

THE  
KAIPARA REPORT



# THE KAIPARA REPORT

WAI 674

WAITANGI TRIBUNAL REPORT 2006



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

A Waitangi Tribunal report

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DAME EVELYN STOKES

1936 – 2005

The members of the Kaipara Tribunal pay tribute to the wisdom and guidance of the late Sir John Turei and the late Dame Evelyn Stokes.

Sir John and Dame Evelyn were the last New Zealanders to be honoured by the Governor-General with their respective titles on 1 January 2000. At a Kaipara judicial conference soon afterwards, fellow Tribunal members, the claimants, and Crown counsel paid tribute to them and recognised the way in which these honours dignified the Tribunal's proceedings.

Sadly, neither Sir John nor Dame Evelyn completed the Kaipara journey with us. The Mohaka ki Ahuriri Tribunal members paid special tribute to Sir John in that report in 2004. It remains for the Kaipara Tribunal members to express their profound appreciation of Dame Evelyn's contribution to the work of the Tribunal, particularly in the completion of this report. She was largely responsible for drafting it, and although in ill-health, she succeeded in completing it shortly before her death. It will be her memorial.

*E te Whaea Evelyn*

*E moe i tōu moengaroa i roto i te rangimārie.*

*Ka mihi ki a koe mōu o mahi rangatira i waenganui i te*

*Rōpu Whakamana i te Tiriti o Waitangi.*

*Tino pōuri ana mātou o hoa mahi.*

*Takoto i roto i te ringa kaha o Te Atua.*



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The Honourable Parekura Horomia  
Minister of Māori Affairs  
Parliament Buildings  
WELLINGTON



The Waitangi Tribunal  
141 The Terrace  
WELLINGTON

9 January 2006

Tēnā koe

E whai ake nei a matau kōrero, ripoata i raro i te mana o te Ropu Whakamana i te Tiriti o Waitangi, i whakaturia mō Kaipara. Ko te tumanako o tēnei ripoata a matau, he whakamama i nga nawe me ngā kereme a ngā kaitono, atu i Te Uri o Hau, kei mua i te Karauna. Ko tā matau wawata, hiahia hoki, kia tutaki ngā kaitono me to Karauna kia awe ai te whakatau i tēnei take nui.

This final *Kaipara Report* covers claims not included in the Te Uri o Hau Claims Settlement Act 2002. That Act, in effect, limited the Waitangi Tribunal's jurisdiction to claims in northern and southern Kaipara, outside the statutorily defined Te Uri o Hau settlement area.

Our final report follows the Tribunal's *Kaipara Interim Report*, which we presented to both the Minister of Māori Affairs and the Minister in Charge of Treaty of Waitangi Negotiations in September 2002, prior to the passage of the Te Uri o Hau settlement legislation. That report related the Crown's acknowledgement of Treaty breaches in the Te Uri o Hau Claims Settlement Bill to our initial assessment of Kaipara claims outside the settlement area. The Tribunal hoped our interim report would enable the remaining Kaipara claimants to enter into immediate settlement negotiations following the Te Uri o Hau settlement. In the event, the remaining claimants chose not to follow this course. Instead, they requested that the Tribunal produce a final report on their claims.

Accordingly, this report covers the following Kaipara claims:

- ▶ Wai 121, a claim by Mōhi Manukau on behalf of the Manukau Māori Trust Board;
- ▶ Wai 244, a claim by the late Lucy Palmer and Patuone Hoskins on behalf of the Ngātiwai Trust Board;
- ▶ Wai 279, a claim by Eriapa Uruamo on behalf of the descendants of Pāora Kāwharu and Aperahama Uruamo;
- ▶ Wai 312, a claim by Takutai Wikiriwhi and others on behalf of the whānau and hapū of Rēweti, Haranui, Araparēra, Puatahi, and Kakanui Marae;
- ▶ Wai 470, a claim by Hariata Ewe and Te Wārena Taua on behalf of Te Kawerau a Maki;

- ▶ Wai 508, a claim by Whītiterā Kaihau on behalf of Ngāti Te Ata;
- ▶ Wai 619, a claim by Waimārie Bruce and others on behalf of Ngāti Kahu o Torongare/Te Parawhau;
- ▶ Wai 620, a claim by the late Colin Malcolm and others on behalf of Te Waiariki/Ngāti Kororā;
- ▶ Wai 632, a claim by Garry Hooker and Alex Nathan on behalf of Ngāti Whiu and Ngāti Kawa hapū of Te Rōroa;
- ▶ Wai 688, a claim by Te Raa Nehua and others on behalf of Ngā Hapū o Whāngārei;
- ▶ Wai 697, a claim by Rangitāne Marsden on behalf of the Marsden whānau;
- ▶ Wai 733, a claim by the late Tauhia Hill on behalf of the ōtakanini Tōpū, a Māori incorporation;
- ▶ Wai 756, a claim by Lou Paul on behalf of Te Taoū; and
- ▶ Wai 763, a claim by Margaret Mutu on behalf of the Kapehu Trust.

Finally, the Kaipara Tribunal must report that one of our members, the Honourable Dr Michael Bassett has dissented from some of our findings. His minority finding at the conclusion of the report explains his position.

No reira, ka tuku atu matau i tēnei ripoata, hei ata whakaaro, hei tautoko i ngā whiriwhiringa o te Karauna mō te take nei.



Dame Augusta Wallace  
Presiding officer

## ABBREVIATIONS

|           |                                                                                                                |
|-----------|----------------------------------------------------------------------------------------------------------------|
| a         | acre                                                                                                           |
| AJHR      | <i>Appendix to the Journal of the House of Representatives</i>                                                 |
| AJLC      | <i>Appendix to the Journal of the Legislative Council</i>                                                      |
| app       | appendix                                                                                                       |
| BPP       | <i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon: Irish University Press, 1968–69)  |
| c         | circa                                                                                                          |
| CA        | Court of Appeal                                                                                                |
| ch        | chapter                                                                                                        |
| comp      | compiler                                                                                                       |
| d         | pence                                                                                                          |
| doc       | document                                                                                                       |
| DNZB      | <i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000) |
| DOSLI     | Department of Survey and Land Information                                                                      |
| ed        | edition, editor                                                                                                |
| encl      | enclosure                                                                                                      |
| esp       | especially                                                                                                     |
| fig       | figure                                                                                                         |
| fn        | footnote                                                                                                       |
| fol       | folio                                                                                                          |
| ha        | hectare                                                                                                        |
| inc       | incorporated                                                                                                   |
| ltd       | limited                                                                                                        |
| ms        | manuscript                                                                                                     |
| NLC       | Native Land Court                                                                                              |
| NZLR      | <i>New Zealand Law Reports</i>                                                                                 |
| p         | perch                                                                                                          |
| p, pp     | page, pages                                                                                                    |
| para      | paragraph                                                                                                      |
| pl        | plate                                                                                                          |
| r         | rood                                                                                                           |
| s         | shilling                                                                                                       |
| s, ss     | section, sections (of an Act of Parliament)                                                                    |
| sec, secs | section, sections (of a book, this report, etc)                                                                |
| sch       | schedule                                                                                                       |
| sess      | session                                                                                                        |
| vol       | volume                                                                                                         |

Wai' is a prefix used with Waitangi Tribunal claim numbers

Unless otherwise stated, footnote references to claims, papers, and documents are to the record of inquiry, the index to which is reproduced in the appendix.

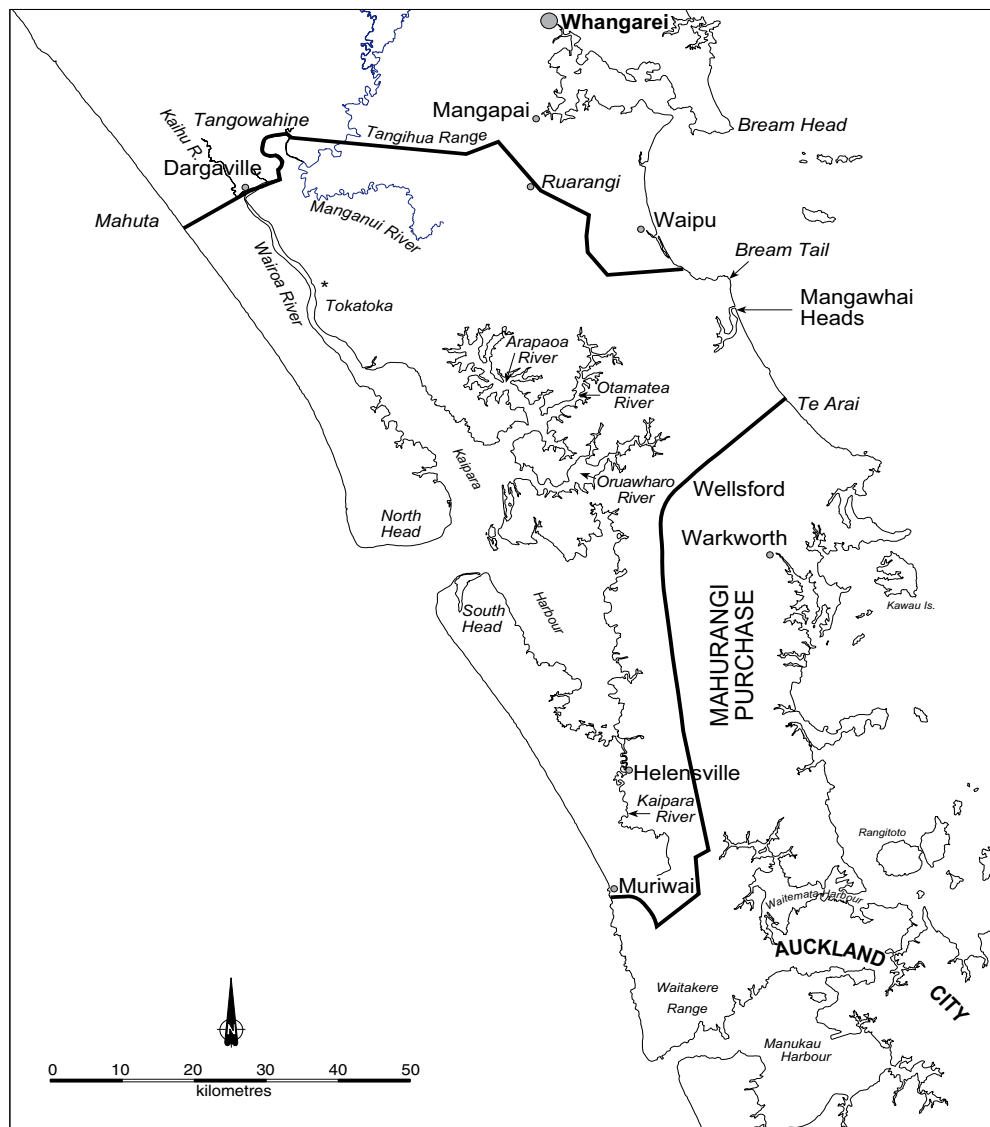


Figure 1: The Kaipara inquiry district

## CHAPTER 1

### THE CLAIMS

#### 1.1 INTRODUCTION

There are 30 claims relating to lands in the Kaipara inquiry district, which includes most of the catchment area of Kaipara Harbour (fig 1). The principal theme of these claims is the loss of land and access to resources. Kaipara Harbour and the numerous rivers that run into it are an important element of the physical and cultural landscape of this inquiry district. The inquiry and our report, however, are confined to an investigation of those claims against the Crown that relate to the land around the harbour, not to the harbour itself or its tributary rivers.

In this chapter, we set out a history of the Kaipara inquiry and an outline of the claims reviewed in the report. During the course of our inquiry, the Crown reached a settlement with Te Uri o Hau, one of the main tribal groups in the Kaipara district. The Te Uri o Hau Claims Settlement Act 2002 removed nine claims from the Tribunal's jurisdiction, and another five to the extent that they relate to Te Uri o Hau interests. For the reasons indicated below, another six claims were not heard in the inquiry. In this report, we consider 14 claims (including those five partially settled by the 2002 Act) in the Kaipara inquiry district. We begin with a history of this inquiry, outlining the effect of the Te Uri o Hau Claims Settlement Act and noting the claims not heard before outlining the issues in the remaining 14 claims. We conclude this chapter with a brief summary of the following chapters.

#### 1.2 THE HISTORY OF THE KAIPARA INQUIRY

In March 1997, Dame Augusta Wallace was appointed presiding officer for the Waitangi Tribunal's inquiry into the Kaipara district, and the remaining members of this Tribunal were appointed in June 1997.<sup>1</sup> The records of inquiry for various claims relating to the Kaipara region were combined under the reference number Wai 674 in July 1997.<sup>2</sup> The inquiry district was divided into three areas (stages 1, 2, and 3), to be heard in sequence (fig 2). Hearings for the stage 1 claims, which included the main Te Uri o Hau claims (Wai 229 and Wai 271),

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1. Papers 2.71, 2.84

2. Paper 2.92

## THE KAIPARA REPORT

1.2

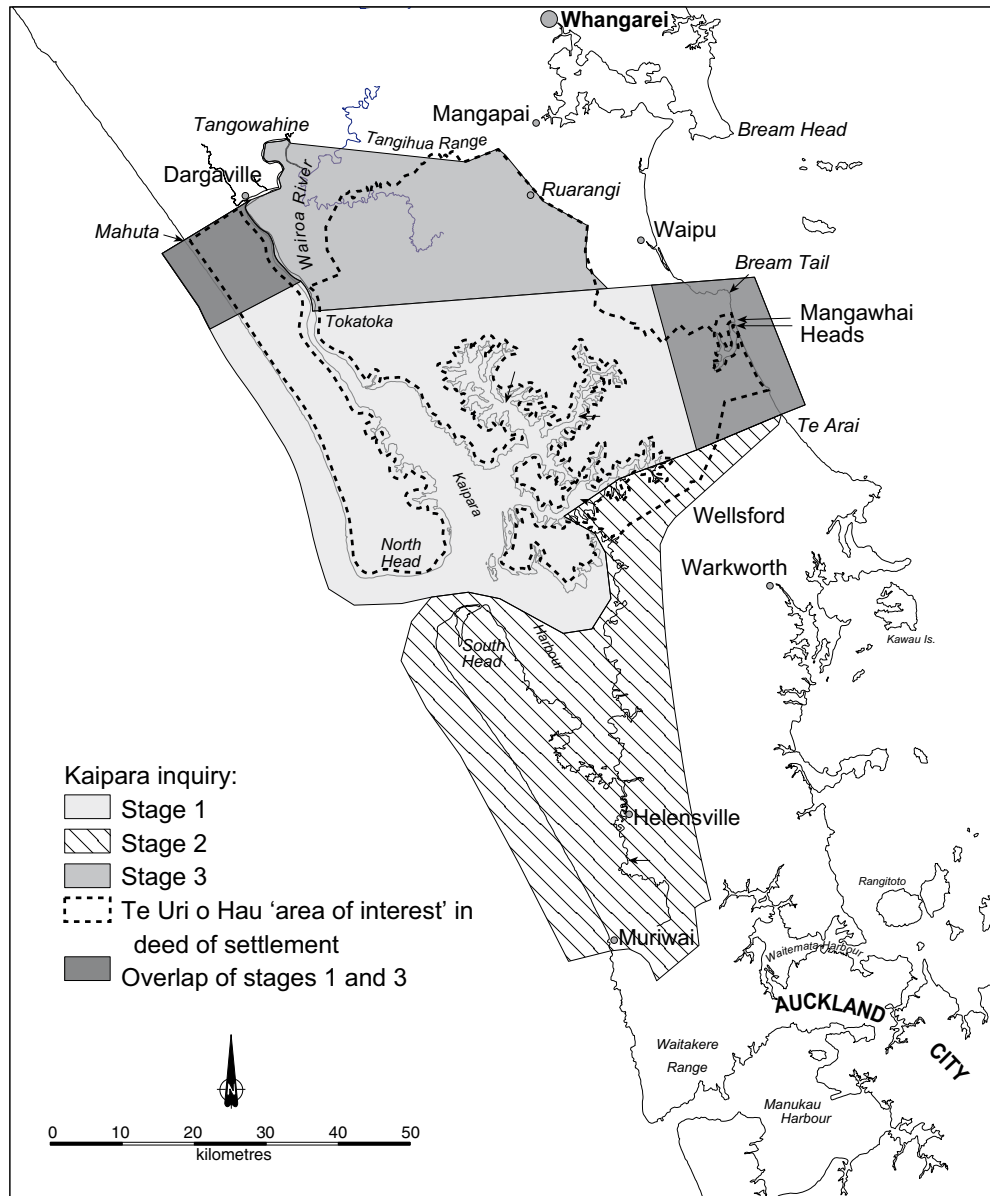


Figure 2: Kaipara inquiry areas

commenced in August 1997 and continued until June 1998. Counsel for Wai 229 and Wai 271 asked the Tribunal to issue an interim report or give preliminary indications at the completion of the stage 1 hearings, with a view to the claimants' entering into direct negotiations with the Crown for the settlement of their claims as soon as possible.<sup>3</sup>

In August 1998, the Tribunal issued its decision declining the application for an interim report or preliminary indications. We pointed out that claims in stages 2 and 3 overlapped

3. Papers 2.86, 2.89, 2.102, 2.104, 2.123, 2.124, 2.129, 2.142

with those heard in stage 1, and that later claimants might be disadvantaged if any preliminary indications were given in relation to the claims of Te Uri o Hau. In addition, we expressed reservations about the accuracy of any indications given without having heard from the claimants in the overlapping claims. While accepting that the release of an interim report might benefit the Te Uri o Hau claimants in any negotiations with the Crown, we were not satisfied that this should be a factor in its decision. We considered that the critical question was whether, in balancing the interests of all Kaipara claimants, there would be a potential injustice to the stage 1 claimants if they had to wait until the conclusion of the Kaipara hearings for a report on their claims. We considered that no such injustice would be created. Further, we noted that it was open to the claimants to enter into negotiations with the Crown at any time.<sup>4</sup>

In the event, the Te Uri o Hau claimants did begin negotiations with the Crown, which recognised the mandate of Te Uri o Hau's negotiators in June 1999. The two parties then entered into negotiations for the settlement of Te Uri o Hau historical claims without recourse to any findings in a Tribunal report. Heads of agreement were signed in November 1999, and the proposed settlement was approved by 82.6 per cent of the participating adult members of the claimant community who were eligible to vote. On 13 December 2000, the Crown and Te Uri o Hau signed a deed of settlement, and the Te Uri o Hau Claims Settlement Act, giving effect to the deed, became law on 17 October 2002.

Meanwhile, between March 1999 and September 2001, this Tribunal heard the claims in stages 2 and 3 and the Crown's responses to those claims. In October 1999, the boundaries of the inquiry were clarified by a Tribunal direction that the Mahurangi area should be severed from the Kaipara inquiry.<sup>5</sup> The inquiry boundaries shown in figure 1 reflect this decision. A subsequent application by the Wai 470 (Te Kawerau a Maki) claimants to extend the inquiry boundaries to include west Auckland was declined by the Tribunal.<sup>6</sup> On 3 August 2001, the Tribunal closed the Kaipara record of inquiry, and we heard closing submissions the following month.<sup>7</sup>

By November 2001, the Te Uri o Hau Claims Settlement Bill had been introduced to Parliament. The Tribunal discussed the implications of this at length, and early in 2002 we decided that the Crown's acknowledgement in the Bill of a number of Treaty breaches was relevant to other claims in the Kaipara inquiry. We also sought a legal opinion to guide us in defining our remaining jurisdiction and obligations to report on these claims. In September 2002, we issued the *Kaipara Interim Report*, in which we briefly discussed the historical background and reviewed the claims. We concluded that the Treaty breaches acknowledged by

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4. Paper 2.154

5. Paper 2.204

6. Papers 2.241, 2.242

7. Paper 2.324

## THE KAIPARA REPORT

1.3

the Crown in the Te Uri o Hau settlement applied also in the rest of the Kaipara inquiry district and provided a basis for Kaipara claimants to enter into negotiations with the Crown.

On 10 December 2002, the Tribunal issued a memorandum, noting the statement in the *Kaipara Interim Report* that ‘it will consider whether to report fully, in its usual manner on the Kaipara claims, or any part thereof (other than Te Uri o Hau), on application to the Tribunal by the Crown or other claimants.’<sup>8</sup> By 31 January 2003, the deadline set in this memorandum, we had received a sufficient number of responses from claimant counsel requesting that we proceed with a full report that we decided to do so. This report is the result.

**1.3 THE TE URI O HAU CLAIMS SETTLEMENT ACT 2002**

The details of the redress provided for in the Te Uri o Hau Claims Settlement Act 2002, and in the deed of settlement to which the Act gave effect, do not concern us here. In brief, this redress includes, but is not limited to, the following:

- ▶ financial redress of \$15.6 million;
- ▶ the vesting in the Te Uri o Hau Settlement Trust of Crown forest licensed land at Poutō and Mangawhai north of Te Ārai Point;
- ▶ a right of first refusal in favour of the Te Uri o Hau Settlement Trust over certain Crown-owned properties; and
- ▶ the vesting in the Te Uri o Hau Settlement Trust of certain properties of cultural and historical significance to Te Uri o Hau.

Of more importance for this report are the historical account, acknowledgements, and apology included in the settlement, which are discussed further below, and the provisions relating to the settlement of claims.

For the purpose of the Act, ‘Te Uri o Hau’ is defined in section 13(1) as:

every individual who can trace descent from 1 or more ancestors who exercised customary rights—

- (a) arising from descent from 1 or more of the following:
  - (i) Haumoewaarangi;
  - (ii) the tribal groups of Te Uri o Hau, Ngai Tahu, Ngati Tahinga, Ngati Rangi, Ngati Mauku, Ngati Kauae, Ngati Kaiwhare, and Ngati Kura; and
- (b) predominantly within Te Uri o Hau area of interest from 1840.

The ‘Te Uri o Hau area of interest’ is defined in a map included in the deed of settlement. Figure 2 shows the area of interest in relation to the Kaipara inquiry district. It will be

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8. Waitangi Tribunal, *The Kaipara Interim Report* (Wellington: Legislation Direct, 2002); paper 2.345



THE CLAIMS

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apparent that the Te Uri o Hau settlement relates not only to the stage 1 area of our inquiry but also to Te Uri o Hau interests in much of stage 3 and a small part of stage 2.

Section 15 of the Act defines ‘Te Uri o Hau historical claims’ as those claims made by any Te Uri o Hau claimant relating to acts or omissions by or on behalf of the Crown, or by or under legislation, that occurred before 21 September 1992. Certain claims to the Waitangi Tribunal are listed as being included within the definition, while others are said to be included ‘so far as they relate to Te Uri o Hau claimants’ (these are detailed below). The settlement of Te Uri o Hau historical claims is stated to be final. Consequently, section 18 amends the Treaty of Waitangi Act 1975 by removing the Tribunal’s jurisdiction to inquire or further inquire into Te Uri o Hau historical claims, the Te Uri o Hau deed of settlement, the redress to be provided as part of the Te Uri o Hau settlement, and the Te Uri o Hau Claims Settlement Act. However, the Tribunal retains jurisdiction in respect of ‘the interpretation or implementation of the deed of settlement or Te Uri o Hau Claims Settlement Act 2002’.

**1.4 CLAIMS IN THE KAIPARA INQUIRY**

The claims in the Kaipara inquiry fall into three categories:

- ▶ those historical claims which are settled by the Te Uri o Hau Claims Settlement Act 2002;
- ▶ those claims which are part of the Kaipara inquiry but have not been heard by the Tribunal; and
- ▶ those claims which have been heard by the Tribunal but are not included in the Te Uri o Hau settlement.

**1.4.1 Claims included in the Te Uri o Hau settlement**

The following claims are part of the Kaipara inquiry, and are listed in the Te Uri o Hau Claims Settlement Act as being covered by the definition of Te Uri o Hau historical claims: Wai 229 (Ōtamatea lands); Wai 259 (Tāwhiri Pā); Wai 271 (Poutō Peninsula); Wai 294 (Poutō lands); Wai 409 (the Poutō 2E7B2 block); Wai 448 (the Tuhirangi block); Wai 658 (the Wairiri Whānau Trust); Wai 689 (the Poutō Tōpū A, 2E, 2E7A, and 2E6 blocks); and Wai 721 (Kaipara lands and resources).

In addition, the claims Wai 121, Wai 303, Wai 468, Wai 688, and Wai 719, which are in our inquiry and further details of which are given below, are said to be Te Uri o Hau historical claims, ‘so far as they relate to Te Uri o Hau claimants’. In our view, these five claims relate only in part to Te Uri o Hau. To the extent that they represent interests other than those of Te Uri o Hau, we have assumed that they are not covered by the Te Uri o Hau settlement.

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**1.4.2 Claims not heard by the Kaipara Tribunal**

For various reasons, certain claims within the Kaipara inquiry district have not been heard by the Tribunal. The claims in this category are: Wai 106 (Te Kāhui-iti Mōrehu on behalf of the Rēweti Marae Trust Board, the Uruamo, Porter, and Mōrehu families, and Te Taoū); Wai 303 (Haahi Walker and Thompson Parore on behalf of Te Rūnanga o Ngāti Whātua); Wai 468 (the late Morley Powell on behalf of Ngā Puhi whānui); Wai 683 (Weretapou Tito on behalf of the Te Parawhau hapū of Ngā Puhi); Wai 719 (Lionel Brown on behalf of the whānau of Haimona Pirika Ngāi, Pirika Ngāi, and Maraea Pirika Ngāi); and Wai 798 (Pamera Timoti-Warner on behalf of the Ngāti Rango hapū of Ngāti Whātua).

**1.4.3 Claims heard but not included in the Te Uri o Hau settlement**

We summarise below those claims which were heard by the Tribunal in stages 2 and 3 of our inquiry, but which are not covered by the Te Uri o Hau settlement and are reviewed in this report:

- ▶ *Wai 121*: Wai 121 is a claim by Mōhi Manukau on behalf of the Manukau Māori Trust Board and its beneficiaries. It focuses on the alleged prejudicial effects of Crown acts or omissions (particularly, the loss of land through the operation of the Native Land Court) on the status of the claimants' tūpuna, who were rangatira in the Kaipara region. Other claims relate to the gifting of a 10-acre block at Te Awaroa (Helensville) and the Crown's failure to implement section 71 of the New Zealand Constitution Act 1852 (which, it is claimed, provided for Māori self-government).
- ▶ *Wai 244*: Wai 244 is a claim by the late Lucy Palmer and Patuone Hoskins on behalf of the Ngātiwai Trust Board. It concerns the 1854 Crown purchase of the Mangawhai block and alleges that, in purchasing the block, the Crown failed to ensure that it was properly surveyed prior to sale, failed to pay a fair price for it, failed to provide reserves, and failed to ensure that Ngāti Wai received the promised 10 per cent of the proceeds of the Crown's on-sale of land in the block.
- ▶ *Wai 279*: Wai 279 is a claim by Eriapa Uruamo on behalf of the descendants of Pāora Kāwharu and Aperahama Uruamo. It concerns the alienation of land at Te Kēti and the wider area known as the Hiore Kata lands in southern Kaipara and also includes a number of grievances relating to public works takings and to the Crown's alleged failure to protect urupā and other wāhi tapu.
- ▶ *Wai 312*: Wai 312 is a claim by Takutai Wikiriwhi and others on behalf of the whānau and hapū of Rēweti, Haranui, Araparēra, Puatahi, and Kakanui Marae. It is a comprehensive claim covering the loss of Ngāti Whātua lands in southern Kaipara through old land claims, pre-emption waiver claims, Crown purchases, the operation of the Native Land Court, and public works takings. Other grievances relate to the gifting of a 10-acre

## THE CLAIMS

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block at Te Awaroa and land for the Auckland to Te Awaroa railway, and to aspects of the sand-dune reclamation works at what became Woodhill Forest. A distinctive feature of Wai 312 is the claim that Ngāti Whātua had an ‘alliance’ with the Crown. It is claimed that this alliance placed particular obligations on the Crown that were not met. Two overarching themes in the Wai 312 claim are the Crown’s alleged failure actively to protect Ngāti Whātua’s land base and the allegation that the Crown made promises of economic development and the provision of services to Ngāti Whātua which it failed to fulfil.

- ▶ *Wai 470*: Wai 470 is a claim by Hariata Ewe and Te Wārena Taua on behalf of Te Kawerau a Maki. The claimants say that Te Kawerau a Maki had both shared and exclusive interests in the Kaipara region (especially south-western Kaipara) and that the Crown failed to recognise these interests, with the result that Te Kawerau a Maki have been left with only a tiny remnant of their southern Kaipara lands. The claim relates to the loss of land through old land claims, pre-emption waiver claims, Crown purchases, the operations of the Native Land Court, and the taking of land for sand-dune reclamation work.
- ▶ *Wai 508*: Wai 508 is a claim by Whītērā Kaihau on behalf of Ngāti Te Ata. It is a very general claim to land within a wide area, which includes the Kaipara district.
- ▶ *Wai 619, Wai 620*: Wai 619 is a claim by Waimārie Bruce and others on behalf of Ngāti Kahu o Torongare/Te Parawhau. Wai 620 was lodged by the late Colin Malcolm and others on behalf of Te Waiariki/Ngāti Kororā. Both claims relate to the Crown’s alleged failure to recognise the interests of the claimants’ tūpuna when purchasing the Mangawhai block in 1854.
- ▶ *Wai 632*: Wai 632 is a claim by Garry Hooker and Alex Nathan on behalf of the Ngāti Whiu and Ngāti Kawa hapū of Te Rōroa. It concerns the cession to the Crown of land at Te Kōpuru in 1842, allegedly without the consent of Ngāti Whiu and Ngāti Kawa, who are said to have been the owners of the land. It also concerns the Crown purchases of the Tokatoka and Whakahara blocks, including the background to these purchases in the O’Brien old land claim.
- ▶ *Wai 688*: Wai 688 is a claim by Te Raa Nehua and others on behalf of Ngā Hapū o Whāngārei (comprising members of Te Parawhau, Te Uri Roroī, Ngāti Kahu o Torongare, Te Uri o Hau, Te Kumutu, Te Kuihi, Ngāti Toki, Ngāti Moe, and Ngāti Horahia hapū). It is a comprehensive claim about land loss in the stage 3 inquiry area and includes the Te Kōpuru cession, old land claims, Crown purchases, the operations of the Native Land Court, and the Crown’s alleged failure to provide reserves or to protect areas of special significance. It is also alleged that the relationship between the Crown and the claimants’ hapū was such as to give rise to a legitimate expectation of continuing benefits and resources but that the Crown failed either to provide ongoing benefits or to conserve the resources of the area.

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- ▶ *Wai 697*: Wai 697 is a claim by Rangitāne Marsden on behalf of the Marsden whānau. It concerns Maungarongo (the old Te Kōpuru hospital site), which the claimants allege was improperly acquired and then sold by the Crown in the 1990s.
- ▶ *Wai 733*: Wai 733 is a claim by the late Tauhia Hill on behalf of the Ōtakanini Tōpū, a Māori incorporation which owns and manages the largest remaining area of Māori land in southern Kaipara. Key issues in the claim include the alienation of land at Ōtakanini, the compulsory vesting of the Ōtakanini block in the Tokerau District Māori Land Board, and the leasing of Ōtakanini Tōpū land for commercial forestry. The claimants also allege that the Crown has failed to provide effective representation for Māori in legislative and administrative bodies.
- ▶ *Wai 756*: Wai 756 is a claim by Lou Paul on behalf of Te Taoū. A central part of the claim is the allegation that the Crown wrongly treated Te Taoū as a hapū of Ngāti Whātua, to the detriment of Te Taoū interests. Other issues include the individualisation of land ownership and land loss through the operations of the Native Land Court, public works takings, the breaching of promises allegedly made by the Crown in association with the gifting of land at Te Awaroa and for the Riverhead to Helensville railway, the alleged blocking of access to kaimoana resources, and the alleged commercial exploitation of urupā sites in Woodhill Forest.
- ▶ *Wai 763*: Wai 763 is a claim by Margaret Mutu on behalf of the Kapehu Trust and the beneficial owners of the Kapehu G, H, and I blocks. The claimants own land which is subject to substantial rates liabilities, and they allege that the Kaipara District Council, in levying and seeking the collection of these rates, is interfering with their use of the land. They also claim that the Crown is responsible for passing rating legislation which does not take account of Māori social, spiritual, cultural, and economic values in respect of their lands.

Two of these claims, Wai 697 and Wai 763, were heard in part, but for various reasons, including insufficient evidence, the Tribunal was unable to report on them. We discuss them briefly here.

In respect of Wai 697 (Marsden whānau), we note that the Crown made no submissions on the claim. Further, in addition to their claims against the Crown, the claimants made allegations about the actions of a third party, and we are in no position to assess the accuracy or fairness of these allegations. Owing to a lack of sufficient evidence, we make no findings, but we recommend that the claimants and the Crown enter mediated discussions in an effort to address the claimants' concerns over the property named Maungarongo.

Wai 763 (the Kapehu Trust rating claim) concerns rates payable on Māori land. The claimants argue that the rating regime should not treat Māori land in the same way as general land and that Māori values in relation to land should be recognised in rating legislation. The Tribunal has insufficient evidence concerning the Kapehu blocks to make any findings on this claim, and at this stage, we make no recommendation on an issue that affects all land,

Māori and general. We note that the Local Government (Rating) Act 2002 has been passed since this claim was heard by the Tribunal. This Act, which makes provision for local authorities to adopt a policy on rates relief for Māori freehold land in certain circumstances, may provide some relief in this and similar claims. We further note that the Local Government Act 2002 makes provision for acknowledging the relevance of the Treaty of Waitangi and for facilitating Māori participation in decision-making by local authorities.

Should the claimants in either of these claims wish to come back to the Tribunal for findings, all parties are put on notice that additional evidence and submissions, including submissions from the Crown, would be required before findings could be made. Any new evidence or submissions would be heard by a new Tribunal.

### 1.5 SUMMARY OF CHAPTERS

In this chapter, we have outlined the Kaipara inquiry district and the history of the Kaipara inquiry, and we have listed the claims which we have considered for this report. In chapter 2 we provide an overview of the Kaipara district in the nineteenth century as the background to our consideration of the claims. In chapter 3, we first consider the Māori concept of take raupatu as a basis of claim before addressing the Treaty breaches that were acknowledged by the Crown in the Te Uri o Hau Claims Settlement Act 2002 and that apply to all claims in the Kaipara inquiry district. We have called these acknowledged breaches 'generic issues'. They include:

- ▶ the administration of old land claims;
- ▶ Crown purchase policies before 1865, including the provision of reserves for Māori and promises of future benefits for Māori as an inducement to sell; and
- ▶ the operation of the Native Land Court, including the 10-owner system, succession, and the effects of the tenurial revolution that created individual, disposable interests in land for Māori.

For completeness, chapter 3 concludes with a brief account of the relevant aspects of Māori land administration in the later nineteenth and twentieth centuries.

In chapters 4 and 5, we consider the claims relating to lands around the northern margins of the Te Uri o Hau 'area of interest', as defined in the settlement deed. These claims are Wai 632 (Te Rōroa), Wai 688 (Ngā Hapū o Whangarei), Wai 619 (Ngāti Kahu o Torongare/Te Parawhau), Wai 620 (Te Waiariki/Ngāti Kororā), and Wai 244 (Ngāti Wai). Chapter 4 deals with the old land claims derived from pre-Treaty transactions between Māori and Pakehā on the Wairoa River in northern Kaipara and with the 'cession' of the Te Kopuru block following a raid, or muru, on Thomas Forsaith's store at Mangawhare, Dargaville. Chapter 5 deals with transactions involving lands around Mangawhai Harbour on the eastern coast.

In chapters 6 to 11, we consider the claims relating to land in southern Kaipara. These

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claims are Wai 312 (Ngāti Whātua), Wai 733 (Ōtakanini lands), Wai 279 (Te Kēti and Hiore Kata lands), Wai 756 (Lou Paul and Te Taoū), Wai 121 (Manukau whānau), and Wai 470 (Te Kawerau a Maki). Chapters 6 to 8 deal with issues arising out of land transactions in the nineteenth century. Chapter 6 first addresses the Ngāti Whātua concept of an ‘alliance’ with the Crown before dealing with Crown purchases in southern Kaipara up to 1865, including an old land claim at Kaukapakapa. Chapter 7 deals with the establishment of the Native Land Court and its operation in Kaipara up to 1900. Chapter 8 deals with the gifting of land by Ngāti Whātua to the Crown for public purposes in Helensville and for the Kaipara railway and roads. This chapter concludes with a review of the impact of land sales on Ngāti Whātua by 1900. Chapter 9 deals with issues relating to the reclamation of the sand dunes along the western coast and the development of Woodhill Forest from the 1920s. In chapter 10, we provide an overview of Kaipara Māori communities in the twentieth century, focusing on the social and economic impact of land loss and the responsibility for this. In chapter 11, we set out our conclusions and findings on the southern Kaipara claims, beginning with the major Wai 312 claim of Ngāti Whātua. The issues in most of these claims overlap with Wai 312, but some specific local issues are also addressed.

In chapter 12, we deal with wider nineteenth-century constitutional issues. These were raised by the Wai 121 and Wai 508 claimants in relation to section 71 of the Constitution Act 1852 and by the Wai 733 and Wai 312 claimants in relation to Māori representation.

## CHAPTER 2

### THE LAND AND PEOPLE OF KAIPARA

#### 2.1 INTRODUCTION

In this chapter, we give an overview of the geography and history of the whole Kaipara district from the early nineteenth century through to the twentieth century. The intention is to provide a context for the more detailed discussion in the later chapters.

#### 2.2 THE SEA AND THE LAND

The unifying factor in the Kaipara district is Kaipara Harbour. The tributary rivers – Wairoa in the north, Arapaoa, Ōtamatea, Oruawharo, and Tauhoa in the east, Kaukapakapa and Kaipara in the south, and many smaller streams – all flow into one extensive estuary, which has only one sand-clogged outlet (fig 3). Flanking the entrance to the harbour are two long peninsulas of sand, rising over 150 metres, known as the North and South Heads. Along the coast of the Tasman Sea, the sands are loose, unconsolidated, and drifting, but to the east they become older, more compacted, and fertile. On the eastern shore of the harbour, long fingers of land stretch out into the water. The Kaipara catchment area is an old river system that was drowned by rising sea levels over 10,000 years ago, leaving only the tops of the ridges visible.

With its long shoreline and fingers of land, the harbour provided a very attractive environment for Māori settlement. Fish and shellfish were abundant, and the many streams and swamps provided eels and wild fowl. More birds and plant food sources were to be found in the forests, and pockets of well-drained fertile flats could be cultivated (kumara grew particularly well in the sandy soils and humid, temperate climate). The natural resources of the region were sufficient to support a larger number of Māori inhabitants than the few hundred estimated to live there in the early nineteenth century. (We consider the reasons for that below.) The number of recorded pā sites (fig 4) indicates that the district was long occupied and frequently fought over.<sup>1</sup> Not all pā were occupied at the same time, of course, but the many sites around the harbour on cliff tops and promontories indicate extensive settlement in past centuries.

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1. Document A18, p 13



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2.2

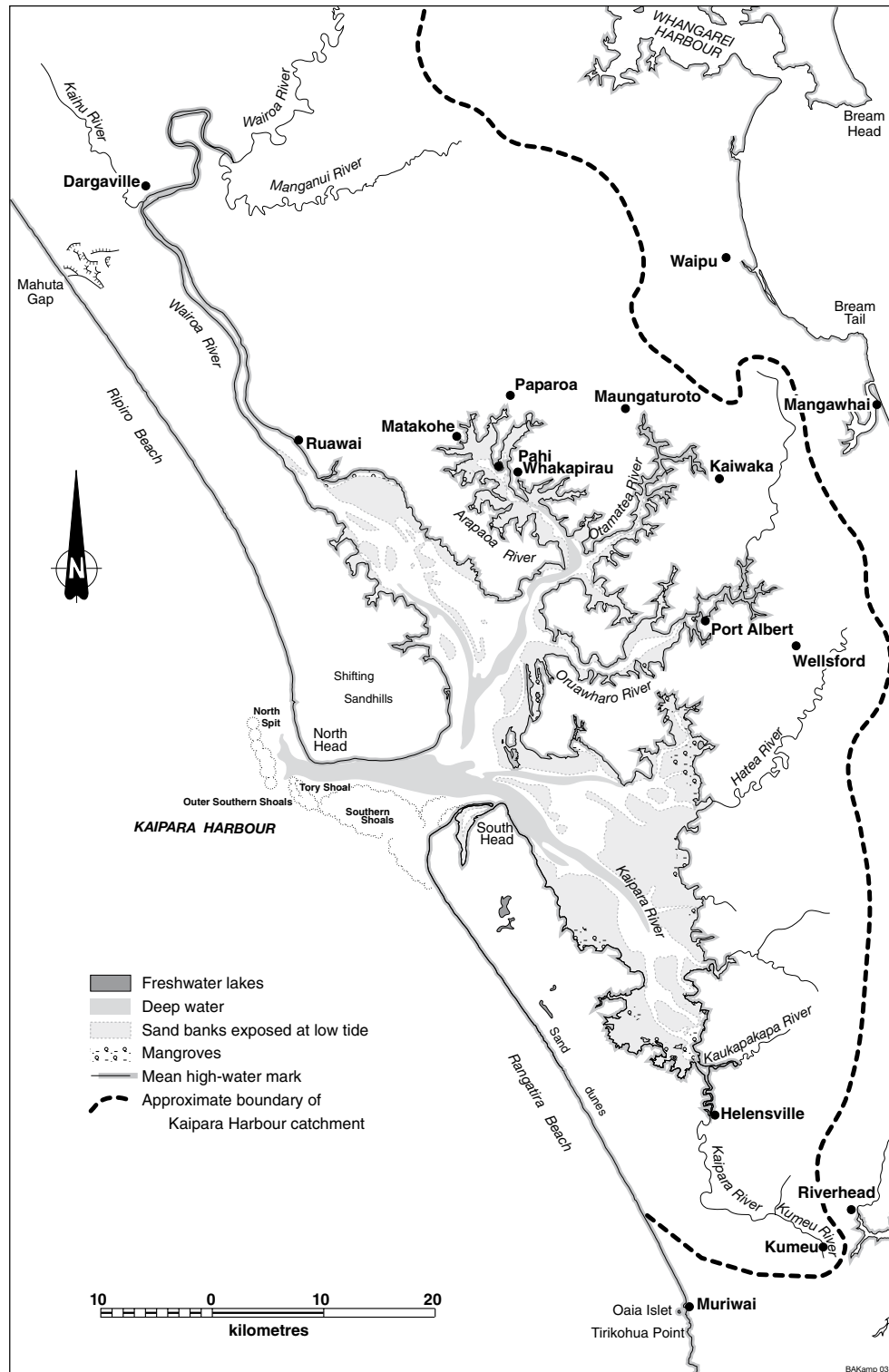


Figure 3: Kaipara Harbour. Source: New Zealand hydrographic chart NZ24, 2001.



The harbour and its tributary rivers provided the main means of access, and there were several important portages for canoes (fig 5).<sup>2</sup> Most of the region was originally covered by forest, but long Māori occupation resulted in the clearance of significant areas around the harbour shoreline, along the important routes between Ōtamatea and Mangawhai, and between the Kaipara River and upper Waitemata Harbour. Where they were not lived on and cultivated, the cleared lands were covered in fern, manuka scrub, and, in some places, regenerating forest. In short, the Kaipara district was a very attractive environment for Māori settlement, and it is not surprising that its resources were frequently fought over.

### 2.3 KAIPARA MĀORI IN THE EARLY NINETEENTH CENTURY

In the course of this inquiry, the claimants shared with us a wealth of information about their traditional histories, their whakapapa, and their relationships with the land and waters of the Kaipara district. This evidence will form a valuable source for the present and future generations seeking to understand the traditional history of Māori in Kaipara. However, it is not the function of the Tribunal to write tribal histories. We have carefully considered the evidence presented to us, which has assisted us in understanding tribal relations before 1840 in Kaipara. Our task, however, is limited to an inquiry into alleged Treaty breaches by the Crown, and for this task it is necessary only to establish which Māori groups had rights in our inquiry district which could have been prejudiced by acts or omissions of the Crown after 1840. For this reason, we are concerned here only with the decades that led up to the signing of the Treaty of Waitangi.

We begin by setting out the major Māori groups that were living in and around Kaipara at the start of the nineteenth century (fig 6). On the northern side of the harbour were Te Uri o Hau. To the north of Te Uri o Hau land on the Poutō Peninsula, in the Kaihū and Waipoua Valleys towards Hokianga, was the heartland of Te Rōroa. The area roughly between present-day Dargaville and Whangarei was a borderland, a zone of conflict, between the broad tribal confederations of Ngā Puhi and Ngāti Whātua. This northern Wairoa region was disputed between Te Uri o Hau, Te Rōroa, and various groups affiliated more closely with Ngā Puhi, including Te Parawhau. On the east coast of our inquiry district, the land around Mangawhai was contested by hapū of Ngā Puhi, Ngāi Tahu, Te Uri o Hau, and Ngāti Wai. The land around the southern part of Kaipara Harbour was inhabited principally by people of Te Taoū, Ngāti Whātua Tūturu, Ngāti Rongo, and other related groups, which are often referred to collectively as 'Ngāti Whātua'. These people had also established themselves further south at Tamaki Makaurau, where they had intermarried with earlier inhabitants of the area. In the Waitakere Ranges to the south-west lived Te Kawerau a Maki, and on the southern shore of Manukau Harbour were Ngāti Te Ata and other Waikato tribes.

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2. Document H2, p 8

## THE KAIPARA REPORT

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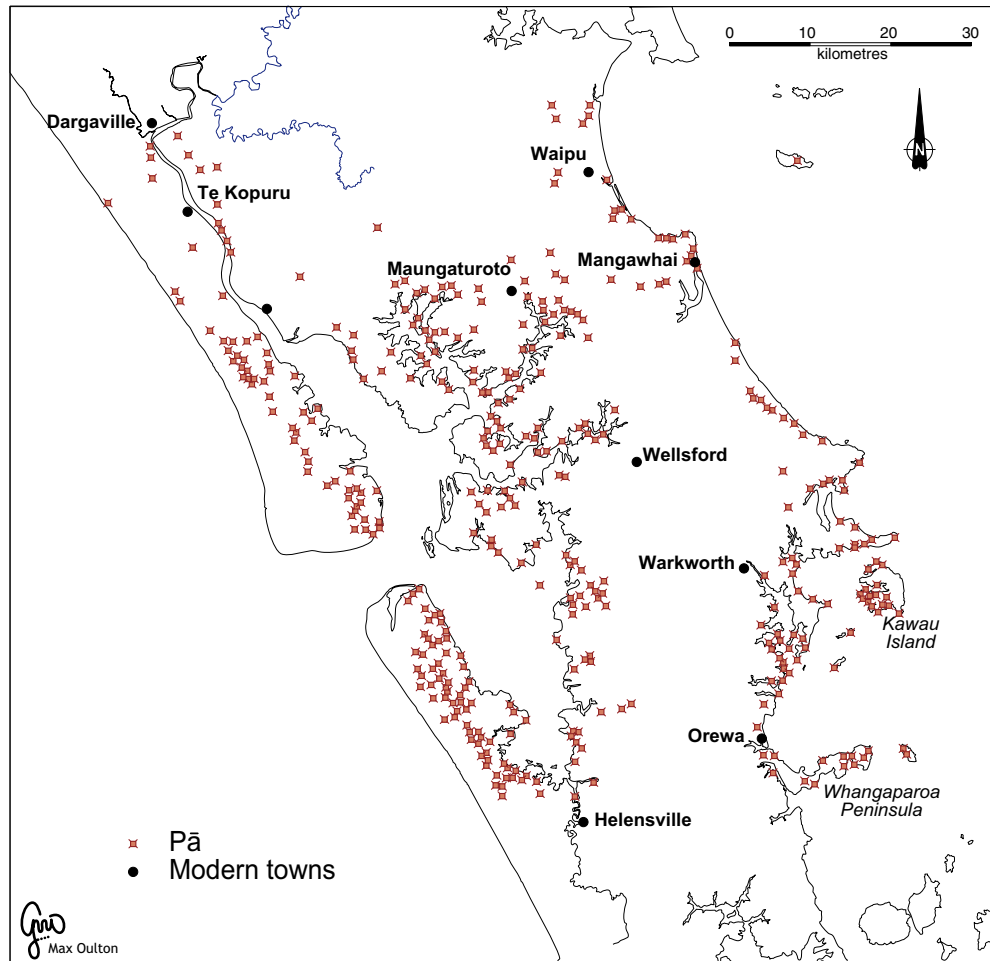


Figure 4: Distribution of pā sites in the Kaipara district

The name 'Ngāti Whātua' has often been used to describe a confederation of tribes of the Kaipara and Tamaki Makaurau districts, including Te Rōroa and Te Uri o Hau. In this report, we will use the name to refer collectively to several hapū of southern Kaipara (principally, Ngāti Whātua Tūturū, Te Taoū, and Ngāti Rongo) and of Tamaki Makaurau (Te Taoū, Ngā Ohu, and Te Uringutu). The strong connections between the Ngāti Whātua hapū of Kaipara and Tamaki Makaurau were well established in the nineteenth century, and have continued since. Although the Kaipara inquiry district does not include the Auckland isthmus, this connection cannot be ignored in our review of the claims of Ngāti Whātua in later chapters. We have distinguished the Kaipara-based hapū where necessary by using the term 'Ngāti Whātua Tūturū'. Where we wish to include Te Rōroa and Te Uri o Hau, we use the term 'Ngāti Whātua confederation'. However, for most purposes in this report, Te Rōroa and Te Uri o Hau are treated separately by their respective names.

The early nineteenth century saw two interrelated developments which would have far-reaching consequences for the relationships between these various groups. The first was the escalating conflict between the Ngā Puhi and Ngāti Whātua confederations. The second was the beginning of contact with Europeans and the resultant introduction of new food-stuffs and technology. The connection between these two developments was that European food (especially pigs and potatoes) and technology (especially firearms) made warfare both easier to prosecute and more devastating in its effects. In the short term, Ngā Puhi gained an advantage from their earlier contact with Pākehā in the Bay of Islands and the access to guns which this provided. After 1840, when the new colonial capital was established at Auckland, Ngāti Whātua also benefited (at least for a time) from their close proximity to a major Pākehā settlement.

