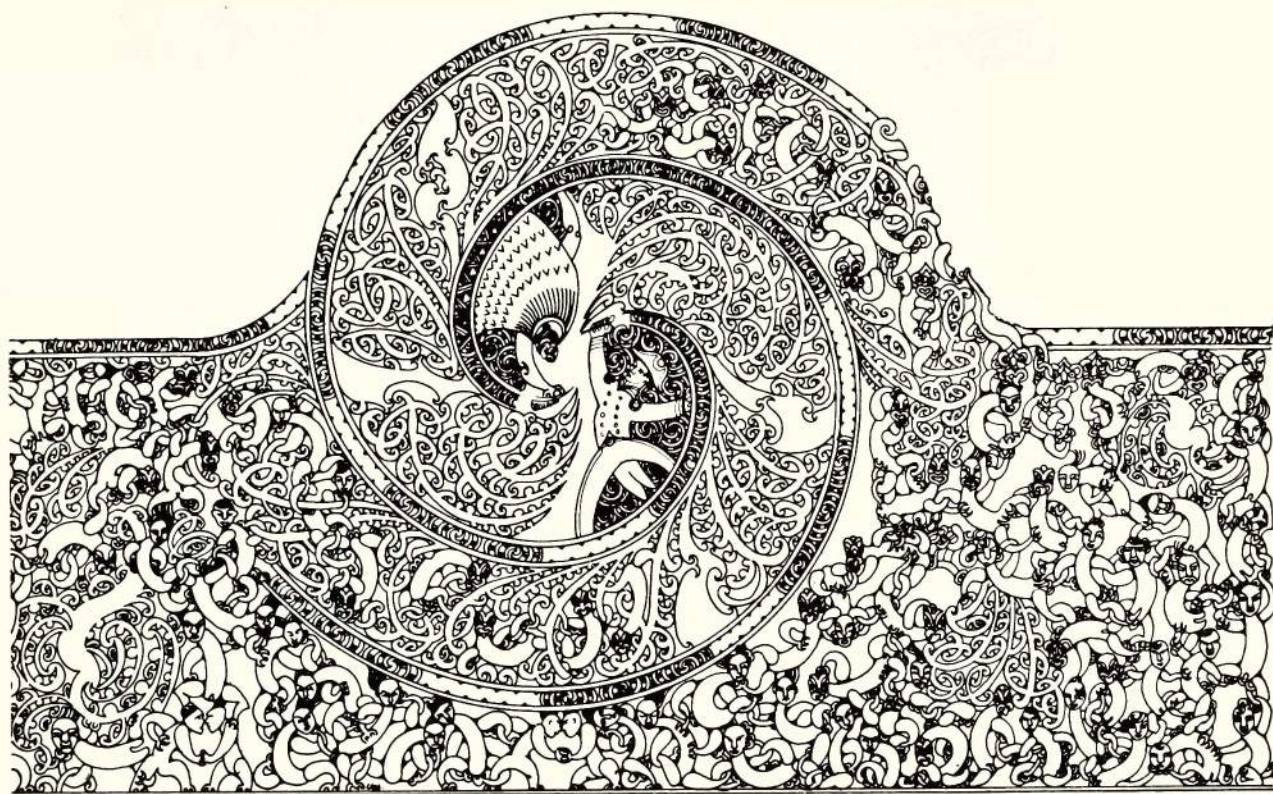


# MURIWHENUA LAND REPORT



WAITANGI TRIBUNAL REPORT 1997

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The cover design by Cliff Whiting invokes the signing  
of the Treaty of Waitangi and the consequent interwoven development  
of Maori and Pakeha history in New Zealand as it continuously  
unfolds in a pattern not yet completely known

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## LIST OF ABBREVIATIONS

AJHR	<i>Appendices to the Journals of the House of Representatives</i>
APL	Auckland Public Library
ATL	Alexander Turnbull Library, Wellington
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon, Irish University Press, 1968–69)
ch	chapter
doc	document
fig	figure
fol	folio
MLC	Maori Land Court
NA	National Archives
NLC	Native Land Court
OLC	old land claims file
p	page
s	section (of an Act)
sec	section (of this report)
sess	session
vol	volume
Wai	Waitangi Tribunal claim



The Honourable Tau Henare  
Minister of Maori Affairs  
Parliament Buildings  
Wellington

Tena koe e te rangatira kua eke nei koe ki runga i te ahurewa teitei, whakamana hoki, kua whakaritea nei ki a koe, hei pikau i nga kaupapa kia ea ai nga wawata me nga moemoea a te hunga Maori. Kua roa rawa te wa e kitea ano ai he kanohi Maori hei Minita Maori. Kaati, ka nui te mihi ake ki a koe e noho mai na i waenga i te ana o nga raiona. I noho mai hoki a James Carroll (ara a Timi Kara), Apirana Turupu Ngata, Matiu Rata, Manuera Ben Riwai Couch, Koro Tainui Wetere, Winston Raymond Peters, hei Minita Maori i te wa i a ratou, a, ko koe tenei mo enei ra.

Ki o tatou tini mate, ratou kua takoto i te urunga te taka . . .

Haere ki te haupuranga o te kauheke . . .

Huri noa ki te hunga e takatu nei, tena tatou katoa.

Ka hoki ano nga whakaaro ki o karangatangamaha o Te Tai Tokerau kia ratou e noho ana hei mema Paremata. Ko Frederick Nene Russell tena, ko Wiremu Katene tena, ko Hori Karaka Tawiti, ko Hone Mohi Tawhai, ko Ihaka Hakuene, ko Hirini Taiwhanga, ko Eparaima Mutu Kapa, ko Hone Heke, ko Te Rangihiroa, ko Tau Henare, ko Paraire Karaka Paikea, me tana tama a Tapihana, ko Matiu Rata, ko Bruce Gregory. I tenei wa kua tatu te turanga, ko koe tenei.

Tenei matou te tuku atu ki a koe tenei ripoata . . . me te whakaaro ano ki a ratau o te Taitokerau whanui, na ratou i waha enei taumahatanga i nga ra kua taha.

Ma te Atua tatau katoa e manaaki i nga ra kei mua i te iwi whanui.

Arohanui





## PREFACE

This report covers seven claims in Muriwhenua, the country's most northerly district.<sup>1</sup> As depicted in figure 1, its southern end is fixed by a line from Whangape Harbour in the west to north of Whangaroa in the east, following the Maungataniwha Range. Since Maori hapu or tribes were not generally defined by land boundaries in the manner of states, and were mobile, this boundary is chosen for reasons of geography only. There are hapu with customary interests on either side of this division but, over the several years of the Tribunal's hearings, no one contended that the overlaps need affect this report or the disposal of the claims.

Hapu and  
boundaries

It substantially assisted the Tribunal's progress that, throughout the proceedings on land, fish, and other matters, from 1986 to the closing addresses on the first part of the land claim in 1994, all but one of the claims were represented through a single body, the Runanga o Muriwhenua. The runanga arranged research and legal representation for all claims for the principal hapu aggregations of Ngati Kuri, Te Aupouri, and Ngai Takoto on the northern peninsula, Te Rarawa in the west and Ngati Kahu of the central area around Doubtless Bay. Only one claim was outside this arrangement. Owing to their distinctive experiences, Ngati Kahu o Whangaroa were heard separately in respect of lands east of Mangonui harbour. The six principal groupings mentioned covered all the claims made to the Tribunal, although within or related to those umbrella groups are other hapu that have customary associations with the area.

Claim  
aggregation

The location of the various groups as shown in figure 1 is approximate only. Because of the past mobility and varying fortunes of the hapu over time, hapu locations and the extent of their influence have regularly changed and relationships are so close it is overly pedantic to divide them. For the purposes of the history that this report describes, it is necessary to show only the main areas of influence for the larger hapu groupings.

It is not assumed, however, that the coordination under the Runanga o Muriwhenua still applies. It may do, but in 1996 the Tribunal received notices indicating that some sections of Ngati Kuri, Ngati Kahu, Ngai Takoto, and Te Rarawa, and also the Murupaenga whanau, now seek to be represented independently.<sup>2</sup> They and the runanga have yet to be heard on these matters.

- 
1. In addition, there is a number of specific claims relating to particular lands or contemporary policies that are not covered in this report. The full list of all claims in Muriwhenua is set out in appendix II.
  2. See notices of 29 February 1996 (paper 2.128) and 17 October 1996 (paper 2.135), the amendment to Te Rarawa claim Wai 128 of 10 May 1996, Ngati Kuri claim Wai 633 of 2 September 1996, and Ngai Takoto claim Wai 613 of 16 July 1996

## PREFACE

Deferral for fish,  
SOEs, and  
sewerage

When the claims were first brought to hearing, as long ago as 1986, the historical land claims were adjourned when the claimants sought urgent hearings in relation to certain contemporary events. The first was the intended transfer of Crown assets to various State-owned enterprises, which, the claimants said, would prejudice the chances of recovery against the Crown if claims were proven. The Tribunal reported on that matter and eventually, after court proceedings and the involvement of other tribes, a protective scheme was settled on a national basis. The second was the Government's proposed allocation of fish quota. In a test case for all Maori, the claimants were diverted to lengthy proceedings on the nature of the Muriwhenua fisheries. The outcome, again, was a report followed by a national settlement. The third related to the Mangonui sewerage scheme, on which the Tribunal reported in 1988. The Tribunal was then diverted to other business, and it was not until later that a reconstituted Tribunal returned to consider the land claims.

Tribunal-initiated  
research

At the first hearings, in 1986, the claimants contended that the Crown's Treaty of Waitangi promise to protect Maori interests could not have been upheld when Muriwhenua Maori had been so deprived of land as to be poverty-stricken soon after European settlement began. No one was certain how that had come about, but the claimants contended the result spoke so amply for itself that the Crown should look into the matter and advise. As this report explains, we have sympathy for that view. There is sound judicial opinion that the Crown has a legal responsibility to establish the validity of its extinguishment of native title, and a Treaty responsibility to show the steps taken to protect Maori interests in the process. However, the Tribunal itself, as constituted under the Treaty of Waitangi Act, has an independent research capacity to ensure a full examination of all matters and, accordingly, the Tribunal commissioned Dr Rigby and Mr Koning to provide an historical report.<sup>3</sup>

1865 limit

The scope of the claims became apparent as research was presented and the historical events unfolded. Such were the issues, however, it was felt that the claims would not be well managed without dividing the historical field. As most of the Muriwhenua land had passed from Maori ownership by 1865, when the Native Land Court heralded a new administrative order, it was decided to limit the initial inquiry to causes of action or to policies complained of that were established before that date. This division could not be enforced with undue rigidity, however, and the inquiry proceeded beyond 1865 to determine the final outcome of policies previously in place.

Issues

Although the issues did not become apparent until the research had progressed, the Tribunal did not require the filing of further claim particulars. Instead, prior to the closing addresses, the issues were determined from the data then to hand. The Tribunal's statement of the issues is printed as appendix I.

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3. See Rigby and Koning, 'Muriwhenua Land Claim: A Preliminary Report on the Historical Evidence' (doc A1)

PREFACE

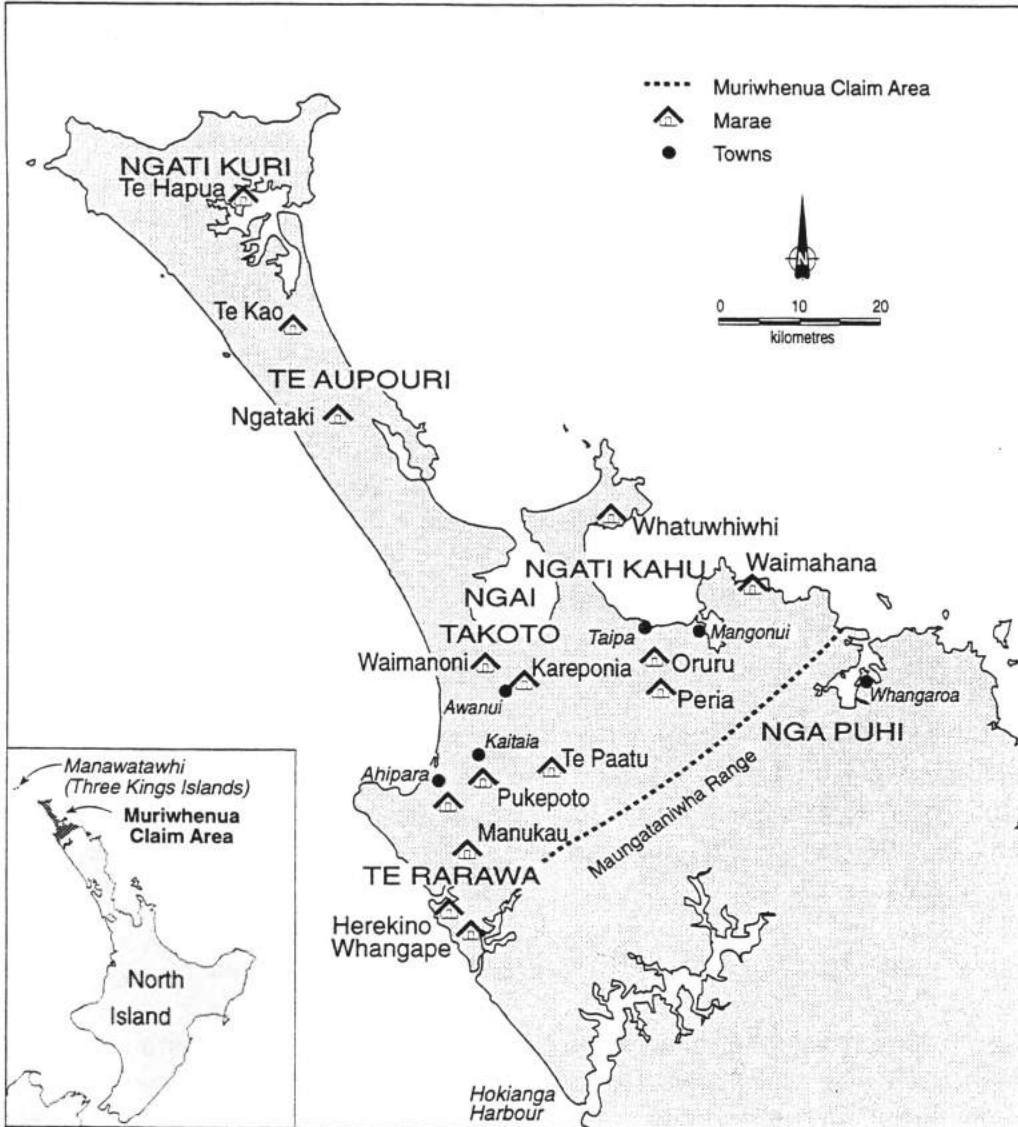


Figure 1: Muriwhenua; principal hapu and current marae

It was further decided to report no more than our findings of fact and interpretation, and, if it appeared the case at this stage was well founded, to assess the situation before proceeding further. The Tribunal is satisfied that the claims to 1865 are well founded and that the consequences have been such that recommendations for the transfer of substantial assets, to be effected as soon as practicable, would be appropriate. Those interested will now be heard on whether the Tribunal should proceed to consider recommendations for relief, or whether, instead, negotiations will be sought, or the inquiry continued into post-1865 matters. Already some research has been done, and evidence given, on the later period.

A hearing on relief

## PREFACE

Taemaro position

The Taemaro claim relates to Ngati Kahu o Whangaroa and lands east of Mangonui harbour. It is included in this report as it is part of the same district and has been affected by the same history. There are also some differences, however, including one that the claim was limited to causes of action arising before 1865. These differences enabled the Taemaro claim to be severed for mediation but, no settlement being achieved, it was reinstated in the current inquiry. The Tribunal is satisfied that the Taemaro claim is well founded, and we will now hear claimants and the Crown on the recommendations to be made to conclude all matters.

Stokes's review of evidence; record of inquiry

This report has conclusions based on evidence far too voluminous to record in detail. A fuller summary of many aspects, by Tribunal member Professor Evelyn Stokes, has been relied on and is available as part of the Tribunal's record.<sup>4</sup> A record of the inquiry, of the proceedings and the documents, is printed as appendix II and is followed by a bibliography of texts to which the Tribunal referred.

---

4. See Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence' (doc P2)

## CHAPTER 1

# OVERVIEW

*Hei ahau koe e whai piringi taku ukaipo? Hei a koe ranei taua e pahuahua ai? Kahore, hei a taua tonu, paringa tai moana, tumunga tai tangata te purapura e ruia ai, te reanga tangata e puta ai, puta ki te whei ao, ki te ao marama.*

*Is it through me that you will gain a place at my mother's breast? Is it through you that we will be replete? No, it is only together as a single ebbing tide, a flooding tide of people that the seed can be properly sown and the new generation can emerge into the world of light.*

Muriwhenua proverb (cited by Shane Jones)

Even before British government was established in New Zealand, the pick of the Muriwhenua land was thought to have been sold; and once British government came it was in Muriwhenua that the first official land deed was executed. The Muriwhenua claims involve some of the very early private and official land transactions between Maori and European: the pre-Treaty transactions from 1834, and the Government transactions from 1840 to 1865. They show how transactions posited as land sales by one race were contracts for long-term social relationships for the other. They concern a people whose economy was in jeopardy through land losses even before 1865. While most other tribes still held their estates at that time, many, conscious of the experiences of tribes whose lands had been settled first, had recently been to war to prevent similar losses happening to them.

The main alienations were before 1865 . . .

Thus the Muriwhenua hapu were at risk from land loss before most others. The loss was also greater in Muriwhenua, for, once the hapu were parted from their lands, the only available industry was in gumdigging, which was heavily controlled and manipulated by European traders. Despite some initial prosperity, the district showed little potential for growth once the timber was extracted and whaling ended. It became a depressed area and, with nearly all their usable land gone, Muriwhenua Maori were reduced to penury, powerlessness, and, eventually, State dependence. To this day the district has one of the worst records of Maori social and economic disadvantage. Family cohesion has been affected, too, as most Maori have shifted to cities like Whangarei and Auckland.

. . . which created early poverty

Essential to understanding the issues affecting the early land transactions is a fact so obvious as to be easily overlooked: that at all times before, during, and after the land arrangements in question, Muriwhenua Maori had their own world-

An independent Maori polity existed

view. They maintained a distinctive social and economic order, which had evolved through a millennium of experience and which was settled and regularly maintained. Accordingly, they enjoyed an independent polity and had no reason to think that, when they entered into the transactions, those transactions should be seen on other than Maori terms or would somehow threaten their independent existence. Likewise, and contrary to the assumptions of some of the early Europeans, Muriwhenua Maori had no cause to consider that their ancestral laws should be abandoned. Although the hapu were later obliged to accept Western law, their own traditions and values were not forsaken and survive today.

Maori would keep  
their own laws  
and authority

In the same way, their independence and freedom from outside domination were things they could treasure. It was natural for them to assume that their own laws and standards would continue without let or hindrance. Indeed, they knew no other law or standards. Whatever may be said about the Treaty of Waitangi and the proclamation of sovereignty as introducing a new legal regime, no such regime could have been given serious thought until it could be seen to be established in fact and to be working on the ground. Moreover, throughout the crucial period from first contact to 1865, Maori were by far the majority population in this district. It was their way that prevailed, and it must have seemed to them that their arrangements with Europeans would be determined according to no other laws and customs than their own.

Official influence  
may be  
exaggerated

The fact that Maori had their distinctive and time-honoured laws, policies, and methods of doing business needs constant emphasis. Some historical focus on the records of Government agents could suggest that official edicts and opinions had more influence on Maori than they did in fact, as though Maori had no more than blank minds awaiting intelligence. In reality, the officials who operated in Muriwhenua were few and lacked the means to enforce their views. Their influence was unlikely to have been as great as their reports to the Government portrayed.

Written and oral  
traditions

Indeed, there are problems with the surviving documentary record. Its one-sided nature has hindered a bicultural understanding of the societies that existed at the time. Further, the documentary record may be given a higher status than it deserves. Since the authors cannot be cross-examined, their opinions may appear more reliable than they are, and views may be perpetuated that in fact reflected personal agendas, temporary aberrations in public opinion or individual eccentricities. In addition, the pervasive written account presents only a European view. The understandings, the thinkings and the arguments are European, the chronicling of events is self-serving, and the repetition of opinions may be confused with corroboration. The general assumption has been that the future debate will likewise be on European terms.

Even a 'Maori account' may in fact represent a European understanding of a Maori position, amounting to no more than the perception of one culture through the lenses of another. As linguists have pointed out, translations reflect the bias and understandings of the interpreter, not the speaker. The use of language



equivalents, or the ascription of special meanings to words by one side alone, expands the areas for miscommunication. 'I sold the land,' a Maori is reported to have said, and that may seem to be a simple translation until it is appreciated that Maori had no word for 'sale'.

Yet, in the past, the written account has been relied on and oral tradition has been distrusted. What may seem from a European view to be liberties taken in relating details over time are taken to discredit the entire Maori opinion. Thus, in Muriwhenua tradition, the land was 'confiscated', but, as was often pointed out in rejoinder, confiscation applied only to those who had taken up arms against the Government. If the land was not technically confiscated, to Maori it still was confiscated if it was not freely given. Whether land is taken by a trick of Western law or through warfare, it is taken just the same. While the metaphors of oral tradition needed to sustain messages over generations have resulted in powerful accounts, the tradition may remain vitally honest for the inner truths conveyed. In reviewing Muriwhenua history, therefore, our greater concern has been not with the vagaries of oral tradition, but with the power of the written word to entrench error and bias.<sup>1</sup>

The existence of Maori law also needs stressing in the light of official presumptions of the time that Maori had no law worth considering, and therefore transactions could be assessed in European terms alone. Elements of that prejudice survive even today. Outside the academic community, it is still asked, for example, at what point Maori understood the meaning of 'sales', as though, on receipt of that intelligence, they would have ceased to act by their own customs and blithely accept those of another country. It needs still further emphasis because, both then and now, a little knowledge of Maori matters has been seen as sufficient for Europeans to make large judgements on Maori affairs. And, commonly, the presumption that indigenous culture has not survived, despite current proof of its resilience, still influences the view that all things should be measured in assimilationist terms. Even now, it is assumed that the age of Maori contracts has long passed, when in fact they are still maintained.

Cultural mind-sets

The continuing existence of Maori law is not negated by the lack of informed settler opinion about it. European ignorance of Maori law shows only how Maori were expected to know the English system, while the settlers were unwilling or unable to reciprocate; and yet the settlers had the greater opportunity to learn, for they lived in a Maori world. This lack of comprehension, however, was probably due most to the settlers' mind-set against any system but their own, and their expectation that their initial subjection to Maori law would be temporary, lasting only until English law could reign.

For lack of an adequate record, no precise statement of Maori intent can be attributed to particular transactions, but a likely position is construable from regular Maori practices and beliefs. It is usual in all societies to interpret, even

The nature of  
Maori law

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1. For an analysis of the evidence on cross-cultural miscommunication, see Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc P2), ch 19.

unconsciously, what people think and do according to the society's norms. In this case, in view of the strengths of the customary opinion about land, it would be overly speculative to assume that land sales were intended, unless a major change of thinking can be shown to have taken place. This is not just because land sales were antithetical to Maori views on the relationship between land and people, as has often been stressed. More importantly, it is because Maori contracts were not about transferring property but about defining relationships between people. There appears to have been no Maori law of property transfer entirely divorced from continuing personal responsibilities between the parties.

The custom of  
incorporation

Most early traders and settlers, being seen to have a contribution to make to a community, were invited by enterprising hapu leaders to join it. In the Maori scheme, the focus was on gaining people for the tribe, and the allocation of land was incidental. This practice of incorporating foreigners into local communities has often been remarked upon as a Pacific phenomenon. It was accompanied by an assumption so obvious to Maori as to require no specification: that the arrangement endured only for so long as the newcomers, like Maori, contributed to the community to the best of their ability and were committed to the community's best interests. It should be borne in mind that mana, the primary motivator of Maori action, accrued to those who provided for the people and not at all to those who looked after only themselves. If property rights flowed from the arrangements, they soon ceased to flow if residence and a regular contribution to the community were not maintained.

The Government  
purchase  
programme; the  
extent of change

Such fundamental views on land and society were unlikely to be easily displaced. The question is whether matters had so changed, by the time of the main Government purchasing between 1856 and 1865, that by then Maori must be taken to have understood the likely consequences of a sale in Western terms. The evidence for a change of that sort is unconvincing. Maori action remained consistent with Maori custom. Conversely, it was inconsistent with European custom. Despite changes in the form of religion, the nature of the leadership, the protocols for trade and many other areas, Maori society remained distinctly Maori. Behind a wealth of new trappings, the underlying value system retained its distinctive Maori flavour.

This is hardly surprising, though. Against several thousand Maori there was only one resident official, with a constabulary of three, for the whole district. There was only a handful of Europeans. There was certainly nothing to compel a change in the Maori view. And, following nearly every so-called purchase that the Government made before 1865, virtually no one took possession of the land. The meaning and effect of both European government and a land sale still existed only on paper in Muriwhenua, and were yet to be demonstrated on the ground.

Maori policy

The Maori policy in Muriwhenua had been, and continued to be, the promotion of European settlement. The purpose was still the same: to enhance the economy and standing of the hapu. After the Treaty of Waitangi was signed,

however, the pursuit of an alliance with the Governor was added to this. The expectation appears to have been that, by this course, the status and authority of the hapu in the district would be guaranteed, and the hapu, provided they gave freely of their land for the Governor's allocation, would be major beneficiaries from European settlement. Massive land transfers were the consequence, but they were not simply 'sales' in a Western sense.

For the purposes of our jurisdiction, however, the intention of the Maori party in transacting, at this time, is not as important as the integrity of the Government in buying. Circumstances had changed. The purchasers were no longer private Europeans but the Government, for it was agreed in the Treaty of Waitangi that the Government should have a monopoly on the purchase of Maori land. In return, the Governor was obliged, and had undertaken in fact, to stand as a protector of the Maori people and as a guardian of their interests. The importance of such a fiduciary role could not have been overstated. Indeed, there had been no modesty when he presented a caring father image during the discussion of the Treaty of Waitangi. The Government knew what Maori could not have known: 'sovereignty' for the British meant that the British land system applied and, under this system, the extensive alienation of land by Maori would not produce the results Maori intended unless they kept sufficient land in reserve. It required no special knowledge for the Government to see that this was the case. Lord Normanby had written from London stating his instinctive concern that, without protection, Maori would be the 'unintentional authors of injuries to themselves'. The matter could not have been put more simply, honestly, or forcefully.

Government  
responsibility

That protection was not given, however. Fiduciary responsibilities and Maori understandings were ignored in favour of a policy of total extinguishment of native title. No matter that the policy may have been intended as benign when first formulated, and no matter that adequate reserves may have been contemplated, when the policy was actually applied Maori interests were indeed very nearly extinguished totally. Maori became confined to the least fertile or the most remote parts of the Muriwhenua territory. They became excluded from a stake in the economic order for which they had bargained and for which, in terms of their customs, they had given generously.

The findings focus on the following acts or omissions of the Crown:

- (a) The Government's confirmation of the pre-Treaty transactions as though they were valid purchases. We find that the transactions did not effect, and could not have effected, valid and binding alienations. We consider that Maori entered into these transactions with entirely different expectations: that the transactions imposed obligations on the settlers, of which they ought reasonably to have been aware, but which they generally did not fulfil.
- (b) The Government's inquiry into pre-Treaty transactions to determine whether they should be confirmed. We find that no inquiry at all was made in most cases, and only an ineffectual inquiry into the rest; and yet

Whether 'sales'  
were valid  
alienations

Was a proper  
inquiry made?

the Maori interest was presumed to have been extinguished in all of the lands submitted to the Government's adjudication.

The surplus land  
issue

- (c) The Government's allocation to purchasers of only part of the lands they were said to have purchased, and its retention of the surplus. We consider that the Government's surplus land claims are unsustainable on several counts. The assumption was that the land had been 'sold', whereas, in our view, that was not the case. It was further overlooked that the transactions were personal to the Europeans concerned, and neither the Government nor anyone else could enter upon that land without the hapu's agreement. In addition, some reliance upon a legal theory about the Crown's radical title was inappropriate for the circumstances of the colony, where the radical title was already spoken for. Moreover, the Governor's intention to take the surplus land had not been stated during the Treaty of Waitangi debate when the matter was raised. Instead, the opposite impression was given. That same impression was given also by later governors. Finally, to be valid, the pre-Treaty transactions needed Maori affirmation. In Muriwhenua, Maori affirmed the transactions, as they understood them to be, on the express condition that the surplus would return to them.

Adequacy of the  
Government  
purchase process

- (d) The Government's purchase of most of the remaining land. Here again, none of the transactions was proven before an independent authority at the time, and none can now be shown to have been intended as an absolute sale. On the evidence, they were not. Nor was there contractual mutuality or common design. Further, the Government was in a conflict situation, yet no independent audit of its actions was arranged. Maori contractual expectations of long-term benefits were known, or were abetted, but there were no plans to provide for them. There was no protection for Maori interests generally and, most especially, reserves were so minimal as barely to warrant mention.

Land tenure  
reform

- (e) The alienation of Maori interests in the remaining Muriwhenua lands through land tenure reform and Native Land Court operations. In earlier reports, we have considered that land reform and the operations of the court were inconsistent with the principles of the Treaty of Waitangi, and prejudicial to Maori by contributing substantially to land loss, social dislocation and political disempowerment. Our concern at this stage of the inquiry is for the individualised Crown grants and reserves made before 1865, as there were no grants or reserves for hapu.

Proof and  
accountability

- (f) The Government's assumption that its own purchases of Maori land were valid and fair. We find that the Government did not establish at the time, and has not shown since, that its own acquisitions were 'fair and equal', in terms of Lord Normanby's instructions, as it was obliged to do as a matter of Treaty principle.

The Government, in our view, had become a judge in its own cause. Although the royal instructions were that a Protector of Aborigines

should watch over Government actions affecting Maori, the Protectorate had been abolished, and at the relevant times there was no provision for an independent audit of any kind. Moreover, the Government did not find it necessary to prove the validity of its own purchases. Even allowing for the destruction of some documents by fire, the Government did not keep a proper account of its actions, or enrol in the lands and deeds register a statement of how it came by Maori land. Maori were prejudiced, and remain prejudiced to this day, by the lack of clear evidence concerning the extinguishment of native title. The Government's onus of establishing the fairness and equity of extinguishment became replaced by a burden on Maori to show a wrong in English legal terms. That burden was placed on Maori, and still exists today, even though the Government alone possessed the record of its actions and even though Maori were without practical access to the courts. Maori were left as supplicants to officials, who treated their petitions with small regard, when it was the officials who should have been obliged to establish affirmatively the justice of the Government's claim to the land.

- (g) The irregularities affecting particular transactions. These are documented in the report and concern inadequacies in terms of land description, the alienors' right and title, purchase price, the information supplied, and the process adopted.
- (h) The failure to ensure that sufficient reserves were created for Maori. Serious shortcomings in the way particular transactions were completed may have amounted to naught if a fair share of the land had been secured for Maori at the time, and if, as a result, Maori had been participants in the new economic order that the Treaty ushered in. It is clear that Maori had expected that result and certainly, in return for the gift of settlement rights, they were entitled to no less. It is equally clear that the royal instructions accompanying the Treaty had required that sufficient reserves be allocated.

Particular irregularities

Failure to ensure reserves

In all, the Muriwhenua claims are about the acquisition of land under a show of judicial and administrative process. They concern Government programmes instituted to relieve Maori of virtually the whole of their land, with little thought being given to their future wellbeing or to their economic development in a new economy. There is little difference between that and land confiscation in terms of outcome, for in each case the long-term economic results, the disintegration of communities, the loss of status and political autonomy, and despair over the fact of dispossession are much the same.

The broad nature of the claims

The area affected by pre-Treaty transactions was about 150,000 acres (60,705 ha), with 20,000 acres (8094 ha) passing as settler grants, 26,000 acres (10,522 ha) as surplus, and the balance being claimed by the Government through assignments from settlers. The settlers' claims were never proven, however, and

The area affected

in this inquiry the right to those lands was claimed instead on the basis of certain purchases.

By the time the pre-Treaty transactions were finalised, Maori were already excluded from the best of the Muriwhenua land, though this may not have been apparent to them at the time. Government purchases, which began as the pre-Treaty transactions were finalised, accounted for a further 280,177 acres (113,388 ha) by 1865, which left most Maori considerably compromised on marginal lands in the most isolated parts of the district. The policy of aggressive land-buying simply continued to roll on. By 1890, a further 75,774 acres (30,665 ha) had been acquired by the Government and there was no hapu that could be said to have held sufficient lands for its present or future wellbeing. Even before 1865, however, in our view, Maori were effectively excluded from the economic equation, for the lands then alienated were the most fertile, and the most strategic in terms of the district's future growth.

Maori were soon to learn of the gross inequities that arose from the Government's management of land. On the northern peninsula, for example, one European could own as much as 68,667 acres (27,790 ha), and lease more besides, while a whole community of Maori nearby, at Te Hapua in this instance, had access to only 800 acres of marginal land, where living conditions were squalid and large parts of the land were so liable to flooding as to be unusable at certain times of the year. At no place and at no time was evidence found of an attempt to achieve a comparable equity in Maori and European land holdings.

Most Maori became gumdiggers, ensnared in a system of debt peonage, where children laboured with the adults and where conditions were such that a quarter of all infants died before reaching the age of three years. There followed forlorn attempts to farm what were clearly remote and marginal lands. Communities disintegrated as people moved away. Social controls could not be maintained. The Maori people in Muriwhenua became, and still are, a people at risk.

Their powerlessness after land loss was illustrated in responses to their numerous complaints and petitions over their exclusion from the land. The Government set the rules on which their complaints would be considered. The Government alone possessed the relevant documentary record, and there was no practical access to the courts for their type of grievance. The petitions and complaints were rarely fully inquired into as a result. Blocks were presented in the hope that the supplicants might eventually go away, or the complaints simply disappeared into official files.

The struggle over land rights continued just the same. As late as the 1960s, Maori were removed from lands on which they had resided for generations and which they genuinely believed they owned. According to the Government, however, the lands had been sold over 120 years previously. In rejoinder, Maori challenged the Government's rights wherever those rights seemed uncertain, most notably with regard to Lake Tangonge, and in Supreme Court proceedings with regard to Ninety Mile Beach. In 1975, when all else had failed, some joined

with other Maori to carry the protest in a land march from Te Hapua to Parliament in Wellington.

This report concludes that the claims are well founded and that recommendations should now be made to transfer assets in recompense. These may include binding recommendations in respect of Crown forest licensed land and State enterprise property. However, the Tribunal wishes first to hear counsel on a number of relevant matters. What is the proper basis for assessing relief? Is it to calculate the areas where valid purchases have been proven to the fullest extent, or is it to restore the hapu to a reasonable economic base? In what circumstances may binding recommendations be made, and in whom should the assets vest? These issues are set out in chapter 11. The Tribunal considers that they should be addressed and that recommendations be made as soon as possible, so that relief for Muriwhenua should not be further delayed.





## CHAPTER 2

# THE PEOPLE AND THE LAND

*Unuhia te rito o te harakeke kei hea te komako e ko? Ki mai koe ki au, 'He aha te mea nui o te ao?' Maku e ki atu, 'He tangata, he tangata, he tangata.'*

*Pluck out the centre of the flax bush, and where would the bellbird be? You ask, 'What is the most important thing in the world?' I would reply, 'Tis people, 'tis people, 'tis people.'*

Muriwhenua proverb

### 2.1 INITIAL ISSUES – CONFLICTING LAWS AND CONTRACTUAL MUTUALITY

For 20 years or more before the Treaty of Waitangi, a number of Europeans had taken up residence in Northland with varying intentions of permanency. Nearly all were traders or missionaries. Most were based in the Bay of Islands, a centre of early trade, but some established themselves in other parts of the 'Far North', including Muriwhenua, which was the country's most northerly district and supported the most northerly trading port.

Early settlers as tenants at will

The position of these residents, however, was tenuous. In effect, they occupied Maori lands at Maori will. Many were known as or called themselves 'Pakeha Maori'. Several had sought to bolster their positions through the execution of certain deeds which, with varying and curious shades of literacy, bore something of the character of Western land conveyances. With or without such deeds, however, the residents depended upon the goodwill of their Maori benefactors to remain in occupation. Generally, and for so long as they showed respect to Maori, their occupancies were unchallenged.

However, when it seemed the United Kingdom would add New Zealand to its portfolio of colonies, those residents without deeds of conveyance saw a need to obtain them. It was presumably obvious to them that, were the annexation of New Zealand effected, what would secure them in their possession would be not Maori goodwill but the pleasure of the British Government – and the Government was more likely to be persuaded by written proof of a purchase in accordance with British law. A sampling of these deeds is given later to show their character. Some were standardised forms composed by Sydney lawyers, but these were no more intelligible, even to the literate, none the less.

With likely annexation came deeds

Cultural  
difference and  
contractual  
mutuality

A central issue in these claims, as agreed by all counsel, is whether the transactions amounted to permanent land alienations, for that is what the Government later considered them to be. In this the Government relied not only upon the written deeds, but upon the perceived affirmation of them by Maori before the land commissioners appointed to examine them. It is necessary to consider, however, what Maori thought they were affirming.

First and foremost, the claims concern those early transactions before the Treaty of Waitangi was signed. The question is whether the parties were sufficiently of one mind at the relevant times for the Government to treat the transactions as binding land sales extinguishing all Maori interests. For the claimants it was contended that the parties were not of one mind, while the Crown argued that both sides sufficiently understood the meaning of a sale by the time the transactions were allegedly affirmed.<sup>1</sup>

For their part the claimants set out to show that Maori had a distinctive tenure system and a substantial culture, so antithetical to land sales that sales could not have been in their minds, and with a mode of business which showed that a different result was intended. We are in substantial agreement with the tenure system as summarised from the evidence by claimant counsel J Williams.<sup>2</sup>

Sadly, it was considered necessary to establish that a society in fact existed. In the past it has been assumed that Maori so lacked civilisation that their customs and practices were largely irrelevant, and the only substantive issue was whether Maori had sufficient opportunity to understand land sales by the settlers' law. Similarly, it has been assumed that Maori so lacked any form of settled authority that the only requirement was to ask when Maori learnt of this new system, not whether they agreed to it. Finally, it has also been assumed that Maori should have learnt rapidly, for such customs as they had were so minor by comparison that there was little that required displacement.

Since the Tribunal has to consider not only the problems of the past but the avoidance of them in future, at least in proven cases,<sup>3</sup> we were concerned to note that in popular discourse many past assumptions continue to be made. It is still asked when Maori understood the Western way as though there was no other. Mutuality is the mental state most needed for good race relations, in our view, just as it is for binding contracts; and the test for mutuality is mutual comprehension and respect. It is relevant to ask at what point Europeans understood the expectations of Maori, which were legitimate in Maori terms, or whether Europeans understand them yet.

Cultural resilience

Accordingly, this chapter considers first the people of the land and those aspects of their society that are pertinent to the claims. It is concluded that, like all peoples, Maori had a profound social order, clear understandings about

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1. The arguments are fully set out in counsel's closing submissions: R. Hawke for Taemaro claimants (docs M1, O3); J Williams for remaining Muriwhenua claimants (docs L10, N1, N2); and M T Parker and A Kerr for Crown (doc O1).
  2. See especially doc N1, pp 16-21
  3. See s 6(3) Treaty of Waitangi Act 1975

authority, and established codes of conduct for keeping good relationships, which could only have given rise to certain expectations from the transactions in question. We also consider that those standards and practices were so well established that they were unlikely to have been readily displaced by European influence. We consider that the values or principles underlying those practices are observed to this day.

The Crown did not challenge that Maori had a comprehensive and established social order, but argued that, whatever that social order might once have been, by the time the transactions were made, or affirmed, Maori knew the settlers' system and agreed to an outcome in Western terms. Accordingly, this chapter also examines the impact of the first Europeans – the explorers, whalers, traders, missionaries, settlers, and officials. It is considered that, although Maori and European made superficial changes in the way they acted to accommodate each other, neither side substantially abandoned its own views or adequately appreciated the other's. To borrow a phrase from Dr Dame Joan Metge of Muriwhenua, whose submissions substantially assisted this inquiry, Maori and Pakeha were talking past each other; and in her view they are still talking past each other.<sup>4</sup> While contractual mutuality was unlikely in such circumstances, we also consider that it was not even settled whose authority applied – that is, by whose rules the arrangements should be tested. Rather, that position was assumed.

To assist parties we have sought to keep this report brief, to complete a report rather than a judgment, as we are bound to do, and to assess issues in the context of history, not history per se. While it would be valuable to lay out all the arguments, opinions, and information put in by counsel, tribal spokespeople, historians, anthropologists, and others, because of the wealth of the material and to expose the main issues, we have not done so. For clarity, we have opted to report mainly our conclusions, and to rely for the detail upon the record, as indexed in the appendices, other material as referenced, Professor Stokes's review of evidence,<sup>5</sup> and understandings based upon our own knowledge and experience as explained in the text. The report's opinions on customary norms, for example, are generalised conclusions. All societies have so many strands that to provide a full account of the behavioural norms of any would require a book in itself.

This chapter introduces the original occupants, the current hapu or tribes, and the rich tapestry of their history and traditions. An account follows of certain values that form the foundation of their law concerning their relationship to the land, and to each other. The appearance of European explorers is then considered, the tragic loss of a substantial population from introduced diseases,

The data are summarised

Outline of this chapter

4. J Metge and P Kinloch, *Talking Past Each Other: Problems in Cross-Cultural Communication*, Wellington, Victoria University Press, 1984

5. See the preface and Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc P2)

and the consequential social reorganisation which culminated in the emergence of a dominant leader. Panakareao was indisputably the key figure in most of the transactions, so his policies and proposals are probably the most significant of any. The question is whether, or how, his views were modified by the traders and missionaries who then entered the land. Their activities also are reviewed.

## 2.2 ORIGINAL OCCUPATION

**Iwi and hapu** It appears that, by the eighteenth century, several hapu had ranged over Muriwhenua. Some, like Aupouri and Ngati Kuri, who were once at Whangape, dramatically changed their locations over time, and occasionally they had communities at widely scattered places. Ngati Kuri once spread to Whangaroa, Matauri Bay and Te Tii, and breakaway sections of the various hapu were to move as far afield as Tauranga, Waikato, Whakatane, Gisborne, Hawke's Bay, Taranaki, and the South Island. We need not examine all these hapu or their fluctuating fortunes. It is sufficient to observe that at the end of the eighteenth century, as today, the main groups were: Ngati Kuri on the northern cape; Te Aupouri with their principal marae now at Te Kao; Ngai Takoto of Rangaunu; Te Rarawa, with principal aggregations in the south-west at Ahipara and Kaitaia; Ngati Kahu of Doubtless Bay, from Karikari to Oruru and Mangonui; and Ngati Kahu o Whangaroa, as now called, east of Mangonui. Their locations are shown in figure 1.

**Iwi versus hapu** In modern times these hapu call themselves 'iwi'. Earlier, it appears, 'iwi' meant simply the people of a place, as it is used in the Treaty of Waitangi to refer to the people (or iwi) of England. However, as hapu aggregated for protection in the nineteenth century under remote ancestral or district names common to them all, the combined people or 'iwi' came to be seen as a 'macro' tribe. Later, constituent hapu used 'iwi' to describe themselves as well. Since this report describes the period before 1865, it uses the words then in vogue: 'hapu' for each tribe and 'iwi' for the people of Muriwhenua.

**Boundaries** While hapu representatives recited tribal boundaries when appearing before us, these probably reflect modern arrangements – in so far as the boundaries are settled at all, for traditionally hapu defined themselves by genealogical descent, and only coincidentally by the occupation of land. They had land rights of varying kinds and intensity from occupations over time and from ancestral associations as recorded in tribal history. Since the hapu were mobile, this made for considerable overlaps and suggests that the key to hapu survival lay not in maintaining state-like boundaries in the European manner, but in keeping up their own numbers and in maintaining cordial relations with others through whakapapa (genealogies), marriages, adoptions, alliances, and the protocols for paying respect. External threats made it important to remember, too, that, while the hapu were independent, through bloodlines, shared history and location they

were also part of a whole. Hapu aggregations and allegiances changed according to the leadership of the day, to the extent that we consider the re-shaping of Maori political units depended not on the maintenance of political boundaries, but on personal influence and sway.

The record of prior occupation, evidenced in songs, proverbs, and stories and largely corroborated by modern scientific research, describes an enterprising culture with such a treasury of knowledge and belief that its values or norms were likely to survive the imposition of another culture. In fact they did survive. Many speakers outlined the spiritual and legal order of Muriwhenua. That order remains, stamped on the collective consciousness through early training by elders at home or on marae, or in wananga, traditional teaching institutions that have continued in the north to this day.

The legal order

It is not necessary to record the detail of the traditional evidence, or indeed do more than broadly describe it.<sup>6</sup> The people's account started before time began, at Matangireia, home of the first being, Io-matua-kore, and proceeded from there on a mental and spiritual journey through aeons. It told of an enterprising people, pragmatic but deeply religious, so intimately tied to land, sea, and space that in their cosmos all life forms, and phenomena like the sky, sun, wind, and rain, are bound to them by treasured links in ancient genealogy. Maori thus see themselves as descendants of gods, and as partners with them in a physical and spiritual universe. As Dame Mira Szaszy put it:

Io-matua-kore

we are the children of Papatuanuku, the Earth Mother, one of our divine Primal Parents. We contend that all of Nature derives from her – our lands, forests, rivers, lakes and seas and all life contained therein. As such our spirituality is deep-rooted in the earth, the lands upon which our forebears lived and died, the seas across which they travelled and the stars which guided them to Aotearoa. They were also physically sustained by the produce of Tane and Tangaroa. The sanctity of the Mauri of all things was respected.<sup>7</sup>

In certain accounts some ancestors were autochthonous, but special pride attaches to those who came in waves from Hawaiiki to inter-marry with those here before them, the traditions they brought and the accounts of their journeys back and forth. Kupe is thought to have been the first from Hawaiiki, landing at the North Cape of Muriwhenua, then circumnavigating the North Island before returning to the North on his journey home. Later, his reshaped canoe came back under the command of Nukutawhiti; then numerous others landed at Muriwhenua, having followed the navigational course that Kupe had fixed. These people left a rich anthology of northern place names, describing their first landings and subsequent adventures. The name Muriwhenua itself is from

Kupe

6. A fuller description is given in doc P2, ch 1.

7. Mira Szaszy, 'Evidence Presented to the Waitangi Tribunal on the Te Reo Mihi Marae, Te Hapua on the Runanga-o-Muriwhenua Claims', December 1987 (doc A6), p 2. Tane is the progenitor of forests, Tangaroa of fishes. Mauri is an intangible quality relating to the essence or life-force of a place, person, or thing; it is central to Maori thinking.

MURIWHENUA LAND REPORT

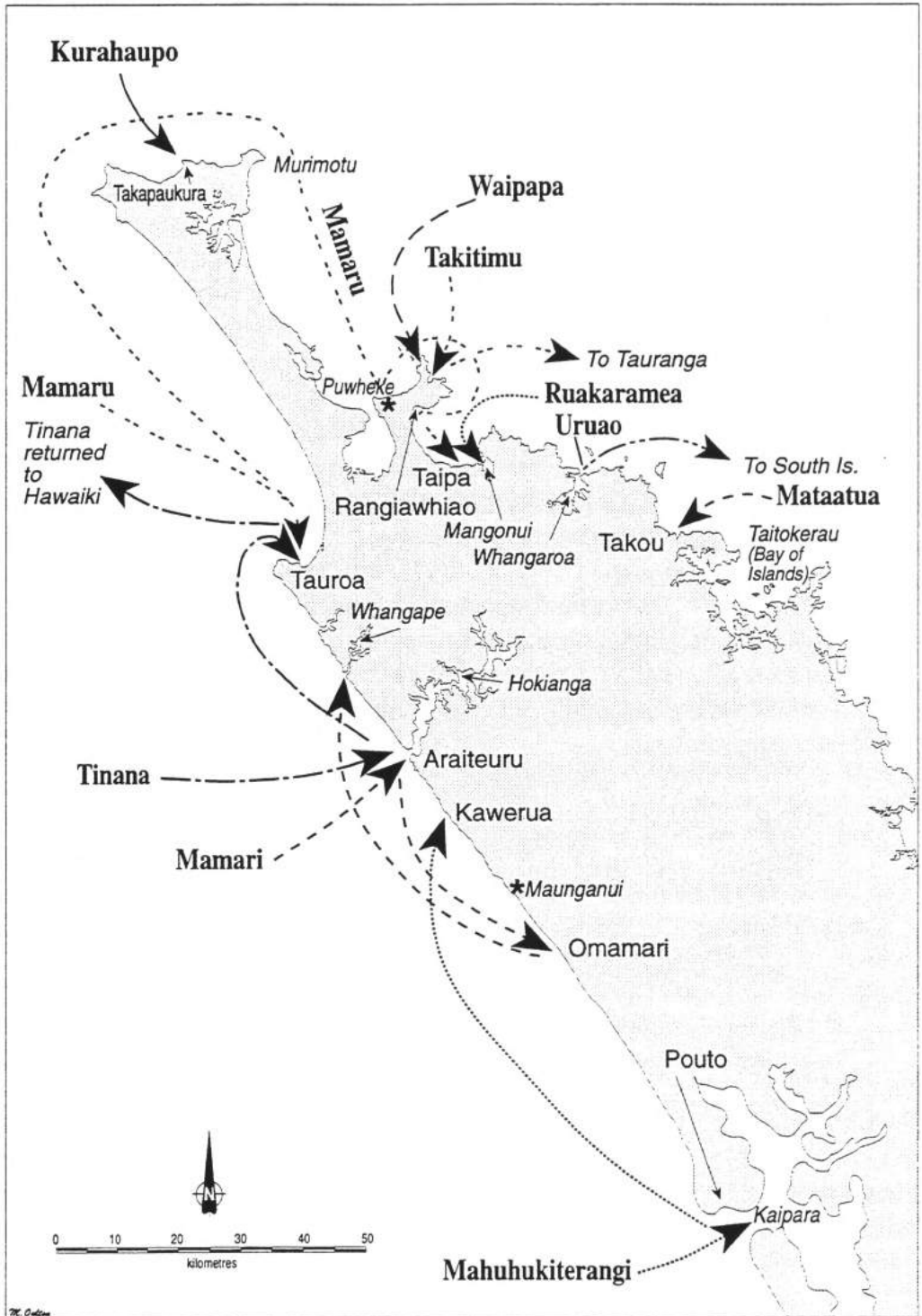


Figure 2: Ancient canoe landings

Pohurihanga of the Kurahaupo canoe, who perceived of the district as 'land's end'. It is also referred to as the tip of Te Hiku o Te Ika, the tail of the great fish, now the North Island, said to have been caught by the legendary Maui.

The voyages were described with such particularity that names were given for each rower's seat on Kupe's canoe, representing a millennium of detailed corporate memory. The same accounts establish the complexity of Muriwhenua lineages. Genealogies trace from at least 10 canoes that made landfall in the district, as illustrated in figure 2 based on traditional accounts. They also describe relationships with hapu throughout Aotearoa, even the South Island, as some of the crew, or their descendants, travelled on to establish settlements elsewhere. The main canoe landings at Muriwhenua were:

<i>Commander</i>	<i>Canoe</i>	<i>Landing place</i>
Kupe	Matawhao	Hokianga
Nukutawhiti	Ngatokimatawhaorua	Hokianga
Ruanui	Mamari	Hokianga/Whangape
Whakatau Potiki	Mahuhukiterangi	Kaipara/Kawerua
Pohurihanga	Kurahaupo	Takapaukura
Tamatea-ariki-nui	Takitimu	Karikari
Puhi-moana-ariki	Mataatua	Takou
Tumoana	Tinana	Hokianga/Ahipara
Te Parata	Mamaru	Karikari/Taipa
Moehuri/Kauri	Ruakaramea	Mangonui

The geographic isolation of Muriwhenua was not a barrier to maintaining wider connections. Archaeological remains include artifacts from many distant places. Corroboration is provided in the story of two Muriwhenua Maori taken on board the naval ship *Daedalus* in 1793 who described places well beyond their home. One of them, Tuki, drew a chart of Aotearoa which yet survives and which, leaving aside for the moment some predictable cartographic inaccuracies, establishes a knowledge of the entire country, and a particular knowledge of such distant places as the greenstone valley of the South Island. It was explained that the geographic peculiarities of Tuki's map represent the mental image of someone from an oral culture where home has primacy and other places fade to distant memory. Tuki's map, at figure 3, is complemented at figure 4 by a computer interpretation of a modern map of New Zealand where Tuki's home is in the foreground and the remaining country narrows to a compressed horizon.

The wealth of place names highlights the intensity of settlement and the people's intimacy with the land. It seemed, on hearing evidence, that there was a name for every fishing ground, reef, and prominent ledge at sea, and for every feature of the land. Waerete Norman referred to this in describing the old Muriwhenua pathways:

Travellers in their own countryside could name its features minutely – rocks, caves, beaches, fishing grounds, points, streams, eeling pools, patches of bush,



MURIWHENUA LAND REPORT

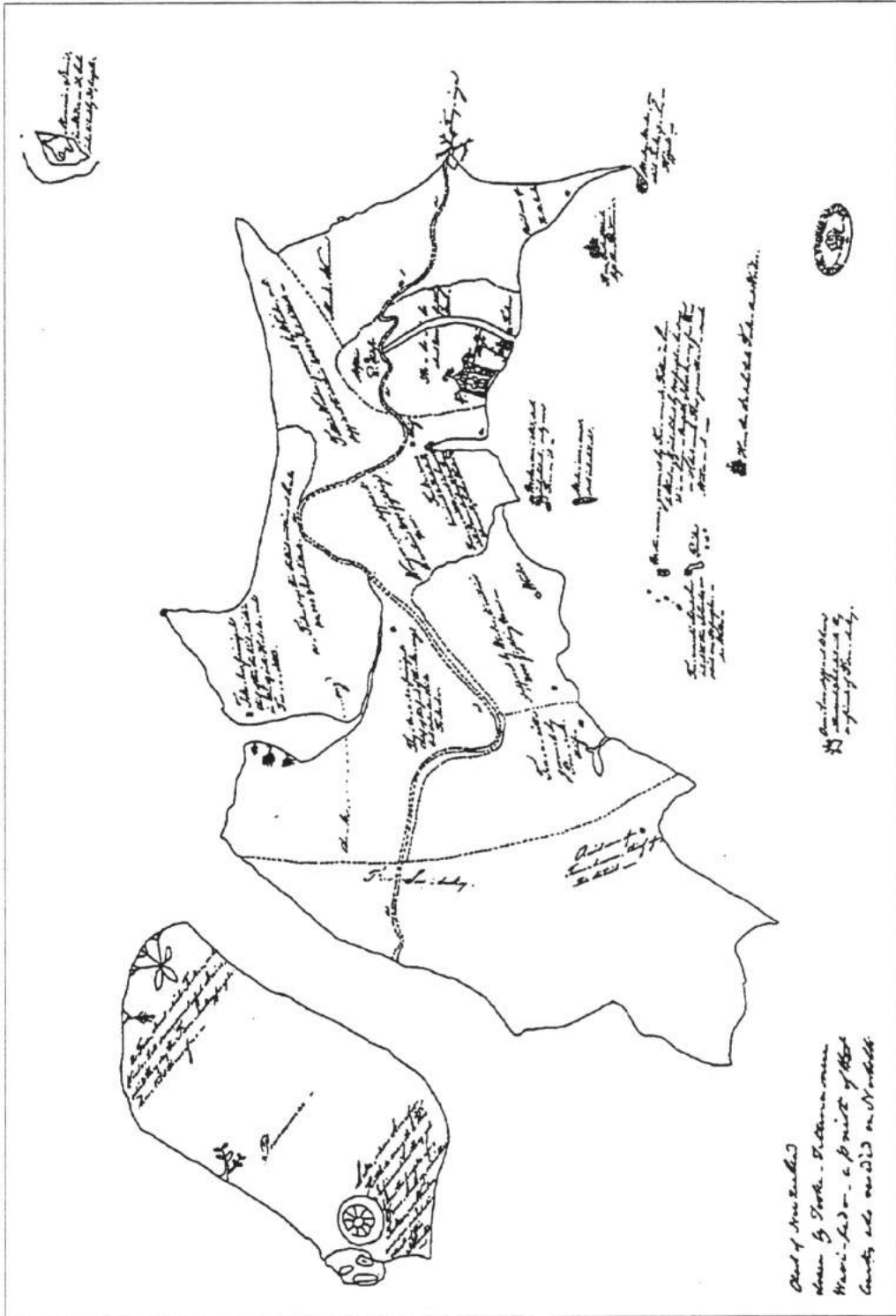


Figure 3: Tuki's map of Aotearoa

cultivations, swamps, rat-runs, trees, ridges, hills and mountains, even clumps of grass – every smallest feature had its name which evoked the quality of that unique place, and nga tupuna, the ancestors who named it or passed that way. The great ocean served as their highway and it had no boundaries. Nga tupuna sailed their craft across its vast expanse, putting in at its many islands and beaches and then moving on again guided by the sun by day, and steering a course by the moon and the myriad stars at night.

This was whenua, land, and moana, sea, sources of life for its people. Te whenua, the land, te oneone, the very earth, and te moana, the sea, were known intimately because people journeyed often. War-parties, groups on seasonal migration, trading trips, groups on their way to some event; all travelled along the paths and across the great ocean and by the internal waterways, often setting up camp and establishing kainga as they moved through the bush and forest in search of food and water. And if a group was driven off their lands or forced to migrate to a new district for some reason, they lamented, singing their grief for the abandoned home of the forefathers.

The placenames marked the land and domesticated it, fitting it for human occupation; and just as the paths gave direction in their journeys so too did the sea and all the elements of nature, observed over time, form an extension of that whole, of te ao Maori, the Maori universe.<sup>8</sup>

The journey of Tohe, to which several witnesses referred, provided an illustration. Tohe was an early forebear to whom all hapu can relate. The accounts of his journey showed how place names are stored in oral traditions and how a single narrative could draw together people of disparate settlements. They illustrated the incidents that place names bring to mind, the wealth of landmarks and navigational points along coasts, the numerous sacred and historical sites in an area, the songs and proverbs connected to localities, the nature of the landscape, the extent of its resources, the variety of harvesting techniques, and, throughout, the importance of the associated spirit world.<sup>9</sup> From Tohe himself comes Te Wharo Oneroa a Tohe, also known now as Ninety Mile Beach, which Tohe traversed on route. The main place names from the journey of Tohe are given in figure 5.

We should mention Maori concern when place names redolent with meaning are threatened with obliteration through the ascription of other names of no significance to them – and also, possibly, of no significance even to local Pakeha. It is as though their own history is not important for the future. From Tasman's fleeting visit, a small speck in the sands of time, their old names have fallen to others, like that which commemorates no more than the wife of the governor of a company in Batavia, Maria Van Diemen, of no importance to the place in question. More wisely, Batavia itself is now Djakarta. Similarly, Three Kings Island (Manawatawhi) records the coincidence that a boat, of no relevance to that

8. Submission of Waerete Norman (doc C19), pp 4–5

9. Speakers on the journey of Tohe included Wiremu Paraone (doc C13), Ross Gregory (doc C10), McCully Matiu (doc C11), and Waerete Norman (doc C19).

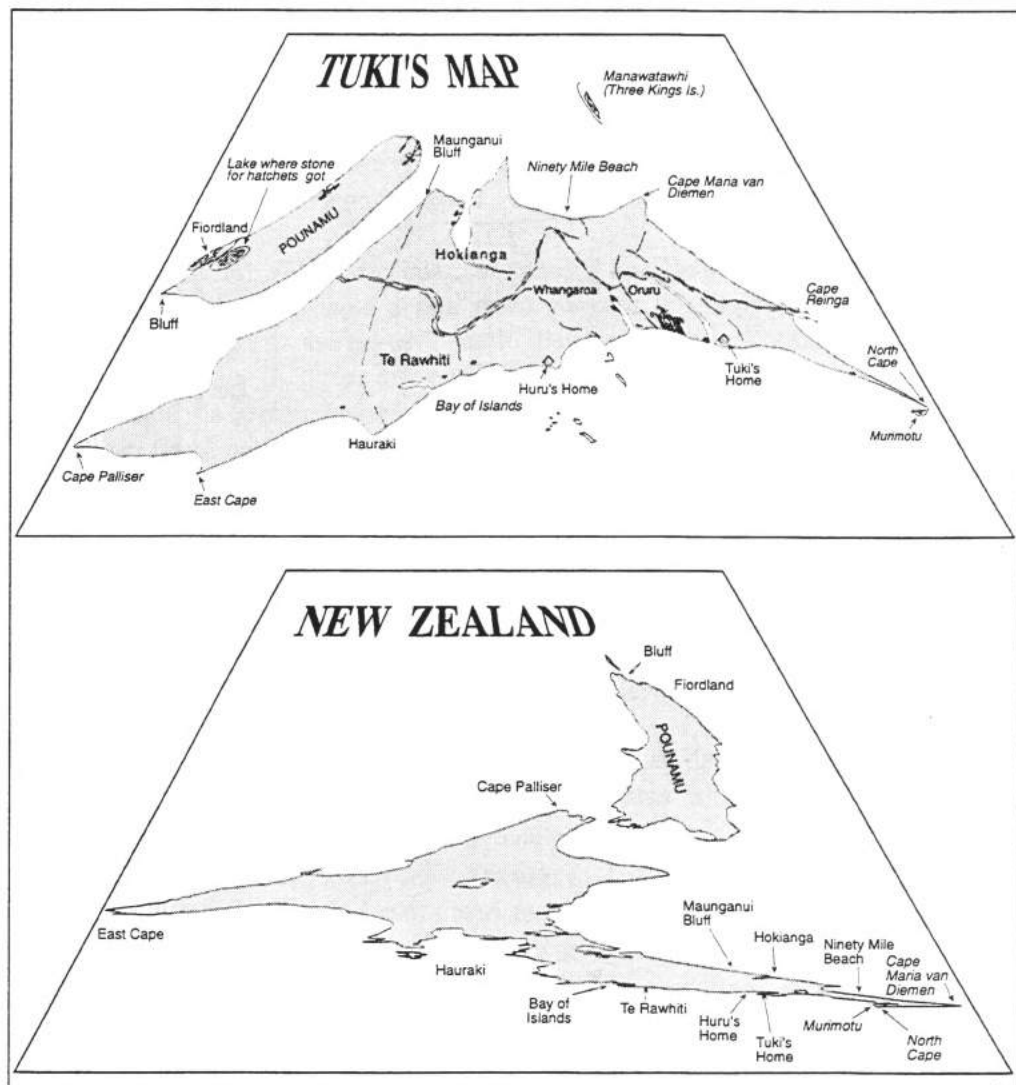


Figure 4: Tuki's perspective by computer

place, happened to arrive there on the celebration of the Epiphany. For the purposes of these claims, however, such names at least serve as evidence of the cultural bias of Europeans at that time. If they could not accept that occupied places were likely to be already named, then presumably they would be no more disposed to recognise a legal system of rights and obligations that had little in common with their own.

Te Rerenga  
Wairua

In visiting throughout Muriwhenua, the Tribunal soon learnt how ancestral associations with the land remain real for young and old of Muriwhenua today. These site visits were used to explain places and events already spoken of, or to assist those who talk more freely of the past when the landscape provides the cues. Needless to say, numerous sacred sites were pointed to; but possibly none was more noteworthy than Te Ara Wairua, the spirit path, and Te Rerenga

Wairua, the final departing place for the spirits of the deceased at one of the most northerly points. The traditions associated with those extremely sacred places are shared with Maori throughout Aotearoa, and a reference to Te Rerenga Wairua is rarely omitted in speeches at tangi in all parts of the country. It serves, too, as a reminder of Maori links to the Pacific Islands and beyond. Just as Island traditions describe the departure of spirits from westerly promontories pointing to Asia, so also the Muriwhenua Peninsula points north, for the spirits will pass through Hawaiiiki on their way. Concerns were expressed that neither Te Ara Wairua nor Te Rerenga Wairua is now in Maori possession or control. Information was sought on how this land passed from Maori ownership.

## 2.3 CUSTOM, VALUES, AND LAW

### 2.3.1 The Maori law of relationships

Comprehension of the claims requires some appreciation of the social mores that were likely to have influenced Maori in their transactions with Europeans. Relevant aspects of Maori law and society are now considered, based on academic studies, our own understandings and the evidence of tribal spokespeople.<sup>10</sup>

It was put to us by Dr Rigby, and by anthropologist and historian Professor Dame Anne Salmond, that Maori law (or the Maori world) was primarily concerned with human and divine relationships.<sup>11</sup> Many claimants expressed the same opinion and we see no cause to depart from it. The fundamental purpose of Maori law was to maintain appropriate relationships of people to their environment, their history and each other. In this it was by no means unique amongst the laws of the world but the emphasis was different. There was no

10. Perspectives on the nature of traditional society and customary land law were extensively dealt with in the context of the Te Roroa claim: see the Waitangi Tribunal, *The Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, pp 4–13.

In January 1994, the Tribunal chairperson issued a paper on customary law and society to counsel and researchers involved in Treaty of Waitangi claims. This set out some preliminary views and matters requiring consideration in claims. An analysis of relevant literature, together with a bibliography, is provided as an appendix to the report to the Tribunal by Tribunal member Professor Evelyn Stokes; this is document P2 on the record. The claimants' view of Maori law was expounded at various points in evidence by Dame Mira Szaszy, the Reverend Maori Marsden, R Edwards, R Gregory, S Jones, Dr M Mutu (see docs A6, A7, B2, B7, C10, C17, F12, F23, F25, F28, H10, K3, M3); and by academic commentators Dr Dame Joan Metge and Professor Dame Anne Salmond (see docs C20, D17, F13, F19, K1).

What constitutes 'law' appears to be an issue of definition. It is here assumed the proper question is whether there were values, standards, principles, or norms to which the Maori community generally subscribed for the determination of appropriate conduct. That approach seems to be favoured by contributors to the Commission on Folk Lore and Legal Pluralism: see Commission on Folk Lore and Legal Pluralism, *Papers to the Congress at Victoria University of Wellington*, 2 vols, Wellington, 1992.

11. Barry Rigby, 'A Question of Extinguishment: Crown Policies and Purchases in Muriwhenua, 1850–1865', 14 April 1992 (doc F9), pp 30, 35; Professor Anne Salmond, 'Treaty Transactions: Waitangi, Mangungu and Kaitaia, 1840', 30 June 1992 (doc F19), p 58



equivalent to the English common law whereby people could hold land without concomitant duties to an associated community, or no parallel to the English social order wherein large land holdings could influence one's status in local society. For Maori, the benefits of the lands, seas, and waterways accrued to all of the associated community and the individual's right of user was as a community member. Similarly, rangatira held chiefly status but might own nothing. It was their boast that all they had was for the people. As the proverb went, the most important thing in the Maori world was not property but people.

Accordingly, Maori law described how people should relate to ancestors as the upholders of old values, to the demi-gods of the environment as the providers of life's necessities, to their hapu, which was the primary support system, and to other peoples as necessary for co-existence. Precise rules were made for respecting other people, ancestors, and deities, and genealogies were kept to show the connections.

Relationships by  
whakapapa

As Professor Dame Anne Salmond put it to us:

It should be stressed that in 1840 in Northland, Maori were operating in a world governed by *whakapapa* (genealogical connections). Ancestors intervened in everyday affairs, *mana* was understood as proceeding from the ancestor-gods and *tapu* was the sign of their presence in the human world. Life was kept in balance by the principle of *utu* (reciprocal exchanges), which operated in relations between individuals, groups and ancestors.<sup>12</sup>

The Maori feeling for the land has often been remarked on, and should need no more elaboration than an outline of the philosophical underpinning of land-related values. In terms of those values, it appears to us, Maori saw themselves as users of the land rather than its owners. While their use must equate with ownership for the purposes of English law, they saw themselves not as owning the land but as being owned by it. They were born out of it, for the land was Papatuanuku, the mother earth who conceived the ancestors of the Maori people. Similarly, *whenua*, or land, meant also the placenta, and the people were the *tangata whenua*, which term captured their view that they came from the earth's womb. As users of the earth's resources rather than its owners, they were required to propitiate the earth's protective deities. This, coincidentally, placed a constraint on greed.

Relationships to  
land

Attachment to the land was reinforced by the stories of the land, and by a preoccupation with the accounts of ancestors, whose admonitions and examples provided the basis for law and a fertile field for its development. As demonstrated to us in numerous sayings, tribal pride and landmarks were connected and, as with other tribal societies, tribe and tribal lands were sources of self-esteem. In all, the essential Maori value of land, as we see it, was that lands were associated with particular communities and, save for violence, could not pass outside the descent group. That land descends from ancestors is pivotal

Attachment to  
land

12. Document F19, p 58

to understanding the Maori land-tenure system. Such was the association between land and particular kin groups that to prove an interest in land, in Maori law, people had only to say who they were. While that is not the legal position today, the ethic is still remembered and upheld on marae.

Land rights by  
descent

The community's right to land, in pure terms, was by descent from the earth of that place, which might be seen to equate with occupation from time immemorial. The individual's right was different, and is generally seen as a right of user arising from membership of the associated community – so that, for the individual, descent alone was not enough. Descent gave a right of entry, but, since Maori had links with many hapu and could enter any one, use rights depended as well on residence, participation in the community and observance of its standards. The 'strong arm' or 'might is right' view of Maori land tenure is a misleading reduction of a complex situation.

Community right

The main right, however, lay with the community in general. As a consequence, deceased forebears and generations to come had as much interest in the land as any current occupier. This view, once again, compelled punctilious observance of constraints on resource depletion.

Individual right  
through  
community

Thus, while there existed a complex variety of individual rights to use or take resources in different ways and at diverse times – rights that individuals regarded as their own – the individuals' enjoyment of any part of the district was because they belonged to the local community. Access to that community was primarily through descent, and then also, but less perfectly, by incorporation. There was no right of land disposal independent of community sanction.

Peculiar to Polynesia was the recognition of associational rights, of which there was a variety. These recognise that people have an interest in a place on account of ancestral associations, no matter where they may now be residing.

Incorporation

The incorporation of outsiders was practised throughout the Pacific. People were included in the hapu who might otherwise have stood outside it. They entered on the same terms as all members: that they should contribute to the community and abide by its norms. The purpose was to build hapu strengths and keep rival hapu at bay.

Incorporation was thus a characteristic of competitive societies. It applied to descent group members as well as to outsiders. As individual Maori were mobile and could join several hapu through their extensive kin networks, there was competition to keep them. That continues today as tribal leaders recall old relationships to recruit new adherents for their particular hapu.

Incorporation was also effected by marriage. There may have been more interest in the children who held the blood line, for in a sense the spouse was always an outsider. Even today Maori may see the hapu as having a better interest than parents in custody disputes.

Adoption was another method of incorporation, although a blood relationship with the adopted person was usual and preferred. The naming of a child at birth,

or the adoption of a new name by an adult, were further ways of securing ongoing connections.

Whatever the means, the goal was the same. It was put to us, for example, that Kupe secured his place in the land by sacrificing his son at a particular spring that ran deep into the earth and emerged again at several places. More regularly, it was said that the crew of the canoes secured a place for their descendants by marrying local women, thus sowing their seed in the whenua.

Incorporation by  
land allocation

Incorporation by land allocation has particular significance for these claims. Land allocations to outside individuals, it seems to us, were not an alienation of the land but the incorporation of the individuals. A rangatira who allocated land to an individual augmented not the recipient but the community the rangatira represented, for it was the recipient who was most obliged. The purpose was not to elevate the individual but to build the community. We do not know of any case where individuals held land rights entirely divorced from obligations to the local community.

Accordingly, land allocation was not a permanent alienation of the land. Nothing could alter the reality that it was held from the ancestral community, and that a stranger taking land held it only by becoming part of that community. Thus the recipients or their issue could not part with the land. If they left it, the land remained where it had always been, with the ancestral descendants. This was no construct of law, for to Maori it was normal or natural. No other concept was imaginable. In Western legal terminology it might be said that, when the recipients vacated it, the land reverted to source; to Maori, however, it had never left ancestral tenure. Again, to secure some larger right in the community for the recipients, marriages were usually arranged, for lineage was central to the Maori system and marriage gave a stake in the land by ancestry. Thus the offer of wives for settlers was not evidence of moral turpitude, as some writers have imagined, but a way of securing them a place in the community and keeping an ongoing relationship.

Allocations to other hapu, as gifts made for war services or to assist hapu driven from their territory, were different. Such groups retained their autonomy but, until such time as their positions were ameliorated by intermarriage, they were still obliged to acknowledge the underlying interest of the descent group by tribute or other obeisance, according to the circumstances. If the group left the district, then of course the land reverted to source, for it was not a commodity that could be packed up and carried away. The land had necessarily to remain with the descent group of the area.

Allocation to other  
hapu

Thus the use of land and resources assumed that the individual would contribute substantially to the community and observe its standards and rules. Those who failed to do so were liable to be plundered (muru). The duty to contribute applied to all of the descent group and those incorporated into it. An outside group given land to live on might retain its independence but was still obliged to acknowledge the source of the land by appropriate tributes.



### 2.3.2 The Maori law of values

The conceptual  
regulators

The association of land rights and communal obligations was part of the general system for regulating Maori behaviour. Most Maori writers agree that the system included such concepts as whanaungatanga or kinship, arohatanga or compassion, manaakitanga or hospitality, and utu or reciprocity. The application of these shows how Maori law was predominantly about principles and values. Certainly, ritual demanded precise protocols and exactitude was required in prayers, chants, oratory, and the performance of some tasks. Rules and rituals were substantially procedural aids to achieving specific goals, but appropriate social behaviour was assessed by reference to desirable character traits, usually based upon remarkable ancestral deeds.

Whanaungatanga stressed the primacy of kinship bonds in determining action and the importance of whakapapa in establishing rights and status. Whakapapa was the basis for hapu allegiance, for establishing that all Maori are related, and for demonstrating the connection of Maori to elements of the universe.

Aroha, love or compassion, was the basis for peaceful co-existence. Aroha is how Maori described the relationship they sought with settlers or the Governor.

Manaakitanga – generosity, care-giving, or compassion – was a desirable character trait but did not necessarily equate with selflessness, for it was mainly about establishing one's status and authority (or mana) by acts of kindness and caring.<sup>13</sup> To give generously in providing for visitors is one mana-enhancing activity, as is evident in the word 'manaaki' for hospitality, as a derivative from mana. Manaaki was given especially to those who would live or align with the tribal group. Such people must be received and treated generously and gifts should be presented. Thus the word 'tuku', to give or present, means also to receive and entertain. Mana and manaaki and tuku are closely related concepts.

Utu concerned the maintenance of harmony and balance, and of mana. For everything given or taken a return of some kind was required, whether that given or taken was love, an act of kindness, property, or a life. Thus those who give gain mana above the recipient. Those who receive must restore the balance, by responding generously over time. It is not a case of trusting in the recipients' goodwill, for no Maori could risk losing mana by failing to make a good response. The giver cannot leave it at that, however. If the balance (utu) is not in fact restored, then utu (or compensation) must be taken. Utu may be deferred but is not forgotten. Maori mental constructs were thus invariably circular, as in their wood carvings, not linear. Even stories were less concerned with chronology than with behavioural patterns.

Maori law as  
dynamic

No fuller review of Maori concepts for the regulation of behaviour has been attempted. Those above are the most important for these claims, but in addition

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13. Mana as spiritual authority and power is more amply described by the late Reverend Maori Marsden: see Maori Marsden, 'Te Mana o Te Hiku o Te Ika' (doc A7), and see also Maori Marsden, 'God, Man and Universe: A Maori View', in *Te Ao Hurihuri*, Michael King (ed), Wellington, Hides Smith, 1975, pp 191–220.

they show how such values did not constrain change. Although custom law is often portrayed as immutable, change was happening all the time. As Maori law was based on values rather than a rigid set of rules, change could be readily accommodated, provided the underlying principles were maintained. Thus, by remaining true to its basic values, Maori culture was able to adopt and adapt while retaining its essential form.<sup>14</sup>

### 2.3.3 The Maori law of contracts

Gift exchange, the method of trade between hapu, typifies the Maori system.<sup>15</sup> Maori traded widely, and Muriwhenua were no exception. Large distances were covered to secure commodities scarce in the home area, and some days of ceremony and feasting could be necessary to stress the importance of the occasion and the trading relationship. Although trade was not the sole purpose of gift exchange, the main interest for the moment is in the way the trade was conducted. It was common, perhaps usual, for groups depositing their goods to make little point of what might be given in return. The response was up to the recipients – especially, as was also usual, if they could not respond immediately. A delay, in whole or in part, seems to have been expected. Better than an immediate payment was a larger reward in time.

Gift exchange

14. Our conclusion, that change was largely superficial and fundamental values remained intact, is made with an awareness that much can be debated about the extent to which Maori society was affected, modified, changed, disturbed, disrupted, or improved by contact with Europeans. At different levels, Keith Sinclair, *A History of New Zealand* (Harmondsworth, Penguin Books, 1959), H M Wright, *New Zealand, 1769–1840: Early Years of Western Contact* (Cambridge, Massachusetts, Harvard University Press, 1959), and A Moorehead, *The Fatal Impact: An Account of the Invasion of the South Pacific, 1767–1840* (Harmondsworth, Penguin Books, 1968) depict Maori society as succumbing to a stronger civilisation. Subsequent writers have seen Maori society as autonomous but with areas of merger: thus, J M R Owens, 'Christianity and the Maoris to 1840' *New Zealand Journal of History*, vol 2, no 1, 1969, pp 18–40 – as showing a basic continuity – J M R Owens, *Prophets in the Wilderness: The Wesleyan Mission to New Zealand, 1818–27*, Auckland, Oxford University Press, 1974, or as incorporating change into a traditional value scale – thus, Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Australian National University Press, 1974. Similarly, in our view, most Europeans before 1840 were incorporated, however loosely, into a tribal structure, as Owens contends. As we see it, however, they remained 'European'. F A Maning was a prime example: he lived among Maori from an early age, called himself a 'Pakeha Maori', and yet his books disclose how little he in fact knew of Maori society: see F E Maning, *Old New Zealand*, Christchurch, Whitcombe and Tombs, 1948.

The considerable debate was honed to the Muriwhenua situation in extensive historical and other expert opinion in this inquiry, P Wyatt (docs F17, H9, L6), C Geiringer and P Wyatt (doc L5), and J Metge (doc F13) observing the continuing influence of traditional norms; F Sinclair (docs 13, 14(a)), A Gould (doc 14(b)), and L Head (doc F21) emphasising instead the evidence of rapid, extensive, and purposeful change. These are substantial works and regretfully it has not been practicable to review the many competing arguments.

15. Gift exchange as a form of trade permeated the Pacific and the Americas. The first comprehensive New Zealand study was probably in 1929 by Raymond Firth, *Primitive Economics of the New Zealand Maori*, (see the second edition, *Economics of the New Zealand Maori*, Wellington, Government Printer, 1959).

Since all participants adhered to the same rules, the system worked effectively. There was generosity in giving, but it was done in the expectation of a handsome response in due course. There was also absolute trust that the recipients would respond – failure to do so could lead to a reprisal. The visiting party was lavishly received, in order to uphold the mana of the hosts. And, predictably, the obligation to respond was honoured. Central to this system was the expectation that relationships would be maintained as necessary for trade and mutual advancement.

The impact of  
barter

In arguments put to us that Maori systems rapidly gave way to European understandings, the ready acceptance of barter was referred to, where goods were exchanged or money was given immediately and exchange rates were shrewdly bargained. It appears, however, that what mattered was not the form so much as the purpose. The delayed response of gift exchange was sensible where a major purpose was to give the surplus of what was abundant at home in return for scarce goods that were plentiful elsewhere – seafish for inland fowl, for example – and where harvesting was seasonal and preserves did not keep beyond a season. Immediate exchange was not unknown, and gift exchange was obviously impracticable in the case of European ships that came and went, and originated from places so distant that return visits by Maori were out of the question.

Gift exchange  
concerned  
relationships too

More significantly, 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 views of reciprocity. It was also important to secure an ongoing supply. The conceptual regulator to ensure reciprocity was mana. The more one gave, the greater one's mana, and an unequal response meant loss of mana. If the original gift was outdone, however, the balance of mana changed again, so that obligations were kept current. Gift exchanges were thus repeated time and again until the parties were so close and accepting of one another that each could rely on the other to be generous in times of local privation, and to expect no immediate response. This could, perhaps, be likened to a form of insurance.

Thus, although barter is said to have replaced gift exchange when Europeans came, in fact the principles of maintaining inter-hapu relationships through gift exchanges continued. Although the practice now survives only in modified form, with money regularly replacing goods, the principles of gift exchange remain in operation, as can be seen at tribal hui, hakari, and tangihanga. 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, as will be seen later.

#### 2.3.4 Maori authority

Hapu

The structure of Maori communities and the location of political power also need to be examined. We consider that the political units of Maori society were the

descent groups called hapu.<sup>16</sup> These were groups large enough to contribute to a fighting force, to uphold prestige in social exchanges, and to utilise resources best harvested by communal efforts. The structure of the hapu was constantly changing, dividing as numbers increased or fusing if, owing to war or famine, numbers were reduced. For that reason the several hapu of a district were related, as in Muriwhenua, and shared a sense of common history and destiny. Hapu were characteristically autonomous in local affairs and competitive with one another, but none the less would federate in times of trouble or to confront outside forces. Individuals from several hapu also came together for any major expedition, from fishing to fighting in another territory. It is not possible, therefore, to describe distinctive hapu in black and white terms. Their structure and membership were constantly changing, their allegiances one to another regularly shifted, they often combined for fishing or other large-scale expeditions, they were independent yet inter-dependent, and they were all related through a complex web of kin networks.

Within each hapu were one or more rangatira, the leaders or chiefs.<sup>17</sup> Since the role of rangatira was often inflated by Europeans, who justified dealing with 'chiefs' by ascribing to them autocratic powers, and since this has influenced perceptions of the rangatira role, some re-examination of their function is necessary. As the name 'rangatira' implies, they brought together the strands of a community to make a unified whole. Although rangatira were generally said to hold their rank by lineage, in fact this was no guarantee and leadership could readily change. Leadership appears to have depended upon a combination of lineage and achievement, with perhaps more emphasis on the latter.

Rangatira

The leadership of a rangatira was said to depend on mana, a mystical quality that showed itself in various ways. It might be in one who is fearless in war but stoutly promotes peace, is persuasive in oratory, is lavish in entertaining and attracts important visitors, is uninhibited in giving, is trusting of others but harsh if offended, is punctilious in fulfilling promises, is proud but humble and, most of all, one who works for the people and not for personal advantage. Mana was said to be delegated from the gods. All people had it, but some had more than others and those with an abundance were regarded as having supernatural capabilities. Equally, however, mana could be lost and a rangatira could come to an ignominious end. Rangatira in fact depended on the support of the community, but that support, especially in times of war or need, could be total.

The concept of mana shows how Maori authority was neither centralised nor institutionalised, and how power moved up from the people and not down from a central authority. Accordingly, authority was not divorced from personal power and influence. Although the necessary leadership traits were reinforced by beliefs that mana was a divine delegation, it was unlike the English divine right

Location of authority

16. It appears that in Muriwhenua the terms 'hapu' and 'whanau' are used interchangeably.

17. In Muriwhenua, the terms 'rangatira' and 'kaumatua' are used interchangeably, but the preference for 'kaumatua' may be modern.

of kings in that power was only partly inherited and mainly acquired. The society was thus basically democratic and there was room for class mobility.

As population  
changed,  
leadership was  
centralised

Although each hapu had one or several rangatira, a particularly powerful rangatira could stand above them all and draw several hapu together as one body. This happened extensively in Aotearoa in the early nineteenth century, following the trauma of major population loss through unusual levels of war and disease. A significant factor in the transactions referred to in these claims was that, shortly before they were entered into, Muriwhenua had become dominated by one rangatira, Nopera Panakareao, although around Mangonui there was a contest between Panakareao and Pororua Wharekauri. Accordingly, it is necessary to consider not only the pre-European society, but Maori society as it came to be reshaped at the start of the nineteenth century.

#### 2.4 EUROPEAN CONTACT AND DEMOGRAPHIC CHANGE

The former  
population was  
larger

The same record of the occupation of Muriwhenua from immemorial time, and the associated tapestry of history and law, tells of a large Maori population in the eighteenth century, bigger than it is now or when the transactions complained of were made. It is therefore important to note the dramatic loss of what could have been some thousands of lives in the eighteenth and nineteenth centuries from diseases introduced by Europeans. Massive depopulation may well have affected the transactions between Maori and Europeans, especially since the Maori population was still in serious decline at the relevant times.

The evidence of a bigger population in earlier years is partly from archaeological studies. Excavations have disclosed throughout the district not only large midden sites from the twelfth and thirteenth centuries, indicating long-term habitation, but an abundant archaeological landscape consistent with dense occupation in the centuries thereafter. It appears that the rich and varied hunting and fishing grounds, supplemented by extensive cultivations, supported several thousands. Figures 6 and 7 show the pa and archaeological sites in two areas, chosen for their relative lack of developmental interference. Midden sites with remains from distant places, including South Island greenstone and Mayor Island (Tuhua) obsidian, are consistent with a numerous people having a network of contacts reaching far beyond the area.

Archaeological  
evidence

The gardens were especially large. Intermittently from Pukepoto to Te Kao, for example, amongst a dune system with swamps and lagoons was a chain of extensive drainage or irrigation networks.<sup>18</sup> Such sites covered tens of hectares, from Pukepoto to the former Lake Tangonge, on the flats around Awanui and Waimanoni, at Motutangi and around Taumataawhana Pa, and between Ngataki and Te Kao. One ditch system comprised 'a complicated grid network [which]

18. See John Coster, 'Te Oneroa a Tohe: The Archaeology of Ninety Mile Beach', February 1991 (doc c7), p 18

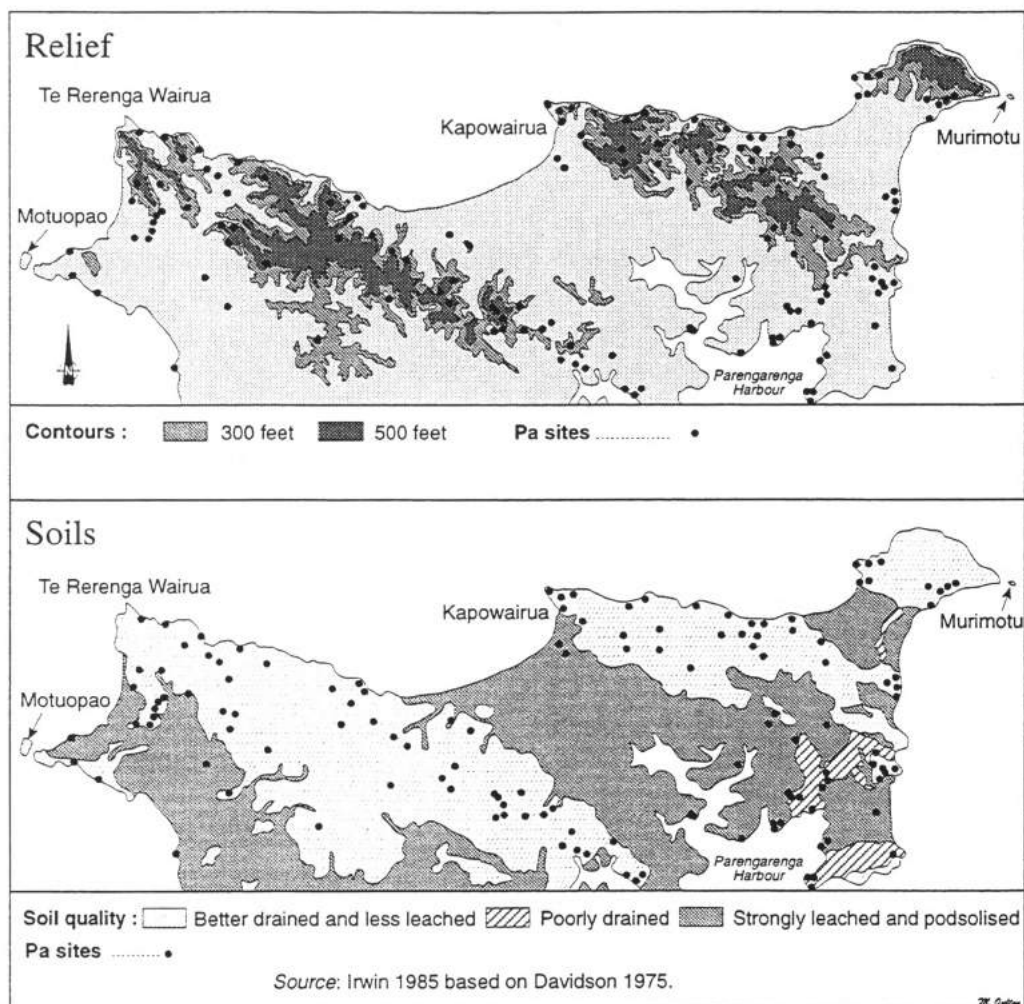


Figure 6: Pa sites of the northern peninsula

transported water from natural springs into a down slope out-fall'. The square or rectangular shapes had sides 10 to 20 metres long and were probably gardens for growing taro. John Coster noted:

The common factor in the systems appears to be their ability to either drain or irrigate land as required. The systems at Motutangi and Taumataawhana all drain springs at the base of semi-consolidated Holocene dunes of the Kimberley complex which abut and overlie a mosaic of wetland soils over which the ditch network spreads ultimately draining into a natural water course. At Motutangi and Taumataawhana, each complex of drains is associated with a cluster of two or three pa, indicating the social and economic importance of the gardens.<sup>19</sup>

The wetland of the Kaitaia flats also retains vestiges of early agricultural ditches like those further north. Archaeologists have speculated that these contain the largest prehistoric drainage systems in New Zealand.

19. Ibid

Early explorers  
confirm

Further evidence for a once-extensive population is found also in the accounts of the early European explorers. Although no precise population estimates were given, the first Europeans generally regarded the Muriwhenua population as large, skilled, and industrious. Muriwhenua was regularly their first and last point of call, as figure 8 shows. Visitors before 1800 included Tasman (1642), Cook (1769), De Surville (1769), du Fresne (1772), the whalers of the *William and Ann* (1791), Hanson (1792), D'Entrecasteaux (1793), and King (1793). Thereafter a regular flow of whalers, sealers, traders, and missionaries developed. Several of the ships' crews left diary accounts of the country and its inhabitants. While, arguably, some romanticised Maori to fit the 'noble savage' image then in vogue, they nevertheless told of substantial, well-structured societies and of a people eager for contact and trade. Thus mention is made of cultivations of 'uncommon neatness and regularity' and extending far, so that 'the sides of the hills were cultivated in some places to their very summits'.<sup>20</sup> Irrigation receives a brief mention, too, as, for example, that 'every ten paces there are to be seen little canals for water to flow along'.<sup>21</sup> There is frequent reference to large villages, superior building construction, the skilled manufacture of clothes, weapons, and utensils, of canoes and sails commensurate with a large maritime experience, and of a fishing capacity that several found astonishing.<sup>22</sup> In all, the descriptions were consistent with a numerous and prosperous people having an established social order.

Population spread

The same evidence describes the spread of the population to all parts, including the remote outer islands. This had added significance in some cases. Manawatawhi (or Three Kings Island) is claimed as Maori land, for example. The prior occupation of Ngati Kuri was stressed, and the island's alienation was disputed. Maori occupation was confirmed by archaeological evidence of middens, stone heaps, walls, and stone-faced terraces, suggesting extensive living areas and perhaps some 80 hectares of gardens.<sup>23</sup> Confirmation of this occupation was given in relatively detailed descriptions by the first European commentators, from Tasman in 1643 to Labillardière on board the *Recherche* in 1793.

Although comparative knowledge was thin in the eighteenth century, it was further speculated that Muriwhenua was one of the most densely populated regions. One explorer estimated some 8000 people in Oruru Valley alone. It was

20. J L Nicholas, *Narrative of a Voyage to New Zealand*, 2 vols, London, James Black, 1817 (reprinted Auckland, Wilson and Horton, not dated, pp 209–210)

21. 'Diary of Jean Roux, Ensign, *Mascarin*, 27 April 1772', in I Ollivier, *Extracts from Journals Relating to the Visit to New Zealand in May–July 1772 of the French Ships 'Mascarin' and 'Marquis de Castries' under the Command of M J Marion du Fresne*, Wellington, Alexander Turnbull Library, 1985.

22. Fishing capabilities are more particularly described in the Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988.

23. See J Maingay, *Mangonui County: Excerpt from Initial Report on Northland Archaeology*, New Zealand Historic Places Trust, Auckland, 1986 (doc A10), and document c7.

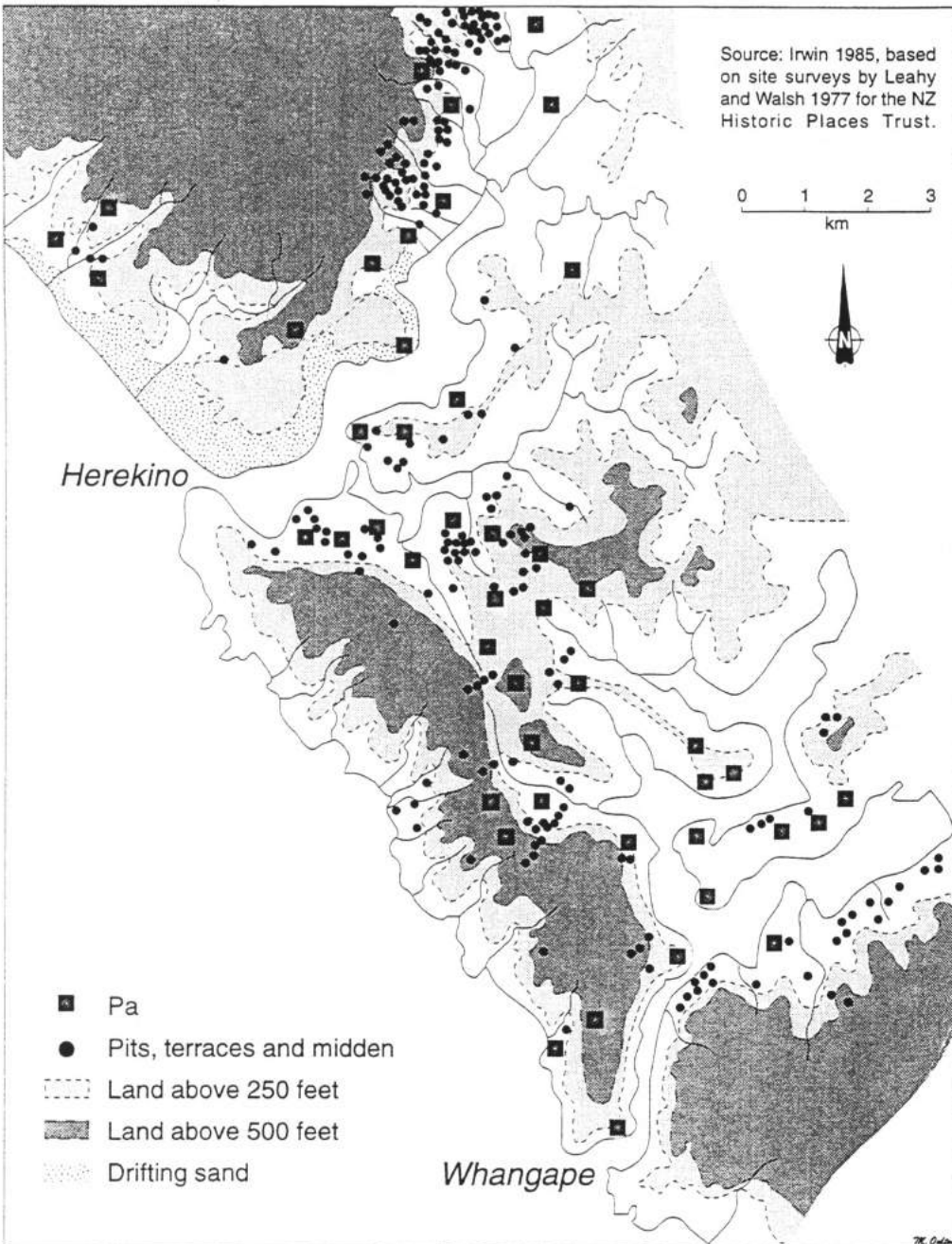


Figure 7: Archaeological sites of Herekino and Whangape

said of this valley, near Taipa, that the pa were so close that messages could be relayed by calling from one to the other over the many miles of its length.<sup>24</sup>

Despite such descriptive but unspecific demographic data, the orthodox historical opinion is that diseases introduced by the explorers and traders wreaked havoc on the Maori population, which had no established immunity.

Epidemics

24. See F Keene, *O Te Raki: Maori Legends of the North*, 1963, p 77



This occurred especially in places with a concentrated population. Researchers in this inquiry estimated that the Muriwhenua population had been halved, to about 5000 to 8000, by 1835. Some areas were almost deserted. Whatever the uncertainties of these estimates, it is at least clear that population loss continued through most of the nineteenth century. Major and tragic epidemics of scarlet fever, typhoid, measles, rheumatic fever, whooping cough, smallpox, influenza, and pneumonia are recorded. One estimate, not entirely reliable, gave the population as a mere 1615 by 1878, the fall being possibly exacerbated by emigration to Hokianga and the Bay of Islands.<sup>25</sup> To Maori, the reduction must have been alarming. About 1878 a slow recovery began, but mortality rates were well above the national average far into the twentieth century.

Impressionistic opinions from long-term residents also support this view. In 1868 Resident Magistrate W B White wrote:

On my first arrival, 20 years ago on paying my first visit to Ahipara, I was struck by their numbers, their large villages and pas, occupied by a numerous population. . . . Now, I regret to say, the country is almost a waste, the population dwindled to a few hundreds.<sup>26</sup>

Population loss  
meant changed  
settlement pattern

The extent to which population loss affected the transactions in question, however, is problematical. Some researchers conjectured that Maori themselves saw the race as dying and, abandoning tradition, sold for what comforts they could get. Such a fatalistic portrait is against the grain of most of the evidence, which suggests, rather, that Maori society remained competitive, dynamic, and in control, despite losses, at all times before 1840 and for some time after as well. We agree with Crown researchers' views that the pre-Treaty transactions were unlikely to have resulted from despair. It may be that their reduced number could have influenced the Maori remainder to provide more liberally for incoming Europeans, but the more likely position is that this had little direct effect on land deals. The major effect of depopulation at the beginning of the nineteenth century, it appears to us, was to aggregate Maori settlements and elevate a single leadership, as described below. That single leadership had the main effect on the transactions, in our view.

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25. G Kelly to Under-Secretary, 9 May 1878, 'Census of the Maori Population, 1878', AJHR, 1878, G-2, no 2, p 1

26. White to Under-Secretary, Native Department, 5 September 1868, AJHR, 1868, A-4, p 36

# THE PEOPLE AND THE LAND

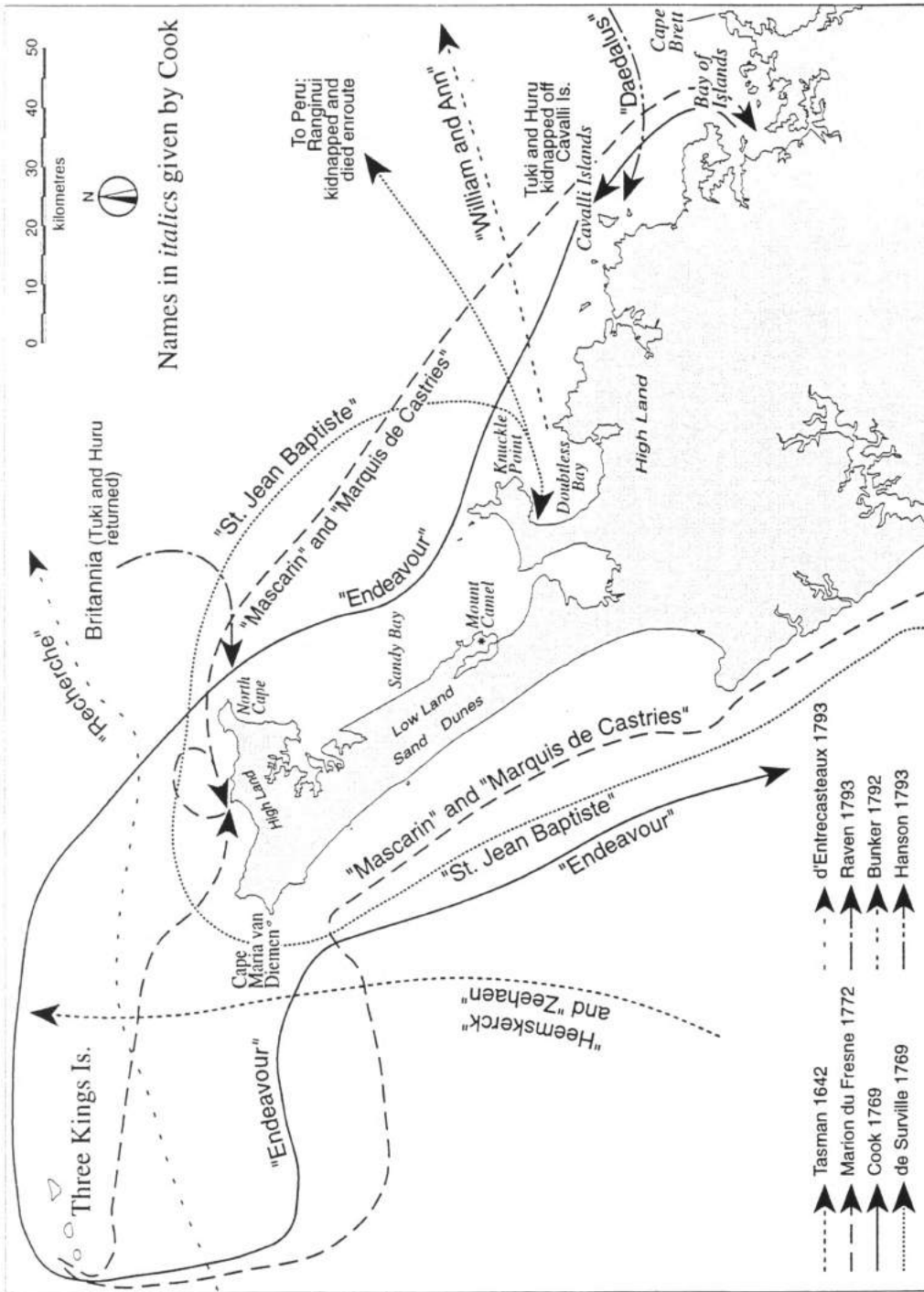


Figure 8: European visitors before 1800

**2.5 SOCIAL RE-ORGANISATION AND LEADERSHIP**

Tribal warfare

Historians seem generally agreed that Maori warfare escalated nationally in the late eighteenth century, starting from the more populous places in the north. Muriwhenua illustrates this, and shows that, while the number of deaths through war is not known, the combined effect of war and pestilence was to denude the country of people. It also altered the survivors' living patterns: people who were once widely spread formed larger clusters in fewer areas for their own protection. A house that stood alone, according to a Maori proverb from that period, was food for the fire.

Concentration of  
Maori settlements  
at the centre

Previously Maori had occupied all parts of Muriwhenua, though naturally there were more people where food resources were best. There were significant settlement clusters around Kapowairua and Te Hapua at the tip of the main peninsula, at Houhora, Karikari, Whangaroa, Herekino, and Whangape at other extremities, and throughout a central band from Ahipara to Mangonui through Kaitaia, Awanui, Rangaunu, and Oruru Valley. The location of these settlements in relation to the physical environment at about 1800 is shown in figure 9.

War and epidemics put all hapu at risk, and it was only shortly before the completion of the transactions in question that the population came to be concentrated in settlements along a band from Ahipara to Tokerau (or Doubtless Bay). Several of Ngati Kuri were regrouping at Manawatawhi and Whangaparaoa, and many of Aupouri resided amongst Te Rarawa at Ahipara, but most survivors were aggregating at places like Ahipara, Kaitaia, and Awanui.

The emergence of  
Panakareao

The concentration of people also aided the emergence of one main leader for the hapu as a whole. It was to be expected, in times of such dramatic change, that Maori should rally behind a unifying figure whose leadership might presage a return to power, prosperity, and influence. Indeed, a unique feature of early nineteenth-century New Zealand, wracked by pestilence and the new musket warfare, was the emergence of pre-eminent Maori leaders for most major land districts. Their names are famous to this day. In Muriwhenua, that leader was Nopera Panakareao. In the vigour of his youth Panakareao promised fame and fortune through war raids with Titore, Takiri and others of Nga Puhi to the centre of the North Island, including Tamaki, Hauraki, Waikato, and Tauranga. He is remembered mainly, however, for the sober reflection of his later years, when he promised wealth, peace, and security by incorporating Europeans into the Muriwhenua communities and, later, by his alliance with the Governor.<sup>27</sup>

The leadership of Panakareao was presumably due to his personal qualities, his vigour, his intelligence, and that which is most the mark of a rangatira, his concern for the people. His reputation in the Nga Puhi raids, the fame of his great uncle, Poroa, in effectively subduing the Muriwhenua hapu earlier, his pedigree, and his marriages to Erenora, whose ranking was thought to be higher than his own, and to Whangatauatia, whose influence spread throughout the north, no

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27. 'Nopera', or 'Noble', was added to Panakareao's name when he was christened.

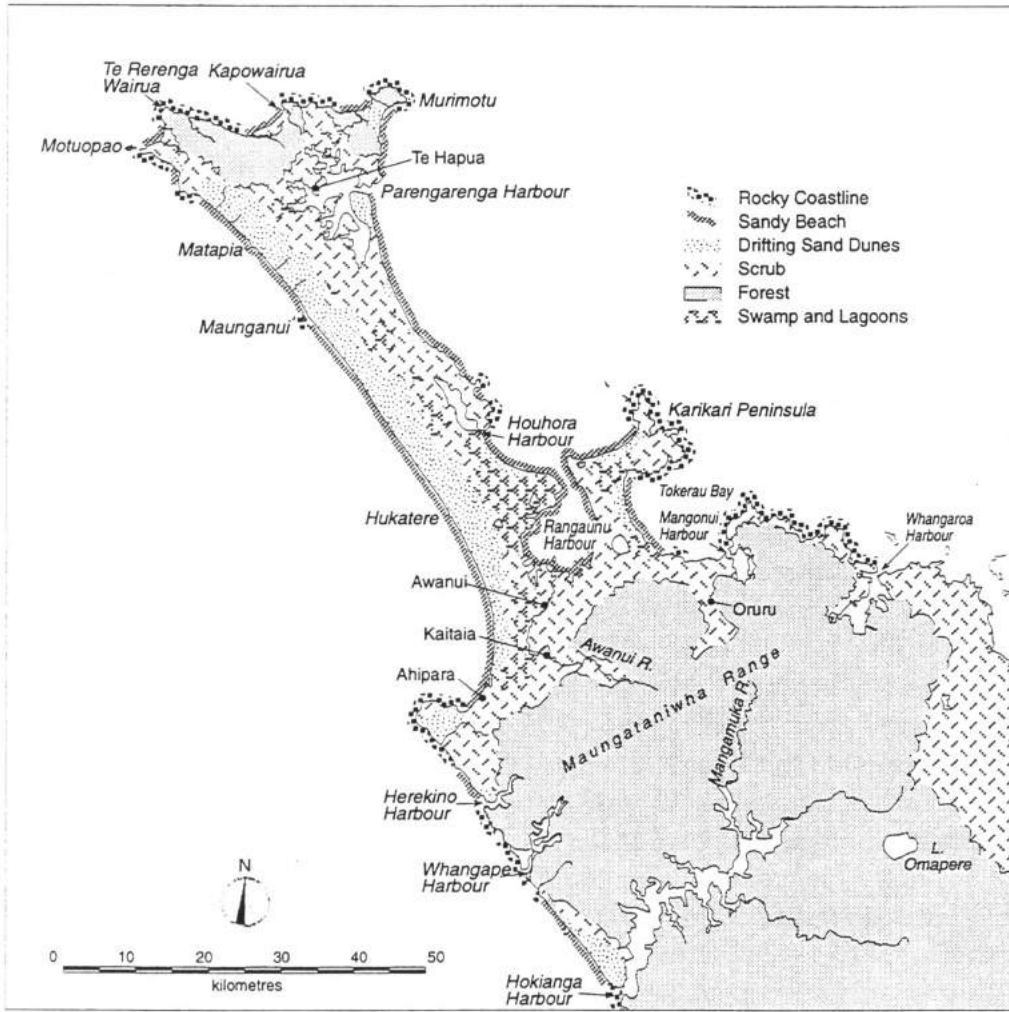


Figure 9: The physical environment, circa 1800

doubt helped as well. In local tradition, however, judging by the evidence of Maori Marsden, Rima Edwards, Waerete Norman, and Ross Gregory, it was his good connections to each hapu that counted most. The relationships were explained to us in detail by the late Maori Marsden. Although his father was Ngati Kahu, and although Panakareao himself identified with Te Rarawa, he was related to all the hapu. The importance of such relationships and networks – the kupenga tupuna, to borrow a phrase from Waerete Norman – was stressed by a succession of speakers. For those reasons, it was put to us that he was an ariki as well.

A further image of Panakareao emerges from various descriptions by missionaries, traders, and, later, governors and Government officials. He is described generally in exemplary and noble terms. The Reverend Joseph Matthews saw him as contemplative and thoughtful, a slow speaker, careful of

his words and decided in approach, but still attracting profound attention on account of an extraordinarily impressive and commanding manner. Lieutenant-Governor Hobson saw him as 'quite a superior person, full of intelligence, of a most independent and liberal spirit, . . . possessing unbounded influence in his district . . . at the head of a very powerful tribe and in close alliance with all the northern natives'.<sup>28</sup> The missionary Puckey described his authority as 'kingly', so that almost none of the northern tribes 'durst do anything without his consent'.<sup>29</sup> Matthews attributed his rule to both birth and conquest, adding:

We have witnessed his power in this and therefore we can speak. If anything serious should happen, a word would be sufficient to gather all the tribes of the Rarawa; which would amount to 1,400 to 1,600 fighting men.<sup>30</sup>

Internal and  
external  
challenges and  
Pororua

Too easily, however, the glowing European pictures of omnipotence, and the Maori concept of mana as both a temporal and spiritual authority delegated from the gods, could lead to a false picture. Even powerful rangatira were regularly challenged, from within their own group or outside it, and they could rarely afford to play god. As Maori witnesses pointed out, with the regular tension in Maori society between local autonomy and concerted action, and because there were always some rangatira who could claim to come from a superior line, the leading rangatira had always to persuade the several other rangatira to stand with him, every one of whom could also have been his rival, and he was still bound to maintain the popular support of the people. As leadership generally lasted only for so long as it produced successful results, Panakareao had further to show enterprise and initiative. For the same reasons he was obliged to keep full contact with several communities, and he therefore maintained homes at many places. This was typical of leading rangatira at the time. Panakareao lived variously at Te Ahu (Kaitaia), Whakarake, Oruru, and Takahue (Victoria Valley).

Moreover, despite Panakareao's previous war alliances and kin connections with hapu of Nga Puhi to the south, and although his reputation spread widely, the growing strength of Nga Puhi through more extensive European contact in the Bay of Islands always threatened to take part of Panakareao's mana from him. There was also a territorial contest from Pororua Wharekauri of Nga Puhi who lived either side of the Maungataniwha range. Pororua claimed an authority throughout Oruru and around Mangonui Harbour. He rejected the claims of Panakareao there, just as Panakareao rejected his. The differences between these two, the war between them, and their rivalry for European attention, were all

28. Hobson to Gipps, 5 May 1840, BPP, vol 3, p 179

29. W G Puckey, letter, 21 January 1835, *Journals and Letters of William Gilbert Puckey, 1834-1839*, MS copy, micro 19, 1831-76; see also W G Puckey, letter, 4 March 1839, *Journals and Letters of William Gilbert Puckey, 1834-1839*, MS copy, micro 19, 1831-76 (quoted in T Walzl, doc D5(c), vol 3, pp 829, 847)

30. S C and L J Matthews, *Matthews of Kaitaia: The Story of Joseph Matthews and the Kaitaia Mission*, Wellington, AH and AW Reed, 1940

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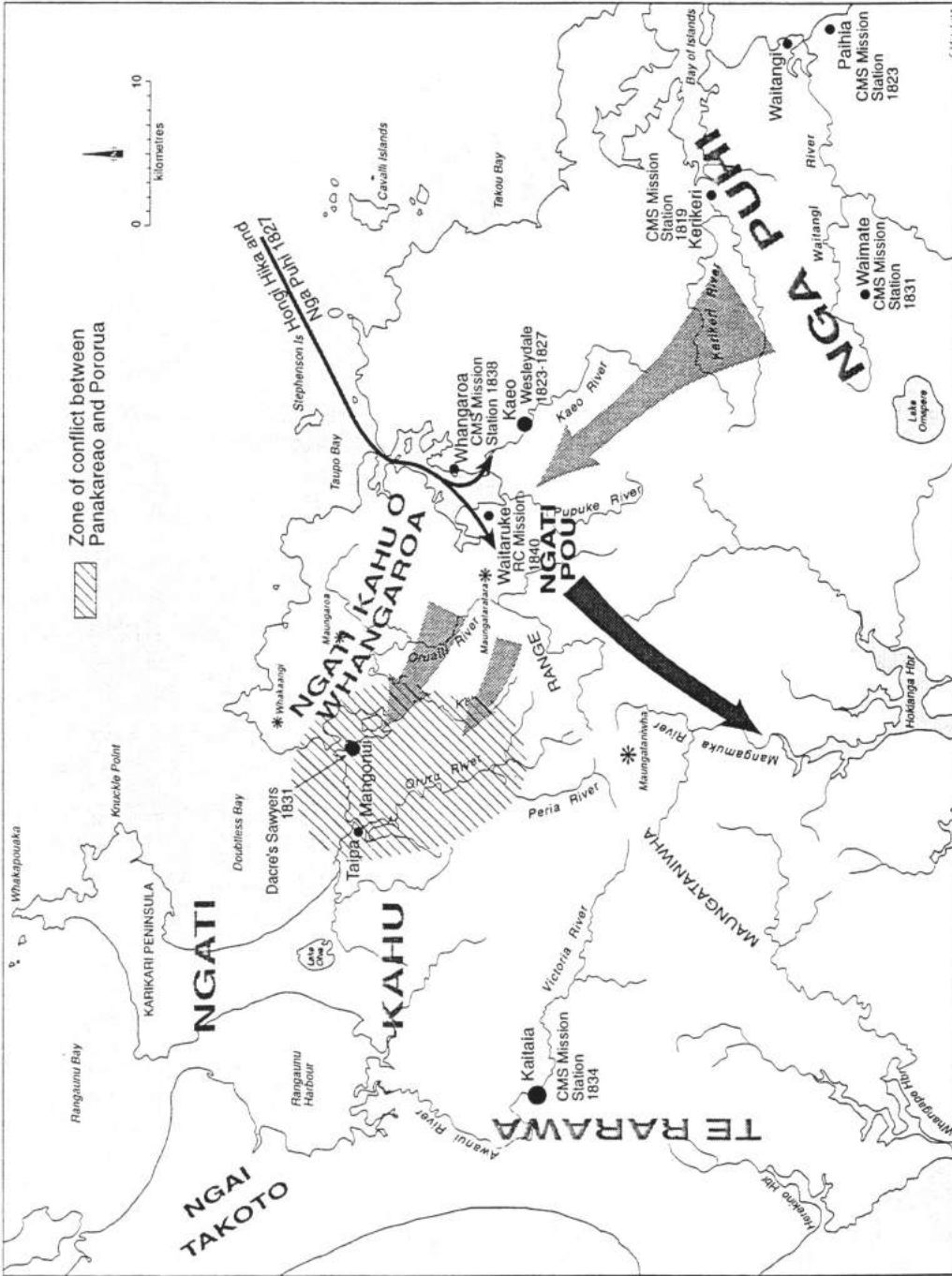


Figure 10: Tribal relations, southern Muriwhenua, 1820-40

significant factors in the transactions entered into. The main area of conflict is illustrated in figure 10.

No simple picture is therefore possible. At his zenith Panakareao seemed invincible, yet there are suggestions that he had lost power by the time of his death. The general picture is of total control and the regular promotion of each hapu, yet there are ad hoc accounts in Native Land Court minute books of Panakareao driving Ngati Kuri from the North Cape area on one occasion, of saving them from almost certain death at the hands of Nga Puhi in Whangaroa on another, and of Panakareao being backed by a Ngati Kuri contingent during a contest at Mangonui. Clearly, there was a history of past struggles. There are accounts of Poroa, who preceded Panakareao, aligning with Nga Puhi to drive Ngati Kahu from Oruru, and of Panakareao forcing Nga Puhi out to preserve Ngati Kahu's presence in the same area. There are reports that people lived in dread of Panakareao, but also of people jeering him in one instance, as though he was powerless to respond. The picture was clearly more complex than the missionaries represented.

Panakareao's  
policy of  
incorporation

Panakareao's direction, however, was much simpler: the future of the people lay in having Pakeha dwell amongst them. This policy, evident in his actions, appears to have underlain most of the pre-Treaty transactions. Panakareao was remarkably consistent in upholding it, never wavering from his objective. It may be seen as no more than the traditional policy of incorporation. It began with overt support for the missionaries, who in turn were ebullient in their praise of him. In the end, however, the situation had changed. Panakareao did not attract the number of settlers he had expected and his mana began to slip. He moved away from the missionaries, who, just before he died, alleged he was reverting to heathenism.

## 2.6 THE TRADE IN GOODS AND RELIGION

Changes in form  
but not substance

The Crown argued that Maori had been so affected by traders and missionaries and their associated business and ethical codes that, by the time the transactions were affirmed, Maori must have understood them as land sales. We very much doubt whether that was so. While there is evidence of a substantial trade in goods and religion in the Far North, even before the Treaty of Waitangi, and that Maori encouraged this trade and altered their own practices to suit, the greater evidence is that the changes wrought, though many, were peripheral and did not fundamentally alter the pervasive Maori politic and ethic. In particular, despite the traders' assumption that Western rules would eventually prevail, and the missionaries' confidence in their own proselytising, Maori still had greater cause to consider that their transactions with Europeans would be honoured in the Maori way, according to their customary expectations. Given the historical enterprise of the volatile and competitive hapu, a willingness to experiment or

seize new opportunities was not surprising. But changes are not evidence that, in their own view, Maori had ceased to govern; that they had abandoned their own laws for all or any purposes, or that their relationship to Europeans, as settled in the transactions, would be decided in European terms. Similarly, established patterns of thought, assumed rather than adopted and not necessarily apparent to Europeans, clearly persisted. Conversely, new values are unlikely to have been adopted, despite some possible breakdown of traditional structures. We are aware of the survival of traditional values to this day, and the difficulties many Maori experienced with Western concepts even in our own lifetimes.

The explorers' accounts, showing Maori as eager for business, describe the transfer of goods by the immediate exchange of presents and some bartering for a fair equivalence. While this was not the classical form of gift exchange, nor was it outside Maori experience. Indeed, it was no more nor less than was to be expected of peoples on their first and fleeting meetings.

Barter compared  
with gift exchange

Even so, there is no shortage of examples of how misunderstandings could occur and of the new learnings that were required. Thus in 1769, when de Surville's yawl was stranded on a Muriwhenua beach, by Maori law it became local property. Since its taking appeared to de Surville as theft, he captured one of the locals, Ranginui, in rejoinder. When Ranginui's relatives converged on the ship at anchorage to protest against this outrage, de Surville fired the village, destroying homes, food stores, canoes, and the like, the fire spreading to the hills. He left with Ranginui, who was never heard of again by his relatives, but is known to have later died on board from scurvy.

But major mis-  
understanding, as  
over Ranginui ...

The Maori account, as recorded in 1850, nearly a century later, made no mention of the yawl or the destruction of the area, but complained only of the unrequited kidnap of Ranginui. It was said that tupua (goblins) had landed from Te Upoko o Tamoremore (the bald head) on Te Putere o Waraki (the drifting stem of Waraki, a sea god) with many sick people on board who were then nursed to health by Te Patuu, the local hapu. But the visitors responded by kidnapping Ranginui, without cause or reason, and this grave offence was unrevenged. A similar account has been retained to this day as part of Ngati Kahu oral tradition.

The massacre of the crew of the *Boyd* at Whangaroa Harbour in 1809 appears to have no connection with the Ranginui incident, and in any event occurred in a different place. According to separate accounts from Maori, from the Reverend Samuel Marsden, and independently from a sailor who lived for a year amongst the local hapu, the killings were utu for the kidnapping of certain Maori, one the son of a chief, who were flogged during a voyage but escaped in another country and returned home. The utu exacted on the crew of the *Boyd*, who had nothing to do with the earlier incident, was followed by a similar reprisal when, in revenge for the *Boyd*, another crew attacked Te Pahi and his people, killing Te Pahi, although this group was not the perpetrator of the raid. In fact, Te Pahi was well disposed to Europeans and had tried to prevent the attack and to rescue five crew members. He too had been mistreated on a voyage to Norfolk Island, where he

... or the  
*Boyd* ...



went in search of his kidnapped son, but he was well received by Governor King, both there and later in Sydney. Te Pahi strongly supported doing business with Europeans but was killed soon after his return to the Bay of Islands from Sydney.

... or Tuki  
and Huru

Similar accounts concern the kidnapping of Tuki and Huru, who later were well cared for on Norfolk Island. In local tradition, Tuki and Huru spoke highly of Europeans and their resources. They are credited with introducing the potato to Muriwhenua.

Despite the travel,  
there was still little  
comprehension

By such contacts, pigs, fowl, potatoes, and various other vegetables came into the Muriwhenua economy, along with iron tools and fabrics of wool and cotton. Notwithstanding moments of conflict, the general climate was clearly one of goodwill, with competition amongst Maori to take the intrepid European travellers into their care and patronage. Despite the travels of Europeans to Aotearoa, and of Maori to Sydney, Norfolk, California, and even London, as early as the second decade of the nineteenth century, it still appears that neither side had sufficient comprehension of the other, or gave primacy to anything other than their own laws and beliefs.

The extent of  
trade, in flax,  
timber, and  
provisioning

A large amount of trade followed; its extent is not always appreciated. Yet this business caused no more than surface changes to life in general – there was no social revolution. Most of the business was in the Bay of Islands and Hokianga. The trade through Muriwhenua was less, but Muriwhenua Maori were in contact with these other places. First came whaling, which began in the eighteenth century and expanded enormously from the 1820s. It was based largely upon the sperm whaling grounds north of Muriwhenua, but, although Mangonui Harbour was closer for ship repair and provisioning, the Bay of Islands was preferred, possibly because missionaries had established contact with Maori there and could serve as intermediaries. Figure 11 shows the main whaling grounds and illustrates the growing number of visits to the Bay of Islands by whaleships from various countries. Through the 1830s the number averaged 118 a year; with each ship having 20 to 30 crew, this would have given some 3000 visitors annually.

The value of flax was also recognised early. The gathering and dressing were tedious, however, and unless carefully done could result in wholesale rejection of cargoes. At the peak in 1831, flax imports to New South Wales reached 1240 tons, valued at £26,004. By 1834 prices were falling and the flax trade was declining.

The quantity of kauri extracted before 1820 is not well documented, but sawmilling proved the most durable of the early extractive industries. Between 1828 and 1839 about 50 to 60 percent of the timber exported was from the Hokianga. Figure 12 illustrates the number of ships visiting the Bay of Islands to 1840 for the purposes noted. Figure 13 depicts the area's resources and the spread of sawmills.

Maori were involved mainly in provisioning ships and supplying them with cargo, either directly or through traders. Pigs, potatoes, other vegetables, fish, and fowl were loaded both for the crew and for export, along with curios. The

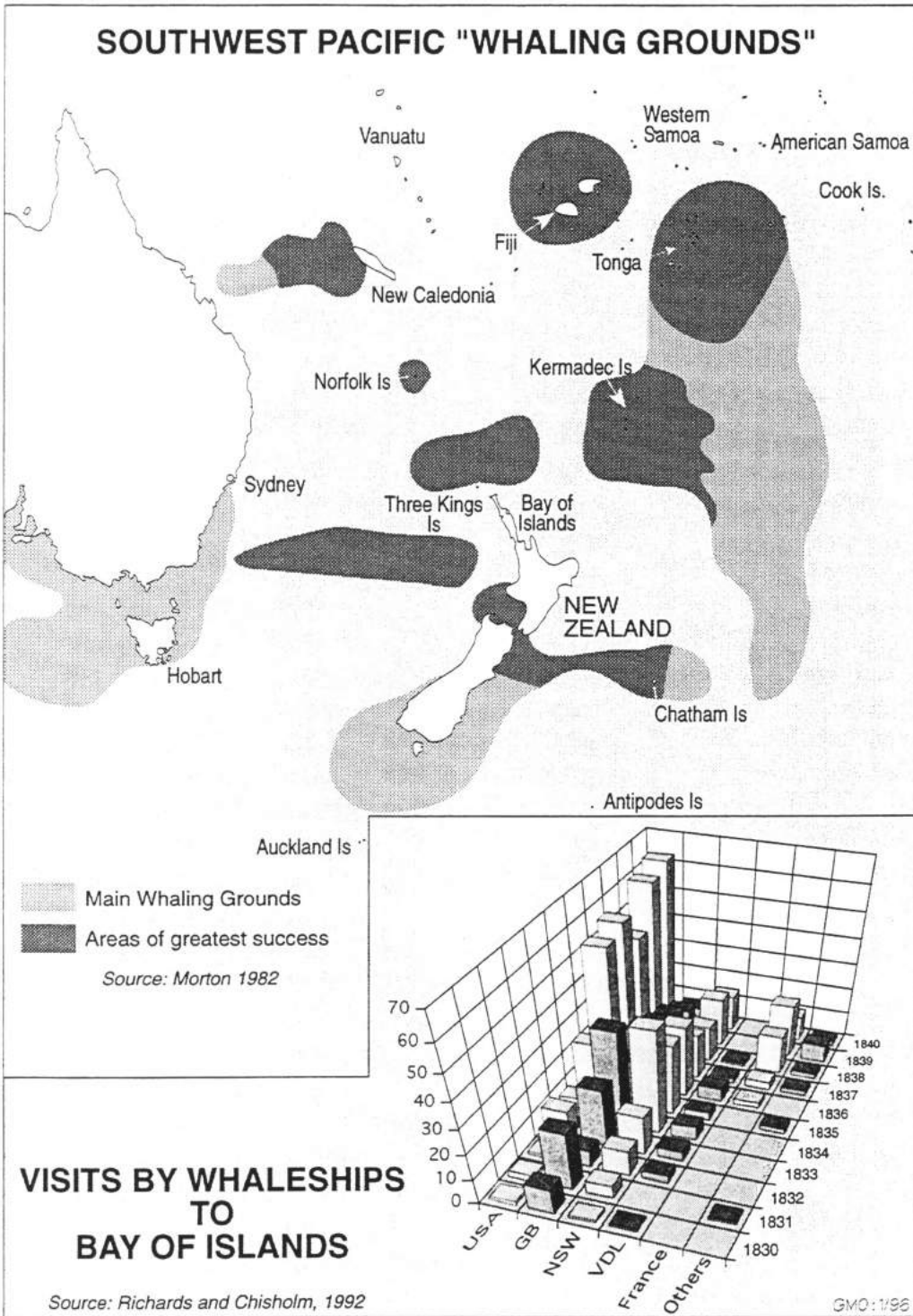


Figure 11: Whaling grounds and whaleship visits

scale of Maori agriculture and fishing, and industry in drying and packing, was thus intensified, and reports of groups transporting goods over long distances by land or sea show that even remote places were affected. Similarly, it appears that all Muriwhenua communities had contact with ships in the Bay of Islands as well as those at Mangonui.

The new work  
required no social  
adjustment

While such activities amounted to little more than an acceleration of customary gardening and fishing, the cutting, processing, cartage, and loading of flax and timber were substantially new work. Nevertheless, it was best done communally and so required no social adjustment. The same applied to ancillary labour, as in assisting in stevedoring, road-making, ship repair, or the construction of jetties and buildings. Individual Maori enterprise was really obvious only in the case of a few who left the tribe to serve as whalers or ships' crew, or as assistants to blacksmiths, coopers, or carpenters. Some, like the whaler Tom Bowling (as he became known), developed fame for the skill they displayed in working with Pakeha, although it should be noted that Muriwhenua Maori were experienced whalers long before the advent of Europeans. For the most part, however, Maori were still functioning according to their traditional groupings, and the new business did not call for any major social adjustment.

Changes were  
still on Maori  
terms

Of greater interest for the purposes of this inquiry, therefore, is evidence that Maori saw the changes as being made on their terms. Barter, or exchange for tools, arms, ammunition, seed, blankets, pipes, and tobacco, still continued. But Maori shrewdness in bargaining, their avoidance of resident traders when ships were in port, and their ready acceptance of money as a medium of trade – often commented on by Europeans – showed that Maori saw themselves as no less than equal in trading situations.

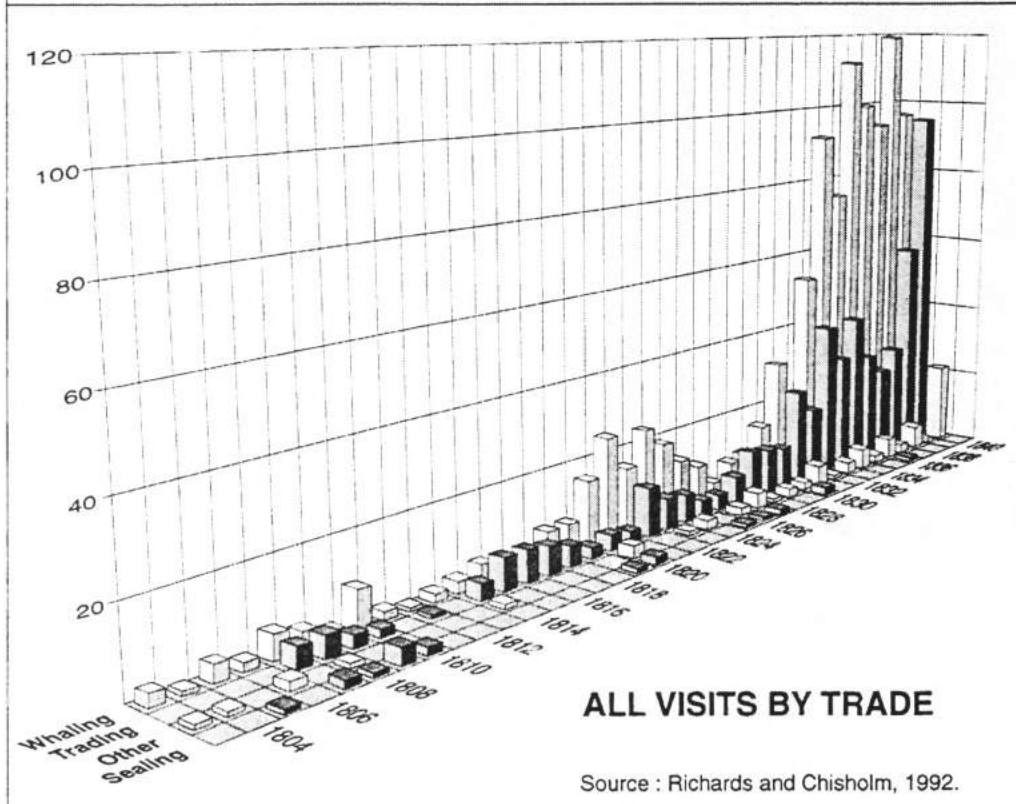
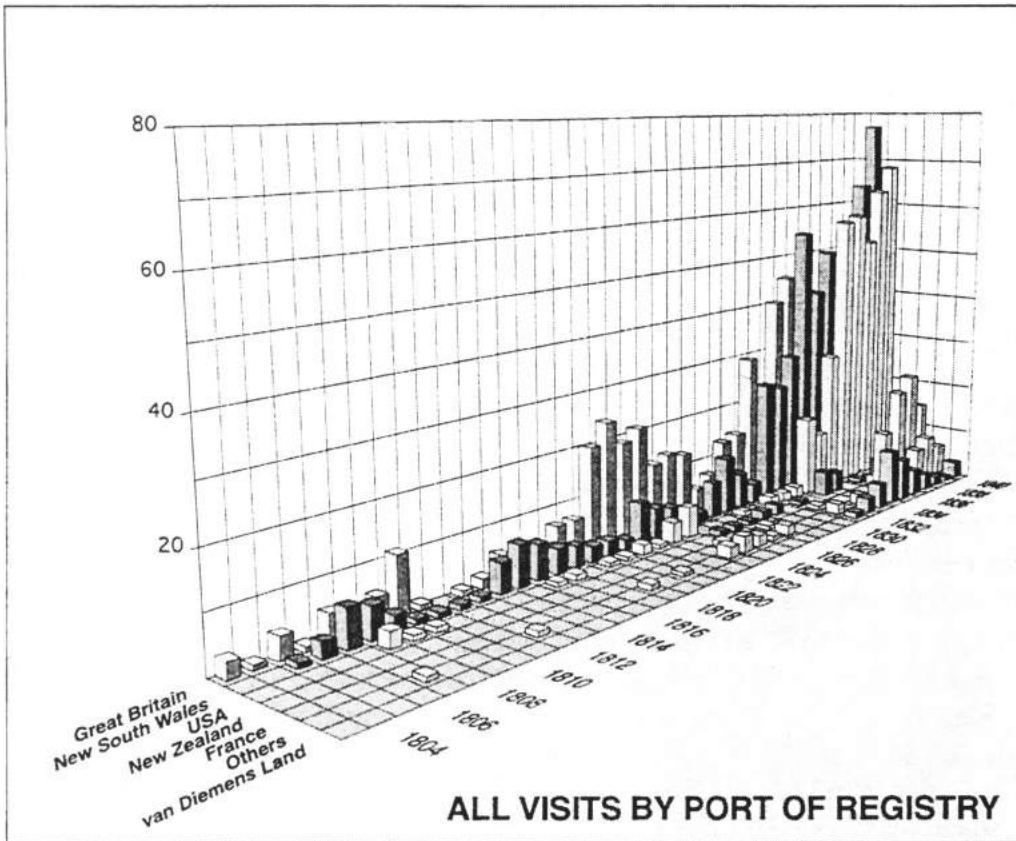
More particularly, however, there is evidence that Maori saw themselves as retaining control. This is demonstrated in their political acts of levying anchorage and watering fees, which Europeans found they were obliged to pay. Much later, Maori were intensely opposed to Government customs duties and harbour charges, as they considered only Maori could levy these. This became a factor in the later northern wars between Maori and the Governor.

The Maori position is further apparent in the competition amongst Bay of Islands rangatira for ships to anchor in the vast Bay of Islands harbour, and in their opposition to captains who anchored at Whangaroa and their threats to Whangaroa Maori who presumed to entertain them. Captains valued the protection of rangatira. The burning of the *Boyd* at Whangaroa in 1809, and the sacking of the Wesleyan mission there in 1827, were signs of what could happen. Ships that traded regularly were soon 'owned' by particular rangatira whose protection could be relied on.

Europeans'  
dependence on  
Maori

It was further apparent to Europeans – and the point was not lost on Maori – that the trade relied totally on Maori permitting access to the resources, and providing the labour required for processing, transport, and loading ships. Indeed, access to resources could never be assumed and, just as ship captains

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Source : Richards and Chisholm, 1992.

Figure 12: Bay of Islands ship visits, 1800-40

found it convenient to accept protective arrangements, so did the sawyers and traders who were resident on the land. As one observer recorded in 1834, referring to the Hokianga:

All the Sawyers live with the Native women. In fact it is not safe to live in the Country without a Chief's daughter as a protection as they are always backed by their Tribe and you are not robbed or molested in that case; they become useful and very much attached if used well and will suffer incredible persecution for the Men they live with.<sup>31</sup>

Maori still  
practising  
incorporation

That passage reveals more about the author than about Maori, but it points to what we consider the most significant factor in Maori interaction with Pakeha: the importance to Maori of establishing kin relationships with other peoples, and incorporating those with special skills as members of their own communities. Thus it is more important to discuss the practice of incorporation than to debate the degree of adaptation from gift exchange to barter and a cash economy. This will be further examined later, but for now it may be noted that both sides saw intermarriage as commercially advantageous: to the trader, to secure the goods; and to Maori, to secure the trader. It must have been obvious that the practice of gift exchange, of creating obligations to be performed in the future, could not operate with those Europeans who were here today and gone tomorrow.

In any event, those who married into the community had a measure of protection. Those who stood aloof were quite properly food for the fire, in Maori reckoning. It was both appropriate and necessary that the latter should be raided from time to time to remind them that they lived on Maori land only by grace and favour. This was nothing new for Maori. Raids on subservient groups living in a client relationship were part of pre-European practice. Moreover, *muru* (plunder) was the usual penalty for all who did not freely contribute to the local community or adhere to its rules, or who amassed wealth for themselves when it ought properly to be distributed to the people.

Bay of Islands  
more popular for  
Europeans

The missionaries were more difficult to incorporate into the Maori communities since they did not take Maori wives. There was a risk that the hapu would have no claim upon their children. Every endeavour was made to bring missionaries under Maori patronage nevertheless. More importantly, in Muriwhenua there was more reliance on missionaries to bolster tribal fortunes since, initially, the traders were less influential. Mangonui had little attraction for ships. The lack of grog shops may have made desertion less likely, there were significant flax swamps, especially around Awanui, with good canoe routes to the port, and timber was available cheaply from nearby European sawyers. Yet Mangonui was not nearly as popular as the Bay of Islands with its much larger and more protected harbour. An indication of the comparative volume of trade is the numbers living on the land. British Resident James Busby recorded the

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31. E Markham, *New Zealand or Recollections of It*, Wellington, Government Printer, 1963, p 40



Figure 13: Exploitation of resources before 1840

European and half-caste population in 1839 as Muriwhenua 37, Whangaroa 63, Hokianga 185, and Bay of Islands 494.

If Maori were keen to traffic with traders, they were no less eager to treat with missionaries. The introduction of Christianity was prophetic in itself. An early Maori traveller, Ruatara, crewed on whalers until he reached London, where he met the Reverend Samuel Marsden. Ruatara accompanied Marsden to Marsden's farm near Sydney and, having learnt about growing and harvesting wheat, in 1812 he returned to the Bay of Islands with seeds and tools. European crops were flourishing in the district before any European settlement. In 1814 Marsden sent Ruatara two missionaries with more crops, stock, and implements. The potential

Christianity comes through Ruatara

value of the missionaries must have been obvious. While traders gave goods, missionaries gave the means of production.

From the outset Christianity was associated with good business. Ruatara achieved renown as a rangatira by demonstrating enterprise and success, and he came to have the company of the Bay's elite, Hongi Hika and Korokoro, who might once have scorned him. These three went to Sydney to seek out Marsden, who came to New Zealand in 1814. He did not stay long, however, but, as a result of this visit and a second trip later, several missions were established between 1815 and 1840 (see fig 14).

How missionaries  
and trade were  
related

The whole thrust of the missions was to introduce agriculture and industry at the same time as the Christian religion, so that the material advancement of the people was connected to religious enthusiasm and knowledge. This was the Maori way as well, where planting, harvesting, fishing, hunting, travelling, and war all did best with divine help. The first missionaries were chosen for their skill in husbandry, horticulture, mechanics, carpentry, and medicine as much as in preaching. They taught trades as well as religion. Each mission station became an industrial and agricultural oasis where Maori could learn from both instruction and example. In fact, the missionaries were traders, teachers, healers, and peace-makers. They developed a reputation for mediating between rivals and provided a way out from the cycle of utu.

The mission  
stations strove to  
be independent of  
Maori provisions

No less than with the sea captains and traders, rangatira competed to capture their own missionaries. On their part, missionaries suspected that Maori were more interested in trade than the gospels, but they were not without a strategy to deal with the situation. Dissatisfied with a Maori hard line in trading, they laboured to make their mission stations self-sufficient, dependent on neither patronage nor bargaining. In the event, the missionaries were not adjuncts to the numerous Maori communities; on the contrary, they encouraged Maori to farm with them or to live at the mission. If people wanted something from the mission, it was to the mission they would have to go.

... but they still  
depended on  
Maori for  
protection

Mission Maori were of two kinds: those less fortunate in earlier life, who welcomed a new regime under missionary supervision; and rangatira, who presumed to place the mission stations under their authority and protection. Though the missions sought to be independent, the reality was that they remained susceptible to outside threats. No one could forget the sacking of the mission station at Whangaroa, for example. Likewise, without the support of rangatira, large-scale conversions to Christianity were unlikely and labour could not be cheaply obtained. From the moment the mission station at Kaitaia was established in 1834, Maori farmed alongside. The missionaries openly acknowledged that the station would not have survived were it not for the love and protection of Panakareao.

... and Maori  
presumed to  
maintain control

It is not entirely certain, however, that love and protection were all that Panakareao had in mind. When it was proposed that one of the missionaries should leave Kaitaia, for example, Panakareao protested to the Bay of Islands



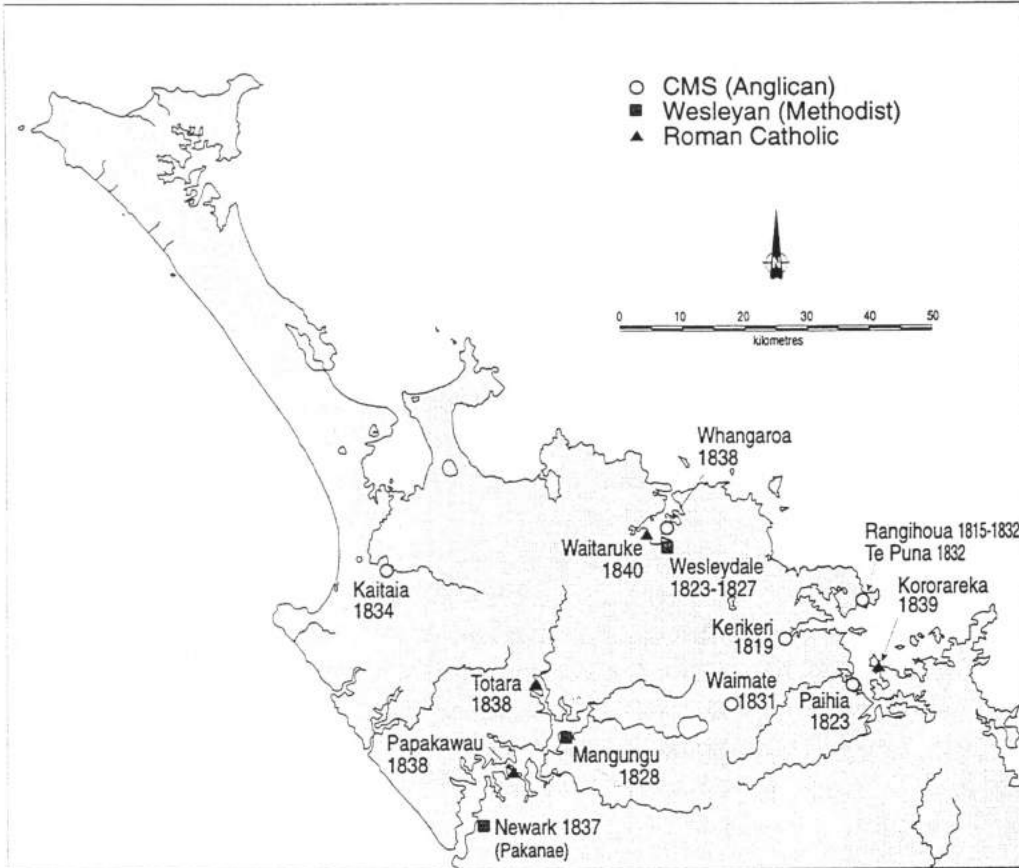


Figure 14: Mission stations, 1815–40

immediately, as though there had been some breach of contractual arrangements. The missionary remained. In fact, the missionaries at Kaitaia were to remain for the rest of their lives, but, as one of them wrote:

Panakareao our principal chief possesses . . . authority over the Northern Tribes so that hardly any of them durst do anything of moment without his consent. . . . and I believe that it is not unlikely, but that he might restrain us forcibly from going, even if it was our wish to go. Why might he not? Would he not consider his authority as treated with contempt? He appears much concerned about this threatened removal; and for this and many other reasons our path of duty seems plainly to say 'stay at home'.<sup>32</sup>

There was a further significant difference between missionaries and traders. The latter came and went. While Maori sought a long-term relationship with both, and endeavoured to tie traders down by marriage arrangements, most who did not marry Maori stayed only for the business and left when the business

32. B Rigby and J Koning, 'Toitu Te Whenua E: Only the Land Remains, Constant and Enduring – A Preliminary Report on the Historical Evidence', 4 December 1989 (doc A1), supporting documents, vol 1, pp 287–289



ended. While the missionaries could not be bought by marriages or trading obligations, they stayed on. Like Maori, they spoke of long-term relationships. It was pointed out to us that a relationship between church officials and Maori is still evident today. Moreover, some particular missionary families – the Williamses, for example – have kept connections with Maori over time, from before the Treaty of Waitangi was signed.

Despite the missionaries, the Maori order remained the same

For the purposes of this report, the essential question about the impact of the missionaries is much the same as for the traders: did Maori so change their world-view as a result that the pre-Treaty transactions were accepted as land sales? The question has two parts, as we see it. First, did the parties so understand each other that theirs was a full meeting of minds? The answer to that, we think, is no. The second is whether the expectations of both sides were the same: were they agreed on whose rules would apply and who would decide? Here again the answer is no.

Most historical and anthropological debate concerns whether Maori entirely abandoned their old beliefs for those of the Christian churches, or whether they merely added those beliefs to a cultural system that remained fundamentally the same. For this, the hard evidence is almost wholly from the missionaries themselves. It is not surprising that, given their acknowledged mission to convert (or to effect change) and, not infrequently, their intolerance of opinions other than their own, missionary accounts tell more about the missionaries than about those whom they purport to describe.

... as the Te Reinga incident shows

We were thus introduced to missionary accounts of journeys to Te Reinga in order to cut the aka vine by which the Maori spirits descended to the sea. The missionaries intended, by this and other means, to debase Maori opinion on the watery destination of the spirits, and to promote instead a place further down, as one stated, 'burning with fire and brimstone'. If the missionaries hoped that, in embracing Christianity, Maori would reject their traditional values and beliefs, however, that outcome was not achieved. Academic research was referred to but was hardly needed. When we went to Te Reinga ourselves, before the debate on this issue, a crowd of over 60 had gathered to add their blessing to the place, so sacred was it to them. The service, in the autumn wind and rain, took more than an hour. More significantly, though, it was a Christian service conducted on Maori lines. It seemed to us that Christianity had not taken over Maori culture but had been incorporated into it. The missionaries went to debase Te Reinga, and now, Christian services are used to maintain its sacred character.

The church was, rather, indigenised

Accordingly, while we were regaled with volumes on the rapid spread of Christianity and the unquenchable thirst of Maori for religious education, we could also see that Maori custom and Christianity had in fact fused. The prayers at the start and end of every day's hearing were testimony in themselves: Christian in terms, Maori in style, and with the heart of both. The same applied when we visited pre-Christian sacred sites. Following customary protocols, not one of those ancient places could be approached or left without karakia, but the

prayers were Christian. During site visits we stopped for prayers at different places regularly throughout the day.

In this way it appeared that Christianity had been made indigenous, just as, presumably, it had earlier been Romanised or Anglicised. Thus the resilience of Maori culture, that it could incorporate such a large body of learning while remaining true to itself; and thus the strength of Christianity, that, contrary to the early missionaries' teachings, it was not culturally specific but accommodated cultures globally.

The position as it affected Maori was explained by the late Reverend Maori Marsden, a remarkable Maori scholar. He observed that the stories of the Old Testament have close equivalents in Maori tradition and impart the same messages; that the values of the New Testament are also Maori values; and that the Hebrew and Greek theology offered a spiritual and philosophical dimension with which Maori could be immediately knowing and comfortable. He felt that, when the missionaries brought Christianity to Muriwhenua, they brought it home to where it belonged. He thought that Muriwhenua had contributed more than most places to the Maori Christian priesthood as a result, and he named the priestly families – Anglican, Catholic, and Ratana, but all Maori to the core.

Speaking separately at another marae, Rima Edwards conveyed much the same theme. Even the biblical understanding of land tenure had close empathy with Maori thinking, in his view. He referred to Leviticus 25:23:

Kaua e hokono te whenua, he mea oti tonu atu; noku hoki te whenua; he manene hoki koutou, he noho noa ki ahau.

The land shall not be sold for ever: for the land is mine; for ye are strangers and sojourners with me.

Other parts of Leviticus suggested that all land returned to the original owner after the fiftieth year. In Rima Edwards's evidence, the *whare wananga* traditions describe a discussion on these passages between Panakareao and the missionaries on the evening of the Treaty signing at Kaitaia, where the Anglican Church now stands, in April 1840.

Literacy also spread rapidly amongst Maori. This has been documented in various studies.<sup>33</sup> Again, however, it appears to us that the extent to which literacy may have informed Maori of the English system can easily be overstated. The medium for all instruction and writing was Maori, the words used in written material thus carried the Maori thoughts behind them, even if the author intended another result, and the written material was almost entirely from the Bible, where the tradition was not English but Judaic.

Literacy spread rapidly

33. For more comments on the spread of literacy, see doc p2, ch 6, which refers to accounts of an insatiable demand for books, notes estimates that 500 people could read in Hokianga by 1833, and outlines the growth of 'converts'. In 1836, the Church Missionary Society numbered its adherents at 1530, in 1842 at 35,000. Contemporary observers remarked on the speed with which Maori learnt to read and write in their own language, aided by retentive memories. In general, however, Maori could not read English.

Competition from  
Te Atua Wera

It should be added, in considering the historical record of Christianity's progress, that for the most part the auditors were the missionaries themselves. In making assessments, they were naturally influenced by their own beliefs and sense of mission. To keep some balance, it is worth noting that Te Atua Wera advanced a competing religion with a Maori and Christian mix, and that his teaching institution, Te Wananga o Nakahi, has survived to the present. Several witnesses before us had attended as pupils.

At heart, a  
question of  
authority is  
involved

Perhaps the real issue, however, is power. The evidence is clear that the missionaries regarded Panakareao as having the main power in the area, and that Panakareao himself assumed so, too. He actively promoted the establishment of the Kaitaia mission station and he took the missionaries under his wing. Although he was christened into the church, there were always concerns that his motives had more to do with trade than with the gospel. Certainly the missionary Charles Baker thought so. The Reverend Samuel Marsden suspected that the same applied to all Maori, however, writing:

I am inclined to think that they have sprung from some dispersed Jews, at some period or other, from their religious superstitions and customs, and have by some means got into the Island from Asia. They have like the Jews a great natural turn for traffic; they will buy or sell anything they have got.<sup>34</sup>

If that were so, it seems to us, it could have applied only to commodities. When the issue was settling the land, we think the thoughts of Panakareao were directed not to trade but to the recruitment of people. However, our more particular conclusions on the varying expectations of the transactions will be dealt with in the next chapter, after the transactions themselves have been examined.

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34. J R Elder (ed), *The Letters and Journals of Samuel Marsden, 1765-1838*, Dunedin, Coulls Somerville Wilkie and Reed, 1932, p 219

## CHAPTER 3

# PRE-TREATY TRANSACTIONS

<i>Turuturu taku manu ki te taha uta</i>	<i>Let my bird settle</i>
<i>Turuturu taku manu ki te taha wairua</i>	<i>May it bridge the gulf between earth and heavens</i>
<i>Koia atu Rutua</i>	<i>There at the horizon stands Rutua</i>
<i>Koia atu Rehua</i>	<i>There at the horizon stands Rehua</i>
<i>Turuturu taku manu</i>	<i>Let my bird settle at the place of joining</i>

'The Joining of Peoples', Muriwhenua karakia to accompany a gift  
(interpretation by Ross Gregory)

### 3.1 CHAPTER OUTLINE

Through trade with Europeans and enhanced horticultural capabilities, the mana of the Bay of Islands hapu grew daily while Muriwhenua languished. The missionaries were the main advisers on agricultural development, and Panakareao became determined to maintain a mission station at Kaitaia. At the same time, and apparently without Panakareao knowing, Pororua admitted certain traders and sawyers to Mangonui. Panakareao later disputed Pororua's authority to do this but was keen to keep the traders and sawyers there, just the same.

This chapter describes the land transactions between the Maori leadership and Europeans which resulted from these manoeuvres. It is given in the context of a considerable debate: by claimants, that the transactions must be seen in the light of custom law, which, they argued, still prevailed; and for the Crown, that they should be seen in the context of a major shift to Western norms which, in the Crown's argument, was then going on.<sup>1</sup>

The chapter also considers how the best of the Maori land was claimed to have been bought by Europeans, even before British sovereignty was proclaimed, but why Maori saw the Europeans as conditional occupiers only. The examination of the resultant land claims, through land commissioners Godfrey and Bell, is considered in the next chapter. A location map for the relevant area is figure 15.

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1. It has not been practical for the Tribunal to summarise the large volumes of evidence in this case. The evidence and the issues were brought together, however, in counsel's closing submissions: see J V Williams and G Powell for the claimants (docs N1, N2, O3) and M T Parker and A Kerr for the Crown (doc O1). These too have not been summarised, although aspects are referred to throughout the report. (Continued on page 54.)

### 3.2 THE TRANSACTIONS

Church and traders would buy the prime land, but the deeds were poorly drawn

Purporting to evidence the first transactions were 22 deeds said to have been completed in five years from 1834. Then, in 1839 and early 1840, when it was apparent that New Zealand would be annexed by Britain, there was a sudden increase of 33 deeds in just over 12 months. Some may have been backdated to escape the law that, after January 1840, only Government officials could buy Maori land.

The transactions were mainly with traders in the east, and with people associated with the church in the west. While the traders were more numerous and made more transactions, by far the larger area was claimed by church adherents. Those of the church considered, however, that much of the 'purchased' land was in fact held in trust for Maori.

While these private transactions related to less land than was later claimed by Government purchase, they involved either the most fertile land or that most accessible to the port for the export of timber. The position is illustrated in figure 16, which locates the transactions and should be compared with figure 13 on land use. The land claimed was in the area where most Maori were concentrated, in a band from Ahipara to Mangonui.

Two factors affected the pre-Treaty transactions more than others. The first was the policies of rangatira to advance their hapu by incorporating Pakeha to live amongst them. The other was the rivalry of Panakareao and Pororua to control the lands in the east.

Figures 18, 20, and 21 reproduce five sample deeds. Those deeds involving Panakareao were all in Maori, while those with Pororua were in English,

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*(Continued from page 53.)*

The primary research reports relied on were: B Rigby and J Koning, 'Historical Overview', 4 December 1989 (doc A1; summary at doc B1); B Rigby, 'The Mangonui Area and the Taemaro Claim', July 1990 (doc A21; summary at doc C5); B Rigby, 'The Muriwhenua North Area and the Muriwhenua Claim', November 1990 (doc B15; summary at doc C6); B Rigby, 'The Oruru Area and the Muriwhenua Claim', February 1991 (doc C1; summary at doc D3); T Walzl, 'Pre-Treaty Muriwhenua' (docs D4, D5); T Walzl, 'Report on the Historical Issues Relating to the Taemaro Mediation, circa 1830-1925' (doc E2); D A Armstrong, 'The Most Healing Measure: Crown Actions in Respect of Oruru-Mangonui, 1840-1843' (doc J3); D A Armstrong, 'The Taylor Purchase' (doc I5); D A Armstrong, 'Documents Supporting the Taylor Purchase' (doc F1); D A Armstrong, 'The Land Claims Commission: Practice and Procedure, 1840-1865' (doc I4); M Alemann, 'Muriwhenua Land Claim: Pre-Treaty Transactions' (doc F11); P Wyatt, 'The "Sale" of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions', 16 June 1992 (doc F17); B Rigby, 'The Mangonui Area and the Taemaro Claim', 25 July 1990 (doc H2); D Loveridge, 'The New Zealand Land Claims Act of 1840', 18 June 1993 (doc I2); and F Sinclair, 'Issues Arising from Pre-Treaty Land Transactions' (doc I3).

For her willingness to seek a Maori dimension in the relevant history, where it was much needed, we particularly acknowledge Philippa Wyatt, 'The Old Land Claims and the Concept of "Sale": A Case Study', MA thesis in history, University of Auckland, 1991, and the advance made on that study in this Tribunal in various papers, including document F17. The Tribunal was considerably assisted by her submissions. We note that Ms Wyatt's view was supported by historian Michael Belgrave in 'Recognition of Aboriginal Tenure in New Zealand, 1840-1860', paper to the American Historical Association, Washington DC, 27 December 1992.

PRE-TREATY TRANSACTIONS

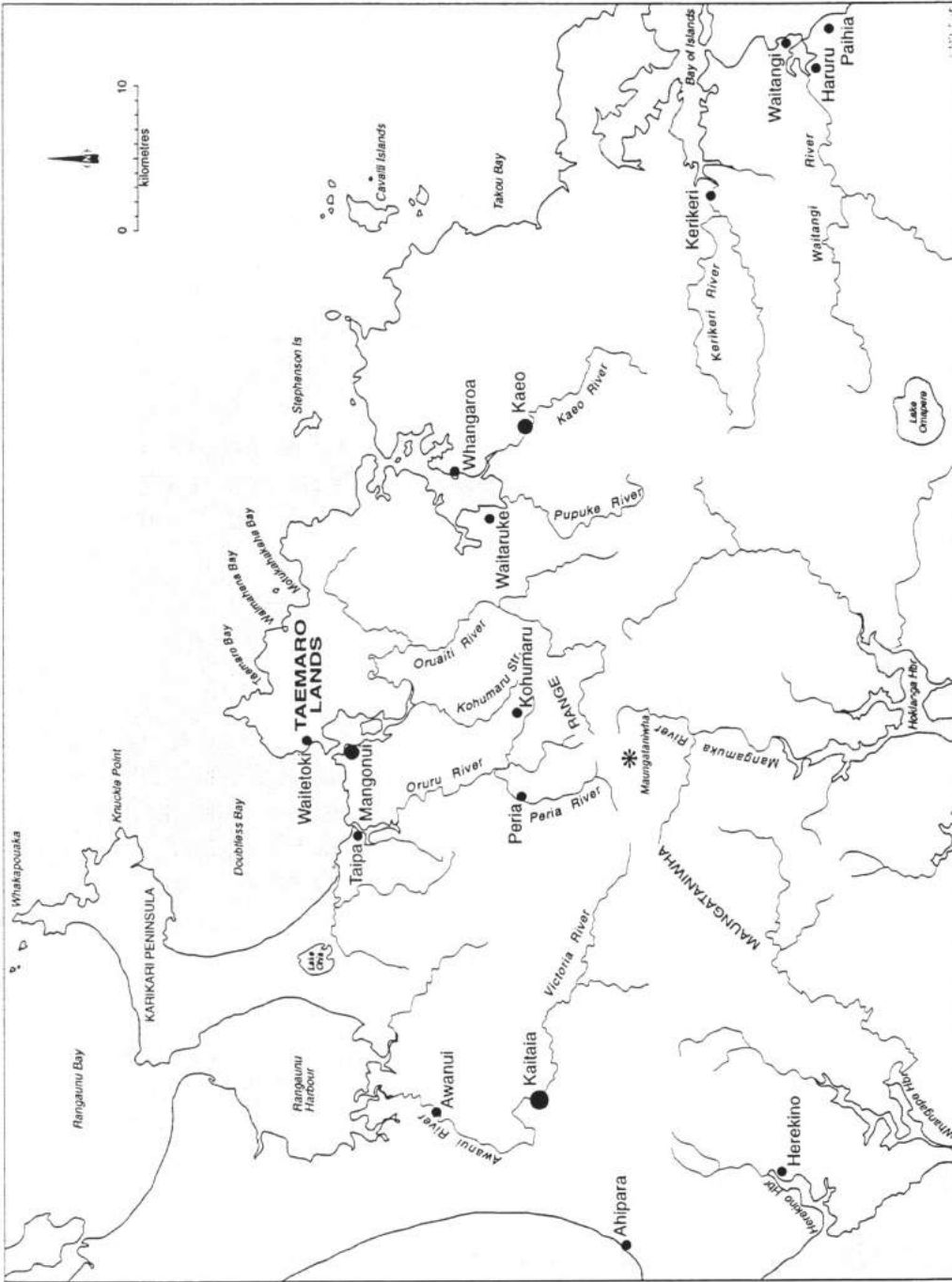


Figure 15: Muriwhenua location map

reflecting the fact that Panakareao dealt mainly with missionaries and Pororua with traders. The deeds were poorly and imprecisely drawn. We have studied each of the deeds and have to say that, in nearly every case, it would not have been possible for a surveyor to define the lands in question without further talks with the parties. Their form is less questionable than their status, however. A written deed is normally the best evidence of that which was agreed on the ground, but this rule of law has little application when one party is of an oral culture, where written documents are of no consequence, and when they contain terms outside that party's experience. In that situation, the deed evidences no more than that which the party who drafted it sought to achieve.<sup>2</sup>

This review follows four divisions

In view of their different circumstances, the transactions are examined in four divisions: the western division, which was virtually the sole province of the missionaries; the eastern division, which includes the separate Taemaro claims where traders and some speculators were involved; the central district, where church adherents and traders were mixed; and the northern peninsula, where a sort of Maori sanctuary appears to have been proposed.

### 3.3 THE WESTERN DIVISION – PANAKAREAO AND THE MISSIONARIES

The pre-Treaty transactions began with the church adherents in the west. On the Maori side, all the transactions were either in the name of Panakareao or under his supervision. Six Pakeha were to claim 20,814 acres (8423 ha). Had surveys been done at the time, they would have disclosed that the area involved was in fact some 32,727 acres (13,244 ha).

The transactions are depicted, following survey, in figure 17, and are scheduled in table A. A sample deed for this area is given in figure 18. All the deeds in the western sector were completed in the Maori language. Certified translations into English were either appended at the time or provided later.

#### 3.3.1 Kaitaia mission station

The first transaction in Muriwhenua concerned some 700 acres (283 ha) which the missionaries sought for a mission station in the name of the Church Missionary Society.<sup>3</sup> It followed three years of missionary visits to Muriwhenua, beginning with the journey of Henry and Edward Williams in 1831.

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2. For the interpretation of early documents with indigenous peoples, see Professor Bradford W Morse and Rosemary Irwin, 'Treaties, Deeds and Surrenders: An Analysis of Canadian and American Law', report commissioned by the Waitangi Tribunal, August 1994 (doc 02).

3. By a second transaction in 1840, it was claimed that the area acquired had been increased to 1727 acres.

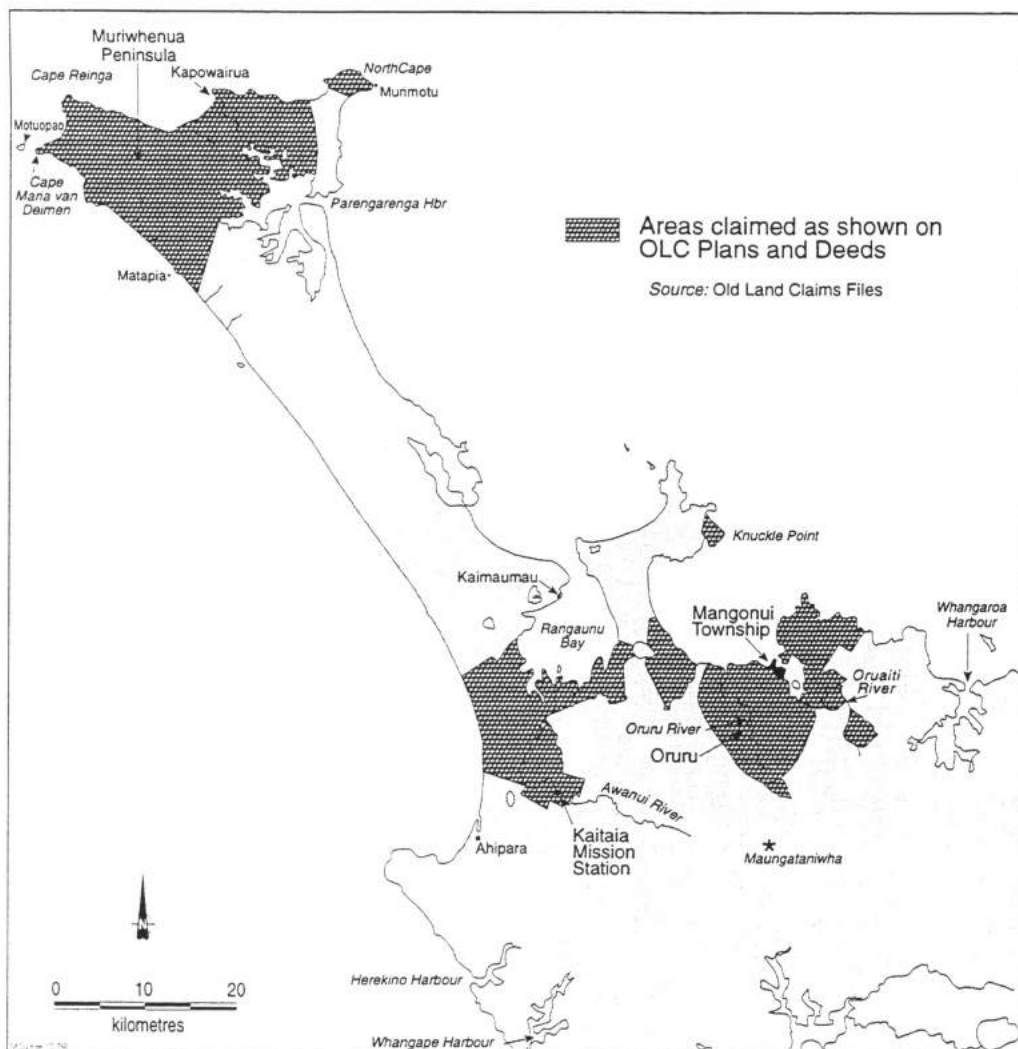


Figure 16: The land in the pre-Treaty transactions, Muriwhenua

Although one account describes Maori as hostile when the missionaries arrived,<sup>4</sup> the more likely situation is that the station had Maori support from the outset. Panakareao provided the land, protection, food, and timber and thatching for house building, as well as a labour force for construction and for clearing land and making roads.

Maori support for the mission station

Indeed, even the picture painted by the missionaries that they took all the initiatives does not stand scrutiny. Their journals describe Maori as objects for conversion, not as real people influencing the course of events, and the image they present of making intrepid and inspired journeys from the Bay of Islands to meet an unknown people in an untamed territory tells more of their anxieties than

4. See S C and L J Matthews, *Matthews of Kaitaia: The Story of Joseph Matthews and the Kaitaia Mission*, Wellington, AH and AW Reed, 1940. According to Rima Edwards, the account that the missionaries' lives were at risk until Panakareao intervened is supported by Maori oral tradition.



of the state of the land. Panakareao and his people were in fact known in the Bay of Islands, which they regularly visited. They had joined Nga Puhi in raids to Hauraki and the Bay of Plenty in the 1820s. Panakareao was related to the Nga Puhi war leader Titore. It is apparent, however, that he soon came to appreciate how Nga Puhi had prospered from the establishment of mission stations amongst them.

Thus when the missionaries went to Muriwhenua they were meeting with no isolated and uninformed group. Seizing the opportunity, Panakareao himself suggested the site for the mission at Kaitaia. From the start he served as host and protector. In 1833 he declined Titore's request to join another expedition to the south, knowing that his charges were averse to that course and not wishing to prejudice the mission station project. He himself journeyed to the Waimate mission station to revitalise interest when the missionaries were having second thoughts. The Reverend Henry Williams and Charles Baker had both expressed concern that the Muriwhenua people were keener on trade than on God. The missionaries did not seem to understand that Maori saw divine authority as part of everyday business, that gods supervised trade as much as anything else and that they were not confined to a church.

On whether there  
was a meeting of  
minds

Crown counsel argued that the eventual Kaitaia transaction, and those that followed, were not effected in an exclusively Maori context, owing to the previous interplay between Maori and Pakeha in settling mutual affairs.<sup>5</sup> Crown lego-historian F Sinclair urged as well that the members of the tight-knit missionary communities had a large collective experience to draw from in acquainting themselves with things Maori.<sup>6</sup> We broadly considered this aspect in the last chapter. It seemed plain to us that, while each party noted in a general way the obvious differences between them, each was still a prisoner of their own world-view and mutual comprehension was minimal.

Etiquettes not  
observed

Indeed, even the distinctive social etiquettes necessary for social control were not always respected. Panakareao complained to the Reverend Henry Williams when, after construction began, the Reverend Charles Baker withdrew. Panakareao thought that it was not right (or 'tika', from which 'tikanga' or Maori law derives) for the work begun by one person to be finished by another. Baker's withdrawal had two implications for Maori. First, if Panakareao and Baker had made a commitment to each other, neither had the right to walk away. Secondly, as the hau (the inner breath or life-force of a person) is invested in a project through the expenditure of labour, it is made tapu to the individual concerned. No one could complete the work of another but was bound to start again out of respect for the hau of the initiator. There are modern instances where this rule has continued to be raised.<sup>7</sup>

5. Crown's opening submissions (doc 11), p 4

6. Document 13, p 70

7. The legal implications of 'hau' are examined by A Frame in 'Property: Some Pacific Reflections', *New Zealand Law Journal*, January 1992, p 21. The belief still applies, as was evident following the death of Inia te Wiata in 1971 with unfinished carvings in New Zealand House, London.



Figure 17: Pre-Treaty transactions, western Muriwhenua

Despite the missionaries' social gaffes, the project struggled on but nearly fell apart again when, in 1834, after the station was built, a ceremony was arranged for the signing of a deed and the delivery of presents. This involved 80 blankets, 30 hoes, 30 iron pots, 30 scissors, 10 shark hooks, 40 axes, 30 adzes, 80 plane irons, 2000 fish hooks, 48 combs, and 600 heads of tobacco. To Maori, the arrangements could have equated only with the *hakari*, a feast to cement a host group's alliances with numerous *hapu*, accompanied by proud displays of the host tribe's wealth. It also involved gifting every article on a stage to each interested party. Some protocol was necessary: the host's leader pointed to each

The gifting ceremony at Kaitaia

## MURIWHENUA LAND REPORT

Claim	Parties and date	Value of goods	Area in deed (acres)	Area claimed (acres)	Examined	Outcome
Claim 675 to 'Kaitiaki/Kerekere'	Panakareao and three others to Church Missionary Society, 17 March 1834 and January 1840	£123	2000	2000	Yes	Commissioner Godfrey recommended 1273 acres. Grant not issued. Land surveyed – 1727 acres. Commissioner Bell ordered grant of 1470 acres. Grant issued 1 November 1859. 257 acres 'surplus'.
Claim 328 to 'Otararau' and 'Waioakai'	Panakareao and four others to the Reverend J Matthews, 20 July 1835	£20	2000	1400	Yes	Godfrey recommended 1400 acres and 306.5 acres. Grant issued 22 October 1844. Called in by Bell and lands surveyed – 3134.5 acres (Waioakai 1279 acres and Otaraau 1855.5 acres). Bell ordered grants for 1279 acres and 1170 acres to Matthews. Grant issued 15 February 1859. 685 acres 'surplus'.
Claim 774 to 'Ohotu'	Panakareao and two others to W G Puckey, church worker, 20 July 1835	£20	2000	1500	Yes	Godfrey recommended 384.5 acres. FitzRoy awarded 1500 acres. Grant issued 18 June 1845. Bell cancelled grant and land surveyed – 2581 acres. Bell ordered grant of 2581 acres. Grant issued 3 November 1857.
Claim 705 to 'Okioire'	Panakareao and 13 others to S Ford, church worker, 11 September 1839	£215	3000	2000	Yes	Godfrey recommended 1357 acres grant. FitzRoy issued 1357 acres scrip July 1845. Scrip not accepted. Land surveyed in 1856 – 8280 acres. Bell ordered grant of 2627 acres 8 August 1860. 5653 acres 'surplus'.
Claims 875-877 to 'Awanui'	Panakareao and 10 others to H Southee, settler, March 1837 and 17 December 1839	£196	10,000	10,000	Yes	Godfrey recommended 2260-2560 acres for Maxwell with encumbrance for Maori reserve. Grant issued 22 October 1844. Recommendation that Southee receive 500 acres. Grant for 186 acres issued by Governor Grey 5 November 1853. 3200 acres scrip issued to Southee's mortgagees, Mair and Powditch, 5 November 1853. Investigated by Bell and surveyed – 13,684 acres. Maxwell's grants cancelled. Bell ordered grants of 4198 acres to Maxwell, 400 acres for Clarke, 500 acres for Southee, and 26 acres to Fenton. Grants issued 10 February 1862 and 27 April 1862. 200 acres reserved for Maori. Another 200 acres recommended to be reserved for Puhipi were not awarded. 8360 acres 'surplus'.

PRE-TREATY TRANSACTIONS

Claim	Parties and date	Value of goods	Area in deed (acres)	Area claimed (acres)	Examined	Outcome
Claim 330 to 'Warau' and 'Mauko'	Panakareao and 3-4 others to R Matthews, church worker. 6 May 1839 and 18 December 1839	£73	3000	3000	Yes	Godfrey recommended 479.5 acres. FitzRoy recommended 1500 acres scrip. Land surveyed - 1750 acres. Bell ordered grant - 1183 acres. Grant issued 24 February 1859. 567 acres 'surplus'.
Claim 775 to 'Pukepoto'	Panakareao and two others to W G Puckey, church worker. 19 December 1839	£50	800	800	Yes	Godfrey recommended 429 acres excluding reserve for Maori. FitzRoy increased award to 800 acres grant. Grant issued 15 February 1845. Bell cancelled grant and land surveyed - 1455 acres. Bell ordered new grant of 765 acres 3 November 1857. 246 acres reserved for Maori. 444 acres 'surplus'.
Claim 776 to 'Okuraiti'	By unknown party to W G Puckey, church worker. 1839	Not known	Not known	100	No	Claim withdrawn
Claim 1375 to 'Awanui'	Panakareao J Smith, sailor, date unknown	Gift	Not known	14	No	Not investigated

Table A: Pre-Treaty transactions, western Muriwhenua, as represented in 'old land claims' and depicted in figure 17

cluster of goods, carefully assembled, and named it for the hapu or whanau for whom it was intended, taking care to ensure that each group was acknowledged and treated according to some rank.<sup>8</sup>

#### Okiore Deed

WAKARONGO e nga tangata katoa ki tenei pukapuka kua tuhituhia e matou e Nopera Panakareao ma ki tetahi taha ko te Poari ki tetahi taha kua oti tenei pukapuka te tuhituhi i tekau ma tahi o nga ra o Hepetema i te tau kotahi mano e waru rau e toru tekau ma iwa; kua tuhituhia tenei pukapuka e matou ara e Nopera Panakareao ma ki tetahi taha ko te Poari ki tetahi taha hei tino tohu ki a ratou katoa ki nga tangata katoa ano hoki kua oti te tuku e matou e Nopera Panakareao ma ki a te Poari tetahi wahi wenua oti tonu atu me nga rakau katoa me nga aha noa me nga aha noa katoa e tupu ana i taua wenua me nga mea katoa o raro o taua wenua. Ko nga ingoa nui o taua wenua ko Okiore ara ko Wangatane ko te Maki.

Na, ko nga kaha anei. Ko to te Ita ka timata i te kaha o to te Matiu ko ia ia kei te tikanga o te Pa o Tututarakihi e timata ana i te Wai o Okiore ara Wangatane, ka rere tahatahi tonu a ka tutaki ki te Reihana Matiu kaha i te Awanui, ki to te Hahi Mihanere taurangi hoki. Na, ko te Kokopu kihai riro, kia tapu taua wahi mo ona tangata. Engari ko te pito o te kokorutanga i waho atu o te Pa kotahi tekau Ekara te nui i kohia ki roto. Na ka rere tonu ano i konei tae noa ki Waikainga. Ka witi atu ka rere a te Karamu ra ano i te tuauru kei te Tupehau te mutunga mai. Na, ko te kaha ki te Hauta tenei. Na, ka ahu tonu atu ano ra te Tupehau tae noa ki te Taupururu. Na, ko to te Weta kaha tenei. Ka wawati i reira, ka ahu mai ki te Wai wakaroto o te Tangonge. Ka puta ki te Waihou, hono noa ki te wai nui o Kaitaia rere tonu atu tahatahi o Ohotu tae noa ki Waiokei ki te kaha o to te Matiu ka ahu atu tika tonu ki te ritenga o Tututarakihi te timatanga o te kaha. Ko te kaha o te Hauta tenei. Na, mo te Hahi Mihanere me era atu te Ara Kata ki te Awanui ki tona wanui ano waihoki e rima tekau rara kuara hei tauranga mo nga mea o te Hahi Mahanere. Na, me noho tonu nga tangata maori i ona wahi ki te taha o te Wainui hei mahinga mona i te tetahi wakatupurangi ki tetahi.

Na, ko nga utu enei mo anei wahi, Kotahi Hoiho, he uwa, Kotahi Kaho Tupeka me nga Pauna e toru tekau ma rima i te taonga. Ka huihuia katoatia e waru tekau Pauna, a mo te Poari mo ona tamariki te wenua ake tonu atu.

#### Kai Tuku—

Nopera Panakareao x	Haunui x
Ripi x	Hapahana Tara x
Mahanga x	Witi x
Poho x	Kuri x
Turau x	Paonui x
Ruanui x	Rangiapiti x
Hohepa Wata x	Kepa Waha

#### Kai Titiro—

Joseph Matthews  
R Matthews  
E H C Souther  
Tomo x  
Toitahi x  
Reihana Morenui x  
Huri Kuri x

Figure 18(a): The Maori text of a typical missionary deed – Okiore

Listen all men to this book written by us Noble Panakareao and others on the one side, and Mr Ford on the other side. Finished writing of this book on the eleventh day of September in the year 1839. Written this book by us Noble Panakareao and others on the one side, and Mr Ford on the other side, as a chief to all of them to all men: that a certain piece of land has been transferred by us Noble Panakareao and others to Mr Ford, for evermore to remain; and all Trees and all other things whatsoever growing on that land, and all other things underneath that land. The principal names of the land are Okiore otherwise Wangatane and Te Meka.

Lo! the boundaries these. That of the East commences on the boundary of that of Mr Matthews, this is in keeping with the Pa Tututarakihi beginning at the Water of Okiore, otherwise Wanagatane, along the side of which it goes on till it joins the boundary of Richard Matthews at Te Awanui, to the landing place also of the Church Missionaries. Lo! Te Kokopu is not gone: let that place be reserved for its people. The projecting point of land beyond the village in size ten acres is enclosed within. Lo! thence proceed onward to Te Waiakainga, crossing over proceed even to Te Karamu on the Western Coast at Te Tepuhau the ending. Lo! this is the boundary to the South. Lo! proceed onwards by Te Tepehau unto Te Taupururu. Lo! this is that of the Western boundary. Breaking off there proceed hitherwards unto the inner water Te Tongonge, arriving at (or by) Waihou until you join the large water of Kaitaia, thence running on by one side of Ohotu even unto Waiokai to that part of the boundary of Mr Matthews, proceeding thence straight on to the bearing of Tutukarakahi the beginning of the boundary. This is the boundary of the South. Lo! for the Church Missionaries and these others, the cart road to Te Awanui according to its breadth; so also fifty yards square as a landing place for the things of the Church Missionaries. Lo! the Natives are to be permitted to cultivate along the banks the Awanui river from one generation to another. Lo! these are the payments for these places: One Horse, a female; one Cask Tobacco and Pounds Money thirty-five, altogether Eighty Pounds: and for Mr Ford and his children the land for ever and ever.

Figure 18(b): Turton's English translation of the missionary Okiore deed

A description of the Kaitaia events survives in the separate journals of two missionaries. From these it is apparent that there was an unintentional but serious blunder. The missionaries displayed the gifts but failed to make the distribution as protocol required. That was left for the Maori themselves. It was as though their Maori guests were like sheep, one indistinguishable from another, or as though their hosts did not know what to call them or cared not to acknowledge them by their proper divisions. They were simply 'Maori'. The blunder raised the

8. In his reminiscences, Resident Magistrate W B White described a hakari at Ahipara in 1863, 30 years after the Kaitaia incident:

The hakare [sic] was a grand feast given by the tribe or section of it to their neighbours. The place selected was generally Ahipara beach, a fine open space. Great spars were collected, fifty and sixty feet high, and placed in rows five or six feet apart, leaning inwards towards the next row; there were two rows about eight feet apart. They were braced together by ties ornamented with pieces of calico, print, and all sorts of things flying out in streamers. I have known one pound notes pinned on to pieces of string. Tobacco pipes were there also. In the bottom space and all round it were piled kits of potatoes and kumara, loaves of bread, large cakes baked in ovens, a numbered [sic] of slaughtered sheep, several oxen and heaps of pigs that had been killed. When the company had assembled (it was of course very numerous) a person belonging to the giver of the feast would come forward with a long wand in his hand and welcome the company in a neat speech; then tap a portion of food and call the hapu for which it was intended. The party called upon would come forward and take possession and carry off to their camp close by (they were all scattered about in their own camps) . . .

William Yate provided a similar account of a hakari in the Bay of Islands. The stages rose in tiers and were 80 to 90 feet high. He also observed that 'the portion belonging to each tribe is particularly pointed out; and when the ceremony of presenting it is over, the people carry away their portions'.

prospect, too, that the missionaries were not honest brokers and might not have given their all, or had not taken the trouble to ensure beforehand that there was enough for each group with whom a bond was intended.

An uproar followed, in which the mission might well have been raided but for the intervention of Panakareao's party to deter retaliatory action. No doubt Panakareao excused the untutored ways of his fledgling wards by highlighting their virtues, their closeness to God and trade. In the end, after many threats and speeches, peace was restored. The missionaries, however, saw matters the other way around, as though Maori were uncivilised.<sup>9</sup>

We note that the same procedural error accompanied the Whanganui block transaction of the New Zealand Company at the other end of the island, and with virtually the same result – an uproar and fighting amongst the local hapu, while the leading rangatira held back from the *melée*. There the European party was saved from attack only by being ensconced on a boat offshore. On their part, Maori were willing to comply with protocols peculiar to their friends. They made their marks on deeds, for example, though they did not know the particular magic in doing so.

A personal  
relationship was  
intended

If Maori oral tradition does not record the Kaitaia land transaction, that is not surprising, for we doubt whether it was seen as a land matter at the time. In the Maori way, the contract concerned the formation of a personal relationship. In that respect, according to Rima Edwards, there are in oral tradition stories that portray Panakareao as saving the missionaries from disaster. The chronologies are doubtful, as Crown historian T Walzl pointed out. Dr Dame Joan Metge, however, an anthropologist drawing on nearly 40 years' research in the Muriwhenua area, explained how Muriwhenua historicity is less concerned with linear time. A story serves to transmit either events or inner truths, and it is with the latter that the accounts in this case were concerned. The oral tradition, as we see it, records the personal and spiritual closeness of Panakareao and the missionaries as seen at that time, as an allegory explaining the arrival and spread of Christianity in the district.<sup>10</sup>

Matthews' status  
today

None the less, after an unpropitious beginning, the Kaitaia mission station was established under the youthful Joseph Matthews and William Puckey. They were to remain there for the rest of their lives. It was evident to us that they now have high esteem in local Maori history. Neither took a Maori wife, but they are still remembered in Maori whakapapa, for some Maori adopted their names upon being christened. Matthews did not die until 1895, and the parents of some who spoke to us were said to have known him in person. They contended that

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9. See H Williams, diary entry for 17 March 1834, *The Journal of Henry Williams, 1831–1840* (doc D5(c)), vol 3, p 376 (MS WIL, ATL); R Davis, diary entry for 17 March 1834, *The Journals and Letters of Richard Davis, 1834–1839*, (doc D5(c)), vol 3, p 802 (Hocken Library, Dunedin); J N Coleman, *A Memoir of the Reverend Richard Davis*, London, James Nisbet, 1865, pp 173–174
  10. See R Edwards' submission on traditional history (doc B2), pp 1–2; doc D4, p 64, app II, pp 2–8; Dame Joan Metge, 'Cross Cultural Communication and Land Transfer in Western Muriwhenua, 1832–40' (doc F13), pp 16–17, 146–148

Matthews' love and integrity were beyond question, and we have no reason to think otherwise. Although Matthews' ordination was withheld by Bishop Selwyn until 1859 on account of his land transactions, Selwyn did the same to others who arranged personal purchases; and our later criticism of the way the Government gave effect to those transactions does not impugn Matthews.

### 3.3.2 The missionaries' personal transactions

Those associated with the church were later to pursue a number of personal transactions. Joseph Matthews claimed Otararau, Waiokai, and Parapara blocks (the latter in central Muriwhenua). His brother Richard Matthews, who was with the mission for a time, contended for Warau and Mataka, while Puckey maintained that Ohotu and Pukepoto had been spoken for. Church Missionary Society surgeon Samuel Ford claimed Okiore and, in central Muriwhenua, the whole Oruru Valley, but in both cases a trust to hold the lands for Maori may be implied. In the same area, John Ryder, church carpenter, held out for Maheatai, while James Davis, son of the Reverend Richard Davis, maintained that he had acquired nearby Mangatete. Henry Southee, a very early settler, was independent of the church though a supporter of it. He claimed rights to the Awanui block, not only because of a deed but, far more convincingly, because he had married Eliza Ati, the daughter of the local rangatira, Ruanui, and lived on the land with a substantial Maori community of at least 300.

Put together, the transactions in western Muriwhenua alone covered an enormous area, from well north of Awanui to south of Kaitaia and taking in nearly all the Kaitaia–Awanui flats. It was here that archaeological evidence, referred to in the last chapter, pointed to one of the largest Maori cultivation areas on record.

While a description survives of part of the Kaitaia mission transaction – the conveyance of the gifts but not the execution of the deed – there are no surviving accounts to show how publicly (or privately) the remaining transactions were arranged. It was conjectured that a report for the first transaction would have been needed, since it stood in the name of the Church Missionary Society, which would have required an account in due course. The last transaction, in January 1840, however, was also for the society and doubled the Kaitaia mission station area, but no description of the occasion or of the negotiations has been located.<sup>11</sup>

Each of the transactions was evidenced by a deed in Maori, which was then translated into English. Some similarity of form suggests that each deed was composed by Puckey, including Southee's. William Puckey was an honest man, and a fluent Maori speaker, but he was more of a faithful artisan than a wordsmith. He was a layman throughout his missionary service, being neither admitted to the diaconate nor ordained as a priest. His use of the Maori language left good scope for improvement, in our view, and as for legal draftsmanship his

Personal transactions generally

No description of other transactions

Puckey's limited draftsmanship

11. See Kerekere deed, 2 January 1840, OLC 1/675, (doc D12(a)), p 13



deeds were in urgent need of repair. One cannot tell whether a trust was intended, and it is only by recourse to extrinsic evidence, which is precisely what deeds are meant to avoid, that anything like the true intent emerges. Indeed, Puckey's draftsmanship suggests that he saw a land deed as merely an instrument of transfer, so that ancillary obligations only marginally rate mention.

### 3-3-3 Joint occupancy and Maori authority

The reality of who controlled the ground

Whatever the deeds' words, that the lands were transferred or gone, they might just as well have been written for the river or the wind when for Maori the reality was rooted in the ground. And what was that reality? Alongside a handful of Pakeha was a numerous warrior people controlling the countryside from Ahipara to beyond Mangonui. Most, by far, were in this western part, at Te Wharo or Ahipara, Pukepoto, Kaitaia, Takahue, Awanui, and Mangatete. From these Panakareao could have mustered 1200 fighting men, according to Puckey at the time the mission was established. Perhaps it was a Maori boast, but we have little else to go on and, supposing that each warrior had one surviving parent, wife, and child, the district would have housed some 3600 souls. We do not rank highly those assertions of Pakeha ownership that spoke behind a paper cuff.

The comprehension of a 'sale' would seem more real had the flats from Awanui to Kaitaia been fenced off, with a force maintained to keep Maori out. Of course, nothing of that sort was feasible. Deeds or no deeds, life carried on with only this apparent change: that three Pakeha families now lived amongst Maori on Te Rarawa land. Te Rarawa was no less a force to be reckoned with, on account of this occupation, than it had been for centuries. Indeed, the purpose of admitting Pakeha had been to strengthen the tribe's power.

Inaccuracy of portrait of missionary control

Although Sinclair considered that the continued Maori occupation of the Kaitaia mission station was on missionary terms, the opinions in support appear to reflect only the point of view of certain missionaries at that moment in time. No such contention could have been real until much later, when Government authority and the significance of paper titles had been established in fact. Only then could the roles of Maori and Pakeha have been reversed.<sup>12</sup> The missionary interpretation of Maori opinion, it seems to us, too readily reflects what they knew to lie ahead, through their knowledge of British law and their understanding of the consequences of annexation. Likewise, while the missionaries spoke of the Maori living under their protection, and for reasons of their own Maori might feed that view back to them, Panakareao had stationed his fighting chiefs at the mission, Rawiri Tiro and Kepa Waha, to save the missionaries from harm. Who was really protecting whom?

No delivery of vacant possession

In any event, the most visible aspect of a land sale, the delivery of vacant possession, did not occur. Maori were still living on the Kaitaia mission station, for example, even 25 years after the 'sale', and this in turn was long after

12. Document 13, pp 19-29

'government' had 'arrived'. In the exceptional case of Tangonge, on Joseph Matthews' Otararau block, Maori were not finally evicted until the 1960s, when more than a century had passed.

Missionary journals acknowledged that the missionaries might not have survived without Panakareao's support and protection. They recognised that protection was both needed and given, and that they were effectively tenants at will or on sufferance on Maori land. It seems to us that there was thus a wide disparity between the deed on paper and the deed on the ground, and that occasionally this was tacitly agreed. Thus in 1838 Captain FitzRoy, later the Governor of New Zealand, was examined by a British parliamentary select committee as follows:

On whose  
sufferance?

The Church Missionaries consider that they hold their Lands purchased on Sufferance?

Yes.

From which you believe them to contemplate the Possibility of their being taken away?

Decidedly; and I apprehend they consider that they hold their Property entirely at the Mercy of the Natives; that their Tenure in that Country depends solely on the Goodwill of the Natives.

Of course it does, generally speaking, but do you suppose them to be of the opinion that the New Zealanders themselves consider them to hold the Lands they have purchased on Sufferance?

It is a Sort of conditional Sale, such as 'We sell them to you to hold as long as we shall permit you'.

I apprehend it is considered that they hold those Lands under the Authority of the New Zealand Chiefs; that they settle upon them as their own Property; but under the Protection and Authority of the Chiefs, and that they look up to the Chiefs as their Protectors, and, in fact, as their Masters.

Do you conceive at the Time that the Purchase is made there is not an Understanding between the Missionaries and the New Zealanders, that the Land is entirely given up for a positive Consideration?

The Use of the Land is certainly; but as the Missionaries have never wholly taken away Ground from the Natives, but always allowed them the Run of the Land, the Right of Common as it were, I do not think they at all apprehend at present, that a Day will come when they will not be allowed to go about the Land as they have hitherto done; they consider it their Country while it is not transferred from them to the Sovereignty of another Power.

Are you aware that the Missionary Society in all their Arrangements speak of the Land as a Possession in Perpetuity, and that they recommend to the Missionaries to purchase such Quantities of Land as a Provision for their Children?

Yes, I am quite aware of that; what I have meant is that they have a Right to hold that Land, or to make any Use of it for their own Benefit; and that they may act as

they please upon the Land as long as they acknowledge the New Zealand Chiefs as the Authorities under whom they hold it.<sup>13</sup>

There was nothing unexpected in this opinion. The principle had been stated by Chief Justice Marshall in the United States in 1823:

The person who purchases lands from the Indians, within their territory, incorporates himself with them so far as respects the property purchased; holds their title under their protection, and subject to their law.<sup>14</sup>

Crown researchers cautioned against relying on FitzRoy's view, as he may have had a purpose, to challenge the New Zealand Company's claims, and since he visited New Zealand only briefly, in 1835. We consider, however, that FitzRoy adequately reflected the commonly perceived position at the time and, if the missionaries later changed their view, that is only because it suited them to do so once annexation was imminent.

The simple reality was that, by sheer weight of numbers, Maori had control of the area. We incline to FitzRoy's opinion on this occasion, as a result; but especially note how the Government was on notice, because of this evidence and other evidence of the same kind, that a Maori comprehension of sales in English terms could not be presumed.

Limited rights  
conveyed in terms  
of Maori law

We substantially agree also with Maori witnesses before this Tribunal who, speaking on different marae at separate times, were consistent in their view that the land transactions with the missionaries, beginning with the Kaitaia mission station and the farm at Te Ahu, were not sales, and could not have been sales. We refer particularly to the Reverend Maori Marsden, Ross Gregory, and Rima Edwards. All three maintained that Panakareao could give no more than he had, and as a rangatira he had no more than the right to allocate land with the intention that the missionaries become part of the local community under his care, protection, and mana. Hence the missionaries held land on sufferance, as all Maori did, subject to their contributing to the common weal. In their view, this did not involve a transfer of the land, for, by the very nature of custom and tradition, the land belonged to no individuals but to the people who formed the local community.<sup>15</sup>

While those views are not independent opinions, as the witnesses belong to the claimant group, we accept them as very likely. They accord with the established laws and traditions of the Maori people, and there is no or no sufficient evidence or compelling circumstances to suggest that Panakareao was moved to contract on some foreign legal terms. The almost certain position is that he did not. The same conclusion was reached by the claimants' historian, P Wyatt.<sup>16</sup>

13. Evidence of Captain R FitzRoy, 11 May 1838, 'Report and Evidence of 1838 Select Committee on New Zealand', BPP, vol 1, pp 173-174

14. See *Johnson v McIntosh* (1823) 8 WHEAT 590

15. See, in particular, Rima Edwards' submission on pre-Treaty transactions (doc F23), pp 8-10

16. Document F17

Anthropologist Dr Dame Joan Metge concurred, noting how Maori and Pakeha imagined entirely different results from the same deal.<sup>17</sup>

### 3.3.4 Joint occupation, trusts, and the deeds translated to English

For those reasons we think that the deeds testify to little more than European hopes for the future, in the event that Britain annexed New Zealand as a colony. The deeds could not represent the position at the time of execution, for their efficacy depended upon reversing the de facto state of power. The substitution of British authority and law for that of Maori was needed before the deeds could have meaning or effect, for, until that was done, Maori law was the only law that existed in fact and was the only law that could apply. It should be noted, then, that six of the nine deeds for western Muriwhenua were executed in 1839, when annexation was likely.

The deeds  
predicated future  
annexation

This does not imply some subterfuge on the missionaries' part, that they were saying one thing and meaning another. They alone knew what the future was likely to hold, and written into the deeds of conveyance, or hidden behind them, were humanitarian intentions. The deeds, or the surrounding evidence, show in various ways the missionaries' mixed motives of protecting Maori interests and their own at the same time. We refer to three situations.

#### (I) *Trust deeds*

At one end of the spectrum, the object expressly stated or implied was to hold the land in trust for Maori, to guard against ill-advised sales and to prevent Maori, or dubious Maori factions, from purporting to sell the patrimony of their hapu. Thus in 1838 the northern Church Missionary Society subcommittee advised the society's parent committee that they had arranged trust deeds to ensure that 'immense tracts of good land . . . remain in [the] possession of the natives' who otherwise were 'continually parting with their land'.<sup>18</sup> In 1840 the society's subcommittee deposited with George Clarke 17 such trust deeds for the Bay of Islands where the lands were held 'for the Aborigines of New Zealand', at the time Clarke left the society to become Protector of Aborigines.<sup>19</sup> The intention to form a trust was not necessarily apparent in the deed but could be separately declared. The Waimate deed, for example, was written as an absolute conveyance, but the Reverend Richard Davis signed a statement that it was acquired 'as a place of cultivation for the Natives'.<sup>20</sup>

17. Document F13, pp 98, 107-108

18. Remarks of the northern sub-committee on the parent committee's letter of 9 August 1838, not dated, CMS/CN/M 11

19. This was brought to the Tribunal's attention by D Armstrong: see Clarke to Colonial Secretary, 16 November 1840, IA 1/1841/135 (doc F1, doc 1), pp 6-23. Although the Government was advised of these trusts, it appears that none was given force and effect.

20. OLC 1/676-679

**(2) *Joint occupation in deeds***

Other deeds enabled both Maori and European to occupy the land in question, jointly or in separate areas. This was the type of arrangement which prevailed in western Muriwhenua and which was provided for in the deeds for Awanui, Okiore, Ohotu, and Pukepoto. The relevant clauses were as follows.

In the Awanui deed:

The land is for Henry Southee and his children for ever but let the natives hear who are living on this place that they are to have the banks of the river to cultivate for themselves, the places are to remain sacred for them for ever, they are not to be troublesome, nor let anyone venture to offer for sale any part on what they are living because those places are for the cultivations of the natives from one generation to the other. And the natives residing on this place are to live according to the believe [sic] of the Church of England. . . .<sup>21</sup>

In a separate deed for part of the Awanui block:

This place is to remain as a settlement for us the natives those persons who live on the place and we are to work on those spots which we wish if it does not interfere with the plantations of the European we will not take without leave it is for the European to give his consent. . . .<sup>22</sup>

In the Okiore deed:

Lo! the natives are to be permitted to cultivate along the banks of the Awanui river from one generation to another. . . .<sup>23</sup>

In both the Ohotu and Pukepoto deeds:

The land for Mr Puckey forever and for the Natives.<sup>24</sup>

Extrinsic evidence  
amplifies

Puckey, as noted earlier, was no lawyer. Extrinsic evidence suggests that his limitation of occupancy rights to defined places was not intended to confine Maori to those parts, but, rather, to guarantee those parts for their use. In Ford's Okiore deed, for example, Maori were entitled to cultivate along the banks of the Awanui River, but this seems to reflect only the fact that that is where they mainly gardened. There is other evidence that most of the block was meant to be secured to them.

Ford's Okiore  
example

Dr S Ford was no doubt highly esteemed at this time when medical services were greatly needed through uncustomary plagues, and he appears to have been trusted. He did not farm the Okiore block, since he merely visited from the Bay of Islands, but Panakareao appears to have entrusted him with the largest block

21. OLC 1/875-877 (doc D5(f), fol 6), pp 1843-1847

22. Ibid, pp 1892-1893

23. Ibid, p 1587

24. Ohotu OLC 1/774 (doc D5(e)), vol 5, pp 1681-1682; Pukepoto OLC 1/775 (doc D5(e)), vol 5, pp 1724-1725

of any given to a church man in western Muriwhenua. It was later surveyed at 8280 acres (3351 ha). Similarly, Panakareao transferred to Ford's care the whole Oruru Valley in central Muriwhenua, some 20,000 acres (8094 ha) of prime country. In the latter case a trust for Maori was implicit, despite deficiencies in the deed's wording. It was stated that the people of that place could 'sit upon their places on the said land within the boundary' with Panakareao 'to point out the sitting places for the Natives'. In forwarding the deed to land commissioners later, Ford explained he had been asked to act as guardian.<sup>25</sup>

Then, in describing his Okiore transaction to land commissioners in 1841, Ford added how the '[Okiore] natives connected with it are provided for in a similar manner to those [at Oruru]'. This suggests that the purpose of the Okiore transaction, like that of Oruru Valley, was to secure the whole of the land, or at least the greater part of it, in Maori ownership.<sup>26</sup> It is significant that Ford claimed only 2000 acres (809 ha) in the Okiore block.

### (3) *Joint occupations in fact*

Finally, there were those where the deeds purported to make an unconditional transfer, but where a joint occupation continued in fact. The Kaitaia mission station and the transactions of Joseph Matthews provide examples. The former has already been referred to. Matthews' Raramata deed did not refer to Maori occupations but later, before the land claims commissioners, Matthews was adamant that the whole of that block was held for local Maori who were living on the land, and he asked that it be cut out for them. Similarly, Maori continued in occupation of Otararau. Matthews later asked that 685 acres (277 ha) be cut out to the south. From last century Maori have persistently maintained that that area was meant for them, but Matthews died soon after they filed a petition to that effect and they were unable to persuade the Government of their contention.

There is a further respect in which these and other deeds apparently drafted by Puckey, for Ford's Oruru block and Taylor's Muriwhenua Peninsula, do not necessarily disclose the true intent. At the Treaty signing at Mangungu in February 1840, when it was claimed that two people had taken large areas in the north – an apparent reference to Taylor and Ford as the two largest claimants – Puckey responded that the land was held 'under a trust deed for the use of the natives'. That may well have been intended, but the trouble was that he was not a lawyer and his trust deeds did not precisely say so.<sup>27</sup> Then, in 1846, Puckey wrote to the Church Missionary Society, possibly referring to the numerous transactions that had occurred throughout eastern and central Mangonui:

Later declarations  
of trust

At the period our purchases were made, the natives were selling land in all directions; in-so-much that both Mr Matthews and myself entertained serious

25. See Oruru OLC 1/704

26. Ford to land commissioners, 13 September 1841, OLC 1/700

27. Taylor, 'Notes of the Meeting at Hokianga', 12 February 1840, enclosed in Taylor to Jowett, 2 October 1840, Taylor papers, ATL, vol 10 (doc 815, pp 14–15)

apprehensions that the natives would part with more than they could spare from their families and in the end occasion material injury to them. This led us to buy more land than we otherwise should, and with this proviso stated in the deed that the natives should occupy it with our own children, thereby doing them a kindness by providing them with homes which they could never alienate from their families.<sup>28</sup>

Again, the trust deeds had not specifically stated that.

Lands entailed

There is another point of confusion. Puckey's deeds consistently conveyed lands 'ki a mea, ratou ko ona tamariki', that is, to so-and-so and his children ('or heirs' in the English translation) but not to their assigns. No doubt Maori placed little or no weight on what was written in the deeds, but if the deeds reflect at all that which Puckey said to Maori, in the Maori language, he could only have affirmed their customary expectation of a personal arrangement. The European right of user, in other words, was personal, and could pass only on the bloodline within the family with whom there was an agreement. If there was a right of transfer to persons outside this arrangement, that had to be made clear at the time. The deeds suggest it never was. The implication is that, if a land right was indeed conveyed, it could only have been entailed – that is, could only have passed on the bloodline.

Marriage gifts

A more particular problem concerned marriage gifts. Land had been given to certain Europeans on marrying Maori to pass to their children and down through the bloodline. One case involved James Berghan in eastern Muriwhenua, and another Henry Southee in the west. Later, when the Government arranged for purchases to be approved based upon the value of the goods conveyed, gifts were seen to fall outside the class of transaction that could be recognised. Southee protested to the Governor how his gift had cost him a great deal:

It is presumed that Your Excellency is aware of the nature of a Maori present – they always expect another in return which in the end is of far more cost than actual purchase.

Indeed, were the truth known, Southee's and Berghan's transactions were the only ones that should have been approved, for it was only gift exchange, not sales, that was known to Maori law.

Multiple payments

The Maori view that sales had not been effected, and that continuing obligations applied, is corroborated by further evidence that additional payments were asked for. It could only have affirmed them in their belief that, in many cases, the additional payments were then made. Crown counsel argued that Maori requests for further payments were not like demands for rent, but were usually based on some pretext of previously unfinished business. We consider that simply gave grounds for raising the matter, as though the Maori concerned would otherwise have waited for the settlers to give of their own free will.

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28. Puckey to Church Missionary Society, 22 January 1846, Puckey ms, University of Auckland Library

### 3.3.5 The nature of the occupation and the deeds in Maori; 'tuku whenua'

The claimants felt some outrage that so much land could have been taken on the basis of certain deeds in Maori when, on their reading of those deeds, they did not effect a land sale. The deeds spoke of tuku whenua, a conveyance of land, when the only land conveyance Maori then knew of, in their view, was one with a string attached, rather like a lease but nothing like a sale. They were angered that, while to them a traditional land conveyance was essentially a tribal arrangement to advantage the tribe, 'tuku whenua' had been manicured as a land sale, to advantage Europeans. Thus began the 'tuku whenua' debate, which was to consume much hearing time. Did 'tuku whenua' or 'land conveyance' mean a land sale or a traditional allocation, or was it a neutral term?

The tuku whenua  
debate

The claimants called Maori Marsden, Ross Gregory, Shane Jones, Rima Edwards, and Margaret Mutu to say what a tuku meant for them as Maori.<sup>29</sup> We were treated to a treasure trove of Maori law on managing land, which was really about managing people, along the lines described in chapter 2. It boiled down to this: that land was given to bring people into the hapu for the hapu's long-term advantage. It was claimed that reference to a tuku of land, a 'tuku whenua' as it is described in the deeds, would have conjured up that purpose. It is not just that Maori had no word for 'sale' but more, that the word the missionaries chose for sale, tuku whenua, in fact had another meaning already. And 'sale' was not alone. There was no word for 'ownership' either, as claimant counsel observed, for Maori had the privilege of possessing or using only, or they might say that something was in their control.

Maori studies lecturer L Head and Crown historian F Sinclair argued that the claimants had wrongly limited 'tuku whenua' to a type of transaction which they had then elevated to an institution, creating a strange new element in a long historical debate.<sup>30</sup> Essentially, Head argued that tuku was a neutral term for 'give, release or let go', so that tuku whenua could refer to any land conveyance, including a sale. It meant simply to let land go. The Maori world had changed, it was argued, a permanent alienation was understood, and 'tuku whenua' was probably first used as a compound noun to cover land conveyances in Western terms.

We agree with Head's point that context is more important than the linguistic debate, and Sinclair sought to provide that context. He argued that Maori made rapid adjustments. He pointed to the vigorous trade with Pakeha from the 1830s, and to a range of commentaries indicative of a substantial shift in Maori minds.

29. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Brooker and Friend Ltd, 1992 (doc C25); R S Gregory's submission on pre-Treaty transactions (doc F28); doc F23; M Mutu, 'Tuku Whenua or Land Sale' (doc F12); S Jones, 'He Whakaaringa mo te Tuku Whenua' 20 March 1994 (doc M3). The matter was initially raised by Dr Rigby: see doc B1, p 1; and see also doc C5, p 1, doc C6, pp 1-2, and doc D3, p 1.

30. See L Head, 'Maori Understanding of Land Transactions in the Mangonui-Muritoki Area during 1861-65' (doc F21), 'An Analysis of Linguistic Issues . . .' (doc G5); F Sinclair, 'Issues Arising from Pre-Treaty Land Transactions' (doc I3)



We refer to those in a moment. For now we record our view, after careful consideration of the circumstances, that the Maori world had not in fact changed in a fundamental sense, and that the Maori understanding of a permanent alienation was probably no better than the European understanding of the primacy of ancestral tenure.

Read together, the lengthy submissions of anthropologists Metge and Salmond, linguist Bauer, and historian Wyatt would appear to acknowledge that *tuku whenua* was not an institution, but to hold nevertheless that the term had meaning for Maori only by reference to the long-established process which the claimants had described.<sup>31</sup> That process represented the norm, or that which was *tika* or right, it was argued, and *tuku whenua* referred to it. Western land sales were not known, it was said, nor was the concept of a permanent alienation. Maori believed they had retained their authority over the land, and Maori society was fundamentally as it had always been.

We have summarised lengthy arguments, and our own conclusions are brief. The main issue, as we see it, was the extent to which Maori had come to new ways, and that, in our view, required reference to the total context, not merely to the language of the deeds. We none the less note as follows. The traditional process of allocating land carried unique referents to continuing relationships and responsibilities, as was fundamental to Maori society. Despite changes in outer form, such fundamental values remained the same. Western land sales were diametrically opposed to the traditional concepts. They severed relationships and terminated obligations, while, for Maori, continuing obligations and relationships were essential. The evidence is that Maori still expected those relationships and obligations to carry on. Accordingly, whatever Maori word was used to denote the sense of giving or conveying land, and no matter how neutral that word was, it would still conjure up a giving or conveying on Maori terms, unless something else was done, within or outside the deed, to make it very clear to Maori that something extraordinary was happening. We are not aware of anything in particular that would sufficiently impute that new revelation.

In brief, no word is neutral in cross-cultural parlay, for no word lives on its own, divorced from its cultural milieu. To the English, for example, 'conveyance' is neutral, covering anything from a sale to a licence, but would hardly conjure up the prospect of being incorporated into a tribe. Likewise, even were 'tuku' neutral, for Maori it would not extend to encompass a land sale or a permanent severing of all ties. There is in each case a relationship between the act of conveyance and the way the conveyance is expected to be performed.

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31. See Dame Joan Metge, 'Comments on Issues Arising from Pre-Treaty Land Transactions ...', 10 October 1993 (doc K1); Professor A Salmond, 'Likely Maori Understanding of Tuku and Hoko', July 1991 (doc D17), 'Treaty Transactions: Waitangi, Mangungu and Kaitaia, 1840' (doc F19); W Bauer, 'Tuku Whenua: Some Linguistic Issues' (doc L2); P Wyatt 'The 'Sale' of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions', 16 June 1992 (doc F17)

We doubt, therefore, whether *tuku* was in fact neutral, as was claimed. We think it was too much associated with gift-giving to be seen so. It is telling, in that respect, that like most Maori words it could be used in many ways where similar concepts applied, so that, while *tuku* certainly meant to give up or let go, it also meant to receive and entertain – the other side of gift-giving. Thus Maori words are used in many ways but regularly with a common conceptual denominator.

The source of the problem as we see it, giving good grounds for complaint today, was the presumption that the British way could be assumed and need not have been explained. It was assumed that the British system of land management would apply, not the Maori system for managing people. It was assumed that old Maori words could be given new meanings, and could be made to apply to this new system, as though any Maori methods would become redundant. Those assumptions were the cause of the trouble, in our view, for it was clearly wrong to impose them.

Thus it was expected that '*tuku whenua*' would come to mean 'land sales' in time, despite the fact that those words had been associated with a process that was quite the reverse. We can thus appreciate the claimants' anger. Their land and their language were assaulted at the same time, and the capture of one was used to justify the taking of the other.

In the highly conceptual and metaphorical manner of Maori speaking, '*tuku*' was only one of many possibilities for 'sale', and in fact it was another word, '*hoko*', which was eventually to prevail as an equivalent. The deeds also used '*hoatu*'. That captured another sense, a sense of direction away from the speaker or persons spoken of, just as '*homai*' gives the reverse. '*Hoko*' lay between, suggesting to and fro, give and take, or exchange. None of these words, however, described an absolute and unconditional transfer of land. The deed simply did not convey the notion that a vastly different type of land deal was meant to be going on.

Other words took on new meanings, too. It is doubtful whether Maori believed in 'forever' as Europeans did; instead, they considered more pragmatically that, if worked on, some things were more likely to endure. Thus it appears that, in their original meanings, '*oti tonu atu*', '*ake tonu atu*' and '*ake ake ake*' had more to do with continuity than 'everlasting' or 'an absolute end'. Similarly, '*tamariki*' covered 'issue', and could have coped with certain 'heirs', but its meaning was stretched beyond comprehension when it was intended to include 'assigns'. Meanwhile, '*utu*' could mean payment, but more regularly meant the payments would go back and forth, and on and on. Neither '*rohe*' nor '*kaha*', nor even '*paewhenua*', described boundaries or districts as Europeans understood them. '*Kainga*' did not mean 'estate' but places where fires burnt, from homes to camp sites, and the name given to a land block might previously have referred to a locality larger or smaller than the block to which it was ascribed. It seems to us

that, despite Puckey's familiarity with Maori, the deeds were speaking Maori with an English intent.

### 3.3.6 The context – a European view

Some passion in the *tuku whenua* debate may suggest the expert witnesses were further apart than they were. Each seemed to us to be saying that it was not the language, but the context in which words were used, that mattered most. We thought it necessary to ask: what were the thoughts of Maori and Pakeha at this time? what mores and myths shaped their points of view? what did they expect in light of their own norms? and had either side altered its traditional position?

Crown lego-historian Sinclair was foremost amongst those who saw change, Maori moving to European standards, in his view, and transferring land 'fairly and squarely within the province of [Western] trade and commerce', as Crown counsel put it. Not unnaturally, the sources relied upon were European accounts. It is not practical to review at length his considerable and intelligent historiography (or that of others), but we understood him to say in essence that Maori adapted with alacrity to novel ways, that they leant more to trade than land retention, and that they sold knowingly for immediate returns and because they anticipated future benefits.

We agree that Maori had long-term goals based upon expected gains from European settlement, and we presume that, like anyone, they would take what they could in the interim; but it is a large step to assume that they were thinking outside their own cultural framework, or were operating within that peculiarly Western concept of an absolute alienation – especially one that would remove them from the future economic equation. The position we see as mainly this: that Europeans saw a sale and, even if unconsciously, interpreted Maori opinion in terms of their own perspective.

The image of some osmotic pull to a stronger cultural system was also assumed, it seems, but again, that reflects how Europeans saw things and not the Maori reality. This illustrates the danger of the written record. It elevates the game of one team only, when there were two teams on the field. The pervasiveness of a one-sided story is not always appreciated. Since Maori spoke Maori, reports of what they said are more than second-hand. 'I sold the land' would be simple enough, for example, were it not for the fact that there was no word for sale. Is that what Maori said, then, or was it what the other party heard?

A number of accounts were relied on to show Maori understood sales. Thus, as early as 1835, a 'leading chief' at Kaitaia is reported to have considered that the land was gone for ever once payment was made. Given the debacle over that Kaitaia sale in the way the gifts were presented, however, what assurance is there that the European commentators put the story right, or were not influenced by that which a valid sale required? It could be the 'leading chief' was simply

playing back what the missionaries themselves had said, to check that he had heard aright. This was not unknown, by any means.

Also, it was said, a league was formed in Hokianga to oppose land sales, showing that Maori had come to understand the effect of them. But did this league against land sales exist purely in the European eye? Was it like the Taranaki league against sales, as perceived by Europeans, where in fact Maori were not debating the meaning of a sale but challenging the number of Europeans coming in, their independent behaviour and the threat to Maori power and authority.

Numerous other examples were given and some will be referred to in later chapters, but in looking at each, we can only say that a different view is obtained if one stands in the footsteps of a Maori. A sale in the European eye is an occupation in the eye of Maori, and vice versa. The documented opinions must now be revisited in light of the greater information that is available today on Maori customary standards.

In subsequent chapters on later events, this question of context is revisited, since both sides were presumably learning more of each other over time. For the moment, we are extremely cautious about relying upon reports from only one side, and reports, moreover, which reflect the particular presumptions of that time. A study of bicultural interaction would appear to require, first and foremost, an appreciation of how each culture worked before judgements are made of the extent of any change.

### 3.4 THE EASTERN DIVISION – PORORUA AND THE TRADERS

The transactions in the eastern division are shown in table B. The land boundaries in the associated deeds were not clearly described, nor were they later sketched or surveyed, but figure 19 is an indicative map of their approximate locations. Figure 20 gives three typical deeds for this area. Figure 21 is an example of a somewhat legalistic deed, the form of which was probably drafted in Sydney. Unlike the deeds in western Muriwhenua, which were all in Maori, these were in English without Maori translations.

The deeds

In the eastern division the Europeans were traders, sawyers, and the like with businesses based on Mangonui Harbour. The Maori party to the transactions comprised either Pororua, his family or his followers. Later, when a commission sat to investigate European purchase claims, Panakareao thwarted its inquiries, allowing no one to consider that Europeans could have a right in the Mangonui district without Panakareao's say-so. In the event, the transactions in this area were not investigated at the time; nor, as will be seen, were they properly investigated at any point later. The amount that Pakeha claimed as a result of the pre-Treaty transactions in the eastern division was 30,962 acres (12,530 ha). Virtually nothing survives on record to show how the various transactions were

The parties

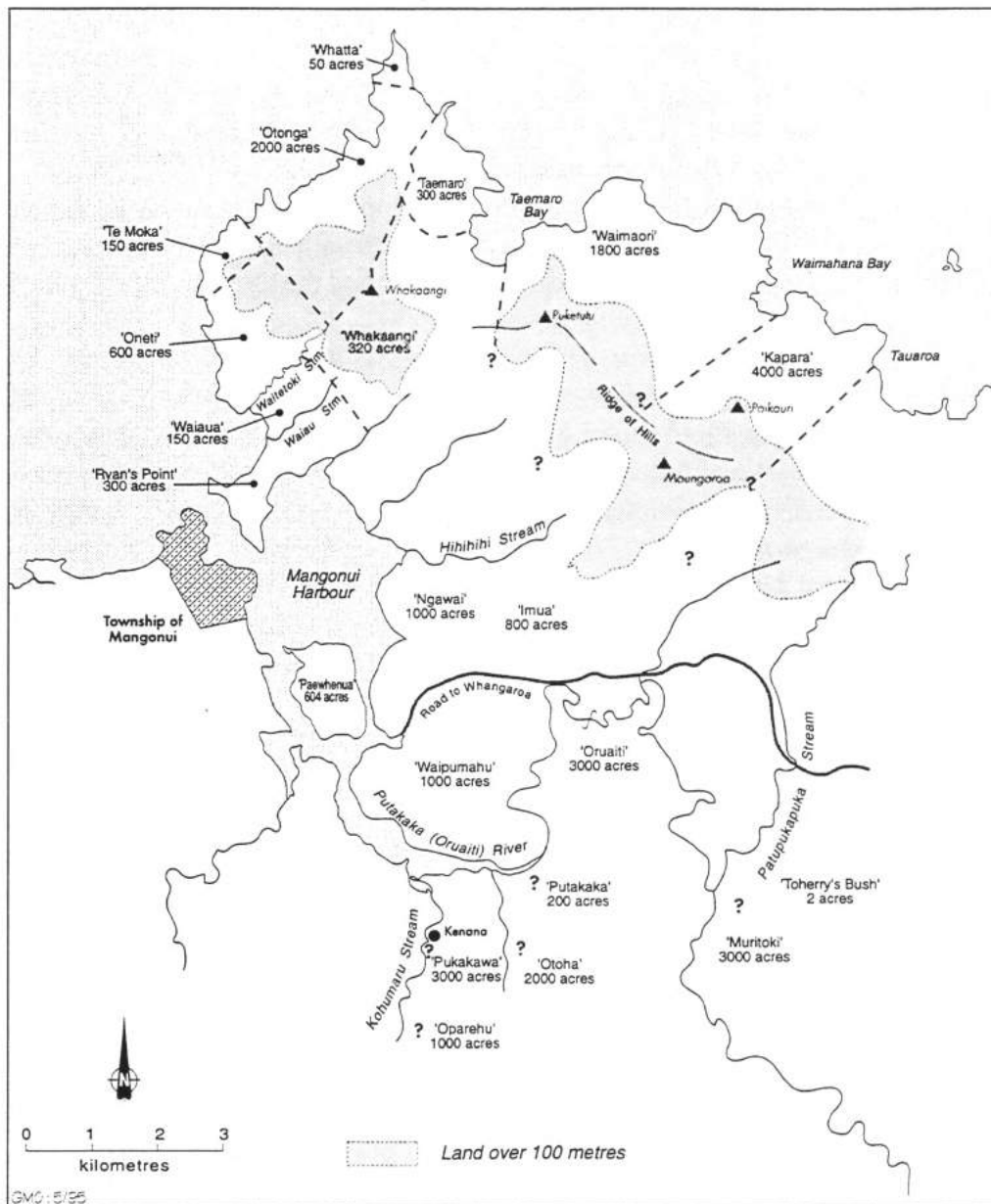


Figure 19: Pre-Treaty transactions, eastern Muriwhenua

completed, whether in public or in private, whether the deeds were read and translated, how goods were distributed, and so on.

**3.4.I The dispute between Panakareao and Pororua – a question of right**

Essential to understanding the transactions in the eastern division, however, as well as those in central Oruru, is the dispute between Panakareao and Pororua. While conflicting stories from rival hapu continue to confuse the picture, there is at least some local support for that which now follows. It appears that both

rangatira were born in Oruru Valley and that both were remarkable childhood leaders. Their rivalry goes back to then. Panakareao claimed the greater right in Oruru, through Te Rarawa, who had forced Nga Puhi from Oruru Valley and had reinstated Ngati Kahu to their ancestral territory. Panakareao identified himself with Te Rarawa, although the principal hapu of his father was in fact Ngati Kahu. Pororua, however, associated with Nga Puhi, in particular with Te Uri o Te Aho, the hapu of his father, Taiapa. He had Te Rarawa connections none the less. When Nga Puhi were driven from Oruru, Pororua's parents were allowed to stay, since his mother was a sister of the Te Rarawa leader, Poroa.

Panakareao and Pororua both left the area in early adulthood, Panakareao heading for the North Cape and battles with Aupouri and Ngati Kuri, Pororua for Whangaroa to join his Nga Puhi relations in their battles with Ngati Pou and the section of Ngati Kahu living there. By the early 1820s Hongi Hika had established his reputation as a military leader in the Bay of Islands, forging a number of hapu together under the name of Nga Puhi. In 1827, Hongi Hika and Nga Puhi expelled Ngati Pou from Whangaroa. By that time Ngati Kahu had also extended as far as the northern shores of Whangaroa Harbour and, soon after the expulsion of Ngati Pou, they too were forced from the district.

It is not clear when Pororua and his father joined Nga Puhi at Whangaroa, but both were apparently involved in routing Ngati Kahu from that area. It was on the basis of his father's battles that Pororua claimed an ascendancy over Ngati Kahu extending as far as Mangonui, and it was on the basis of those same conquests that Pororua claimed the sole right to treat with the first Pakeha settlers there. Further, Pororua married Ngaurupa of Ngati Kahu at Oruru, thus consolidating his position in that valley where he was later to introduce a number of his kinsfolk. Just as Panakareao lived at various places to maintain his leadership throughout Muriwhenua, so also Pororua lived variously throughout the centre and the east – at Oruru, probably near Peria, around Kenana and Kohumarua near Mangonui, and also at Whangaroa.

For his part, Panakareao regarded Pororua as an outsider in Oruru and an interloper at Mangonui. He never regarded Ngati Kahu as having been defeated at any point beyond Whangaroa. Panakareao had also kept Nga Puhi at bay at Whangaroa when they attacked Ngati Kuri. Furthermore, Panakareao had an alliance with influential sections of Nga Puhi who were in turn friendly with the Governor – Mohi Tawhai and Tamati Waka Nene.

It is difficult to see how the relationship between Pororua and the Mangonui traders was conceptually any different from that between Panakareao and the Kaitaia missionaries. Adopting customary styles, Pororua may be seen as doing no more than allocating areas where the traders could live or cut trees under his protection, in return for ongoing trading benefits. If Panakareao had no authority to sell land at Kaitaia, however, for no one was an absolute owner of any part, Pororua's authority in Mangonui was even less. It is doubtful whether he had any authority to represent the local Ngati Kahu communities who continued to reside

Pororua could  
have given only a  
use-right

MURIWHENUA LAND REPORT

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 847 to 'Toherry's Bush'	'Tyup' and another to W Murphy and J Berghan, sawyers, 15 May 1836	Not known	2	No	Claimant appeared but did not proceed with examination. No grant recommended.
Claim 403 to 'Ryan's Point'	Poroua and seven others to T Ryan, sawyer, 14 May 1836	£79	300	No	Godfrey recommended 514 acres scrip for claims 403-407. On application to FitzRoy, 1542 acres scrip offered. Not accepted. In 1852, White, assuming land was now the Crown's, granted J Lloyd 426 acres in the area where OLC 403 was situated. This grant satisfied Lloyd's share of OLC 458. Bell ordered three acres for W Butler for interest in OLC 407. Grant issued 4 October 1859.
Claim 1362 to 'Muritoki'	Poroua and six others to J Berghan, 30 May 1836	Not known. Perhaps a gift.	3000	No	Not investigated by Godfrey. Considered a transaction between Maori. Land surveyed in 1850s - 2337 acres. Commissioner Domett ordered a grant of 2414 acres 24 September 1864.
Claim 404 to 'Whakaangi'	Nukewa and two others to T Ryan, sawyer, 4 June 1836	£5 6s	320	No	Godfrey recommended 514 acres scrip for claims 403-407. On application to FitzRoy, 1542 acres scrip offered. Not accepted. No grants issued for OLC 404 by Bell.
Claim 618 to 'Putakaka River'	Poroua to G Thomas and T Phillips, traders, 1 November 1836	£10	200	No	Godfrey recommended 279 acres scrip for OLC 617-623. Increased to 757 acres by FitzRoy. Scrip refused. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (No survey for OLC 618. Assumed to be Crown land.)
Claim 558 to 'Waipumahu'	Kiwa and another to J Berghan, sawyer, 7 February 1837	£11	1000	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. Partly surveyed OLC 558 - 493 acres. Grant for 493 acres ordered.

PRE-TREATY TRANSACTIONS

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 619 to 'Oneti'	Pororua and two others to G Thomas and T Phillips. traders. 1 April 1837	£5	600	No	Godfrey recommended 279 acres scrip for OLC 617-623. Increased to 757 acres scrip by FitzRoy. Scrip refused. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 1 July 1861. (OLC 619 surveyed - 1056 acres. 556 acres to Butler and 500 acres to Thomas's daughters granted.)
Claim 405 to 'Waiaua'	Tetori Ehiru to T Ryan, sawyer. 1 September 1838	£11	150	No	Godfrey recommended 514 acres scrip for claims 403-407. On application to FitzRoy. 1542 acres scrip offered. Not accepted. No grants for OLC 405 issued by Bell.
Claim 913 to 'Paewhenua'	Pororua and another to W Butler. trader. 17 December 1838	£47	640	No	Godfrey recommended 1054 acres for OLC 913-914. FitzRoy confirmed award. Scrip issued 20 May 1844. Scrip accepted.
Claim 565 to 'Whaata' (Bergham Point)	Pororua and another to J Bergham. sawyer. 10 January 1839	£16	50	No	No deed presented in support of claim. Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-566. Grants issued 4 October 1859. OLC 565 not surveyed and no grants issued there.
Claim 889 to 'Ngawai'	Pororua and four others to C Partridge. land speculator. 15 October 1839	Not known. but OLC 889-893 total £56	1600	No	Godfrey recommended 500 acres scrip for OLC 889, 891-893. Governor FitzRoy increased award to 1310 acres scrip and a further award of £500. Scrip issued 20 May 1844 and 22 May 1844. Scrip accepted. In 1851. White, assuming the land was now the Crown's, granted J Duffus 426 acres in area of OLC 889 in satisfaction for claims under OLC 458.
Claim 854 to 'Oparehi'	Pororua and two others to S Wrathall. 23 October 1839	Not known. but OLC 851-856 total £33	1000	No	Godfrey recommended 242 acres scrip for OLC 851-856. FitzRoy increased award to 640 acres scrip. Scrip accepted.

Table B: Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and depicted in figure 19



## MURIWHENUA LAND REPORT

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 620 to 'Te Moka'	'Kohana Ti' and another to G Thomas and T Phillips, traders, 30 October 1839	Not known	150	No	Godfrey recommended 279 acres scrip for oLC 617-623. Increased to 757 acres scrip by FitzRoy. Scrip refused. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (oLC 620 surveyed - 184 acres. 184 acres granted to Polack 4 October 1859.)
Claim 890 to 'Te Moka'	'Kohana Ti' and another to C Partridge, land speculator, 30 October 1839	Not known, but oLC 889-893 total £56	200	No	Claim was withdrawn and pursued under oLC 620.
Claim 566 to 'Oruaiti'	Poroua and another to J Bergham, sawyer, October 1839	£10	3000	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for oLC 558-565. Grants issued 4 October 1859. oLC 566 partly surveyed in 1852 and 1859 - 1175 acres. 1175 acres granted.
Claim 891 to 'Waimaori'	'Tupianiro' and four others to C Partridge, land speculator, 7 November 1839	Not known, but oLC 889-893 total £56	1800	No	Godfrey recommended 500 acres scrip for oLC 889, 891-893. Governor FitzRoy increased award to 1310 acres scrip and a further award of £500. Scrip issued 20 May 1844 and 22 May 1844. Scrip accepted.
Claim 856 to 'Otoomaniā'	Poroua and others to S Wrathall, sawyer, 11 November 1839	£35. Not known, but oLC 851-856 total £33	4000	No	Godfrey recommended 242 acres scrip for oLC 851-856. FitzRoy increased award to 640 acres scrip. Scrip accepted.

PRE-TREATY TRANSACTIONS

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 892 to 'Kapara'	Pororua and nine others to C Partridge, land speculator, 12 November 1839	Not known, but OLC 889-893 total £56	4000	No	Godfrey recommended 500 acres scrip for OLC 889, 891-893. Governor FitzRoy increased award to 1310 acres scrip and a further award of £500. Scrip issued 20 May 1844 and 22 May 1844. Scrip accepted.
Claim 887 to 'Taemaro'	Pororua and five others to H Smyth, land speculator, 14 November 1839	Not known, but price of £9 for OLC 887-888	300	No	Godfrey recommended 219 acres scrip for OLC 887-888. FitzRoy increased it to 500 acres scrip. Scrip issued. Scrip accepted.
Claim 888 to 'Imua'	Pororua and five others to H Smyth, land speculator, 19 November 1839	Not known, but price of £9 for OLC 887-888	800	No	Godfrey recommended 219 acres scrip for OLC 887-888. FitzRoy increased it to 500 acres scrip. Scrip issued. Scrip accepted.
Claim 623 to 'Oronga'	Pororua and six others to G Thomas and T Phillips, traders, 20 November 1839	Not known	2000	No	Godfrey recommended 279 acres scrip for OLC 617-623. Increased to 757 acres scrip by FitzRoy. Scrip refused. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (OLC 623 not surveyed. No grants issued. Assumed to be Crown land.)
Claim 893 to 'Otoha'	Pororua Wharekauri and four others to C Partridge, land speculator, 21 November 1839	Not known, but OLC 889-893 total £56	2000	No	Godfrey recommended 500 acres scrip for OLC 889, 891-893. Governor FitzRoy increased award to 1310 acres scrip and a further award of £500. Scrip issued 20 May 1844 and 22 May 1844. Scrip accepted.

Table B: Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and depicted in figure 19

MURIWHENUA LAND REPORT

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 914 to 'Pukakawa'	Poroua Wharekauri and four others to W Butler, trader, 22 November 1839	£60	3000	No	Godfrey recommended 1054 acres for OLC 913-914. FitzRoy confirmed award. Scrip issued 20 May 1844. Scrip accepted.
Claim 443 to 'Mangonui' (location not known)	Katapona and six others to T Spicer, trader, 4 January 1840	£9	200	No	Claim withdrawn.
Claim 770 to unknown (not located)	T Ryan, sawyer and others to A B Victor De Senes, 4 January 1841	£80	650	No	Claim dismissed, non-appearance.

Table B. Pre-Treaty transactions, eastern Muriwhenua, as represented in old land claims and depicted in figure 19

there (though often identified at that time under the more embracing label of Te Rarawa).

### 3.4.2 The sawyers – a matter of marriage

The extraction of kauri began in 1831 when the *Darling*, the schooner of Sydney merchant Ranulph Dacre, landed a party of sawyers with a British Admiralty contract to supply spar timber. These included James Berghan, Thomas Flavell, Thomas Ryan, George Thomas, Thomas Phillips and Stephen Wrathall. Generally, these men had more right than the missionaries, for each became incorporated into the Maori tribal structures through marrying local women. These women had either Te Rarawa or Nga Puhi connections, and some were of distinguished rank. James Berghan's first wife, for example, was Turikatuku Makareta, the daughter of Ururoa, a Whangaroa rangatira of Nga Puhi. One of their sons, Joseph, was in turn to marry Maraea, the daughter of Pororua. Berghan's second wife was the daughter of Ihaka Te Teira of Peria, who claimed connections to both Pororua and Panakareao. Each of these European settlers was to claim land rights by purchase. However, it is likely that Maori saw their strongest right as arising out of marriage and would later support land claims in favour of the children.

The sawyers

In terms of the deeds, the sawyers acquired land, though possibly at the time they saw themselves as gaining no more than timber or timber cutting rights. Their deeds were probably drafted for them, since they were not literary types and at least one could not sign his name. These deeds purported to convey land, but they also gave some emphasis to the timber, which was the main attraction then. Thus Ryan's Waikiekie deed conveyed:

The acquisition of timber

all rights titles Interest to all the Bush Land and Timber known by the Name Ku Pona both sides of the River and all the Timber there on as far as the Mourea.<sup>32</sup>

Similarly, the Putakaka deed provided:

Know all men by these presents that I Bowrua or Ware Cowrie a Chief of Mongaruewie and Oduru on the first day of November One thousand eight hundred and thirty-six have sold unto Thomas Phillips, George Thomas and Thomas Burgess of Mongaruewie, Doubtless Bay, New Zealand, their heirs and assigns for ever all Rights Titles and Interest (excepting 6 spars now standing and belonging to Stephen Wrathall and two trees belonging to Mr Gudger) to a settlement now called Peutoearea with all the surrounding parts.<sup>33</sup>

The form of these deeds may have been prepared in Sydney, with the traders being left to add the names of the parties and the property in question.

Dieffenbach wrote, after visiting the area in 1840:

32. OLC 403-407 (doc D12(a), p 76)

33. OLC 617-623 (doc D12(a)(i), p 89)

## MURIWHENUA LAND REPORT

### Deed for 'Timber Land' on the Putakaka (Oruaiti) River

Know all men by these presents that I Bowrua or Ware Cowrie a Chief of Mongaruewie and Oduru on the first day of November One thousand eight hundred and thirty-six have sold unto Thomas Phillips, George Thomas and Thomas Burgess of Mongaruewie, Doubtless Bay, New Zealand, their heirs and assigns for ever all Rights Titles and interest (excepting 6 spars now standing and belonging to Stephen Wrathall and two trees belonging to Mr Gudger) to a settlement now called Peutoearea with all the surrounding parts of which settlement I the said Bowrua or Ware Cowrie give all claims up to the said Thomas Phillips, George Thomas and Thomas Burgess, and I Bowrua or Ware Cowrie have received of the above Thomas Phillips, George Thomas and Thomas Burgess as a full and just payment in sterling money (£10) Ten Pounds for which I forfeit all rights and all claims or my heirs or successors to the above their heirs and successors for ever. In Witness whereof I set my hand and seal this first day of November 1836.

Bowrua or Ware Cowrie x  
Tanuware x his mark

Witness—

William Wells  
Robert Twait x my mark  
Stephen Wrathall  
James Whitaker x my mark

(Turton's Deeds, pp 27-28)

### Waipumahu Deed

Know all men by these presents that We Kiwa Pew and the undersigned Native Chiefs of Mungonui District Doubtless Bay New Zealand for and in consideration of £10 ten pound, One Dress Coat Value Five Pounds, one Box £1 one pound, one Blanket, 16 sixteen shillings, 10 lbs Tabacco, and 6 six yards of Calico, to us in hand paid by James Berghan of Mungonui the receipt whereof we hereby acknowledge have bargained sold and delivered and by these presents do bargain sell and deliver unto the said James Berghan all that piece or parcel of land timber mines and minerals belonging thereunto and bounded as follows: Commencing at Wymboomough and following the different windings of the Putta Kaka river unto the Wangaroo road and back to Wymboomough by the Wangaroo road and known by the Native names of Orudu, te Hate, Wymboomough &c &c to have and to hold aforesaid bargained premises unto the aforesaid James Berghan and his executors administrators and assigns for ever, and we E Kiwa Paowa Porurua and the undersigned for us and our executors administrators and assigns by these presents. In witness whereof we set our hands and seals this 7th day of February in the year of our Lord 1837.

Kiwa  
Na Pewa toku x tohu

[In] Presence of—

Frederick Hanckel

(Turton's Deeds, pp 28-29)

### Ngawai Deed

Know all men by these presents That we Native Chiefs residing at Oododo and Munganui of Doubtless Bay New Zealand, and known by the names 'Tai Heape', 'Waekowri', 'Tukarede' and 'Rekiwa'. On the fifteenth day of October in the year of our Lord One thousand eight hundred and thirty-nine have bequeathed bargained and sold and by these presents do bequeath bargain and sell unto Clement Partridge and Hibernia Smyth (late of Adelaide in South Australia but now of Munganui in Doubtless Bay) their Heirs Executors and Assigns for ever all our right title and interest in and unto a piece of parcel of land with all timber &c &c thereunto belonging situated at Munganui in Doubtless Bay fronting the salt water on the South West side and known by the name of 'Ngawi Tiouararoa' on the South East Boundary and Kotehihi on the North West boundary adjoining a piece of land formerly purchased by Thos Ryan divided from his land by a small stream of water called the 'Hai Hai' creek bounded on the South West by the salt Water and extending to a ridge of hills to the North East which forms the outside boundary at the foot of the said hills the River runs which forms the outside boundary. We the said 'Tai Hape' 'Warekowri' - 'Tukarede' and 'Rekiwa' in consideration of the sum of Fifty pounds value in goods of the undermentioned description viz Ten pair of Blankets, nine gown pieces, six red Shirts, Eleven common Shirts, six pair of Trowsers, Three gross pipes, a double barrel Fowling piece, ten pounds of tabacco, six handkerchiefs - one bag of shot, three boxes of percussion caps, and a nipple screw, which we do hereby acknowledge to have received as a just and full payment for the above described piece of land, and do hereby resign all our right title and interest, in and unto, the said piece of land for ourselves and our Heirs, Executors, and assigns for ever and do yield up possession of the same to the said Clement Partridge and Hibernia Smyth their Heirs executors and assigns for ever in witness whereof, we have hereunto set our hands and seals this day and year and first above written in presence of the undermentioned witnesses.

October Fifteenth One Thousand eight hundred and thirty nine. Received the value of Fifty pounds in goods as described under of Messrs Clement Partridge and Hibernia Smyth being full and final consideration for the piece of land described on the other side in the presence of the undermentioned witnesses.

10 pair of blankets	1 Double Barrel Fowling piece
9 Gown pieces	10 lbs Tabacco
6 Red Shirts	6 Handkerchiefs
11 Common shirts	1 Bag Shot
6 Pair Trowsers	3 boxes of percussion caps
3 Gross Pipes	1 nipple screw

Witness

Thos Flavell his x mark  
George Thomas  
Thomas Phillips his x mark

(Turton's Deeds, pp 39-40)

Figure 20: Three typical trader deeds, eastern Muriwhenua

A great many of these first settlers, doubtful of being able to maintain their claims to their immense purchases, have no other object than to clear the greatest possible amount of profit in the shortest time, even at the sacrifice of a large and invaluable forest.<sup>34</sup>

He described the 'reckless destruction' of kauri forests occurring in many places, and noted that, once cleared, 'kauri land is so exhausted that scarcely anything will grow on it but fern and manuka'. Much of the work of felling and cutting the logs up into 16-foot lengths was done by 'native sawyers'. Cut in the inland forests, the logs were floated down tributary streams in flood times to the harbours. Dieffenbach recorded:

A melancholy scene of waste and destruction presented itself to me when I went up to see this forest. Several square miles of it were burning having been fired in order to make room for the conveyance of logs down to the creek. Noble trees, which had required ages for their perfection, were thus recklessly destroyed in great numbers, as, in consequence of the great quantity of resin around this pine, the fire always spread rapidly. The cupidity of new settlers too often occasions the destruction of the forests, to the irreparable injury of subsequent colonists.<sup>35</sup>

### 3.4.3 General overview of transactions

Each of the transactions in the eastern division is described in detail in Professor Stokes's background report.<sup>36</sup> At this point we need make only the comments that follow.

Notwithstanding the paper conveyance in the deeds, on the ground nothing was given except a right to use and occupy; and that was subject to compliance with local laws and customs and contribution to the local community. As illustration of the above, the Europeans were subject to the law of muru or plunder for offences. The trader Thomas Ryan and his Maori wife were twice subjected to muru, on each occasion for leaving their place of residence and thus breaching their contractual obligations as Maori saw them. It was 'their custom', Ryan said, 'to take all the possessions of any person who forsook any tribe, considering them forfeited'. That indeed was the custom as we understand it: the profit from the tribe had to return to it. Hibemia Smyth and his family were also subjected to muru, probably for similar reasons.

Further, the right given was not a property right, for Maori had bargained for a relationship, not a sale. The arrangement was personal. Thus Panakareao later admitted Captain William Butler to residency at Mangonui, but, as land commissioner Godfrey noted:

No change on the ground; Maori law continues to apply

A personal relationship was established rather than a land right

34. E Dieffenbach, *Travels in New Zealand*, London, John Murray, 1843 (reprinted Christchurch, Capper Press, 1974), vol 1, p 228

35. *Ibid*, p 227

36. Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc P2), ch 13

## MURIWHENUA LAND REPORT

This Indenture made the Seventeenth day of December in the year of our Lord One thousand eight hundred and Thirty- Eight Between Ekeva and Warekauri Chiefs of Mungonue and Odoodo Mungonue Doubtless Bay New Zealand of the one part and William Butler Master of the Whaling Barque Nimrod of the other part. Whereas the said Ekeva and Warekauri being Chiefs of Mungonue and Odoodo aforesaid in the Territory of New Zealand and having right and authority to alienate the land hereinafter described have contracted with the said William Butler for the sale to him of the said land for the consideration hereinafter expressed. Now this Indenture witnesseth that in consideration of one double barrell gun two casks of gunpowder three kegs of Gunpowder Sixty pounds of tobacco four cotton shirts four pair of duck trousers one canister of powder and one box of caps and two pair of blankets in hand well and truly delivered by the said William Butler to the said Ekeva and Warekauri before the sealing and delivery hereof the receipt whereof and that the same is in full for the absolute purchase of the Inheritance in Fee Simple in possession of the land and hereditaments hereinafter described and intended to be hereby enfeoffed and conveyed the said Ekeva and Warekauri Do hereby acknowledge and from the same and every part thereof Do acquit release and for ever discharge the said William Butler his heirs and assigns and also the said land. We the said Ekeva and Warekauri have given granted and enfeoffed and by these presents Do give grant enfeoff and confirm unto the said William Butler and his heirs All that Island situate in the Harbour of Mungonue and known by the name of Piehenou or by whatever name the Island is known or distinguished Together with all ways paths waters woods timber and other trees mines and metals and all appurtenances to the said land and premises belonging or in any wise appertaining And all the right and title whatsoever of them the said Ekeva and Warekauri or of any persons or persons claiming or deriving title through them or to the same To have and To hold the said Island hereditaments and premises hereinbefore described and hereby granted enfeoffed or confirmed or intended so to be with their and every of their rights privileges advantages and appurtenances whatsoever until and for the sole use and behoof of the said William Butler his heirs and assigns for ever And the said Ekeva Warekauri for themselves respectively and their respective heirs Do hereby covenant with the said William Butler his heirs and assigns That they the said Ekeva and Warekauri and their heirs shall and will warrant and for ever defend unto and to the use of the said William Butler his heirs and assigns All the Island and premises hereby granted and enfeoffed against them the said Ekeva and Warekauri and their heirs and against all and every other person and persons whomsoever claiming the said land and premises or any part thereof. In Witness whereof the said Ekeva and Warekauri have hereunto affixed their seals and signatures the day and year above written.

... [Attestation clauses]

Be it remember that on the seventeenth day of December in the year of our Lord one thousand eight hundred and thirty-eight peaceable and quite possession and full Seizin of the land and hereditaments within mentioned to be granted and enfeoffed to the within named William Butler was openly had and taken by the within named Ekeva and Warekauri and by them delivered to the said William Butler. To hold the same unto and to the use of the said William Butler and his heirs according to the purport and true intent and meaning of the within written Indenture in the presence of us whose names are hereunto subscribed.

... [Attestation clauses]

... [Receipt for goods]

Figure 21: Captain Butler's Paewhenua deed – eastern Muriwhenua

altho' the Claimant would be permitted to remain undisturbed upon these Lands by this Chief, yet, as it is not probable, that he would at any time be allowed to transfer them to others.<sup>37</sup>

Despite Ryan's experience, those who had taken Maori wives were probably more secure, at least so long as they lived on the land and kept the local law. Certainly, the husbands would remain outsiders, but the children would have a place as of right in the local hapu, for they came in on a bloodline. They came from the whenua. They would be the tangata whenua.

Some who came may be regarded as speculators, like Hibernia Smyth and Clement Partridge, who stayed briefly then went. For them no less than others the expectation was that they would settle, and they too appear to have been subjected to muru when they attempted to leave. It is then significant that many years later, when Maori petitioned that they were wrongly excluded from this district, the petitioners assumed, rather than stated, that the land had reverted to Maori after the departure of 'Smith' and 'Pateriki', as they were then called. On leaving, contractual arrangements were seen as at an end.

Speculators

The position is not so clear with Walter Brodie. He came and went but returned again with intentions of working a coppermine on his claim at Karikari Peninsula. In his case, he complained, Maori forced a renegotiation of his contract, reducing it considerably to leave only the coppermine part of his acquisition, that is, the area he intended to use.

Finally, the Europeans' right was no greater than the right of the one who gave it. In this case, the right of use and occupation was from Pororua. It seems, however, that the right thus obtained was not strong and that a right from Panakareao was mainly required. Those who stayed were eventually to receive Panakareao's blessing.

A question of authority

### 3.5 THE CONFLICT AT THE CENTRE

The transactions in the central district, from Mangatete to Mangonui, are set out in table c and are approximately delineated in figure 22(a) (Mangonui township), (b) (Oruru), and (c) (Karikari). The total area claimed by Europeans in the central district was 21,745 acres (8900 ha). Generally, the traders involved in the eastern division also claimed property in the centre, being either sections in Mangonui township or land in Oruru Valley. In each case, their pretended right was through allegiance to Pororua, as before, and tribute was given in the form of a variety of goods – blankets, clothing, guns, and implements. Those involved included Thomas Ryan, James Berghan, Stephen Wrathall, George Thomas, and Thomas Phillips. There were others, like William Wright, who transacted with Pororua although they had not been involved in the eastern sector.

The claims through Pororua

37. OLC 913-914, (docs D5, D12(a)(ii))



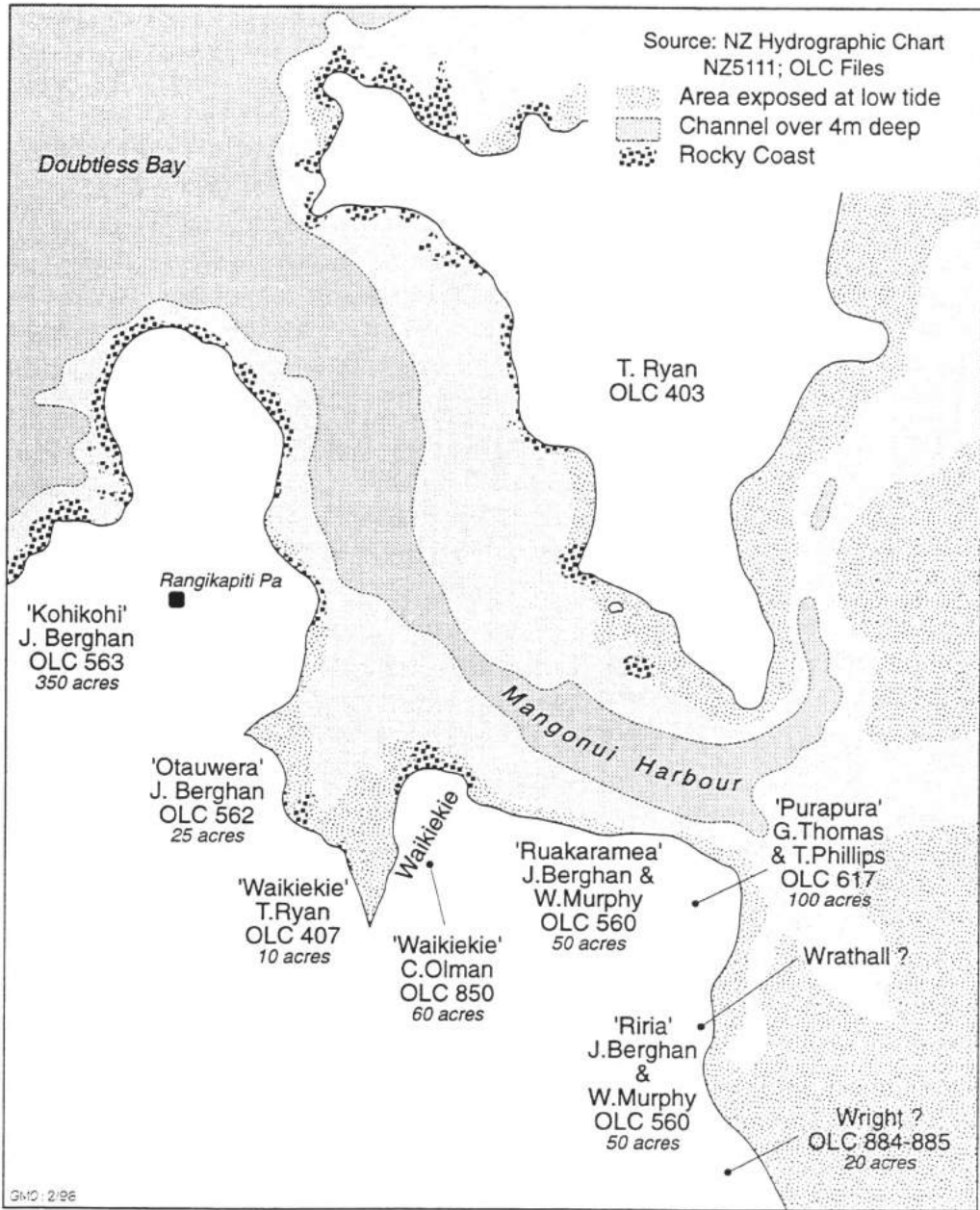


Figure 22(a): Pre-Treaty transactions as represented in old land claims, Mangonui, central Muriwhenua

The claims through Panakareao

The other claimants in the central district claimed through Panakareao. All deeds through Panakareao were in Maori. Those of all others were in English. Two traders who had not been involved in the east, and who pursued rights through Panakareao, were Walter Brodie and William Murphy, although Brodie's purchase deed was effected without Panakareao being involved. Further, John Ryder, a carpenter for the Church Missionary Society, contended for land from Panakareao near Taipa. The missionary Joseph Matthews had a claim for land near Karikari, and James Davis, the son of missionary Richard

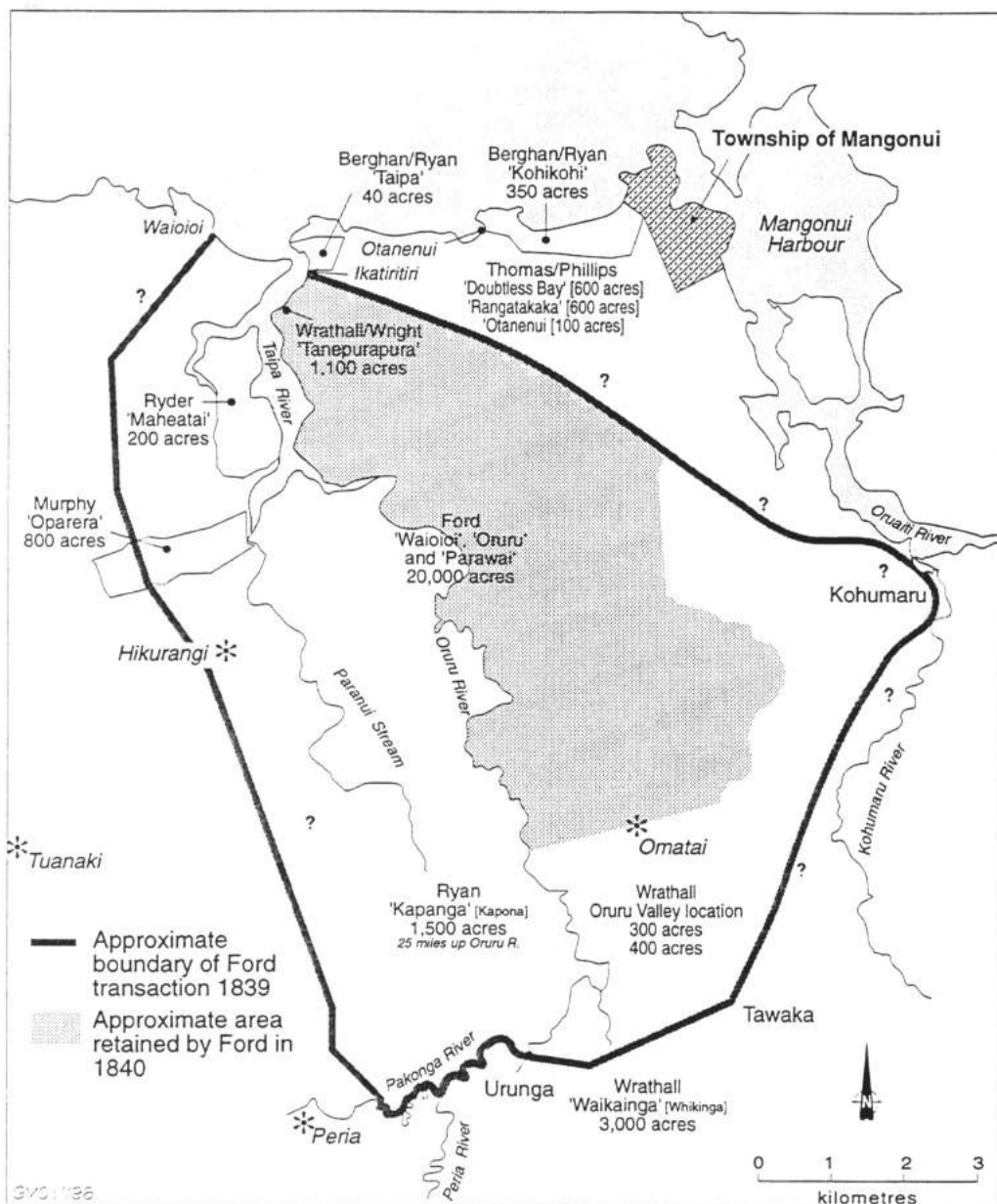


Figure 22(b): Pre-Treaty transactions as represented in old land claims, Oruru Valley, central Muriwhenua

Davis, had a stake nearby at Mangatete, in each case by aligning with Panakareao. There is extrinsic evidence, referred to in a later chapter, that both the Davis and Matthews transactions were meant to hold parts of the land for Maori. Finally, as if to outwit the adherents to Pororua, Panakareao gave the whole of Oruru Valley to the Church Missionary Society surgeon, Dr Samuel Ford, to hold on trust for local Maori according to such allocations as Panakareao might approve. He thus purported to subsume the right of anyone claiming through Pororua. In the opinion of Crown historian D Armstrong, Panakareao

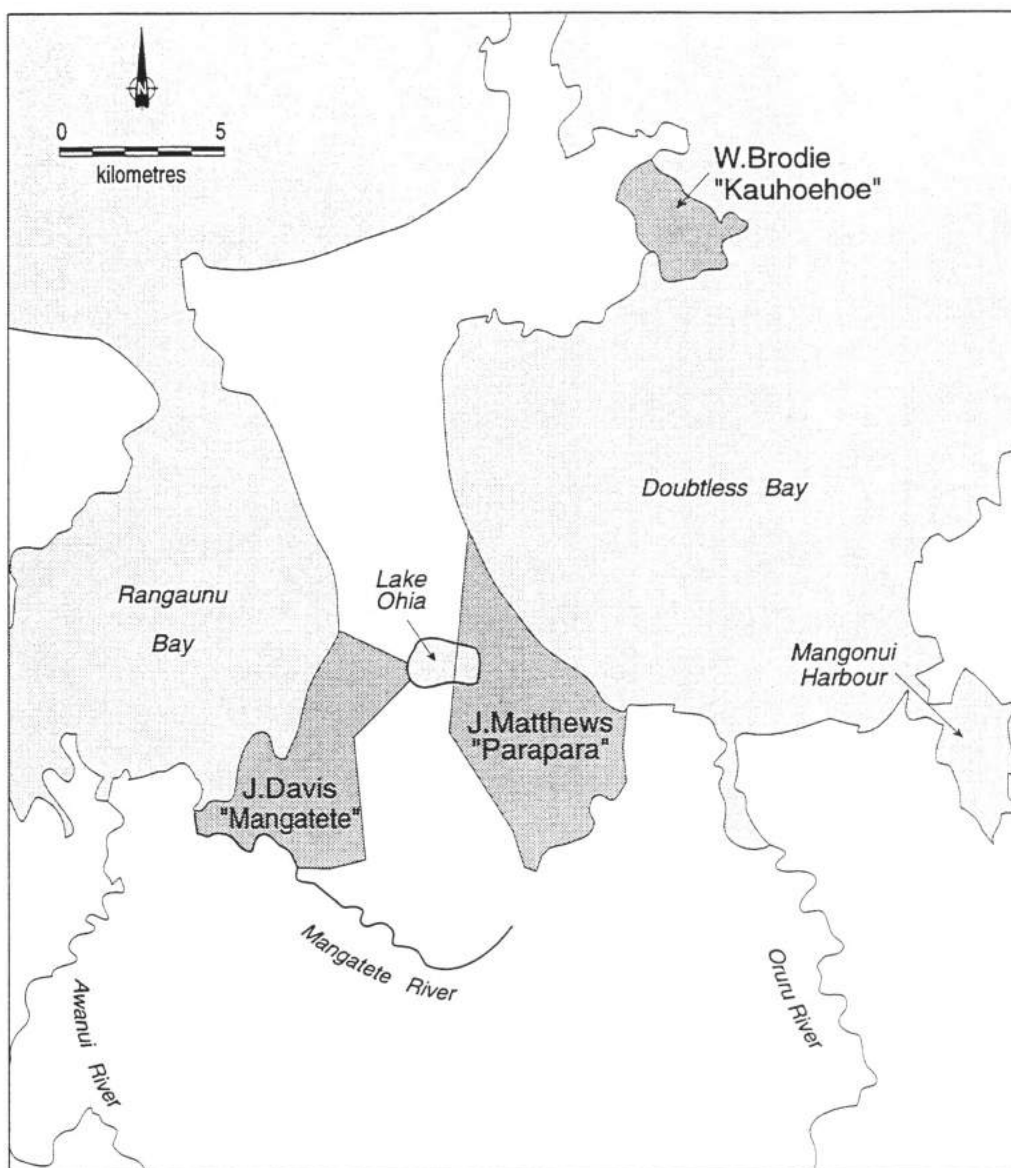


Figure 22(c): Pre-Treaty transactions as represented in old land claims, Karikari area, central Muriwhenua

was also attempting to extend his influence to Mangonui, while the missionaries promoted the transaction in order to secure peace.<sup>38</sup> Then once more, when government was established and a commissioner was assigned to investigate these alleged purchases, Panakareao was to prevent any inquiry into any land claim that had not been approved by him.

Panakareao's transactions with Matthews and Davis, and the arrangements with Brodie, will be considered more fully when reviewing the inquiry into them

38. See doc 13

in chapter 5. The transaction with Ford, however, needs further attention at this stage.

No doubt Samuel Ford, Church Missionary Society surgeon based mainly in the Bay of Islands, was highly valued for his treatment of a people troubled by fatal epidemics, against which the *tohunga*, unaccustomed to these imported infections, were powerless. Panakareao had already provided him with a large area at Kaitaia and, as mentioned in the previous chapter, there is evidence, extrinsic to the deed, that Ford maintained that the land was held on trust for the local people. Near the end of the pre-Treaty days, in November 1839, Panakareao set aside in Ford's name the massive and rich Oruru Valley. It was the second-largest land transaction in Muriwhenua and exceeded some 20,000 acres (8094 ha). It had once been the home of one of the most intense aggregations of Maori people.

Ford's Oruru  
transaction

There were several other unusual features to the Oruru arrangement. The deed covered not only the whole Oruru Valley but extended beyond to include the eastern extreme, the Kohumaru village, a regular residence of Pororua (see fig 22(b)<sup>39</sup>). Further, it encompassed and thus appeared to negate certain previous arrangements that Pororua had made with traders in this area. Then it purported to secure the land for two communities of Maori, both of them a mixture of Nga Puhi and Ngati Kahu–Te Rarawa: at Kohumaru, where Nga Puhi may have been the greater number, and at Oruru, where Ngati Kahu–Te Rarawa almost certainly were.

Furthermore, this deed was executed by 50 Maori, which suggests a rather public event; then, more extraordinary still, it was executed by people from both Ngati Kahu–Te Rarawa and Nga Puhi. None other than Kiwa, Pororua's brother, was among those who joined Panakareao and signed, but Pororua himself did not do so. Probably, this omission was not accidental.<sup>40</sup>

Nothing survives of the circumstances, the debate and the goods distribution, and whether the deed was executed at once or over time. Yet the deed has the hallmarks of an attempt to settle that debilitating tribal and leadership dispute between Pororua and Panakareao. Was it possibly settled that Pororua should stay in the east at Kohumaru and Panakareao in the west, along the lines allegedly stipulated by Mohi and Nene when ending the war in Oruru? Whatever the case, Pororua did not agree, and later he opposed the investigation of this transaction on the ground that he had not approved it.

While there is no hard record of the Maori opinion, from a Pakeha view the evidence is strongly indicative of a trust. The prospect of a trust arises from these words in the deed (as translated from the text in Maori):

A trust was  
intended

The people of Kohumaru with their children may sit upon this place from this generation to another: but not the people of other parts: those of the place only.

39. We have estimated the boundaries of Ford's Oruru transactions from the description in the deed, but, given the lapse of time, the exact location of the place names mentioned is uncertain.

40. For varying opinions on the purposes of the deed, see doc C1, p 16; doc D4, app v, pp 28–29; doc J3, p 3

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Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 155 to unnamed block. unlocated	Unknown party to R Dacre, sawyer, November 1831	£70	5000	No	Failed to appear. No grant.
Claim 617 to 'Purapura' (see fig 21(a))	Pororua and two others to G Thomas and T Phillips, traders, August 1834	£22	100	No	Commissioner Godfrey recommended 279 acres scrip for all claims. Increased to 757 acres scrip by FitzRoy. Refused scrip. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (OLC 617 surveyed - 14 acres. Ordered grants totalling 2.5 acres to Thomas's daughters, T Flavell, E Flavell, and Butler, October 1859.)
Claim 560 to 'Riria' (see fig 21(a))	Pororua and three others to J Berghan, sawyer, 4 May 1836	£20 8s	50	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC 560 partly surveyed - three acres. Grant for three acres issued.
Claim 561 to 'Ruakaramea' (see fig 21(a))	Pororua and three others to J Berghan, sawyer, 9 June 1836	£16	50	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC partly surveyed - one acre. Grant for one acre issued.
Claim 852 to 'Waikaunga' (see fig 21(b))	Pororua and another to S Wrathall, sawyer, 26 October 1836	Not known, but OLC 851-856 total £33	3000	No	Godfrey recommended 242 acres scrip for OLC 851-856. FitzRoy increased award to 640 acres scrip. Scrip accepted.
Claim 851 to 'Hemu no 1' (see fig 21(b))	Pororua and another to S Wrathall, sawyer, 1 May 1837	Not known, but OLC 851-856 total £33	300	No	Godfrey recommended 242 acres scrip for OLC 851-856. FitzRoy increased award to 640 acres scrip. Scrip accepted.
Claim 160 to 'Mangatete' (see fig 21(c))	Tuaia to J Davis, church worker, 21 June 1837	£40	1000	Yes	Godfrey recommended 320 acres. Grant issued 24 June 1844. Grant called in by Bell and land surveyed - 535 acres. Bell ordered grant of 466 acres. Grant issued 10 February 1862. Land resurveyed - 5346 acres 'surplus'.

PRE-TREATY TRANSACTIONS

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 406 to 'Kapanga' (see fig 21(b))	Rokaia and two others to T Ryan, sawyer, 9 November 1837	£26	1500	No	Godfrey recommended 514 acres scrip for claims 403-407. On application to FitzRoy, 1542 acres scrip offered. Scrip not accepted. In addition, £1500 scrip offered to G Mair as derivative of claim to 406. Scrip accepted by Mair.
Claim 848 to 'Oparera no 1' (see fig 21(b))	Panakareao and two others to W Murphy, sawyer, 21 December 1837	£13	400	Yes	Godfrey recommended 303 acres to OLC 848-849. Grant issued 22 October 1844. Claimant then indicated wanted to exchange land. FitzRoy issued £215 scrip, 27 December 1844. Scrip accepted. Grant of 303 acres cancelled by Bell. Oparera blocks became Crown land.
Claim 407 to 'Waikiekie' (see fig 21(b))	Ewart to T Ryan, sawyer, 21 June 1838	£8	10	No	Godfrey recommended 514 acres scrip for claims 403-407. On application to FitzRoy, 1542 acres scrip offered. Not accepted.
Claim 853 to 'Hemu no 2' (see fig 21(b))	Pororia and another to S Wrathall, sawyer, 6 November 1838	Not known, but OLC 851-856 total £33	400	No	Godfrey recommended 242 acres scrip for OLC 851-856. FitzRoy increased award to £640 scrip. Scrip accepted.
Claim 894 to unnamed block	Pororia and another to W Wright, sawyer, 17 July 1839	Not known, but OLC 894-895 total £5	Not stated	No	Godfrey recommended 45 acres scrip. FitzRoy increased this to 71 acres scrip. Not known whether scrip accepted.
Claim 895 to unnamed block	Pororia and another to W Wright, sawyer, 23 October 1839	Not known, but OLC 894-895 total £5	20	No	Godfrey recommended 45 acres scrip. FitzRoy increased this to 71 acres scrip. Not known whether scrip accepted.
Claim 621 to Rangatakaka (see fig 21(b))	'Tamitiwauka' to G Thomas and T Phillips, traders, 5 November 1839	£38	600	No	Godfrey recommended 279 acres scrip for all claims. Increased to 757 acres scrip by FitzRoy. Refused scrip. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. (OLC 623 not surveyed. No grants issued.)

Table C: Pre-Treaty transactions, central Muriwhenua (Mangatete to Mangonui as represented in 'old land claims' and depicted in figure 22(a), (b), and (c))

MURIWHENUA LAND REPORT

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 563 to Kohikohi (see fig 21(b))	'Taveedee' and two others to J Berghan, sawyer, 6 November 1839	£15	350	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC 563 partly surveyed - 145 acres. Grant for 145 acres issued.
Claim 562 to 'Otauwera' (see fig 21(a))	Ewarri to J Berghan, sawyer, 7 November 1839	£43	25	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC 562 partly surveyed - four acres. Grant for four acres issued.
Claim 855 to 'Tanepurapura' (see fig 21(b))	Tane and another to S Wrathall, sawyer, 7 November 1839	Not known, but OLC 851-856 total £33	1100	No	Godfrey recommended 242 acres scrip for OLC 851-856. FitzRoy increased award to 640 acres scrip. Scrip accepted.
Claim 850 to 'Waikiekie' (see fig 21(b))	Potorua Wharekauri and another to C Olman, 8 November 1839	£13	60	No	Godfrey recommended 36 acres scrip. FitzRoy increased to 83 acres scrip. Olman transferred claim to Flavell. No grant issued, but in 1850 White recommended Flavell be allowed to purchase three acres in Mangonui. Grant issued after payment.
Claim 564 to Taipa (see fig 21(b))	Ewarri to J Berghan, sawyer, 9 November 1839	£17	40	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC 564 partly surveyed - 41 acres. Grant for 41 acres issued.
Claim 559 to 'Tuckawera'	'Taveedee' and another to J Berghan, sawyer, 9 November 1839	£9	40	No	Godfrey recommended 438 acres scrip for all claims. FitzRoy awarded 1146 acres scrip. Scrip not accepted. Bell ordered grant of 1862 acres for OLC 558-565. Grants issued 4 October 1859. OLC 559 not surveyed. No grants issued there.
Claim 704 to 'Oruru' (see fig 21(b))	Panakareao, Kiwa, and 49 others to S Ford, church worker, 12 November 1839	£220	5000 (in deed 20,000)	No	Godfrey recommended 575 acres scrip. FitzRoy recommended 1725 acres scrip. Scrip issued 20 May 1844. Scrip accepted.

PRE-TREATY TRANSACTIONS

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 329 to 'Parapara' (see fig 21(c))	Panakareao and 15 others to J Matthews, church worker, 14 November 1839	£52	800	Yes	Godfrey recommended 306.5 acres. FitzRoy increased award to 800 acres. Grant issued for 306.5 acres. Additional grant issued by order of FitzRoy – 493.5 acres. Grants called in by Commissioner Bell and lands surveyed – 7317 acres. Grants issued for 1748 acres to Matthews and Clarke 15 February 1859 and 25 January 1861. 340 acres reserved for Maori. 5229 acres 'surplus'.
Claim 849 to 'Oparera 2' (see fig 21(b))	Hu and another to W Murphy, sawyer, 22 November 1839	£3	400	Yes	Godfrey recommended 303 acres to OLC 848–849. Grant issued 22 October 1844. Claimant then indicated wanted to exchange land. FitzRoy issued 215 acres scrip 27 December 1844. Scrip accepted. Grant of 303 acres cancelled by Bell. Oparera blocks became Crown land.
Claim 622 to 'Oianenui' (see fig 21(b))	Whitua to G Thomas and T Phillips, traders, December 1839	£5	100	No	Godfrey recommended 279 acres scrip for all claims. Increased to 757 acres scrip by FitzRoy. Refused scrip. Bell ordered grants totalling 1288 acres. Grants issued between 4 October 1859 and 11 July 1861. OLC 622 not surveyed. No grants issued there.
Claim 570 to 'Knuckle Point' (see fig 21(c))	Paikai and 11 others to W Brodie, land speculator, 3 January 1840	£79	1200	Yes	Godfrey recommended 567.5 acres. Claimant appealed and had another OLC outside Muriwhenua included in recommended grant for 947.5 acres. Land surveyed in 1843 – 1326 acres. Grant issued 21 October 1846. Bell declared grant valid. 378.5 acres 'surplus'.
Claim 1025 to 'Maheatai' (see fig 21(b))	Panakareao and two others to J Ryder, church worker, 8 January 1840	£30	200	No	Commissioner Godfrey made no recommendation. Governor FitzRoy recommended 200 acres scrip. Scrip not issued. Land surveyed – 287 acres. Bell ordered grant of 120 acres. Grant issued 25 January 1861. 'Surplus' of 107 acres.

Table c: Pre-Treaty transactions, central Muriwhenua (Mangatete to Mangonui as represented in 'old land claims' and depicted in figure 22(a), (b), and (c))



Also the people of Oruru may sit upon their places on the said land within the boundary. But for me [Panakareao] to point out the sitting places of the natives and those only shall be there who follow the directions of the Scripture of Jesus Christ.<sup>41</sup>

Puckey so  
admitted

As Armstrong pointed out, the arrangement that Panakareao could determine who might reside on the land, provided they were Christian, may have been a two-edged sword, for Pororua had so far refused to add Christianity to his ancestors' religious equipment. This deed too, however, was almost certainly the work of W G Puckey, who saw the arrangement more clearly as a trust. At the Mangungu Treaty signing on 12 February 1840, Wi Tana Papahia objected to the large claims of two persons in the north, in what we consider was a pointed reference to the Reverend Richard Taylor and Dr Ford, who had the largest claims by far. Puckey was there and responded that:

the land alluded to was held under a trust deed for the use of the natives, and that the mission would hand over that [land] and all other Tracts held in a similar way to the Government.<sup>42</sup>

The intention that the land would be held in trust for Maori, or that the deed should serve to secure the land for them, is further supported in this written statement by Dr Ford, made in 1841 to the commissioners appointed to investigate these transactions:

I purchased this land at the urgent request of the natives who were desirous of disposing of it to one who [would] act as their guardian allowing them to cultivate portions of land within my boundaries.