Conflict between Ngā Puhi and Te Rōroa at the start of the nineteenth century began a cycle of retribution which continued well into the 1830s. Around 1807, Ngā Puhi clashed with Te Rōroa and their allies from the Ngāti Whātua confederation under the leadership of Murupaenga. This battle at Moremonui (just north of Baylys Beach) became known as ‘Te Kai a te Karoro’ (the seagull’s feast). It was a serious defeat for Ngā Puhi, who lost several of their leaders there. Following their defeat at Moremonui, Ngā Puhi under the leadership of Hongi Hika sought revenge. Hongi, who had fought at Moremonui and lost two brothers there, set out to acquire the guns which would give his people the edge over their Ngāti Whātua adversaries.<sup>3</sup> After visiting Sydney in 1814, Hongi encouraged missionaries and traders to establish themselves at the Bay of Islands under his protection. His monopoly on trade with Pākehā allowed him to boost agricultural production and to acquire large numbers of muskets, which his people were to use against the inhabitants of Kaipara and other areas. In 1821, for example, Hongi destroyed the Ngāti Paoa pā Maunaina and Mokoia in Tamaki Makaurau, and other raids in Hauraki, the Bay of Plenty, and the Waikato followed.<sup>4</sup>

Though Kaipara Māori had little contact with Europeans before the late 1830s, their lives were already being transformed by Pākehā-introduced goods. Pigs and potatoes were present as early as 1820, as observed by the missionary Samuel Marsden when he visited Kaipara in August. Marsden also recorded a conversation with Murupaenga:

We talked over the wars between Shunghee’s [Hongi Hika’s] tribe and his. Moodeepanga [Murupaenga] said he did not wish to be at war with any tribe, but he was compelled to fight to protect himself and people; a party of Shunghee’s tribe (Ngāpuhi) was now plundering

3. Document F4, p 8; RCJ Stone, *From Tāmaki-makau-rau to Auckland* (Auckland: Auckland University Press, 2001), pp 82–84; Waitangi Tribunal, *The Te Roroa Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 12; Angela Ballara, ‘Murupaenga’, DNZB, vol 1, p 304; Angela Ballara, ‘Hongi Hika’, DNZB, vol 1, p 201; Stephenson Percy Smith, *Maori Wars of the Nineteenth Century: The Struggle of the Northern against the Southern Maori Tribes prior to the Colonisation of New Zealand in 1840*, 2nd ed (1910; reprint, Christchurch: Capper Press, 1984), pp 44–49

4. Angela Ballara, ‘Hongi Hika’, DNZB, vol 1, p 201

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and murdering the inhabitants in the districts of Kiperro (Kaipara), and he was afraid he should be compelled to appeal to arms again. He, as well as most of the chiefs, wished for some regular government by which they could obtain protection to their persons and properties. Temmarangha [Te Morenga, Marsden's travelling companion] explained to them how the government of Port Jackson [in New South Wales] was conducted: that we only had one king, which was Governor Macquarie, and he put a stop to all fighting there. King George, he had heard, did the same in England. But while there were so many kings in New Zealand there would be continual wars.<sup>5</sup>

Murupaenga also wanted to know whether a ship such as the British naval ship *Coromandel*, which had been at Thames collecting spars in 1820, would come to Kaipara. He told Marsden: 'There were plenty of fine spars on the banks of the river in his district if the ships could come for them, which he very much wished. He should also like some Europeans to reside with him for the benefit of his people.'<sup>6</sup> Marsden responded that this would not be possible until the harbour entrance had been examined.

Marsden attempted to investigate the harbour entrance himself but was foiled by bad weather. He concluded that at the entrance there was likely to be 'a dangerous bar from the very nature of the seashores and the banks of the rivers.'<sup>7</sup> On a visit in November 1820, Marsden made another attempt, which was also foiled, but he was told by locals that there were deep-water channels through the offshore shoals at the harbour entrance. Marsden also noted 'some extensive sandbanks' in the harbour and concluded that there was 'plenty of water for any ship in all the rivers.'<sup>8</sup>

**2.4 TE IKA Ā RANGANUI AND ITS AFTERMATH**

Despite having themselves been victims of Ngā Puhi raids, Te Parawhau under the chief Te Tirarau came to terms with Ngā Puhi in the early 1820s, as tension between Ngā Puhi and Ngāti Whātua forces continued.<sup>9</sup> This conflict culminated in 1825 in the battle of Te Ika ā Ranganui, where Ngā Puhi finally got revenge for their defeat at Moremonui two decades earlier. Hongi initially intended to attack Te Rōroa, but peace terms were negotiated with the chief Parōre Te Āwha. Hongi's Ngā Puhi taua, or war-party, which included some Te Parawhau, came south by canoe to Mangawhai and the canoes were dragged inland, over the

5. Samuel Marsden, *The Letters and Journals of Samuel Marsden, 1764–1838, Senior Chaplain in the Colony of New South Wales and Superintendent of the Mission of the Church Missionary Society in New Zealand*, ed John Elder (Dunedin: Coulls, Somerville Wilkie, and Reed, 1932), p 290

6. Ibid

7. Ibid, p 294

8. Ibid, pp 319–320

9. Document 14, pp 23–24; Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland, Rangahaua Whanui Series* (Wellington: Waitangi Tribunal, 1996), pp 43–44

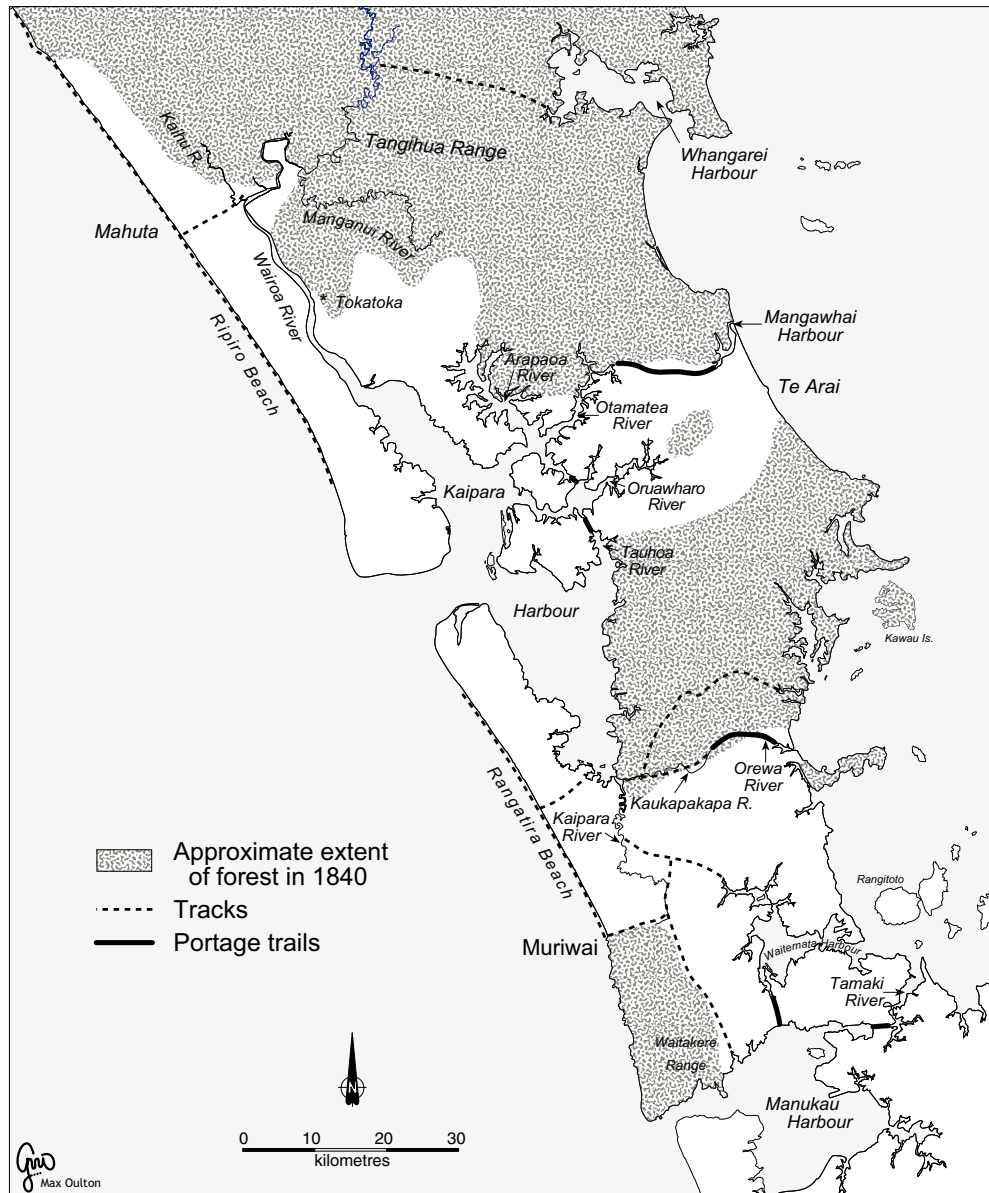


Figure 5: Kaipara and Tamaki Makaurau tracks and portages. Based on a map prepared by Wynne Spring-Rice.

portage, toward Kaipara. They were met by a Ngāti Whātua force near Kaiwaka. This force, said to have been 1000 strong, included members of Te Uri o Hau, Te Taoū, Ngāti Whātua Tūturu, and Ngāti Rongo. Although the Ngā Puhi taua was reportedly only half the size of Ngāti Whātua's, Ngā Puhi were heavily armed with muskets, while Ngāti Whātua possessed almost none. The result was a comprehensive defeat for the Ngāti Whātua forces, who suffered heavy losses.<sup>10</sup>

10. Stone, pp 100–101; Daamen, Hamer, and Rigby, p 44; doc F4, p 12; doc L2, p 57; Angela Ballara, 'Murupaenga', DNZB, vol 1, pp 304–305; doc L4, pp 24–25

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Stephenson Percy Smith described the impact of Te Ika ā Ranganui on Kaipara Māori:

The Ngāti-Whātua tribe [confederation] scattered in small parties, Ngāti-Whātua proper to the ranges near Waitakere, and eventually to Waikato; Te Uri-o-Hau to the fastnesses of the Tangihua mountains; Ngāti-Rongo, to their relatives at Whangarei and to the wilds of the forests. The fear of Ngā Puhi prevented them from occupying their old homes for many years afterwards, indeed not until Auckland was founded did they feel safe . . . The old men have often described to me the state of fear and alarm they lived in during their wild life in the mountains of Tangihua, Mareretu, and the forests of Waikiekie; they rarely approached rivers or the paths, but confined themselves to the wild bush, living on eels, birds, and the produce of a few hidden cultivations.<sup>11</sup>

The Ngāti Whātua survivors who fled south met a Ngāti Whātua taua from Tamaki Makaurau under the leadership of Te Kawau that had reached Kaipara too late to join in the battle. The Tamaki people then joined their Kaipara kin in seeking refuge from Ngā Puhi attack. For the next decade, both Kaipara and Tamaki were largely unoccupied, their peoples dispersed to the north and south. Many ended up sheltering in Waikato, although even there they were still subject to Ngā Puhi attacks, and many more Ngāti Whātua were killed.<sup>12</sup>

Others took refuge in the north, often among the very people who had just defeated them in battle. As Te Rōroa researcher Garry Hooker suggested, while Te Ika ā Ranganui is commonly portrayed as a clash between Ngā Puhi and Ngāti Whātua, the dispersal patterns show that the reality was a more complex picture in which kinship ties cut across the division between these two large tribal confederations.<sup>13</sup> For example, a group of Te Uri o Hau under Paikea Te Hekeua lived in northern Wairoa under the protection of Paikea's cousin Tirarau, whose Te Parawhau people had fought against Te Uri o Hau at Te Ika ā Ranganui.<sup>14</sup>

Another instance in which kinship ties with a member of the opposing side saved some Ngāti Whātua involved the Ngāti Hine rangatira Kawiti, who was related to Ngāti Whātua. Before Te Ika ā Ranganui (in which he supported the Ngā Puhi side), Kawiti had taken some Ngāti Whātua hostage in order to protect them. He subsequently gave these people refuge, and when it was considered safe for them to return to Kaipara, he provided them with an escort party back to their homeland. He also sent Mate Kairangatira of Ngāti Hine to live with Ngāti Whātua in Kaipara, where Mate married a Ngāti Whātua woman. The relationship between the two groups was further cemented by the gifting of land to Ngāti Hine by Ngāti Whātua. This was the origin of the Puatahi-based Ngāti Hine hapū of Ngāti Whātua, who are part of the Wai 312 (Ngāti Whātua o Kaipara ki te Tonga) claimant group.<sup>15</sup>

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11. Smith, pp 345–346

12. The most detailed account of the fate of the southern Kaipara and Tamaki peoples in this period is in Stone: see pp 101–149.

13. Document L2, p 60

14. Document C3, p 4; doc L4, pp 25–26

15. Kene Hine Te Uira Martin, 'Te Ruki Kawiti', DNZB, vol 1, p 220; doc A1, p 100; doc F4, p 17; doc F10, p 3



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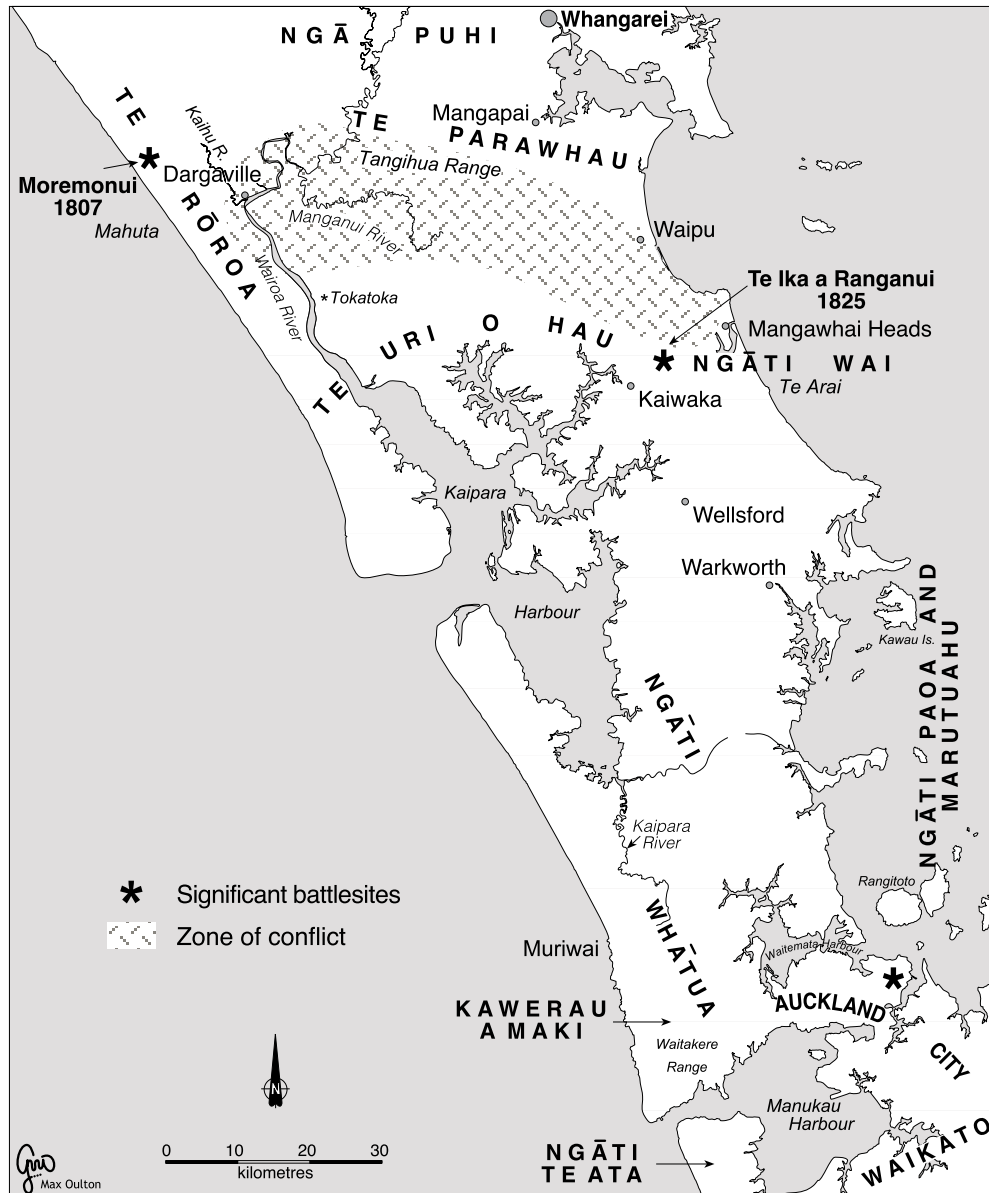


Figure 6: The tribes of Kaipara

Although Kaipara was left largely deserted for some 10 years, it had not been entirely abandoned. Raiding parties from the Ngāti Whātua confederation attacked Ngā Puhi outposts. Te Parawhau, as the southernmost allies of Ngā Puhi, bore the brunt of such raids. Some Kaipara people also remained on their land, albeit living in fear of Ngā Puhi.<sup>16</sup> Nor did Ngā Puhi follow up their victory at Te Ika ā Ranganui with settlement in Kaipara. The concept of take raupatu, or assertion of ownership rights by settlement after battle, is discussed in

16. Document F4, p 15; doc N8, p 50

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the next chapter. Here, however, the Tribunal notes that it did not agree with the evidence of Waimarie Bruce, in her mana whenua report for Ngāti Kahu o Torongare/Te Parawhau, that 'Ngā Puhi took the Kaipara by conquest'.<sup>17</sup> No raupatu, in terms of tikanga Māori, took place in Kaipara because victory in battle was not followed by settlement. Only in the northern part of our inquiry district, where Te Parawhau and related Ngā Puhi-aligned groups lived near Te Uri o Hau and others who were part of the Ngāti Whātua confederation, did the victors at Te Ika ā Ranganui assert ownership rights. As noted earlier, we consider this northern area to have been a contested zone, rather than a region where one group or another had established clear rights. As we shall see in later chapters, rights to land in northern Kaipara, in the Wairoa River and Mangawhai area, would continue to be disputed for several decades to come.

It is clear that the outcome of Te Ika ā Ranganui strengthened the position of Tirarau and his Te Parawhau people, who were often considered to be the dominant force in northern Wairoa by the Pākehā who began arriving in the region in the 1830s.<sup>18</sup> One of these was Joel Polack, a Bay of Islands trader, who visited Kaipara in 1831 and 1832 in search of trade and kauri-timber resources. On his second journey, he met with Parōre, the chief of Te Rōroa, who told him that:

his heart was set upon having commercial Europeans residing in his various settlements; that, unfortunately, his people had nothing to employ their thoughts or hands, after planting, but themes of war and renewing old grievances; but, if commerce was instituted among his tribe, they would be employed in working for articles that would prove most serviceable to them, by dressing the *korari*, or flax, felling timber, and planting provisions for other markets.<sup>19</sup>

At Kaihū, similar sentiments were expressed by 'the chief Kaka', who was concerned about the continuing threat of warfare.<sup>20</sup> Polack also commented that most of the villages along the Kaihū River were deserted, leaving only 'a few rotten sticks and decayed rushes, and, in various spots, pieces of old canoes standing perpendicular and solitary'.<sup>21</sup>

Polack next visited Tirarau's village in the upper Wairoa district. He was seeking permission to traverse the region and be supplied with a canoe to take him and his party of Hokianga Māori down the Wairoa River. At the subsequent hui, with Tirarau present, Polack explained his commercial interests as a trader. He suggested that, by trading with him, 'in a little time, they [the Māori of the district] would be enabled to compete with their neighbours to the

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17. Document L6, p 51

18. Document H1, p 19

19. Joel Polack, *New Zealand: Being a Narrative of Travels and Adventures during a Residence in that Country between the Years 1831 and 1837*, 2 vols (1838; reprint, Christchurch: Capper Press, 1974), vol 1, p 78

20. Ibid, pp 120–121

21. Ibid, p 147



north and east, in possessing articles of clothing' as well as agricultural implements made of iron and 'ammunition to repel an invader; who, aware of their being in possession of such resources' would then turn to peaceful pursuits 'and would war no more'. Some of the elders present were not convinced and complained that Europeans were 'overrunning the land' and they did not want them interfering in Māori affairs, including their fighting.<sup>22</sup>

A 'chief of commanding aspect, named Piakia' (Paikēa) rose to speak in favour of Polack's 'cause', and several others followed, shifting the balance of opinion in favour of trading with Europeans. It was also agreed to supply a canoe. Tirarau accompanied Polack's party to the Wairoa River and joined in a discussion about the district's flax and timber resources:

Tirarau pointed out to me several pieces of forest land and plain, whose eligibility, he said, would be worthy of my purchasing. I excused myself from so doing at the time, but they have since become [by 1837] the property of Europeans.

The observations of this chief were extremely shrewd; among an infinity of questions, he required to know the why and wherefore of every thing. He inquired how it happened that Europeans left a superior country for a savage land, and, in despite of the natives, spread so fast over the face of the country; also as to the perceptible decrease of the aboriginal population.<sup>23</sup>

Several of Tirarau's people travelled with Polack's party down the Wairoa, which was:

literally crowded with wild ducks, whose tameness enabled us to catch several, principally killing them with our paddles. Wild pigeons flew about in great numbers, as also several parrots, parroquets, hawks, and singing birds. The banks of the river were covered by forests, filled with splendid timber of magnificent height and foliage; and where the forest patches ended, the flax supplied its place on the rourou, or plains.<sup>24</sup>

Polack also noted a number of deserted villages along the Wairoa which were tapu because of earlier fighting there. He described the 'conical mountain' called Tokatoka and mused:

This place would be an invaluable spot as a settlement for Europeans. It is situated at the head of navigation, and will be the seat of the principal town in this part of the country. The splendid land in the vicinity of the Wairoa River will be a favourite resort for the future colonist.<sup>25</sup>

Polack also commented on the Ōtamatea and Oruawharo Rivers, which were described to him as 'abounding with pine-trees [kauri], in thickly wooded forests, and swamps covered with the flax plant'. However, his paddlers were not prepared to take the canoe there for fear

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22. Ibid, pp172–174

23. Ibid, pp179–190

24. Ibid, p193

25. Ibid, pp198–199

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of attack by other tribes; 'also, a very small remnant of the former owners of the country still existed, wandering about the forests, in continual fear of surprise'.<sup>26</sup>

Polack was impressed by the high level of Māori horticultural skills. He described the 'plantations' at Tirarau's village as follows:

Few farms in civilised countries could be planted with greater attention to neatness. The soil was of the richest quality; and the different edibles flourished with extraordinary vigour. The potatoes and kumeras were planted in rows of small hills, laid out with strict regularity; between those hills the large broad lotus leaf of the farinaceous taro appeared; large broad patches of the culmiferous Indian corn [maize] grew in neat order to the right of us; and the herbaceous land was cleared of weeds, piled above the walls of stone that had been collected from the grounds, which I calculated occupied about twenty acres in extent. Among the vegetables deposited in the soil, in addition to the above-mentioned, were cabbages, shallots, garlick, turnips, and the kaipakeha, a species of yam.<sup>27</sup>

In spite of Polack's enthusiasm at the trade potential of the kauri and flax in the Kaipara district, it was not until the late 1830s that a few Pākehā traders became established. The principal drawback was the difficult Kaipara Harbour entrance. Polack climbed the high sandhills at North Head to view it:

From this point we distinguished the deep water of three channels, of apparently sufficient depth for a vessel of four hundred tons. The breakers were dashing on several sandbars in an awful manner, about three miles from the land. The late westerly gale caused the fearful commotion of the rolling waves to bound on these sea sand-spits, dashing the surf to an unusual height. No vessel, of any size or shape, could at this time have entered the Kaipara; instant shipwreck, into a thousand pieces, would have been the result. Sandbanks appeared in every direction within the harbour's mouth.<sup>28</sup>

It was not until the mid-1830s that Kaipara Māori began returning home in any number, although a few may have returned earlier.<sup>29</sup> In 1835, the Waikato rangatira Te Wherowhero escorted the people who had been living under his protection back to Manukau and Tamaki. There, they continued to enjoy the protection of Waikato, although fear of Ngā Puhi attack did not subside until Tamaki became the site of the colonial capital in 1840.<sup>30</sup> Kaipara remained even more vulnerable to Ngā Puhi attack, and was still only sparsely settled by 1840. Small groups returned to southern Kaipara after 1835, but the Wesleyan missionary James Buller reported in 1839 that they were 'greatly scattered in detached settlements'.<sup>31</sup> In

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26. Polack, p 207

27. Ibid, pp181–182

28. Ibid, p 208

29. Document F4, pp 15–16

30. Stone, pp 151–152, 181–182

31. Document F4, p 22; see also doc K1, p 39

northern Kaipara, there was a community at Oruawharo in 1839, and other areas were resettled by Te Uri o Hau in the early 1840s.<sup>32</sup> On their return, the people deliberately dispersed to widely scattered locations so as to be seen to be occupying all their lands, thus preventing the victors at Te Ika ā Ranganui from claiming raupatu rights.<sup>33</sup>

Although the balance of power was no longer so strongly in Ngā Puhi's favour, the tiny Kaipara population was still very exposed to the threat from the north. It was only in the early 1840s, when Paora Tuhaere, of the Tamaki branch of Te Taoū, travelled to Whangarei and made peace with Te Parawhau, that the threat was finally removed.<sup>34</sup> By then, the situation in Kaipara had already been altered by the arrival of the first European settlers, the signing of the Treaty of Waitangi, and the establishment of the colonial capital at Tamaki Makaurau.

## 2.5 THE TREATY OF WAITANGI

In 1832, the British Government appointed James Busby the British Resident in response to calls for intervention from the small but growing Pākehā population in New Zealand and from some northern Māori. Busby was to represent the British Government in New Zealand and to encourage Māori to form some sort of government capable of regulating their contact with the outside world. In 1835, prompted by fears that the French might establish a foothold in New Zealand, Busby persuaded 34 northern chiefs to sign the Declaration of Independence of the Confederation of United Tribes of New Zealand.<sup>35</sup> Two of those who eventually signed the declaration had connections with Kaipara: Te Tirarau Kukupa and his brother-in-law, Parōre Te Āwha.<sup>36</sup> Parōre, who signed the declaration in 1837, was a rangatira of Ngā Puhi and Te Rōroa descent. Though generally based somewhat to the north of our inquiry district, he was to play an important role in Kaipara in the following decades. We are not aware of any evidence that the declaration was signed by rangatira of Ngāti Whātua or Te Uri o Hau (although Parōre sometimes described himself as Ngāti Whātua).<sup>37</sup>

In 1839, the British Government gave William Hobson the task of negotiating a treaty with Māori in New Zealand. This culminated in the signing of the Treaty of Waitangi on 6 February 1840 at Waitangi in the Bay of Islands. Hobson had been provided with instructions by Lord Normanby which, among other things, stated that the British Government acknowledged the sovereign independence of Māori, as set out in the Declaration of Independence, but

32. Document A1, p 104; doc C3, pp 37–39

33. Document I3, p 24

34. Stone, p 191; Steven Oliver, 'Paora Tuhaere', DNZB, vol 1, p 552

35. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, pp 18–19; Claudia Orange, *The Treaty of Waitangi*, 2nd ed (Wellington: Bridget Williams Books, 1995), pp 11–21

36. Steven Oliver, 'Te Tirarau Kukupa', DNZB, vol 2, p 527; Garry Hooker, 'Parore Te Āwha', DNZB, vol 2, p 378

37. See document I9, p 4, for an example of Parōre referring to himself as Ngāti Whātua.

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also recognised that Māori were a tribal people with no central authority governing the whole country.<sup>38</sup> The Treaty of Waitangi provided the justification for Hobson's proclamation of British sovereignty over the North Island in May 1840.<sup>39</sup>

After his initial success in gaining signatures to the Treaty in the Far North, Hobson delegated the task of acquiring further signatures to missionaries and others. Although Hobson informed Governor Gipps of New South Wales in March 1840 that William C Symonds was to have the task of procuring signatures at Manukau and Kaipara,<sup>40</sup> the Treaty was never in fact brought to Kaipara. However, on 20 March 1840 at Manukau, Symonds, who had lived for some months in northern Kaipara in late 1839 and early 1840, was able to obtain the signatures of the Ngāti Whātua chiefs Te Kawau, Te Tinana, and Te Reweti.<sup>41</sup>

Researcher Philippa Wyatt and counsel for Wai 312 have suggested that Symonds made promises to Ngāti Whātua during a discussion at the time of the Treaty signing.<sup>42</sup> Such speculation is unsupported by any clear evidence. We have no information about the nature of the discussion which took place at Manukau before these rangatira signed, but there was no doubt a vigorous debate: Symonds recorded that the Bay of Islands chief 'Rewa' had argued against the Treaty and that several important chiefs, including Te Wherowhero of Waikato, had refused to sign. Nor do we know what Symonds told the assembled Māori about the meaning of the Treaty: he reported only that he had 'explained to them the views of Her Majesty's Government'. Symonds also mentioned that:

in personal communication with the several chiefs who affixed their signatures to the treaty, I found the best disposition displayed towards Her Majesty's Government, but at the same time that their expectations are raised very high as to the immediate benefits which they are to derive from its establishment in their country; and . . . I would suggest, that in order that they might not be disappointed, measures might be adopted to put the chiefs in communication with the Government officers to make arrangements for the purchasing of lands, &c.<sup>43</sup>

In other words, the Ngāti Whātua chiefs who signed the Treaty were keen to enter into land transactions as a means of attracting more Pākehā settlers to their areas, believing that they and their people would benefit from such settlement. Under article 2 of the Treaty, land could be sold only to the Crown. There is no reason to believe that any more specific promise was required to persuade Ngāti Whātua rangatira to sign the Treaty. In addition to their desire for settlers and trade, it is reasonable to assume that the Ngāti Whātua signatories

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38. Ward, vol 2, pp 20–21; Orange, pp 21–31

39. Proclamation, 21 May 1840, BPP, vol 3, p 140. The proclamation of British sovereignty over the South Island and Stewart Island issued on the same day did not mention the Treaty (BPP, vol 3, p 141).

40. Document 04, p 36

41. Ibid, pp 27–28; Stone, pp 200–203; Orange, pp 68–69

42. Document F4, pp 23–31; doc Q1, pp 16–21

43. Symonds to Colonial Secretary, 13 May 1840, BPP, vol 3, pp 223–224

hoped that the Crown would bring greater security to people who still felt the need for protection from Ngā Puhi. As Manukau Rewharewha of Te Uri o Hau recalled 20 years later:

Ka puta mai te ture o Ingarani ka ora nohinohi taku ngakau, ka ora au. E tuahua pononga ana ahau i reira. Ka mea kia rapu iwi ahau hei whakaea i taku mate i te Ikaranganui . . . Muri mai ko te ngaru nui, ko te Kuini taua ngaru. Ka tahi au ka karanga, Haere mai, haere mai aku matua . . . Kua ea te Ikaranganui.

When the laws of England came, I took heart a little and was saved. I was in the position of a servant in those days, and thought of seeking for some tribe to revenge my loss at the Ikaranganui . . . After that came the great wave; the Queen was that wave. Then I shouted, Welcome, welcome my parents . . . The Ikaranganui is avenged.<sup>44</sup>

No doubt, those northern Wairoa chiefs who had supported the Ngā Puhi side at Te Ika ā Ranganui saw things somewhat differently. Tirarau and Parōre, as signatories to the Declaration of Independence, had been invited to sign the Treaty at the Bay of Islands but had shown no signs of taking up the invitation. In May 1840, however, Pomare of Ngā Puhi was able to persuade Tirarau, his brother Taurau, and another chief named Te Roha, together with Kawiti of Ngāti Hine, to come north to meet Hobson. Tirarau and his two companions willingly signed the Treaty, expressing satisfaction that the Queen had sent them a governor, but Kawiti signed it only reluctantly.<sup>45</sup> Parōre never did sign the Treaty, although his son, Te Ahu, had signed at Waitangi.<sup>46</sup>

Soon after the signing of the Treaty and Hobson's proclamation of British sovereignty over New Zealand, there was another important development which was to have significant implications for the relationship between the Ngā Puhi and Ngāti Whātua confederations and the new Crown administration. The Bay of Islands, in the Ngā Puhi heartland, had been the main centre of European settlement in the north, but around August 1840 Hobson decided to locate the new colonial capital at Tamaki Makaurau, on the southern shore of Waitemata Harbour. This new settlement of Auckland was established in September 1840.<sup>47</sup> One of Hobson's considerations in choosing Waitemata as the location for his capital was 'the great facility of internal water communication by the Kaipara and its branches to the northward' and via Manukau Harbour and the Waikato River to the south.<sup>48</sup>

We have received conflicting evidence and submissions on behalf of the Wai 312 claimants and the Crown about Ngāti Whātua's involvement in encouraging the establishment of the capital in Tamaki, and about the nature of the arrangements made by Ngāti Whātua in

44. Manukau's speech at the Kohimarama conference, reported in *Maori Messenger Extra: He Apiti ko te Karere Maori*, vol 7, no 15, 3 August 1860, p 53 (doc 04(a), pt 2). The translation is from the same source. Manukau was referred to as 'Manuka' in the record of the speeches at this conference.

45. Orange, p 83; Daamen, Hamer, and Rigby, p 59

46. Garry Hooker, 'Parore Te Awha', DNZB, vol 2, p 378

47. Stone, ch 10; doc 04, pp 53–71; doc F4, pp 32–35

48. Hobson to Secretary of State for the Colonies, 15 October 1840, BPP, vol 3, p 235

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relation to land for the new settlement.<sup>49</sup> Such matters fall well outside our inquiry district, and we therefore draw no conclusions about them. What is clear and uncontested is that Ngāti Whātua welcomed the arrival of the Governor and the new settlers. It is also clear that their proximity to the capital allowed Ngāti Whātua of southern Kaipara to establish a relationship with the colonial administration earlier than Māori in most other regions. We examine the nature and development of this relationship in later chapters.

**2.6 FIRST PĀKEHĀ SETTLERS**

It was not until the late 1830s that there was any Pākehā settlement in the Kaipara district. The main deterrent to trade was the treacherous Kaipara Harbour entrance – a European sailing ship did not successfully negotiate the shifting sand banks until January 1836. In November 1836, the Wesleyan missionary James Wallis negotiated with the chiefs Tirarau of Te Parawhau and Paikea of Te Uri o Hau for a site for a mission station at Tangiteroria on the upper Wairoa River. Also in that year, George Stephenson established a trading station further down the Wairoa River from Tirarau's kainga at Aotahi, at a place known as Rahurahu or Te Wharau, about 12 kilometres upstream from Dargaville.<sup>50</sup>

Wallis's acquisition of land at Tangiteroria was one of a number of land transactions in northern Wairoa between 1836 and the signing of the Treaty of Waitangi. The only known pre-Treaty land transaction in southern Kaipara was that of James Honey, who in 1839 established a trading station at Whakatiwai on the Kaukapakapa River. (We discuss this transaction in chapter 6.) There was also a claimed pre-Treaty purchase at Mangawhai, and there were other transactions along the eastern coast from Whangarei to Waitemata.<sup>51</sup> Some of those who claimed to have bought land from Māori before the Treaty later sought to have those purchases validated by the Crown. These transactions, known as 'old land claims', were later investigated by land claims commissioners and some were translated into Crown grants, a process we consider in the next chapter. The northern Wairoa and Mangawhai transactions are reviewed in chapters 4 and 5 respectively.

Initially, Pākehā were interested mainly in northern Kaipara, being attracted by its kauri-timber resources. The north also benefited from its proximity to the centre of European population at the Bay of Islands, and from the growing reputation of Tirarau as a powerful and friendly chief. Even so, the number of permanent settlers was very small. As late as 1845,

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49. See doc Q1, pp 14–25; doc Q16, pp 19–21

50. For an overview of early Pakeha settlement, see Wayne Ryburn, *Tall Spars, Steamers and Gum: A History of the Kaipara from Early European Settlement, 1854–1947* (Auckland: Kaipara Publications, 1999), and T B Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: T B Byrne, 2002).

51. Document H1, pp 35–36; doc F1, pp 3–5; doc F4, pp 20–21; Daamen, Hamer, and Rigby, pp 154–155, 165, figs 28, 29, table 7

the Wesleyan missionary James Buller (who had taken over the Tangiteroria mission station from Wallis in 1838) reported that there were still only 13 settler families on the Wairoa River. There was, however, a larger transient population of Pākehā timber-workers.<sup>52</sup> The Pākehā presence in southern Kaipara seems to have been limited to Honey and his employees and to occasional visits from Buller.<sup>53</sup> In the perceptions of Pākehā in the 1840s, Kaipara remained relatively remote and inaccessible, and until the 1850s it was also imperfectly mapped. John Arrowsmith's 1842 map (see fig 7) indicates that there was a rudimentary chart for navigating the Kaipara Harbour entrance and approaching the Wairoa River, but the grounding of the New Zealand Company ship *Tory* in February 1840, followed by the loss of the *Aurora* in April that year and the wreck of the *Sophia Pate* in August 1841 (with considerable loss of life), did not encourage ship captains to try the hazardous entrance.<sup>54</sup>

The Reverend James Buller described the local people and the land in his district in 1838:

The natives, in the immediate locality, were not numerous, and lived in scattered kaingas, or villages, a few families together. Wars had desolated the territory in former days. The leading chief, Te Tirarau, lived near to my station; his place was called Te Aotahi. He claimed possession by right of conquest. He and his people were glad to have a missionary near them, but did not care to listen to his teaching. Only a few of them would come to the services.

Kaihu was the name of a rich valley, just fifteen miles inland, from a point which was thirty miles or more down the river. A tribe of two hundred, or thereabout, lived there under the chief Parore. They had embraced Christianity and built a church . . .

There was another settlement about sixty miles down the river, called Okaro, under the chief Paikea. . . . A beautiful church was the ornament of this kainga. It cost them much labour, and did them great credit. I visited scattered villages on other rivers as well . . .

The entire number of Maories, within my wide district, did not exceed a thousand.<sup>55</sup>

Church Missionary Society missionary William Wade visited the region in 1838 and described the rich kauri forests of northern Kaipara in which the trees grew 'not, as more northerly, a few here and there, among the miscellaneous vegetation of the native forests; but in grand masses, claiming sole possession of large portions of country'.<sup>56</sup> Wade stayed at 'the village of Kaihu', where Parōre was the 'principal chief', and expressed surprise at a field of wheat being harvested there:

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52. Document H1, pp 34–35

53. Document F4, pp 20–21

54. Byrne, pp 296–297

55. James Buller, *Forty Years in New Zealand: Including a Personal Narrative, an Account of Maoridom, and of the Christianization and Colonization of the Country by the Reverend James Buller* (London: Hodder and Stoughton, 1878), pp 64–65

56. William Wade, *A Journey in the Northern Island of New Zealand: Interspersed with Various Information Relative to the Country and People* (1842; reprint, Christchurch: Capper Press, 1977), p 56



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The land in the immediate neighbourhood of the Kaihu village is level and exceedingly rich; admirably adapted for cultivation. Further on, the scene changes to barren hills and swamps, with here and there a patch of wooded land, and some kauri . . .<sup>57</sup>

Wade also visited the Wesleyan mission station at Tangiteroria, where a weather-boarded mission house had been erected, land had been cleared of forest, and 'a good crop of wheat [was] ready for the sickle'.<sup>58</sup> He also remarked that downstream from Tangiteroria the Māori population, 'permanently residing close upon the river', was 'very scanty', numbering perhaps about 120.<sup>59</sup> While noting that it was difficult to assess population numbers because Māori often moved to different locations, Wade suggested that tribal wars and introduced diseases had taken their toll and that there was evidence of depopulation over several decades.

In the south, Wade and his party walked overland from the Kaipara River to Manukau Harbour:

We were now travelling over short easy hills; the white clayey soil, with lumps of kauri resin embedded in it, bearing evident marks of having formerly been covered with a kauri forest; old stumps and roots here and there appearing. The land for the most part was covered with stunted Manuka . . .

Occasionally we had to pass through narrow lines of kauri wood, which crossed our path. The kauri here appeared of a much less aspiring growth than in a more northern latitude. The short swamps which came in our way were not serious impediments, and on the whole, we found the road from Kaipara to Manukau easy travelling.<sup>60</sup>

Wade did not record any people living in this area.

Apart from the Wesleyan mission station at Tangiteroria, the few Pākehā settlers in the Kaipara district were involved in trade with local Māori, particularly exchanging European goods for processed flax and kauri timber, mostly extracted by Māori labour. A Roman Catholic mission station was established in 1840 by Father Petit at Hatoi, north-east of Tangiteroria on the Wairoa River. It was taken over by Father Garin in 1843 but abandoned in 1846. The Wesleyan station remained at Tangiteroria until 1854, when Buller left the district and the mission was moved to the Oruawharo area by his successor, W B Gittos, who established himself on the Ōtamatea River opposite Tanoa, where Paikea of Te Uri o Hau had established his main kainga. There were two abortive attempts to establish more organised Pākehā settlements. In 1840, the New Zealand Company ship *Tory* visited Kaipara to investigate an alleged purchase of land negotiated by Thomas McDonnell, the Hokianga trader. However, the Kaipara chiefs repudiated the transaction, the *Tory* grounded on a sand-bank

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57. Wade, pp 59–60

58. Ibid, p 65

59. Ibid, p 69

60. Ibid, p 75



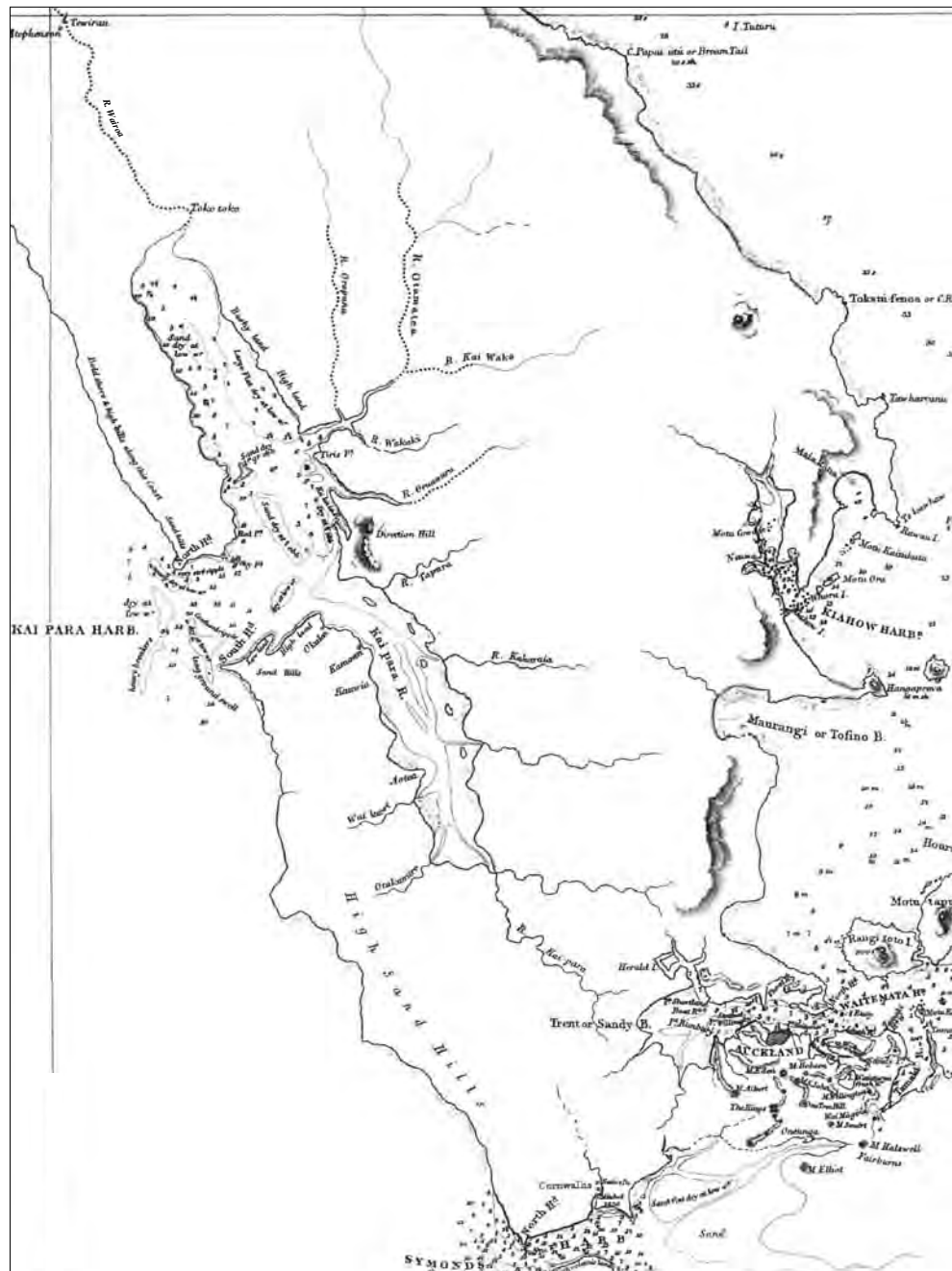


Figure 7: Kaipara and Auckland, 1842.

Source: John Arrowsmith, *The Harbour and City of Auckland* (London, 1842).

(still known today as the Tory Slip), and the New Zealand Company lost interest.<sup>61</sup> The second attempt began in 1839, when James Salter of Limerick negotiated with Parōre for about 1000 acres of land in the Kaihū district. Salter returned to Ireland and organised a group

61. Byrne, pp 159–160

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of four families to emigrate to Kaipara. They sailed on the ill-fated *Sophia Pate*, which was wrecked on South Head in August 1841, and most of them drowned. The Kaihū settlement plan was also abandoned.<sup>62</sup>

In 1840, Ernst Dieffenbach, a naturalist with the New Zealand Company, visited Kaipara. He considered the prospects for colonisation in the district very promising:

Kaipara Harbour, into which the Wairoa and other rivers fall, seems to me – on account of the quantity of timber-trees on the shores of the rivers, the length of their navigable course, the extent of the available alluvial land on their banks, and the immediate neighbourhood of the seat of government, Wai-te-mata [Auckland] – to be deserving of an early attention as a place where capital and labour may be very profitably employed.<sup>63</sup>

Although the recent grounding of the *Tory* and the wreck of both the *Aurora* and the *Sophia Pate* on the sand bars at the entrance had given Kaipara Harbour a bad reputation, the problem, Dieffenbach thought, was caused by inadequate surveying. He considered that, with an adequate chart, the shoals marked with buoys, and an experienced pilot, large vessels could successfully enter and leave the harbour – as some had already done.

Dieffenbach also considered that the harbour and the navigable rivers leading into it provided access to a large area of forest and potential farm land. Further, there was only a short portage between the Waitemata and Kaipara Harbours, ‘a piece of land about three miles in breadth, and consisting of low hills, over which the natives frequently dragged their canoes in times of war.’<sup>64</sup> Dieffenbach was most impressed with the forestry resources, particularly kauri, along the banks of the Wairoa River: ‘I am not acquainted with any place in New Zealand where these trees are more plentiful, of greater height and diameter, and of easier access.’ Many local Māori were employed in felling and squaring them, with the consequence that they were ‘well supplied with all our commodities’. Dieffenbach noted that local Māori also cultivated ‘a considerable quantity of ground for their own use’ and had ‘a surplus quantity for sale’. He suggested that, ‘if justly treated by their new government’, they would prove in time to be ‘a valuable and wealthy part of the population of the colony’.<sup>65</sup>

However, Dieffenbach was aware of the potential problems in sorting out the various land claims:

About forty Europeans live on the Kaipara estuary and its tributaries, and about 700 natives belonging to the tribe of the Nga-te-Whata. The Europeans claim a great part of the land, and much difficulty will arise in settling their various claims, as the land was sold to them by the Nga-pui, the natives in the Bay of Islands, who formerly conquered and

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62. Byrne, pp 172–176

63. Ernest Dieffenbach, *Travels in New Zealand: With Contributions to the Geography, Geology, Botany, and Natural History of that Country*, 2 vols (1843; reprint, Christchurch: Capper Press, 1974), vol 1, p 263

64. Ibid, p 266

65. Ibid, p 267

| Year | Māori     | European           | Remarks                    |
|------|-----------|--------------------|----------------------------|
| 1839 | 700–800   | 7                  | William White's estimates  |
| 1841 | 700       | 40                 | Dieffenbach's estimates    |
| 1841 | About 800 | Up to 70           | HT Kemp's report           |
| 1842 | 545 men   | At least 21 adults | Charles Ligar's report     |
| 1845 | 1020      | 79                 | 'Blue Book' estimates      |
| 1852 | 600       | 50                 | Captain Drury's report     |
| 1857 | 880       | Unknown            | 1857 census                |
| 1860 | 1117      | Unknown            | Andrew Sinclair's estimate |
| 1865 | 700       | Unknown            | John Rogan's estimate      |
| 1868 | 590       | Unknown            | John Rogan's report        |
| 1869 | 700–1200  | 1000               | Governor Bowen's dispatch  |
| 1869 | 706       | Unknown            | John Rogan's report        |

Table 1: The Māori and European population in the Kaipara district, 1839–69.

Source: TB Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: TB Byrne, 2002), p 523; document 08, p 6.

drove away the original proprietors of the soil. But a short time since these latter again returned, and their numbers have increased; whereas the contrary has been the case with the Nga-pui, who have silently given up all claims to the land.<sup>66</sup>

As is explained in the following chapters, Ngā Puhi, Te Rōroa, and Te Uri o Hau contested a number of later transactions with the Crown. This suggests that Ngā Puhi, and Te Parawhau in particular, had not silently given up their claims. However, most of the pre-1840 transaction deeds in the Wairoa River area carried the names of Tirarau and Paikea, and Parōre was also involved with several.

## 2.7 POPULATION PATTERNS

Until the early 1860s, the European population in the Kaipara district was concentrated almost entirely in the Wairoa River area of northern Kaipara, with a very small number in the Ōtamatea and Kaukapakapa areas. In 1836, James Busby's 'Kaipara Census' had listed seven Europeans in the Wairoa River area: one missionary (James Wallis at Tangiteroria, though his wife was not listed), one trader (George Stephenson), four sawyers, and one carpenter.<sup>67</sup> During the 1840s, there was a small but steady increase in the number of Europeans in the region, and from 1862, beginning with the 'Albertland' settlers (see sec 2.8), the Pākehā population began to increase. Table 1 shows various estimates of the Māori and European populations between 1839 and 1869, though it should be noted that there are difficulties in

66. Ibid, p 268

67. Byrne, p 522

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| Location                | Population (men) | Chief                              |
|-------------------------|------------------|------------------------------------|
| Atuckaneene (Ōtakanini) | 30               | Drowned                            |
| Omokoite (Omokoiti)     | 60               | Komoki                             |
| Okaroo (Okaro)          | 30               | Mata                               |
| Mahaypatood (?)         | 25               | William Stephenson (Wiremu Tipene) |
| Kihu (Kaihu)            | 200              | Paroree                            |
| Auana (?)               | 50               | Rangatera lives Hokianga           |
| Pikah's Pah (Paieka)    | 100              | Pikah (Paieka)                     |
| Tirarau's Pah           | 100              | Tirarau                            |
| Total                   | 545              |                                    |

Table 2: The male Māori population in the Kaipara district, 1842. Source: document 05, p 23.

interpreting these figures, because they are all estimates and the area defined as 'Kaipara' is not clear.