This is expressed in the Deed and there are now many natives settled in legal and undisturbed possession on my purchase . . .<sup>43</sup>

In October 1840, Ford and Panakareao renegotiated the transaction, as shown by a codicil on the reverse of the deed. It translated into English as follows:

We Noble Panakareao and others whose names are affixed to this deed of land on the back of this, in conjunction with Mr Ford have all of us agreed that all the land therein mentioned shall go back to the natives excepting that expressed in the present writing which shall belong exclusively to Mr Ford & his heirs. Lo! these are the boundaries . . .<sup>44</sup>

There followed a description of boundaries enclosing perhaps some 5000 acres (2024 ha). Only Panakareao and one other signed. Various opinions were given on this amendment. Historian Dr B Rigby noted that Ford had left the Church

41. Turton 1879, deed 52

42. R Taylor, 'Notes of the Meeting at Hokianga, 12 February 1840', enclosed in Taylor to Jowett, 20 October 1840, Taylor papers, 10, ATL (doc B15, pp 14-15)

43. Ford to New Zealand land commissioners, 28 December 1840, OLC 1/700

44. OLC 1/704, (doc D12), pp 20-21

Missionary Society service and thought that could have been a factor. D Armstrong observed that the amendment effectively acknowledged that Panakareao had authority over the balance, and P Wyatt put the matter more strongly, that Maori were asserting their continued authority wherever they could.<sup>45</sup> Whether a severance of the trust was in fact intended, however, is doubtful. In the subsequent investigation of the claims, Ford filed for the full 20,000 acres, relying only upon the 1839 deed. Later he explained that only 5000 acres were sought for himself absolutely. It is possible, however, that an inalienable trust for Maori was intended for the balance.

### 3.6 THE NORTHERN SANCTUARY

The two transactions on the northern peninsula are summarised in table D and shown in figure 23. More detail on these is found in Professor Stokes's report.<sup>46</sup> The area claimed was 51,200 acres (20,721 ha), but the claim of one alone amounted to 50,000 acres. This is regularly referred to as 'Taylor's Purchase', although we think the word 'purchase' is a misnomer: there Panakareao and a missionary agreed to an arrangement to secure protection for certain hapu at risk.

Tables and figures

The mixed motives of missionaries, to protect Maori interests while not forgetting their own, are again apparent in the arrangements the Reverend Richard Taylor sought for the country's most northerly point. Adopting the thoughts of the missionaries in the Bay of Islands, though not quite following their form, Taylor proposed to hold the northern peninsula for the local Maori, many of whom had been driven from the area by Te Rarawa and wished to return. Taylor referred in particular to 'Te Aupouri', although he also used that name compendiously for all Maori of that area, just as the missionaries used 'Te Rarawa' for everyone else. Combining commercial objectives with his humanitarian ideals, Taylor sought also to invest in this venture some capital from certain colleagues in New South Wales, plus some of his own, so that, in addition to protecting the land for Maori, he might secure for himself and his partners an area proportionate to their investment based upon the New South Wales land ordinance scale.

Taylor's mixed motives

To this end, Taylor met with the Kaitaia missionaries and settled the arrangements with Panakareao. It appears that most of Te Aupouri and Ngati Kuri were then living at Kaitaia, although sections of Ngati Kuri were spread from Manawatawhi to Whangaroa. Although Panakareao was later criticised for treating with Taylor ahead of the local people, he appears to have shared Taylor's concern for the northerners' future. Te Aupouri and Ngati Kuri were living peaceably amongst Te Rarawa at Kaitaia at this time, and Panakareao had

Maori motives

45. See docs C1, J3, F17

46. Document P2, ch 16

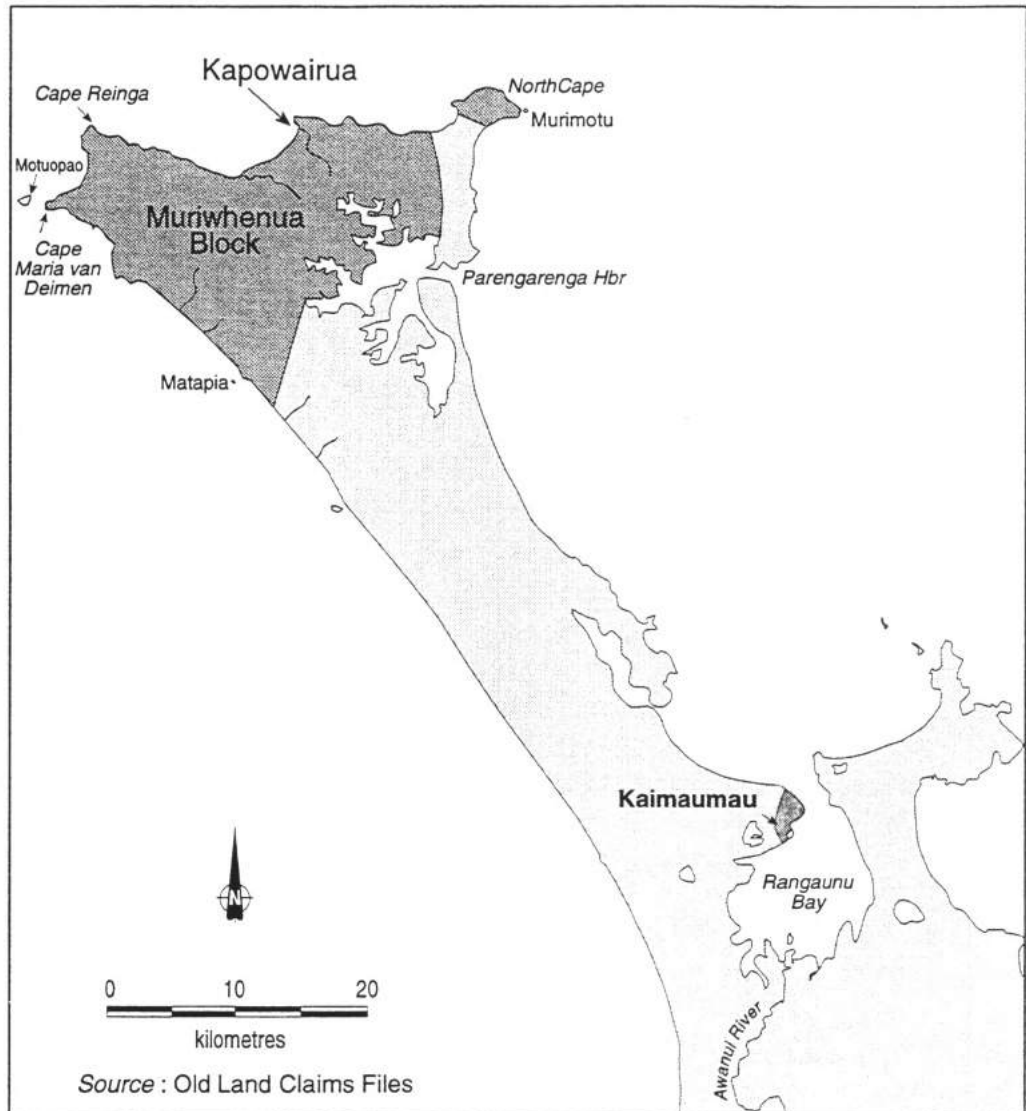


Figure 23: Pre-Treaty transactions as represented in old land claims, northern peninsula

taken up arms to protect Ngati Kuri when they were threatened by Nga Puhi at Whangaroa.

The deed's words

In the deed the arrangement was not described in full. The relevant part (translated) read:

This land becomes Taylor's. It has been decided to belong to his children forever and ever.

Taylor agrees that the rest of the Aupouri people live on his land if they live peacefully without stirring. Taylor will direct them as to where they should settle if they wished to settle and return there. However no person shall say the land belongs to them. They cannot stake their claims or buy or sell any part of this land.<sup>47</sup>

47. Translation given to Crown by M Jones in 1993: see doc 15, p 15.

Claim	Parties and date	Value of goods	Area claimed (acres)	Examined	Outcome
Claim 458 to 'Muriwhenua'	Panakareao and 28 others to R Taylor, church worker, 20 January 1840	£30	50,000	Yes	Godfrey recommended 1704 acres grant. Grant issued for 852 acres 22 October 1844. In addition, 852 acres scrip exchanged for land east of Mangonui by Duffus and Lloyd in 1850s. See OLC 403 and OLC 889.
Claim 382 to 'Kaimaumu'	Panakareao and seven others to T Grenville (W Potter pursued the OLC), 27 December 1839	£221	1200	Yes	Godfrey recommended 225 acres. Grant issued 22 October 1844. Called in by Bell and 130 acres scrip ordered for Macky. Scrip issued 20 June 1862. Scrip accepted. Land absorbed into Wharemaru block.

Table D: Pre-Treaty transactions, northern peninsula, as represented in old land claims and depicted in figure 23

Taylor's journal and letters provide the necessary amplification. He wrote in his journal on 21 January 1840:

Taylor's  
amplifications

This day I settled with Noble [Nopera Panakareao] the chief of the Rarawa to buy Muriwhenua or the north end of the island, a large though unserviceable tract of land 35 miles long and ten wide in one part arranging at the same time for the entire land as far as Mt Camel with the chieftainship of the whole. I have given the former one hundred and sixty pounds (£160) in goods which I have taken off Sadlier's hands at his request and £100 in money. I have been induced to do so because by my becoming purchaser 80 natives will immediately return and settle upon it where I have offered them and the entire tribe a home. They have been vanquished and expelled by Noble's tribe some years ago and have never since dared to live on the land.<sup>48</sup>

Later, in a letter of 5 October 1840 to the Church Missionary Society in London, Taylor wrote:

I have purchased the [Coast?] . . . from the North Cape to the Reinga. I did so because I thought if I did not I should never perhaps have another opportunity. This land was formerly the possession and abode of the Aupouri who being vanquished by the Rarawa lost both their chief . . . and their land, the greater part of the tribe was then cut off, the remainder fled to Wangaroa where they remained with a friendly tribe until a few months ago when their friends having parted with their land to Europeans they were compelled to seek a home elsewhere their desires were naturally towards their native spot. They petitioned Noble [Nopera

48. Taylor's journal, Auckland Institute and Museum (quoted at docs B15, p 8, 15, pp 10-11)

Panakareao] to restore it to them, the tribe refused, Noble himself pressed me to buy it, I declined, for I came to the land with the determination not to have any possession [of?] it, and therefore invested my little property in the Colony (of New South Wales) before I left, but it so happened my agent sent me word the security was not good and my money was still in his hands and he moreover strongly recommended to me to purchase land in New Zealand stating that this would be the only opportunity missionaries would have of making any provision for natives, he also sent goods to obtain some for himself (and he is one of our best men in the colony). I therefore bought the land partly with his goods . . .

Taylor then described the terms of the transaction and stressed his honourable intentions, in that he had:

made provision for the whole tribe of the Aupouri, only stipulating that each individual should be obedient to me, there are now nearly 100 men in the land which before was uninhabited, for myself I only claim 1500 acres and the same for the other owner. I may have erred but I believe whatever the world may say I have done more for the poor natives than will be done again, a tribe now have a home, its native home. I can only say that I am most willing to resign to the Society all my interest in it if deemed advisable. I cannot regret the step I have taken though I feel it will render the motives which led to it to be doubted until the circumstances of the case are known.<sup>49</sup>

On 6 October 1840, Taylor wrote to Hobson about his transactions:

Having been given to understand that you wish to ascertain what lands have been secured in behalf of the natives, I have the honour of informing you that I have purchased a tract of land extending from the north cape to Cape Maria V D [van Diemen] and thence to a small perforated island [Matapia], which I hold in trust for the natives of the Aupouri tribe reserving 6000 acres for myself, Col Phelps [who had acquired part of Sadlier's interest] and Lieut Sadlier RN joint purchasers to be selected from whatever parts of that purchase I may think proper. I have also to state that many of the natives of this tribe who once owned the above mentioned land but were vanquished and expelled from it by the Rarawa, have since my purchase returned, and are now residing upon it.<sup>50</sup>

A trust was intended

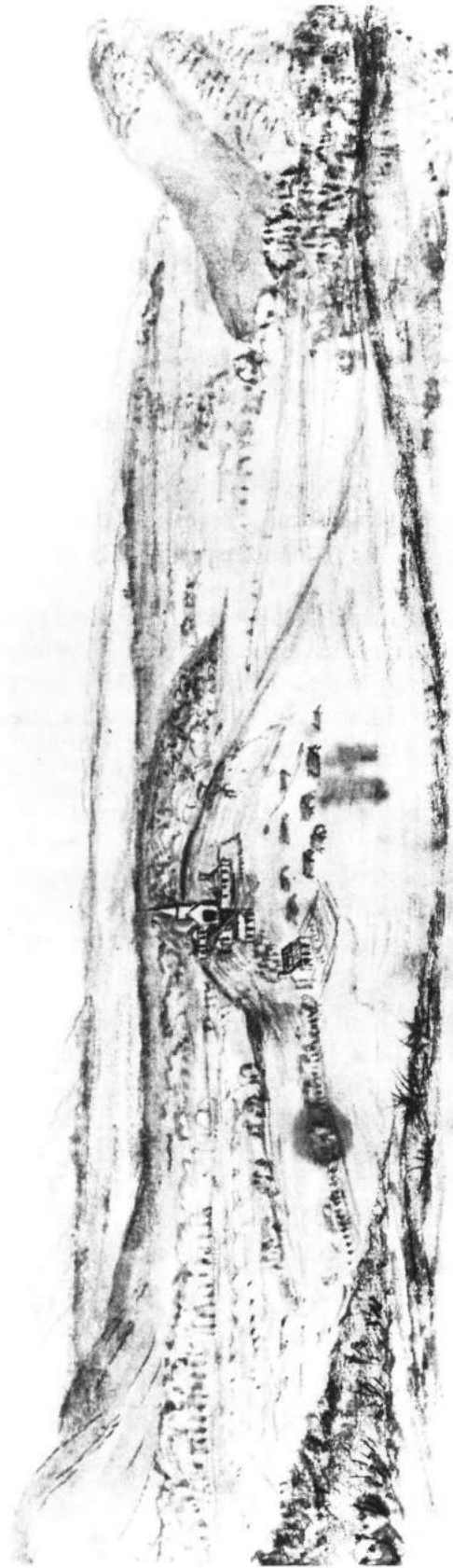
It is apparent that Taylor saw himself as holding the land in the deed on trust for the customary hapu, as well as having personal rights to a comparatively small part of it.

Taylor's later assessment of the area

We now know that the area concerned was about 65,000 acres (26,306 ha). At the time the deed was signed, however, Taylor had little idea of the size or boundaries. He had still to visit the area, and the deed's boundary description probably came from Te Aupouri and Ngati Kuri Maori then living at Kaitaia. Taylor later walked the land and completed a sketch in his journal, which is

49. Taylor to Church Missionary Society, 5 October 1840, Taylor MS/254, ATL

50. Taylor to Hobson, 6 October 1840, IA 1/1840/567, NA Wellington



*Kaitaia*

Pencil, pen, and ink sketch of Kaitaia by the Reverend Richard Taylor. Reproduced with the permission of the Whanganui Historical Society. Print courtesy of the Alexander Turnbull Library (F28660/2).

reproduced in figure 24. The boundaries recited in the deed, however, give a different result, as is also shown in figure 24, especially excluding the fertile area on the east coast known as Waikuku. This is important, for when Taylor travelled to the area in January 1841, the local people were concerned that Waikuku should be left out.

At first Taylor had 'a cool reception' from those at Parengarenga. They considered that Panakareao had no business to deal with the land without them. When Taylor returned the following month, he met with:

the Chiefs of the Aupouri with Te Mu at their head when they stated that part of the purchase they allowed which is the land from Pakaho [Pakohu] to Waitohoia [Waitohora] and then to Parengarenga and Matapiu [Matapia].<sup>51</sup>

This describes a triangle, as shown in figure 24, and again Waikuku is excluded. On returning to Kaitaia, however, Taylor endeavoured to secure Waikuku. His journal entry for 16 February 1841 records an arrangement with:

Taitimu a chief of the Aupouri (baptised yesterday) to go and reside on my land at Waikuku, he first signed a paper acknowledging that the land was mine and that none should live there without making the same acknowledgement and then I presented him with a handsome blue cloak intended for Noble but returned by him when he was out of temper with me.<sup>52</sup>

This agreement, translated into English, read:

This declaration is my agreement of a sale [hokonga] by Nopera in Muriwhenua to Taylor and I consent to his living in Waikuku, such place to be regarded as Taylor's place. So that this agreement may be binding, I will not permit the people who oppose Taylor to live there, also those who object to this place being Taylor's.

Kai titiro [Witnesses]	Wiki Taitimu, Rangatira o te Aupouri
Nopera	Naterani Wakaruru
W G Puckey	Paraone te Huhu
J Matthews	Mehaka Hiko <sup>53</sup>

The inclusion of Waikuku was to be the cause of some dissension. Indeed, the whole transaction became beset by confusion. There will be further reference to it in the next chapter, which concerns the Government's subsequent inquiries.

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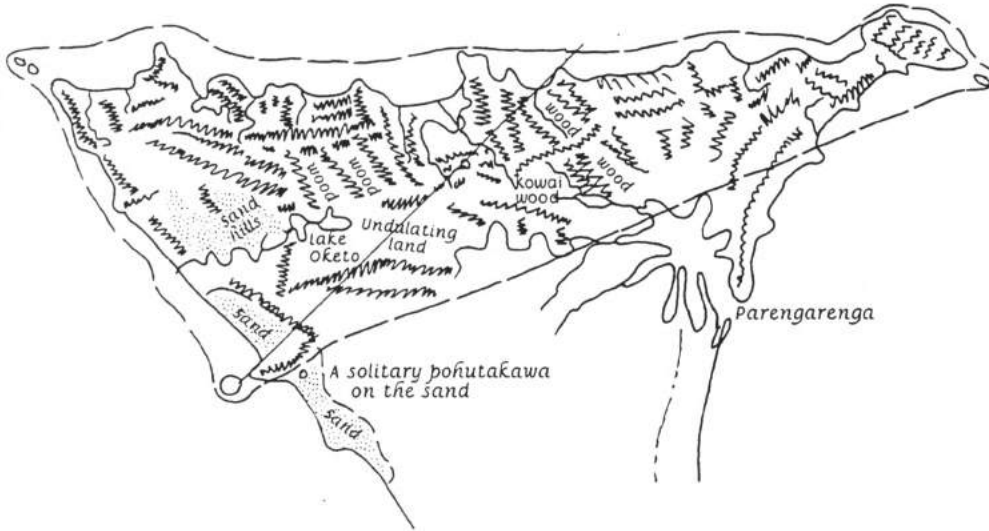
51. Taylor's journal, 5 February 1841, ATL

52. Taylor's journal, 16 February 1841, ATL

53. Translation for Crown counsel by M Jones, 1993

PRE-TREATY TRANSACTIONS

1. TAYLOR'S SKETCH MAP  
Redrawn from his Journal



2. TAYLOR'S TRANSACTION  
Drawn on a modern base map and showing  
boundaries described in the Deed

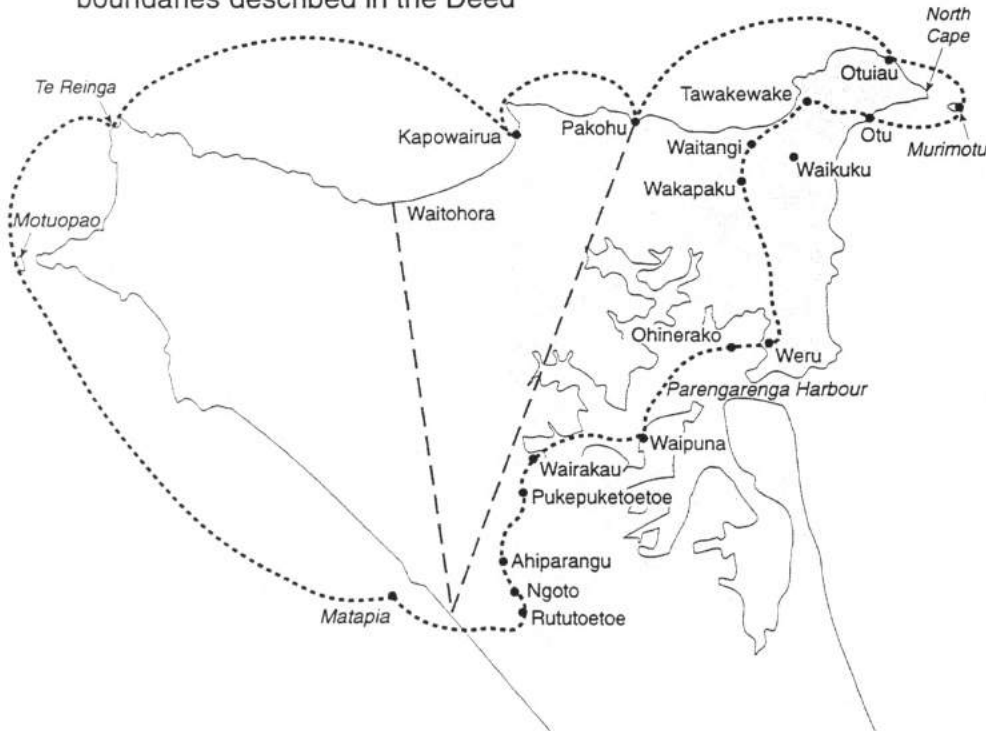


Figure 24: 'Taylor's transaction', northern peninsula



**3-7 SUMMATION**

Our opinions on the main points are as follows:

- While presumably Maori did not all see things the same way and thoughts changed over time, we think it is highly unlikely that Maori generally saw the land transactions in Muriwhenua as land sales in the European sense. Much more compelling evidence would be needed to assume that the profound and antithetical principles of traditional land tenure had been displaced.
- There is no compelling evidence that Maori had bowed to an alternative power structure when the transactions were entered into. The presumption must be the other way, 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.
- Despite the use of deeds and money, and other changes in form, the fundamental value system underpinning Maori law appears to have been unaffected.
- It is far more likely the transactions were seen by Maori as creating personal bonds, and as allocating conditional rights of resource use as part of that arrangement.
- The general principle was that persons were allocated the right to use a particular resource, rather than the right to all uses within a defined parcel of land. Although some modification of that principle may have been seen as appropriate for Europeans, the principle still applied so that a right of exclusive possession to all resources in a given area could not be assumed.
- A personal contract needed to exist between the land user and the community. Rights passed to heirs of the blood and could not pass to assignees without community approval. It is consistent that the missionary deeds entailed the land, that is, that they personalised the right to the transferee and issue. By custom law, however, no land interest existed independent of the local community and was freely transferable outside of it. Land rights flowed from an abiding relationship with the associated hapu.
- Use rights were conditional upon regular contribution to the community and acceptance of its authority and norms. Accordingly, it was considered, continuing benefits would flow to the community from the allocation of use rights.
- The view persisted that the underlying right to the land, and the authority over it, remained with the ancestral community. People did not buy land so much as buy into the community. From a traditional view, the land was still the land of the people long after it was 'sold', so that even today, Maori speak of the relationship they have with their ancestral land, notwithstanding a century of intervening sales. In the same way, people throughout the Pacific still talk of church land, for example, as 'their' land, as though no permanent alienation of the freehold had occurred.

PRE-TREATY TRANSACTIONS



Mangonui early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G4902/1).

- There is no sufficient evidence to show that, generally, early Europeans sufficiently understood the Maori tenure system or were sympathetic to it. They appear, rather, to have been locked into their own cultural opinions. Henry Southee may have been an exception.
- Generally, Europeans occupied the land at Maori will, but upon annexation, the deeds were presented as absolute land conveyances consistent with the English legal system.
- The basic distinctions were that Maori saw a social compact where Europeans saw a property conveyance. Europeans considered persons could hold land without social obligations and responsibilities to the local community, while to Maori, that was unthinkable; the use of a resource was a privilege passed down from the ancestors. Europeans saw a land transaction as simply a deal, a transaction where the parties need barely have known each other beforehand and need not know each other thereafter. To Maori it was the confirmation of a relationship which was intended to produce ongoing benefits for both sides.
- Contemporary opinion that Maori understood sales may be subjective, self-serving, overly dependent on the authors' interpretation and not founded on an adequate comprehension of Maori tradition.
- It does not follow that, when Europeans gave new meanings to Maori words and practices, in the deeds, they had the same meaning for Maori, or that words like 'sale' conjured up in the Maori mind all that they did for Europeans.
- It is doubtful that 'price' meant for Maori what it meant for Europeans. It was not about land value, but about the mana of the Europeans (a person of status should be able to give generously) and the mana of the contract (that given should suffice to honour the affected Maori and to mark the occasion).
- Effectively, the deeds evidenced only part of the arrangement, being that which the European party sought to achieve under English law.
- If Maori law applied before annexation (or after), as we consider it did, then, as a matter of law, the transactions could not have been sales, for Maori law did not permit of that. If English law had prevailed, the transactions are doubtful again, for lack of contractual mutuality.
- The rangatira did not have the right, title, and interest to effect a sale in Western law. They had only a power of allocation. We consider Panakareao did not seek to do more than allocate land, and for the benefit of the local community, with whom the European would then be bonded. Moreover, in allocating land to Europeans, the rangatira were not alienating their authority over the land but asserting it.
- The missionaries' concept of a trust, as implied with Oruru, Raramata, Mangatete, Okiore, Tangonge, and Muriwhenua North, or other joint-use arrangements, came closer to Maori expectations that the Europeans would have a role within the Maori communities and both would assist each other.

## CHAPTER 4

# RATIFICATION PRINCIPLES

*The shadow of the land goes to the Queen, but the substance remains with us.*

Nopera Panakareao, in the debate on the Treaty of Waitangi at Kaitaia,  
Muriwhenua, 28 April 1840

### 4.1 INTRODUCTION

The main question is whether the Government made sufficient inquiry into the pre-Treaty transactions to treat them as sales. The gravamen of the claimants' case was that the Government did not, and that it was incapable of comprehending the Maori dimension. The Crown's rejoinder was that the land commissioners made a thorough investigation of those matters that needed to be considered in terms of the legislation, and that the legislation was adequate for the purpose. In this and the following chapter we conclude the transactions were simply presumed to be sales or were treated as sales, without adequate inquiry of the Maori intent.<sup>1</sup> There was no inquiry, or no authority to inquire, whether, in the circumstances, a trust should have been imputed and given legal effect. The legislation was insufficient for the task if all equities were to be considered.

insufficient inquiry was made to treat the transactions as sales

The inquiry of the pre-Treaty transactions should also have disclosed, in our view, that the arrangements for Pakeha in Muriwhenua needed better planning. The Treaty of Waitangi should have served to remind the Government that sound settlement policies were required, not ad hoc land transactions, if Pakeha and Maori were to share fairly in the land.

The question is also whether Maori and Pakeha had so merged since the transactions were made as to become of one mind. We conclude they had grown no closer by the time the transactions were examined, and indeed were further apart. After annexation, Europeans were no longer bound to Maori law and, increasingly, were acting in an independent manner. For Maori, their law and

Each party had more cause to think their own criteria would prevail

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1. The main research reports to the Tribunal on the pre-Treaty transactions and their subsequent investigation are given at footnote one to chapter 3. This chapter also considers, however, the issue of surplus land, which was the subject of special submissions in M Nepia, 'Essential Documents of the Royal Commission on Surplus Lands 1948' (doc F7); R Boast, 'Surplus Lands: Policy-making and Practice in the Nineteenth Century', June 1992 (doc F16); David A Armstrong and Bruce Stirling, 'Surplus Lands: Policy and Practice, 1840-1950', September 1993 (doc J2); M Nepia, 'Muriwhenua Surplus Lands Commission of Inquiry in the Twentieth Century', October 1992 (doc G1, G8).

authority was still the same. It is necessary to consider, then, the alternative mind-sets of the parties at the points of interaction from 1840. This chapter begins by reviewing the Treaty of Waitangi in that context, and a certain land transaction at Mangonui soon thereafter, the first land transaction between Maori and the Government in New Zealand history.

The criteria for examining the pre-Treaty transactions are then considered, as set out in the New Zealand Land Claims Ordinance 1841. Thereafter, a review is made of the general operations of the Godfrey commission to consider the European land claims; of the separate arrangements for scrip lands, as they came to be known; of the unofficial inquiries conducted by Resident Magistrate White; and of the final adjustments effected by Commissioner Bell, some 15 years after the ratification process began.

Chapter 5 then deals with the results in each of the Muriwhenua districts. It will then draw conclusions on the process as a whole, and on the Government's right to what is called the 'surplus land'.

#### 4.2 THE TREATY OF WAITANGI AND MAORI EXPECTATIONS

Treaty debate  
reinforces view  
that Maori law  
would prevail

Notwithstanding that the British Colonial Office and the fledgling local bureaucracy continued to assume the transactions would be judged by British law, the Treaty debate could only have convinced Maori that the result would be settled by their terms.<sup>2</sup> We refer to the record of that debate at Waitangi in the Bay of Islands on 6 February 1840, at Mangungu, Hokianga on 11 February 1840 and at Kaitaia, Muriwhenua on 28 April 1840. The record is important, though again it must be treated cautiously, since the debate in Maori has not survived but only English interpretations of it.

The  
distinctiveness of  
the Maori debate

The Maori contribution to the making of the Treaty reflects their debating modes and the customs that gave their order of speaking. The friendly relationship between Maori and missionary, and the missionaries' evaluation of the Governor's visit, obliged Maori to honour the occasion. They responded as etiquette required. To whakanui, or enlarge the day, 'several thousand' were reported at Waitangi. Had he been a Maori, the Governor might have sensed victory even before the debate began, for there would have been real cause for alarm only if the attendance was poor. Further, the first day's debate was prolonged for an exhausting six hours after the Governor retired. Thus was the day honoured as it deserved to be.

Importance of the  
feast

Unfortunately, there was no large feast at Waitangi. The missionaries should have known that was required, but Maori rectified the social gaffe for them. Soon

2. A comprehensive summary of the material relevant to the Treaty debate is provided by Professor Eveilyn Stokes at 'Muriwhenua: Review of the Evidence', May 1996 (doc P2), chs 8, 9.

after, the Treaty was taken to the mission station at Mangungu, where 3000 Maori were estimated to have been present, 400 to 500 of them being 'chiefs of different degrees', and a huge meal was laid on. It is possible that Mangungu was thus more important than Waitangi.

It is not clear how many assembled at Kaitaia, but 500 were described as forming an immediate circle. There, however, and not to be outdone, a gift was made to the Governor of 12 tons of potatoes and kumara, eight pigs and some dried shark.<sup>3</sup> Such munificence would compensate for any lack of numbers. A large feast was also put on for the Governor's party. This was more important for establishing a relationship than any contractual terms and, as shall be seen, Panakareao was later to remind officials of the feast, not the Treaty, when describing the responsibilities of each to the other.

European accounts depict lively Treaty debates, with the position being saved or violent argument quieted through the timely appearance of a principal rangatira. This could be accurate, but the record is of a European view, and to our minds the result may not have been so finely balanced. A matter is 'koretake' (of no account), to Maori, if it arouses no passion or debate, while a battle of words does justice to the cause, sharpens the issues, augments the occasion, and leaves stories to memorialise the event.

Traditional  
rhetoric

It was said that the Governor was harangued with allegations, but impassioned declamation is also a standard oratorical tool. It solicits a clear position on a point in issue.<sup>4</sup> Thus Europeans opposed to the Treaty (for annexation would restrict their ability to trade and buy land) had advised Maori that the Governor would enslave them and leave them landless. The Maori way is to clear the air by so averring, in order to compel a forthright denial. Further, to discredit the missionaries as Maori counsellors, some traders claimed the missionaries had already robbed Maori of their land. Again, the Maori manner was to repeat the allegations so as to compel an open disavowal.

They had also a parabolic debating mode. One speaker appeared in rags in a show of penury. His purpose, we consider, was not to complain of land loss, but to imply that the Europeans should give much more than they had already.

A further cultural trait deserves mention: in forming contracts, Maori looked not to the heart of the terms but to the heart of the person making them. It was integral to Maori philosophy, as illustrated in gift exchanges, that there should be trust, honesty, and generosity in establishing working alliances. Accordingly, a

Contracts based  
on trust

- 
3. In fact, the etiquette of gift exchange was observed. The Governor's return gift, sent later, was 12 bales of blankets and a cask of tobacco.
  4. Lieutenant-Governor Hobson commented on this: 'The New Zealanders are passionately fond of declamation, and they possess considerable ingenuity in exciting the passions of the people': see Hobson to Gipps, 17 February 1840, in H Turton, *Facsimiles of the Declaration of Independence and the Treaty of Waitangi*, Wellington, Government Printer, 1976.

missionary protest that their love was enduring had as much weight as precise proposals for land sharing.<sup>5</sup>

Transaction  
problems

Care is needed, too, with accounts that Maori complained of land loss through sales. The debate was all in Maori, there was no language equivalent for a land 'sale', and nothing survives of the Maori words used. These reports may represent the translator's understanding more than Maori intentions.

Order of speaking

It was usual, as well, and it is often still so today, that the main leader spoke last. Leaders' addresses commonly end debate. They soothe the wounds of earlier discussion, add passion or reasoning as required, and allay fears or doubts. Further, since previous discussions gave rangatira a feel for the consensus, a general affirmation regularly attended their closures. This chiefly anchoring of debate often had two purposes: to state a pre-formed consensus view, and to show the authority to declare it.

No academic analysis is needed for these views. Tribunal members recall how Maori placed more faith in people's words than written contracts, or relied mainly on personal relationships, even in our times. The oratory, the staged declamations, the aggressive allegations, the impassioned claims, the cautious and reasoned summations, and sudden consensus, are all standard fare today, on marae and before the Waitangi Tribunal and Maori Land Court.<sup>6</sup> To Maori, such processes help achieve lasting decisions.

Thus the closing address may deserve most weight. Those preceding it may reflect positions required in customary rhetoric and process. It was in his now famous closing address at Kaitiāia that Panakareao illuminated the Treaty by saying, 'The shadow of the land goes to the Queen but the substance remains with us.' He added, 'We will go to the governor and get a payment for our lands as before', for under the new regime, only the Governor could pay for land rights.<sup>7</sup>

The shadow of  
the land

Professor Dame Anne Salmond, whose advice we valued, referred to 'the shadow of the land' as meaning that the Queen had a spiritual, protective, or kaitiaki role, the shadow, the 'atakau' or 'atarangi', denoting the protective and spiritual aspect of a being, in Maori views. Independently, Rima Edwards, a claimant well versed in Maori law, argued the same.<sup>8</sup> There were different opinions, however, on whether 'substance' stood for 'land' or for 'authority', but

5. The Reverend Henry Williams apparently understood this cultural predilection. In introducing the Treaty debate at Waitangi, for example, he described the Treaty as an act of love on the part of the Queen: see Claudia Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin and Port Nicholson Press, 1987, pp 45-46. In the Maori mind, such a declaration is the first prerequisite to contract formation.
6. The order and form of Maori debate vary according to the occasion. We here refer to whakawhiti korero, the criss-crossing debate amongst the members of the related hapu of a district.
7. See BPP, vol 4, pp 511-512
8. See A Salmond, 'Submission for the Waitangi Tribunal: Muriwhenua Land Claim' (doc F19), p 46; Evidence of Rima Eruera (doc F23), pp 12-15; L Head, 'An Analysis of Linguistic Issues Raised in Margaret Mutu (1992) Tuku Whenua or Land Sale?' and Joan Metge (1992) Cross Cultural Communication and Land Transfer in Western Muriwhenua, 1832-1840' (doc G5), pp 11-12; Orange, pp 82-83. The arguments are more fully summarised in doc P2, chs 8, 9.

we consider it covered both, since land and authority were fused in Maori minds. The words Panakareao added, however, may shed more light: 'We will go to the governor and get a payment for our lands as before.' The implication could be that Maori expected the Governor to pay for the use of the land but the underlying Maori title would remain.

As we understood Dame Anne Salmond to say, the Queen would serve as *kaitiaki*, as guardian and protector. Maori in turn would protect the Queen, the two standing in alliance. The Governor would serve as *kai-whakarite*, as broker or mediator between Maori and European, but the authority of the land would remain with the *rangatira*, with whom it had always been.<sup>9</sup>

Accordingly, we doubt whether Maori anxieties were in fact as large as the reports of their alarm that they would be made slaves or would lose their land. They had little to fear, not yet at least. They were measured in their thousands, whereas Europeans were but a handful at Kaitaia and Mangungu and a mere few hundred in the Bay of Islands. Their towns could even be sacked if Maori chose – and indeed, soon after, Kororareka in the Bay of Islands was destroyed. Certainly, the Governor forewarned that many more Europeans would come, but Maori had known Europeans for over 50 years, their numbers had hardly grown in that time and Maori were concerned mainly to secure more. Any suggestion that they would suddenly be swamped must have seemed beyond belief. The British boats were large, but not that large. We think the Treaty rhetoric was, rather, a warning that Maori would entertain no diminution of their authority and expected, at the very least, that power would be shared in arrangements made with the missionaries and the Governor.<sup>10</sup>

European numbers were unlikely to pose a threat

Despite those cautionary remarks, the debate is informative none the less. 'You must preserve our customs and never permit our lands to be wrested from us.' Those words from another leading figure, Tamati Waka Nene, were typical of the leadership's opinion, where land, law, and authority were invariably treated as one. These graphically illustrate how Maori expected their law and authority to remain. The Governor responded as he was bound to do. At Waitangi, the issue had become mixed with a dispute amongst the churches. There, the English account of the Governor's response was:

But Maori expected their customs and law would prevail

- 
9. It is said that Panakareao later reversed his metaphor when he considered the Governor was challenging his authority.
  10. Mention was made of an event at Hokianga when a group of Treaty signatories returned the blankets given to them the day before and asked that their marks to the Treaty be expunged. We read the incident not as a rejection of the Treaty, however, but as a rejection of the blankets. They were clearly insufficient in number, and an inadequate return for the massive hosting of 3000 people that had been required. Much worse, they were less than those given to the *rangatira* of the Bay of Islands. According to Maning, *Old New Zealand*, 1948 pp 216–220, one *rangatira* considered, 'I got for myself and all my sons and my two brothers and my three wives, only two blankets. I thought it was too little . . .' Subsequently, and by way of comparison, Panakareao received from the Governor 12 bales of blankets and a cask of tobacco. While this was in return for a substantial gift from Panakareao, Hokianga Maori had also given freely in hosting a large hui for the Governor. Maning suggests that Hokianga Maori signed principally to obtain blankets, but he was not an impartial observer and his anecdotal accounts are related with a sardonic flair.



The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome and also the Maori custom, shall be alike protected by him.<sup>11</sup>

At Kaitaia, Willoughby Shortland for the Governor put the matter more succinctly:

The Queen will not interfere with your native laws or customs.<sup>12</sup>

From the Treaty guarantee of rangatiratanga (or traditional authority), from oral undertakings to respect the custom and the law, and from the guarantee that Maori could keep their land, Maori had cause to believe that the Europeans already in possession of land held it only on customary terms. The Treaty debate could not have disabused them of that customary notion but, rather, could only have reinforced it. If this were so, the pre-Treaty transactions had properly to be judged by Maori custom. As shall be seen, however, they were not.

Other likely Maori perspectives from the Treaty and the northern debate would include these:

- |   |  |
|---|--|
| Maori expected an alliance                | • That Maori and the Queen would stand in partnership or alliance, and Maori would continue to benefit from having more Pakeha living with them.   |
| Unity with Pakeha and tribal conciliation | • That the Governor would unify Pakeha and Maori, would end inter-tribal confrontation and would keep order amongst Pakeha. This would secure law, order, and national unity. As Panakareao put it: 'We now have a helmsman; before everyone wanted to be helmsman; one said, let me steer, another, let me steer, and we never went straight.' <sup>13</sup>  |
| Equal status                              | • That Maori and the Governor would be equal, not one above the other. A persistent metaphor was that the Governor should not be up and Maori down.  |
| Mutual trust                              | • That Maori would repose in the Governor an absolute trust. Such a relationship already existed with the missionaries. As Panakareao put it, in urging the execution of the Treaty, 'What man of sense would believe that the governor will take our food away and give us only a part of it?' <sup>14</sup> By this, we think, he was referring to the land. For Maori, trust, and the display of trust and love, were the essential ingredients to forming a lasting relationship. It was assumed, of course, that this trust would not be one-sided. Unfortunately, however, the Maori display of trust was seen by the British as acknowledging subservience. |
| Settled tribal representation             | • That the Governor would respect the Maori social structure by dealing through the leadership and not with upstarts who relied on Pakeha  |

11. W Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*, Wellington, 1890

12. From John Johnson's journal, 28 April 1840, Auckland Public Library

13. BPP, vol 4, p 511

14. Per Willoughby Shortland, BPP, vol 4, pp 510-511

recognition to rise above their stations. This was one area where Maori did have cause for concern. The new wealth in goods and the British method of trading had allowed individuals to treat independently of the established leadership. The effect was to destabilise the Maori communities. Under the Treaty, however, rangatiratanga had been guaranteed.

- Although Maori echoed the Governor’s promise to protect them by calling on him to do so, at the time it was the Governor who most needed shelter. There was concern, however, that Maori should not be regarded with the same low esteem as the Australians regarded the aboriginals, the ‘paraiwhara’ (black fellows) as Maori called them. Despite the rhetoric, later events soon showed that Panakareao expected an alliance of equals for mutual protection, not paternalism.
- That the pre-Treaty transactions would be inquired into. That was the Governor’s express promise, made in the course of the debates, although it may have been meant to appease the assembled Europeans more than Maori. Maori had not specifically urged this course and, following Lord Normanby’s instructions, the Governor proclaimed the inquiry even before the Treaty debate began.
- That lands unjustly held would be returned. This was in direct response to Te Kemara, Rewa, and Moka, who alleged that seven Europeans (who were specifically named) were wrongly claiming their land and who challenged them to return it. We think that was sufficient to forewarn the Governor that the Maori understanding of the transactions would need to be inquired into.

Acknowledged status

An inquiry into pre-Treaty transactions

Lands would be returned

**4.3 THE TREATY OF WAITANGI AND BRITISH EXPECTATIONS**

When considering the Treaty of Waitangi and British expectations, the Treaty debate is more significant for what was not said than for what was. It was not said, for example, that, for the British, sovereignty meant that the Queen’s authority was absolute. Nor was it said that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced. Similarly, while Maori assumed that they had kept the underlying right to the land on which Pakeha were living, in accordance with ancestral norms, the British assumed, but did not say, that the underlying (or radical) title would be held by the Crown, in accordance with English beliefs. Although no deception was intended, the assumption was none the less that, in brief, the British would rule on all matters, and the fair share for Maori would be what the British deemed appropriate.

Despite Treaty promises, the British expected their law would prevail

We do not think the pre-eminence of British law and rule was at all stressed in the Treaty debate. The talk did not match Panakareao’s clear exhortation:

Hear, all of you, Pakeha's and Mouris. This is my speech. My desire is that we should all be of one heart. Speak your words openly; speak as you mean to act; do not say one thing and mean another.<sup>15</sup>

Wastelands  
argument

A more astonishing assumption by the British persisted from 1840 to 1846: that all lands not stocked, gardened, or lived on by Maori would be wastelands of the Crown. In instructing Lieutenant-Governor Hobson, Lord Normanby had cautioned against that view, but it persisted for six years none the less.<sup>16</sup> Governor Grey then made it plain that, whatever the worth of the doctrine in law, it would be impossible to enforce it in fact. Although wastelands were not mentioned at Waitangi, as Normanby regarded all the land as Maori-owned, and although scorn would justly have greeted that doctrine had it been raised in the Treaty debate, it gained currency soon after the Treaty's execution. It is likely to have influenced those who subsequently held official positions, including the examiners of the pre-Treaty transactions.

Despite good  
intentions, the  
parties were still  
in two worlds

We imply no subterfuge in describing the enormous gap between what was said and agreed and what was left unspoken. Like Maori, the British were locked into their own world-view and spoke of things which carried a raft of implications that they could take for granted and yet only they could know. Matters had to be put simply, and British constitutional norms were as incomprehensible to Maori as Maori societal norms were a mystery to the British. What needs to be stressed, therefore, is that each side approached the Treaty with genuine good feelings for the other – Maori seeking advantages from Pakeha trade and residence, the British expecting benefits from this expansion of their empire. They also proposed protection for the indigenous people. As a wealth of historical material reveals, there was in England at this time a strong evangelical and humanitarian tradition consistent with this objective. As Maori knew, the terms were not as important as the hearts of those making them.

The result, however, is that, despite the goodwill, the parties were talking past each other. Maori expected the relationship to be defined by their rules. It was natural to think so and, far from disabusing them of that view, the Treaty and the debate reinforced it. By the same token, the British, true to what was natural to them, assumed that sovereignty had been obtained by the Treaty and therefore matters would be determined by British legal precepts. It is thus important to see the Treaty not in terms of its specific details but for what it mainly was: a statement of good intent and of basic and necessary principles. With regard to the earlier transactions, however, the Treaty and Treaty debate showed that, in contractual terms, the parties were further apart than they were when the

15. Per the Reverend Richard Taylor and Dr Johnson, Gipps to Russell, 15 June 1840, BPP, vol 3, pp 180–181

16. For a fuller discussion on the topic, see doc P2, ch 9. The wastelands doctrine is criticised by the Tribunal in *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 2, p 252.

transactions were first made. Each had more cause to think their own rules applied, to the exclusion of any other.

#### 4.4 THE TREATY OF WAITANGI AND LORD NORMANBY

Whatever the mismatches of Maori and Pakeha aspirations, none gainsay the Treaty's honest intention that Maori and Pakeha relationships would be based on mutual respect and the protection of each other. For Maori, these principles were essential to any alliance. For the British, they were part of the art of statesmanship and of humanitarian objectives.

The royal instructions flesh out the Treaty's terms

The more specific intentions of the British are explained in the royal instructions through the Colonial Secretary, Lord Normanby, which flesh out and give meaning to the Treaty's bland promise of protection.<sup>17</sup> They so illuminate the Treaty's goals that, in our view, the Treaty and the instructions should be read together. Two of Normanby's injunctions have particular relevance for these claims: the first, that all contracts should be on fair and equal terms; the second, that Maori must keep sufficient lands for themselves and only the excess should be sold.

In Lord Normanby's elegant phraseology:

it will be your duty to obtain by fair and equal contracts with the natives, the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers. . . .

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, – will be one of the first duties of their official protector.<sup>18</sup>

It may be seen that, had Normanby's instructions been adhered to, Maori could only have become significant stakeholders in the new order.

Using Lord Normanby's instructions as an overlay, another principle emerges: that the restriction on alienation of land to private individuals was intended not

17. The rules for the interpretation of treaties with indigenous peoples, including those for the incorporation of background documents, have been examined in previous Tribunal reports. American authorities have been reviewed for the Tribunal in Professor W Morse and Rosemary Irwin, 'Treaties, Deeds and Surrenders: An Analysis of Canadian and American Law' (doc 02).

18. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87

only to augment State revenues but to protect Maori by enabling State supervision of land sales. The trouble was, however: who would supervise the State?

The Treaty of Waitangi will be referred to again, but for now three promises should be kept in mind, for they assuredly influenced Maori at that time:

- Maori law or custom, and Maori authority, or rangatiratanga, would be respected;
- the pre-Treaty transactions would be inquired into and lands unjustly held would be returned; and
- all future dealings would be with the Governor, who would provide for and protect Maori interests.

#### 4.5 THE MANGONUI AFFIRMATIONS, 1840–41

The Mangonui transactions were not strictly sales

The next major point of Government and Maori interaction came on 24 June 1840, only two months after the Treaty was signed at Kaitia. On this occasion George Clarke, for Governor Hobson, and Panakareao, with four others, completed the first official ‘land sale’ in New Zealand, which we call the ‘Mangonui transaction 1840’ to distinguish it from another Mangonui transaction of 1863. We do not see this first transaction, or a similar one of 1841, as a sale, however. Some historical evidence suggests that the Governor was trying to quieten Panakareao’s claims by buying him out, and was hoping to maintain peace by keeping settlers out as well until matters had settled. In any event, so many complications accompanied recognition of this ‘purchase’ that it was rarely relied on. Amongst other things, Clarke was in a conflict situation, as Government purchase agent, since his primary responsibility was as Protector of Aborigines.

Later events would show that Panakareao saw the transaction as no more than an affirmation that he held authority over Mangonui and the eastern division. It is not always appreciated, although historians have noted it before, that in transacting with Europeans over land, the rangatira did not see themselves as ceding their authority over that land but as asserting it, and as being acknowledged as possessed of that power.

The English text of the Mangonui deed is set out in figure 26. It related not to the land as such but to Panakareao’s interest in it. There was no accompanying plan and the rough boundary lines are barely comprehensible, so the depiction in figure 25 is no more than approximate. The deed incorporated land already claimed by settlers under transactions with Pororua. It appears to have been managed by three missionaries, Puckey, Matthews, and Clarke, and the style shows it was written by Puckey. Puckey was a lay catechist and carpenter whose honesty, which was above question, was in excess of his ability as a legal conveyancer.

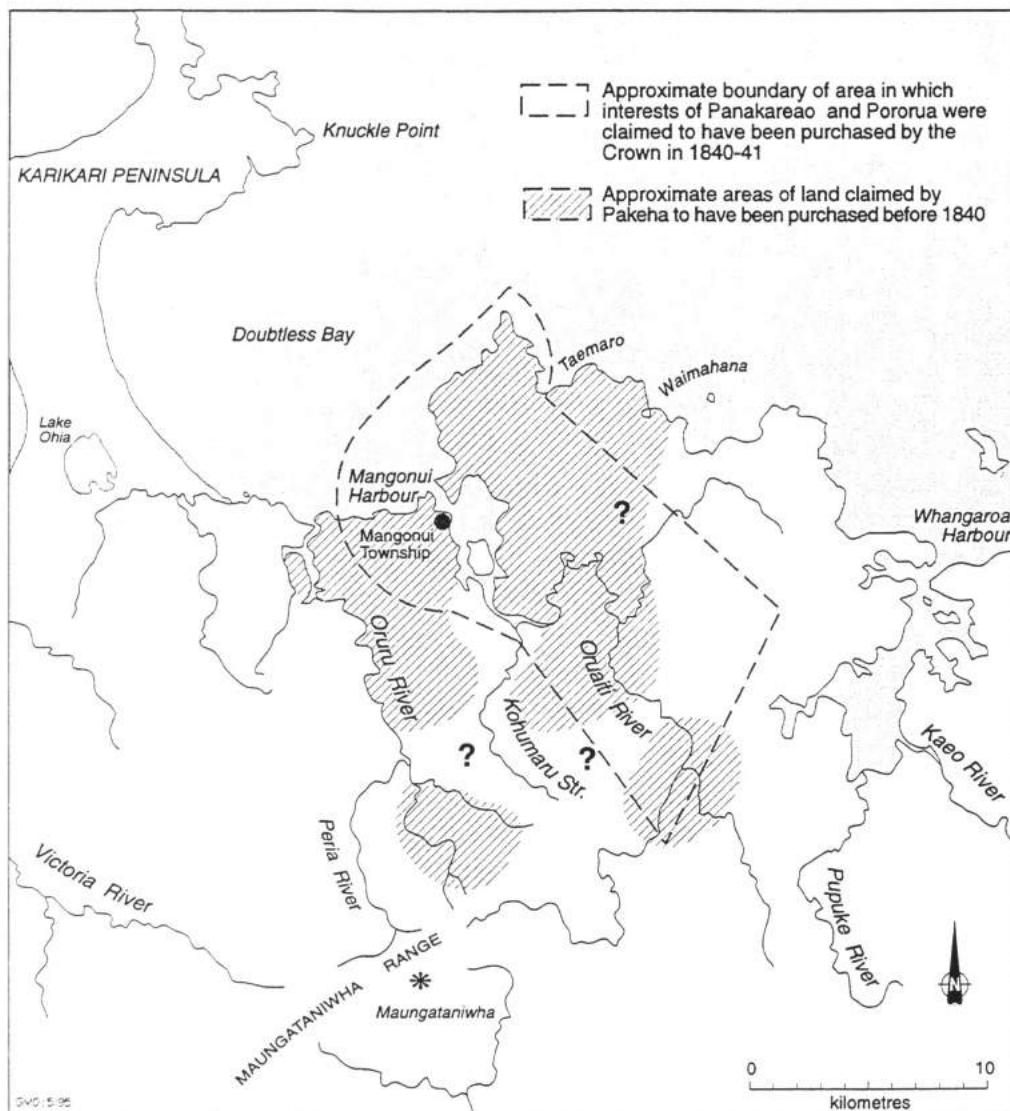


Figure 25: The possible location of the Mangonui ‘purchase’, 1840–41

The transaction followed a discussion between Panakareao and Governor Hobson. Panakareao apparently complained that Pakeha were entering Mangonui without his permission. Afterwards Hobson expressed his hope, in a letter to Governor Gipps in New South Wales, that the deal would ‘restrain in some degree, the settlers from making encroachments on the land which has been and still is the cause of much annoyance to the natives’.<sup>19</sup> On 9 July 1840 Hobson had issued a proclamation cautioning anyone without a prior claim against entering the territory the deed referred to.

Subsequent conduct, where Panakareao still dealt with the land as though his authority was unimpaired, shows that he did not regard this transaction as

19. Hobson to Gipps, 18 July 1840, BPP, vol 4, pp 57–58 (quoted in doc A21, p 12)

extinguishing his interests or authority. The indications are that, as at June 1840, Panakareao was still operating by the laws of his ancestors and not by the English laws of sale. We think the more likely scenario to be that Panakareao would have placed importance on the Mangonui transaction but for different reasons than those the Governor may have imagined. By his agreement with Dr Ford, Panakareao had secured Pakeha recognition of his rights throughout Oruru and even to Kohumaru, and by the Mangonui transaction, as Panakareao saw it, the Governor had recognised his rights to Kohumaru, Mangonui, and an indeterminate area to the east.

Pororua's position

Pororua apparently saw things in a similar light. When he heard of the transaction with Panakareao, Pororua protested that he should be acknowledged in the same way – even though, if the pre-Treaty transactions had indeed been sales, he had already sold most of the land in question. The result was a second deed, dated 28 May 1841, conveying ‘all his part and that of his tribe’ in the same land for the same amount of £100, only this time in specie: one horse, one cloak, one saddle and bridle. In the same way as Panakareao, Pororua continued to act thereafter as though he were now the sole owner of the land in question.

Conclusions on  
the Mangonui  
transactions,  
1840–41

Our conclusions are:

- On the face of the deeds, the Government bought the ‘possessions and interests’ of Panakareao and Pororua in the vicinity of Mangonui. It is doubtful whether this conveyed a property right, or whether either Panakareao or Pororua had an interest in possession that was capable of severance and alienation. What Panakareao and Pororua were contending for was not a private right of property but a political right of authority – which they did not see themselves as transferring.
- There was no independent assessment or confirmation of the transactions at the time. The nature and extent of the interests referred to were not examined. There was no inquiry as to whether Maori understood the transactions in the terms the deed described.
- On the evidence that is now available, the right and interest that Panakareao and Pororua respectively claimed was mainly the right to admit and control newcomers to the territory. Neither had interests in possession, except that Pororua was resident at Kohumaru in association with others, and Panakareao claimed the right to reside in the area, in community with others, if he chose.
- It was clearly not seen as a sale. Pororua and his people continued to reside at the village at Kohumaru.
- On the available evidence and in the light of subsequent conduct, neither rangatira freely and willingly sold the authority he had to control newcomers to the territory; on the contrary, each saw the transaction as acknowledging his authority. The deeds were in conflict with reality and accordingly, notwithstanding their terms, there was no effective conveyance of anything.

This book sheweth that Noble Panakareao the Chief of Kaitaia on the twenty-fourth day of June in the year of Our Lord One thousand Eight hundred and forty did sell to His Excellency the Lieut Governor Captain William Hobson Esq of Her Majesty's Royal Navy, his possessions and interests in Manganui and its vicinity, bounded as follows, commencing at Oweto (in Doubtless Bay) continuing along the River Paekotare from thence over to the Mouth of Kohumaru along the waters of Puta Kaka over Hill and Dale, untill you come to Otangaroa, returning by Unuhia, from thence to Wakapaku, from thence to Tae Maro, the Watu and Oneti, over Rangi toto, crossing to Rangi Kapiti, from thence to Koe Koea, the Kopu and Parore, continuing until it meets Oweto. The Payment for Nobles interest in the said land given to him is £100, One Hundred Pounds Stirling, Lawful Money of the British Empire, given in the presence of Noble Panakareao and his Tribe in Witness whereof he has duly signed this deed.

Witness

Wm G Puckey	Nopera Pana kareao	x	His mark
Joseph Matthews	Puhipi Ripi	x	His mark
George Clarke P A	Hohepa Poutama	o	His mark
	Reihana Morenui	o	
	Kepa Waha	o	His mark

Note: Although Panakareao has his mark on the deed, a receipt for the money bears his signature.

Figure 26: The English text of the 1840 Manganui purchase, New Zealand's first official land 'sale'

**4.6 BRITISH PRESUMPTIONS AFFECTING THE PRE-TREATY TRANSACTIONS**

The principles already developed, of respecting Maori law and authority and protecting Maori interests, were lost almost immediately, by officials, in a preoccupation with the English system. Integral to understanding the laws and practices for examining the pre-Treaty transactions are certain assumptions of English law. The first was that all land is held by the Crown and no one is entitled to any part without a Crown grant or licence, provided, however, that in New Zealand the Crown is assumed to hold the land subject to any Maori usages until Maori rights are lawfully extinguished. In the result, the Government had no need to register a conveyance of land from Maori, and had only to be satisfied that such Maori rights that may have existed had been extinguished. It could then do as it chose.

Impact of Government theories of land tenure and native title

The second assumption, at that time, was that the extinguishment of native title was an act of State and, as such, was not reviewable in the courts. This was



despite the fact that Maori were New Zealand citizens. Later, this was given statutory reinforcement. In the result, and at the time, it was sufficient for the Government to say that native title had been extinguished. It was not necessary for the Government to show how that had been done.

The third assumption was not consistently made but was still regularly apparent. It was considered that, when Maori accepted any uncustomary instrument or land conveyance, or were subjected to one, the stream of customary consciousness was broken, customary title was impaired, and the Government could dispose of the land as it considered appropriate. Thus land could be transferred to Dr Ford or the Reverend Richard Taylor upon a trust and the Government, while not acknowledging the trust, could regard the native title as extinguished.

We see the two main problems with the ratification process as follows. The first was the presumption that, as a matter of law, all Maori interests were deemed to be extinguished, while Maori saw their interests as continuing. The perception of a continuing Maori interest had been made known to the British House of Commons beforehand.

The second was that the transactions could be treated as sales provided they were affirmed by one or two Maori and were equitable. This was so though Maori affirmed no more than their customary understanding, which was not of a sale. In addition, the equity of the transactions was barely considered. The only transactions adjudged as inequitable were those outside Muriwhenua that were seen as notoriously bad for they covered whole provinces.

It appears, moreover, that the transactions could be treated as sales without any lawful inquiry at all. Those of Muriwhenua East and the centre were regarded as valid sales even though none was officially inquired into in the way the legislation required.

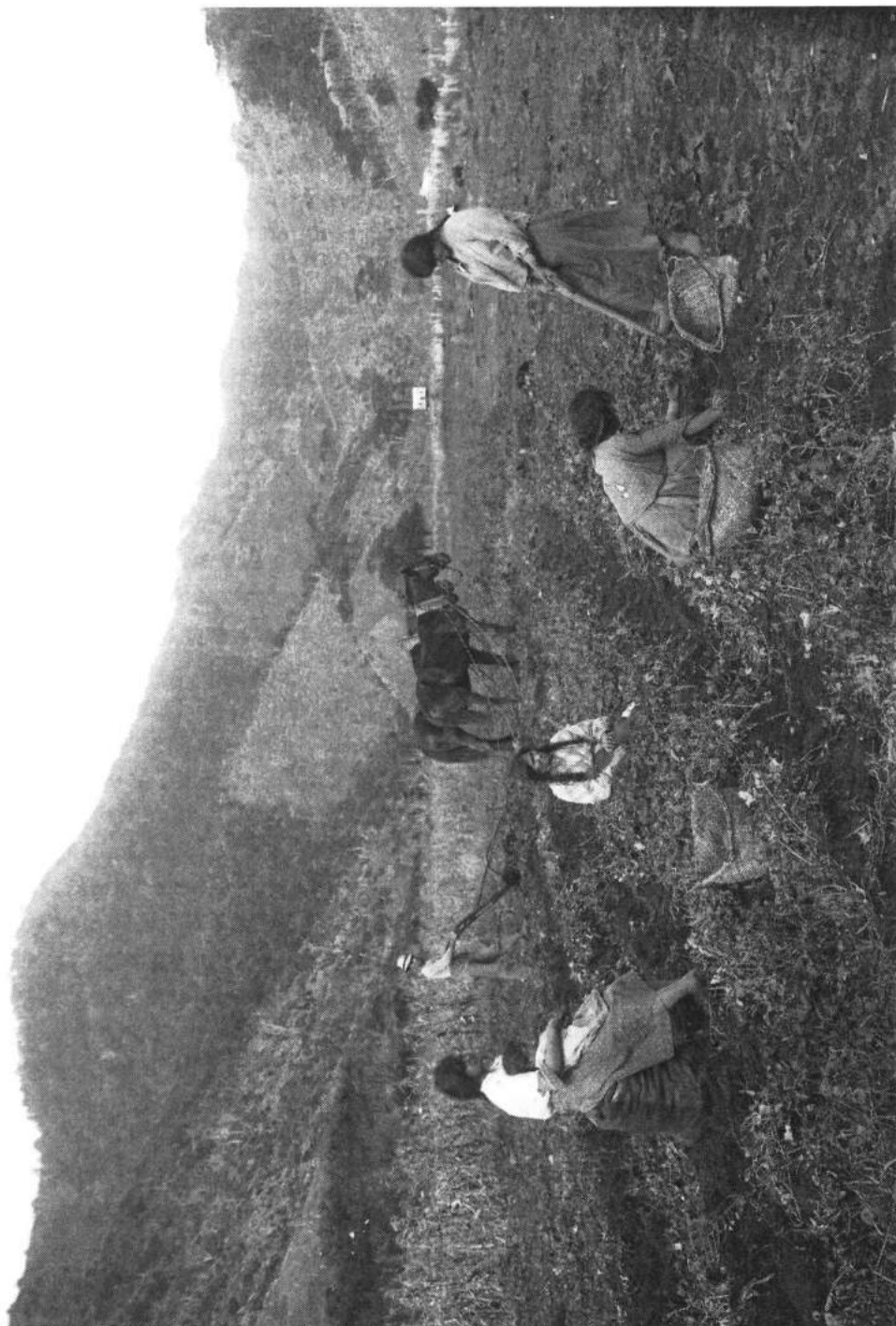
#### **4.7 THE LAND CLAIMS ORDINANCE 1841 AND THE SURPLUS LAND DEBATE**

The ordinance gives inadequate protection

The assumptions concerning the Crown's radical title, the process of extinguishment and the loss of customary status through uncustomary instruments, fit with the arrangements made to inquire into and resolve the European land claims arising from the pre-Treaty transactions. We consider that the relevant legislation, the New Zealand 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, as the Treaty of Waitangi had required.

NSW model

In explanation, the New Zealand legislation was patterned on models from New South Wales, where native rights were not part of the design. This arose as follows. Certain squatters in that colony, having assumed rights to land, had



Women harvesting kumara. From the Northwood collection,  
photograph courtesy of the Alexander Turnbull Library (G6265 $\frac{1}{4}$ ).

onsold all or part to newcomers. The latter sought recognition for their purchases. By legislation of 1825 and 1833, recognition was given on the limited basis that no one could take more than 2560 acres (or four square miles), and each would receive according to their respective payments. The claimants were to appear before land commissioners to settle the amount paid and the boundaries of the land concerned. There was a problem, however. The Statute of Frauds required land sales to be evidenced in writing, but the early squatters and settlers were often illiterate and such written documents as may have existed were often unsatisfactory. It was therefore provided that the commissioners should be guided by the real justice and good conscience of the case without regard to legal forms and solemnities.

Again, no native questions were involved, and it was not necessary to consider whether the alienor understood a sale since everyone was from the same culture. It was sufficient if both sides affirmed to the land commissioner that a certain sum had been paid and a definite land area had been given over.

It then happened that, while New Zealand was a dependency of New South Wales and annexation was pending, certain Sydney speculators who had invested in land in New Zealand had become anxious to secure good title for their purchases immediately on annexation. Governor Gipps of New South Wales was able to produce the necessary legislation to investigate their claims from that which already existed in his colony.

Surplus debate in  
NSW

Gipps's legislation for New Zealand was hotly debated in New South Wales, since it limited grants thereunder to 2560 acres (1036 ha) with the balance, or the surplus as it was called, passing to the Government. Governor Gipps was adamant, however, that, by English law, the Government would have the underlying or radical title to all the land in New Zealand once sovereignty was proclaimed, that the Government could then do with the land as it chose, and that the Government was fully entitled to grant part only of that acquired by the purchasers and to keep the balance. The Australians, it seems, had not heard of this radical title and acted as though it were an absurd legal fiction, or medieval relic that could hardly have applied south of Capricorn.<sup>20</sup> Gipps's legislation for New Zealand was enacted none the less.

Thus the surplus land issue arose at this early stage. It is helpful now to give it a definition, as appropriate to the New Zealand situation and the debate that followed:

*Surplus land:* surplus land is the balance of a pre-Treaty land transaction which was not granted to a putative purchaser.

It is land which the Government presumed to own.

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20. The origins of the New Zealand legislation, and the extensive debate in Australia, were outlined to the Tribunal in a major historical work: D M Loveridge, 'The New Zealand Land Claims Act of 1840', 18 June 1993 (doc 12).

After annexation, Gipps's legislation was re-enacted in New Zealand by Governor Hobson, with virtually no change, as the Land Claims Ordinance 1841. Governor Gipps, however, continued to give assistance. He appointed the land commissioners from New South Wales, with Colonel Edward Godfrey, a British military officer, being posted to the northern part of New Zealand including Muriwhenua.

Australian law re-enacted in New Zealand

As we read it, the primary purpose of the legislation was not to protect Maori interests. The main purpose was to achieve a fair distribution of land amongst Europeans by defeating the extravagant claims to millions of acres that some had made, even in a single transaction. As in Australia, the New Zealand Land Claims Ordinance set a maximum of 2560 acres for any one person, unless the Governor allowed more.<sup>21</sup> It would have prejudiced the objectives of settlement, as outlined by Lord Normanby, had a few individuals been allowed to own most of the land.

The legislation

A further primary purpose was to achieve equity between the various European claimants, and especially between the 'genuine' settlers, who purchased early, and speculators and others who came later, once annexation was imminent. For this purpose a scale was provided, allowing land awards according to the value of the goods transferred and a set price for land increasing over each year. Presumably to cover transport costs, the goods were to be valued at three times their selling price in Sydney. No thought was given to maintaining equity as between Maori and Europeans.

As in New South Wales, the lack of a deed was not fatal. Four transactions were accepted in Muriwhenua without the production of any deeds, and only an unsigned copy was produced for a fifth,<sup>22</sup> for the ordinance specifically provided, as in Australia, that the commissioners were to be guided by 'the real justice and good conscience of the case without regard to legal forms and solemnities'. Although it was argued before us that this clause enabled the commissioners to consider a broad range of equities, we think the qualifying reference to legal forms and solemnities focused the clause to the problem described, that of obviating the Statute of Frauds requirements.

The Crown argued that the ordinance was adequate for the protection of Maori interests,<sup>23</sup> but we consider the protection of Maori interests was subsidiary to the other objectives described. In the ordinance, the requirement to protect Maori interests was at best obscure. As former Chief Justice Sir Michael Myers noted in 1946, when investigating the issue of surplus lands, the basis for considering

21. The commissioner could recommend above 2560 acres where that had been approved by the Governor, but the Governor presumed he had authority to enlarge the grants, and did so. His actions were later challenged. See *R v Clarke* (1849-51) NZPCC 516.

22. T Ryan did not produce deeds for three cases, J Berghan for one, and in one case Thomas and Phillips had only a copy.

23. See Crown submissions (doc 01), and especially see supporting historical evidence, D A Armstrong, 'The Land Claims Commission: Practice and Procedure, 1840-1856', July 1993 (doc 14(a))

the equity of the transactions was in section 6. This required that, in recommending a grant, the commissioners should be satisfied:

that the person or persons claiming such lands or any part thereof is or are entitled according to the declaration of Her Gracious Majesty as aforesaid to hold the said lands.

The 'aforesaid' declaration could only have referred to a recital in the preamble of Lord Normanby's instructions of 1839 'to recognise claims to land which may have been obtained on equitable terms'. Looking at the instructions and at the circumstances of the legislation, we think this must be taken to have meant that there must be no evidence of fraud, or that the price was not demonstrably unfair.

The point, however, is that the necessary matters to consider for the protection of Maori interests had properly to be spelt out, just as the legislation was specific about the criteria for equity between the purchasers and the prevention of undue land aggregation. The need for such specificity is more apparent when one considers that some commissioners, like Colonel Godfrey, were not lawyers.

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, or alternatively, in Lord Normanby's terms, was the alienated land excess to their requirements? 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?

The need to consider such matters was nothing new. They had been spoken of by colonial officials and missionaries for some years. They had previously been raised before a select committee of the British House of Commons. It may be noted that similar provisions for the protection of Maori interests were in fact introduced into legislation later, and were not removed from Maori land law until as late as the Maori Affairs Amendment Act 1967, and even then not entirely.

#### **4.8 THE INQUIRY IN PRACTICE**

Whatever the legislative intent, upon reading the record of the inquiry itself, it is all too evident, in our view, that no inquiry, or no adequate inquiry, was made into those matters, as mentioned above, that were necessary for the protection of Maori interests. The evidence elicited from Maori was mainly, or almost entirely, to the effect that they had signed the deed, received the goods and knew the affected land. It is difficult to escape the impression that the commissioners assumed that Maori had sold the land, and all that was needed was for one or two Maori to attend and affirm the transactions in the way described.

The Government made the same assumption. It will be seen that in several cases the land commissioner was unable to complete an inquiry. In those cases, the Government itself assumed the validity of the original transactions, without anyone having appeared in support or opposition, or without any hearing at all, leaving a question as to why Maori affirmation had ever been required in the first instance.

The Land Claims Ordinance may have worked well in other districts. It was effective in disallowing claims to some 9.2 million acres elsewhere. The individual Muriwhenua claims were small by comparison, however, and the equity of those claims appears to have been assumed. Not one claim that went to a hearing was disallowed.

In brief, as we see it, the ordinance implicitly assumed the pre-Treaty transactions were all valid purchases, but that some should be set aside as unconscionable if an injustice was plain. The ordinance did not require that the transactions should be examined for mutual comprehension, and no such examination was made in fact. The conditional occupations of custom law were thus changed to permanent alienations, and, accordingly, the ordinance served not to effectuate the agreements, but to amend them.

Crown counsel contended that, notwithstanding the terms of the ordinance, the land commissioners were instructed by Gipps to establish 'proof of conveyance according to the custom of the country and in a manner deemed valid by the inhabitants'. We do not think this called for an examination of custom law transactions but, rather, whether the deed was executed in some open manner that might best accord with the customary way of doing business. Once more, the question of comprehension was not considered.

Had an inquiry of customary understandings in fact been required by this instruction, we doubt that Commissioner Godfrey could have been of much assistance. Godfrey, in our view, was honest and conscientious. He was also methodical and adhered to his duties, as he saw them, to the letter; but the reality was that he was new to the country and had no idea of Maori custom. Had he that comprehension, he would have known that a conveyance, according to the custom of the country, was not a sale.

It may be noted in this context that Godfrey did have the benefit of an interpreter who was fluent in Maori, Henry Tacy Kemp, son of the missionary James Kemp. There was no one from the Office of the Protector of Aborigines, however, as was normally required, and although Kemp later acted as a subprotector, he was too young to discharge the functions of that office at this time. Moreover, although he was born in New Zealand and fluent in speaking Maori, his letters and reports do not demonstrate to us an understanding of Maori values or the underlying beliefs that governed Maori transactions. They show, rather, a concern to 'civilise' Maori, and thus to replace those beliefs, of which he had a surface understanding only.

It was also argued before us that, if normal practice was followed, someone from the protectorate would have been to Muriwhenua beforehand to explain matters to Maori. There is no evidence that that happened on this occasion, but, assuming it did, there is still a difference between teaching others what they might need to know and teaching oneself to know others.

The inquiry, in our view, was not of a kind that could have cured the fundamental defect: that the parties to the pre-Treaty transactions were not of common mind or purpose. It ought to have been obvious, in our view, that what was mainly needed was not a determination of settlement rights on the basis of deeds that meant nothing to one party, but a clear settlement plan designed to achieve fairness for all, and providing protection for Maori interests, along the lines Lord Normanby had directed.

#### 4.9 SCRIP LANDS

The particular course of Godfrey's inquiry is examined in the next chapter. Here we are concerned with the broad consequences, and at this point need to consider one in particular, concerning the so-called 'scrip lands'.

Due to a small war between Panakareao and Pororua over who had the rights in the area, Godfrey was unable to complete an inquiry into the claims for eastern Muriwhenua, Mangonui, or Oruru. As claimants were complaining that the war would prevent them from receiving land, and since the Governor was keen to settle as many people as he could at Auckland, he decided that the European claimants affected should be offered scrip and, in return, the Government would take over their land claims.

Again, because of the importance of this matter in later events, some definitions may assist:

*Scrip:* Scrip was a certificate entitling European purchasers to a given amount of land at any place where the Government had land available.

*Scrip land:* Scrip land, in Muriwhenua, was pre-Treaty transaction land where, in exchange for scrip, the Government had taken over the purchaser's claim to that land.

At the Governor's direction, Godfrey was to meet with the various European claimants affected, but without the Maori party, to assess the entitlement of each claimant in terms of the Land Claims Ordinance and so to advise the Governor. On receipt of his advice, the Governor adjusted these entitlements and offered scrip for the amount so determined.

Some claimants declined to take scrip. They were mainly those who had settled in the area and now had adult half-caste children, or those who were persuaded against taking scrip by Panakareao, who then undertook to secure the

land for them.<sup>24</sup> Most, however, did take the scrip, and shifted to Auckland or took Government land elsewhere.

The particular scrip awards are considered in the next chapter. The main point here is that, as a result of those awards, and the implicit assignment of the purchasers' interests to the Government, the Government assumed it had acquired most of Oruru, Mangonui, and eastern Muriwhenua.

In fact, by taking an assignment of the purchasers' claims, the Government could have acquired no greater right than the purchaser had – that is, the right to pursue a claim before land claims commissioners. And yet, at all subsequent times, the Government acted as though its right to the lands in question, wherever they might have been, were total and complete, without any ratification process being needed. This may have been because the Land Claims Ordinance was not seen as binding on the Government.

In any event, no Maori affirmation was seen to be required. Moreover, since Maori had become adamant that their arrangements were personal to the Europeans concerned and that they were opposed to the Government taking the land, it is unlikely that that affirmation would have been given. Accordingly, in all the scrip land cases, there was no examination of Maori intentions, of boundaries, of the existence of trusts or the like. The Government itself now appeared to be assuming that valid transfers had been made throughout Muriwhenua. It was thus less likely that any Government official coming afterwards would advocate another view.

#### 4.10 THE UNOFFICIAL INQUIRIES OF RESIDENT MAGISTRATE WHITE

The next stage in the process was the appearance of William Bertram White, who was appointed Resident Magistrate at Mangonui in 1848. The resident magistrate took it upon himself to recover, where he could, that which he regarded as the Government's land on account of surplus or scrip. To that end he endeavoured to sort out and locate the boundaries of the various old land claims. He had no authority to undertake the work of a land claims commissioner, and he lacked the necessary skills for the task. He was neither a lawyer nor an experienced administrator or Government official, and had simply been a surveyor, unqualified, for the New Zealand Company. He gave no notice of his intentions, conducted no public hearings, kept no minutes or records of his meetings, and gave no reasons for his decisions. Having considered at length the

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24. See Berghan to White, 25 September 1848, OLC 1/558–66, at p 16, where Berghan claimed Panakareao would not allow him to exercise his scrip; Panakareao to Grey, 20 June 1847, OLC 1/617–23, p 62, where Panakareao supported Thomas Phillips's claim to land but not scrip; and similarly, apparently, for Flavell: see Flavell to White, 20 September 1849, OLC 1/850, pp 13–15.



substantial number of documents relating to his activities, we would describe his actions as consistently high-handed.

Nevertheless, the Government tacitly acquiesced in his proceedings. As a first step, the resident magistrate considered the lands at Mangonui township. He examined the old land claims, purported to purchase from Panakareao a small area not covered by them, added a washing-up clause to the deed to acquire any other 'unsold' land in the area, recovered by that means several times the area he had purchased from Panakareao, then recommended that the Governor issue Crown grants to various Europeans. This the Governor did.

Having thus acquired Mangonui, the resident magistrate then assumed the Government's right to the Oruru lands, on account of scrip, and without any inquiry allocated farms to a number of Europeans, including himself. Only then did Panakareao raise questions – at the point when something happened on the ground. In response, the resident magistrate purported to buy the lands on behalf of the Government. There are no satisfactory documents to show that Panakareao agreed to a sale, but a purchase was eventually claimed, by a deed executed soon after Panakareao's death, in 1856.

Much the same was done in eastern Muriwhenua. Assuming the land was the Government's, the resident magistrate allocated a few areas to various individuals, but later, when possession was taken by certain settlers who were strangers to the land, Pororua objected. Panakareao was dead by then. Again, Maori reaction had followed not a paper transfer but an act of possession on the ground. The resident magistrate responded as he had done in Oruru, by having a purchase document completed.

These purchases and transactions are detailed in a later chapter. Each of the deeds has been justifiably criticised, and it is doubtful whether all or any of the lands in the deeds were meant to be sold in the European sense. What should be noted now, however, is the assumption that the pre-Treaty transactions had extinguished all Maori interests, that no Maori affirmation was needed under the Land Claims Ordinance, and that the Government was entitled to the scrip lands without any formal inquiry into the validity of the original transactions which constituted the root of any European title. In that respect, the resident magistrate did not see his eventual purchase of the land as an admission that Maori were still the owners. Each purchase was for him merely an act of appeasement, and the prices paid reflect that that view.

#### **4.11 THE INCOMPLETE GRANTS AND THE ADJUSTMENTS OF COMMISSIONER BELL**

Crown grants  
were insufficiently  
particular

A further source of later confusion was that the Crown grants that followed Godfrey's inquiry were never properly completed. In each of the cases that Godfrey heard, he assessed the claimant's land entitlement in terms of the

ordinance and recommended to the Governor a grant for that amount from out of the claim area. In some cases the Governor increased the claimant's entitlement, purporting to exercise a discretion he may not really have had, then he issued a Crown grant. It was not the sort of grant that would satisfy a modern land registrar, however. It said, effectively, that the grantee was entitled to a certain number of acres from somewhere within an unsurveyed and vaguely described piece of territory, the description being simply that given in the original deed. It was difficult enough to locate the boundaries of the original transaction, but, even if they could be ascertained, it was impossible to know which part of the area was the purchaser's and which part was the Government's.

With good reason, many complained that the Crown grants were not proper grants at all, and were not worth the paper they were written on. There was a further concern that Maori were presuming the right to occupy any lands not in the actual possession of Europeans, as though the Maori concerned still owned them. It was considered vital that the Government should assert its title. The result was that, much later, the Land Claims Settlement Act 1856 was enacted, providing for a further Land Claims Commissioner – Francis Dillon Bell, in this case – to define the original transactions by survey, and then to identify the purchasers' parts and the Government's surplus.

The defects led to Bell's inquiry

Bell's primary work in Muriwhenua was to settle and define by survey the settler's grant and the Government's surplus in those cases where grants had been made. This did not mean rehearing the case. In fact, Bell considered he should not do so. The assumption was that the native title had been extinguished by the grant, that no Maori needed to be heard thereafter, and that the issues before Bell were entirely between the Government and the European purchaser. The only role for Maori in this process was to assist in the identification of boundaries, if they wished to, though they were also allowed to be heard on the location and size of reserves.

There were some exceptions. There were six people whose claims near Mangonui or Oruru had still to be investigated because they had declined to take scrip. Bell was empowered to examine such outstanding cases, but felt he could assume that sales had been effected by the right people. He sought no evidence of the title of the 'sellers', yet title had been in dispute, and he did not inquire whether a sale was meant. It was argued before us, by reference to the general provisions in Part VI of the Land Claims Settlement Act, that Bell was obliged to protect Maori interests, and by inference would therefore have done so. Particular reference was made to section 38, that no lands were to be included in any grant where it was not proved to the commissioner's satisfaction that the native title was extinguished. We do not read that section, however, as obliging the commissioner to go beyond the face of the deed, and in no case did he go beyond the face of the deed in fact.

The outstanding claimants

Most especially, Bell did not investigate the claims of those who had taken scrip. He had no jurisdiction to do so. This is important to note, for in later

Scrip cases not done

inquiries it was assumed that Bell had finalised everything that Godfrey had left undone. It is clear that that was not so: section 15(2) of the Act prevented the Land Claims Commissioner from inquiring into those cases, the Government's mind by then being settled that the land had become the Government's.

Bell's operation

Bell's handling of the specific claims will be considered in chapters 7 and 8, along with the Government land purchases which fitted in with his programme. At this stage Bell's mode of operation should be examined. He was sitting on and off at Mangonui from 1857 to 1859. It is clear to us, from the record and from Professor Oliver's assessment of Bell's motives, that Bell entered upon his task with the political objective of recovering as much of the surplus land as he could, in the face of Maori occupations, and even although this would mean substantially increasing the grants to Europeans in order to obtain the settlers' cooperation. Conversely, the protection of Maori interests barely figured throughout Bell's operations.

Bell's survey arrangements

Although the Land Claims Settlement Act did not require survey of anything more than the grants, Bell devised and gazetted rules requiring grantees to survey the whole of their original claims. In return, they would receive substantial increases to their grants. This ensured that the Government not only secured the surplus, but recovered the maximum it could. Previously, grantees such as Matthews were happy that the surplus revert to Maori, since their own grants were limited. Where boundaries were uncertain, they had no cause to push their original claim boundaries to the limit, since only the Government would profit. Under Bell's scheme, however, the grantees received a bonus for every acre recovered for the Government. They thus had the incentive to extend the survey boundaries as far as possible. They also had preferred rights of purchase over the surplus that was recovered.

Moreover, as the claimants pointed out, Maori raised no objection to survey work being undertaken by the grantees since, in their view, they had a contract with the grantee. For the Government to intervene, and presume to effect a survey, would almost certainly have unleashed a protest. Indeed, in the one case where the Government did undertake the survey itself, with the Davis claim at Mangatete, there was a protest from Maori.

Bell felt impelled to adopt this course out of practical necessity. He summarised the position in a memorandum of 13 January 1857:

it has been laid down as a general rule that claimants should survey the external boundaries of their whole claim so that after laying off the quantity that they may be found entitled to, the surplus land may revert to the Crown without disputes – the supposition being, that while the Natives will give possession to a claimant and allow surveys to be made of all the land they originally sold him, they were likely to object to the Crown taking possession of any surplus land afterwards, if only the part to be granted to the claimant is surveyed by him.<sup>25</sup>

25. R P Boast, 'Surplus Lands: Policy-Making and Practice in the Nineteenth Century', June 1992 (doc F16), p 188; doc F11, p 25, doc J2, p 95

He was convinced, however, that the surplus had to be recovered, for otherwise it would 'practically, have reverted to the natives, and must at some time or other have been purchased again by the government'.<sup>26</sup> He added:

But when the claimants were told they would receive an allowance in acreage to the extent of 15 per cent on the area surveyed, it became in their interest to exert all their influence with the native sellers to give up the whole boundaries originally sold.<sup>27</sup>

Under the Act, lands could also be added onto the settler's grant, up to one sixth, for example, to provide for natural and practicable boundaries or other purposes. To encourage settlers to claim the full extent of the original purchases, as they saw it, Bell allowed the maximum additions in each case, together with a land allowance for survey charges. An illustration of how the survey incentive scheme applied is Matthews' survey of his Parapara claim, at 7317 acres (2961 ha). There, the scheme worked this way:

	<i>Acres</i>	<i>Acres</i>
Godfrey's recommendation based on value of goods x 3		306.5
FitzRoy's grant based upon executive discretion		800
Bell's adjustment:		
Original grant	800	
Add one-sixth allowance, under section 23	133	
Add 15 percent survey allowance on 7317, under section 44	1097	
Add fees allowance, under section 45	<u>66</u>	
Adjusted grant	2096	(848 ha)

William Puckey claimed on two blocks totalling 4036 acres. His awards were assessed as follows:

	<i>Acres</i>	<i>Acres</i>
Godfrey (as amended)		1296
FitzRoy's grant, based on discretion		2300
Bell's adjustment:		
Original grant	2300	
Add one-sixth allowance, under section 23	383	
Add 15 percent survey allowance on 4036, under section 44	605	
Add 15 percent survey allowance on 4036, under section 44	<u>58</u>	
Adjusted grant	3346	(1354 ha)

26. F D Bell, 'Land Claims Commission Report', AJHR, 1862, D-10, p 5

27. *Ibid*

Puckey was able to obviate the 2560-acre maximum since his claim related to two purchases. Ford, however, received 2627 acres in one block. In Southee's case, Godfrey's original recommendation of 1228 acres grew to 2070 acres.

It is arguable that the section 44 allowance for survey could apply only to the survey of the grant, not to the survey of the entire purchase, and that in this respect Bell's rules were *ultra vires*.

Bell concluded:

There is no doubt that the grant of liberal survey allowance had a very beneficial effect. If the Government had attempted to survey the claims themselves, the claimants would have had no interest in the whole exterior boundaries being got and would only have felt called upon to point out as much as was actually to be granted to them. The residue would practically have reverted to the natives and must at some time or other have been purchased again by the Government: and a large extent of territory must have remained, as it was before the passing of the Land Claims Acts, a *terra incognita*. But when the claimants were told they would receive an allowance in acreage to the extent of 15 per cent on the area surveyed it became their interest to exert all their influence with the native sellers to give up the whole boundaries originally sold. The result had been not only to produce a large surplus of land which, under the operation of the existing Acts, goes to the Crown; but to connect the claims together, and lay them down on a map. Under the arrangements which I directed to be adopted by the surveyors engaged in the survey of the claims, I was enabled, as the original boundaries of a great number of the claims were conterminous, to compile a plan of the whole country about the Bay of Islands and Mongonui [sic], showing the Government purchases as well as the Land Claims; and a connected map now exists of all that part of the Province of Auckland which lies between the Waikato River and the North Cape.<sup>28</sup>

When surveyed boundaries were cut and marked on the ground, the extent of the settler's award and the Government's surplus was apparent. In addition, as the settler's area was added to from out of the left-over land, which in the Maori view had reverted to them, it appears some Maori could see that the additional areas being allowed to the settlers were coming from out of the Maori portion.

This chapter having considered the way the pre-Treaty transactions were generally inquired into, and the roles, over time, of Godfrey, White, and Bell, the following chapter considers the more particular consequences in the districts affected.

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28. See AJHR, 1862, D-10, p 5

## CHAPTER 5

# RATIFICATION PROCESS AND SURPLUS LAND

*Immediately after my arrival at Kaitaia, all Nopera's tribes assembled there in considerable numbers; and in a public conference many violent and seditious speeches were made by Nopera [Panakareao] and other chiefs. In these harangues they declared . . . That the sales of land around Kaitaia, already made by Nopera and his party to individuals, should be acknowledged; but that any surplus lands, ie those the Government does not grant to the claimants, will be resumed by the chiefs who sold them.*

Report on the welcome to Commissioner Godfrey at Kaitaia, 1843

### 5.1 CHAPTER OUTLINE

This chapter considers the outcome of the inquiries conducted by Commissioner Godfrey in 1843, with the final adjustments as effected by Commissioner Bell between 1857 and 1859.<sup>1</sup> It concludes with an assessment of the issues as a whole, and of the Maori claim to the surplus lands, as introduced in the previous chapter. The description of the Government inquiry follows the course that Godfrey took: beginning in the east at Mangonui, then shifting to Kaitaia.

### 5.2 THE INQUIRY IN THE EASTERN DIVISION

The inquiry into those transactions east of Mangonui Harbour can be briefly reported on, for, as far as Maori were concerned, there was none. The eastern transactions were detailed in chapter 3. They were summarised in table B and depicted in figure 19. The claims not covered in Godfrey's inquiry are depicted in figure 27.

Panakareao  
rejects claims,  
prevents inquiry

A week or so after Godfrey arrived at Mangonui, on 6 January 1843, he was prevented from proceeding with his proposed inquiry by the likelihood of warfare. Panakareao attended the opening, sitting with 250 warriors 'to dispute and resist all the purchases . . . that were not derived from him'.<sup>2</sup> Pororua also

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1. The references to counsel's arguments and the research reports were given in the introductory footnotes to the previous two chapters.  
2. Godfrey to Colonial Secretary, 15 January 1843, BPP, vol 2, pp 125-126 (doc A21, app 17)

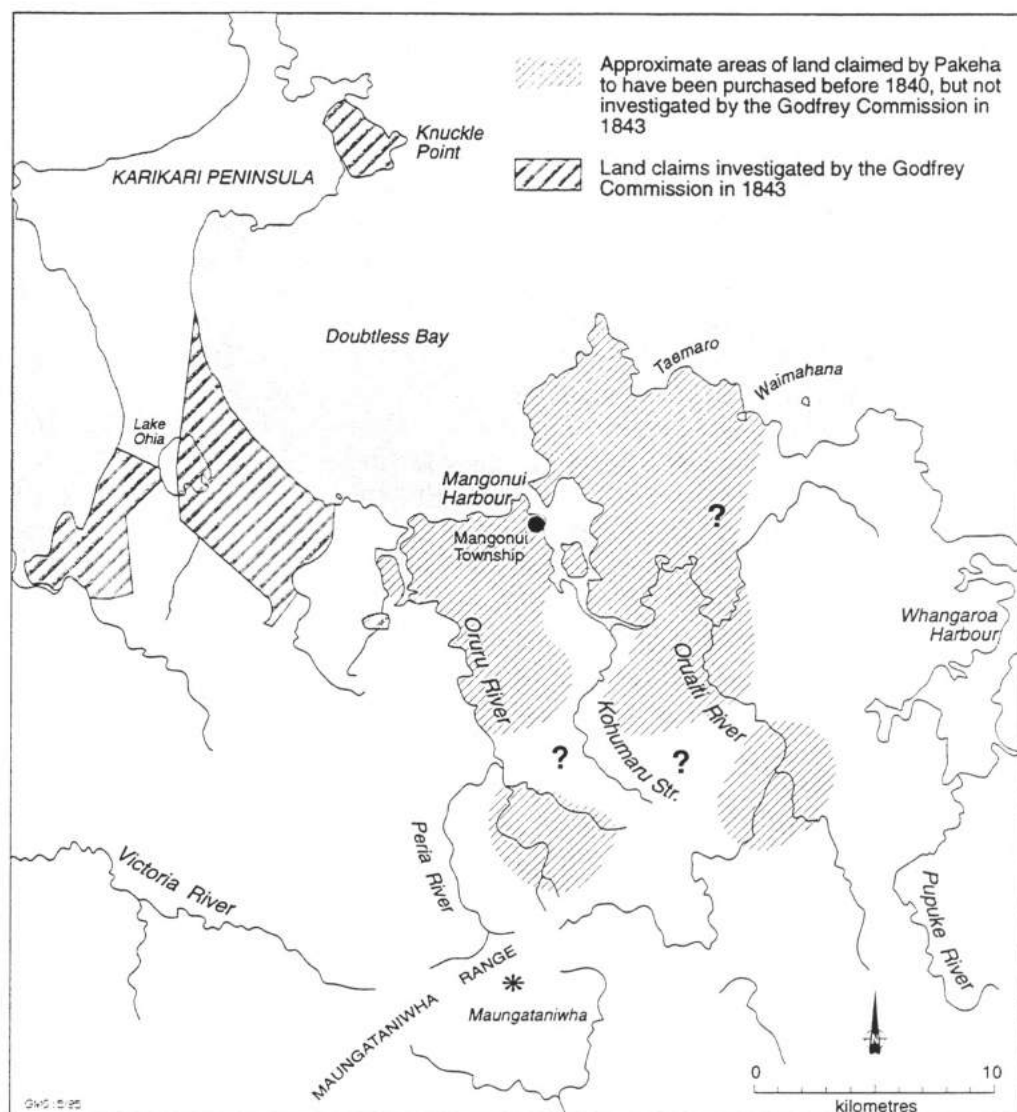


Figure 27: The investigation of old land claims in central and eastern Muriwhenua, 1843

established himself at Mangonui with a like-sized party of Nga Puhi from Whangaroa. Later, in accordance with the custom that disputes of this sort should not be fought in the heat of the moment, an appointment was made for a contest on the beach at Taipa. Only a few were killed there, however. In what must have been an act of extraordinary valour, the Reverend Henry Williams stood between the warring parties in the name of God, to bring the proceedings to a sudden end. Given the Maori aversion to fighting if the tohunga (priest) regarded the signs as unpropitious, and Panakareao's regard for the ministry, it is not surprising the battle was discontinued. Skirmishes occurred elsewhere in Oruru Valley, however, and about a dozen had been killed when, as was also usual in Maori affairs, two well-known rangatira from outside intervened as mediators: Tamati

Waka Nene and Mohi Tawhai. These Nga Puhi rangatira were linked to Pororua but had also aligned before with Panakareao.<sup>3</sup>

Although Europeans portrayed the context as a title dispute, as a question of who could sell and not whether a sale was desired, neither titles nor sales were known to Maori. The contest was really about authority: who had the authority to speak for the area and whom would the Government recognise?<sup>4</sup> It was only later, when Panakareao and Pororua had passed from the scene, that Maori pointed out that a question of title was also inherently involved, and that, moreover, 'ownership' could not have been settled when the transactions were made.

An issue of authority, not title

Knowing no Maori, Godfrey was dependent on the interpreter, H T Kemp. Kemp recorded Panakareao's message, though perhaps with his own cultural imprint.<sup>5</sup> Panakareao's message, as relayed by Commissioner Godfrey to the Colonial Secretary, is printed below, but we stress that, in our view, the issue was who had authority over the settlers in Mangonui, or under whose protection did they stay – that of Panakareao, or of Pororua? Godfrey reported:

Panakareao's opposition to the eastern transactions

Upon my opening the court and commencing the examination of certain sales of land made by Pororua (or Warekauri) and others, Nopera entered and declared as follows:

Firstly. He opposes all the purchases of land not made from himself at Mongonui.

Secondly. That he had a priority of right over all the land in the neighbourhood of Doubtless bay, and denies the right of any other party to sell any land there without his sanction and ratification, which, however, had not been obtained in any case except in Captain Butler's purchase, which, consequently, was the only one he would allow of.

Thirdly. That he considers the trifling property and cash given to him in 1840 by the Government for the lands in Doubtless Bay was only an earnest of what he was to receive for these lands; Pororua having received as much, although he had

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3. Before the Native Land Court in 1877, it was claimed the Nga Puhi leaders imposed a truce whereby Panakareao would take control from Mangonui to the west, while Pororua would take the division in the east. The evidence must be treated circumspectly, since it was given to support Nga Puhi land rights in the area, but it was admitted that Panakareao took the harbour itself and the creek where ships obtained their water. This was a major concession, for, throughout the north, the principal rangatira had been charging harbour dues and watering rights.
  4. The issue of Maori authority, or autonomy, is more particularly examined in the *Taranaki Report*: see Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996.
  5. During the Tribunal hearings, the Crown stressed that Henry Tacy Kemp had lived amongst Maori and spoke the language fluently. We are not inclined to accept the corollary that he understood the Maori dimension. It appears to us that he was very much the son of his father, James Kemp, whose mission was to convert Maori to another world-view. On our reading of H T Kemp, where his words were in Maori his thinking was still in English, and, like Maning, he judged Maori by English cultural criteria. It also has to be remembered that later Kemp held office as district land purchase commissioner. In the South Island, in 1848, he effected the largest purchase in New Zealand history, about one-third of the South Island. His disregard for the interests of the local Maori is detailed in the *Ngai Tahu Report 1991*: Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991.



disposed of his rights to and received payment from, the settlers. This purchase by the Government not having been completed according to his view of the matter, he thinks that the amount he has already received is only a fair equivalent for the feast given by him at Kaitaia upon the late Governor's arrival there [ie, Hobson's visit in June 1840].

Fourthly. He, Nopera, promises that the settlers at Mongonui shall remain unmolested and be permitted to occupy 'the spots they reside on, with any cultivation attached,' until the whole of the matter be arranged, and this license he considers an ample compensation to Pororua, &c, for any rights they may have had to the lands.

Fifthly. That he would not now relinquish his right over the lands either to the settlers or to the Government for any consideration that could be offered but that he will maintain his right to the lands *vi et armis* [by force of arms] . . .

Godfrey added:

I proposed divers modes of arranging their differences to these chiefs, but without effect. Nopera being the most determined in resistance, he considers that the offer (as he calls it) of the Government in 1840 to purchase his rights over the heads of Europeans already settled upon these lands was an absolute confirmation and admission of his title.

The two parties mustered upwards of 400 fighting men, were fully armed with abundance of ammunition, and their muskets loaded with ball cartridge; each party danced the war dance and was harangued by their respective chiefs, and one time it appeared very probable that they would have come to blows before me.<sup>6</sup>

The lack of inquiry  
in the east

In the result, Godfrey never conducted the necessary inquiry under the Land Claims Ordinance in respect of the eastern district; and, as shall be seen, neither Bell nor anyone else was to complete an inquiry for this area in the manner that the ordinance required. No Maori confirmed that the deeds were explained and understood. No Maori acknowledged that the specified quantum of goods had been allocated, or distributed to the right people, and no one ratified the description of boundaries or testified as to title.

It seems likely that occupation had been taken in some cases before deeds were formalised, and that there was a rush to document transactions in 1839. The claimants contended, but did not establish, that some of those deeds had been backdated. There were no surveys or plans, boundaries were imprecisely described and were incapable of survey, and estimates of areas were very approximate, or areas were not given at all.

Sales none the  
less assumed  
through scrip

In any event, were the transactions to be treated as land sales, it is obvious that the vendor's title was not settled and was disputed. Claims that Pororua had no title were still being made years afterwards as late as 1855.<sup>7</sup> Some disputed that Pororua had an over-right, claiming the Ngati Kahu ancestral title holders at

6. Godfrey to Colonial Secretary, 15 January 1843, BPP, vol 2, pp 125-126 (doc A21, app 17)

7. See B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850-1865', 14 April 1992 (doc F9), p 45

Mangonui were never subdued, but at least it is clear that their possessory rights were unaffected, for, along with casual residents from Ngati Kuri and Te Rarawa, they continued to reside and cultivate there. Nor had they been driven from their other main areas of settlement: Waiarau, Waimahana, Taemaro, or Motukahakaha. A claim by conquest would necessarily have been stretched.

Most Pakeha seem to have known this and to have considered that the political authority was in fact held by Panakareao. Thus George Clarke reported in 1845:

Some of the [Pakeha] settlers held their lands by direct purchase from Noble or from his father, and others who derived from Pororua, were so conscious of the defective character of their titles, derived exclusively from him and his party, that they unitedly offered a considerable payment to Noble, in presence of Messrs Matthews and Puckey, in 1840, as an inducement for him to ratify their purchases, and acknowledge their titles!<sup>8</sup>

It will be recalled from the previous chapter that, notwithstanding that to all appearances the title was in dispute, and notwithstanding that the transactions were not affirmed, the Governor requested Godfrey to assess the entitlements of the European claimants for the purposes of issuing scrip. This was done without hearing any Maori. The outcome is now described.

When Dieffenbach had visited Mangonui, three years earlier, he described about 30 Europeans living around the harbour, chiefly sawyers and storekeepers. About half of them were interested in land claims.<sup>9</sup> Many of these were the sawyers who had lived there since 1831, some of whom had married local Maori and saw themselves as permanent residents. They were not generally in a position to accept scrip and they maintained both their residences and their land claims. Commissioner Godfrey dealt with the claims of the various traders individually but without hearing Maori, and arranged scrip where he could.

Thomas Ryan claimed 2280 acres (923 ha) in five blocks, three in the eastern division, one in Mangonui township, and the largest in Oruru. His claims were considered even though the deeds were missing for the three eastern blocks. Based on the declared value of the goods, and the schedule, Godfrey recommended scrip for 514 acres (208 ha). However, Godfrey did not multiply the value of the goods by three as the ordinance required. Godfrey was punctilious in his observance of the law, and this was not a proceeding under the ordinance but was simply a fulfilment of the Governor's request. However, Governor FitzRoy made the multiplication and gave a grant for 1542 acres (624 ha). Ryan was married to a local Maori and so declined to take scrip, but later his interests in Oruru were assigned to Gilbert Mair to meet debts. Mair then took the scrip by assigning the several claims to the Government for 1500 acres in Oruru Valley.

The circumstances in Mangonui at the time

The particular scrip awards

8. Clarke to Stanley, 1 September 1845, BPP, vol 5, p 284

9. E Dieffenbach, *Travels in New Zealand*, London, John Murray, 1843 (reprinted Christchurch, Capper Press, 1974), vol 1, p 229

James Berghan, another sawyer turned settler, with a Maori wife of distinguished rank, claimed 4600 acres (1862 ha) out of seven transactions: four in the east, three in Mangonui township and three in Oruru. Commissioner Godfrey proposed 438 acres (177 ha) scrip, which Governor FitzRoy increased to 1146 acres (464 ha), but it was not accepted. Later the matter went to Commissioner Bell, who awarded 1862 acres (754 ha). Berghan took that land in four places, and the Government kept all that was left over, at Oruaiti, Kohekohe (Cooper's Beach) and Taipa.

In a similar series of transactions, Stephen Wrathall claimed 9800 acres (3966 ha) from purchases in the east and at Oruru. Based on the value of the goods, Godfrey recommended scrip for 242 acres (98 ha), which Governor FitzRoy increased to 640 acres (259 ha). Wrathall accepted the scrip but remained living with his family near Taipa, and later he bought scrip land there. The Government assumed the right to the whole of Wrathall's claims.

George Thomas and Thomas Phillips claimed 3750 acres (1518 ha) in seven transactions in the east and at Oruru. Commissioner Godfrey recommended 279 acres (133 ha) scrip, which Governor FitzRoy increased to 757 acres (306 ha). Under pressure from Maori, the claimants refused this scrip offer. Later Commissioner Bell authorised grants to their half-caste children for 1288 acres (521 ha) taken in the east, with the Government retaining the balance.

Captain William Butler claimed 3640 acres (1473 ha) in two purchases. Commissioner Godfrey recommended scrip for 1054 acres (427 ha), which the Governor approved and Butler accepted. The Government assumed the claim areas. Butler remained, however, on land previously claimed by Ryan and known as Ryan's Point (or Butler Point today).

Clement Partridge and Hibernia Smyth appear to have been speculators who arrived in 1839. They claimed 8000 acres (3238 ha) in six transactions in the eastern district. Commissioner Godfrey recommended scrip for 448 acres (181 ha), which Governor FitzRoy upgraded to 1310 acres (530 ha). This was accepted, the Government then assuming the right to their original claim areas.

William Murphy sought 800 acres (324 ha) at Oparera near Oruru. At that time he was the only trader to have obtained his interests through Panakareao, and he went to Kaitaia to have his claim approved before him and Godfrey. Based on the value of the goods, Godfrey recommended a grant to Murphy of 303 acres (123 ha), but subsequently he took scrip in exchange.

John Ryder, a carpenter for the Church Missionary Society, claimed 200 acres (81 ha) near Taipa at the foot of Oruru Valley, by a deed with Panakareao and others. He failed to appear before Commissioner Godfrey, who therefore recommended no grant. Ryder wrote to the Governor, who offered 200 acres scrip, which was not taken up. Much later, Commissioner Bell assessed Ryder's entitlement at 120 acres (49 ha) and he received a grant for that amount, with a surplus of 167 acres (68 ha) passing to the Government.

5.3 THE INQUIRY IN THE CENTRAL DIVISION

5.3.1 The inquiry generally

The transactions in the central division, extending from Mangatete to Mangonui, were summarised in table C in chapter 3 and depicted in figure 22(a), (b), and (c), covering the Mangonui township, Oruru Valley, and the Karikari Peninsula respectively. Here again Commissioner Godfrey's inquiry can be dealt with briefly, for once more, as far as Maori were concerned, there was no inquiry into the transactions at Mangonui or Oruru owing to the dispute between Panakareao and Pororua.

No inquiry was made of Mangonui and Oruru transactions

Karikari was outside the dispute, however. The Ngati Kahu control of that part of Doubtless Bay had never been affected. There the people were in four major settlements: on the northern end of the peninsula at Parakerake or Whatuwhiwhi, and on the south-eastern base at Raramata (also known as Aurere), and at Mangatete on the south-western side where Colenso described a small village in 1839.

Karikari

Oruru Valley was a potentially productive Maori agricultural district. The population there had declined but in 1840 Dieffenbach had noted:

Oruru

I was agreeably surprised to see the native plantations at Oruru. In neatness they exceed everything that would be done by Europeans with similar means; but strange to say, the natives had preferred the steep sides of a hill to the rich alluvium of the valley.<sup>10</sup>

There were only three claims heard in the central division as a result (see fig 27). James Davis, son of the missionary Richard Davis and brother-in-law of both Joseph Matthews and William Puckey of the Kaitaia mission, claimed the south-western base of the peninsula known as Mangatete. Joseph Matthews claimed the south-eastern segment, which took in three Maori blocks: Raramata, Parapara, and Te Mata. On the peninsula, the trader Walter Brodie claimed Kauhoehoe block, named Knuckle Point by Captain Cook. This appears to be the only transaction in Muriwhenua that was not effected under the aegis of either Panakareao or Pororua.

Only three claims heard in central division

The three claims were dealt with when Commissioner Godfrey sat at Kaitaia after closing the Mangonui hearings. There, Godfrey was sitting under the watchful eye of Panakareao. We will consider each claim briefly, the examination of them being more particularly detailed in Professor Stokes's background report.<sup>11</sup> We will then consider the award of scrip for land in the centre.

10. Ibid, p 226

11. Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc p2), ch 17



Whatuwhiwi School on Karikari Peninsula early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (F10685 $\frac{1}{4}$ ).

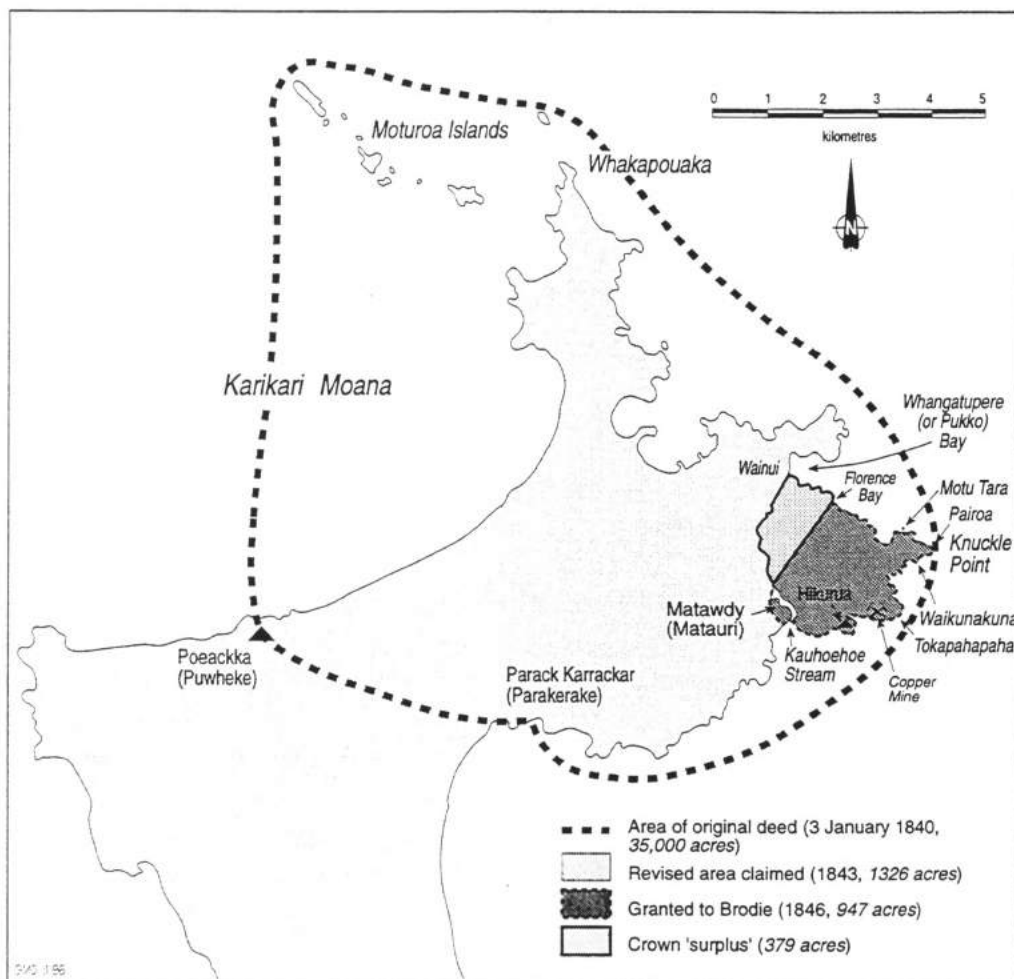


Figure 28: Kauhoehoe, Karikari; award to Brodie and Government surplus

**5.3.2 Kauhoehoe (Knuckle Point)**

The Kauhoehoe (Knuckle Point) transaction is depicted in figure 28. Initially, Brodie’s deed purported to acquire, for an assortment of guns, powder, blankets, clothes, and tobacco, the whole northern section of Karikari, about 35,000 acres (14,165 ha). More realism was evident when this was crossed out in the deed and replaced with an alternative area, said to be 1200 acres and surveyed later at 1326 acres (537 ha). Brodie himself claimed that this reduction had been forced on him by Maori, who would not otherwise have affirmed the transaction before the land commissioners. That makes sense, for it transpired that Brodie was not a regular settler intending to farm the land and that he wished only to work a coppermine in the reduced area.

Brodie's claim to Kauhoehoe

Two Maori attended to support the reduced claim and there was no objection from Panakareao. Based upon the assessed value of the goods and the scale in the Land Claims Ordinance, Godfrey recommended a grant to Brodie of 567 acres. The Government retained 759 acres as surplus. Three years later, Brodie, having

successfully claimed 380 acres in the Bay of Islands, had that area added to his Kauhoehoe award in lieu, thus taking 947 acres there and reducing the Government's portion.

### 5.3.3 Mangatete

Davis's claim to  
Mangatete

Although James Davis's deed was not signed by Panakareao, it was more important to state – and it was so claimed – that the transaction had Panakareao's approval. The area, according to the claim, was 4000 to 5000 acres but Davis claimed only 1000 acres (405 ha). Davis had paid £40 in cash, entitling him, at the scale rate for the year 1837, to 320 acres (130 ha). That amount was recommended.

Sixteen years later, at Bell's direction, the whole of the original transaction area was surveyed at 4880 acres (1975 ha). Bell then decided to increase the grant to Davis to 466 acres (189 ha) and the Government took the surplus of 4414 acres (1786 ha) (see fig 29). There is a long record of Maori protests over the survey and the Government's claim to the surplus. The implication is that the balance area that Davis did not claim for himself was meant to be kept for Maori. The final outcome is related to certain Government purchases that were going on at the same time, and accordingly we deal with this matter more fully later, in chapter 7.

It should be noted for the moment that the Maori village of Mangatete was in this area, across the river from Davis's land. Maori appear to have taken an active interest in the adjoining properties.

### 5.3.4 Raramata, Parapara, and Te Mata

Matthews' claim  
and the Raramata  
reserve

A feature of Joseph Matthews' transactions was the assumption that Maori would remain in occupation, that they would continue to have an interest, and that their interests would somehow be protected by the arrangement, presumably because Matthews as title holder could prevent an alienation. There was nothing unusual in this. The missionaries were later to claim that much of the land was purchased to protect Maori interests, and they referred to a large number of Bay of Islands transactions where the resultant trust for the benefit of Maori was clear. Matthews may have been aware of this but Puckey, who appears to have written the deed, may not have known how to give it legal effect. This was apparent not only at Raramata, but also at Otatarau, Kaitaia, as will be seen later.

When the Raramata-Parapara claim came before Commissioner Godfrey, Panakareao stated explicitly:

Mr Matthews has but a small portion of Raramata – the remainder of that place belongs to the natives still.<sup>12</sup>

12. Papers supporting T Walzl, 'Pre-Treaty Muriwhenua' (doc D5(d)), vol 4, p 975

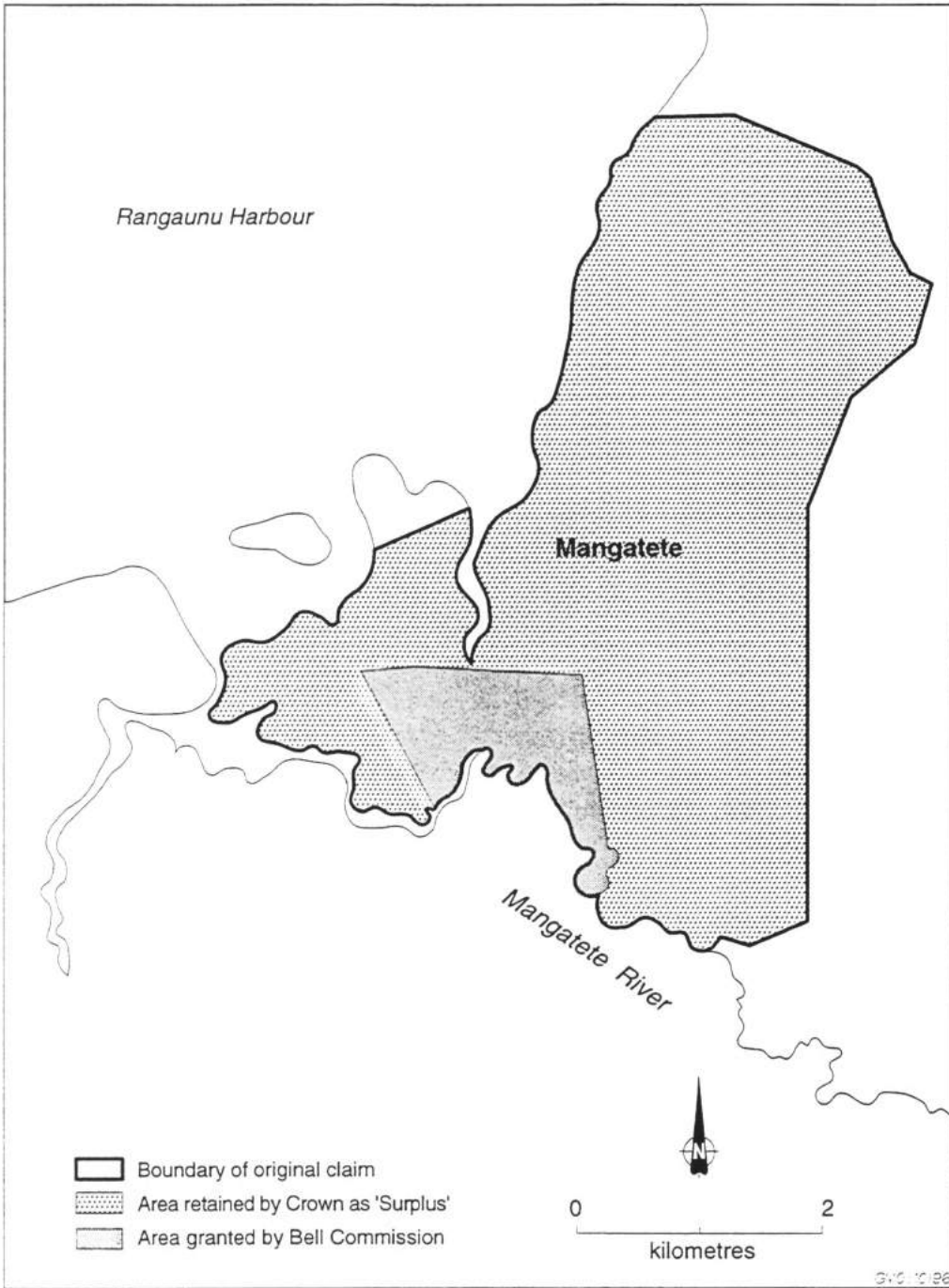


Figure 29: Mangatete; award to Davis and Government surplus

Godfrey noted that, on that part of the land, Matthews was to take only a small piece on which he had a cottage. The area concerned is shown in figure 30.

Based upon the goods – tobacco, blankets, and US\$100, valued in total at £60 – Commissioner Godfrey recommended a grant to Matthews of 306 acres (124



ha). Governor FitzRoy, accepting Matthews' personal appeal, increased the grant to 800 acres (324 ha).

Again, we revisit this matter in more detail in chapter 7, relating to Government purchases, but for the moment we note that, 16 years later, a survey showed the whole area to be 7317 acres (2961 ha). Matthews then appeared before Commissioner Bell and asked:

- (a) That Raramata block be reserved for Maori 'in performance of my promises'.<sup>13</sup> He described this block as including the whole of that area from the Aurere or Raramata stream to Te Pikinga (as shown on figure 30), an area of 2967 acres (1201 ha).
- (b) That a sacred hill, Pararake, be also reserved for Maori according to their requests.
- (c) That part of his entitlement be passed to William Clarke, surveyor, for survey costs.

Commissioner Bell, allowing for survey and other costs, recalculated Matthews' entitlement at 1748 acres (707 ha). Part, 659 acres (267 ha), was awarded to Clarke, as shown in figure 30. The balance, 1089 acres (441 ha), was awarded to Matthews in two severances, as also shown in figure 30. The smaller severance to the south provided a share, about 177 acres, in the valuable timber country of the Tapuirau bush. The commissioner reduced the Maori interest in Raramata from 2967 acres (1021 ha) to 340 acres (138 ha), cut out as Okokori native reserve, but gave no grounds for so doing. Pararake was not reserved; it was used for a trig station and later as a quarry. The whole of the land not awarded as above, or 5229 acres (2238 ha), was retained by the Government as surplus.<sup>14</sup>

This startling situation illustrates Bell's assumption that the transactions had extinguished all Maori interests. Although Maori in fact continued in occupation of Raramata, and although the European party attested to the intention that Raramata be reserved for them, it was still assumed that Maori interests had been extinguished through the intervention of an uncustomary instrument, so that, if Maori were to receive any part of the block at all, it would be by grace and favour only, no matter what promises were made.

There is a long record of petitions over these arrangements also, relating to the failure to secure the proper reserve and the Government's claim to the surplus. As mentioned, they are considered in a later chapter.

### 5-3-5 Oruru-Mangonui

Oruru-Mangonui transactions, including Ford's trust, are not heard; scrip given

With one exception, the remaining transactions, in Oruru, Taipa, and Mangonui, were not investigated, except for the purposes of awarding scrip. Most of the affected Europeans had claims as well in the eastern sector. The commissioner

13. OLC 1/328 (doc D12(a)), p 44

14. See OLC 1/328, (doc D12(a)), p 49

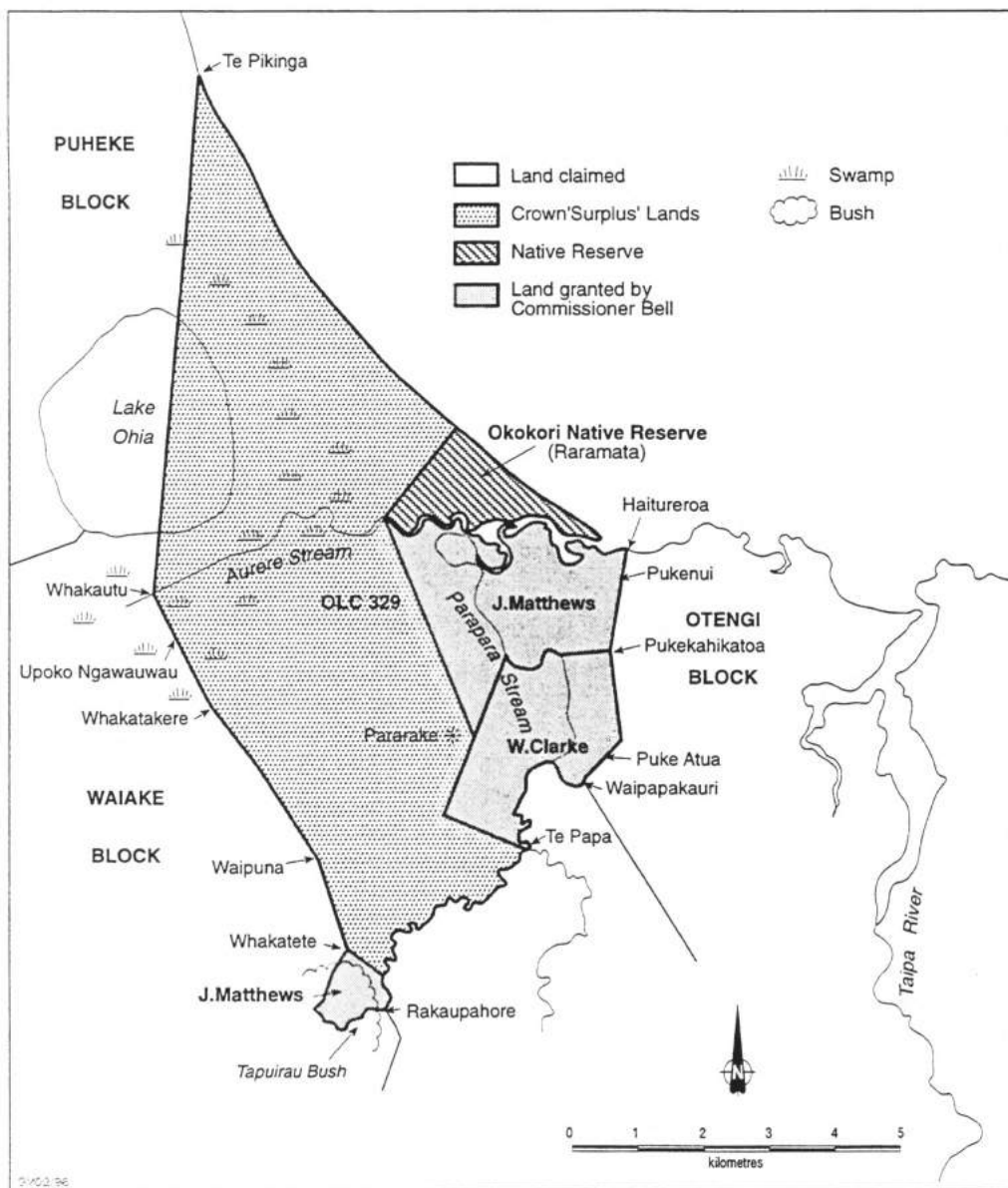


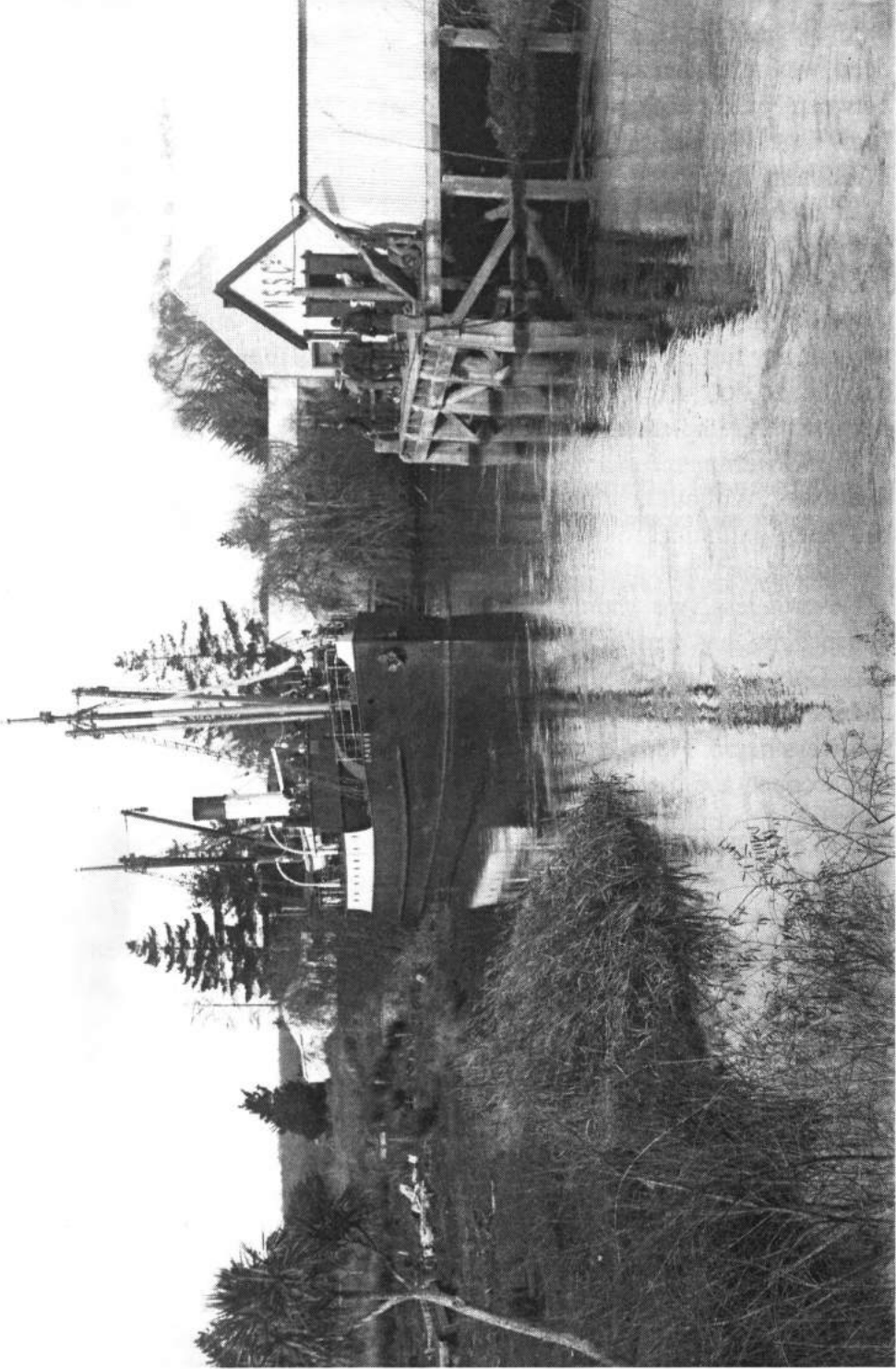
Figure 30: Raramata, Parapara, Te Mata; award to Matthews and Clarke and Government surplus

simply added to the eastern sector lands the value of the goods said to have been given for lands in the centre, and calculated scrip entitlements on the total value. Those who did not also have claims elsewhere were offered scrip according to the value of the goods given for the central land.

The most significant claim was that of Dr Ford. Again, since matters relating to this claim were not finalised until much later, and then in association with a Government purchase programme, the final outcome is considered in chapter 7. For the moment, it is recalled that Dr Ford was a medical officer for the Church Missionary Society in whom Panakareao reposed considerable faith. The



The widening of the Awanui River. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G10650 $\frac{1}{4}$ ).



The *Apanui* on the Awanui River before the dock of the Northern Steam Ship Company. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G4930 $\frac{1}{2}$ ).

evidence is that 20,000 acres was entrusted to Ford, as a place for him, and to hold the land for local Maori according to Panakareao's allocations. Later, the deed was amended to define Ford's share at 5000 acres. Since the dispute between Panakareao and Pororua extended to Oruru, Godfrey could not formally hear Ford's claim and, furthermore, Ford had recently left the Church Missionary Society.

In order to assess his scrip entitlements, however, Godfrey heard Ford in private, in the Bay of Islands. Maori were not involved. Based on the value of the goods delivered, Ford was awarded scrip for 1725 acres, which he accepted. The Government presumed to own Ford's land, as a result, but it presumed to hold, without any further inquiry, not just the 5000 acres (2024 ha) that Ford claimed, but the 20,000 acres (8094 ha) of the original transaction. There was no suggestion of implementing the trust.

The Government assumed the right to all the Oruru–Mangonui land in the same way. Without hearing any Maori, it simply assumed that Maori interests had been extinguished over the whole of the lands which the Government considered had been affected by the pre-Treaty transactions.

Nevertheless, we should not draw too sharp a distinction between the transactions that were investigated and those that were not. On delving deeper into Commissioner Godfrey's proceedings at Kaitaia, we consider Maori understandings of the transactions were not inquired into even for those cases that were heard. Maori expectations at the time of the inquiry were not brought into account, and the perception that Maori affirmed the transactions was merely a matter of form, in our view.

## 5.4 THE INQUIRY IN THE WESTERN DIVISION

### 5.4.1 The Western scene at 1843

Conditions in the  
west; joint  
occupations  
continue

The western division, which included Ahipara, Kaitaia, and Awanui, supported the most numerous Maori population in Muriwhenua at this time. The few Europeans there were nearly all connected to the church. They claimed land rights over the whole of the flats from Awanui to Kaitaia. There were Maori settlements in the valley south and east of Ahipara and Kaitaia, and also in the north around Awanui and Mangatete. In addition, however, Maori were also living on the same lands that were claimed by Europeans, from the mission station at Kaitaia to Henry Southee's farm at Awanui.

From his visit in 1840, Dieffenbach has left a description of the area at the time Godfrey conducted his inquiry. In those days entry was by the Awanui River, which was navigable for some distance at high tide, and provided access to the Kaitaia district from Rangaunu Harbour via 'an open though an intricate

channel for moderate-sized vessels'<sup>15</sup> (fig 31). Smaller craft were needed to follow the serpentine course of the river itself. Dieffenbach described the landscape on a trip up the river from Rangaunu Harbour:

The higher we went, the more agreeable was the scene. On the shores were native settlements, with long seines hanging out to dry, and many natives at work mending canoes and their fishing apparatus, for the season is approaching when the shark is caught in great numbers. Here and there fields of potatoes, kumeras, melons, and pumpkins, neatly fenced in, and kept extremely clean, show all the vigour of vegetation for which New Zealand is so remarkable.

Further upstream, Southee's farm was reached:

The maize, growing ten or twelve feet high, and the fields of yellow wheat, bowing under the weight of the grain, showed what this land is capable of producing. Cattle were grazing about, and the well-stocked farm-yard bore testimony to an industry such as is very rarely met with amongst the numerous settlers of all classes who for several years have had almost the whole of the land partitioned amongst themselves, as the generality of them have bought the land for the purpose of speculation, instead of cultivation.

Mr Southee has about 300 natives around him in his immediate neighbourhood, who cultivate bits of land interspersed with his own, and who, for cheap wages, work for him in various branches of husbandry, and thus procure for themselves those European commodities for which they have acquired a taste. He gives them articles to the value of £2 for every acre they clear.<sup>16</sup>

Dieffenbach recorded that by 1840 land access had been obtained. A 'bridle road' cut by a party of 50 Maori, some 25 kilometres through the Maungataniwha range, had connected the Kaitaia mission with Waimate and the Bay of Islands. Maori had also cut roads around a village he visited, where he observed that they reaped wheat and ploughed several acres of land.

### 5.4.2 Joint occupation

Dieffenbach also observed the joint occupation of land by Maori and Europeans and thought it augured well for Maori advancement in agricultural pursuits. Shared land-use fitted the Maori way, but a feature of some of the land deeds in this area was the extent to which the shared-use arrangements had been written into them, in particular the deeds for Awanui, Okiore, Ohotu, and Pukepoto blocks referred to in chapter 3.

Joint use and trusts

It is not clear how Maori understood the joint-use arrangements. If one looked not at the deed but to what was happening on the ground, the only apparent change was that a European was now sharing the land with them. From this it

15. Dieffenbach, vol 1, p 212

16. Ibid, pp 213-215

# MURIWHENUA LAND REPORT

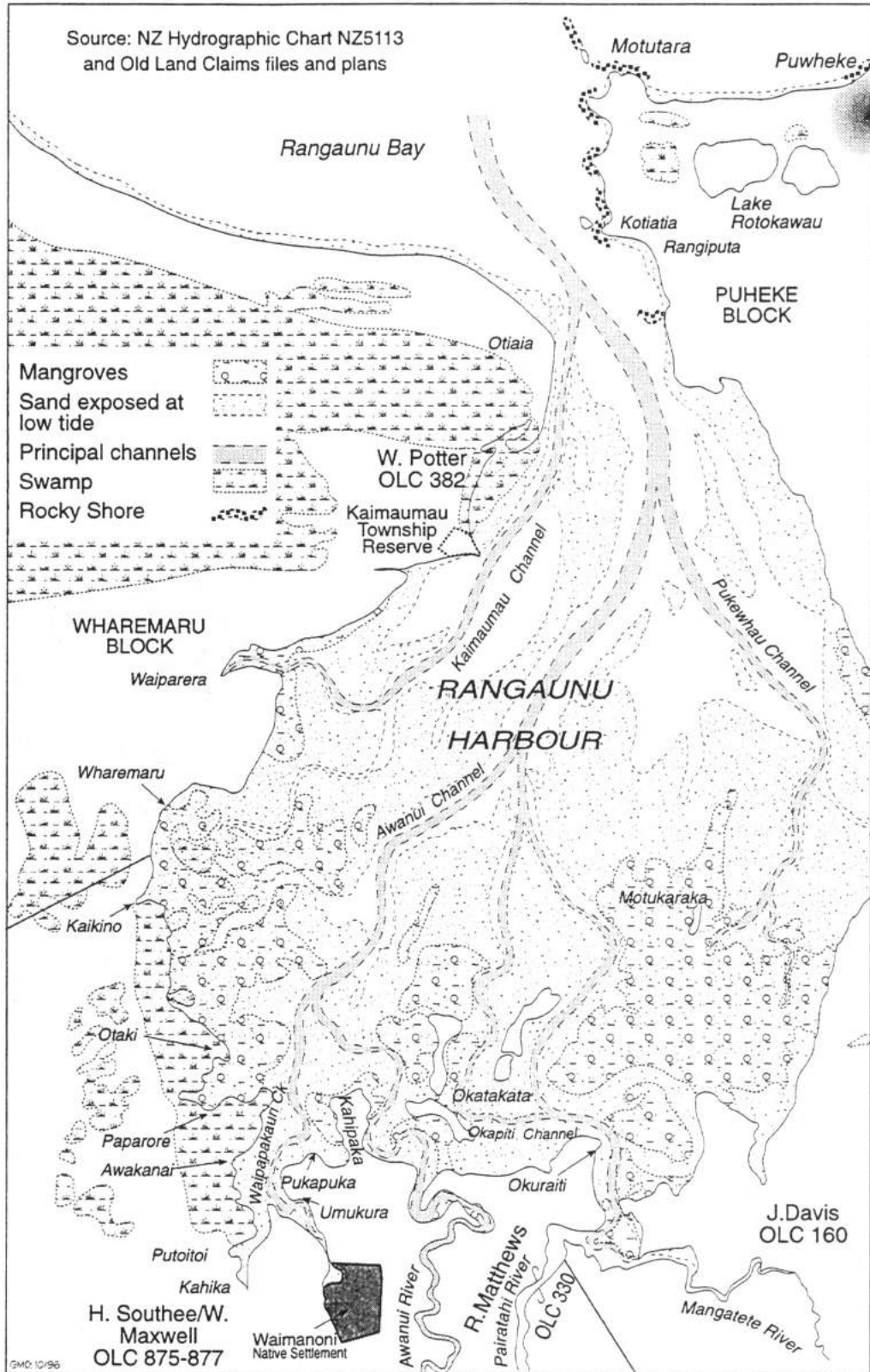


Figure 31: Rangaunu Harbour



might be assumed that the European had no larger interest than any individual of the tribe, though undoubtedly possessing high mana on account of certain skills. It is possible that the rangatira saw things differently, and relied upon promises by missionaries that they would hold the land to prevent factions within the tribe from entering into sale agreements with others. This may have been in Panakareao's mind when he advised Commissioner Godfrey, regarding the claims for Pukepoto and Ohotu:

The Natives are allowed to live on and cultivate upon this land but are prohibited from selling or alienating any part of it.<sup>17</sup>

Taking a quite different view, the Europeans maintained to Commissioner Godfrey that the deed permitted Maori use only in so far as the Europeans allowed it, and then only for their cultivations. Thus it was stated:

The term in the deed 'also for the use of the Natives' was inserted because I guaranteed to them the undisturbed possession of as much land as they required for cultivation.<sup>18</sup>

Subtly, the roles were changing. Where once, and as late as 1839, the missionaries acknowledged that they occupied on Maori sufferance, the inference was now that Maori were tenants at the will of Europeans. When the law changed with annexation, the perception of the arrangements with Maori changed too – at least amongst the Europeans.

In addition, Maori were occupying lands without joint-occupancy clauses in the associated deeds. For example, there were several homes and a Maori 'village' at the Church Missionary Society mission on the Kaitaia–Kerekere block. According to Joseph Matthews, a Government official recorded 'the many native plantations' on the society's ground in 1848, and there were 35 to 40 acres of wheat and potatoes there.<sup>19</sup> There is a further note that Maori were cultivating 'Rawiri's ground' on Joseph Matthews' farm as late as 1856, when the map on which figure 32 is based was prepared.

In any event, it must have seemed to Maori that they had good prospects for growth and development through having Europeans living among them. No doubt the Europeans saw matters the other way around, believing that Maori were sojourners on what was now European land, for the whole of the flats from Kaitaia to Awanui were held under deed by Europeans in only eight blocks, as shown in figure 33.

Dieffenbach was encouraged by Maori agricultural advances when he toured the district in 1840, and he was not pessimistic for their future on account of the large area under deeds. Assuming that the surplus lands would return to Maori, he wrote:

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17. Document D5(e), vol 5, p 1680

18. *Ibid.*, p 1679

19. Matthews to Church Missionary Society, 13 April 1848, CMS/CN/M18



MURIWHENUA LAND REPORT

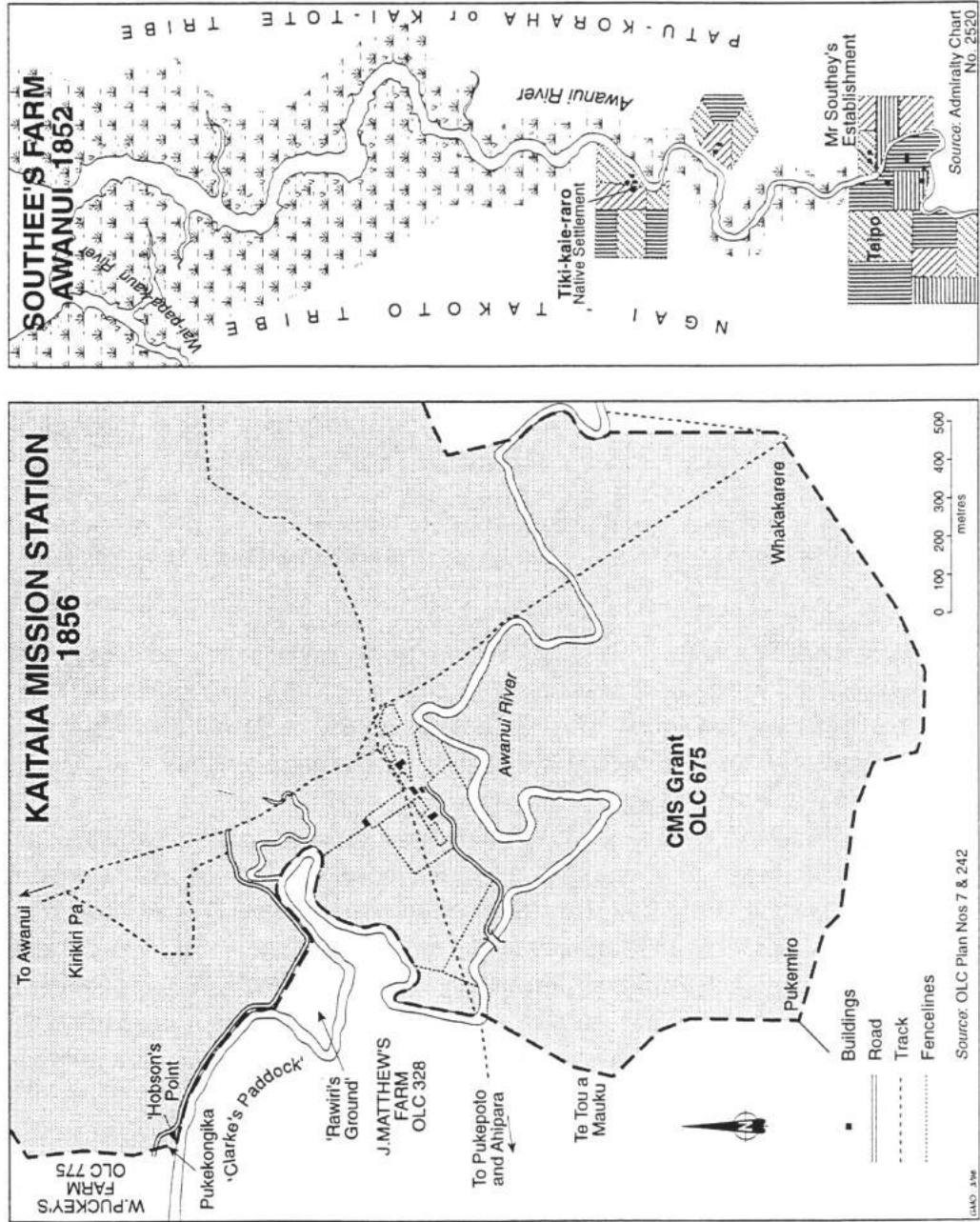


Figure 32: Joint occupations, Kaitaia, Awanui blocks

A great portion of the land has been purchased by a few private individuals; but if the intentions of Government, of not allowing more than 2,500 acres to any one individual is strictly carried into effect, a great part of these purchases will come back to the natives, and without injuring the interests of the latter, government will have no difficulty in acquiring a fine agricultural district.<sup>20</sup>

### 5.4.3 Additional payments

The evidence of second and third payments for some areas was likewise played down. It provided a possible clue that Maori did not regard the first transaction as conclusive and that they expected ongoing payments to be made. There seems to be little doubt that the leasing of land more closely approximated Maori cultural expectations than a sale.

### 5.4.4 Maori conditions to confirmation

While Dieffenbach assumed the surplus lands would return to Maori, others had not the same view, despite Lieutenant-Governor Hobson's statement at Waitangi that 'lands unjustly held will be returned'. It would have been apparent to the discerning, from the debate in Australia on the New Zealand Land Claims Act, that the surplus was to pass to the Government.

The expectation that the surplus lands would return

It is very likely that rumours that the Government would take the surplus reached New Zealand, and that Pakeha would have made that known to Maori. We can well imagine, for example, that the Reverend Joseph Matthews would have conveyed this view, expressing his concern to Panakareao that the Government might take part of the land that had been entrusted to the care of the missionaries, or the word could have passed to him from the Hokianga.

We cannot be sure what Maori would have made of such intelligence. So far they had no cause to be other than happy with the arrangements, the Europeans being simply conjoint occupiers of Maori land. None the less, it was consistent with Maori culture that the rumour of the Government's intention to take the surplus land was raised directly with Government officials at the first public opportunity.

After the aborted hearings at Mangonui in February 1843, Godfrey shifted his inquiries to Kaitaia. He reported, relying upon the interpretations of H T Kemp:

Panakareao's caveat in the east

Immediately after my arrival at Kaitaia, all Nopera's tribes assembled there in considerable numbers; and in a public conference many violent and seditious speeches were made by Nopera and other chiefs.

In these harangues they declared—

1. That the sales of land around Kaitaia, already made by Nopera and his party to individuals, should be acknowledged; but that any surplus lands, ie those

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20. Dieffenbach, vol 1, p 221

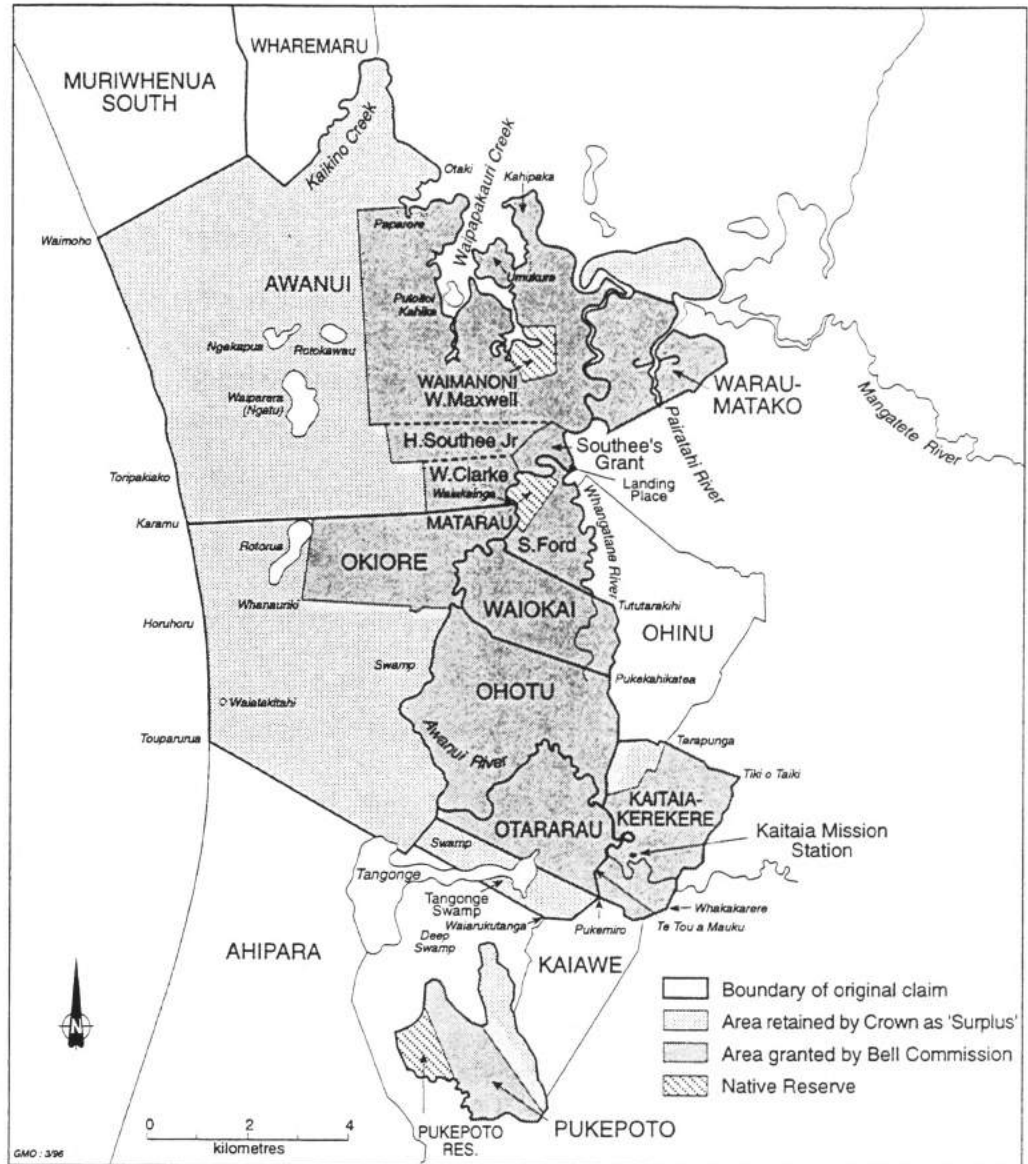


Figure 33: Pre-Treaty transactions, Kaitaia–Awanui

the Government does not grant to the claimants, will be resumed by the chiefs who sold them.

2. That they will sell no more land either to individuals or to the Government.
3. That the chiefs will exercise all their ancient rights and authority, of every description, as heretofore; and will not in future allow of any claims or interference on the part of the Government.<sup>21</sup>

Again, we would caution against undue reliance upon Kemp's summarised interpretation, bearing in mind that words like 'sales of land' had no Maori-

21. Godfrey to Colonial Secretary, 10 February 1843, Turton, *Epitome*, p B7

language equivalent. Even so, however, the declaration is extremely significant: it is as clear a statement as one could expect that the transactions were not affirmed if the effect was to allow the Government to take the 'surplus'. The Crown constantly urged in the Tribunal hearings that the pre-Treaty transaction was less important than the Maori affirmation of the transaction before the land commissioners. If that were so, what clearer condition to affirmation could there have been?

More particularly, we see the transactions as a whole as affirming the traditional Maori view that their contracts related to people, not property. They had 'purchased' Matthews and the other missionaries, and had provided land for them. They had not sold the land, but, according to their customs, had placed Pakeha on it. It was not their understanding of the contract that any part of the land that was not needed could pass to anyone else.

The view that land rights were personal and not assignable was not novel or peculiar, for it had pervaded other Pacific cultures for over a thousand years. It was not unknown to English law, either, that lands might be entailed.

This, then, was Panakareao's statement of contractual understanding. It also seems likely, however, that Matthews was of the same opinion. From then onward both Matthews and Panakareao acted as though any surplus lands would naturally stay with Maori. This appears to have been Matthews' expectation with his own block at Otatararau (or Tangonge), but we will return to that point later.

Panakareao's significant opening statement that any surplus lands would be resumed by the chiefs seems to have had no effect on the commissioner. The inquiry carried on, and the opening statement was not treated as restricting the affirmation of the transactions in any sense! This highlights a difficulty that continues to confront Maori to this day when bodies are established to hear Maori submissions, especially if the sittings are on marae. What is said in open debate on the marae or similar forum counts most for Maori, and all else is subservient to it. In official inquiries, however, the marae commentary is set aside and all that counts is the evidence in the 'hearings', where witnesses can be examined in the European manner. Customary evidence is thus disregarded. That, it appears to us, is what happened with Commissioner Godfrey 150 years ago. This Tribunal is well aware, from its own proceedings, how important messages are relayed on marae during the opening proceedings. Colenso recorded his view of the importance of the preceding marae debate for Maori:

Some of the New Zealanders were truly natural orators, and consequently possessed in their large assemblies great power and influence. This was mainly owing, next to their tenacious memories, to their proper selection from their copious expressive language; skilfully choosing the very word, sentence, theme, or natural image best fitted to make an impression on the lively, impulsive minds of their countrymen. Possessing a tenacious memory, the orator's knowledge of their traditions and myths, songs, proverbs, and fables, was ever to him an exhaustless mine of wealth. For the New Zealander, both speaker and hearer, never tired of

The Maori understanding of personal contracts

Panakareao's caveat is discounted by the commissioner

frequent repetition, if pregnant and pointed. All the people well knew the power of persuasion – particularly of that done in the open air – before the multitude. Hence, before anything of importance was undertaken, there were repeated large open-air meetings, free to all, where the tribe or confederates were brought into one way of thinking and acting by the sole power of the orator. Their auditories applauded and encouraged with their voice, in an orderly manner, as with us. Not unfrequently has the writer sat for hours (some twenty or thirty years ago) listening with admiration to skilled New Zealand speakers arousing or repressing the passions of their countrymen – scarcely deciding which to admire the most – their suitable fluent diction, their choice of natural images, their impassioned appeals, or their graceful action!<sup>22</sup>

Sadly, we have no record of the addresses that can be presumed to have been delivered on the marae on other important occasions, before transactions between Maori and European were entered into.

#### 5-4-5 The conduct of Godfrey's inquiry

The inquiry is  
mechanical

Godfrey's inquiry thus carried on in a methodical but mechanical way, missing the vital issues while concentrating on form. Naturally, Maori came forward to affirm the transactions. The word of Maori was their bond at that time and a failure to stand by promises would cause too much loss of mana. But it was their own word they were affirming none the less – that is, the promises as they saw them to be. If they affirmed that a settler was entitled to occupy certain land, for example, it did not follow they had sold it. Historian Philippa Wyatt argued that, considering the recorded responses of Maori witnesses, which followed a set formula, a picture emerges of a series of standard questions from the commissioner based upon a reading of the claim and the deed then before him, with such variations as the written material might require:

Is this your mark on the deed now shown to you?  
Was the deed read and explained to you before you signed?  
Did you sell the land stated in the deed to the claimant?  
Did you receive the goods stated in it?  
Did you receive any further payment?  
Did you have the right to sell this land?  
Have you sold it to any other?

And thus the formulaic Maori evidence as recorded for the claims before him:

That is my mark on the deed now shown to me. It was read and explained to me before I signed it, etc, etc.

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22. W Colenso, 'On the Maori Races of New Zealand', *Transactions and Proceedings of the New Zealand Institute*, no 1, 1868, pp 48–49

The Crown responded that such a peremptory approach could not be assumed. It could be that Maori had full licence in speaking and the commissioner merely recorded those matters that had to be proven. We doubt that that was so – except at the opening, the very part that was ignored. The minutes of the hearings do not match the tenor of the preceding open debate as recorded. Even were there free discussion in the hearing, however, the minutes indicate that the commissioner saw no need to minute anything other than the limited remarks he recorded. In this respect he was doing all that was necessary when the commissioners dealt with the land sales, from European to European, in New South Wales. We have no reason to doubt that Colonel Godfrey was acting in an honest, conscientious, and methodical manner. It appears to us none the less that he was marching to a drum rather than making a full assessment of everything that might be relevant. The main trouble, however, as we said earlier, was the assumption that Maori had sold the land, or must be deemed to have done so. The customary comprehension of transactions was simply not considered.

#### 5.4.6 Bell's inquiry and Maori reserves; Tangonge, Okiore, Awanui

Bell's inquiry, 16 years later, altered the contractual relationships. Godfrey had simply given the area to which the European claimant was entitled, repeating (except in Puckey's two cases) such joint occupancy or other special clauses as may have been in the deeds. Bell, however, not only increased the Europeans' share substantially, but he gave unconditional grants, severing such ancillary obligations as may still have been apparent.

In return, he provided Maori with a few, small reserves, but with such parsimony that the effect was not to benefit Maori, but to limit them; to remove their claims to a continuing right of occupation of the surplus lands.

It should first be noted that the need for reserves would not have been apparent to Maori for some time, in our view. Irrespective of Godfrey's determinations on paper, on the ground the land was used jointly as before, and there was nothing to show that any surplus land existed or had passed to anyone else. Maori remained part of the missionary community at Kaitaia, or, depending on the point of view, the missionaries remained part of theirs.

Philippa Wyatt described the position some four years later. Panakareao stood by the missionaries in 1847, when Governor Grey sought to discredit them on account of their purchases.<sup>23</sup> Joseph Matthews testified in 1848 that Kaitaia Maori:

have a village and plantation [on the mission station] . . . [and] have lived with us in harmony for 14 years. . . . The two chiefs whom Noble [Panakareao] first deputed to guard our settlement are living inside my fence [ie, on Otatararau,

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23. See P. Wyatt, 'The "Sale" of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions', 16 June 1992 (doc F17), pp 43-47

adjoining the mission station] and have done so ever since our station was formed.<sup>24</sup>

A subsequent survey of the land depicted 'Rawiri's ground'. Rawiri Tiro was one of the two rangatira whom Panakareao had assigned as guardians of the mission. The evidence of Robert Burrows to Commissioner Bell of 20 September 1859 shows that Maori were still occupying the land at that date.<sup>25</sup>

It should be noted, however, that Godfrey had seen the need for reserves. He had been operating under the Land Claims Ordinance Amendment 1842, which was later disallowed by the Imperial Government but which had specifically vested the pre-Treaty land in the Government. Thus, at the time, any part not awarded to the Europeans was automatically the Government's in terms of the law. Godfrey was thus concerned that there should be Maori reserves. As claimant counsel pointed out, when Godfrey had heard the Kaipara claims, in 1842,<sup>26</sup> he had reported that Maori had 'certainly never calculated the consequences of so entire an alienation of their territory', that they had been 'allowed and, frequently encouraged to remain upon the lands with an assured promise or understanding of never being molested' and that their 'cultivation and fishing and sacred grounds' had properly to be reserved to them. The assumption was that reserves would be made as a matter of course, from out of the sold land, by the surveyors who came later. Thus Godfrey's directions could be general, as in Puckey's case: that 'all cultivation or other grounds in the present occupation of the natives and any quantity judged to be required for their use by the Protector of Aborigines' should be reserved.

Bell, however, either allowed no reserves or made minimal ones. Thus, in Puckey's case, Maori received only 246 acres (100 ha), and there was no one to play the Protector of Aborigine's role.

Despite the continuing joint occupations, Bell severed the interests of Pakeha and Maori, providing secure Crown grants for the former and reserves for the latter. It may have made a difference that, by the time of Bell's operations, Panakareao was dead, for those who followed him may not have appreciated Panakareao's condition that the whole of the surplus was to return to them. They argued for reserves when they were entitled to the whole surplus, although it may be that that was their minimum position. It was clearly the most that Bell would allow.

Bell's reserves, or the lack of them, must now be mentioned because of subsequent complaints. Sometimes, however, the root causes of a complaint are clearer the further removed one is in time. The issues were, in this instance, whether the lands were ever sold, in the first instance, and whether it was ever agreed that the surplus could pass to the Government. Nevertheless, as the consequences of the Government's investigation became apparent to Maori,

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24. Joseph Matthews to Church Missionary Society, 13 April 1848, CMS/CN/M18

25. OLC 1/675 (doc D12(a)), p 24

26. See closing submissions of Williams and Powell (doc N1), vol 1, p 90

usually after about 1890, Maori complaints focused on particular incidences. This was not unnatural, since what the Government had done was never clear to Maori, and the complaints were often valid in themselves. The politics were also such that the most Maori could argue for was a minimal position. Still, they were symptomatic of a larger problem than the ones they gave vent to.

With regard to the particular reserves, we refer briefly to those below, although some will need to be revisited later, in more detail.

- (a) *Tangonge*: A significant complaint concerned Tangonge block, which, in our opinion, was part of Matthews' Otararau transaction. Just as Maori continued to occupy a part of Otararau adjoining the mission station, being 'Rawiri's ground' as earlier referred to, so also, it appears, Maori were in occupation of the Tangonge section of the Otararau land to the south. Maori have claimed that Matthews promised Tangonge to them, and cut off 685 acres (277 ha) for that purpose. The Government considered, however, that the land excised was Government surplus land and presumed to own it. The last seven Maori families, all otherwise landless, were not removed from that land until the 1960s, over a century after the transaction that gave rise to the problem. Tangonge will be dealt with further in a subsequent chapter, relating to the Government purchase programme.
- (b) *Okioire*: A further complaint concerned Ford's Okioire property. Unfortunately, Ford had long since left the area, and Panakareao had died, by the time Bell arrived. The Maori then there do not appear to have appreciated that most of the 8000 acre (3238 ha) block was meant to be held for them. They merely sought a reserve on the west coast. Bell does not appear to have been aware of the true circumstances either, however, as no reserve at all was allowed.
- (c) *Awanui*: Numerous Maori had lived with Henry Southee on the Awanui block, but Henry Southee too had died before Bell came. Most of his lands had passed to William Maxwell, who was opposed to Maori continuing to live in the area. None the less, in this instance 200 acres (81 ha) was given for what appears to have been a few hundred Maori. The differences should be noted, however: Maxwell received 4198 acres (1700 ha), Southee's estate 500 acres (202 ha), the surveyor 400 acres (162 ha) and the Government 8360 acres (3383 ha), while more than 300 Maori received 200 acres (81 ha). Despite the larger questions of whether there had been a sale or whether Maori were entitled to the surplus, the initial complaint was only that Bell had promised a further reserve in addition to the one mentioned, and this had not been allocated.

Again, these complaints are considered in more detail in a later chapter.

One area the land commissioners never allocated, however, was much prized by Maori at the time as a rich food resource, Lake Tangonge. The area is shown in figure 34. Here the complaint was that the natural resource was destroyed by



MURIWHENUA LAND REPORT

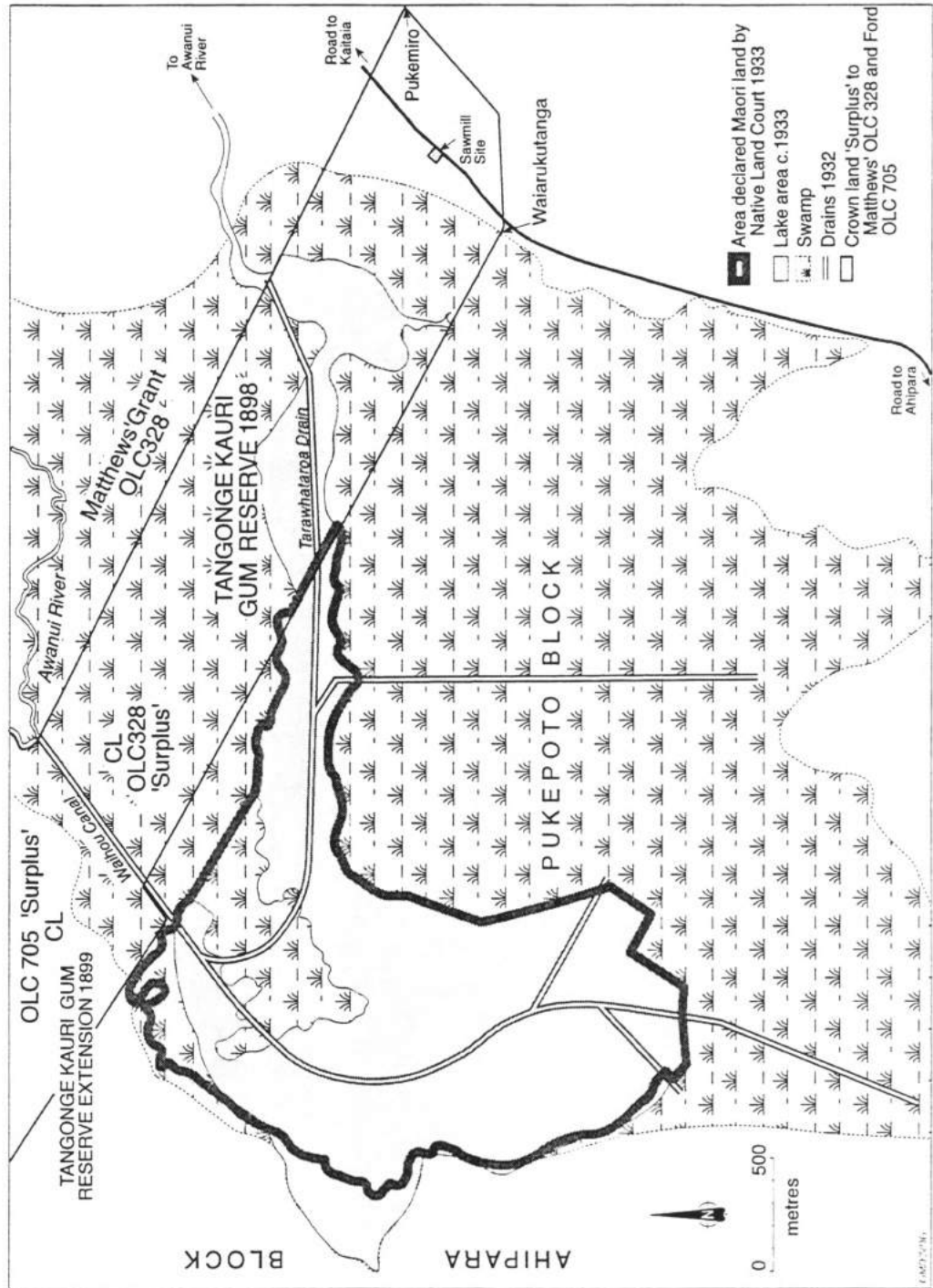


Figure 34: Lake Tangonge

draining the surrounding wetland. In 1933, the Native Land Court declared as Maori land the bed of Lake Tangonge, or such of it as then remained after the extensive drainage works. In 1970 it was vested in the Lake Tangonge Maori Incorporation for Te Rarawa and Aupouri.

#### **5.4.7 The outcome**

The outcome of Godfrey's inquiry in the western division, as adjusted 16 years later by Commissioner Bell, may be summarised as follows: after assessing the value of the goods paid – blankets, clothes, implements, and the like – against the scale, and allowing for survey and other costs, the total area affected, from Kaitaia to Awanui, was apportioned as follows:

16,199 acres (6556 ha) to six Europeans  
15,966 acres (6441 ha) surplus for the Government  
446 acres (180 ha) for several hundred Maori

The areas are illustrated in figure 33.

### **5.5 THE INQUIRY IN THE NORTHERN PENINSULA**

The distinctive feature of Godfrey's inquiry in the northern peninsula is that virtually no Europeans were living there when the inquiry was made. Maori were living mainly around Parengarenga and Houhora Harbours. Only two blocks were concerned, Muriwhenua Peninsula, some 65,000 acres (26,306 ha) (although the size was not known at the time); and Kaimaumau, some 1200 acres (485 ha) claimed by Thomas Granville.

#### **5.5.1 Kaimaumau**

William Potter claimed that Thomas Granville had acquired 1200 acres at Kaimaumau in exchange for gunpowder, tobacco, blankets, spades, and hoes and had since transferred the property to him. Based on the value of the goods, Potter was declared to be entitled to 225 acres (91 ha), which Potter then assigned to William Macky.

However, the size of the full block was never settled. In 1861 Resident Magistrate White considered that the given boundaries circumscribed no more than 50 acres (20 ha). Commissioner Bell then determined that the area of 50 acres should be reserved for a township. Macky was paid out in land scrip, the Government assumed the claim rights, and the land was included in the Government's purchase of the 13,555 acre Wharemaru block (5486 ha). The possible location of Kaimaumau is shown in figure 35.



Figure 35: Possible location of the Kaimaumau claim

### 5.5.2 Muriwhenua Peninsula

When Commissioner Godfrey investigated Richard Taylor's claim, he ought to have been aware that transactions of this type, where lands were held in trust for Maori, were not unusual. In November 1840 the Church Missionary Society missionary and Chief Protector of Aborigines, George Clarke, submitted to Lieutenant-Governor Hobson a list of 17 Church Missionary Society deeds where the land was held 'for the Aborigines of New Zealand'.<sup>27</sup> As we have also seen, the elements of a trust could be inferred from the deeds, or from extrinsic evidence, for Oruru, Raramata, Mangatete, and Okiore.

As stated in chapter 3, Taylor claimed an area of uncertain size (now known to be about 65,000 acres), to be held for the local hapu, whom he referred to

27. Clarke to Hobson, 16 November 1840, IA 1/1841/135, NA Wellington (doc F1, sub-doc 1)

compendiously as Te Aupouri. He claimed the land for himself and his partners. It was uncertain whether Waikuku was included; the boundaries in the deeds suggested it was not.

Unfortunately, Taylor's old land claim file has long since been lost. A copy of the claim describes the land as:

formerly the abode of the Aupouri, a tribe which was conquered and expelled by the Rarawa. It was chiefly to give a home to the remnant of this tribe that I was induced to make the purchase, which intention is stated in my deed and at this time there are nearly 100 of the Aupouri residing upon it. . . . My intention, as expressed in the deed, is to give up to this tribe the greater portion retaining only sufficient to form an equivalent for the property invested.<sup>28</sup>

No record survives of the evidence given, or of the reasons for any decision. It is not known, for example, how the commissioner dealt with the problem that Taylor's transaction post-dated the proclamation of 14 January 1840, prohibiting further private purchases and declaring any after that date to be absolutely null and void.

The commissioner's report of 16 February 1843, following the Kaitaia hearing, shows that the claim was opposed by Maori from the area and that Maori parties were at loggerheads. After the hearings, however, according to Godfrey, Nga Takimoana had withdrawn his opposition when he found that his own family lands were not included. This appears to refer to Waikuku.

Again, it is not known what happened subsequently, except that, on 22 October 1844, Governor FitzRoy issued to the Reverend Richard Taylor a Crown grant of remarkable composition. It gave the area as 1704 acres (690 ha), which is presumably the size of Taylor's assessed entitlements based on the value of the goods, but it then described the land by the same boundaries as in the original deed, thus enclosing some 65,000 acres but excluding Waikuku. The trust to protect the land for the tribe was not provided for, however. Instead, these words were simply added at the end of the Crown grant:

Excepting any cultivation or other grounds required by the Aupouri Tribes, at the discretion of the Protector of Aborigines more particularly excepting Waikuku.<sup>29</sup>

Subsequently, however, Taylor sought to excise an area for himself. Of the 1704 acres, his two partners claimed half, or 426 acres (172 ha) each, which, by an arrangement with Resident Magistrate White, they took instead on the eastern shore of Mangonui Harbour. By a plan of 1852, Taylor delineated his half-share of 852 acres, but, adding 12 acres for roads, he took a total of 864 acres (350 ha). The land granted to him, as shown in figure 36, was called Kapowairua.

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28. Taylor to Colonial Secretary of New South Wales, 12 November 1840, Taylor MS/254, ATL

29. Taylor's Crown grant, 22 October 1844 (doc B15, sub-doc 4)

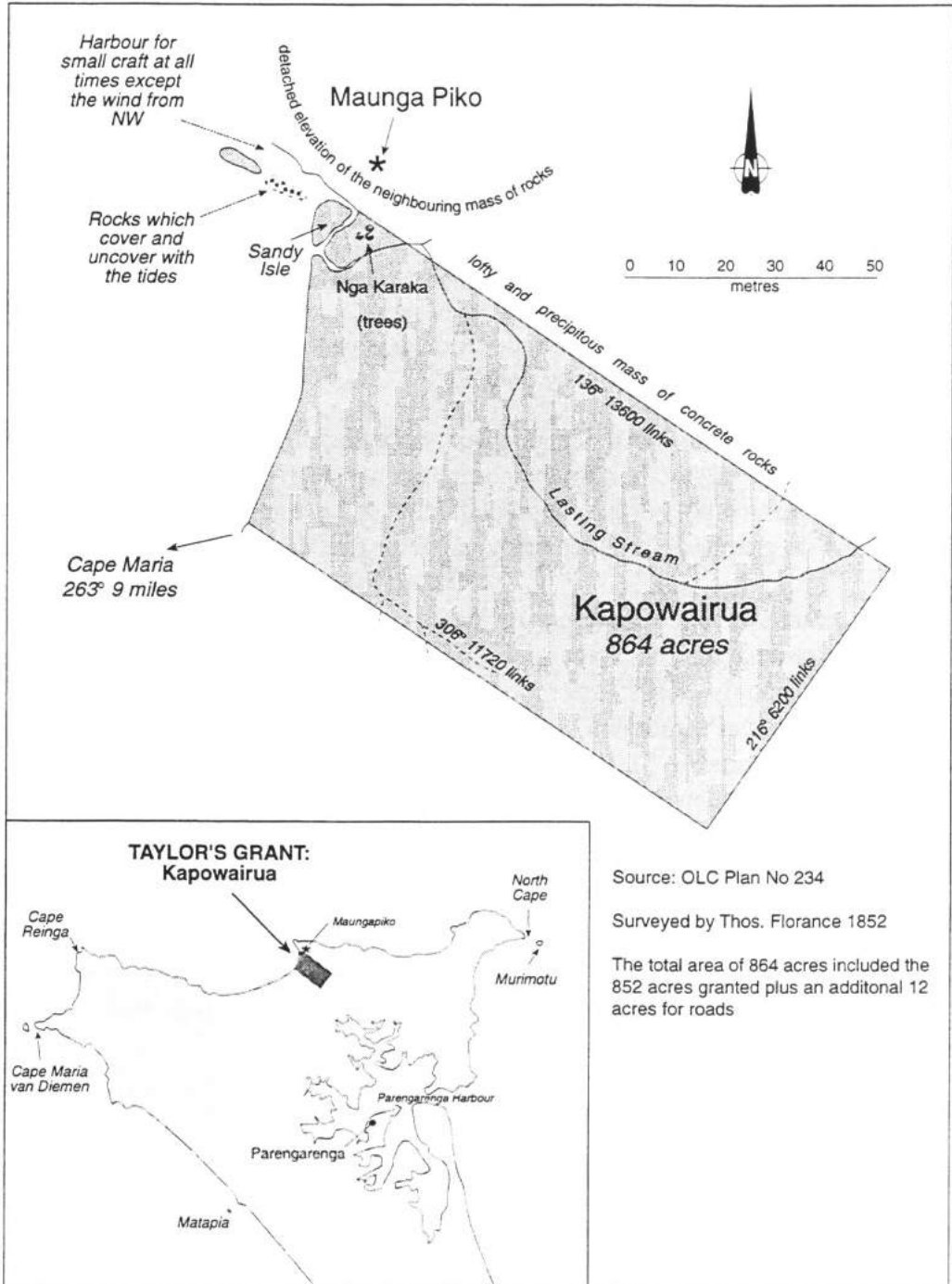


Figure 36: Kapowairua, Taylor's grant

As for the balance, 64,136 acres (25,956 ha), the Government claimed it as surplus land. Such a legal fantasy could not be sustained, however, and eventually, shortly before the sale of the land, the Government did not contest a Maori claim to the Native Land Court for title. From out of that confused picture,

latter-day Maori were left with the impression that the Kapowairua block, which went to Taylor, was the land that Taylor was to hold as a permanent trust for the tribe. There was no other land in Taylor's name. Accordingly, Maori lived upon that block. They were there until the 1960s, but the land had long since been sold and they were eventually required to move. They never understood why. When the Tribunal visited the Kapowairua block and spoke with the local people, with those who had once been living on the land, they continued to maintain that this land was theirs as of right, that it was all that was left of the land Taylor had secured for the tribe.

## **5.6 ASSESSMENT OF THE GENERAL ISSUES**

Counsel urged, and we agree, that the transactions should be measured according to how they were affirmed. The essential point here, however, is that in no case was there a full and binding affirmation. The transactions were not affirmed, nor formally inquired into, by anyone, throughout Muriwhenua East, Oruru, or Mangonui. All others were affirmed at Kaitaia, but on condition that the surplus was returned; and in no case was that done. Those affirmations, moreover, must be seen as confirmations of the transactions as Maori saw them, in terms of their own culture. The only certainty is that, customarily, Maori had a particular view of their transactions that was integral to their society, and the evidence, once shorn of its cultural bias, does not convince us that Maori society had so changed that this view had been ceded.

We now examine more particularly the issues relevant to the ratification process.

### **5.6.1 Adequacy of the legislation**

In the Treaty of Waitangi debate of 1840, a full investigation of the preceding transactions, the return of lands unjustly held and the protection of Maori interests had all been promised, but neither the Land Claims Ordinance 1841 nor the Land Claims Settlement Act 1856 sufficiently set out the matters that had to be dealt with to fulfil those promises. While it was probably intended that inequitable contracts would not be sanctioned – and the dismissal of claims to 9.2 million acres elsewhere shows the effect the legislation had on the wildly extravagant claims – it seems the comparatively moderate transactions in Muriwhenua were regarded as equitable sales, without the need for further question, provided there was some minimal affirmation.

The ordinance did not require the commissioners to consider, as it should have, whether there was a contract in terms of mutual comprehension; and, if so, the adequacy of consideration; the measures needed to protect any trusts and ancillary obligations; the sufficiency of other land; the certainty of the alienors'

title; the clarity of boundaries; or whether the land was fairly apportioned between Maori and European.

#### **5.6.2 Adequacy of examination**

There was no sufficient evidence that the transactions were seen by Maori as sales, and no adequate inquiry was made of whether Maori in fact saw them that way. This was despite the fact that Maori were in occupation of lands 'sold', assuming the right to be there; or despite the evidence, well known at the time, that Maori were demanding further payments for lands allegedly alienated. It was not considered either whether, in accordance with their customs, Maori had bargained not for the goods but for future benefits, or whether their agreements envisaged an ongoing personal relationship with particular individuals. Based upon our inquiry, we are of opinion that Maori would not have seen the transactions as sales, in the European sense, either at the date of execution or in 1843.

#### **5.6.3 Sufficiency of mutuality**

Our opinion is further that Maori and Pakeha were so much in different worlds, in 1843, that no new contract, on mutually agreed terms, may be deemed to have arisen out of the commissioner's inquiries.

#### **5.6.4 Conditions on affirmation**

The Maori opening statement at Kaitaia constituted a conditional affirmation only. Notwithstanding that statement – that the transactions were affirmed on the basis that the surplus land would be resumed by Maori – the transactions were treated as having been affirmed unconditionally, with lands passing to both the European claimant and the Government as a result.

#### **5.6.5 Extent of affirmation**

In view of their extensive custom on ancestral tenure, then, without clear evidence to the contrary, Maori must be taken to have conditionally affirmed the transactions as they understood them to be – that is, that use rights were given in return for ongoing support. The nature of the Maori reality, and their tenure system, needs emphasis. No matter how much a purchaser might talk of 'permanent alienation', to Maori, for so long as the land could not be packaged and shipped away, it would necessarily remain where it had always been, with the ancestral hapu. Amongst Maori, elements of this opinion have never ceased to apply.

### 5.6.6 Extent of support

Lack of objections to sales is not relevant in this situation. There would be no objection to a sale if a sale was not perceived. Similarly, while no record was made of the various rangatira who assembled for the opening at Kaitaia, the absence of any hapu from a meeting is not an indication of consent. Hapu have traditionally expressed neutrality or disapproval by staying away, or voting with their feet. Moreover, despite Gipps's charge to establish 'proof of conveyance according to the custom of the country', the commissioners did not themselves choose to adopt the custom of the country in making their inquiry. A hui was required but none was arranged, and the hui that Maori themselves held, at the opening, was disregarded.

It was equally serious that the land commissioners required corroboration from only one or two Maori; this, to Maori minds, could only have meant that nothing important was happening. Support required a positive affirmation, so that, when hapu representatives stayed away from a meeting, it was likely to mean, for example, that the hapu did not agree with the proposal, that the hapu did not consider its own interests were affected, that the hapu did not want its own interests to be affected, or that the hapu felt it had no right to be there as the business of the day had not been brought on by them.

### 5.6.7 Adequacy of consideration and ongoing benefits

Although the Land Claims Ordinance had some provision for the equity of the transactions to be considered, and although Governor Gipps, Lord Stanley and other officials had said the price to Maori must be looked at under that heading, we have found no evidence that the adequacy of the consideration was investigated. The equity of the transactions appears to have been presumed. As claimants pointed out, Maori themselves would have placed little value on the land if, to their minds, they were only trading a right of occupation or something like a lease. We accept that, for most Maori of the time, the real 'consideration' would have been the ongoing benefits to the hapu, and to future generations, from the occupation of the hapu's land. In the Maori scheme, the initial 'purchase' price is likely to have been of little comparative importance.

We also accept the Crown's argument that there were no criteria by which prices may have been assessed and that the schedule in the Ordinance was irrelevant for that purpose. This emphasises, however, how sound policy was needed. The issue was not really the price for the land sold, but the benefits to Maori from settlement. This might be assessed in terms of the increased value of the land retained, as Lord Normanby had said, so that a measure for the adequacy of consideration was the amount of land reserved. We think there were ways of ensuring that Maori could have benefited in both the immediate and longer terms. All that was lacking was the will to legislate for a comprehensive settlement plan.



### 5.6.8 Adequacy of reserves

There was no inquiry whether Maori would retain sufficient land for their immediate and future purposes, as Lord Normanby had required. The ordinance did not explicitly compel it. This was singularly unfortunate, for, in our view, the assurance of fair shares was one way Maori and Pakeha could both have been satisfied.

The essence of the Crown's position was that Maori retained considerable other lands at this time, but we do not think that is the point. The commissioners were dealing with the prime land, in the central band where most Maori lived. Maori were entitled to a fair share of that land, not the land on the perimeters, and this could have been the whole of the land of some hapu.

There was also no inquiry into the number of Maori affected by the pre-Treaty transactions, and the nature, location, and sufficiency of any other land left to them.

### 5.6.9 Adequacy of title; adequacy of settlement plans

It appears basic that there is no equitable sale of land if all those with an interest have not agreed. In no case, however, was the vendors' 'title' examined. Had it been, it should have been found that not all with land interests had disposed of them. This is unsurprising, for, as we see it, the 'alienors' were exercising a political authority to allocate use rights, not to extinguish the underlying right of the local hapu.

J Williams of counsel for claimants argued that Maori could alienate no more than they could give. Consequently, he contended, the purchasers received no more than a 'native title', no different from that which Maori possessed: the right of occupation subject to support for the group. His argument followed the lines of the findings of an international tribunal which, in 1925, investigated the old land claims in New Zealand on the petition of William Webster, a citizen of the United States. That tribunal reached the same conclusion that the rights acquired by any purchase before 1840 were 'no more than a native customary title'.<sup>30</sup>

While we would reserve the term 'native title' for the artifices of law, divorced from anthropology, we generally concur with Mr Williams's approach. It follows that no absolute or unconditional title should have been given by the Government, or that the Government should not have assumed an unconditional right to the surplus, without a further agreement with all affected.

We have broad sympathy with Crown counsel's point, however, that in the circumstances of the time, the Government could not have gone behind Panakareao's back to treat with all and sundry. We agree that it would not have been appropriate to sideline the Maori leadership in that way. This all points,

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30. See F K Nielsen, *American and British Claims Arbitration*, Washington DC, United States Government Printing Office, 1926, p 540

however, to the inappropriateness of the process as a whole. Most needed was a plan, agreed between the Maori leadership and the Governor, for how settlement would be arranged, the lands for Maori and those for settlers, how continuing benefits to Maori might flow, how Maori authority might be recognised and provided for, and so on. These were not matters that could have been dealt with by ad hoc land transactions, as the circumstances show, and as the effect was then, and has been ever since, to cast the whole debate about equity between Pakeha and Maori only in legal terms.

As we see it, the problems were not primarily those of 'price', 'title', and the like; the real problem was the assumption that all matters could be resolved by the application of English law, authority, and process alone, when what was most needed was a fair and agreed political plan.

### **5.6.10 Adequacy of purpose**

In all, the purpose as we see it was primarily to grant lands to settlers and secure a surplus for the Government. To that end, it was assumed that the transactions were equitable, that the alienors had right and title and that, subject to minimal ratification, a sale in Western terms was intended. The protection of Maori interests was not really part of the play.

### **5.6.11 Adequacy of the Bell commission of inquiry**

It was not the function of the second commission, under Bell, to review the workings of the first. In addition, it did not consider the claims in eastern and central Muriwhenua which Godfrey left untouched and for which the Government, assuming the claims were genuine and equitable, had issued scrip. The main work of the Bell commission was to tidy an uncertain title situation, converting vague Crown grants into certain ones by surveying the original grantee's entitlements. In the process, Bell made it his mission to define the surplus for the Government as well. To secure the cooperation of the settlers, which was needed since no one else knew the boundaries of the original transactions, Bell so arranged the rules as to increase substantially the settler's lands in return for the survey of the total area.

The context was elucidated by Professor Bill Oliver, a well-known and senior historian who was engaged in an independent capacity by the Crown Forestry Rental Trust.<sup>31</sup> In Professor Oliver's analysis, Bell may be seen as driven by political motives, rather than by impartial legal criteria. The Government had wavered over whether to pursue its surplus land claim, but Bell made it his concern to get as much land as possible for European occupation and use, and to secure the remaining surplus for the Government, irrespective of its existing use by Maori or their likely needs in future.

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31. For Professor Oliver's account, see doc 1.7

The consequences may be summarised as these:

- Such arrangements as Godfrey may have made to recognise joint occupancy arrangements were cancelled, unilaterally. Bell enabled unconditional titles to issue to the European grantees, disregarding all references to joint occupation in the original transactions or any trusts that might be construed from the deeds or the surrounding circumstances. The result was not to affirm the deeds but to change them substantially.
- In return, Bell might make reserves for Maori, but those he made were few and niggardly, without any consideration of Maori needs or interests, and without regard to comparable equities. Thus out of one block with a joint-occupancy arrangement, one European, William Puckey, would receive 3337 acres while an entire Maori community would receive only 246 acres. No allowance was made for those cases where land was jointly occupied in fact but without a joint-occupancy clause in the deed.
- It was not considered whether the Government, in taking the surplus, might acquire no larger right than that given in the original transactions, and whether its land might also be subject to joint-use arrangements or to certain fiduciary responsibilities.
- No surplus land returned to Maori in terms of Panakareao's conditional affirmation. The effect of Bell's substantial increase in the grants to European claimants was to reduce that surplus. The effect of his overall operations was to disregard Maori evidence entirely.
- Maori were not called upon to be heard, even in the few cases which had not been heard by Godfrey and in which scrip had not been taken, so that Bell was obliged to hear the matter anew. It was simply assumed that valid alienations had been effected.
- Although Bell's commission was constituted as a full court of record, no Maori evidence was minuted, no account of the argument was maintained and no reasons for his decisions were given. Consistently, it was simply written that matters were explained to the Maori, who then agreed, and without any account of the explanation given.
- Bell appears to have assumed that, once Maori had signed a conveyance, all their customary interests were at an end and that he, Bell, for the Government, had a wide discretion on what he might do. Matthews gave evidence, for example, that Raramata block was kept out of the sale and was to be reserved for Maori. Bell simply treated it as sold, then, as a matter of discretion, allowed a reserve for a small part.
- Consistently, the Maori reserves were minimal. Quite disregarding Matthews' assertion of a 3000-acre reserve for Maori at Raramata, that reserve was cut back to 340 acres. It was simply assumed that Tangonge had been cut off as Government surplus. Out of Southee's large claim, the Maori reserve was only 200 acres. In that case the Maori were rather lamely advised that they could run their cattle on the 'government land' until the

Government, or settlers, needed it. And, although Davis claimed only part of Mangatete, the Government itself surveyed and took the remainder, without reserves.

### 5.6.12 The extent of both inquiries

- Although it has regularly been maintained, in response to Maori petitions, that the pre-Treaty transactions in Muriwhenua were fully inquired into, first by one commissioner in 1843, and then by another in 1856, that is simply not the case. Of the 62 European land claims, only 14 were ever examined. Most of those in eastern and central Muriwhenua have never been considered.
- The 14 that were considered were only ever examined by one person.
- In no case was the Maori understanding of the transactions inquired into.
- In each case the Maori condition to the affirmation of the transactions, that the surplus must return, was not observed.

In all the circumstances, we consider there were no grounds for treating any transaction as a full and final conveyance of the land described in it.

## 5.7 ASSESSMENT OF THE ISSUE OF SURPLUS LANDS

A significant consequence of the ratification process was the issue left hanging of the right to the surplus lands, the lands left over after only part of a 'purchase' had been awarded to the 'buyer'. Who should have the surplus, Maori or the Government?

Before an answer is attempted, it is emphasised that the surplus land issue is secondary, in the claimants' case, to the primary point that the land was not sold in the first instance. It may be presumed that the Maori argument had always been that way. If, as the claimants contended, no absolute title was conveyed, and the arrangement was more like a lease with Maori retaining an underlying right, then of course there was no surplus for the Government to lay claim to. However, in later years, when the Government presumed that sales had been effected and would countenance no other view, Maori were obliged to limit their claim to the surplus. No other claim was likely to succeed. In the climate of the day, a claim that there had been no sale would have been laughed out of court. Thus Maori have frequently found the need to reframe their arguments in terms of the adjudicator's mind-set. It should not be thought, therefore, that a larger Maori claim would not have been brought in the past, had it been practicable to bring it.

The issue is also distinct from that of the Government's right to regulate. There was no argument that the Government may limit the amount of land any

Surplus land  
debate is  
secondary for  
claimants

Compare right of  
regulation

one person may buy, as a matter of national policy. The question of whether the Government was entitled, as of right, to the surplus is another issue.

Personal  
contracts that  
were not seen as  
sales

We see the Maori claim as standing on five tiers. On the first, the transactions were not sales, and in our view the Government has never established that they were. If nothing properly passed, there was no surplus that could be properly claimed. On the second, it was fundamental that the transaction was personal to the European concerned with whom an ongoing relationship was expected. A stranger could not intervene without a licence and nor could rights be assigned to strangers without approval from the hapu. There needed to be an agreement between the ancestral land holders and the occupier and, accordingly, there was no space for the Government to intervene.

Governor's  
statements

The third tier assumes that the Governor knew of the surplus land issue when the Treaty of Waitangi was signed, the debate having started beforehand. The argument is that, if the Governor failed to say that the Government would take the surplus land, before the Treaty was signed, he should be stopped from saying so afterwards, for the Treaty might not have been signed had Maori known the Governor's intention. The Governor in fact said that lands unjustly held would be returned, creating an expectation that this would apply to any lands not allowed to the 'purchaser'. Likewise, Governor FitzRoy said that the surplus land would return, and this may have influenced Maori in affirming the transactions, a point which is considered later.

Theoretical

The fourth tier considers the Government's claim to be overly artificial, founded on a complex theory of feudal land tenure which would not have applied if an allodial tenure system, as found in most of Europe, had happened to exist. We consider that the Government should acquire Maori land by direct dealing with Maori, not by a legal sidewind.

Conditional  
affirmation

The fifth tier is obvious. The transactions were ineffectual without affirmation, and affirmation was conditional on the reversion of the surplus to Maori.

Government  
claim and the  
doctrine of tenure

The basis for the Government's claim to the surplus land was not simple. The matter was also dealt with by successive governments in an inconsistent, obscure, and irresolute manner. The theoretical position was apparent from 1839, when the New Zealand Land Claims Ordinance was first proposed in New South Wales.<sup>32</sup> Governor Gipps explained, after obtaining instructions from England, that it was founded on a political, legal theory that English law would be ushered in on the assumption of British sovereignty and, with it, the doctrine of tenure. Under this doctrine all land belonged to the Crown, subject only to any native rights of user until those rights were extinguished. It followed that no individual could hold land except by Crown grant. In applying this theory, it was assumed that a sale by Maori did not convey the land to the purchaser, but none the less it extinguished the Maori interest, leaving the land unencumbered in the

32. The position is explained fully by D Loveridge in 'The New Zealand Land Claims Act of 1840', 18 June 1993 (doc 12)

Government's hands to dispose of as it wished. The Government could then decide how much it would give to the purchaser and what surplus it might keep for itself.

Also, on this thinking, the surplus land issue had nothing to do with Maori. If Maori had sold a block of land, then they had sold the whole block, and how the block was then divided between the Government and the buyer was purely a matter of debate for the Europeans.

The New South Wales land buyers argued against this theory, contending that, at the time of sale, Maori were a sovereign and independent people, that any contract was a matter between them and Maori only, and the Government had no right to intervene. The settlers in New Zealand argued much the same, but some admitted that the Government had the right to control land-buying – to prevent undue land aggregation, for example. It followed, however, that any part denied to the purchaser should return to Maori. Many North Auckland settlers had developed close relations with Maori, and were strongly of the view that any part denied to any purchaser should return to Maori. We suspect they appreciated full well that Maori never intended to convey an absolute and exclusive right to the whole of the land in the first instance. It was only much later, when Bell offered substantial advantages to those settlers who cooperated, that positions changed.

New South Wales  
debate

Despite the debate in New South Wales, the royal instructions associated with the Treaty of Waitangi, under the hand of Lord Normanby, did not propose the transfer of the surplus land to the Government. Lord Normanby went to some lengths to propose special arrangements for an inquiry into the pre-Treaty transactions, to prohibit further private sales, and to prescribe the conditions on which the Government might acquire land, that, is, by 'fair and equal' contracts with Maori. None the less, nowhere in his instructions to Hobson did Lord Normanby advert to any 'surplus land' doctrine or suggest that, following the Land Claims Commission investigations, land 'sold' to pre-Treaty 'purchasers' but not awarded to such purchasers should become Crown land rather than revert to Maori. Given the concern of the Colonial Secretary to ensure that Maori were fully protected and dealt with on the basis of 'fair and equal' contracts, the lack of any instruction to return the surplus land is not surprising. We consider that, had the British Government intended to take the surplus land, it would or should have said so before the Treaty was signed. It must therefore be presumed that the Government did not intend to take the surplus land, or any land not granted to Europeans except that it should be acquired by the Government by 'fair and equal contracts', as Lord Normanby had said.

Normanby's  
position

Nor did Governor Hobson, or his representatives, mention any surplus land proposal during the Treaty debate. Instead, the opposite impression was given. When challenged, Hobson replied that the transactions would be inquired into and lands unjustly held would be returned.

Hobson's position

FitzRoy's position

Governor FitzRoy's position was even more clear-cut. In December 1843, he promised publicly that the surplus land would return.<sup>33</sup> The newspaper *Southern Cross* reported that the Governor's speech had 'allayed the fears of the natives' and that the Governor stated he would 'most unequivocally and with the utmost sincerity disown any and every intention on the part of the government to appropriate . . . the surplus lands of the original settlers, they are to revert to the original owners'.

Commissioner Bell argued in a formal report of 1862 that FitzRoy's views must be discounted, as they were contrary to advices from Lord Stanley.<sup>34</sup> Bell's partiality was thus apparent. Whatever the validity of the Governor's opinion, however, or whatever FitzRoy's competence to make such a comment when he was still new as Governor, the fact is that the opinion was given, and was not retracted; and it is doubtful whether Lord Stanley objected. FitzRoy wrote to Stanley in October 1844:

While it was the object of the local Government to raise as much money as possible by the sales, of lands, irrespective of the real interests of the settlers and the colony, it was of course an object to take as much as possible from the old settlers, with the view of those lands (not reverting to their original owners, but) becoming disposable for sale by the local Government.

Such a step as selling those 'excess lands' was happily never attempted, however generally contemplated. The natives would never have allowed it to take effect; and the attempt to do so would have injured the character of the Queen's Government very seriously, if not irretrievably; so tenacious are the natives of what they consider to be strict justice. As yet it is quite impossible to make them comprehend our strictly legal view of such cases.<sup>35</sup>

In brief, FitzRoy was not denying the right of English law, but was warning against exercising it. Nothing was done about the surplus land for over a decade and, to all intents and purposes, on the ground it remained in the possession and ownership of Maori. With reference to the country as a whole, it was recorded in the Report of the Outstanding Claims Select Committee of the House of Representatives in July 1856, which led eventually to Bell's commission:

Some of the grantees are in possession of the lands granted; but a greater part of those claimed are unoccupied by anyone. Some portions have been resumed by the natives, and some where the native title has been extinguished, and no grants made, have been considered Crown Lands and taken by the Government as such; although in reality it has generally had to make the natives some additional payment. Still, in a great number of cases no possession has been obtained by any one; the natives disputing the ownership of the land in the absence of the claimants, or the insecurity of the titles that hold preventing the latter from attempting to enforce their supposed rights.

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33. Dr Martin, *Martin's New Zealand*, p 183; *Southern Cross* 30 December 1843

34. F D Bell, report, AJHR, 1862, D-10, p 18

35. BPP, vol 4, pp 408-409 (doc A1, sub-doc B31)

There is some evidence that officials in Governor Grey's time likewise led Panakareao to believe that the surplus land would return to Maori. James Berghan, it was reported, had translated into English a letter for Panakareao, which was published in the *New Zealander*. In this, Panakareao, following standard rhetoric, stated a belief 'that the Queen was going to take away, first, the land of the missionaries, and then the land of the natives', a clear reference to the surplus land. The official response was to reassure Panakareao that the Government had no intention of depriving Maori of their land, but:

Grey's position

with respect to the missionaries, that it was in contemplation to take away a portion of land from individuals who had procured . . . larger quantities than they could use, to the exclusion of other Europeans, and reserve the portion taken away for the use of the natives.<sup>36</sup>

At the very least governors and officials wavered over the surplus lands, assuming alternative positions at different times.

In our view, the resurrection of the Government's claim to the surplus land, in 1856, was flawed. The first error was in the assumption that the land had been unconditionally sold. The second was in the assumption that the doctrine of tenure, as described earlier, in section 4.3, was applicable to the circumstances of New Zealand. We do not see that it was. All the land belonged to Maori, the English legal doctrine had not been agreed upon when the Treaty of Waitangi was signed, and the underlying title was already spoken for.

Flaws in the Government's approach

It should be noted, too, that, as a result of the doctrine of tenure, the Government had no need to prove its acquisition of Maori land.<sup>37</sup> Whatever the legal theory that the Government must prove the valid extinguishment of native title, in practice the Government had no need to produce a conveyance or other instrument. Its assertion that it had extinguished native title, by *Gazette* notice or otherwise, either was conclusive in court, as shall be seen later, or left Maori having to prove the land was still theirs.

Consistently, Maori have described the surplus land taking as 'confiscation'. Regularly, governments and commissions have said it was nothing of the sort. To the Maori mind, however, when the Government claimed the surplus land

Surplus as confiscation

36. Nugent to Colonial Secretary, 2 January 1848, enclosed in Grey to Earl Grey, 17 March 1848, no 35, BPP, vol 6, pp 99-100

37. Compare, however, Lord Davey in *Nireaha Tamaki v Baker* (1901) AC 561, 576: 'the assertion of title by the Attorney-General in a Court of Justice can be treated as a pleading only, and requires to be supported by evidence'; and Kent McNeil, *Common Law Aboriginal Title*, Oxford, Clarendon Press, 1989, pp 84-85 (and see also pp 92-93): 'The Crown cannot, on the strength of its fictitious original title, require a person who is in possession of land to prove his right by producing a royal grant . . . The Crown must prove its title like anyone else'. In practice, however, the method by which the Crown became possessed of Maori land has remained a mystery to Maori, and, since the Crown has not been obliged to keep a title of its own properties, ready access to information about its acquisition has not been available from the Lands and Deeds Office. Where Maori have sought to obtain an answer by proceedings in the Maori Land Court for ascertainment of title, statutory provisions have prevented the Maori Land Court from inquiring without the Government's consent.



because it held the underlying title, it was confiscating the underlying title of the tribe; and when it took the surplus without an arrangement with Maori, it was abrogating the rights and obligations Maori considered they had contracted for with the Europeans.

Summary In summary, the Government's derivative claim to the surplus lands was contrary to Maori law and to the Maori contractual terms. There was no agreement with Maori that the Government was entitled to the surplus land, and the Maori affirmation of the pre-Treaty transactions in Muriwhenua was on the express condition that the surplus would return to them.

The 1946 commission We depart in this respect from the previous opinion of the Royal Commission of Inquiry on Surplus Lands under Sir Michael Myers, the former chief justice, in 1948. That commission considered that compensation was due to Maori, but for other reasons. The difference, however, is one of fact. Counsel for the Maori petitioners, counsel for the Crown, and the commission itself, all worked from the erroneous advice given to the commission that the transactions had been fully investigated by both Godfrey and Bell, and that the transactions had been affirmed as absolute sales.

Surplus lands and moral imperatives Professor Oliver drew attention to a moral imperative that was also not considered in the previous debate.<sup>38</sup> Should the Government have been holding the surplus land in any event, if Maori were already prejudiced through the excessive alienation of their land? It would have been a simple matter to write into the legislation governing Bell's inquiry that the commissioner should consider the lands retained by each hapu, whether they had retained sufficient for their present and future needs, and whether provision should be made for them from out of the surplus land. Such an arrangement was within the ambit of the Governor's Treaty exhortation that 'lands unjustly held would be returned', but no inquiry of the Maori circumstance was made.

## 5.8 THE PROCESS AND MAORI AUTONOMY

The land commissioners' inquiries have been described, and observations have been made that there was never an inquiry into whether valid contracts had formed. The further concern, however, is that the process as a whole was wrong. It demeaned Maori as supplicants before a foreign court where their actions would be judged on foreign terms. To adopt the Maori metaphor used in the Treaty debate, the process put the Governor up and Maori down. We can see more clearly now how important it is that, when two cultures meet, their joint affairs must be resolved in a way that treats both as equals, and allows for differences to be mediated between them.

The colonisers, presuming to be superior as a race, imagined matters should be managed on their terms. Maori, who were no less independent as a people,

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38. W H Oliver, 'The Crown and Muriwhenua Lands: An Overview' (doc L7)

equally assumed that their government of their own districts would continue. Subservience to another cultural regime was so outside their experience, and so contrary to that to which any free people would knowingly subscribe, that any act of diminution imposed upon them would not necessarily be seen as such until some time afterwards, if at all. Accordingly, while we have examined matters in terms of the land claims inquiry process, we do not thereby say that any part of that process was appropriate. Consistently behind Maori claims is the Maori expectation, legitimate in Treaty terms, that they should control their own affairs, transact with others on their own terms, and have their own cultural expectations respected.

Nor do we imply, in examining the Government's process, that Maori acquiesced in it. It is doubtful whether it was even understood. In any event, there were two processes at work when Godfrey was sitting: his own, and that of Maori. In the Maori process, which went first, it was declared that the eastern and central transactions would not be submitted for investigation but the Europeans would be advised which transactions were approved. At Kaitaia, the terms and conditions for acknowledging the transactions were declared, and the rangatira would 'exercise all their ancient rights and authority of every description, as heretofore'.

Thus two processes applied, each valid in their own legal terms, and the two parties were to act as though their own process prevailed. The eventual outcome thus depended on who had the ultimate power. Again, in these circumstances, an adjustment of power was really required between the Governor and the rangatira, with the mediation of jointly agreed policies for the sharing of the Muriwhenua land.

The need for some alternative arrangement may be more apparent now than it was then, but it does not follow that alternative modes of operating were unknown in those early days. Previously, certain missionaries had imagined a form of Maori rule using missionary advisers, the British Resident James Busby had promoted a political confederation of tribes with British advisory opinion, and the Treaty of Waitangi had presaged a partnership. In the new emerging world, several options were possible.



CHAPTER 6

**THE GOVERNMENT PURCHASE  
PROGRAMME**

*The Queen will not interfere with your native laws or customs.*

Willoughby Shortland for Lieutenant-Governor Hobson, Treaty debate,  
Kaitaia, 28 April 1840

*These tribes are old friends of the Pakehas, and my determination to protect the Pakehas is fixed.*

Wi Tana Papahia, during the debate on the New Zealand wars, Ahipara, 1863

**6.1 OUTLINE OF ISSUES AND CONCLUSION**

This chapter considers the Government's efforts to purchase the desirable Muriwhenua lands not acquired in the tidy-up of the old transactions. By 1865, the Government had acquired 280,177 acres (113,388 ha) of the remaining land, most of it in the preceding eight years. The chapter begins by tracing the 15 years from Godfrey's inquiry in 1843 to 1858, soon after Panakareao had died leaving a gap in the Maori leadership, when the Government launched its major land-buying programme. The transactions themselves are described in chapters 7 and 8, and to set them in context this chapter provides a broad overview examining four factors most likely to have influenced Maori in entering into the transactions: their desire for European settlement, their perception of an alliance with the Governor, their traditional beliefs, and their expectation of settlement benefits. The Government's policy of extinguishing native title, that is, of cancelling Maori land rights and traditional self-government, is then examined, along with the Government's responsibilities. The chapter concludes by considering the degree of mutuality involved and the sufficiency of the arrangements as a whole, before particularising the Government's purchase strategy.

Maori policy,  
Government  
policy, mutuality

Notwithstanding the European view of property, Maori understandings about property and the primacy of personal relationships remained as it had always been, so as to forge a distinctive Maori approach to the Government's buying programme. We conclude, as a result, that while the Government could see only a land sale, a land sale was least on Maori minds, for Maori saw only a plan for

The conclusion –  
a plan for  
settlement

settlement, where they would be partners with the Governor and substantial beneficiaries in a new economic regime. Maori hopes and policies for the future, and Government designs of extinguishment, were thus so divergent in concept and intent that the arrangements between them were marred by a lack of mutuality or common purpose. There were also flaws in the form of several deeds.

For this second stage of land alienation, however, where the Government was the buyer, the main issue in terms of the Treaty of Waitangi is not only the Maori intention in alienating the land but the integrity of the Government in buying. The relationship between Maori and the Government was much more than that of a buyer and seller under a simple agreement for sale and purchase. Our principal conclusion is that the Government was obliged to protect Maori interests but that protection was not given. As a result, no adequate provisions were made for Maori in the new settlement structure. Conflict, misunderstandings, and mistakes were inevitable. If there had been a proper protective plan, however, or simply if sufficient reserves had been made to ensure a place for Maori in this new future, old arguments over misunderstandings and mistakes would not have meant so much for today. Maori complaints about particular matters, while often sustainable in themselves, more broadly reflect the general state of comparative landlessness.

## 6.2 HISTORICAL BACKGROUND, 1843-58

Godfrey effected  
no change on the  
ground

No matter how important Commissioner Godfrey's inquiry may seem now, at the time it probably meant little or nothing to the many Maori of Muriwhenua, the only significant population in the area there. Whatever the changes on paper, nothing altered on the ground. No one vacated land as a result of Godfrey's decisions, and no one else came in. Panakareao's authority remained the only effective authority in Muriwhenua except for the continuing challenge from Pororua.

The years from  
1843 to 1858

This section traces the 15 years from Godfrey's inquiry in 1843 up to 1858.<sup>1</sup> It was in the latter year, soon after Panakareao had died leaving a gap in the Maori leadership, that the Government began a major programme to secure the surplus lands, as has been seen, and to buy the lands unaffected by the pre-Treaty transactions. The Government programme was carried out by only three

1. See B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850-1865', 14 April 1992 (doc F9); B Rigby, 'The Mangonui Area and the Taemaro Claim', July 1990 (doc A21); B Rigby, 'The Oruru Area and the Muriwhenua Claim', February 1991 (doc C1); R Boast, 'Muriwhenua South and Ahipara Purchases', March 1992 (doc D16); T Walzl, 'Report on the Historical Issues Relating to the Taemaro Mediation circa 1830-1925' (doc E2); P Wyatt, 'Crown Purchases in Muriwhenua, 1850-1865' (doc H9); F Sinclair, 'Crown Purchases in Muriwhenua to 1865' (doc J4(a)); A Gould, 'Crown Purchases in Muriwhenua to 1865' (doc J4(b)); F Sinclair, 'The Purchase of the Muriwhenua South Block' (doc J4(d)); C Geiringer and P Wyatt, 'Issues Arising from the Evidence . . . relating to Crown Purchases in Muriwhenua, 1850-1865' (doc L5)

officials, each previously mentioned. The first was the politician, Francis Dillon Bell, acting as land claims commissioner, who had resolved to secure the surplus for the Government. The second, Henry Tacy Kemp, had formerly served with Godfrey, and was now district land purchase commissioner, charged with buying the remaining land. The third, William Bertram White, was the resident magistrate, and the only Government official living in Muriwhenua. With some enthusiasm for the goal of acquiring the Maori land, he presumed to act as both a commissioner for land claims and a commissioner for land purchase, even without legal authority, whenever he felt that was required.

The question here is as before: did Maori see the land transactions in the Government's purchase programme in the same way as Europeans? The assumption has been that they did, 18 years or more having passed since the last bout of buying. We remain unconvinced, however. There may have been changes on the surface, with the adoption of European forms, but the philosophies and policies of Maori remained fundamentally as they always had been. In Muriwhenua, at all material times, it was Maori who had the de facto power, for the Europeans, though significant as mediators for trade, were barely noticeable in terms of numbers. There was no contemporary reason to give the pens and papers of officials the weight that they were found to have much later, in about the 1890s, when the truth began to dawn. We now outline the situation in Muriwhenua, as we see it, at the same time the main purchases began.

Maori continue to predominate

Panakareao's authority had not diminished with the arrival of Europeans. If anything, it probably increased. From Panakareao's point of view, he had established an alliance with the missionaries at Kaitaia, with the settler Southee and with the traders of Mangonui through land allocations. He had done the same with Taylor, for the benefit of Aupouri and Ngati Kuri. Furthermore, he had secured the allegiance of the prestigious Dr Ford in arrangements for Okiore and the whole Oruru Valley. This had the effect of ousting Pororua and those traders who presumed rights under him. Panakareao had then secured an alliance with Lieutenant-Governor Hobson, who recognised his authority in the Treaty signing at Kaitaia in 1840, and at Mangonui, in the Mangonui transaction later that year, which was represented as a sale but which, for Panakareao, was an act of recognition of his authority in that area. Subsequently he had sought an arrangement with Governor FitzRoy, travelling south for that purpose. He was less successful in this, but when FitzRoy sent Godfrey to Muriwhenua to decide who had land rights there, Panakareao, from his point of view, soon put him in his place. He made it clear that the primary issues were for Panakareao, not Godfrey, to resolve. He thus prevented Godfrey from sitting at Mangonui to hear those cases he did not agree with. At Kaitaia, Panakareao prescribed the terms on which Pakeha land claims might be recognised. From a Maori view, the Old Land Claims Commissioner was not confirming transactions so much as ratifying Panakareao's authority.

Panakareao's mana grew from European recognition

The European population in Muriwhenua had barely grown and numbers alone gave Maori the control. The settlers could not have been seen as a threat at that time. The Maori population is not known, but there are indications of its size. In 1838 the Kaitaia Mission Station considered it was serving about 4000 Maori in that locality alone. By comparison, James Clendon counted the European population for all Muriwhenua in 1846, eight years later, at 69, being 41 at Mangonui, including 16 half-castes, and 28 at Kaitaia, including three half-castes.<sup>2</sup>

Moreover, from 1840 to 1848, apart from Godfrey's brief visit, there were no Government representatives or officials in Muriwhenua to show what British law or authority might mean. In the absence of anything else, Maori authority remained uppermost, and we should not have an exaggerated image of Godfrey's importance as seen at the time.

Alliance with Grey  
and the northern  
war

After Godfrey, Panakareao's next challenge was to secure an alliance with FitzRoy's successor, Governor Grey. That chance came in 1845 when Grey sought to end the war with Hone Heke of Nga Puhī. Panakareao stood with Grey at the main engagement at Ruapekapeka, along with other Nga Puhī chiefs, Tamati Waka Nene and Mohi Tawhai. It was a difficult situation for Panakareao, however. Heke had fought with Pororua at Taipa in 1843, but it was necessary to avoid an escalation of fighting. In the event Panakareao stood with Grey at Ruapekapeka but with a token force only, a dozen or so warriors. Thus his stance could not give Heke cause for later retaliation. The token force was jeered when it returned to Kaitaia, for it was hardly flattering of Te Rarawa, and the cause may not have been popular, but Panakareao's policy of friendship with Pakeha had been established with the new governor nevertheless.

Grey responded generously to Panakareao's initiatives, giving a schooner for Panakareao to take his goods to Mangonui, and granting pensions and assessor salaries for Panakareao and other rangatira.

Panakareao's  
concern for  
economic  
development

Panakareao was concerned that too few settlers were entering Muriwhenua and the economy was in decline. He was losing his own people, to the logging of kauri forests at Hokianga and Whangaroa, or to trade in the Bay of Islands. Moreover, the Government had shifted further away, to Auckland. Prospective settlers left the north, taking scrip for Auckland land in exchange for their northern claims. Fewer ships came to Mangonui, Hokianga, and the Bay of Islands. At Mangonui, a single person, Captain Butler, appears to have established a monopoly over all trading activities. Panakareao disputed Butler's control, complaining to the Native Secretary:

A person whose name is Buttler will not permit our goods and the goods of some of the Europeans to be sold to the vessels that come hither to trade, he wants everything to go through his hands.<sup>3</sup>

2. M Eyes, 'Maori and European Population Histories, 1810-1901', 1989; see doc A1; doc D2, pp 432-433

3. Panakareao to Grey, 30 January 1847, MA 1/7 (quoted in doc J2, p 185)

Matters were sorted out with Butler, however, and in 1846 Governor Grey announced plans to develop a large town at Mangonui based on coal deposits behind Cooper's beach (the project did not proceed when the deposits turned out to be poor). For his part, Panakareao shifted to Oruru in 1846, to be closer to the traders in the likely centre of action. Claimants represented Grey's announcement as an actionable promise, but it is probably just as likely that the Governor did no more than express a political hope.

Panakareao  
moves to Oruru

Joseph Matthews noted that Panakareao protested when the Government imposed restrictions on timber cutting in Oruru, as though the Government owned the land. Dr Ford having left the Church Missionary Society in 1844, Panakareao also took the opportunity to recover possession, moving onto the 'Ford block' at Pakautararua. Clearly, he did not see the land as sold, and significantly no one in the Government raised any objection.

To cover his position, Pororua then shifted to Oruru as well, in 1847. Panakareao's position would seem to have been much stronger, however, for it was he who had the alliance with the Governor.

Pororua moves to  
Oruru

The position of the missionaries was secure by then, and Panakareao could set about protecting the occupation of the other settlers, especially those whose claims he had earlier opposed. Panakareao had no objection to their presence, of course, so long as it was clear that their rights of occupation came from him. He had also to dissuade them from taking scrip and leaving. Captain Butler in particular came under his protection as 'my' Pakeha, even though Panakareao had previously challenged his domination of the provisioning industry.<sup>4</sup> The traders were most valuable, however, in providing a market for Maori produce. White was to write of the Maori productivity, noting that, while most lived in the west, there were:

Panakareao  
supports traders

quantities of native produce being sent to Mangonui to supply the wants of the numerous whalers then visiting the port, besides wheat, corn and onions exported to Auckland and even Sydney.<sup>5</sup>

But all settlers had their value to Panakareao, so long as they acknowledged him. He wrote in support of Southee in 1845:

He was our first native European who supplied us with European things. It would indeed be well for you to be kind to him, our European, as we regard him ourselves. Do you honour his letter and allow him to have the land we gave him for ever and ever.<sup>6</sup>

In 1847 Panakareao wrote to the Native Secretary in support of Thomas Phillips:

4. See B Rigby, 'Empire on the Cheap: Crown Policies and Purchases in Muriwhenua, 1840-1850' (doc F8), pp 15, 80-82, 87-88

5. AJHR, 1868, A-4 p 36

6. Panakareao to Governor, 15 April 1845, OLC 1/875-877; see doc D12(a), vol 3, pp 51-53



If you like to consent to his having a grant for his place, I agree because he is an old pakeha (settler). He has resided some time amongst us.<sup>7</sup>

Hotel-keeper Thomas Flavell also claimed Panakareao's backing.<sup>8</sup> With regard to James Berghan, Panakareao wrote in 1846:

This is my letter the letter of Nopera to the Governor – A letter to you o Governor, that you may be pleased to give a grant or deed of land to James Berghan in Mangonui for his children. He paid for his land a very long time ago. He has lived a long time with us, his works are good, and he is kind to us natives, therefore I make this request that this piece of land may not be taken away. Sir the Governor, harken I pray you to this my request and give him a deed of land for himself and his children.<sup>9</sup>

Berghan later wrote that Panakareao would not allow him to leave the area or take scrip.<sup>10</sup> Panakareao also supported the claims of George Thomas, as Clement Partridge acknowledged when writing to the Governor in 1848, after George Thomas had drowned, leaving two young daughters:

The whole of the Native Chiefs in that district including Noble are most anxious that the half caste children of George Thomas so nearly related to them shall obtain their land, and are willing to sign a memorial to His Excellency to that effect.<sup>11</sup>

Accordingly, while Governor FitzRoy had proposed land scrip in support of the Government's plan to establish a settlement at Auckland, Panakareao was undoing the work, seeking to maintain the settlement at Mangonui. Moreover, he was acting as if he owned the place.

White's  
appointment as  
resident  
magistrate

Looking back on matters from our vantage point of time, probably the most significant event in this intervening period was the appointment of Resident Magistrate White, in 1848, for his appointment marks the introduction of British rule to Muriwhenua. However, it is with hindsight only that the significance of the appointment could have been apparent to Maori. If White was important to anyone in Muriwhenua at the time, it was probably mainly to himself.

In 1848, as part of his policy of imposing British law through Government agents serving as judges, Governor Grey appointed William Bertram White as resident magistrate at Mangonui. It is a sign of the north's decline that White was the first official resident. He was also of low ranking. He had no previous experience as a Government administrator and had formerly worked as a New Zealand Company surveyor. It is a further sign of economic stagnation that he was the only official resident in Muriwhenua for the next 30 years, until 1878. In the result, all Government functions became aggregated in one person.

7. Panakareao to Grey, 20 June 1847, OLC 1/617-23; see doc D12(a), vol 2, p 62

8. Flavell to White, 20 September 1849, OLC 1-850, pp 13-15

9. Panakareao to Grey, 1847 (not dated), MA 7/1 (quoted in doc J2, p 183)

10. Berghan to White, 25 September 1848, OLC 1/558-66, p 16

11. Partridge to Grey, 7 July 1848, OLC 1/617-623 (quoted in doc J2, p 354)

Unofficially he was the law-maker, and officially the law manager, enforcer, and dispenser all at the same time. By so combining executive and judicial functions, English law was introduced to Muriwhenua without those safeguards that gave it respect. White presented to other Europeans as the effective governor of the north.

White's title, 'resident magistrate', does not fairly describe his role. Governor Grey used magistrates for a number of functions, to 'civilise' Maori and introduce British law through the courts. Such officers were really Government agents and administrators. White took the job a stage further, effecting an extraordinary economy by investing in himself the plenipotentiary powers of law-maker, judge, agent, and executor. Among other positions he was officially collector of customs, Government agent, land surveyor, inspector of police and postmaster; as he put it in his reminiscences, 'in fact I held all the Government offices'.<sup>12</sup> He had a sergeant and a small constabulary of three to assist him.

White's many  
roles

White was not well qualified, however. He was not a lawyer and, sent to the north to uphold British law, he more regularly upheld a law of his own. He was not a qualified surveyor. His receptiveness to other cultures was not apparent, either. During his 30 years of residence, he avoided learning or speaking Maori. While the missionaries sought to change Maori by living with them, White sought to marginalise Maori while standing aloof.

White's  
qualifications

The relationship between White and Panakareao was soon strained. After White had established himself at Mangonui with his small constabulary, Panakareao did the same, with a 'police force' of about 30 Ngati Kuri. They stationed themselves, and made a home, almost opposite White's police barracks. In 1850 Panakareao had 'authorised' the establishment of a town there (or he had sold the land for it, from a European view), providing 35 acres (14 ha) for that purpose, as is described in chapter 7. We consider that White manipulated the deed, however, and in doing so added more land to the town site than was apparent from the face of the document. For himself and for his own house in the town, White carved out more than an acre; but for Panakareao and his Ngati Kuri supporters, he set aside a mere 28 square yards, probably the bare outline of the house and front courtyard. It may be no coincidence that Panakareao never signed a further land deed with White. At most, he executed a receipt for money that was paid, and even then there are doubts about the veracity of the signature. The initialled 'P' for Panakareao does not have the form he regularly used; Panakareao's 'P' had a flourish, like Puckey's, suggesting that Puckey had been his teacher.

White versus  
Panakareao

Panakareao also repudiated White's authority as collector of customs and presumed to conduct his trade with the ship captains direct. On 23 December 1851 Panakareao remonstrated with the resident magistrate, claiming he was restricting Maori access to the ships for trade. The resident magistrate said he explained the laws that he had passed, whereupon Panakareao, presumably to

12. Extracts from the reminiscences of William Bertram White, 1822-1910, MS, ATL; see docs A1, C1

show his own authority, turned to his people and passed several laws of his own. White alleged that Panakareao had then threatened to bum the police barracks, and claimed that the Ngati Kuri supporters performed a haka 'just outside my house'.<sup>13</sup>

In January 1852 White sought a naval presence – the HMS *Calliope* under Wynyard. Panakareao does not appear to have been put out, perhaps because he had an alliance with White's superior, the Governor, but he sent a message to Wynyard reminding him that 'the marriage ring has not dropped from my finger'.<sup>14</sup>

In his reminiscences, White described how Panakareao, on another occasion, 'went about the various settlements domineering and interfering in a very arbitrary manner' and again, in another instance, was 'haranguing a small mob of Maoris in a very revolutionary manner: he abolished the Customs and Governmental authority, abused me personally, the Governor and the Queen'. When reporting Panakareao's death in 1856, White summed him up as:

a man of great energy and cunning, but too arbitrary to be much liked amongst the Natives, though he had very great influence over them.

White's relationship with Pororua was no less equivocal, describing Pororua as 'a violent, insolent Native'.<sup>15</sup> White correctly identified that the key to Maori authority was the land, and that by relieving Maori of their land their authority was likely to go too. As will be seen, by the time Panakareao died the resident magistrate had a plan under way to relieve Maori of their land.

White's mission  
and assumptions

Though he was not a land claims commissioner, White presumed to finalise the outstanding old land claims that Godfrey had not touched, in order to assert the Government's right to that which was regarded as 'surplus'. Though he was not a land purchase commissioner, he was also to plan the purchase of the remainder, with native reserves to be individualised so as to rid the scourge of native title from every part of the area. His role in purchasing the remaining land will be described later. For the moment, adopting the position that the pre-Treaty transactions had extinguished native interests over all of the affected land, which then became the Government's, White busied himself with mapping the 'purchases' where the buyers had left, taking scrip instead, so that the full extent of the Government's windfall might be defined and any Maori reoccupation repulsed.

The blunder over  
scrip

It was at this point that probably the most serious blunder was made. While Godfrey had been careful to show that the claims for which scrip was given were only 'alleged' and had not been proven, White treated each one as though the native title had been fully extinguished and the land had become the

13. White to Police Commissioner, Auckland, 2 January 1852, IA 52/85

14. The account is from D Armstrong and B Stirling, 'Surplus Lands: Policy and Practice, 1840–1850' (doc 12), pp 204–206

15. W B White to Colonial Secretary, 31 January 1856, IA 56/336; see doc A1; doc A4, p 13

Government's. His task as he saw it was to finalise the areas involved, and to provide for any outstanding grants that might be required.

Accordingly, White focused on Oruru and Muriwhenua East, the areas where land claims had been abandoned and scrip had been taken instead. His inquiries, and the associated land purchases, are detailed in chapter 7. It is sufficient to note here that there were no hearings as such: no minutes or records of consultations, if any, were kept. There was no need for a hearing, in White's view, for the land was the Government's and the only question was where the boundaries lay.

Although the boundaries of the lands were by no means certain, the resident magistrate then allocated sections to people who were willing to buy them or take them on account of their scrip. He thus placed Duffus and Lloyd in Mangonui East as satisfaction of their 'entitlements' on Muriwhenua Peninsula, assuming that the land was the Government's. He placed others, including himself, at Oruru, where homes were built. Only then did Panakareao raise questions – at the point when something happened on the ground.

White did more than investigate the 'scrip lands', however. He was asked by the Governor to investigate some claims to Mangonui township where the owners had not taken scrip but had remained. Again, as a matter of law, only land claims commissioners could do this, but White took it upon himself to do much more than he was asked: he set out to resolve those claims and determine grants – without notice of hearing, without conducting hearings, and without minutes or the like. Then, assuming the role of a land purchase commissioner, he purported to buy any land in the township not covered by the claims.

Eventually, Commissioner Bell was appointed to complete the washing-up of the old land claims other than those satisfied by scrip, but in White's opinion the laundry had already been done. He later reminisced, exaggerating his role, that Bell 'held a land commissioner's court at Mangonui and officially confirmed all I had done'. There was no Maori objection to the process this time, however, since in 1856 Panakareao had died, and it was not at all apparent what was going on since public hearings were not held.

## 6.3 OVERVIEW

### 6.3.1 The overall Maori policy or kaupapa

Undoubtedly, Maori did not see themselves as caught up in events beyond their control and were not wanting to discard their culture or their traditional independence in favour of some foreign authority. Nor were they without kaupapa (fundamental purpose or policy). Throughout history, important Maori action has been invariably deliberate, following the considerable public debate for which the culture is now well known, so that decisions had kaupapa, a clear line of action and a vision, preferably divinely inspired. Just as Maori ask today 'what is the kaupapa?' in order to assess a proposal, so also we think a search for

The search for a kaupapa

the kaupapa is the key to understanding Maori action in the past, and Maori intentions with regard to the transactions in this case.

We consider such an approach is needed here to produce a well-rounded history that overcomes the slant of the English documentary record, provided it is within the parameters of the anthropological and historical sciences. Crown counsel warned against speculation, but in our view the greater speculation and danger is to assume that Maori had no policy or aspirations, or must be deemed to have had none, on account of the overly strict application of an evidential court rule. It is not speculative, in our view, to assume that a course of action had regard to the social norm, unless the contrary be shown. We have thus adopted the approach of claimant historian Philippa Wyatt, who urged that the identification of Maori kaupapa and the expectation of settlement benefits were pivotal to understanding the period.<sup>16</sup>

The likely kaupapa

We think a likely Maori kaupapa is discernible by looking at Maori action in the light of their traditions. While, obviously, all Maori do not think the same, positions change over time, and it is not in the nature of Maori or anyone else consistently to follow a logical line, traditional characteristics may still be found. The kaupapa, we consider, though honoured sometimes in the breach, was one of partnership and participation, to maintain a partnership with the Governor so that the hapu might be full participants in and beneficiaries of the new economic regime projected.

This was a line of action Panakareao had begun. It does not appear to us, however, that this kaupapa had qualified two other goals essential in the past: that Maori status and authority would be maintained; and that their children and their children after them would keep their association with their ancestral land. The maintenance of status and ancestral links with land were matters so old, and so much in evidence throughout subsequent Maori debate, that it would be hazardous to assume they had been discarded for the period being discussed. It should be considered, too, that if an authority over the land was maintained, then the ancestral link with the land was continued, no matter who was in occupation.

### 6.3.2 The Maori support for European settlement

The pro-settlement policy

The first of the factors most influencing Maori action at this time, in our view, was the desire for European settlement. We found the historical opinion consistent in the view that, throughout the period now considered, from 1840 to 1865, Maori were seeking to bring more Europeans to their land. This was so even though, during this time, other Maori, especially in the central North Island, had taken arms to stem the flow of European settlers and to limit the Governor's authority.

The reasons for that policy

The support for European settlement in Muriwhenua was due to several reasons. Maori were the majority population and saw themselves as in control.

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16. Document H9

No alternative regime was effectively asserted. Most Maori lived in the west, and the resident magistrate, with his tiny police force, was distanced to the east by a march of two days. It was not apparent then that land transactions meant a permanent loss of both land and authority. The situation was not like Auckland, New Plymouth, Wellington, Christchurch, or Dunedin, where large numbers of Europeans had taken possession of the land without paying homage or courtesies to local rangatira. Muriwhenua Maori did complain about settlers in possession of parts of Mangonui or Oruru, as will be seen and that Maxwell took Southee's land without prior Maori agreement, but these were relatively minor matters. Far from showing that the situation had so changed as to enforce a new Maori awareness, they show rather how Maori saw their own rules as still applying. This view was reinforced when, as a result of their complaints, the Crown paid Maori again during the 1850s and 1860s, at Oruru and Mangonui.

Maori must have considered that such payments, and other tribute, confirmed their status and authority in the land. Governor Grey made various gifts, from horses to steel flour mills and a schooner, and provided stipends and assessor salaries. Others also gave services or contributions regularly or at some stage, including the missionaries, Dr Ford, Henry Southee, Joseph Berghan, William Butler and Samuel Yates, that we know of.

Historians appearing before the Tribunal were agreed also that, in the Maori view, European settlement would provide ready markets for Maori produce, and that the settlers would provide skilled services and goods. Maori were led to that view both by Europeans and by their customary perceptions.

In sum, then, the world was still a Maori world to Muriwhenua Maori, and the settlement of Europeans appeared to them to be beneficial. The only concern Muriwhenua Maori had, therefore, was that the number of Europeans was too few. The actions of the leadership are regularly consistent with the desire to hold on to those settlers who were already there, and to bring in more.

### 6.3.3 The Maori alliance with the Governor

The second factor that we consider most influenced Maori at this time was the belief in the existence of a haumi, or an alliance with the Crown as represented by the Governor. In evidence before the Court of Appeal in 1987, historian Claudia Orange characterised the perceived relationship as a partnership between Maori and the Crown, and considered that this perception applied generally.<sup>17</sup> For practical purposes, a hono, a partnership or marriage, and a haumi, an alliance, can be seen as the same. The metaphor of an alliance is probably more apt for Muriwhenua, however, on account of the military arrangements made with the Governor in two significant wars, the northern wars of the 1840s and the general wars of the 1860s. Whether partnership or alliance, however, the Muriwhenua record supports the perception of a relationship of the

Partnership and  
alliance

17. See *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA)

kind Dr Orange described. This point was particularly emphasised by Dr Margaret Mutu for the claimants.<sup>18</sup>

How the alliance  
matured

It has to be noted, then, that while there were troubles between Maori and the Governor to the south, in Muriwhenua the partnership or alliance not only survived but developed. In line with custom, Panakareao had sought an alliance first with Governor Hobson at Kaitaia and at Mangonui, then with his successor, Governor FitzRoy, at the beginning of the northern war, and again with Governor Grey at the battle of Ruapekapeka in 1846.

European view of  
an alliance

Clearly, Europeans did not see an alliance as existing at this time. They assumed Britain would rule. Historians have suggested that Grey himself, with his pensions and assessor salaries for chiefs, was simply manipulating the rangatira to advance his own rule, or was cultivating a Maori aristocracy that he could control. Here, however, we are concerned with the Maori view and how that view informed Maori actions at this time. In short, Maori believed they had an alliance, or a partnership in Dr Orange's terms, with the Crown.

The custom about  
an alliance

The concept of an alliance required only a small transition from the idea of incorporating individual Europeans. Incorporation and alliance both came from the same customary source and, in this instance, both were directed to Panakareao's objective of locating Europeans on the land. Moreover, both carried the same customary requirements. It was important, for an alliance to succeed, that the rangatira involved should be meticulously faithful to their word. Europeans often commented at this time on how rangatira would not abandon their word, once given, despite any consequences.

An alliance was seen to require also an absolute trust in the integrity of the other party and consistent homage, or the honouring of each other in speeches and the regular renewal of bonds, promises, or undertakings. Alliances did not exist on account of some document or in a vacuum, but rather they survived through an ongoing display of commitment, love, and trust. Hence Panakareao's wry observation to Wynyard that 'the marriage ring has not dropped from my finger'.

The alliance was  
with the Governor,  
not with officials  
or Europeans  
generally

The alliance was also personal to the monarch or the Governor. Far from extending this commitment to officials, or to Europeans generally, the rangatira saw themselves as in control of the home scene, and local officials were even considered to owe them some allegiance. Godfrey, for example, was not permitted to sit in Mangonui, where it did not suit Panakareao's pleasure, and the terms on which he might sit at Kaitaia were set out at the opening there.

The missionaries, of course, were seen as fulfilling customary obligations, providing numerous services. The traders, too, appeared to acknowledge Maori authority. After an initial conflict over access to shipping for trade, there was peace with Captain Butler. Other traders also came in under Panakareao's wing.

18. M Mutu, 'Muriwhenua: Crown Alliances as Described in the Maori Language Documents Relating to Crown Land Purchases in Muriwhenua in the Period from 1840-1865', 27 April 1993 (doc H10)

Panakareao wrote to the Governor to support their land claims, once they were prepared to recognise him.

With Resident Magistrate White, however, who presumed to act in an independent manner, Panakareao had regular trouble. White's presence was tolerated but his authority was not acknowledged.

Affirming the alliance was probably important after Panakareao's death in 1856; first, to confirm that the alliance had survived Panakareao, and second to establish the status of each of the hapu leaders for whom Panakareao had previously spoken. The chance to make this affirmation, and to be recognised, came when Kemp, the Government's land purchase agent, inaugurated a new Government purchase programme later the same year. An important part of the transactions that followed, we think, was that they were seen to affirm both the alliance between Maori and the Queen, or the Governor, and the authority of the various rangatira. The main issue for contemporary Maori leaders, we consider, was neither a sale, as such, nor the price, but the recognition given by their inclusion in the contract. 'I had not the selling of the land, and therefore my claim to it is not wrong', wrote Wi Tana Papahia (according to a translation by Kemp) concerning the alienation of lands where he had not been consulted. 'Had I even received a sixpence as an acknowledgement of my right', he added, 'then the claim I now make would be unjust.'<sup>19</sup> Papahia thus claimed the land, but in his whole correspondence his primary concern was the failure to recognise his own interest and authority.

The alliance after  
Panakareao's  
death

The second opportunity to affirm the arrangement with the Governor, and more clear-cut from a European view, was the decision to stand with the Governor during the New Zealand wars. On 16 February 1861, Muriwhenua Maori affirmed their relationship with Governor Browne at a hui at Mangonui. There, with representatives from Hokianga and the Bay of Islands, and also with Waikato in attendance, Muriwhenua rangatira confirmed that, while they would not oppose the Maori King, they would support the Governor by keeping out of the war. They had placed 'their Pakeha' on the land and implied that they would protect them if need be.<sup>20</sup> Muriwhenua leaders affirmed that position again later, independently of the Government, at a meeting with Nga Puhi at Ahipara in 1863, when they were again urged to join the Maori forces against the Governor. Wi Tana Papahia replied: 'These tribes are old friends of the Pakehas, and my determination to protect the Pakehas is fixed.' It was a classic restatement of the Muriwhenua position. Panakareao may have died, but old policies had not given way to new.

The alliance as  
affirmed in war

The Muriwhenua leaders rejected the views of central North Island Maori that those who gave over their lands would lose the control of their territories. When the latter went to war to protect their autonomy, Muriwhenua Maori assumed that

19. Wi Tana Papahia to the Governor, 19 September 1855, OLC 1/328, pp 23, 28-30 (doc D12(a)); translation by H T Kemp

20. Fuller particulars are in document F9, p 34, and the supporting documents there referred to.



their own autonomy remained safely in place. Many of the Government's land purchases in the north occurred during the wars, when other Maori were hoping to keep Pakeha out but Muriwhenua Maori were hoping to bring more in.

Once more it seemed to them that the Governor saw an alliance as well. He rewarded Muriwhenua loyalty during the New Zealand wars by dramatically increasing assessor salaries, and by establishing a native hospital at Mangonui in the aftermath of a further typhoid epidemic.

#### 6.3.4 The prevalence of traditional values

The survival of tradition and the understanding of sales

The third factor we see as important in influencing Maori opinion at this time is that traditional Maori philosophy and policies continued to prevail. In our view, Maori lifestyles were still Maori, firmly embedded in custom. This point is contentious, since it relates directly to whether, by this time, Maori understood sales as Europeans did. Because there were so many sales, it could be argued that traditional philosophies and policies, especially those involving a close feeling for the land, were in abeyance. We do not accept that view. Rather, we believe that, in pursuit of the new social and economic goals, the traditional Maori views about their status and authority in the land, their relationship to the land, and the way people should relate to one another, continued to be important to Maori, just as they are important to Maori today.

Reason: population imbalance

Our reasons are as follows. First, Maori remained the predominant population and saw themselves as being in control. The European population, though important for trade and therefore to be looked after, was so small it could not present a challenge or force people to change on other than their own terms.

Also, change was superficial

Secondly, while accepting most historical evidence that major changes were occurring, we do not see those changes as affecting the fundamental Maori values and beliefs. As Dr Gould pointed out for the Crown in a thoroughly researched paper, there were significant alterations in terms of clothes, money, wage labour, barter, foodstuffs, agriculture, implements, stock, and so on; but, in our view, these mainly amended practice and procedure.<sup>21</sup> There was a substantial shift in production and marketing, but we believe it was accommodated within a customary group structure. Similarly, a whole new religion may have been taken on, but it was in basic harmony with Maori values and beliefs.

The more likely scenario, we see, is that foreign practices were received with pleasure and alacrity, but did not replace Maori culture. They were incorporated to supplement, strengthen, or enrich that culture, adding a further dimension to existing views. In the result, practices might be taken on board without the associated value systems. Indeed, foreign forms could be used to assert independence from foreign control, as the religious leader Te Atua Wera shows. Maori culture was thus no different from English culture, or any other, in its

21. Document J4(b)

ability to receive foreign influences while remaining true to itself. We do not agree with Crown counsel's suggestions that, once a native culture has lost its perceived pristine form, it has somehow bent to some foreign sway.

Thus, even in receiving payment for land, old ways remained, as Kemp's recollection of his Muriwhenua purchasing activities shows:

A special feature connected with the old purchases is one, I think, that should not pass without recognition, viz, that the distribution of the money payments in the early days was always in cash, gold and silver. The claim of each member of the tribe, or section of a tribe, however small, was honourably recognised by the chiefs of the old school, who frequently left themselves minus the share to which they were equitably entitled. These traits in the character of comparatively uncivilised men were remarkable in their way, and warranted the impression that though without any written code to guide them, their common sense and observance of their national customs and traditions had by this means secured the loyalty and affection of their people.<sup>22</sup>

Old practices continued and old values persisted. It will be recalled that Panakareao had eschewed participation in the somewhat tumultuous scramble for goods in the first-ever transactions in Muriwhenua, at Kaitaia in 1834. This indicated two things. What the rangatira did was for the people, not for themselves; and the rangatira were not interested in the immediate returns but the greater benefits over time.

Thirdly, unique customs remained. Although the resident magistrate was determined to stamp out muru, or property confiscation for offences, for example, the practice, with its essential messages about the priority of the group over the individual, continued. Although he was equally resolved to abolish the hakari, with its profound ethic that status lay not in accumulating wealth but in giving and in maintaining alliances, it continued on a lavish scale. A report on one hakari in 1863, involving 800 locals and 400 Nga Puhi guests, describes the gift of goods, including 2800 'blankets, gowns and shawls'. The value of the food and goods conveyed was probably equivalent to the amount that would have been received from the 'sale' of several thousands of acres of Maori land, according to prices at that time.<sup>23</sup>

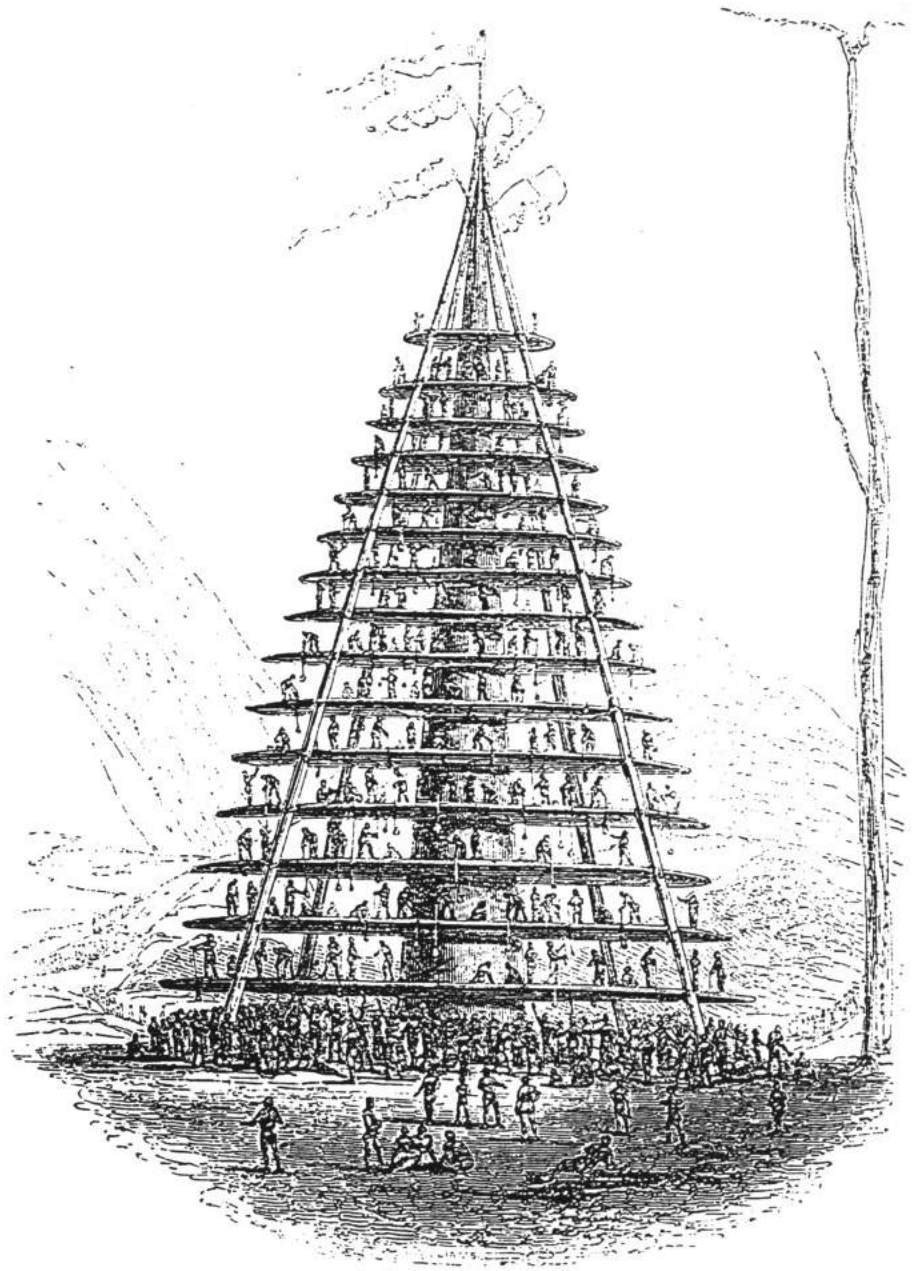
Further, unique  
customs  
remained

The resident magistrate's determination to abolish the hakari has parallels with the Canadian authorities' drive to ban the Indian potlatch, which was remarkably similar in structure and purpose. In both countries officials remarked despairingly on the extravagant displays and generous gifting of all that the people possessed, only to face poverty, penury, and starvation, they thought, next winter. In fact, the hakari was an insurance that, if crops failed locally or there was a war, full support must inevitably come from elsewhere, as honour would

22. H T Kemp, *Revised Narrative of Incidents and Events in the Early Colonizing History of New Zealand, from 1840 to 1880*, Auckland, Wilson and Horton, 1901, pp 10-11; see doc 14, app 1, pp 10-11

23. See 'Account of Meeting Held at Ahipara, May 1863', Grey papers, APL. Though it was described as the last hakari, we very much doubt that.

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A stage erected for a hakari. From W Yate, *An Account of New Zealand*, London, Seeley and Burnside, 1835.

so require. In both countries, officials did not see that a much larger 'recklessness' in giving was taking place in relation to the land, and with a similar purpose in mind: to provide for other people.

The continuation of *murū* and *hakari* is evidence that traditional customs endured, along with the values they expressed: in this case, meeting obligations to one's community and to other peoples, no matter what the cost. Further testimony to the survival of traditional values is the tenor of Maori opinion recorded, in letters and petitions from then to the present, which consistently express a distinctive Maori world-view, and in the repetition of those values in latter-day *waiata*. 'Ehara i te Mea' by Eru Ihaka of Te Kao, in the early 1900s, comes readily to mind, for it is now nationally known; and thus in the second verse:

Finally, Maori  
values survived

*Te whenua, te whenua!*  
*Hei oranga mo te iwi,*  
*No nga tupuna,*  
*Tuku iho, tuku iho*

*The land, the land!*  
*The sustainer of the people,*  
*Belonging to the ancestors,*  
*Passed down, passed down*

Having listened to many 'ordinary' Maori in Muriwhenua over several years, it is clear that, in Muriwhenua, the traditional world-view remains part of everyday life. The evidence came especially on site visits, in such a natural and unassuming way that it was obvious old values exist – not because of some modern cultural renaissance, as was suggested at one point, but because they have always been there. Tradition, in Muriwhenua, lies less in the form than in the heart.

With regard to the survival of tradition, ancestral tenure deserves special mention. The Tribunal was introduced to the importance of ancestral tenure for the people today in the Ngati Kahu Mangonui sewerage claim, reported on by the Tribunal in 1988.<sup>24</sup> (The issue of ancestral land is also part of the current Ngati Kahu claim.<sup>25</sup>) We were reminded that, as a result of submissions to a parliamentary select committee by the New Zealand Maori Council, under Sir Graham Latimer, who is one of the Ngati Kahu claimants, section 3(1)(g) was introduced to the Town and Country Planning Act 1977. This provided for 'the relationship of the Maori people and their culture and traditions with their ancestral land' to be recognised as a matter of national importance in the preparation of district schemes.

Ancestral tenure

It was contended before this Tribunal in 1988 that, while Maori were supposed to have learnt early of the European tenure system, the Government was not so capable of comprehending the tenure of Maori. It had taken more than a century for Maori land values to be incorporated into the general law, and then, they

24. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988

25. See *Report . . . on the Mangonui Sewerage Claim*, preamble, sec 2

contended, it took 10 years for the meaning of the section to be understood. The assumption was that ancestral land meant land currently owned by Maori people, whereas to Maori, as the Ngati Kahu claim made clear, it was the relationship with the land that was important, not the English concept of ownership of property.

The Waitangi Tribunal responded to the Ngati Kahu position, commenting:

The assessment of [the ancestral] relationships ought not to depend on the ownership of land, the more so when, as here, it cannot be assumed that the land was freely and willingly sold with appropriate tribal sanction.<sup>26</sup>

By then, however, a new understanding of ancestral tenure was already apparent to the courts,<sup>27</sup> although Ngati Kahu had to pursue an action to the Court of Appeal in 1988 to have the principle of ancestral tenure ratified with regard to their district, in a case concerning a development project on the Karikari Peninsula.<sup>28</sup>

Comprehension  
of sales

Even though Maori values persisted, it does not follow that Maori could not have learnt the meaning of a land sale. Old values survive today, but obviously a sale in Western terms is now understood. Our concern, however, is that the common assumption that Maori learnt rapidly is in danger of assuming too much importance. First, that view may rely overly on official Crown purchase records, when it suited the purpose of the purchaser, official, or politician to show that land was freely and knowingly given. Second, cultural assumptions affected official thinking. Nineteenth-century colonial officials assumed that the natural movement for native peoples was from darkness to light, that Maori progress was to be measured by the rate of assimilation, that rapid acceptance of change was evidence of cultural collapse, that indigenous cultures must inevitably die, or that Maori would move from custom to law. Some elements of those views survive even today. Maori, on the other hand, see their post-contact history differently. They tell of a plethora of movements, secular and religious, to uphold their traditions and autonomy. For them, the evidence of cultural resilience is everywhere. Accordingly, their acceptance of rapid change speaks of cultural expansion, not decline; they measure progress by their pursuit of ancestral kaupapa in a modern world; and their objective may be to sustain custom within the law, not to phase it out.

Customary views  
survived

Customary views on land tenure, contracts, and human relationships, as described in previous chapters, were part of such an entrenched social system that we do not consider its displacement can be assumed simply because of evidence of superficial changes, no matter how extensive those changes might have seemed. Old views on ancestral land rights continue to be applied today, despite the alternative provisions in statutory Maori land law. Maori contractual

26. *Report . . . on the Mangonui Sewerage Claim*, p 61, no 7

27. See *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76

28. See *Environmental Defence Society Inc v Mangonui County Council* [1989] NZLR 257 (CA)

modes operate even now outside the ubiquitous commercial norm. Tribunal members can also recall some elders who only recently could not accept that English sales applied to ancestral land, and who spoke as though land long sold was still theirs. A test for when Maori saw sales as Europeans did is the point at which they generally acted in this regard as Europeans normally did. In Western terms, as will be seen, Maori conduct over sales at this time was extraordinary.

Other actions show how the transactions described in the land deeds and the transactions as understood by Maori were not the same. Thus, in 1840, a land deed was signed with Panakareao, as we have seen, but later he acted as though the land had been retained. In 1854 a receipt was given for the sale of other land, but soon after, when settlers took possession, Panakareao complained once more. This reaction carried on into the Government purchase period. According to an 1840 deed, Pororua had agreed to a Mangonui sale, but, when settlers came onto the land, he objected. A further payment was then made and yet, in 1862, he objected again and 37 Maori petitioned that the land was being stolen by the Government. One response was to say, as White did, that the Maori were liars and cheats. Another would have been to consider whether they were simply acting out of their own laws and beliefs.

Evidence of misunderstanding at the time

We think it likely that new understandings would have developed only slowly, over generations, unless something forced a different view. Accordingly, the answer to the question, 'When did Maori understand land sales?', may lie in another: 'When would they have needed to know?' Presumably, Maori understood the meaning of a land sale only at the hard edge of reality, when possession was taken and held without homage to Maori, and when Maori felt unable to effect a remedy. In other parts of New Zealand, the meaning of a sale would have been obvious, as settlers took possession soon after the transaction. But immediate, large-scale possession by settlers did not come in Muriwhenua during the nineteenth century. Occupation was regularly delayed after the execution of a deed, often for over a decade. Indeed, a third of the land the Government purchased it still owned in 1949. Thus 'sale' was a paper thing, without matching marks on the ground; and, when occupation was taken, it was believed to be on customary terms. Obviously a 'sale' in English terms was understood in time, but clearly this was substantially after the event.

The relevance of a shift in power and possession

Crown counsel contended that Maori had an understanding of sales by 1840 (and indeed much earlier). Claimant counsel acknowledged that a permanent alienation was probably understood by the 1850s, even though Maori continued to hold their customary expectations of reciprocal obligations and ongoing benefits, and sought to attach such conditions to the alienations. We therefore examine briefly the evidence on which these views rely.

Evidence to suggest sales were understood

H T Kemp apparently reported, shortly before Panakareao died in 1856, that Panakareao would not sell certain lands in Victoria Valley as 'it was more than probable it would be required for the use of the Natives, whenever the

surrounding districts shall have been purchased by the Government'.<sup>29</sup> Panakareao may have come to see the effect of a sale in Western terms. The fact that he signed only two Government purchase deeds after 1839 (one in 1840, for Mangonui, and the other in 1850, for 35 acres) possibly supports that view. We do not regard Kemp's report on its own, however, as authoritative evidence that Panakareao saw land sales as a European did. Like other reports which the Crown relied upon to contend for an understanding of sales before 1840 – the report of a 'leading' Maori on the settlement of the Kaitaia transaction in 1835, or that on the Hokianga 'combination' against land sales, for example – Kemp's report is a European interpretation of a Maori opinion, presumably given in the Maori language.

An opinion in Maori may be variously translated, especially in this case where, in the Tribunal's view, there was no Maori word for sale or purchase. Kemp's interpretation, that Maori knew what a conveyance meant, fitted what Kemp was officially obliged to show: that Maori knowingly sold their land. Panakareao could equally have said, however – in Maori – that Maori needed to keep part of the land for their own use over that given for the use of the settlers. Kemp may have taken him to be referring to an unconditional purchase, since that was on Kemp's mind. We think that such accounts left far too much to the interpreter's bias, and that assessment of the issue requires a broader contextual survey.

Payment or  
deposit; transfer  
or lease

Crown historians Gould and Sinclair argued that a Maori eagerness for money, for food, clothes, stock, machinery, debt clearance or the like, and some haggling over price, showed a shift from traditional beliefs about future rewards to a focus on immediate needs.<sup>30</sup> They also said that, if a long-term relationship and ongoing benefits were most desired, a lease option was known about and could have been tried. We agree that Maori probably shifted their focus to account for new needs. In that case, however, one would expect them to manoeuvre for a high down-payment. Similarly, if the deed was not in the form of a lease, Maori may still have seen the transaction to be like a lease.

The written or  
spoken deed

As with the pre-Treaty transactions, we see the deeds as primarily evidencing the objectives of one party only: the Government. Traditionally, Maori valued the spoken word and relied upon the honour of the other party to observe its obligations in the spirit in which they were entered into. The decision to sign a deed was more likely to have been based on the preceding debate than on the deed's words, so that, while the signing of a deed was probably seen as pledging a troth, the deed was not seen as the troth itself.

Thus, Panakareao described the Government's payment of £100 for Mangonui in 1840 as 'an earnest' only, when he revisited the transaction in 1843. This had nothing to do with the wording of the deed, and everything to do with what Panakareao considered to be the unstated conditions of the contract.

29. Kemp to McLean, 11 April 1856, AJHR, 1861, C-1, pp 5-7

30. See doc J4(a), (b)

For these reasons, we doubt whether, even at this time, the Government purchase transactions described in the following chapters were seen as sales. We do not think that the transactions were seen to carry all the consequences that a person familiar with English land sales would have taken for granted, or that they were seen to omit those expectations that a Maori would assume when contracting.

Conclusion on  
Maori  
understanding

### 6.3.5 The expectation of a comprehensive settlement approach

For Maori, the discussion about land purchases would have been concerned, not with conveyancing and alienation, but with settling Europeans on the land in large numbers. The discussion would have been in terms of ancient kaupapa: that Maori status and authority in the land would still be enhanced, and their association with their ancestral land would still continue.<sup>31</sup>

This is the fourth factor most influencing Maori action at the time. As we see it, the main debate amongst Maori was not about sales, but settlement, for the following reasons.

- Maori could no longer deal directly with settlers. They were bound to deal only with the Governor, and he alone could allocate land to settlers. The alliance was therefore important. Maori and the Governor had to work together, with Maori giving land, the Governor effecting allocations.
- Furthermore, the Governor would allocate the land in question to both European and Maori. The Government's reserve policy was to reserve lands for Maori from out of the land under negotiation. There was nothing new in this policy: imperial officers had proposed, as had the New Zealand Company, even before the Treaty of Waitangi, that a proportion of all the land acquired should be reserved for Maori. Previously, land had been transferred to missionaries to hold for Maori. Now the Government would do the same, but would give Crown grants. This arrangement had been regularly put to Maori and, although they appear to have assumed that tribal holdings would remain, Maori too spoke of their desire for a Crown grant so that their lands might be made safe. The transfer of land was not a permanent alienation in fact.
- In so far as a Maori-Governor alliance was seen to apply, the transfer of land for the Governor's allocation could not have been seen as an unconditional cession of power either. Hapu would continue to have authority in the areas they traditionally occupied and, consequently, their association with their ancestral land would remain. They may have expected a continuing say in its use. For their own occupation, reserves were proposed, and from this they would have expected that special benefits would follow: access to local European markets, allowances, from the Governor as before, and the sorts of services the missionaries had given.

Direct dealings  
prohibited

Part of land  
acquired to be  
reserved

Maori authority  
seen as  
continuing

31. See doc H9



Each of these expectations contributed to the overall assumption that Maori would be substantial beneficiaries in a new economic regime.

Most especially, Maori believed that their authority was secured. Their whole history supports the view that Maori never willingly ceded their traditional power. Mana was too integral to their culture, and Maori policy was not to give mana away but to enhance it.

Transactions as  
the affirmation of  
an alliance

- To affirm this alliance with the Governor, and to participate in the new deal, one had to give over land. This required some trust, but Maori traditionally placed an absolute trust in those with whom they transacted. A free giving to allies, as in the hakari, was part of the culture. There is also evidence of some hapu eagerness to give over land at this time. Giving on trust was the essence of manaki, the enhancement of mana.

Expectation of  
continuing  
benefits

- The expectation of continuing benefits and a bigger reward over time was no doubt due in part to customary understandings, as Crown counsel contended, but it was also fostered and encouraged by officials. In this respect, we adopt claimant counsel's argument and Professor Oliver's overview of the evidence. We consider that the supposed benefits of European settlement were advocated to Maori in a general way by missionaries, settlers, and officials, both before the Treaty and regularly thereafter, as an inducement to accept the Treaty of Waitangi and to cooperate over land alienation.

Promises and  
inducements

These reasons combined compel the view that the arrangements for Maori and Europeans could not have been restricted to the sale of land but involved consideration of power, markets, services, and the mutual advantages. The promise of benefits was the subject of much debate, however. Part of the claimants' case was that promises of long-term benefits were so crucial as to form part of the implied contract, making the Government accountable for non-delivery.<sup>32</sup> The Crown argued that Maori and the Government, in their separate understandings, both expected future benefits but that there were no binding promises.

Evidence of such promises assists in understanding why people acted as they did, but our jurisdiction is not honed to what might be actionable in a court of law. The question for us is whether Government policy was reasonably adapted to known circumstances and foreseeable consequences. If Maori and the Government were agreed that Maori should benefit from settlement, and if it appeared that Maori were transferring land with that expectation, we would have expected some form of plan to bring that about.

General evidence  
of promises

Here, we are not so concerned with specific promises of prescribed benefits connected to particular transactions. They would be difficult to establish anyhow, since no records were kept of the meetings and discussions. Our concern is more with the broad promises of a political kind, of which there is abundant evidence. It begins with the missionaries, who promoted the

32. See W H Oliver, 'The Crown and Muriwhenua Lands: An Overview' (doc 1.7), pp 24-26

advantages of British government to Maori, and whose opinions were later ratified by the governors and officials. Indeed, until Governor Grey implemented the resident magistrate system nearly 10 years after the Treaty, the Government sought to achieve its objectives through the missionaries, who were effectively made Crown agents. The Treaty of Waitangi itself, moreover, was promoted on the assumption that settlement would provide long-term benefits to the Maori people. Why would Maori have signed the Treaty of Waitangi if they thought, for one moment, the position might be otherwise?

By their words and actions, subsequent governors consistently maintained that Maori would profit from settlement in due course, though Maori would need to give over their lands. Panakareao, for example, believed that Grey had 'promised' him a European settlement at Mangonui, and he wrote to the Governor 'that he was tired of waiting'.<sup>33</sup> No attempt was made to deny that such a promise had been given.

The same general understanding is conveyed in various reports to the Government, like that of Resident Magistrate White:

We have also for several years been leading the natives to acquiesce in the desirability of ceding their lands to the government.<sup>34</sup>

This was reinforced by promises made in other districts, and in Muriwhenua reports from a later period. One purchase agent there in the 1870s reported that he had said:

If you sell land, true, you will have parted with it, but unlike other lands you have sold, you, yourselves, and your children after you will continue to reap a benefit from the White man who will occupy it and kindle his fires upon it.<sup>35</sup>

At a national level, Governor Browne assessed in 1857:

I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial Government, have been held out to the Natives to induce them to part with their land.<sup>36</sup>

A widespread practice of promising future benefits can reasonably be inferred. It is apparent, too, that Maori relied on these promises, that they believed the governors would adhere to their undertakings or those made on their behalf, and that the expectation of future and continuing benefits would have influenced them in entering into land transactions.

Custom on adherence to one's word

33. Cited by Nugent to Colonial Secretary, 2 January 1848, enclosed in Grey to Earl Grey, 17 March 1848, no 35, BPP, vol 6, pp 99-100

34. White to Native Minister, 29 November 1861, BAFO-A760/11, pp 100-104

35. McDonnell to McLean, Native Secretary, 27 September 1873, MA/MLP 1/1 1873/222, NA Wellington; see doc F10, p 57

36. Gore Brown to Labouchere, 9 February 1857, GI/43, NA Wellington

Maori expectation  
of a wider strategy

An agreed plan for mutually beneficial settlement was therefore needed. Land allocation was but one of many matters, and for Maori not the most important, that needed resolution: provision for Maori law and authority, access to markets, the incidence of taxation (the debate at this time concerned custom duties), reserves, the availability of medical services, schooling, farm training, watering rights, anchorage dues, land development, and so on. The deeds of conveyance were but a first step in a larger design, or kaupapa.

New Zealand and  
Canada

If it is considered that the matters mentioned above would not have been thought of at the time, it should be noted that each had been previously debated in Muriwhenua, and some had been in issue in the northern wars of the 1840s. By way of comparison as well, each item was in fact being discussed in Canada at this time. For Indians as for Maori, the focus was not upon a peculiarity of English law – the conveyance of land – which was unknown to their respective cultures. The focus was on the terms for the ultimate good, the settlement of Europeans.<sup>37</sup>

In Canada, a different position was taken. We are aware of considerable criticism of the arrangements made there, and much of it appears to be justified. It must be noted, nevertheless, that while Maori were presented with deeds that simply conveyed land, the Canadian documents, read collectively, at least made some show of concern for each of the items mentioned.

Reliance upon the  
Governor's  
honour

At the time, however, it need not have mattered for Maori if these items were not resolved before the land was transferred. The Governor had indicated that Maori would benefit and their interests would be protected. He had the authority, knowledge, and ability to make that happen. Once Maori gave the land, it was for the Governor to do what honour required of him. There was no difference in principle between this approach and the contractual approach that had sustained Maori since time immemorial. It is thus not surprising that Maori gave over so much land, or believed that the more they gave, the greater would be the benefits in time. Some Europeans may have seen the position in the same way. Puckey reported on the 1859 Ahipara purchase, for example:

The Rarawa chiefs have shown the utmost liberality in giving so fine and large a proportion of ground – and they well deserve a good and kind class of settlers . . .<sup>38</sup>

Generally, however, Maori were thinking in one world, and Europeans in another. The transactions that, for Maori, were a beginning were, for Europeans, contracts to put an end to a millennium of Maori history and tradition. They were talking of extinguishment.

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37. For a general overview of the Canadian Indian position, see John J Burrows, 'Inherent Sovereignty and First Nations Self-Government', *Osgoode Hall Law Journal*, vol 30, no 2, 1992, p 321

38. Annual report, 31 December 1859, Puckey's journal, vol 2, pp 405, 408

### 6.3.6 Government policy of total extinguishment

Where Maori expected their authority to continue as before, the Government, in asserting British rule, assumed that Maori authority, law, and land tenure should be replaced. Further, while both sides assumed that Maori would benefit from European settlement, there was no drive to reserve the land that Maori needed for that purpose. The result was the virtual exclusion of Maori from the central Muriwhenua bowl, and their marginalisation on the rims – politically, socially, and economically.

Maori and Government assumptions

The Government managed settlement through a policy for the total extinguishment of native title. Once more, a definition is needed:

Extinguishment concerns both land and authority

*Native title:* Native title comprises the package of rights to which native peoples were accustomed by virtue of their prior occupation, encompassing both land usage *and* systems of government.

For the purposes of this claim, we need not refine the English legal notions of native title or pursue further the Government's related doctrine of tenure. It is sufficient to say that, by taking a cession of land, preferably by purchase, the Government deemed the native title – that is, both the native right to use it and the native authority over it – to have been extinguished. It was called a deed of cession rather than a simple land conveyance. Further, since it was expedient to erect one form of tenure and authority for the whole country, the Government referred to a general or '*total* extinguishment', to indicate the need for a cession of everything and the complete replacement of Maori tenure and control. It therefore wanted large purchases, with parts to be handed back as freehold grants to individual Maori in the same way as grants were made for settlers. Tribal ownership would end and Maori would hold lands as Europeans did, except that the Maori lands, or reserves, would be managed by Government agents for them, or would be held by a few chiefs.

The underlying assumption that a free society, good government and economic growth required the extinguishment of native title, and the general substitution of individual tenure, does not appear to us to be sustainable. We have come to see more clearly today that a variety of title systems, including tribal titles, can work in a modern political and economic system. It is also clearer today that the individualisation programme imposed on Maori led to the disinheritance of large numbers, title fragmentation, ownership splintering, the elevation of absentee interests, and the loss of group authority, social cohesion, and economic strength.

Associated colonial assumptions

It is arguable that the conversion policy was seen as beneficial for Maori at the time. It may be equally debated, however, that the policy arose primarily from a prejudice against tribal authority and the power of chiefs, from a desire to assert domination and to subjugate Maori to the British system, as much as from a wish to facilitate the sale of Maori land. Whatever the good and bad elements in the mixed motives of the time, it is clear from later actions that the new system was

not agreed. Maori never consented to the substitution of an alternative tenure system or the diminution of the laws of their ancestors. When a Native Land Court was established to change Maori land tenure generally, and the policy was thus obvious for the first time, Maori in various parts of the country immediately objected.

Any good intentions that may once have existed, however, were soon devalued by the failure to secure Maori reserves. If the intention was, as Crown counsel contended, and as we understood it to be, to acquire large areas and then to hand back parts to Maori as reserves, but under a new tenure system, proof of good intent would lie in the amount thus passed back. Very little was. For one thing, there was no clear nineteenth-century policy on reserves. As Professor Oliver pointed out, Chief Land Purchase Commissioner Donald McLean envisaged reserves for all of the hapu at one point, and then, soon after, as providing only a small amount of land for a few chiefs, with the remainder to constitute a labouring class. For another, officials at the frontier saw in the policy the opportunity to remove Maori altogether from large areas. Maori had no view on this policy, of course, as at the time they did not know of it. Most still did not know of it when our inquiry began.

Dr Rigby opined that certain other assumptions influenced policy and action at this time; for example, that Maori would so want 'civilisation' and European commodities that they would readily give of their land. We think this view prevailed amongst officials. Related to it was another: that land was valueless in Maori hands, for only individual labour for personal gain gave it value. This meant that an overly meticulous determination of the proper owners or of a fair price was not needed, for by this 'trickle-down' process the larger reward would come eventually, and to everyone, from the spread of civilisation.

Government  
policy in practice

These views would not have encouraged Maori to believe that land alienations could have serious, long-term consequences. Although McLean required full and open proceedings involving everyone, and that reserves be made, his instructions were neither rigorously enforced nor followed. While the Government was never so explicit as to state that its policy was to relieve Maori of as much land as possible, as quickly as practicable, and for the least cost, official statements and reports, combined with the outcome, show that that was the policy in fact. It is difficult not to form the impression, on reading through official documents, that Maori interventions or complaints were seen as having nuisance value only, standing in the way of a necessary objective.

Crown arguments

It is not practicable to review at length the submissions of Crown counsel, but we should briefly mention some at this point. The Crown argued that there was no specific policy or instruction to buy all the Maori land. While no such policy was formally proclaimed, the correspondence of Crown agents and the Government shows that such a policy was generally accepted, understood, or tacitly agreed, and later events would show that total extinguishment of native title, mainly by purchase, was effected in fact. There was regular talk of the need

to effect very large purchases, and as rapidly as possible, and many reports proudly related how everything in an area had been taken. Thus, at the local level, Resident Magistrate White wrote:

We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the Govt. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.<sup>39</sup>

At the central and regional level, in 1858 the Assistant Native Secretary urged Kemp 'to complete the purchases under negotiation in your district with the least possible delay, the quantity of land at the disposal of the Provincial Government being insufficient to meet the requirements of immigrants expected to arrive in the Colony within the next year'.<sup>40</sup> In response, Kemp reported (six weeks later) that he had recently completed a number of purchases and that these 'connected a long line of country North of Mangonui, over which the Native title will have been extinguished'.<sup>41</sup> By September 1859, Kemp claimed, virtually all the land from Ahipara to Mangonui had been 'connected by survey lines . . . making with but little interruption, one continuous and complete block'.<sup>42</sup> Finally, the Governor himself took the same position. He was critical of legislation which, he thought, would deter Maori 'from selling large blocks, the cession of which carries with it a recognition of Her Majesty's supremacy . . .', adding, 'it [is in] the interest of both races that the tribal title of the natives should be extinguished as rapidly as is consistent with honesty'.<sup>43</sup>

During this time, the Government was doing more than merely buying the land to meet the needs of settlers. In Muriwhenua, it was buying with a distant future in mind, ahead of demand. One result was that market forces did not determine the sale price for Maori. Another was that some of the land purchased by the Government remained Crown land into the middle of the twentieth century. Crown counsel addressed this situation by submitting that the Government was merely responding to Maori offers to sell. We did not read the evidence that way. The point, however, is not about Maori intentions in offering the land, but the responsibility of the Government in buying. Lord Normanby had warned that a constraint on sales would be required and an interventionist policy was needed.

The Crown's position was further, as we understood it, that the policy of buying to amend the land-tenure system was beneficial, for Maori as for Europeans, or at least was seen to be beneficial at the time, giving Maori secure land rights.<sup>44</sup> Many Maori spoke of the advantages of a Crown grant as a result;

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39. White to Native Minister, 29 November 1861, BAFO-A760/11, pp 100-104

40. Smith to Kemp, 29 November 1858, no 65, AJHR, 1861, C-1, p 32

41. Kemp to McLean, 18 January 1859, no 68, AJHR, 1861, C-1, pp 33-34

42. Kemp to McLean, 12 September 1859, no 80, AJHR, 1861, C-1, p 38

43. Browne to Bulwer Lytton, 15 October 1858, BPP, vol 2, p 78

44. Crown's closing submissions (doc 01), pp 171-173

but the assumption of benefit too readily assumes the superiority of the Western system. The opinion of many commentators, for over a century, has been that some tribal title, with incorporation of the tribe, was needed far more than the individual tenure that was given. The argument of good intention is nevertheless thrown into jeopardy simply by reference to the parsimony with which land was in fact handed back to Maori, no matter what the form of amended tenure.

The Crown also maintained that Maori sold some of their land to meet the cost of obtaining stock and implements to develop their remaining land. This opinion also needs careful consideration. Maori, if anyone, were entitled to development assistance. It was well known at the time, and had even been predicted as necessary by Lord Normanby, that the cost of settling and developing the country was being met from the on-sale of Maori land. They were funding the country. The irony would later be, as Europeans took possession of the land and Maori were excluded, that it was the Europeans, not Maori, who received the State's land development assistance from the accumulated profit in the public revenue.

Finally, Crown historians Gould and Sinclair argued that the need to reserve land for Maori was not apparent at the time, for there was sufficient other Maori land in the district. In the period in question, before 1865, the whole trade out of Mangonui could have been supported from no more than 1000 acres; all other farming was subsistence, and gumdigging could be freely undertaken on Government land. There was no other industry. The problem with this position is that it was contrary to the need, previously foreseen, to secure reserves to Maori from out of the sold land, if Maori were not to be pushed from the centre of business to the outer areas and if all the hapu were to have a share in land. As time would show, the failure to insist on adequate Maori reserves from the beginning would later result in a failure to provide sufficient reserves at all.

Clearly, again, planning for a Maori future was required. Crown historians often stressed to us that things must be seen according to their own times, and little long-range planning would have been going on then. We do not accept that, however. The whole business of colonisation was about providing for the future. Thus the large land acquisitions, even before the settlers arrived. The entire scheme was future-driven and the problem was simply double standards: there was one standard in securing land for European settlers, and another in reserving land for Maori. Reserves were not created as they should have been, those that were created were not protected, and as a result Maori were denied the single most obvious opportunity they had to share in the economic development of the country.

### 6.3.7 Settlement arrangements generally

The extent of  
alienation

So it was that, in an astonishing series of transactions before 1865, Muriwhenua Maori gave to the Governor, in our view on the initiative of Government agents,

nearly the whole of their best land; and the Government, despite this generosity and cooperation, made the most niggardly provision for Maori in return. Were Maori intentions not known, or their trust and faith not understood, their actions would count as reckless. The extent of the giving can be gauged as follows. Some 46,000 acres (18,616 ha) passed to either the settlers or the Government on account of the pre-Treaty transactions (this figure assumes that the transactions in Oruru, in the east and in the northern peninsula, were eventually subsumed by purchases). The extent of certain acquisitions was then debated at length. Government buying, on the other hand, effected as the pre-Treaty transactions were finalised, accounted for 280,177 acres (113,388 ha) in the period to 1865 alone, nearly all of it in less than eight years. And this passed with barely a murmur. The buying carried on after 1865, at a similar rate, until all hapu were either landless or virtually so, or their lands were infertile or of little commercial value.

To provide a succinct account of this extraordinary turn of events, we have condensed several volumes of submissions and research. We also felt it necessary to seek the bicultural view lacking in much of the primary material. Each party, we consider, was proceeding on a different basis. Maori, envisaging participation in a new economic regime, and understanding that they had a special arrangement with the Governor for their protection, made available for settlement virtually all the land that was asked for. Taking what they could get for the present, they still had cause to think that the main benefits would come later, that they would still be partners in the new development, and that their authority in the district, and their association with their ancestral land, would continue. Unbeknown to Maori, however, the Government would not bend from its own laws about land and society. Both encouraging and capitalising on a perceived willingness to sell, it embarked upon a programme of extinguishment that would remove Maori from the political, social, and economic equation.

If the Maori philosophy was hard for Europeans to understand, with its assumptions of an alliance and a continuing Maori authority in the land, it would have been as nothing compared with the novelty that the Government's policy would have had for Maori – had they known of it. Its concepts were not only unbelievable, in Maori terms, but were probably unknown to anyone at the time except lawyers, politicians, and officials. It should not be thought, either, that the Government was so shackled to contemporary legal theory that it could follow no other course. The Treaty had pointed to alternatives.

Our principal conclusion, then, is that the Government failed to devise and then debate an adequate – or any – plan for settlement to ensure that Maori would be substantial beneficiaries in the predicted economic regime, when in all the circumstances – the known Maori goal, the promises made and the perception of an alliance – the Government ought reasonably to have seen the need for such a plan.

Bicultural view  
needed of  
different  
objectives

A plan for  
settlement was  
required





We are mindful that in those early days there was no science of legal anthropology. The Government did try to ascertain the Maori tenure system, and between 1856 and 1890 collated and published a range of opinions on the topic. These opinions noted in detail the things Maori do – those things that can be seen on the surface – but lacked appreciation of why or when they were done in that way, of the underlying value system. It is like trying to assess Christianity by what Christians do, without reference to what they believe in or aspire to. The popular conception that Maori soon came to understand Western legal concepts, at a time when Maori were the majority, must be weighed against the settlers' inability to comprehend the legal concepts of Maori. If one could not, how can it be assumed the other could? To adopt the trappings of the Western trading style is not evidence of comprehension.