The distribution of the Māori population in 1842 was set out in the report of the Surveyor-General, Charles Ligar, but only men were listed (see table 2). Fenton's 1858 census listed 390 Māori in 'Upper Kaipara' and 490 in 'Lower Kaipara'. Andrew Sinclair's 1860 estimates were 427 Māori in 'central Kaipara' and 690 in 'the Wairoa'. In 1865, John Rogan estimated there were 250 Ngāti Whātua in southern Kaipara, 250 of 'Uriohau tribe' in 'the district north of Kaipara Heads', and 200 Māori 'about the Wairoa' whom he described as Ngā Puhi, noting that the area had been 'contested for Generations by their neighbours – Te Uriohau'.<sup>68</sup>

In 1868, Rogan compiled a more detailed survey of the Māori population in the Kaipara district. His total of 600 included approximately 100 Te Rarawa gumdiggers from Hokianga in northern Kaipara, 250 Te Uri o Hau, and 250 Ngāti Whātua in southern Kaipara. He did not mention any Ngā Puhi, although he had recorded them separately in the Wairoa area in 1865. He commented:

The native population of this district (excluding Orakei and the East Coast) may be stated at 590 which may be relied upon as accurate as I have taken a list of the natives in each settlement from which the last census returns were compiled. The number of natives in this district according to a return made by me two years ago amounted to about 600. Owing to the settlement of Europeans and the demand for Kauri gum within the last few years some of the Rarawa tribe from Hokianga and Te Aupouri towards the North Cape numbering one hundred in all have become residents in the Kaipara (north) and have purchased land from the provincial government which places them independent of the original proprietors of the district. These people form the working part of the community and will in all probability in the course of time outnumber the native owners of the soil who are indolent and decreasing in number every year.

68. Byrne, pp 27, 29

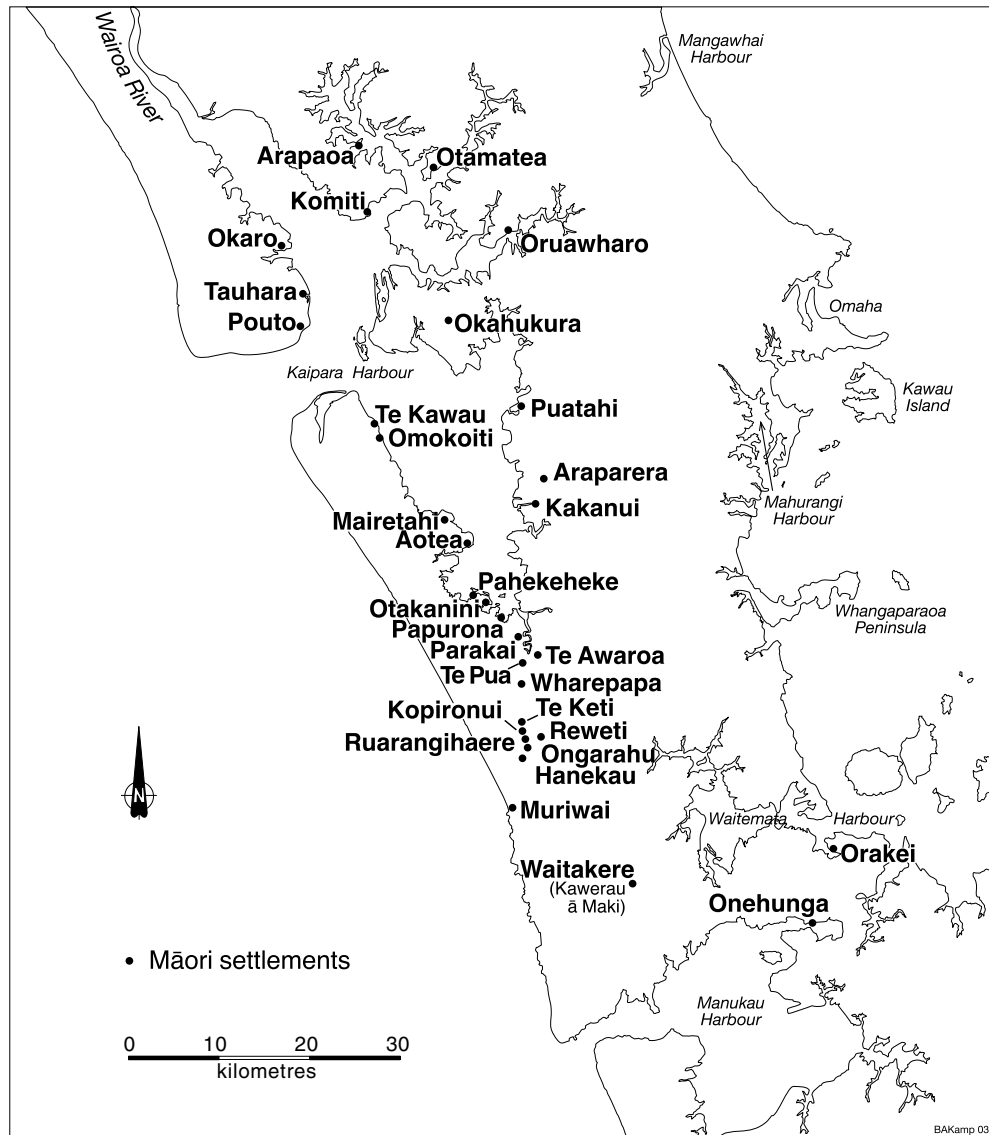


Figure 8: Te Uri o Hau and Ngāti Whātua settlements in Kaipara and Tamaki Makaurau, 1840–1921.

Source: document 05.

According to the above statement it will be seen that in the space of ten years the original occupiers of the Kaipara have decreased 100 in number whose places have been supplied by members of the Rarawa tribe. The natives who occupied the Wairoa district 20 years ago have almost entirely disappeared in consequence principally of the timber trade which was carried on very extensively at that time rendering it necessary for them to leave their homes and live in low damp places on the banks of the river during the winter months to fell and haul out timber. The great decrease of the tribes occupying the northern portion of the district is I believe correctly attributed by the natives to this mode of life.<sup>69</sup>

69. Ibid, pp 29–30

## THE KAIPARA REPORT

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| Tribe        | 1870 | 1874 | 1878 | 1881 |
|--------------|------|------|------|------|
| Ngāti Whātua | 435  | 855  | 771  | 351  |
| Kawerau      | 25   | 27   | —    | —    |
| Te Rarawa    | 105  | 336  | 69   | 191  |
| Ngāti Kawa   | 30   | 44   | 21   | 56   |
| Ngāti Rango  | 40   | 37   | 27   | 64   |
| Ngā Puhi     | 70   | 14   | 126  | 315  |
| Others       | —    | —    | 18   | —    |
| Total        | 705  | 1313 | 1032 | 977  |

Table 3: The Māori population in the Kaipara district, 1870–81.

Source: AJHR, 1870, A-11, p 4; AJHR, 1874, G-7, p 4; AJHR, 1878, G-2, pp 13–14; AJHR, 1881, G-3, p 12.

Rogan also noted that in the 1866 census of Kaipara there were 269 men, 171 women, 88 boys, and 71 girls. In 1869, Rogan recorded a total Māori population of 706, which included 105 Te Rarawa, 30 Ngāti Kawa, 30 Ngā Puhi, 112 Ngāti Whātua in southern Kaipara, and 118 Te Taoū, including those living at Orakei in Auckland.<sup>70</sup> The principal settlements of Te Uri o Hau and Ngāti Whātua are shown in figure 8.

From 1870 to 1881, a Māori census was taken by the resident magistrate in each district. Table 3 shows the figures extracted for the 'Kaipara district', which included settlements on the east coast at Mahurangi and Ōmaha.

In 1870, Ngāti Whātua comprised 117 Te Taoū, 206 Te Uri o Hau, and 112 Ngāti Whātua Tūturu. In 1874, 1878, and 1881, Ngāti Whātua included Te Uri o Hau and Te Taoū, plus a number of other hapū. Kawerau were listed only in the Auckland district at Waitakere, not at Kaipara, in 1878 and 1881. In 1878, Te Rarawa were also included with Ngā Puhi in the Kaihū to Aratapu area, so 69 is an underestimate. Te Rōroa were included with Ngā Puhi in all the figures, although Ngāti Kawa, a hapū of Te Rōroa, were listed separately. Ngāti Rango lived mainly at Mahurangi and Ōmaha. These figures are not precise, owing to difficulties in enumeration, population mobility, and inconsistencies in descriptions of hapū. But however unreliable they may be, the figures do indicate that the Ngāti Whātua population was declining. The rate of decline was estimated by Goldstone to be 1.5 per cent per year between the 1840s and the 1870s, but it slowed in the 1880s.<sup>71</sup>

**2.8 THE EXPANSION OF PĀKEHĀ SETTLEMENT**

In the 1850s, there was still very little Pākehā settlement in Kaipara beyond the sawmilling communities on the Wairoa River and a few settlers in the Ōtamatea area and at Whakatiwai

70. Byrne, pp 30–32

71. Document 05, p 63

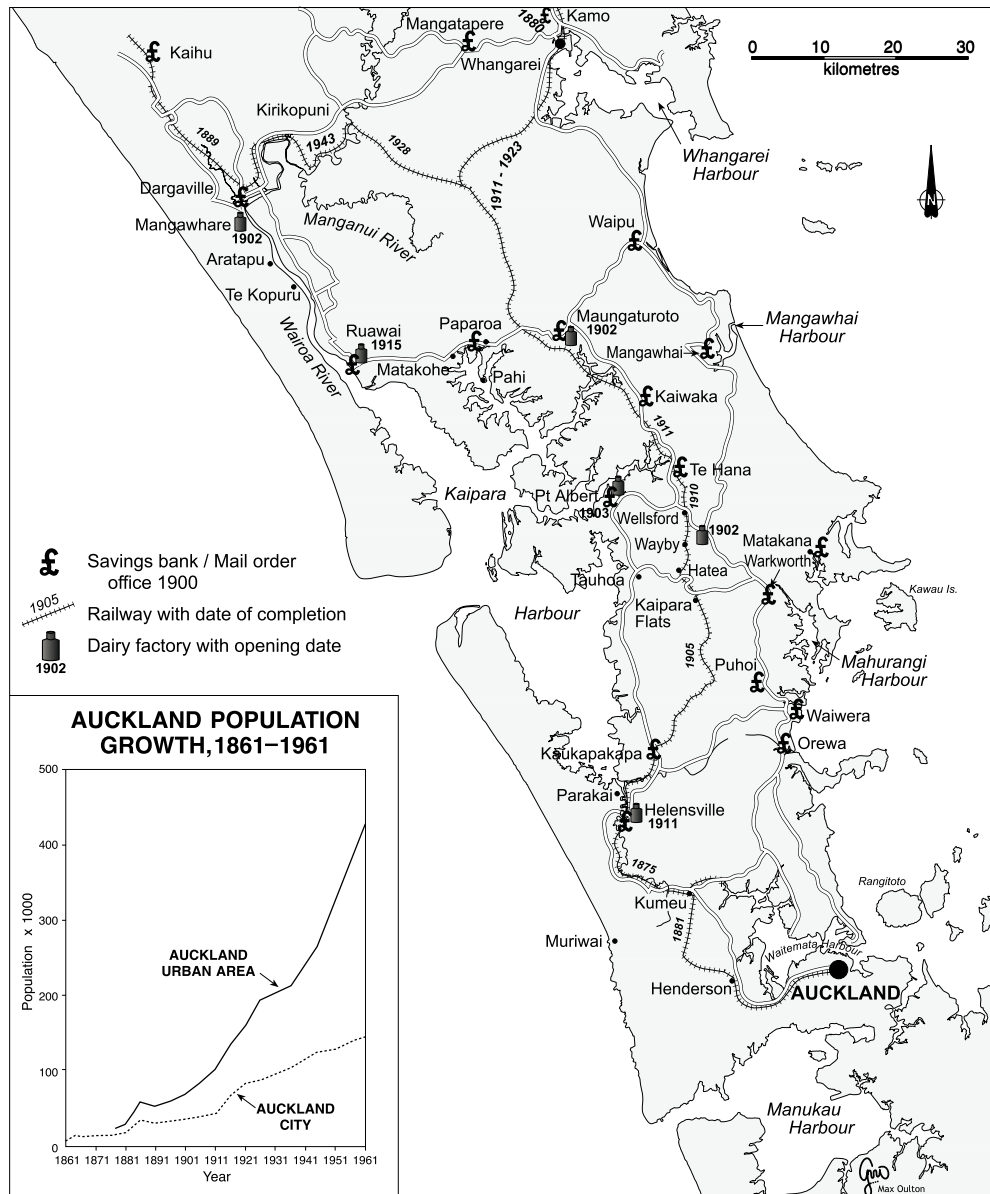


Figure 9: Expansion of Pākehā settlement in the Kaipara district

in southern Kaipara. An extensive programme of Crown purchasing in the district began in 1854, and this provided a base for the expansion of Pākehā settlement in the 1860s. In the Kaipara electoral district in the period from 1854 to 1859, only 40 men were registered as property owners or leaseholders. They included four merchants (one of timber), 15 sawyers, three carpenters, 10 farmers, two settlers, a labourer, the resident magistrate and two clerks, a master mariner, and a ropemaker.<sup>72</sup> To be able to vote at that time, men required a property qualification, and there would have been some men working in the district who did not

72. Byrne, p 524



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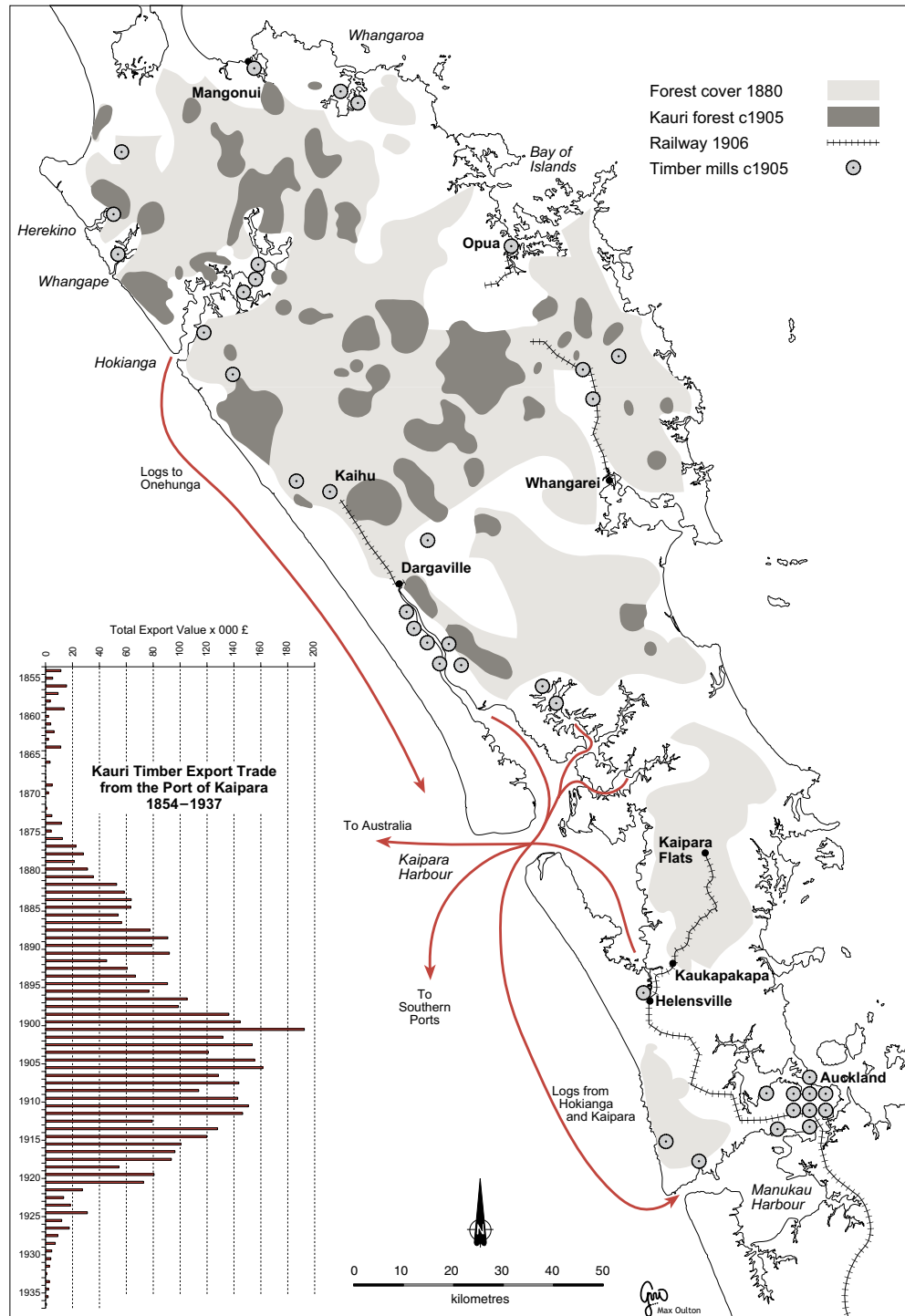


Figure 10: The kauri trade. Source: Malcolm McKinnon, ed, *Bateman New Zealand Historical Atlas: Ko Papatuanuku e Takoto Nei* (Auckland: David Bateman and Department of Internal Affairs, 1997), pl 48, and Wayne Ryburn, *Tall Spars, Steamers and Gum: A History of the Kaipara from Early European Settlement, 1854–1947* (Auckland: Kaipara Publications, 1999), pp 219–221.



## THE LAND AND PEOPLE OF KAIPARA

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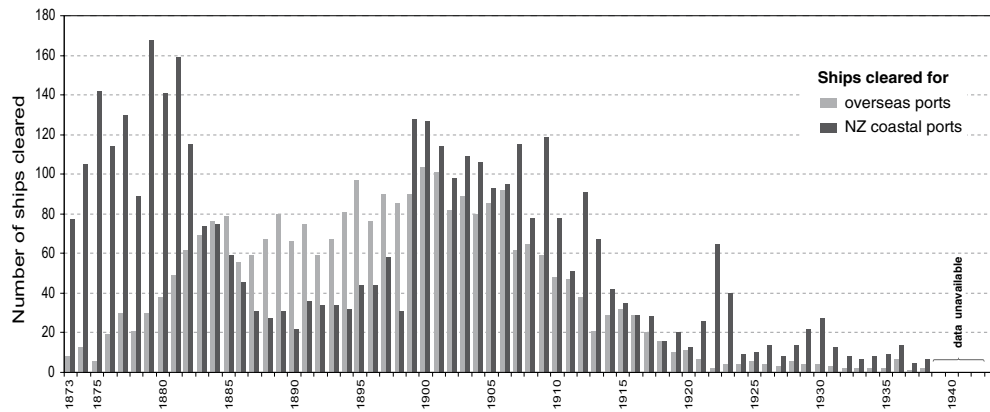


Figure 11: Port of Kaipara, number of ships cleared, 1873–1948.

Source: Wayne Ryburn, *Tall Spars, Steamers and Gum: A History of the Kaipara from Early European Settlement, 1854–1947* (Auckland: Kaipara Publications, 1999), p 21.

qualify. (Women did not yet have the right to vote.) The resident magistrate, appointed in 1854, was Francis Dart Fenton (later to become the chief judge of the Native Land Court), who had established his court and customs house at Tokatoka. This reflected the increasing importance of shipping, mainly for the exporting of kauri from the Wairoa River. In 1857, after Fenton's departure, the resident magistrate at Whangarei took over his duties.

In 1864, John Rogan was appointed both resident magistrate and judge of the Native Land Court, and he decided to make Helensville his base of operations. The embryo township of Helensville had begun with the establishment of a sawmill at Te Awaroa on the Kaipara River in 1862, following the purchase of about 450 acres of land there by John McLeod. Rogan conducted his first land court hearing there in 1864.<sup>73</sup> In 1875, a railway was opened between Riverhead and Helensville, and in 1881 a direct line to Auckland (via Kumeu) was completed. Long before this, some Pākehā settlers had begun to establish farms on the cut-over lands of the Kaukapakapa district in the early 1860s.

The 'Albertland special settlements' were established on Crown land in the Oruawharo, Paparoa, and Matakohē blocks. Between 1862 and 1865, eight ships brought parties of settlers, while others came independently to join the settlements. William Rawson Brame, a Birmingham Baptist minister, had founded the Albertland Special Settlement Association in 1861 and became its secretary and organiser. The association had branches in London and in the English Midlands. Brame migrated with the first settlers and founded a township at Port Albert, but he then moved to Auckland, where he died in 1863. The association continued under new leadership. Brame was described as a 'visionary' but not a business man, although some settlers were unsure whether he was 'a saint or a schemer' when life in the Kaipara did not turn out to be quite what they had expected.<sup>74</sup> Brame took advantage of the

73. Byrne, pp 376–377; Ryburn, p 25

74. Sir Henry Brett and Henry Hook, *The Albertlanders: Brave Pioneers of the 'Sixties* (Christchurch: Capper Press, 1979), p 91

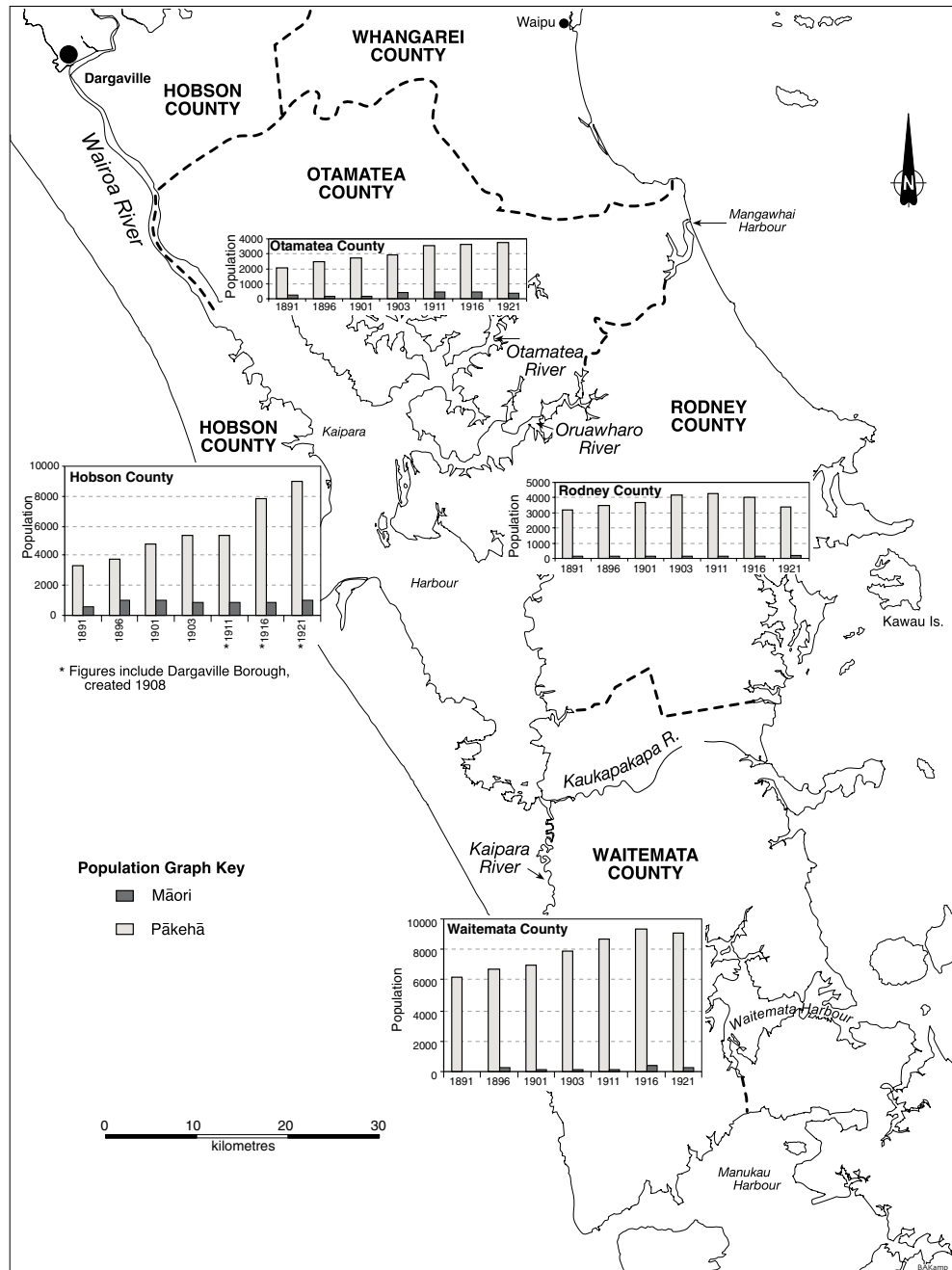


Figure 12: Population of counties, 1891–1921

Auckland Provincial Council scheme of providing land for settlers – 40 acres each for a man and his wife, and 20 acres for each child between five and 18 years old – provided they paid their own fare and stayed on the land for five years, built a house, and began farming. The settlers were generally ‘non-conformist’ (ie, not Church of England or Roman Catholic) and were predominantly Wesleyans from London and the Midlands. A feature of the settlement

was the way in which Paikea and Te Uri o Hau welcomed the settlers and pledged to protect them during the fighting that erupted in Waikato in 1863. Not all the settlers lasted the distance, but many did, and they became the nucleus of the Pākehā farming community in Kaipara.<sup>75</sup>

There were two other 'special settlements' just outside the Kaipara inquiry district. In September 1854, an advance party of Gaelic-speaking Scots from Nova Scotia, led by one Norman McLeod, arrived at Waipū. In 1859, a Captain Martin Krippner selected land at Puhoi and returned to his native Bohemia to organise a group settlement. In 1863, a party of about 80 German-speaking Roman Catholic Bohemians set up a self-sufficient community at Puhoi, followed in 1866 by another group of about 30 who settled at Ahuroa, about 12 kilometres north-west of Puhoi. By 1876, there were about 400 settlers in the Puhoi district. Other independent settlers arrived at Warkworth from 1854 on, and at Kaipara Flats from the 1860s on. Later, parties of the Waipū settlers, who totalled over 1000 migrants, formed settlements around Whangarei Harbour.<sup>76</sup> The township of Whangarei had a population of only 223 in 1878, but this increased to 746 by 1891 and 1429 by 1901. By the mid-1920s, it was the largest service centre in the region, with over 6000 people.

Meanwhile, to the south, Auckland, which remained the capital until that was shifted to Wellington in 1865, had grown from a small town of 2895 people in 1842 to 12,423 in 1864. In the 1870s, the town spilled out into suburbs, and satellite boroughs grew. By 1921, the population of the Auckland urban area had reached 157,757, and by 1961 it had grown to 448,365 people (see fig 9).<sup>77</sup> Auckland became the principal market both for Pākehā timber men, kauri-gum merchants, and settlers and for local Māori with produce to sell.

By the 1890s, the present pattern of towns and rural settlements had been imposed on the Māori landscape in the Kaipara district. It had become a stable community of Pākehā farmers and small service towns (fig 9) and was heavily reliant on shipping services on Kaipara Harbour for access to the outside world. The Māori communities were scattered on the remaining Māori lands, with clusters at Ōtakanini, Te Pua, and Reweti west of Helensville, and at Puatahi, Araparera, and Kakanui in eastern Kaipara. The principal economic activity was timber: both kauri (for building and for export) and kahikatea (especially for butter boxes for the growing dairy industry). Most of the timber mills were on the Wairoa River in the Te Kopuru to Dargaville area, and many Māori had moved there for work, although the companies were controlled by Pākehā businessmen (figs 10, 11). Both Māori and Pākehā

75. For a history of the 'Albertlanders', see Brett and Hook, and James Borrows, *Albertland: The Last Organised British Settlement in New Zealand* (Wellington: Reed, 1969). Peter Barlow provides an account of a settler's life in the 1870s in his *Kaipara: Experiences of a Settler in North New Zealand* (London: Sampson Low, Mastons, Searle and Rivington, 1888).

76. Alfred Hamish Reed, *The Story of Northland* (Wellington: AH and AW Reed, 1956), pp 235–246

77. Bruce Hardie, *Statistics of New Zealand for the Crown Colony Period, 1840–1852* (Auckland: Department of Economics, Auckland University College, 1954), table 1; Gerald Bloomfield, *New Zealand: A Handbook of Historical Statistics* (Boston: GK Hall, 1984), pp 57–58.

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could dig for kauri gum to obtain extra cash, and in most small centres Auckland-based merchants had trading stations where gum could be exchanged for goods.<sup>78</sup>

The Māori population was still only a few hundred in each county into the 1920s and was considerably outnumbered by Pākehā settlers (see fig12). Pākehā settlers still depended on water transport into the 1920s, by which time the kauri timber and gum trade was on the wane. The railway was pushed north to Wellsford in 1909 and to Ranganui (near Kaiwaka) in 1914, and the Auckland to Opua line was completed in 1922. In the 1920s, a connection from this line to the Kaihu Valley railway was begun, reaching Kirikopuni in 1928, although the final link with Dargaville was not completed until 1943.<sup>79</sup> Much of the area could be reached by road from 1924.

In this chapter, we have set out the geographical and historical context for our inquiry into Māori claims against the Crown in the Kaipara district. In the next chapter, we review the generic issues which underlie these claims.

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78. For an overview of the kauri timber and gum trade and the shipping industry, see Ryburn and Byrne. See also *The Cyclopaedia of New Zealand: Industrial, Descriptive, Historical, Biographical Facts, Figures, Illustrations*, 6 vols (Wellington: Cyclopaedia Company, 1897–1908), vol 2, pp 623–644.

79. David Leitch, *Railways of New Zealand* (Newton Abbot: David and Charles, 1972), pp 69, 98, 119–120

## CHAPTER 3

### GENERIC ISSUES IN THE KAIPARA CLAIMS

#### 3.1 INTRODUCTION

In this chapter, we review a number of generic issues that are raised to a greater or lesser extent in all the Kaipara claims. We begin by discussing the concept of take raupatu, or occupation rights based on conquest. This is a significant issue for some claimant groups on the northern margins of the Te Uri o Hau area of interest which assert claims derived from the battle Te Ika ā Ranganui in 1825 (fig 13). These claims are outlined in chapters 4 and 5. Take raupatu is also an issue in the Te Kawerau a Maki claims in southern Kaipara, which are reviewed in chapter 11. While the issue of take raupatu is not in itself a claim against the Crown, it is relevant to the claimants' status and to their eligibility to participate in any claims settlement within the Kaipara inquiry district.

A number of generic issues in claims against the Crown were acknowledged in the Te Uri o Hau Claims Settlement Act 2002. As already indicated in our *Kaipara Interim Report*, these issues are similar to those raised in other Kaipara claims.<sup>1</sup> In the rest of this chapter, therefore, we review generic issues arising from the process of Māori land loss in Kaipara. These include:

- ▶ pre-Treaty transactions that became known as the 'old land claims';
- ▶ Crown purchases between 1840 and 1865;
- ▶ the failure of the Crown to ensure that existing reserves were protected and that Māori retained the ownership of enough land for their foreseeable needs; and
- ▶ the operation of the Native Land Court and the individualisation of Māori interests in land.

For completeness, we conclude this chapter with a short account of some later developments in the administration of Māori land. These developments are particularly relevant to issues arising from the continuing loss of land in southern Kaipara in the twentieth century, which is discussed in chapters 9 and 10.

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1. Waitangi Tribunal, *The Kaipara Interim Report* (Wellington: Legislation Direct, 2002), p 1



### 3.2 TAKE RAUPATU

Along with rights derived from ancestry, occupation, and gifting, take raupatu, or right by conquest, has been acknowledged as a source of Māori rights in land. However, all authorities have made it clear that conquest alone is not sufficient to establish title in customary terms. Te Rangihiroa (Sir Peter Buck) set this out in his book *The Coming of the Maori*:

The title (*take*) to the ownership of land was based on two main claims: right of inheritance through ancestors (*take tupuna*) and right of inheritance through conquest (*take raupatu*). The right of prior discovery became historically merged in ancestral right. Conquest (*raupatu*) alone did not confer right of ownership unless it was followed by occupation. If the invading party retired, the survivors of the defeated tribe could return and still own their land. Occupation to establish title had to be continuous, as idiomatically expressed by the term *ahi ka*, or lit fire. So long as a people occupied the land, they kept their fires going to cook their food. Conversely, the absence of fires showed that the land had been vacated. Even if a conquering tribe did not leave a holding party, they might claim

the land subsequently if it remained unoccupied. However, if some of the conquered people evaded the invaders and remained on the land to keep their fires alight, the right of ownership of the defeated people was not extinguished.<sup>2</sup>

Norman Smith made a similar comment in his book *Native Custom and Law Affecting Maori Land*:

A title by conquest usually became complete upon the material subjection and driving off of the conquered tribe. Mere raids, even though a raiding party were successful, were insufficient to support a title by conquest. As in the case of the other *take* to land, so in the case of *take rau-patu*, the conquest must be shown to have been followed up by occupation of the conquered land to the exclusion of the vanquished.<sup>3</sup>

Smith also explained various arrangements that could follow if the conquerors chose to establish rights through peacemaking agreements and strategic marriages. But such arrangements did not automatically extinguish the ancestral rights of the defeated occupants.

Anthropologist Raymond Firth also discussed Māori land tenure in his book *Economics of the New Zealand Maori*, which was based on fieldwork he carried out in the 1920s. According to Firth, Māori title was often said to be maintained only by force of arms:

General principles, however, cannot be covered by the extreme case, and the title by conquest, *te rau o te patu*, is quite inadequate as a full explanation of the native system of land tenure . . . Even when meditating the acquisition of land by force a tribe was usually careful to justify its action by uncovering some old *take* or cause which gave them a claim to it.<sup>4</sup>

Firth then discussed the various *take* which established customary tenure of land by specific Māori groups, including conquest and discovery, occupation, ancestral right, and gifting. The Māori system of land tenure was 'an intricate system of rights and privileges, obedient to the supreme dictates of the tribal welfare' that could not easily be reduced to 'any single comprehensive term'. On the matter of *take raupatu*, however, the issues appeared clear:

For a title to land obtained by conquest or discovery to be valid, occupation had to be effective. If one tribe were defeated by another and their lands occupied, the original owners, if thoroughly dispossessed or enslaved, had no further claim to the land, unless in future years they could win back their territory again by intermarriage or force of arms. But invasion and driving out of the inhabitants was not sufficient to establish a title if the land were not permanently occupied. Again, even if the land were settled for a time by invaders but the dispossessed tribe still managed to maintain itself in freedom within its own borders,

2. Te Rangi Hiroa (Peter Buck), *The Coming of the Maori*, 2nd ed (Wellington: Whitcombe and Tombs for Māori Purposes Fund Board, 1950), pp 380–381

3. Norman Smith, *Native Custom and Law Affecting Native Land* (Wellington: Māori Purposes Fund Board, 1942), p 66

4. Raymond Firth, *Economics of the New Zealand Māori*, 2nd ed (Wellington, Government Printer, 1972), p 374

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scattered in the forest or in hiding in the mountains, their title to the whole of the land still held good. '*I ka tonu taku ahi i runga i toku whenua* – my fire has ever been kept alight upon my land' was the saying, indicating that their rights had not been extinguished. The proof of this continuity was sufficient to establish ownership in later years.<sup>5</sup>

In a discussion of Māori customary rights in land and the concept of mana, the Whanganui River Tribunal commented:

The lands of the people, then, are defined not by boundaries but by relationships. The identifiable lands of a group of Maori people are the lands of their history, the places where their tupuna are buried, all those lands that they could occupy or defend, or on which they could keep their fires alight.<sup>6</sup>

This statement was quoted by the Wellington district Tribunal in discussing the concepts of mana and take raupatu. That Tribunal commented:

Conquest gave mana and take raupatu to conquering chiefs and tribes. But rights to land derived from conquest had to be enforced and then sustained by laying down those other layers of rights, such as use-rights, kin links, and physical occupation of the land, in order to have ahi ka. It was well understood that conquest not followed by the establishment and defence of ahi ka conferred no lasting rights. If the conquerors did follow up their conquest with ahi ka, then rights derived from conquest would be replaced by rights derived from occupation, and, eventually, from long association. Once established, occupation gradually developed into a relationship with the land.<sup>7</sup>

We turn now to the specific issue of take raupatu in the northern Kaipara claims arising out of the alleged conquest by forces of the Ngā Puhi confederation, led by Hongi Hika, after the battle called Te Ika ā Ranganui in 1825 (fig 13).

In her biography of Hongi Hika, Dorothy Urlich Cloher remarked on the complex role of a rangatira: 'The contrast between warrior and civic leader persistently puzzled European observers unaware of the dual expectations of Māori leadership at the level of chief.' The rangatira was 'a person who was equally courteous to friends and ruthless to enemies', and this was his duty in maintaining 'the honour of the tribe.' Urlich Cloher then explained:

The maintenance of honour was founded on the principle of utu in the Māori tradition of reciprocity, whereby for 'a symmetrical relationship to be maintained, each action on the part of one of the members must be countered with an *utu* or equivalent response on the part of the other'— ie a good and kindly, or a violent and hurtful act being responded

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5. Firth, pp 384–385

6. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 35

7. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 33



to with a similar one . . . not to reciprocate in like manner was to lose mana or status . . . Achieving the correct balance was not easy to do, and hard feelings harboured about the destructiveness of some of Hongi's wars relate to this.<sup>8</sup>

Percy Smith described Te Ika ā Ranganui as 'one of the bloodiest fought in this country', while Ulrich Cloher attempted to 'authenticate, broaden and balance Smith's perceptions' by referring to other contemporary evidence in 'accounts by Māori historians and the journals and letters of the missionaries'. The underlying motivation for Hongi Hika was utu, not the acquisition of territory:

The war with the Ngāti Whātua people of the Kaipara stood at the apex of Hongi's military ambitions. It was the principal and ultimate focus of most of his undertakings, and the major impetus behind his remarkable journey to England and on the way home, Australia. At last he was ready to get satisfaction for Ngāpuhi's defeat at Moremonui in 1807 and the attendant deaths of his older brother, Houwawe, and his sister Waitapu.<sup>9</sup>

During the battle, Hare (Charley) Hongi, the eldest son of Hongi Hika, was shot in the chest. He died three days later:

The battle of Te Ika-a-ranganui was for Hongi a climactic event as it signified the close of a personal vendetta which had begun in 1807. In some ways, the battles after 1820 leading up to the one against Ngāti Whātua were but trial runs in which he perfected his musket warfare strategies. Tamaki, the Hauraki Plains in the Thames, Waikato, Rotorua – battles in these places had their origins in historic events and were the expression of utu on behalf of his tribe. Te Ika-a-ranganui was specifically for members of his own family. This battle climaxed in a great personal loss – the death of his eldest son.<sup>10</sup>

Te Ika ā Ranganui was a conquest of the Ngāti Whātua confederation on the day, but it did not extinguish Ngāti Whātua rights in the land. The impact on Ngāti Whātua was traumatic, scattering the survivors southward and into the forested hills around Kaipara, where they lived in fear of further attack over the next decade. Ngāti Whātua, including Te Uri o Hau, did not abandon their rights in Kaipara and they maintained ahi kā. In 1835, the southern refugees returned to Tamaki Makaurau. As Ulrich Cloher remarked: 'In the many battles that Hongi had had with other tribes, he had never appropriated land.'<sup>11</sup> He acted as a military commander of various hapū of Ngā Puhi with their own chiefs, but none of these rangatira followed up this battle with effective settlement. Te Ika ā Ranganui did not therefore justify take raupatu as a basis for claiming any Ngā Puhi hapū rights in lands of Ngāti Whātua peoples.

8. Dorothy Ulrich Cloher, *Hongi Hika, Warrior Chief* (Auckland: Viking, 2003), p 79

9. Ibid, p 180

10. Ibid, p 193

11. Ibid, p 207

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**3.3 GENERIC ISSUES IN THE TE URI O HAU CLAIMS SETTLEMENT ACT**

In our *Kaipara Interim Report*, we indicated that the generic issues identified in the Te Uri o Hau Claims Settlement Bill were, in our view, common to claims throughout the Kaipara inquiry district.<sup>12</sup> The Bill was subsequently passed into law in 2002. We therefore begin our overview of the generic issues with the Crown's acknowledgements in section 8 of the Act of 'the historical claims and the breaches of Te Tiriti o Waitangi/The Treaty of Waitangi and its principles by the Crown in relation to Te Uri o Hau historical claims'. A number of issues were then set out:

- (a) The Crown recognises that Te Uri o Hau endeavoured to preserve and strengthen their relationship with the Crown. In particular, the early land transactions for settlement purposes contributed to development of New Zealand and affirmed the loyalty of Te Uri o Hau to the Crown:
- (b) The Crown acknowledges that the benefits that Te Uri o Hau expected to flow from this relationship were not always realised. Early land transactions and twentieth century land development, including the Tai Tokerau Maori District Land Board and the Maori Affairs development schemes initiated in the 1930s, did not provide the economic opportunities and benefits that Te Uri o Hau expected:
- (d) The Crown acknowledges that a large amount of Te Uri o Hau land has been alienated since 1840 and that it failed to provide adequate reserves for the people of Te Uri o Hau. The Crown also acknowledges that it did not ensure that there was sufficient protection from alienation for the few reserves that were provided. This failure by the Crown to set aside reserves and protect lands for the future use of Te Uri o Hau was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles:
- (e) The Crown acknowledges that the operation and impact of the Native land laws . . . had a prejudicial effect on those of Te Uri o Hau who wished to retain their land and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown also acknowledges that the awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau; and
- (f) The Crown acknowledges that this loss of control over land has prejudiced Te Uri o Hau and hindered the economic, social, and cultural development of Te Uri o Hau. It has also impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.

We acknowledge the Crown's settlement of these generic issues, and we reiterate our belief that not only Te Uri o Hau but also all the other claimants were prejudiced by these breaches of the Treaty by the Crown in the Kaipara inquiry district.

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12. Waitangi Tribunal, *The Kaipara Interim Report*, p 1

We turn now to review the various ways in which Māori lands were alienated in the Kaipara district after 1840.

### 3.4 THE OLD LAND CLAIMS

In the period between the signing of the Treaty and the end of Crown pre-emption in 1862, there were two categories of exception to the rule that Māori could sell land only to the Crown. First, there were various transactions between Māori and individual Pākehā before 1840. These became known as old land claims, and the Crown appointed commissioners to determine whether or not they were valid under English law. Secondly, between 1844 and 1846, Governor Robert FitzRoy waived the Crown's right of pre-emption, allowing the direct sale of Māori land to private purchasers. A number of old land claims are at issue in this inquiry, but we will not be reporting on the pre-emption waiver purchases mentioned by several claimant groups, since all of these lie outside our inquiry district. Further, the policies and procedures relating to the investigation of old land claims have been covered at length in the Waitangi Tribunal's Rangahaua Whanui series and in the *Muriwhenua Land Report*.<sup>13</sup> For the present report, we provide only a brief summary of this process.

On 14 January 1840, Governor George Gipps of New South Wales issued a proclamation prohibiting any further private purchasing of land directly from Māori. Those transactions which had already been completed were to be investigated by a commission established by the Crown under the Land Claims Ordinance 1841 and, if found to be valid, would be confirmed by Crown grants. Hobson repeated this proclamation on 30 January 1840, following his arrival in New Zealand, and the Treaty signed at Waitangi a week later confirmed that Māori were to sell land only to the Crown. The first land claims commissioners, Edward Godfrey and Matthew Richmond, began their inquiries into old land claims north of Auckland in 1841 and completed their investigations in 1844. The commissioners heard evidence from the Māori and Pākehā participants in the transactions. Where a transaction was found to have been completed before Gipps's proclamation and was affirmed by at least two chiefs, the commissioners would recommend that a Crown grant be made to the Pākehā claimant or claimants.

However, these investigations and the resulting Crown grants failed in most cases to resolve the old land claims, largely because Governor FitzRoy decided to issue Crown grants before the claims had been surveyed. As a result, the Land Claims Settlement Act 1856 established a new commission to investigate both old land claims and pre-emption

13. Duncan Moore, Dr Barry Rigby, and Matthew Russell, *Old Land Claims*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997); Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), ch 3; Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, ch 2; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), chs 3–5

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waiver purchases. Existing grants could be called in, and new grants were to be issued only after the claimant produced a certified survey plan. In addition, the Pākehā claimants were given an incentive to survey the whole of their claimed purchase, whereas under the earlier legislation they had accepted grants which were often much smaller than the areas they had originally claimed. The incentive was a survey allowance of additional land (up to one-sixth of the area they were found to be entitled to), plus other allowances for expenses. The sole commissioner was Francis Dillon Bell, who conducted investigations from 1857 on and issued his final report in 1862. Bell's inquiry largely cleared up uncertainty about the boundaries of the purchases, but questions have remained about the adequacy of the investigations by successive commissioners and about the Crown's retention of 'surplus land', a matter discussed in the next chapter in relation to the Elmsley–Walton old land claim. The areas subject to old land claims are shown in figure 14.

Several claimant groups in this inquiry raised issues concerning old land claims. The Wai 312 (Ngāti Whātua) and Wai 470 (Te Kawerau a Maki) claimants presented claims relating to the Honey old land claim on the Kaukapakapa River in southern Kaipara.<sup>14</sup> That claim was overlaid by the Kaukapakapa Crown purchase, and will be discussed in chapter 6. The Wai 632 (Te Rōroa) claim relating to the Tokatoka and Whakahara Crown purchases includes the background of these purchases in the O'Brien old land claim.<sup>15</sup> The Wai 688 (Ngā Hapū o Whangarei) claim includes general grievances about old land claims in northern Kaipara, as well as a specific claim about the Crown's retention of surplus land from the Elmsley–Walton old land claim, and the overlapping Waikiekie Crown purchase.<sup>16</sup> These old land claims in the Wairoa River district are reviewed in chapter 4.

The Muriwhenua Tribunal considered that Māori understood pre-Treaty transactions in terms of their own law, which was fundamentally different from the English law imported and imposed by the colonial government. Māori understood the pre-Treaty transactions as creating mutually beneficial personal relationships with particular Pākehā settlers. These settlers, a source of trade goods, were granted conditional rights of resource use rather than a permanent transfer of land, a concept described as *tuku whenua*, where the underlying right to the land remained vested in the ancestral community. From the Māori point of view, those settlers who were granted occupation rights thereby assumed corresponding obligations to the communities in which they settled: 'Maori saw a social compact where Europeans saw a property conveyance.' These transactions, according to the Muriwhenua Tribunal, did not effect binding sales because the parties were 'not of sufficiently common mind for valid contracts to have formed'.<sup>17</sup>

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14. Claim 1.10(a), para 14; claim 1.13(b), paras 16,17

15. Claim 1.25(b), paras 9–13

16. Claim 1.22(a), para 6(1)

17. Waitangi Tribunal, *Muriwhenua Land Report*, pp 108, 392. *Tuku whenua* is discussed at pp 73–77.

# GENERIC ISSUES IN THE KAIPARA CLAIMS

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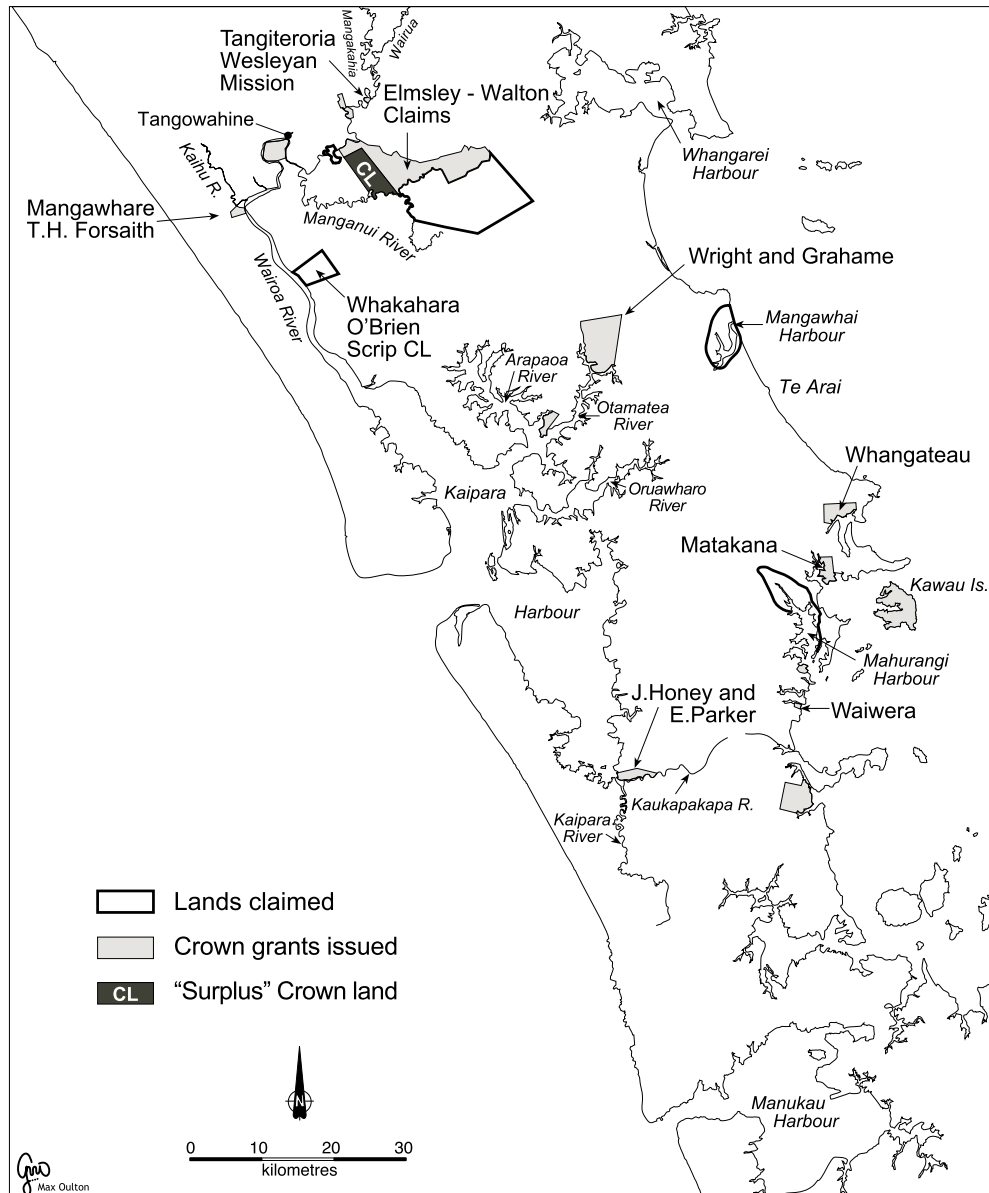


Figure 14: Pre-Treaty transactions in the Kaipara district

The Muriwhenua Tribunal was also critical of the process of inquiry into pre-Treaty transactions, based as it was on the assumption that the transactions ‘could be deemed to constitute a contract for the sale and purchase of land under English Law’. The commissioners operating under the Land Claims Ordinance 1841 did not inquire into the nature of the transactions or whether both parties had the same understanding of them. Nor did they investigate such matters as the adequacy of the payments, any expectations of future benefit, whether any fraud or unfair inducement was involved, the provision of reserves, whether the

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Māori participants genuinely had rights to the land, and the clear definition of the boundaries of the land transacted. The Tribunal concluded that ‘on the Maori understanding of the transactions, Maori interests in the land had not been extinguished’.<sup>18</sup>

The Muriwhenua Tribunal was also critical of Commissioner Bell’s inquiry under the Land Claims Settlement Act 1856. It found that, by encouraging Pākehā claimants to increase substantially the area of their claims, with allowances for survey costs and other expenses, the Crown was able to retain a substantial area of ‘surplus’ land. The Muriwhenua Tribunal also found that there was no review of the original inquiry in the 1840s, that no allowance was made for Māori reserves, that all transactions were treated as sales, and that Bell deliberately acted to ‘maximise the amount of land which went to Europeans or the Government, and to minimise that retained by Maori’.<sup>19</sup>

The retention of land by the Crown was based on two separate processes. One was the substitution of scrip for payment to a Pākehā claimant. Scrip was a certificate enabling the holder to acquire Crown land elsewhere, given instead of a Crown grant for the land subject to the original transaction. The original land then reverted to the Crown. There was no legislative provision for this, but many Pākehā settlers sought scrip in order to buy land elsewhere, instead of staying on their pre-Treaty purchase. The Muriwhenua Tribunal commented that the Crown assumption of title was ‘derived from the opinion that the Government should not be obliged to prove its acquisitions or the valid extinguishment of native title’. However, the Tribunal also remarked, ‘by Maori law, once the individual [purchaser] left the area the land reverted to source’ – that is, the Māori title remained intact.<sup>20</sup> In the Māori view, such land should return to Māori because the original ‘purchaser’ was no longer occupying it.