### **6.3.9 Protection**

Even if mutuality were not an issue, what was the appropriate Government conduct? If Maori were unaware of the likely consequences of their action in terms of English law, or if, through unfamiliarity with that law, they were likely to be the unwitting authors of injuries to themselves, to use Lord Normanby's words, then, as Lord Normanby had implied, the Government's responsibility to safeguard their interests was so much greater. To overcome the inherent conflict between the Government's interest in buying lands for settlement and its duty to protect Maori interests at the same time, Lord Normanby had stipulated for the appointment of a Protector of Aborigines. The Protectorate was abolished by Governor Grey in 1846, however, and at all times during the Government purchase programme in Muriwhenua, there were no provisions for an independent audit of the Government's policy and practice, or for the judicial supervision of individual transactions. No one was responsible for checking that title and representation matters were adequately looked into or that sufficient reserves were maintained.

## **6.4 THE GOVERNMENT PURCHASE PROGRAMME**

### **6.4.1 The strategy**

By 25 deeds from 1850 to 1865, all but one after 1856, the Government claimed the whole of the more fertile Muriwhenua lands not already taken by pre-Treaty transactions, save for the Victoria Valley lands south of Kaitaia and a scattering of proposed reserves. The effect was to deprive Maori of the productive areas within the central band where they had formerly aggregated, and to exclude them from the greater part of the most valuable agricultural land in nineteenth-century Muriwhenua.

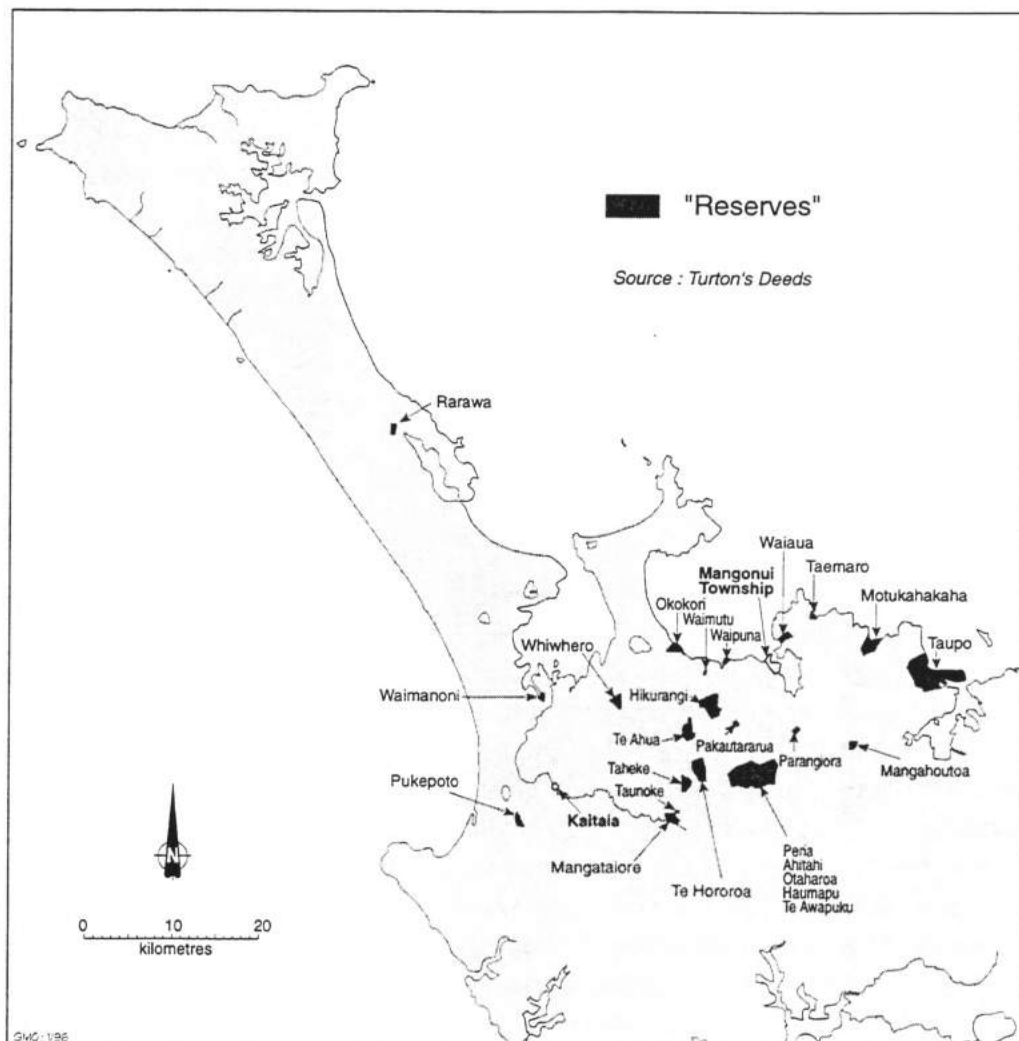


Figure 38: Muriwhenua 'reserves', 1840-65

The transactions are summarised in table E and located on figure 37. A comparison with the pre-Treaty transactions in figure 16 shows that the Government purchases took all the land remaining in the area, leaving no sections of Maori land in between, while the table reveals that most the buying was done over only six years, 1858 to 1864. The reserves remaining to Maori at the end of this process are shown in figure 38. Further particulars of the transactions are provided by Professor Stokes.<sup>45</sup>

Although ad hoc purchases occurred everywhere, the effort was concentrated in three stages.

45. See Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc P2), chs 14-18

**(1) *Central band***

Until 1859, buying was focused on a narrow band from Ahipara through Kaitaia, Awanui, and Taipa, to Mangonui. Here the main buying was delayed until after 1856 and Bell's determination of the grants to individuals and the surplus remaining to the Government. The object was to buy all the lands around these. Managed by Resident Magistrate White, this part of the buying was finished as soon as Commissioner Bell's inquiries were complete. By grant, surplus definition and purchase, the Government secured a connected tract of land from Ahipara in the west to Mangonui in the east, free of native title. Bell's purpose was to settle a title situation which was so confused that it was unlikely Maori were fully aware, or as aware as officials, of the extent of land that had passed from them by the time buying began.

**(2) *The main valleys***

The second thrust, from 1859 to 1865, was to extend outwards from the central line by a series of connected block purchases, leaving only the extremities and a scattering of small reserves. A major goal was to acquire the Victoria, Oruru, and Kohumaru Valleys, which were linked in the south. As H T Kemp, the District Land Purchase Commissioner, put it:

Mr White now states that the Natives have fallen in with our views with regard to the boundaries, the object having been to buy up the whole of the available land between the Oruru and Victoria plains, and by this means to connect the Blocks as soon as possible. Having explored the country at the head of the Oruru valley, I am able to report that a junction with the Victoria could be made with but little difficulty, thereby bringing the whole of that fertile district into connection with the Port of Mangonui.<sup>46</sup>

It was essential, according to Kemp, that the land should be 'connected by survey'd lines with Government purchases, or with private lands, making, with but little interruption, one continuous and complete block'.<sup>47</sup>

Initially, the Government directed Kemp to concentrate on the Bay of Islands, but White's insistence that he had willing sellers for large areas in Muriwhenua, and at low prices, served to hold the Government's interest. The goal was not fully achieved, however. Most of Kohumaru and nearly all of Oruru was acquired, but Maori retained most parts of Victoria Valley.

**(3) *Remainders and extremities***

The third stage is described in chapter 9. There was a lull while the Native Land Court investigated titles to the remaining blocks from 1865, but policies under the Immigration and Public Works Acts of 1870 and 1873 – to acquire as much of the remaining Maori land as possible for European settlement – saw a drive to

46. Kemp to McLean, 22 September 1858, AJHR, 1861, C-1, p 29

47. Kemp to McLean, 12 September 1859, AJHR, 1861, C-1, p 38

MURIWHENUA LAND REPORT

Turton's deed no	Date	Block	Payment (£ s d)	Area (acres)		Price per acre (£ s d)
				Deed plan	Later survey	
2	3 May 1850	Waikiekie	£5	32	Not known	3s
3	17 September 1856	Oruru	£350	Not given	14,700 (estimate)	5d
31	22 December 1856	Whakapaku	£200	2688	12,332	4d
36	3 February 1858	Otengi	£230	Not given	2722	1s 3d
34	3 February 1858	Muriwhenua South	£1100	Not given	86,885	3d
35	3 February 1858	Wharemaru	£400	Not given	13,555	7d
4	29 August 1859	Upper Kohumaru	£400	11,062	11,062	9d
5	30 August 1859	Waiake	£220	Not given	6952	8d
6	7 September 1859	Kaiawe	£58	1375	1375	10d
7	7 September 1859	Puteke	£300	Not given	16,000	4d
DR 2	7 October 1859	Ohiau	£100	2703	2703	3s 11d
8	13 December 1859	Ahipara	£800	9470	9470	1s 8d
44	25 January 1861	Kokohuia	£50	800	800	1s 3d
11	15 March 1861	Hikurangi	£250	4705	4705	1s 1d
12	2 August 1862	Maungataniwha East	£388 3s 3d	8469	8469	11d

THE GOVERNMENT PURCHASE PROGRAMME

Turton's deed no	Date	Block	Payment (£ s d)	Area (acres)		Price per acre (£ s d)
				Deed plan	Later survey	
13	2 August 1862	Mangatele	£509 17s 11d	5649	11,125	1 1d
14	14 January 1863	Maungataniwha West no 1	£647	12,940	12,940	1s
15	14 January 1863	Maungataniwha West no 2	£560 2s	11,002	11,002	1s
16	19 May 1863	Mangonui	£100	Not given	22,000 (estimate)	1d
17	8 October 1863	Pupuke	£1273 16s 3d	19,592	19,592	1s 3d
18	27 September 1864	Taunoke	£5 10s	44	44	2s 10d
19	21 October 1864	Waimutu	£39 10s	79	79	10s
20	11 November 1864	Poneke	£43 2s 6d	345	345	2s 10d
21	30 May 1865	Toatoa	£386 6s	3863	3863	2s
22	30 May 1865	Kaiaka	£1114 1s	7367	7427	3s

Table E: Crown purchases, 1850-65

buy the balance of Maori lands: the few reserves from earlier purchases, Victoria Valley, and the lands at the extremities, especially from Kaitaia south to Whangape. By 1900 Maori retained only a few residual pockets of land, most of poor quality.

### 6.4.2 The approach to the particular transactions

The distinction  
between pre- and  
post-Treaty  
arrangements

The next two chapters describe the particular transactions up to 1865. They are the main concern for many people and must therefore be addressed. In examining them, however, we must distinguish between those areas affected by pre-Treaty transactions and those untouched until the Government buying began. The circumstances for each were different.

In this and other Tribunal inquiries, we have found evidence of a regular Maori insistence upon adherence to one's word, perhaps indicative of old ways where customary contracts depended on trust and honour. Objections might be continued over decades if it were felt that agreements had not been honoured. In the result, Muriwhenua Maori held doggedly to their view of the pre-Treaty arrangements, insisting upon their rights to share the land, or to resume it all where the settler had broken faith and departed, while at the same time they were freely passing land to the Government in extraordinary quantities, several times the extent of the pre-Treaty land under debate.

There was no inconsistency from the Maori point of view. The essential thing was that tikanga, a proper course of conduct, should be maintained. The pre-Treaty lands had to be dealt with according to what had been agreed at the time. Those lands untouched by pre-Treaty arrangements could be handled differently. The former were based on personal relationships with individual Europeans, mainly through Panakareao; the latter on an alliance between the Governor and each of the various hapu. This new course of action, and the disposal of 'untouched' lands, began in earnest in 1858, when in a single day Maori gave more than 100,000 acres (40,470 ha) – far more than all the pre-Treaty lands put together. We see it as important, in now recording the final arrangements, to keep this perspective.

Bicultural  
understanding of  
particular  
contentions

Further, in examining the particular Maori claims, the truth in Maori assertions depends once more on looking at issues through their eyes. In answer to Maori claims, it was sometimes said, and not dishonestly so, that the claims were so preposterous that Maori were fabricating, lying, or cheating. In rejoinder, Maori would accuse the Government of theft or stealing. On examination, it often appears to us, Maori were not cheating, nor was the Government stealing, but each was acting honestly and truthfully according to their own law. In this case, the Government was claiming land on account of a particular view of land tenure, while Maori were claiming the same land and for the same reasons.

## CHAPTER 7

# THE GOVERNMENT TRANSACTIONS TO 1865: CENTRAL AND EASTERN DISTRICTS

*We are absolutely certain that neither our ancestors or elders ever sold this land, either to a European, a Maori, or to the Government.*

Hemi Rua Paeara, petition to Parliament, 1912

### 7.1 CHAPTER OUTLINE

Chapters 7 and 8 particularise the Government's land transactions, chapter 7 in the central and eastern districts, chapter 8 in the north and west. Although the main loss to the Maori capital base arose from the Government's extinguishment policy generally, there are outstanding contentions about particular land allocations, and these are the main concerns for many claimants. The transactions are examined along with Bell's final adjustments, which were made at the same time and which cannot be severed from the purchase programme.

At the end of chapter 8, specific aspects of the transactions – the adequacy of the purchase price and the like – are assessed in English legal terms. The main issue, the sufficiency of reserves, is left until after the eventual result has been assessed in chapters 9 and 10.

### 7.2 CENTRAL DIVISION

#### 7.2.1 The Mangonui transactions, 1840–41

The first Government 'purchase', as earlier discussed, was the Governor's Mangonui transaction with Panakareao in 1840 and with Pororua in 1841. This took in part of the central district, including Mangonui township, and most of the eastern division. It is not clear how these transactions were seen at the time, but subsequent conduct shows they were not later seen as sales by either party. Both Panakareao and Pororua saw them as acknowledging their authority, while George Clarke, for the Governor, thought they were directed to buying out such



claims as Panakareao and Pororua may have had to the land, but no more. The transactions were never subjected to any independent judicial scrutiny.

### 7.2.2 Waikiekie–Mangonui township

White arranges  
the town claims

In the first three Government purchases, Waikiekie, Oruru, and Whakapaku, the resident magistrate did not wait until Bell had begun his inquiries. White's buying programme started at Mangonui, in 1850, where he planned a township.<sup>1</sup> From the outset that programme needed to fuse Government buying with the settlement of outstanding pre-Treaty matters. A handful of settlers claimed land from Pororua, in the approximate locations shown in figure 22(a), but the claims had not been investigated by Godfrey owing to the Maori dispute over rights. White decided to 'investigate' those claims himself, without hearing anyone in open court and without lawful authority, although the Governor, also without authority, endorsed White's actions. Grants had been approved by the Governor, to White's recommendations, before Bell came. To prevent the town site falling to a few, the resident magistrate first had the claims reduced. Had he been a land claims commissioner he would have had authority to do so (see section 7 of the Land Claims Ordinance 1841), but he may have purported to hold that power. White 'identified' lands for the claimants and the surplus for the Government, as shown in figure 39.

Waikiekie  
purchase

The pre-Treaty transactions had left a gap at Waikiekie, however, which White then set out to purchase from Panakareao. In 1849, White claimed to have purchased that block (about 35 acres, or 14 ha) for £5, although a deed was not executed until 1850. This was the first Government transaction in Muriwhenua to have had legal effect. The purchase area is shown in figure 39. White then recommended to the Governor that grants be made to suit his 'allocations', even though the Surveyor-General had requested that he first file a report on the extinguishment of native title, and that report had still to be given.<sup>2</sup>

The mopping-up  
clause

White included in the deed a mopping-up provision to extinguish any remaining rights within a given area. After describing the bounds of the Waikiekie purchase, the deed provided:

And further in consideration of the sum of Five pounds which I have received for this land which has been already described – I hereby give up any interest in all the Land to the North of the boundary of Te Rere to Berghan's post – by the road to Taipa – to Te Rua Karamea – so on to the sea side to high water mark.

The line described is plotted on figure 39.

The areas affected were not readily apparent at the time. The picture is unclear today but could only have been more confused then. The accompanying sketch

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1. For the Crown historians' overview of the Mangonui township proceedings, see doc J2, pp 191–194, and for the Crown's submissions thereon, see doc O1, pp 196–197
  2. Ligar's minute, 26 July 1850, OLC 1/403–407, p 39

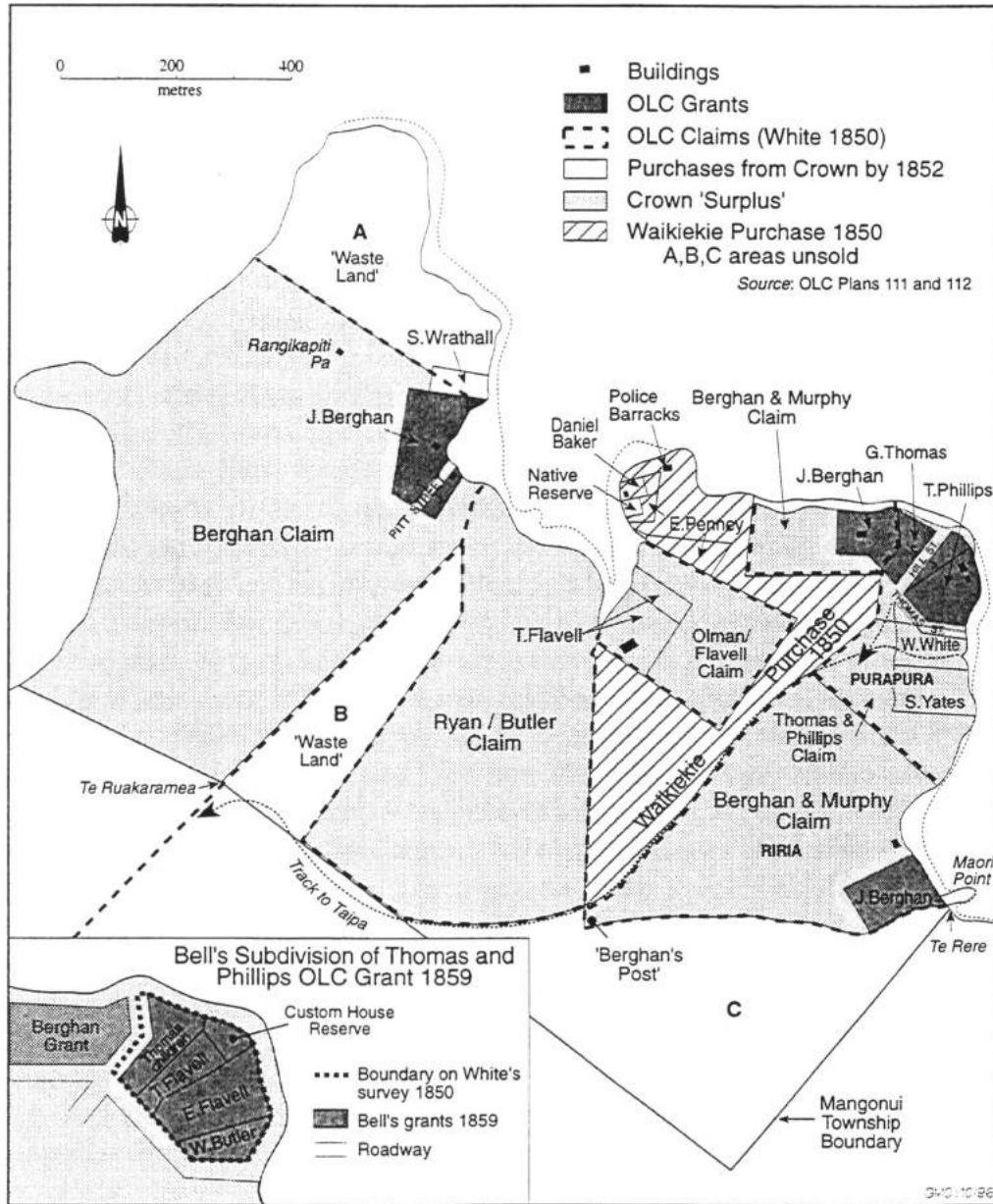


Figure 39: The Mangonui township estimated, at 1852

plans were so poorly drawn that it could not be said precisely what lands might in fact have been remaining. It may have been thought that, save for the European grants and 28 square yards for Panakareao's house, the Waikiekie area was all that was left, but a later and better plan disclosed that two other areas, identified as 'waste land', had been left out too. The Governor in council then approved White's recommendations to 'settle' the township claim along the lines of his earlier sketch plan, which he attached to the Waikiekie deed.

The dispute over Rangikapiti headland

For years since Maori have complained that the town, or parts of it, had not been sold. In 1888 they petitioned Parliament that, in particular, the headland at the harbour entrance by Rangikapiti Pa, marked 'A' on figure 39, had never been alienated. They had good cause to think so. The headland was clearly outside the boundaries of Berghan's transaction (although, perhaps without Maori knowing it, the line described in White's plan took away the pa itself). The trouble was the catch-all provision in White's deed with Panakareao.

In addition, subsequent maps gave the Mangonui township boundary as extending south of Berghan's post to include the area marked 'C' on figure 39. This has been treated as unencumbered Crown land, but we have been unable to ascertain how the native title for this area was extinguished. It was not part of White's scheme.

Waikiekie concerns

The concerns about Waikiekie include these:

- The resident magistrate's inquiry does not appear to have been lawful. He held many Government offices, but he was not a land claims commissioner under the Act. Moreover, he followed no judicial process, notified no hearings, recorded no evidence and minuted no meetings. Although White claimed that Maori had agreed to the arrangements, there is no evidence of that except White's own statement. While Governor Grey had approved White's recommendations, he could not lawfully have directed White to do as he did, as Commissioner Bell noted in 1859.
- White's sketch maps were inadequate and vague. It was not clear where lands were to be awarded, where the surplus lay, what part was included in the Waikiekie block or what part was caught in the catch-all clause.
- The Maori claim that Rangikapiti Pa headland had not been alienated was correct at the time of the relevant agreement. It was excluded from the adjoining pre-Treaty transaction. Only through the washing-up provision in Panakareao's deed was it included.
- That deed, however, did not in fact convey the land. It conveyed only Panakareao's interest in the land, whatever that may have been. Panakareao did not purport to convey for himself and the tribe. His interest, in our view, was that he held the right to allocate the use of land. He did not have exclusive possession, and did not pretend to hold any larger right than he had.
- White originally claimed the purchase in 1849 but the Attorney-General was unimpressed with the documents. The Attorney-General required a deed. A deed was executed in 1850.
- The native reserve for Panakareao's home was nominal, and showed the different standards for Maori and Pakeha. The awards for Europeans were in acres. The reserve for Panakareao's home was 28 square yards. This area was not only where Panakareao resided when visiting Mangonui, but where he received and entertained, and where he housed his immediate followers.

- Te Rere or 'Maori Point' should have been reserved for Maori, as this was the traditional gathering-place of the tribes, and where they continued to meet long after the land was assumed by the Government.

For his part, Panakareao does not appear to have considered he had no further interest in the land. He carried on as if his authority in 'his' town was recognised by the Europeans. Ngati Kuri 'police detachment' was still deployed there in 1851 to keep control of Mangonui Maori.

### 7.2.3 Oruru

Oruru was targeted next. Once again, the purchase arrangements were tied in with finalising outstanding pre-Treaty matters. As we see it, Godfrey had held no hearings on the European land claims in this area. White and Bell did not examine them either. It was assumed none the less that the Government had the right to the land and any obligations to the settlers had been settled with scrip. Bell considered only those cases where scrip had not been taken, and these were only on the periphery: Berghan's Kohikohi and Taipa purchases, and Ryder's Maheatai, as shown on figure 40.

Most old lands  
claims not heard

Most of the Oruru Valley as far as Kohumaru, about 20,000 acres (8094 ha), was included in the 1839 deed with Dr Ford by which 'a portion' was for Ford, and the Maori of Kohumaru and Oruru were to continue in occupation, their 'sitting places' to be determined by Panakareao. Ford wrote later, in his old land claim application, that Maori had transferred their land to him that he might act as their guardian.

How Ford had  
taken scrip

The deed was amended in 1840 to define Ford's personal right at about 5000 acres (2024 ha). Crown historians argued that this enabled the Ford transaction to fit with an arrangement with the Government for the adjoining land made two months earlier. This is the Mangonui deed completed with the Government in 1840, the boundaries of which lay on the western periphery of Oruru. We do not consider Panakareao had in mind a sale, however. He was substituting the Governor for Ford as the guardian of Maori interests, in an alliance with the Governor where Panakareao's authority would remain. Panakareao's subsequent repudiation of this arrangement, when the Government then purported to treat with Pororua, confirms this view.

In the meantime, Commissioner Godfrey heard Ford privately, in the Bay of Islands, whereafter Ford, having left both the Church Missionary Society and the district, took land scrip for 1725 acres (698 ha). Although the Government was to pay Panakareao £100 for the 'sale' of the whole area, the land scrip issued to Ford and Mair for but a small part of it was valued at £3225.

Then, although there had been no proper inquiry under the Land Claims Ordinance and not even an unofficial examination by White, and although Panakareao had reoccupied part of the block, it was assumed that Ford's 5000 acres, and possibly the whole 20,000 acres, was the Government's. Pororua's

White allocates  
Ford's purchase

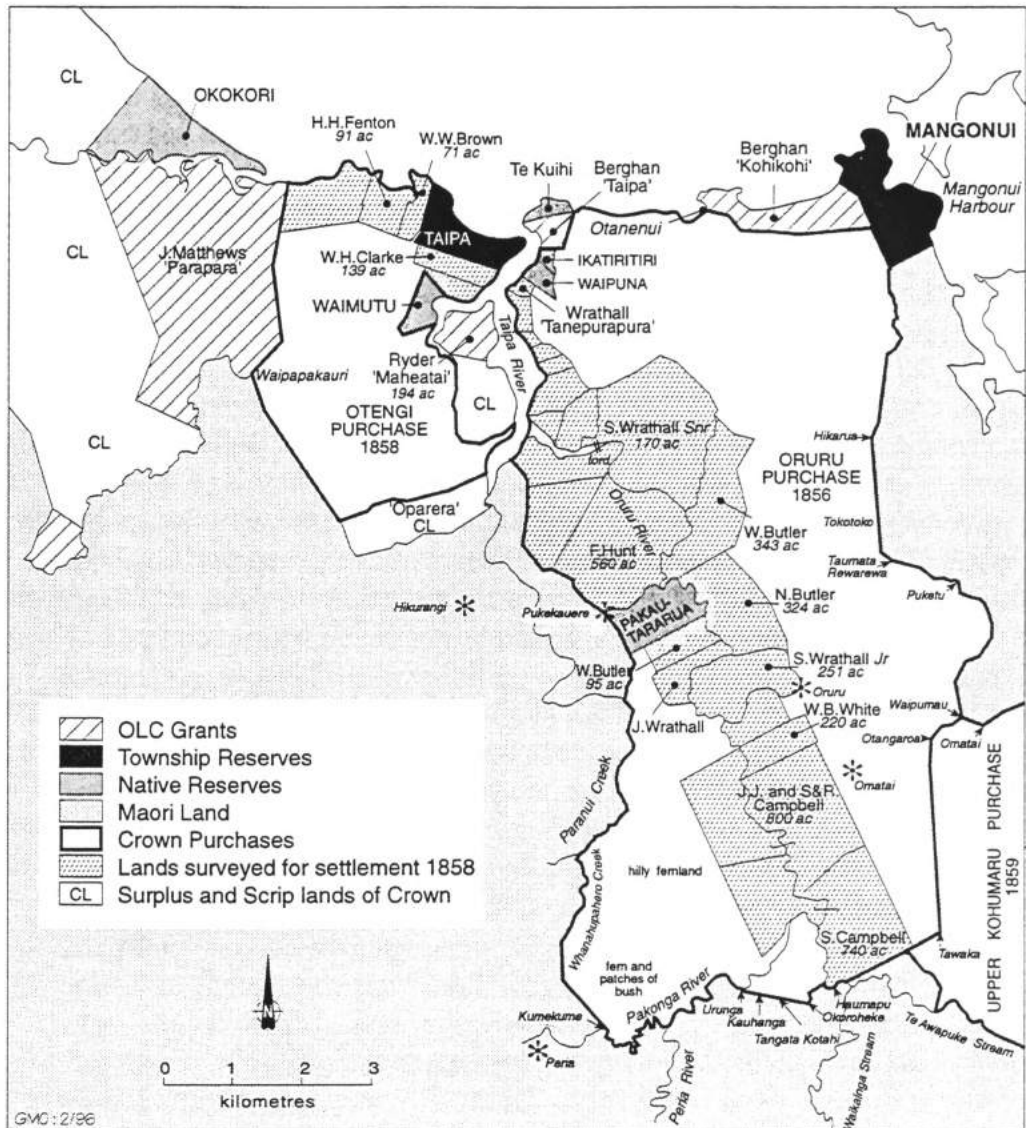


Figure 40: Oruru Valley, 1858

interest was ignored too. Without the Government ever having been put to the proof of its acquisition, the resident magistrate placed certain families there, starting in 1852. They included the families of two traders, Wraithall and Butler, those of two newcomers, the surveyors Clarke and Campbell, and also White himself, in 1853, on 220 acres. His allocations, as given in figure 40, covered more than the 5000 acres Ford had claimed in 1840, indicating that the Government saw itself as entitled to the whole area.

White had become the rangatira, performing the allocating role that was supposed to have been 'preserved' for Panakareao. By 1854 White had established a homestead on this property, just as he had established one earlier at Mangonui. It is to be recalled, however, that Panakareao had himself reoccupied

Oruru from 1846, living at Pakautararua. According to Land Purchase Commissioner Johnson, he claimed the Government's sanction for this 'in consideration of the services he rendered in the war against Heke'.<sup>3</sup>

Shortly after making these allocations, however, the resident magistrate appears to have compromised the assumption of the Government's right by acceding in part to Panakareao's assertions. By a payment in July 1854 White claimed to have extinguished Panakareao's claims for £100, reserving to Panakareao the Pakautararua block on which he lived. This was the Oruru 'purchase', although no deed was signed. It was probably meant to be no more than a purchase of Panakareao's claim, once more, although Panakareao appears also to have insisted that his was the only claim. The receipt appears to have been framed to suit. Again, however, it is doubtful that Panakareao saw this transaction as any more of a sale than the previous transactions. As the Crown historians pointed out, Panakareao wrote to the Governor in October 1854, apparently concerned about the settler occupations and complaining that the Government was stealing the land.

Despite Panakareao's position, there were indeed other claims. These should have been known at the time. Pororua occupied the block White had 'awarded' to Campbell, Ngati Kahu claimed the land back, Puhipi laid a claim for Te Rarawa and the Hokianga people contended for an interest. Consequently, there was a further Oruru 'purchase' in 1856, just after Panakareao died. It was effected with 37 Maori purporting to be of Te Rarawa or Nga Puhi.

Claimants argued, with regard to this 1856 purchase, that ownership was not properly settled beforehand and the boundaries were never clear. The Crown responded that the land purchase commissioner for Whangarei, John Johnson, had attended to sort out the ownership question before the sale, and the surveys were finalised in 1858 with Maori involvement.

We see the position as follows. Resident Magistrate White placed no weight on the 1840 transaction between the Governor and Panakareao, but assumed the land belonged to the Government as surplus and as assigned old land claims. As a result it was occupied, before any old land claim inquiry or any further attempt at purchase was made. When that position could no longer be sustained against Panakareao, White attempted a purchase, in 1854. The only evidence of a purchase, however, was a form of receipt. As mentioned earlier, we have doubts that the signature on the receipt is that of Panakareao. In any event, Panakareao wrote to the Governor soon after to contend that the Government was stealing his land.<sup>4</sup> His position accords with traditional and customary perspectives.

Panakareao died in April 1856, nearly two years after the supposed sale. Thereafter many others claimed an interest and it was necessary to attempt to buy again. Johnson came in to settle who had rights, but it is difficult to see how any stranger could suddenly appear and know all about the local customary land

3. Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p 1

4. Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p 1 (see doc 12, p 224)

rights. In any event, a transaction was arranged to buy out the interests of a large number of representatives. Others, however, particularly certain of Te Rarawa from Hokianga, would continue to claim that they had been excluded.

Although the boundaries were not at all clear in the deed, and no area was given and no plan was available, this deficiency was probably academic, since settlers already had occupation of most of the land. The transaction was really about compensating those who had not been acknowledged earlier.

A survey was done later, in 1858. There are notes by Kemp and others, all of whom were interested in establishing the propriety of the process, that certain Maori were available to assist in the survey, but there is no evidence that Maori actually settled the boundaries with the surveyor, or even were present. In this case, as generally in Muriwhenua, unlike elsewhere, no surveyors' field notes were retained, and survey plans were not executed by Maori. The area surveyed was 14,700 acres (5949 ha), which excluded the Maori village of Kohumaru and the associated valley.

Our main concerns are these:

- The original plan to protect the Oruru Valley for Maori, and for Dr Ford, was obfuscated by the Government's failure to provide for such trusts to be recognised. The plan became instead to secure the area for Europeans.
- The one transaction on which the Government might most rely for rights to the Oruru Valley, in our view, was the 1856 transaction, but that is marred by the fact that the European settlers had taken possession of the land beforehand and the greater part of the valley had already been carved up between them. This was not a willing seller-willing buyer situation.
- The reserves highlight the unequal treatment of Maori and Pakeha. S Wrathall senior had 170 acres (69 ha), S Wrathall junior 251 acres (102 ha), W Butler 343 acres (139 ha), N Butler 324 acres (131 ha), W B White 220 acres (89 ha), J J Campbell 800 acres (324 ha), S Campbell 740 acres (299 ha), and so on. By comparison, the reserves for the many Maori were Pakautarua at 200 acres (81 ha) and Ikatiritiri at 19 acres (8 ha). The first was for Panakareao and his 'immediate followers', the other appears to have been a canoe landing-place for several tribal groups. The remainder, Te Kuihi and Waipuna, were simply pa sites and urupa (cemeteries).

To conclude this section, we note that, immediately after Panakareao's death, there was pressure from settlers to remove Maori from the area, including Panakareao's daughter, his only child, and to purchase the reserves. There were concerns about large numbers of Maori aggregating on the property. The matter was deferred, however. It was not until the 1870s that Panakareao's reserve was acquired, and the 1880s for the other.

Several Maori petitions concerning the alienation of the Oruru lands, touching on the above matters, were subsequently mounted. We consider those petitions were never adequately inquired into.

### 7.2.4 Oruru–Otengi–Waimutu

The initial documentation of the Waikiekie and Oruru purchases, which was inadequate in both cases and required later rectification, showed why acquisitions needed to be managed by those who could be trained or instructed in conveyancing and procedural standards. From 1855 District Land Purchase Commissioner Kemp was involved, at least in most cases. He was not based permanently in Muriwhenua, however, and Resident Magistrate White continued to arrange matters for his approval. Moreover Kemp's own standards were suspect. In 1857, Donald McLean, the Chief Land Purchase Commissioner, had written to Kemp:

Documentation  
inadequate

You will use the greatest care in making the deeds and translations as perfect as possible and endeavour to render the arrangements final and complete. It having been observed that certain passages in deeds transmitted by you to this office are vague, and therefore objectionable, I have to request that you will adhere as closely as circumstances will permit to the form of the deed used by the other Commissioners, which have proved to be intelligible to, and binding upon, the Natives.<sup>5</sup>

The Otengi purchase followed. Taking in Taipa, it bridged the gap between Matthews' Parapara claim and the Government's Oruru purchase to make a continuous line of land along the southern Doubtless Bay shores where the Government claimed that native title had been extinguished. Little information is available on how the transaction was completed, but it appears that the deed relied upon White's survey of the land in 1857. Although it was contrary to survey instructions from the Chief Land Purchase Commissioner, White did a second survey, after the deed, which had the block fit with a new Oruru plan.<sup>6</sup> The deed shows that 15 Maori purported to convey Otengi for £230. No area was given, no plan was actually attached, but the second and subsequent survey disclosed 2722 acres (1102 ha). A reserve of 79 acres (32 ha) near Taipa, called Waimutu, was provided for Tipene of Ngati Kahu, but Resident Magistrate White negotiated the Government's acquisition of this reserve, for £39, in 1864.

Otengi purchase  
makes a  
continuous line

With the Otengi purchase, all questions of private grants and Government surplus in Oruru had now been resolved to the Government's satisfaction. The new programme of total extinguishment, from the Government's viewpoint, or a total giving to a new alliance, from a Maori viewpoint, could now begin in earnest. In fact the Otengi deed was executed on the same day as that for Muriwhenua South and Wharemaru, north of Ahipara, so that the Government marked the opening of this new venture with the acquisition in one day of 113,162 acres (45,797 ha). The programme was then to acquire all remaining land through the Victoria, Oruru, and Kohumaru Valleys. We now trace the outcome according to the following divisions:

Otengi purchase  
opens the way for  
larger buying

5. McLean to Kemp, 21 December 1857, AJHR, 1861, C-1, p 23

6. Compare s0797 and s0812 of 29 June 1858



## 7.2.5

- the remaining land in the Oruru Valley;
- the Karikari Peninsula;
- Mangatete to Victoria Valley;
- the Maungataniwha blocks at the southern end of the Oruru Valley and extending into the ranges; and
- the Kohumaru district south of the Mangonui township.

The blocks concerned are depicted in figure 41. The Maori lands remaining after those acquisitions are shown in figure 42.

### 7.2.5 The remaining Oruru blocks

Hikurangi  
transaction

Little background is available on the transactions for the remaining acquisitions in the Oruru catchment. The Hikurangi block of 4705 acres (1904 ha), on the western aspects of the Oruru River south of Otengi, was acquired in 1861 for £250. White arranged the transaction and urged Kemp to seal matters quickly:

I would urge that the money be paid as soon as possible, the natives being very sickly, and the money would be the means of providing them with food of a nourishing nature, of which they stand much in need.<sup>7</sup>

Although the resident magistrate was meant to be reporting on Maori in his district, this is one of the few accounts we have of their circumstances, and then only because of a purchase.

An additional area of 522 acres (211 ha), also called Hikurangi, was kept as a native reserve. That, however, was acquired in 1869.

Acquisition of  
Hikurangi  
reserves

The Toatoa block adjoining the western Hikurangi boundary comprised 3863 acres (1563 ha), which the Government acquired in 1865 for £386. Two areas were kept out: Te Ahua of 624 acres (253 ha), and Opouturi of 250 acres (101 ha). However, the Government acquired 156 acres (63 ha) of Te Ahua in 1868, and claimed to have acquired the whole of Opouturi reserve in 1870. The deed of conveyance for the Opouturi block is one of several that are missing.

Oruru outcome  
by 1890

By 1890 there were no Maori lands left in the Oruru Valley apart from those surrounding the small village of Peria in the very upper reaches, running into the Maungataniwha ranges. Peria was associated more with the ranges than with the valley, and was included as part of the Maungataniwha block, the alienation of which will be considered shortly.

### 7.2.6 Karikari Peninsula

#### (I) *Mangatete*

Davis's  
Mangatete claim

In the Karikari Peninsula area, Government activity related once more to the finalisation of pre-Treaty matters before the Government could buy the balance.

7. White to Kemp, 6 October 1860, AJHR, 1861, C-1, p 42



Resident Magistrate White appears to have had a substantial task. First, there was a problem over James Davis's claim to Mangatete, which Puckey, representing Davis before Commissioner Godfrey, had described as 1000 acres (405 ha). It was given by one person only, called Taua, but it was Panakareao who attended before Godfrey and who affirmed the transaction; this occurred after Puckey had described it at 1000 acres.

Based on the value of his goods, Davis was awarded 320 acres (130 ha). When Commissioner Bell was appointed to revisit Godfrey's awards, land claimants were urged to survey the whole of their deed areas, for which they would be rewarded by substantial grant increases. Davis, however, surveyed his area at 535 acres (217 ha) only, because, as Bell later said, it 'was all that the natives would at that time agree to give up'.<sup>8</sup> Bell increased the award to 466 acres (189 ha) and claimed for the Government the 69 acres (28 ha) surplus. The area is shown in figure 43.

White surveys a larger area than Maori had agreed

What then followed seems to us to raise the question of why Maori affirmation of the pre-Treaty transactions should have been required at all. As we see the position, there were in fact two checks: that Maori should have affirmed before Godfrey, and that Maori should not obstruct the subsequent survey. In this case Panakareao's affirmation was based on an area of 1000 acres (405 ha) only. Panakareao had since died. On survey, local Maori agreed to 535 acres (217 ha) only, yet almost 10 times that amount was eventually taken. The evidence is that, when it was discovered that the original deed had referred to a larger area, Bell requested White to arrange a Government survey of the original boundaries. He further asked that this survey connect other Government and old land claim surveys to allow him to map all the country from Aurere to Ahipara. Kemp also implicated Bell in the matter, for, on forwarding the resultant plan to Bell, he described it as completed 'under Mr White's directions with your own concurrence'.<sup>9</sup> This survey gave 4880 acres (1975 ha) and a Government surplus of 4414 acres (1786 ha), a substantial increase on the former 69 acres.

Larger Government surplus is claimed

The title for Davis's grant was delayed pending survey of the larger area, and this apparently caused him some anxiety. The larger survey had sparked Maori complaints and Davis may have felt the need for Government support just to keep his own title. He thus wrote claiming that a smaller area had been surveyed only because he had been taken poorly at the time, and he urged the Government 'to stand firm for I know well if the government relax it will lead to much trouble'.<sup>10</sup>

All eventually went through. We have no more evidence than Bell's minute of events. He recorded simply that 'after various negotiations the natives had

8. Bell's report, 26 December 1859, OLC 1/160, p 29

9. White to Bell, 3 September 1859, Bell to Kemp, 12 September 1859, OLC 1/160, pp 19-22. Kemp then reported to the Chief Land Purchase Commissioner that 4880 acres had been 'recovered under the Land Claims Act for which no remuneration is required by the natives': Kemp to McLean, 12 September 1859, AJHR, 1860, C-1, p 38.

10. Davis to Webster, 15 May 1877, OLC 1/160, pp 27-28

TRANSACTIONS: CENTRAL AND EASTERN DISTRICTS

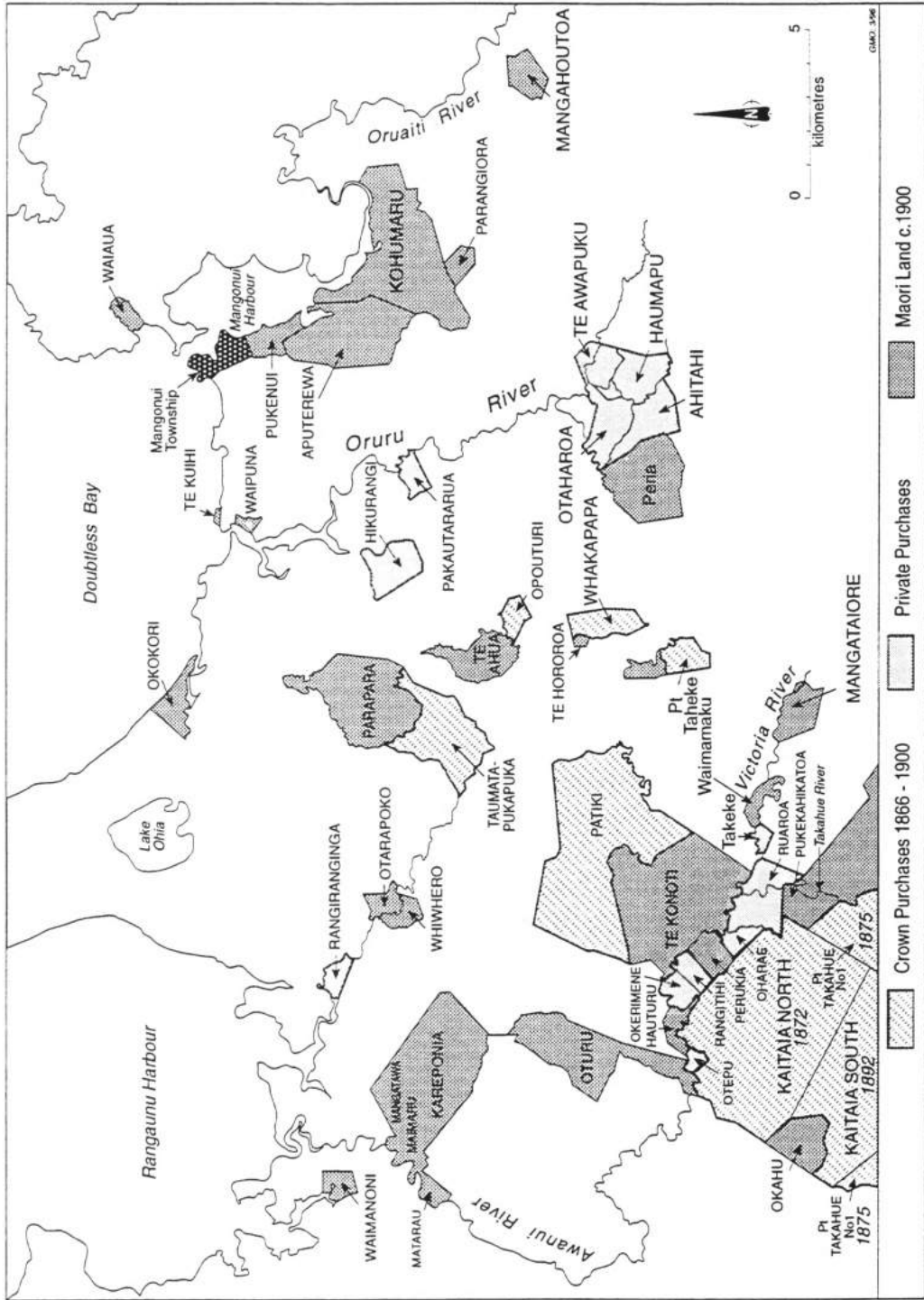


Figure 42: Remaining Maori lands, 1865, and disposal at 1900

agreed to give up the original Boundaries'.<sup>11</sup> No details of the hearing, if there was one, are recorded, only that there were 'various negotiations' and the 'natives had agreed'. The Government survey, however, did not append the usual certificate that survey had been effected without native obstruction. Only the outcome is clear. The Government came by 4114 acres and Davis received 466 acres, for all of which Davis had paid only £40 in 1840, and then to only one person.

Mangatete survey  
error

In addition, the Government's survey was wrong. Although Davis certified the plan as correct, the survey had not been done under his supervision but, in a departure from the norm, through the Government under the supervision of the resident magistrate. The line in Davis's original deed had prescribed a boundary from Mangakowhara to Toanga (see fig 43). The Government's survey, however, had swung the line around part of Lake Ohia to take in more country.

Mangatete  
dispute

It is doubtful that Maori ever agreed to the Government survey. They had no objection to Davis's allocation, but they consistently disputed the Government's right. As late as the 1880s Maori commissioned a survey of the land the Government claimed, in two blocks, Taipaku and Pukewhau (as depicted in figure 43), then applied to the Native Land Court for a title to those areas. The applications were dismissed, as the Government claimed the land. A further attempt was made to gain a title to it in 1882, and in 1924 it was the subject of a parliamentary petition that was eventually reported on in 1948. The decision was simply that the land was included in the Government surplus. The questions of whether Maori had affirmed the transaction, or whether a more limited area was agreed to before Godfrey, were not considered.

Mangatete  
concerns

In Mangatete, the principal concern can be summarised as follows. It may be inferred that, as with many other missionaries or their families, Davis had taken on Mangatete on the basis that the larger part of it would be held for the Maori of the local village. Whatever the true intention may have been, however, is not quite the point. It was accepted in this inquiry by all counsel, and it is our own view, that it was the understanding of the parties when the transaction was before the land commissioners, and also when the land was surveyed, that was more important. In this case, when Panakareao affirmed the arrangement in 1843, before Godfrey, it was on evidence that only 1000 acres (405 ha) was involved. On survey, however, local Maori would not agree to more than 535 acres (229 ha). None the less, Maori were relieved of 4880 acres (1975 ha).

## (2) *Raramata*

Matthews'  
Raramata claim

In the case of the Raramata land nearby, on the opposite side of the Karikari stem, the Reverend Joseph Matthews had also arranged to keep part of the land for Maori. Matthews' transaction covered three adjoining Maori blocks, Raramata, Parapara, and Te Mata, for 7317 acres (2961 ha) in all, but the deed was clear that all but 10 acres of the first-named block, Raramata, was for Maori.

11. Bell's report, 26 December 1859, OLC 1/160, p 29

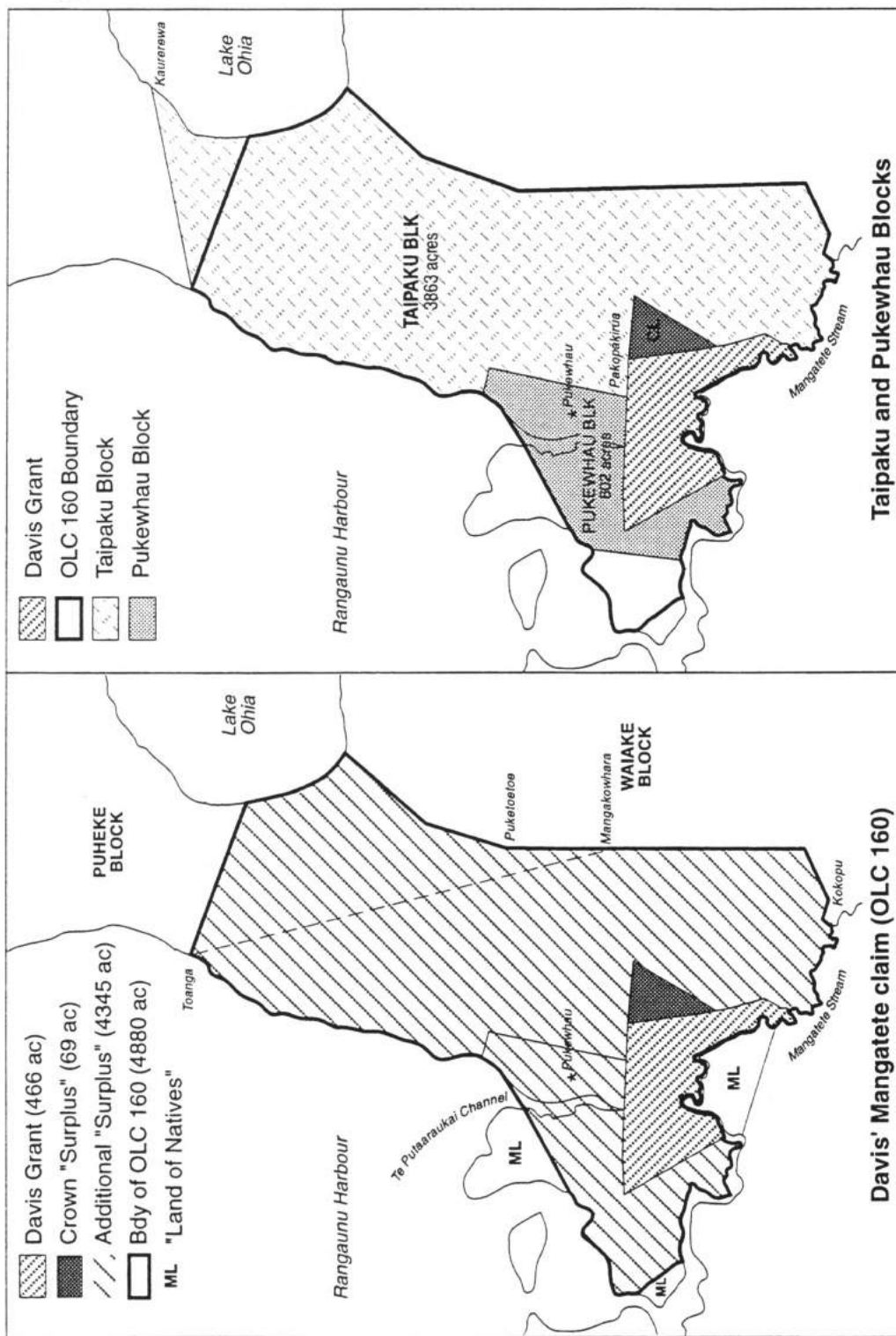


Figure 43: Davis's Mangatete claim (OLC 160)

Each block was not defined, however, only the outer boundaries of the combined area being given.

When the matter was before Godfrey, Matthews and Panakareao both observed that Raramata was to be kept out of the sale, or that it 'belongs to the natives still', as Panakareao put it; but again, Raramata was not defined by either of them, except to say that it lay north of what is now Aurere or Raramata Stream. This is now shown on figure 44. It would be consistent with that description were Raramata the whole of the land north of that stream. For his part, Godfrey did not define Raramata either. He had no need to do so. He simply assessed Matthews' entitlement, which Governor FitzRoy finally settled at 800 acres (324 ha).

Over a decade later, the matter was before Bell. Panakareao was by then dead and Matthews appeared with Reihana Kiriwi and certain other Maori. He also had a survey plan which defined the whole of the land north of Aurere Stream as 2967 acres (1201 ha). In a sworn statement Matthews reminded the commissioner that, when the matter was before Godfrey, it was settled that the whole of the land at Raramata was reserved. The intention, he said, was to make a sufficient reserve for the natives for their canoes, nets, and other purposes. He then described the survey of the area, which he said extended to Te Pikinga, as shown in figure 44. Matthews then asked that this area be given up to Maori, in performance of his promises to the natives, as he put it.

The clear inference is that this area north of the stream was the block called Raramata. Crown historians have now argued against that, saying, in effect, that Raramata was smaller and Matthews was adding more on; but there is nothing of probative value to establish that or to impute that motive to Matthews.<sup>12</sup> Had Commissioner Bell been of that view he should have questioned Matthews on it, or Reihana Kiriwi, who was present and in support, but there is nothing to show he did so. Bell simply minuted that he declined to accede to Matthews' request but that, upon 'a discussion with the natives', particulars of which he did not record, he agreed to make them a reserve of 300 acres (121 ha) 'at Raramata'. There is no evidence that Bell had assessed the true area of Raramata. Had he done so, we think he would have said so. 'At Raramata' does not mean that the 300-acre reserve was the whole of the Raramata block.

On the face of it, the position is simply that Bell considered that he had a discretion as to the area he might grant to Maori, though he gave no reasons for so saying. Crown historians argued that Matthews had intended to reserve lands sufficient for the people's 'canoes, nets and other purposes' and that Bell had assessed 300 acres as sufficient for that; but the deed, and the statements to Godfrey, were clear that it was Raramata which was reserved, not an undefined area such as might be sufficient for certain prescribed purposes.

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12. For the Crown historians' overview, see doc J2, pp 126-135, and for Crown counsel's closing submissions thereon, see doc O1, p 123

TRANSACTIONS: CENTRAL AND EASTERN DISTRICTS

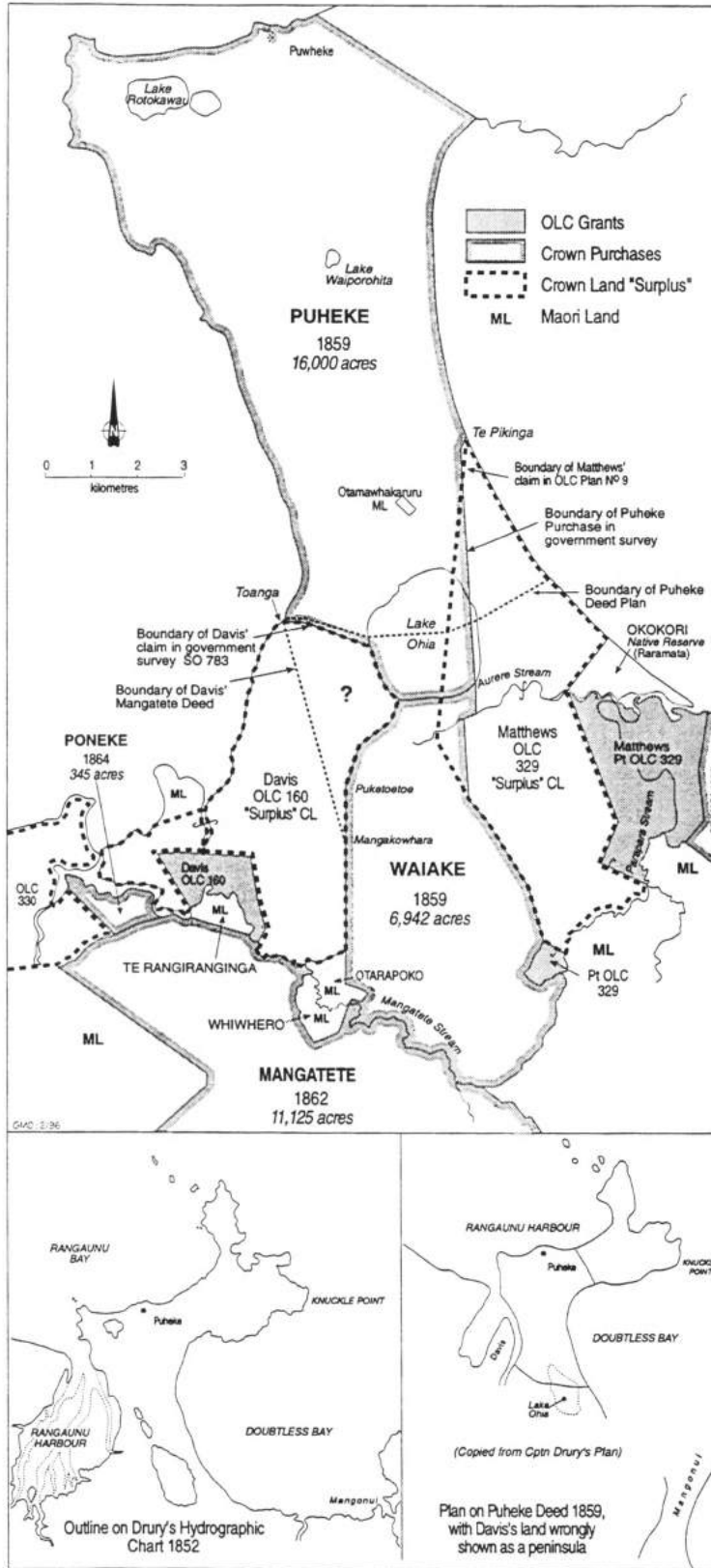


Figure 44: Acquisitions on the Karikari Peninsula



Finally, it was put by Crown historians that Maori admitted that the land outside the 300 acres was surplus land, because that is how they called it in evidence before the Native Land Court in 1897, after the lapse of 40 years. We think that simply means that, by 1897, that is how the area was known, just as it was called Crown surplus land by the Government in various documents even in 1857. The position was in fact put quite plainly by Timoti Puhipi before the Native Land Court in 1897:

Reihana [Kiriwi] alone appeared in the Court before Commissioner Bell, he was asking for the whole surplus to be returned to him. But the Commissioner cut off this reserve – 340 acres only.<sup>13</sup>

It is further telling that, when the reserve was finally given, at 340 acres (138 ha) at the mouth of the Aurere or Raramata River, it was called Okokori, not Raramata, for Raramata was a larger area and a kokori describes just a small inlet on a coast.

It is not clear what Bell intended. He rarely gave reasons for his conclusions, and in this case he did not. It would be consistent with his general line, however, had he thought, as did other officials at this time, that once Maori executed an uncustomary instrument, the customary hold was broken and native title no longer applied. This meant in law that the Government, which holds the radical or underlying title to land, was freed of the native title burden, and was able to dispose of the land at its discretion.

Matthews received his entitlement, which Bell assessed at 1748 acres (707 ha), described as being in the Parapara block, and the Government obtained a surplus of 5229 acres (2238 ha). According to Bell's minute, Maori were meant to receive as well 'their cultivations in the forest marked on the plan', whatever that was; and according to correspondence, they were also to take Pararake Pa and urupa. But no further areas were in fact cut out for them.

Raramata  
concerns

Our primary concern about the Raramata situation can be stated simply. We consider the Government's right to Parapara block, over 2600 acres (1052 ha), was never properly established and, on the evidence, the land should have been reserved for Maori.

The changes  
were all on paper

One can see more clearly now how the Government acquired 4414 acres (1786 ha) on one side of the Karikari Peninsula and 5229 acres (2238 ha) on the other, but it is doubtful whether this was clear to Maori at the time. The allocation of land to Europeans, to the Government, and to Maori was happening on paper. No change was apparent on the ground. One needed to have access to the documents and plans to know what was happening. Only White, Kemp, Bell, and whoever kept the papers in Auckland were in that privileged position. No physical possession was taking place. Maori protest came later, presumably as they became more informed, or perhaps because someone moved onto the land. In the

13. Extract from northern minute book, vol 17, fols 367-370, 5 October 1897, p 368; Surplus Lands Commission file D, OLC 329, reproduced in MA 91/9, exhibit D, pp 27-29

meantime, the Government's policy to extinguish native title to the remaining land, and Maori concerns to advance their relationship with Europeans as well, were able to continue as though all were above-board and fair.

(3) *Waiake*

The adjoining Puheke and Waiake purchases were proposed by Kemp to the Government at the same time as Bell was completing his adjustments at Mangatete. It was said they would 'connect a long line of country north of Mangonui over which native title will have been extinguished'<sup>14</sup> and were 'connected by surveyed line with former government purchases or with private lands'.<sup>15</sup>

Waiake  
transaction

Waiake was surveyed at 6942 acres (2809 ha), as shown in figure 44, and was given over for £220.

(4) *Puheke*

Puheke also was not surveyed until later. No area was stated in the deed but the later survey gave 16,000 acres (6475 ha). Kemp had estimated 6000 acres (2428 ha). The sketch on the deed was very badly drawn, with Davis's claim put as though it were a small peninsula in the harbour. This sketch purported to rely upon a hydrographic plan completed by Captain Drury of HMS *Pandora* in 1852, but in fact it was not an accurate tracing of the plan at all. Figure 44 shows these plans and Puheke as finally surveyed, with the variations on the southern boundary being noted. The conveyance was for £300 by 15 'Chiefs and People of the Tribe Te Rarawa'. Blanket identification was regular then, and we suppose that Te Rarawa was seen to include Ngati Kahu at that time.<sup>16</sup> The lack of adequate surveys and plans in cases like this will be referred to later.

Puheke  
transaction

(5) *Parakerake*

Apart from the 947 acres (383 ha) awarded to Walter Brodie and the Government's surplus of 379 acres (153 ha), the more remote end of the peninsula was left in Maori hands – at least until the Parakerake block of 3054 acres (1236 ha) was privately acquired in 1872 for £229. This block adjoined the northern boundary of Puheke.

Parakerake  
transaction

7.2.7 Mangatete to Victoria Valley

(1) *Mangatete South*

The large Mangatete Government transaction, for 11,125 acres (4502 ha) (wrongly given on the deed plan as 5649 acres, or 2286 ha), included some very

Mangatete South  
transaction

14. Kemp to McLean, 18 January 1859, AJHR, 1861, C-1, p 34

15. Kemp to McLean, 12 September 1859, AJHR, 1861, C-1, p 38

16. For further particulars of the survey irregularities, see Professor Evelyn Stokes, 'Muriwhenua: Review of the Evidence', May 1996 (doc p2), ch 17.

valuable land extending from the Mangatete village, near Rangaunu Harbour, south to the highly prized Victoria Valley. It was sold in 1862 for £509, a mere 11 pence per acre, and with only four reserves (though only one was shown on the deed plan): Otarapoko of 206 acres (83 ha), Whiwhero of 178 acres (72 ha), Hauturu of 144 acres (58 ha), and Te Rangirangina of 176 acres (71 ha). The latter was acquired in 1869, and the others in 1911, 1918, and 1947 except for some small residues.

(2) *Poneke*

Poneke  
transaction

Though comparatively small, the Poneke block of 345 acres (140 ha) between Mangatete and Rangaunu Harbour was significant, as it filled the gap between Davis's and Matthews' claims. It was acquired in 1864 for £43. There were no Maori reserves.

(3) *Taunoke*

Taunoke  
transaction

The Government obtained its first foot in the door to the valuable Victoria Valley when it acquired, in the upper reaches, the small Taunoke block of 44 acres (18 ha) for £5 in 1864. Victoria Valley was the area Maori most wished to retain.

(4) *Kaiaka*

Kaiaka  
transaction and  
reserves

Though it was broken country, Kaiaka, adjoining Taunoke, was also in Victoria Valley. It was the last Government purchase before the Native Land Court was established in 1865. Despite its broken character, the Kaiaka block of 7367 acres (2981 ha) was acquired for £1114 – at three shillings per acre the price was the second highest of all the Government purchases. There appear to have been four reserves: Taheke of 484 acres (196 ha) (220 acres of which was sold in 1871), Te Hororoa of 41 acres (17 ha), Whakapapa of 470 acres (190 ha) (sold in 1871) and Waimamaku of 154 acres (62 ha) (sold in 1941). None was identified in the deed or plan, however, so it is possible they were added by another arrangement later. Maori never accepted that Taheke and Whakapapa were sold and no deed of conveyance has ever been located for them.

**7.2.8 South of Oruru – the Maungataniwha blocks**

Maungataniwha  
transactions and  
reserves

In the hills to the south of Oruru Valley lay the Maungataniwha blocks. These were unaffected by pre-Treaty transactions. Maungataniwha West No 2, of 11,002 acres (4453 ha), was sold in 1863 for £560. There were two reserves: Takeke of 79 acres (32 ha), which was acquired in 1877, and Mangataiore of 381 acres (154 ha), of which 191 acres (77 ha) was sold. Adjoining that was Maungataniwha West No 1 of 12,940 (5237 ha) acres, sold in 1863 for £647. It included the Maori village of Peria, where Pororua appears to have been residing. There, 1130 acres (457 ha) was cut out as the Peria block, of which 566 acres (229 ha) was sold later.

Maungataniwha East contained 8649 acres (3500 ha) and was sold for £388 in 1862. Four blocks were kept for Maori next to Peria, but not formally reserved: Ahitahi, Otaharoa, Haumapu, and Te Awapuku. These comprised 1405 acres (569 ha) in total, all of which were sold between 1867 and 1885.

### 7.2.9 South of Mangonui – Kohumaru

On the eastern side of the central district, south of Mangonui, Maori retained three large blocks, Pukenui, Aputerewa, and Kohumaru. These appear to have been thrown, as an afterthought, into the massive and dubious Mangonui transaction of 1863, which took the whole of the eastern division (it is described in the later eastern division review). South of Kohumaru village, the upper Kohumaru Valley was alienated together with some prized forest lands. This happened in two transactions. The first, Upper Kohumaru of 11,062 acres (4477 ha), was sold in 1859 for £400 with one reserve called Parangiora, of 160 acres (65 ha) according to the deed but not shown on the plan, 119 acres (48 ha) of which was later sold. The second block was Pupuke of 19,592 acres (7929 ha). This passed in 1863 for £1273 with one reserve, Maungahoutoa of 295 acres (119 ha). None of those transactions was affected by pre-Treaty arrangements.

Kohumaru and  
Pupuke  
transactions

What can be found of the associated correspondence suggests that, with these lands, as with the Maungataniwha blocks described above, there may have been more value in the timber than the land. White stressed that ‘these lands will be a valuable acquisition, not only on account of the good soil, but fine timber’.<sup>17</sup> In January 1859 Kemp reported that he and White had fixed the price of Upper Kohumaru at £350 for an estimated 10,000 acres (4047 ha) ‘but which, for the present, has been declined by the Natives’. He also provided a further description of the land:

Timber not valued

[Upper] Kohumaru Block, is easily accessible by water, and although the surface is very broken, there is much of the land that is desirable, with a plentiful supply of timber, including some very fine Kauri.<sup>18</sup>

It is plain, however, that no appraisal was made of the value of the timber and no estimated value was allowed for in the purchase price. The significance of this issue of the adequacy of the price is discussed at the end of chapter 8.

By the means described, nearly the whole of Muriwhenua Central was acquired by the Government – from Mangatete in the west to Mangonui in the east, and from Karikari Peninsula and Taipa in the north to Victoria Valley, Oruru Valley, the Maungataniwha Ranges, and Kohumaru Valley in the south. It will be observed, however, that the Maori complaints of the time were mainly about how the pre-Treaty transactions were finalised. Any complaints about the

Summary

17. White to Kemp, 7 September 1858, AJHR, 1861, C-1, p 29

18. Kemp to McLean, 18 January 1859, AJHR, 1861, C-1, pp 33–34

Government purchases could only come much later, when the meaning and effect of the purchases became known.

### 7.3 EASTERN DIVISION

In the eastern area, the Government's purchases cannot be divorced from the prior purpose of finalising the outstanding pre-Treaty matters.

#### 7.3.1 White, Bell, and land grants

These were scrip lands

As in Oruru and Mangonui township, the land claims arising from the pre-Treaty transactions in the eastern division were not examined by Commissioner Godfrey because of the dispute between Pororua and Panakareao as to who could allocate land there. Godfrey inquired into neither the title of the Maori concerned nor their comprehension of the transactions. Notwithstanding that in European terms this unresolved dispute went to the root of title, and no one acquires anything if the vendor's title is not good, the Government offered the claimants land scrip – which most took – as though the validity of the transactions could then be assumed. In effect, the Government took an assignment of such claim as the individual may have had; but in practice, without proof of that claim, the Government presumed to own the land.

White's 'grants' to Duffus and Lloyd

Once more, Resident Magistrate White took the initiative. In 1851 he arranged grants for the Reverend John Duffus and John Lloyd on land east of Mangonui, each on 426 acres (172 ha), in lieu of their 'entitlements' on Muriwhenua Peninsula. This, of course, assumed that the Government so owned the land that grants could be made.

Bell's grant to Butler et al

For his part, Commissioner Bell had no authority to examine the scrip cases as such, and he did not presume to. Those cases were affected none the less, for he too assumed the land was the Government's. This was thought to cover a massive area, as shown in figure 45. Bell's task was to consider those cases where claimants had declined scrip: the claims of Berghan and Thomas (deceased) and one claim of Partridge which had been assigned to J Polack. But he did not examine the title of the Maori party, nor did he question them on their understanding of the arrangements. He did little more than adjust the computations of earlier officers, reapportioning entitlements between claimants and the Government, and have each defined by survey. And so, using the process described in the previous chapter, and the formula in the ordinance of multiplying the Sydney price for the goods by three, he made grants (as shown in figure 44) to James Berghan of 1668 acres (675 ha), to William Butler in three separate lots of 3 acres (1 ha), 406 acres (164 ha) and 350 acres (142 ha), to George Thomas (deceased, grant to two daughters) of 500 acres (202 ha), and to Clement Partridge and Joel Polack of 180 acres (73 ha). He did not find it

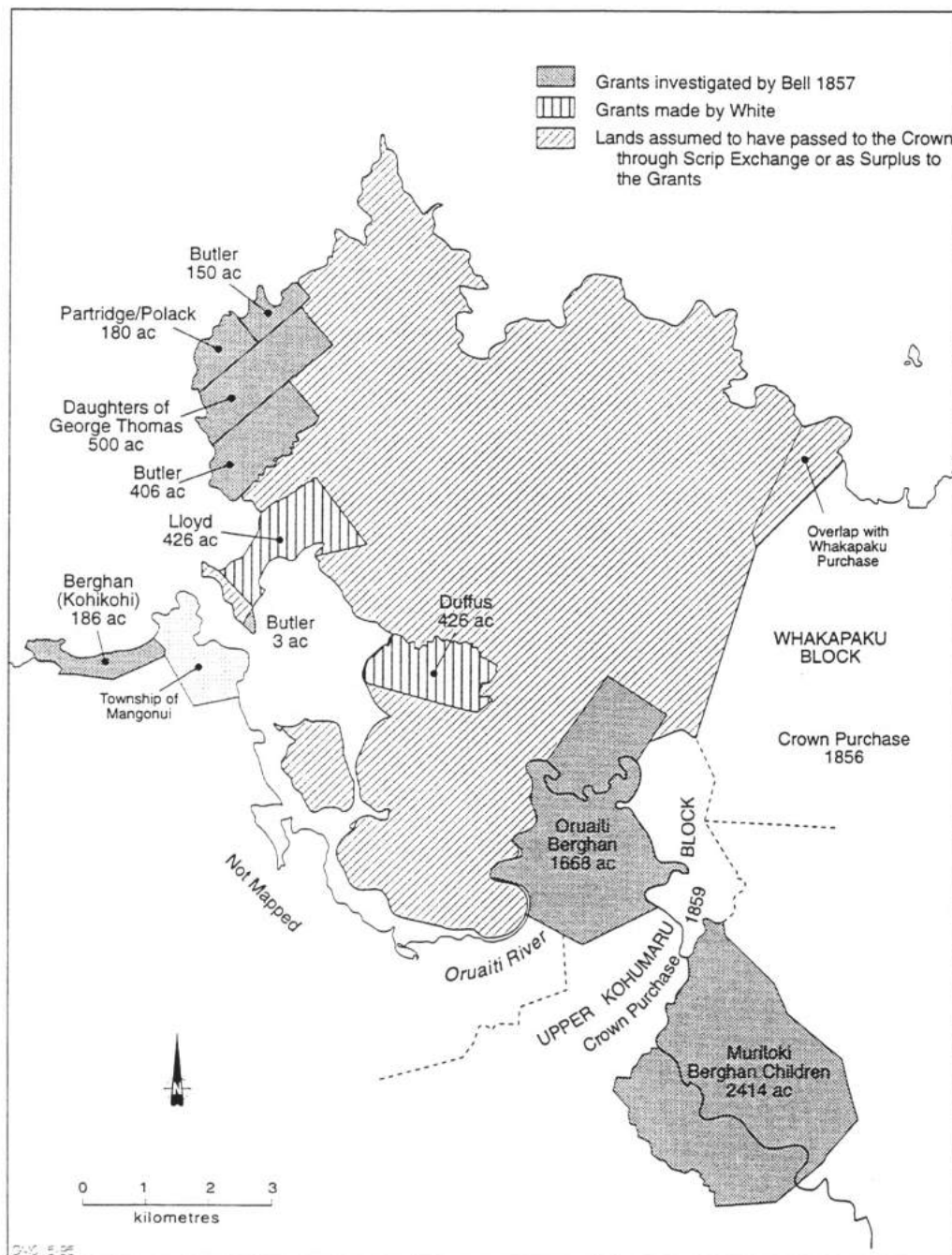


Figure 45: Bell commission land grants in eastern Muriwhenua

necessary to survey the surplus. This could be only because, to his thinking, all adjoining lands were already the Government's through the presumptive assignment of the claims of those who had taken scrip.

Accordingly, in eastern Muriwhenua as in Oruru, none of the pre-Treaty transactions was investigated at any time as to either the mutuality of the parties

No examination of title or mutuality

or the title of the alienors, the first being the usual pre-requisite for a valid contract, the second being essential for a valid land conveyance.

Berghan's  
Muritoki claim

The Muritoki block must be mentioned as well. Te Ururoa, a senior relative of Pororua and a rangatira of Whangaroa, had appeared before Bell in 1857 to seek a grant for the gift of the Muritoki block to the children of James Berghan. Bell left without effectuating this arrangement. A gift did not fit the usual formula based on the value of goods. In 1861 Pororua wrote in further support:

Friend we sold this land to this European, we Ururoa, Renata Pu, Hongi, Hohepa Kiwa and Pororua Te Taepa. Friend the old men who sold this land to the European are dead and there are young men, do not hearken to their words but do you listen to the old men, this land is not for the European but for his children.<sup>19</sup>

James Berghan had married the daughter of Ururoa Turikatuku and thus the gift would have provided for Ururoa's grandchildren. It may not have been obvious at the time that letter was written, but the proposal was one way in which Maori could gain a title to land as Europeans could – if not for themselves, then at least for certain grandchildren – by gifting land to a Pakeha son-in-law for the issue. In this case Land Claims Commissioner Alfred Domett intervened in 1864 to award the 2414 acre (977 ha) Muritoki block to James (junior) and Joseph Berghan. No land passed to the Government and we are not aware of any historical complaints.

### 7.3.2 White, Kemp, and Whakapaku block

Acknowledgement of other interests

In now considering the Whakapaku transaction, we do not assume that the block was the exclusive territory of Ngati Kahu. It skirts Whangaroa, the home of a people who, though closely related to Ngati Kahu by marriage, were also distinct. Whakapaku is considered now because Ngati Kahu was partly involved and the transaction was prelude to and affected the sale of lands adjoining. The block is shown in figure 46.

Whakapaku helps define scrip boundaries

Although Resident Magistrate White considered that the pre-Treaty transactions had covered most of eastern Muriwhenua, the extent of his inquiries is not known. The basis of his authority to determine them is not known either. The claim areas were vaguely described and the putative purchasers, who were needed to give their view of the boundaries, had taken scrip and left. It would have assisted the definition of the outer boundary of the 'scrip lands', however, were the Whangaroa end of the district surveyed off and acquired. We think the need to do so probably influenced the next transaction, which followed close behind White's arrangements for Waikiekie and Oruru, and which preceded by two years the Government's intensive land-purchase programme.

19. Pororua and Hohepa Kiwa to Governor, 13 July 1861, OLC 1/1362

TRANSACTIONS: CENTRAL AND EASTERN DISTRICTS

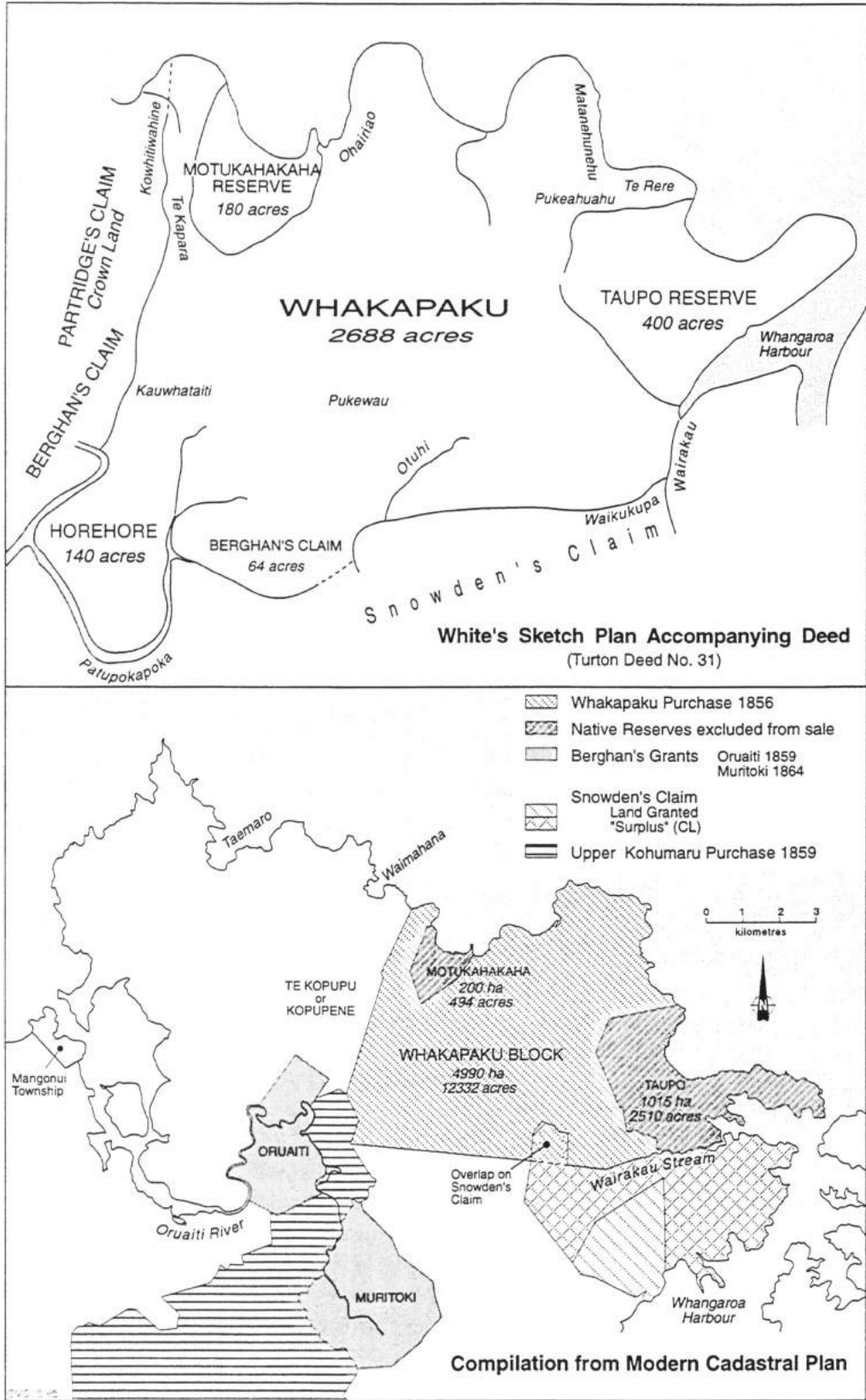


Figure 46: Whakapaku transaction



White's under-  
estimation of  
acreage

Thus, the Whakapaku block was acquired even before Land Claims Commissioner Bell had arrived on the scene. It is now known to have contained 12,332 acres (4991 ha), excluding reserves. As in each of the previous cases, White had done a very inadequate sketch and assessment beforehand, and thought the land to be 2688 acres. White's sketch and the ultimate survey are shown in figure 46. The Chief Land Purchase Commissioner, Donald McLean, was unhappy, writing in 1856:

as a general rule, the purchase of such small blocks should be avoided as entailing great expense in the purchase and survey, which might be obviated by treating in a more general manner for a considerable extent of country . . .<sup>20</sup>

McLean approved the purchase, nevertheless, but might have felt better had he known that the area had been understated by nearly 10,000 acres! He would have been happier still had he known that his agents would succeed in forcing the price down from £300 to £200. This gave a return to Maori of fourpence per acre.

The reserves, and  
alienation thereof

The deed was signed by 17 people. The Maori settlements of Motukahakaha and Taupo were delineated as reserves. We understand that Taupo reserve was primarily associated with the current Whangaroa hapu, and Motukahakaha with Ngati Kahu, but there seems to have been a merger so that those distinctions may not have been made at the time. In 1873 Motukahakaha reserve was vested in only two persons, presumably in trust for the people, but that cannot be determined now, for the court minute books have been missing for many years. In any event those two sold it in 1897.

Inadequate  
sketch plan

The boundary description in the deeds, and the sketch plan, left a legacy of numerous boundary uncertainties, as M Alemann pointed out in his submissions. The description fell far short of the standards the Government expected, even at that early time; since Resident Magistrate White claimed to be a surveyor, and had been engaged as a surveyor by the New Zealand Company, one could reasonably have expected better. This uncertainty no doubt contributed to the gross miscalculation of the area, which was picked up on the survey in 1879, and had the full extent of the land been known it must surely have affected the price. But this was only one of several similar cases. In 1858 Chief Land Purchase Commissioner Donald McLean had occasion to write to District Land Purchase Commissioner Kemp as follows:

You will have the goodness to bear fully in mind that every transaction with the Natives for the purchase of land should be so clear, distinct, and well understood, that no possibility of a question arising in consequence of insufficient surveys should ever exist. The subsequent evils resulting from undefined boundaries are often much greater than the first expense of an accurate survey.

The Government, therefore, expects that each transaction with the Natives of your district shall in every way be so final and conclusive, that there shall be no

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20. McLean to Kemp, 3 October 1856, AJHR, 1861, C-1, p 13



An early photograph of Taemaro Bay. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G10906 $\frac{1}{i}$ ).

further embarrassment caused by disputes arising which might have been obviated.<sup>21</sup>

The same complaints could have been made about White's sketch and survey plans for Mangonui township, Oruru, and Mangatete.

The first concern affecting Whakapaku is the obvious discrepancy between the land as described, 2688 acres (1088 ha), and the land as claimed at the end, 12,332 acres (4991 ha). The second is that which affected the Government purchases generally: that it was a paper thing without any obvious reality. As late as 1901, Maori were to complain that Europeans had entered on the land to cut timber, Maori believing the land was still theirs.

### 7.3.3 The Mangonui 'purchase', 1863

Discrepancies in  
the Mangonui  
block transaction

McLean's warning and earlier admonitions counted for naught when a deed for the adjoining Mangonui block was completed in 1863. There the problem related mainly to the obscurity of the deed's intention. In White's view, the transaction extinguished any outstanding native claims throughout Mangonui East and Kohumaru, while Maori claimed it related only to Te Kopupene, an area behind Berghan's Oruaiti block. Kopupene is shown on the modern compilation in figure 46, and could not have amounted to more than 2000 acres (809 ha). The area to which White was referring was about 22,000 acres (8903 ha). Although it was shown on a sketch plan (reproduced as figure 47), there are doubts whether the plan was shown to Maori at the time.

Crown historians Armstrong and Stirling argued that the 'purchase' was not a fresh 'purchase' but was intended to extinguish such Maori interests as might then remain in the area. Accordingly, they said, it should not be treated as a purchase of 22,000 acres which, having passed at £100, returned one penny per acre.<sup>22</sup> We would go further, to say that the deed cannot be counted as a sale or purchase of anything but should be set aside for uncertainty.

Uncertain location  
of scrip lands

It is necessary to look beyond the deed to the background. There was no sure way of knowing the extent of the welter of pre-Treaty transactions. The boundary descriptions were too vague and most of the traders affected had taken scrip and left. Even were it possible to survey the boundaries, the cost did not make that worthwhile when there was no intention to convert the land to grants. White initially assumed that the transactions covered the whole area but he had no way of knowing that was so.

Te Kopupene had  
not been acquired

Eventually, White conceded that an area called Te Kopupene (or Te Kopupu in some written accounts), behind Berghan's surveyed Oruaiti grant, had not been covered.<sup>23</sup> The boundaries of Te Kopupene were not clear, but that is not unusual among Maori. Their place names could be specific spots or general

21. McLean to Kemp, 3 October 1856, AJHR, 1861, C-1, p 13

22. D Armstrong and B Stirling, 'Surplus Lands: Policy and Practice, 1840-1950' (doc 12), pp 276-277

23. See OLC 558-566

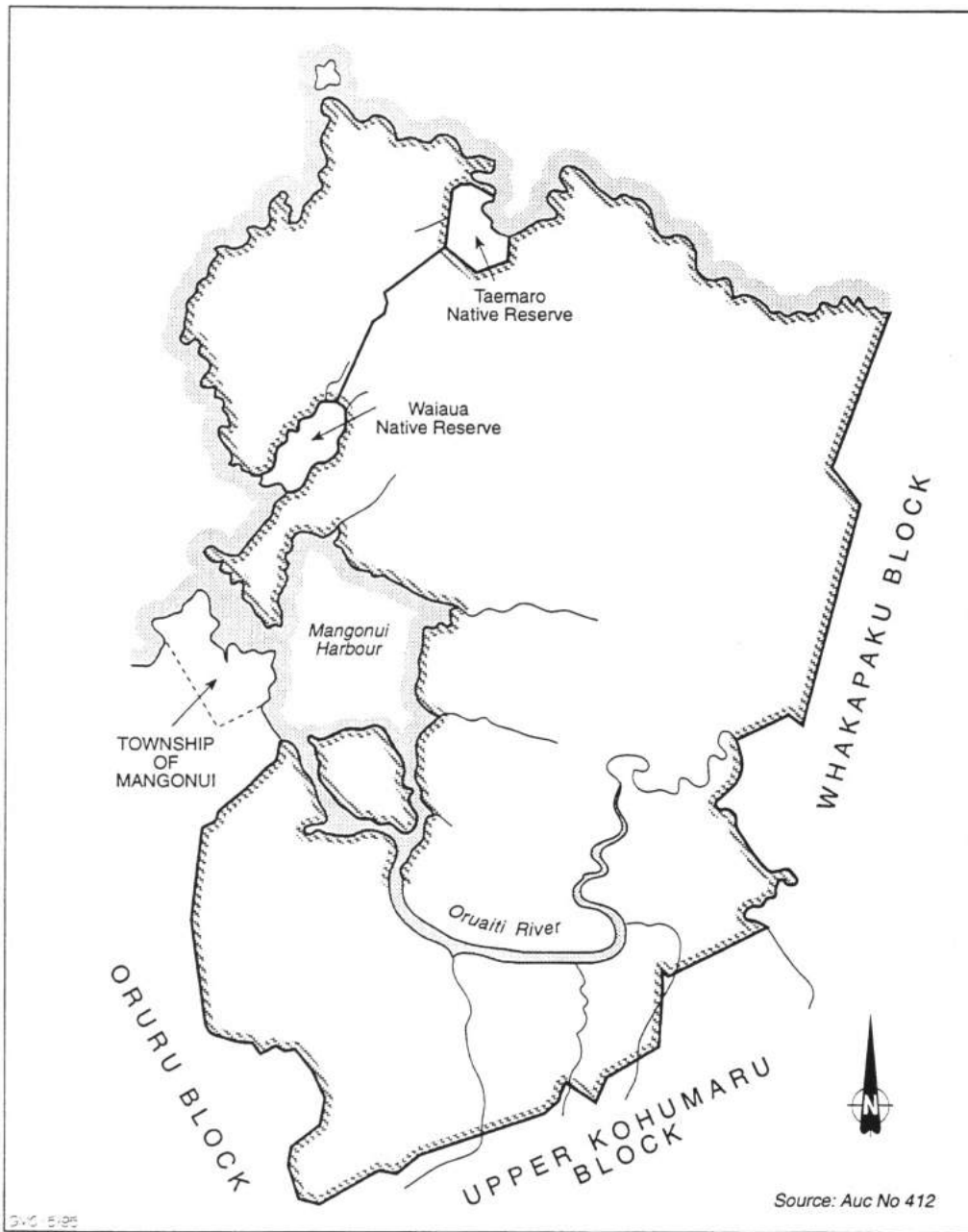


Figure 47: Sketch plan of Mangonui purchase, 1863

localities; and lands were not necessarily prescribed by outer boundaries. They could be identified by a central point with a radius no more defined than a candle's glow. References to Te Kopupene would have it at 600 acres (243 ha), or as big as 2000 acres (809 ha). In any event, White assumed that all the land was the Government's through the pre-Treaty transactions, except perhaps for Te Kopupene.

To Maori, nothing  
had been  
acquired

For Maori, the assumption appears to have been the other way. The traders had been allocated land but the land still belonged to the local hapu in the customary way. While Te Kopupene had not been allocated, this did not mean that the remainder had been sold. Moreover, when the traders left, any contracts with them had been extinguished, and the land remained where it had always been, with the associated bloodline. If the Government wished to make an arrangement for this land, it would need to negotiate.

The location of  
settlers on the  
land

Support for this view is that Pororua continued to act as though all the land was still his, while White continued to believe the native title had been extinguished save for a small part. He represented Pororua as admitting the earlier sales but as claiming they were not fair. In the meantime White brought settlers onto the land. For Maori, this change of circumstance on the ground exposed the issue for the first time. A group arrived in 1859, and some Government land sales were organised for a part of the land to the south-east of Mangonui Harbour in about 1860. In 1862 Pororua wrote to the Government. His letter does not survive, but according to the correspondence register he wrote 'complaining of Mr White for having taken some of his land'. Pororua had earlier written complaining that whalers had taken water from his streams without payment,<sup>24</sup> so that in 1862 Pororua's view appears to have stayed where it had always been: that it was for him to control the allocation of land and the access to its resources in the customary manner of a rangatira.

Pororua's view is  
independently  
shared by others

Further support for that view is in a petition to the Governor of November 1862 signed by Rakena Waihua and 37 others. As this petition was referred to by Crown historians in another context, concerning the Maori understanding of the Mangonui purchase of 1863, its significance will be addressed when that matter is discussed.

The negotiation  
for Te Kopupene

White read the Maori complaints as confirming that part of the land had not been ceded, and he began to negotiate for it. He wrote:

There is a portion of this block, which, as far as I can ascertain really belongs to the Natives, situated at the back of James Berghans. I offered them (£100) One hundred pounds for their claim which was rejected.

I have no doubt from my knowledge of Pororua's character, that he will urge every means in his power to obtain his demand. I therefore trust that the Government will not encourage one of the most dishonourable and unblushing attempts at extortion which has come to my knowledge.<sup>25</sup>

White and  
Pororua are not  
ad idem

Thus once more Maori and Pakeha were talking past each other, the resident magistrate considering the land had mainly been sold, Pororua and other Maori believing the land was still theirs to control. Each remained faithful to his own world-view while making accusations about the other – of theft, in Pororua's complaint about White, and of extortion, in White's complaint about Pororua.

24. BAFO-A 760/11, p 130

25. OLC 558-566

At his request, White was sent £100 to complete the acquisition. He held on to the money, however, explaining:

The money  
debate

In consequence of some little differences between the natives themselves I have not yet paid over this sum. There is every probability however that they will shortly come to terms, and that they will call upon me for the money. It is therefore very desirable that the cash should be at hand when applied for by them.<sup>26</sup>

In a petition to the Government in 1891, Hemi Paeara maintained that Pororua lent some money to Poni te Kanohi and that, when Poni could not repay it, Paeara agreed to give over Te Kopupene in clearance of the debt due. The remaining lands were considered to be still held by Maori.

This view was affirmed in a further petition of 1892, which described how the land was identified:

White, was himself present on the top of a mountain (? hill) named Paiaka, at the upper end of Waimahanga [sic], where a large number of Natives assembled. Mr White was present then. The land to be given in payment of the debt which Poni owed Pororua and known as Te Kopupene was then pointed out. We know the boundaries of this land well . . .

Mr White told the Natives at that meeting to go to Mangonui and we went. We suggested to him at the meeting to have the land surveyed and he acquiesced. On our arrival at Mangonui the whole question connected with the land was discussed and a settlement having been come to the money was paid over to Pororua and Poni – the land finally passed into Mr White's hand.<sup>27</sup>

In commenting on the 1891 petition, White stated:

The payment of 100£ made to Pororua and others, was made by Mr Kemp, Land Purchase Commissioner and myself, in consequence of the claims made by Pororua and others of his tribe, to small patches of land, in and about the various land claims, the boundaries of which were only descriptive and had not been surveyed and were a continual source of vexation to the settlers.<sup>28</sup>

The Mangonui deed went further than the discussions about Te Kopupene, however. It purported to extinguish all interests in Kohumaru and Mangonui East. While the Mangonui township deed was used to acquire Waikiekie with a washing-up clause for whatever land might remain, in this case the whole deed was a washing-up exercise. The methodology is not easy to comprehend. Rather than treating for land, the resident magistrate was proposing a blanket extinguishment of such Maori interests as may have remained in a general area.

The change in  
contract style

26. White to Colonial Treasurer, 4 February 1863, Mangonui resident magistrate's letterbook, BAFO-A760/11, p 224, NA Auckland

27. Petition of Hemi Paeara, 7 September 1892, SLC file G, pp 53–55 (doc A21, app 57)

28. White to Native Minister, 21 July 1891, SLC file G, pp 51–52 (doc A21, app 58)

It seems that at the time, however, the only talk was about Te Kopupene. There is, moreover, a problem with the deed as a deed: as drafted it was nonsense.

The meaningless  
drafting

By this deed Maori purported to convey and surrender for themselves and their relatives of the tribe, for £100, all that piece of land situate at Mangonui, the boundaries whereof were set out at the foot of the deed – or so the deed said. In fact, no boundaries of any sort were set out at the foot of the deed. White was using a printed form, no doubt needed to tidy up his conveyancing, and the words up to that point were simply those printed as part of the form. Where the printed deed stated, at the foot, ‘These are the boundaries of the land commencing at . . .’,<sup>29</sup> the drafter had added, in handwriting:

The outstanding claims in all the lands in the immediate district of Mangonui which were not clearly included within the former purchases.

Mid-stream, a deed of land conveyance had been changed to one of renunciation, with which it did not fit. But, either way, the land conveyed or the thing renounced remained unidentified. What was the land ‘in the immediate district of Mangonui’, and what and where were ‘the former purchases’?

The problem with  
the plan

It may be considered that the land ‘in the immediate district of Mangonui’, although not described in the deed, was determinable by reference to an associated plan. The printed form of deed did refer to ‘a plan of which land was annexed’, but no annexure has been proven to have existed at the time of signing. It may have existed once, but no plan has been found with an identifying exhibit note or endorsement. Purely as a matter of proving and recording its extinguishment of native title, however, we consider the Government was obliged to properly annotate and keep those plans (if any) that formed part of the documentation. The Government must bear the consequences if it failed to do so, and if, as a result, it cannot now establish the existence of a proper plan, signed by the parties.

There is *now* upon the deed a sketch map, as copied in figure 47, but this map was clearly not on the deed when it was signed, as there is correspondence to have the plan inscribed on the deed *after* the date of execution. This creates the likelihood that a plan existed at the time, but does not establish that it was available to the parties, or whether some other plan was there that may well have been as inaccurate as that for Whakapaku.

Uncertain  
meaning

Even assuming, however, that the plan as later inscribed had been in front of the parties at the relevant time, it might have been deduced that ‘the immediate district of Mangonui’ was intended to refer to the area outlined on the plan. But what were ‘the outstanding claims . . . which were not clearly included within the former purchases’?

One of the signatories, Te Paeara of Ngati Te Aukiwa, remained adamant that the only area under discussion with White at the time was Te Kopupene. That

29. Possibly in an attempt to give the deed some sense, Turton’s compilation of deeds has omitted the words ‘commencing at’.

makes sound sense in light of the background described. The deed said that Maori conveyed their 'outstanding claims . . . not . . . included within the former purchases' and there was some agreement that Te Kopupene was claimed by Maori and had not been included in the former private 'purchases'. On this construction, the Mangonui deed related to Te Kopupene and no more, and did not affect the former purchases, which would continue to have such status as they deserved.

The other possibility is that 'the former purchases' referred not to the private transactions but to the Government ones, the purchases outside the deed area. This would mean the Oruru, Upper Kohumaru, and Whakapaku transactions, referred to earlier. Support for this view is that those transactions were named around the borders of the sketch map. If that was the case, the consequence would have been amazing. The map swept down to encompass the Pukenui, Aputerewa, and Kohumaru blocks to the west of the harbour to link this area with the Oruru and Upper Kohumaru purchases. Pororua would have been selling the very land and homes where most of his people resided, at Kenana and other places in the lower Kohumaru Valley. If that was intended, those blocks would at least need to have been specifically mentioned in the deed, and the 'sale' of Kenana village should have been abundantly apparent. Such a large result could not be caught in a washing-up clause. Unsurprisingly, when the Native Land Court investigated this area a decade later, the Government did not produce this deed or object to the award of Pukenui, Aputerewa, and lower Kohumaru blocks to Maori. It implicitly acknowledged that this land had not been sold.

Uncertain  
consequence

In the same way, were this second construction of 'the former purchases' intended, Waimahana village and a string of homes along the eastern coast would also have been conveyed, without a single mention in the deed that that was happening. It seems to us extraordinary that White could later claim to have bought the whole of the eastern division on such a flimsy and badly drafted deed, without explicit statements to that effect in the document. Although it was nothing new, it should still be noted also that there was no mention of the acreage – that 22,000 acres (8903 ha) was involved.

To add to the deed's deficiencies, it was signed by Pororua of Te Uri o Te Aho, Te Paeara of Ngati Te Aukiwa, and three others whose affiliations are unknown, who purported to convey whatever it was they were conveying for those of 'the Tribe Te Matetaroha'. The printed deed had left a blank for the tribe, and there 'Te Matetaroha' has been written in. We have found no record of Te Matetaroha as a hapu at that time or subsequently. Nor did Maori witnesses know of such a hapu when we inquired. The recorded hapu of the time were Ngati Rehia of Ngati Kahu at Waiarau, Ngati Te Aukiwa of Ngati Kahu at Taemaro, Waimahana, and Motuhakahaka, and Te Uri o Te Aho and Matarahurahu at Kohumaru. Since hapu names often changed, a Matetaroha hapu could have existed, but equally there could have been a mistake.

No inquiry of the  
alienating class



'Mo te aroha' is a well-known phrase, still common, when Maori are transacting and perhaps so common that it might pass without being translated. It says literally that something is given for love, but means in effect that it is for the receiver to decide the return in due course. We imagine a discussion on these lines:

White:	Who gives this?
Maori:	Ko matou. Mo te aroha. (We do. It is for love.)
Interpreter: <sup>30</sup>	The land is given by them, mo te aroha.
Deed:	[As printed] This deed . . . is a full and final sale, conveyance and surrender by us the Chiefs and People of the Tribe [and as handwritten] <i>Te Matetaroha</i> .

In any event, no inquiry is evident as to the affected hapu, the representativeness of the signatories, or their mandate from those living inland or along the coast. It is further doubtful that the signatories considered their actions might be prejudicial to those people.

The deeds in terms of legal constructs

While Kemp was present, White appears to have been in charge, having known the area for some years; and, as happened at Waikiekie and Oruru, a shoddy deed resulted. It seems that White was primarily concerned with Kopupene but took the opportunity, as he had done in Waikiekie and Oruru, to change the deed from a specific conveyance to a general washing-up instrument. He purported to extinguish everything that might remain but without reference to anything in particular. It seems also that White was armed with a printed deed, that he spoke with Maori, and certain blanks in the deed were filled on the spot. Were one to adopt a general rule of law in cases like this, that where there is uncertainty a deed should be construed against the drafter, then Te Paeara's view, that only Te Kopupene was covered, is the more sustainable. We think the position is so unclear, however, that the deed as a whole should be treated as too uncertain.

Waiaua and Taemaro reserves

The deed then referred to reserves at Waiaua and Taemaro, which we will discuss shortly. Nothing was allowed for the people at Waimahana and Kohumaru. The evidence is that Maori inhabited various spots along the coast. White later claimed that no one lived at Waiaua until he created the reserve, but this does not fit with classical tradition which records Waiaua as an old settlement, and there is in fact evidence of people living there, including Rakena Waiaua and Te Paeara himself.

Taemaro is reduced

Even then, the reserves were never formally gazetted as reserves. Moreover, one of them, Taemaro, was later reduced from that shown in the map eventually inscribed on the deed, without any explanation. The reserve had covered three cultivations spread over 143 acres 1 rood 27 perches (58 ha). A later survey plan,

30. No official interpreter was present. 'Koikoi, formerly of the Police' was there, however, and may have done the translations. Crown historian T Walz considered *Mate aroha*, the death (or want?) of love, may have been intended.

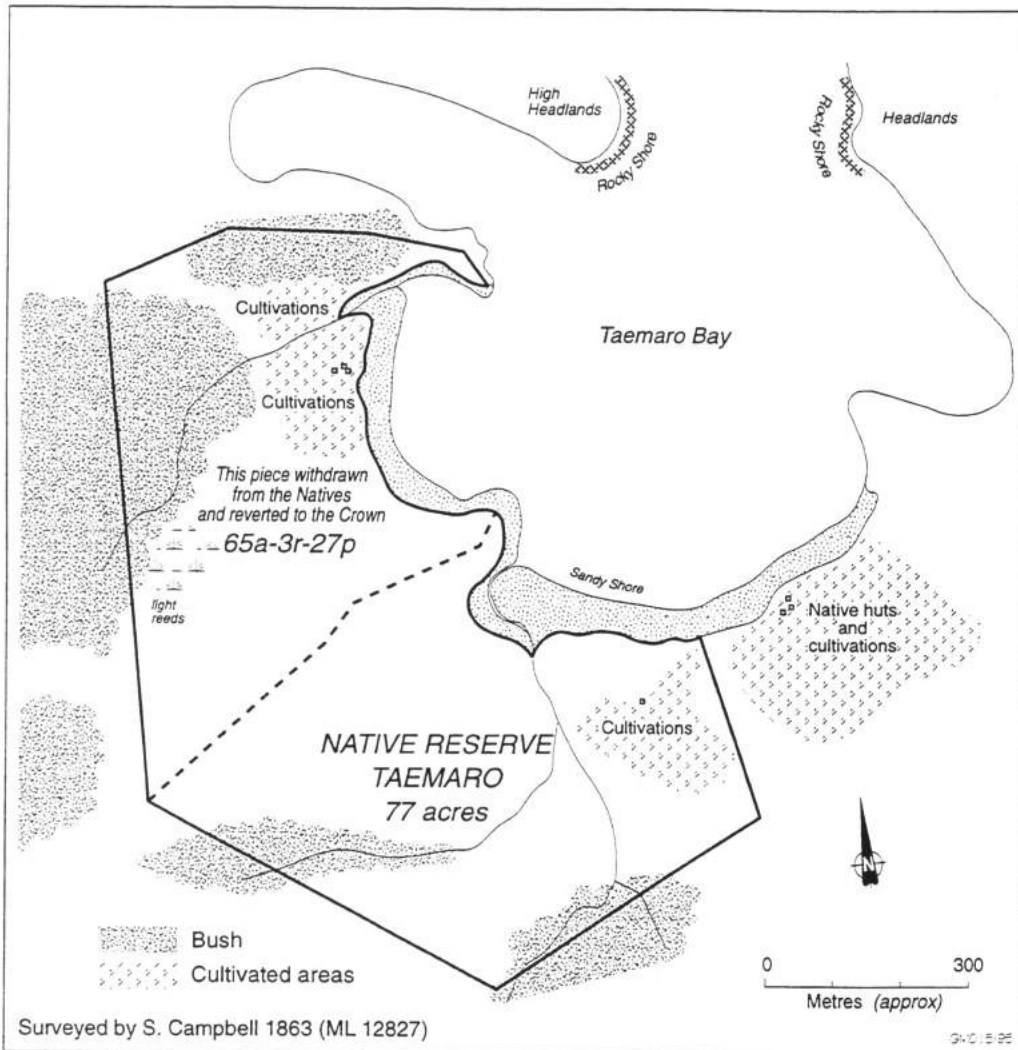


Figure 48: Taemaro native reserve

as depicted in figure 48, advised simply that some 65 acres (26 ha) was ‘withdrawn from the Natives and reverted to the Crown’. There is nothing to show the change was agreed. In addition, not until the Taemaro and Waimahana Grants Act 1874 was there any recognition of its reserved status.

Whatever the interpretation of the deed, Pororua considered that nothing had changed – an entirely defensible position if the world is seen from a Maori view. He persisted with complaints about surveys on the land, which he said he had not sold. In June 1864 White wrote the following note on the translation of a letter from Pororua:

Pororua still presumes to own the land

I have so often remarked on Pororua’s unscrupulous manner of claiming land that I think the best way will be to take no further notice of these claims, the land he mentions has been bought and paid for several times and there are living witnesses – but I, to set these disputes at rest forever, on 19th May, 1863 gave him

and his people £100 to give up all the claims to the land there and besides I have two reserves marked off for them, one at Waitetokie [Waiaua], the other at Taemaro.<sup>31</sup>

Ngati Te Aukiwa did not consider the land sold either. They carried on living at Waimahana, where they had always been, and Te Paeara of Ngati Te Aukiwa insisted to his dying day that the only block involved was Te Kopupene.

Crown argument

Crown counsel argued that Maori knew the meaning and effect of the Mangonui deed, and that the meaning in the deed was clear. For reasons earlier given, we do not agree the meaning was at all plain. Maori also knew the surrounding land had been previously sold, it was argued, reference being made to the Crown historical research.

Crown historians had relied first on an 1854 comment on various letters to the Governor, complaining of landlessness following land sales. According to this comment, one of the letters was from a Taemaro person, although that letter cannot now be found. We do not think a brief statement about the combined import of several letters, none of which necessarily referred to this area, can be assumed to support the given proposition when so many other possibilities present themselves.

More especially, reliance was placed upon the 1862 petition of Rakena Waiaua and 37 others, mentioned earlier. This stated:

This is a word of ours to you, about our land which Mr White is taking away about Takaia, Rongo, Kairawan, Wangamoa, Waiwero, Umakukupu, Kaituna, Matua and Matukowhai. This was the boundary formerly when we sold it to Mr Smith [Smyth]. This land is ours that we now tell you of as being taken away by Mr White. We know by this that Mr White is a bad man; for we have been five times to the Court and his reply always is, No, no. We turn therefore to you. It will rest with you to return us our land. Formerly we used to hear the word of the chief of Our Runanga Pororua Te Taepa. Now we do not listen to his voice because the evil comes from his friend Mr White.<sup>32</sup>

We do not consider this is evidence that Maori understood that the land in the area, and the land given for Smyth in particular, had been sold. We think it is, rather, evidence of the opposite.

In about 1857 Bell minuted that he thought the land at Taemaro should be reserved for Maori. We do not think this meant that part of the land the Government claimed had to be given over, for the land concerned was still Maori land. Bell may have thought it was the Government's, but we do not agree, or he may have thought part of the Maori land should be protected from further sales. We consider that the old land claims of Smyth, marked 'Taemaro' on figure 19, took in part only of Taemaro bay, as shown on that figure. Likewise the Partridge claim to Waimaori, as shown on figure 19, left part of Taemaro bay untouched.

31. White's minute to the Governor on Pororua, 7 June 1865, OLC 1/1362

32. OLC 558-566

Accordingly, when White sketched out the Taemaro reserve, he was creating not a reserve from out of Government land, in our view – and we suspect he knew that too – but a reserve from out of part of that which was still Maori land, never alienated. Again, figure 19 shows what we have constructed as the likely position.

We refer now to figure 48. What appears to have happened is that the most northerly boundary of the reserve was on a point in the bay which White mistook for Motukowhai (or Matukowhai in the petition) and which was where Smyth's boundary ended. In fact, White came later to consider that Motukowhai was the next point down, and so he proposed to reduce the reserve accordingly, by what turned out to be nearly 66 acres (27 ha).

Maori protested as a result, but what the petition was effectively saying was that Smyth's land was no longer Smyth's. The petitioners describe Smyth's boundary, but, since Smyth had left the district, to them the contract was at an end and the land had reverted to source. White therefore had no right to reduce the Taemaro reserve and to take the remainder for the Government, as the petition was contending.

We do not know the outcome of the petition in 1862. We know only that in 1863 the surveyor surveyed the full Taemaro reserve, and that subsequently someone annotated the survey plan, cutting off 65 acres 3 roods 27 perches (27 ha) as 'withdrawn from the Natives and reverted to the Crown', thus giving full effect to the Government's rights, as White saw them, by virtue of the presumed assignment from Smyth.

We consider Maori interests were never properly extinguished by the Mangonui transaction of 1863.

In our view, the Mangonui 'purchase' typifies the resident magistrate's incomprehension of, or disregard for, both the Maori ethic and English legal processes and conveyancing forms. The result was considerable confusion. White was not a lawyer, despite his resident magistrate's title, nor was he a competent surveyor, despite his adoption of that calling from when he worked for the New Zealand Company. It is further apparent to us that, in any event, he had no legal authority to be conducting the Whakapaku and Mangonui transactions, as he was not authorised to serve as a land purchase commissioner.

The disregard for process



## CHAPTER 8

# THE GOVERNMENT TRANSACTIONS TO 1865: WESTERN AND NORTHERN DISTRICTS

*The next step, and one which is now in successful progress, is to acquire large tracts of land by purchase from the Natives, out of which blocks, varying in extent from 100 to 2,000 acres, should be reconveyed under Crown grants to the principal Chiefs upon the extinction of the tribal title, such blocks consisting not only of cultivable but also of forest land, in order to secure to them a continued revenue . . .*

Governor Gore Browne, land acquisition policy for the Far North, 1857

*We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the government. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.*

Resident Magistrate White to the Native Minister, 1861

### 8.1 CHAPTER OUTLINE

This chapter continues the account of the re-allocation of the Muriwhenua land, looking now at the western and northern districts. It is helpful to be reminded, at the outset, of the official programme. The aim was to acquire everything and hand back part, but under a new tenure arrangement so that Maori and Pakeha would be on the same footing. This is evident in the quotation above, from Governor Gore Browne, and gives a more precise meaning to the resident magistrate's programme to extinguish native title.

But what areas were reserved? This chapter concludes with an assessment of the transactions in English legal terms, considering the adequacy of the purchase price and the like. The main concern, the adequacy of reserves, is left until after the following chapter, where the final result is made known.

## 8.2 WESTERN DIVISION

### 8.2.1 Bell's operations

In the western division, from Ahipara to Mangatete and centering on Kaitaia, the Government's buying programme had again to await the resolution of outstanding pre-Treaty matters. Although the scrip issue did not arise, Resident Magistrate White still found a role for himself in assisting Land Claims Commissioner Bell to define and adjust the previous grants and surplus, and in arranging for purchases to follow. As no Maori issues arose, in Bell's view, the cases were heard at Mangonui. He did not travel to Kaitaia, as Godfrey had done. Maori attended nevertheless, possibly at the instigation of the missionary Joseph Matthews, in whose company they came.

Maori evidence  
and reserves

Maori appear to have attended to support Matthews and James Berghan, and to protect their own use rights through continued joint occupation, or otherwise to have part of the land kept for them as a reserve. Bell did not record their concerns, however, only that matters were discussed or explained. Some particular reserve proposals are now referred to.

### 8.2.2 Okiore reserve

On our reading of the circumstances, Maori were entitled to the greater part of the Okiore block. It was more than 8000 acres (3238 ha), but Ford had stated it was held in the same way as Oruru, from which he may be taken to have meant the greater part was for Maori according to such allocations as Panakareao might make. It is consistent with that view that Ford claimed 2000 acres (809 ha) only. Godfrey assessed his entitlement at 1357 acres (549 ha).

Some 19 years after the original transaction, the matter was reviewed by Bell. Ford had left the district and Panakareao was dead. The local Maori may have known little of the initial arrangement. In any event, the Government assumed that all the land in the original transaction not taken by Ford was its, and Maori appear to have thought the most they might be entitled to was a reserve on the west coast.

We have no idea of the debate. Bell recorded no evidence and kept no minutes of the discussions. It appears, however, that, by reference to the description of boundaries in the deed, Bell asserted the Government's right to the total area. He recorded no reasons but simply the result: Ford's entitlement was increased to 2627 acres (1063 ha), nothing passed to Maori, and 5653 acres (2288 ha) was Government surplus.

### 8.2.3 Awanui reserves

A similar situation applied to Henry Southee's land at Awanui, in that both Panakareao and Southee were dead (the latter dying in 1854). It will be recalled

that numerous Maori had been living on this large block of 13,685 acres (5538 ha). Dieffenbach had noted about 300 occupying part near the Awanui River in 1840, and there may have been more elsewhere. Cordial relationships were enjoyed with Henry Southee, who had married Eliza Ati, the daughter of Ruanui, a prominent local rangatira.

Southee fell into debt, with the result that most of his land passed to others, and eventually to William Maxwell. We suspect that part of Southee's problem may have been his willingness to accede to Maori expectations of continuing tribute. He wrote briefly to the Governor about his claim, and the amount he had paid, but protested that the Government was unaware of the nature of a Maori gift, implying that continuing tribute had to follow.

Maxwell, who possibly knew the cause of Southee's problem, took a severe line with Maori from the start. To Maori thinking, the relationship with Southee was personal and lands could not pass from his line without their agreement. Maxwell did not recognise any continuing Maori interest, however. There is evidence of some tension, with Maori presuming to occupy part of the land as before, and to run stock or take gum from the balance, and with Maxwell regularly complaining.

Before Bell, there was no question that the group living in a village on part of the land, at Waimanoni, should have that part reserved for them. Once more, however, Maori claimed land along the west coast, next to the reserve sought from out of Okiore, presumably to make one continuous block. The whole was to stand in the name of Puhipi, a further rangatira of the district. Again, Bell did not record what was said or how he came to his decision. He awarded 4198 acres (1699 ha) for Maxwell, 500 acres (202 ha) for Southee's estate, 400 acres (162 ha) for the surveyor, 200 acres (81 ha) for the Waimanoni Maori group, another 200 acres for Maori to the west to stand in the name of Puhipi, and 8360 acres (3383 ha) for the Government.

Somehow, the second Maori reserve was never created. Maori appear to have complained that it was not large enough for the stock of all affected, but Bell noted there was a considerable area of Government surplus which Maori could use for their cattle until the Government, or settlers, had need for it. Bell then recorded that Maori should apply to the resident magistrate to settle the location of the 200 acres, and after that nothing happened. Bell simply wrote that, as he had heard nothing from White, he presumed no provision was sought.

Much later, Puhipi's son complained that the reserve had never been defined. Crown historians investigated the matter and thought that, when the complaint was made, the file was not adequately examined. Had this been done, in their view, it would have been apparent that the reserve was promised and should have been gazetted.<sup>1</sup>

It struck us as extraordinarily severe that the reserves for Maori were given so sparingly. Dr Rigby's explanation seems plausible: that Maori had continued in

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1. See D Armstrong and B Stirling, 'Surplus Lands: Policy and Practice, 1840-1950' (doc 12), p 8



occupation of large areas, that they appeared to assume that any land not occupied by settlers was free for them to use, and that, in recovering that land, the Government could allow no latitude to Maori which might be seen as confirming their beliefs. Accordingly, reserves were given ex gratia, without recognition of a right, and they were also of limited extent. Professor Oliver expanded on that view. Relying on contemporary opinion of Commissioner Bell, he considered the commissioner was motivated to prove his worth to the Government, and his suitability for other appointments, by recovering for the Government all he could. Certain of his operations in Taranaki point to the same conclusion.

#### 8.2.4 Tangonge reserve

One of the blocks where shared use appears to have continued, although there was no joint-occupancy clause in the deed, was the Otararau block of the Reverend Joseph Matthews. According to Maori, Matthews promised that an area at the south of that block, adjoining Lake Tangonge, would be reserved for Maori, title to be taken in the name of Puhipi Te Ripi. It is alleged that, to this end, 685 acres (277 ha) were surveyed as the Tangonge block. On its part, the Government has consistently claimed that area as surplus to that part of Otararau block to which Matthews was entitled in terms of the land claims legislation. For reasons given later, we consider the land was surplus to the Otararau block, but there is a reasonable inference that this land was promised for Maori.

The Otararau block is shown on figure 49 with the disputed Tangonge block on the southern boundary. It appears that, while the elevated parts of Otararau to the north of the swamp were preferred for European pastoral and horticultural farming, Maori tended to aggregate at the edges of the Tangonge wetland, which was by far the greater resource for food and materials. It was valued for its fish and fowl, raupo and flax. The sharply rising ground on the eastern or Pukemiro end of the Tangonge block was especially preferred, as it adjoined and overlooked the swamp grounds.

Because in the course of the hearing there were doubts as to where the Otararau boundaries were, and whether the 685 acres, or any other area that Maori may have been claiming, were part of the Otararau block, it is necessary to state at the outset that, after careful examination of the early sketch and survey plans, we are satisfied that the area Maori claimed was indeed the 685 acres, being the land between Pukemiro and the lake, and that this was part of Otararau. The Otararau deed of 20 July 1835 purported to convey 1000 acres bounded on the north-west by the Kaitaia or Awanui River, 'until you come to Tangonge', from thence to Wai o Rukutanga ('Waiarukutanga' on the plan) and on the east by 'the missionaries' land', that is, the Kaitaia mission block. That area encompasses both 'Otararau' and 'Tangonge block' as shown in figure 49. We note, in this respect, that the deed gave Otararau as 1000 acres (405 ha) only, that

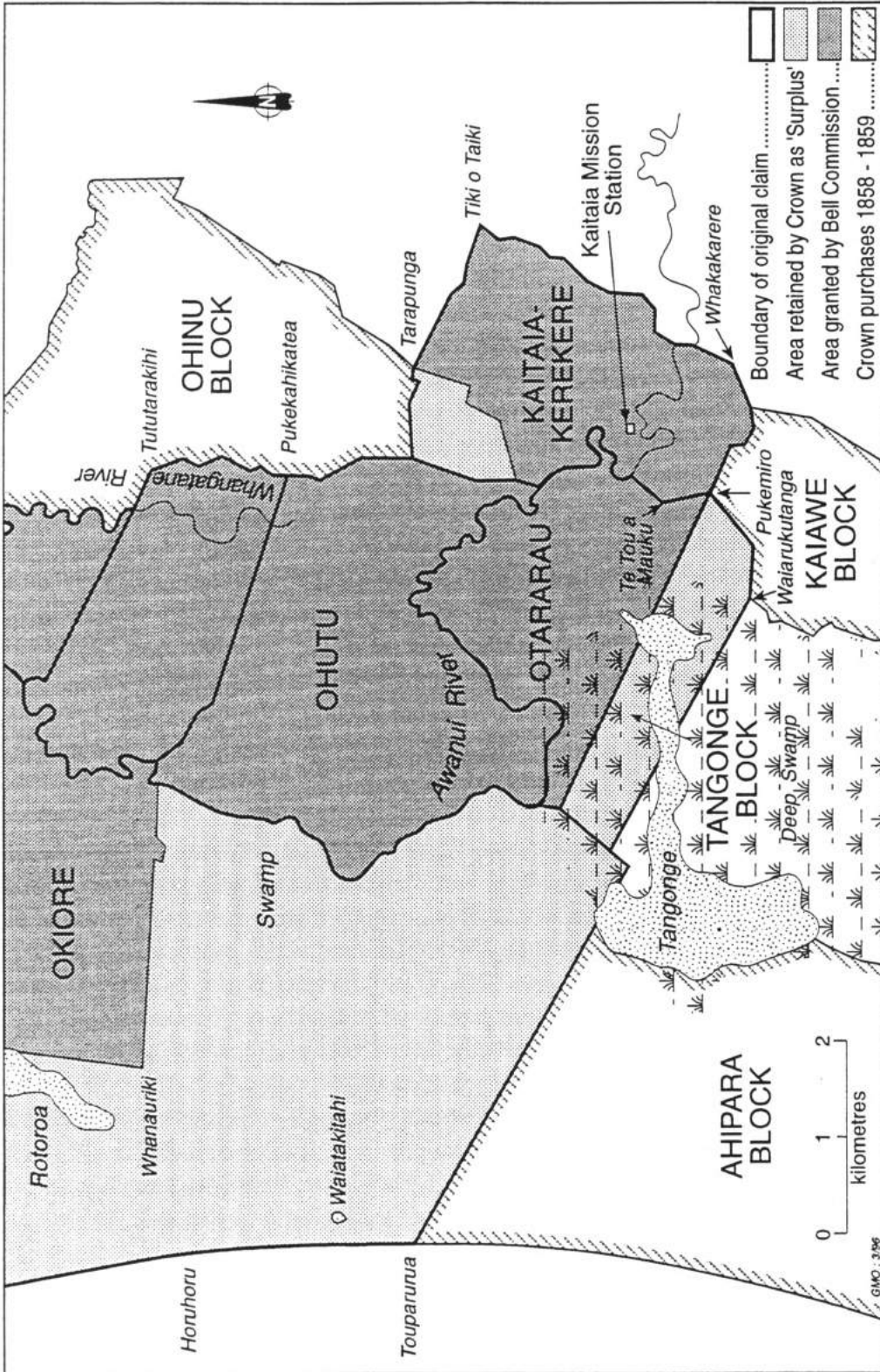


Figure 49: Otararau and the Tangonge block claim

the area marked Otararau on figure 49 is 1170 acres (473 ha) alone, and that the area marked 'Tangonge block' is 685 acres (277 ha), making 1855 acres (751 ha) in all. This may suggest that Tangonge block was not part of Otararau, but we are satisfied that, notwithstanding the assessed acreage in the deed, the deed boundaries circumscribed the entire area.

The background appears to be as follows:

- When the matter was before Commissioner Godfrey, no survey was done, and Godfrey simply calculated that Matthews was entitled to a certain acreage within an approximate area.
- Fifteen years later, in 1858, the matter was before Commissioner Bell. After certain survey and other allowances were added, Matthews' entitlement in Otararau was 840 acres (340 ha). However, by transferring 330 acres (134 ha) from land to which Matthews was entitled elsewhere, at Aurere (and thus enlarging the Government's surplus there), Matthews was able to take 1170 acres (473 ha). Accordingly, he surveyed out that amount.
- In writing to Bell, however, Matthews noted that at his request 685 acres (277 ha) had been 'cut off from the [Otararau] land', as he put it. Matthews did not say why he had it cut off, but Bell assumed that this was the balance of the land, or the surplus. The intitlement on the surveyor's map supported that assumption, the whole area of 1855 acres (751 ha) being given as the Otararau block (or 'Summerville', as Matthews had decided it should be named).
- It was not an assumption that could be made, however. There is evidence that Matthews supported the Maori contention that this land was cut out to be reserved for them.

Nothing happened on the ground to cause Maori to think this land had ceased to be theirs, until 1890. It turned out that Tangonge block was zoned as part of the Tangonge kauri gum reserve, that it was used for gum extraction, and that in 1890 Timoti Te Ripi, obviously considering the land was Maori land, demanded royalties for gum extracted from it. When told the land was the Government's, however, in 1893 he and 23 others petitioned Parliament. Matthews joined the petition. A hearing was not granted, however, and Matthews, who must have been the principal witness, died soon after, in 1895.

How could Matthews have supported that petition if the land was so clearly surplus? The answer appears to us to be as follows. It is known that at all times prior to 1843, when Commissioner Godfrey sat, Matthews was close to Panakareao. Both he and Panakareao knew of the Government's intention to give part only of the land to the Europeans and to take the surplus. It is obvious, further, that they knew the transactions would require Maori affirmation to have effect. And that was the main point. When Godfrey attended at Kaitaia in 1843, he was addressed at the outset by Panakareao, who made his position most plain that the whole of the transactions in western Muriwhenua were approved by him, but on the basis that the surplus was retained by Maori.

Matthews was there. He heard that word, and since no land would pass except to the extent that the transactions were affirmed, both he and Panakareao had good cause to consider that the surplus was to be cut out and reserved for Maori. Accordingly, Maori continued to live on the land and Matthews saw them as entitled to it. He had cut it out for them. He signed the petition.

We consider the Maori view must prevail, for these reasons:

- It was never part of the contract as affirmed that the surplus was to pass to the Government.
- This area was clearly important for Maori, for the reasons given, and should have been reserved for them. It appears they continued to reside there, on the elevated lands of the Pukemiro slopes.
- The Government should not have the benefit of its own lapses. Commissioner Bell ought properly to have inquired into the matter, to have obtained evidence from Maori of their position when the plans were submitted to them, and to have recorded their evidence. He rarely did so in any case, and did not do so in this one.
- In addition, the matter might also have been resolved in the petition, had it been dealt with while Matthews was still alive, but the Government did not refer the petition for inquiry or arrange for Matthews' statement to be taken.
- It is true that Bell recorded no Maori objection at the time, but why should there have been any? If the plan showed a severance on the southern boundary, and if Maori considered that area was promised to them, it would be natural for them to assume that the plan had been arranged in fulfilment of that promise.

Four petitions followed that of 1893. Crown historians challenged them on the grounds that Maori gave the wrong areas. In one petition the area was given as 1024 acres, in another as 200 to 300 acres, leading Crown historians to contend that they may have been referring to another area. The misunderstanding about acreage is not surprising, however, for Maori had no access to the necessary maps and documents. The area of 1024 acres was simply the area gazetted as the Tangonge gum reserve, of which the disputed area had formed part, and 200 to 300 acres was obviously no more than that which Matthews had guessed at, when they spoke to him about the petition. The petitioners were clear, however, that the land in question was to the immediate south of the line from Pukemiro to the lake, and that was all which was needed by way of identification.

In response to the further petitions, in 1906 (well after Matthews' death) the matter was referred to an inquiry. The Houston commission recommended the return of the land, but largely on humanitarian grounds. On visiting the area in 1906, the commission found that Maori were still living on the land. Resident Magistrate Houston, who was a local parliamentary representative and a gum trader who knew Maori well, described these people as otherwise landless, and urged that the Government make this land available to them.

Despite the plight of the Maori affected, the Government prevaricated and then referred the matter to two further commissions of inquiry, in 1924 (Judge MacCormick) and 1927 (Justice Sim). The matter was dealt with in the context of the surplus land issue generally, however, and, with the Sim Commission, in association with a raft of similar surplus land petitions. Neither inquiry was privy to the evidence subsequently found, that the Kaitaia transactions had been affirmed by Maori on the condition that the surplus returned to the Maori people.

These inquiries did not resolve the occupation of the land. By the 1960s large parts of the area had been given out on licences by the Government for sawmilling; this made local living uncomfortable, but seven Maori families still clung to their homes, without titles, on the perimeter. There are reports that the families were large but the homes well cared for. Witnesses described with anger how those seven families, with young children, were finally forced from their homes, landless and with nowhere else to go, more than a century after the Europeans had been so well provided for. The Government finally won the Tangonge block, and with it the undying bitterness of the local Maori people.

### 8.2.5 Ohinu, Kaiawe, and Ahipara transactions

The Government purchases were effected almost immediately after Bell's awards in 1859, suggesting they may have been arranged during his inquiries. White and Kemp completed three purchases: Ohinu, Kaiawe, and Ahipara. There are few particulars about them but, as shown in figures 37 and 50, the effect was to secure almost the whole of the remaining part of the Ahipara–Kaitaia–Awanui flats and the bordering hills. Maori were left with small areas at Ahipara and Pukepoto and the steeper lands in more rugged country south of Kaitaia. As figure 50 shows, those remaining lands, which were mainly in the south-east, were acquired by the Government in intensive purchase programmes in the 1870s to 1890s.

The Government acquired Ohinu of 2703 acres (1094 ha) for £100, Kaiawe of 1375 acres (56 ha) for £58 and 'Ahipara, containing 9,470 acres (3833 ha) of the finest land'<sup>2</sup> from 19 Maori for £800. Added to the Ahipara block later was certain 'forest land', the Kokohuia block, in an acquisition from eight Maori in 1861, for £50.

Few reserves

The only reserves were some very small ones from the Ahipara purchase. Maori negotiated to exclude a coastal strip from the Ahipara block, just as they had sought a similar strip in the reviews of the Okiore and Awanui old land claims, but most of the Ahipara coastal strip was sold in 1877. It is not clear to us why Maori were so concerned at this time to keep the coastal areas, which were largely in extensive sandhills, although it may have been to keep their interest in Te Oneroa a Tohe, Ninety Mile Beach.

2. Kemp to McLean, 12 September 1859, no 80, AJHR, 1861, C-1, p 38



No change on the  
ground

The extent to which Maori saw these transactions as sales in the same way as the Government did, or could picture the future as Europeans could, remains doubtful, for again there was not the reality of a sale on the ground. As in all other cases except Oruru and part of Mangonui, where occupation was taken in advance, there was no immediate surrender or taking of possession. Maori kept areas for cropping. Cattle were still running on what the Government saw as its land. Access to traditional food resource areas, the lakes, rivers, and seas, was the same as it had always been. Throughout the 1850s the only settlers on the land were Southee, Matthews, and Puckey and some workers at the Kaitaia mission. Davis and Ford had both left. In other words, the European presence was insignificant, and the Maori desire was still for more Europeans to come.

### 8.2.6 European settlement

Some did come in the 1860s, however, following the definition of the Government's surplus land and the purchases described. There was a minor land boom when those lands were opened for settlement, but it did not last and much of the Government land was not occupied until the 1890s or later.

One new settler on the Ahipara block, R Pickmere, described the mission settlement in 1860:

Inland, on the road to Mangonui, is Kaitaia, for thirty years a missionary settlement, at which reside Rev Joseph Matthews and Mr Puckey. They both have large families. Mr Puckey is what they call a lay catechist. He has two very good looking daughters, two sons grown up, besides two smaller children. Both his sons have large farms or sheep runs. Mr Matthews is an exceedingly nice man, pious without affectation, mild in his manners, kind, thoughtful, considerate and wise. He has two grown-up sons, one daughter about seventeen, and two younger boys and a girl. The improvements in this place were chiefly done many years ago by the natives. They have fine orchards, full of excellent apple trees, chiefly American varieties, fine pasture fields etc. About their homes are beautiful flowers, shrubs, Australian bluegums, etc. Mr Matthews' eldest son Richard has a fine sheep and cattle run, and the second, Herbert, is just going to locate on his, at Aurere river, about six miles from Mangonui . . .

There live besides in Kaitaia a shoe and saddle maker, a blacksmith, several sawyers and a storekeeper. . . .<sup>3</sup>

He also described progress on the settlement of the Ahipara block:

I could scarcely give you an idea of the way in which this country is progressing. . . . The whole almost of this block, Ahipara, is taken up by land orders and cash purchasers at ten shillings per acre. Many parties still keep coming to examine what is left of it. You must understand that such blocks are only to be found here and there, consequently they are taken up very briskly. There is at the present time

3. S C and L J Matthews, *Matthews of Kaitaia: The Story of Joseph Matthews and The Kaitaia Mission*, Dunedin, Reed, 1940, pp 205–206

a large number of emigrants trying to find land suitable for them on various Government blocks open to their choice for their land orders, and they find great difficulty in suiting themselves, as many of the blocks are very remote from town, some too hilly, poor land etc. A large party, about a hundred people are coming to locate on the Awanui River, three or four miles below Kaitaia . . .

The natives are all peaceable up here in the north, and have always steadily been so for a great number of years. They are of great assistance to the Europeans in many ways; indeed at the first attempts at settling we should feel the want of them very much. The missionaries have a quiet but steady influence over them.<sup>4</sup>

### 8.2.7 Lake Tangonge

Maori could not see, however, what the settlers could foretell. It could not have been apparent to them that Lake Tangonge, for example, their largest food resource, might be threatened. Pickmere also wrote:

There is still a quantity of land for sale on this block, at the upset price of ten shillings [per acre] principally marsh. The Rev Duffus and Captain Butler both bought hugely. Captain Harrison and others bought large tracts of marsh. A quarter of a mile only separates it from Awanui River, and as soon as the marsh is all bought, and they agree as to the expense, the marsh will be drained by a cutting connecting with the river. . . . The Lake Tangonge, which holds the surplus waters of the marsh, has thousands of black ducks, and the eels caught in it are about three to five feet long, and range up to 60lbs weight.<sup>5</sup>

We understand it was not unusual to speculate in wetlands at this time, which could be more cheaply bought, in anticipation of assistance. The national injunction was to clear forests and drain swamps and the Government appeared willing to subsidise the latter.

## 8.3 NORTHERN PENINSULA

The sequential review of the transactions by districts – central, eastern, western, and now the north – may suggest that the transactions proceeded in that order. They did not. While the main focus was initially on the centre, there were negotiations at other places at the same time. The largest transactions were in the north, and were actually the first of the Government purchases entirely free from tidying up old pre-Treaty matters. These transactions, for the Muriwhenua South and Wharemaru blocks, involved 100,440 acres (40,678 ha) and were completed in 1858. They will be described shortly.

As in all other districts, Resident Magistrate White went ahead of Land Claims Commissioner Bell to secure the Maori word to large sales. These could not be

The sequence of transactions

4. Ibid, p 208

5. Ibid, pp 205–206



MURIWHENUA LAND REPORT



Draining the Kaitaia swamp early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G10661 1/4).

sealed before Bell's boundary determinations were made, but they needed to be settled soon after and before the influx of settlers which secure titles were expected to bring. In that way Maori would not be selling small parcels at a time for increasingly higher returns, or would not be holding onto their land once its value to Europeans was evident.

### 8.3.1 Kaimaumau

In the northern peninsula White envisaged a township at Kaimaumau on Rangaunu Harbour (see fig 51). In fact this township never developed, as the harbour was too shallow, but White's first concern was to secure that area and clear off the only old land claim there, by William Potter. The Land Claims Ordinance gave an authority to decline grants in order to protect town sites and William Mackay, who had purchased Potter's entitlement, was persuaded to take scrip. The township did not proceed and the land was included with other Government property when White and District Land Purchase Commissioner Kemp acquired the whole surrounding block, Wharemaru, of 13,555 acres (5486 ha).

### 8.3.2 Ruatorara

Even while the Wharemaru purchase was proceeding, White and Kemp were negotiating for the much larger Muriwhenua South block. It encompassed so many Maori localities that there was no single Maori name for it, and a name had to be devised. The transaction could not be completed, however, without clearing off the unusual Stephenson claim to Ruatorara, the 'shipland', as it was described.

In October 1842, when George Stephenson's schooner *Eclipse* ran aground at Ahipara, its remnant cargo was taken by local Maori in accordance with the Maori law that anything delivered by the sea, a stranded whale or even a boat in distress, was Tangaroa's gift to the people at the place of deposit. Stephenson petitioned the Government and the Chief Protector of Aborigines, George Clarke, was instructed to pursue compensation. Maori considered that they had been more than fair in not keeping the washed-up crew as well. However, they may have recalled the Ranginui incident, which still features in local oral tradition, as described in chapter 2. So Panakareao, no doubt keen to maintain good Government relations, offered a perfect and protected coastal strip, south of Houhora Harbour, as amends. A deed of conveyance was produced to suit. There is no record of whether Panakareao consulted those affected, either of Ahipara, where the ship ran aground, or of Houhora, where Te Aupouri and Ngai Takoto appear to have resided.