The second process by which the Crown acquired land in old land claims was to claim the ‘surplus’ (ie, the balance of the land within a Pākehā claimant’s boundary that was not included in his or her Crown grant). The Muriwhenua Tribunal found that, because the original transactions were not sales and were based on a personal relationship between Pākehā settler and Māori, the lands concerned had not been validly alienated from Māori, and therefore the Crown had no right to retain any ‘surplus’ land. The Crown’s claim was based on a legal theory that the radical title was vested in the Crown on the assumption of British sovereignty. But there was already a system of Māori title in place that had not been extinguished. This English doctrine of tenures was inappropriate and had not been explained to Māori (nor had they agreed to it) at the time of the signing of the Treaty of Waitangi.<sup>21</sup>

The Muriwhenua Tribunal found that most aspects of the inquiry into old land claims, particularly the Crown retention of scrip and ‘surplus’ lands, were inconsistent with Treaty principles.

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18. Waitangi Tribunal, *Muriwhenua Land Report*, p 394

19. Ibid, p 396

20. Ibid, pp 397–398

21. Ibid, pp 398–399

**3.5 CROWN PURCHASE POLICIES, 1854–65**

We have noted that in 1844 the Crown pre-emption provision in article 2 of the Treaty of Waitangi was waived. However, although there were a few applications for Kaipara lands, none was granted. We therefore make no comment on this.

The Native Land Purchase Ordinance 1846 restored Crown pre-emption and prohibited the private purchasing or leasing of Māori land. In a dispatch to the Colonial Office in 1848, Governor Grey set out the approach he proposed to take in purchasing land from Māori:

- ▶ The interests Māori had in all of their lands (even the so-called ‘waste lands’ which they were not occupying or cultivating) would be recognised.
- ▶ Māori title to very large tracts of land could be extinguished through purchase for merely ‘nominal’ payment. In this way, sufficient land would become available before it was required for Pākehā settlement.
- ▶ Areas of land sufficient to meet the future needs of Māori would be reserved from such purchases.
- ▶ The real payment to Māori for their land would come not from the initial purchase price but rather from the security that Crown title provided to their reserves, the increased value of their remaining land resulting from Pākehā settlement, and the economic benefits of trade with the settlers.<sup>22</sup>

These ideas continued to underpin the Crown’s purchasing policy for the remainder of its pre-emption period.

In 1854, the Native Land Purchase Department was established under Donald McLean as chief land purchase commissioner. Almost all the Crown purchases in Kaipara took place after the creation of this department. McLean explained that it was imperative that much more land be acquired from Māori to meet the demand both of those Europeans already in New Zealand and of the large influx of immigrants expected in the near future. To that end, district land purchase commissioners were appointed and were to ‘acquire a knowledge of the Native tribes of their district, to ascertain the extent and nature of their claims, and to give their undivided energy and attention to the purchase of land’. McLean warned that, the longer the purchasing of land was delayed, the more expensive and difficult the land would be to acquire.<sup>23</sup>

McLean continued Grey’s policy of buying all the land in large areas except for reserves, which were to be confirmed to Māori under Crown grants.<sup>24</sup> The policy of extinguishing native title over such large areas was reflected in instructions to land purchase commissioners to ‘use their utmost endeavours to connect and consolidate Crown lands’ and, except

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22. Ward, vol 2, pp 130–131

23. McLean, ‘Memorandum Relative to Organization of the Native Land Purchase Department’, 15 June 1854, in Henry Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (Wellington: Government Printer, 1883), sec A1, pp 52–53; see also Ward, vol 2, pp 144–145

24. Ward, vol 2, p 145



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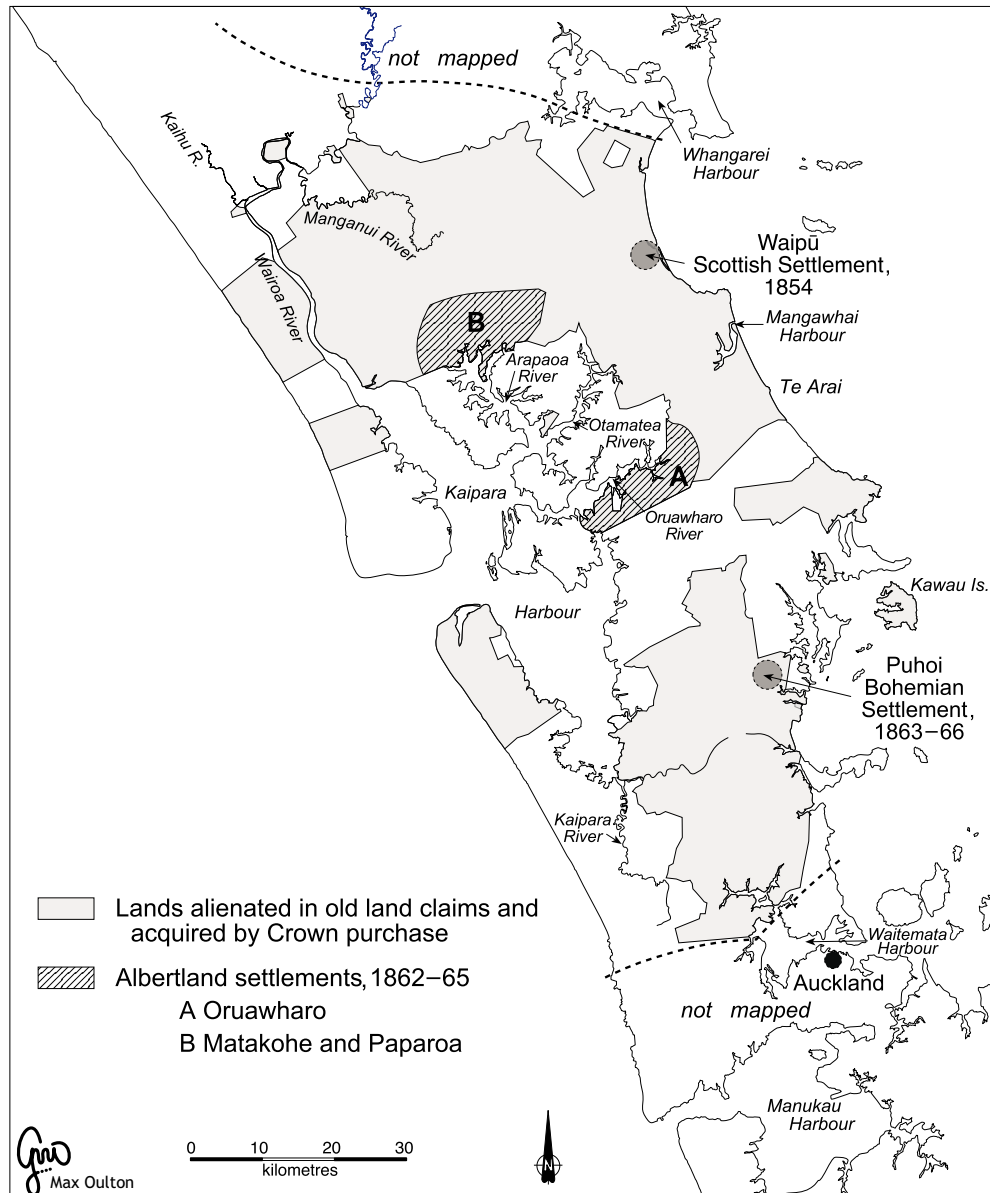


Figure 15: Land sold by 1865 in the Kaipara district

with the approval of the Governor, 'not to commence negotiations for the purchase of land, unless adjacent to and connected with Crown lands'. This policy was intended primarily to prevent the isolation of the Pākehā settlers in areas remote from Government control.<sup>25</sup> Māori were, however, to retain a foothold within the districts acquired by the Crown for colonisation, because reserves sufficient for their present and future needs were to be made

25. Governor Gore Browne, minute, 4 June 1857, in Turton, sec c, p166



for them in these districts. McLean also emphasised the need for the careful surveying of the purchases, and surveyors from the Surveyor-General's department were to be assigned to work with the land purchase commissioners.<sup>26</sup>

McLean remained chief land purchase commissioner until early 1863, although his position became largely nominal after the Fox Ministry came to power in mid-1861. His eventual departure made little difference to the policies, practice, or personnel of the Native Land Purchase Department, which was subsequently disestablished in May 1865.<sup>27</sup> Thereafter, land was purchased by the central and provincial governments only after it had first been through the Native Land Court. The extent of Māori land sold in the greater Kaipara district by 1865 is shown in figure 15.

In 1854, John Grant Johnson was appointed district land purchase commissioner in the Whangarei and Kaipara districts. Johnson, the son of colonial surgeon Dr John Johnson, had arrived in the Bay of Islands in 1840 as a 16-year-old, and he soon learned Māori and entered Government service in Auckland as a clerk. By the early 1850s, he was acting as a Government interpreter and was involved in negotiating an agreement between the Crown and Māori over the goldfield at Coromandel in 1852.<sup>28</sup> In 1854, McLean instructed Johnson to attempt to purchase from Māori the whole of their lands, other than those lands 'essential for their own welfare', in the district north of the Waitemata–Kaipara portage. He was to use his own discretion as to which land he should try to purchase first, although McLean told him that he should, as a matter of urgency, settle the dispute over the O'Brien old land claim on the Whakahara block (reviewed in the next chapter). McLean stressed the importance of establishing 'a clear understanding respecting the external boundaries of the lands they [Māori] dispose of, and the blocks they retain for their own use'. Wherever possible, he said, reserves should be within natural boundaries such as rivers or hills. Māori should also be encouraged to repurchase land they had sold to the Government, 'as nothing will more effectually improve their condition, than substituting their present precarious and unsatisfactory tenure for a permanent holding under the Crown'. McLean concluded his instructions to Johnson as follows:

In any treaty with the Natives for the cession of their lands, it is most desirable that they should fully comprehend its nature, and the boundaries should be inserted with the greatest possible care, and in general they should be read aloud three times in the presence of the Natives, whose assent should be unanimously given before appending their signatures to the transfer.<sup>29</sup>

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26. Ward, vol 2, p 146

27. Ibid, pp 161–162; doc P3, p 14

28. TB Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: TB Byrne, 2002), pp 351–353

29. McLean to Johnson, 18 May 1854, in Turton, sec c, p 94

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McLean also enclosed samples of the form of deed Johnson was to follow in his transactions. A later instruction from McLean to Johnson stated that ‘The boundaries of each Block must be carefully perambulated, as well as the reserves for the Natives, and a plan made of the same to be attached to the deed of sale, before any payment is made to the natives.’<sup>30</sup>

In 1856, McLean secured more funding for land purchases, particularly in Auckland province, thus allowing the purchasing to proceed more rapidly.<sup>31</sup> To facilitate this process, McLean separated the Kaipara and Whangarei land purchase districts, leaving Johnson in charge of Whangarei and appointing John Rogan as land purchase commissioner for Kaipara in 1857.<sup>32</sup> Rogan had been a surveyor for the New Zealand Company before working as a surveyor and land purchase commissioner for the Government in Taranaki and Whaingaroa (Raglan), during which time he formed a close relationship with McLean. Rogan went on to be appointed resident magistrate and Native Land Court judge in Kaipara in 1864, and remained a powerful figure in the area into the 1870s.<sup>33</sup>

Rogan does not appear to have received any general instructions from McLean as to how he was to carry out land purchasing in Kaipara, probably because he had already been employed as a land purchase commissioner for several years.<sup>34</sup> However, in January 1857 McLean directed Rogan to negotiate the purchase of a particular block of land, and these instructions suggest the general manner in which he was supposed to proceed. Rogan was to:

- ▶ purchase the land for ‘as low a rate as possible’;
- ▶ ensure that the boundaries of the block were defined with ‘extreme care and accuracy’; and
- ▶ set aside ‘ample and eligible reserves . . . for the use of the Natives, the selection, number, and extent of which must be determined by the wishes of the vendors themselves, and your own discretion.’<sup>35</sup>

In his evidence before the Native Land Laws Commission in 1891, Rogan provided some insight into his land purchase methods:

I had the whole of that country [Kaipara district] placed at my disposal. I had surveyors appointed to do what I directed them; and I may say I purchased nearly the whole Kaipara district, some of the land being purchased at 8d an acre, some at 1s, and some at 2s 6d.<sup>36</sup>

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30. McLean to Johnson, 9 September 1856, AJHR, 1861, C-1, p 73

31. Document H1, p 108

32. Document F4, p 253

33. Daamen, Hamer, and Rigby, pp 166–167; W G Russell, ‘John Rogan: Surveyor and Magistrate, 1821–1899’, *Auckland–Waikato Historical Journal*, no 24 (1974), pp 32–35; Byrne, pp 353–369

34. See letters appointing Rogan as Whaingaroa district land purchase commissioner and instructions to Rogan from McLean: McLean to Rogan, 31 July 1854, and McLean to Rogan, 13 July 1855, AJHR, 1861, C-1, pp 153–154.

35. McLean to Rogan, 31 January 1857, in Turton, sec C, p 101

36. ‘John Rogan Sworn and Examined’, Report of the Native Land Laws Commission, AJHR, 1891, sess 2, G-1, p 57

Rogan commented that it was important for a land purchase officer to know the Māori language and preferable for a surveyor to know it too. He also emphasised the need for all dealings to be in public. He described his involvement in a land purchase at Mōkau, where he had been sent by McLean before he came to Kaipara, and implied that this was typical of his methods of land purchase, which he had learnt from McLean:

I met the Natives in different parts of the country. Some of them opposed any sale being made. But one chief in particular, named Takerei . . . was very favourable to the sale. I was successful in getting the Natives to agree to the sale of a block of land and in putting everything in train. Afterwards Mr McLean returned with me, taking with him the necessary money, and he purchased the first block of land at Mokau, from Takerei. I travelled with him for some time, and his practice was . . . of the division of the money amongst the heads of the hapus or families. He carried the money there, and the whole of the Natives there agreed to Mr McLean handing over this £500 – which was the price agreed upon – to Takerei for that chief to divide, as he was a man of great consequence among them. He succeeded in getting their signatures to the deed, and the money was handed over in public, in presence of their own missionary and all the neighbouring chiefs, at the mission-station. After a time this chief (Takerei) came forward and divided the money, and there was such a scene on that occasion that I shall not forget to the latest day I live. The Maoris were there in their true savage character – they were very wild. After their dance was over the money was divided amongst them, and there never has been a dispute over the transaction from that day to this.<sup>37</sup>

Rogan added that Takerei reserved very little of the money for himself but did ask for two 50-acre sections for his two sons.

In later chapters, we review how this Crown purchasing policy was put into practice in specific transactions and the overall impact that land alienation had on Kaipara Māori. The Crown purchases of the 1850s paved the way for the expansion of Pākehā settlement in the Kaipara district in the 1860s.

### 3.6 RESERVES AND PROMISES OF FUTURE BENEFITS

The policy of reserving land for Māori from Crown purchases originated with Lord Normanby's instructions to Hobson, which stated that Māori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves'. To this end, the Crown was to purchase only such land as Māori could alienate 'without distress or serious inconvenience to themselves', and the protector

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<sup>37</sup> Ibid, p 56

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of aborigines was to be responsible for ensuring that Māori retained sufficient land for their needs.<sup>38</sup> Although Governor Grey abolished the protectorate in 1846, he reiterated the policy of reserving sufficient land for the future needs of Māori. In 1850, he directed that the commissioner of Crown lands should be instructed to ensure that sufficient reserves were made for the present and future needs of Māori, adding that Māori would be allowed to lease to others portions of reserve land which were not required for their present wants.<sup>39</sup>

The creation of reserves within the areas sold by Māori to the Crown remained one of the main planks of the Crown's purchasing policy after the Native Land Purchase Department was established. As noted above, McLean instructed Rogan that 'ample' reserves were to be made for Māori.<sup>40</sup> In 1861, McLean issued a general instruction to district land purchase commissioners that any reserves to be excepted from a particular purchase were to be defined and marked out before final payment was made for the land.<sup>41</sup> These instructions lacked any clear definition of what constituted 'ample' reserves. It was also unclear whether land was to be reserved for Māori from every purchase or only when requested by Māori, and whether the continued possession by Māori of substantial areas of land outside the blocks purchased by the Crown absolved the land purchase commissioners of their duty to create reserves.

McLean evidently considered the reserving of land for Māori out of Crown purchases to be a necessary evil. He believed that Māori would be much better off if, instead of having land reserved for them in customary title, they obtained a Crown grant for portions of land by purchasing this land back from the Crown. Both Johnson and Rogan were instructed to encourage Māori to repurchase land from the Crown.<sup>42</sup> McLean explained that, if Māori obtained Crown grants in this way, their tribal system would begin to dissolve and they would gain a more secure and well-defined form of title.<sup>43</sup> He admitted, however, that it would take time for such a change to come about, and consequently saw a continuing need for land to be reserved for Māori in the meantime.

Another plank of the Crown's land purchasing policy was the proposition that the relatively low purchase price paid to Māori was not the only payment for their land. Grey explained to the Smith–Nairn commission of inquiry into South Island land purchases in 1878 that he always gave instructions to set aside reserves for Māori and that 'the payment made to them in money was really not the true payment at all'.<sup>44</sup> The main benefits for Māori would come later: from the increased value of their remaining lands, from the opportunity to sell their produce to Pākehā settlers, and from the Government's provision of roads, schools, medical services, and other forms of infrastructure. As Crown historian Dr Donald

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

39. Ward, vol 2, p 141

40. McLean to Rogan, 13 July 1855, AJHR, 1861, C-1, p 154

41. McLean to land purchase commissioners, 3 May 1861, AJHR, 1861, C-8

42. McLean to Johnson, 18 May 1854, in Turton, sec C, p 94; McLean to Rogan, 13 July 1855, AJHR, 1861, C-1, p 154

43. McLean to private secretary, 4 June 1856, BPP, vol 10, p 581

44. Document A2(j)

Loveridge explained in his evidence about Lord Normanby's instructions, colonisation in New Zealand was to be funded largely by the substantial difference between the amount the Crown paid to purchase land from Māori and the amount it received when it sold that land to settlers. The provision of infrastructure made possible by this revenue was supposed to benefit Māori as much as Pākehā.<sup>45</sup>

It is clear that part of the Crown's policy was to encourage Māori to sell their land by telling them of such future benefits. The general evidence that such a policy existed has been assessed by the Muriwhenua Tribunal, and we endorse their conclusion that 'A widespread practice of promising future benefits can reasonably be inferred'.<sup>46</sup> We likewise agree with Dr Loveridge that such undertakings formed 'the core of the Crown's policy in relation to Maori affairs, land and settlement from the earliest days of the colony up to the 1860s and beyond'. Dr Loveridge accepted that such undertakings would have been made to Kaipara Māori during land purchase negotiations, although there is little specific evidence about what Māori were told in these discussions.<sup>47</sup>

Dr Loveridge is also correct in asserting that claimant historians in this inquiry have produced no evidence that specific promises of development were made in association with particular sales or that Kaipara Māori subsequently complained that such promises had been made but not fulfilled.<sup>48</sup> In this respect, the situation in Kaipara is quite different from that in the South Island, as discussed by the Ngāi Tahu Tribunal.<sup>49</sup> Nevertheless, we are satisfied that some general promises of future benefit were made to Kaipara Māori and that, as a result, the Crown did take on some responsibility to try to ensure that Māori benefited from colonisation. The matter of how far this responsibility extended, and how much Kaipara Māori actually benefited from colonisation, will be taken up in later chapters.

It is apparent that Kaipara Māori were aware of the difference between what the Government paid them for their land and what it received when that land was sold to settlers, and it is clear that they were not always convinced by the argument that Māori would benefit from the Crown's expenditure of this land revenue. In 1856, the Ngāi Whātua rangatira Pāora Tūhaere of Ōrākei told a board of inquiry into native affairs that:

The natives have heard of the Government buying at a cheap and selling at a dear rate. They do not like it. The natives do not know what is done with the money. I have heard that it is spread out upon the roads, and a part upon schools. The natives are suspicious, and say that this statement is only put forth in order to get the land at a cheap rate from the natives.<sup>50</sup>

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45. Document P3, esp ch 7

46. Waitangi Tribunal, *Muriwhenua Land Report*, p 203

47. Document O4, pp 156, 158

48. Ibid, pp 155–156

49. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, ch 19

50. Evidence of Pāora Tūhaere, 14 April 1856, in 'Report of a Board Appointed by His Excellency the Governor to Inquire Into and Report Upon the State of Native Affairs', 9 July 1856, BPP, vol 10, p 555

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Reporting on a visit to Kaipara and Whāngārei in 1857, McLean saw the need to allay such suspicions. As one of the 'liberal and comprehensive measures' that McLean thought should be adopted in order to promote land purchases in the area, he recommended that the Government:

expend a certain definite proportion (and that no inconsiderable one) of the moneys realized by the waste-land sales on roads and other improvements exclusively within those districts from which they have accrued, and from time to time publish the balance-sheets of such expenditure in the *Maori Messenger*.

This would, in McLean's view, 'do away with present or future dissatisfaction on the part of the Native sellers at the price they receive for their land as compared with the value it acquires when in the hands of the Government'.<sup>51</sup> Governor Thomas Gore Browne endorsed McLean's suggestion that 'a portion of the money obtained by the sale of land over which the Native title has been extinguished ought to be expended in the locality from whence it is derived',<sup>52</sup> but as far as we are aware such a policy was never generally implemented. In the deed recording the Crown purchase of the Mangawhai block in 1854, there was provision for 10 per cent of the proceeds of subsequent Crown sales of the land to be assigned for the benefit of Māori. But this was an exception to the other Crown purchases in the Kaipara inquiry district before 1865, many of which did not include any Māori reserves. We examine the Mangawhai transaction in chapter 5.

Rogan was well aware that Kaipara Māori were dissatisfied with the prices paid for their land. In his 1871 report to Chief Judge Francis Dart Fenton, he commented on his time as a purchase officer, noting that none of his land purchases had been disputed. However, he did admit 'that, even before the Native Lands Act became law, the Natives in the Kaipara District were so dissatisfied with the amounts I was authorized to offer, that it would have been very difficult, if not impossible, for me to persuade this people to alienate any more land to the Government'.<sup>53</sup> By that time, of course, a substantial area of Kaipara lands had already been sold. Twenty years later, in his evidence before the Native Land Laws Commission, Rogan spoke in support of the waiving of Crown pre-emption contained within the Native Lands Act 1862:

I was a Land Purchase Commissioner [in Kaipara] at the time, and I was told by the then Native Minister that the Government had not a shilling with which to buy land, and that they were going to waive their pre-emptive rights. The only difference I had with the Natives about this part of the country was that the Government would not allow them at that time to sell to private individuals, who would pay them a very much higher price for their land than the Government were willing to give. They complained that I was paying

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51. McLean to Gore Browne, 20 March 1857, in Turton, sec A1, p 57

52. Gore Browne, minute, 27 April 1857, in Turton, sec A1, p 58

53. Rogan to Fenton, 26 June 1871, AJHR, 1871, A-2A, p 13

them 6d an acre. I purchased one block at that price. They said to me, 'Why don't you tell the Government to pay a higher price?' I replied, 'I am only acting for the Government, and have simply to carry out my instructions. But you should recollect that I, on the part of the Government, buy from you all land, the good as well as the bad, and that this 6d an acre is part for those sandhills which are being blown away, as well as for the good land. The private purchasers would not do that. Where we extinguish the Native title we buy the good land as well as the bad.' They replied, 'We will keep the sandhills if you will allow us to sell to any man we like.'<sup>54</sup>

In 1864, the new Native Lands Act was put into effect in the Kaipara district, and Rogan was appointed a judge in the new Native Land Court.

### 3.7 THE NATIVE LAND COURT

The passing of the Native Lands Act 1862 marked the introduction of a new relationship between the Crown and Māori. First, the Act waived the Crown right of pre-emption of land set out in the Treaty of Waitangi. Secondly, it established the Native Land Court, whose purpose was set out in the preamble to the Act:

And whereas it would greatly promote the peaceful settlement of the Colony and the advancement and civilization of the Natives if their rights to land were ascertained defined and declared and if the ownership of such lands when so ascertained defined and declared were assimilated as nearly as possible to the ownership of land according to English law.

Thus, the doctrine of tenures, based on the assumption in English law that all land titles derive from the Crown, was imposed on Māori land held in customary title. It was a tenuous revolution which Māori had no part in deciding, and in which they were expected to conform through the processes of the Native Land Court, which was set up to investigate and determine title to their land.

The Native Lands Act 1862 was the product of 'long, complex and often intense' debate through the 1840s and 1850s among settlers and officials about the form of governance for Māori, and the need for a land tribunal or court. In a scholarly study, Dr Loveridge outlined this debate, and the earlier legislative drafts and reports produced by officials and members of Parliament. But, as Dr Loveridge pointed out, this debate did not involve Māori and was conducted within the limited frame of reference of the underlying assumptions of British colonial enterprise:

Māori (if they did not become extinct first, as some expected) would in time be drawn into the mainstream of colonial life, enjoying and exercising the same rights and duties

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54. 'Report of the Native Land Laws Commission', AJHR, 1891, sess 2, G-1, pp 59-60



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under the law as their settler neighbours, and sharing equally in the prosperity of a progressive country and empire . . .

The idea that Maori should be encouraged to retain most of their lands, or might want to maintain a separate identity, was not one which British settlers, missionaries and officials in the mid Nineteenth century could readily grasp. From their point of view, colonization meant bringing 'civilization' to a new country; land was essential for colonization; and civilization was a gift to the 'semi-barbaric' occupants of that country – the real price paid for lands which Maori, in any case, did not and could not actually make use of themselves. This simple paradigm was the lens through which the developments of the period 1840–1865 were perceived by these British settlers, missionaries and officials.<sup>55</sup>

The royal assent to the Native Lands Act 1862 was received in New Zealand in May 1863 and proclaimed early in June. The next six months were taken up in planning for the Native Land Court. It was decided to experiment first in the Kaipara district, where Māori were seen as 'loyal' and peaceful at a time when war had broken out in Taranaki and British troops had invaded the Waikato. In January 1864, the Kaipara Crown land purchase officer, John Rogan, was appointed the resident magistrate for the Kaipara district, an area stretching across the Northland peninsula from Waitemata Harbour north to Whangarei and the upper Wairoa River. In March, Sir William Fox, by then the Colonial Secretary and Native Minister, set out with Rogan on a tour of the district, with the dual purpose of ascertaining local attitudes to the then-current military campaign and explaining the new land law. There was a well-attended hui at Te Awaroa in southern Kaipara, one at Tanoa on the Ōtamatea River, and two others in the Whangarei district, at which Fox explained that Rogan would be the Government representative in Kaipara and kai whakawa, or judge, for their land. Māori were told they could now sell land directly to Pākehā settlers, but only after Rogan had established who had rightful claim to it and had issued a certificate. No opposition to the proposed new system was recorded.<sup>56</sup>

On 19 April 1864, Governor Grey created 'native land districts' in 'Kaipara North' and 'Kaipara South' and declared the Native Lands Act 1862 to be in force within both areas.<sup>57</sup> Two days later, courts were created under the Act for each district, and Resident Magistrate Rogan was named president of both.<sup>58</sup> Four Māori 'judges' of these courts were also appointed: Wiremu Tipene and Matikikuha in Kaipara South, and Te Keene and Tamati Reweti in Kaipara North. The first hearing of what became known as the Native Land Court was held in Kaipara South at Te Awaroa on 7 June 1864. This and its subsequent hearings are described in chapter 7. By 30 October 1865, when the 1862 Act was superseded, titles to only

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55. Document 07, pp 232–233

56. Ibid, pp 203–210

57. 'A Proclamation', 23 April 1864, *New Zealand Gazette*, 1864, no 14, p 168

58. 'Declaration Constituting Courts and Naming Presidency', 25 June 1864, *New Zealand Gazette*, 1864, no 23, p 273



about 4300 acres of land had been investigated, and at least 15 certificates issued, in Kaipara South and North, including the area around Whangarei.

On 29 December 1864, the separate Native Land Court districts were cancelled and the whole country was made subject to the 1862 Act. New regulations were gazetted at the same time for the practice and procedure of the court. They set out a new structure of 'one Chief Judge, being a European Magistrate, and other such Judges, being European Magistrates, and such Native Assessors as may from time to time be appointed by the Governor.'<sup>59</sup> A court could sit with any one of the judges and two native assessors, but no assessor was to sit on a case where he had a personal interest. On 9 January 1865, the Native Minister announced the appointment of the new chief judge of the Native Land Court, Francis Dart Fenton, the former resident magistrate of Kaipara. John Rogan and George Clarke senior were also appointed judges, and 11 Māori, all of whom had previously been Māori judges, were appointed native assessors. Several additional European judges were appointed over the next few months. In May 1865, because the 1862 Act and the Native Land Court now applied over the whole country, the Native Land Purchase Department was disestablished. The intention was, as Dr Loveridge commented, to shift to an independent court the role of the Government land purchase officers in ascertaining Māori land interests: 'The Native Land Court was now to be the principal vehicle by which Maori customary land was made available for colonization, through its conversion to freehold land which could be purchased or leased by European settlers.'<sup>60</sup> The effect of the new regulations was to create a centralised national institution, a formal court headed by European judges. On 30 October 1865, a new Native Lands Act, drafted largely by Fenton, was passed into law.

The Native Lands Act 1865 set out the purpose and machinery of the Native Land Court. Its purpose and jurisdiction were summarised in the preamble:

Whereas it is expedient to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof and to encourage the extinction of such proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown and to provide for the regulation of the descent of such lands when the title thereto is converted as aforesaid and to make further provisions in reference to the matters aforesaid.

Professor Hugh Kawharu has described the Native Land Court as 'a veritable engine of destruction for any tribe's tenure of land anywhere.'<sup>61</sup> However, we do not intend to provide a history of the Native Land Court and the legislation that governed it, since many others have

59. 'A Proclamation Bringing "The Native Lands Act, 1862" into Force within the Whole of the Colony', 31 December 1864, *New Zealand Gazette*, 1864, no 51, p 465

60. Document 07, p 223

61. Ian Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), p 15

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written about this.<sup>62</sup> In chapters 7 and 8, we review the impact of the operations of the Native Land Court in southern Kaipara, but we now consider the salient features of the legislation that created this revolution in Māori land tenure.

**3.8 THE '10-OWNER SYSTEM' AND 'NATIVE CUSTOM'**

An investigation of title by the Native Land Court began when any individual Māori gave 'notice in writing to the Court that he claims to be interested in a piece of Native Land'. Section 21 of the Native Lands Act 1865 further required that the applicant specify the piece of land and state 'the name of the tribe or the names of the persons whom he admits to be interested therein'. The application was then publicly notified and set down for hearing by the court, a procedure set out in section 23:

At such sitting of the Court the Court shall ascertain by such evidence as it shall think fit the right title estate or interest of the applicant and of all other claimants . . . and the Court shall order a certificate of title to be made and issued which certificate shall specify the names of the persons or of the tribe who according to Native custom own or are interested in the land . . . Provided always that no certificate shall be ordered to more than 10 persons.

There was a further provision that only a block of land in excess of 5000 acres could be vested in a tribe. This provision for tribal title was used only rarely, however, and not at all in the Kaipara district.

There is a fundamental conflict in section 23 of the 1865 Act. Because Māori customary tenure did not recognise individual disposable property rights in land, determining a title 'according to Native custom' should not have been constrained by a limit of 10 owners.<sup>63</sup> The Native Land Court represented a codification of custom, which traditionally involved a fluid and dynamic system of rights to the use and occupation of land by different groups. The 1865 Act did not specify the role of these 10 (or fewer) owners of a block of land – whether they were to act as owners of the freehold, jointly or in common, or were trustees for their

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62. See Kawharu; David Williams, *Te Kooti Tango Whenua: The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999); Richard Boast, Andrew Erueti, Doug McPhail, and Norman Smith, *Maori Land Law* (Wellington: Butterworths, 1999); Tom Bennion, *The Maori Land Court and Maori Land Boards, 1909–1952*, Ranga-hua Whanui Series (Wellington: Waitangi Tribunal, 1997); Royal Commission on the Māori Land Courts, *The Māori Land Courts: Report of the Royal Commission of Inquiry* (Wellington: Government Printer, 1980); Hazel Riseborough and John Hutton, *The Crown's Engagement with Customary Tenure in the Nineteenth Century*, Ranga-hua Whanui Series (Wellington: Waitangi Tribunal, 1997); Alan Ward, *National Overview and A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974); Waitangi Tribunal, *Turanga Tangata Turanga Whenua: A Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, ch 8

63. For a discussion of Māori custom and law, see Waitangi Tribunal, *Muriwhenua Land Report*, pp 21–30. See also Riseborough and Hutton; and Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper 9 (Wellington: Law Commission, 2001).

community. In 1947, Smith acknowledged the accumulation of judge-made rules to define what was meant by customary or papatipu (papatupu) land, held by Māori under Māori customs and usages:

Notwithstanding the fact that the custom in relation to claims for *papatipu* land has become codified to a very great extent by the judgments of the Native Land Court, inasmuch as the Supreme Court holds that to be Native custom which is recognised as such by the former Court, it is nevertheless somewhat difficult to elaborate the rules governing that question in the same manner and to the same extent to which it has been done with respect to European law.<sup>64</sup>

Smith noted the regional and tribal variations in customary tenure (as in Europe), and suggested that 'gradual changes' in New Zealand were 'brought about principally by the influence of conditions and demands of advancing civilization and pakeha ideas'. The value judgements in this comment underlie the Pākehā perception of the need to codify 'native' customary tenure. Smith acknowledged the inconsistency of many early Native Land Court decisions, but he suggested that, by about 1895:

the rules of Native custom, with proper regard to any exceptions prevalent in different parts of the country, became more or less clearly defined. On occasions, the customs as so defined and laid down by the Courts differed in some respects from the actual custom practised by the Maoris prior to the coming of the law [1840].

Smith then suggested that 'much of the original custom remained with a grafting upon it of such subsidiaries as were necessary to meet the equities of each case as well as the demands of a changing society'. He might well have added that these demands were imposed in a plethora of laws created by Pākehā legislators. But Smith did concede the obvious: that the 10-owner system and subsequent forms of individualisation of Māori title, however modified in the Native Land Court, had no basis in Māori custom:

For instance individual ownership as we know it was practically unknown to the Maori, and his land customs certainly made no provision for the allocation of aliquot shares to the owners of tribal lands, nor *a fortiori*, laid down any definite principle upon which such an allocation might be based.<sup>65</sup>

Chief Judge Fenton explained to the 1891 Native Land Laws Commission how he thought the 10-owner system had evolved:

I think the practice originated in this way: At the period of the early Courts there was a great demand for land, and most frequently land was purchased by a European before it

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64. Smith, *Native Custom*, p 47

65. *Ibid*, p 48

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came to Court, the European paying the cost of the survey. The clause limiting the number of owners in the certificate to ten compelled the Court to refuse titles until the estates were reduced by division to ten. By arrangement out of Court ten names were selected, and described to the Court as the owners, the object being to avoid the expense of divisional surveys. I presume that the purchase-money was paid at once, and divided amongst all interested, but I have no official knowledge of this. Whether the persons left out got their share of money or not cannot be proved now I should think . . . The ten owners were arranged out of Court between the Maoris and the European purchaser and in Court none others were disclosed.<sup>66</sup>

When Judge Rogan reported to Fenton in July 1867 on the workings of the 1865 Act in the Kaipara district, he noted few problems. However, Judge Frederick Maning, whose Hokianga district bordered northern Kaipara, did identify several issues. He remarked on the cost of surveys and the inadequate surveying of boundaries of blocks already sold to the Crown, which were the source of ‘difficulties, disputes and suspicions’. He also noted a problem when people who had already sold land wanted to raise funds to survey land they retained and tried to bring ‘unfounded claims into Court, or by opposing the more legitimate claims of others, with the intention of selling the land which they hoped to obtain by these means’. According to Maning, this was often an expression of ‘the old Maori feuds and jealousies not unfrequently existing between the parties’. Despite these disputes, Maning considered that, in general, with adequate surveys, good progress had been made in the acceptance of the Native Land Court:

As it is but fifteen months ago that the first Court under the Native Lands Act was held in this district, and as it is but quite lately that Crown Grants have been issued here in any number, it is scarcely to be expected that in that time any very great progress would appear in a movement, the success of which would create to a certainty a completely new set of circumstances with regard to the Maori people – a revolution in fact – which must of necessity displace barbarism and bring civilization in its stead, for the difference between a people holding their country as commonage and holding it as individualized real property is, in effect, the difference between civilization and barbarism.<sup>67</sup>

After six years in the Native Land Court, Maning set out his view of the process of colonisation, of which the court was a part:

When it is taken to be a natural consequence of the contact of two races of men, that the soil of the country of one shall pass into the hands of the other, the suffering to the losing race appears to me to be equally inevitable, and therefore not to be in any way reduced or

66. ‘Theophilus Cooper, Sworn and Examined’, Report of the Native Land Laws Commission, 17 April 1891, AJHR, 1891, sess 2, G-1, p 86

67. Manning to Fenton, 24 June 1867, AJHR, 1867, A-10, p 8

prevented. The higher the losing race may have stood in the scale of humanity, and the greater their material advantages of life have been, the greater will be the suffering, because the loss of the soil means degradation and poverty to the race . . . Individual benevolence has, no doubt, always existed, and has had more or less visible effects; but we look in vain for any marked proof of the exercise of benevolence as between races.<sup>68</sup>

Section 17 of the Native Lands Act 1867 amended section 23 of the 1865 Act by requiring the court to identify the interests not only of the applicant or applicants but also 'of every other person who and every tribe which according to Native custom owns or is interested in such land whether such person or tribe shall have put in or made a claim or not'. However, if the number of such people exceeded 10, then only 10 would be put on the Native Land Court certificate of title, although the names of the other owners would be recorded in a memorial of ownership in the Native Land Court. This modification of the '10-owner system' was described by Alexander Mackay in his 'synopsis' of Māori land legislation:

The principal object, however, in introducing the [1867] Act was to insure the ascertainment of the whole of the owners so as to cure the defect in the Act of 1865 which enabled the land to be vested in ten persons, thereby ignoring the interests of the majority. No sale of land under this form of title could be effectuated until after subdivision. Although the Act was passed with the object of protecting the whole of the owners, the fact of its being only requisite that no more than ten should be inserted in the body of the certificate perpetuated the evil effects of the Act of 1865, as these ten individuals could lease the land and appropriate the proceeds.<sup>69</sup>

This provision was frequently not implemented, especially when a sale was pending, and it was not used much in the Kaipara district. There was a later provision, in the Native Equitable Owners Act 1886, for the Native Land Court to conduct a further inquiry and to add names to the list of owners in a title that had been determined under the Native Lands Act 1865, if there was evidence that the 10 or fewer owners were intended to act as trustees. But this provision was made too late, since it did not apply to lands already sold and it was not always possible to prove that the 'owners' were really trustees.

In its *Report on the Orakei Claim*, the Waitangi Tribunal suggested that by 1867 the Native Land Court had four options when an investigation of title was completed:

- (a) To award the block to not more than ten as absolute owners – section 23 Native Lands Act 1865
- (b) To divide the block into lots and award each allotment to not more than ten – section 24 Native Lands Act 1865, or

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68. Manning to Fenton, 27 April 1871, AJHR, 1871, A-2A, p 17

69. Native Land Laws Commission, 'Unfinished Report by the Late Mr Thomas Mackay Relating to Native Land Laws', AJHR, 1891, sess 2, G-1A, p 10

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- (c) To award the block to not more than ten, as tribal representatives, the names of each and every member of the tribe being then recorded in a separate record of the Court and the title noting that the grant was pursuant to the enabling section – section 17 Native Lands Act 1867.
- (d) To award the block to a tribe . . . applied only to blocks in excess of 5000 acres.<sup>70</sup>

In most districts, and certainly in Kaipara, only the first option was chosen by the court before the enactment of the Native Lands Act 1873, which provided for all owners to be listed in a block title. But this provision was made too late for most of the remaining Māori land. In the Kaipara district, only a few areas had not been investigated and given title under the 10-owner system. The legal effect of vesting the title in 10 or fewer names was that only the persons named became the owners and, under the rules of succession that evolved in the Native Land Court, only their descendants succeeded to their interests in land. No sense of trusteeship was conveyed in the title under this system. Thus, any others who may have had rights in the land were disinherited when the title was created.

**3.9 INDIVIDUALISATION OF MĀORI INTERESTS IN LAND**

Section 41 of the Native Lands Act 1873 required the Native Land Court, on investigation of title to a block of land, to ‘ascertain from such evidence as it shall think fit, not only the title of the applicants, but also the title of all other claimants to the land’. There was further provision in section 45 that:

If the majority in number of the claimants shall so desire it, the inquiry shall be extended, in order to ascertain in such instance the amount of the proportionate undivided share that each such owner of such land is entitled to according to native usage and custom.

While it had been assumed that all owners had equal shares when a title was determined, it was now possible to vary the proportions of shares. Whatever was decided, the title was not complete until the rights of all claimants had been determined and their names set out in a list of owners and confirmed by the Native Land Court. The 1873 Act was not implemented immediately because, where an application for investigation of title had been lodged before the Act came into force on 2 October 1873, the investigation of title was carried out under the previous legislation.

One of the ways in which investigation of title could be influenced was by the application of the 1840 rule, first enunciated in the *Oakura* decision of the Compensation Court in

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70. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), pp 45–46

1866.<sup>71</sup> This rule assumed that title was based on occupation in 1840, when New Zealand was proclaimed a British colony. In its *Rekohu* report, the Waitangi Tribunal acknowledged the ‘common sense’ of not accepting any right to land acquired by force after 1840. But it considered that there was too much emphasis on conquest as a source of rights:

The context [in 1840] was that Maori society was in an uncustomary state of flux as result of musket war relocations. Normality had still to be restored, and time was needed to see how relationships between the conquerors and conquered, or between different sub-groups within them, would work out. But different judges made different assumptions on admitting peaceful changes after 1840.<sup>72</sup>

Researcher David Williams noted inconsistencies in the application of the 1840 rule in some areas, where the Native Land Court did acknowledge the prior rights of Māori who had remained in occupation and maintained ahi kā after an alleged conquest:

What is undeniable, however, is that the 1840 rule was created by the Land Court judges but then applied somewhat erratically and unevenly. If it had been rigorously applied then there would have been fewer difficulties, but any attempt by a court-created legal fiction to lay down an immutable criterion for closing off the evolution of Maori customary law is bound to be open to objection and criticism.<sup>73</sup>

The 1840 rule was acknowledged in section 21(1) of the Native Lands Act 1873, and it remained the basis for investigation of title by the Native Land Court. It was not a major issue in southern Kaipara but was relevant to the contested lands on the northern border of the Te Uri o Hau ‘area of interest’ in northern Kaipara.

A major issue once titles to Māori land were established was the way in which individual interests could be inherited, and by whom. Section 30 of the Native Lands Act 1865 provided for the Native Land Court to determine the disposal of interests of any Māori dying intestate. On the ‘application of any person claiming to be interested’, the court was to ‘inquire into the matter and ascertain by such evidence as it may think fit who according to law as nearly as it can be reconciled with Native custom ought in the judgment of the Court to succeed to the hereditaments’. Applications were to be publicly notified and heard at a convenient time in an open court sitting. Again, there was a conflict between the concept of individual property rights in Māori land, which could be transferred by succession order, and the very different values in Māori customary law. This conflict had to be reconciled. Again, ‘Native custom’ was to be defined by the Pākehā judge of the Native Land Court.

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71. Native Land Court, *Important Judgments Delivered in the Compensation Court and Native Land Court, 1866–1879* (Auckland: General Steam Printer, 1879), pp 9–11

72. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 132

73. Williams, p 187



The ‘rules’ of succession to interests in Māori land evolved within the Native Land Court and were not established by statute. A decision by Fenton in the Compensation Court in April 1867, concerning the Papakura block, provided the basis for subsequent practice in the Native Land Court. One of the owners named in the Crown grant for the Papakura block died intestate in 1864. His widow applied for succession to his interests on behalf of herself and their three children, but her entitlement was contested by ‘a cousin of the deceased, and other members of the tribe’. The case was heard under sections 30 to 35 of the Native Lands Act 1865. According to Fenton:

The intention of the legislature appears to be that English law shall regulate the succession of real estate among the Maoris, except in a case where strict adherence to English rules of law would be very repugnant to Native ideas and customs. The leaning of the Court will always be to uphold Crown grants and the rules of law applicable to them, and will decline to consider the particular circumstances under which the grant was originally obtained, or the equities which might have been created or understood to have been created at the time thereunder, unless the evidence shall disclose strong reasons for deviating from so obvious and desirable a rule. It would be highly prejudicial to allow the tribal tenure to grow up and affect land that has once been clothed with a lawful title, recognized and understood by the ordinary laws of the country. Instead of subordinating English tenures to Maori customs it will be the duty of the Court in administering this Act to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudices.<sup>74</sup>

Fenton ruled against any tribal rights in this case. This decision, in effect, denied a hapū or whānau any role as a trustee for any person named in a title under the 10-owner system.

In claiming that English law on succession should prevail, Fenton then decided to make an exception for Māori from the English legal rule of primogeniture, or inheritance by the eldest son:

The Court does not think the descent of the whole estate upon the heir-at-law could be reconciled with Native ideas of justice or Maori custom; and in this respect only the operation of the law will be interfered with. The Court determines in favour of all the children equally . . . [they] ought to succeed to the hereditaments above mentioned in equal shares as tenants in common.<sup>75</sup>

The Papakura decision became the basis for succession by Māori to interests in land where the deceased died intestate. Further, the succession rules applied in the inheritance of interests from both mother and father. If there were no issue, the succession would revert to an earlier generation, and could devolve, for example, to the children of a sibling of the

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<sup>74</sup> Judgment by the Compensation Court, 10 April 1867, *New Zealand Gazette*, 1867, no 23, p 158

<sup>75</sup> Ibid



deceased. At no time was primogeniture applied to the succession of interests in Māori land. Nor was there any attempt to incorporate the Māori concept of ahi kā roa, or long occupation and use.

The intention of Māori land legislation in the 1860s had been to individualise title. The 10-owner system of the 1865 Act provided some limitation on the number of owners appearing in a title to any block of Māori land, but the rules of succession adopted by the Native Land Court ensured that the number of owners would increase over succeeding generations. The change in the Native Lands Act 1873 to include all owners ensured that titles in multiple ownership would accumulate more and more owners. One solution was to partition a block into separate portions for separate groups of owners. In some cases, an individual owner would apply to partition out his or her shares. More frequently, a block was partitioned between those who wanted to sell their interests and those who did not. However, in the long term partition was not a solution, because the numbers of owners in blocks that were not sold increased.

Professor Alan Ward commented on the problems faced by any court or tribunal in transmuting customary tenure into individualised titles:

Even with the best will in the world it could be no easy matter to translate a complex of different kinds of rights in Maori law to arrive at a defined list of owners. Probably, such an outcome should never have been attempted. Modern efforts to define ownership in Oceania tend to give a group a name and allow the community itself to determine who is included or excluded from membership. (Examples are the Papua New Guinea Land Groups Act 1975 and awards under the Aboriginal Land Rights Act (Northern Territory) 1974.) Even this is fraught with difficulties and litigation commonly arises in whatever local tribunal is empowered to hear such issues. But it is certainly a less drastic interference with custom, and hence with rangatiratanga, than that of the New Zealand legislature in the 1860s.<sup>76</sup>

One interpretation of the role of the Native Land Court was that it acted merely as ‘an umpire and recorder’, implementing decisions that Māori had reached in their own way. It was assumed that the individuals who were put into a title under the 10-owner system would act as trustees for their hapū. But, in practice, these individuals were treated as absolute owners. Even under the 1873 Act and later amendments, it could not always be assumed that voluntary arrangements, ratified by the Native Land Court, had been reached with all the people who held interests being present and with the issues being fully debated. Further, as Ward commented:

in many, probably most, cases Maori were *not* free to make such arrangements unhindered. Because prior dealings in land were void, not illegal, under the [1865] Act, some or all sections of Maori claimants had usually long since been approached by speculators or creditors,

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76. Ward, *National Overview*, vol 2, p 223

who frequently supported their faction in court by paying their fees for surveys and other costs. This and the adversarial process invited by [Chief Judge] Fenton's insistence on taking account only of evidence presented in court, instigated decades of bitter contesting between factions, with much money (or the clearance of much debt) riding on the outcome. For this was a winner-take-all situation, quite the opposite of one which encouraged Maori to respect each other's interests in a spirit of aroha. In this situation distortion of evidence or outright lying became a fine art and judges and Assessors could be fooled or influenced. False or misleading evidence was often exposed by Maori objectors who put forward alternate evidence in many cases, but still it was easier to fool a [Pākehā] judge than to fool a Runanga or hui of Maori elders . . .

The problem now is that there is no easy way of knowing, for each of the thousands of blocks that went through the court, whether perjury occurred, or even a mere excess of emphasis on one side of the evidence which the judge could not detect. Maori groups may genuinely feel, and sometimes say, that the court awarded the land to the wrong owners, or insufficient owners. [Emphasis in original.]<sup>77</sup>

Whatever the shortcomings of the Native Land Court – and numerous complaints were made by Māori from the 1870s on – some sort of disputes tribunal would have been needed. Dr Loveridge commented:

It seems fairly certain that, even if Maori had been willing to sell larger quantities of good land to the Crown during the 1850s and 1860s, some kind of tribunal for converting customary rights into Crown titles would have been implemented during this period. This institution would probably have grown out of one created to adjudicate on land disputes between Maori, and between Maori and the Crown.<sup>78</sup>

The problems arose because the Native Land Court was imposed on Māori, without any consultation with them and without them having any real control over the process. A universal complaint was that, by creating individual, disposable, property interests, land could be sold piecemeal, without consultation with the larger group of owners. And there were many ways an individual shareholder could be persuaded to sell. We examine this process further in chapters 8 and 10, with particular reference to land sales after 1865 in southern Kaipara.

Our review of the Native Land Court in this chapter has set out the main issues in the legislation and administrative structure established in the 1860s and 1870s, when most of the land in the Kaipara inquiry district was alienated. In later chapters, we review the impact of the Native Land Court on Kaipara Māori and the claimants' specific concerns about land loss attributed to the operations of the court in this period. From the 1880s on, there were

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77. Ward, *National Overview*, vol 2, pp 224–225

78. Document 07, p 234

numerous other statutes relating to Māori land. While we do not need to consider those in detail here, certain developments in the administration of Māori land are relevant to our review of the further loss of land in Kaipara in the twentieth century.<sup>79</sup> We outline those developments now.

### 3.10 LATER ADMINISTRATION OF MĀORI LAND

The report of the Native Land Laws Commission in 1891 highlighted the confused state of Māori land legislation by the 1890s and the need for a comprehensive new system for administering Māori land.<sup>80</sup> Among the commission's proposals was a native land board, with Māori members, to act as trustee. Each block would have an advisory committee of owners, but the proposed board would have to approve all transactions involving the alienation of Māori land. This recommendation was not immediately acted on, but it bore fruit in the regional Māori land councils set up under the Māori Lands Administration Act 1900.

The commission also recommended the restoration of Crown pre-emption. Commissioner James Carroll dissented from this recommendation, and in his minority report he also identified a need to educate Māori in commercial agriculture and to provide access to capital to support farm development on the same basis as Pākehā settlement schemes in the 1880s. However, nothing came of Carroll's proposal until the 1930s, when Sir Apirana Ngata implemented his Māori land development schemes.

The 1890s also saw some major changes in Māori administration. The Native Department was abolished in 1892, although it was reinstated in 1906. The Native Land Purchasing Branch was transferred to the Department of Crown Lands and the Native Land Court to the Department of Justice. In 1894, Crown pre-emption was reimposed, and through the 1890s the Government embarked on a major programme of purchasing Māori land.<sup>81</sup>

The Māori land councils were soon superseded by Māori land boards appointed under the Māori Land Settlement Act 1905. These comprised three Crown-appointed members, usually the judge and registrar of the Native Land Court in each district (which coincided with the land court district), and a Māori member. The elected Māori membership of the old councils was eliminated, although until 1913 one member of each board was a Māori appointee.

The Stout–Ngata commission of inquiry into Māori land tenure and use in the North

79. For a review of legislation and Native Land Court operations in the 1880s and 1890s, see Waitangi Tribunal, *The Pouakani Report 1993* (Wellington: Brooker's Ltd, 1993).

80. Native Land Laws Commission, 'Unfinished Report by the Late Mr Thomas Mackay Relating to Native Land Laws', AJHR, 1891, sess 2, G-1A

81. Tom Brooking, "'Busting Up" The Greatest Estate of All: Liberal Māori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1 (1992), pp 78–98; Graham Butterworth and Hepora Young, *Māori Affairs: A Department and the People Who Made It* (Wellington: GP Books, 1990), chs 4, 5

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3.10

Island was set up in 1907 as part of an attempt to put Māori land into productive use by making it available to settlers on lease. The commission's reports led to a comprehensive review and consolidation of Māori land legislation in the Native Land Act 1909. While the Native Land Court still retained jurisdiction over the investigation of title to customary Māori land and succession to interests in Māori lands, the administration of leases and sales of Māori land was transferred to the Māori land boards. In 1913, the Crown-appointed Māori members of the boards were eliminated, leaving two-member boards comprising the judge and registrar of the district Native Land Court.<sup>82</sup>

The 1909 Act removed all former provisions restricting the alienation of Māori land. Politicians at the time suggested that the new Act returned the decision-making powers to Māori owners through the provisions for 'meetings of assembled owners'. However, as Ward observed, 'The machinery provisions of the 1909 Act favoured partition and piecemeal alienation by simple majorities of assembled owners (not of the totality of owners).'<sup>83</sup> This system could also be manipulated by the use of proxy votes, because all the owners were not required to be present. The checks and controls exercised by Māori land boards to prevent alienation were limited, and increasing land prices during and after the First World War added to the pressures to sell.

In the early 1930s, the Native Minister, Sir Apirana Ngata, instigated a series of Māori land development schemes throughout the North Island. Some Te Uri o Hau lands in northern Kaipara were organised into the Kaipara development scheme, but only two individual farms in southern Kaipara benefited from this scheme. Ngāti Whātua did not have a sufficient area of land left to participate effectively. Initially, the schemes were controlled by the Māori land boards, but after a review of Māori land administration in 1932 the statutory functions of the boards were mostly incorporated into the administrative processes of the Department of Native Affairs.<sup>84</sup>

In 1920, the Māori Trust Office was established under the Native Trustee Act to take over from the Public Trustee an increasing volume of trust administration of Māori estates, interests of minors, and so on. In 1930, the Māori Trustee was given powers to invest trust funds in farm development. After 1932, however, the Māori Trustee's functions became incorporated into the administrative structure of the Department of Native Affairs. In 1952, the Māori Land Development Act finally dissolved the Māori land boards and placed the administration of all board leases with the Māori Trustee. The report of the Royal Commission on Māori Vested Lands in 1949 had been very critical of the failure of the land boards to monitor the provisions of leases or to set up a sinking fund to pay lessees compensation for their improvements on the expiry of long-term leases, such as those on the Ōtakanini

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82. Dr Donald Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p vii

83. Ward, *National Overview*, vol 2, p 395

84. Ibid, pp 413–423; Loveridge, pp 135–145

block in southern Kaipara.<sup>85</sup> The Māori Affairs Act 1953 was a consolidation of the existing legislation that confirmed the dominance of the Department of Māori Affairs, which also provided administrative services for the Māori Trustee and Māori Land Court.

The 1950s and 1960s saw an unprecedented migration of rural Māori to urban areas in search of employment, a movement encouraged by Crown policies implemented through the Department of Māori Affairs. Various efforts were made in the 1960s to reform Māori land tenure, in particular the problems of multiple ownership and fractionation of individual Māori interests with succeeding generations. There was also an attempt to reform social attitudes in order to encourage Māori individualism, and this was expressed most clearly in what became known as the 'Hunn report'. Professor Sir Hugh Kawharu explained to the Tribunal:

This was a context spelt out with great missionary zeal by Jack Hunn, Secretary of the Department of Maori Affairs in his Hunn Report of 1960 on the future of the Maori people. With Hunn's minister, Ralph Hanan, as its advocate, the Report saw the future as one where the evils of 'tribalism' had long been discarded in favour of integration. For example, instead of owning unusable shares in a remote tribal estate, a Maori might be better advised to exchange such shares for a housing section in an area of employment opportunity, and through building a home on that section, presumably in a Pakeha suburb, acquire a 'real' turangawaewae. From a Pakeha point of view the logic was persuasive, and integration became the departmental mantra until replaced two decades later by 'tu tangata'.<sup>86</sup>

By the 1990s, another generation of largely urban Māori, whose ties with home marae, ancestral land, and language were much attenuated, were trying to re-establish their whānau and hapū connections and explore ways to build up viable marae-based rural communities.

We make no findings on the generic issues reviewed in this chapter because these have been largely acknowledged by the Crown in the Te Uri o Hau Claims Settlement Act 2002. We reiterate our view that these issues are similar to those that underpin the Te Uri o Hau settlement and apply throughout the Kaipara inquiry district. We now review the claims on the northern margins of Te Uri o Hau lands, and later we consider the claims relating to lands in southern Kaipara.

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85. Ward, *National Overview*, vol 2, pp 426–431; Loveridge, pp 149–152

86. Document G16, pp 6–7

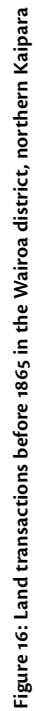


Figure 16: Land transactions before 1865 in the Wairoa district, northern Kaipara

## CHAPTER 4

### OLD LAND CLAIMS IN NORTHERN KAIPARA

#### 4.1 INTRODUCTION

Along the northern edge of the Te Uri o Hau area of interest, as defined by the deed of settlement, a number of Ngā Pūhi hapū have lodged claims in respect of loss of land. Te Rōroa to the north-west and Ngāti Wai to the east have also lodged claims (Wai 632 and Wai 244 respectively). In closing submissions, counsel for Te Rōroa noted that Wai 632 was specific to two areas of land, Te Kōpuru/Aratapu and the Whakahara and Tokatoka blocks, both lying outside the area considered by the Waitangi Tribunal in its *Te Roroa Report 1992*. Counsel also outlined the negotiations between Te Rōroa and the Crown in settlement of their claims on lands north of Dargaville, beyond the Kaipara inquiry district. In closing submissions, Crown counsel advised that the negotiations were still open but that in late 2000 an impasse had been reached which had yet to be worked through.<sup>1</sup> Since the hearing of the closing submissions in late 2001, we have had no further information on the status of these negotiations.

Other claimant groups who presented evidence to the Kaipara Tribunal were Ngāti Kahu o Torongare/Te Parawhau (Wai 619), Te Waiariki/Ngāti Kororā (Wai 620), and the composite group called ‘Ngā Hapū o Whangarei’ (Wai 688), including Te Parawhau and others. The Wai 688 claims embrace all the northern borderlands of Te Uri o Hau, from the Te Kōpuru block on the west coast to Mangawhai on the eastern coast. The Wai 619 and Wai 620 claims centre on the 1854 Crown purchase of the Mangawhai block on the east coast, which is also the subject of Wai 244, the Ngāti Wai claim.

The Mangawhai transaction is discussed in chapter 5. In this chapter, we focus on the claims located in the Wairoa River area of northern Kaipara (fig 16). To provide context, we begin by reviewing the tribal relations in northern Kaipara before giving an overview of the pre-Treaty transactions in this area, drawn largely from claimant research. Subsequent sections focus on the specific issues contested:

- the cession of the Te Kōpuru block to the Crown in 1842 after the muru or retaliatory destruction of Thomas Forsaith’s store at Mangawhare;

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1. Document Q16, pp 123–130

## THE KAIPARA REPORT

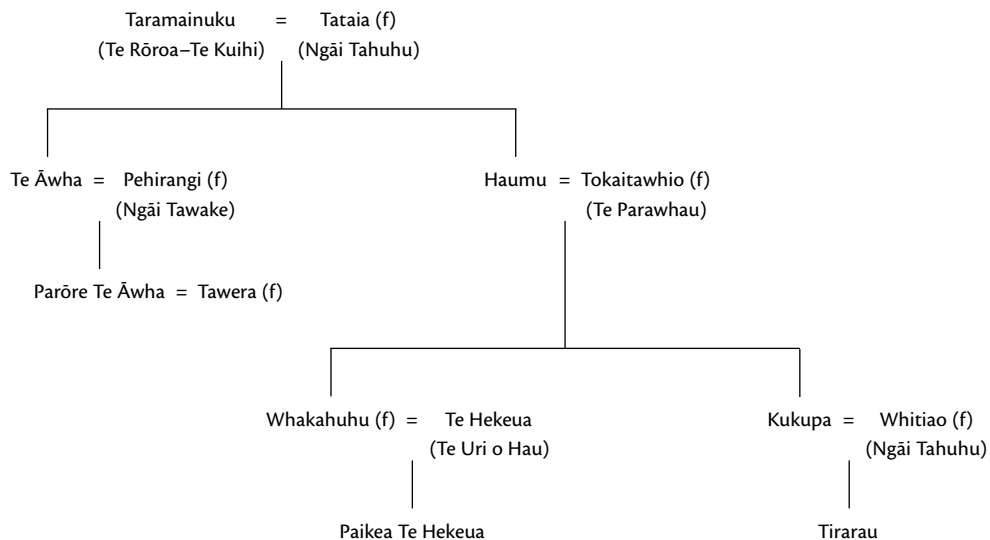
## 4.2

- ▶ the O'Brien old land claim at Whakahara and the Crown's subsequent purchase of the Whakahara and Tokatoka blocks; and
- ▶ the Elmsley–Walton land claim, the Crown's purchase of the Waikiekie block, and the Crown's retention of 'surplus land'.

## 4.2 TRIBAL RELATIONS IN NORTHERN KAIPARA

## 4.2.1 Overview

The northern border of Te Uri o Hau remained a contested zone after the battle of Te Ika ā Ranganui, a zone of complex overlapping rights and kin connections between the Ngāti Whātua and Ngā Puhi confederations. It is important to bear in mind the close kin relationship between the three rangatira, Tirarau, Parōre, and Paikea, who were the principal negotiators of pre-Treaty transactions. They were all immediate descendants of Taramainuku, and further back could trace their ancestry to Tahuhuniorangi, the eponymous ancestor of Ngāi Tahu.



Names in brackets are tribal affiliation. Source: document L2, p 65.

Parōre was closely connected with both Te Rōroa and Te Parawhau. Tawera, his wife, was a half-sister of Tirarau of Te Parawhau, whose mother was of Ngāi Tahu. Paikea was a first cousin of Tirarau, and he identified primarily with his father's people, Te Uri o Hau, although he used his Te Parawhau connections too.

The effect of ancestral marriage alliances on these 'border lands', together with complex use rights and the absence of the concept of sale as a permanent transfer of land and resources,



made up a complex context for early interaction between Māori and Pākehā. The role of these chiefs in early land transactions is significant. There is a good deal of evidence in early deeds of cooperation among them in arranging for places where Pākehā traders and timbermen could settle, and thus bring the desired benefits of trade goods to northern Kaipara people. By the mid-1850s, however, when the Crown had begun to purchase large areas of land in the district, disputes over land rights arose between Tirarau, Paikea, and Parōre and other chiefs of Te Parawhau, Te Uri o Hau, and Te Rōroa. As Te Uri o Hau researcher Maurice Alemann remarked: 'Only when Pakeha surveyors came along with their chains, compasses and maps were territories defined on the ground, and their boundaries and contents "frozen" forever.' As a result, 'Maori suddenly found that through their genealogical connections with various pieces of land – but which they did not occupy at the time – they could share in the proceeds of the sale.'<sup>2</sup>

We have no reason to question the various whakapapa that claimant groups put before us. Nor do we reproduce them in our report, beyond the explanation above of the close relationship of the three principal rangatira who wielded their influence in the nineteenth century. Whakapapa issues belong with the whānau and hapū. We simply comment here that one of the principal functions of whakapapa is to establish relationships with each other. We are mindful, therefore, that, in reaching conclusions about the various claims to northern Kaipara lands, the claimants can usually connect with hapū in both the Ngā Puhi and Ngāti Whātua confederations in these border lands. They all share a common grievance, the loss of most of their lands and resources since 1840.

#### 4.2.2 Spheres of influence

Tirarau wielded the major influence in the 1840s and 1850s in the Wairoa River–Whangarei district. In 1854, land purchase officer John Grant Johnson remarked that 'his influence is paramount, in whichever way it is directed in this part of the island.'<sup>3</sup> He therefore sought the support of Tirarau in pursuing his land purchase negotiations.

The Wesleyan missionary James Buller described Tirarau, who lived near his mission at Tangiterōia as follows:

Our chief, Te Tirarau, was a mild but determined man, – a lion when roused. His tribe was a small one, but his 'mana', or influence, was great. He was a near descendant of the famous Hongi, and, in his youth, was his companion in arms. Few ventured to brave his anger. He could ill brook contradiction. It was impossible for me to avoid a contest with him.

2. Maurice Alemann, 'Early Land Transactions in the Ngāti Whātua Tribal Area', MA thesis, University of Auckland, 1992, pp 1–2

3. Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p 48

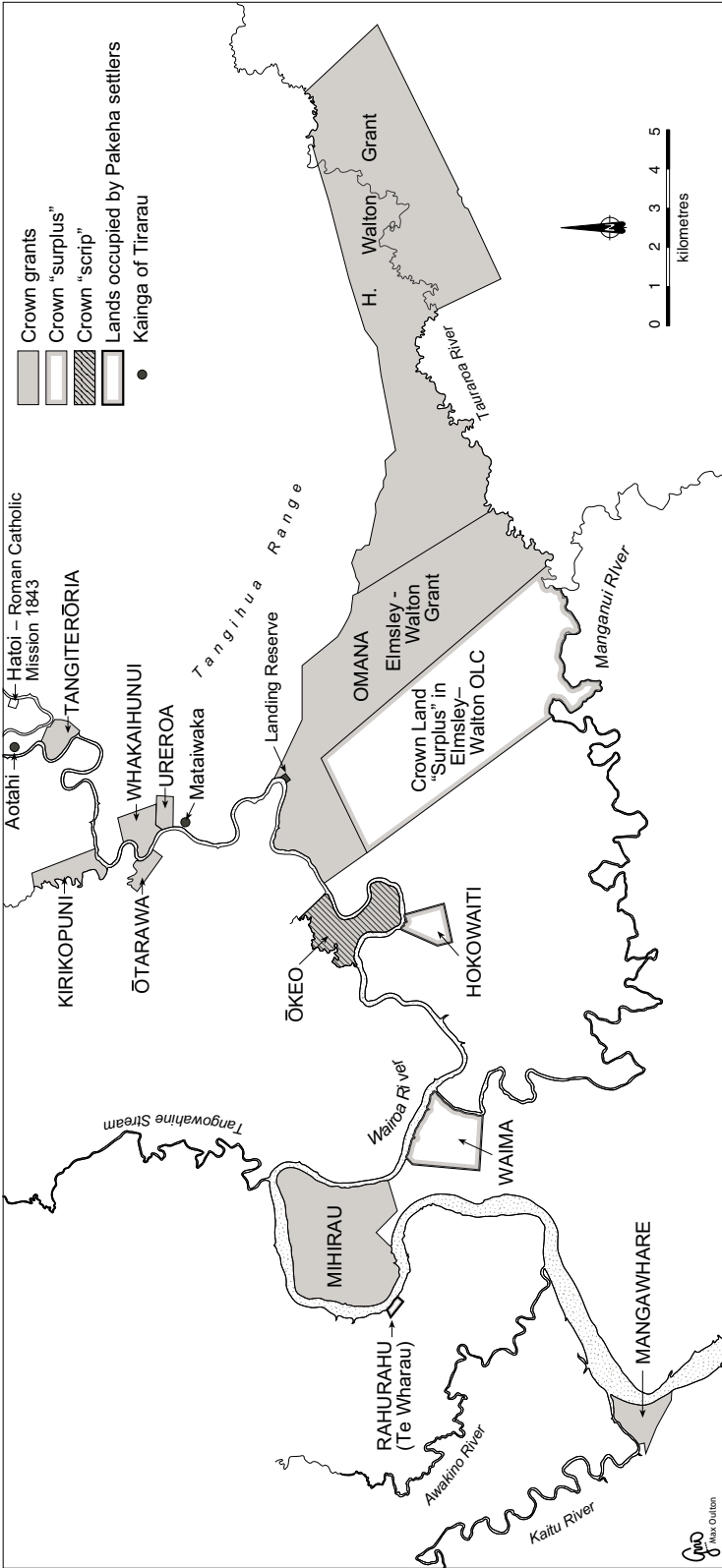


Figure 17: Old land claims on the Wairoa River, northern Kaipara

Buller then explained how he refused to grant an exception for Tirarau on the ‘fixed rules’ he set for any Māori visitor to the mission house to come ‘decently attired’, to knock on the door first, and not to go into his ‘store’. Eventually Tirarau ‘gave up the point, yielded me his confidence, and became my fast friend.’<sup>4</sup> Buller’s wife and children were entrusted to the care of Tirarau whenever the missionary had to travel away from the station.

Te Rōroa researcher Garry Hooker described Tirarau as ‘the dominant force’ in the Wairoa River district in the early nineteenth century. His tribe, Te Parawhau, was ‘mixed people of Ngāi Tahu and Ngā Puhi descent’, whose territory extended from Tangowahine and the junction of the Manganui and Wairoa Rivers, upstream to include the lower Mangakahia Valley, a tributary of the Wairoa, and east to the southern shores of Whangarei Harbour (fig 14).<sup>5</sup> Ngāi Tahu had been much reduced in numbers and power by the killing of so many at Te Ika ā Ranganui and by earlier Ngā Puhi raids on them. Within this territory, however, later Native Land Court investigations acknowledged interests derived from the ancestral Ngāti Rangi, Te Uri o Hau, and Ngāti Toki (a hapū of Ngā Puhi) in the Maungaru block and some interests of Ngāi Tahu in the Tangihua block. Hooker also suggested that Te Parawhau numbers were augmented by people brought in to help extract kauri on the Wairoa River, including Te Uri o Hau refugees from Te Ika ā Ranganui. By the early 1840s, most had returned to their homes.

Downstream on the Wairoa River, Hooker explained, ‘From Tangowahine to Tunatahi (Dargaville) and from the Manganui Stream to Hungahungatoroa block, land interests generally were claimed under Te Kuihi, Parore’s descent group, whose tupuna Taramainuku was of Te Roroa tribe.’<sup>6</sup> Taramainuku was also an ancestor of Tirarau. Hooker has separated out Te Kuihi from Te Rōroa but describes Te Kuihi as a whānau, whose ‘hegemony’ – that is, Parore’s sphere of influence – ‘was artificially created, to the disadvantage of other claimants, by Parore’s advocate, land purchase officer JW Preece.’<sup>7</sup> He provides no evidence for this assertion, and we make no comment. We do observe, however, that Hooker includes the Waima block in the Te Kuihi awards. Yet, in 1839 a deed giving trader George Stephenson the timber-cutting rights on this block was signed by Parore, Tirarau, Paikea, Weinga, and Tāwera, the wife of Parore. In her table of Native Land Court awards, Dr Robyn Anderson, a historical researcher for Wai 688, lists the Waima block, investigated in 1868, as being awarded to Tirarau, with the support of Paikea, and no opposition.<sup>8</sup> This is but one example both of the complexity of kin relationships and of continuing cooperation between them.

4. James Buller, *Forty Years in New Zealand: Including a Personal Narrative, an Account of Maoridom, and of the Christianization and Colonization of the Country by the Reverend James Buller* (London: Hodder and Stoughton, 1878), pp 67–68

5. Document L2, p 61

6. Ibid, p 66

7. Ibid, p 69

8. Document L4, pp 79, 111–112

## THE KAIPARA REPORT

4.3

Dr Anderson notes that in Native Land Court investigations the ancestral rights claimed by individuals over different parts of the Wairoa River district varied:

Whakapapa rather than conquest was seen as the key to tribal relations and patterns of right-holding. Tirarau and Taurau [his brother] pointed to different ancestors as the source of their rights in different regions: Tawhiro at Whangarei itself, but Tahuu in Tangihua, and Taramainuku (of Te Roroa) in the western Wairoa and Kaihu region. This reflected the different stages of migration into those areas and various practices of gifting, tribute, and intermarriage. Witnesses from the Whangarei tribes, describing their rights in the land to the west, often went back to the ancestor already on the land when they arrived, indicating the consolidation of rights by a close network of marriage alliances.<sup>9</sup>

Hooker described the migration of Te Rōroa ancestors southward from Muriwhenua to Hokianga to the Kaihū Valley: ‘The migrating tribes underwent processes of fusion and fission.’<sup>10</sup> Alemann also emphasised the complexity of kin relationships and warned against ‘simplification’ in thinking in terms of discrete whānau, hapū, or iwi:

the diverse tribes of Ngati Whatua [confederation] do not trace their ancestry monolithically from one ancestor, or from one canoe. In various times, and in different circumstances these tribal groups have been allied, or fought against each other, and have never formed one solid and massive tribal identity.<sup>11</sup>

Alemann also commented that the territories of Māori communities waxed and waned and often overlapped, and claims to them were weaker or stronger according to the circumstances at the time. We are careful, therefore, to avoid assigning precise territorial boundaries to any specific Māori group.

#### 4.3 OLD LAND CLAIMS ON THE WAIROA RIVER

From 1836 onward, a small number of Pākehā traders and sawyers drifted into the Wairoa River area, attracted by the massive stands of kauri forest. Local Māori leaders welcomed them because they were anxious to participate in the trading opportunities they had seen in the Bay of Islands and in the kauri-timber trade in the Hokianga. The timbermen and traders made various arrangements with local chiefs to build homes and trading stores and to cut timber. The principal chiefs, Tirarau, Parōre, and Paikea, cooperated in encouraging the first Pākehā traders and signed the deeds providing them with land.

Most of these pre-Treaty transactions on the Wairoa River therefore appear to have been

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9. Document L4, p 12

10. Document L2, p 47

11. Alemann, p 2

## OLD LAND CLAIMS IN NORTHERN KAIPARA

4.3

| Block        | Purchaser                                   | Vendor                                                          | Date on deed      | Area (acres) |                  |
|--------------|---------------------------------------------|-----------------------------------------------------------------|-------------------|--------------|------------------|
|              |                                             |                                                                 |                   | Claimed      | Granted          |
| Tangiterōria | Wesleyan Mission                            | Tirarau<br>Paieka                                               | 17 November 1836  | 400          | 133              |
| Kirikopuni   | William Christmas                           | Paieka                                                          | 20 January 1840   | 1000         | 250              |
| Whakaihunui  | Alexander Ross                              | Tirarau<br>Paieka<br>Weinga                                     | 17 December 1839  | 300          | 198              |
| Ōtarawa      | Edmund Ruff                                 | Tirarau<br>Pou                                                  | 3 January 1840    | 80           | 80               |
| Ureroa       | Edmund Ruff                                 | Tirarau<br>Pou                                                  | 27 December 1837  | 80           | 80               |
| Ōmana        | Thomas Elmsley, Henry<br>and Charles Walton | Tirarau<br>Weinga<br>Taurau<br>Pārore<br>Ahu and others         | 7 September 1839  | 6000         | 11,708           |
| Okeo         | Edward Lord                                 | Paieka                                                          | 10 January 1840   | 5000         | 539 <sup>†</sup> |
| Hokowaiti    | Gregor McGregor                             | Tirarau                                                         | June 1840         | 206*         |                  |
| Waima        | George Stephenson                           | Parōre<br>Tirarau<br>Paieka<br>Weinga<br>Tawera (Parōre's wife) | 17 February 1839  | 800          | —                |
| Mihirau      | John Whitehead<br>MacNee                    | Parōre<br>Paieka<br>Weinga<br>Tawera                            | 22 October 1839   | 4000         | 2232             |
| Rahurahu     | George Stephenson                           | Parōre<br>Tirarau<br>Paieka<br>Weinga<br>Tawera                 | 17 February 1839  | 20           | —                |
| Mangawhare   | Thomas S Forsaith                           | Tirarau<br>Paieka                                               | 10 September 1839 | 400          | 251              |

\* Leasehold

† Scrip

Table 4: Principal pre-Treaty transactions on the Wairoa River

uncontested. They became old land claims when the Pākehā claimants applied to the Land Claims Commission in the early 1840s to have their deeds translated into Crown grants for land. Some individuals, however, such as George Stephenson, remained on land allocated to them by local Māori without any Crown grant. A summary of the principal transactions is shown in table 4, beginning at Tangiterōria and working downstream to Mangawhare. The lands involved are shown in figure 17, and the payments made for these transactions are summarised in table 5.

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| Block        | Area on survey | Cash<br>(£) | Goods<br>(£ s d) | Total value<br>(£ s d) |
|--------------|----------------|-------------|------------------|------------------------|
| Tangiterōria | 133            | 20          | 20 0 0           | 40 0 0                 |
| Kirikopuni   | 250            | ?           | ?                | 282 9 0                |
| Whakaihunui  | 198            | 60          | —                | 60 0 0                 |
| Ōtarawa      | 80             | 10          | 21 15 0          | 31 15 0                |
| Ureroa       | 80             | —           | 36 0 0           | 36 0 0                 |
| Ōmana*       | 11,708         | 30          | 643 1 0          | 673 1 0                |
| Ōkeo         | 539            | ?           | ?                | 305 8 0                |
| Hokowaiti    | 206            | ?           | ?                | Lease                  |
| Waima        | 800            | 100         | 64 0 0           | 164 0 0                |
| Rahu Rahu    | 20             | —†          | ?                |                        |
| Mihirau      | 1818           | 60          | 818 5 6          | 878 5 6                |
| Mangawhare   | 251            | 50          | 90 7 0           | 140 7 0‡               |

\* The summary figure provided by Byrne for Omana contradicts the figure provided in the original document record which can also be viewed in Byrne, p 313. The figure used in this report is from the original document.

† Given for services and presents.

**Table 5: Payments for principal pre-Treaty transactions on the Wairoa River. Source: T B Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: T B Byrne, 2002), pp 307–336**

Only some of the pre-Treaty transactions are within the Kaipara inquiry district – those from Ōmana downstream – and most were uncontested. The extensive claims of Thomas Elmsley and Henry and Charles Walton at Ōmana are reviewed in section 4.6.

Ōkeo was purchased in 1839. Shortly afterward, Edward Lord of Sydney, through his agents W S Grahame and Thomas Forsaith, sent two men with agricultural implements and stores to begin farming the land. Later, Henry Walton was appointed agent to look after the farming development. By 1844, when the land was before land claims commissioner Edward Godfrey, Lord had died and the trustees of the estate advised that his interests in the land should be transferred to Walton. Although Godfrey had recommended a grant of 305 acres, for some reason Governor FitzRoy awarded £2000 in scrip to Walton. On survey, the land was found to be 539 acres, which reverted to the Crown. In 1856, the Crown sold 340 acres of Ōkeo to Gregor McGregor, who had been occupying 206 acres of the Hokowaiti block, across the river from Ōkeo, since 1840 in an informal lease arrangement with Tirarau.<sup>12</sup>

George Stephenson, a carpenter and Wesleyan lay preacher at the Mangungu mission station in the Hokianga, arrived on the Wairoa River in January 1836 as a timber trader and settler. By July, he had negotiated the occupation of a site at Te Wharau, on the Rahurahu block, where he built his house and trading station. In his statement of claim to the Land Claims Commission, Stephenson said that Rahurahu was gifted to him by the chiefs on account of him being the first European resident and in recognition of his gifts and services

12. T B Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: T B Byrne, 2002), pp 328–329

for them. He also negotiated timber-cutting rights on the Waima block. The actual deeds of sale of these lands were not signed until February 1839. Although Stephenson lodged claims to both the blocks, they were disallowed by Godfrey because he refused to pay the required fees. In fact, he probably could not afford to pay because of the downturn in trade that followed the armed conflict in the north in the mid-1840s. In 1847, Stephenson and his family moved to Auckland, where he worked as a carpenter and builder and where he often acted as a pilot for chartered vessels on Kaipara Harbour during the early 1850s. The Waima and Rahurahu blocks remained Māori land.<sup>13</sup>

In August 1839, Dr John MacNee, a doctor of medicine and a partner in the Sydney firm Paul and Company, went to Kaipara in search of land. His partners were W S Grahame and W Wright, who also acquired several thousand acres of Te Wairau on the upper Ōtamatea River. The Mihirau block was negotiated by Thomas Forsaith as interpreter and put in MacNee's name. At some time in 1842, MacNee ran into financial difficulties and agreed to transfer his one-third share to the trustees of Paul and Company when the Crown grant was issued. In 1844, Godfrey recommended a grant of 2232 acres be made to MacNee, but by then he had died. In October 1853, Grahame, as the trustee of MacNee's estate, put his one-third share in Mihirau up for auction. The successful bidder was Henry Walton, but in 1856 he transferred this share to Grahame. When a Crown grant for 1818 acres was finally issued in 1858, it was in Grahame's name only.<sup>14</sup>

Mangawhare was the site of Forsaith's trading station, which had been established in 1839 at the confluence of the Kaihū and Wairoa Rivers, and was now part of the town of Dargaville. The destructive raid on Forsaith's station by local Māori in 1842, which led to the cession to the Crown of the Te Kōpuru block, is described in the next section. Forsaith left Kaipara soon after this incident, leaving a manager in charge of the trading station. He sold the property in 1851 to Hastings Atkins, to whom the Crown grant was finally awarded in 1864.<sup>15</sup>

The pre-1840 pattern of Māori villages, trading stations, and kauri-timber extraction based on the Wairoa River persisted through the 1850s (fig 18). In later sections, we review the land claims contested in the 1850s, but we turn now to a transaction that was not strictly an old land claim but a cession to the Crown of land at Te Kōpuru in 1842.

#### 4.4 THE FORSAITH MURU AND THE CESSION OF TE KŌPURU

The muru was the destructive raid on Thomas Forsaith's trading store at Mangawhare in February 1842. The background to this issue is summarised in the preamble to the Te Uri o Hau Claims Settlement Act 2002. Under the heading 'Te Kōpuru land', clause 5 states:

13. Ibid, pp 335–336

14. Ibid, pp 319–320

15. Ibid, p 310

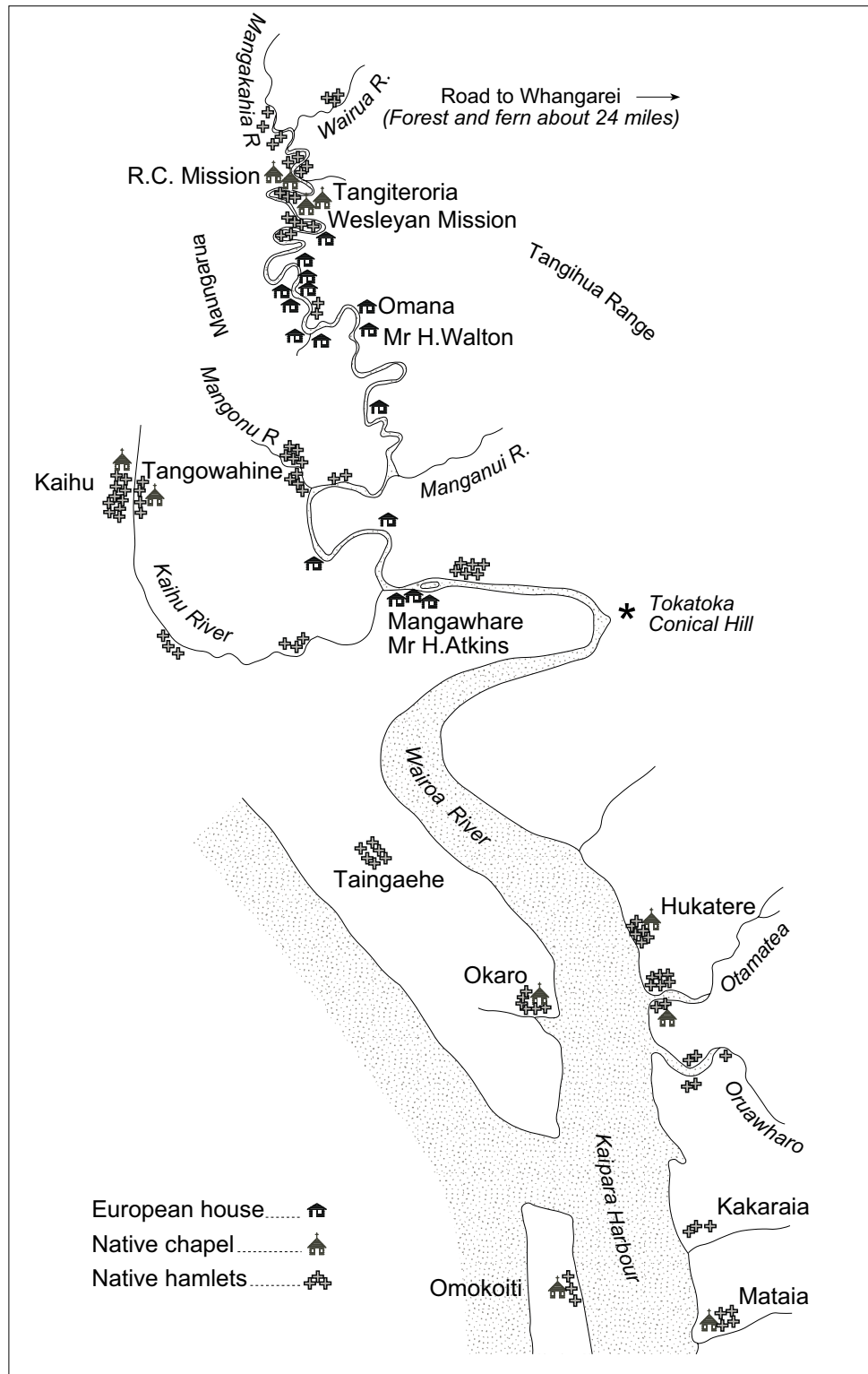


Figure 18: Sketch of the Wairoa River, 1852. Based on an anonymous sketch in TB Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: TB Byrne, 2002), p 126.



In 1842, the Protector of Aborigines prevailed on chiefs of Te Uri o Hau and Nga Puhi to cede an area of land as restitution for the plunder of the store of a local resident. Maori suspected that the store owner had desecrated an urupa and removed human remains. Representative chiefs selected an area of land at Te Kopuru for this purpose. The Crown made no payment for the land and retained the area as punishment for the plunder. Uncertainty surrounded the boundaries of the ceded block and the area does not appear to have been surveyed until 1857, when land to the south of Te Kopuru was purchased by the Crown. It is estimated that the block contained 6000 to 8000 acres.

In section 8 of the Act, the Crown acknowledged a number of historical claims and breaches of the Treaty of Waitangi and its principles. Paragraph (c) states:

The Crown acknowledges that the process used to determine the reparation for the plunder of a store, which led Te Uri o Hau chiefs and others to cede land at Te Kopuru as punishment for the plunder, was prejudicial to Te Uri o Hau. The Crown acknowledges that its actions may have caused Te Uri o Hau to alienate lands that they wished to retain and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

The northern Wairoa rangatira involved included Paikea of Te Uri o Hau and Tirarau of Te Parawhau. Te Uri o Hau claims regarding this cession have been settled. However, two claims relating to it remain within the Tribunal's jurisdiction. One is the Wai 688 claim (Ngā Hapū ō Whāngārei), which has not been particularised in relation to this issue.<sup>16</sup> Counsel for Wai 688 stated in closing submissions that he relied on the submissions of others to detail this grievance.<sup>17</sup> We will treat the Wai 688 claim as relating to the interests of the non-Te Uri o Hau participants in the muru and cession: that is, Te Parawhau and related hapū of Ngā Pūhi.

The Te Kōpuru cession is also the subject of a claim by the Wai 632 claimants, Ngāti Whiu and Ngāti Kawa hapū of Te Rōroa, who say that they were the traditional owners of land within the Te Kōpuru block. The Wai 632 claimants allege that:

- ▶ the transfer of the Te Kōpuru block was forced by the Crown without proper investigation of the circumstances of the muru;
- ▶ the alleged perpetrators of the muru had no interests or rights in the ceded land and had no authority to transfer it to the Crown;
- ▶ the Crown failed to ascertain the proper owners of the block or to protect the interests of those owners;
- ▶ the Crown failed to ascertain the extent or value of the Te Kōpuru land or to investigate whether the value of the ceded land bore any relationship to Forsaith's alleged losses; and

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16. Claim 1.22(a), para 5.4

17. Document Q2, p 8

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- ▶ despite subsequent protests by Ngāti Whiu and Ngāti Kawa, no redress consistent with Treaty principles has been provided to them by the Crown.<sup>18</sup>

We now set out the history of the Te Kōpuru cession.

**4.4.1 Clarke's investigation of the muru of Forsaith's store**

Thomas Forsaith and his wife had settled at Mangawhare in 1839 after negotiating the purchase of about 400 acres from Tirarau and Paikea. According to the Wesleyan missionary James Buller, they intended to farm the land and trade in timber. Late in 1841, they were both away, travelling south, having left employee Elihu Shaw in charge. Buller, writing some years later, described the muru of Forsaith's store:

On 17th January [1842], I heard that a *muru*, or robbery had been perpetrated. At once, I had my boat launched and repaired to the place. It was true: all that was movable had been carried away; doors and windows smashed; floors and partitions pulled to pieces. Only the house in which Shaw and his family lived was respected.

Buller had already heard in November 1841 that 'some natives, while waiting for the return tide, accidentally picked up a human skull, and hastily concluded that Mr Forsaith must have gotten it from one of their old burial grounds hard by'. Buller understood how outraged local Māori would be if this were so, but he suggested that they wait until Forsaith returned. He also wrote to Forsaith warning him. However, rumours spread among local Māori and, according to Buller, 'Weinga' (Te Wheinga) instigated the muru, leading a group of about 150 men. Buller immediately reported the incident to the Government at Auckland.<sup>19</sup>

The protector of aborigines, George Clarke, was instructed by Governor Hobson to investigate, and in early March 1842 he and Forsaith travelled to Mangawhare. They arrived there on 9 March to find the store stripped bare. On 12 March, Clarke held a meeting at Tirarau's kainga near Tangiterōria to discuss the incident. The meeting was attended by about 200 Māori, including Tirarau, Parōre, Paikea, and Te Wheinga (who was Parōre's first cousin and was also related to Tirarau and Paikea). Also in attendance were Forsaith, Buller, and several settlers.<sup>20</sup>

Clarke began by calling on the chiefs to give their accounts of the muru, explaining that both he and the Governor had the highest respect for Tirarau and they could not believe that he would commit such an act, except through great provocation or through bad advice from disaffected persons. Tirarau replied that he had 'commissioned the outrage and completed it and was then ready to justify it'.<sup>21</sup> He testified that his brother, Taurau, had seen a skull

18. Claim 1.25(b), paras 3–7

19. Buller, pp 84–85

20. Document A3, p 10. For a discussion of Te Wheinga's whakapapa, see document 1.2, pp 83–85.

21. Clarke's notes of meeting of 12 March 1842, enclosed with Clarke to Hobson, 15 March 1842, and with Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A3, p 11)

in Forsaith's store and that Tirarau and Taurau had confronted Elihu Shaw about the matter. Asked where the skull had come from, Shaw had nodded in a direction which Tirarau took to be indicating a nearby wāhi tapu or sacred place. On this occasion, Tirarau and Te Wheinga were dissuaded from plundering the store, apparently by Buller and Parōre.<sup>22</sup>

The next witness was Parōre, who stated that a visiting rangatira named Opataia had seen three heads in Forsaith's store. Parōre had then visited the store with George Stephenson and, although their evidence differed somewhat, the two men agreed that there had been a skull in the shop. It was apparently after this visit that the muru took place. Tirarau described how he, Paikea, Te Wheinga, and 100 others had gone to Mangawhare to carry out the muru. After destroying the store, they had buried the skull in an urupā.

Finally, Forsaith gave evidence, saying that he had known nothing about the skull. However, following the muru Forsaith's wife had told him that she had found the skull near the water's edge and that it had ended up in the potato store.<sup>23</sup> Although the presence of a skull in a potato store would have been particularly abhorrent to Māori, the evidence of the other witnesses suggested that the skull had been seen in the general store itself.

After hearing this evidence, Clarke told Tirarau that he could see no justification for the muru and that he would withdraw from the meeting so that the Māori could consider how Forsaith could be compensated for his losses. Some objected strongly to the mention of compensation, but Clarke left them to consider the matter. During the adjournment, another witness came forward, 'Paul' (Pāora Tokatea), a Christian Māori from Buller's mission station. Paul gave his evidence in private, telling Clarke that on a visit to Forsaith's place he and his family had seen a skull lying beside the river. Clarke accepted this evidence without giving the assembled Māori any opportunity to question Paul. Clarke considered that the new evidence established clearly that the skull had not been taken from a wāhi tapu. On being told of Paul's testimony by Clarke, the other Māori were left speechless until a furious Tirarau asked why Paul had not come forward earlier with his evidence. Tirarau said that, had he known this information, he would have prevented the stripping of Forsaith's store.<sup>24</sup>

After further discussion, Clarke suggested to the meeting that those involved in the muru should give up a piece of land as 'the best and quietest mode of adjusting all differences'. However, 'not a word would they hear about land, they declared it would be a degradation to do such a thing. The Governor should have no land here until he first killed them and their children.'<sup>25</sup> Clarke then left the meeting.

Buller, who had provided accommodation for both Clarke and Forsaith, wrote the following account of the meeting some years later:

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22. Document A3, pp 11–12

23. Ibid, pp 12–14

24. Ibid, pp 14–16

25. Clarke to Hobson, 15 March 1842, enclosed with Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A6(t), p 12)

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A large and orderly meeting was convened. The natives stated their case, and defended their proceedings. Mr Forsaith admitted that he knew the skull was on his premises, but could not tell how it got there; it was found one day by the riverside. Mr Clarke, on behalf of the Government, claimed compensation. Their reply was, that the Governor might take them as payment, – which meant, of course, if he could.

During a recess for dinner, Mr Forsaith had some talk with Paora Tokatea, who could call to remembrance that he had seen the said skull there, in a position as though it had been washed down with a flood. Paora was a Christian, and, although a slave, no one doubted his word. His evidence was taken as decisive. Stung by a feeling of remorse, Tirarau laid hold of a gun, and would have shot the poor man on the spot, had not Parore held him back, while Tito led Paora away.

The result was that, on the Monday, a block of land was ceded to the Government, in restitution for what they had taken. A large steam saw-mill now employs a number of hands on that land – Te Kopuru, the property of Messrs Grahame and Walton. To Mr Forsaith the loss proved an ultimate gain. Refunded by the Government, to the amount of his estimated loss, he removed to Auckland, where he prospered in business . . .<sup>26</sup>

**4.4.2 The cession of Te Kōpuru**

The meeting was followed by an exchange of letters between Clarke and Tirarau. Clarke wrote to Tirarau saying that the skull seen inside the shop had been ‘a thing laying about the water side’ and called on him to settle the matter peaceably. He concluded the letter by saying that evil and war would soon come, not from the Governor but ‘by yourselves only’. The Governor did not wish for war, but ‘he will not look carelessly on the plunder of white people.’<sup>27</sup> Despite Clarke’s protestations that both he and the Governor would strive to settle the matter peacefully, these remarks may have seemed to Tirarau like a veiled threat of war. The letter certainly provoked a strong reaction from him, because he replied: ‘We will not pay, if your hearts are dark write to the Governor to kill us.’<sup>28</sup> Clarke responded by accusing Tirarau of writing a ‘fighting answer’, and told him that the Governor wanted the matter settled peacefully with ‘a piece of land or some timber’.<sup>29</sup>

The desire of Tirarau and others to remain on good terms with the Government, and perhaps also Clarke’s talk of war, evidently overcame the initial Māori resistance to the suggestion of giving up land as compensation for the muru. On 15 March 1842, Clarke reported

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26. Buller, pp 87–88

27. Clarke to Te Tirarau and tribe, 12 March 1842, enclosed with Clarke to Hobson, 15 March 1842, and with Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A3, p17)

28. Ibid

29. Clarke to Te Tirarau, 14 March 1842, enclosed with Clarke to Hobson, 15 March 1842, and with Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A3, p18)

to Hobson that a meeting had been held at Paikea's residence attended by Tirarau, Paikea, Te Wheinga, and others. There, it had been agreed that a piece of land on the Wairoa River would be given up to the Crown in payment for the plunder of Forsaith's store. The location of this land was established by place names which were given to Clarke at the meeting, but Clarke could not get Tirarau to accompany him down the river to show him the boundaries on the spot.<sup>30</sup>

Hobson then sent the Surveyor-General, Charles Ligar, to examine the land ceded. Tirarau gave Ligar a sketch map of the boundaries of the block, drawn in Ligar's presence, a copy of which is reproduced in figure 19. At the top of this sketch map is the caption 'Plan of the land ceded by the Chiefs Ti-ra-row [Tirarau], Pikah [Paikea] and Wing [Te Wheinga] in compensation for injuries inflicted on the properties of British born subjects'. At the bottom is the further explanation:

Drawn out in my presence under the instructions of the head Chief Ti-ra-row and given to me by him for my guidance. I could not prevail on this Chief to accompany me to the ground, but some of his tribe pointed out the above boundaries which are well defined and known.

Signed CW Ligar

The eastern boundary of this land is clearly shown as the Wairoa River; the northern boundary is Te Aratapu Stream and the southern boundary is Te Makaka Stream. On the western boundary is a line connecting these two streams with the inscription 'Terai na terepo ke utu'. This would read 'Te raina te repo ki a utu', meaning 'the boundary line is the swamp for the payment'. The use of 'ke' instead of 'ki a' can be attributed to poor transcription of Māori speech. In this report, Ligar, who knew little Māori and had no interpreter, said that he had been unable to determine whether Tirarau meant this line to indicate the sea or a range of sandhills parallel to the coast.<sup>31</sup> Hooker suggested that the description of the line should read 'Te raina terepo ki uta', meaning 'The line [from] the swamp inland'.<sup>32</sup> It is unnecessary to reinterpret the word 'utu', meaning payment or compensation, as 'uta', or inland, because it is apparent from Tirarau's sketch that the line intersected the two creeks which formed the northern and southern boundaries. Since these creeks did not run through the sandhills and had their source in the swamps that lay to their east, it is quite clear that the western boundary was supposed to be some distance inland. If it had been intended that the sea should form the western boundary of the block, Tirarau would surely have said so plainly. Ligar estimated that, if the western boundary ran along the sandhills, the block would not exceed 10 square miles (6400 acres) in area, whereas if the boundary extended to the coast, another

30. Document A3, pp 19–20; Clarke to Hobson, 15 March 1842, enclosed with Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A6(t), pp 5–15)

31. Ligar to Colonial Secretary, 28 April 1842, IA1/1860/1804, Archives NZ (doc A6(k), pp 49–56)

32. Document L2, pp 88–89

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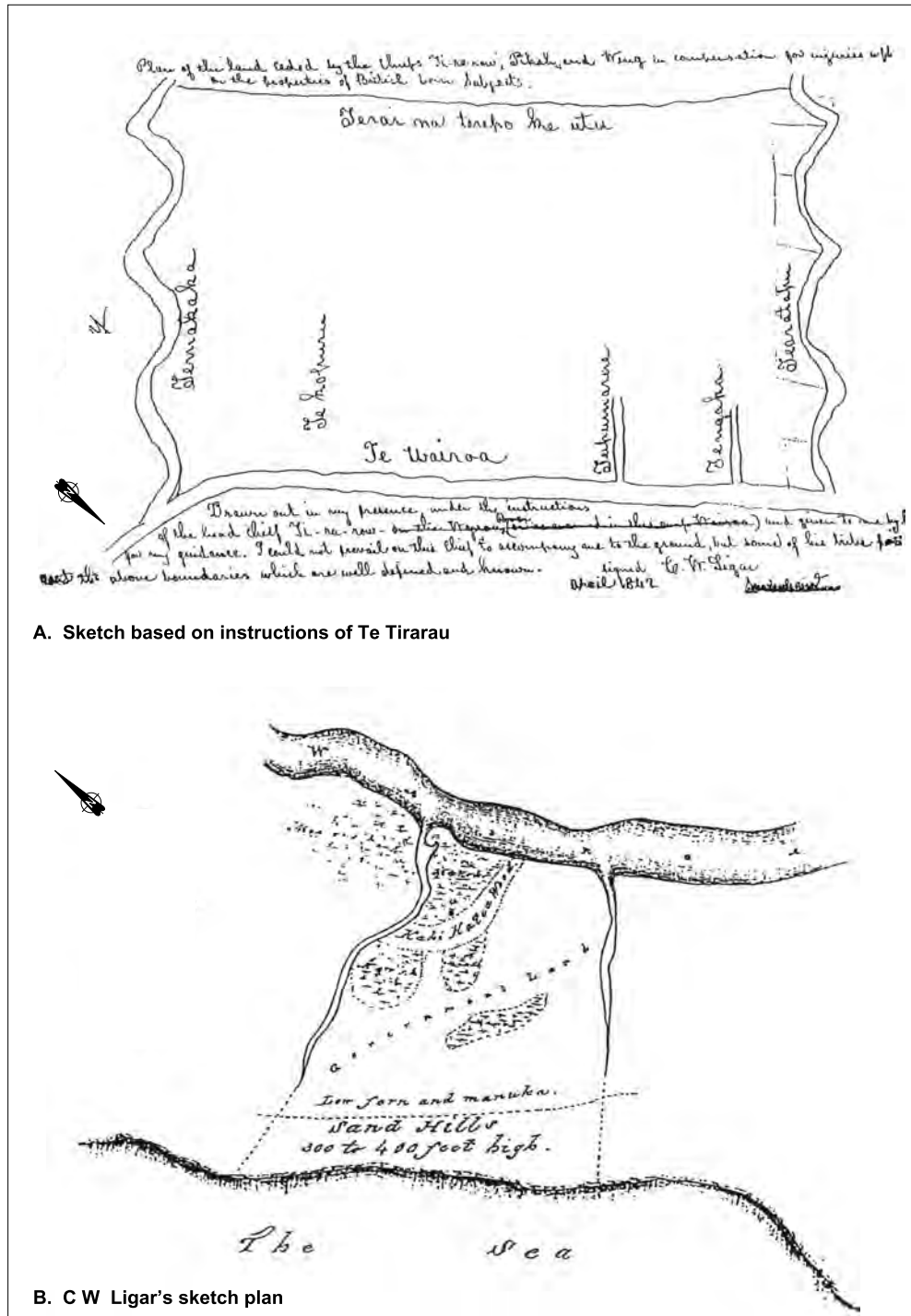


Figure 19: The Te Kōpuru block, 1842

seven square miles (4480 acres) would be added. While this additional land was described by Ligar as 'sandy waste', Māori probably viewed it as an important food source, since it contained Lakes Kapoai and Parawanui, as well as providing access to the sea for kaimoana. In addition, Te Uri o Hau researcher Bruce Stirling states that it included old pā sites.<sup>33</sup>

None of the rangatira would accompany Ligar to the land, because they were too busy trading with a schooner further up the river. When he went to examine the block, however, Ligar was accompanied by two Māori, who apparently pointed out the boundaries to him. He was not impressed by what he saw, finding the land barren and swampy, and he reported as much to Hobson. With his report, he enclosed the rough sketch map of the block, which showed a small area of kahikatea forest in the 'marsh' (fig 19).<sup>34</sup> It seems that the Crown went no further in defining the extent of the ceded block by survey until the adjoining Tātārāiki block was purchased in 1857. There is no evidence of a deed of cession of the Te Kōpuru block having been signed either in 1842 or subsequently. Figure 20 shows the surveyed boundaries of the Te Kōpuru and adjacent blocks in 1924, although most of this area has been resurveyed and subdivided since.