Although Stephenson submitted a claim for the land, Godfrey did not touch it, as this was clearly not a pre-Treaty transaction. For his part, Stephenson had

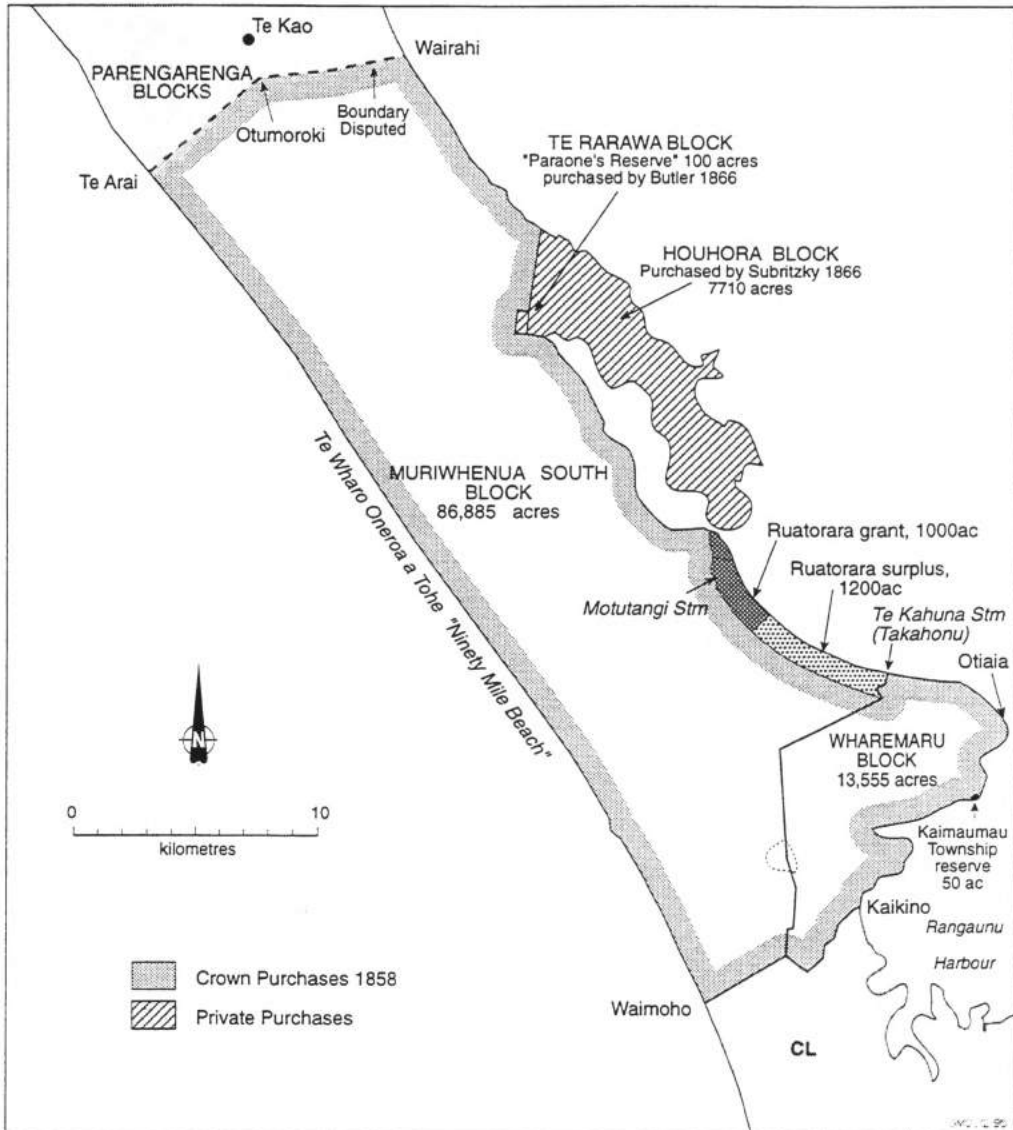


Figure 51: Land transactions, southern Aupouri Peninsula

never taken up the land and would have taken scrip. Maori, however, would not proceed with the Muriwhenua South transaction unless the shipland was severed first, as it is not 'tika' to walk away from agreements. Accordingly, the shipland was surveyed, at the same time as the Muriwhenua South and Wharemaru transactions, and Bell made an award even although no Maori attended to support the claim. Stephenson was awarded 1000 acres (405 ha), since the evidence was that that quantum had been agreed to, and this was to be taken from between two points along the coast. For reasons that we have not been able to fathom, however, the Government surveyed out 2482 acres (1004 ha) and took the balance of 1482 acres (600 ha) as though it were surplus (see fig 49). We have not been able to find any basis for the Government's right to that area.

### 8.3.3 Muriwhenua South and Wharemaru blocks

Although oral tradition has it that the sale of Muriwhenua South and Wharemaru arose from a quarrel between Paraone Ngaruhe and Wiremu Te Mahia over a whaling incident, there are insufficient particulars to link this to the European written account of the purchase. The significance of the traditional account was not apparent to us, unless a whakahe was involved – that is, where one person retaliates for a personal injury by causing a loss to everyone.

Kemp and White first explored the blocks with a view to acquisition early in 1857. On 10 June 1857, Kemp suggested that Muriwhenua South might be about 25,000 acres (10,117 ha) and Wharemaru about 3000 acres (1214 ha).<sup>6</sup> About the same time, he wrote in a private letter to McLean that the area could not be far short of 40,000 acres (16,188 ha), but that he had given it as 30,000 acres as 'it is better to be under rather than above the mark'. On 7 December 1857, however, he recorded the correct areas of 86,885 acres (35,162 ha) and 13,555 acres (5486 ha).<sup>7</sup> It is not known whether these figures were advised to Maori.

The discrepancy  
over size

The record discloses only that the deeds for Muriwhenua South and Wharemaru were both signed on 3 February 1858. The amounts paid were £1100 and £400 respectively. Notwithstanding that the lands were assumed to have been about 28,000 acres (11,332 ha) at the commencement of the negotiations, and notwithstanding that Kemp and White had since learnt that the true area was nearly 100,000 acres (40,470 ha), no survey plans were appended to the deeds and the deeds did not record the area. Based on the areas actually surveyed, the first block gave a return to Maori of threepence per acre and the second, sevenpence per acre.

Crown counsel noted that, whatever the acreage, the area must have been known to Maori. This seems sensible, for although there was later a boundary dispute, affecting several hundred acres, it was small in the overall scale, and from the boundary descriptions the general expanse of country must have been apparent.<sup>8</sup> It is not the Maori awareness that is in issue, however, but the Government's conduct: that, when it knew the area was much more than that bargained for, the price remained the same.

The northern boundary of Muriwhenua South block was described in the deed as running from Wairahi on the eastern coast westwards to Otumoroki and from there to 'a well known rocky point' on the western coast named Te Arai. This boundary was the subject of a dispute in the 1890s, known as the 'Wairahi' claim, and eventually it was inquired into by the Native Land Court in 1933. It is reviewed in the next chapter.

Excluded from Muriwhenua South were two areas: Houhora block of 7710 acres (3120 ha), and Te Rarawa 'reserve' of 100 acres (40 ha). Te Rarawa was

The disposal of  
reserves

6. Kemp to McLean, 10 June 1857, no 35, AJHR, 1861, C-1, p 20

7. Kemp to McLean, 7 December 1857, no 42, AJHR, 1861, C-1, p 22

8. We are skeptical, however, of Kemp's claim that in this and other cases the boundaries of the land were walked with the Maori alienors. The boundaries of Muriwhenua South alone were over 100 kilometres.

never formally reserved and both were sold in 1866. It appears the smaller one may have been transferred to settle a debt. There were no areas excluded from Wharemaru.

### 8.3.4 Muriwhenua Peninsula

Surplus or trust?

If Muriwhenua South was the largest alienation, Muriwhenua Peninsula gave rise to the largest surplus issue, though in this case the Government abandoned any right it may have had. Previous chapters have described how, following Godfrey's inquiry, Governor FitzRoy issued to the Reverend Richard Taylor and his partners a grant or entitlement to 1706 acres (690 ha). Taylor surveyed out his half-share, for 852 acres (345 ha), to which he presumed to add 12 acres for roads, making 864 acres (350 ha). This he surveyed out as the Kapowairua block. His partners, Duffus and Lloyd, reached an arrangement with Resident Magistrate White and took their share of 426 acres (172 ha) each in Mangonui East. It is not known whether Bell did anything to tidy the position, for the old land claim file was lost some time last century. Later action would show, however, that White assumed the surplus – some 64,000 acres (25,901 ha) – was the Government's, despite the fact that, under the original agreement as Taylor understood it, the area was meant to be kept as a home for Maori people.

Attempted acquisitions

At the same time, Kemp and White attempted to acquire the lands to the south and east outside the Taylor claim boundary. They were mainly interested in land at Ohao, on the north head of Parengarenga Harbour, where low-grade coal deposits had been found, but their efforts were resisted by the local people.

The Government's surplus was never surveyed and defined, and no land purchase was completed. The position remained unresolved in 1865, when the Native Land Court was established to determine the title to Maori land. Matters remained at a standstill until the court could consider this area in 1869. In the interim, a number of people had taken up residence on the land. They presumably belonged to Aupouri and Ngati Kuri, since both are associated with the area, but an 1870 report referred only to Te Aupouri at North Cape. These were divided into two hapu: Te Ringamaui of 250 people, and Ngati Murikahakaha of 150. Ngati Kuri were apparently scattered as far as the Bay of Islands and Hokianga, but 260 people were recorded as living in Muriwhenua, at Herekino, Ahipara, and Motukahakaha though not at North Cape.<sup>9</sup> These assessments, however, may reflect the influence of Resident Magistrate White, who had some antipathy to Ngati Kuri from the time they had formed Panakareao's 'police' force.

Who owned the title: the Government, or Taylor on trust for Maori?

In 1869 representatives of the local Maori, whose tribal calling is not known to us, applied to the Native Land Court to determine their rights to the land in Taylor's original claim. They may have been assisted. An application for title investigation required the completion of a surveyor's scheme plan for the land

9. 'Return Giving the Names of the Tribes of the North Island', AJHR, 1870, A-11, p 3

concerned, and this necessitated some expenditure. Behind a Maori application for title investigation at this time was usually a European purchaser for all or part of the land, who provided the necessary funds. In this case it was the trader William Yates, who had already taken up residence. Later he and White enjoyed a very cordial relationship, but initially, when the Maori application went to the court, White was opposed. He wrote to the Native Minister that the Crown had a claim on these lands and he sought the file so that the Government's position could be argued before the Native Land Court. He reported that Taylor's intention to hold the land for Aupouri:

will, I fear, tell with the Court against the Government claim, and I am most anxious to prevent an adverse decision by the Court . . .<sup>10</sup>

The matter was referred to the Registrar-General of Lands, who advised:

The native title strictly speaking seems to have been extinguished over the land described in Taylor's purchase deed – with the exceptions and subject to the occupation on sufferance [by Te Aupouri].<sup>11</sup>

On the back of this memorandum, G S Cooper of the Native Department wrote a note dated 5 September 1870 for Native Minister McLean, advising:

It seems that [Taylor] bought to prevent war, and with the intention of restoring it to the original owners (Aupouri). Under these circumstances it is a question whether it would not be advisable for the Crown to abandon its claim to the land in favour of the original Maori owners.<sup>12</sup>

A legal opinion was sought from Attorney-General James Prendergast, who responded on 16 December 1870:

There is no doubt that the jurisdiction of the Native Land Court is limited to questions affecting land over which the native title has not been extinguished and to questions affecting lands passed through the Court and to reserves.

Assuming the land has been purchased and the sale confirmed by the [Land Claims] Commissioners, the native title is extinguished and the Court cannot legally entertain the question. But I observe that Judge Maning [of the Native Land Court] and Mr White suggest as a matter of policy that government should not insist on the Crown's possession in this case.<sup>13</sup>

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10. White to McLean, 11 November 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1; doc 13, p 151)

11. McLean to G S Cooper, 3 September 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 161)

12. G S Cooper to McLean, 5 September 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 161)

13. Prendergast to McLean, 16 December 1870, res 2/5/2, Department of Conservation Head Office, Wellington (see doc F1, p 146)

In response to a further query as to whether the Crown could legally abandon its claim, Prendergast replied that the Government could do so by authorising an agent to appear in the Native Land Court and state that the Crown made no claim and by not providing any evidence of sale.

And that was done. The case had already been adjourned several times in the Native Land Court but in the end Resident Magistrate White appeared and withdrew the Government's opposition. The court then vested the land in various persons, but only their names survive, on a title order. Particulars of why they were chosen are not known, for not only did the old land claim file go missing at this point, but the court's minute book later went missing too.

The Muriwhenua  
transfer

In 1873, two years after the titles for the main Muriwhenua block were issued, a deed was produced for the transfer of one part, 56,628 acres (22,917 ha), to Samuel Yates and Stannus Jones, gum traders. There are grounds for thinking that the transaction was arranged before the title was investigated. Yates had been living on the land since the 1860s. As a gum trader and storekeeper, who had married a local Maori, he offered what Panakareao had regularly promised: that the installation of Pakeha on the land would provide long-term benefits. His wife, Ngawini, would in fact link Yates to Aupouri, Te Rarawa and Ngati Kuri. Taylor had made promises but had delivered no return. In 1843 he had accepted a posting to the mission at Whanganui, where he had remained, revisiting the North only once from 1841 to his death in 1873. In Maori law, therefore, there were no longer any obligations. It must also have been apparent to local Maori that the Government was claiming the surplus lands throughout Muriwhenua, and there was no reason to think it would change its mind here. Yates, on the other hand, offered security: he was a European, and would the Government be prepared to take the land from him? He was also friendly with White and, further, he had married into the local people. It appears to us that, to the Maori mind, Yates must have presented a solution to the problem.

White's position

White took it upon himself to deliver the purchase money of £1050. He later reported to McLean, after distributing the money at Parengarenga:

This was a portion of the Rev Mr Taylor's claim, which I some time ago recommended the Government to give up to the natives. I feel assured that the course adopted was the best: the Government could not have taken possession without compensating the resident Natives. This would have led to much excitement and discontent; whereas by the present course of allowing the Natives to sell, the Government without trouble or expense, derive a revenue both directly by fees and indirectly by the beneficial occupation of the land by Europeans.<sup>14</sup>

Taylor's position

Having heard that the Muriwhenua block had been sold, Taylor wrote to Chief Judge Fenton of the Native Land Court:

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14. White to McLean, 22 April 1873, no 2, AJHR, 1823, G-1, p 1

My object in making that purchase was that the conquered tribe of the Aupouri might return to their ancient homes. I therefore gave back to them the chief part of the land at the North Cape conditionally receiving a document signed by the Aupouri chiefs promising never to alienate any portion of it. If they have done so I must appeal to you as the Judge of Native Lands whether Mr Stannus Jones [Yates's partner] can have a valid title to the land of which I was the original purchaser without my sanction. [I]f the natives have broken their covenant with me then I have returned to my original position as the first purchaser.<sup>15</sup>

We have no reason to doubt Taylor's sincerity. In their own way, each of the missionaries Taylor, Matthews, and Davis, and also Dr Ford, had sought to reserve, set aside or protect substantial areas of land for Maori. But if the world had ceased to be that of the Maori, it was also no longer the missionaries to control, and each failed. Taylor died soon after this letter, in October 1873.

Meanwhile the 1860s had been marked by the arrival of Pakeha gum traders in the north, and gum extraction had become the principal occupation of the local people. Prior to the sale to Yates there had been nothing to suggest to Maori that land sales could affect gum digging rights, for Maori had been allowed to dig on land conveyed to the Government. It was not until after the transfer to Yates that restrictions on gum digging were seen to apply on land that had been alienated, but by then Maori were dependent on gum traders, who also operated as storekeepers, and were caught in a cycle of indebtedness.

Land ownership  
and gum rights

By the 1890s almost the whole of the Aupouri Peninsula had been alienated. Maori land was limited to the district around Parengarenga Harbour, the remotest point in Muriwhenua and, indeed, in the North Island, and the Parengarenga block itself was leased.

## 8.4 OVERVIEW OF THE PARTICULAR TRANSACTIONS

Challenges to the Government purchases and the winding up of pre-Treaty matters may be made on each of three tiers: on the particular facts; on the general performance of fiduciary responsibilities; and on the adequacy of national policies. Each is considered in turn.

### 8.4.1 On the particular facts

The record reveals numerous grounds for complaint, but some of the more serious are these:

- The scrip lands in Mangonui township were never investigated or purchased by the Government.
- Parts of Mangonui township were not directly and specifically purchased, and parts that were treated as purchased may not have been acquired at all.

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15. Taylor to F D Fenton, 19 June 1873 (see docs B15, 12)



- When Oruru was claimed by purchase, the Government had already sold parts to settlers and possession had been taken.
- The Government's right to 4414 acres (1786 ha) of Mangatete was not established by the prescribed process of law, and it appears this area should have been retained by Maori.
- The Government's right to 2600 acres (1077 ha) of Raramata was not established either, and that area was clearly meant to be a Maori reserve.
- Puheke was estimated at 6000 acres (2428 ha) and was found after the transaction to be 16,000 acres (6475 ha).
- The Government had provided for pre-Treaty purchases to be effectuated, but had not provided for trust arrangements to be respected in order that Maori might retain their lands.
- Trust or guardianship arrangements appear to have been intended, through the missionaries, for Oruru, Raramata, Mangatete, Okiore, Tangonge, and 65,000 acres (26,306 ha) of Muriwhenua North at Parengarenga. The trust arrangements were not respected in those cases.
- Whakapaku was estimated at 2688 acres (1088 ha) and after the transaction was found to be 12,332 acres (4991 ha). At the turn of the century Maori did not know this block had been sold. They complained in 1901 that Europeans were cutting timber there.
- The 1863 Mangonui purchase for some 22,000 acres (8903 ha) east of Mangonui Harbour was so lacking for certainty on the face of the deed, and so lacking for mutuality on the underlying facts, that we consider it was ineffective as a valid extinguishment of native title over the area concerned.
- Taemaro reserve was wrongly reduced by over 65 acres (26 ha).
- The basis for the Government's right to 1482 acres (600 ha) of Ruatorara has not been established and appears to us to have no proper foundation.
- Muriwhenua South and Wharemaru were negotiated for on the basis that they were about 30,000 acres (12,141 ha) when survey showed they were over 100,440 acres (40,648 ha). Although the Government was obliged to maintain a proper record of the documentation, it cannot establish that the true area was made known before the deeds were executed.
- The Government enabled and facilitated one European to acquire over 56,000 acres (22,663 ha) in Muriwhenua North and later more, leaving over 400 Maori on much less, when the original arrangement was to maintain the whole area under a tribal trust, and when the Government's own claim to the 56,000 acres as surplus land made the private alienation inevitable.

#### 8.4.2 The protection of Maori interests

Basis for the duty  
to protect

At this point we consider the Government's management of the transactions as a whole, in European terms, and the protection accorded Maori interests, having regard to principles that were seen as important when the colony was founded.

The duty to protect may be seen to have arisen from the uneven power relationship that existed between the Government and Maori following the Treaty of Waitangi. First, unlike Maori, the Government could foretell the consequences of the land deeds once English authority was established in fact. Secondly, the Government had a monopoly and thus a control on the alienation of Maori land. The right of pre-emption in the second article of the Treaty of Waitangi had been legislated for in the Native Land Purchase Ordinance 1846, which prohibited the sale, lease, or licence of Maori land except through a Crown agent. In practice, no leases were arranged, although a lease was probably the form of alienation that was most natural for Maori. The primary issue here, then, is not the intentions of Maori in alienating, but the integrity of the Government in buying.

To make that assessment we consider below the adequacy of title and representation for effective alienations to have been made, the adequacy of boundary and other descriptions in the deeds, the adequacy of the purchase price and the sufficiency of reserves. While these things were not necessarily important to Maori at the time, or were not seen as important for reasons apparent today, they became important once the Europeans' way of working was known. At this point, however, we note the absence of protective mechanisms generally. The office of Protector of Aborigines had been abolished as early as 1845, and although there had been some problems with that office, nothing similar was put in its place. The need for protective measures was even greater, as the Government was buying land at a massive rate and scale, and there was no shortage of reminders from the Colonial Office that the Government had this responsibility. None the less, there were no arrangements for an independent audit or judicial examination of the Government's purchases. Nor would the general courts intervene in Government purchases at this time, as they were seen as acts of State.

The absence of protective mechanisms

In 1840, a significant rationale for reserving to the Government the exclusive purchase of Maori land was to protect Maori from rapacious private land-buyers who would rapidly deprive the hapu of their patrimony. By 1860 the question had become: who would protect Maori from the Government, which was doing the same thing?

**(1) *The adequacy of title and representation***

As Dr Rigby pointed out, the Government purported to extinguish Maori land rights without knowing what those rights were.<sup>16</sup> It could not have been satisfied that all Maori interests were properly represented in a transaction if no proper inquiry had been made. The Government was aware of the problem. In 1856 a board of inquiry under C W Ligar confirmed that Maori land interests were more complex than had previously been thought. There were doubts whether all Maori

Uncertain ownership and inquiries thereon

16. B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850-1865', 14 April 1992 (doc F9)

interests could be adequately extinguished in any sale. Partly to overcome this problem, by 1862 legislation was in place for lands to be surveyed into blocks and apportioned to Maori in shares. Although the tribal nature of Maori land ownership was known, the Government did not propose the alternative: that the land might be vested in some corporate body representing the hapu.

We consider the 1862 legislation, and that which replaced it in 1865, was defective in failing to accommodate tribes, but none the less they show the perception of the time, that reforms were needed for sales to be made. It was known especially that Maori land ownership was too uncertain for the purposes of land sales, to the extent that in Taranaki the ownership dispute was seen as the cause of war.<sup>17</sup> The 1862 legislation followed as a result. Our first point is that, in Muriwhenua, purchases went ahead under the old system, before reforms were made and though the uncertain title position was known.

We do not say, however, that this tenure reform was the appropriate solution. We accept that the Maori system was philosophically antagonistic to a land sale and that it had no title system for that purpose, so that it was called upon to do something it could not do. The answer, however, was not to change the local system, but adapt to it. Maori were willing to give land provided their own interests were safeguarded, so that what was needed was not a land sale but a settlement plan. As we see it, land sales were really to satisfy European idiosyncrasies, and were irrelevant, to Maori, to the larger goal.

Crown counsel contended there were few subsequent protests that the wrong people sold. We do not consider the number of protests to be much help in this instance. Prior to the Government purchases, Te Aupouri had complained that Panakareao had no authority to make an arrangement with the Reverend Richard Taylor for their area. There had always been title problems over Oruru, Mangonui, and the east. There were complaints from groups outside Muriwhenua that their interests had not been respected. There could very well have been many more complaints, were it not for the fact that there was some history to show that, generally, such complaints were not seriously inquired into.

(2) *The adequacy of boundaries and descriptions*

'Unregisterable'  
documents

Were the Government required to register its conveyances, and to have those conveyances meet the standards of a reasonable registry system, we doubt that many of the Muriwhenua deeds would have passed muster. The resident magistrate's deeds were defective at Whakapaku, Mangonui, and Mangonui township. In the 1854 Oruru transaction, the resident magistrate had anticipated that land might pass by the mere production of a receipt for purchase monies, and both White and Kemp relied upon a simple form of receipt, again, at Ohinu and Kaiawe in September 1859.

Survey plans

The more regular problems in other cases were the lack of a survey plan, and the failure to specify acreages in the documents or miscalculation of the areas

17. See Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996

involved. Uncertain boundary descriptions also led to later disputes (as with Mangatete, Mangonui, Oruru, and Muriwhenua South), as did the vague references to reserves or the failure to mention them at all. The whole process was casual and second-rate.

It is tempting to assume that the dearth of qualified surveyors and the rudimentary land registry system at this time meant that survey and greater specificity in conveyancing were impracticable. We do not agree. Both the Government and the New Zealand Company entered into the colonisation of New Zealand knowing the primary need to survey land and control land titles if matters were not to get out of hand – earlier colonisation operations had shown that. Both the Government and the company brought in many surveyors as early as 1840. Specific instructions requiring the survey of Crown and Maori land were issued by Lord Russell to Governor Hobson on 5 December 1840 and 28 January 1841. To put the position beyond doubt, survey was made a pre-requisite to the release of a Crown grant by a proclamation on 27 September 1842. Survey requirements were relaxed by Governor FitzRoy for a period in 1844, but thereafter the dangers of proceeding without survey became all too apparent. A special commission had to be established under Bell to resolve the problem, and from 1856 surveys were undertaken of all the land claims in Muriwhenua where grants were proposed.

Contemporary capabilities

We therefore see no reason why survey plans could not have been completed for the transactions before deeds of conveyance were finally signed. Indeed, most of the Government purchases came after strict survey requirements had been imposed on private persons. Moreover, since surveys were done soon after the deeds were signed, it seems they could equally have been done beforehand. Even Maori had to comply with a higher standard than the Government adopted. From 1862 they were required to survey their lands before they could apply for a title. Yet it appears that survey plans were not available to Maori at the time of the execution of documents in many cases, including Mangonui, Oruru, Puheke, Muriwhenua South and Wharemaru. In the latter two cases, it appears the survey was done but not attached to the deeds. It may be speculated that they were not attached to those deeds because Ruatorara, the shipland block, was included in the same survey, and the plan disclosed that the Government was taking surplus when clearly it had no right to.

The lack of the necessary standards

Why, then, did the Government accept a lesser standard for itself? In part, the reason was probably structural. The Government was never bound to prove its acquisitions of Maori land. It was not required to register a conveyance. Native title was simply extinguished by a Government declaration that it had been purchased. Nor did the Government's acquisition have to be scrutinised by an independent judicial agency. The system enabled Government agents to take unacceptable liberties where Maori lands were concerned.

We would make special mention, too, of the lack of adequate recording. It is impossible to tell today what sketch plans, if any, were before Maori when the

The lack of adequate recording

deeds were executed. There are undated plans, missing plans and plans that are held with deeds that were completed after the deed was signed. The simple expedient was not followed of having such plans before Maori at the time, signed and dated at the same time as the deed, and then held with it. Nor were surveyors' field notes kept which may have recorded any Maori objections.

**(3) *The adequacy of the purchase price***

The issue of price  
was more  
important later

The sufficiency of the price was not such an issue for Maori at the time, as discussed in section 5.6, for, though as high an earnest as possible may have been sought, the transaction was not seen as the end of all matters. The question of the price was raised later, when it was apparent that Europeans were working to another system. Issues of adequacy were then entertained by the Government, for, although in English law an inadequate purchase price did not in itself invalidate a contract, it was by then assumed that a fair price should be paid in dealings with indigenous peoples.

It appears to us, however, that that was not so initially. In the beginning the policy was that colonisation would be funded from the on-sale of Maori land, by buying cheap and selling well, and no injustice to Maori would follow, since they would benefit more in time, and from the increase in value to their remaining land, as Lord Normanby had said. Accordingly, in the foundation years of the colony, the first 25 years to 1865, the adequacy of the purchase price is not so important as the arrangements to ensure that Maori were in fact recompensed by additional benefits in the longer term. What lands were reserved for them, and to what extent were they assisted to develop them?

No market-  
oriented  
approach

For the moment, however, looking at the matter purely in terms of the prices paid, this far removed in time, it is difficult to say what a fair price might have been – especially since, in Muriwhenua, immediate on-sales to settlers were infrequent. It is telling, however, that the fairness of the price to Maori was not something market forces could settle. The Government had a monopoly. Moreover, the Government was buying rapidly to acquire large areas before settlers came, and before an influx of settlers pushed up prices to show what the land might really be worth.

How price was  
assessed

Moreover, the Government was judge in its own cause as to how that monopoly might be exercised. The Chief Land Purchase Commissioner simply set the Government's maximum figure, usually at 80 percent or more below the on-sale price to settlers. In addition, district land purchase commissioners were encouraged to negotiate for less where they could. Resident Magistrate White, who was not authorised to act as a purchase commissioner but assumed the role nevertheless, was successful in achieving the lowest price: fourpence per acre for Whakapaku and threepence per acre for Muriwhenua South. District Land Purchase Commissioner Kemp was unable to match his South Island achievement of three-hundredths of a penny per acre, but he did obtain Wharemaru for sevenpence per acre and Puheke for fourpence per acre.

In 1858 Governor Gore Browne declared a national average price of 1s 6d per acre for Maori land, at a time when on-sales to settlers were at 10 shillings an acre. By the 1860s, the prices paid were more generally around two or three shillings per acre, but this was at a time when Maori had taken up arms in Taranaki and Waikato and the need was seen to show generosity in the 'loyal' districts.

In practice, however, the adequacy of the price could not have been considered, in most cases, for accurate acreages for the lands being acquired were not known. Where surveys had not been done before the sale, there was no provision for a pro rata increase in the purchase price if, after survey, the acreage was found to be higher. And invariably it was higher – an additional 61,000 acres (24,687 ha) in Muriwhenua South block, for example.

Fixing prices for unknown quantities

Nor was the value of the timber reserved, or a royalty reserved for kauri gum. It is likely that the amount recovered for timber exceeded the price paid for the land, in many cases. The value of the gum extracted probably exceeded the price of the land from which it was taken, several times over. Thus Muriwhenua South of 86,885 acres was acquired in 1858 for £1100. It was then used for gumdigging. In about 1900 it was said of the gum trader there that his shipments to Auckland every fortnight occasionally amounted in value to over £1100.<sup>18</sup>

Timber and minerals

We do not attempt to assess a fair price in these cases. We note simply the unfairness of the structure. There was no means whereby a fair price could be impartially settled with reasons given for the decision.

#### (4) *The adequacy of reserves*

The key to fair buying, as we see it, was the assurance of fair shares: that Maori might keep sufficient lands for themselves to enable them to benefit from European settlement and participate in the new economy. The need for such reserves was a very old assumption. The missionaries had taken lands to protect them for the tribes from well before the Treaty of Waitangi. The New Zealand Company had proposed a fixed share in reserves. The principle underlay the royal instructions under the hand of Lord Normanby, and was also expressed during the Treaty debate. In Muriwhenua, however, there was no concerted plan of action to determine what Maori might need to keep for themselves as reserves, where those reserves should be located, or how they should be constituted, managed, or retained in Maori control. In fact, no genuine consideration seems to have been given to this principle at all.

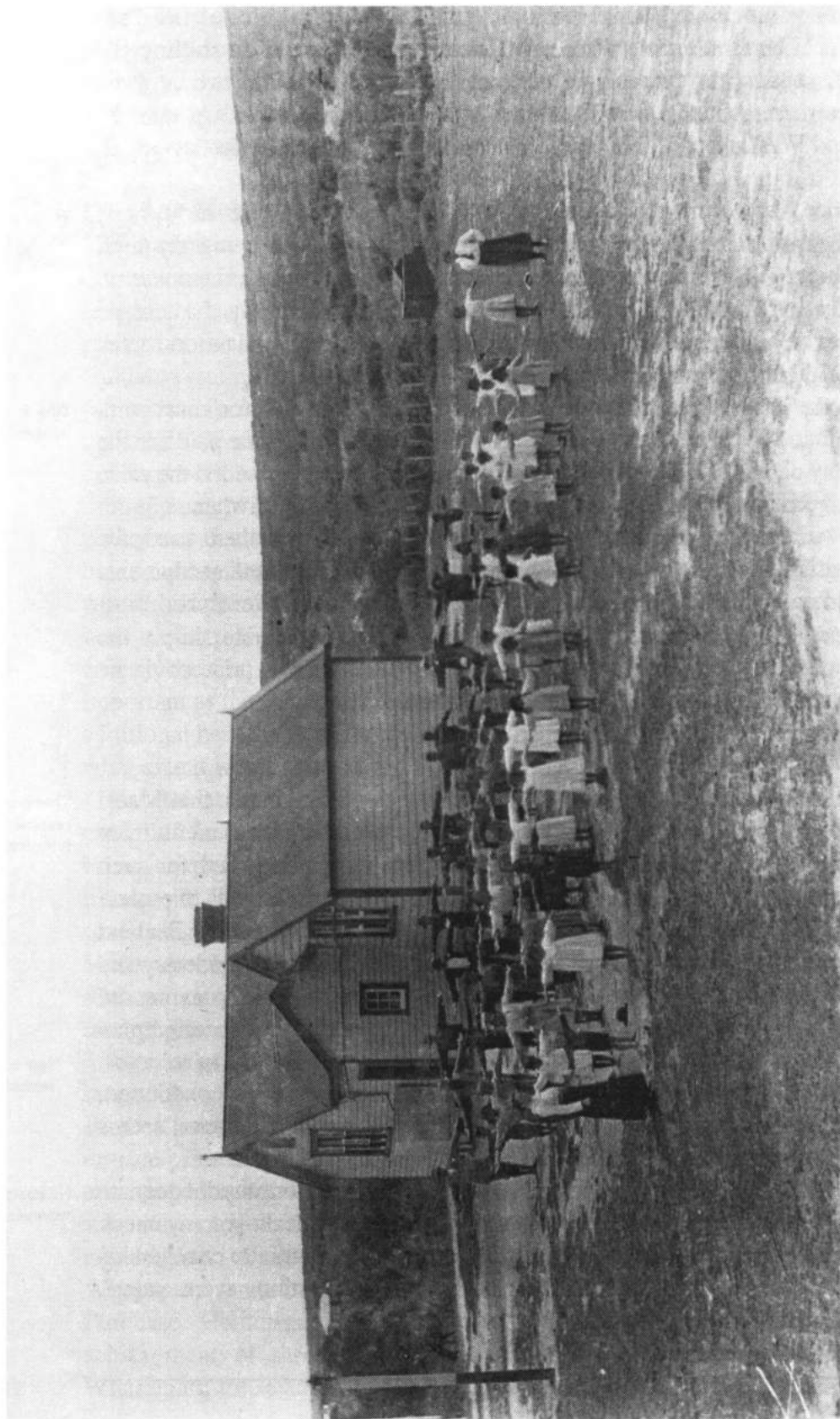
The need for reserves was foreseen

Although the Chief Land Purchase Commissioner had required adequate native reserves, he fixed no guidelines, made no systematic check – or any check at all – to see that adequate reserves were provided, and substantially changed his mind on what might be required. Reports were few; opinions were vague. Resident Magistrate White concluded:

No adequate reserves policy

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18. See *The Cyclopaedia of New Zealand*, 1902, vol 2, p 601



An early photograph of Te Kao School, Mangonui. Photograph courtesy of the Alexander Turnbull Library (FI52021/4).

I have always dealt liberally with the natives in land matters. They have plenty [of] reserves and generally the best parts.<sup>19</sup>

Such opinions were hardly proper reports, and were not only self-serving but unsustainable in fact.

Moreover, the reserves were not protected for future generations or made and kept inalienable. Most of the reserves that were made were never formally gazetted as reserves, although the law required this. Instead, the Government purchased most of them soon after they were created, or, they were put through the Native Land Court process and private individuals sold them. In other words, the creation of 'reserves' in Muriwhenua had no reality: reserves were provided for one day, and then purchased the next.

The areas reserved from sale were inadequate, in any event. A hapu of several hundred people would have less land than one European family. Given the declared intention to provide for a Maori future, it was no answer that Maori were able to live at a subsistence level. Even if they were, traditional Maori subsistence required access to a much larger area, for hunting and foraging, than is needed for commercial farming.

On our review of the evidence, the Government agents were locked into an alternative design to gain as much Maori land as they could. In November 1861 Resident Magistrate White wrote to the Native Minister advising that he and Kemp had been:

assisting each other and acting together, as we have often done, for the advancement of the Natives . . . We have also for several years been leading the Natives to acquiesce in the desirability of ceding their lands to the Govt. There are many large districts which we are in actual negotiation for, and in the course of a few years confidently look forward to the total extinction of Native title.<sup>20</sup>

We presume the intention was that Maori lands would be converted to native reserves, but the reserves were in fact few and small, and were never formally gazetted. There was no training to provide farming skills, and there were few employment opportunities. The purchase programme, on the other hand, was conducted like a military manoeuvre: first to secure a continuous band from coast to coast, then to expand outwards from either side, acquiring complete blocks with no or minimal Maori reserves, and forcing Maori on to less fertile lands on the remote perimeter. We will need to address this key question of the reserves once more, after the final result of the buying programme has been considered in the following chapter.

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19. OLC 5, pp 58–566

20. BAFO-A 760/11, pp 100–104



**(5) *The adequacy of national policy***

Most especially, however, as considered in the previous chapter, the Government failed to produce and maintain an appropriate settlement plan, in order to secure Maori a proper place in the future social and economic development of the district, when in all the circumstances such a plan was required.

## CHAPTER 9

# POST-1865 RESULTS

*Welcome my friends. Bring with you the law of the Governor. It was stated in some of his laws, 'Survey your lands so that you may have a firm title to them, lest they slip from you into the hands of another tribe'. That law was agreed to; the lands were surveyed, and then money had to be paid therefor; then the Crown Grants had to be paid for, and then the applications to the custodian of the Grants in Wellington had to be paid for. Now, hearken the tribe, do not introduce any new matter.*

Iehu Ngawaka, Whangape, 1872

### 9.1 CHAPTER OUTLINE

Previous chapters reviewed how Muriwhenua Maori lost most of their more productive lands before 1865 under the Government's policies of the first 25 years. The areas of loss are shown in figure 52. While a full, post-1865 inquiry has been deferred, this chapter considers the continuing effect of the initial policies in the years that followed. The essential elements of the period, as relevant to the policies begun before 1865, are these:

Relevance of  
post-1865  
developments

- the continuation of an aggressive Government land-buying programme once the Maori Land Court system was established, with few, if any, provisions for Maori reserves;
- the failure to protect reserves under the old reserves policy, and consequently, their rapid alienation;
- the continuing impact of the Government's land-tenure theory, whereby the Government was not obliged to establish the validity of its acquisitions, shifting the burden to Maori to show an acquisition was wrong;
- the emergence of new factors tending to the alienation of Maori land – poverty, debts, the high costs of obtaining titles and the need for development capital;
- the continuing lack of mechanisms for the protection of Maori interests; and
- the continuing failure to recognise and uphold arrangements for the protection and preservation of land for Maori.

The analysis adopts the earlier territorial divisions of eastern, central, western, and northern districts.<sup>1</sup> The acreage affected has not been fully assessed, but continuing Government purchases to 1890 accounted for over 75,000 acres (30,375 ha), 64,000 acres (25,920 ha) from Kaitaia to Whangape being acquired from 1872 to 1879; and say 40,000 acres (16,200 ha) in private purchases.

Eastern district East of Mangonui, the Government's claims to have acquired all the land but for three reserves by 1865 were never proven. The Government claims were not even clarified, let alone examined. In fact, an independent inquiry was resisted. When the Native Land Court unexpectedly granted a large part to Maori, the decision was overturned through political intervention. Thereafter, with so many owning so little, most Maori left, especially from the 1920s.

Central district In the central district, from Mangonui to Mangatete in the north, and from Kohumaru to the edge of Victoria Valley in the south, only a scattering of Maori lands remained. These pepper-potted lands were largely the reserves resulting from the Government's earlier buying, but they were never formally gazetted as reserves and most were acquired by the Government in the second stage of the purchase programme. Again, those purchases were not proven and the putative deeds of conveyance have gone missing in some cases. As for Victoria Valley, Panakareao had become concerned that that land should be used by Maori, and he said so, shortly before he died. It was acquired none the less and its acquisition is also considered in this chapter.

Western district To the west, the land circumscribed by Ahipara, Kaitaia, Awanui, and the coast had nearly all been transferred before 1865. But the Government's pre-existing policy of buying to the fullest extent was to be continued in the 1870s programme to buy the balance, from Kaitaia to Whangape. The old Maori opinion that Pakeha settlement would produce long-term benefits for Maori was revived by the Government to encourage alienations.

Northern peninsula On the peninsula above Awanui, the post-1865 years saw the immediate transfer of the Houhora 'reserves' to traders, in apparent repayment of debts, with the result that, from the beginning of this period, Maori ceased to have any

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1. The intention to consider post-1865 matters and the rate of continuing alienation, but not to analyse the alienations themselves, was disclosed in the Tribunal's issues statement of 8 July 1993 (see app 1), as was noted by claimant counsel: see J Williams's opening remarks concerning Crown memoranda and historical evidence (doc L10).

As to post-1865 claimant research reports and opinions, see C Geiringer, 'Historical Background to the Muriwhenua Land Claim, 1865-1950', 27 April 1992 (doc F10), and the four volumes of supporting documents (doc F20); M Nepia, 'Essential Documents of the Royal Commission on Surplus Lands 1948' (doc F7); M Nepia, 'Muriwhenua Surplus Lands Commissions of Inquiry in the Twentieth Century', October 1992 (doc G1); M Nepia, 'Supplementary Evidence on Surplus Lands' (doc G8); Professor W Oliver, 'The Crown and Muriwhenua Lands: An Overview' (doc L7); and J Koning and Professor W Oliver, 'Economic Decline and Social Deprivation in Muriwhenua, 1880-1940' (doc L8). As to Crown research reports and opinions, see D Armstrong and B Stirling, 'Surplus Lands: Policy and Practice, 1840-1950' (doc J2) and F Sinclair and A Gould, 'Crown Purchases in Muriwhenua to 1865' (doc J4), sec 3.

The alienations referred to in this chapter are more fully detailed by Professor Evelyn Stokes in 'Muriwhenua: Review of the Evidence', May 1996 (doc P2), chs 15, 16.

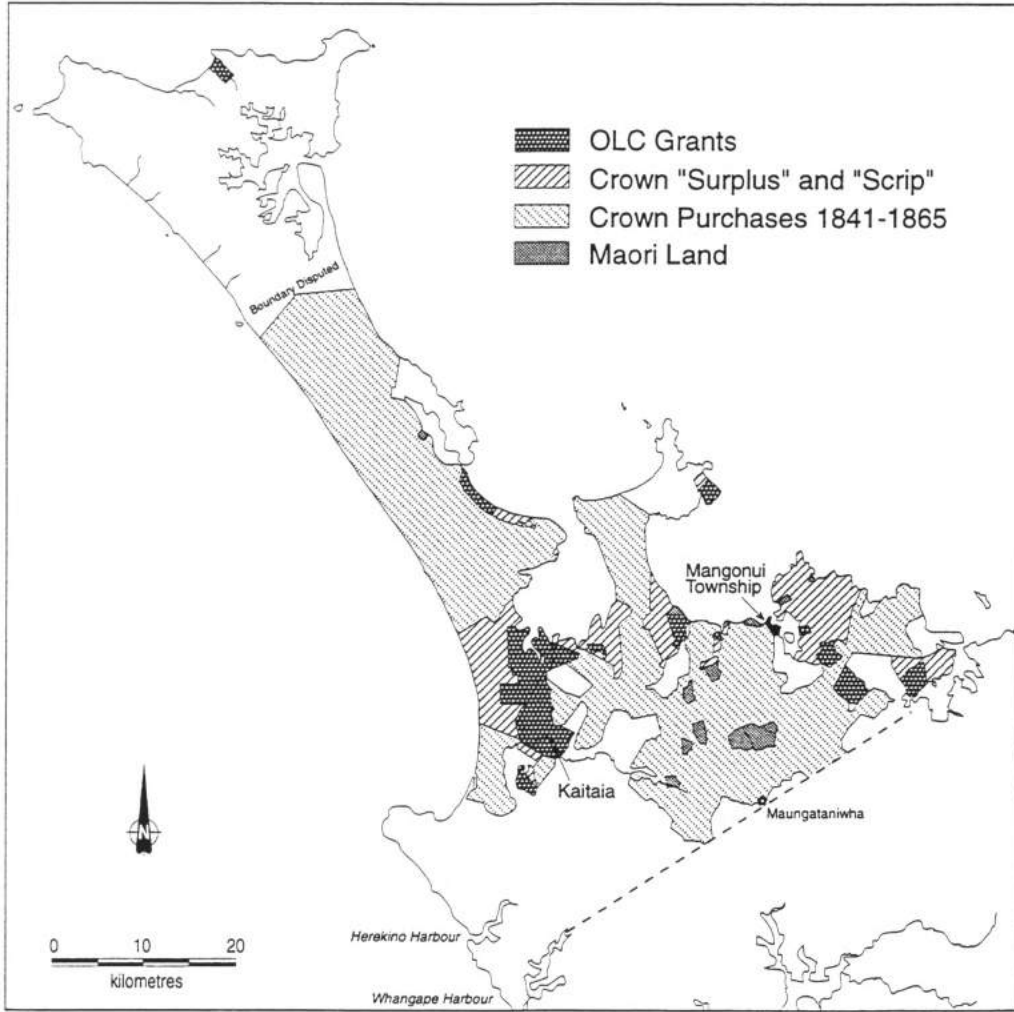


Figure 52: Muriwhenua land tenure, 1865

interests at all in the southern half of the peninsula. As to the northern part, about half was to pass to a private European family, which held as much land as several hundred Maori put together. Once more, gumdigging, trader debts and the Government's surplus land claims appear to have had an influence.

Throughout Muriwhenua, insufficient land remained for the Maori's own needs.

**9.2 EASTERN DIVISION (TAEMARO)**

The case of the eastern lands most shows the pen and paper estrangement of Maori from their land without matching marks on the ground. In the 1860s, Europeans were confined to lands near Mangonui Harbour and, despite the so-called 'sales', Maori lived over the rest of the land as before. The intensity of

The actual occupation

their former occupation is shown in figure 53, which locates the recorded pa (fortified villages) and wahi tapu (sacred sites). Their main kainga (settlements) at this time were at Taemaro, Waimahana, Waiaua, Te Hihi, Motukahakaha, Akatarere, and Oruaiti, as also shown in figure 53. For several decades, only Maori were to be found anywhere beyond the circumference of hills that crowd the harbour, and there was little modern development before the 1950s, when the Government started the Stony Creek Farm scheme. That too is depicted in figure 53.

The Ngati Kahu  
affiliation

The people were Ngati Kahu. Despite all that has been said about Panakareao of Te Rarawa and Pororua of Te Uri o Te Aho, in the final analysis their rights were only managerial. The people on the land were Ngati Kahu, whose existence was proclaimed in this pepeha:

<i>Whakaangi te maunga</i>	<i>Whakaangi is the (tribal) mountain</i>
<i>Taemaro te moana</i>	<i>Taemaro is the sea</i>
<i>Kahukuraariki te marae</i>	<i>Kahukuraariki is the marae</i>
<i>Ngati Kahu te iwi</i>	<i>Ngati Kahu are the people</i>

Ngati Kahu protested from the moment they knew the Government claimed their land, and that protest has continued to the present. The way they asserted their claim, and the Government's response, is now described.

Native Land Court

Ngati Kahu proceedings to claim their land began in the Native Land Court in 1869. Already the roles had changed, for it was no longer for the Government to prove its acquisition of the land, but for Maori to prove they still owned it, provided the law even let them bring a case. The Native Land Court system had placed Maori in a quandary. They were generally opposed to its purpose, which was to vest the hapu lands in individuals, but were bound to claim none the less, as the court would make awards to whoever did or the land would simply be held by the Government. Survey and court costs were so high, however, that those best able to take a case to the court were those who had sold, the whole or part, and had a European sponsor in the background. Some sold in order to outmanoeuvre old rivals, using the court, and European backing, to score the final victory.

The applications

Ngati Kahu did not go to court to sell, however, but, at some considerable cost, to prove the land was still theirs. The proceedings are not fully known since the court minute books went missing last century, but part may be gleaned from court files and other material. Various of Ngati Kahu made claims to Takerau, Taemaro, and Whakaangi blocks and, in addition, Pororua claimed four blocks near Mangonui. The Whakaangi application did not proceed. Possibly this was because Whakaangi was the same as either Takerau or Taemaro, which had already been applied for. The Whakaangi peak overlooked a wide area, however, and the name could also have applied to the south. One cannot therefore be sure what the Whakaangi claim referred to or why it did not go ahead.

POST-1865 RESULTS

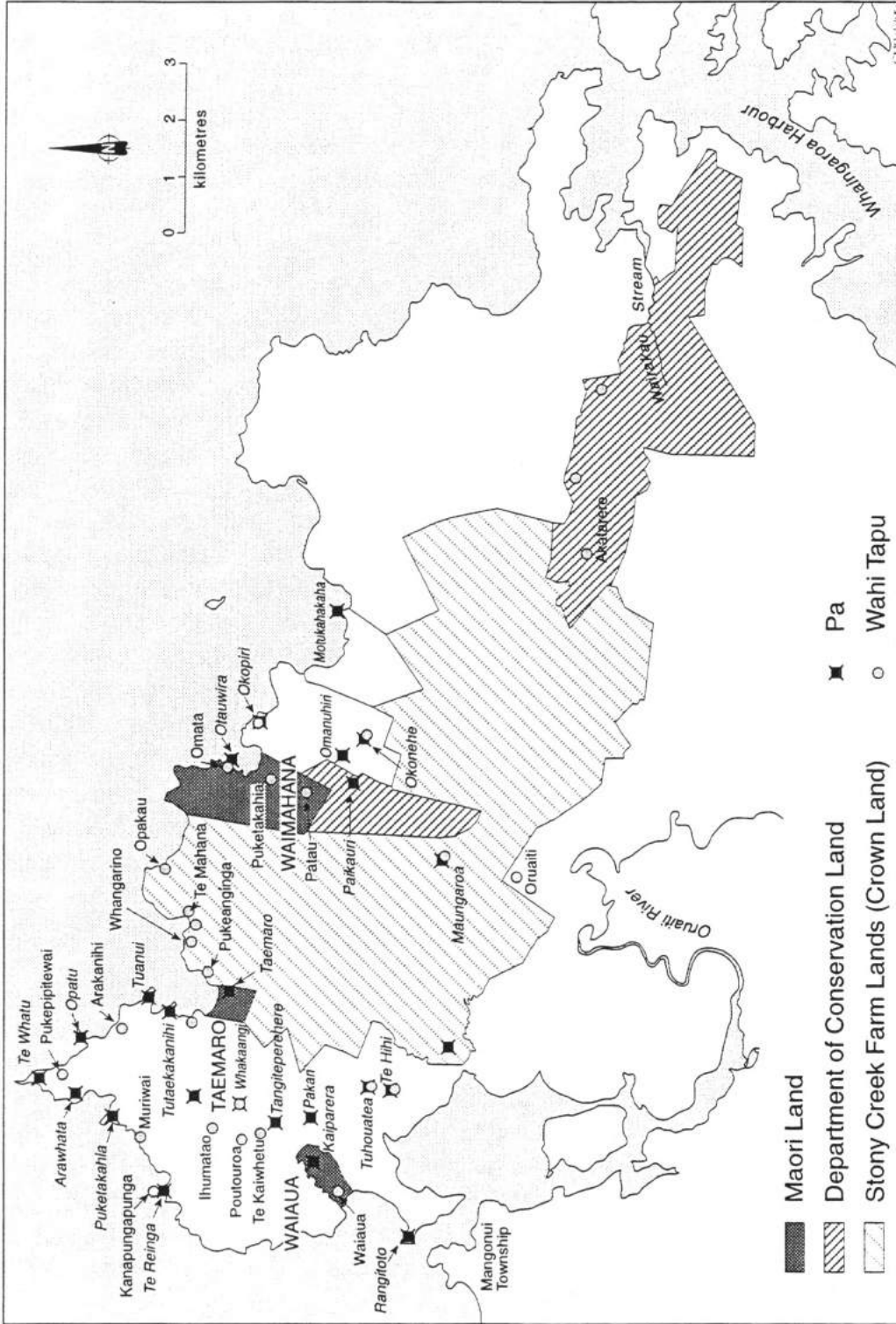


Figure 53: Taemaro lands – Crown and Maori holdings

Nor did the claims of Pororua proceed and, again, no record survives as to why. There is only a letter from the judge mentioning that Pororua was abusive in court. The Takerau and Taemaro blocks, which were investigated, are shown in figures 54 and 55. It does not follow from the claims to Takerau and Taemaro that the lands to the south of them were recognised as the Government's. The discontinuance could have been due to several reasons, of which survey and court costs may have been one.

The process  
elevates  
occupants

The claims that were brought are significant in several respects. Under the new court system, ownership was based on occupation and not the political leadership as before, and accordingly different people came to the fore. Te Rarawa made no claim. Nor did Pororua, save to the limited extent mentioned. The claims were from Ngati Kahu. This in itself casts doubts on the Government claims by purchases under the aegis of either Panakareao or Pororua, for if the Native Land Court system was right, then the wrong persons had led the initial alienations.

The Maori  
applications  
challenge the  
Government's  
claim

For that and other reasons, the claims were an assertion that the lands had not been sold. This averment was at no small cost. The resident magistrate described the Maori claims as a 'cheap trick'<sup>2</sup> since, in his view, the Government had bought the land. But it appears to us, rather, that the claims were honestly brought, were within the law, were not cheap and involved no trick. Despite their lack of cash after the loss of the whaling trade, and their dependence on Captain Butler for work, credit, and trade, Ngati Kahu raised the necessary funds to survey two large areas. There is no record of a background buyer providing funding. It seems to us that the primary purpose of these expensive claims was to challenge the Government's right. Memoranda of the Native Land Court judge show how the court was made aware that Maori disputed the Government's entitlement.

Government does  
not contest

The evidence is further that the Government knew of the claims. We refer not only to the constructive notice from publication in the *Gazette*.<sup>3</sup> Resident Magistrate White knew of them, and ought to have been familiar with the court process. In addition to his many other roles, he was made a judge of the Native Land Court in 1865. Although he had ceased to be a Native Land Court judge and had become Crown agent in 1869, it must be taken that he knew the procedure. He wrote to the Native Minister prior to the hearing, raising the prospect of some Government intervention.<sup>4</sup> A prevalent legal opinion, however, was that the court could not investigate any block if the Government did not consent, and if the Government claimed the land by purchase that was the end of the matter. In legal terms, it was said the extinguishment of native title was a

2. McLean papers MS 32/633 (quoted in doc 12, p 291)

3. See *New Zealand Gazette*, November 1869, February 1870

4. McLean papers MS 32/633

POST-1865 RESULTS

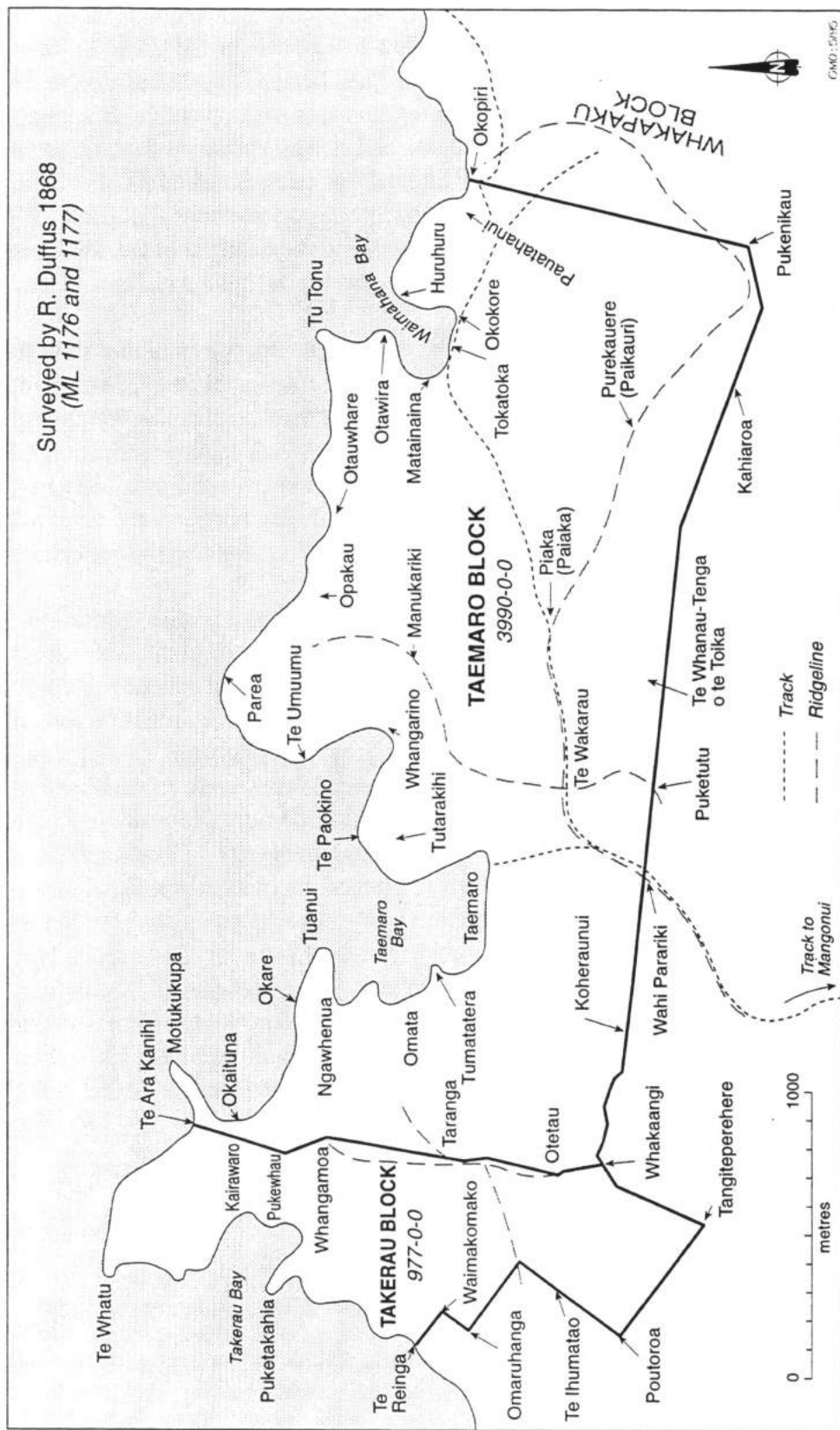


Figure 54: The Maori claims to the Takerau and Taemaro blocks



non-justiciable act of State.<sup>5</sup> This view found expression in section 10 of the Native Lands Act 1867, which provided that any notice in the *New Zealand Gazette* stating that the native title in any land had been extinguished was to be received in any court as conclusive proof that that was so. In practice, it appears *Gazette* notices did not issue in many cases and it was sufficient that a Crown agent informed the court that the native interest had been acquired. In this case, however, not only was no *Gazette* notice issued, but no statement was filed with the court and the Government was not represented at the hearing. In the result, in 1870, judgement was given for the Maori in respect of both the Takerau and Taemaro blocks.

Weakness of the  
Government  
claim

That does not mean judgement was by default. The court assumed a duty to inquire, and its inquiry showed the lack of official evidence of any Government right. The surveyor engaged by Maori was bound to disclose any survey plan or other evidence of a Government interest in the land – a survey definition of surplus lands, a Crown grant or a conveyance – but none was found. The chief surveyor was bound to do the same. In fact, the plans were checked and declared ‘correct’ by the chief surveyor, the deputy inspector of surveys and the provincial surveyor, but none was aware of any Government claim.<sup>6</sup>

Further, while the Government may have claimed on one of three grounds, no one ground was strong. The Government’s claim to the surplus or scrip lands from the pre-Treaty transactions suffered the impediment that not one of those transactions had been investigated as the law had required. Were reliance placed on the Government’s ‘purchases’ from Panakareao and Pororua in 1840 and 1841, there were the further difficulties that the boundaries were so unclear that survey could not be effected, neither Panakareao nor Pororua saw the transactions as sales, the deeds conveyed only such interests as Panakareao and Pororua may have had, and neither had an interest in possession. Finally, the 1863 deed was so badly drawn and uncertain as to convey nothing, and the Maori understanding of that transaction was clearly different from the Government’s.

Subsequent letters from the Native Land Court judge records his finding that there was no evidence, by deed or plan, indicating that the Government had any claim to the land and, therefore, the lands were granted to the Maori claimants. In addition, the judge appended the following memorandum to the sealed order for Taemaro:

The Claimant stated in the course of the investigation that he had heard that part or the whole of this land is claimed by the Government but that there was no

5. Advanced later in *Wi Parata v The Bishop of Wellington and the Attorney-General* (1877) 3 NZ Jur (NS) SC. The position may no longer be sustainable in law but there is now little or no Maori customary land remaining.

6. See ML plans 1176, 1177

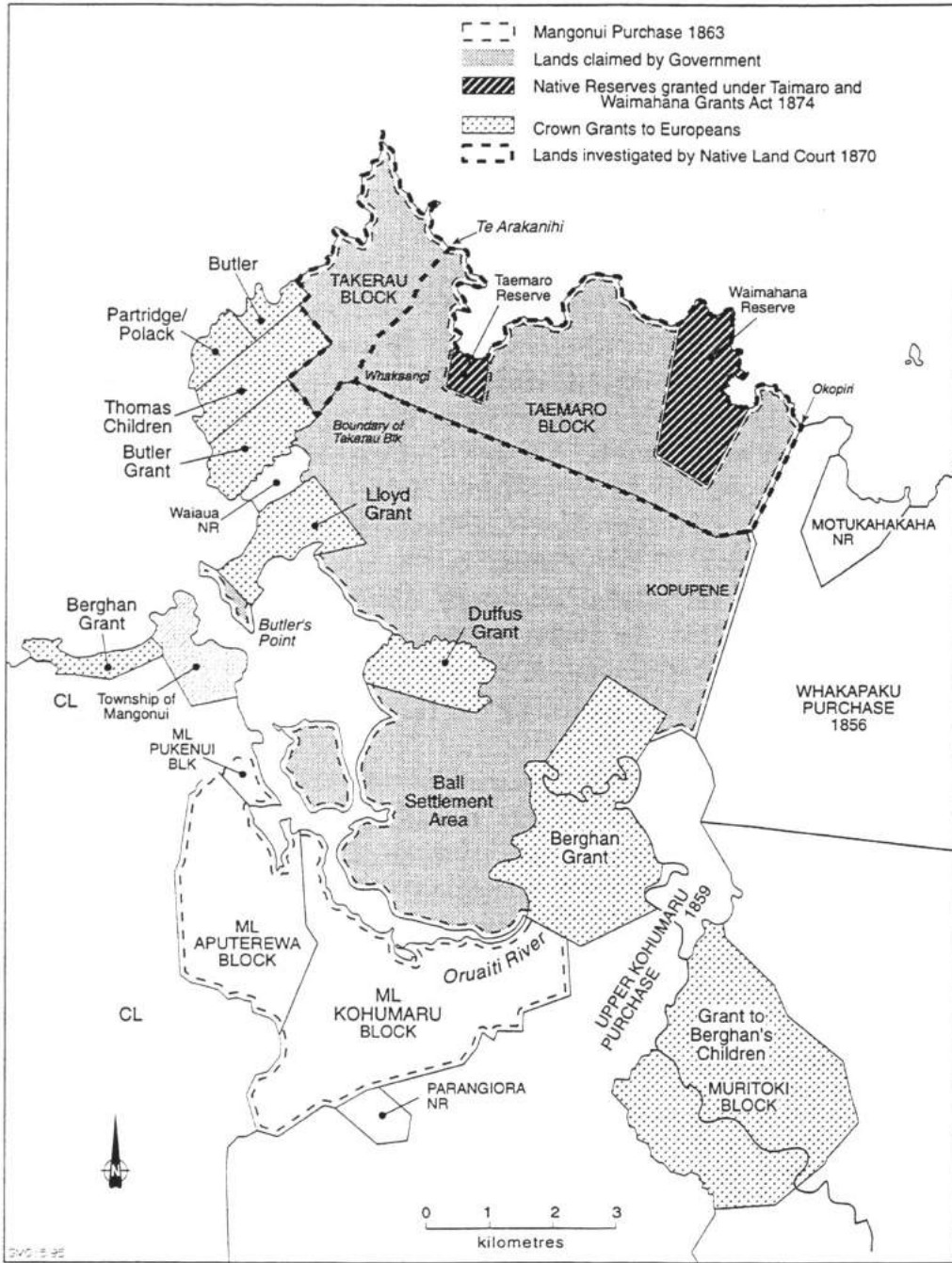


Figure 55: Taemaro lands, 1857-74

foundation for any such claim. No-one appeared to oppose the claim on the part of the Government and the land is not marked on any plan in my possession as Government land.<sup>7</sup>

7. Memorandum from Judge Maning concerning the Taemaro block, 1870, Maori Land Court records, 1868-73, Whangarei (doc A21, app 41)

In 1870 titles issued to Maori, for both the Takerau and Taemaro blocks. At 977 acres (395 ha) and 3990 acres (1615 ha) respectively, this was by far the largest provision ever made for a group of Maori in Muriwhenua – although, of course, awards of that size or larger were common for individual Europeans.

Government  
directs re-hearing

The resident magistrate was apparently unprepared for a Native Land Court that might grant land to Maori without his say-so, and he wrote to the Native Minister. The Government responded with an order in council of 4 May 1870, pursuant to the Native Land Act, directing the court to conduct a rehearing.

It is apparent the resident magistrate had not studied the court record and *Gazette* notices, however, for a rehearing was directed only for Takerau. He was either unaware that the court had made two orders, or he thought the second referred to the Taemaro reserve of 77 acres, not a block of 3990 acres. Either way, the position would have been clear had he examined the court files, and if he was confused over the difference between Taemaro ‘reserve’ and Taemaro ‘block’, he had only himself to blame. The Taemaro reserve came from out of the Mangonui transaction of 1863, which had been conducted by the resident magistrate himself. The resident magistrate, however, had omitted to take the necessary steps to protect that reserve, by depositing the survey plan and having the reserve gazetted. Had he done that, the various surveyors would have noted the reserve on the plans, distinguishing the Taemaro native land block from the Taemaro native reserve.

Again, nothing survives of the rehearing record except an annotation on the Takerau plan that, as a result of that rehearing, the Maori claim was then dismissed. It is possible that the Government argued a case. A letter from the resident magistrate to the civil commissioner shortly before the rehearing, seeking particulars of the 1863 deed, suggests that a case was being prepared.<sup>8</sup> We think it unlikely, however, that the Government mounted a case to prove its right, for it was sufficient for the Government simply to assert the extinguishment of native title.

Taemaro grant  
cancelled

In the Taemaro case, where there was no rehearing, the Government simply intervened to cancel the grant by legislation. Maori have long complained that, to achieve this end, they were bullied to surrender the Taemaro title and to settle instead for a small addition to their reserves. The intimidation alleged cannot be proven now, but the more important point is that the course adopted circumvented the court process and gave no protection against such threats being made.

The resident magistrate presumably acted as he did because a rehearing was impracticable by the time he realised the true position. There was a time limit on rehearings, and it is instructive to consider why. Competing claims to land rights, and the lack of actual notice of cases to affected interest groups, meant there were regular applications for rehearing by Maori, to the prejudice of purchasers.

8. White to Clarke, 26 April 1870, Native Land Court records, 1868–73, Whangarei (copied from Lands and Survey file 22/2316) (doc H1(a), p 131)

The latter wanted an assurance that their titles would not be continually challenged. It was a political issue, and the Native Land Act had imposed strict time-limits on rehearings as a result. That time was well past when the resident magistrate discovered his error, and had the Government legislated for a rehearing after such a lapse of time it might have been obliged to do the same for many others. The resident magistrate turned his attention instead to influencing the Native Minister to cancel the grant by special legislation, through the manufacture of the appearance of judicial approval and of Maori consent.

On 30 June 1873, three years after the Taemaro grant had been made, the resident magistrate wrote to the Native Minister that the matter had been discussed with the Native Land Court judge. The judge, he said, acknowledged that 'the fellows' had 'perjured themselves' and that he was about to attend court 'for the purpose of trying to upset the certificate granted to the natives of Taemaro'.<sup>9</sup> Reporting much later on an 1891 petition on the matter, the resident magistrate recalled the hearing and added that the judge 'made some very strong remarks on the conduct of those who had deceived the court'.<sup>10</sup> The nature of the hearing is quite unclear. It appears the resident magistrate had spoken with the Maori grantees and that the surveyed and sealed Crown grant for 3990 acres, with its certificate that all court and survey costs had been paid, was delivered up to the court, and the court then purported to cancel it. The statutory authority for the court to have done so eludes us.

According to the resident magistrate, the title was surrendered on the basis that the Maori reserves would be increased. The Taemaro reserve of 77 acres (31 ha) was to be enlarged to 99 acres (40 ha). The numerous residents of Waimahana, who had no reserve at all, would receive 649 acres (263 ha). In brief, uncontested titles would be exchanged for a much larger block that was subject to a Government challenge. The irony was that the Taemaro reserve was still less than that which had originally been settled on, as described in chapter 7. Then, to validate the court's cancellation of that grant, and to provide for the reserves, the Taemaro and Waimahana Grants Act 1874 was enacted, all with the implication of Maori consent.

The Taemaro–  
Waimahana Act

The result, however, is that the justice of the Government's claim to the lands east of Mangonui was never established and remains in high contention to this day. Following the passage of the Act, the allocation of the eastern Muriwhenua land was as shown in figure 53.

Subsequently, Maori protested that they never consented to the cancellation of the original Taemaro grant. This is referred to shortly. For the moment we note that, not only was the court title order upset, and not only was there no judicial inquiry into the Government's right, but the grantees for the Maori reserves were likewise settled without any judicial check as required under the Native Land Act. Instead of providing for the reserves to be vested in such Maori as the court

Maori ownership  
determined by  
resident  
magistrate

9. McLean papers MS 32/633

10. White to Native Minister, 21 July 1891, surplus land file G, NA Wellington, pp 51–52 (doc A23, app 58)

might determine, as a lawyer would have expected, the Taemaro and Waimahana Act named who the owners would be. The record is that the under-secretary of the native office wrote to the resident magistrate for the names and the resident magistrate supplied them, six for Taemaro and 10 for Waimahana.

In doing so, the resident magistrate changed the names Maori had put forward to the Native Land Court and which the court had approved in issuing the original Taemaro title, most especially omitting Hemi Paeara from the Waimahana reserve where he lived. It was Paeara, who had consistently challenged the Government's right and who had contended that the 1863 transaction related only to Te Kopupene. His father, Te Paeara, had been a leading rangatira and Hemi's name could not have been overlooked. Since the representatives placed on Maori titles were later to be absolute owners, his exclusion from Waimahana was crucial. The effect was also to deny Paeara further audience before the court, on matters relating to that block, since he was not 'an owner'. Needless to say, Te Paeara's descendants are prominent in the claim now made to this Tribunal.

Non-delivery of  
reserve titles

Then there was a further complaint. Maori had no customary cause to value written documents, but by the 1870s the opinion obtained that the only way to hold the land was to have a Crown grant for it. Resident Magistrate White often commented on Maori anxiety in the 1870s to possess such grants. Previously, grants had issued only to settlers, but the Native Land Act enabled Maori to have them too. In surrendering the grant for 3990 acres, then, especially after paying survey and court costs, Maori could only have been anxious to receive new ones for the two reserves. Despite the promises made, and subsequent Maori pleas, those grants did not immediately issue. In fact, they did not issue until the following century. The failure to deliver the new grants, and claims that Maori had been bullied out of the old one in the first instance, became the subject of regular complaints and petitions.

Intimidation?

The most regular complaints were that the resident magistrate had adopted bullying tactics, and that the Government should prove its alleged acquisition. The most disturbing aspect of the Government's response was the obvious lack of any in-depth inquiry. There was instead a concern to keep a lid on Maori complaints to prevent them from getting out of hand.

The first recorded complaint after the Act of 1874 was from Hemi Paeara in 1876, but particulars have not survived. The second, from Te Huirama Tukariri in 1881, followed the obstruction of survey work. This petition alleged:

When Mr White, the late R M of Mangonui, heard of [the Taemaro grant] he urged the Maoris to give the Grant up, the Maoris were very determined whereupon Mr White threatened to imprison them for seven years, which so frightened them that they gave up the Grant. This is where the Maoris were wrong,

in giving it up, for they were unacquainted with the proclamations relating to land.<sup>11</sup>

White, who was then in retirement, denied such threats. In an earlier letter, however, he had alleged that the judge had spoken of how 'the fellows' had 'perjured themselves' and that the judge 'made some very strong remarks on the conduct of those who had deceived the court'. Some reference to the penalty for perjury could have followed.

In 1886 Hemi Paeara and others petitioned again, claiming that the whole Taemaro district was still Maori land. In 1887 the petitioner wrote further concerning the surrounding Whakapaku and Mangonui lands, disputing any Government claim to ownership and contending that Te Kopupene alone was conveyed in the 1863 transaction. He also claimed that the Taemaro block had been properly adjudicated upon and that the grant was given up through the resident magistrate's threat of imprisonment. He added 'the resident magistrate was two years demanding for it and saying words to frighten us'.<sup>12</sup>

An explanation or inquiry was sought, but the Government did no more than refer it to the Assistant Surveyor-General, S Percy Smith. The latter, in reporting on 22 March 1887, could not provide a coherent account of how the Taemaro land came to be Crown land.<sup>13</sup> In fact, at one point he remarked, 'by what process of law and equity these extensive areas became the property of the Crown, I have never been able to learn'. Nevertheless there was no further inquiry, merely an assumption as before that the land was the Government's. Maori were simply advised there was no Maori land left.

There followed two petitions in 1891 and one each in 1892 and 1893 to similar effect, each seeking an explanation of the Government's right to the land or at least a fair investigation of what had happened. In this petition it was thought there had been only one pre-Treaty negotiation in the area, with a person called Pateriki (probably Partridge), that the transaction was never completed and that Pateriki had left, so any arrangement was at an end. In the meantime, certain petitioners obstructed surveys in the district to protest their cause. Resident Magistrate Bishop, who had replaced White after the latter's retirement, reported:

I had personally warned these Natives many weeks ago as to the result of any obstruction on their part. Since then the leaders have been prosecuted and fined £2 each with costs, making a total of £29 amongst them. They do not intend to offer any further obstruction. I wish here to say that I have known these Natives for very many years as the most respectable and law-abiding people in the District and I feel quite convinced that their late action has been prompted by a strong feeling of injustice having been done. I can not avoid feeling that there is more in the matter

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11. Tukariri to Native Minister, 28 September 1881, surplus land file G, NA Wellington, p 44

12. Hemi Paeara and others to Native Minister, 9 January 1887, surplus land file (doc H1(a), pp 18-22)

13. Ibid

than would appear on the survey and that some mistake has occurred in years gone by in dealing with the land which has led up to the present state of things. It will be readily admitted that negotiations for land were *a little loose* in those days and Mr White cannot be reasonably expected to remember the exact details of every transaction that he entered into on behalf of the Govt. It is only right to state that I have no absolute ground for the above opinion. [Emphasis in original.]<sup>14</sup>

There was no further inquiry. On 30 March 1893, the Native Minister minuted, 'Don't see how the matter can be reopened. File.'

Petitions on similar lines followed in 1893, 1901, 1906, 1907, 1908, 1909, 1910 (two petitions), 1912, 1921 (two petitions), and 1924. These were supported by various signatories, 90 in one case. Nevertheless, no public inquiry was directed and there was no explanation of the Government's claim or an inquiry into the justice of it. Most regularly the petitions contended that the Mangonui transaction of 1863 related to Te Kopupene block and that the resident magistrate had obtained the Taemaro grant by threats of imprisonment. Over the course of time, from the first petition in 1876 to that of 1924, the threat of imprisonment for seven years grew to 27 years, but in principle the petitions are consistent.

Outcome

Thereafter the petitions ceased. All but a few Maori moved away. Peter Pangari recalled the oral history passed on to him by his uncle Haki Tatai of Waimahana, who died in 1989 at the age of 90 years:

... Parata and Kahukuraariki [ancestors of Ngati Kahu] settled in Taemaro Bay, and there were masses of people living within the vicinity of the Bay, around the Omata and over to Whakaangi and Waiua. He talked of the burial sites (urupa), pa sites and the areas that were sacred; of fishing grounds (toka) ranging from near the shoreline to far out to sea where the hapuka were caught, each yielding a different species of fish.

He would speak of the sacredness of Taemaro, and the reason for the shift to Waimahana, and how this was undertaken by Te Aukiwa and Roha giving rise to the hapu Ngati Aukiwa. . . .

He spoke of the history of Maungaroa Maunga (an old pa site and burial ground) where the story was told that the iwi of Te Rarawa could see the dust rising from underfoot atop Maungaroa from as far away as Kaitaia when Ngati Kahu were executing a haka.<sup>15</sup>

While the ancient tradition is retained, there is little knowledge today of the petitions or the Maori opinion of the Government's land claims. Peter Pangari recalled his interviews with various of the old people, including Haki Tatai:

He spoke of the felling of Kauri trees by the pakeha in areas of Oruaiti, Paekauri, Akaterere and Whakapaku, and the concern that caused the people, who were by and large unaware of the claims made to the land by pakeha.

14. Bishop to Haselden, 23 March 1893, Whakaangi files A, B (doc H1(a))

15. See P Pangari, 'Chronology of Events Affecting Taemaro Land, 1840-1863' (doc H3), p 3

Although some Kaumatua interviewed have personally participated and been signatories to Hemi Roha's petition of 1921, none had any real knowledge of the true reason for the grievances – they were merely aware that grievances were there. There remain alive today [1991] six such Kaumatua of the 90 who signed the petition.

No one was aware of the specifics of land purchased by pakeha.

No one was aware of specifics of land sales to the Crown.

Most had a feeling of underlying grievance and mistrust of pakeha dealings with land, and Governmental Agents.<sup>16</sup>

With land loss, the communities gradually disintegrated. People remained at Taemaro and Waimahana until the first decades of the twentieth century and there were still very few Pakeha living there, at those times. Pangari's interviewees described a woman of Stony Creek in the 1920s who 'would bundle her children together and hide in the bush if she sighted a Pakeha'.<sup>17</sup> There was one school at Taemaro, for both the Taemaro and Waimahana communities. The 1920s saw a general exodus, however, when the Taemaro School closed and another opened at Waitaruke. The Taemaro wharenuī built in the 1880s was refurbished in 1909, but in the late 1940s a marae was established at Waitaruke as well. Many shifted out of the area in the depression of the 1930s, a number to work on Maori Affairs development schemes in Tolaga Bay on the East Coast. Much of the knowledge of the land claims history disappeared with them. Unlike those of Ngati Porou, the Taemaro people had no land to work of sufficient size for development.

Peter Pangari explained how he personally came to know of the grievances from his mother's father, Hemi Roha, who signed the 1921 petition:

I was vaguely aware as a young man, of the land grievances through things my grandfather and mother told me.

It was not until I had returned from serving overseas with the Armed Forces and years later had returned to live in Auckland and started visiting some of our old people, that I fully realised the depth of feeling among our people that our land had been taken away from us. Much of my early knowledge came from our Kaumatua Teddy Emery. Teddy was at this time living in Auckland with his Aunt Martha. He had in his earlier years lived at Taemaro and Waitaruke . . .

Over a period of time, I learned how my grandfather, and his brother Te Kawau, and Teddy's uncle Noema Tamati Tawio Tamati had been active in trying to raise money to pay an Auckland lawyer, J J Sutherland, to take the grievance to Court in the 1930s and 1940s. Some of our living kaumatua remember this and contributed to the effort. J J Sutherland unfortunately died shortly before the case was to be heard, and nothing further came of it. . . .

He told me of the many petitions of the old people, and how my grandfather had finally given up trying to go to Government for relief, and instead, had tried to take the case to Court. He told me we had once had title to the land. This I was able to

16. Ibid

17. Ibid



verify from the land records held in Whangarei, and it led me to filing this application on behalf of our people.<sup>18</sup>

Though facts may be lost, the grievance yet survives.

### 9.3 MURIWHENUA CENTRAL

Continuing  
extinguishment

The comprehensive land-buying before 1865 left scattered reserves and remainders throughout central Muriwhenua and an aggregation of unalienated Maori land in the Takahue or Victoria Valley, which was inland from Kaitaia. We refer to each in turn: the reserves, the remainders and the Victoria Valley lands. They illustrate respectively the lack of protection for the lands reserved from the preceding large-scale buying, the continuing absence of procedural formality in Maori land acquisition, and the survival of the former aggressive policies to open the areas of Maori aggregation for European settlement. The lands concerned are depicted in figure 56.

#### 9.3.1 'Reserves'

The 'reserves' that were purchased were the lands reserved for Maori in the Government purchase deeds from 1850 to 1865. Since there were different hapu at different places, the reserves were all some hapu had left. The lack of proper management in the buying process is reflected in the fact that not one of these areas was ever formally gazetted as a reserve under the Native Reserves Act 1856. It appears that having obtained the bulk of the land, the Government could not be bothered tidying up the balance area for Maori. Further, the Native Land Court was to vest them in a handful of people only, the Act limiting the number to 10. The assumption was that these represented the hapu, but since there were no clear trusteeship provisions, in law each nominated owner became an absolute owner and all others were disinherited.

The marked lack of proper protective arrangements for these 'reserves' was reflected also in the fact that most of them were sold soon after the 'ownership' was established. At this stage of our inquiry we refer to no more than the outcome, as given in table F.

#### 9.3.2 Remaining Maori lands and missing conveyances

The remaining Maori lands were investigated by the Native Land Court and vested in 10 or fewer persons. We refer to:

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18. Submission of P Pangari on Taemaro claim (doc H19), pp 4-5

# POST-1865 RESULTS

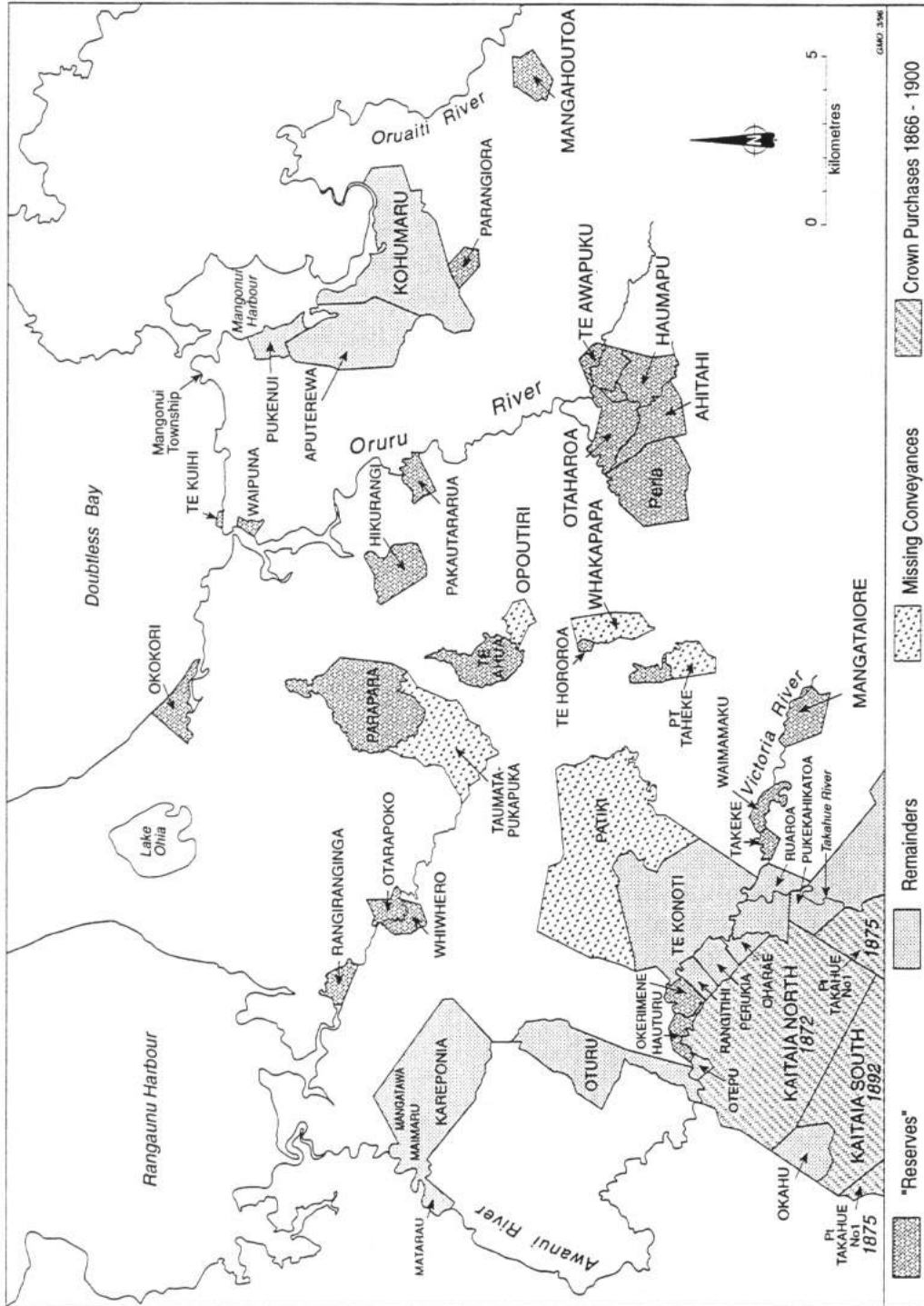


Figure 56: 'Reserves', remainders, missing conveyances: central Muriwhenua, 1865

## MURIWHENUA LAND REPORT

<i>Block</i>	<i>Acres</i>	<i>Disposal</i>
Kareponia	2614	1990 acres sold
Parapara	1643	752 acres sold
Taumatapukapuka	1430	sold circa 1871
Patiki	4007	sold circa 1871
Oturu	1174	763 acres sold

In addition, there were a number of smaller blocks sold privately: Okerimene, Rangitihi, Perukia, Oharae, Ruaroa, and Pukekahikatoa. The main concern at this point is the transfer of two of the remainder lands, Patiki of 4007 acres (1622 ha) and Taumatapukapuka of 1430 acres (579 ha), and the transfer of the three 'reserves', Opouturi of 250 acres (101 ha), Whakapapa of 470 acres (190 ha) and part of Taheke at 484 acres (196 ha). The deeds of conveyance for each of these five blocks has gone missing.

The missing conveyances

The case of the missing conveyances shows once more how the duty on the Crown to prove its acquisitions shifted to an onus on Maori to show the land was still theirs, an onus that was generally impossible to discharge. The background may be summarised as follows:

- (a) Opouturi was one of several blocks reserved from the Government's purchases before 1865 but never reserved under the Native Reserves Act. Instead, in 1870 Opouturi passed through the Native Land Court to five nominees who were put onto the title for the interested families. These were later treated as absolute owners. Meanwhile, the new court system had changed the method for buying Maori land so that the Government now dealt with the registered 'owners'. Moreover, it could deal with them separately.

In the result there was, throughout the country, a shift from the open purchase of land blocks to the private purchase of individual shares in them. The documents varied. Sometimes one conveyance was engrossed and money was paid as signatures were gradually added. At other times there was a separate deed for each seller. Either way, when all had signed, a conveyance of the land was recorded or a *Gazette* notice issued declaring the land as Crown land. If all would not sign, the Native Land Court could be advised of those who had, whereafter the court could be called upon to divide the land between the Government and the non-sellers according to their shares.

- (b) In 1871 a transfer is said to have been executed for Opouturi. This was a hilly and unoccupied bush block not far from Oruru Valley, somewhat typical of Maori reserves. It is not known whether the transfer affected the whole or part only of the land, or the whole or part only of the shares. The land was in bush and no one took possession. As was invariably the case in Muriwhenua, people were unaware of the need to register an objection until possession was taken on the ground.

Reserve	Area (acres)	NLC order	Owners	Disposal
Parangiora	180	1875	6	139 acres sold
Hikurangi	522	1869	7	Sold 1869 except five acres
Ahitahi	584	1866	2	Sold 1867
Haumapu	485	1885	Not given	Sold 1885
Otaharoa	241	1869	3	Sold 1872
Te Awapuku	204	1873	5	Sold 1875
Otarapoko	206	1866	5	Sold 1918
Whiwhero	178	1865	10	Part sold 1947
Te Rangirangina	176	1865	Not given	Sold 1869
Hauturu	144	1867	10	Sold 1911 except one acre
Peria	1130	1865	9	566 acres sold
Mangatairoe	381	1867	10	191 acres sold
Takeke	79	1865	10	Sold 1877
Maungahoutoa	295	1866	3	Still Maori land
Te Ahua	624	1868	8	156 acres sold
Opouturi	250	1870	5	Sold circa 1871
Taheke	484	1866	5	424 acres sold
Te Hororoa	41	1868	5	Still Maori land
Whakapapa	470	1870	6	Sold circa 1871
Waimamaku	154	1866	?	Sold 1941

Table F: Lands 'reserved' in the central Muriwhenua Government transactions, 1850-65

- (c) The transfer was to go missing. It is presumed to have been burnt in a fire in certain Government offices at Auckland in 1872. The existence of a conveyance affecting the land is known, however, from correspondence concerning the transfer that was held elsewhere, in the Stamp Duties office. The correspondence does not establish whether the conveyance related to all or part of the land or all or part of the shares.
- (d) In 1884, the Government filed a declaration in the Auckland Deeds Registry to the effect that the instrument of conveyance had been lost in the fire. It is not known whether Maori were made aware of this. The Government presumed that the whole of the land had been conveyed and

advised the registry that the block was to be treated as Crown land. The register was noted accordingly.

- (e) In 1916 the Government surveyed the land into two parts, and in 1919 part was leased. It was only later, when the lessee took possession, that Maori can be shown to have been aware of a development. They then complained, contending that this part of the land had not been sold. A petition was filed in Parliament in 1923.
- (f) The petition, signed by 24 persons, contended that not all of the land had been sold and asked that the remaining Maori shares be cut out. No action was taken on the petition.
- (g) In 1948, after a lapse of 25 years, Maori petitioned once more, then occupied the land. Five persons were convicted of criminal trespass and assault as a consequence. They were also held liable in a civil suit for property damage and stock losses. The occupiers agreed to withdraw from the land on an undertaking that their claims would be investigated.
- (h) In 1950 a royal commission under Judge Dalglish was appointed.<sup>19</sup>
- (i) In the course of the commission's inquiry, it transpired that the deeds for each of the other blocks earlier mentioned, Patiki, Taumatapukapuka, Whakapapa, and Taheke, had been destroyed in the same fire, though in the case of Taheke it was acknowledged that only part of the block had been conveyed.

The commission's report makes it plain that a transfer of some sort existed, but whether of the whole or part was not established. The Maori contended that a dividing boundary existed, and their case appears to have been affected by their inability to prove it. For all we know, however, a subdivisional sketch plan could also have been destroyed in the fire, or a dividing boundary may have been more perfectly in the recall of those who petitioned in 1923, but who were not heard. In any event, as we see it, the Government should properly have sought affirmation of the transactions as soon as the lost conveyance was known. That could not have been later than 1884, when declarations of lost instruments were lodged in the Auckland Registry, only 13 years after the conveyance was executed and when there was a likelihood that the owners originally affected might be still alive.

The problem, as we see it, is the legacy of opinion, apparent from the very first Government transactions, that the Government was not obliged to prove its acquisition of Maori land, and it was enough for the Government to declare the land as Crown land unless and until Maori should establish otherwise. Had it been clear from the outset that the Government had to prove its right to Maori land, a different result may well have ensued not only for Opouturi, but for the remaining blocks of land affected in the same way. It might then have established

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19. Judge Dalglish, of the Court of Arbitration, sat with H M Christie and R Ormsby. The commission's report of 4 December 1950 is at AJHR, 1951, G-2.

the position with the Maori owners, and obtained their affidavits, the moment the documents were known to be missing.

### 9.3.3 Victoria Valley (Takahue)

Victoria Valley is said to have been so named by Panakareao in honour of his powerful wife, Erenora, whom he called Victoria, after the Queen. There is further speculation that, shortly before he died in 1856, Panakareao must have been aware, even if he could not accept, that his authority in the land was being threatened by the resident magistrate. Panakareao had consistently shown friendship to Pakeha, but less so in his later years. He had verbally attacked Governor Grey in 1849, when Mangonui township had not developed. The resident magistrate saw him as increasingly obstructive, and he was unfriendly even to the missionary, William Puckey, who tended him on his death bed. Puckey despaired that Panakareao had reverted to heathenism, that his death was 'to all appearances dark', and that he had failed to have Panakareao repent of his sinful clinging to Maori ways.<sup>20</sup> It is possible that Panakareao had come to see that a land sale did not signal the continuance of Maori mana as he had thought. In any event, from 1850, after his first and only land transaction with White, concerning Mangonui township, Panakareao pointedly avoided signing further papers. He would not sign the Oruru deed, for example. He became especially concerned to retain possession of Victoria Valley. It was the largest remaining residue of Maori land in central Muriwhenua, and certainly it was the most fertile of the remaining Maori land in the whole of Muriwhenua.

Panakareao's  
changed  
disposition

As much as Panakareao was opposed to release it, however, the Government was determined that it should be acquired. Resident Magistrate White reported Panakareao's reluctance in September 1855 but nevertheless, in November, Kemp was instructed to negotiate the acquisition of the valley. On 10 March 1856 Kemp wrote:

The Victoria valley I have traversed. Nobel [Panakareao] tells me he won't sell. It is a beautiful valley of about 20,000 acres. After hearing what he had with other[s] to say I intend to recommend £3,000 as a special bait that is if the Government really mean to carry on efficiently and in earnest.<sup>21</sup>

According to Dr Rigby, the bait was refused, though it was almost 10 times the going rate.<sup>22</sup>

On 11 April 1856 Kemp reported:

The valley of the Victoria, better known to the natives as Takahue, is situated on the northern side of the Rua Taniwah range, and about midway between the Oruru

20. Entry for 13 April 1856. Puckey's journal, vol 2, pp 325-326

21. AJHR, 1861, C-1, pp 6-7

22. B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850-1865', 14 April 1992 (doc F9), p 50

Valley and the western coast, the two valleys being separated by a bush of from seven to eight miles in length; which I traversed and through which a road might be easily opened up, thereby connecting the two districts and thus forming a nearly direct line of communication with the Harbour of Mangonui, the principal port of safety in that part of the island. The Victoria Valley is nearly triangular in shape, is well watered, and skirted with excellent timber, the soil of a rich alluvial deposit, and, at a rough estimate, may be said to contain about twenty thousand (20,000) acres. A large portion of it has been under cultivation by the Natives, and there exist at present some few scattered plantations of no very large extent.

Noble Panakareao, the chief of the Rarawa tribe, is the principal owner of the valley, and upon my expressing a desire to visit, he informed me that it had never been offered for sale, that it was more than probable it would be required for the use of the Natives, whenever the surrounding districts shall have been purchased by the Government. At the same time he led me to infer that a large price would be asked if the Crown should propose to buy.

I regret that, owing to the very sudden and serious illness of Noble, further enquiries have been postponed; but judging from what I have heard in other influential quarters, I think a sum of £3,000 (Three thousand pounds) if the money were on the spot, and a few reserves, comprising in all about two thousand (2,000) acres, would effect the purchase.

Of its importance taken in conjunction with the settlements of Oruru and Mangonui, there seems to be no doubt; and that a large portion of it would be taken up at once by settlers, if the Native title were extinguished.

It is decidedly the finest district in that part of the Province, and presents great facilities for settling.

Although the word 'sale' is regularly used to describe the transaction that was discussed, it must not be forgotten that that is the word the Europeans used, not the Maori, who spoke their own language and had no word for 'sale'. Maori could equally have referred to giving the land, that is, its use and occupation. It cannot be assumed, from the words the Europeans chose to use, that their understandings of the transaction and those of Maori were the same.

The relationship  
between land-  
buying and  
Panakareao's  
burial and  
reinterment

Panakareao's influence lived on after him. Although he died a few days after Kemp's letter, he had arranged to be buried in the heart of Victoria Valley, next to his wife, Ereonora, whom he had buried there in 1848. It was an unusually strong statement that these rangatira of exalted status should be buried on their own, outside the main tribal urupa. The effect was to make the valley tapu, restricting its use to Panakareao's own people.

White remained eager to buy, as correspondence from 1858 shows. On the other hand, there were Maori keen to show their personal prowess in the leadership stakes by breaking the tapu on the area and selling. One person thus offered to sell part, but the proposal was quashed by a runanga of rangatira in 1861. As Kemp put it:

an important objection was made by these Chiefs to the sale of the entire Valley on the ground that the late Chief 'Noble' (Panakareao) and his wife were buried there,

and as the place of interment lies in the centre, it seemed to us at first an almost insuperable obstacle to its acquisition, and one which would seriously interfere with the operations of any settlers, who might eventually establish themselves there, so long as the Native Title to that particular portion remains unextinguished.<sup>23</sup>

Although the writings of European observers do not exactly say so, it appears to us an inter-tribal power struggle followed. The elements were there. In his lifetime Panakareao had held the hapu together, but after his death the cohesion was not the same. It appears to be rather usual amongst Maori, even to this day, that nothing happened for some years after the death of a senior rangatira, for in custom the mana of a great chief is still around for some time after death. Following the 1861 meeting, however, which was five years after Panakareao's death, several runanga or tribal councils were held and tribal divisions appeared.

The Te Rarawa living south of Kaitaia, even to Hokianga, of whom no mention has been made so far, claimed interests by whakapapa and occupation well into Victoria Valley and beyond to Oruru and even Raramata. These interests had not been considered in any of the earlier transactions. It may have been further argued that the stronger bloodline was through Erenora, not Panakareao, and that the southern Te Rarawa had particular links to her.

Intervening in the debate was a third party, the resident magistrate. White's primary goal, as he stated in 1861, was 'the total extinction of native title' in the district and he was prepared to go to some lengths to that end. He wrote to the under-secretary in the Native Department in February 1865:

Having experienced great difficulty in purchasing land in the 'Victoria Valley', from the fact that the late Chief . . . Pana Kareau [sic] and his wife, being buried in the finest part of it, I have for some years urged his removal to the Church yard at Kaitaia.<sup>24</sup>

Although exhumation and the securing and protection of remains had been standard practice amongst Maori, and Polynesians generally, and although it continued despite intense missionary opposition, what the resident magistrate proposed – an exhumation in order to reinter – was of a different character, and was contrary to Panakareao's dying wishes. Accordingly, the resident magistrate's resolve to proceed with his plan could have been seen by Maori only as demonstrating an extraordinary capability and mana. However, White may have found some moral support from Te Rarawa of the south, who sought Erenora. In Maori thinking, if they could take her, then it would help to establish their rights in those places, like Victoria Valley, where she had an interest. In any event, the exhumation happened. Before a crowd of some 500,

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23. AJHR, 1862, C-1, p 372

24. BAFO-A760/11, pp 346-347



## MURIWHENUA LAND REPORT

Block	Acres	Disposal
Ruaroa	729	Sold 1870
Okerimene	209	Sold 1870s (date uncertain)
Kaitaia North	5806	Sold 1872
Te Koniti	2674	1884 acres sold (date uncertain)
Perukia	203	Sold (date uncertain)
Puke Kahikatoa	349	273 acres sold (date uncertain)
Patiki	2219	Sold 1870s (date uncertain)
Otepu	77	Sold 1880
Rangitihi	189	Sold 1881
Orakiroa	59	Sold 1883
Kaitaia South	5220	Sold 1892
Okahu	540	171 acres sold after 1892
Okarae	197	Sold 1918

Table G: The alienations in Victoria Valley

Panakareao and Erenora were exhumed, Panakareao's remains were reinterred in St Saviour's churchyard at Kaitaia, and Erenora was taken to Hokianga.

At least that is White's account. According to Maori tradition, as explained by Rima Edwards, the contest for Panakareao was such that his remains were apportioned to three different areas,<sup>25</sup> but that is not a matter we need go into here. It is mentioned only to show the survival of ancient opinions on the basis for land rights and power, and how Maori were still acting in distinctly Maori terms.

The exhumation also shows how far the resident magistrate would go to achieve his goals. For Maori the move was about land rights and power. For the resident magistrate it was, as he wrote:

to prevent the peace of the district being disturbed, and to facilitate the purchase of the best block of land in the district.<sup>26</sup>

The sale of  
Victoria Valley

In fact no purchase proceeded for four years. Under the Native Lands Act 1865, the court had first to determine ownership before a sale could be made, and owing to the disputes, it was some time before ownership could be settled. A major argument on this issue between the local Te Paatu hapu and the Te Rarawa of Hokianga nearly erupted in violence. The latter, who had missed out on previous sales, were keen for a share. The matter eventually came before Judge

25. Submission of Rima Edwards (doc F23)

26. BAFO-A760/11, pp 346-347

POST-1865 RESULTS

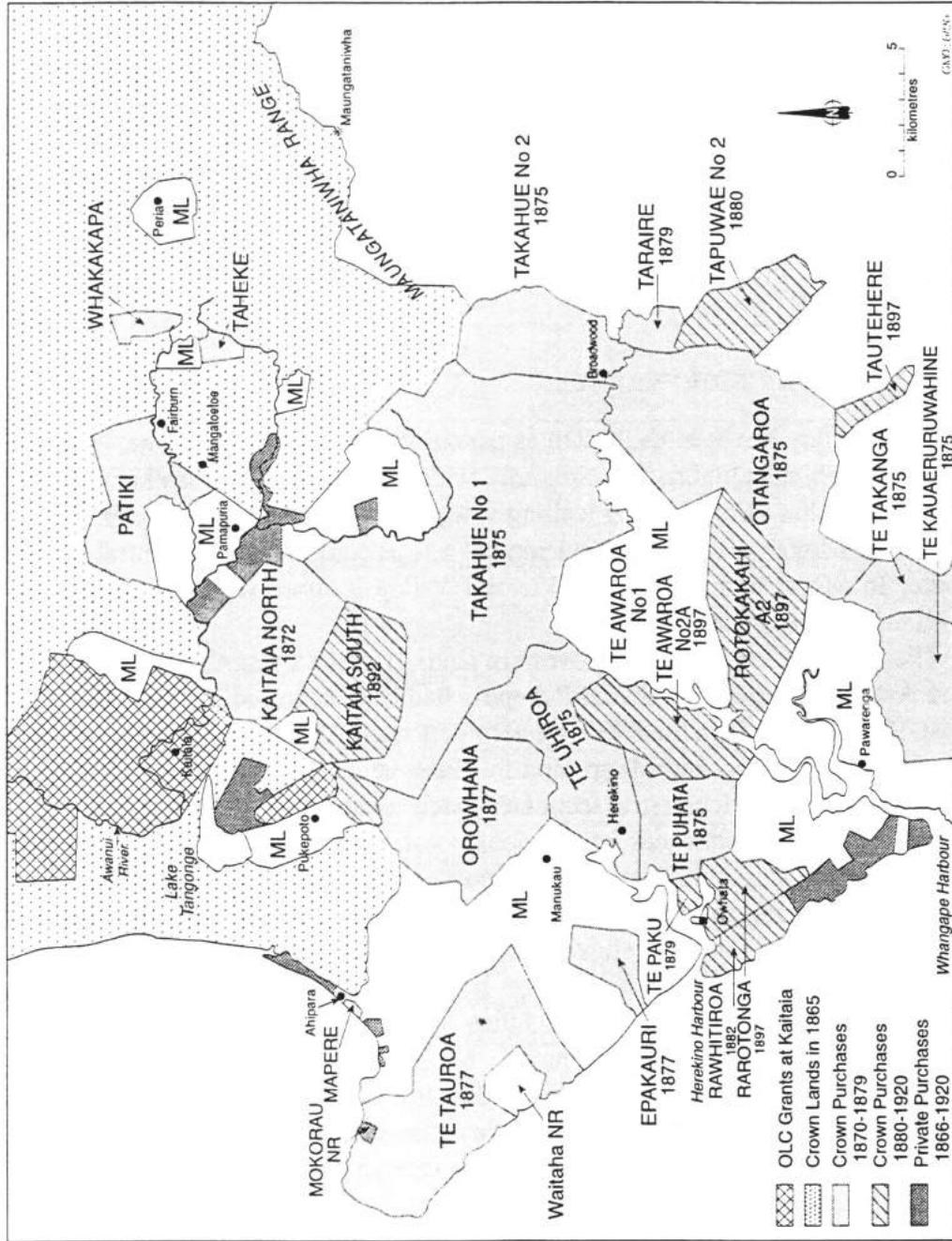


Figure 57: South-western transactions, 1865–1920

Maning, of Hokianga. The court found that certain of Hokianga had an interest in common with others in the area.

Our inquiry does not consider the actual alienations in Victoria Valley, owing to the 1865 restriction, but the outcome is shown in table G. Of 18,075 acres in Victoria Valley, 1246 acres (504 ha) remains as Maori land. Another section of the valley, not included in table G, was part of the Takahue No 1 block of 24,122 acres (9762 ha), which was sold in 1875. The blocks concerned are depicted in figures 56 and 57.

#### 9.4 WESTERN MURIWHENUA

Victoria Valley has been dealt with as part of the central district since, in terms of the Government purchase programme, which is the focus of this examination, it is part of that trilogy of interlocking valleys to the south – Kohumaru, Upper Oruru, and Takahue – that the Government saw as comprising one central access route. In Maori terms, however, Victoria Valley is more regularly associated with the people of the western area.

The acquisition of  
the south-west

There is little to add about the western lands in an arc from Ahipara to Kaitaia and Awanui, since all but that at Pukepoto had been acquired before 1865. The post-1865 interest is in the south-western part from Ahipara to Whangape – the last bastion of untouched Maori land in Muriwhenua. Again, this chapter does not review the particular transactions, which must await further inquiry, but considers the consequences of previously established policies. Here the old Maori opinion inherited from Panakareao, that Pakeha settlement would bring long-term benefits to Maori, appears to have been promoted by Government agents as a positive way of relieving them of their last land holdings.

Purchase policy  
and techniques

Buying in the south-west, as also in Victoria Valley, was given special impetus in 1870 by the policies of Julius Vogel, then in the Fox ministry, for massive immigration and extensive Maori land acquisition under the Immigration and Public Works Acts of 1870 and 1873. For this purpose, in 1872 a new armoury was marshalled to buy the Northland west coast, under Lieutenant-Colonel Thomas McDonnell – a veteran of the Taranaki wars.

The Waitangi Tribunal reviewed McDonnell's purchases in the Te Roroa lands to the south. That was no different from his operations throughout the island. The report said:

McDonnell was in the habit of taking large sums of money with him and giving advance payments or deposits to prospective sellers, on land which had not passed through the Native Land Court.<sup>27</sup>

27. Waitangi Tribunal, *The Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 56; see also Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996

Date	Block	Area (acres)	Price
31 July 1872	Kaitaia North	5806	£725 15s
4 May 1875	Takahue no 1	24,122	£2814 4s 8d
4 May 1875	Takahue no 2	4405	£513 18s 1d
15 June 1875	Te Puhata	3352	£391 1s 4d
15 June 1875	Te Uhiroa	7219	£841 4s 4d
8 March 1877	Te Tauroa	10,510	£175
8 March 1877	Epakauri	1600	£27
8 March 1877	Orowhana	6562	£984
15 February 1879	Te Paku	327	£128
		Σ 63,903	Σ £6901 3s 5d

Three more purchases were effected before the turn of the century:

Date	Block	Area (acres)	Price
11 March 1882	Rawhitiroa no 1	1482	£315
19 March 1897	Rarotonga A	1702	£377 6s 6d
19 March 1897	Te Awaroa 2A Rotokakahi A2	3801	£760 6s

Table H: Alienations, south-west Muriwhenua, 1872–79, 1882–97

The technique, which he described as ‘a sprat to catch the mackerel’,<sup>28</sup> was employed by other land purchase officers working for him. In Muriwhenua, only three agents were involved but they acquired nearly 64,000 acres (25,901 ha) from Kaitaia to Whangape in seven years from 1872. The land at that time was principally in forest. The individual transactions are tabulated in table H and depicted in figure 57.

The main concerns are these:

- The use of down-payments, not only as ‘a sprat to catch the mackerel’ but also to lock Maori into a process from which they could not retreat.
- The advantage taken of Maori poverty and debt, the indebtedness to storekeepers operating as gum traders being notorious by then. Down payments appear to have been used to clear or reduce such liabilities.
- The regular advice to Maori that to keep their lands they must obtain titles, but the high cost of obtaining titles, since this involved survey, court fees

Issues

28. *The Te Roroa Report* 1992, p 60

and court attendance costs. As Iehu Ngawaka put it to a meeting at Whangape in 1872:

Welcome my friends. Bring with you the law of the Governor. It was stated in some of his laws, 'Survey your lands so that you may have a firm title to them, lest they slip from you into the hands of another tribe'. That law was agreed to; the lands were surveyed, and then money had to be paid therefor; then the Crown Grants had to be paid for, and then the applications to the custodian of the Grants in Wellington had to be paid for. Now, hearken the tribe, do not introduce any new matter.<sup>29</sup>

- The cost of attending Government purchase meetings. One had to be there lest an arrangement was made in one's absence.
- The social disruption arising from arguments over land sale rights.
- Statements that from the proceeds of land sales Maori would be able to develop those lands retained, without any policy to ensure that each affected hapu kept a sufficient balance.
- The purchase of land at the cheapest possible price, without attempts to assess its fair value. For the Takahue blocks McDonnell was authorised to pay up to three shillings per acre but succeeded in reducing the price to 2s 4d, which set the bench mark for the lands adjoining. In McDonnell's boast, this saved the Crown £1266. No allowance was made for gum or for kauri or other timber on the land. When Maori requested that the timber be valued separately, McDonnell responded:

if you, I said buy a shirt, you do not pay extra for the buttons. All garments that have buttons are purchased with the buttons and in this instance the trees are the buttons of the land.<sup>30</sup>

- The apparent failure to establish some supervision or independent audit of the Government's purchase of Maori land to ensure the protection of Maori interests.
- The apparent failure to provide adequate reserves or even to consider what might be required.
- The taxes introduced, especially the levy on Maori lands to pay for road works under the Native District Road Boards Act 1871, which was the subject of various objections from Muriwhenua Maori.

Most especially, however, the Government purchase agents appear to have capitalised upon the long-standing Maori desire for European settlers. McDonnell recorded this account of one meeting:

I then explained that if good land was sold by them, Pakehas would not only be glad to come, but would remain, and prove a lasting benefit to the natives. Your

29. AJHR, 1872, F-4, p 5

30. AJHR, 1875, G-7, p 6

land, I argued, is as a fat ox, the whole of which you cannot consume, part of which, you offer for sale to buy utensils to cook and enjoy the remainder. But what a fool I would be, to take what you offer – namely the horns, and the hoofs. No, sell me a quarter of your bullock, and the Government will then give you that which will enable you to use the remainder to advantage.<sup>31</sup>

He wrote also:

The Ahipara natives are evidently anxious to get Europeans located in their neighbourhood and wish, I fancy, to enter into a compact, that if they part with land, that settlers be placed on it within a certain time.<sup>32</sup>

Of a later meeting, McDonnell reported he was challenged:

to explain the reason why Government wanted land and to point out the benefit, if any, that would accrue to themselves supposing they did agree to sell a portion, as they certainly had not from those lands they had hitherto sold, but were now a poor, though they said, deserving case of people who had not killed any pakehas.<sup>33</sup>

McDonnell responded by contrasting the poverty of Ahipara people with the supposed prosperity of southern tribes. A principal cause of their poverty, he argued, was a lack of Pakeha settlement 'to push you on, to purchase your produce, to give you new ideas, to praise you when you behave well, or to caution you when you behave ill'. He maintained that Maori would become prosperous only by having Pakeha settlers living on the land:

If you sell land, true, you will have parted with it but unlike other lands you have sold, you, yourselves, and your children after you will continue to reap a benefit from the White man who will occupy it and kindle his fires upon it. It is now for you to decide, whether you are going to remain with your wives and little ones in a state of disgraceful poverty, considering the means you have at hand, or seize the chance that is now before you and better your condition.<sup>34</sup>

In a September 1873 meeting McDonnell also used Panakareao's statement about the 'shadow of the land' to support his argument to sell and encourage Pakeha settlers:

you, the Rarawa were, with Ngapuhi the first to welcome the white man but you have let him, the substance, go from you, all that you have retained is the shadow and other tribes are now enjoying the benefits that might have been yours this day.<sup>35</sup>

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31. T McDonnell, 'Report on Land Purchases North of Auckland', 7 August 1873, MA/MLP 1/1 1873/19

32. Ibid

33. Ibid

34. T McDonnell to Native Secretary, 27 September 1873, MA/MLP 1/1 1873/12

35. Ibid

Unfortunately, we have only McDonnell's reports and not detailed records of Maori discussions at the land-sale meetings. Historian C Geiringer suggested the anticipation of long-term benefits from Pakeha settlements encouraged not only sales but an acceptance of low prices.<sup>36</sup>

Outcome

By the end of the nineteenth century, the residue of lands for Maori were proportionately small. In the district from Ahipara to Herekino, shown in figure 58, what was left to Maori from the 1877 sale of the Tauroa and Epakauri blocks was probably the poorest in Muriwhenua. The Waitaha native reserve on the coast, and the northern aspects of Herekino Harbour, which were still Maori lands, included large sand dune areas. The balance of the Maori land was hilly, in forest and scrub. It was later to be devastated by gumdigging and the removal of the millable timber. Attempts to establish farms there in the 1930s were unsuccessful: they were abandoned by the 1960s and reverted to scrub. On the more fertile southern shores of Herekino Harbour, only tiny reserves remained, Omaku of 26 acres (11 ha) and Owkata of 48 acres (19 ha).

North of Whangape Harbour, Paihia and Whakakoro blocks, as shown in figure 59, remained as Maori land. They were held in Maori tenure until the Native Land Court effected partitions from 1910, whereafter various divisions were sold.

Despite the promises, there was no effective Pakeha settlement in the area or the development of farms until well into the 1900s. There were no continuing benefits. In the mid-1880s, in the hinterland beyond Herekino, a village settlement was proposed, as shown in figure 59. Such settlements were part of a Government scheme to relieve Pakeha poverty and unemployment. Lands were subdivided into 40 to 60 acre (16 to 24 ha) units around a village nucleus, but no settlement under the scheme was achieved in the manner expected.

## 9.5 NORTHERN PENINSULA

### 9.5.1 Lower peninsula

The Houhora  
sales

Were it intended to protect the land reserved from the massive sales of Muriwhenua South and Wharemaru in 1858, the protection did not last beyond a decade. It will be recalled there were only two reserves for the Houhora Maori, the 100 acre (40 ha) Te Rarawa reserve, and the Houhora block of 7710 acres (3120 ha), as shown in figure 60. Both passed to influential traders in 1866, the circumstances suggesting they had in fact been 'sold' beforehand.

It will also be recalled private purchases were prohibited until 1865, when the Native Land Court was established, and even then they could be effected only after the Native Land Court had awarded a title. Maori generally lacked the cash required for survey and court costs and, more regularly, the award of title by the

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36. Document F10

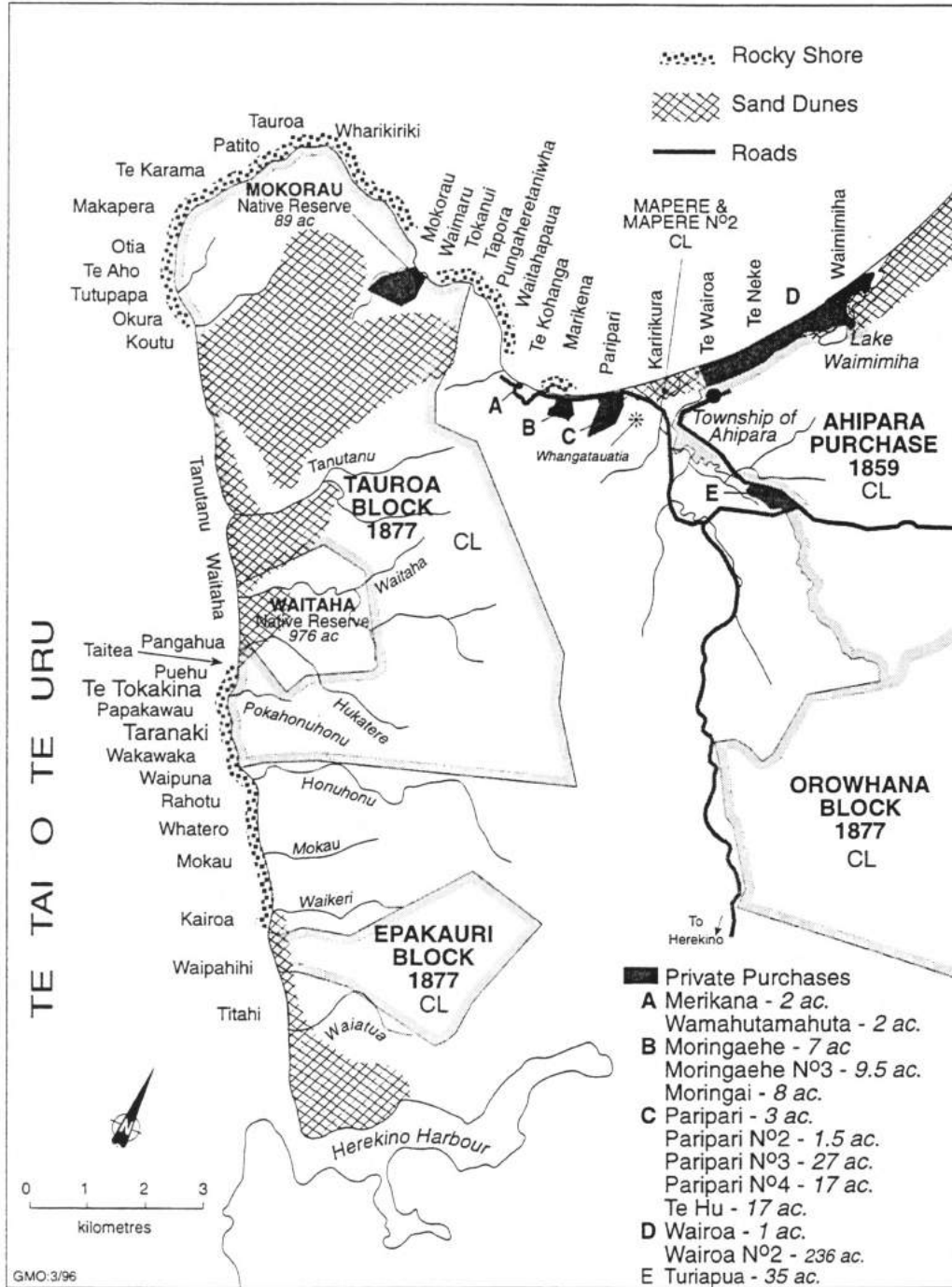


Figure 58: Alienations and lands retained, Ahipara to Herekino

court indicated that a purchaser had provided funding. In this case the titles were investigated in 1865, the first year of the court’s existence, and the conveyances were noted the next year, suggesting both a prior arrangement and some



influence on the traders' part to meet the survey costs and to gain such priority attention.

The matter may have been heard by Resident Magistrate White. We cannot be certain, since the court's records are now missing, but Resident Magistrate White was also a judge of the Native Land Court at this time. In any event, he knew of the circumstances. He wrote later that the Rarawa reserve passed to Captain Butler, who was his neighbour in Oruru, 'in liquidation of certain debts of the tribe'.<sup>37</sup> At the same time Houhora passed for £550 to the gum traders Ludolph and Henry Subritzky. The point at which the Maori village was relocated is not known, but from this moment Maori ceased to have any interests at all in the southern end of the Muriwhenua Peninsula.

Subsequent  
petitions,  
southern  
peninsula

The primary concern in these transactions relates not to Maori motives in selling but to Government responsibilities in buying. What protection was given to Maori to secure them with adequate lands? A petition of 1943, 85 years after the transactions, suggests the Maori focus at that time was not on that issue but on the price paid for Muriwhenua South and Wharemaru. It was alleged:

As to the sale of Muriwhenua block – the price agreed upon by the elders before Judge Knight [should read 'White'] was paid as purchase money. The elders not being any the wiser, thought that the sum of £1000 represented the price of 5/6 per acre, when in reality it was only 4d per acre. One of the elders would not sign the deed. He suspected that the purchase sum of £1000 did not represent the price of 5/6 per acre. His name was Hemi Kapa. Later Judge White paid him the sum of £100 making the total purchase money £1100. We respectfully submit to Parliament to grant an enquiry to ascertain as to whether or not this sale was just and whether the whole of the purchase money was paid. We state that this sale was a fraud and that the whole of the purchase money should be paid up.<sup>38</sup>

Despite the inaccuracies in the petition, to which Crown historian F. Sinclair referred,<sup>39</sup> there is corroboration for the view that the acreage was unknown when the transaction was sealed. As noted in the previous chapter, Kemp thought the area 'cannot be far short of 40,000 acres [16,188 ha]'. On survey, six months later, the area was found to be 86,886 acres (35,163 ha). For the Crown it was contended the actual area was unimportant in fixing the price, for the land was sold on the basis of a lump sum. The more important point, however, is whether the Crown could have assessed the fair price for Maori if the size of the land was not known.

The words of the petition suggest Maori may have settled for a further payment, but one cannot be sure. That may have been the most they could have expected in the political climate of the time. Maori opinions were not recorded, however, for this petition, like many others, was never inquired into. Although

37. BAFO-A760/11, pp 314–315

38. Hone Wi Kapa and Mutu Kapa, 28 July 1943, essential documents, Surplus Lands Commission, NA Wellington, pp 110–111

39. See doc H7, p 52

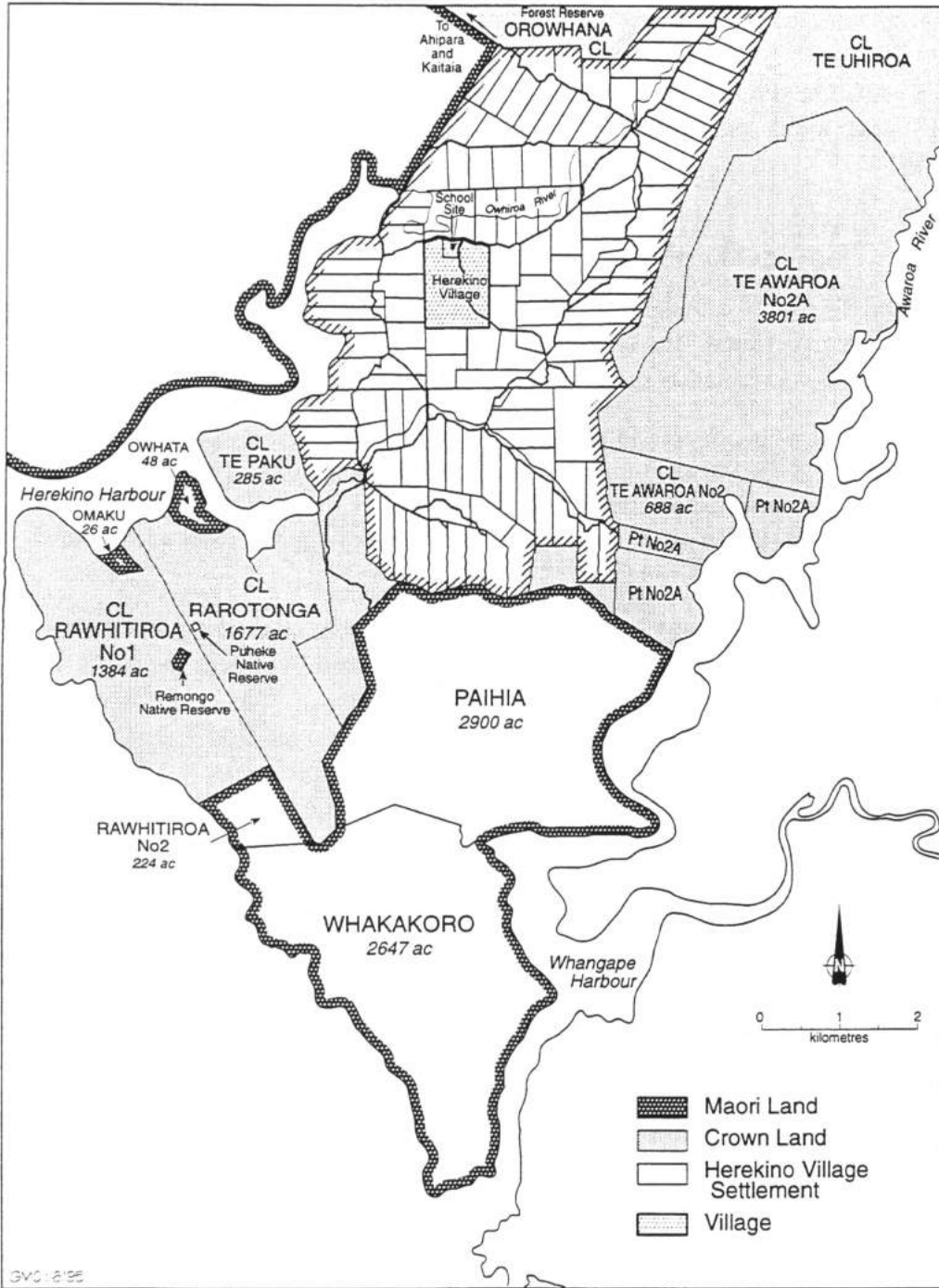


Figure 59: Herekino to Whangape, circa 1900

correspondence continued on the petition until 1947, and although a further petition was filed on the same matter in 1949, the Maori concerns were not investigated.

The further petition of 1949 was more comprehensive, seeking an investigation into the alienation of Muriwhenua South, Kaimaumau, and Houhora, and also the loss of lands to the north, including the Maori settlements of Werahi and Kapowairua. It is to the northern part of the peninsula that we now refer.

### 9.5.2 Upper peninsula

Samuel Yates Samuel Yates and Stannus Jones became established as traders in the Far North in the early 1860s. In 1866 the Reverend Richard Taylor wrote of the Parengarenga population as comprising:

about 100 men women and children, but Brown [Paraone] states there are 300. They are digging Kauri gum, they have sold 880 tons of it obtained from this narrow tract from which they got 30s per cwt. They have been working for the last 10 years and still have not exhausted the supply, they support a trader a Jew named Yates, who is well spoken of, he keeps a store.<sup>40</sup>

Yates was to acquire over 56,000 acres (22,663 ha) of the land where he had set up shop, but at the time the position was confused by rival title claims. First, however, we consider the man himself. He was the son of a London lawyer and was regarded as 'a gentleman of culture', having been educated in the arts at both Liverpool and Paris. In 1853 he chose to settle as a storekeeper at Mangonui. To the delight of Resident Magistrate White, who arrived in 1858, Yates brought 'standing' to the area. Thereafter Yates moved north to Parengarenga and established himself as manager of the only general store in the area and as a gum trader. He also joined the local Maori community, marrying Ngawini, whom he called Annie.

The contenders  
for the land

At this time there were three contenders for the land. The first was the Government, which claimed the land as surplus to Taylor's transaction, though Resident Magistrate White may have raised the surplus claim mainly to defeat the arguments of the second contender, the Reverend Richard Taylor. Taylor claimed, as he had consistently done, that he held the land in trust for the tribes to prevent its alienation. In his view, the Government had no surplus right since the land was not purchased save for a small part which had been cut out for himself. His position was that the land had been entrusted to him for the people. Maori were the third contenders. They saw themselves as still owning the land, neither the Government nor Taylor having taken physical possession of any parts or having otherwise asserted any rights on the ground.

Yates's  
'purchase':  
Taylor's  
'affirmation'

Yates presumed to have purchased 'Parengarenga' (or Pua) from local Maori in 1863. If he had done so, however, it could only have been informally since, again, there was no right of private purchase until 1865, and then only after investigation of the title. In any event, having 'purchased' the land in 1863,

40. Entry for 25 April 1865, Taylor's journal, Tay qms 1833-73, ATL

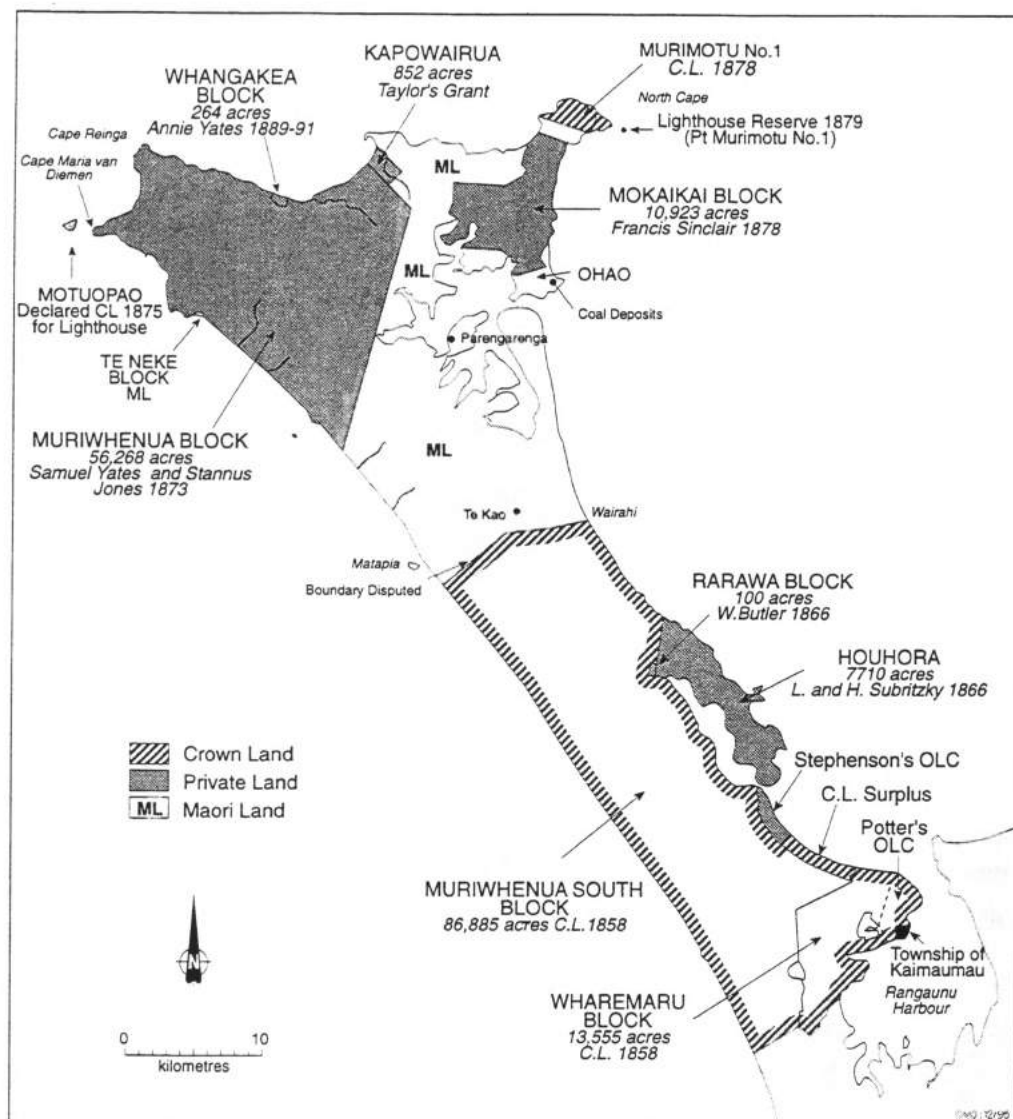


Figure 60: The alienation of the northern peninsula by 1900

Yates built a large home of 11 rooms on it, in that same year, with three further residences for his employees.

Taylor may not have been aware of Yates's 'purchase' but he had some contact with local Maori and had learnt of Yates's presence. On 26 July 1866 Maori signed a further acknowledgement or affirmation that the land was held by Taylor on behalf of the tribe.<sup>41</sup> The Native Land Court did not investigate the title until 1871.

As mentioned in the previous chapter, when the matter was before the Native Land Court Resident Magistrate White abandoned any Government claim to the area. He had previously advised the Government that, by doing so, the land

41. Taylor to F D Fenton, 19 June 1873, GNZ, MSS 297, Taylor collection, folder 18, APL

Block	Title	Area (acres)	Disposal (abbreviated)
Kapowairua	Crown grant 1852	852	Vested in R Taylor. Transferred Taylor family to S Yates 1876, to R Keene 1920, to Crown 1966, now in Te Paki recreation reserve (1984).
Muriwhenua	NLC title 1871	56,628	Vested in seven Maori. Transfer to S Yates 1873, to R Keene 1920, to Crown 1966, now in Te Paki recreation reserve (1984).
Whangakea	NLC title 1871	264	Vested in five Maori. Transfer to A Yates 1889, to R Keene 1920, to Crown 1966, now in Te Paki recreation reserve (1984).
Mokaikai	NLC title 1875	10,923	Vested in 10 Maori. Transfer to F Sinclair, financier to Yates, 1878, to A Yates 1907, to R Keene 1920, to Crown 1973, now Mokaikai scenic reserve (1984).

Table 1: The disposal of Parengarenga lands granted to Maori at 1875

would pass to Samuel Yates, who was an eminently suitable settler. Neither the Government nor the Native Land Court considered Taylor's position, however, and the land was vested in seven Maori. Yates's transfer was not presented until 1873, the year in which Taylor died.

Subsequent Yates  
acquisitions – Te  
Paki Station

Accordingly, Samuel Yates became the largest private land-owner in all Muriwhenua, acquiring initially 56,268 acres (22,772 ha). Soon after, he and members of his family, or his financial adviser, Francis Sinclair of Hawaii, acquired more – Kapowairua of 852 acres (345 ha), Whangakea of 264 acres (107 ha) and Mokaikai of 10,923 acres (4421 ha) – bringing the total to 68,667 acres (27,790 ha). In 1920, the whole was to pass from the Yates family to the Keene family of Wellington. Thereafter, the lands passed to the Government, as Te Paki and Mokaikai Stations, in 1966. The Maori lands awarded and transferred are shown in table 1 and figure 61.

Other lands

Titles were arranged for lands sold, but not always for those retained. Te Neke block was a small area of eight acres on the west coast that was kept out of the Muriwhenua transfer to Yates in 1873. A title for Te Neke, however, was not given until 1967, almost 100 years later. It was then purchased by the Government for \$20 in 1969, but handed back again, in 1993, when it was set aside as a Maori reservation for Ngati Kuri, Te Aupouri and Ngai Takoto. Motuopao was an island off Cape Maria Van Diemen that was also kept out of the sale. As discussed below, it was later assumed by the Government, on the incorrect basis, as advised by Resident Magistrate White, that the island was surplus from Taylor's transaction.

Further land, as shown in figure 61, passed from Maori ownership to the Government. The title for Murimotu was established by the Native Land Court in 1873 for 2491 acres (1008 ha) and was vested in 10 Maori. It comprised 2472 acres (1000 ha) on the mainland and 19 acres as Murimotu island. The

POST-1865 RESULTS

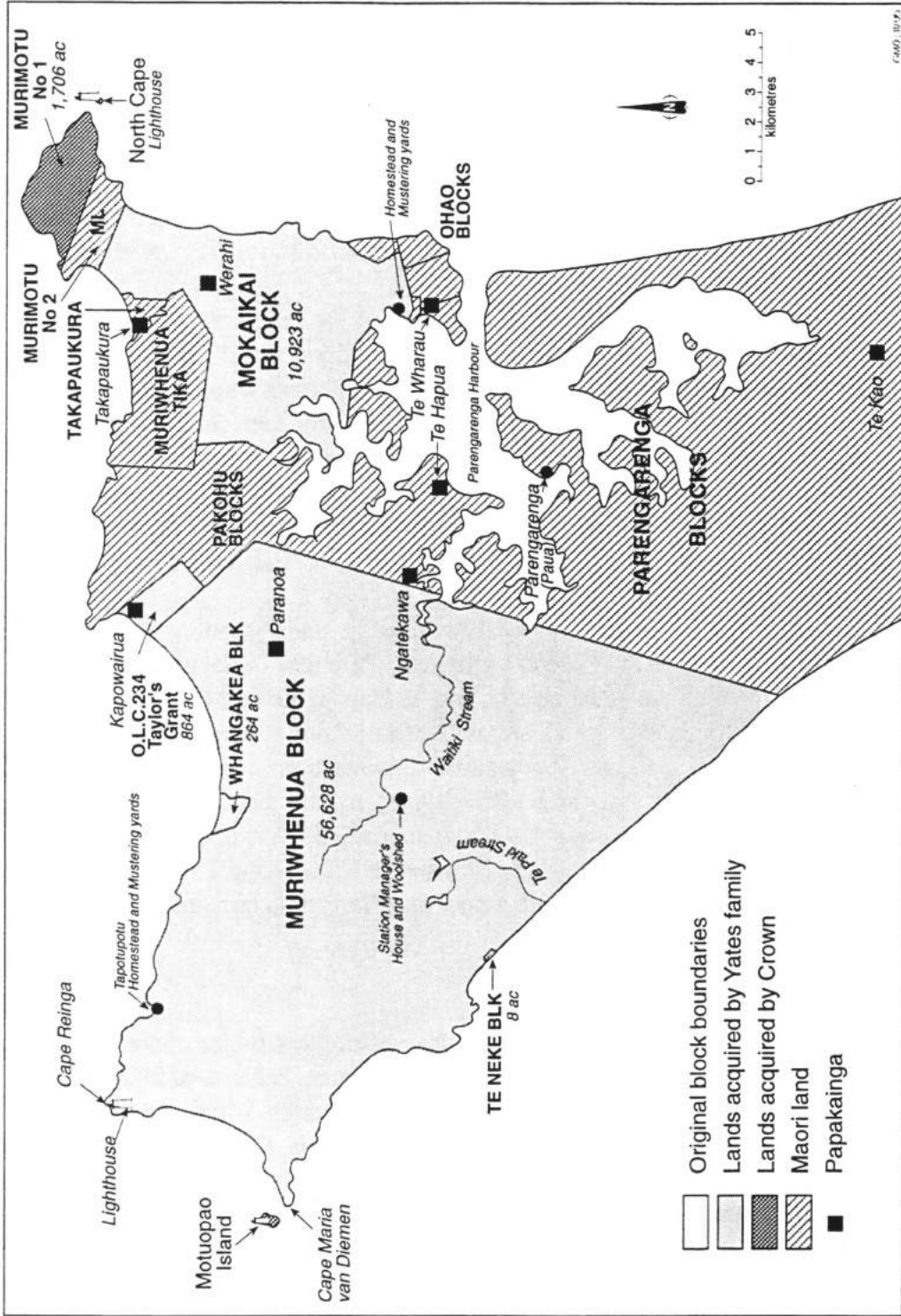


Figure 61: Lands end at 1900

Government purchased the shares of seven of the 10 Maori in 1878 and took as a result 1706 acres (690 ha), being part of the mainland and the whole of the island. It is now the North Cape scientific reserve. The balance, now called Murimotu No 2, remains as Maori land.