While he was in the area in 1842, Ligar also made a careful assessment of Forsaith's losses. On this basis, the executive council accepted £678 as the value of those losses, and awarded Forsaith an equivalent in land (678 acres). Forsaith elected to take this award as scrip, and the scrip certificate passed in turn to the settlers to whom he owed money.<sup>35</sup> It is clear that any notion of using the ceded land at Te Kōpuru to compensate Forsaith for his losses had been abandoned. Instead, the entire block would be retained by the Crown.

The payment of compensation to Forsaith was in accordance with the instructions of Lord Stanley, the Secretary of State for the Colonies, who wrote that compensation should be made without reference to the value of the ceded land. In Stanley's view, the land at Te Kōpuru should be regarded as Crown property acquired in the course of a 'penal infliction'.<sup>36</sup> Despite approving compensation to Forsaith, Stanley expressed some disapproval of Clarke's actions in two dispatches sent in October 1842. He remarked that he was not entirely satisfied that the plunder of Forsaith's store was altogether unprovoked, and he emphasised the importance of encouraging Māori 'to be satisfied with our mode of administering justice and to abandon their own'. To this end, Stanley suggested that desecration of a wāhi tapu (the crime of which those who carried out the muru believed Forsaith to have been guilty) should be made subject to a severe penalty so that Māori would not feel the need to inflict punishments of their own.<sup>37</sup> With regard to the cession of the land at Te Kōpuru, Stanley commented that the imposition of such a penalty was 'of too questionable a propriety to be often repeated'. A policy of taking large areas of land whenever Māori committed 'outrages'

33. Ligar to Colonial Secretary, 28 April 1842, IA1/1850/1804, Archives NZ (doc A6(k), pp 49–51); doc A3, p 25

34. Ligar to Colonial Secretary, 28 April 1842, IA1/1850/1804, Archives NZ (doc A6(k))

35. Document A3, pp 23–24

36. Ibid, p 21

37. Stanley to Hobson, 5 October 1842, G1/6, Archives NZ (doc A3, pp 21, 33)



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would, he continued, have the ‘most dangerous consequences’ for both the welfare of Māori and the peace of the colony.<sup>38</sup>

Although Clarke had been uncompromising in his insistence that those involved in the muru would have to give up land in recompense, he showed greater understanding of the Māori position when he reported on the incident in a general account of his March 1842 visit to Northland. Noting that Tirarau had believed that the skull in Forsaith’s store had been taken from a wāhi tapu, Clarke explained that ‘this impression was greatly strengthened by the fact that Europeans had robbed their Sepulchre and were in a habit of carrying them [ie, bones] on board ships’. Because Forsaith traded with such ships, the suspicion had arisen that he had taken Māori skulls on board. In addition, Māori had been told by some Pākehā that Europeans ground up the bones and used them in medicines. Clarke was therefore unsurprised at Tirarau’s disgust and initial refusal to consider compensation for the muru. He observed that to Māori such desecration was the greatest crime that could be committed next to murder, and it was punishable not only by plunder but by death.

Clarke also tried to convince Tirarau of the ‘necessity of referring all their disputes to the Governor and not to take the law into their hands’. In response, Tirarau ‘made some very natural remarks both as to the distance and delay’ but said that, if the Governor would send to them an official who knew their language and customs, Māori would be much more willing to refer their disputes to him and to abide by his decisions. Clarke also mentioned that Pākehā were continually threatening Māori ‘in every little difficulty that they will write to the Governor and have them tied up or hung as occasion may require.’<sup>39</sup> In such an environment, and in the absence of a Government official to whom they could appeal, it is not surprising that Tirarau and others decided to exact their own punishment for what they perceived to be an extremely serious crime.

#### 4.4.3 Subsequent history of Te Kōpuru

The history of Te Kōpuru between 1842 and 1857 is not known, but it appears that no proper survey had been carried out prior to 1857, when the Tātārariki block immediately to the south of Te Kōpuru was purchased by the Crown. While the date of the survey of Te Kōpuru is unclear, it is apparent that the boundaries which were eventually surveyed were not those given by Tirarau in 1842. Tirarau had described a block bounded by the Wairoa River, the Aratapu and Makaka Streams, and a line intersecting the two streams. Instead, the surveyed boundaries of the block were: in the east, the Wairoa River and a small portion of the Aratapu Stream; in the west, the sea; in the south, a straight line from the mouth of the Makaka Stream to the coast; and, in the north, a straight line starting part-way along the

38. Stanley to Hobson, 27 October 1842, G1/6, Archives NZ (doc A3, pp 21, 33)

39. ‘Chief Protector’s Report of a Visit to the Northern Parts of the Island’, [1842], IA1/1850/1804, Archives NZ (doc A6(k), pp 9–10)



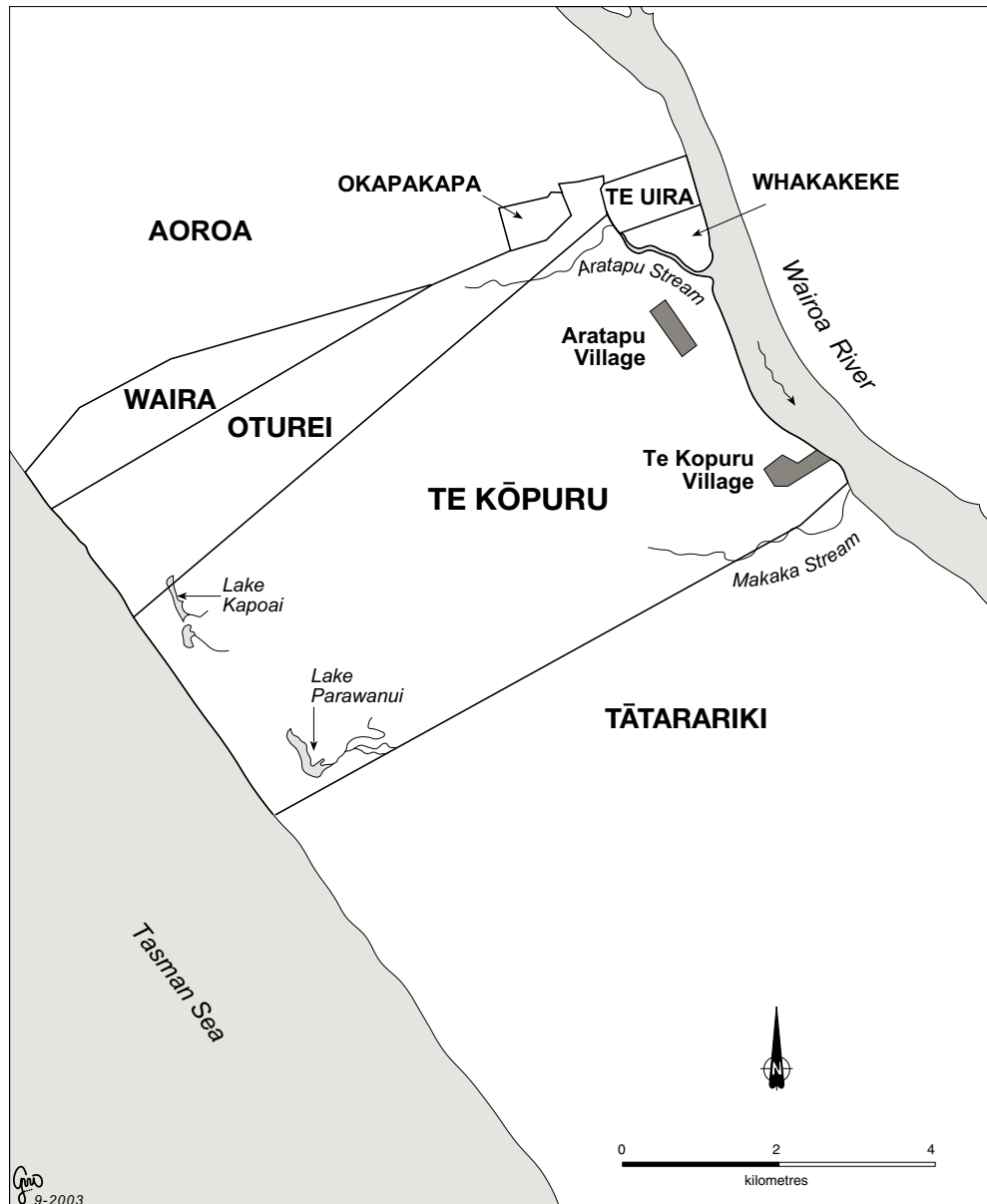


Figure 20: The surveyed boundaries of the Te Kōpuru block, 1924

Aratapu Stream (fig 20).<sup>40</sup> As a result, the Crown land in the Te Kōpuru block was substantially larger than the area ceded by Tirarau and the others. The block was said in 1919 to contain between 9000 and 10,000 acres.<sup>41</sup>

Reporting on the purchase of Tātārāriki in February 1857, the district land purchase commissioner, John Rogan, referred incorrectly to Te Kōpuru as an old land claim of Forsaith's,

40. See the twentieth-century plan of the block from LS1/7255, Archives NZ (doc A6(m), p 76).

41. Under-secretary, Department of Lands and Survey, to Minister for Lands, 30 September 1919, LS1/7255, Archives NZ (doc A6(m), p 52)

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‘a portion of which however the Natives now repudiate.’<sup>42</sup> It is not clear from Rogan’s report which Māori were involved or which portion of Te Kōpuru they claimed. However, in 1861 Rogan provided more specific information about those who were repudiating the cession. By that time, he was aware that the land had been ceded following the muru of Forsaith’s store. Rogan wrote that the Ngāti Kawa rangatira Rapana and his people represented themselves as the true owners of the land and repudiated the cession. Rogan reported that he had been unable to locate the documents regarding the cession of Te Kōpuru, and he therefore declined to express an opinion on the matter to Rapana’s people.<sup>43</sup>

The associations of Ngāti Kawa and Ngāti Whiu with Te Kōpuru were set out in the evidence of Garry Hooker, who stated that they were living there at the time of Te Ika ā Ranganui but relocated to Hokianga following the battle.<sup>44</sup> There is no evidence from the time of the cession to suggest that members of these two hapū took any part in the decision to cede the land. The only suggestion that they were involved came in the evidence that Parāone Pairama of Te Uri o Hau gave to the Native Land Court in 1908. Responding to a Ngāti Whiu claimant who had asserted that Paieka and Tirarau had given away Te Kōpuru despite having no right to do so, Pairama listed those who he said had been involved in the cession, and his list included members of Ngāti Whiu and Ngāti Kawa.<sup>45</sup> It is possible that Pairama was conflating the original cession with an out-of-court settlement (which his father had helped to arrange) of an 1867 Native Land Court case, described below. In the absence of any corroborating evidence for Pairama’s claim, and given the history of protest about Te Kōpuru from Ngāti Whiu and Ngāti Kawa (set out below), we assume that they were not involved in the cession of Te Kōpuru.

The establishment in 1865 of a sawmill at Aratapu, on the Te Kōpuru block, may have prompted the next challenge from Ngāti Whiu and Ngāti Kawa. In 1866, Rogan (by then a judge of the Native Land Court) reported to Chief Judge Fenton on claims by Tiopira Kīnaki and Tamati Whakatara of Ngāti Whiu and Ngāti Kawa. Rogan mentioned that the valuable parts of the Te Kōpuru block had been subdivided and sold to settlers but that ‘the natives have threatened for some time to take possession of the land’ (by which he appears to have meant the land occupied by the sawmill). When the matter came before Rogan, he outlined the history of the block and then explained that, because the land was held under Crown grant, he was unsure whether the court had jurisdiction over it. Tamati Whakatara stated that Aratapu should not have been included in the cession, while Tiopira Kīnaki ‘claimed the same place [presumably Aratapu] from his ancestry and denied the right of Paieka and Tirarau to give his land away as he was at Hokianga at the time the property was taken’. It appears, then, that their claims were specific to Aratapu rather than covering the whole of

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42. Rogan to McLean, 26 February 1857, IA1/1857/915, Archives NZ (doc A3, p 26)

43. Rogan to McLean, 5 June 1861, AJHR, 1861, C-1, p 101

44. Document L2, pp 75–80

45. Ibid, pp 86–87

Te Kōpuru. Having heard the claimants' statements, Rogan adjourned the hearing because he considered that one of the native assessors sitting on the case was biased in favour of the claimants.<sup>46</sup>

It was not until a year later, in April 1867, that the matter came before the Native Land Court again. On that occasion, John White appeared in the court in his role as an agent for the provincial government responsible for defending Government claims to land taken by Māori. White explained that he was close to reaching a settlement with the claimants, and the matter was adjourned to the following day.<sup>47</sup> White then went to the disputed land with the claimants, taking with him 'the original papers purporting to be deeds of cession' of the land.<sup>48</sup> It is not clear which documents White was referring to as being deeds of cession – no such deeds have been produced in evidence to the present inquiry.

White found from the documents that the land had been surveyed twice: once by HH Fenton and once when the land was subdivided, by W Gundy. White reported that Fenton's survey had taken at least three-quarters more land than had been given up by Māori, as shown in the sketch and description of the land ceded. Gundy's survey, by failing to follow the course of the Aratapu Stream, had taken a piece of Māori land from the Ōkapakapa block. For the land taken by Fenton, the claimants demanded £1000 and, for that taken by Gundy, £600.<sup>49</sup> The location of the additional land included in Fenton's survey was not specified, but the differences between the boundaries originally ceded and the boundaries of the surveyed block (in particular, the extension of the block westward to the coast) have been outlined above.

The next day, White returned to the Native Land Court to announce two out-of-court settlements of Tiopira's and Tamati Whakatarā's claims. Although these settlements had been negotiated outside the courtroom, Rogan and native assessor Pairama of Te Uri o Hau had, according to White, been of great assistance in settling the claims. Two deeds of receipt were signed by the claimants in the court. The first, for £50, covered the whole of the land included in Fenton's survey. The survey itself does not appear to have survived, but the boundaries described in the receipt are somewhat different from the final boundaries of the Te Kōpuru block. Instead of drawing a straight line from the mouths of the Aratapu and Makaka Streams to the coast, the boundaries were said to follow these streams to their source and then go in a straight line to the coast. The second receipt, for £20, covered the land taken in by Gundy in his survey.<sup>50</sup>

Despite this apparent settlement of Ngāti Whiu's and Ngāti Kawa's claims, it was not the end of their protest in relation to Te Kōpuru. There is evidence of further protest in 1878, and a petition to Parliament in 1881 called for the return of Te Kōpuru, which the Ngāti Whiu

46. Rogan to Fenton, 3 April 1866 (doc L2(a), p 46/1)

47. Document L4, p 107

48. White to superintendent, Auckland, April 1867, MS papers 0075–50 (doc L4(c), p 619); doc A3(a), pp 2–4

49. White to superintendent, Auckland, April 1867, MS papers 0075–50 (doc L4(c), pp 619–620)

50. Document L4, pp 107–108

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and Ngāti Kāwa petitioners claimed had been wrongly taken from them in compensation for offences committed by others. The Native Affairs Committee declined to make any recommendation on the petition, since they regarded the petitioners' claim as being against their own tribe. In 1886, a member of Ngāti Whiu or Ngāti Kawa went to court to test the validity of a Crown grant to land at Te Kōpuru but apparently lost. Finally, in 1891 several applications were made to the Native Land Court, predominantly by members of Ngāti Whiu and Ngāti Kawa, concerning Crown land at Te Kōpuru. These applications were dismissed on the ground that they could not be dealt with by the court because the land in question was Crown land. This was the last recorded protest on behalf of Ngāti Whiu and Ngāti Kawa, although Te Kōpuru was included with other blocks in a 1917 petition from Haimona Pirika and 32 others of Te Uri o Hau and Ngāti Whātua. Hooker described this as 'a blanket claim' which did not set out the historical details of Te Kōpuru.<sup>51</sup>

A second issue in the claims concerning Te Kōpuru, which compounded the failure of process in determining reparation for the Forsaith muru, was the Crown's failure to respect the boundaries agreed to by Tirarau and the others by asserting title to a much larger area of land in the Te Kōpuru block.

## 4.4.4 Claimant submissions

Counsel for the Wai 632 claimants submitted that there was a suspicion that Forsaith was trading in skulls and that local Māori clearly believed the skull found in his store had been taken from a local urupā. The suggestion that it had been placed in a potato store 'caused particular cultural offence'. It was further argued that the investigation by George Clarke 'did not begin with any appearance of impartiality' because Forsaith had travelled with Clarke to the meeting at Tangiterōia. The inquiry was also fundamentally flawed, it was claimed, because not all of it was in public; in particular, the taking of evidence from 'Paora Tokatea, who apparently corroborated Mrs Forsaith's evidence' that the skull was found by the river.<sup>52</sup>

Counsel also submitted that, in demanding compensation by cession of Te Kōpuru land, Clarke had not properly investigated who had conducted the muru or who had interests in Te Kōpuru land. It was asserted that 'The means by which the Crown acquired the block effectively amounted to a form of confiscation'.<sup>53</sup> Counsel also referred to the remarks of Lord Stanley, the Colonial Secretary in London, about the 'questionable propriety' of the 'penal infliction' on local Māori of the 'forced cession' of land at Te Kōpuru. Furthermore, it was claimed, 'Clarke made no attempt whatsoever to investigate whether the land for which Tirarau gave the boundary description was in fact Tirarau's to cede'. Counsel submitted that

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51. Document L2, pp 105–108

52. Document Q9, pp 4–6

53. Ibid

the traditional owners of the Te Kōpuru land were the Ngāti Whiu and Ngāti Kawa hapū of Te Rōroa but that their rights were not recognised by the Crown in 1842.<sup>54</sup>

Counsel also noted the protests about the loss of Te Kōpuru by these hapū from 1847 into the twentieth century. He claimed that the payments of £50 and £20 in 1867 for Ngāti Whiu and Ngāti Kawa interests were not fair compensation and did not, therefore, discharge the Crown's Treaty obligations to the hapū. He raised several concerns about these payments:

- ▶ There is no evidence that £50 reflected the value of Ngāti Whiu and Ngāti Kawa interests. (Hooker noted that £50 for some 9000 acres is only 1.3 pence per acre.)
- ▶ There is no evidence as to whether the agreement was freely negotiated or presented to Ngāti Whiu and Ngāti Kawa on a 'take it or leave it' basis on the ground that the Native Land Court could not investigate their claims because the land had already been transferred to the Crown.
- ▶ There is no evidence that Ngāti Whiu and Ngāti Kawa received independent advice before accepting £50 for land for which they had originally demanded £1000.
- ▶ It is unclear how well, if at all, Ngāti Whiu and Ngāti Kawa understood the receipt, particularly since the signed receipts were in English and had no interpreter's certificate attached, and since they referred to survey plans which Tiopira and others were probably unable to understand.
- ▶ It is now impossible to tell how much land was supposed to be covered by the £20 payment and, therefore, whether this payment represented a fair price.<sup>55</sup>

Counsel for the Wai 688 claimants made no specific submissions on the Te Kōpuru cession, relying on the submissions of others.

#### 4.4.5 Crown submissions

Crown counsel took issue with the description by counsel for the Wai 632 claimants of Te Kōpuru as a 'forced cession', stating that 'the balance of evidence does not support the conclusion that the cession was imposed on the owners of the land'. Counsel then suggested that 'those who had plundered Forsaith's store realised that the muru was unjustified and that some compensation was warranted', claiming that Tirarau's anger when confronted with Pāora Tokatea's account of the skull being found by the river was evidence that he thought the muru unjustified.

Counsel argued that, instead of causing unrest by arresting those responsible, Clarke had suggested that 'the most appropriate way to deal with the issue was to seek compensation'.<sup>56</sup> This was accepted, and Tirarau and others had subsequently agreed to the cession of Te

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54. Ibid, pp 6–7

55. Ibid, pp 7–12

56. Document Q16, p 124

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Kōpuru land to the Crown. Counsel also claimed that there was ‘scant evidence to determine who was involved in agreeing to the cession. What is clear is that those who were involved held themselves out as having authority to treat with the land in question.’<sup>57</sup>

On the specific claims of Ngāti Whiu and Ngāti Kawa, Crown counsel submitted that there was no evidence of complaint from them until the 1860s, ‘and even then the nature of the complaint is unclear’. In any case, it was argued, their dispute over Te Kōpuru was resolved prior to the April 1867 Native Land Court hearing by the two Crown payments of £50 and £20, which ‘were intended to settle any residual interests in the land ceded to the Crown.’<sup>58</sup>

In relation to the Wai 688 claim, Crown counsel referred to closing submissions on the Wai 632 claim, in particular the suggestion that participants in the muru, including Tirarau, agreed that compensation should be paid.

**4.4.6 Tribunal comment**

As noted above, in section 8(c) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged that ‘the process used to determine the reparation for the plunder of a store, which led Te Uri o Hau chiefs and others to cede land at Te Kōpuru as punishment for the plunder, was prejudicial to Te Uri o Hau’. However, we suggest that the use of the term ‘plunder’ as a translation of the Māori word muru (or ‘te murunga’ in the Māori version of the Crown acknowledgement in section 7(c) of the Act) may imply something unlawful. We consider that in the eyes of Māori the muru of Forsaith’s store at Mangawhare in 1842 was lawful under customary law, as understood by Māori at the time. This is a very clear example of an early clash of cultural perspectives.

The principle of utu, maintaining balance or reciprocity, was basic to Māori society. As Angela Ballara has explained:

Because of the need to avoid loss of or damage to tapu and mana, seeking utu after an offence to any tapu member of a group or to the whole group was essential. Reciprocal responses were among the basic cultural conditions of most aspects of Māori interaction and social organisation. The utu aspect of reciprocity was vital to maintaining the integrity of descent groups [hapū] at about 1800 and later, at least into the mid-nineteenth century. The need continued unabated until traditional responses shifted as a result of the introduction and internalisation of some of the concepts of Christianity and the European system of justice.<sup>59</sup>

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57. Document Q16, p 125

58. Ibid, p 126

59. Angela Ballara, *Taua: ‘Musket Wars’, ‘Land Wars’ or Tikanga? Warfare in Māori Society in the Early Nineteenth Century* (Auckland: Penguin Books, 2003), p 82

It was to achieve utu that a taua muru would embark on an expedition to right some perceived wrong and to maintain the mana, honour, and self-esteem of the hapū or tribe. A muru was a form of dispute resolution in traditional Māori society, but it 'was not intended to provoke war'. The taua muru was 'a hostile expedition to take payment for crimes by plundering or destroying property, so wiping out offences'. Ballara commented that 'the equivalent sanction to a Māori taua muru would be the court-imposed fine'. She also suggested that, while a muru could, and occasionally did, escalate into war, it was an accepted method of resolving disputes. Indeed, early missionary records indicate that it was frequently used, usually between kin groups but also against others.<sup>60</sup>

In this case, what was perceived by Māori as the desecration of human remains was culturally offensive to them. For Māori, a Pākehā trader's store (whether it was in the potato store or elsewhere) was no place for the skull of an ancestor, and it was to be expected that local Māori at Mangawhare would be affronted. Thomas Forsaith and his wife should have known this, and it is not surprising that local Māori sought redress according to their custom.

In sending a copy of Clarke's report on the muru and cession to Stanley in March 1842, Hobson described the land as having been 'ceded to Her Majesty as compensation for the damage'.<sup>61</sup> However, Stanley's description of the cession as a 'penal infliction' was perhaps more accurate. Punishment, rather than compensation, seems to have been the primary purpose, and this was confirmed by the decision not to use the ceded land in compensating Forsaith. Hobson was clearly determined to suppress the practice of muru since, in a dispatch to Stanley sent while Clarke was still investigating the incident, he had asked for more troops so that he could 'demand and enforce' its abolition.<sup>62</sup> To Crown officials, muru was a barbaric punishment which required punishment in return. To most Māori, however, muru was still an appropriate penalty for a serious infringement of tapu and tikanga. It was a form of utu, and one which did not require a lengthy wait for an investigation by representatives of a distant government. The issue here is not so much the continuity of Māori custom as the Crown's failure to establish a fair process to determine reparation.

It is therefore appropriate that the Crown has acknowledged that the cession of Te Kōpuru land was prejudicial to Te Uri o Hau. Our first task here is to determine whether the Wai 632 claimants, Ngāti Whiu and Ngāti Kawa, hapū of Te Rōroa, were also prejudiced. They claim that they were also owners in the Te Kōpuru land but that their interests were not recognised by the Crown.

In the *Te Roroa Report 1992*, the Tribunal described Te Rōroa as a 'composite group' of several hapū centred on Waimamaku, Waipoua, and Kaihū: 'In the north they have strong links with Ngapuhi, in the south, with Ngāti Whatua. Te Roroa is essentially a borderlands

60. Ibid, pp 103–104

61. Hobson to Secretary of State for the Colonies, 25 March 1842, CO209/14, Archives NZ (doc A6(t))

62. Hobson to Stanley, 12 March 1842, CO209/64 (Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974), p 58)



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community of closely related hapu, each retaining their separate identities.’<sup>63</sup> We have no evidence that would lead us to disagree. The Te Rōroa Tribunal also quoted the evidence of the late ED Nathan that ‘the rohe potae (territorial umbrella) over which Te Roroa held mana whenua’ extended south to Poutō, at the northern entrance to Kaipara Harbour.<sup>64</sup> This interpretation does not acknowledge that Te Uri o Hau subsequently established rights by their long occupation of the Poutō peninsula. In any case, Te Rōroa and Te Uri o Hau are closely related by common ancestry.

We consider that after this lapse of time it is no longer possible to determine the specific nature of Te Rōroa interests in the north-western corner of the Kaipara inquiry area. We think that, given the significance of the Wairoa River as a transport route, it is likely that the hapū of Te Rōroa had interests in this area but that, given the complex kin connections of Te Rōroa with Ngā Puhi, Te Uri o Hau, and Ngāti Whātua, it is unlikely that these interests were exclusive.

As for the Wai 688 claim, the interests in land represented by the claimants will be detailed in chapter 5 in relation to Mangawhai. Here, we note that Te Parawhau is one of the nine hapū represented in Wai 688, and that Tirarau of Te Parawhau, with other rangatira, was involved in the Forsaith muru and the meetings that led to the cession of this land to the Crown. However, we consider that there is insufficient evidence that these interests extended as far as Te Kōpuru.

**4.4.7 Findings and recommendations**

In relation to the muru of Forsaith’s store at Mangawhare and the consequent cession of Te Kōpuru, we find the following Crown breaches of good faith and of the guarantees of protection made in the Treaty of Waitangi:

- ▶ the Crown failed to instigate a process to ensure a full and proper inquiry into the facts and surrounding circumstances of the muru of Forsaith’s store at Mangawhare;
- ▶ the Crown imposed a ‘penal infliction’ for the muru by demanding the cession of Te Kōpuru without a proper investigation of the ancestral rights in that land;
- ▶ the Crown failed to maintain a proper record of the ‘agreement’ to cede land at Te Kōpuru; and
- ▶ the Crown failed to respect the boundaries described by Tirarau and recorded by Ligar by asserting title to a much larger area in the Te Kōpuru block.

In relation to the Wai 632 claim, we find that the hapū Ngāti Whiu and Ngāti Kawa held undefined but not exclusive interests in Te Kōpuru, and were therefore to some extent prejudiced by the Crown’s acquisition of the Te Kōpuru land. We recommend that this should be taken into account in the negotiation of a settlement of all Te Rōroa claims.

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63. Waitangi Tribunal, *The Te Roroa Report* (Wellington: Brooker and Friend Ltd, 1992), p 7

64. Ibid, p16



In relation to Wai 688, because of insufficient evidence that Tirarau, and Te Parawhau generally, had ancestral rights there, we make no findings about Te Kōpuru.

#### 4.5 THE WHAKAHARA AND TOKATOKA TRANSACTIONS

In addition to the old land claims on the upper Wairoa River detailed in section 4.3, there was a claim further down the river, almost opposite Te Kōpuru at Whakahara. There, Andrew O'Brien's claim, originally overestimated at 60,000 acres but later agreed at 3000 acres, was twice disallowed by old land claims commissioners because he had not completed payment. The transaction was probably speculative, because O'Brien, a Sydney merchant, never lived there. The Crown subsequently acquired this land and, shortly afterwards, the adjoining Tokatoka block.

Both blocks are the subject of claims by the Wai 632 claimants. The issues in these transactions are:

- ▶ in relation to Whakahara, the inadequacy of the investigation of O'Brien's old land claim by commissioners appointed by the Crown; and
- ▶ in relation to both blocks, doubt as to whether all the parties with interests in these blocks agreed to the subsequent Crown purchases.

##### 4.5.1 The purchase of Whakahara

O'Brien claimed that on 28 December 1839 he had purchased from Henare Taramoeroa some 60,000 acres, bounded 'in the front by the Wairoa River, extending along that river from a creek called Waikaka to the tea trees beyond the creek called Angatapu and running back to the Manganui river'.<sup>65</sup> O'Brien later reduced this estimate to about 30,000 acres. Garry Hooker suggested that this area would have encompassed all of the Whakahara, Tokatoka, and Okahu blocks, a total area of 27,750 acres.<sup>66</sup> The actual area of Whakahara, the block associated with O'Brien's claim, was 3150 acres fronting on the Wairoa River between the Waikaka and Hiraku Streams (fig 21). O'Brien's claim was heard by Commissioner Richmond in Hokianga in December 1842, possibly because Taramoeroa was there or had Hokianga connections.<sup>67</sup> Hooker identified Taramoeroa as a chief of the Ngāti Kawa and Ngāti Whiu hapū of Te Rōroa.

In September 1839, O'Brien had paid Taramoeroa a deposit of one double-barrelled gun, five single-barrelled guns, and a few items of clothing, with a total value of £44. Taramoeroa had also undertaken to build a house for O'Brien on the land. The balance of the payment

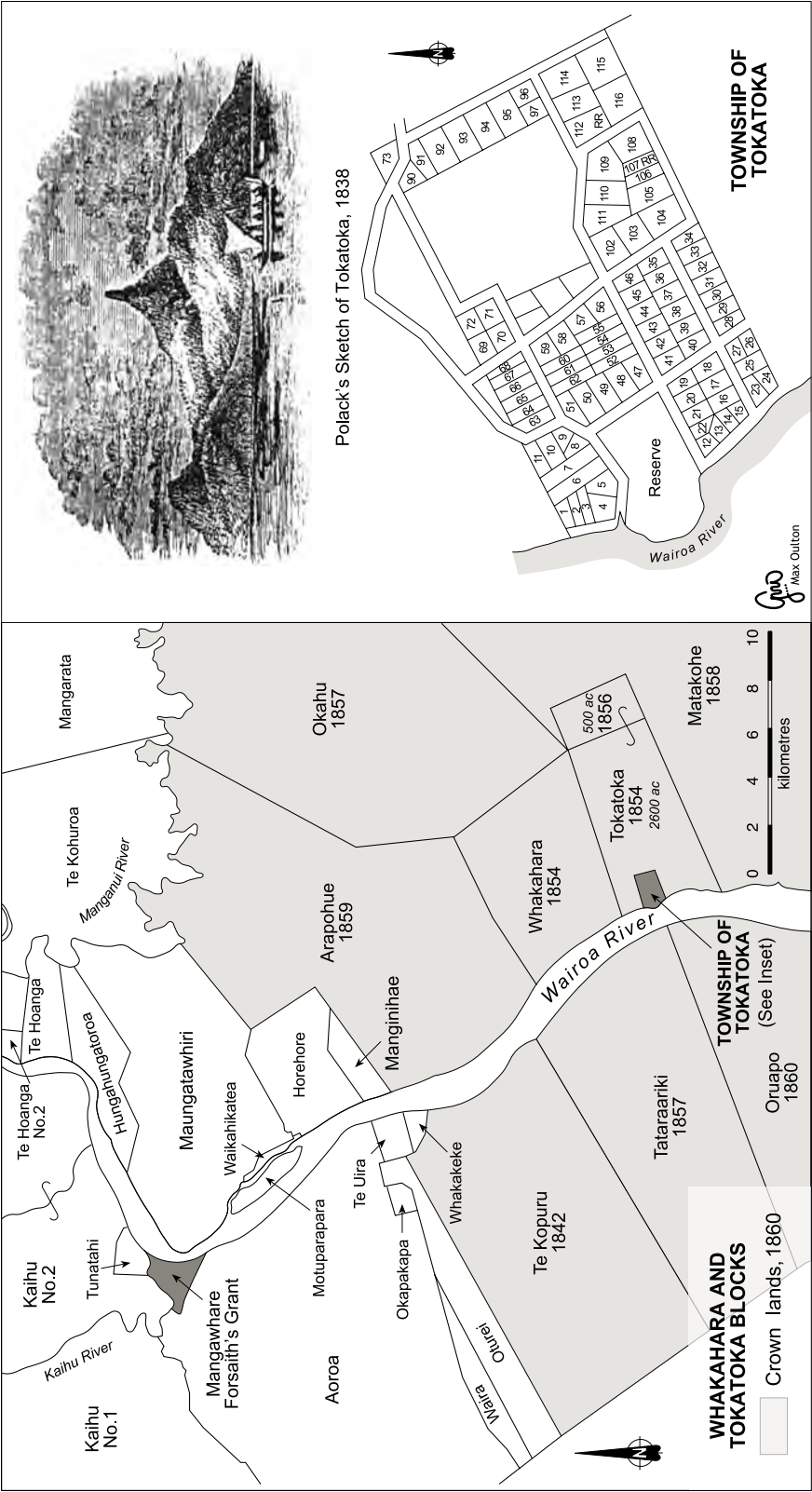
65. OLC355, 1 December 1842 (Byrne, p 321)

66. Document L2, pp 141–142

67. Document H1, p 285

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referred to in the deed – £100 cash plus goods to the value of £535 – was to be paid later, but O'Brien had not done so by December 1842. Richmond accordingly disallowed the claim, not accepting O'Brien's excuses for his non-payment.<sup>68</sup> O'Brien continued to press for the recognition of his land claim, and his case was subsequently reheard by Commissioner Fitzgerald in Auckland in September 1844. Just before this, on 17 August 1844, Paikea had signed the O'Brien deed, but the reason for this is not known. However, on 12 September 1844 both Taramoeroa and Paikea signed a receipt for some of the outstanding goods.<sup>69</sup> Taramoeroa told the commission that he had received some additional payments which brought the total consideration paid to £275 18s, but this was still well short of the total of £679 in the deed. Fitzgerald was not impressed and considered these payments 'manifestly an evasion of the law, for which he [O'Brien] is reprehensible'.<sup>70</sup>

No Crown grant was issued to O'Brien, but he persisted with his claims, petitioning Governor Grey in 1847 to no effect. In 1853, he petitioned the Governor again. The matter was referred to the Executive Council, which considered it a special case. It recommended that, if O'Brien could prove he had made payments 'partially extinguishing the Native title and the Native title can be totally extinguished by the Crown for such a sum that the acquisition of the land is advantageous to the public', then some reimbursement to O'Brien should be made.<sup>71</sup> In other words, if the Crown could purchase the balance of the title cheaply, then it would be considered to be in the public interest to buy out O'Brien and acquire the land for the Crown. O'Brien was subsequently paid £275 18s by the Crown.

By early 1854, a dispute had erupted between Parōre and Taramoeroa over Whakahara. This dispute was reported by Hastings Atkins of Mangawhare, who urged Government intervention because he was concerned about adverse effects on the kauri trade on the Wairoa River. On 18 May 1854, the chief land purchase commissioner, Donald McLean, wrote to land purchase officer John Grant Johnson with general instructions to purchase as much land as possible in the Kaipara and Whangarei districts. He included a specific task:

It is essential that you should take an early opportunity to visit the Kaipara District, to arrange a dispute between the Ngapuhi and Uriohau tribes, respecting some land claimed by Mr O'Brien, as the dispute is likely, if not speedily adjusted, to interfere with the important trade carried on in that River.<sup>72</sup>

The details of Parōre's dispute with Taramoeroa are not clear, but the disagreement was symptomatic of the rivalries between the chiefs of Te Rōroa, led by Parōre, Tirarau of Te Parawhau, and Paikea and others of Te Uri o Hau. Paikea had supported Taramoeroa in the dispute over Whakahara, and Parōre was allied in most matters with Tirarau. The basic

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68. Byrne, p 321; doc H1, pp 285–286

69. Document L2, pp 142–143

70. Document H1, pp 285–289

71. Document L2, p 144; doc H1, p 289

72. McLean to Johnson, 18 May 1854, AJHR, 1861, C-1, p 52

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problem was that there was no clear demarcation line between the spheres of influence of Te Uri o Hau, Tirarau, and Parōre. Hooker suggested that Johnson was 'unaware that Taramoeroa's party belonged to Te Roroa'.<sup>73</sup> Discussions continued over the next few months involving, on the one side, Te Uri o Hau, Ngāti Whatua, and their allies and, on the other, Tirarau, Parōre, and their allies.

The Whakahara transaction was not completed until December 1854. On 18 December, Johnson reported that, at a 'general meeting of the contending parties' held at Mangawhare the previous week, a 'complete reconciliation between the hostile tribes was effected'. He recorded that 'the right of Taramoeroa over the Wakahara [*sic*] was fully admitted by Parore and Tirarau' and that he had 'managed to extinguish the whole of the Native claims on the same' by the payment of £170. Johnson then described how this payment was made:

The money was, by Tirarau's consent, placed before Taramoeroa, who immediately handed it over to Tirarau and Parore. These two chiefs, having seen this mark of respect publicly shown to them as the former conquerors of the land in question, felt their pride satisfied, and formally placed the whole amount again before Taramoeroa, by whom it was divided among the real owners of the soil.<sup>74</sup>

Johnson also reported that the land the Crown had purchased for £445 18s (£170 paid to Taramoeroa plus £275 18s paid to O'Brien) amounted to about 3000 acres, although in a return of lands purchased in 1854 he listed the block as being 2500 acres.<sup>75</sup>

**4.5.2 The purchase of Tokatoka**

At the December 1854 meeting, Johnson also made further moves toward a Crown purchase of the adjacent Tokatoka block. On 24 August 1854, in Auckland, he had made an initial payment of £100 to Manukau and seven others of Te Uri o Hau and to Te Waiarūhe of Ngāti Whātua, with the promise of a further payment 'in the summer season when the land is properly surveyed'.<sup>76</sup> Johnson had also reported that the land was 'still liable to a pretended claim of Parore and Tirarau – which it is my purpose not to entertain'.<sup>77</sup>

The Tokatoka area had previously been singled out as the best site for a customs house for the port of Kaipara. On 1 December 1854, Francis Dart Fenton, recently appointed the

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73. Document L2, pp145–146; doc L4, p58

74. Johnson to McLean, 18 December 1854, AJHR, 1861, C-1, p94

75. 'Return of All Lands Purchased from the Natives by John Grant Johnson, Commissioner for the District of Whangarei, from the 13th February, 1854, to the 31st March, 1856', AJHR, 1861, C-1, p71

76. Henry Hanson Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877), vol1, deed 146 (pp189–190)

77. Document H1, pp160–161; doc L4, p59

resident magistrate for Kaipara, wrote to Johnson pointing out the 'urgent necessity' of completing the Crown acquisition of the block:

Apart from the urgent political reasons . . . the natural advantages of position, and the peculiar physical character of the Wairoa River, render this locality the only one available for the Government officers of this district. It is situated midway between the districts of country at present occupied by merchants and visited by ships, it is equi-distant from, and will form a good neutral territory between the Ngapuhi and Ngatiwhatua tribes, recently at war, and possesses the only natural landing place for many miles in each direction.<sup>78</sup>

Johnson immediately sought permission to complete the transaction. He noted that £100 had already been paid and sought the balance of £200 for his estimate of about 4000 acres of the Tokatoka block. On survey, it was found to be 2600 acres.

Although Johnson had stated that he did not intend to recognise any other claims, on 10 September 1855 a deed was signed by Parōre consenting to the Crown purchase of Tokatoka upon the payment of £20 to him. The deed, translated into Māori by Johnson, was witnessed by Hastings Atkins of Mangawhare.<sup>79</sup> The second instalment of £200 had already been paid to Te Uri o Hau in March 1855, but of this £20 had been held in trust for Parōre; this was the payment recognised by the separate deed. On 31 October 1856, a deed receipt for £30 was signed by Manukau and six others for an additional area not included in the original survey.<sup>80</sup> This appears to have related to an additional block of 500 acres inland from the original surveyed block. The total area acquired in the Tokatoka block was listed as 3000 acres on Johnson's 1854 return of lands purchased.<sup>81</sup> A contemporary plan shows two blocks, one of 2600 acres and one of 500 acres (fig 21).<sup>82</sup> Hooker also referred to Chief Surveyor Skeet's 1917 evidence about two sales of Tokatoka: one of 2600 acres and one of 500 acres. A payment of £5 was also made by McLean in 1857 to Pirika Ngai for his claim to Tokatoka, but the background to this is not known. Hooker suggested that this payment was 'disturbing evidence' that not all the claimants to Tokatoka had been paid.<sup>83</sup> Without further evidence, we can make no comment on this suggestion.

Apart from the additional payment on Tokatoka in 1857, there seems to have been no subsequent protests about the transaction. The town of Tokatoka was surveyed, Resident Magistrate Fenton established his court and customs house there, and it was the base for the Kaipara Harbour pilot. However, the township never consisted of more than a few settlers.

78. Fenton to Johnson, 1 December 1854, AJHR, 1861, C-1, p 93

79. Turton, vol 1, deed 147 (p 190)

80. Ibid, deed receipt 7 (p 717)

81. 'Return of All Lands Purchased from the Natives', p 71

82. Byrne, p 366

83. Document 12, pp 155-156

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**4.5.3 The blocks' subsequent history**

The Whakahara block was gazetted for sale to settlers in 1856, and soon after two stores were set up and a number of settlers established farms.<sup>84</sup> Whakahara was the subject of a query about Crown acquisition in 1908 from Waata Aporo, a great-grandson of Henare Taramoeroa, and 25 others. The response from the Department of Lands did not satisfy Aporo, who was still seeking information in 1914. In 1915, he and 15 others petitioned Parliament, stating that they had not been able to establish how the Crown had acquired the land and referring to the past extraction of kauri spars from the block under the 'direction of Ngāti Whiu/Ngāti Kawa chiefs Henare Taramoeroa and Rapana te Rarau (Tuaea)'. In 1917, another petition concerning the Tokatoka, Whakahara, Te Kōpuru, and other blocks was lodged by Haimona Pirika and 32 others. Both petitions were reported on in 1920. The Native Affairs Committee had no recommendation to make on the 1917 petition and recommended that the 1915 petition be given leave to be withdrawn since Aporo had died by then.<sup>85</sup>

**4.5.4 Claimant submissions**

Counsel for Wai 632 argued that:

In summary, the basis for the grievance is that the Crown failed to dismiss an old land claim in respect of the Whakahara block, notwithstanding that the old Lands Claim Commission had twice recommended that no Crown grant be given. Instead, the Crown subsequently treated the old land claim as having been partially completed and purported to complete the transaction as a Crown purchase of the Tokatoka and Whakahara blocks in 1854.<sup>86</sup>

In short, it was argued that, if O'Brien's old land claim had been dismissed by the Land Claims Commission, the land should have remained under Māori tenure. Counsel noted that Ngāti Whiu's and Ngāti Kawa's interests were not recognised in the deeds, nor were any reserves created for them in these lands. There was also no acknowledgement of 'the sacred maunga of Tokatoka' or other wāhi tapu, including Maungaraho on the Whakahara block. Counsel further claimed that subsequent protest had been ignored by the Crown. He concluded that 'both blocks were acquired on the basis of a flawed foundation and even today, significant issues arise as to the amounts paid, the lack of reserves and whether all interests were recognised, including those [of] Ngāti Whiu and Ngāti Kawa.'<sup>87</sup>

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84. Wayne Ryburn, *Tall Spars, Steamers and Gum: A History of the Kaipara from Early European Settlement, 1854–1947* (Auckland: Kaipara Publications, 1999), p 24

85. Document L2, pp 158–159

86. Document Q9, p 12

87. Ibid, pp 16–17

**4.5.5 Crown submissions**

Crown counsel noted ‘a great deal of uncertainty’ in relation to the area of, and the price paid for, the Whakahara and Tokatoka blocks. However, he set out certain ‘facts’ gleaned from Hooker’s evidence: ‘Although there were inter-tribal rivalries occurring at this time over the transactions, there does not appear to be any subsequent protest against the sales.’ The vendors later attempted to repurchase land in both the sold blocks, which, counsel suggested, indicated an acceptance of the transaction. Further, it was argued that ‘It appears that all those having an interest in the land were aware of the sales, and participated to some extent in the transactions.’ Crown counsel concluded:

The Crown acknowledges that it appears that the process adopted for these blocks departed from that expected under Gipps’ proclamation, and that considerable doubt remains as to exactly what happened in relation to these blocks. Nevertheless it is submitted that claimants have failed to establish a breach of the Treaty and that . . . the vendors suffered little or no prejudice as a result of these transactions.<sup>88</sup>

**4.5.6 Tribunal comment**

As with Te Kōpuru (see sec 4.4), which lies almost directly opposite across the Wairoa River, we consider that hapū of Te Rōroa held undefined interests in the Tokatoka and Whakahara blocks. These interests were unlikely to have been exclusive. We note that the landmark mountain at Tokatoka was acknowledged by both Te Rōroa and Te Uri o Hau. Clearly, the original Whakahara transaction with O’Brien did not meet the requirements of an old land claim for the awarding of a Crown grant. There is insufficient evidence to conclude with any certainty whether all the interests in the Whakahara and Tokatoka blocks were agreed on sale. Because their chief, Taramoeroa, was a party to the original transactions with O’Brien, Ngāti Whiu and Ngāti Kāwa were certainly aware that the land was being alienated. The public nature of the payments by land purchase officer Johnson in the 1850s in settlement of disputes is evidence of some agreement that both the Whakahara block and the Tokatoka block were sold to the Crown.

**4.5.7 Tribunal findings and recommendation**

We find that the Crown failed to ensure that a full and proper investigation was carried out of the Whakahara pre-Treaty transaction, and we find that this breaches good faith and the guarantees of protection provided in the Treaty of Waitangi.

We find that the Te Rōroa hapū Ngāti Whiu and Ngāti Kawa held undefined but not

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88. Document Q16, pp127–128



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exclusive interests in the Whakahara and Tokatoka blocks and were therefore prejudiced to some extent by Crown transactions in relation to these lands.

We recommend that this should be taken into account in the negotiation of a settlement of all Te Rōroa claims.

**4.6 THE ELMSLEY–WALTON LAND CLAIM**

Most of the evidence presented to us about pre-Treaty transactions concerned the large Elmsley–Walton land claim on the upper Wairoa River at Ōmana. This formed only one aspect of the bigger picture painted by the Wai 688 claimants of the loss of land and resources to Pākehā settlers and to the Crown across northern Kaipara. Here, we are concerned specifically with pre-Treaty transactions, and with the Elmsley–Walton old land claim in particular. The grievances expressed by the Wai 688 claimants relate not to the original transaction but to the additional allowance of land granted by the Crown in the 1850s for survey and other expenses, which had the effect of increasing the area over which the Crown assumed title to land regarded as ‘surplus’.

**4.6.1 The Elmsley–Walton purchase**

Henry and Charles Walton arrived in Sydney from Yorkshire in 1838 and set up H&C Walton and Company, merchants. Another Yorkshireman whom they met in Sydney, Thomas Elmsley, joined their partnership. The three decided to investigate a farming and trading venture in New Zealand. In August 1839, Elmsley sailed for the Bay of Islands, and shortly afterwards, on 7 September, a deed for 6000 acres of land at Ōmana was signed by Tirarau, Weinga, Taurau, Parōre, Ahu, and others. How Elmsley decided on the Wairoa and the details of the negotiations are not known. He paid £30 in cash and returned to Sydney to assemble the goods, equipment, stores, and stock needed to start a farm and to pay the balance of the agreed price. There was some delay in chartering a ship for all the goods and stock, and Elmsley was unable to return and take possession until 8 February 1840.<sup>89</sup> The payment for this first transaction included guns and powder, a fully equipped whaleboat, clothing, tools, tobacco, soap, two cows, and a calf, with a total value of £643 1s.

The Waltons soon followed Elmsley, bringing with them more goods and stock for their farm and trading station. They also became involved in the kauri timber and gum trade, and had several employees. In 1841, they established a flax mill powered by an overshot waterwheel on the bank of the Wairoa River near the landing reserve for their Ōmana

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89. Byrne, pp 312–314



store, and they made rope that was sold in Auckland. In 1845, the mill was moved north to Maungatapere to another of Henry Walton's land acquisitions. It was a very successful business and farming venture, supported and protected by Tirarau. Byrne commented:

the Waltons had a virtual monopoly on the Kaipara timber and kauri gum trade. They exported considerable quantities of both commodities during the second half of the 1840s and early 1850s. Henry Walton's connection with Tirarau, through his marriage in 1846 to Tirarau's niece, Kohura, and after Kohura's death in 1847 to her sister, Pehi, in 1848, would not have disadvantaged his business.<sup>90</sup>

Thomas Elmsley returned to Yorkshire a few years later, but the Waltons stayed on, expanding their business empire and acquiring further interests in land.