The Ohao block was divided by the Native Land Court into four parts in 1901 and 1905. Two blocks comprising together 869 acres (352 ha) were vested in 174 Maori owners, the restriction to 10 owners having ended by then. The 869 acres was acquired by the Keene family in 1924. It passed to the Crown in 1966 and since 1984 has been a scenic reserve.

By the means described, the vast majority of the lands on the northern and western aspects of Parengarenga Harbour – including one of the most sacred of all areas to Muriwhenua Maori, and the Maori people as a whole – passed mainly into private European ownership, and thence to the Government. More particularly, 68,667 acres became vested in one family, while several hundred Maori, living in the area, retained 14,470 acres (5856 ha). The former is now Crown land in recreation or scenic reserve, while the latter is held by the Muriwhenua Maori Incorporation. The current ownership is depicted in figure 62.

Maori emerged from this process with little understanding of what had happened. Of the main Maori villages, Paranoa, Kapowairua, Werahi, Ngatekawa, Te Wharau, Takapaukura, and Te Hapua, the first three were on land that had ceased to be Maori land, although Maori thought they owned some of it. There were people living at Kapowairua, on what was then Government land, into the 1960s. The fourth and fifth villages mentioned, Ngatekawa and Te Wharau, overlapped onto lands that had been sold. Takapaukura survived to the 1960s. It was the home of the former Minister of Maori Affairs who was to move the Treaty of Waitangi Act 1975; but now only Te Hapua remains.

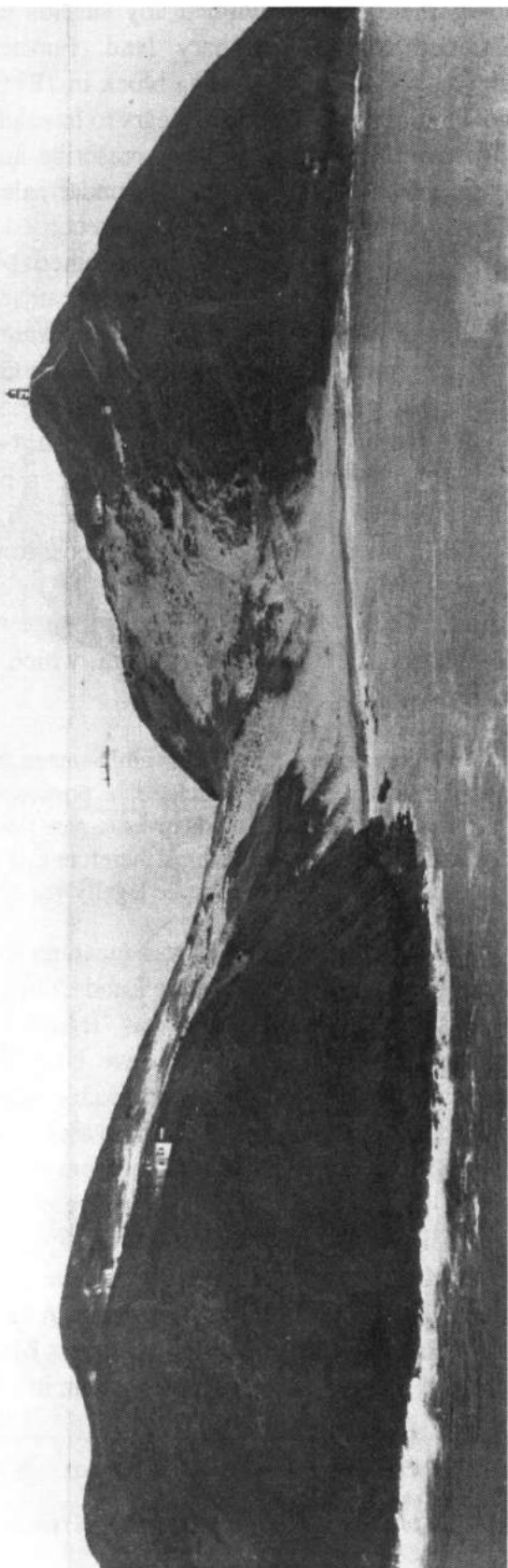
### 9.5.3 Motuopao Island

While Maori complained of the alienations generally, a major concern was the small island of Motuopao off Cape Maria van Diemen, because of its importance in Maori life. Motuopao stands in view of Te Rerenga Wairua, the departing place of Maori spirits, and on part of Motuopao is the burial-place of the paramount chiefs of the Far North. It was the subject of Maori petitions from 1879 to 1915, and is still the subject of complaints.

In 1873 Resident Magistrate White was instructed to obtain certain islands for lighthouses, including those off the North Cape and Cape Maria van Diemen. As earlier noted, White succeeded in acquiring not only the 19 acre (8 ha) Murimotu island for that purpose, but 1687 acres (683 ha) on the mainland at the same time. However, Motuopao was not given over.

Motuopao had been included in Taylor's transactions, but Taylor had taken his entitlement under the Land Claims Ordinance at Kapowairua. Then the

POST-1865 RESULTS



Motuopao Island, 1932. From the *Evening Post* collection, photograph courtesy of the Alexander Turnbull Library (c22618).



Government had abandoned any surplus claim, in 1871, and the island thus remained Maori customary land. Further, when the Native Land Court investigated the Muriwhenua block in 1871, two areas were kept out, Te Neke and Motuopao. The court appears to have understood that the delineation of the Muriwhenua block was not to prescribe an area of Maori land so much as to define the land that was to pass under sale to Samuel Yates. We mention this because there has been an opinion, recorded in *The Cyclopaedia of New Zealand* in 1902,<sup>42</sup> that Samuel Yates presented Motuopao to the Government. This opinion, which has been repeated in subsequent histories, has no foundation. Motuopao was not included in the land Yates acquired.

Accordingly, the method by which the Government acquired Motuopao was simply that, on 4 March 1875, the Government published a *Gazette* notice stating that the native title to Motuopao had been extinguished<sup>43</sup>. How, was not explained. The following day an order in council declared Motuopao reserved for a public utility.

Once more we are faced with the position that the Government has never had to prove its right to Maori land. It is enough to declare the native title extinguished. It seems likely that reliance was simply placed on a report from Resident Magistrate White of 1874, which stated, with inaccuracy and lack of clarity:

With regard to Cape Maria van Diemann there can be no doubt that it was part of Rev'd Mr Taylor's purchase, a portion of which, with the consent of the Government I assisted the Natives to pass through the Native Land Court for their special benefit – I do not think therefore that the Natives should be called upon to convey property which must be legally vested in the Government.<sup>44</sup>

If the resident magistrate was meaning to say that the title to Motuopao had been investigated by the Native Land Court, then he was incorrect. In any event, the basis on which the land was 'legally vested in the Government' was not explained. White could only have been assuming that the land was Crown surplus. If so, there was a remarkable situation. The resident magistrate had abandoned the surplus land claim to assist Yates to acquire the land, then revived it to claim the balance for the Government.

It is likely Maori had no knowledge of the Government's claim to Motuopao until a lighthouse was built there in 1876. This prompted an early reaction. By 1877 Maori had an application to the Native Land Court to have the title investigated. The claim was dismissed. A Government declaration that the native title to land had been extinguished was binding on the court. There were then letters of complaint to the Government, in 1877 and 1878, followed by a petition

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42. *The Cyclopaedia of New Zealand*, 1902, p 607

43. *New Zealand Gazette*, 1875, p 181

44. White to Civil Commissioner, 21 October 1874, res 2/5/2, Department of Conservation Head Office, Wellington (doc FI, p 119)

POST-1865 RESULTS

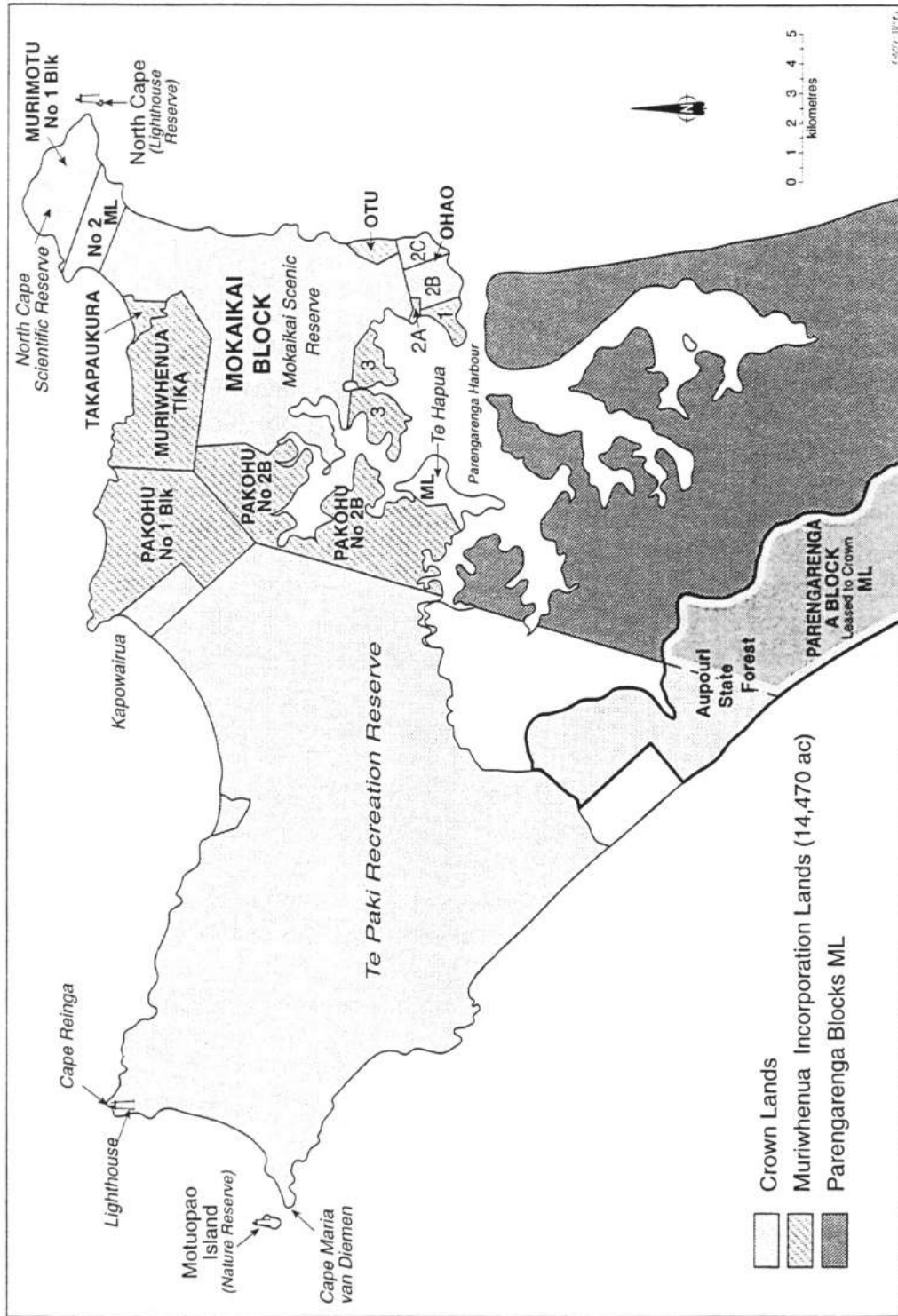


Figure 62: Land tenure northern Aupouri Peninsula, circa 1985

in 1879. This provoked no more than a simple assertion that Maori interests had been transferred, by when, how, or what instrument being unstated. A further petition followed in 1881. On that occasion the response was simply that the land was Government surplus. Yet another petition followed in 1882, but it met the same response. Assertions of the Government's right, without any adequate inquiry or explanation, were also made in response to letters of 1883 and 1886.

Motuopao was a most significant island, however, and, for the protection of their ancestors, Maori could not let this matter lie. A further petition followed in 1894. It was bundled up with complaints about surplus lands throughout Northland and referred to an inquiry in 1907, but in the report that followed, Motuopao was not specifically addressed. In the result, the correspondence carried on as before and there was yet a further petition in 1915.

At that point Tau Henare, the member of Parliament for Northern Maori, examined the file. He expressed his dismay at the inadequate responses that had been given on several earlier occasions, contended that the matter had never been properly examined and argued the land was still Maori customary land. With that opinion, we agree. As a result of his intervention, the Government made an ex gratia payment of £150 in 1919. However, it would not return the land. The Department of Lands and Survey, moreover, was most opposed to even an ex gratia payment, fearing that the action could be taken as an admission that would lead to a host of similar claims being brought. It was further considered 'a most ill advised step' that the member for Northern Maori had been allowed to peruse official papers.<sup>45</sup>

It is obvious that at no point prior to Tau Henare's intervention was an adequate inquiry made. The facts seem abundantly plain. It is only on the basis of the surplus land construction that the Government could have pursued a claim to this land. The strength of a surplus land claim was tenuous at best, and was even more flimsy in this case, where the Reverend Richard Taylor, of his own admission, had not purchased the land at all but had taken it on trust. In any event, the Government had abandoned a surplus land claim in 1871. Its right to Motuopao was simply that of an unfounded assertion in a *Gazette* notice. Moreover, at no point had the Government considered the significance of the urupa on the land, though it was certainly informed of it. The point was entirely discounted. And, finally, the Government directed that, of the £150 compensation, £100 was to be paid to the 'Trustees of the Nga Puhi Patriotic Fund'. The Government was apparently unaware that Nga Puhi were another people.

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45. Hawthorne to Under-Secretary, Department of Lands and Survey, 13 December 1917, res 2/5/2. Department of Conservation Head Office, Wellington (doc F1, p 119), pp 42-43

## 9.6 CONCLUSIONS ON THE GOVERNMENT PURCHASE PROGRAMME

To summarise opinions on the Government purchase programme:

- Most lacking was a settlement plan to ensure equal benefits to both races.
- In the absence of such a plan, the contractual arrangements are contestable for lack of common purpose and design.
- No adequate protective arrangements were made. The absence of a necessary sense of duty to protect Maori interests stands in contrast to some extraordinary measures to buy, as the exhumation of Panakareao and Ereonora shows.
- There was no adequate inquiry into the Maori reserves needed. Had the Government compared the number of Europeans and their land holdings with the number of Maori, the land they had retained, the hapu divisions and comparable land qualities, then it should have been obvious that the whole of Victoria Valley, for example, should have been reserved.
- Title problems were not resolved. The Native Land Acts were to advantage the Government and Europeans, to facilitate the acquisition of Maori land, and were not for Maori benefit. They did away with hapu titles. They limited the number of owners to 10, disinheriting the remainder.
- Maori allegations of intimidation and of Government control of the Native Land Court, in the Taemaro area, indicate further extraordinary measures. The allegations of intimidation need not be proven. The established facts are enough to show the systemic inadequacies for the protection of Maori interests. While the Government's land claims were highly contestable, the Government was not accountable to anyone for its putative acquisitions. It was not obliged to prove them, there was no independent audit of its operations, there was no forum for Maori to challenge the Government's assertions, and the Government failed to make an adequate inquiry of the facts in response to Maori complaints. Indeed, the Government's frustration of Maori petitions to obtain a full investigation of their many contentions is a consistent feature of its response over many decades.
- Maori were prejudiced in various ways by the lack of such a basic protective measure as requiring the Government to prove its acquisitions and document its land claims. The onus would then have been on the Government to state, at the outset, the basis for its claims to the lands east of Mangonui, and to produce the necessary documents for examination and challenge. The Government's right to the 'missing conveyance' land, and whether to the whole or part only, should also have required the discharge of a higher evidential burden. The basis of the Government's claim to Motuopao would have been known and apparent from the outset. Many other areas of uncertainty would have been removed, and Maori would have been entitled to assume that they still owned that which was not clearly recorded as having passed to the Government or private ownership. Forced removals, unlawful occupations and arrests were the result, as Maori,

lacking information and having tried official channels, sought to have the position fully inquired into and clarified.

- With regard to the surplus lands, the Government not only allowed the position to remain uncertain in the far northern Muriwhenua Peninsula, but also capitalised on that uncertainty, for the benefit of an individual private purchaser, by claiming a massive area as surplus until such time as Maori sold the land.
- The final irony concerns the old Maori policy that European settlement would bring long-term benefits to the various hapu. It was a policy endemic to the Polynesian social system, and had been fostered as well by missionaries, by officials during the Treaty debate, and by a succession of governors. It was finally promoted in the 1870s to relieve Maori of their south-western lands. It must have been obvious, not only that there were no policies in place, or proposed, to ensure that Maori indeed benefited from the sale and settlement of their lands, but that the whole premise on which the Treaty of Waitangi was proposed, in Lord Normanby's instructions of 1839, was that Maori would retain a sufficiency of land in order that they might so benefit.

When the Tribunal's inquiry opened, some claimants protested that they should not have to prove how they lost their land when the Government record was not known to them. They only knew for sure that all the land had once been theirs. They thought it was for the Government to show:

- the basis for the Government's right to the land; and
- how Maori could have ended up with so little, when the Treaty of Waitangi had promised a beneficial and protective regime.

The foregoing chapters have been directed to the question of how the vast majority of the lands passed from them; and nearly all of that within the first 35 years after the Treaty.

## CHAPTER 10

# SOCIAL CONSEQUENCES

*... It is possible, however, that there may be some tribes that have sold recklessly, and are in danger of becoming paupers. The ramifications of family and hapu make it a very difficult thing to arrive at the precise extent of land held by any one tribe, but a careful collation of the schedules with the map, aided by what information is available as to the numbers of the respective tribes, indicate the Rarawa of Mongonui, the Ngatiwhatua of Auckland, and the Patukirikiri of Coromandel, as those that have the least extent of land left in proportion to what they have sold. ... I would recommend that none of the cultivations of the Rarawa ... should be allowed to be sold. ...*

Report on the native reserves in the province of Auckland,  
Commissioner of Native Reserves, 1871

### 10.1 CHAPTER OUTLINE

This chapter considers the reserves and the little land remaining after the Government purchase programmes. It reviews the legacy of petitions, disputes, and uncertain land rights, and the social and economic consequences.

### 10.2 RESERVES AND LANDS REMAINING

There could be no hope that Maori would share in a new agrarian economy if there were no plans that Maori should retain an essential land-base. Few things would have provided as much for equity and future Maori participation in the economy as a fair share of the land. Crown counsel's position that the Government was not expected to secure Maori reserves seemed to us to take credulity too far; and we do not regard seriously the contention that the Government's professed inability to assess Maori reserve needs could excuse the patent lack of them. That a reserves policy was seen to be required is obvious from the early history. The Church Missionary Society in London had faithfully conveyed to Parliament the missionaries' opinions on how reserves were needed, and to that end the missionaries themselves had taken land on protective trusts. Native reserves were advocated by the Aborigines Protection Society and were proposed by the 1836 House of Commons Select Committee. To establish its humanitarian credentials before a government so inclined, the New Zealand Company, in 1839, proposed to reserve one-tenth of all land acquired. Lord

Origins of  
reserves policy

Normanby's instructions to Captain Hobson RN of 14 August that year expressed the general sentiment that Maori must retain those lands needed for their own use. It is a little late in the day to suggest that the Government was not obliged to ensure that Maori kept sufficient land.

Subsequent  
reserves  
opposition

At the frontier, however, the implementation of a fair reserves policy was prejudiced by a growing antipathy to Maori interests. This is shown in a range of opinions: that land had no value in native hands, that only their cultivations should be reserved, that the other lands were not used, that Maori were a dying race so they did not need land, that Maori should be relieved of the burden of their lands so they might learn to labour for a living. Each argument had only such merit as convenience might give, save perhaps for the view that the Maori race was dying. That could only have meant a possible excess of land in the future, however, for at the time Maori were the clear majority, and in Muriwhenua they were more than double the number of Europeans. The Government, as a fiduciary, could not afford to assume that the race would pass from the scene. It had at least to wait for that to happen.

Reserves policy,  
1850s

The Government maintained a reserves policy in name, if not in practice, but sufficient to satisfy the Imperial Government that a reserves policy existed. When the Native Minister launched his purchase campaign in 1854, he reported to the Colonial Secretary on the purpose and administration of the then reserves. Reserves, he said, consisted of:

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 colonization . . .

He added:

in general there has been a distinct understanding that Maori should not at any time be called upon to alienate any lands so reserved, it being considered essential for their own maintenance and welfare to retain them.<sup>1</sup>

It was proposed that mixed local boards, consisting of resident magistrates, missionaries, and chiefs, should administer the reserves 'for the social, industrial, religious and educational advancement of the Natives'. The boards, it was thought, should have no power of alienation without the Governor's express permission, because they 'should be permanently retained'.

Reserves policy,  
1860s

In May 1861, in a circular to all district land purchase commissioners, the Native Minister again reiterated the long-standing reserves policy. Before final payment was made for lands purchased from Maori, he directed, reserves were to be clearly defined, and they were to be properly surveyed before purchase agents submitted the block plans to the Commissioner of Crown Lands.<sup>2</sup>

1. McLean to Colonial Secretary, 29 July 1854, no 41, Turton, *Epitome*, p 021

2. McLean to district land purchase commissioners, 3 May 1861, AJHR, 1861, c-8, p 1

SOCIAL CONSEQUENCES

Date	Transaction	Name	Acres	Comments
11 September 1839	Ford Okiore deed	Matarau	132	NLC award to Hateraka Taumataita and nine others, 27 June 1868. Grant made 'inalienable' for 21 years. Some five acres remain.
14 November 1839	Matthews Parapara deed	Okokori	340	NLC award to six Maori as trustees, 5 October 1897. Some 50 acres remain.
17 December 1839	Soutfee Awanui deed	Waimanoni	185	NLC award to Hohepa Poutama and nine others, 15 March 1867. Some 60 acres remain.
19 December 1839	Puckey Pukepoto deed	Pukepoto	246	Adjudicated upon by a Papatupu committee, 14 October 1904. Still Maori Land.
3 May 1850	Government Waikiekie transaction	For Nopera Panakareao	0.16	Never awarded. Disposal uncertain.
2 August 1852	Government Maungataniwha West no 1 transaction	Ahitahi	584	NLC award to Tipene Taha and Maihi Te Huhu without restrictions, 30 November 1866. Purchased for £40, 13 December 1867.
		Peria	1130	NLC award to Pene Te Piri and eight others without restrictions, 19 December 1865. 566 acres sold.
		Haumapu	485	NLC award 20 February 1885. Purchased 21 December 1885.
		Otahaora	241	NLC award to Tipene Te Taha and two others without restrictions, 19 October 1869. Purchased for £83, 11 October 1872.
		Te Awapuku	204	NLC award of 95 acres to Tipene Te Hara and four others without restrictions, 3 January 1873. Purchased for £29, 25 May 1875. Award for 109 acres. Purchased.

Table J: Lands reserved from private or Government purchases to 1865, though only one was formally gazetted under the Native Reserves Act 1856



MURIWHENUA LAND REPORT

Date	Transaction	Name	Acres	Comments
1854 and 1856	Government Oruru transaction	Pakautararua	202	NLC award for Pakautararua no 1 (180 acres) to Tehu Ngawaka and others, Pakautararua no 2 (22 acres) to Nopera Puru and others, 9 May 1870. Sold between 1875 and 1877.
		Ikaitiritiri	19.5	NLC award 5 May 1882. Sold 1883.
		Waijpuna	36	NLC award 19 February 1882. Purchased 1886.
		Te Kuihi	34	NLC award 16 September 1871. Purchased 1885.
22 December 1856	Government Whakapaku transaction	Motukahakaha	494	NLC award to Hare Te Heihei and another with alienation restriction of 21 years, 24 October 1873. Purchased 19 December 1901.
3 February 1858	Government Otengi transaction	Waimutu	79	Never awarded. Purchased 21 October 1864.
3 February 1858	Government Muriwhenua South transaction	Te Rarawa	100	NLC award to Paraone, 18 April 1865. Sold for £100 17 October 1866.
29 August 1859	Government Upper Kohumaru transaction	Parangiora	180	NLC award to Huirama Tukariki and five others, 3 May 1875. Around 41 acres remain.
13 December 1859	Government Ahipara transaction	Whangatautia	27	NLC award, 15 April 1880. Sold 1881.
		Pakaka or Turiapua	35	NLC award, 6 March 1913. Half an acre remains (urupa).
15 March 1861	Government Hikurangi transaction	Hikurangi	500	NLC award to Pene Te Katoa and six others, 3 May 1869. Most sold 4 August 1869. An urupa of five acres remains.

SOCIAL CONSEQUENCES

Date	Transaction	Name	Acres	Comments
2 August 1862	Government Mangatete transaction	Hauturu	144	NLC award marked 'inalienable', 15 May 1867. Under one acre remains as Maori land.
		Otarapoko	206	NLC award to Reihana Kiriwi and four others, 10 August 1866. Sold 14 October 1918.
		Whiwhero	Some 200	NLC award to Karaka Te Kawanu and nine others, 10 August 1866. Sold 12 November 1947.
		Rangirangina	176	NLC award, 19 December 1865. Sold for £92, 17 June 1869.
14 January 1863	Government Maungataniwha West no 2 transaction	Takeke	79	NLC awarded grant to Tohuora Parahiku and nine others, 30 December 1865. Sold for £70 21 November 1877.
		Mangataiore	381	NLC award to Hemi Te Pau and others, 15 March 1867. 190 acres remain.
19 May 1863	Government Mangonui transaction	Waiaua	147	NLC award, 20 February 1885. 135 acres remain.
		Taemaro	99	Set apart as Maori land under Taimaro and Waimahana Grants Act 1874.
		Waimahana	649	
8 October 1863	Government Pupuke transaction	Mangahouton	293	NLC award to Poroua Wharekauri and two others, 14 December 1866.
30 May 1865	Government Toatoa transaction	Te Ahua	624	NLC award to Wiremu Pikahu and seven others, 27 August 1868. Some 468 acres remain.
30 May 1865	Government Kaiaka transaction	Taheke	484	NLC award to Hoani Te Kura and four others, 28 November 1866. About 60 acres remain.
		Te Hororoa	41	NLC award to Wiremu Pikahu and another, 21 July 1868.

Table J: Lands reserved from private or Government purchases to 1865, though only one was formally gazetted under the Native Reserves Act 1856

Inadequacy of  
reserves

In Muriwhenua, however, proper reserves were not maintained. Those at 1865, after the pre-Treaty transactions and the first round of Government purchases, are set out in table J. There were but 34. Only one, at 1130 acres (458 ha), exceeded 1000 acres (405 ha), and only two others were more than 500 acres (202 ha). The economic value of many was negligible. Those at Parapara, Te Ahua, Otarapoko, Patiki, and Hikurangi were either rugged bush, or remote from the fledgling towns or from the river or coastal access routes. The Okokori, Te Kuihi, Taemaro, Waimahana, and Motukahakaha reserves would confine the people to subsistence cultivation and fishing. Though Maori were more than double the number of Europeans at this time, these reserves represented only 2.7 percent of the land processed for Europeans – far less than even the New Zealand Company had proposed.

The *Ngai Tahu Report 1991* considered three elements should have been weighed to assess the adequacy of reserves:

- (a) the kainga and cultivation areas required for subsistence;
- (b) the lands needed for agricultural and resource development in Western terms; and
- (c) the endowments necessary to fund the hapu's general schemes.

We agree. Further, the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* emphasised that development was a human right; and the Maori developmental right had especially to be protected considering that Maori had traded settlement and Government rights in order to secure it. Reserves, in other words, could not have been pitched at a subsistence level alone.

We consider none of the reserves in Muriwhenua was adequate to provide reasonable livelihoods in agriculture for the members of a small hapu. The minimum standard of the time was 100 acres (40.5 ha) for one European family, and more, as in this case, where marginal country was involved. The maximum, as we have seen, was 2560 acres (1037 ha), for one European, or more if the Governor allowed, and after 1865 there was no limit, with the Government allowing one European to acquire 7000 acres at Houhora and another 56,000 acres at Parengarenga.

The Government must be taken to have known of the problem. The resident magistrate should have been aware. In 1871 the Commissioner of Native Reserves reported, from Auckland, that some Maori were 'in danger of becoming paupers' and that 'the Rarawa of Mangonui' was one of three groups where Maori had the least extent of land left in proportion to that sold. Under the blanket labelling then common, the reference was probably to the Maori from Mangonui to Kaitaia and Ahipara, the report assessing that these numbered 1275 persons holding 24,296 acres (9833 ha), or 19 acres (8 ha) per head.<sup>3</sup> Most of this was stock country, at best.

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3. Report from the Commissioner of Native Reserves, AJHR, 1871, vol 2, F-4

Why were the reserves so few and meagre? Leaving aside any personal motives of particular Government officers, the problem, we consider, was a lack of sufficient standards, giving free reign to any land greed or antipathy to Maori that might have existed. The Native Minister wrote only in general terms, assuming, for example, that reserves should be 'sufficiently extensive to provide for their present and future wants'. No greater guidelines were given; and in writing to Kemp, only 12 months later, the Native Minister stated:

Inadequacy of  
policy and plans

It may be found advisable to issue a few Crown grants, of from one to 100 acres each, to four or five of the principal chiefs out of the lands they may surrender to the Crown.<sup>4</sup>

Nor did the so-called 'reserves' have the benefit of the reserves legislation. The efficacy of the Native Reserves Act 1856 was dubious, but it did at least put a check on alienations. Only one of the reserves was ever formally gazetted under that Act, however. In effect, 'reserve' was no more than a synonym for 'on hold'. Table 1 shows how reserves were made one day, only to be purchased the next. None was reserved for hapu.

To complete an adequate reserves plan, some particulars were needed on the numbers of Maori, and the quantity, quality, location, and tenure of the land required for their future wellbeing. The Crown contended that as much as could have been done at that time was done, but that is not supported by the facts. No one could refer to any assessment, for the purpose of reserves, of hapu strengths, of the spread of the kainga, of the optimum location and quantity of lands that Maori would need in order to participate in local development, or of the administrative structures necessary for tribal management and individual operations. There is a significant lack of reports on the Maori circumstances, and of evidence of any planning for the protection of their interests. There was not even an estimate of Maori numbers. Their cultivations, as necessary for their subsistence, were sometimes mentioned, but their traditional access to other areas for hunting, which was part of their traditional subsistence, was rarely considered, and no mention was made of their developmental rights or capacity.

Policy and  
planning  
generally

In brief, there was no inquiry as to what might be 'ample reserves'; and, if consideration was given to 'future wants' at all, then no comments were made as to why Maori should want less, in future, than Europeans, or on the equity of one European holding thousands of acres and numerous Maori on reserves of under 100 acres. No thought was given to agricultural training or development assistance. This was not an inconceivable proposition, since the missionaries had been providing just that. It was not the wit that was lacking, but the will.

Instead, the historical record points to one consistent theme: a desire to acquire as much Maori land as could be, to limit Maori lands as far as possible, and to remove Maori entirely from the town areas and the nearby fertile flats and

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4. P Wyatt, 'Crown Purchases in Muriwhenua, 1850-1865', April 1993 (doc 119), p 48

valleys. The greater evidence is not of inquiries into the amount of land Maori might need, but of how they might be talked out of the reserves they were seeking.

The Crown claimed that the Government could not have predicted Maori needs or foreseen the future, but meeting needs and planning ahead is what governments do, and the land-buying programme was evidence enough that the Government was planning ahead, at least for Europeans. Some consequences for Maori were perfectly foreseeable, but the choice was not to foresee them.

The Crown claimed also that matters must be seen in the context and standards of the time; but that proposition cannot be taken too far. The standards had been set beforehand, in the Treaty of Waitangi debate, and subsequent departures from them were not necessarily agreed or may have been for self-serving purposes. It was said, further, that Maori were wanting to sell and had the individual right to do so; but the lands were not individually held, so there was no such right. In any event, no individual propensity could relieve the Government from its duty to protect.

Remaining lands

The main Crown argument was that, at 1865, sufficient other land remained. That argument relied partly upon research advice that Maori had kept the best land and only the inferior land was sold. That advice, we consider, was wrong. By 1865 the hapu of Muriwhenua were in a precarious position. They had no significant land holdings throughout the central band from Mangonui through Taipa, Awanui, Kaitaia, and Pukepoto to Ahipara. They were excluded from the fertile valleys and flats of that area, and from the associated river and harbour cartage routes and the rudimentary towns. The only significant aggregation of fertile land that Maori retained was a little further back from Kaitara in Victoria Valley. The other lands south of Ahipara, or at Parengarenga, were not in the same category.

The position at 1865, then, is that Maori were effectively excluded from land ownership in the main area of activity, save only for Victoria Valley, and that meant that some hapu were now without land except by loading themselves onto their relatives in the outer areas. We cannot see how it was appropriate that the greater and best part of the central band could have passed to Europeans without considering, at the same time, the requirements of the Maori of those places, and the importance of preserving a share for them in the more productive and accessible parts.

At 1865, moreover, Maori held only precariously to the outer lands. If the Government had intended to keep them for Maori, the Crown's claim that Maori were well provided for may have been more tenable, but no such intention was manifest. Attempts to buy the remaining lands were still carrying on. By the 1870s most of Victoria Valley had been acquired. The Government purchase machine rolled on without constraint, and the omission to provide adequate reserves was simply continued. It was precisely because no reserves policy had been insisted upon before 1865 that there was no history for reserving land in the

major sales that followed after that date. The mind-set, at 1865, was no different from when the buying programme began, and it was the same when the programme ended.

By the turn of the century, the hapu of Muriwhenua were in a parlous condition. They were in every sense living on the fringes, a marginalised and impoverished people on uneconomic perimeter lands. They were struggling to survive, both individually and as a people, and the effect was to disperse the people and destabilise the polity of the hapu. The Maori land remaining at 1900 is illustrated in figure 63.

Consequences

By then Maori were about half the population with less than a quarter of the land, and that which was held was mainly remote and marginal, incapable of supporting more than a few on pastoral farms. Meanwhile, a few Europeans held to several thousand acres each. While many more Europeans had latterly come into the district, these were not farmers but gumdiggers.

### 10.3 PETITIONS

Subsequent Maori reflection on the inequity of the result found expression in an outrage of complaints, especially after 1890, when the European population increased through gumdigging and the reality gradually become apparent on the ground.<sup>5</sup> Not unnaturally, those complaints focused on that which was explicable to Europeans in their legal and property scheme, for the world was now a European world where matters would be judged on their terms. The complaints were honed to particular aspects of property rights comprehensible in the European system.

Maori petitions honed to European criteria; focus on the particular

While petitions, being the last recourse, may represent only a fraction of the complaints, they and letters to the Minister of Native Affairs provide the best record of past Maori opinion and its persistence over generations. In the course of our inquiries, petitions were continually being found. Those now discovered have been summarised, with a brief description of the result, in table K. They ranged across aspects of the Taemaro purchases, the pre-Treaty transactions and the surplus lands issue. The alienation of Oruru Valley was naturally the subject of a particular claim, as were the matters relating to Raramata, Tangonge, Mangatete, Opouturi, Kapowairua, and Motuopao.

Many of these petitions were brushed aside for errors of fact. It ought to have been obvious, however, that Maori lacked the necessary information, that the record was a mystery even to the informed, that all official documents were held by the Government, and that Maori were being compelled to make a case from

Access to the official record

5. An examination of the extent and nature of Maori protests and complaints on the validity and fairness of the early Government purchases is more particularly provided by Claudia Geiringer in 'Muriwhenua Land Claim: Subsequent Maori Protest Arising from the Crown Land Purchases in Muriwhenua, 1850-1865', 20 April 1993 (doc H7).

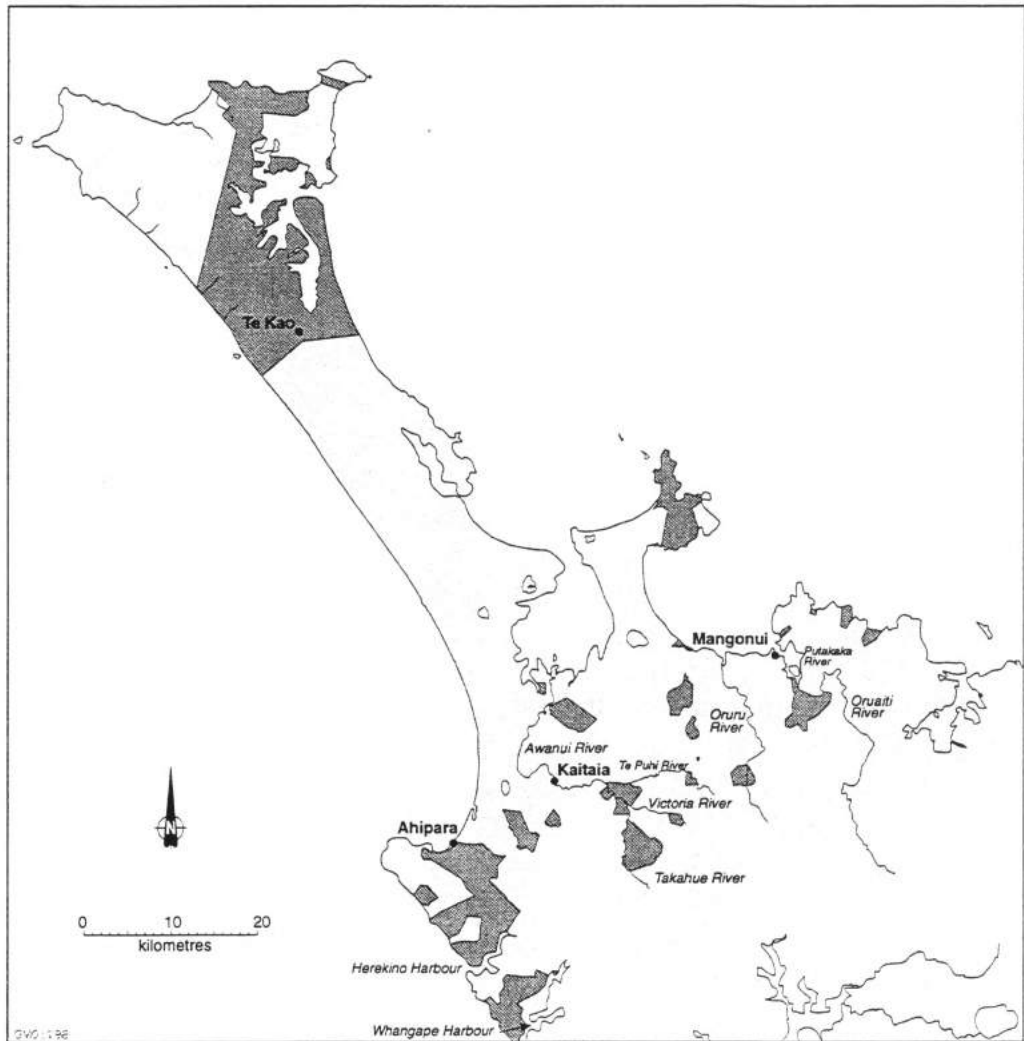


Figure 63: Muriwhenua Maori land, circa 1900

what they might guess at. The problem, in our view, stemmed not from Maori error or incomprehension but from the lack of transparency in past Government action or the fact that the business was all done entirely on European terms. On the other hand, the Maori circumstance ought to have been apparent to officials. Maori complaints regularly followed a development on the ground which established that the land was no longer Maori land, and this should have indicated to the Government that Maori were not previously aware of the position.

In effect the onus was thrust on Maori to make a case, when in our view the burden was really on the Government to establish its right. The only certainty was that all the land had once been Maori land. If the Government or anyone else claimed any part, then there was a responsibility on the Government, in our view, to demonstrate its entitlement, to enrol in some permanent public record the

The shift of the  
onus of proof

method by which the land had ceased to be Maori land, and, if ever required so to do, to establish from clear records that the alienation was in all respects fair. The onus of responsibility has still to be put right.

The significance, then, is not in the Maori error or confusion but in the inadequacy of the Government's response. Rarely were the facts properly inquired into and explained. Assumptions were made. Files were not fully examined or read. A previous clerical opinion on file might be simply copied and repeated, again and again, until it became viewed as unassailable truth; or it was seen as sufficient to poke holes in the Maori claim to avoid a full investigation. Moreover, the Government itself was confused. Land would be claimed as surplus one day, and as having been purchased the next, especially in Muriwhenua East, where the Government argument kept changing. It was regularly asserted the old land claims had all been fully and perfectly investigated by two commissions in 1843 and 1856, when that was not the case. Honesty of purpose required a full and impartial examination of the relevant circumstances, but that was not given.

The inadequate  
inquiries

Only on two comparatively small petitions was a Maori right admitted. A claim to Motuopao island was accepted, but due only to the unexpected intervention of the Northern Maori member of parliament. Even then, however, the island was not returned but compensation was paid; and then compensation did not pass to Ngati Kuri and Aupouri, but to the people of another tribe far to the south.

Motuopao;  
Puheke

A Maori claim was also admitted to the Otamawahakaruru burial ground on Puheke, but then the Government simply vested the urupa in the Public Trustee, in 1885. It was not passed on to Maori, and the fact that the title was still sitting with the Public Trustee was not discovered until 1993, during the course of our inquiry, over 100 years later.

Some particular claims were confused with the issue of surplus lands. Despite a number of surplus land petitions from throughout Northland, which was the district most affected by this issue, the Government had avoided a full-scale inquiry. The Houston commission of 1907 had looked at an isolated incident only, where the question was not precisely directed to surplus land but to whether the Reverend Joseph Matthews had promised Maori the Tangonge land. The commission found that Matthews had made such a promise. Thereafter, however, the Government referred the matter to another inquisitorial body, this time the Maori Land Court, in 1925. In the Maori Land Court, Judge McCormick found that Matthews probably had made such a promise, but as a matter of law, in the court's view, the Maori claim could not prevail against the Government's title.

Tangonge

A moral right was enough for Maori to pursue the Tangonge matter with the Government, however, and so it passed to a further commission of inquiry in 1927. There, Justice Sim found that Matthews' promise had not been proven, but the matter was caught up with a huge number of other petitions throughout the



MURIWHENUA LAND REPORT

Number	Reference	Petitioner(s)	Petition	Government
58/1878	AJHR, 1878, 1-3, p 3	Te Huirama Tukariri	That half Crown purchases be returned as not paid for in money, 'but by pots and pans and fishhooks'.	NAC -- no recommendation.
2407/1879	Re 2/5/2	Nopera Mumu and 18 others	That lighthouse erected on Motuopao Island without authority.	NAC -- no report made.
99/1881	AJHR, 1881, 1-2, p 22	Rawiri Hongi and 36 others	That lighthouse erected on Motuopao Island without consent. Seek £100 per annum rent or £1500 purchase money.	NAC reported Taylor had purchased land, had received a Crown grant 22 October 1844, and it was now Crown property. NAC declined to recognise claim.
282/1882	AJHR, 1882, 1-2, p 22	Hongi Keepa and seven others	That Government erected lighthouse on Motuopao Island without consent. Seek island's return.	NAC considered previous report contained errors. Motuopao was 'surplus land' from Taylor's purchase. Native title had then been extinguished. On 5 March 1875, an Order in Council had set island apart as a lighthouse reserve.
297/1882	AJHR, 1882, 1-2, p 18	Kirihini Te Moeranga	That 20 acres, including burial place, be set aside from Crown purchase of Pateke.	NAC -- petition referred to Government for an inquiry. No inquiry made.
306/1886	AJHR, 1886, 1-2, p 44	Kingi Waiaua and others	That Waiaua case be reheard.	NAC -- no recommendation.
422/1886	AJHR, 1886, 1-2, pp 44-45	Hohepa Paraone Ngaruhe and others	That Motuopao taken by Europeans without Maori knowledge and lighthouse erected. Seeks inquiry.	NAC reported that the matter had been fully inquired into before. No recommendation to make.
456/1886	AJHR, 1886, 1-2, p 43	Eru P Aperahama and others	That Rangikapiti was not sold.	NAC -- no recommendation.
110/1888	AJHR, 1888, 1-2, p 16	Eru P Aperahama and others	That Rangikapiti never sold, that land be left to them for own benefit.	NAC -- no recommendation.

SOCIAL CONSEQUENCES

Number	Reference	Petitioner(s)	Petition	Government
189/1888	AJHR, 1888, 1-2, p 16	Eru Patuone and five others	That Pukenui and Aputerewa blocks never sold; that those blocks be vested in them.	NAC – no recommendation.
419/1888	AJHR, 1888, 1-2, p 24	Hapakuku Ruia and 13 others	That Motuopao be returned or that Government pay.	NAC – recommendation.
36/1891, sess II	AJHR, 1891, sess II, pp 1-2	Hohaia Pawhau	That claim to piece of land in Mangonui be recognised.	NAC – petition referred to Government.
60/1891/ sess II	AJHR, 1892, 1-3, p 4; MA 91/9 G	Hemi Paeara and whole of hapu	That Taemaro wrongfully taken by White. White told claimants they would be 'put in jail for twenty-seven years'.	NAC – petition referred to Government.
40/1891/ sess II	AJHR, 1892, 1-3, p 4	Rewiri Kaiwaka	That Whakaangi was wrongfully taken by White.	NAC – petition referred to Government.
402/1893	AJHR, 1893, 1-3, p 21	Timoti Puhipi and 20 others	That certain land abutting Tangonge Lake be returned.	NAC – petition be referred to Government for inquiry by resident magistrate.
45/1893	AJHR, 1893, 1-3, p 8	Hemi Paeara and 38 others	That Taemaro and Whakaangi wrongfully taken by White.	NAC – petition referred to Government for inquiry by resident magistrate.
55, 71, 110, 365/1894	AJHR, 1894, 1-3, p 10	Reihana Moheketanga and 47 others, Wiremu Te Teeti and 43 others, Rewiri Hongi and 11 others, Honi Peti and four others	That 'surplus lands' be returned.	NAC – recommended that these outstanding grievances be inquired into by a royal commission.
734/1894	AJHR, 1895, 1-3, p 6	Timoti Puhipi and five others (no 2)	That certain lands in Tangonge swamp be returned.	NAC – recommended that a stipendiary magistrate be appointed to inquire.

Table K: Muriwhenua petitions. (This does not purport to be an exhaustive list.)

MURIWHENUA LAND REPORT

Number	Reference	Petitioner(s)	Petition	Government
346/1897	AJHR, 1898, 1-3, p 15	Kihiringi Morenga and 20 others	That Motuopao was not sold. Seek inquiry.	NAC – no recommendation.
378/1898	AJHR, 1900, 1-3, p 5	Hataraka Wī Poihipi	That Tuheke block be reheard.	NAC – no recommendation.
1195/1901	AJHR, 1902, 1-3, p 5	Hemiria Paeara and others	That Pakeha right to cut timber on Pakorau (part of Whakapaku block) be investigated and the land vested in rightful owners.	NAC – no recommendation.
49/1905	AJHR, 1905, 1-3, p 19	Timoti Puhipi and 27 others	That land at Kaitia, near Pukepoto block, be handed over.	NAC – no recommendation.
104/1906	AJHR, 1906, 1-3, p 10	Ngamoni Rewiri and 26 others	That Whakaangi be held sacred.	NAC – petition referred to Government for inquiry with view to assessing whether arrangement be made with lessees to protect burial places.
156/1907	AJHR, 1907, 1-3, pp 12-13	Ngamoni Rewiri and four others	That Europeans be prevented from removing timber from Whakaangi.	NAC – petition referred to Government.
216/1908	AJHR, 1908, 1-3, p 11	Hemi Paeara and nine others	That petitioner be included as owner in Waimahana grant.	NAC – petition referred to Government for inquiry, in turn referred to NLC in 1920s, but never heard, as Government was successful in obtaining a series of adjournments.
466/1909	AJHR, 1909, 1-3, p 18	Kete Te Ahere	That land be given to them as they are landless.	NAC – petition referred to Government for inquiry.
32/1910	AJHR, 1910, 1-3, p 6	Hemi Paeara and others	That Taemaro be inquired into.	NAC – no recommendation.
605/1910	AJHR, 1910, 1-3, p 22	Kete te Ahere and others	That land be made available under Landless Natives Act.	NAC – petition referred to Government for inquiry.

SOCIAL CONSEQUENCES

Number	Reference	Petitioner(s)	Petition	Government
138/1912	AJHR, 1913, 1-3, p 25; Le 1/1912/19, box 4245	Hemi Pacara and 36 others	That Taemaro block wrongly taken by Government.	NAC -- no recommendation.
147/1915	AJHR, 1915, 1-3, p 25	Wairama Maithi and 70 others	That compensation be given for Motuopao Island.	NAC -- no recommendation. As a result of intervention of Tau Henare, member of Parliament for Northern Maori, Government paid £150 'ex gratia' for the island but claimed the island was Crown land.
178/1921/ sess II	AJHR, 1922, 1-3, p 8	Kete Te Ahere and 132 others	That Whakaangi block be returned.	NAC -- no recommendation.
179/1921/ sess II	AJHR, 1925, 1-3, p 4; AJHR, 1948, G-8	Kere Erihe and 89 others	That Taemaro wrongfully taken, that compensation be paid.	NAC -- petition referred to Government for inquiry. Petition referred to NLC in 1920s but not heard as Government was successful in obtaining a series of adjournments. Referred to Surplus Lands Commission.
117/1923	AJHR, 1924, 1-3, p 46; AJHR, 1951, G-2	Wiki Piki Pikaahu and 25 others	That whole of Opoutiri block was not sold, return unsold part.	NAC -- petition referred to Government for inquiry. Petition referred to NLC in 1920s but never heard as Government was successful in obtaining a series of adjournments. Referred to a royal commission (Dalglish) in 1949.
119/1923	AJHR, 1924, 1-3, p 44	Kataraina Te Hira and 26 others	That Hikurangi 'taken by a European'.	NAC -- no recommendation.
120/1923	AJHR, 1924, 1-3, pp 45-46; AJHR, 1948, G-8; MA 91/90D	Heta Kiriwi and others	That 'Aurere' ('surplus land' from Matthews' o.i.c. 329, Parapara) was wrongly taken by Crown.	NAC -- petition referred to Government for inquiry. Referred to Surplus Lands Commission.

Table K: Muriwhenua petitions. (This does not purport to be an exhaustive list.)

MURIWHENUA LAND REPORT

Number	Reference	Petitioner(s)	Petition	Government
162/1924	AJHR, 1924, 1-3, p 35; AJHR, 1925, G-6B; AJHR, 1928, G-7, pp 34-35; AJHR, 1948, G-8	Herepete Rapihana	That the report of the royal commission re Kaitaia block be given effect to. (Note: this petition referred to 'surplus land' from Matthews' OLC 328 on Lake Tangonge.)	NAC – petition referred matter to Government for favourable consideration. Referred to NLC under section 45 of the Native Land Amendment and Native Land Claims Adjustment Act 1924. Judge McCormick found the land to be 'surplus land'. Petition referred to the Sim commission in 1927. The commission also found the land to be 'surplus land'. Referred to Surplus Lands Commission.
180/1924	AJHR, 1925, 1-3, p 5; AJHR, 1948, G-8	Hare Popata and another (for Te Rarawa)	That Pukewhau (part of 'surplus land' from Davis's OLC 160) was wrongfully taken.	NAC – petition referred to Government for inquiry. Referred to Surplus Lands Commission.
183/1924	AJHR, 1925, 1-3, p 5; AJHR, 1948, G-8	Keita Te Ahere	That Whakaangi was wrongfully taken.	NAC – petition referred to Government for inquiry. Referred to NLC in 1920s but not heard as Government was successful in obtaining a series of adjournments. Referred to Surplus Lands Commission.
238/1934	AJHR, 1934, 1-3, p 10; Le 1/1934/15	Eru Ihaka and 41 others	That parts of Waioio and Okiore blocks be returned.	NAC – no recommendation.
1936 Petition to Prime Minister	MA 19/1/210	Eru Ihaka and 135 others	That land dealt with under Wairahi boundary dispute be returned.	This petition followed the investigation of the boundary dispute by Judge McCormick. The Crown acted on McCormick's recommendations through section 18 of the Native Purposes Act 1938. 865 acres were returned to owners of Parengarenga block.
24/1939	AJHR, 1939, 1-3, p 7; MA 98/2	Petene H Tukariri and 104 others	That question of 'surplus lands' and Tangonge Lake be reopened.	NAC – petition referred to Government. Recommended that a commission of inquiry investigate all pending petitions to 'surplus lands' in north Auckland.

SOCIAL CONSEQUENCES

Number	Reference	Petitioner(s)	Petition	Government
80/1944	AJHR, 1944, 1-3, p 10; Le 1/1944/17	Perene H Tukariri and 163 others	That the outstanding claims in Tokerau district be referred to a commission.	NAC – petition referred to Government.
69/1946	AJHR, 1946, 1-3, p 14; AJHR, 1948, G-8; Le 1/ 1946/14	Hoone P H Tukariri	That Oruru wrongfully taken.	NAC determined the petition related to 'surplus land' and should be referred to Government. Referred to Surplus Lands Commission.
49/1947	AJHR, 1947, 1-3, p 7	Hoone P H Tukariri and eight others	That land claims in Mangonui be inquired into.	MAC – petition referred to Government.
47/1948	AJHR, 1948, 1-3, p 14; AJHR, 1951, G-2	Hoone P H Tukariri and others	That Oponotiri block be investigated.	MAC – petition referred to Government. Referred to a royal commission in 1949 (Daiglish commission).
23/1949	AJHR, 1949, 1-3, p 8; Le 1/1949/12; MA 5/13/ 225	Karena Wiki and others	That MLC be empowered to inquire into 'Muriwhenua – Tika South' and other blocks.	MAC – no recommendation.
55/1950	AJHR, 1951, 1-3, p 5	Hoone P H Tukariri and others	That Takerau block be returned.	MAC – no recommendation.
32/1954	AJHR, 1955, 1-3, p 5	Hoone P H Tukariri and nine others	That titles of various lands in Mangonui and Hokianga districts be referred to a court of inquiry.	MAC – no recommendation.
1974	Evidence of Winiata and Marian Paraone, doc F29 (see appendix)	Hopa Rolto, Andrew Rolto, and Viv Gregory on behalf of Ngati Kuri and Te Aupouri	That Kapowairua, being 'Taylor's grant', be returned.	Minister of Lands dismissed the petition.

Table K: Muriwhenua petitions. (This does not purport to be an exhaustive list.)

country. For reasons given earlier, we consider the parties intended that Tangonge should pass to Maori. In any event, any doubt had to be construed in favour of Maori, for the Government could have no right unless it could be clearly demonstrated. And that would have been difficult: the Government had made no agreement and had paid no money.

Inquiry deferred  
on Taemaro,  
Raramata, and  
Mangatete

Pressure was maintained for the examination of other cases: the Government's right to the Taemaro lands, Bell's reduction of the Raramata reserve, and the wrongful survey of Mangatete at Pukewhau, for example. In 1925 the Native Land Amendment and Native Land Claims Adjustment Act enabled Maori petitions to be referred to the Native Land Court, and petitions on those matters were sent there in 1926. In that year, however, the Government sought and obtained an adjournment upon the grounds that important legal and policy issues had first to be referred to the Ministers of Justice and Lands before instructions could be obtained by Crown counsel. Thereafter the matter was adjourned for no less than a further 12 years! A petition was then filed to protest against the constant deferral of the inquiry into the previous petitions. In the end, the Native Land Court heard none.

Limitations on the  
petitions process

Matters that stand out from the record of petitions include the following:

- That Maori could not be specific about how they lost their land, and could not have been without prior and adequate disclosure of the record. The point needs emphasis. It is still sometimes expected that Maori should be able to advance claims without prior knowledge of the facts, as though claims lack validity if the case cannot be stated before the research is done. We do not see this view as an honest appraisal of the circumstances.
- Maori are considerably disadvantaged by the lack of access to the official record, and by the capture of that record by officials.
- There has not been an adequate response to the Maori petitions, and too often the investigation of the records by officials in charge of them has been minimal or wrong.

Maori land march  
and Waitangi  
Tribunal

Maori frustration with the Government's control of the land, the record of its disposal and the form of the inquiry eventually came to a head in 1974 with the petition of Hopa, Rollo, Gregory, and others affecting Kapowairua, and with the Maori land march from nearby Te Hapua to Parliament Buildings in Wellington. The march is referred to again later.

When the Treaty of Waitangi Act 1975 established the Waitangi Tribunal, and although the Tribunal was limited in the matters that could be investigated at that time, it was seen as important that the Tribunal should have a research capacity, so that it should be independent, that the official record might be fully inquired into, that the inquiry might be impartial, that it should be inquisitorial rather than a court relying upon the evidence adduced by parties, and that it should be bicultural.

## SOCIAL CONSEQUENCES



Whina Cooper (later Dame Whina Cooper) and her mokopuna Irene leading off the Maori land march from Te Hapua on 14 September 1975. The marchers covered 1100 kilometres in 30 days before Whina eventually led 5000 marchers to the steps of Parliament Buildings. Photograph courtesy of the *New Zealand Herald*.



## 10.4 THE SURPLUS LANDS INQUIRY 1948

Surplus land was called 'confiscated' land

The surplus lands petitions were eventually investigated. Since the Government acquired that land without a purchase, but as a legal sidewind from the private old land claims, and since it abrogated continuing Maori rights, in Maori eyes the land was confiscated. Accordingly, Maori referred to the surplus land by that term, as was seen in the previous chapter.

Again, the concern is not with the Maori label, but with the Government's lack of inquiry as to why that label was being used. For a while, the Government thought it sufficient to insist that there had been no confiscation in Muriwhenua, as there had been in the central North Island. In so dealing with the technicality, the substantive point was missed. Eventually, however, following petition after petition on the surplus land issue from Maori throughout North Auckland, the Government conceded, and in 1946 it established an inquiry into the surplus land. It was so called, but to Maori it was then, and still is, the 'confiscated land' of North Auckland, the land taken by an English legal fiction that bore no resemblance to the reality on the ground.

Criticisms of the hearing

Claimants noted three matters at the outset: first, that the surplus land petition that eventually led to the inquiry had been brought by Muriwhenua elders in 1923, and many were dead by the time the Surplus Lands Commission was constituted in 1948; second, that, to the chagrin of the Muriwhenua people, the commission never actually travelled to Muriwhenua and it was not considered necessary for the people to be heard; and third, that the Surplus Lands Commission was to review the surplus land issue nationally, with the result that many circumstances peculiar to particular areas escaped attention. Indicative of the size of the task, the chairman estimated the inquiry involved 'the equivalent of the hearing and determination of over 300 actions in the Supreme Court'.<sup>6</sup> Reliance was therefore placed on the précis of each old land claim file by officers of the Lands and Survey Department. We take issue mainly with the data supplied by the department, rather than the commission's assessment.

We now consider the decision, and thereafter the matters not inquired into.

Decision of chairman

Concisely, the commission was to report whether in all the circumstances the surplus lands not granted to the purchaser, but retained by the Government, ought in equity and good conscience to have been returned to Maori. The commission was agreed that compensation should be paid, but was divided as to why. In the minority view of the chairman, retired Chief Justice Sir Michael Myers, Maori had a claim in equity and good conscience to a small part only of the surplus land. This was where the subsequent survey of the lands sold greatly exceeded the purchaser's estimate of the area included in the transaction. It was assessed that, although the land may have been sold for a lump sum, a fair price would have been computed on the estimated area.<sup>7</sup> This was calculated to affect

6. See 'Report of the Commission', AJHR, 1948, G-8, p 12

7. Ibid, pp 64-65

only 20,106 acres (8137 ha) for all North Auckland, much less than the area Maori claimed.

The majority, Hanara Reedy of Ruatoria and Albert Samuel of Auckland, likewise considered there was a claim on equitable grounds, but for different reasons. They held that, on taking office in 1843, Governor FitzRoy had promised Maori that the surplus lands would return and that the Government should be bound by it.<sup>8</sup> Sir Michael doubted whether such a promise had been made and argued it would have been unauthorised in any event. The majority concluded the promise was made, however, and inferred that, in confirming the transactions before the land claims commissioners, Maori would have relied on it.<sup>9</sup> Moreover, the commission, which was dealing with the issue nationwide, was unaware of the particular Muriwhenua circumstance that Maori had affirmed the transactions, at least in the west, which was the only area affected, on the express basis 'that any surplus . . . will be resumed by the chiefs who sold . . .'. That position had been recorded by the Land Claims Commissioner, but the information was not passed on to the Surplus Lands Commission. In any event, however, Reedy and Samuel, having found that Maori had a claim on all lands not granted to the settlers, none the less adopted the chairman's figures for the smaller area of 20,106 acres only.

Decision of  
majority

As to compensation, Reedy and Samuel, after considering the discount rate for the sale of surplus land to old land claimants in 1843, recommended 14 shillings per acre. Based upon the average value of the goods initially given by the old land claimants, Sir Michael supported only 2s 4d per acre, plus a solatium. The Government accepted the higher figure. The Maori Purposes Act 1953 provided for payment of £47,150 4s to the Tai Tokerau Maori Trust Board in respect of the whole of the surplus lands of North Auckland, of which we compute the Muriwhenua portion to have been £14,074.

Rate of  
compensation

Since, in our view, the original transactions were wanting, and the Government's right to the surplus lands was flawed in consequence, we need not traverse the arguments before the Surplus Lands Commission. In addition, the commission assumed the validity of the initial transactions, once more. Following the advice of the Lands Department, it was taken for granted that the transactions would have been fully investigated by the Land Claims Commissioners of 1843 and 1856 and that there was therefore no need to revisit

Tribunal's position

8. Ibid, pp 28–29

9. The chairman's doubts can now be assuaged. The commission relied on *Martin's New Zealand*, p 183, where Dr Martin described Governor FitzRoy's public address as follows: 'With regard to the surplus land he [FitzRoy] disclaimed on the part of the Crown any intention of reserving them – they would revert to the natives themselves'. The majority had made a check of certain libraries and could not find that Dr Martin's report had ever been questioned. In fact, however, Martin's report of the public meeting was corroborated. The newspaper *Southern Cross* (30 December 1843) reported on the Governor's speech, which had 'allayed the fears of the natives', and how the Governor went on to 'most unequivocally and with most perfect sincerity disown any and every intention on the part of the government to appropriate . . . the surplus lands of the original settlers, they are to revert to the original owners' and 'the surplus lands of the claimants [are] to revert to the natives'.

them. In this the Surplus Lands Commission was influenced by the fact that the early land commissioners had disallowed the extravagant claims in other parts of the country, for a total of 9.2 million acres (3.7 million ha). We consider, however, that had an analysis been made of the circumstances peculiar to Muriwhenua, it would have been found that no adequate inquiry as to equitable conditions, the alienors' title or mutual comprehension was ever made. Each of the Muriwhenua claims was so comparatively moderate that fairness and validity were assumed.

Matters not  
inquired into

The commission's process left Maori feeling that their concerns had not been addressed. They had wanted their own lawyer, but one was appointed for them. They had wished to give evidence and had asked that the commission sit in Muriwhenua; but the commission was reluctant to leave Auckland and never reached Muriwhenua, it was decided not to admit oral evidence, and the argument was based on counsel's arguments and the documentary record. In addition, no detailed examination was made of the specific petitions that had been tacked onto the commission's terms of reference. It was held the commission could consider surplus lands questions only, and not the other matters that those petitions had raised relating to Taemaro, Raramata, and Mangatete.<sup>10</sup>

Incorrect advice  
from officials

The officials' examination of the Taemaro petition, on which the commission relied, illustrates how inquiries into Maori grievances could be stifled. The departmental report was grossly misleading. It stated, wrongly, that the lands had been investigated by Godfrey and Bell, inferring the Government had the right to the surplus. This was simply not true. It emphasised the conflict of Panakareao and Pororua but not the primary possession of Ngati Kahu. It noted 'the matter was finally settled, by the 1863 Mangonui purchase deed with Pororua and his tribe (Te Matetaroha)' but failed to comment that the petition itself had challenged that deed and had alleged that that transaction related only to Te Kopupene. No mention was made of the Native Land Court award of title. It was not disclosed that the petition alleged the Native Land Court title had been delivered up only after the resident magistrate had threatened Hemi Paeara with incarceration. However, the commission, relying on the department's report, declared the Government's right was by purchase. It was so declared though the purchase was not examined, no Maori were heard, and the purchase was very much in question. It declared the Government's right was by purchase, though previously the Government had claimed the land as surplus or by virtue of scrip exchange.

No land returned;  
no payment to  
Muriwhenua

At no point was it asked whether Maori had sufficient land. The commission was not empowered to consider Treaty principles, but had it been so obliged it would have strained to find it equitable for the Crown to assume the surplus lands, either in Bell's time in 1856, when some hapu were already landless, or at the time of the commission's sitting in 1946, when Maori were economically

10. AJHR, 1948, G-8, p 13

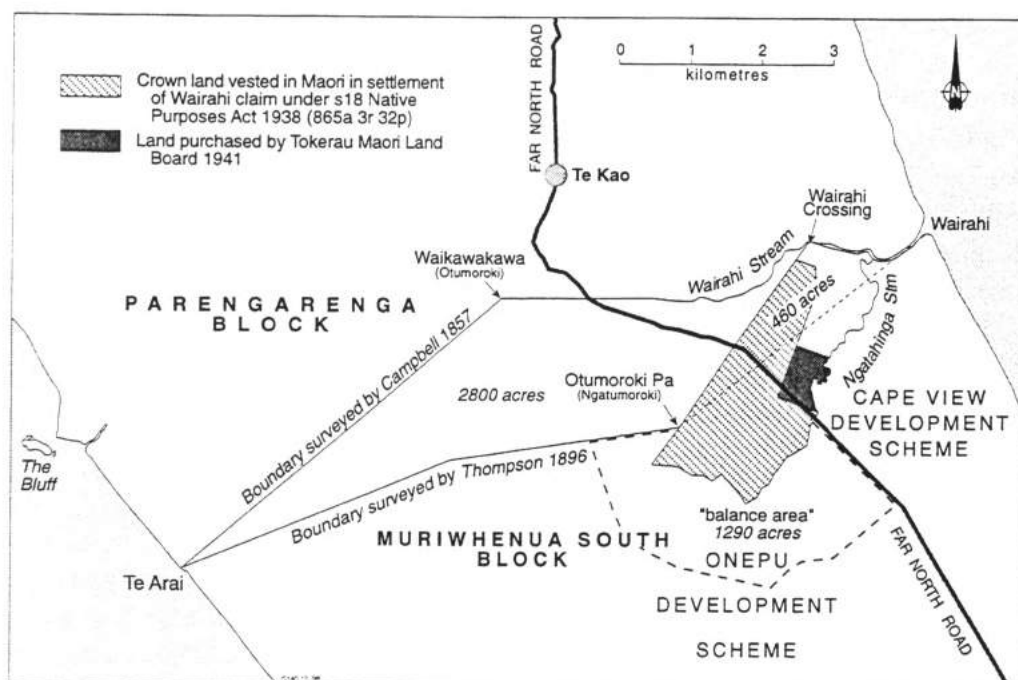


Figure 64: The Wairahi claim

desperate. Maori, moreover, sought compensation in land, not money, but the commission recorded 'there are no Crown lands suitable for this purpose'.<sup>11</sup> Presumably that was the position generally, but had specific inquiry been made of Muriwhenua, it would have been apparent that the position there was otherwise. There was a considerable amount of unused Government land available. Finally, Muriwhenua Maori did not directly receive compensation. It passed to a general body based mainly in another district.

Other matters relating to the surplus lands issue, the personal nature of the contracts to Maori and the application of the doctrine of tenure, were considered at section 5.7.

### 10.5 THE WAIRAHĪ SURVEY CLAIM

During the establishment of a dairy scheme at Te Kao, an old outstanding grievance resurfaced concerning the northern boundary of Muriwhenua South block, as surveyed by one Campbell in 1857. The northern point in the deed was Otumoroki, but there were two places with that name and the surveyor of 1857 had taken that which was obviously more obscure. This had the effect of extending the Government's entitlement by some 2800 acres (1133 ha). The Government later accepted that an error had been made and a new line was

11. Ibid, p 30, see also p 72

defined by surveyor Thompson in 1896. The survey lines are illustrated in figure 64. The Thompson survey line, however, which should have extended from Otumoroki to Wairahi River mouth, had in fact been drawn to Wairahi crossing, extending the Government's entitlement again, this time by about 460 acres (186 ha).

The loss of the use of lands from 1857 had a particularly substantial effect in this case, for the land concerned was in fact the Otumoroki gumfield, which had been worked over for some decades as though it was Government land.

In compensation, the Government agreed to transfer to the Aupouri people 865 acres (350 ha), as shown in figure 64, and it appears that a promise of a further 1290 acres (522 ha) was made as well, but was never transferred. There was an investigation of this issue by the Native Land Court, but Maori continue to claim the 1290 acres as outstanding.

## 10.6 UNCERTAIN LAND RIGHTS

### 10.6.1 Kapowairua

Adverse  
possession at  
Kapowairua

That special characteristic of the Muriwhenua circumstances, that the sale of land was a paper thing without possession being given and taken at the time, and which had resulted in the removal of the people from Tangonge as late as the 1960s, was apparent also at Kapowairua, where the people were removed at about the same time. Unlike Tangonge, where the land lay close to the town of Kaitaia, Kapowairua was one of the remotest parts of the country. Vehicular transport to the extreme northerly point was still hazardous in the 1970s, except by driving Ninety Mile Beach. Te Pahi was a vast open station nearby. There were few holiday-makers or strangers to intrude on local lifestyles, to infringe local fishing customs, to exploit the seafood or to wander in ignorance over sacred places. There were no rangers, and controlled camping grounds and park facilities were only being introduced. And all this time Maori continued to live on land that had been 'sold' the previous century – on Kapowairua, 'sold' even before the Treaty of Waitangi, and on the blocks of Muriwhenua, Whangakea, and Mokaikai.

The Kapowairua  
claim

Maori had a special claim to Kapowairua. There was a belief, not without good grounds, as we have seen, that the Reverend Richard Taylor had secured an area of land to be held for Maori for ever. As this was the only land in Taylor's name, it was assumed this was it. Maori of the later generations were not to know that the Government had granted this part to Taylor, absolutely. They were not to know that the area secured to them for ever was in fact much more, 65,000 acres, that the Government had not allowed the 65,000 acres to be so held for Maori, that the Government none the less then claimed the 65,000 acres as Crown surplus, that the Maori of that time had then passed the land to Yates while the

Government's claim was current, and that the Government then withdrew its claim, allowing the land to pass privately.

In any event, Maori laboured under the view that this land was their land and, since Taylor never took possession, they continued in occupation. The 65,000 acres passed to the Keene family, as Te Paki Station, and likewise Kapowairua was sold by the Taylor family to the Keene family as well; but nothing was done to change the situation on the ground. Maori carried on living there and, since there was a lack of fences, they had an arrangement with Te Paki Station for the recovery of wandering cattle.

Winiata and Marian Paraone spoke to the Tribunal of the Ngati Kuri presence at Kapowairua:

Life at  
Kapowairua

Traditionally, they have led a nomadic lifestyle, with lots of papakainga areas built around the ford and water supplies. It's a traditional thing which has been handed down, so, for example, when we went out to North Cape . . . we knew which tracks to take, where to camp, where the water was and where to fish and collect shellfish.

Of the many papakainga areas, one of the most significant is Kapowairua. It was one of the prime food sources . . . the gardens, the seafood and water.

One shouldn't underestimate the importance of water, water is survival and at some communities like Te Hapua, the water runs out over summer. In contrast Kapowairua has an all year round water supply.

It is also very accessible; because of the sea access and it was a place boats could come into and shelter. For these reasons it is ridiculous for us to think that the people would ever have relinquished their rights to Kapowairua.

The people themselves never believed they had sold or lost the land.<sup>12</sup>

Others told the Tribunal how their families lived at Kapowairua from the nineteenth century through to the 1960s. Some were employed by the Keene family on Te Paki Station.

Te Hapua people also ran their stock on the land and there was little concern about boundaries. Rapata Ripini Romana described the farming operations:

Flexible boundary  
arrangements

There was an understanding between the people of Te Hapua and the Keenes.

The Keenes relied on the local people for workers at shearing and mustering. In those days there were no fences like there are now, only around the [Te Paki] station, that is where they had their homestead and a few holding paddocks. In the overall area there were no paddocks at all; so to round the cattle up and keep them in a mob we would push them onto a point of land which extends into Te Ketekete Lake. One or two of the others would go mustering again. When all the cattle were rounded up we would have one big drive to Te Paki.

Any Maori cattle which were in amongst that muster were drafted out of theirs and put in a separate paddock. They were then driven back to Te Hapua and taken to the run where the Maori cattle were grazing.

12. Submission of Winiata and Marian Paraone (doc F29), p 4

When we had our mustering, if there were any cattle belonging to the Keenes they would be drafted out likewise and driven back to the Keenes. This was the sort of exchange that took place.

The Keenes made no complaints about our horses which we had living out at Twilight [Beach] and Werahi. They used spare horses for mustering because it was quite a long period of mustering, ie two weeks.

The Keenes never complained to us about the people of Te Hapua using the land. I remember when we were out at the gumfields off Ninety Mile Beach, staying at the gumdigging camps there. If we wanted to cross the land to collect seafood, stay on Te Paki, or fish for tuna [eels] at Te Ketekete, all we had to do was tell them so they would know who was out there . . .

When we were living at Kapowairua we thought it was ours. Not once did we have problems. It was not until the troubles started that we realised that someone else, namely the Crown, was claiming that they owned the place.<sup>13</sup>

The awareness of  
the Government's  
claim

It was not until the Government bought from the Keenes that Maori learnt that the Government claimed the land. As Winiata and Marian Paraone put it:

At that time, the piece of paper which said it wasn't theirs became significant. Until then the locals had continued to believe Kapowairua was theirs.<sup>14</sup>

Tuini Sylva, a member of the Murupaenga family, also spoke of the continuing Maori occupation of the land at Kapowairua:

I never heard about Taylor's Grant until the investigations of the Waitangi Tribunal. As far as I know, Taylor never stayed at Kapowairua or tried to enforce his claim. I don't see how he could have done so in the time my grandfather, Rewiri Hongi, lived there, along with my father and other elders like Te Paraha Ratahi.

The Yates were based at Paua. They had a bit to do with Te Paki but to my knowledge nothing to do with Kapowairua. In those days my father was [living] at Kapowairua as was my grandfather on my mother's side, Tipene Whakaruru.

When we lived at Kapowairua we had no problems. I remember when the Keenes were mustering they would ride past and wave out, that was all. My belief was that the land at Kapowairua had been leased by my father to the Keenes. My father was getting paid by the Keenes and that money he would use to buy food for various families living in the bush. They would come into Te Hapua and be able to purchase food.

When we looked for the papers we found out about the sales of Taylor's Grant, we couldn't find any papers about the lease and still can't. . . . The only thing I remember was when the lease was to be given up, it was to return to the Murupaenga family.<sup>15</sup>

13. Submission of Rapata Ripini Romana (doc F31), pp 6-7

14. Document F29, p 6

15. Submission of Tuini Sylva (doc F33), pp 7-8

Te Paraha Neho and David Neho described their upbringing at Kapowairua.<sup>16</sup> Their father was running sheep, cattle, and pigs, clearing the manuka scrub and, at times, gumdigging at Tom Bowling Bay as well. They grew all their own vegetables, hunted wild pigs and birds, such as pheasants and swans, captured eels, gathered berries and other wild plants, fished, and collected seafood for their subsistence.

There was a great deal of friction between Crown rangers and local people, particularly over the loss of access to Kapowairua. Winiata and Marian Paraone spoke of the 'intense resentment' felt by local people:

Friction over access

The people had these strong feelings, which were not often talked about publicly, which is a typically Maori thing where it's not what they say it's what they don't say. Silence does not necessarily mean acceptance.<sup>17</sup>

Local resentment had been exacerbated over the period 1969 to 1970 when the Crown sought to negotiate boundary changes with owners of the adjacent Maori land to the east. The proposal involved an exchange of Maori land east of Kapowairua, including Maungapiko, with the Crown land east of the Spirits Bay and Te Hapua roads which it was intended would be incorporated in a land development scheme around Te Hapua. This proposal also incorporated an exchange of Otu and Ohao blocks, which would be added to the Mokaikai scenic reserve. In 1971 the Maori owners turned down the whole proposal. Subsequently, these lands were vested in the Muriwhenua Incorporation and a large area was planted in pine forest.

Government negotiations for boundaries

In 1974, a petition to Parliament was organised by Hopa, Andrew Rollo, and Viv Gregory, father of Dr Bruce Gregory who later became member of Parliament for Northern Maori. The petition, on behalf of Ngati Kuri and Te Aupouri, sought the return of Taylor's grant at Kapowairua. The grounds stated for the return of the land included the claim that 'the original sale by Panakareao and others of the Rarawa tribe was invalid'; that Taylor and his partners had never occupied the land; that Taylor had intended the land to be reserved for Te Aupouri; that the land at Kapowairua has 'continuously up to recent times been used by the Aupouri people for cultivation and residence during the spring and summer months'; and that 'the continued and undisturbed occupation of Kapowairua' since the time of Taylor's transaction 'clearly indicates that the Aupouri continued to recognise the land as their heritage and one of their papakainga'. Finally, the petition stated:

The 1974 petition

That the rights of the Maori people to [their] ancestral lands as set out in the Treaty of Waitangi have been protected by various statutes since the Treaty was signed, except for that period between 1840 and the establishment of the Maori Land Court, when Commissioners not fully conversant with the Maori land laws

16. See submissions of Te Paraha Nehoon (doc F30) and D Neho (doc F32)

17. Document F29, p 6



and the essence of the Treaty were appointed by the Crown as Protectors and during which period the above transactions took place.<sup>18</sup>

Winiata and Marian Paraone described the fate of this petition:

The Minister of Lands . . . dismissed the petition. The three elders were later told that Taylor's claim to Kapowairua was valid and that they could not prove that Kapowairua had been occupied by Maori since the 1840s–1860s. In a letter to Andrew Rollo in 1976 he said the Crown had a valid title to Kapowairua.

Out of any of the Crown's excuses, the statement that Kapowairua has not been occupied by Maori since the 1840s is the least sustainable. Our tupuna have continued to live and cultivate at Kapowairua since the time of Tohe.<sup>19</sup>

A summer  
campsite

The loss of the papakainga at Kapowairua is still most keenly felt by Ngati Kuri and Te Aupouri. They were required to vacate in the 1960s, over 120 years after it was said that this and a much larger area surrounding was protected to them for ever. The last of the homes was removed and Kapowairua was turned into a summer campsite for the people of New Zealand generally. There was never a full inquiry.

### 10.6.2 Protest and Ninety Mile Beach

Uncertain land  
rights and Maori  
protest

It was after years of neglect that the Government moved to tidy its own land claims in the 1960s, asserting its right to parts of the Far North that Maori had continued to use for gumdigging, stock, hunting, or living. People were shifted from their homes in the process. Some homes were made only of nikau palms. The removal of the families from Tangonge and Kapowairua, however, created the most attention, and it was only then that the realities of the past became known to many.

When the Government thus exposed the uncertainty of Maori occupations, the Maori leadership reacted by challenging the certainty of the Government's right wherever they could. In Supreme Court proceedings they claimed the ownership of Ninety Mile Beach.<sup>20</sup> They were unsuccessful, but in the Maori Land Court they obtained a freehold title for Lake Tangonge.

We make no further comment on the Ninety Mile Beach claim. It is a matter of crucial importance for the Muriwhenua people, but, after hearing some evidence thereon, it was agreed by claimant and Crown counsel that the Ninety

18. Document F29, app 17

19. Ibid, pp 7–8. Tohe is the ancestral figure of pre-European times referred to in chapter 2.

20. For the court proceedings, see *In re the Ninety Mile Beach* [1963] NZLR 461.

Mile Beach claim should not be dealt with as part of this present stage of the inquiry.<sup>21</sup> Their reason was simply that there was too much else to consider.

The protest was continued also in the petition of 1974, referred to earlier. As mentioned above, the failure of that petition as well, was instrumental in inaugurating the Maori land march in September 1975, from Te Hapua to Parliament in Wellington. This had snowballed to 5000 people when it arrived there. Coincidentally, the Minister of Maori Affairs who received the marchers was none other than Hon. Matiu Rata, himself from the Te Hapua area.

### 10.7 MURIWHENUA GUMDIGGING

We move back at this point to consider what had been happening on the ground. Maori economic survival, from after the Government purchases to the present, can be traced through two overlapping stages, gumdigging and land development. The story of Maori gumdigging in the north is one of abject poverty from which the people did not begin to recover until recently. The second stage, land development, describes a struggle to rebuild a people on poor and marginal territory. In reviewing those matters now, the purpose is not to consider new causes of complaint, but the consequences of old ones.

Gum extraction, which began before the Treaty of Waitangi, provided the only industry for Maori in the late 1860s. The former trade in horticultural produce and ship provisioning dropped off, as ships stopped visiting Mangonui, and as such trade as could be obtained from horticulture could all be supplied from the lands around Mangonui, now in European hands. The agrarian economy slumped nationally in the late 1850s and, were it not for gumdigging, Muriwhenua may have stagnated entirely. It was gum, not land, that brought the first major influx of Europeans to the territory. The kauri gum reserves on Government land, as gazetted at 1901, are set out in figure 65. The rapid increase in the European population shortly before the turn of the century, which resulted from the gum industry, is illustrated in figure 66.

The irony for Maori is that the long-awaited arrival of Europeans did not bring with it the long-term benefits which had been promised in a general way: close markets for Maori produce, which would return to Maori goods and essential services. Nor was it the case that Maori authority continued to be acknowledged and respected. The gum trade fell to the monopolistic control of a handful of gum traders. They, and the Government, were the only ones to benefit substantially.

Gumdigging and  
land development

Decline of  
horticulture and  
rise of gum

Gum and debt  
peonage

21. For the claimants' evidence on Ninety Mile Beach, see R Boast, 'Report in Respect of the Claim to Te Wharo Oneroa A Tohe/Ninety Mile Beach', February 1991 (doc c3); J Coster, 'Te Oneroa a Tohe: The Archaeology of the Ninety Mile Beach', February 1991 (doc c7); J Williams, 'Legal Submissions on the Claim in Respect of Te Oneroa a Tohe', March 1991; submission of Brian Easton (doc c21); and Maori submissions (H Snowden, R Gregory, M Matiu, E Walker, W Paraone, N Morrison, M W Karena, P Paraone, M Marsden, S Murray, W Norman, Dame Joan Metge, H P Matunga) (docs c9-c22).

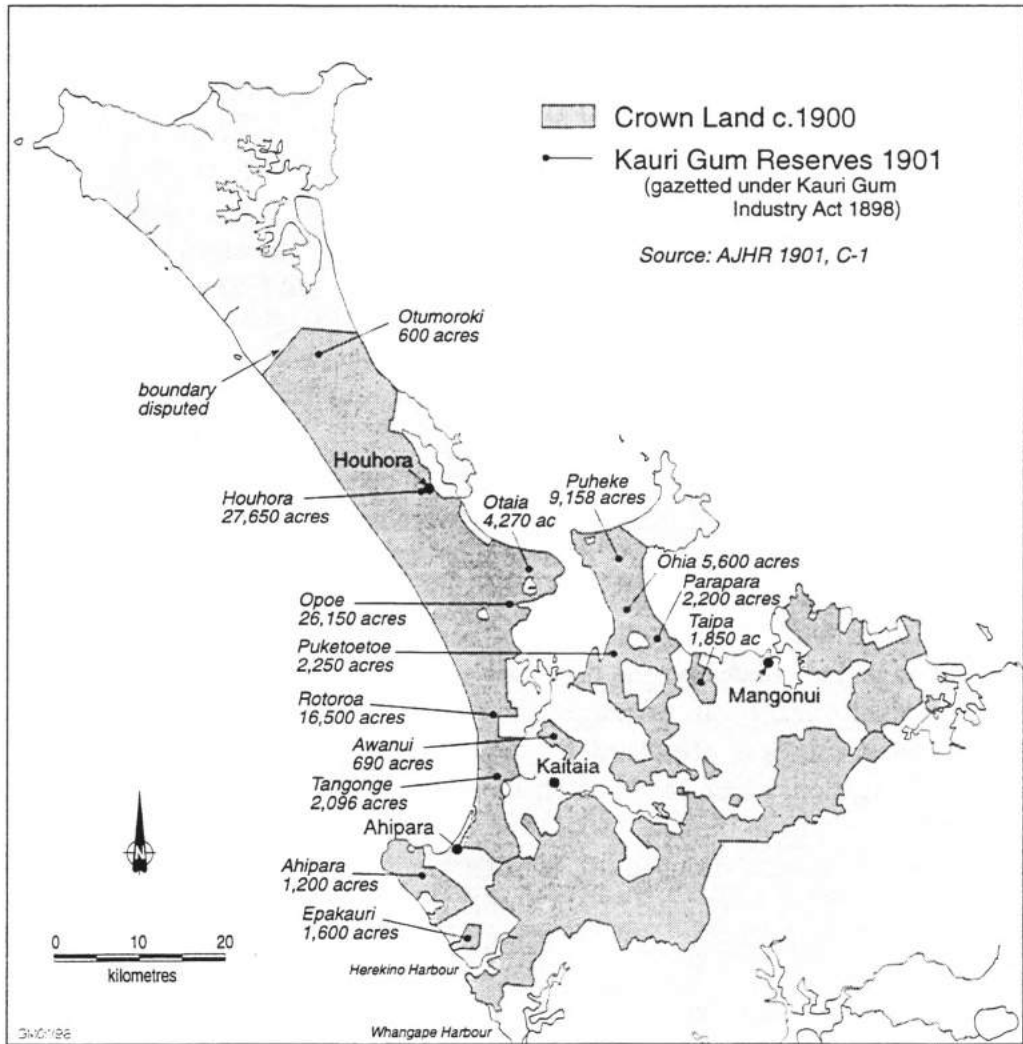


Figure 65: Kauri gum reserves at 1901

The Maori, and the large number of people brought in to work the fields, mainly Dalmatians, were to be ensnared in an unwholesome system of debt peonage. The Government, it appears, had the benefit of the industry but took no sufficient steps to reverse a situation that was described by some at the time as a species of slave labour.

Argument on  
economic  
development  
criteria

In the claimants' view, gumdigging, with all its devastating effects, was a direct result of land loss. The local Maori had no option, for there was no other work in road-building or other construction, there was no demand for ship provisioning or for timber, there was no pastoral farming experience or capacity, and, in any event, the lands needed for timber felling or pastoral farming were no longer theirs, or such lands as they retained were too costly to develop. It was further submitted that a type of bondage to the stores which the gum traders operated caused Maori to sell, or lease, more of such land as remained to them in an attempt to release themselves from both debt and servitude.

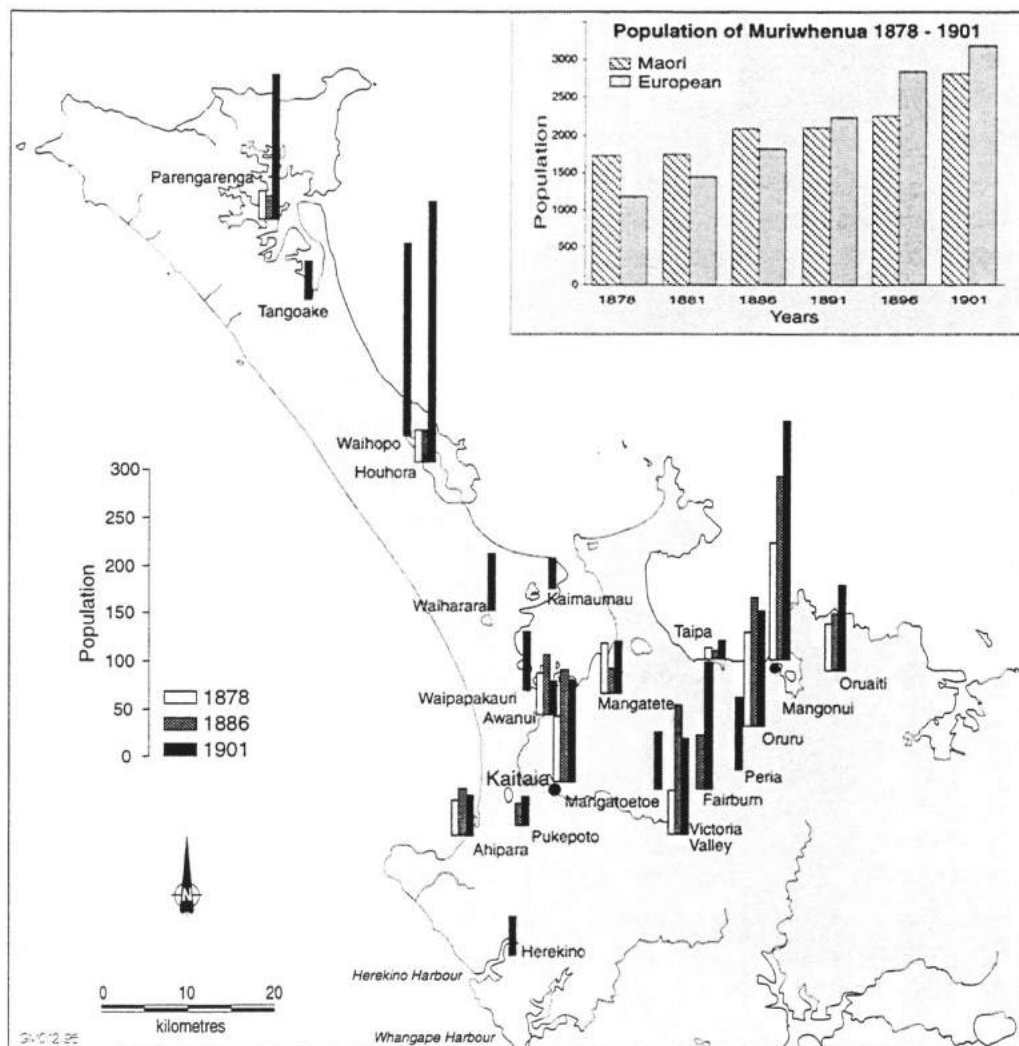


Figure 66: European population, 1878-1901

Crown researchers naturally argued the opposite position, that Maori sold their land because gumdigging was more lucrative than horticulture.<sup>22</sup> They pursued gumdigging from free choice, neglecting such lands as they in fact retained and abandoning their own gardens even when it was said they were starving. To that extent they were authors of their own misfortune.

We do not agree with the Crown’s analysis of the context. We found more assistance from the evidence of economist Brian Easton, although he did not address the gumdigging industry in particular. Under the Western economy by which future development could be measured, Maori had two of the prerequisites for growth, as we see it: the people or human capital, and the resource or the land. However, they also lacked two of the essentials: the technology, and knowledge of the necessary infrastructure – knowledge, for example, of the

Tribunal opinion on the economic argument

22. See Dr A Gould, ‘Crown Purchases in Muriwhenua to 1865’, 16 September 1993 (doc J4B)

nature of property ownership in the Western economic system. Basically, as we see it, it was for lack of that knowledge, and because they understood an alternative economic regime, that Maori lost most of the land, the essential resource base. It was also for lack of knowledge and technology that they were unable to develop such land as they retained for pastoral farming, or they were unable to manage the gum industry themselves.

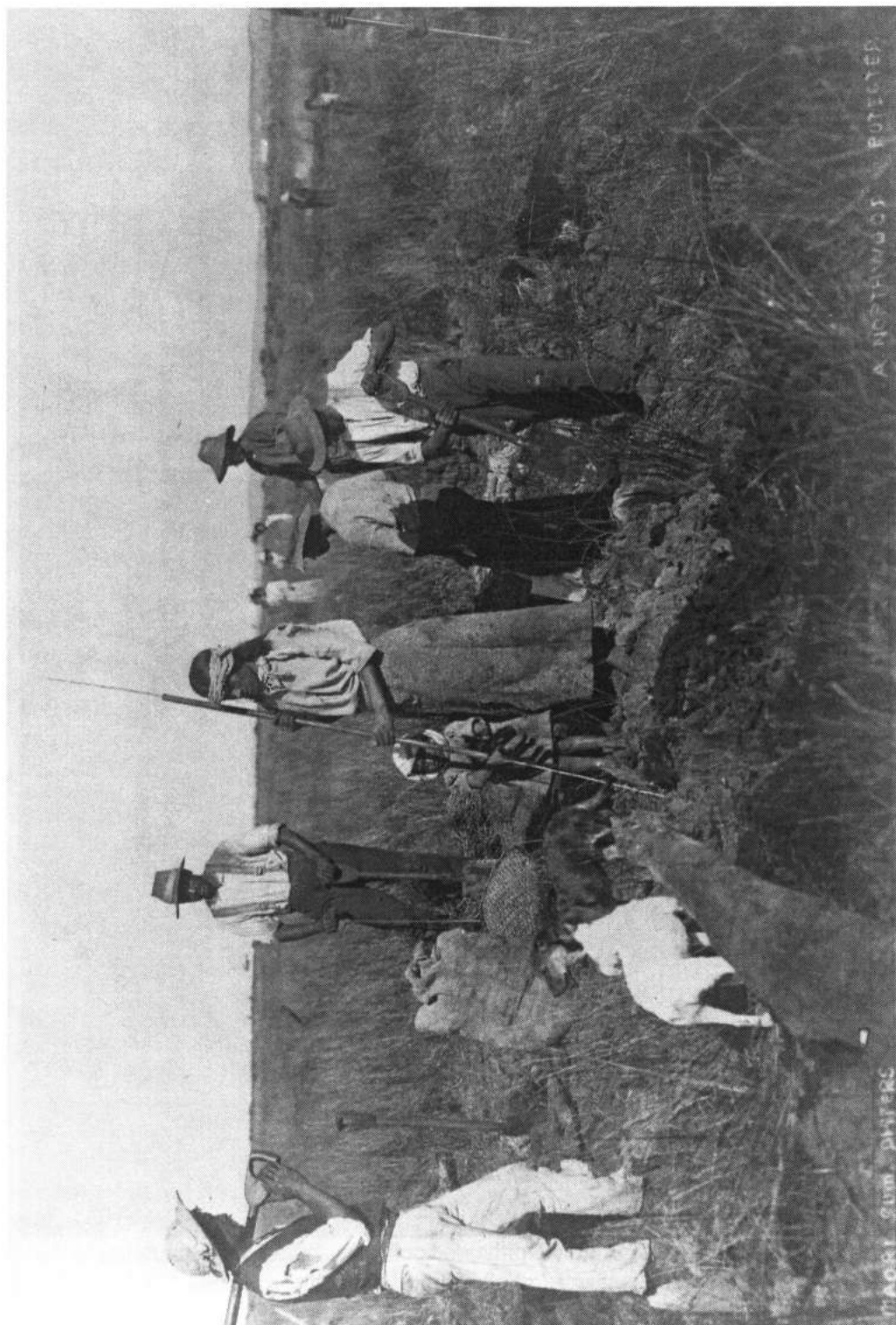
It is pointless to assume free choice in circumstances like these. Free choice means having the knowledge and experience from which an informed decision can be made. There was no free choice over land sales in the very first instance, in our opinion, and there was no free choice over gumdigging. Nor can it be assumed that Maori had free choice to step out of the poverty cycle they were caught in. The opposite view fails to understand the nature of poverty and dependence. Experience in other countries, in Africa, for example, suggests that change comes slowly, even with aid, over at least three generations, once a regime of poverty has become established.

The essential point, then, is that the real issue is the action or inaction of the Government. Again, to get the matter into proper context, the need to protect Maori interests in the settlement of the country had been foretold. The likelihood that Maori might unwittingly alienate the whole of their land had been officially predicted. And promises were made to suit, that Maori would benefit from European settlement and their interests would be looked after. These are the questions, then: what steps were taken to ensure that Maori retained sufficient land that a free choice in agricultural development might be exercised in future? What profits did the Government get from the on-sale of Maori land, and how much was put back into arming Maori with the knowledge and technological skills needed to develop the lands remaining to them? What profit did the Government make from the gum industry, and what steps did the Government take to relieve Maori from debt peonage and to establish them as independent managers of it? In brief, once again, a settlement plan that was sensitive to Maori people was needed if Maori interests were to be provided for.

The above questions are rhetorical for the moment, in so far as they relate to the post-1865 period, save to say that we do not accept the Government had no responsibility for the social and economic consequences of land loss that flowed through to the twentieth century.

It cannot be assumed, either, that, with the shift to gumdigging, the full impact of land loss was immediately apparent to all. Maori were still able to dig gum on the Government land and this could only have obscured further the meaning of a land sale, implying that Maori retained latent rights. To all intents and appearances, one could still access certain resources after land sales, and it was access to resources, not ownership, that Maori most understood. Later, the areas used for gumdigging were formally set aside as kauri gum reserves, as was shown in figure 65. Although a licence was required to dig on the reserves, under the Kauri Gum Industry Act 1898, this did not apply to local Maori.

SOCIAL CONSEQUENCES



Gumdiggers at Parengarenga early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (F38717½).



MURIWHENUA LAND REPORT



MAORI, WAININE OF THE SUNFIELDS. 50. NORTHWOOD PHOTOGRAPHY CO. PHOTO 8-14  
A Maori gumdigger, 1914. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (F42675½).

SOCIAL CONSEQUENCES



A Maori gumdigger early this century. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (F29857½).





Two young Maori gumdiggers. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G9779<sup>1</sup>/<sub>1</sub>).

The movement of Europeans to the outlying districts, as a result of the gum trade, is well shown in the case of the northern peninsula. By the turn of the century, the Yates family had acquired some 68,667 acres (27,790 ha), being mainly the North Cape Station which was mostly stocked with cattle. In addition, they leased all but small parts of the Maori land, about 57,000 acres (23,068 ha), as an extensive gumfield. For 40 years this had yielded an average of 400 tonnes of gum annually, all of which passed through the Yates trading store. At the Yates settlement, called Parenga, but known today as Paua, there were about 350 diggers, being some 150 Maori, 150 Dalmatians, and 50 other Europeans.<sup>23</sup>

Gumdigging on  
the northern  
peninsula

The lower peninsula from Te Kao to Awanui was dominated by the Evans family, who had trading stores at Te Kao, Houhora, Waiharara, Waipapakauri, and Awanui, as shown in figure 67. Here, it was said, 'Mr Evans ships fortnightly to Auckland, his shipments occasionally amounting in value to over £1,100'.<sup>24</sup> In this district the gumdiggers were about 300 Maori, 500 Dalmatians, and 200 other Europeans.

The effect of gumdigging was to lock Maori (and others) into an ever-widening cycle of poverty and dependence from which they were not relieved until the 1960s. Even today, in Muriwhenua social problems continue to abound.<sup>25</sup> The gum traders were also, usually, the only storekeepers in an area and, as Resident Magistrate White had commented, the Maori were impoverished because they were allowed to get into debt far beyond their means of repaying. He wrote:

Impact of  
gumdigging

Losing heart they get idle, which soon leads to worse. I have often regretted that it cannot be in law that a trader could not recover more than a certain moderate sum from a native debtor. This might have the effect of staying the reckless credit given them.<sup>26</sup>

This in turn was likely to lead to the sale of such Maori land as remained.

In 1891 the Te Kao schoolteacher described the relationship of Samuel Yates with local people:

Mr Yates is the only trader of any importance in that district; he also leases or owns all the land – except Maori reserves – north of Parenga Harbour. All the Maoris are in his debt, and their improvidence is likely to keep them so.<sup>27</sup>

There were Maori attempts to control the situation by setting up their own stores, in the 1880s and 1890s, and to prevent outsiders from digging on Maori land. However, in Parengarenga, the main trader had secured his monopoly by taking a lease on all the Maori land. South from there, there was no Maori land.

23. See *The Cyclopaedia of New Zealand*, 1902, vol 2, pp 607–609

24. *Ibid*, p 601

25. See J Newall, 'Muriwhenua Socio-Economic Profile', 28 March 1990 (doc A2)

26. AJHR, 1873, G-1, p 1

27. J McGavin to Secretary for Education, 15 July 1891, BAA 100/574C

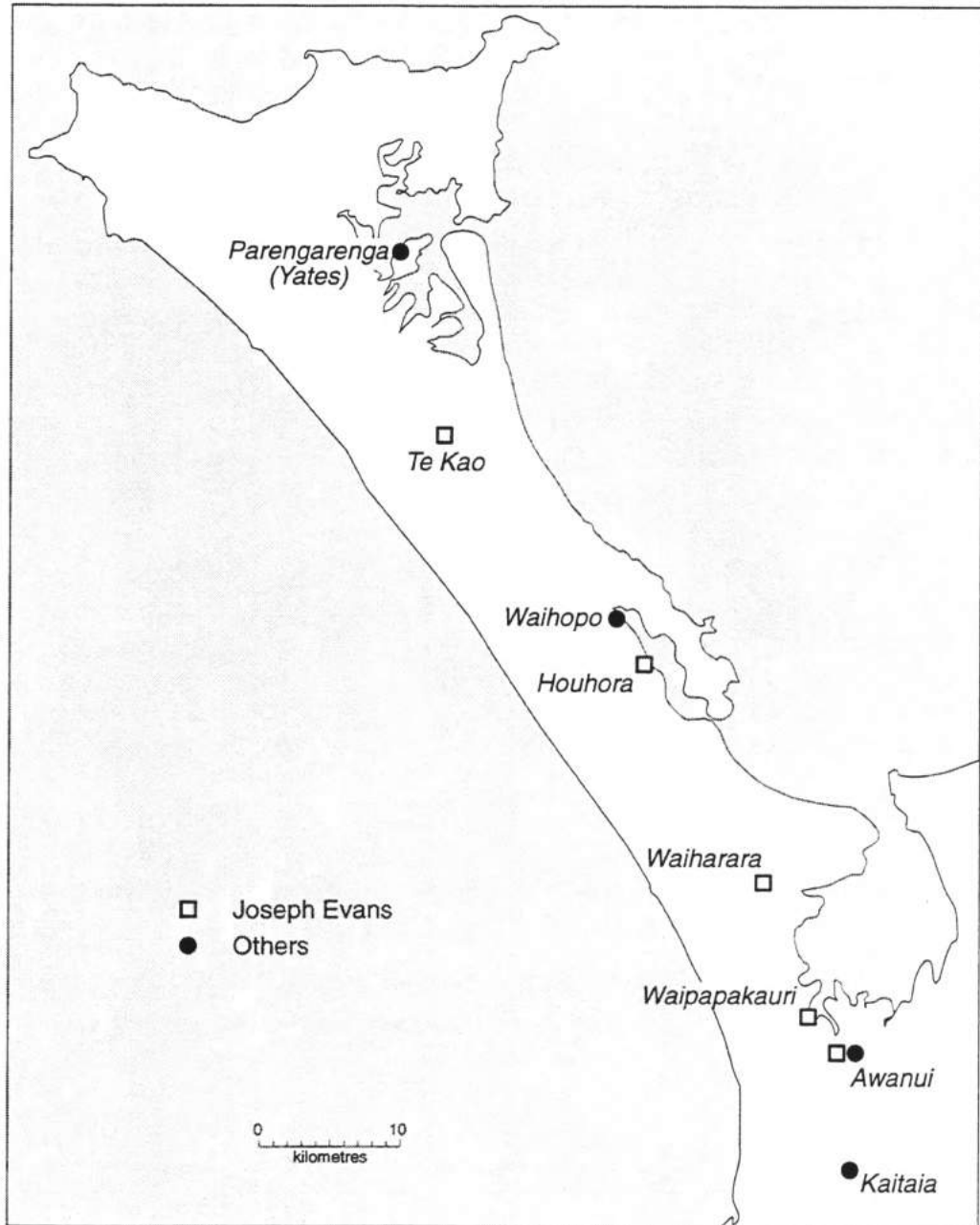


Figure 67: Principal gum trading centres on the northern peninsula, circa 1900

Before the Kauri Gum Commission in 1898, there were Maori and Pakeha complaints that store prices were exorbitant, and that money was not given for gum, only credit at the store. One witness claimed:

Storekeepers do not intend that a digger shall leave the field with a shilling in his possession. If your bill at the store is not a big one he will not buy your gum,

leaving it on your hands on purpose to punish you for not having dealt more largely with him.<sup>28</sup>

The relationship of gumdigger to storekeeper was explained by another witness:

If a man had money in the storekeepers' hands, and did not choose to take the prices that were offered by the storekeeper for his gum, if he went to sell it to another store the storekeeper would say, 'Take it to the man you buy your goods from'. Once in the storekeepers' hands you are bound to sell your gum and get your provisions from him, and accept his prices.<sup>29</sup>

The further effect of gumdigging as the only source of cash was to encourage more energy into digging and less into food production. Cultivations were neglected as debts grew and dependence on store-bought food increased. In 1872, the visiting inspector of schools described the remaining Maori land in the Far North as 'poor to a degree which is difficult to conceive' and he saw little or no attempt at cultivation.<sup>30</sup>

The reports on education in native schools, of 1864, 1903, and 1905,<sup>31</sup> tell of appalling conditions, of epidemics that wrought havoc on school attendances, the failure of crops and lack of food, of children compelled to dig gum in order to live, and of walking four to five miles to school without a sufficient meal. A G Allan, teacher at Te Kao School, reported in 1888:

To the Natives the gumfields have been a curse. They have disregarded the raising of crops, as in the former years, with the exception of potatoes and kumeras. With all their earnings upon the gumfields, they are deeply in debt, and they and their families for the most part are badly clad. All over the gumfields the Natives are in a species of bondage to the storekeepers and it is to the latter's advantage to keep them so. Gum at present is very low in price – but such is not the case with provisions which are thirty percent higher than can be purchased anywhere else. In such a state of matters how can the Natives be expected to keep their children regularly at school.<sup>32</sup>

The effects on Maori health and education were devastating. With long periods of camping in the gumfields without proper sanitation and unhealthy living areas in swamps, high rates of death and disease became apparent, particularly among the children. In the early decades of the twentieth century, with falling gum prices and loss of control of their lands, local people were locked even more tightly into poverty and deprivation with little opportunity for

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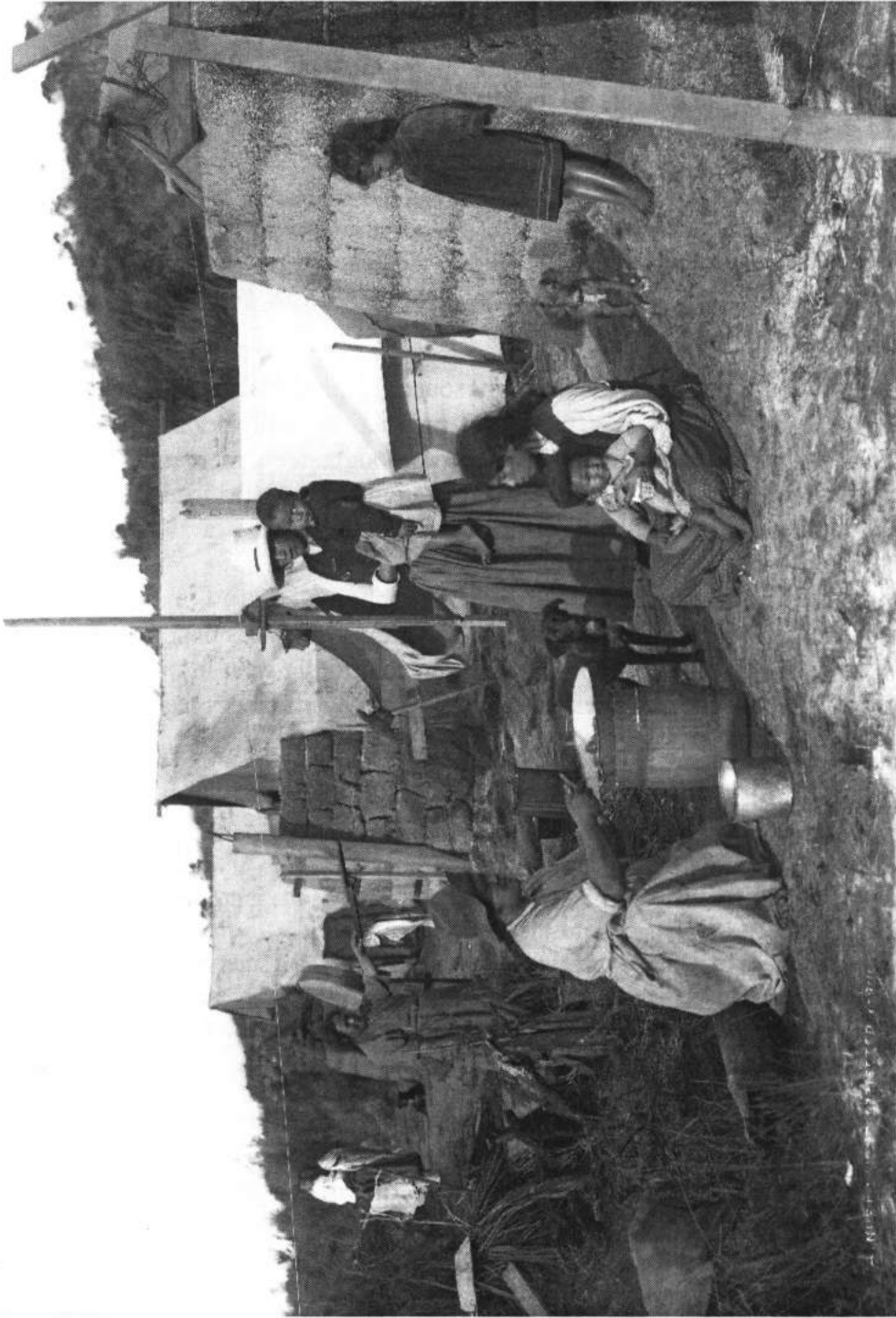
28. AJHR, 1898, H-12, p 41

29. Ibid

30. AJHR, 1872, F-2, no 7, p 12

31. AJHR, 1864, 1903, 1905, E-2

32. J Henderson, *Te Kao*: 75, Kaitiāia, 1957, p 46



Maori gumdigger families, circa 1910. From the Northwood collection, photograph courtesy of the Alexander Turnbull Library (G62801/1).

any economic development. In 1914, school inspector Bird noted the absence of the youngsters from the schools and their presence instead on the gumfields:

Dressed in the veriest rags, unkempt and filthy, half-starved and housed in structures hardly fit for dogs, these children, some of them near babies, are compelled to live and work under conditions that are appalling . . . during the winter [the parents] are forced to contract, with the various gumfield storekeepers, debts which it costs a summer of slavery to work off, and in this the children have to bear their part.<sup>33</sup>

The following reminiscences of childhood at Te Kao were recorded by J Henderson:

In those days, say 1910 to 1920, we were very poor . . . some were too poor to have even spoons. They used toheroa shells. Have you ever heard of Maori peanuts? Karaka berries were cooked all day, just leaving the hard shell and the nut inside, then into a bag and into water for three or four days when they'd be ready to eat – and you'd have your peanuts – the only ones we knew . . .

One girl at Te Kao school had more food than the others so we'd catch her horse after school, saddle it for her, help her up, and fool around so we might get a bit of her food next day.

There was not a kumera in the whole district therefore the children had to earn their own living. Frequently after the dismissal of the school they would take spear and spade to dig for the everlasting gum, otherwise they would go without meals.

If you had two shirts at the same time you were a lucky boy; one shirt for one year generally, a real problem in wet weather when your shirt was wet.

Sometimes the flour would run out, so a pot of corn for breakfast, then you'd go hungry all day.<sup>34</sup>

A H Watt, schoolteacher at Te Kao from 1915 to 1937, reported:

As many as 25% of the children died before reaching the age of three years. Very young children were sometimes taken out to the gumfields where their mothers worked – indeed they were sometimes born there – and where living conditions were bad enough for adults, let alone tiny infants.<sup>35</sup>

## 10.8 FARM DEVELOPMENT – MURIWHENUA NORTH

While Government schemes to assist European unemployed and promote them into farming began in the 1880s, farming assistance to Muriwhenua Maori did not come until the 1920s. By then, most of the land had been sold, or leased to gum traders on account of debts, allowing the gum traders to control the

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33. AJHR, 1914, E-3, p 60

34. Ibid, p 15

35. Ibid, p 42

extraction of gum from the land. On the northern peninsula around Parengarenga Harbour, Yates leased all the remaining Maori lands save for a 'few reserves', being 820 acres (332 ha) at Te Hapua, 84 acres (34 ha) at Parenga and 951 acres (385 ha) at Te Kao. The leases were informal only, however. The Native Land Court became active in the area in about 1899, and surveyed the balance of Maori lands for the investigation of the titles, partitioning the blocks amongst the owners. The survey cost was over £1000. To recoup that cost, the Maori land, some 59,531 acres (24,092 ha) excluding the 'reserves' above-mentioned, was vested in the Tokerau Maori Land Board, to be leased formally. In that way Maori lost control of all but the small reserves. All rents and royalties went to the board to clear debts and Maori became totally dependent on gumdigging. There were pleas for at least a part of the lease land to return to Maori, but to no avail.

The Te Hapua people especially were aggrieved, since a good deal of their reserve was regularly under water in the winter months. They lived with the reality that one Pakeha farmer had 68,607 acres (27,765 ha) freehold and more land on lease, while more than 100 Maori at Te Hapua had 820 acres (332 ha) which was liable to flooding.

By then, fragmentation of ownership was making the title position unworkable. The average number of owners in the blocks as at 1908 was 20, the average interest representing 15 acres. One block of 9280 acres had 733 owners.<sup>36</sup> This was at 1908 and most of the owners were already absentees.

Te Kao dairy  
scheme

Following a severe slump in gum prices in 1924, when the traders stopped credit and refused to buy more gum, Judge Acheson of the Native Land Court, who was appalled by the poverty, hunger, and distress, wrote to the Native Minister:

The natives are already seriously short of the bare necessities of life. Their children are very poorly clad. It is a fact that people even have to tear off boards from their houses in order to make coffins for their dead.<sup>37</sup>

Judge Pritchard wrote later, referring to Te Kao in the late 1920s:

The mortality amongst the Maori children on the gumfields was so appalling that it is recorded that one in every four children under 12 died. The school children were poorly clothed, sickly, and suffered from skin diseases.<sup>38</sup>

Eventually Government assistance came. It was proposed to terminate the leases and to finance the development of dairy farms at Te Kao, as an alternative to gumdigging. By 1931 there were 51 dairy units in what was called the Te Kao Consolidation Scheme. The area concerned is shown in figure 68.<sup>39</sup>

36. Stout-Ngata commission report, 1908

37. Acheson to Native Minister, 10 August 1925, MA19/1/548, NA, pt 3, p 3

38. Ibid

39. For full particulars, see C Geiringer, 'Historical Background to the Muriwhenua Land Claim 1865-1950', 27 April 1992 (doc F10), pp 184-208



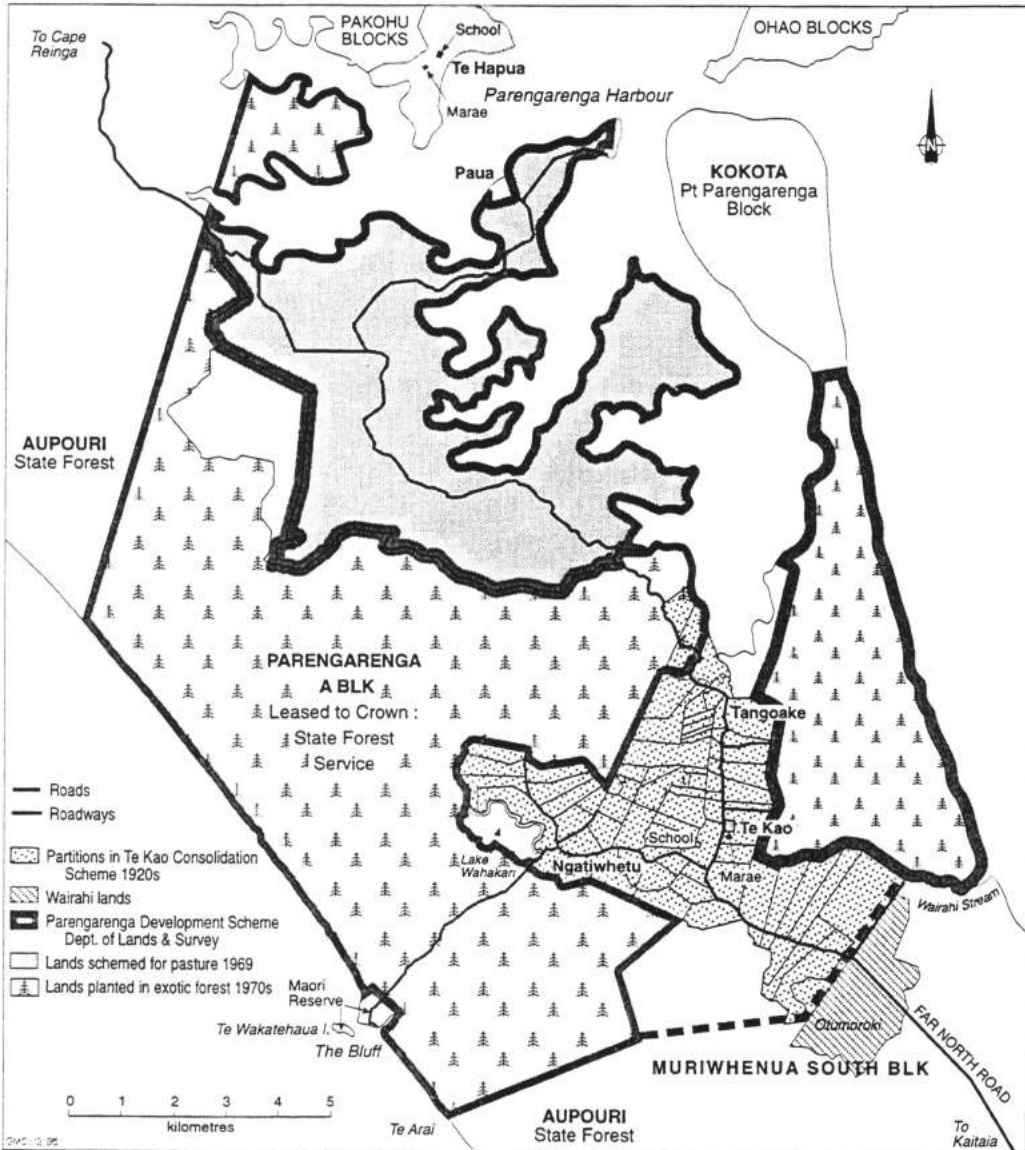


Figure 68: Parengarenga block

The scheme was only a qualified success. Soils were poor and Te Kao was a long way from the Kaitiia dairy factory. Despite title consolidation, the Native Land Court system continued to result in fragmentation of ownership, with numerous absentee owners remaining on the title after they had abandoned the area. The whole scheme remained under the tight control of the somewhat bureaucratic Department of Maori Affairs and people were simply relocated with little or no discussion or agreement. Several of the Ngati Kuri people were placed south of Te Kao at Ngataki, despite objections. The department held on to all profits to reduce the development debt, so that Maori farmers were effectively working on a salary. That salary was little above subsistence level and most still

Impact of scheme



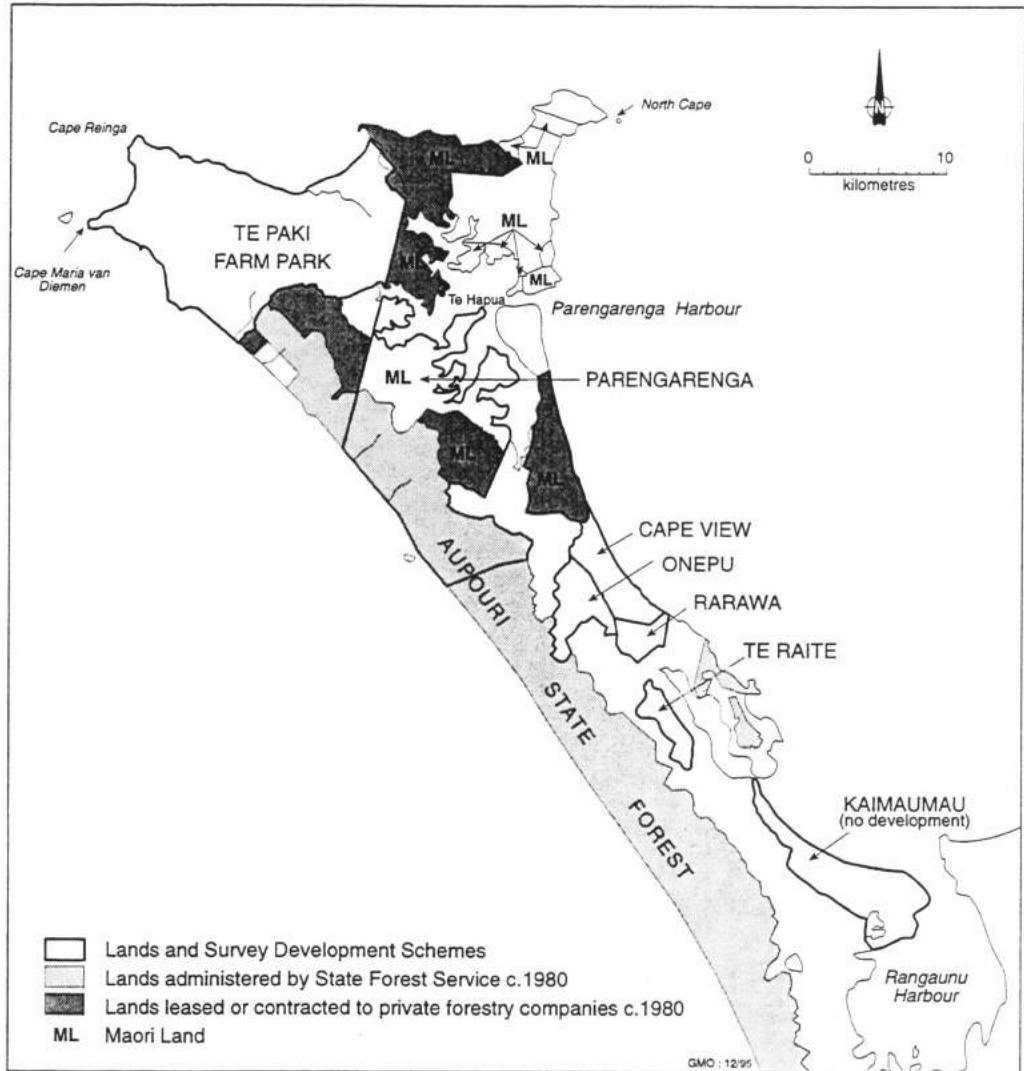


Figure 69: Aupouri Peninsula: forestry and farm development

depended on gumdigging or on fishing for survival. The following is from a petition from Te Kao Maori to the Prime Minister in 1936:

Our houses are shacks made of rusty iron used many times over and badly holed. They are not fit for human beings to live in. We are grateful for your desire to assist the Maori people with houses . . . We are prepared to deny ourselves and work hard to get these cottages. We yearn for them. We beg you to help us to get them before next winter. Last winter was very wet and we all suffered . . .

If by working long hours we earn more than sufficient for food and clothing, we would use the balance cash to pay for new cottages.<sup>40</sup>

The following is from the petition of Te Rarawa:

40. Wairama Maihi te Huhu and others to Prime Minister, 6 January 1936, MA/I 19/1/210

Nearly all our dwellings are in a bad state. The health of ourselves and our children is suffering. It is hard for us to rise unless our homes are fit places to live in. Our lands have been improved for our cows. The owners of the cows live in continual discomfort. It is bad for the young people to live in over-crowded whares when they marry. There is a risk of typhoid and TB.<sup>41</sup>

They had still not escaped the cycle of debt, poverty, and deprivation.

Before this Tribunal, Maori witnesses recalled conditions of abject poverty, the single-room homes without power, water, floorboards, or glassed windows. They described the overcrowding of those rudimentary dwellings, the lack of work, the paucity of farmable land, and the dependence on foraging and fishing. They contended that the hapu became depleted as the young folk moved to Whangarei and Auckland in search of employment.

None the less Maori retained some land. In addition, in 1953 certain assets from the communal activities undertaken by the people of Te Kao, and some 2700 acres (1093 ha) held by the Maori Land Board for a communal benefit, became vested in the Aupouri Maori Trust Board. This is a Maori owned and managed board which continues to operate for the general benefit of the Aupouri people.

Aupouri Maori  
Trust Board

In addition, in the 1950s the Department of Lands and Survey began to develop lands in Muriwhenua. In the 1960s several large schemes were established on the northern peninsula, as illustrated in figure 69. Those under the control of the Department of Lands and Survey in 1968 were mainly on Crown land (CL) but they included some Maori land (ML) and were as follows:

Government  
development  
schemes

Scheme	Established	Area (acres)	In grass (acres)	Tenure
Cape View	1955-65	6225	5200	CL/ML
Onepu	1961	5544	3868	CL/ML
Parengarenga	1961	39,468	6641	ML
Kaimaumuau	1961	12,058	0	CL
Te Paki	1966	42,000	720	CL

A further scheme, Te Raite, was begun in the mid-1970s, and some drainage work had started on the Kaimaumuau scheme by 1983. As for the Parengarenga scheme, on Maori land, 14,938 acres (6050 ha) was leased for pine forest as part of the Aupouri State Forest in 1971, and the balance, 24,530 acres (9935 ha), was divided into the Paua and Te Rangi Stations, carrying sheep and cattle.

The Government purchased Te Paki Station from the Keene family in 1966. The proposed utilisation of Te Paki Station, as at 1985, is shown in figure 70. A

41. Ibid

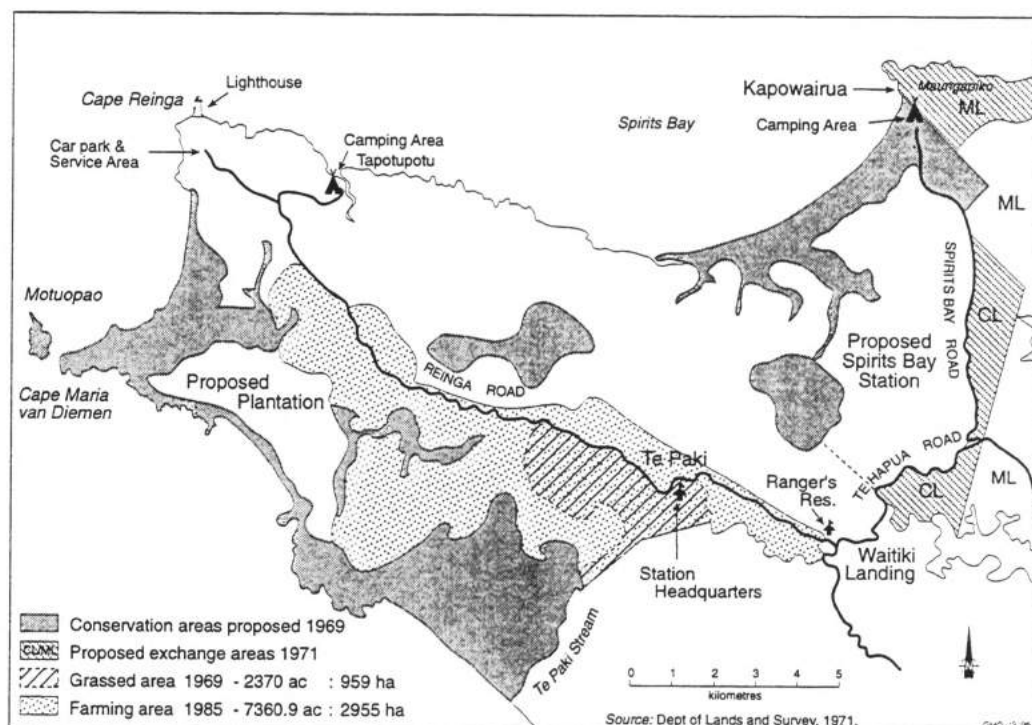


Figure 70: Proposed utilisation of Te Pahi Station

proposed exchange of Maori and Crown land, as shown in that figure, did not proceed.

### 10.9 FARM DEVELOPMENT – AHIPARA AND SOUTH

Haimona Snowden told the Tribunal how his family had sought a living in the 1920s and 1930s on the lands to the south of Ahipara:

My father Te Ngo Haki Rewiti Snowden and his brother Wiremu Snowden and another uncle, my mother's brother Hori Wairama, were working in the bush in the hills beyond the Ahipara gumfields at a place called Koroki. This was on land that belonged to my grandfather, my mother's father, Wairama Maihi Te Hu. . . . They cut the kauri logs in the bush and hauled them down the valley to Tarahuna. . . . They had a mill at Tarahuna and they milled the logs into timber there. When they were milling logs they camped on the gumfields. That land at Tarahuna belonged to Tiopira Heiwari . . .

By this time my father and my uncle Hori Wairama had built cottages for themselves at Waitehuia (behind the Roma Marae) with the timber they had milled.

My other uncle Wiremu Snowden, who was the sawmiller, built himself a cottage on the land given by Tiopira Heiwari while the mill was still operating. It was only a small piece of land, not more than five acres . . .

I can remember the mill and my uncle's cottage. After the bush was cleared and the mill closed down, my uncle and his family went gumdigging. Later still, in the thirties, my father and uncles milked cows on the land they had cleared at Koroki but it all went back [into scrub] during the Second World War.<sup>42</sup>

Selwyn Clarke also gave oral evidence about the lands at Koroki, on the Ahipara gumfields. Wairama Maihi Te Huhu had gone there to cut kauri some time before 1915. In the 1930s the area was divided into several small farms, and occupied by his sons and daughters. Selwyn Clarke's father married one of the daughters, and he spoke of living there and helping to clear the land, ploughing and milking cows. He went overseas during the Second World War and returned to find the land reverted to scrub. The land had been leased, but not looked after. His brother-in-law earned some money by cutting manuka for firewood. He complained that the Department of Maori Affairs had taken over the land, settled the farmers there, only to tell them to leave some years later when they could not keep up with loan repayments. There was no electricity or other services. Access was by horse track to deliver the cream to be picked up on the Herekino road. Selwyn Clarke complained: 'Maori Affairs should not have put us there, we worked for nothing'. He also spoke of Barney Snowden, Haimona's father, who 'died of hard work'. Two of Barney's children died there in the poor conditions. Haimona also spoke of how he 'did a lot of work on the farm for nothing', and of the isolation and lack of medical attention. He told of how boards were pulled off the house to make a coffin for a brother who died, as they could not afford more. There were other accounts, too, of the fruitless struggle to wrest a living from small uneconomic dairy units, and of the heartbreak when the land was abandoned, reverting quickly to the manuka scrub which they had spent years clearing.

In 1954 and 1955 Joan Metge, now Dame Joan, carried out a study of the Ahipara Maori community, which then numbered 537 people, a study subsequently published as *A New Maori Migration: Rural and Urban Relations in Northern New Zealand*. Her comments on land and land use in this community, which she named Kotare in her book, support the personal experience of kaumatua who spoke to the Tribunal:

Kotare was by reputation and experience a farming community. The lowland and valley area were given over to fenced fields of pasture and hay, to cowsheds and pig-styes, with occasional gardens growing *kumara* (sweet potato), maize, potatoes, pumpkins and marrows in quantity. Close investigation, however, revealed that the natural resources of the district fully supported only a little over one-seventh of the Maori inhabitants. . . .

The Maori owned land was in general under-developed. Almost half was hill-country or gum-land which could be developed only at a cost beyond the reach of the owners. Of the 1,500 odd acres enclosed within the limits of producing Maori

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42. Submission of Haimona Snowden (doc F26), pp 2-3

farms, roughly one-third was undeveloped or rough grazing used only as 'run-off' when the better pasture was too wet or needed resting. Even on the lowland and in the valleys there were ten holdings between five and sixty acres which grew only gorse and scrub except for a few acres around shareholders' houses, while another twelve, let out on short-term leases, were in poor condition, because the lessees had neither the incentive nor the means to improve them or even to arrest deterioration.

Dairy farming was the dominant form of land utilisation, there were twenty-two Maori farms in Kotare, all concentrating on the production of cream, which was collected daily by lorries from a butter factory fifteen miles away. Most farmers also kept a few pigs and put down between half and one acre in gardens, using the products for both activities in the home or in fulfilling obligations to kin, club or community.<sup>43</sup>

Only nine of the 22 dairy farmers were full-time farmers, they were on units of between 40 and 60 acres, and the largest herd was 45 cows. Annual production on average was between 100 and 150 pounds butterfat per cow, compared with the Northland average of 200 to 300 pounds. All the farmers relied heavily on family assistance, usually wives and children, to run their farms, and additional employment off farm, part-time for the farmer, or full-time for older children, was common. Most of the farmers were shareholders in at least some of their land and occupied it with leases and mortgages arranged through the Department of Maori Affairs. Dairy farming was a relatively recent form of land use for Maori farmers in the Ahipara district in the 1950s, as Metge explained:

The general level of farming in Kotare was not efficient nor even moderately productive by New Zealand standards. But Maori farmers had to contend with many problems that did not confront others. Maori farming in Northland had an extremely short history, amounting to little more than twenty years. A few farmers were struggling to make a living in the 1920s, but they were severely handicapped by a lack of clear title and the consequent difficulty of borrowing capital. The State established a Maori Land Development Scheme in Kotare in 1932-3, absorbing existing farms and developing the land on a group basis with the labour of the land owners, but it was not until 1935 that the land was subdivided and the first farm units established. Again, the farmers as a group lacked training and experience. Most of them were first-generation farmers, sons of busb-workers, gum-diggers and labourers, and all but four of them had spent long periods in the other occupations. They were still paying off mortgages incurred in development and stocking. At the existing level of production, they were left with an income that was at best barely adequate to support a family, so that in order to pay for the machines and fertiliser essential to increased production, the farmer had to maintain or increase the debt. Occupiers of holdings with several owners could not raise capital from the usual sources; their only hope of assistance was through the Department of Maori Affairs. Their occupancy, upon which depended their

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43. Joan Metge, *A New Maori Migration: Rural and Urban Relations in Northern New Zealand*, 1964, p 32

security of income and residence, lasted only for the span of their working life. Maori farmers in Kotare thus lacked strong incentives to improve production. Though they struggled through most of their occupancy on a reduced income to pay off the debt on the land, it remained only partly theirs and they had no guarantee that the fruit of their labours would pass to their sons rather than to another shareholder. As a result it often needed only a poor season or a quarrel with other part-owners to decide an occupier to walk off the farm. Efficient land use was further reduced by fragmentation: seven farms consisted of two or more blocks some distance apart. Lastly, low farm incomes tended to perpetuate themselves, since the farmer felt compelled by the shortage of ready cash to take casual or permanent employment, and so had less time to spend on the farm.<sup>44</sup>

Metge refuted the criticism that Maori farmers' output was reduced by their obligations to marae and community, and emphasised the reciprocal nature of farmers' generous contribution in labour and produce to weddings, funerals, and other community activities. The old Maori economy, based on gift exchange, still survived:

In general, however, contributions to *hui*, both labour and goods, were a loss or drain on the farmers' resources only on a short-term view. He was recompensed, not for each specific gift but in a general way, when a wedding or a death occurred in his own immediate family, for then he received from kinsfolk (not necessarily those to whom he had given or in the same measure) contributions which in the aggregate covered all or the greater part of the expenses of staging of necessary *hui*. The Kotare farmers also gave frequent gifts of meat, milk, fruit, and vegetables to kinsmen who lacked them, but these were usually returned indirectly, in the form of labour or gifts of goods not produced on the farm, such as seafoods.<sup>45</sup>

There were many Maori landowners who did not obtain their principal cash income from farming, but who did cultivate their land for gardens, kept pigs, sometimes a house cow, collected flax and other products or cut firewood. Others cultivated on the land of a family member who was a farmer, sharing the tasks and helping out, for example at haymaking time:

Apart from the farmers, a firewood contractor was the only Maori in Kotare who made a living from the land. The kauri-gum industry was at a standstill, but two Pakehas, who had been diggers most of their life, still won enough from concessions on the gum-land to support their Maori wives and children.<sup>46</sup>

The sea was also a significant resource for the people of the Ahipara district, and several families derived a large proportion of their income from it:

Two of the older men were commercial fishermen, owning power-driven launches and refrigerated vans in which they hauled their catch around the

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44. Ibid, pp 33-34

45. Ibid

46. Ibid

surrounding countryside. But fishing on this unsheltered coast was a hazardous occupation, virtually impossible in winter and halted by spells of bad weather even in summer. One of the fishermen, who had a large family to support, also took on contract work of various kinds, assisted in both enterprises by two adult sons. The sea yielded yet another and richer harvest in the form of commercial varieties of seaweed which wind and current drove into remote rock-bound coves. Four couples, two with children, lived all the year round in one of these bays in rented cottages, swimming out into the surf to 'pick' the seaweed in summer, when they made enough to support them during the rest of the year, and gathering it from the beach in winter. . . . In summer, eight other families camped there for several months.