The Elmsley-Walton land claim was investigated by Godfrey in April 1844. Tirarau appeared in support of the claimants, stating (in the words of the interpreter H T Kemp) that the payment was a large one and that he hoped the land would be confirmed to the claimants. He also stated that he and the other chiefs who were signatories to the original deed for Ōmana had a right to sell the land and that the transaction had never been disputed by others.<sup>91</sup> Godfrey accepted that there was a valid transaction but could not immediately recommend a grant because the payment had been made after 14 January 1840, the date of Governor Gipps's proclamation concerning titles for pre-1840 land transactions. Godfrey recommended 'the most favourable consideration' by the Governor, and in due course FitzRoy approved the award of 4000 acres to the claimants. A Crown grant was issued on 19 July 1844. However, Tirarau pointed out that there was an error in the boundary description on the grant, and a new grant for 4000 acres was issued on 21 October 1845.<sup>92</sup>

#### 4.6.2 The Waikiekie block

In the mid-1850s, a dispute flared between Tirarau and Paikea when the Crown began purchasing adjacent lands, in particular the Waikiekie block to the south of the Elmsley-Walton claim. On 30 October 1856, Rogan completed the signing of a deed by Paikea and 28 others of 'Te Uri o Hau and Ngati Whatua' for 12,000 acres of the Waikiekie block. Payment was £400 and the agreement included a provision for the payment of an additional £30 for every 1000 acres found to be in excess of 12,000 acres on survey. A note on this deed stated: 'Paikea not to urge his claims on North bank of Tauroroa [Tauraroa River] – Tirarau not to claim any land south of Tauroroa.'<sup>93</sup> A second deed was signed by Paikea and other Te Uri o Hau

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90. Ibid, p 315

91. Document H1, pp 280–281

92. Ibid, p 281

93. Turton, vol 1, deed 149 (pp 192–194)

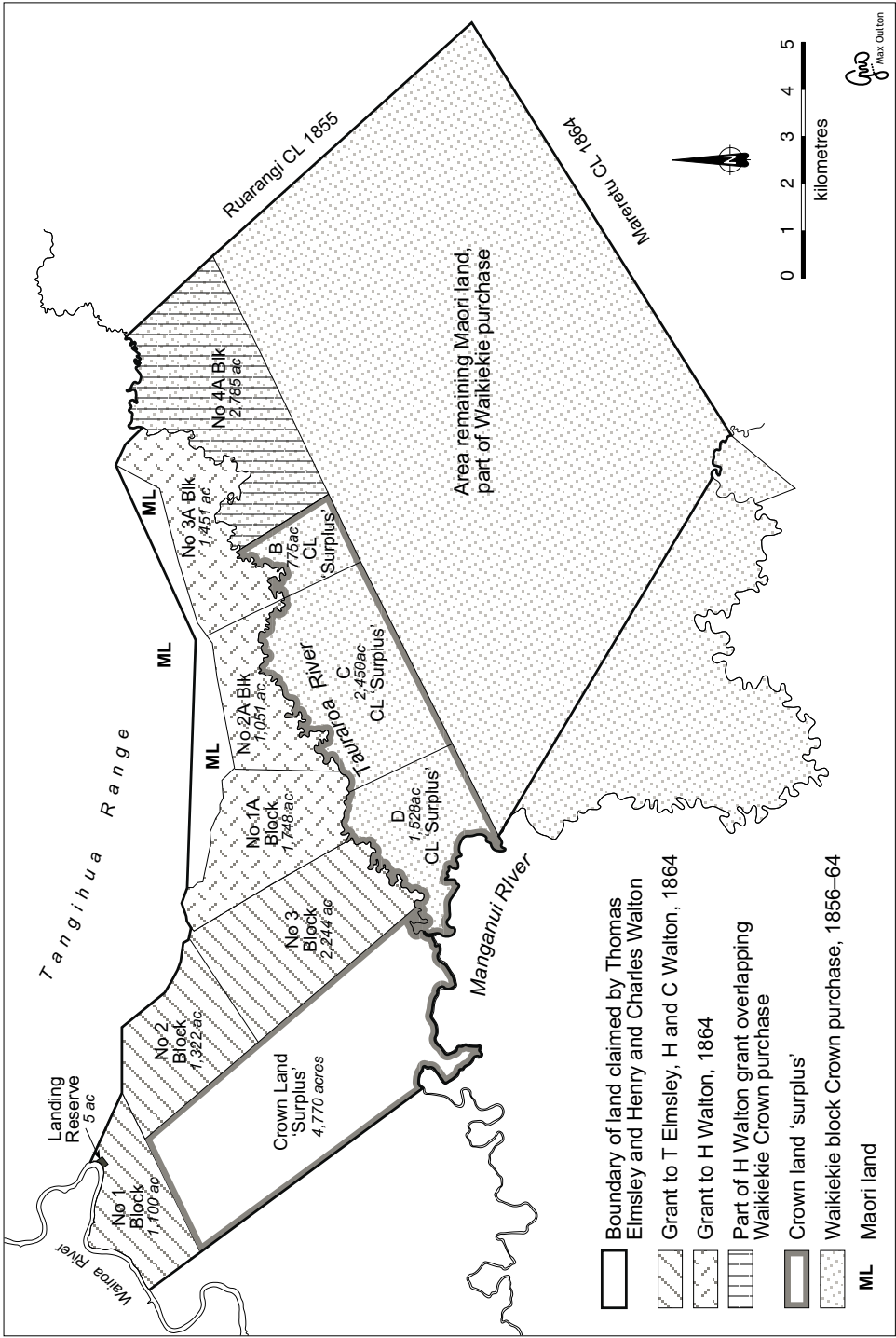


Figure 22: The Elmsley-Walton land claims. Source: oLC plan 239, surveyed by Edwin Davey, 1862.

on 28 April 1864, finalising the Crown purchase with another payment of £566 13s 4d, 'being the full consideration money' for the Waikiekie block, which on survey contained 33,800 acres.<sup>94</sup>

Meanwhile, on 23 March 1860, Commissioner Bell, acting under the Land Claims Settlement Act 1856, had cancelled the Elmsley–Walton grant of 1845. The Waltons had originally claimed a total of 6000 acres but by then, according to Bell, their claims 'greatly exceeded all former estimates'.<sup>95</sup> They commissioned another survey, which was completed in 1862 and became OLC plan 239, which has been redrawn in figure 22. The Waltons asserted that they had assurances from the chief land purchase commissioner, Donald McLean, that Crown purchase negotiations would not encroach on their claims. When Bell sought confirmation of this, the answer was 'equivocal'.<sup>96</sup> McLean suggested that he had told Charles Walton that the Waikiekie negotiations would not be prejudicial to him since the Government's intention in purchasing the block was as much to prevent further dispute between Tirarau and Paieka as to acquire the land.<sup>97</sup> The Waltons went ahead with their survey, and Bell gave them the choice of excluding the Waikiekie block south of the Tauraroa River from their claims or reimbursing the Crown at eight shillings per acre for any Waikiekie land that they included. OLC plan 239 clearly shows that a significant portion of Waikiekie was included inside the boundary of their claims, the total area of which was 44,043 acres.

Another condition imposed by Bell was that the survey plan had to be agreed to by Tirarau and Paieka, and by any other chiefs designated by Rogan. OLC plan 239 carries the following inscription at the bottom:

E Wakaae ana ahau e tika ana tenei mapi e rite ana ki te hokona ki a te Watene ana i mua

Na Te Tirarau tenei tohu

Witness to signature of Te Tirarau

Charles Heath [trader at Whakahara]

Na Paieka tenei tohu

Witness to signature of Paieka

[Indecipherable because part of map torn away.]

This inscription indicates that both Tirarau and Paieka agreed that the map correctly showed the lands transferred to the Waltons and both placed their tohu, or marks, on it. No other Māori signatory was sought, although there had been other objectors among Te Uri o Hau. However, by then Rogan had paid the first instalment on Waikiekie, and the second was about to be paid when, in April 1864, the Waltons appeared before Bell in Auckland. They claimed that there had been no interruptions to the survey and that Tirarau's people had assisted in cutting survey lines.

94. Turton, vol 1, deed 184 (p 243)

95. Document H1, p 282

96. Document L4, p 38

97. Document H1, p 282

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## 4.6.3

After a brief hearing in which no other witnesses were examined, Bell issued two new Crown grants, 'conditional on the district commissioner certifying that the land which remains after granting what the claimants are entitled to will revert to the Crown' free of any other Māori claim. The first grant was issued to Thomas Elmsley and Henry and Charles Walton for 4666 acres, being the original 4000 acres awarded by FitzRoy plus the one-sixth survey allowance of 666 acres. The second grant of 7042 acres was issued to Henry Walton alone, and was calculated on the basis of survey costs and court fees to cover the expenses that he had paid, which amounted to between £600 and £700. This grant included 2785 acres that encroached on the Crown purchase of the Waikiekie block, for which Walton had to pay the Crown just over £92.<sup>98</sup> The rest of the claim south of the Tauraroa River all lay within the Waikiekie block on land agreed to be within Paikea's claim, for which the Crown had already paid Te Uri o Hau.

**4.6.3 Crown assumption of title to 'surplus' land**

To the west of the Elmsley–Walton grants lay a block of 4770 acres. This was regarded as 'surplus' to that grants, and since it was considered that the customary title had been extinguished by the Elmsley–Walton transactions, the title was assumed by the Crown. In 1886, the block was proclaimed as an educational endowment for Auckland Girls' High School.<sup>99</sup> It is the retention of this block by the Crown as 'surplus' land which is the principal grievance of the Wai 688 claimants in relation to the Elmsley–Walton transactions. The rest of the area of 'surplus' land lay south of the Tauraroa River, within Te Uri o Hau territory.

**4.6.4 Claimant submissions**

Counsel for the Wai 688 claimants submitted that the pre-Treaty transactions 'were not sales at all but . . . were viewed by Maori as part of an on-going relationship'. Counsel also argued that 'there was no agreement between Maori and the Government for the Government to gain any land arising from dealings between Maori and settler'. The original transaction with Tirarau was not the issue, but counsel was critical of the Crown's assumption of title to 'surplus' land, some 5800 acres in the Elmsley–Walton old land claim. Counsel also criticised the encouragement given to pre-1840 Pākehā settlers in 'the one-sixth incentive and allowances for survey expenses to expand upon their original grant so that the Government could ultimately retain the surplus'.<sup>100</sup>

Counsel did not comment on the other old land claims on the Wairoa River beyond relying in general on the conclusions of the Muriwhenua Tribunal, which have been quoted

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98. Document L4, pp 38–39

99. Document L4(c), p 583

100. Document Q2, pp 3–4

in section 3.4. The specific grievance concerning the Elmsley–Walton claim is the Crown’s retention of the 4770 acres of ‘surplus’ land north of the Manganui and Tauraroa Rivers.

#### 4.6.5 Crown submissions

On the issue of old land claims, counsel noted that, although several transactions were referred to by the Wai 688 claimants, the only evidence presented concerned Tirarau’s involvement with the Land Claims Commission’s investigation of the Elmsley–Walton claim. Crown counsel argued that ‘The evidence is clear that Tirarau and those he represented were satisfied with this transaction and wanted it to be upheld as valid.’<sup>101</sup> Crown counsel also noted that there had been no subsequent protest over this transaction, but did not comment on the issue of the Crown’s retention of ‘surplus’ lands within the Elmsley–Walton claim.

#### 4.6.6 Tribunal comment

The Crown assumption of title to surplus land in the Elmsley–Walton old land claim was the specific issue addressed by the Wai 688 claimants in the context of their more general grievances about the Crown’s treatment of the pre-Treaty transactions. We concur with the Muriwhenua Tribunal’s conclusion that, by retaining the ‘surplus’ land instead of returning it to the original Māori owners or their descendants, the Crown was in breach of the guarantees in article 2 of the Treaty. The generic issues in respect of old land claims in the Wai 688 claim are similar to those already acknowledged by the Crown in the Te Uri o Hau settlement and included in section 8(a) and (b) of the Te Uri o Hau Claims Settlement Act 2002 in the phrase ‘the early land transactions for settlement purposes’.

We note that in the mid-1850s an agreement was reached that Tirarau would not claim rights in land south of the Manganui and Tauraroa Rivers and Paikea would not claim to the north. This line forms part of the boundary in the Te Uri o Hau deed of settlement, as described in a map of the Te Uri o Hau area of interest. However, this line lies south of the northern boundary of our stage 3 inquiry area. Clearly, therefore, Te Parawhau and related hapū represented in the Wai 688 claim have undefined interests within the Kaipara inquiry district, north of and possibly overlapping the Te Uri o Hau area of interest. The difficulty is that, just as clearly, the interests of the various Hapū o Whangarei extend to the north and east, outside the boundary of the inquiry district. We do not have before us a comprehensive statement of their total losses of land and resources. This issue should be left to a future inquiry into claims in the Whangarei district.

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101. Document Q16, p128

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4.6.7

**4.6.7 Tribunal findings**

We find that the Crown's assumption of title to 4470 acres of 'surplus' land within the Elmsley–Walton old land claim is a breach of the Crown guarantee of rights in land in article 2 of the Treaty of Waitangi. We therefore find that this specific grievance in the Wai 688 claim within the Kaipara inquiry district is well-founded.

As this is only one issue in a larger comprehensive claim involving lands outside the Kaipara inquiry district, we make no recommendation in the Wai 688 claim in respect of pre-Treaty transactions. We consider other aspects of the Wai 688 claim in section 5.9.

## CHAPTER 5

### THE MANGAWHAI TRANSACTION

#### 5.1 INTRODUCTION

The purchase of land around Mangawhai Harbour in 1854 by land purchase officer John Grant Johnson was one of a series of Crown purchases in the Kaipara district between 1854 and 1865. This transaction, however, differs from the rest in that the original deed included a provision that payment of 10 per cent of the proceeds of land sold by the Crown at Mangawhai 'be expended for the benefit of the Natives'.<sup>1</sup> The alleged failure of the Crown to fulfil this provision is one of the grievances of the claimants. Other issues raised include the low price paid and the failure to survey boundaries, provide reserves for Māori, and include all who had interests in the land.

Mangawhai is included in the Te Uri o Hau area of interest, but we report on the several other claims relating to this land. Clause 8 of the preamble to the Te Uri o Hau Claims Settlement Act 2002 states:

The Crown's purchase in 1854 of the Mangawhai block was notable in that the Deed stated that 'ten per cent of the proceeds of the sale of this block of land by the Queen is to be expended for the benefit of the Natives'. There was performance of this clause up to 1874. No further payments were made after this date.

Te Uri o Hau claims in the Mangawhai transaction have been settled, and the settlement includes the transfer of part of the Crown land in Mangawhai Forest. The acknowledgements by the Crown in section 8 of the Te Uri o Hau Settlement Act make no specific reference to Mangawhai, but it is presumably included in the general acknowledgement in section 8(d) that, in the large amount of land alienated since 1840, the Crown failed to provide adequate reserves or to protect the few reserves that were made. No reserve was provided for in the Mangawhai transaction.

There are several claims overlapping Te Uri o Hau interests in the Mangawhai land, in all of which the claimants allege that their interests have not been acknowledged. The Ngāti Wai claimants (Wai 244) state that the block was not properly surveyed before sale, the Crown

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1. Henry Hanson Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877), vol 1, deed 98 (p 134)

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did not pay a fair price, and the Crown failed both to provide reserves for Ngāti Wai within the block and to ensure that Ngāti Wai received their fair share of the proceeds of the 10 per cent provision. The claimants state that their rohe extends north from Pakiri to Mangawhai Heads and that their interests lie in the southern portion of the Mangawhai block. To the north, several hapū of Ngā Puhi made similar claims; in particular, that their interests were ignored by Johnson during negotiations for the original purchase. These claimants include Ngāti Kahu o Torongare/Te Parawhau (Wai 619), Te Waiariki/Ngāti Kororā (Wai 620), and Ngā Hapū o Whangarei (Wai 688).

We begin this chapter by reviewing the Mangawhai transaction and outlining the history of subsequent complaints about it, before dealing with the various claims individually.

**5.2 NEGOTIATING THE MANGAWHAI PURCHASE**

On 7 November 1853, the Colonial Secretary, Andrew Sinclair, wrote to Johnson requesting that he ‘immediately proceed to Whangarei to negotiate purchase of as extensive a block of land as possible, including a location fit for the Highlanders, recently arrived in the Colony.’ The Highlanders were Norman McLeod’s group of Scottish immigrants from Nova Scotia, who later settled at Waipū, just north of Mangawhai. Johnson was to begin negotiations, but he was not complete any purchase until he had the approval of the Surveyor-General. He was also told that a clause would be inserted in the deed of purchase ‘reserving for native purposes ten per cent of the future proceeds which may be realised from the sale of the land.’<sup>2</sup>

On 12 December 1853, Johnson reported that he had gone to Whangarei to begin purchase negotiations:

Having first ascertained the nature of the native claims in that district to be clearly defined (the Parawhau, or original tribe of Whangarei, occupying and claiming the southern bank, and the Ngāpuhi the northern bank of the Whangarei [Harbour], but both parties being connected with, and, in a great measure, controlled by Tirarau, the chief of the Wairoa River in Kaipara) I lost no time in repairing thither to gain his consent to the object of my mission, which I obtained in general terms over any tract of country for which I could make arrangements with the more immediate owners, excepting alone a block between the Whangarei and the Wairoa, which Tirarau and Manihera, the resident owners, have determined to retain for themselves . . .<sup>3</sup>

2. Colonial Secretary to Johnson, 7 November 1853, in Henry Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (Wellington: Government Printer, 1883), sec c, p 55

3. Johnson to Colonial Secretary, 12 December 1853, in Turton, *Epitome*, sec c, p 55



## THE MANGAWHAI TRANSACTION

5.2

| Tribe           | Chiefs                                              |
|-----------------|-----------------------------------------------------|
| Te Uri o Hau    | Paikea, William Stephenson, Makoare Hawaiki         |
| Ngai Tahu       | Arama Karaka, Pereneko, Wetere Pou, Puriri          |
| Te Rauriki      | Matiu, Pairama, Tamati                              |
| Ngati Mauku     | Paratena (Paratene) Taupuhi, Matiki Kuha, Te Awaiti |
| Ngati Kauae     | Te Korone, Hemara                                   |
| Te Wai Aruhe    | Manukau, Te Whe                                     |
| Te Uri Kohu     | Te Awa, Pehimana, Te Taiona (Tatana)                |
| Te Uri o Katea  | Te Uranga (Te Urunga), Te Kiri, Parihoro            |
| Ngati Kai Whare | Himeona, Waitoitoi                                  |
| Ngati Kaha      | Hohaia                                              |
| Te Uri Pake     | Kerepe                                              |
| Ngati Wai Māori | Te Awe                                              |

Table 6: Mangawhai claimants present at Pakiri, 1853

Johnson also reported that on this trip he ‘negotiated with part of the owners and obtained their consent to the sale of a block called after a river running through the centre of it – the Mangawhai’. At that stage, Johnson was vague about the boundaries, suggesting that to the west were the ‘surplus’ lands of the Grahame old land claim at Te Wairau on the Ōtamatea River, in Te Uri o Hau territory, and to the north Busby’s claim. There was another old land claim based on a pre-1840 transaction by an American trader, William Mayhew, of the Bay of Islands, for about 20,000 acres around Mangawhai Harbour, although the price paid and other details were not recorded. Neither Busby’s nor Mayhew’s claim was granted, the Grahame claim did not overlap, and these claims did not intrude on Johnson’s negotiations. In all, Johnson estimated that he had begun negotiations for about 200,000 acres between Whangarei and Mangawhai. He wrote to the remaining claimants to Mangawhai, who lived at Ōtamatea and whom he had not yet seen, and invited them to meet to consider the purchase. In the meantime, ‘a party of the Highlanders’ had been exploring the district and decided on the land at Waipū, not Mangawhai, and Johnson turned his attention to the Waipū purchase north of Mangawhai.<sup>4</sup>

On 14 December 1853, Johnson got approval from the Surveyor-General, Charles Ligar, to continue his negotiations to acquire about 240,000 acres of land in the area, including the land to be settled by the Highlanders, for £600. On 31 December, Johnson reported from Pakiri that he was negotiating the purchase of the Mangawhai land, and he advised that ‘the extinction of the native claims are fraught with more difficulty, and the price required will be much greater, than I had anticipated in my last report’. At the meeting at Pakiri, Johnson noted that about 100 claimants to Mangawhai attended, and he listed the tribes and their chiefs (see table 6).

4. Ibid, pp 55–56

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In the same report, Johnson recorded that 'Chief Tirarau claimed One hundred pounds . . . on account of a battle fought by the Nga Puhi' at Te Ika ā Ranganui. Johnson commented: 'as this place is not included in the boundaries of the land offered at present, and the other claimants and owners of the land denying his right to a man, I have thought it expedient not to entertain this claim'. Johnson also reported that the payment now required was £1000, and he provided a 'description of the land (in which there are no reserves required) for the approval of the Surveyor General'.<sup>5</sup>

On 6 January 1854, Johnson reported that he had completed negotiations for about 60,000 acres north of Wakatarariki, the northern boundary of the Mangawhai purchase, including the valleys of the Waipū and Ruakaka Rivers. On 20 March 1854, he sent the Colonial Secretary three deeds for the purchase of Ruakaka, Waipū, and Mangawhai. The Ruakaka deed was dated 16 February 1854, when payment of £250 was made to nine signatories. Two further payments of £50 each followed on 8 and 17 March to another five signatories, making a total of £350. Although no area was stated, the boundaries were described, and a reserve was shown on the plan attached to the deed. The deed included the provision that 'Ten per cent of the proceeds of the sale of this Land [is] to be expended for the benefit of the Aborigines'.<sup>6</sup>

The Waipū deed included no reserves, no 10 per cent provision, and no statement of area, but it did describe the boundaries. The deed stated that a total of £350 was paid to 23 signatories in three instalments, on 20 February, 2 March, and 8 March 1854. A further payment of £10 to one signatory on 26 May 1854 was recorded in a second Waipū deed.<sup>7</sup>

The Mangawhai deed, dated 3 March 1854, followed a similar format, with a total payment of £1060 stated, a description of boundaries but no area given, and no reserves. It included the provision: 'It is further agreed that ten per cent of the proceeds of the sale of this block of Land by the Queen is to be expended for the benefit of the Natives'.<sup>8</sup> The higher price paid for Mangawhai may reflect the larger number of claimants for this land. In his 20 March 1854 report, Johnson provided little information about how the names of the various groups of signatories to the deed and the portion of funds each group received were arrived at. But he did explain an additional payment of £60:

It became necessary to settle this demand of a chief named Paratene Taupuhi, who disputed a part of the boundary, after all the details had been arranged by a Committee of the Chiefs, and had nearly prevailed on them to break off the negotiations; but on consideration of the said paid sum of Sixty pounds, he gave a range of valuable kauri timber, part of

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5. Johnson to Colonial Secretary, 6 January 1854, in Turton, *Epitome*, sec c, p 57

6. Turton, *Maori Deeds*, vol 1, deed 96 (pp 127–128)

7. Ibid, deeds 97, 99 (pp 132–133, 136)

8. Ibid, deed 98 (pp 133–136)

which was included in the boundary agreed upon, and part in addition of about 1,000 acres in extent . . .<sup>9</sup>

The Mangawhai deed contained a list of 28 sellers' names. These were the same names listed as tribes and their chiefs in Johnson's 14 December 1853 report (see above). After the list of names was added 'me ta ratou whanau katoa,' which was translated as 'and all our relations'. Presumably, many of the whānau also signed the deed, since there were 63 signatories in all. All the signatures and marks on the deed and all the receipts were witnessed by 'John G Johnson, Sub-commissioner,' and there seems to have been no independent witness.

There were three deed receipts for the Mangawhai purchase, the signatories to which correspond to a schedule Johnson enclosed with his 3 March 1854 report setting out 'their ground of claim' and amount paid. The first receipt was for £200 and was for 'The Arai, southern extreme of the purchase'. It listed seven names: 'Right by inheritance, being progenitors of the Kawerau tribe, who owned this part of the country.' This is the area claimed by the Ngāti Wai (Wai 244) claimants. The other two receipts were for £360 and £500. The former, which bore 20 signatories, was for 'The portion to the back and eastward and south of the Mangawhai'. The latter, with 34 signatories, was for the 'Northern side of Mangawhai, Bream Tail, the Rao Rao, and to the extreme [north] at Wakatarariki'. Both groups were described as having rights of inheritance from Ngāi Tahu, 'the original owners,' and 'also occupancy and possession to the present time'.<sup>10</sup> The Ngāi Tahu claims are included in the Te Uri o Hau Claims Settlement Act 2002. Paratene Taupuhi, who had sought a boundary change and was paid £60, was one of the people named as sellers in the deed, and his payment was included with the Ngāi Tahu claims.

Tirarau had not given up his claim for £100 of the Mangawhai purchase payment, despite having been rebuffed on his claim based on the battle of Te Ika ā Ranganui. As Johnson explained in his report of 20 March 1854:

I now regret to state that Tirarau urges the same claim, on account of a canoe upsetting on the bar of the Mangawhai river, in which a relative of his was drowned, a chief named Hikaotote, a brother of Parore.

The Ngatiwhatua tribes, the owners of Mangawhai, remonstrated with apparent justice, that as this catastrophe was occasioned by the sea, they would not submit to their land being taxed with it, and absolutely refused to sell their land subject to the condition of this payment, and I hoped that Tirarau would have relinquished this unreasonable demand; but, on the contrary, on my arrival at Whangarei, he came over from the Wairoa to see me, and

9. Johnson to Colonial Secretary, 20 March 1854, in Turton, *Epitome*, sec c, p 58

10. Turton, *Maori Deeds*, vol 1, deed 98 (pp 133–136); Johnson to Colonial Secretary, 20 March 1854, encl 3, in Turton, *Epitome*, sec c, p 60; John Grant Johnson, 'Schedule of Native Claimants to Mangawhai', AJHR, 1861, C-1, p 50

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urged his claim with great firmness, threatening to burn the house of any settler who might go to the land, unless his claim is satisfied. From the well known character of this chief, I have no doubt but that he would attempt to put his threat into execution.<sup>11</sup>

On the basis of a communication in 2000 from Lionel Brown, one of the claimants, Wai 688 researcher Dr Robyn Anderson asserted that Johnson did not appreciate the perspective of Te Parawhau. Dr Anderson stated that, 'From Te Parawhau's perspective, Tirarau's demands were not motivated by greed, or chiefly rivalry, but by the desire to honour the actions of Hikaotote in preventing the Ngapuhi incursion southwards directly through Kaipara in 1825.'<sup>12</sup>

Johnson sought official approval for a payment to Tirarau on the ground of maintaining the peace rather than for any perceived equity. He explained:

Notwithstanding this exaction on the part of Tirarau, which proceeds more from a species of native pride than from avarice, he is a chief well disposed towards the Government and the Europeans generally, and incongruous however as these circumstances may appear, he has taken the lead of the party in favour of selling their lands to the Government, and has offered a valuable tract of country for sale . . . his influence is paramount in whichever way it is directed in this part of the island, and his good offices being obtained in our favour will materially assist the more firm establishment of the authority of the Government in these newly acquired districts, where the natives are not in such an advanced state of civilization, or so attached to the Government, as in many other parts of the colony.<sup>13</sup>

A payment of £200 was made and recorded in a deed covering Mangawhai and Waipū, described as 'claims of Tirarau and Parore', and dated 17 July 1854. The deed referred to 'the true consent of us the chiefs of Ngatiporo, te Patukai [Patupai] and Ngatitu whose names are attached to this document'. The signatories included Tirarau and Parōre, as well as six others: Taurau Toko, Te Reweti, Hori Kingi Tahua, Te Manihera, and Karawai. The deed was signed by Johnson and witnessed by one Charles Walton, a settler of Wairoa.<sup>14</sup> In his report of 2 August 1854, Johnson described it as 'the deed of final extinction of the claims of the chiefs and their followers' named in the list of signatories, who appear to be Ngā Puhi and include Te Parawhau (Tirarau and his brother Taurau) and Te Rōroa (Parōre). Dr Anderson suggested that Johnson needed to forestall opposition to the sale from Ngā Puhi followers of Hone Heke in the Bay of Islands by appeasing Tirarau, who had opposed Heke's challenge to the British in 1843.<sup>15</sup>

11. Johnson to Colonial Secretary, 20 March 1854, in Turton, *Epitome*, sec C, p 58; Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, pp 47-48

12. Document L4, p 51

13. Johnson to Colonial Secretary, 20 March 1854, in Turton, *Epitome*, sec C, p 58

14. Turton, *Maori Deeds*, vol 1, deed 102 (pp 138-139)

15. Johnson to chief commissioner, 2 August 1854, *NZ Land Purchases*, 1861, C-1, no 14, p 58

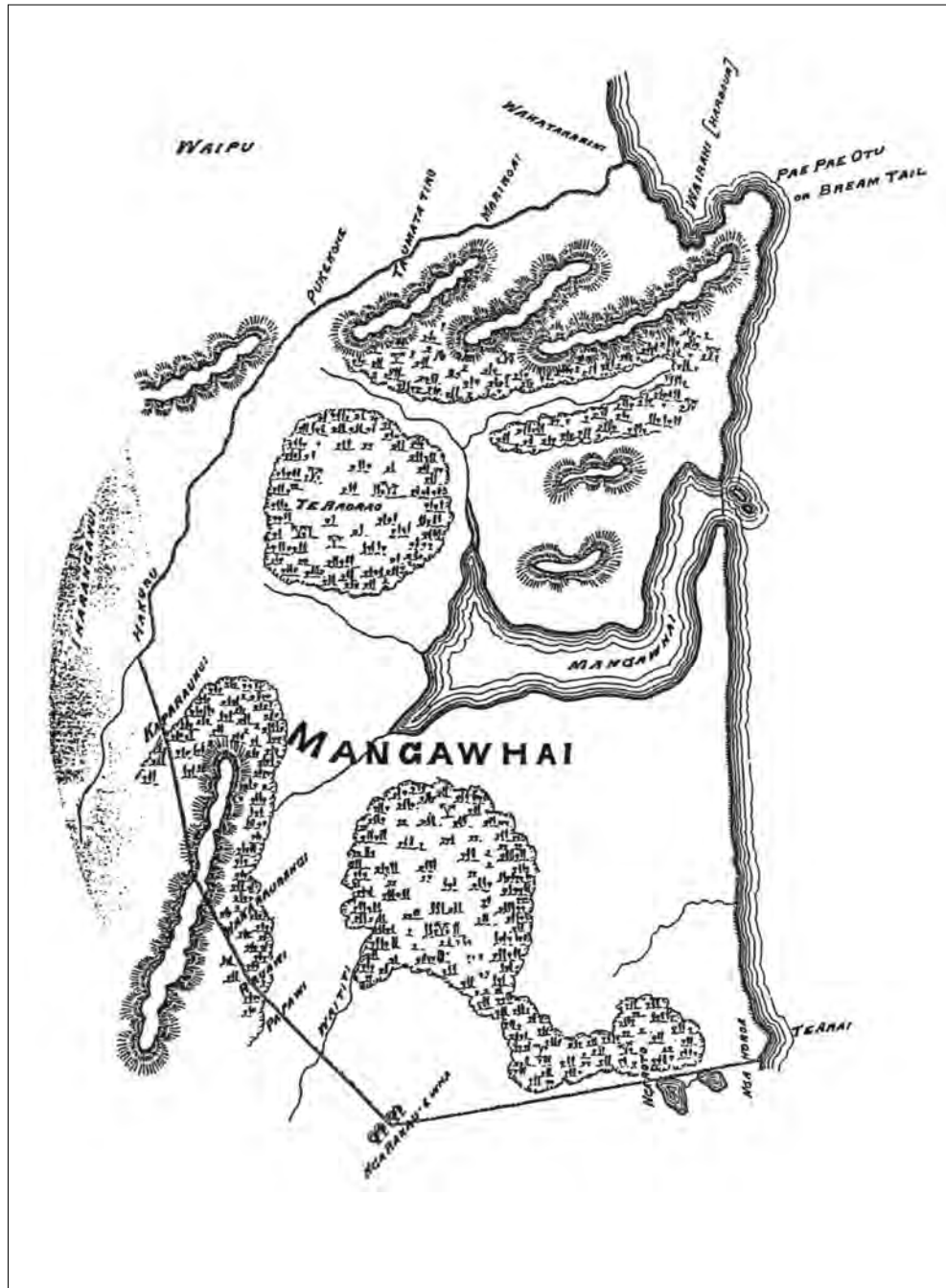


Figure 23: Plan of the Mangawhai purchase, 1854. Source: Henry Hanson Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877), vol 1, deed 98 (pp 133–136).

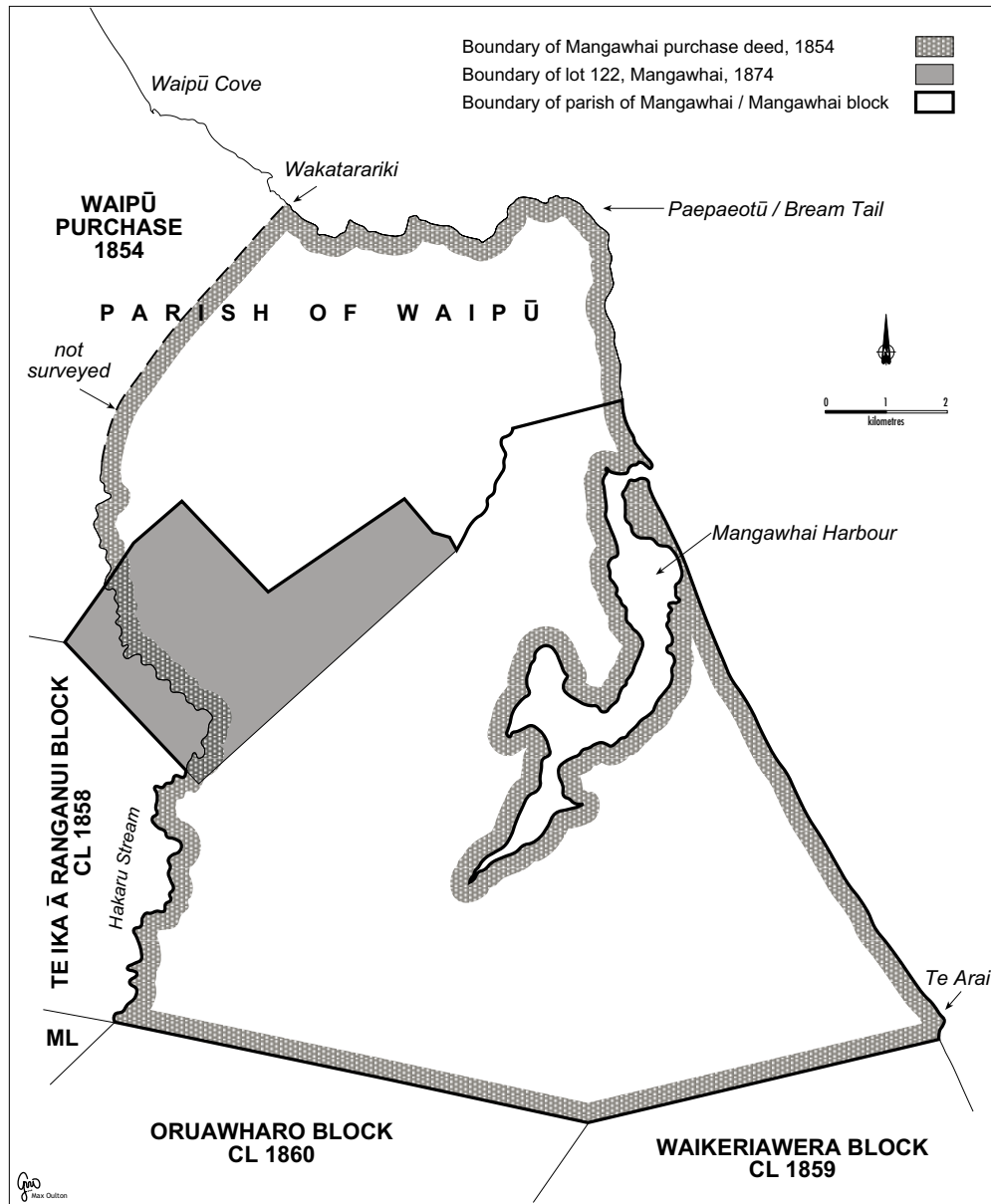


Figure 24: The boundaries of the Mangawhai block

### 5.3 THE BOUNDARIES OF MANGAWHAI

A significant issue in all the Mangawhai claims is the Crown's failure to ensure that a proper boundary survey was made at the time of purchase. The plan attached to the 1854 Mangawhai deed was only a sketch map with named boundary points, not a proper survey (fig 23), and there was never a survey of the boundary between the Waipū and Mangawhai purchases. When a proper survey was later done, the northern boundary of what became known as Mangawhai parish, or the Mangawhai block, was well south of the boundary in the deed



plan (fig 24). Because no area was stated in the original purchase deed and there was no proper survey, as Alemann pointed out in his research report for Te Uri o Hau, it is not possible to state the block's specific acreage. But when in 1855 the block was gazetted under the Waste Lands Act as being open for settlement, the area given for Mangawhai and Ruakaka combined was 30,500 acres. Johnson had estimated that Ruakaka contained 14,000 acres, leaving 16,500 acres for Mangawhai. Alemann reported that roll map 19 in the Auckland office of the Department of Survey and Land Information (DOSLI, now Land Information New Zealand) showed the area of the Mangawhai block as 24,000 acres. Calculations made in the DOSLI office, using a planimeter on a cadastral plan, produced an area of 23,700 acres for the land now known as the Mangawhai block, which was only part of the Mangawhai purchase. The total area covered by the Mangawhai purchase deed was also defined on the cadastral plan and calculated by DOSLI at 32,100 acres (fig 24).<sup>16</sup> This latter figure is the correct one on which to base a later discussion of price per acre and the payment of 10 per cent on sales in the area described in the original Mangawhai deed.

The first survey of the Mangawhai block was done in 1856, after the deed was signed, and presumably that was when the northern boundary was determined. It was also found that the inland boundary of the Waipū block had not been surveyed. There was further confusion when Commissioner Bell was investigating Wright and Grahame's old land claim at the head of the Ōtamatea River. Grahame implied to Bell that their claims extended east into the Mangawhai and Waipū purchases. Johnson was asked to comment, and he stated that the lands still held by Māori, named Te Ika ā Ranganui and Pukekaroro, lay between the Wright and Grahame claims and the Mangawhai and Waipū purchases.<sup>17</sup>

A dispute developed over an encroachment west of the Hakaru Stream (the boundary described in the Mangawhai deed) by lot 122, an area of 3457 acres purchased from the Crown by Thomas Henry (fig 24). The area west of the Hakaru Stream amounted to about 500 acres, and Henry had received a Crown grant for the whole of lot 122 in January 1863. Arama Karaka of Ngāi Tahu had already complained to Crown land purchase officer John Rogan that Henry had taken some of his land, but nothing was done at the time. The matter came to a head in 1872 when Arama Karaka was negotiating the sale to the Crown of land called Maranui, west of the Mangawhai block. Rogan, by then a judge of the Native Land Court, was asked to comment. He acknowledged that there had been an encroachment but blamed Henry, who had employed the surveyor. The resulting survey plan had been passed by the Survey Office, and Henry was adamant that he had a Crown grant for the land and that it was up to the Crown officials to sort out any dispute with Māori. Arama Karaka wanted full payment of the 10 shillings per acre that Henry had paid for the land, but Crown officials were unwilling to pay that much, and eventually a price was settled at six shillings

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16. Document A14, p 30

17. Document L3, pp 93–96

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per acre.<sup>18</sup> On 12 February 1874, payment of £150 was made to Arama Karaka for his interests in lot 122 of the Mangawhai block.<sup>19</sup>

**5.4 ANCESTRAL RIGHTS IN MANGAWHAI**

Johnson identified three groups of owners with ancestral rights in the Mangawhai land. One group, in the land south of Te Arai, was derived from the ancestral Kawerau people; the other two derived from Ngāi Tahu, who were ancestors of Te Uri o Hau. Johnson provided no information, however, about any Māori occupation of the land, kainga, wāhi tapu, urupā, or other sacred sites. Following the battle of Te Ika ā Ranganui, much of the surrounding area was abandoned, including Mangawhai. However, traditional and archaeological evidence indicates that there was an important route and canoe portage between the Ōtamatea River and Mangawhai Harbour (see ch 2). This was Te Uri o Hau's only major access to the eastern coast. There is also archaeological evidence of past Māori settlement around Mangawhai Harbour and clear evidence of past occupation and use of the area by the various hapū of Te Uri o Hau. This has been acknowledged by the Crown in the settlement of Te Uri o Hau claims.

The claims of traditional occupation made by the other claimant groups are reviewed below.

**5.5 THE '10 PER CENT' PROVISION**

As noted in section 5.2, the Mangawhai deed contained the provision that 'ten per cent of the proceeds of the sale of this block of Land by the Queen is to be expended for the benefit of the Natives'. The Māori-language deed stated: 'Ko te tua Ngahuru o nga moni e homai ana e nga pakeha ki a te Kuini mo tenei whenua – ka riro mo nga mahi ma nga tangata Maori'.<sup>20</sup> The Ruakaka deed, which was negotiated about the same time, contained a similar provision, but no other deeds for purchases in the Kaipara inquiry district did, although there were seven others with similar provisions in the Auckland province. In April 1854, Donald McLean, the chief land purchase commissioner, was instructed by the Colonial Secretary not to enter into any arrangements which might infringe the Constitution Act 1852 or Governor Grey's land regulations of 4 March 1853.<sup>21</sup> McLean's instructions to Johnson following this were more specific: in drawing up a deed of purchase, Johnson was 'not to insert any clause

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18. Document L3, pp 93–96

19. Turton, *Maori Deeds*, vol 1, deed 138 (p 182)

20. Ibid, deed 98 (pp 133–136)

21. Document P5, p 3



for additional per centage being paid to the Natives' until definite instructions were issued to him on the subject.<sup>22</sup> No more deeds were completed that included this sort of provision.

Crown researcher Robert Hayes investigated the background to this 10 per cent provision, which can be linked back to the Crown's policy in the 1840s of 'dedicating part of its land revenue – the Land Fund – for the benefit of Maori and to the periodic tensions over the utilisation of the Land Fund'.<sup>23</sup> In the early 1850s, Grey's policy of using a portion of the land fund came under serious challenge. With the establishment of representative government under the Constitution Act 1852, a separate dedicated fund of £7000 was allocated for Māori purposes. Hayes suggested that Grey 'crafted' the 10 per cent provision 'to provide him with an unfettered source of funding so as to maintain his system of patronage and [he] generally provided [for] the welfare of Maori as he saw fit'.<sup>24</sup> What Hayes referred to as the 'claw-back clause' was first used in September 1853 in several deeds recording Crown land purchases in the Wairarapa. These included a provision that 5 per cent of the proceeds of Crown sales was to be returned to Māori. In a report dated 2 September 1853, McLean set out how this 5 per cent was to be paid: 'For schools, hospitals, and medical attendance, flour mills, and annuities for the chiefs who have ceded their lands; but it is reserved entirely to the Governor, or an officer acting for him, as to whom, and at what periods, and how these annuities are to be distributed'.<sup>25</sup> Hayes was unable to locate any contemporary evidence that would explain why Grey had introduced this claw-back clause so late in his tenure as governor, just three months before he left New Zealand in December 1853.

One of the reasons suggested for the Wairarapa 5 per cent provision was that it was a form of compensation to Māori for lost rental from informal grazing leases. No such explanation fits the Mangawhai situation, however. Nor is there any explanation of why, in the nine Auckland province deeds containing a claw-back clause, the payment had risen to 10 per cent. Johnson provided no explanation of why such a clause was included in the Mangawhai and Ruakaka deeds but not in the Waipū deed, when all three purchases were negotiated at about the same time. The other seven Auckland deeds containing the 10 per cent provision were negotiated by Crown land purchase officer John White. The Hikurangi deed of 10 November 1853, recording the Crown's purchase of land from Ngāti Whātua, Akitai, and Ngāti Te Ata on the northern shore of Manukau Harbour, provided more detail about the purpose of the 10 per cent provision:

it is further agreed to by the Queen of England on her part that there shall be paid for the following purposes that is to say for the founding of schools in which persons of our race may be taught for the construction of Hospitals in which persons of our race may be tended

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22. McLean to Johnson, 18 May 1854, AJHR, 1861, C-1, pp 52–53

23. Document P5, p 3 (see also pp 5–25)

24. Ibid, p 25

25. Ibid, p 29

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for the payment of medical attendance for us for annuities for our chiefs or for other purposes of a like nature in which the Natives of this country have an interest ten per cent or ten pounds out of every hundred pounds out of moneys from time to time received for this land when it is resold . . .<sup>26</sup>

Hayes concluded that 'it is difficult to draw firm conclusions as to the precise benefits intended to flow from the Mangawhai (and Ruakaka deeds) and who were to be the beneficiaries.'<sup>27</sup> However, he also considered it reasonable to assume that the earlier Hikurangi deed provided a guide that was already known to Ngāti Whātua.

One interpretation of the Hikurangi deed was that the 10 per cent fund could be used for the general benefit of Māori. However, based on the 'contract' set out in the Mangawhai deed, Alemann concluded that the beneficiaries of the 10 per cent provision were the sellers of the land.<sup>28</sup> Kirstie Ross, a researcher for the Ngāti Wai claimants, also argued that the Crown 'had entered into a contract with Maori who sold Mangawhai'.<sup>29</sup> There were two aspects to the interpretation of who the beneficiaries of the 10 per cent provision were:

- ▶ the Crown's failure to pay out any money after 1874; and
- ▶ whether Crown expenditure on services generally for Māori compensated for the non-payment to the descendants of the sellers of the Mangawhai land.

No system of separate accounting for the 10 per cent of revenue from land sales was set up until, after a reminder from the Auditor-General, a separate Auckland 10 per cent fund was established in 1861–62, to be paid into the Colonial Treasury. No detailed accounts seem to have been kept before 1861, although there are records of some transfers before that date. In October 1861, the receipts for 10 per cent of land sales on the nine Auckland 10 per cent deeds amounted to £3782 15s 2d, while payments totalled £586 10s, leaving a balance of £3196 5s 2d.<sup>30</sup> No payments had yet been made to the Mangawhai sellers. However, on 11 May 1864, John Rogan, by then the resident magistrate for Kaipara, wrote to the Native Secretary, forwarding 'an original receipt, and translation, for the sum of four hundred pounds, which has been paid to the natives, on account of the Mangawhai Block, in accordance with an agreement entered into with the natives when the deed of cession for the purchase was executed'.<sup>31</sup> Hayes reported that he had been unable to find the actual receipt to determine who had signed it. The payment was not recorded in Government accounts as part of the 10 per cent provision, and Hayes found no record of a Māori request for payment or other evidence that it related to Mangawhai. He could not exclude the possibility that in a clerical error the wrong block was listed (Rogan often had to clarify his book-keeping records long

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26. Turton, *Maori Deeds*, vol 1, deed 270 (p 327)

27. Document P5, p 31

28. Document A14, p 77

29. Document L3, p 128

30. Document P5, p 57

31. *Ibid*, p 58

after transactions were settled). The payment may have been part of the settlement of the Crown purchases of the Waikiekie and Mareretu blocks, which were completed about the same time.

In 1873, the commissioner of native reserves, Charles Heaphy, was given the task of arranging for the distribution of the Wairarapa and Auckland funds. This was probably in response to persistent Wairarapa Māori requests, although no similar inquiry seems to have been made about the Auckland fund. Heaphy sorted out the amounts for distribution, block by block, and distributed the Wairarapa moneys in September 1873. He made the Auckland payments in April and May 1874. Revenue accrued from sales in the Mangawhai block, according to Treasury accounts, amounted to £419 13s 2d. In his report to Parliament, Heaphy explained that the Mangawhai case had been difficult to deal with because there were so many people to find, many of them descendants of sellers by then deceased. Heaphy had met with 'the principal of their chiefs at Auckland and other places' and reached an agreement to divide the Mangawhai 10 per cent fund as follows: £209 16s 7d for schools and hospitals, £14 6s 6d for administration expenses, and £195 10s 1d for 'presents'.

Heaphy had an agreement signed by Arama Karaka, Eramiha Paikea, and six others for the £14 6s 6d expenses, 'for the trouble and expense in connection with the management' of the payments.<sup>32</sup> He then explained how individual payments under the category of 'presents' were arranged:

The chiefs Adam [Arama] Karaka and Eranihi [Eramiha] Paikea, principal men on the sale, gave me valuable assistance in allocating the amounts to the respective claimants. They had all quite forgotten the circumstance of the stipulation, and expressed their gratification at the Government having taken care of their interests. In this case, after paying £68 to those present, I had also to leave blank receipt forms with Mr Commissioner Kemp, the Rev Mr Gittos, and Mr R Mair, to be signed by the absent Natives, to whom I promised to remit the amounts decided on.<sup>33</sup>

Although Heaphy had called meetings in Auckland and had travelled to Mahurangi and Whangarei, it was about a year before all the Mangawhai funds were finally distributed. One reason was that some recipients were scattered, living away from their usual homes and working on the gumfields. Ross suggested that Māori were 'disadvantaged by a lack of official planning and the practicalities of the process' and by the lack of 'advance warnings of Heaphy's visits'.<sup>34</sup> However, Heaphy's careful records of payments and his efforts to consult with the chiefs and to travel out of Auckland, as well as arranging for reputable agents such

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<sup>32</sup>. Document L3, p 102

<sup>33</sup>. Heaphy to under-secretary, Native Department, 29 May 1874, AJHR, 1874, G-4A, pp 2-3; and see doc L3(a), pp 62-66

<sup>34</sup>. Document L3, p 102

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as the Reverend W B Gittos at Ōtamatea and Robert Mair in Whangarei to organise payment to those he could not find, indicate that he carried out his task conscientiously.

The researchers were critical of the Crown, however, for its failure to maintain adequate records. Alemann's analysis of land sales on the Mangawhai block up to 1865 indicates that an estimated £1017 17s 19d should have been accumulated in the Auckland fund by then.<sup>35</sup> Yet, in 1874 Heaphy found the accrued revenue to be only £419 13s 2d. In commenting on these figures, Hayes notes that 'Alemann's reconstruction substantially mirrors the Crown's 1927 statements submitted to the Sim Commission' (an inquiry we discuss below), compiled by the Department of Lands and Survey.<sup>36</sup> Hayes reported that he had been 'unable to reconcile Heaphy's accounts with the General Government's accounts as published, nor the payouts from the fund with those contemplated by Heaphy'.<sup>37</sup>

There was no further payment to Māori out of the Auckland 10 per cent fund for Mangawhai after 1874. In 1878, the Auckland fund was transferred to the Public Trustee. There were suggestions that the Government buy off its remaining obligations, but no action was taken. In 1899, the fund was transferred from the Public Trustee to the Consolidated Fund, but the reason for this is not known.<sup>38</sup>

**5.6 MĀORI COMPLAINTS AND THE SIM COMMISSION**

From 1899 on, there were a series of petitions to Parliament on non-payment from the Auckland 10 per cent fund. Heta Paikea and others in 1899 sought all the funds due, being 'ten per cent of the moneys paid by the Pakeha to the Queen'. In other words, they did not consider that part of the fund should be assigned for schools, hospitals, or other services for Māori. Other petitions followed, including half a dozen between 1914 and 1917, and one each in 1920 and 1924. Most were on the general issue of non-payment of the 10 per cent of sales revenue, but several mentioned Mangawhai specifically.<sup>39</sup>

The response of the Native Affairs Committee on several occasions was to seek information from the Department of Lands and Survey, which did supply figures from time to time. In 1920, it began a detailed reconstruction of sales of Crown lands in the relevant blocks, but by 1923 it had not completed the task. On 25 June 1924, the under-secretary of the Native Department wrote to the Native Minister, with reference to one petition, that the Department of Lands was still working on the issue. 'Apparently it was either considered unnecessary to keep proper records or the matter of keeping accounts was overlooked and

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35. Document A14, p 39

36. Document P5, p 59 n 188

37. Ibid, p 64

38. Ibid, pp 66–67

39. Ibid, pp 67–69

## THE MANGAWHAI TRANSACTION

5.6

| Item                                                   | Amount<br>(£ s d) |
|--------------------------------------------------------|-------------------|
| Total rent received                                    | 1312 18 9         |
| Total received from sales, land orders and free grants | 8731 6 7          |
| Unimproved value of leased land 1927                   | 1771 10 0         |
| Value of reserves at date of reservation               | 4058 15 0         |
| Value of Crown land undisposed of in 1927              | 1492 0 0          |
| Total                                                  | 17,366 10 4       |

Table 7: Figures for the Mangawhai block.