Seafoods figured prominently in the diet of every Maori family in Kotare, for they were relished greatly. The children made frequent excursions to the beach to dig in the sand for bivalve shellfish, and on Saturday and Sunday, whenever tide and weather permitted, a large proportion of the community trekked 'round the rocks' on foot, horse, truck or tractor, in search of mussels and other shellfish, sea-eggs and crayfish. Those who could take advantage of favourable tides during the week or had adolescent children to send gave part of their harvest to kin or neighbours, in return for other favours. But with regard to fish, Kotare households bought most of their needs from the commercial fishermen, for the coast was not suitable for small boats and shore fishing was uncertain and often dangerous.<sup>47</sup>

The resources of land and sea provided subsistence to a greater or lesser extent for all the Maori families of the Ahipara district. There was no other employment in Ahipara and many workers had to commute to wage-earning jobs in Kaitaia or elsewhere. Some worked as labourers on road or drainage works, some built houses and bridges, worked in the dairy factory or timber mill. Others stayed away during the week and returned at weekends. A few who took droving jobs, such as taking stock to the freezing works in Moerewa, were away for weeks at a time. Metge emphasised the reciprocity of Maori community life in Ahipara, the reliance on kin, the extended family and marae, and sense of belonging to that land which held the community together. We have quoted from her book at some length because hers is the only in-depth study of a Maori community in Muriwhenua which provides a contemporary account of Maori life in the 1950s. But Metge also emphasised the harsh economic reality that the resources of land and sea were insufficient to provide subsistence for everybody, and wage-earning jobs were limited in the district. The alternative was to find a job elsewhere, to migrate to Auckland where the jobs were. Much of Metge's book is about this substantial urban migration of the 1950s.

Thus, the Muriwhenua rural communities were deprived of many of the energetic working age-group. In turn, children brought up in the city were deprived of the continuity of language and culture that elders would have passed on. The dynamics of the Maori communities were subjected to major change. Now, in the 1990s, jobs in the cities are not so easy to find. For many urban

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47. Metge, p 36

unemployed, a solution has been to return to the home territory. But that home territory, and the little remaining Maori land, was insufficient to support all their families in the 1950s, and there are more descendants now. The seafood resources have been depleted too. There are few jobs and many families now subsist on Government benefits. The return of urban kin has created new tensions and rivalries, exacerbated by continuing poverty, low educational attainments, and poor health.

## 10.10 SYNOPSIS OF THE DISTRICTS

### 10.10.1 Muriwhenua East

The people of the northern peninsula, and from Ahipara south, had at least some land to develop, no matter how marginal. Those of the east had nothing. The Taemaro–Waimahana Maori lands were insufficient for any economic farming unit. The blocks were isolated from Mangonui by a tortuous range of hills and they are still hard to reach today. Even the Government did not begin farming its own properties there until the 1950s, although the Government lands were several times the acreage of that retained by Maori. As previously seen, most Maori left the area from the 1920s, to labour on the lands of distant tribes.

### 10.10.2 Muriwhenua Central

The Maori blocks at Kohumarū, near Mangonui, were at least accessible and productive but could not provide farms for more than a few. As to Oruru Valley, by 1890 all of it had been alienated save for the Peria reserves in the upper reaches, where again a large and fragmenting ownership held to a dwindling residue. To be pragmatic, there was land enough for one or two family farms only. The remaining lands at Parapara and Te Ahua were beyond the fertile land on much more difficult terrain. The hilly country of Te Ahua remains in bush today. Parts of Parapara, dug over for gum, were virtually useless.

Mangonui–Oruru

Karikari Peninsula was also an isolated area without any adequate road access for years. The land left there was also to be subjected to the debilitating effects of the Native Land Court. The court's land divisions are shown in figure 71. With numerous owners in each block, they have since been further partitioned, several times over. Farming was not feasible there until the 1930s, and then was marginal at best, with soils of poor natural fertility. With the fragmentation of ownership and titles, Maori farmers were to hold under-sized units on leases from their extended families, and they had then to borrow from the Department of Maori Affairs to effect developments.

Karikari Peninsula

At the Tribunal's hearing at Rangiawhia, several of the people spoke of their struggle to survive on uneconomic units. They described how they relied heavily upon supplementing their income by fishing. Mortgage repayments could not be



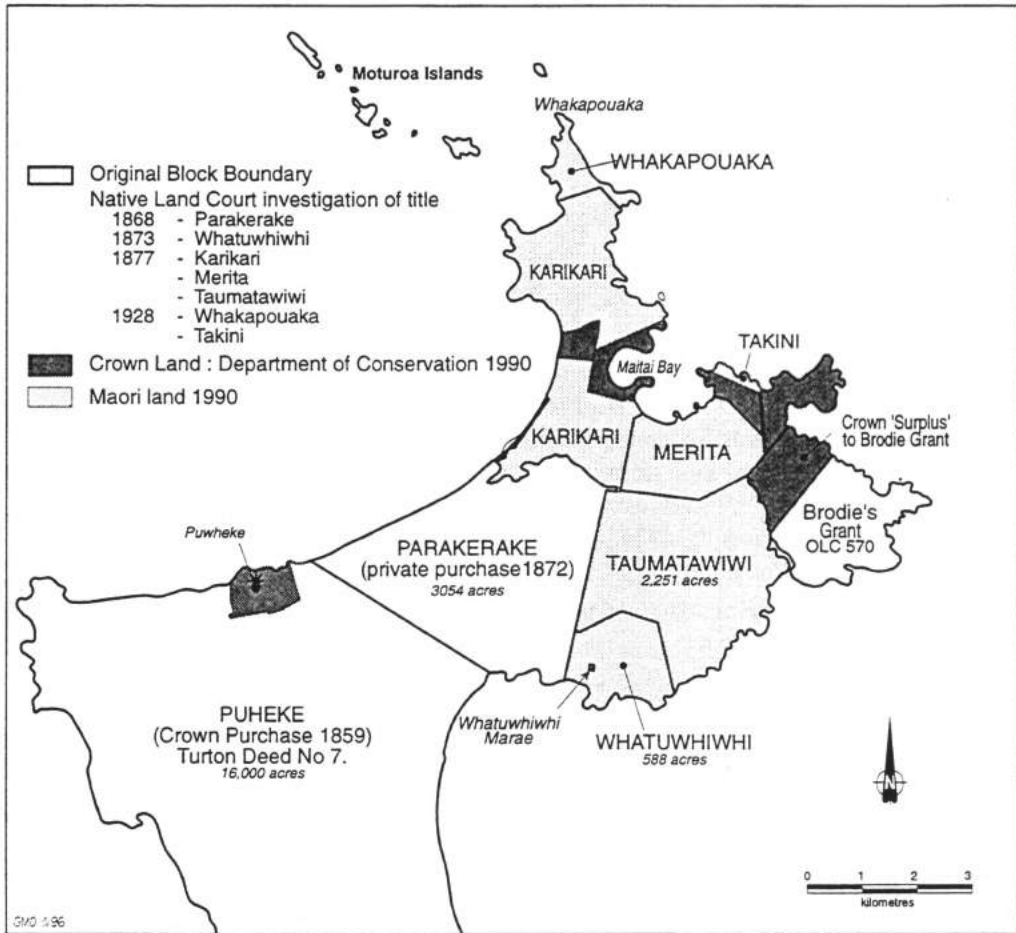


Figure 71: Karikari Peninsula lands

met or rates paid, and we were told how some debts were more than the value of the lands. Parts, around Maitai Bay, were sold to the Government. Many Maori migrated to Auckland and people walked from their farms. In the 1970s, the abandoned titles were amalgamated to form Ngati Kahu Station. Dairying has now given way to sheep and cattle, and pine has been planted on the poorer soil. However, the people despair that their children and grandchildren may now be lost to the cities. Today, as holiday and retirement homes encroach upon this incredibly beautiful area, increasing rates and land prices, and the lack of employment, threaten even the existing Maori presence.

Kareponia-  
Takahue

At Kareponia, near Awanui, the Maori land is largely flat and accessible, but it is not fertile river-flat, rather, a hard clay pan; and with more owners than the land can sustain, this area too was soon characterised by fragmentation of title and ownership. It is now divided into long, narrow-gutted sections of little practical sense. Victoria Valley, on the other hand, was one of the most fertile parts of Muriwhenua, but none the less the Maori land that remains is on the steeper gradients of Pamapurua and Okakewai. Here again, problems of multiple ownership and title fragmentation abound.

**10.10.3 Muriwhenua West**

Closer to Kaitaia were the Pukepoto Maori lands, a substantial part of the landscape but at the time still mainly in swamp. To the south, from Ahipara to Herekino was a larger area than any we have so far described, but the land left for Maori ranked with the poorest land in the district. Good farms could be made from the smallish part near Ahipara itself but not on the plateau behind, the former kauri forest lands. The natural fertility of the soils had been depleted. The area had been cut over by sawmillers and dug over for kauri gum, so that the top soil was removed and the land left virtually unworkable. Attempts to farm here failed.

Pukepoto-  
Ahipara-  
Whangape

The area at Whangape was hill country, but suitable only for large-scale sheep and cattle farming. The largish area retained was not big enough to support other than a few families.

**10.10.4 Muriwhenua North**

The largest remaining Maori territory was at Parengarenga, where Ngati Kuri of Te Hapua occupied the northern harbour shores and Te Aupouri were to be found around Te Kao in the south. Ironically, the trader Samuel Yates, who owned the Muriwhenua block of some 56,600 acres, had secured about three-quarters of the remaining Maori land under an informal lease. Maori were thus unable to develop the area themselves for many years. Moreover, the Maori lease land was used for gumdigging. In any event, this was the remotest part of Muriwhenua. The soils were indifferent, road transport was by bullocks only, and there were long distances to market. Dairy farming did not begin there until the 1930s, and then was of uncertain viability.

Today, Muriwhenua Maori retain ownership of but a small percentage of their claim area (see fig 73). Unfortunately, these lands are among the poorest in that area.

**10.11 SOCIO-ECONOMIC SURVEY**

European contact had not been kind to the Muriwhenua people. Early visitors described the area as one of the most densely populated regions in New Zealand. It has been speculated that the cultivations on the Kaitaia flat were associated with the largest pre-historic drainage system in the country. As to Oruru Valley, one explorer estimated there were 8000 people there alone. Some 60 pa have been identified there, and it was said that the approach of strangers was signalled the length of the valley by calling from pa to pa (see sec 2.4).

Researchers on this claim have estimated that the total Muriwhenua population was dramatically reduced to less than 8000 by 1835. While the population estimates show large variations, it is at least apparent that immunity

to introduced diseases came only slowly and that scarlet fever, typhoid, measles, rheumatic fever, influenza, tuberculosis, and pneumonia continued in epidemic proportions throughout the nineteenth and early twentieth centuries.

Although early census figures are also unreliable, it is indicative that one gave a low of 1615 Maori in 1878. This may have reflected the emigration of large numbers to Hokianga and the Bay of Islands for work, but such a low return is significant in itself. All later estimates, however, show the population as growing thereafter, but unusually high levels of disease were faced by Muriwhenua Maori well into the twentieth century.<sup>48</sup> Social and economic conditions remained serious through the 1920s and the Far North was one of the most depressed Maori areas in the country.

The land dwindled more quickly than the people, however, and medical opinion is that such land loss is a significant factor in the declining morale and health of the Maori affected.<sup>49</sup> Muriwhenua and the Bay of Islands were the two areas north of Whangarei most affected by land alienations before 1860, as figure 72 shows. Indeed, North Auckland was probably more affected than other places in the North Island by early land transactions.

By 1865, the Government and settlers had acquired:

as Crown grants from pre-Treaty transactions	20,000 acres	(8094 ha)
as surplus from pre-Treaty transactions	26,000 acres	(10,522 ha) <sup>50</sup>
by Crown purchases, 1850–65 (in 25 blocks)	<u>280,177 acres</u>	(113,388 ha)
	326,177 acres	

Thus, nearly half the land was alienated, though Maori were more than 80 percent of the population at that time. Thereafter, more land was acquired as follows:

Crown purchases of the 1870s	65,282 acres	(26,420 ha)
acquisitions to 1910	<u>75,843 acres</u>	(30,694 ha)
	141,125 acres	
	326,177 acres	
	<u>141,125 acres</u>	
	467,302 acres	(189,117 ha)

In 1908 the Stout–Ngata commission estimated that 109,706 acres (44,398 ha) remained in Maori ownership, less than 20 percent of the district, when Maori were 42 percent of the population. Nearly all of this was remote and marginal

48. See doc F10, pp 19–20

49. The relationship between land loss and health and the spiritual and physical dimensions of health are considered by Dr M H Durie in *Whaiora: Maori Health Development*, Oxford University Press, 1994.

50. The Government in fact claimed a much larger area as surplus at the time, including Muriwhenua East, Oruru Valley, and 65,000 acres on the most northerly peninsula, but these were later subsumed by alleged purchases, and the Government relied on those purchases in these proceedings.

SOCIAL CONSEQUENCES

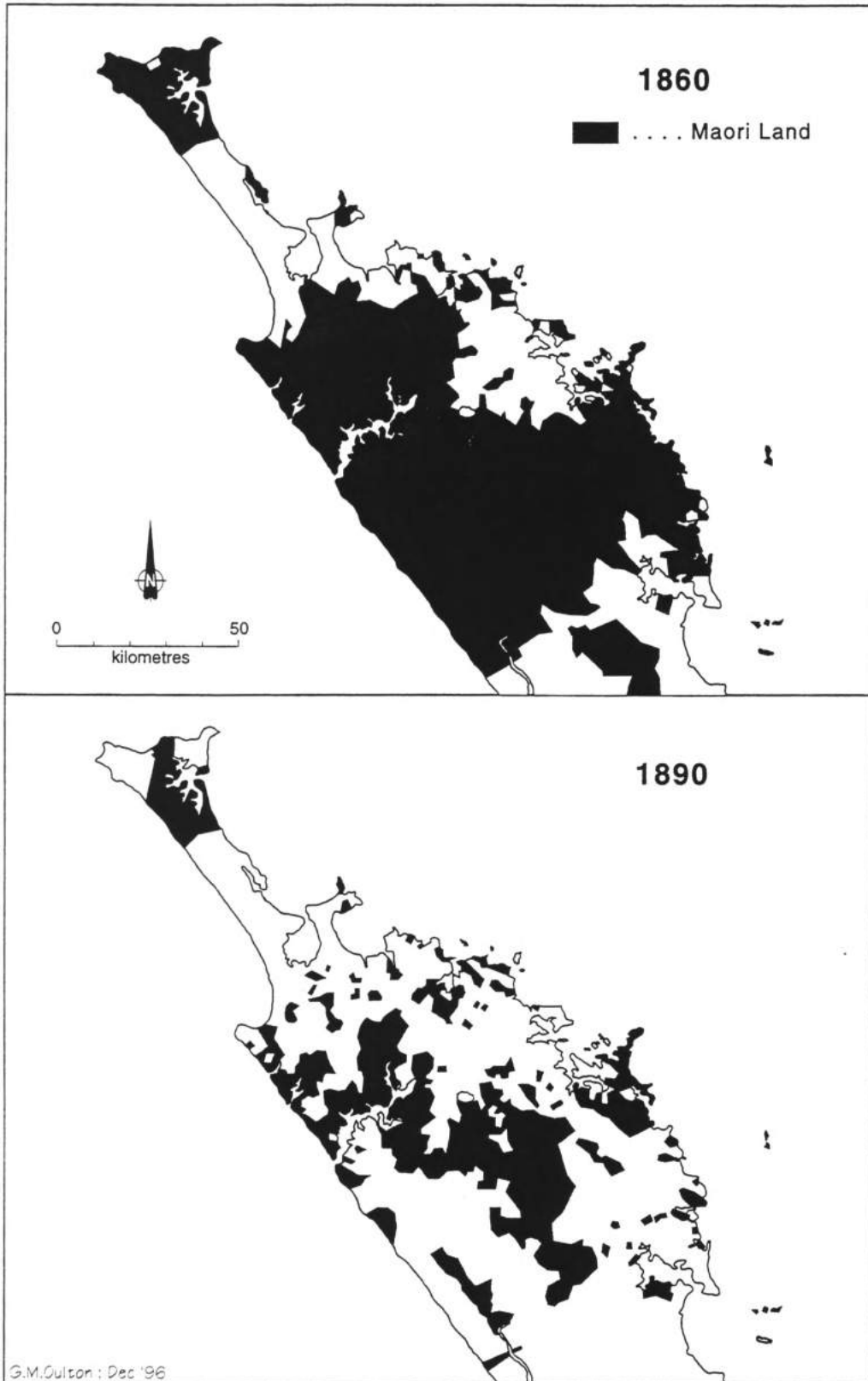


Figure 72: Maori land at 1860 and 1890 from north of Whangarei

land. In addition, Maori had actual control of less than 10 percent of the district, for 57,306 acres (23,192 ha) was vested in a board to lease for the recovery of survey liens.<sup>51</sup> An analysis of 42,617 acres (17,247 ha) of the Muriwhenua Maori land showed that, at that time, it was divided into 140 blocks with a total of 2748 owners. Already, the land was well beyond the threshold of economic family user.

### 10.12 MURIWHENUA MAORI TODAY

In the 1991 population census, 10,287 of those living in New Zealand nominated one of Te Aupouri, Ngati Kahu, Ngati Kuri, Te Rarawa, or Ngai Takoto as their main iwi of allegiance. Some of these would belong to hapu south of the claims area, but all of them are likely to have rights within the area under claim. In addition, of those who can trace descent from these iwi, some gave a confederation or waka (eg, Tai Tokerau, or Nga Puhi in the greater sense) as their main iwi, or included one of the above iwi as a subsidiary allegiance. For various reasons it is not possible to enumerate these people, and the following data refer only to the 10,287 who nominated one of the five Muriwhenua iwi as their main allegiance.<sup>52</sup>

Of this group, 41.5 percent reported living in the Northland Region and 41.2 percent lived in the Auckland Region. Most of the remaining 17.3 percent lived in the rest of the North Island. Since Northland Region is larger than the region under claim (or the larger territory of the Far North district – see below), a large majority of Muriwhenua Maori live outside the rohe of their iwi.

In regard to most available socio-economic indicators, Muriwhenua Maori are much like other Maori, except they are slightly poorer. The average income (including social security benefits) of adults (those aged above 15) was \$14,400 in 1990–91, or 94 percent of the Maori average (where ‘Maori’ is defined as those reporting some Maori ancestry), and 76 percent of the national average. Only 39.9 percent reported some school qualification, in contrast to 41.9 percent of all Maori, and 56.0 percent of all adult New Zealanders. Again, only 30.5 percent of adult Muriwhenua reported some tertiary qualification, compared with 31.3 percent of all Maori, and 39.9 percent nationally.

Muriwhenua Maori are more likely to be unemployed. Their unemployment rate in 1991 was 25.7 percent, compared with 20.9 percent for all Maori and 10.5 percent for all New Zealanders. This underestimates the situation because, facing higher unemployment, Muriwhenua Maori are less likely to seek work. A better comparison is provided by the employment participation rate (the ratio of those

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51. Document F10, pp 12–13

52. In this section, all statistics are from the 1991 population census, and unless otherwise stated, definitions correspond to the census definitions.

with jobs to those over the age of 15), which was 41.9 percent for those of Muriwhenua iwi, 47.9 percent for all Maori, and 54.6 percent for all New Zealanders.

Muriwhenua households (those in which the 'occupier' or spouse gave Muriwhenua as their main allegiance) are less likely to be in rented accommodation than all Maori households (similarly defined) but to pay a slightly higher rent. They are also likely to be more crowded, with 23.7 of the households being multiple family, non-family or temporary households, compared with 19.1 percent for all Maori, and 14.1 percent for all New Zealanders.

### 10.13 MAORI IN THE FAR NORTH DISTRICT

The previous section reported the statistics for all Muriwhenua Maori, whether they live within the claim area (north of Whangaroa) or outside. Figures are not readily available for Muriwhenua Maori living in the claim area. The best that can be supplied is for all Maori living in the Far North district, which extends south to Kaikohe and the Bay of Islands. In the 1991 census, 20,826 in the Far North district declared themselves as being of Maori descent, so that the Muriwhenua would be a small proportion of that total.<sup>53</sup>

Maori living in the Far North district reported average incomes of \$12,100 for 1990 to 1991, only 79 percent of the Maori average, and 64 percent of that for all New Zealanders. Their employment participation ratio was 34.7 percent, considerably lower than those reported in the previous section. Far North Maori also had poorer educational qualifications and, while they were more likely to own their own homes (and, if they were renting, their housing was cheaper than the national average), they appear as likely to be living with other families or in temporary accommodation as all Maori (and more so than all New Zealanders).

If this pattern for all Maori in the Far North applies to Muriwhenua Maori, then those living within the rohe are in greater financial and employment hardship than those who have migrated. The assumption of an equivalent pattern may be optimistic, since anecdotal evidence suggests that Maori in the Muriwhenua rohe are often poorer than those in the southern parts of the Far North district. If so, there would be an even greater disparity between those Muriwhenua Maori living outside the region, and the conditions of hardship for those left behind.

Ironically, in this land where Maori unemployment remains one of the highest in the country and social problems abound, Maori localities have become sought-after for European homes. The Karikari Peninsula is a prime example. Retirement and holiday homes now intrude on the traditional Maori areas, while

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53. Population census 1991

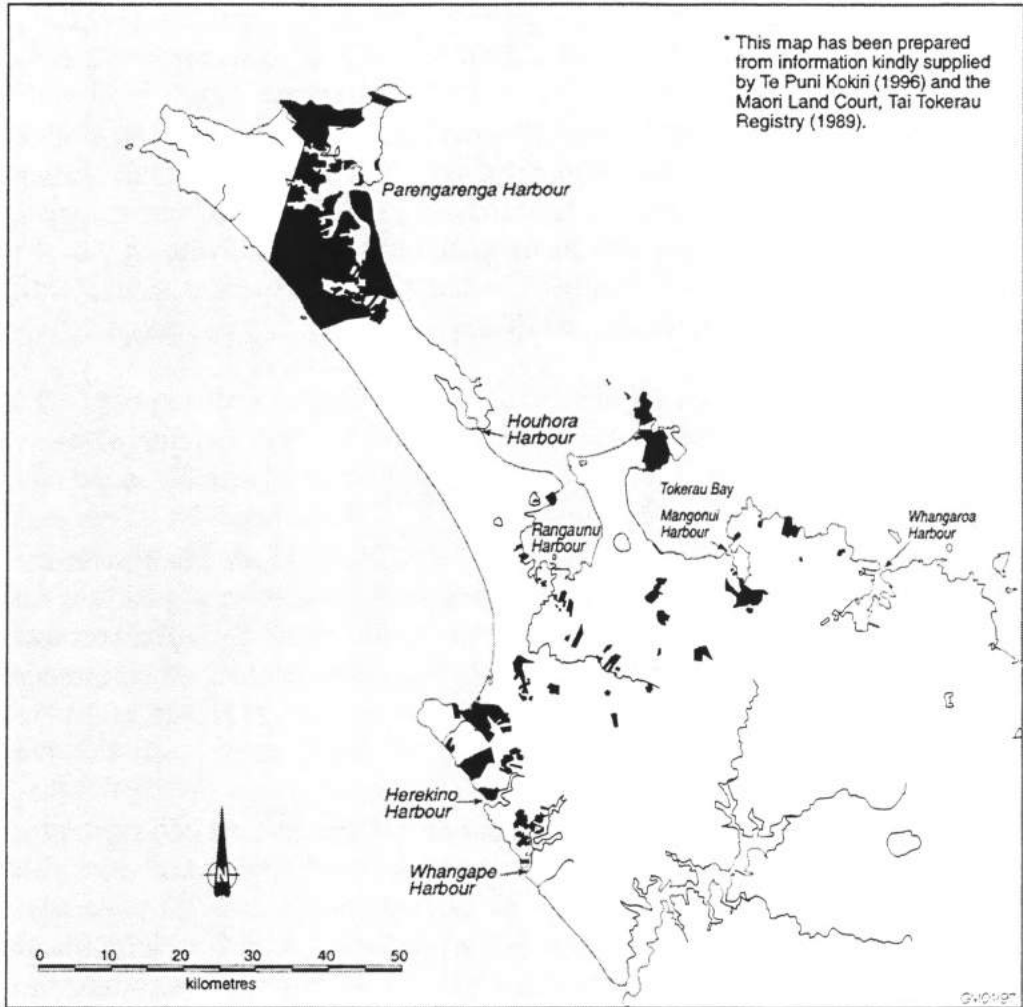


Figure 73: Muriwhenua Maori land, 1996

numerous Maori families have been forced to the concrete pavements of Auckland. Unless special steps are taken to protect such places, and to provide opportunities for the young Maori from Auckland to spend time there, the relationship of the Maori people to their ancestral land, and the culture itself, will continue to be in jeopardy.

## CHAPTER 11

# FINDINGS AND PROPOSALS

*[T]hey must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.*

From the royal instructions, Marquis of Normanby to Captain Hobson RN, 14 August 1839

### 11.1 CHAPTER OUTLINE

This chapter examines the Tribunal's jurisdiction, the construction of the Treaty of Waitangi and the Treaty's principles. Thereafter findings are made in terms of the Tribunal's jurisdiction. The claims are held to be well founded and it is determined that recommendations are appropriate to compensate the claimant groups or remove the prejudice. Finally, the steps necessary to determine the appropriate recommendations, including binding recommendations, are reviewed.

### 11.2 JURISDICTION

#### 11.2.1 The application of the Treaty of Waitangi

The Government's policies and practices should be seen in light of the standards of the day, as Crown counsel contended. In terms of the Treaty of Waitangi Act 1975, however, they must also be assessed by the principles and the standards for settlement established in the Treaty of Waitangi. A lower test cannot be sanctioned simply because it later became the norm. It was basic to the assumption of rights of settlement and governance that Maori interests would be protected, and Maori would be treated fairly, equitably, and in accordance with the high standards of justice that a fiduciary relationship entails. The canons of justice and protection apply to all ages.

The principles apply to all ages

The Tribunal's task is to measure State action against the principles of the Treaty of Waitangi. More particularly, section 6 of the Act requires claimants to establish that they have been prejudiced by State action, and that the action

Jurisdiction



complained of is contrary to the principles of the Treaty of Waitangi. If that is established, not only may the Tribunal recommend relief, but it may make binding recommendations to transfer substantial assets.<sup>1</sup> It is clearly important to establish what the Treaty principles are.

Principles and  
terms

Although the Act refers to the principles of the Treaty for assessing State action, not the Treaty's terms, this does not mean that the terms can be negated or reduced. As Justice Somers held in the Court of Appeal, 'a breach of a Treaty provision . . . must be a breach of the principles of the Treaty'.<sup>2</sup> As we see it, the 'principles' enlarge the terms, enabling the Treaty to be applied in situations that were not foreseen or discussed at the time.

Treaty  
construction

Conversely, a focus on the terms alone would negate the Treaty's spirit and lead to a narrow and technical approach. In illustration, to satisfy the terms of article 2 one might ask only whether the land was knowingly sold, when the principle from the Treaty as a whole is whether, in all the circumstances, any sale was fair. Similarly, based upon the Treaty's terms, tribal rights may depend on whether article 2 is subservient to article 3, when the principle is that the reasonable expectations of two different peoples, as parties to the Treaty, must equally be respected. The Treaty cannot be read as a contract to build a house or buy a car. It was a political agreement to forge a working relationship between two peoples and it must be seen in light of the parties' objectives. The principles of the Treaty are ventilated by both the document itself and the surrounding experience.

The Treaty is also a treaty, not a unilateral declaration. It is necessary to inquire of the Maori view as well. Although some of the assumptions are dated, the approach adopted by the United States Supreme Court is still sound:

In construing any Treaty between the United States and an Indian tribe, it must always (as was pointed out by Counsel for the appellees) be borne in mind that the negotiations for the Treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives 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; that the Treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who 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 imparted to them by the interpreter employed by the United States; and that the Treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.<sup>3</sup>

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1. See ss 5(1), 6(1)–(3), 8A, 8HB Treaty of Waitangi Act 1975

2. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 693

3. *Jones v Meehan* (1899) 175 US 1, 10

Decisions of the Supreme Court of Canada affirm the need for a broad approach, and as something more than an extension of the rule of *contra proferentem* as applied to the treaties of major State powers. In *R v Taylor and Williams* it was held that surrounding circumstances and contemporary statements may be brought into account though on its face the treaty is not lacking for certainty.<sup>4</sup> The court considered:

Cases on Indian and Aboriginal rights can never be determined in a vacuum. It is of importance to consider the history and oral traditions of the tribes concerned, and the surrounding circumstances at the time of the Treaty, relied on by both parties, in determining the Treaty's effect . . .

Further, if there is any ambiguity in the words or phrases used, not only should the words be interpreted as against the framers or 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 understood the terms of the Treaty, then such understanding and practice is of assistance in giving content to the term or terms.<sup>5</sup>

In view of the North American experience, the Tribunal engaged Professor Bradford W Morse of Ottawa to report on the judicial interpretation of contractual arrangements with the indigenous peoples.<sup>6</sup> Some of the important principles are these:

- The treaties should be given a fair, large, and liberal construction in favour of the Indians.
- The treaties must be construed not according to the technical meaning of the words, but in the sense that they would be naturally understood by the Indians.
- As the honour of the Crown is always involved, no appearance of 'sharp dealing' should be sanctioned.
- Any ambiguity in wording should not be interpreted to the prejudice of the Indians if another construction is reasonably possible.
- Evidence by conduct or otherwise as to how the parties understood the Treaty is of assistance in giving it content.
- Oral promises form part of the Treaty too.

The prevailing view in North America, and now New Zealand, is that it is the spirit of the treaties that most count.<sup>7</sup>

These same rules, in our view, apply to the early deeds, particularly those of the Government before 1865 when the lands were still tribally owned. The circumstances surrounding the early New Zealand land conveyances are

Application to  
deeds

4. *R v Taylor and Williams* 1981 62 CCC (2d) 227

5. *Ibid*, pp 232, 235–236

6. See Bradford W Morse and R Irwin, 'Treaties, Deeds and Surrenders: An Analysis of Canadian and American Law' (doc 02)

7. See Cooke P, *New Zealand Maori Council v Attorney-General*, p 663

sufficiently the same as those for the treaties with North American Indians for the principles of treaty interpretation developed in North America to be applied to them.

The Te Roroa  
approach

‘We have used the vital essence of the Treaty [of Waitangi] as our yardstick,’ the Tribunal reported in the Te Roroa claim. Seeking the essence from the bicultural matrix that applied at the time, the Te Roroa report took the following stance:

- The Treaty is an arrangement between two parties, one of whom had an oral culture, the other a literate culture. To understand its meaning we must consider what was said and agreed as well as what was written down; and also whether it was subsequently acted on or acquiesced in, and by whom. As an oral arrangement, it can be understood only in the context of the debate among Maori that preceded its signing. The Treaty as a written document can be understood only in the context of other sources in documents, such as Normanby’s instructions to Hobson.
- The Treaty is essentially a contract or reciprocal arrangement between two parties, the Crown and Maori, a ratification of the terms and conditions on which Europeans were allowed to settle in the country. It set down the terms on which the Queen was to establish a government to maintain peace and deal with lawlessness. In return for ceding sovereignty to the Queen, the chiefs, the hapu and all the people were guaranteed their tino rangatiratanga. It involves continuing obligations to give, receive, and return.
- The Treaty is a sacred covenant entered into by the Crown and Maori ‘based on the promises of two peoples to take the best possible care they can of each other’. Both parties have a common moral duty to abide by the values it embodies.<sup>8</sup>

### II.2.2 Applicable Treaty principles

Applicable Treaty  
principles

What, then, are the Treaty’s principles? We would not repeat that already written by the Tribunal and the courts, or range beyond that most pertinent to this case.<sup>9</sup> The principles of the Treaty flow from its words and the evidence of the surrounding sentiments, including the parties’ purposes and goals. Four are important in this case: protection, honourable conduct, fair process and recognition, though all may be seen as covered by the first.

8. Waitangi Tribunal, *The Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 42

9. For some of the more recent expositions on Treaty principles, see Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, pp 215–242, and the detailed discussion of the status of the Treaty, the Crown and Maori perspectives on the Treaty provisions, the surrounding circumstances of the Treaty, and the related principles. See also *The Ngai Tahu Sea Fisheries Report 1992*, Wellington, Brooker and Friend Ltd, 1992, pp 267–273; *Ngawha Geothermal Resource Report 1993*, Wellington, Brooker and Friend Ltd, 1993, pp 99–102; *Te Whanganui-a-Orutu Report 1995*, Wellington, Brooker’s Ltd, 1995, pp 201–202; *The Turangi Township Report 1995*, Wellington, Brooker’s Ltd, 1995, pp 284–288.

Priority is due to the principle that, in the settlement of the country, Maori interests would be protected. The Treaty's opening and closing words so specified, and the intention is abundantly apparent from the associated royal instructions under the hand of Lord Normanby and from addresses at the Treaty signings. The degree of responsibility required is indicated by the extent of that which Maori gave over – settlement rights and governance – and by the extent to which consensual annexation was achieved only by assuring Maori that they and their lands were not at risk.<sup>10</sup>

The accompanying royal instructions shed light on the form of protection the British Government had in mind at the time – the audit of the Government's policies and practices through the appointment of an independent Protector of Aborigines, and the assurance of adequate land reserves. In reading the instructions as a whole, the principle behind the reserves would appear to be that Maori would retain sufficient resources to be full participants in the projected new economy, and would have sufficient land to provide an economic base for the future.<sup>11</sup>

In further elaboration of the protective role, Normanby required:

- all dealings with Maori were to be conducted on the basis of sincerity, justice, and good faith;
- Maori must be prevented from entering into contracts which would be injurious to their interests. Thus Government agents were not to purchase from Maori any land 'the retention of which by them would be essential, or highly conducive to their own comfort, safety or subsistence'; and
- Government purchases for land settlement were to be confined to such districts as Maori could alienate 'without distress or serious inconvenience to themselves'.

In addition, Normanby discussed the undesirability of direct dealings between Maori and settlers, and the need for the Government to maintain a right of pre-emption on the purchase of Maori land. The Tribunal has earlier considered that such a monopoly carried a concomitant duty to ensure that sales were understood, and that the hapu retained a sufficient endowment of land to meet present and future tribal needs.<sup>12</sup>

Fiduciary responsibilities arose also from the marked imbalance in knowledge and power. The Government alone knew the likely outcome in terms of the Western legal and economic system which was likely to prevail. The relationship

10. See Claudia Orange, *The Treaty of Waitangi*, Wellington, Allen and Unwin, 1987, chs 3–4

11. See also the *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington, Brooker and Friend Ltd, 1991, pp 137–147, where the Tribunal took into account Lord Normanby's instructions and the oral assurances in formulating the principle that article 2, read as a whole, imposed on the Crown the duty, first, to ensure that the Maori people in fact wished to sell; secondly, to ensure they were left with sufficient land for their maintenance and support or livelihood or, as the chairperson put it in the *Report of the Waitangi Tribunal on the Waiheke Island Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1987, p 38, that each tribe maintained a sufficient endowment for its foreseen needs.

12. See *Report . . . on the Orakei Claim*, pp 143–144, and *The Ngai Tahu Report 1991*, pp 237–238

between the Government and Maori could not therefore be addressed in commercial terms alone.

In various reports the Tribunal has stressed that active protection was required. The Court of Appeal in 1987 endorsed this view. The president of the court, then Sir Robin Cooke, said:

the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. There are passages in the Waitangi Tribunal's *Te Atiawa*, *Manukau* and *Te Reo Maori* reports which support that proposition and are undoubtedly well-founded.<sup>13</sup>

Principle of  
honourable  
conduct

It would be consistent with Maori custom if Maori had seen matters in terms of honourable conduct rather than protection. Either way, however, the outcome is the same. The allusions to protection in the rhetoric of the Treaty debate do not gainsay the reality that Maori saw themselves as holding the military power, while yet being anxious not to prejudice their access to Europeans and the trade they brought. Custom gives the clue to the Maori perception that a working relationship required a generous giving and an absolute trust in an honourable rejoinder. We have seen how this was a customary trait. The position for Maori is not unlike the finding in the Court of Appeal that the Treaty required the parties to act reasonably towards each other and with the utmost good faith.<sup>14</sup>

Principle of fair  
process

The Treaty promised 'the necessary laws and institutions'. Normanby stipulated for the appointment of an independent Protector of Aborigines to maintain an oversight of State action in the interests of Maori people. Hobson promised Maori, following their complaints, that the pre-Treaty transactions would be inquired into and lands unjustly held would be returned. The principle, as we see it, is that the Government should be accountable for its actions in relation to Maori, that State policy affecting Maori should be subject to independent audit, and that Maori complaints should be fully inquired into by an independent agency.

Principle of  
recognition

A principle intrinsic to the Treaty was that Maori would recognise and respect the Governor and the Governor's right of national governance, while the Governor would recognise and respect Maori and their rangatiratanga, by which was meant their laws, institutions, and traditional authority. The relationship between the two has been seen as a partnership.<sup>15</sup>

Rangatiratanga was provided for in the Maori Treaty text. A question on the status of Maori custom and law was raised in the Treaty debate, and, as has been seen, it was undertaken by or for the Governor that Maori custom and law would also be respected. The aspects of rangatiratanga important to this case include the

13. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 (CA). This decision has been applied by the Tribunal in many subsequent reports.

14. See *New Zealand Maori Council v Attorney-General*, p 642

15. See the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988, p 192; *New Zealand Maori Council v Attorney-General*, p 642

right to have acknowledged and respected the hapu's system of land tenure and of contracting, and also the hapu's customary preferences in the administration of their affairs or the management of natural resources.<sup>16</sup>

### 11.2.3 Proof and discretion

In reviewing historical matters, the Treaty of Waitangi may be seen as imposing an impossibly high legal standard; but, as we see it, the Treaty of Waitangi Act does not call for a strictly legal result. The Tribunal is not called upon to determine actionable wrongs, to quantify particular losses or to award damages for property losses and injuries upon legal lines. The Treaty is not a commercial contract, nor is the Tribunal a court.

The Tribunal has a wide discretion as to the action to be taken, or whether to take action at all. Section 6(3) of the Treaty of Waitangi Act provides that the Tribunal may make recommendations 'if it thinks fit having regard to all the circumstances of the case'. Its recommendations shall be 'that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future'. By section 6(4) such recommendations 'may be in general terms or may indicate in specific terms the action which, in the opinion of the Tribunal, the Crown should take'. How the Tribunal's discretion should be exercised is an important issue in this case.

Claimants have none the less to establish their claims in terms of the Act; that is, they must show the matter complained of is an act or omission of the Crown, that the act or omission has caused prejudice to them, and that the act or omission was contrary to the principles of the Treaty. Notwithstanding the onus so placed on the claimants, we do not see the statutory framework as relieving the Government of the burden it would otherwise have had to account for the performance of its Treaty duties. As part of its protective responsibility, the Government must demonstrate the probity of its conduct and establish, for example, the propriety of its acquisition of Maori land. It must show, in other words, that its extinguishment of native title was valid. As we understand it, that is also demanded as a matter of general law.

Onus of proof

Accordingly, while the claimants must establish a claim, a point may be reached where the onus must shift to the Government to establish the propriety of its actions or acquisitions, or to show how it came by certain lands.

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16. The principle of recognising Maori law and authority has been developed over a number of Waitangi Tribunal reports from the *Report of the Waitangi Tribunal on the Motunui-Waitara Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1983, and the *Report of the Waitangi Tribunal on the Manukau Claim*, Wellington, Government Printer, 1985. The development of the principle in the context of historical claims was advanced in the *Report . . . on the Orakei Claim*, pp 143-144, the *Report . . . on the Muriwhenua Fishing Claim*, p 187, *The Ngai Tahu Report 1991*, pp 237-238, and most recently in *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 19.

**11.3 FINDINGS**

The claims relate principally to:

- the disposal of the pre-Treaty transaction land by grant or the presumptive acquisition of the scrip lands and surplus;
- contemporaneous land purchases by the Government; and
- consequential impacts in terms of land tenure reform and disempowerment.

We now consider the first.

**11.3.1 The status of the pre-Treaty transactions**

Pre-Treaty  
transactions were  
not sales

Following the consideration of the issues in chapters 2 and 3, we find that the pre-Treaty transactions 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. Maori contracted with Europeans on the basis of Maori law, which was the only law known to them and the only cognisable law in New Zealand before 1840. As a consequence, the pre-Treaty land transactions were not sales but at best conferred a personal right of occupation conditional upon acceptance of the norms and authority of the local Maori community as represented in the rangatira. The transactions imposed obligations on the settlers, of which the settlers ought reasonably to have been aware but which they did not generally fulfil.

We are reminded of the warning sounded by the Privy Council as late as 1921, when Viscount Haldane in delivering judgment said:

Their Lordships make the preliminary observation that in interpreting the native title to land, not only in Southern Nigeria, but other parts of the British Empire, much caution is essential. There is a tendency, operating at times unconsciously, to render that title conceptually in terms which are appropriate only to systems which have grown up under the English law. But this tendency has to be held in check closely.<sup>17</sup>

As we have earlier noted, by Maori customary law there existed no interest in land independent of the local community which was freely transferable outside of it. All such land rights as any individual possessed flowed from membership of, or at least an abiding relationship with, the associated ancestral groups.

Despite changes in form, style, or protocols, the use of books and money, the fundamental value system which is the basis for Maori law was largely unaffected. The Europeans' attribution of new meanings to Maori words and practices does not mean that they had acquired the full or any such meaning in Maori minds. Our more particular opinions are at sections 3.7 and 5.6.

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17. *Amodu Tijani v Secretary, Southern Nigeria* [1921] 2 AC 399, 402–403

### 11.3.2 The management of the pre-Treaty transactions

Inquiries into the pre-Treaty transactions were made first by Commissioner Godfrey under the Land Claims Ordinance 1841 and later by Commissioner Bell under the Land Claims Settlement Act 1856. Our findings are given under five headings:

- The provisions of the Land Claims Ordinance 1841.
- The investigations under that ordinance by Commissioner Godfrey.
- The provisions of the Land Claims Settlement Act 1856.
- The investigations under that Act by Commissioner Bell.
- The inquiry as a whole.

#### (1) *The Land Claims Ordinance 1841*

This ordinance was virtually identical to the New Zealand Land Claims Act passed by the New South Wales Legislative Council in 1840, which in turn was modelled upon a New South Wales Act of 1833. We have earlier recounted the background to the New South Wales Act at section 4.7. This Act concerned Australians who had purchased lands from earlier Australian squatters without title. Unlike the New Zealand legislation, it had nothing to do with the indigenous people as the Aborigines were not seen as having any land rights. The intention was to give a title where none had previously existed. The only issue was whether one European had sold to another European. Little reliance was placed on the form of evidentiary document, given the low level of literacy of the early New South Wales population and the shortage of lawyers. It was accepted that any such transaction would be governed by English law, as that was the law common to both parties.

In New Zealand, however, the pre-Treaty land transactions were with Maori, who were governed by their own distinctive land laws. English law had no currency here prior to 1840. This critical difference between the Australian situation and that in New Zealand appears to have been overlooked or disregarded by those responsible for both the New South Wales enactment relating to New Zealand and the Land Claims Ordinance 1841 which copied it. The underlying assumption was that the transactions fell to be considered in the context of English not Maori law, although only Maori law applied at the time. Consequently, the minds of the commissioners were not directed to the real issue, which was the true nature of the transactions under Maori law.

We now consider the provisions of the 1841 ordinance. For the reasons discussed in chapter 4 and more succinctly set out at section 5.6, we find that the Land Claims Ordinance 1841 omitted:

- (a) to sufficiently particularise the nature and scope of the investigation needed;
- (b) to require the commissioners to ascertain the true nature of the transactions; and



- (c) to require the commissioners to determine the adequacy of the consideration, the expectation of future benefits, the absence of fraud or unfair inducement, the measures needed to accommodate any special arrangements such as joint-use understandings, implied trusts or service obligations, the sufficiency of other land in the possession of Maori, the certainty of the alienor's right to enter into the transaction, the clarity of boundaries, the fairness of the apportionment of land between the parties, the on-going obligations to be met, and appropriate provision for reserves.

We find the claimant hapu were prejudicially affected by the above omissions in that their effect was to circumscribe the inquiry that was needed, impede ascertainment of the true nature of the transactions, and allow the conditional occupations of Maori law to be changed into absolute sales.

The Tribunal further finds that the omission of such requirements in the Land Claims Ordinance 1841 was inconsistent with the Treaty principle which requires the Crown actively to protect Maori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law.

**(2) *The Godfrey inquiry under the Land Claims Ordinance***

Chapters 4 and 5 considered the nature and scope of the commissioner's inquiry in 1843. Our conclusions were given at section 5.6 but we reiterate our main points:

- (a) The inquiry proceeded on an erroneous assumption that the land transactions constituted or could be deemed to constitute a contract for the sale and purchase of land under English law.
- (b) No examination was made of the matters previously mentioned – the true nature of the transactions, the parties' understandings and the degree of mutual comprehension, the 'title' of the Maori parties to enter into the land transactions, the adequacy of consideration, whether there was fraud or unfair inducement, the provisions needed for trusts, joint-use or other special arrangements, the true boundaries, whether Maori would retain sufficient land to maintain an economic base, or the reserves required.
- (c) The number of claims considered was limited as well. Of the 62 European land claims in Muriwhenua, only 14 were ever examined, and these ineffectually. Those not heard resulted in scrip awards, as referred to later.

We find the claimant hapu were prejudicially affected by the inadequate inquiry in that, had a full and effective inquiry been made, it would or should have been ascertained first that the Maori and European parties, in 1843 (and previously), were not sufficiently of one mind for valid contracts to have been concluded and, on the Maori understanding of the transactions, Maori interests in the land had not been extinguished.

The Tribunal further finds that the failure of the Crown to ensure that an adequate inquiry was conducted into the pre-Treaty land transactions in question, and into the equity of outcomes, was inconsistent with the Treaty principle which requires the Crown actively to protect Maori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law.

**(3) *The Land Claims Settlement Act 1856***

The Land Claims Settlement Act 1856 was intended to facilitate a final settlement of old land claims not previously heard or not finally settled by valid Crown grants. It provided for a commissioner to define the previous awards by more appropriate Crown grants and to determine claims not already heard. However, claims in respect of which awards had been made could not be reheard, only adjusted, and the scrip lands specifically could not be investigated, by virtue of section 15(2) of the Act, even though they had never been heard. The Government had effectively purchased the inchoate rights of the European claimants, and had then converted them into binding sales without any independent hearing.

A particular circumstance in Muriwhenua is that Maori had imposed a condition on any confirmation of the pre-Treaty transactions: that any surplus would return to them. On the evidence, Godfrey paid no regard to that condition. None the less, he faithfully recorded and reported the Maori statement to the Government, and passed no judgment on it. He simply determined the amount to which the European was entitled in accordance with the legislation, and made no comment on the disposal of the balance lands. It was the subsequent legislation and Government action which ignored the condition that Maori had legitimately laid down.

For reasons discussed in chapter 5 and particularised in section 5.6, we find that the Land Claims Settlement Act 1856 omitted:

- (a) a requirement that the commissioner should review the workings of the first Land Claims Ordinance Commission in the light of the defects in the 1841 ordinance as referred to;
- (b) a requirement that the commissioner should hear and determine those claims not investigated by Commissioner Godfrey and which led to the awards of land scrip;
- (c) a requirement that Maori should be provided with adequate reserves in the areas alienated;
- (d) a requirement to respect any conditions on which the transactions had been affirmed, or any express or implied trusts or joint-use arrangements;
- (e) a requirement that Maori should be heard on any steps taken to settle and define the settler's grant, the right to the surplus and any Maori reserves.

We find that the claimant hapu were prejudicially affected by these omissions in that they circumscribed the inquiry that was needed, prevented the true nature

of the transactions from being ascertained, failed to ensure that the hapu were left with sufficient lands, and allowed the majority of the claims, those affected by scrip, to be treated as valid sales without any inquiry into them.

In addition, the legislation enabled the condition that the surplus lands return to Maori to be ignored; so that the transactions could be treated as though they were sales, as though they had been affirmed as sales, and as though such affirmations were unconditional. In similar vein, joint-use arrangements and trusts were negated.

The Tribunal further finds that the omission of such requirements in the Land Claims Settlement Act 1856 was inconsistent with the Treaty principles which require the Crown actively to protect Maori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law.

#### **(4) *Commissioner Bell's investigations***

Although inhibited by legislation from conducting appropriate inquiries, Bell none the less augmented his statutory role, which was mainly to define the Europeans' grants and any Maori reserves, to a mission to recover for the Europeans, and the Government, as much Maori land as he could.

As noted in chapter 4, Bell devised and gazetted rules for grantees to survey the whole of their original claims. In return, their grants were substantially increased. Since Maori were claiming the surplus land not occupied by Europeans, this ensured that the maximum was either taken up by the Europeans or secured for the Government. As Commissioner Bell noted, it became the claimants' interest, when told they would receive an allowance in acreage of 15 percent on the area surveyed, to define with Maori the whole of the land originally 'sold'. The result was that the Government recovered a large surplus.

In addition, as noted in chapters 4 and 5, and as summarised at section 5.6, Maori were not properly heard on the question of reserves. It is doubtful whether there was ever a proper hearing in a judicial sense. Reserves were reduced to a minimum or not provided at all. In those few cases where scrip had not been taken and the European claims were heard, there was no proper hearing as was necessary and required.

The Tribunal finds that the commissioner took positive and deliberate steps to maximise the amount of land which went to Europeans or the Government, and to minimise that retained by Maori, that he allowed Maori no or no sufficient hearing, and that he had insufficient regard for their use of the land, their future needs or their other interests.

The Tribunal further finds that the claimants were prejudicially affected by the foregoing, which deprived them of lands in which they had a legitimate interest. As concluded at section 5.6, we consider there was never a sufficient ground for treating any transaction as a full and final conveyance of the land described in it.

The Tribunal finds, in addition, that the foregoing acts of the commissioner were inconsistent with the Treaty principles which require the Crown actively to

protect Maori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law.

**(5) *The inquiry as a whole***

With regard to the pre-Treaty transactions as a whole, our finding is that the confirmation of those transactions was an act of the Crown pursuant to legislation and to policies and practices adopted in fact, and that the legislation, policies, and practices were inconsistent with the principles of the Treaty of Waitangi, for the reasons earlier given. We find further that the hapu were prejudiced as a result. The prejudice to the claimant hapu was the erosion of their social, economic, and political base, and the extinguishment of hapu interests in respect of most of the Muriwhenua land that would be crucial for the future development of the district. They were deprived of their underlying interest in the lands granted, their rights of shared user, the benefit of the occupiers' services for the use of the land, their interests as beneficiaries of a tribal trust, and their traditional authority over it. They were also denied their absolute right to the surplus.

The area affected was about 150,000 acres (60,705 ha). Deducting those lands that were later claimed by subsequent purchases (Muriwhenua East, Mangonui, Oruru, and Muriwhenua North), the pre-Treaty lands finally alienated by the land claims process totalled 46,000 acres (18,616 ha), some 20,000 acres (8094 ha) in grants to settlers, and some 26,000 acres (10,522 ha) as Government surplus. In addition, however, the Government was implicated in the loss by private treaty of 65,000 acres (26,306 ha) of Muriwhenua North, by virtue of the Government's surplus claim; and its claim to the surplus also affected its claimed purchases of Muriwhenua East, Mangonui, and Oruru.

**II.3.3 Scrip lands**

The substitution of scrip for a land grant, in Muriwhenua East, Mangonui, and Oruru, as considered in chapter 4, was not legislatively prescribed. As a Government policy it was contrary to the Land Claims Ordinance and to previous proclamations that European land rights were not to be recognised until proven before land commissioners. None the less, the Government assumed that, from the grant of scrip, and the presumptive assignment of the claimants' claims, it had a full right to the land in question. In the result, none of the scrip lands was inquired into.

The presumptive acquisition of the scrip lands appears to have derived from the opinion that the Government should not be obliged to prove its acquisitions or the valid extinguishment of native title. Whatever the merits of that proposition, the Government's right in this case could not have been better than that of the individual from whom it was derived, and the individual's right had

not been proven. Moreover, by Maori law, once the individual left the area the land reverted to source.

The Tribunal finds that the Crown's failure to investigate the pre-Treaty transactions for which scrip was given, and the presumption that the Government was entitled to the scrip lands, was inconsistent with the Treaty principle which requires the Crown actively to protect Maori rights to their land. The failure was prejudicial to the affected hapu in that lands which should have reverted to them, according to their understanding of the transactions, passed to the Government.

Although in this inquiry the Crown claimed its right to the affected scrip lands by virtue of subsequent purchases, the Government entered into those purchases on the basis that the lands affected by scrip awards had already passed to the Government. The Crown's regular presumption that it was not obliged to establish the validity or equity of its direct or derivative acquisitions was also contrary to Treaty principles, in that the duty to protect requires an accounting for the protection given, and thus an accounting for the Government's acquisitions.

#### **11.3.4 Surplus lands**

The issue of surplus lands was discussed in chapters 4 and 5 and assessed at section 5.7. As noted, if the transactions were not sales in the first instance, there was no surplus that the Government could claim, and if the Maori transactions were personal to the Europeans concerned, and their issue, there was again no basis for the Government to assume an unencumbered right to any part. The Government's claim, moreover, was founded upon a legal theory that the radical title was vested in the Crown; but that legal theory was inappropriate to the circumstances of the colony, where the radical title was already spoken for. The claim, moreover, was not consistently made. Lord Normanby made no mention of such a proposal, and his pronounced solicitude for the protection of Maori interests, and his directions for Government acquisitions to be always fair and equal, demonstrate that acquisition by a legal sidewind was not approved by him. During the Treaty debate, Governor Hobson did not raise any matter relating to the Government's intention to take the surplus lands, when circumstances required that he should do so if there was an intention to take the surplus at that time. Governor FitzRoy and officials advising Governor Grey may also be quoted as denouncing an intention to take the surplus lands.

The doctrine of tenure, moreover, had not been agreed with Maori, although it seriously affected their rights. The doctrine was contrary to the Maori tenet that an entry onto hapu land required an agreement between the hapu and each entrant; and the pre-Treaty transactions had been affirmed by Maori, in the terms that Maori understood them, on the basis that the surplus would be retained by Maori.

Finally, no inquiry was made as to whether it was necessary to secure all or part of the surplus for Maori in order to provide adequately for their present wants and future needs, as Lord Normanby had required. Looking at the matter now, it can be seen that the pre-Treaty transactions covered the most significant of the Maori lands, and that the substantial exclusion of Maori from those lands would jeopardise their future contribution to the community.

The Tribunal finds that the Crown policies and practices and acts and omissions which gave rise to the appropriation of the surplus lands were inconsistent with the Treaty principles which require the Crown actively to protect Maori rights to their land, to ensure that they maintain an economic base, and to respect tribal autonomy and law. As a consequence, Maori were wrongly deprived of land they had not sold and over which they had continued to exercise rangatiratanga.

### 11.3.5 The Government transactions

The Government transactions from 1850 to 1865 were considered in chapters 6, 7, and 8, and also at section 9.6. In summary:

- On the evidence, no transaction can be shown to have been an absolute sale (see sec 6.2). There was also no contractual mutuality or common design, but a fundamental ideological divide.
- Conversely, the Government did not prove the transactions as sales at the time (or subsequently).
- There was no independent audit of Government action for fair and equitable contracts, no judicial confirmation process, and no access for Maori to independent and informed advice to enable proper decisions to be made. There was no independent monitoring of issues of title, representation, boundaries, land descriptions, fair prices, and reserves, and there is evidence of considerable looseness in each of these areas, as summarised at section 8.4. In fact, there were no protective arrangements overall. The Government's purchase monopoly and fiscal interest in buying and selling Maori land at this time made independent advice essential.
- There is no evidence that the Government was buying the land in excess of Maori needs, as was required, or that any inquiry was made on that account. The evidence is that the Government was buying the better land in the central band where Maori were concentrated.
- Long-term benefits were clearly anticipated by Maori, as officials were aware, in accordance with expectations created over many years. It was also apparent that Maori had in mind a much larger design than mere sales (see secs 6.3.7–6.3.10). In the meantime, the Government was funding immigration and colonisation costs from the sale of Maori land, so that Maori had a prior claim on such funds for their own agricultural training and development. There were no settlement plans to accommodate Maori,

Shortcomings in  
the Government  
purchase  
programme

however. There were no arrangements to secure long-term benefits for Maori either, yet nor were they disavowed, and there is some evidence that the Maori opinion was capitalised on to secure extensive acquisitions.

- The absence of a necessary sense of duty to protect Maori interests stands in contrast to some extraordinary measures to buy, as the exhumation of the remains of Panakareao and Ereonora shows.
- The foregoing – the fact that the transactions were not sales and no proper protective arrangements were in place – need not have mattered so much in achieving the original goals of Maori and the Crown in the completion of the Treaty, had fair shares in the land been maintained. For that reason, we see the failure to provide adequate reserves as the main cause of Maori dissatisfaction. No adequate reserves policy was implemented or adhered to, and insufficient reserves were provided. The evidence points convincingly to an alternative policy of acquiring as much Maori land as could be, as soon as practicable and with as few reserves as possible.

Finding on the  
Government  
purchases

We find that there was an omission to protect Maori interests, in the respects given above, and that the omission was contrary to the Treaty duty to provide that protection and ensure an economic base for each hapu. The policy of extinguishment was also contrary to the principles of the Treaty of Waitangi in that grossly insufficient reserves were made.

The prejudice to Maori is highlighted in the gross distortions in land ownership that followed. It was this that precluded Maori from participating in the eventual benefits of settlement, for their exclusion from the land was such that they could not be stake-holders in the new social and economic order that Europeans knew would follow. From the very beginning, one European could hold up to 2560 acres (1036 ha) (or more if the Governor allowed, and as he did in fact allow), while reserves for a Maori community of some 100 or more people might be 200 acres (81 ha) or less.

Later, no ceilings for Europeans applied. The Government enabled and facilitated Europeans to acquire 7710 acres (3120 ha) on the southern Aupouri Peninsula when that was the last of the Maori land in that area; and allowed a European to purchase 68,607 acres (27,765 ha), and then to lease more, on the same peninsula, while more than 100 Maori had access to only 820 acres (332 ha), much of which in winter was under water. Consistently, Maori were allocated far less than was seen as necessary for a European. The laws to control land allocation simply did not include any adequate provision to maintain fair shares with Maori.

The prejudice to Maori is also that they were deprived of 280,177 acres (113,388 ha) by 1865. Through the continuation of the same policies after 1865, a further 75,774 acres (30,655 ha) was to pass by 1890, by which time there were no hapu with sufficient land for their subsistence, let alone future growth. The broad result was the virtual exclusion of Maori from the central Muriwhenua bowl, and their marginalisation on the rims – politically, socially, and

economically – as outlined in chapter 10. They were excluded from most strategic lands even before 1865.

The Tribunal notes that these findings are consistent with those of other tribunals separately constituted for the hearing of claims under the Treaty of Waitangi Act about the Government's purchase of land. This Tribunal has been concerned with the confirmation of private land transactions said to have been effected before 1840, and with Government land transactions from 1840 to 1865. The Ngai Tahu Tribunal was concerned with land transactions from 1848 to 1864, and the Te Roroa Tribunal with transactions after 1874. The Ngai Tahu Tribunal emphasised, among other things, the responsibility on the Government to ensure that the Maori concerned had the right to sell, and to be satisfied, on proper inquiry, that finality was understood, that no ongoing contractual relationship was intended, that no residual interests were retained, that there would be no further claim on the buyer, and that the buyer would not be obliged to share the land or the fruits of the land with them. In both the Ngai Tahu and Te Roroa reports, it was considered that the purchase prices were nominal, and were precursors to anticipated benefits and development opportunities in future.

Consistency with  
other Tribunal  
findings

### 11.3.6 Particular complaints

While the main losses to the hapu arose from Crown actions and omissions in relation to the pre-Treaty and Government transactions as a whole, certain hapu and individual families are mainly or equally concerned with particular land areas. We find that Crown conduct was inconsistent with the principles of the Treaty of Waitangi and prejudicial to Maori, with regard to the following lands, for the general reasons given above and also for the more particular reasons indicated below:

*Whakapaku block:* The lack of proper process and formality was evident in the gross misdescription; there was also no inquiry into the right and title of the alienors (see sec 7.3.2).

*Mangonui block:* The improper assumption, behind the whole of the Government's approach, was that most of the land had been validly purchased by the Government in 1863 when that had not been proven and was not the case, and when the pre-Treaty transactions had not been examined as required by law. The further lack of appropriate formality in the completion of the transaction was described earlier (see sec 7.3.3).

*Mangonui township:* Again, the pre-Treaty transactions had not been investigated as required by law, the Waikiekie purchase lacked sufficient specificity, Rangikapiti headland and other areas should not have been included in a mopping-up clause, and the 'vendor' could have given no more than use rights (see sec 7.2.2).

*Taemaro reserve:* The Taemaro reserve was wrongly reduced by over 65 acres (26 ha) (see sec 7.3.3).



- Oruru Valley*: No thought was given to whether this area should have been secured to Maori in accordance with original intentions. Then, the subsequent purchase wrongly proceeded on the basis that the lands had been validly acquired by prior transactions, when these had not been investigated or proven, and after the Government had allocated the land and possession had been taken (see secs 3.5, 4.10, 5.3.5, 7.2.3).
- Raramata block*: Maori were wrongly deprived of 2600 acres (1077 ha) (see secs 3.3.4, 5.3.1–5.3.4, 7.2.6).
- Mangatete block*: The Government's right to 4414 acres (1786 ha) was not established, and it appears to us this area should have been retained by Maori (see secs 5.3.1–5.3.4, 7.2.6).
- Puheke block*: The size of the Puheke purchase was grossly under-estimated, again indicating the regular looseness in proceedings (see sec 7.2.6).
- Okiore block*: The evidence of a trust was not investigated, a trust in respect of some 6000 acres should have been imputed, and there were obviously inadequate reserves (see secs 3.3.4, 5.4.6, 8.2).
- Awanui block*: The reserves were inadequate and a promised reserve was not provided (see secs 5.4.6, 8.2).
- Tangonge block*: In all the circumstances, the Government should have reserved the Tangonge block for Maori (see secs 3.3.4, 5.4.6, 8.2).
- Victoria Valley*: Having regard to the surrounding alienations, and Panakareao's wishes, the whole of this land should have been reserved by 1865, and made inalienable, as Panakareao had expected (see sec 9.3.3).
- Ruatorara block*: There was no basis for the Government's right to 1482 acres (see sec 8.3.2).
- Muriwhenua South and Wharemaru*: The assessed acreage was grossly incorrect and no proper consideration was given to reserves, despite the large area involved (see sec 8.3.3).
- Houhora block*: Having regard to the surrounding alienations, the Houhora block should have been reserved before 1865, and made inalienable (see secs 8.3.3, 9.5.1).
- Muriwhenua North*: The Government enabled and facilitated one European to acquire the vast area of Muriwhenua North, creating gross distortions between Maori and European holdings in this significant Maori area, and compromising Maori subsistence and future economy. Having regard to the numbers of Maori and the fact that this was marginal land, a small inquiry should have revealed that the whole of this block should have been reserved for Maori in accordance with the original intentions settled between Panakareao and the missionaries (see secs 3.6, 5.5.2, 8.3.4, 9.5.2).
- Outer blocks generally*: Timber and gum interests should have been reserved to Maori in all of the outer country (see sec 7.2.9).

### 11.3.7 The Taemaro claim

Particular findings are made with regard to the Taemaro claim since, for the most part, it has been dealt with separately.

There is no sufficient evidence that the Ngati Kahu of this area ever agreed to the sale of any part of Muriwhenua East. More particularly:

- The lands allocated by Resident Magistrate White were based on an assumption that the pre-Treaty transactions were valid, when the pre-Treaty transactions had not been inquired into as the law required, and when, in terms of the contracts as understood by Maori, the land should have reverted to them once the Europeans involved left the area.
- There was no adequate hearing of Maori with regard to those few areas that were awarded by Commissioner Bell, and no sufficient evidence that the affected Maori understood the transactions as sales.
- There were no sufficient checks to ensure that the Mangonui purchase of 1863 was fairly and honestly effected and with the right persons. On the evidence, it was not fairly and honestly effected and with the right persons, and, in addition, it proceeded on the basis that the whole or greater part had already been purchased when that was not the case and that had not been established as the law required.
- There were no sufficient checks in place to ensure that the Whakapaku purchase was fairly and honestly effected and with the right persons. On the evidence, it was not. In addition, the price was incapable of bearing a reasonable relationship to the acreage conveyed when the acreage was so grossly uncertain.
- No inquiry was made of whether the land purchased was in excess of the needs of the hapu, or whether the lands retained would be sufficient for them to be full participants in a new economic regime; and, on the evidence, such land as was left to certain individuals was not. No land was left to the hapu as a group.
- The Crown omissions above were contrary to the principles of the Treaty of Waitangi and were prejudicial to Maori, that prejudice consisting not only of land loss and loss of use, but of tribal dispersal, the attendant social collapse, and the burden of the grievance borne over the years, either permissively, or actively in Native Land Court proceedings, complaints, and petitions.
- While remedies have still to be considered, we indicate a preliminary opinion that the return of Stony Creek farm alone would not be sufficient to compensate for past loss, or provide a sufficient economic base for the hapu in the future.

### 11.3.8 Conclusions

For the foregoing reasons, we conclude the Muriwhenua land claims are well founded in the respects given. The people were marginalised on marginal lands, insufficient for traditional subsistence and inadequate for an agrarian economy. The social and economic consequences for the Muriwhenua hapu have been profound, with burgeoning impacts in terms of physical deprivation, poverty, social dislocation as families dismembered in search of work elsewhere, and loss of status during the long years of petition and protest when Muriwhenua leaders were made as supplicants to Government bureaucrats.

These matters, and the serious social and economic conditions that still prevail in Muriwhenua, were set out in chapters 9 and 10. In all the circumstances, we consider that recommendations would be appropriate, and binding recommendations if need be, for the transfer of substantial benefits to compensate for or remove the prejudice.

The remaining sections of this report consider the steps necessary for final recommendations to be made.

## 11.4 ON RECOMMENDATIONS

We have given our conclusion that recommendations should be made, and should include proposals for the transfer of substantial property. Our preliminary opinion is that, unless the parties agree otherwise, this should include binding recommendations in respect of Crown forests and State enterprise assets. This section concerns the issues that need to be resolved before recommendations, including any binding recommendations that may be appropriate, can be made.

### 11.4.1 Total package relief

Counsel for claimants asked for binding recommendations now, in respect of Aupouri State Forest and Stony Creek Station in the event the claims were held to be well founded, with other relief to be considered later. Crown counsel were right to oppose this course, in our view. The Tribunal considers the binding recommendations for the transfer of large assets should not be made except in strict accordance with the law and then, in view of the discretion involved, only after considering all relevant matters of principle. The following view is preliminary only, as counsel were not fully heard on the matter, but it appears the Tribunal cannot proceed incrementally when binding recommendations are involved. Section 6(3) of the Act provides for the Tribunal to propose the necessary action to compensate for or remove the prejudice arising from past Crown action in a well-founded case. Sections 8A(2) and 8HB(1) provide for binding recommendations to be 'included' in the recommendation under section

6(3). The effect, as we see it, is that the Tribunal must propose a total relief package and cannot deal with matters piecemeal.

This was indicated in a memorandum to counsel of 30 January 1995.<sup>18</sup> Subject to such further submissions as counsel may wish to make, the Tribunal considers binding recommendations cannot be made for any claimant group except in the context of the total relief due to it.

#### 11.4.2 Early relief

It is none the less apparent that relief must be given sooner rather than later. The Runanga o Muriwhenua first introduced the claim to the Tribunal in 1986. However, reforms in the fishing industry, new policies for the sale of Crown assets, and particular local body works compelled the land claims to be shelved for the Muriwhenua fishing claim, a claim in respect of the alienation of Crown assets, and a claim relating to Taipa sewerage. This involved the runanga not only in protracted Tribunal hearings, but in extensive proceedings in the High Court and Court of Appeal, and in associated negotiations with the Government. We understand that the returns to Muriwhenua have not been large. In the meantime, the runanga has had a heavy cost and crippling responsibility to bear, and the burden of advancing complex land claims from 1990. Early relief is as necessary as it is appropriate.

#### 11.4.3 Negotiations

The Tribunal understands that negotiations have not progressed since the final hearing in 1994, and does not propose to adjourn matters for further negotiations unless all counsel consent to that course.

#### 11.4.4 Approach to relief

The Tribunal wishes to hear counsel on the approach to be taken to the recommendations to be made. Is it to compensate each wrongful loss to the fullest extent, when, in our finding, the acquisition of most of Muriwhenua was inconsistent with the principles of the Treaty, or is it to consider what is necessary for tribal restoration? The Tribunal's preliminary opinion, which was introduced at section 11.2.3, is set out below. This broadly follows the *Report of the Waitangi Tribunal on the Orakei Claim*, in principle though not necessarily in quantum.

The Tribunal is not a court required to determine an actionable wrong, quantify a particular loss, or award damages for property losses and injuries on legal lines. A different approach may be appropriate for specific claims by individuals on account of particular recent losses, but the historical claims of

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peoples are in another category. For such claims, property losses may be validly offset by other benefits, albeit of a general nature. Thus, the statutory direction to the Tribunal is in general terms. It may recommend that action be taken to compensate for or remove the prejudice, or to prevent other persons from being similarly affected in the future. This is not the language of the courts. 'Prejudice', in this context, would appear to embrace broad social and economic consequences.

Since the case for the claims is based upon the principles of the Treaty of Waitangi, it appears the remedy, for general wrongs affecting peoples, should also have regard to Treaty principles. It may be considered that the broad object of the Treaty was to secure a place for two peoples in one country, where both would benefit from settlement, and which basically required a fair sharing of resources. On that basis, where the place of a hapu has been wrongly diminished, an appropriate response is to ask what is necessary to re-establish it.

On this basis, the remedy does not depend solely upon a measurement of past loss, and compensation for historical claims may be at less than the proven value of the total properties in question. The Tribunal is thus particularly interested in the relevant factors to be considered. They could include, for example:

- the seriousness of the case – the extent of property loss and the extent of consideration given to hapu interests;
- the impact of that loss, having regard to the numbers affected and the lands remaining;
- the socio-economic consequences;
- the effect on the status and standing of the people;
- the benefits returned from European settlement;
- the lands necessary to provide a reasonable economic base for the hapu and to secure livelihoods for the affected people; and
- the impact of reparation on the rest of the community (so that local and national economic constraints are also relevant).

The thrust, it may be argued, is to compensate for past wrongs and remove the prejudice, by assuring a better arrangement for the hapu in the future. If that is not the thrust the legislature would intend, then it may be the legislature should make the appropriate criteria more apparent; but again that is a matter on which we would prefer to hear argument.

Who should benefit? Again we indicate our preliminary thinking. Recommendations appear to be required to secure an appropriate economic base for the groups above-named, Ngati Kuri, Te Aupouri, Ngai Takoto, Te Rarawa, Ngati Kahu, and Ngati Kahu o Whangaroa, either independently or through the central agency of the Runanga o Muriwhenua.

In addition, however, there may be cases where full justice would not be met if more particular groups were not compensated for specific losses. These are referred to later.

### 11.4.5 Nexus

By sections 8A and 8HB, a binding recommendation may be made 'where a claim ... relates in whole or in part' to forest or other land on which binding recommendations may be made. Crown counsel contended that there must be a sufficient nexus between the claim and the land in question.

Counsel may wish to be heard further on this matter, which was not fully addressed. It appears that in this case, however, the claims are substantially about the loss of land throughout the tribal area as a result of several Crown policies and practices. The question is whether the land about which binding recommendations may be made is part of the territory affected by the policies and practices complained of. 'Relates to' must have regard to the tribe, the tribal area, and the type of claims that may be brought under the legislation.

### 11.4.6 Post-1865 claims

In the preface, it was noted that the current inquiry has been limited to policies and practices established before 1865. As we see it, however, the impact of those policies and practices entitles the claimants to a very large compensation to enable their re-establishment in future. This must involve the transfer of substantial assets. Taking the approach suggested at section 11.4.4, the Tribunal does not consider the proof of further wrongs after 1865 could add anything to the relief that might now be given.

If counsel wish to proceed with a post-1865 inquiry, then, of course the Tribunal will do so; but, unless an incremental approach is acceptable, relief may need to be postponed until that has been done. It is suggested that delay is unnecessary, and that relief should be explored at this stage with matters post-1865 remaining uninvestigated.

### 11.4.7 Specific claims

The foregoing should not prejudice specific claims where a particular relief may be called for. These claims may be severed from the general claims, for separate hearings later. At this stage the Tribunal is aware of specific claims relating to:

- Ninety Mile Beach (Wai 45);
- Rating (Wai 117 and 284);
- Mapera 2 school site (Wai 118);
- Te Kao School site and telephone exchange (Wai 292);
- Kohumarū Station and nearby blocks (Wai 295, 320);
- Telecom depot, Kaitaia (Wai 534);
- Takahue School and other lands (Wai 544, 548);
- Konoti and other blocks (Wai 590);
- Te Kohanga No 1 (Wai 626); and
- Te Kao 76 and 77B (Wai 643).

It appears the general claim could be settled without prejudice to the above.

#### 11.4.8 Tribal representation

The Tribunal's understanding of tribal representation is also given, so that any concerns might be further debated. The claims were initially brought by the Honourable Matiu Rata for Ngati Kuri; Wiki Karena for Te Aupouri and Aupouri Maori Trust Board; Simon Snowden for Te Rarawa and Te Rarawa Tribal Executive; the Reverend Maori Marsden for Ngai Takoto and Ngai Takoto Tribal Executive; McCully Matiu for Ngati Kahu and the Ngati Kahu Trust Board; and Peter Pangari for Ngati Kahu o Whangaroa.

At the opening of the inquiry and at all subsequent times during several years of hearings, it was settled and agreed that all claims, except that of Ngati Kahu o Whangaroa, would be presented through the Runanga o Muriwhenua. The Tribunal was given to understand, however, that if the claims were well founded, the intention of the runanga was to direct any compensation to the groups above-named. As mentioned in the preface, it considerably assisted the Tribunal that the claims were brought in a unified way. Several witnesses spoke as well of the close relationships within the Muriwhenua hapu in terms of whakapapa, shared experience and locality, so that they collectively constitute a distinctive people or iwi.

Subsequent to the final hearing in 1994, however, and more particularly in 1996, another group has given notice of its desire to be heard independently. This stands under the name 'Southern Alliance'. The Tribunal has been given to understand that the chair is shared by McCully Matiu (above-named) for Te Runanga o Ngati Kahu (a separate body from the Ngati Kahu Trust Board which was represented during the inquiry), Ranareti Brown for Ngai Takoto, and John Campbell for Te Runanga o Te Rarawa.<sup>19</sup>

Further, a separate claim was filed at about the same time, for Graeme Noho on behalf of Ngati Kuri Trust Board.<sup>20</sup> For the reasons given below, any associated problems will need to be sorted out.

#### 11.4.9 Vesting of assets

Binding recommendations for the vesting of assets may be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom the land is to be returned.<sup>21</sup>

The Tribunal will need particulars of the assets in Muriwhenua that could be affected by binding recommendations.

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19. See papers 2.128, 2.135

20. Ibid

21. See ss 8A, 8HB Treaty of Waitangi Act 1975

The Tribunal will need to be advised of the relief sought by the runanga and of the Maori or group of Maori for whose benefit any binding or ordinary recommendations should be made.

The Tribunal will hear such groups with an interest as may wish to be heard on those matters.

However, the Tribunal expresses the following concerns at this stage:

- The runanga and any other groups involved in earlier proceedings must be protected for any outstanding costs, including legal costs.
- The spread of assets about which binding recommendations might be made may not be even over the various tribal and geographic areas. It does not appear that Stony Creek Station alone would be sufficient for the claims of Ngati Kahu o Whangaroa, for example, and recoverable land within the central district of Ngati Kahu appears to be far less than that which would be required, having regard to the losses in that area. There is a question of whether assets might be held in a central agency for a period, to assist all the hapu to develop a reasonable asset base for the future and to ensure equity between them.

#### **11.4.10 Boundaries**

In the course of the hearing, certain hapu representatives described their understanding of their tribal boundaries. We have no difficulty with the hapu settling upon hapu boundaries as agreed between them, if they can indeed be agreed, but we would not ourselves presume to fix boundaries or even refer boundaries to the Maori Appellate Court to determine. The traditional focus was on the relationships between hapu, not on the lines that divide them, and there has been considerable mobility (see sec 2.2).

While it is certainly the case that block boundaries, or places habitually frequented, can be recited by Maori with considerable particularity, and can cover vast areas, we do not regard these as having had the same significance as the political boundaries of states. The important task is not to imagine boundaries for purposes that were once unimaginable, and once more to force Maori into a European mould, but to consider how each hapu can be restored to a reasonable economic base, having regard to comparable hapu strengths.

#### **11.4.11 Conservation land**

It may be that ordinary recommendations could be proposed in respect of Department of Conservation lands, in particular but not exclusively at Motuopao, Muriwhenua North, Kapowairua, and Karikari Peninsula. This was indicated during the course of the previous inquiry. The Tribunal would like to hear parties thereon, and whether arrangements to protect public uses would be envisaged.



**11.4.12 Surplus land settlement**

Claimants contended that a prior 'settlement' of surplus lands, following the 1946 surplus land inquiry, was not a mutual settlement. It was not agreed, nor was there a direct benefit to Muriwhenua. The Tribunal flags this matter as an issue that could be relevant to remedies.

**11.4.13 Proof of acquisitions**

The Tribunal considers the Muriwhenua claimants have been prejudiced by the lack of such a basic protective measure as that of requiring the Government to prove its acquisitions and to document how it came by Maori land (see sec 9.6). It is considered that other Maori may have been adversely affected in the same way and may be similarly prejudiced in future. The Tribunal foreshadows a recommendation to the effect that for all Crown land there should be a title, and that the source of the Crown's right to the land should be clearly enrolled in an instrument lodged with the District Land Registrar. Again, however, the Tribunal would like to hear counsel on that matter first.

Any such recommendation, in the Tribunal's view, should not relieve the Government from establishing the basis for its claim to any particular land, or how the native title thereover was extinguished, in appropriate historical cases.

**11.4.14 Further hearing**

The Tribunal director will be arranging as soon as practicable a time and place for the Tribunal to hear counsel and other representatives on the following:

- whether negotiations, further hearing of post-1865 matters, or recommendations are sought at this stage; and if the latter,
- whether the Tribunal is limited to a total relief package as outlined in section 11.4.11;
- the appropriate approach to relief, having regard to the comments in section 11.4.4;
- the issue of nexus at section 11.4.5;
- any other matters of jurisdiction;
- particulars of the properties on which binding recommendations may be made; and
- the arrangements necessary for a remedies hearing.

Thereafter the Tribunal director will be liaising with interested Maori groups on the extent to which issues can be agreed, or an order for hearing them can be settled.

In conclusion, Minister, we consider that all involved in the Muriwhenua proceedings, members of the public, witnesses, officials, counsel, and also the Tribunal itself, have at all times been treated with the utmost courtesy and respect by the Muriwhenua people, and their considerate demeanour has

substantially helped the inquiry. We mention also our gratitude to counsel and researchers, without whom a full inquiry could not have been completed.

Since Maori claim a special relationship with the Crown, there appears to have been some anxiety amongst certain claimants that Crown researchers, and Crown counsel, left no stone unturned in presenting a healthy response to the claimants' case. That response, however, was no less than that which the Tribunal expected to ensure all points of view were canvassed. Although we could not presume that every aspect of the complex Muriwhenua claims has been covered, or could be covered without more years of work, the Crown's submissions assisted us to make the current examination as full as could be in the circumstances, and to relieve that which has been a very old Muriwhenua complaint, that their concerns have not been fully and properly heard.

Dated at Wellington this 17<sup>th</sup> day of January 1997



Chief Judge E T Durie, chairperson



M A Bennett, member



J R Morris, member



E M Stokes, member





## APPENDIX I

# THE TRIBUNAL'S INITIAL STATEMENT OF ISSUES AS AT JULY 1993

### INTRODUCTION

In introducing evidence at the opening of hearings and in a statement of issues and claim particulars of June 1992 (2.67), claimant counsel has specified the Crown actions or omissions complained of. As further research is still pending however, the claimants may file particulars of further Crown actions or omissions should that be necessary.

Counsel have then given their understanding of the issues so far arising, in the claimants' statement of issues of June 1992, and the Crown's of June 1993 and in July 1993 in opening the Crown's response. In addition the Tribunal, as an inquisitorial body, and in terms of the Treaty of Waitangi Act, has itself commissioned research that raises issues as well.

The Tribunal has now a need to settle the issues. Although, as counsel for the Crown has submitted, these cannot be finalised until all research is complete, to assist counsel and the progress of the inquiry, the Tribunal has decided to state its tentative view of the issues at this stage, but with leave to all counsel to move for the addition of issues, or the amendment of these now stated, prior to closing arguments.

Because of the scope and complexity of this inquiry, and our need to present a comprehensive report, we also reserve to ourselves the right to conduct further research after closing arguments, should gaps in the information base become apparent. We are mindful that Miss Kerr may be absent when that is done. We therefore hope that further research will not be necessary, but we do note that she has been assisted throughout by Ms Kennedy. Counsel would of course be advised of any further inquiry and research the Tribunal undertakes and will be given an opportunity to be heard on it.

The issues now to be stated incorporate those of the Taemaro claim, which was initially included in this inquiry, then severed for mediation, and which has now returned.

### ISSUES

Of the various Crown actions or omissions complained of, the grievances alleged appear to arise mainly from the broad Crown action of extinguishing native title (to use the Crown's own terms). The issues are thus framed around that action of extinguishment.

## MURIWHENUA LAND REPORT

### Pre-Treaty transactions

1. Was the action of the Crown in extinguishing Maori interests following an inquiry into claims based upon pre-Treaty transactions, and were the associated policies and practices, inconsistent with the principles of the Treaty of Waitangi and prejudicial to Maori?

The pre-Treaty transactions referred to are given in the claimants' particulars of claim of June 1992 (2.67).

This broad issue raises a number of sub-questions:

- Did the parties sufficiently understand and agree with each other, either at the time of the transaction or subsequently, before extinguishment was effected?
- Were the terms sufficiently certain as to boundaries, price or the like?
- Was the extent and nature of Maori interests in the land adequately settled beforehand?
- Were the parties adequately representative of all with an interest in the transactions?
- Had any outstanding matters properly to be settled before a complete extinguishment could be made, relating for example to any expectations of some reversion restriction on further alienation, continuing right of use or occupation, or a continuing authority or rangatiratanga over the land or its occupants?
- Did the act of extinguishment breach any express, implied or resulting trust?
- Were the terms and conditions, including the consideration, consistent with equity and good conscience?
- Was the Crown obliged to inquire into those matters, and into the nature of Maori polity, society, land tenure and traditional and contemporary understandings and expectations of the transactions and, if so, was an adequate inquiry made?
- Were the laws, instructions, regulations and policies governing the transactions and the inquiry into these adequate for the purpose?
- Was the Crown obliged to ensure that the terms and conditions of the transactions were fair, sufficiently certain, and adequately documented, or that they adequately reflected the expectations of the particular parties and, if so, were adequate inquiries made to that end?
- Did Crown officers fairly and impartially give effect to the transactions?
- Was extinguishment effected over those lands where settler claimants were awarded scrip and, if so, was extinguishment justified or were the settler claims adequately inquired into in those cases, and was the act of extinguishment itself sufficiently certain, understood and made known?
- Had the Crown to ensure that Maori were sufficiently informed of the inquiry and allocation process that the Crown prescribed, before Maori were called upon to affirm any transaction; including advice on the Crown's radical title and prerogative to extinguish the Maori interest; and, if so, were Maori sufficiently informed?
- Was the Crown's reliance upon private pre-Treaty transactions to extinguish Maori interests consistent with the Crown pre-emption provided for in the Treaty and, if not, were Maori thereby prejudiced?

The sub-questions which we have posed are seen as requiring consideration of the operations of the claims court, the competence of its officers, the legislative and other directions given to the court and the procedures adopted. The questions are seen as requiring, as well, consideration of any particular actions of other Crown officers

## TRIBUNAL'S INITIAL STATEMENT OF ISSUES

involved, protectors, commissioners, magistrates, surveyors and the like; and also as including the claimants' specific contentions concerning tuku whenua and the proper interpretation of the deeds.

### Surplus lands

The surplus land contention must necessarily be considered within the debate on pre-Treaty transactions, but it needs also to be separately stated. The issue is:

1. Was the extinguishment of the Maori interest in the whole or any of the lands not granted to settlers, so as to appropriate those lands to the Crown, and were the associated Crown policies and practices, inconsistent with the principles of the Treaty and prejudicial to Maori? Conversely, should the Crown have maintained the Maori interest in the whole or any part of these lands?

There are further sub-questions:

- Was the Crown obliged to notify and explain to the Maori party its intention to appropriate those surplus lands to itself, and was it obliged to then treat with Maori thereon, before any Maori interests were extinguished? If so, did the Crown adequately so notify, explain and treat?
- Was the Crown obliged to inquire into any subsequent Maori complaint and, if so, was an adequate inquiry made?
- Should the implementation of the Myers Commission report represent a full and final settlement of the surplus lands issue?

These questions do not exclude the more specific allegations concerning the Myers Commission in the claimants' statement of June 1992.

### Crown purchases

1. Was the action of the Crown in extinguishing Maori interests through direct Crown purchases to 1865, and were the associated policies and practices, prejudicial to Maori in all or any respects and inconsistent with the principles of the Treaty?

The transactions complained of are set out in the claimants' particulars of claim of June 1992.

Without limiting the generality of the issue, the following specific questions are referred to:

- Did Maori and the Crown sufficiently understand and agree with each other and were they of one mind on the effect that extinguishment would have?
- Was the Crown obliged to inquire into contemporary Maori law and practice on land conveyance, the nature of Maori tenure and contemporary expectations, to satisfy itself that the Crown and Maori were of one mind as to the outcome and the goals to be achieved?
- Did the Crown make an adequate inquiry as to whether the transactions would legitimately bind all with an interest?
- Was Crown purchase policy adequately sensitive to legitimate Maori goals and expectations, to participate in the new colonial economic order for example?

## MURIWHENUA LAND REPORT

- Were the terms sufficiently certain as to boundaries, price or the like?
- Was the extent and nature of Maori interests adequately settled beforehand?
- Was the Maori party adequately representative of all with an interest in the transaction?
- Were the terms and conditions, including the consideration, consistent with equity and good conscience?
- Were the laws, instructions, regulations and policies governing the transactions consistent with the principles of the Treaty?
- Did Crown officers of agents, commissioners, surveyors or others engaged, act fairly and impartially in promoting the transactions or in giving effect to them? Were there any apparent or likely inducements, promises, representations or unfair tactics that may have influenced proceedings?
- Was the Crown obliged to provide an independent review of the transactions and, if so, was any provided? Did Maori have recourse to any independent and competent forum for the resolution of their complaints?
- Did Crown purchases include lands subject to uninvestigated private claims and did the existence of any such claims or any assumptions respecting them unfairly influence the completion of Crown purchases?
- Where multiple transactions were made in respect of the same lands, were the transactions as a whole conducted honestly and openly and, in all the circumstances, in accordance with equity and good conscience?
- Did the Crown act honestly, openly and fairly in the steps taken to secure lands in the Taemaro–Whakaangi districts, including steps taken after 1865 with regard to the decisions of the Native Land Court?
- Did the Crown fail to clarify its entitlement to Muriwhenua North lands following the Taylor grant and, if so, did that failure impact on subsequent alienations under the Native Land Court system?

### Reserves

The question of reserves consequentially arises from any discussion of the pre-Treaty transactions and Crown purchases, but this too should be separately stated.

1. Was the Crown obliged to ensure that Maori retained sufficient lands in reserve and, if so, did the Crown fail to provide such reserves?

Ancillary questions include:

- Were the transactions fair and equitable if adequate reserves were not provided?
- Was the Crown obliged to ensure that all with interests in the alienated lands were provided with interests in the reserves and, if so, were they?
- Was the Crown obliged to ensure that any reserve areas were adequately secured and held and administered in accordance with Maori preference and, if so, were those things provided for?
- If the Treaty imposed a duty on the Crown to protect Maori interests by ensuring the maintenance of sufficient lands in reserve, is the extent of Maori land remaining at 1865 evidence as to whether or not that duty was fulfilled?
- Was there any Crown policy for the securing of reserves?

## TRIBUNAL'S INITIAL STATEMENT OF ISSUES

### Generally

- Was the Crown obliged to safeguard or respect the status and authority of the Muriwhenua Maori and, if so, was a necessary protection or respect given in the process of extinguishing Maori interests and in the provision of services?
- Should the Crown have provided more adequately for Muriwhenua Maori, for example by securing to them the option to lease their lands?
- Is the burden of proof on the claimants to establish that any prejudices are due to some action or omission of the Crown that is contrary to the principles of the Treaty?
- Did the Treaty impose a burden of proof on the Crown to demonstrate the propriety of its acquisition from Maori or of its extinguishment of Maori interests?
- Where they have a burden of proof, is a higher standard of proof required of claimants if the Tribunal is to go beyond recommendations to binding recommendations?
- Is a lesser standard of proof required in view of the time lapse and any failure of the Crown to provide a ready forum for the independent review of Maori grievances?

The Tribunal may have need to consider the extent to which Maori law applied to or affected the transactions with the Crown, and we may need to consider in this context the meaning of the Treaty's article 3, and to consider statements made at the time of signing relevant to the status of Maori custom. We wish to advise that we may need to invite submissions on that point.

### On pre-1865 Crown actions

Because of the scope of the complaints made, the Tribunal resolved to issue a first report on Crown actions or omissions before 1865; after which time a new land tenure system was introduced for Maori land, and a different set of issues arose.

It is considered however, where the cause of complaint arose before 1865, it will be necessary to go beyond 1865 to round off the investigation of certain questions, in some cases, namely:

- matters relating to the 1946 Surplus Lands Commission, for the purpose of considering the treatment and eventual outcome of the surplus land issue;
- proceedings relating to the Native Land Court determination of the title to lands near Taemaro and Whakaangi, for the purpose of considering the extent to which extinguishment may have either been or been seen to have been effected as a result of pre-Treaty transactions and Crown purchases;
- Native Land Court partitions and alienations in Muriwhenua North, for the purpose of considering the impact of the Crown's policy of extinguishment based upon pre-Treaty transactions;
- the amount of Maori land remaining at the turn of the century and today, and the extent to which reserves had been alienated by 1885, as possible evidence of the degree of protection given to lands left for Maori after the extinguishment to 1865, but not for the purpose of assessing the Maori land reforms effected under post-1865 legislation, or the equity or otherwise of any particular post-1865 alienations;
- protests concerning the extinguishment of Maori interests, to the extent that these may indicate a Maori understanding of the pre-1865 transactions.





## APPENDIX II

# RECORD OF THE INQUIRY

### A1 CORAM

The Tribunal constituted for the aggregated claims in Muriwhenua was Chief Judge E T J Durie (presiding), Bishop M A Bennett, Sir Monita Delamere, Ms J Morris, and Professor E Stokes. Following the death of Sir Monita Delamere in April 1993, the Tribunal continued with a coram of four.

### A2 COUNSEL AND OFFICERS

Mr J V Williams with Mr G Powell appeared for the Muriwhenua claimants, Mr R M K Hawk for the Taemaro claimants, and Mr M T Parker, Miss A Kerr, Ms J Lake, and Ms H Kennedy for the Crown.

Mrs W Pink was appointed as interpreter.

### A3 HEARINGS

#### First hearing

The inquiry opened at Potahi Marae Te Kao, 6 August 1990, and Whatuwhiwhi School, 8 August 1990.

#### *Submissions*

On 6 August 1990: The Honourable Matiu Rata (6 August, 7 August), Haami Piripi, Rapine Aperahama, Gordon Kapa, Dame Mira Szaszy (6 August, 7 August), Paiheri Paraone, Jessie Everett, George Witana

On 7 August 1990: Waerete Norman, Raharuhi, Winiata Brown, Matiu Rapata, Saana Murry, Tuini Sylva, Te Paea Waitai, Hoana Emma Karekare, Haami Piripi, Simon Snowden, Rima Edwards, Apikaira Brown, Jim Davis, MacCully Matiu, Sir Graham Latimer, Paki Rupapera, Patana Matiu, Mu Hetaraka, Dr M Mutu, Hector Busby, Peter Pangari

On 8 August 1990: Maanu Paul, Tuhoe Manuera, Atihana Johns, Maude Vini, Paeahua Williams, Rachel Raharuhi

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### **Second hearing**

The second hearing was held at the Far North Community Centre, Kaitaia, 3 December 1990 to 7 December 1990.

#### *Submissions*

On 4 December 1990: Rima Edwards (3 December, 4 December), Ben Te Wake, Simon Snowden, Dick Motu, Rupene Karaka, Apikaira Brown, Piri William Robson, Wiremu Hadfield, the Honourable Matiu Rata

On 5 December 1990: Jim Heke, Selwyn Clark, Simon Snowden, Makene Davis, Shelia Murray, Lance Brown, the Reverend Maori Marsden, Henare Huru, Dr B Rigby

### **Third hearing**

The third hearing was held at the Far North Community Centre, Kaitaia, 4 March 1991 to 8 March 1991.

#### *Submissions*

On 4 March 1991: Simon Snowden, Ross Gregory, Eddie Walker, P Palmer, Wiremu Paraone (4 March, 5 March)

On 5 March 1991: Ngarui Morrison, MacCully Matiu, Apikaira Brown, R P Boast (5 March, 6 March)

On 6 March 1991: Mutu Wiki Karena, Rev Maori Marsden, Paihere Hopa Paraone, the Reverend Puti Murray, Hoana Karekare, Matengaroa Wiki, Saana Murray

On 7 March 1991: Waerete Norman, Dr Dame Joan Metge, George Witana

On 8 March 1991: John Coster, Brian Easton

### **Fourth hearing**

The fourth hearing was held at Waimanoni Marae (near Awanui), 22 July 1991 to 25 July 1991.

#### *Submissions*

On 22 July 1991: Dr B Rigby (22 July, 23 July, 24 July), Arthur Hore, Peter Redfearn

On 23 July 1991: Professor Anne Salmond, Richard Boast

On 24 July 1991: Tony Walzl

### **Fifth hearing**

The fifth hearing was held at Databank House, Wellington, 22 October 1991, for the purpose of hearing interim legal submissions on Kaimaumuau.

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### **Sixth hearing**

The sixth hearing was held at the Auckland District Law Society, 30 April 1992 to 1 May 1992, for the purpose of hearing Claudia Geiringer.

### **Seventh hearing**

The seventh hearing was held at Te Rarawa Marae, Pukepoto, Kaitaia, 9 November 1992 to 12 November 1992.

#### *Submissions*

On 9 November 1992: Rima Edwards, Joseph Thomas, the Reverend Maori Marsden

On 10 November 1992: Haimona Snowdon, Rima Edwards, MacCully Matiu, Ross Gregory, Winiata Paraone, Te Paraha Neho, Rapata Rapine Romana, Tuini Sylvia

On 11 November 1992: Dr Dame Joan Metge

On 12 November 1992: Philippa Wyatt, Maurice Alemann, Dr Margaret Mutu

### **Eighth hearing**

The eighth hearing was held at Te Rarawa Marae, Pukepoto, 30 November 1992 to 3 December 1992.

#### *Submissions*

On 30 November 1992: Lyndsay Head (30 November, 1 December)

On 1 December 1992: Richard Boast (1 December, 2 December)

On 2 December 1992: Michael Nepia (2 December, 3 December)

On 3 December 1992: Professor A Salmond

### **Ninth hearing**

The ninth hearing was held at Maimaru Marae, Awanui, Kaitaia, 10 May 1993 to 13 May 1993.

#### *Submissions*

On 10 May 1993: Phillipa Wyatt (also 11 May 1993)

On 11 May 1993: Dr M Mutu (also 12 May 1993), Maurice Alemann, Maude Vini

On 12 May 1993: Claudia Geiringer (also 13 May 1993)

On 13 May 1993: Saana Murray, Hoana Karekare, MacCully Matiu, Rupene Karaka, Shane Jones, Wilfred Peterson, Paihakena Kira, Peter Pangari, the Honourable Matiu Rata

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### **Tenth hearing**

The tenth hearing was held at De'Surville Resort Hotel, Taipa, 5 July 1993 to 9 July 1993.

#### *Submissions*

On 5 July 1993: Fergus Sinclair (5 July, 6 July, 7 July)

On 7 July 1993: David Armstrong (7 July, 8 July, 9 July)

On 9 July 1993: Dr B Rigby

### **Eleventh hearing**

The eleventh hearing was held at De'Surville Resort Hotel, Taipa, 13 September 1993 to 16 September 1993.

#### *Submissions*

On 13 September 1993: David Armstrong (13 September, 14 September), Bruce Stirling (13 September, 14 September)

On 15 September 1993: Dr D Loveridge

On 16 September 1993: Fergus Sinclair, Dr A Gould

### **Twelfth hearing**

The twelfth hearing was held at Seabridge House, Wellington, 11 October 1993 to 13 October 1993.

#### *Submissions*

On 11 October 1993: Dr A Gould, Fergus Sinclair

On 12 October 1993: Dr Dame Joan Metge, David Armstrong, Bruce Stirling

On 13 October 1993: Dr M Mutu

### **Thirteenth hearing**

The thirteenth hearing was held at Te Rarawa Marae, Pukepoto, Kaitaia, 21 March 1994 to 22 March 1994.

#### *Submissions*

On 21 March 1994: Professor William Oliver, John Koning

On 22 March 1994: Claudia Geiringer, Phillipa Wyatt, Shane Jones

In addition, closing submissions were made by counsel for Taemaro claimants

## RECORD OF THE INQUIRY

### **Fourteenth hearing**

The fourteenth hearing was held at the Auckland District Law Society, Auckland, 26 April 1994 to 28 April 1994.

#### *Submissions*

Professor William Oliver

In addition, closing submissions were made by counsel for the Muriwhenua claimants.

### **Fifteenth hearing**

The fifteenth hearing was held at the District Court, Auckland, 29 June 1994, for the purpose of hearing the Crown's closing submissions.

In addition, several conferences were held with counsel both before and during the inquiry and site visits were undertaken.

## **A4 SITE VISITS**

### **s1: 8 August 1990**

Kaikari Bay, Maitai Bay, Opouturi, and Kauhanga Marae, Peria

Dr M Mutu, Tuhoe Manuera, and Manu Paul spoke at Karikari Bay, M Rupapera and Manu Paul at Matai Bay, Pahua Williams at Opouturi, and W Marsh and the Reverend H Harrison.

### **s2: 9 August 1990**

Parengarenga, Kapowairua, Cape Reinga, Te Neke, and the Maunganui Bluff or Wakatehaua

The Honourable Matiu Rata spoke at Parengarenga, Bill McLeod, W Brown, Te Paea Waitai, Waerete Norman, Tuini Sylva, Matiu Rata, and Rapine Aperahama at Kapowairua, Bill Brown and Paea Waitai at Te Neke, and G Witana at Maunganui Bluff.

### **s3: 6 December 1990.**

St Saviours Church, Pukemiro Pa, Whangape (Te Kotahitanga Marae), Owkata, Manukau (Whaka Maharatanga Marae), and Tauroa

## **A5 MEDIATION**

On 12 July 1990, the Taemaro claim, which formed part of this inquiry, was referred to mediation under Judge P J Trapski. On 21 January 1993, the mediator reported that the claim was unlikely to be settled and that there were no matters on which agreement had

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been reached. On 2 February 1993, the Tribunal directed the Taemaro claim be included back into the Muriwhenua inquiry.

### **A6 DOCUMENTARY RECORD OF PROCEEDINGS**

The following documents comprise the record of proceedings:

#### **I. Claims**

##### **I.0 *Wai 45***

Date of Consolidation: 1 December 1987

Claimant: The Honourable M Rata and others

Concerning: The consolidated file for all Muriwhenua claims

##### **I.1 *Wai 16***

Date: 3 January 1985

Claimant: R Rutene and others for Ngati Kahu Trust Board

Concerning: Karikari complex

##### **I.2 *Wai 17***

Date: 15 May 1986

Claimant: M Matiu and others for Ngati Kahu Trust Board

Concerning: Taipa sewerage

(a) Amendment 9 October 1986

(b) Amendment 18 October 1986

(c) Amendment 19 October 1986

##### **I.3 *Wai 116***

Date: 11 July 1986

Claimant: P Pangari and others

Concerning: Taemaro Land

(a) Amendment 25 March 1987

(b) Amendment 12 June 1987

##### **I.4 *Wai 22***

Date: 8 December 1986

Claimant: The Honourable M Rata and others for Runanga o Muriwhenua

Concerning: Fisheries, State-owned enterprises

##### **I.5 *Wai 41***

Date: 24 July 1987

Claimant: R Murupaenga and others for Ngati Kuri

Concerning: Ngati Kuri lands

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### **1.6 Wai 112**

Date: 4 September 1987

Claimant: P Makene and others for Kaitaia Marae Incorporated, Kaitaia Maori Comm.

Concerning: Kaitaia lands

(a) Amendment 21 October 1987

(b) Amendment 26 January 1988

(c) Amendment 10 July 1989

(d) Amendment 7 November 1989

### **1.7 Wai 117**

Date: 2 October 1987

Claimant: M Mutu, Te Whanau Moana Hapu of Ngati Kahu

Concerning: Karikari blocks, rating

(a) Amendment 28 November 1988

### **1.8 Wai 118**

Date: 23 May 1989

Claimant: H Piripi and others, Te Rarawa

Concerning: Mapere 2 school site

### **1.9 Wai 292**

Date: 10 April 1990 (received 11 May 1992)

Claimant: H Karekare and others, Awarua Karena Wiki whanau

Concerning: Te Kao school sites and telephone exchange

### **1.10 Wai 128**

Date: 15 May 1990

Claimant: Dame Whina Cooper

Concerning: Hokianga lands

Note: Part, north of Whangape harbour, is included in Muriwhenua claim

(a) Amendment 10 May 1996 by S Snowden, J Campbell

### **1.11 Wai 284**

Date: 7 February 1992

Claimant: M Mutu and others; Ngati Kahu

Concerning: Rating of Maori land (grouped for inquiry with other rating claims)

### **1.12 Wai 295**

Date: 24 June 1992

Claimant: T Rota and others for Mangahoutoa Trust

Concerning: Kohumaru Station, Waihapa 2D, Kaingapipiwai 1H, Omaunu 1A,  
Patupukapuka blocks, Ranfurly Bay scenic reserve



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### **1.13 *Wai 320***

Date: 15 October 1992

Claimant: M T Popata for Kenana Marae trustees

Concerning: Kohumaru Station

### **1.14 *Wai 515***

Date: 31 May 1995

Claim: W Peterson for Ngati Kahu Ki Whangaroa Maori Committee

Concerning: Northland Conservancy's draft conservation management strategy  
(grouped for inquiry with other claims relating to Northland local government)

### **1.15 *Wai 517***

Date: 1 June 1995

Claimant: W Peterson for Ngati Kahu Ki Whangaroa Maori Committee

Concerning: Northern Regional Council's proposed regional coastal plan for Northland  
(grouped for inquiry with other claims on Northland Local Government)

### **1.16 *Wai 534***

Date: 31 July 1995

Claimant: G Martin for Te hapu o te Tao Maui

Concerning: 'Telecom depot' at Kaitaia

### **1.17 *Wai 544***

Date: 11 August 1995

Claimant: K P Tobin and others for Te Paatu Hapu

Concerning: Takahue School and other lands near Kaitaia

### **1.18 *Wai 548***

Date: 1 June 1995

Claimant: S H Murray for Te Tahaawai, Te Paatu, Te Rarawa, and Ngatikahu

Concerning: Takahue no 1 block, Takahue School, Takahue Domain, and Takahue Cemetery

### **1.19 *Wai 590***

Date: 14 March 1996

Claimant: P Mitchell for descendants of Te Rata Te Ahi, Ngamoko (Mere) Rata and Tutere Rata

Concerning: Konoti, Whewhero, Oturu, and other blocks

### **1.20 *Wai 613***

Date: 16 July 1996

Claimant: H W Petera for Ngaitakoto-a-Iwi

Concerning: Ngai Takoto tribal lands generally

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### **1.21 Wai 626**

Date: 5 September 1996

Claimant: A F Andrews for Nopera Arano descendants

Concerning: The alienation of Te Kohanga no 1

### **1.22 Wai 633**

Date: 2 September 1996

Claimant: Graeme Noho, Ngati Kuri Trust Board

Concerning: Ngati Kuri tribal lands generally

### **1.23 Wai 643**

Date: 4 December 1996

Claimant: Kapa whanau

Concerning: Te Kao 76 and 77B

## **2. Papers in proceedings**

2.1 Tribunal memo requesting further details of claim, May 1987

2.2 Tribunal memo regarding claims relating to transfer of Crown assets to State-Owned corporations, 14 May 1987

2.3 Tribunal Memo that Rigby and Koning assume Belgrave commission, 3 July 1989

2.4 Distribute Rigby-Koning report, 4 December 1989

2.5 Directions on Makene claim, 23 January 1990

2.6 Directions on Piripi claim, 15 March 1990

2.7 Directions for conference, 30 March 1990

2.8 Directions on Mutu claim, 2 April 1990

2.9 Directions on Pangari claim, 2 April 1990

2.10 Distribute Newell report, 11 April 1990

2.11 Distribute document bank with Rigby report, 1 May 1990

2.12 Conference, 19 April 1990

2.13 Conference, 28 May 1990

2.14 Claimants memo re timetable, 29 May 1990

2.15 Notice of first hearing, 25 June 1990

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- 2.16 Constitution of Tribunal, 26 June 1990
- 2.17 Dispatch of notice of first hearing, 3 August 1990
- 2.18 Crown memo re timetable, 30 July 1990
- 2.19 Claimant memo re timetable, 31 July 1990
- 2.20(a)(b) Memo Salmon–Baragwanath to appoint senior counsel
- 2.21 Memo re catfish to Minister of Fisheries, 17 August 1990
- 2.22 Claimant memo re claim structure, 23 August 1990
- 2.23 Crown memo re claim structure, 23 August 1990
- 2.24 Tribunal memo re judicial conference, 23 August 1990
- 2.25 Tribunal memo uplifting embargo on Rigby–Koning report
- 2.26 Distribute Rigby Muriwhenua North report, 7 November 1990
- 2.27 Tribunal memo on examination of research reports, 7 November 1990
- 2.28 Notice of second hearing, 7 November 1990
- 2.29 Dispatch of notice re second hearing, 11 November 1990
- 2.30 Crown questions on Rigby–Koning report, 27 November 1990
- 2.31 Appointment of claimant counsel Williams, 7 November 1990
- 2.32 Crown memo requesting conference, 20 December 1990
- 2.33 Distribute Oruru report, 4 February 1991
- 2.34 Conference, 30 January 1991
- 2.35 Notice of third hearing, Kaitaia, 4 February 1991
- 2.36 Dispatch of notice re third hearing, 4 February 1991
- 2.37 Distribute Boast report, 25 February 1991
- 2.38 Crown re timetable, 20 March 1991
- 2.39 Direction re research and timetable, 5 April 1991

## RECORD OF THE INQUIRY

- 2.40 Claimant's issues re Te Wharo Oneroa A Tohe, 15 April 1991
- 2.41 Crown re research and timetable, 15 April 1991
- 2.42 Distribute Nicholson reports, 23 April 1991
- 2.43 Crown issues re Te wharo Oneroa, 30 April 1991
- 2.44 Notice of fourth hearing, 22 April 1991
- 2.45 Dispatch of notice re fourth hearing, 6 May 1991
- 2.46 Cancellation of hearing, 14 May 1991
- 2.47 Tribunal re engagement of counsel, 21 March 1991
- 2.48 Cancellation of May hearing, 10 May 1991
- 2.49 Notice of fourth hearing, 25 June 1991
- 2.50 Dispatch of notice re fourth hearing, 28 June 1991
- 2.51 Distribute Boast report, 10 July 1991
- 2.52 Distribute Salmond report, 10 July 1991
- 2.53 Memo, sale of Kaimaumu block, 15 October 1991
- 2.54 Claimant memo for recommendation re Kaimaumu, 22 October 1991
- 2.55 Crown memo, Kaimaumu block, 22 October 1991
- 2.56 Claimants to Maori Affairs re Kaimaumu, 21 October 1991
- 2.57 Kaimaumu report, 30 October 1991
- 2.58 Extension counsel's appointment, 8 November 1991
- 2.59 Tribunal memo re timetable, 22 November 1991
- 2.60 Tribunal memo re timetable, 5 February 1992
- 2.61 Distribute Rigby report, 6 March 1992
- 2.62 Distribute further Rigby report, 22 April 1992
- 2.63 Tribunal memo on A Brown submission, 28 April 1992

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- 2.64 Direction to commission research, 8 May 1992
- 2.65 Extension of counsel's appointment, 19 May 1992
- 2.66 Direction to commission research, 22 May 1992
- 2.67 Claimant's issues, 29 June 1992
- 2.68 Distribute Boast, Wyatt, Salmond reports, and claimant's issues, 6 July 1992
- 2.69 Distribute Head report issues, 4 September 1992
- 2.70 Notice of fifth hearing, Auckland 13 April 1992
- 2.71 Conference, 8 October 1992
- 2.72 Notice of sixth hearing, Pukepoto, 20 October 1992
- 2.73 Dispatch of notice re sixth hearing, 20 October 1992
- 2.74 Notice of seventh hearing, Pukepoto, 18 November 1992
- 2.75 Dispatch of notice re seventh hearing, 18 November 1992
- 2.76 Distribute Nepia report, 19 November 1992
- 2.77 Memo re Belgrave article, 27 November 1992
- 2.78 Incorporation of Taemaro claim, 2 February 1993
- 2.79 Taemaro land claim record of proceedings documents 1.1-3.1  
(a) Taemaro mediation: Wai 116, 21 January 1993
- 2.80 Claimants issues on Taemaro, 10 August 1992
- 2.81 Crown on Taemaro issues, 1 March 1993
- 2.82 Notice of eighth hearing, Maimaru Marae, Awanui, 15 April 1993
- 2.83 Dispatch of notice re eighth hearing, 16 April 1993
- 2.84 Distribute Geiringer report, 23 April 1994
- 2.85 Distribute Alemann report, 27 April 1993
- 2.86 Distribute P Wyatt report, 27 April 1993

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- 2.87 Distribute M Mutu, 28 April 1993
- 2.88 Claimants re proposed lease, Te Paki Farm, 7 May 1993
  - (a) Crown on Te Paki Farm Park, 14 May 1993
- 2.89 Tribunal memo on Te Paki Farm Park, 19 May 1993
- 2.90 Telephone conference, 24 May 1993
  - (a) Correspondence Crown to claimants on issues, 25 May 1993
  - (b) Correspondence claimants to Crown on issues, 2 June 1993
- 2.91 Notice of ninth hearing, Te Patu Marae, Pampurua, 10 June 1993
- 2.92 Dispatch of notice of ninth hearing, 10 June 1993
- 2.93 Crown draft issues, 22 June 1993
- 2.94 Conference, Wellington, 25 June 1993
  - (a) Tribunal's tentative statement of issues, 8 July 1993
- 2.95 Tribunal questions on Loveridge's report, 22 July 1993
- 2.96 Tribunal further questions on Loveridge report, 22 July 1993
- 2.97 Distribute Easton report, 4 August 1993
- 2.98 Notice of tenth hearing, Taipa, 25 August 1993
- 2.99 Dispatch of notice re tenth hearing, 25 August 1993
- 2.100 Notice of eleventh hearing, Wellington, 28 September 1993
- 2.101 Dispatch of notice re eleventh hearing, 28 September 1993
- 2.102 Notice of twelfth hearing, Te Rarawa Marae, Pukepoto, 16 February 1994
- 2.103 Dispatch of notice re twelfth hearing, 17 February 1994
- 2.104 Claimants re boundaries, Whangape dispute claim, 10 February 1994
- 2.105 Claimant's motion for State-owned enterprise recommendation, 23 February 1994
- 2.106 Crown re claim boundaries, 11 March 1994
- 2.107 Crown re request for State-owned enterprise recommendation, 11 March 1994

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- 2.108 Taemaro motion for State-owned enterprise recommendation, 19 March 1994
- 2.109 Notice of thirteenth hearing, 31 March 1994
- 2.110 Dispatch of notice re thirteenth hearing, 31 March 1994
- 2.111 Distribute Alemann report, 11 April 1994
- 2.112 Notice of fourteenth hearing, Auckland, 27 May 1994
- 2.113 Dispatch of notice re fourteenth hearing, 27 May 1994
- 2.114 Crown re Commissioner Bell, 7 July 1994
- 2.115 Notice of fifteenth hearing, Auckland, 15 July 1994
- 2.116 Claimant request for adjournment, 1 August 1994
- 2.117 Crown opposing adjournment, 2 August 1994
- 2.118 Tribunal granting adjournment, 4 August 1994
- 2.119 Taemaro request for prior report on Taemaro, 22 September 1994
- 2.120 Claimants opposing early Taemaro report, 26 September 1994
- 2.121 Crown re early Taemaro report, 4 November 1994
- 2.122 Tribunal re claimants' final reply, 9 November 1994
- 2.123 Memo that W D Baragwanath retained for claim, 23 December 1994
- 2.124 Memo from Crown counsel, 20 January 1995
- 2.125 Tribunal memo, 30 January 1995
  - (a) Taemaro claimant's memo on land banking and requesting urgency, 31 March 1995
- 2.126 Crown memo on negotiation of Wai 45 claim, 3 July 1995
- 2.127 Taemaro claimant memo on management of Stoney Creek, Thomson, and Clarke blocks, 12 July 1995
- 2.128 Notice of separate representation for Ngati Takoto, Te Rarawa, Ngati Kahu, Murupaenga, 29 February 1996

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2.129 Taemaro claimants' memo requesting separate report and urgency, 7 June 1996  
(a) Tribunal response, 21 June 1996

2.130 Tribunal directions to distribute Easton report (doc P1), 3 July 1996

2.131 Tribunal directions on proposed post-1865 research, 15 July 1996

2.132 Claimant memo in response to above directions, 1 August 1996

2.133 Tribunal directions to register amendment to Wai 128, 28 August 1996

2.134 Notice of Wai 128 amendment, 6 September 1996

2.135 Te Runanga o te Rarawa, notice of separate representation 17 October 1996

### **3. Research commissions**

3.1 Belgrave commission, 13 March 1987

3.2 Wilson commission, 3 November 1988

3.3 Newell commission, 19 December 1988

3.4 Runanga O Muriwhenua research agreement, 1 July 1989

3.5 Rigby-Koning commission, 3 July 1989

3.6 C Geiringer commission (extract from memo of conference, 23 August 1990),  
30 September 1991

3.7 Runanga Muriwhenua research agreement, August 1990

3.8 Nicholson commission, 21 December 1990

3.9 Boast commission, 16 January 1991

3.10 Salmond commission, 16 January 1991

3.11 Boast commission and Rigby commissions, 4 March 1991

3.12 Nepia commission, 23 September 1991

3.13 Nepia commission, 7 October 1992

3.14 Nepia commission, 5 February 1992

3.15 Head commission, 8 May 1992



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3.16 Easton commission, 22 May 1992

3.17 Salmond commission, 13 July 1992

3.18 Head commission, 28 October 1992

3.19 Morse commission, 17 August 1993

3.20 Alemann commission, 8 February 1994

3.21 Alemann commission, 31 May 1994

### **4. Transcripts and translations**

4.1 Extract, Rima Edwards evidence, 3 December 1990

4.2 L Brown translation at Kaitaia, 5 December 1990

4.3 Extract, Simon Snowden evidence at Kaitaia, 5 December 1990

4.4 Morris cross-examination of Salmond, 3 December 1992

4.5 Extract, Jones translates Saana Murray, 13 May 1993

4.6 Extract, Kerekere evidence, 13 May 1993

4.7 Extract, Jones translates McCully Matiu, 13 May 1993

4.8 Extract, Ben Clarke evidence, 13 May 1993

4.9 Extract, Jones evidence, 13 May 1993

4.10 Extract, Pita Pangari evidence, 13 May 1993

4.11 Cross-examination of Head, 30 December 1992

4.12 Pukenui hearing 8 March 1877, northern minute book, vol 1, pp164-186

4.13 Cross-examination of Stirling and Armstrong, 15 September 1993 (transcript provided by R Hawk for Wai 116 claimants)

4.14 Draft transcript of cross-examining of Sinclair, 6 July 1993

4.15 Cross-examination, F Sinclair, 6 July 1993

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### A7 RECORD OF DOCUMENTS

The following documents were filed:

#### A To end of first hearing

- A1 Rigby–Koning research report, historical evidence, 4 December 1989 (supporting documents in 2 vols)
- A2 James Newell, research report, socio-economic profile, 28 March 1990
- A3 Summary of Newall report by Dr Rigby
- A4 L R Wilson, Maori lands in Mangonui County with 8 maps
- A5 Topographical display map with overlays, old land claims, and Crown purchases to 1865; current Maori land; current Crown land
- A6 M Szaszy re spiritual and ancestral rights, December 1987
- A7 The Reverend M Marsden, 'Te Mana O Te Hiku O Te Ika', December 1986
- A8 I G McIntyre re Muriwhenua claim, December 1986
- A9 J Davidson, archaeological surveys, June 1975
- A10 J Maingay, '... on Northland Archaeology', 1986
- A11 Department of Conservation, *Draft New Zealand Coastal Policy Statement*, 1990
- A12 G W Witana, Onepu block history, re Wairahi compensation area
- A13 W Brown, Parengarenga conversion shares correspondence, 1989–90
- A14 Te Paea Waitai, Muriwhenua genealogical stories
- A15 Plan (MLI5277) of Parengarenga 5X1 and 5X2 blocks
- A16 Kaitaia Borough Council to A Brown of 28 August 1989 re Okahu 4C2
- A17 List of Te Runanga o Whaingaroa delegates and constitution
- A18 Rapine Aperahama, Te Rerenga Wairua
- A19 Reserved for translation of the above
- A20 The Honourable Matiu Rata, documents relating to catfish proposals

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A21 B Rigby, 'The Mangonui Area and the Taemaro Claim' (July 1990)

### **B To end of second hearing**

B1 Summary of Rigby–Koning report (A1)

B2 Rima Edwards, submission on traditional history

B3 Map, Ahipara–Whangape sites visited, December 1990

B4 Map, part Ahipara B2

B5 Record sheet, Ahipara blocks

B6 R Paraone, 'Mo te Iwi o Ngaitakoto', 5 December 1990

B7 The Reverend M Marsden, submission (confidential)

B8 The Honourable M Rata, forestry submission, 4 December 1990

B9 1834 Church Missionary Society Kaitaia deeds

B10 1840 Church Missionary Society Kaitaia deeds

B11 1859 Church Missionary Society Kaitaia Crown grant

B12 The Reverend D Urquhart, summary of Kaitaia Treaty signing

B13 St Saviours cemetery plan

B14 Proposed site visit itinerary

B15 B Rigby, 'The Muriwhenua North Area and the Muriwhenua Claim', November 1990

### **C To end of third hearing**

C1 B Rigby, 'The Oruru Area and the Muriwhenua Claim', February 1991

C2 E Stokes, 'Kauri and White Pine: A Comparison of New Zealand and American Lumbering'

C3 R Boast, 'Report in Respect of the Claim to Te Wharo Oneroa A Tohe/Ninety Mile Beach', February 1991 (with annexures)

C4 B Rigby, answers to Crown questions on Rigby–Koning report (doc A1)

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- c5 B Rigby summary of Mangonui area report (A21)
- c6 B Rigby, summary of Muriwhenua North report (B15)
- c7 John Coster, 'Te Oneroa a Tohe – The Archaeology of Ninety Mile Beach', February 1991 (with supporting documents)
- c8 J Williams, submissions on the claim in respect of Te Oneroa a Tohe, 4 March 1991
- c9 Haimona Snowden, submission on Te Oneroa a Tohe
- c10 Ross Gregory, submission on Te Oneroa a Tohe
- c11 McCully Matiu, submission on Te Oneroa a Tohe
- c12 Eddie Walker, submission on Te Oneroa a Tohe
- c13 Wiremu Paraone, submission on Te Oneroa a Tohe
- c14 Ngarui Morrison, submission on Te Oneroa a Tohe
- c15 Mutu Wiki Karena, submission on Te Oneroa a Tohe
- c16 Paihere Hopa Paraone, submission on Te Oneroa a Tohe
- c17 The Reverend Maori Marsden, submission on Te Oneroa a Tohe
- c18 Saana Murray, submission on Te Oneroa a Tohe
- c19 Waerete Norman, submission on Te Oneroa a Tohe
- c20 Dame J Metge, submission on Te Oneroa a Tohe
- c21 Brian Easton, submission on Te Oneroa a Tohe
- c22 Hirini Paerangi Matunga, submission on Te Oneroa a Tohe
- c23 (a) Jane McRae, 'A Catalogue of Manuscript Relating to the History and Traditions of the Tribes in Taitokerau'  
(b) Department of Maori Affairs, Whangarei, *He Whakatauki and He Pepeha, He Whakatauki no Taitokerau*
- c24 Christine Marra, 'Kaitaia: A Community Profile', 15 June 1990
- c25 Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wellington, Department of Justice: Waitangi Tribunal, 1988

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### **D To end of fourth hearing**

- D1 Judge W G Nicholson, 'Title Investigations on Owkata c and Wairahi Blocks'
- D2 New Zealand Law Commission, *The Treaty of Waitangi and Maori Fisheries: Mataitai: Nga Tikanga Maori me te Tiriti o Waitangi*, 1989
- D3 B Rigby, summary of Oruru report (doc C1)
- D4 T Walzl pre-Treaty Muriwhenua
- D5 Papers supporting T Walzl, pre-Treaty Muriwhenua, 7 vols
- D6 J Lake and H Kennedy, Crown counsel memo re information relating to Ninety Mile beach (30 May 1991)
- D7 Kim Walshe, MAF fisheries submission on Ninety Mile Beach
- D8 Peter Redfearn, MAF fisheries submission on Ninety Mile Beach
- D9 J Lake, 'Information Received from the Department of Conservation re Ninety Mile Beach'
- D10 Maori Land Court Taitokerau, report on 'Maunganui Bluff Reserve'
- D11 F Sinclair, Crown, 'Documents Relating to Ninety Mile Beach', 4 vols, 24 May 1991
- D12 Old land claim files, 3 vols
- D13 Crown purchase deeds and plans 1850-1900
- D14 White Kemp, and Maning correspondence, 1854-73
- D15 Molly Anderson, submission on Kuaka (Godwit) protection (17 May 1991)
- D16 R Boast, 'Muriwhenua South and Ahipara Purchases' (with annexures)
- D17 Professor Anne Salmond, 'Likely Maori Understanding of Tuku and Hoko', July 1991
- D18 Map, Crown Mangonui purchases, 1840-41, 1863, native reserves, 1863-74, and Taemaro award, 1870
- D19 Plan s0948A, Muriwhenua South Crown purchase
- D20 Plan s0948, Muriwhenua South Crown purchase

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D21 Plan SO 5043A, Ahipara Crown purchase

D22 Plan SO2959, Wairoa block adjacent to southern portion of Ahipara block

D23 Kahi Harawira, request for direct negotiation regarding the Resource Management Act, July 1991

### **E To end of fifth hearing**

E1 Philippa Wyatt, 'The Old Land Claims and the Concept of Sale: A Case Study', MA thesis, March 1991

E2 Evidence of Tony Walzl, 'Report on the Historical Issues Relating to the Taemaro Mediation, circa 1830–1925'

E3 Unallocated

E4 *New Zealand Maori Council v Attorney General*, per Justice McGechan, pp 29–30

E5 J Williams, claimant submission in support of Kaimaumu recommendation, 22 October 1991

### **F To end of sixth hearing**

F1 D Armstrong, documents supporting 'The Taylor Purchase' (doc 15)

F2 Tribunal staff, introduction to documents on Muriwhenua land, 1840–65 (F3–F6)

F3 Governor series and *British Parliamentary Papers*

F4 Old land claim general papers

F5 Internal Affairs and Maori Affairs papers

F6 Church Missionary Society and Wesleyan Missionary Society papers

F7 M Nepia, essential documents of the Royal Commission on Surplus Lands 1948

F8 B Rigby, 'Empire On The Cheap: Crown Policies And Purchases In Muriwhenua, 1840–1850', 6 March 1992

F9 B Rigby, 'A Question of Extinguishment: Crown Purchases in Muriwhenua, 1850–1865', 14 April 1992

F10 C Geiringer, 'Historical Background to the Muriwhenua Land Claim, 1865–1950', 27 April 1992

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- F11 M Alemann, 'Muriwhenua Land Claim: Pre-Treaty Transactions'
- F12 M Mutu, 'Tuku Whenua or Land Sale?', 24 April 1992
- F13 Dame J Metge, 'Cross-Cultural Communication and Land Transfer in Western Muriwhenua, 1832-40'
- F14 D Armstrong, Crown purchase documents originally presented to the Te Roroa Tribunal (Wai 38)
- F15 LR V Tonk, 'The First New Zealand Land Commission, 1840-1845', MA thesis
- F16 R Boast, 'Surplus Lands: Policy-making and Practice in the Nineteenth Century', June 1992
- F17 P Wyatt, 'The 'Sale' of Land in Muriwhenua: A Historical Report on Pre-1840 Land Transactions', 16 June 1992
- F18 J Williams, 'Issues and Particulars of Claim . . . Arising prior to 1865', 29 June 1992
- F19 Professor A Salmond, 'Treaty Transactions: Waitangi, Mangungu and Kaitaia, 1840'
- F20 C Geiringer, supporting documents to document F10, 4 vols
- F21 L Head, Maori understanding of land transactions in the Mangonui-Muritoki area during 1861-65
- F22 J Williams, opening submissions relating to pre-Treaty transactions, 9 November 1992
- F23 R Edwards, submission on pre-Treaty transactions
- F24 J Thomas, submission on pre-Treaty transactions
- F25 The Reverend M Marsden, submission on pre-Treaty transactions
- F26 H Snowden, submission on pre-Treaty transactions
- F27 M Matiu, submission on pre-Treaty transactions
- F28 R S Gregory, submission on pre-Treaty transactions
- F29 W and M Paraone, submission on pre-Treaty transaction
- F30 Te Paraha Noho, submission on pre-Treaty transaction

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F31 R R Romana, submission on pre-Treaty transaction

F32 D Neho, submission on pre-Treaty transaction

F33 T Sylva, submission on pre-Treaty transaction

### **G To end of seventh hearing**

G1 M Nepia, 'Muriwhenua Surplus Lands Commissions of Inquiry in the Twentieth Century', October 1992

G2 B Rigby, summary of document F8

G3 B Rigby, summary of document F9

G4 Michael Belgrave, 'The Recognition of Aboriginal Tenure in New Zealand, 1840-1860'

G5 L L Head, supplementary evidence, 'An Analysis of Linguistic Issues Raised in Margaret Mutu (1992) Tuku Whenua or Land Sale? and Joan Metge (1992) Cross-Cultural Communication and Land Transfer in Western Muriwhenua, 1832-1840'

G6 Chief Judge E T J Durie, questions to Lyndsay Head

G7 R Boast, supplementary evidence on surplus lands

G8 M Nepia, supplementary evidence on surplus lands

G9 Surplus Land Commission, map of surplus land areas where Maoris have an equity, north Auckland land district

G10 Sir Vincent Meredith, 'A Long Brief', pp 206-213

### **H To end of eighth hearing**

(Documents H1 to H5 incorporated from Wai 116 record of documents)

H1 Peter Pangari, 'Chronology of Events Affecting Taemaro Land, 1840-1863'

H2 B Rigby, 'The Mangonui Area and the Taemaro Claim', 25 July 1990 (also doc A21)

H3 P Pangari, further report of claimants, 28 June 1991

H4 T Walzl, 'Report on the Historical Issues Relating to Taemaro Mediation, circa 1830-1925' (also doc E2)

H5 Pangari, submission at Waimahana



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- H6 A Kerr 'Questions . . . for Lyndsay Head in Respect of Wai 45 Document G5', 15 February 1993
- H7 C Geiringer, 'Subsequent Maori Protest Arising from the Crown Land Purchases in Muriwhenua, 1850–1865', 20 April 1993
- H8 M Alemann, 'Mangonui, Native Reserves and Opouturi', April 1993
- H9 P Wyatt, 'Crown Purchases in Muriwhenua, 1850–1865', April 1993
- H10 M Mutu, 'Muriwhenua: Crown Alliances as Described in the Maori language Documents Relating to Crown Land Purchases In Muriwhenua in the Period from 1840–1865', 27 April 1993
- H11 J Williams and G Powell, 'Further Questions . . . for Lyndsay Head . . .'
- H12 Unallocated
- H13 J Williams and G Powell, 'Opening Submissions . . . Relating to Crown Purchases between 1850 and 1865', 10 May 1993
- H14 J Williams and G Powell, 'Memorandum . . . Regarding Proposed Lease of Te Paki Farm Park . . .', 7 May 1993
- H15 L Head, response to Crown questions, 6 May 1993
- H16 L Head response to claimant questions, 7 May 1993
- H17 Plan ML3184, Takahue no 2 block
- H18 R Hawk, opening submissions on Taemaro claim, 13 May 1993
- H19 Pangari submission on Taemaro claim with supporting documents
- H20 Te Runanga O Whaingaroa, support of Taemaro claim, 11 May 1993
- H21 Whangaroa Maori Executive, support of Taemaro claim, 11 May 1993
- H22 J Williams, G Powell, submissions re Te Paki Farm Park, May 1993
- H23 The Honourable Matiu Rata, submission re Te Paki Farm Park
- H24 J Williams, G Powell, supporting documents re Te Paki Farm
- H25 A Kerr, Crown submissions re Te Paki Farm Park, 13 May 1993

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### **I To end of ninth hearing**

- 11 A Kerr Crown, opening submissions re historical evidence and issues, 5 July 1993
- 12 D Loveridge, 'The New Zealand Land Claims Act of 1840', 18 June 1993
- 13 F Sinclair, 'Issues Arising from Pre-Treaty Land Transactions' (with supporting documents)
- 14 D Armstrong, 'The Land Claims Commission. Practice and Procedure, 1840-1845' (with supporting documents)
- 15 Evidence of David Armstrong, 'The Taylor Purchase' (with further supporting documents; in addition to doc FI)
- 16 Chief Judge E T Durie, 'Tribunal's Tentative Statement of Issues', 8 July 1993

### **J To end of tenth hearing**

- 11 A Kerr, opening submissions re surplus lands and pre-1865 Crown purchases, 13 September 1993
- 12 D Armstrong and B Stirling, 'Surplus Lands. Policy and Practice: 1840-1950' (with supporting documents)
- 13 D Armstrong, 'The Most Healing Measure: Crown Actions in Respect of Oruru/Mangonui, 1840-1843'
- 14 F Sinclair and A Gould, 'Crown Purchases in Muriwhenua to 1865' (with supporting documents)
- 15 M Alemann, 'A Comment on the Reserves in Muriwhenua', 7 June 1993
- 16 B Easton, 'Towards an Iwi Development Plan for the Muriwhenua', 22 June 1993
- 17 L Head, 'An Analysis of Issues in the Report of Dr M Mutu on Crown Purchases in Muriwhenua, 1840-1865'

### **K To end of eleventh hearing**

- K1 Dame J Metge, 'Comments on Issues Arising from Pre-Treaty Land Transactions . . .', 10 October 1993
- K2 Haehae Greaves's submission (as recorded by M Mutu)
- K3 M Mutu, response to L F Head (doc J7), 11 October 1993

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### **L To end of twelfth hearing**

- L1 Professor A Chowning, 'Notes on Questions of Misunderstanding between Indigenous Land-Owners and Would-Be Foreign Purchasers', 15 November 1993
- L2 W Bauer, 'Tuku Whenua: Some Linguistic Issues'
- L3 F Watson, south Auckland 'Old Land Claim Deeds', September 1993
- L4 A Parsonson, 'Land and Conflict in Taranaki, 1839-59', pp 1-66, November 1991
- L5 C Geiringer and P Wyatt, 'Issues Arising from the Evidence . . . Relating to Crown Purchases in Muriwhenua, 1850-1865'
- L6 P Wyatt, 'Issues Arising from the Evidence . . . in Reference to Pre-Treaty Land Transactions'  
(a) B Drury, chart of Rangaounou or Awanui River, 1852 (appendix 2 in report)
- L7 Professor W Oliver, 'The Crown and Muriwhenua Lands: An Overview'
- L8 J Koning and Professor W Oliver, 'Economic Decline and Social Deprivation in Muriwhenua, 1880-1940'
- L9 R Boast, '*In Re Ninety Mile Beach* Revisited: The Native Land Court and the Foreshore in New Zealand Legal History', *Victoria University of Wellington Law Review*
- L10 J Williams, opening remarks re Crown memoranda and historical evidence, 21 March 1994

### **M To end of thirteenth hearing**

- M1 R Hawk, closing submissions on Taemaro claim, 22 March 1994
- M2 Documents in support of Taemaro claim, 22 March 1994
- M3 S Jones, submission, 'He Whakaaringa mo te Tuku Whenua', 20 March 1994
- M4 M Alemann, 'Muriwhenua Land Tenure'

### **M To end of fourteenth hearing**

No documents filed

### **N To end of fifteenth hearing**

- N1 Muriwhenua claimants' closing submissions, vols 1, 2

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N2 Muriwhenua claimant counsel's concluding remarks

**O To end of sixteenth hearing**

O1 Crown's closing submissions (with appended documents)

O2 Professor Bradford W Morse (with the assistance of Rosemary Irwin), 'Treaties, Deeds and Surrenders: An Analysis of Canadian and American Law'

O3 Taemaro claimants, Final reply, 22 September 1994

**P Received subsequent to closure**

P1 Brian Easton, 'A Data Base of Iwi', 15 May 1995 (Wai 116, doc A7, Wai 128, doc A2)

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