Source: Auckland 10 per cents, MA/8a, Archives NZ (doc D4).

the Lands Department is finding difficulty in tracing what (if any) are the present liabilities.<sup>40</sup> On 30 July 1925, the under-secretary of the Department of Lands and Survey suggested to the under-secretary of the Native Department that:

it would be in the best interests of the Natives and the Crown to arrive at a definite sum to liquidate the whole of the liability and hand such sum over to the Native Trustee or other authority to be dealt with in a manner consistent with the aims and objects covered by the clauses in the various purchase deeds.

Special legislation would no doubt be required to give effect to such a proposal . . .<sup>41</sup>

The under-secretary suggested that, if a flat rate were assessed instead of specific figures for each alienation, that would 'considerably simplify matters', but there would be 'difficult issues' to resolve. Nothing came of this, or of similar earlier proposals.

In 1927, eight petitions relating to the Auckland 10 per cent fund were referred to the Sim commission, the royal commission to inquire into 'confiscated native lands and other grievances'. By this time, the Department of Lands and Survey had compiled some detailed figures which were submitted in evidence. A summary of the figures for the Mangawhai block is given in table 7.

These figures were based on the area of the Mangawhai block being 27,193 acres 1 rood 34 perches.<sup>42</sup> We have noted above that the DOSLI calculation of the block was 23,700 acres. The area covered by the Mangawhai purchase was also calculated by DOSLI at 32,100 acres.<sup>43</sup> Hayes calculated that the land sold or disposed of by land order or free grant, valued at 10 shillings per acre, was about 57 per cent of the total area of the Mangawhai block.<sup>44</sup> We provide these figures to give a sense of the values involved, but we make no further comment on

40. Document L3(a), p 104

41. Ibid, p 105

42. 'North Auckland Land District: Summary Showing Position with Respect to the Blocks Containing Ten Per Cent Reservation in Deeds of Purchase', table, undated (doc D4)

43. Document A14, p 30

44. Document P55, p 71

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the discrepancies in area or the method of valuation, because no more payments were made to Māori out of the Auckland 10 per cent fund.

Crown solicitor Vincent Meredith argued strongly before the Sim commission that the 10 per cent provision in the Auckland deeds, and in particular the wording in the Hikurangi deed, indicated that there was no intention of 'personal benefit accruing to individual vendors or their relatives'. He considered that the intention was to benefit Māori generally, citing Governor Grey's concern 'for making adequate provision for the education, sanitation and other benefits for the Natives'. For the same reason, there was provision in the Constitution Act 1852 to set aside £7000 annually 'for Native purposes'. Meredith then recited the various increases in funds allocated to the education, health, and welfare of Māori, and the relevant legislation. He produced figures for all the Auckland blocks subject to the 10 per cent provision, and suggested that the maximum revenue that could be derived was £89,827. One-tenth of this would be £8982, from which he deducted the £1677 total 'disbursed by Heaphy to Natives personally', leaving a balance of £7305. He then produced figures compiled by the Department of Lands and Survey from returns supplied by Treasury and the Departments of Education and Health setting out Government expenditure for 'various Native purposes' since 1853. This figure came to £2,362,385. In the ensuing years, he added, the figure would increase, whereas a 10 per cent payment was made once only. Meredith concluded that 'that being so it seems puerile to suggest that there has been any failure on the part of the Government'.<sup>45</sup>

The Sim commission report on the eight petitions concerning the Auckland 10 per cent fund was brief. It began by quoting the provision in the Hikurangi deed and then followed Meredith's argument closely. The commission accepted the Crown's argument that the Government had spent 'well over £2,000,000' on services for Māori, in addition to providing equal access to general services:

In education, the Maoris have special schools established in their settlements, and records show that nearly £500,000 has been expended on Maori education in the Auckland and North Auckland Districts between the years 1880 and 1925. It was contended by counsel for the Crown that this expenditure ought to be treated as a performance of the obligation created by the covenants. We think that this is the proper view to take of the matter, and that the petitioners are not entitled to any relief.<sup>46</sup>

In 1934, another petition on the Auckland 10 per cent provision was submitted to Parliament by Wiremu Henare Toka and 47 others. The under-secretary of the Native

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45. 'Minutes of Evidence before Royal Commission sitting at Russell', 11–12 April 1927, petitions 42–56, north Auckland, pp 451–461 (doc D4)

46. 'Report of Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, p 33

Department responded: ‘The Report of the [Sim] commission really fulfills the prayer of the petitioners.’<sup>47</sup>

This completes our account of the historical background to the various claims relating to the Mangawhai transaction. We turn our attention now to reviewing the individual claims, concluding the discussion of each one with our findings and recommendations.

## 5.7 WAI 244

Laly Haddon, the chairman of the Ngātiwai Trust Board, gave evidence for the Wai 244 claimants. He explained that the rohe of Ngāti Wai extended from Rawhiti in the Bay of Islands along the eastern coast to Omaha and out to the islands of the Hauraki Gulf. His hapū, Ngāti Manuhiri, occupied the coastal area from around Te Arai southward to Pakiri, where their marae is located. They are tangata whenua there, based on their whakapapa. The principal ancestors of Ngāti Wai were Tahuhunuiorangi (the eponymous ancestor of Ngāi Tahu), Tamatea, and Manaia. Ngāti Wai have close kin connections historically with Ngāti Whātua and Te Uri o Hau. This ‘relationship has had its “ups and downs” but . . . remains, to this day’.<sup>48</sup> Mr Haddon explained how in the mid-seventeenth century ancestral Kawerau iwi occupied the eastern coast from Takapuna north to the end of Pakiri beach. North of this were ‘Ngāi Tahu, who were part of a powerful iwi in Ngāti Manaia.’ Te Kawerau and Ngāti Manaia lived peaceably for some time, but there was a major battle in the Mahurangi area, followed by ‘a series of ongoing peace-making marriages.’ Out of these marriages, the present Ngāti Wai people evolved.<sup>49</sup>

### 5.7.1 Claimant submissions

In closing submissions, counsel for the Wai 244 claimants acknowledged that their claims in the Mangawhai land were only a small part of their total claims, because their rohe lies mostly outside the Kaipara inquiry district. Counsel also expressed concern that Ngāti Wai claims were divided among several inquiry districts. The Mangawhai claim involves only one hapū of Ngāti Wai – Ngāti Manuhiri – but the Mangawhai land around Te Arai ‘represents a major part of their traditional hapu estate.’<sup>50</sup> The division of the Ngāti Wai rohe across several hearing districts makes it difficult for the Tribunal to see their land issues in their full context.

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47. MA1 19/1/148, Archives NZ (doc A14, p 34)

48. Document L12, p 2

49. Ibid, pp 3–4

50. Document Q4, pp 3–4



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Counsel commented that the Crown did not dispute Ngāti Wai interests in the Mangawhai purchase. Two of the signatories to the Mangawhai deed, Te Kiri and Te Urunga, were of Ngāti Wai: ‘Te Kiri has a marae named after him at Pakiri.’<sup>51</sup> It was also acknowledged that both could whakapapa also to Te Uri o Hau, and that kin connections were close. However, although they did not dispute shared Te Uri o Hau interests in the Mangawhai land, Ngāti Wai wanted their interests acknowledged in their name. After Te Ika ā Ranganui, it was claimed, Te Kiri and Te Urunga stayed in the district and maintained their rights. We note that the Waikeriawera block (12,738 acres) to the south of Mangawhai was purchased for the Crown by John Rogan in 1859 for £500 from the ‘Chiefs and People of the tribe Ngatimanui and Te Uriokatea’. The signatories to this deed were Te Kiri, Te Urunga, and six others.<sup>52</sup>

Claimant counsel also referred to the ‘inadequate’ price per acre paid for the Mangawhai purchase, noting the difficulty in calculating this accurately because of ‘the inaccurate and incomplete identification of the boundaries of the Mangawhai block, and the failure on the part of the Crown to survey the block prior to purchase.’<sup>53</sup> Counsel also remarked on the Crown’s failure to provide any reserves for Ngāti Wai, and the lack of explanation for this beyond Johnson’s comment that ‘there were no reserves required’ in his 31 December 1853 report.<sup>54</sup> Nor was there any acknowledgement of wāhi tapu in the Te Arai area. Counsel attributed the failure to provide reserves to Johnson’s personal view that Māori were ‘doomed for extinction’ and quoted the evidence of Tribunal researcher Dr Barry Rigby that Johnson shared the ‘contemporary European ideology’ that Māori were a ‘dying race’.<sup>55</sup>

Counsel for Wai 244 was particularly concerned about the failure of the Crown to pay Ngāti Wai their share of the 10 per cent of the proceeds of the sales of land at Mangawhai. He submitted that in the Mangawhai deed ‘there was an explicit written promise by Johnson, signed on behalf of the Crown, which provided for benefits additional to the purchase price’ which would come from selling land to settlers. Counsel suggested that this was a contractual obligation on the Crown, saying that ‘the contract is binding’ and that Ngāti Wai were therefore entitled to any benefit. Counsel also queried why Heaphy had acknowledged this Crown obligation by making payments to vendors or their descendants in 1874 but in 1927 the Sim commission chose to interpret the Crown obligation as being fulfilled by general expenditure on services for Māori since 1840. In any case, counsel added, the Crown had provided no evidence that money ‘received as a consequence of the on-sale of land in the Mangawhai was ever applied directly for the benefit of the Mangawhai vendors and their descendants.’<sup>56</sup>

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51. Document Q4, p 11

52. Turton, *Maori Deeds*, vol 1, deed 117 (pp 156–157)

53. Document Q4, pp 20–21

54. Ibid, pp 28–29

55. Ibid, pp 29–30; doc F1, p 108

56. Document Q4, pp 38–39

**5.7.2 Crown submissions**

Crown counsel rejected the claim that Johnson had not thoroughly investigated occupation rights at Mangawhai, quoting from the Wai 244 research report by Kirstie Ross:

Johnson's deed illustrates his understanding of the groups involved in the sale, and the types of rights that he recognised. He appeared to be aware of the historical background that underpinned the rights of local hapu in the area and used longevity of occupation as his benchmark for a claim.<sup>57</sup>

Counsel submitted that 'Ngatiwai were represented in the negotiations and subsequent agreement to sell' and there was no evidence of any contemporary or subsequent complaint.<sup>58</sup>

On the question of price, counsel acknowledged that Crown pre-emption in the Treaty created a land-purchasing monopoly but rejected the suggestion that the prices paid were too low. There was no evidence that the Crown made a substantial profit. Moreover, it was argued, the Government resources were slender, and receipts from the sale of land were, in the 1850s, still largely offset by the costs of acquiring the land, surveying it, and administering the sales. Furthermore, the provision of infrastructure benefited both Pākehā and Māori, and the Constitution Act 1852 provided for an annual allocation of £7000 for Māori purposes.<sup>59</sup>

On the issue of boundaries, Crown counsel submitted that 'on the balance of the evidence, the boundaries were determined and were understood by both parties' and it 'was likely that Johnson had traversed the boundaries'. Furthermore, disputes had been resolved by the committee of chiefs. 'In any event, it is submitted that the claimants have failed to establish any prejudice arising from the alleged failure to survey the boundary.'<sup>60</sup>

On the issue of the lack of reserves in the Mangawhai purchase, Crown counsel noted that Johnson was aware of the need to consider the provision of reserves and it was therefore reasonable to assume that this had been discussed with the vendors. A reserve area where people were living and cultivating the land had been requested in the Ruakaka purchase, negotiated at the same time by Johnson. At Mangawhai, because it was the 'first major land sale in the area', because most land in the area was still under Māori control, and because there was no Māori settlement on the land, it was argued that the 'vendors did not want or need reserves set aside.'<sup>61</sup>

On the question of the 10 per cent provision in the Mangawhai deed, Crown counsel submitted that 'considerable doubt remains as to both the meaning of the clause (both in terms of what was the intended benefit and who were the intended beneficiaries) and as to the

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57. Document L3, pp 71–72

58. Document Q16, p 117

59. Ibid, pp 38–40, 117

60. Ibid, p 118

61. Ibid, pp 118–119

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subsequent administration of the “Ten per cent” Fund’. Counsel accepted that the 10 per cent provision was likely to have been intended ‘at least in part, as an inducement to Māori to make land available for settlement’, but maintained that ‘other more immediate motives’ included Grey’s desire to establish a fund (in addition to the £7000 allocated in the Constitution Act 1852) for the benefit of Māori generally. Counsel argued that ‘these mixed motives’ indicated the ‘likely beneficiaries of the clause’. The Hikurangi deed provided for general Māori purposes. The ‘distribution by Heaphy in 1874 conferred a mix of benefits’, which reinforced this interpretation, it was argued, in that £209 16s 7d was allocated to schools and hospitals, and £195 10s 1d was paid ‘directly to the vendors or their descendants.’<sup>62</sup>

Crown counsel acknowledged that after 1874 ‘the Crown failed to keep adequate accounting records’ and that it was therefore ‘difficult to ascertain the extent to which the Crown discharged its obligations under the “ten per cent” clause’. Counsel listed the difficulties as follows. There was doubt about whether the £400 paid by Rogan in or before 1864 related to the Mangawhai 10 per cent or some other payment, and there was difficulty in reconciling the numbers involved in calculations of how much was payable. There were discrepancies between Heaphy’s distribution and the calculations by Alemann and Hayes of what was payable by 1874. There was also doubt about whether free land grants or income from the leasing of Crown land should be included in these calculations and about ‘the extent of public funds expended for the benefit of the “natives”, and the extent to which the vendors, their descendants and the wider regional community benefited from this expenditure’. In 1927, the Sim commission argued that the Crown’s obligations had been discharged by the expenditure to date of over £2 million for the benefit of Māori. Crown counsel submitted that ‘this argument has substance’ and supported ‘the finding of the Sim Commission that Crown expenditure on Maori was a reasonable satisfaction of the “ten per cent” provision.’<sup>63</sup>

**5.7.3 Claimant response to Crown submissions**

In responding to Crown submissions, claimant counsel submitted that the suggestion that the purchase price was adequate and in line with other purchases ‘misses the point’. While the Crown’s monopoly on land purchasing was not a breach of the Treaty, the issue was ‘whether the Crown exercised the powers created by the monopoly in the appropriate manner’, and whether Māori interests were properly protected. Claimant counsel suggested that the Crown had not produced evidence to demonstrate that the boundaries were properly identified prior to the sale of Mangawhai or that Ngāti Wai did not require reserves. Contrary to the Crown’s contention that there was no evidence of any contemporary or subsequent complaint, Ngāti Wai had joined with Te Uri o Hau signatories in petitions concerning Mangawhai. Claimant counsel also rejected the Crown’s interpretation of the 10 per cent

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62. Document Q16, pp 119–121

63. Ibid, pp 121–122

provision and submitted that ‘there can be little doubt the intended beneficiaries of the ten per cent clause were the vendors.’<sup>64</sup>

#### 5.7.4 Tribunal comment

The Crown has acknowledged that the Ngāti Manuhiri hapū of Ngāti Wai did have ancestral rights that were taken into account in the Mangawhai purchase. The disputed issues in the Wai 244 claims in Mangawhai are the price paid, the definition of the boundaries, the lack of reserves, and the 10 per cent provision. We note that the argument is necessarily curtailed by the limitations of the evidence provided in Johnson’s brief reports and by the lack of other corroborating evidence surrounding the negotiations and signing of the Mangawhai deed. Johnson was both witness and interpreter as well as Crown representative in the completion of the deed, and there is no evidence of independent witnesses or any advice for the Māori parties. However, both Crown and claimant researchers and Dr Rigby have commented that Johnson made a conscientious effort to investigate ancestral claims to the Mangawhai land in what was a very complex Māori political situation following Te Ika ā Ranganui. He consulted the influential chief Tirarau, and later agreed to a payment which acknowledged both Tirarau’s mana and the pragmatic desire to reinforce his cooperative attitude toward land sales. The Mangawhai deed was negotiated with people who could demonstrate ancestral rights in the land.

On the question of price, there are many factors to be considered in determining what was fair or adequate in 1854 in what were the first land sales to the Crown in the region and at a time when the Crown was the only purchaser. The price for the Mangawhai land was calculated at ‘just under 8 pence per acre’ by Alemann and between eightpence and ninepence an acre according to Ross under cross-examination by the Crown.<sup>65</sup> Hayes’s calculation of just over 10 pence per acre was based on the area of the Mangawhai block being 27,200 acres and included the payment to Tirarau, a total of £1160.<sup>66</sup> Some confusion has arisen because the area of the Mangawhai purchase (as calculated by DOSLI and reported by Alemann) was 32,100 acres, and Alemann’s calculation was based on this, as well as excluding the £100 paid to Tirarau. Moreover, the present boundary of the Mangawhai block is not the same as the area described in the Mangawhai deed plan.<sup>67</sup>

Whether the Mangawhai price at, say, between eightpence and ninepence an acre was ‘in line’ with other purchases is difficult to determine. Hayes concluded that ‘the sellers were robust negotiators,’ who had raised Johnson’s original offer (which was based on his instructions in January 1854 to pay no more than sixpence per acre for a large block, but up to one

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64. Document Q19, pp 1–5

65. Document A14, p 31; doc Q16, p 117

66. Document P5, p 45

67. Document A14, p 31

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| Year | Block             | Area<br>(acres) | Total price<br>(£ s d) | Price per acre<br>(s d) |
|------|-------------------|-----------------|------------------------|-------------------------|
| 1854 | Ruakaka           | 15,100          | 420 0 0                | 0 6½                    |
| 1858 | Te Ika ā Ranganui | 8128            | 500 0 0                | 1 3                     |
| 1859 | Pukekāroro        | 8400            | 422 18 0               | 1 0                     |
| 1859 | Waikeriawera      | 12,738          | 500 0 0                | 0 9½                    |
| 1862 | Piroa             | 9200            | 500 0 0                | 1 0                     |
| 1862 | Maungaturoto      | 6815            | 511 2 6                | 1 6                     |
| 1864 | Mareretu          | 27,500          | 2062 10 0              | 1 6                     |

Table 8: Comparison of land sales to the Crown in the Mangawhai area, 1854–64.

Source: document P5, p 45.

shilling per acre for smaller blocks that could be available for immediate settlement).<sup>68</sup> The issue is further confused by the lack of a specific statement of the area in the Mangawhai deed and by Johnson's exaggerated estimates of the land he acquired between Whangarei Harbour and Te Arai. Table 8 provides approximate comparisons with other sales to the Crown around the Mangawhai area in subsequent years.

The Mangawhai price of eightpence or ninepence is a little low in comparison, but none of these deeds after 1854 included a provision for 10 per cent of on-sales by the Crown to be paid to the vendors or to Māori generally. It could be argued that the slightly lower price per acre for Mangawhai was offset by the 10 per cent provision. The Mangawhai price was higher than the Ruakaka price per acre, which also had a 10 per cent provision in the deed.

There is the further argument (outlined in chapter 3) that the real payment for the land was not the price paid at the time but the subsequent benefits of Pākehā settlement. We are unable to assess the price in relation to the quality of the land in these transactions. However, according to Hayes, the Crown still retained about 40 per cent of the Mangawhai block in 1927.<sup>69</sup> We have insufficient evidence to quantify the real or perceived benefits there may or may not have been for the sellers of Mangawhai or their descendants.

While it is clear that a full survey of the boundaries of the Mangawhai land had not been made at the time of purchase in early 1854, the plan attached to the deed was clear and fitted the description of the boundaries and the place names in the deed. Local Māori, including Ngāti Wai, would have known these names and places and would have identified the area transacted. One change was made after Paratene Taupuhi of Ngāti Mauku objected to the boundary in one place, and Johnson indicated that the line had been discussed by the committee of chiefs that determined it. In his report on the negotiations to purchase the Waipū block for the Highlanders' settlement, Johnson commented that 'My next care was

68. Document A14, pp 44–45

69. Ibid, p 54

to perambulate the boundaries.<sup>70</sup> He did not say specifically that he had also walked the boundaries of the Mangawhai purchase, but he would have had to do so, or at least walk over the land and possibly ascend to a high point with a good view, in order to create the sketch plan that went with the deed. This is not the same thing, of course, as cutting lines for a survey. However, we do not consider that there was any significant misunderstanding of the boundaries among the signatories to the Mangawhai purchase in 1854.

The encroachment of lot 122 over the Mangawhai boundary was a separate issue, referred to in research reports by Alemann for Te Uri o Hau and Ross for Ngāti Wai. This was a failure in the administration of the records in the Survey Office, which did not reconcile the boundary of a Crown purchase with a new survey. The issue may also have become confused by the Crown's purchase of the adjacent Te Ika ā Ranganui block in 1858 and of Pukekaroro in 1859. By the early 1860s, when the survey of lot 122 was done and a Crown grant was issued to Thomas Henry, officials would have interpreted it as being all Crown land. In any case, Arama Karaka's grievance was settled by a payment recorded in a deed. There was no continuing prejudice to Māori as a result.

The question of reserves is more problematic. We do not know why no reserves were set aside in the Mangawhai purchase in 1854. The only evidence available to us is Johnson's comment that no reserves were required. There is no record of the discussions that must have gone on before the signing of the deed. The issue of the reserves became more significant over time, as more land was sold and hapū realised the limits of their dwindling resources. It is not surprising that by the early 1900s questions were being raised by Māori in petitions to Parliament about the fairness of earlier land deals. This issue was exacerbated by the growth in the Māori population in the twentieth century. We note, however, that for Ngāti Wai, and for the Ngāti Manuhiri hapū in particular, no reserves were set aside in either the Mangawhai purchase or the Waikeriawera purchase to the south. Because we have insufficient information about other losses of Ngāti Wai lands, we are unable to comment further.

The issue of the 10 per cent provision in the Mangawhai deed is even more problematic. That a mix of purposes for this fund was intended, as set out in the Hikurangi deed, seems likely. The same formula was agreed among at least a number of chiefs representing beneficiaries in 1874 when Heaphy distributed some funds. The Crown has accepted the findings of the Sim commission in 1927 that subsequent expenditure by the Crown on general Māori purposes has discharged the Crown's obligations. The claimants maintain that the descendants of the vendors have not benefited since 1874 and that there is a contractual obligation in the Mangawhai deed between the Crown and the Māori vendors, who should have benefited from the 10 per cent provision. We are unable to determine exactly what was in the minds of the vendors who signed the deed containing this provision. We have no record of the discussion before the signing, and we have no evidence that Ngāti Wai knew about the

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70. Turton, *Epitome*, sec C, p 55

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more detailed provisions set out in the Hikurangi deed. We consider that it is not unreasonable to assume that the vendors, in signing this deed, thought that they would benefit from the 10 per cent provision. We have no evidence that Crown revenue from this provision was spent to benefit Ngāti Wai rather than being part of general funds spent elsewhere. We are in no position to assess precisely what amounts might be involved, because, as the Sim commission found in 1927, the Crown had not maintained detailed accounts and there were discrepancies in the numbers even before Heaphy's payout in 1874.

Both the Mangawhai purchase in 1854 and the Crown's failure after 1874 to make any payment to the vendors or to their descendants of 10 per cent of the revenue from its on-sale of lands are included in the Te Uri o Hau settlement. Ancestors of the Ngāti Manuhiri hapū of Ngāti Wai had rights that were recognised by the Crown in the Mangawhai purchase. To the extent that Te Uri o Hau were prejudiced by this transaction and the subsequent Crown failure to fulfil the 10 per cent provision, we consider that Ngāti Wai were also prejudiced.

We do not have a complete picture of Ngāti Wai land losses overall. We note that counsel for the Wai 244 claimants stated that Ngāti Wai 'would prefer to see meaningful discussions, Treaty partner to Treaty partner, between it and the Crown take place as a means to resolve its Treaty grievances'.<sup>71</sup>

**5.7.5 Findings and recommendation**

Because the issues in the Mangawhai transaction relate to several claims, we first set out our findings on the issues common to them all before presenting our finding on the Wai 244 claim. We find that:

- ▶ Crown land purchase officer John Johnson made a conscientious effort to investigate the complex ancestral claims to the Mangawhai land. He consulted widely and ensured appropriate representation of all interests. There is no record of any complaint on this aspect of the transaction.
- ▶ Although there was no survey on the ground at the time of the transaction, the boundaries set out in the Mangawhai deed and on the sketch plan attached to the deed were sufficiently clear that there was no misunderstanding of the limits of the land being transacted in 1854.
- ▶ The encroachment of lot 122 over part of the Mangawhai boundary represented a failure of process in the Survey Office by its inadequate checking of a survey plan, but this does not constitute a Treaty breach. The Crown acknowledged the error and compensation was paid.
- ▶ While the Crown failed to set aside any reserves within the Mangawhai land, we have no evidence that the Māori vendors asked for reserves.

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71. Document Q4, p54



- The price per acre paid for the Mangawhai land does not appear out of line with the prices paid for other land at the time, and it would have been fair if the 10 per cent provision in the deed had been fully implemented.
- As acknowledged in the preamble to the Te Uri o Hau Claims Settlement Act 2002, the Crown failed after 1874 to implement the provision in the Mangawhai deed that 10 per cent of the proceeds of the on-sale of the land 'be expended for the benefit of the Natives'. The Māori vendors had reason to expect that they, their hapū, or their descendants (or all of them) would receive an identifiable benefit from this provision. However, the Crown failed to keep adequate records after 1874 and failed to act in good faith by not continuing to implement this provision. The hapū and the descendants of the signatories to the Mangawhai deed who are not of Te Uri o Hau have thereby also been prejudiced by the Crown's inaction in this respect.

In relation to the Wai 244 claim, we find that Ngāti Wai were prejudiced by Crown actions and inaction in respect of the Mangawhai land, and we therefore find that their claim is well founded. Because Mangawhai is only part of Ngāti Wai's lands, and the rest lie outside the Kaipara inquiry area, we make no specific recommendation.

#### 5.8 WAI 619 AND WAI 620

Both Ngāti Kahu o Torongare/Te Parawhau (Wai 619) and Te Waiariki/Ngāti Kororā (Wai 620) have their rohe in lands around Whangarei Harbour, outside the Kaipara inquiry district. Both also claim ancestral interests in Mangawhai which they say were ignored by John Johnson in negotiations over the sale of Mangawhai in 1854.

Ngāti Kahu o Torongare/Te Parawhau is a hapū of Ngā Puhi, whose rohe extends northward from Whangarei Harbour. They claim rights in Kaipara through ancestral links with Ngāi Tahu and through raupatu arising from the battle of Te Ika ā Ranganui in 1825. Claimant Waimarie Bruce stated:

Suffice to say, whakapapa plays an enormous part in the establishment of the mana whenua of Ngāti Kahu o Torongare/Te Parawhau in the Kaipara region. Our connection to the lands within the Kaipara is derived from Tahuhunuiorangi. In modern times we understood that the Tupuna [ancestors] who provided safe passage and use rights into the area of the Kaipara covered by Stage 3 hearings, was Hikurangi of Ngāti Tu the brother of Mihiao, who gifted land at Oruawharo to Ngāti Mauku. However with the battle fought at Te Ikaā-Ranganui all issues of mana were to change again.

Ms Bruce explained that Ngāti Kahu had participated in this battle but 'left this area because the tapu had been placed where the dead had shed blood'. She continued:

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From 1825 to 1840 Mangawhai remained without settlement. There were no inhabitants. The Crown when planning for new settlers and seeking to acquire lands at Mangawhai, failed to understand the nature of raupatu, found it convenient to recognize and/or acknowledge all people having an interest in the Kaipara and dealt with people who supported selling. Thus, when land purchases were made and/or approved, Ngāti Kahu were not considered in such transactions. Therefore, it was the Crown's lack of understanding of Maori tikanga, in this case tapu, that led to the deliberate severing of all ancestral and historical ties of Ngāti Kahu to the land in the Kaipara.<sup>72</sup>

These were the reasons, according to Ms Bruce, that Ngāti Kahu o Torongare were omitted from the Mangawhai purchase.

Poi (Bosie) Peihopa of Ngāti Kahu o Torongare told the Tribunal about his family traditions concerning their connections with Mangawhai and the battle of Te Ika ā Ranganui:

I recall my grandfather told me of Hongi Hika and Te Whareumu going down to Kaiwaka to avenge losses in an earlier battle at Moremonui . . . Our tupuna went for utu and to assert control of the area.

My grandfather told me that Ngāti Whatua and Te Uri o Hau were devastated by Nga Puhi in that battle and that some of them were nearly completely wiped out. Some of the defeated were only allowed to survive because they had whakapapa links to us.

Mr Peihopa explained the significance of Mangawhai as a 'highway' used by his ancestors:

This was for when they were visiting others, harvesting resources or for taua (war parties) etc. It was an important connection between the East coast the Kaipara and the West coast. It was needed to access both those coasts.

Travel was most efficient by waka, which could enter Mangawhai Harbour, be drawn over short portage routes to the Kaipara harbour and moved to the west to access other resources there.<sup>73</sup>

Te Waiariki/Ngāti Kororā (Wai 620) are another coastal hapū, whose rohe extends from north of Ngunguru Harbour to Whangarei Heads, on the eastern coast, well north of Mangawhai. Their connection with Mangawhai is through ancestral kin connections with Ngāi Tahu and Te Kāwerau. Originally from Hokianga, Te Waiariki migrated south to Kaipara and moved up the Ōtamatea River and over the portage route to Mangawhai. They finally settled, long before 1840, in the Ngunguru area, where they had acquired rights by marriage and gifting from Ngāi Tahu, and they remained in occupation there. Ngāti Kororā is a more recent kin grouping derived from Te Waiariki. These claimants admit shared interests

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72. Document L6(a), pp 3–4

73. Document M13, pp 2–3

with others in Mangawhai. Ngaire Brown of Te Waiariki told the Tribunal that ‘the extent of such interests included use of the Mangawhai as a portage and stop over on fishing expeditions.’<sup>74</sup>

The customary use of Mangawhai by Te Waiariki was explained by claimant representative Mitai Paraone-Kawiti:

Te Waiariki’s fishing grounds extended along the eastern coast, and to and beyond the Mangawhai. In my own lifetime, I can remember Te Waiariki men making double oared fishing scowls from timber sourced from Ngunguru. They were designed to travel great distances.

Of particular significance was fishing for mango pare [hammerhead shark] outside of the Mangawhai area.

Te Waiariki customarily used the Mangawhai area as a portage for access to the Kaipara.

Te Waiariki would camp temporarily from time to time at the Mangawhai during fishing expeditions and expeditions to the Kaipara.<sup>75</sup>

The Wai 620 claimants state that, despite their whakapapa links with Ngāi Tahu, their interests were ignored by Johnson in the negotiations for the Mangawhai purchase in 1854. They maintain that this was because they were allied with Ngā Puhī and, in particular, because they had supported Hone Heke’s challenge to British rule in the 1840s. Ngaire Brown suggested that the Mangawhai deed ‘appeared to favour Crown friendly tribes. As a result, Te Waiariki lost access to an important resource essential to the well being of the tribe.’<sup>76</sup> Both researchers for the Wai 620 claimants, Ngaire Brown and Mitai Paraone-Kawiti, also emphasised that Te Waiariki/Ngāti Kororā were an independent group, distinct and separate from Ngāti Wai, although their rohe was claimed to be part of the district within which the Ngātiwai Trust Board operates. Their view was that there were two sections of Ngāti Wai, the southern group along Pakiri Beach (the Wai 244 claimants) and a coastal group to the north of Te Waiariki/Ngāti Kororā around Whangaruru Harbour.

#### 5.8.1 Claimant submissions

Counsel for the Wai 619 claimants submitted that Ngāti Kahu o Torongare/Te Parawhau had ‘long recognised rights in accordance with tikanga (Maori custom and usage).’<sup>77</sup> They were therefore entitled to be consulted about and compensated in the Mangawhai transaction in 1854 and to have their interests protected by the Crown. The Wai 619 claim is wide-ranging and general, covering lands and resources, wāhi tapu and taonga, te reo Māori and tikanga

74. Document L7(b), pp 2–3; see also doc L7, pp 1–2

75. Document M26, pp 8–9

76. Document L7(b), p 2

77. Document Q13, p 5

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wairua, and kaitiakitanga, especially in relation to mahinga kai and hunting and fishing rights. It refers to their whole rohe. In respect of Mangawhai, counsel submitted that Ngāti Kahu o Torongare/Te Parawhau had whakapapa links with ancestral Ngāi Tahu. They also claimed rights on the basis of raupatu and utu after Te Ika ā Ranganui, and the whole area became a wāhi tapu because of all those who died there. Before 1825, Mangawhai was strategically important to Ngāti Kahu because it was used as a waka portage between the east and west coasts.<sup>78</sup>

Counsel for Wai 619 also suggested that the Crown's actions in negotiating a settlement with Te Uri o Hau before the Wai 619 claim was heard by the Tribunal were prejudicial to the interests of Ngāti Kahu o Torongare/Te Parawhau. Because the Te Uri o Hau Claims Settlement Bill was before the House at the time of hearing closing submissions, the Tribunal had no jurisdiction to hear this aspect of the Wai 619 claim. The claimants were told by the Tribunal that they could make separate submissions to the appropriate parliamentary select committee. Now that the Bill has passed into law as the Te Uri o Hau Claims Settlement Act 2002, the Kaipara Tribunal has no jurisdiction to inquire into Te Uri o Hau claims. We have been given no evidence that the Wai 619 claimants have been prejudiced by the Act or by the negotiations to achieve that settlement.

In closing submissions for Wai 620, counsel submitted that their rights in Mangawhai were based on:

- ▶ the fact of their *take tupuna* [ancestral rights] and in particular their Ngāi Tahu ancestry who were, it is generally accepted, the first and true owners of the area;
- ▶ the fact of their *take raupatu*, arising out of the aftermath of their significant involvement in the battle of Te Ika A Ranganui in 1825 on the side of Nga Puhi;
- ▶ the fact of their continued customary usage of the area (inter alia) as a fishing stop over and as a portage to the west coast in pursuit of food, trade, and *whakawhanaungatanga* [kinship].<sup>79</sup>

Counsel also explained that customary rights claimed at Mangawhai were not held exclusively by Te Waiariki/Ngāti Kororā and that their tino rangatiratanga was shared with others.

#### 5.8.2 Crown submissions

In closing submissions, Crown counsel grouped the Wai 619 and Wai 620 claims together, since both claimant groups alleged that they had rights at Mangawhai and that their tupuna had been left out of the transaction. Counsel also noted that the Mangawhai land was

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78. Document Q13, p 5

79. Document Q7, p 7

unoccupied at the time of the transaction. It was submitted that these two claims were not well founded:

The Mangawhai negotiations were carefully conducted over a four month period, with a large number of claimant groups. There is no evidence of any contemporary, or even subsequent, complaint from the claimants' tupuna regarding this transaction. Although counsel for Wai 620 argues that one cannot complain about what one does not know about, it is difficult to accept that the claimants' tupuna remained unaware of the sale of the Mangawhai block, particularly if the nature of association is as alleged.<sup>80</sup>

Counsel also noted that both claimant groups objected to the Crown lands in Mangawhai Forest being transferred to Te Uri o Hau in settlement of their claims. He pointed out that there were other Crown forest areas closer to the claimants' home territory north of Whangarei, in particular the much larger Glenbervie Forest.

Crown counsel made no comment on the take raupatu issues raised by the claimants.

### 5.8.3 Tribunal comment

These two claims are similar in their assertions by hapū groups of customary rights which were ignored by Johnson in the Mangawhai purchase in 1854. The basis of the two claims is similar, in that they claim rights through:

- ▶ take tupuna in their Ngāi Tahu ancestry;
- ▶ take raupatu following the Ngā Puhi defeat of people of the Ngāti Whātua confederation in 1825 in the battle of Te Ika ā Ranganui; and
- ▶ alleged continued customary use of the Mangawhai land by fishing parties and access over the waka portage route to Kaipara from Mangawhai Harbour to the Ōtamatea River.

The claimants do not dispute that the Mangawhai land was unoccupied at the time of the transaction in 1854 and had been abandoned after Te Ika ā Ranganui.

We accept that there are whakapapa connections for both these hapū groups with ancestral Ngāi Tahu, who occupied the lands around Whangarei Harbour south to about Te Arai. Te Uri o Hau also have such links, as do Ngāti Wai. However, ancestry needs to be reinforced by long occupation. Neither claimant group produced evidence of actual occupation or of stories about significant events on the land or landmarks connected with particular ancestors. Both groups asserted that their customary use included fishing in the coastal waters off Mangawhai, intermittent camping by fishing parties, and transiting over the portage between Mangawhai Harbour and the Ōtamatea River. We note that the central rohe of each group lies well north of the Mangawhai land, which is on the outer fringes of

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80. Document Q16, pp 115–116

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their respective areas of interest. We do not dispute that, in the interests of whakawhānau-ngatanga and maintaining access to the fishing and other resources of the Mangawhai and Kaipara district, parties from each hapū periodically went on excursions there. We have not been persuaded, however, that this is a sufficient basis for these two hapū to claim rights equivalent to tangata whenua status at Mangawhai.

Both hapū have also claimed raupatu rights based on Te Ika ā Ranganui. As explained in chapter 3, take raupatu must also involve occupation of the land after conquest. Neither hapū was in occupation of Mangawhai after 1825. We consider that claims based on Ngā Puhi conquest of Te Uri o Hau, and on the wider Ngāti Whātua confederation that was formed after Te Ika ā Ranganui, cannot be sustained.

As for the claims that these groups were left out of negotiations by Johnson, whether deliberately or inadvertently, we note that Johnson did hold meetings at Whangarei in 1853 and 1854, especially in relation to purchase of the Ruakaka and Waipū blocks to the north of Mangawhai. It would be unlikely that word of these hui had not spread among the hapū of the Whangarei district. Johnson consulted Tirarau, who apparently conceded that the owners were among hapū now known as Te Uri o Hau, because he could not sustain any status based on occupation. The subsequent payment of £100 was, as Johnson explained, politically expedient, but we consider that it was not based on take raupatu. Nor are we persuaded that any claimant hapū were left out because they supported Hone Heke's campaign 10 years earlier. No evidence has been produced to support this assertion.

**5.8.4 Finding**

We find that the Wai 619 (Ngāti Kahu o Torongare/Te Parawhau) and Wai 620 (Te Waiariki/ Ngāti Kororā) claims in respect of the Crown's purchase of the Mangawhai land are not well founded.

**5.9 WAI 688**

The Wai 688 claimants, Ngā Hapū o Whangarei, are a composite group of nine hapū, mainly of Ngā Puhi: Te Parawhau, Te Uri Roroī, Ngāti Kahu o Torongare, Te Uri o Hau, Te Kumutu, Te Kuihi, Ngāti Toki, Ngāti Moe, and Ngāti Horahia. The claims of Te Uri o Hau have already been settled. In section 5.8, we reviewed the claims to ancestral rights in Mangawhai of a section of Ngāti Kahu o Torongare/Te Parawhau (Wai 619). The Wai 688 claim is concerned with the whole northern border zone of Te Uri o Hau in stage 3 of the Kaipara inquiry. However, as claimant counsel acknowledged, their principal kainga, in addition to the upper Wairoa

River settlements, were around Whangarei Harbour and northward. Yet, they claimed an interest in Mangawhai.<sup>81</sup>

None of the representatives of the nine hapū who gave evidence to the Tribunal referred to any ancestral connections with Mangawhai. Dr Anderson reviewed Johnson's purchases of the Ruakaka, Waipū, and Mangawhai lands. She noted that 'the Whangarei people were demonstrably amenable to entering into land arrangements with the government'.<sup>82</sup> The Ruakaka and Waipū purchases were negotiated with local hapū at Whangarei. Johnson reported on the efforts to stop land sales of a section of Ngā Puhi 'who opposed the Government in the war in the North', some of whom occupied these two blocks. There was also opposition from a group further north, 'at the head of whom is the widow of John Heke', who had written a letter to Whangarei chiefs trying to persuade them not to sell any land. Johnson's report of 20 March 1854 explained how he dealt with this situation:

had I adopted the usual and safer method of assembling all the claimants before making my payment, the influence of the before-mentioned agencies would have been apt to have terminated in preventing the sale of the land; but, bearing in mind the strong desire which His Excellency had expressed to have lands obtained for the settlers, I felt assured that the Government would approve of my obtaining this tract of country, even at some further outlay, than of my relinquishing the attempt from the apparent difficulties which appeared to surround it; and, actuated by this principle, I accepted the offers of the chiefs who first came forward to sell the Ruakaka, and paid to them the sum of One hundred pounds (£100) for their claims, reserving the sum of Two hundred and fifty pounds (£250) to satisfy the other parties with whom I had not yet come to terms. This decisive step showed the opposition that, when the real owners of land are disposed to sell to the Government, it is not to be intimidated by the clamour of disaffected factions exercising very little, if any, ownership at all over the lands sought to be purchased . . .

With reference to the Waipu I adopted a similar course . . .<sup>83</sup>

Both Ruakaka and Waipū are outside the Kaipara inquiry district, and these transactions were negotiated with Whangarei hapū, a different group of owners from those in the Mangawhai purchase. As Dr Anderson remarked: 'How Johnson decided who to deal with is far from clear. He generally supported and relied upon Tirarau as the senior rangatira of the Whangarei and northern Wairoa region.'<sup>84</sup>

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81. Document M11, pp 2, 4

82. Document L4, p 52

83. Turton, *Epitome*, sec C, p 58

84. Document L4, p 66



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We have already concluded (see sec 5.7.5) that Johnson made a conscientious attempt in 1854 to identify ‘the real owners’ of land he wanted to purchase for the Crown. We have also observed (see sec 5.8.3) that Johnson consulted Tirarau but that the additional payment to him was not based on any right in the Mangawhai land.

**5.9.1 Claimant submissions**

Counsel for Wai 688 explained in closing submissions that the claimants represented nine hapū whose interests extended from Te Kōpuru in the west to Mangawhai in the east. Their claims concerned the loss of land and resources to Pākehā settlers and the Crown through the Crown’s treatment of pre-Treaty transactions, through Crown purchases before 1865, through the operation of the Native Land Court, through the cession of Te Kōpuru land, and through the Crown’s failure to create sufficient reserves and to ‘set aside areas of special significance.’<sup>85</sup> Of these, the claims to do with pre-Treaty transactions focused on the Elmsley–Walton old land claim, which has been dealt with in chapter 4, as has the cession of Te Kōpuru. Counsel did not make specific submissions on the Mangawhai purchase and relied on the submissions of other counsel, which have been addressed above. We are therefore left with only the generic issues, which we have reviewed in chapter 3, to consider in relation to this claim.

On the issue of Crown purchases before 1865, counsel submitted that the Crown had failed to ensure that Māori retained a ‘sufficient endowment of land for their present and foreseeable future needs’, and that it had failed in its duty of active protection of Māori interests in land. Furthermore, it was claimed that the Crown had a ‘fiduciary obligation to its Treaty partner’ because unfamiliar Pākehā systems and laws were imposed on Māori, who were therefore at a disadvantage: ‘There can be no validity in an assertion that Maori participated voluntarily in a situation where they had insufficient familiarity with the concepts and the outcomes.’ Counsel submitted that the Crown ‘endeavoured to keep prices minimal and reserves minimal, that there was no process for identifying all who held rights in the land, and no system to ensure that payment was fairly distributed to all those who had an interest, nor the provision of adequate reserves.’<sup>86</sup>

On the operation of the Native Land Court after 1865, counsel submitted that Māori continued to lose land and that the Crown failed both to provide active protection of Māori interests and to impose formal trust obligations on those named in a title, with the result that many Māori were dispossessed of their interests. The effect, counsel suggested, was ‘to strip Maori from their ancient relationship with the land and to transmute it from “whenua” to a tradeable commodity.’<sup>87</sup>

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85. Document Q2, pp 2–3

86. Ibid, pp 5–6

87. Ibid, pp 7–8

Counsel concluded by commenting on the legitimate and reasonable expectations of Māori to benefit from land transactions and Pākehā settlement, including the promises of schools, hospitals, and other infrastructure, and of participating in a future developing economy. Instead, he stated, the claimant hapū 'have been severely marginalised', there is little employment in their home district, many have lost their 'reo', and traditional land and resources have been lost and 'the ecosystem polluted'.<sup>88</sup>

### 5.9.2 Crown submissions

On the issue of Crown purchases before 1865, Crown counsel submitted that the 'major criticism' was that 'the Crown did not adequately ascertain all those holding rights in the land, nor ensure that payment was fairly distributed to all those having an interest'. Counsel suggested that Dr Anderson's responses to cross-examination indicated 'that the Crown brokered with Tirarau in respect of these purchases, [and] that Tirarau represented communal interests and generally undertook to distribute the proceeds to those he represented'. There was no evidence of subsequent protest over these transactions, counsel submitted, and Dr Anderson's evidence suggested that 'those Tirarau represented were demonstrably amenable to entering into land sales with the Crown'.<sup>89</sup>

Crown counsel suggested also that the evidence concerning the operation of the Native Land Court 'appears to be of a generic nature' and noted that 'there are limited complaints against the Native Land Court transactions by tupuna of the claimants'.<sup>90</sup>

### 5.9.3 Tribunal comment

Te Uri o Hau are one of the nine hapū represented in Wai 688. Because their claims have already been settled by the Crown, our comments here refer only to the other eight hapū.

Representatives of nine marae communities gave evidence before the Tribunal, and each stated their hapū affiliations. These provide a picture of the complex network of kin relationships within northern Kaipara along the border of the Te Uri o Hau area of interest. Eight people affiliated with Te Parawhau and Te Uriroroi of Ngā Puhi, and six of these also affiliated with Te Kuihi. Five of the nine could affiliate with Te Uri o Hau. Of the other Ngā Puhi hapū mentioned, three of the nine could also relate to Ngāti Kahu o Torongare, two to Ngāti Horahia, and one each to Ngāti Moe, Ngāti Toki, and Te Kumutu.

Much of the evidence was focused on Tirarau and Te Parawhau interests and was concerned with the generic issues of old land claims, Crown purchases, and the operation of the Native Land Court. The main tenor of the evidence was the loss of land and resources and

88. Ibid, pp 8–10

89. Document Q16, pp 128–129

90. Ibid, p 129

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the marginalisation of Māori communities in the northern Kaipara and Whangarei districts. As noted in chapter 4 in relation to the Elmsley–Walton old land claim, in the mid-1850s an agreement was reached that Tirarau would not claim rights in land south of the Manganui and Tauraroa Rivers and Paiea would not claim to the north. This line forms part of the boundary of the Te Uri o Hau area of interest; it is also to the south of the northern boundary of the stage 3 inquiry area in the Kaipara inquiry district.

Clearly, Te Parawhau and related hapū have undefined interests within the Kaipara inquiry district, to the north of and possibly overlapping the Te Uri o Hau area of interest. The difficulty is that, just as clearly, the interests of the various Hapū o Whangarei extend to the north and east, outside the boundary of the Kaipara inquiry district, and we do not have before us a comprehensive statement of their total losses of land and resources.

**5.9.4 Findings**

We make the following findings:

- ▶ Te Parawhau and related hapū do have interests, largely undefined, in the stage 3 area of the Kaipara inquiry district.
- ▶ On the evidence before the Tribunal, we are not satisfied that Ngā Hapū o Whangarei were prejudiced by the Crown's purchase of land at Mangawhai in 1854 from Te Uri o Hau and Ngāti Wai. We have already rejected Ngā Puhi claims based on take raupatu following the battle of Te Ika ā Ranganui. An additional payment for Mangawhai was made to Tirarau by Crown land purchase officer John Johnson as an acknowledgement of his role in keeping the peace and supporting Pākehā settlement in the Whangarei district, but this payment was not an acknowledgement of any Te Parawhau right in the Mangawhai land.
- ▶ On the limited evidence before the Tribunal, it seems that, like Te Uri o Hau, Ngā Hapū o Whangarei suffered prejudice by the process employed by the Crown to deal with old land claims, by Crown land purchases before 1865, by the Crown's failure to set aside reserves in many of these purchases, and by the operation of the Native Land Court after 1865. However, a large proportion of the lands of Ngā Hapū o Whangarei lie outside the Kaipara inquiry district. On the evidence before us, we are unable to make any determination on the extent of the loss. Therefore, we make no recommendation on the Wai 688 claim.

## CHAPTER 6

### LAND TRANSACTIONS IN SOUTHERN KAIPARA, 1840–65

#### 6.1 INTRODUCTION

In this chapter, we begin our review of claims concerning lands in southern Kaipara. The principal theme is loss of land and its consequences. In this chapter, we deal with land alienation by Crown purchase before 1865, during the period of Crown pre-emption. The operations of the Native Land Court from 1864 on, and the extensive land sales it enabled, are addressed in the following chapter. Donations of land by Māori are dealt with in chapter 8, which concludes with an overview of the situation of Māori in southern Kaipara by 1900. In chapter 9, we begin our review of the issues arising in the twentieth century.

In chapter 3, we reviewed the generic issues in the Kaipara claims, and this provides the background to our discussion of nineteenth-century land transactions in southern Kaipara. We are also aware of the limitations of the boundary of our inquiry district, which cuts off a large area of Ngāti Whātua confederation lands to the south and east. In this and succeeding chapters concerning southern Kaipara, we refer to ‘Ngāti Whātua’ in a collective sense to include Te Taoū, Ngāti Rango, and others, but not Te Uri o Hau. To the north, Te Uri o Hau claims have already been settled, and we do not review the transactions there. We recognise, however, that some Te Uri o Hau, through their kin connections, also have interests in southern Kaipara.

#### 6.2 WAI 312

The major claim involving the southern Kaipara district is Wai 312 (Ngāti Whātua o Kaipara ki te Tonga). This comprehensive claim was initially lodged by Takutaimoana Wikiriwhi and others in 1992, and amended in 1999.<sup>1</sup> On 3 August 2001, a second amended statement of claim was filed with the Tribunal, and it is this version that we subsequently quote from. The claimants are Takutaimoana Wikiriwhi, Waata Herewini Richards, Haahi Walker, Richard Whanaupani Nahi, and Gloria Timoti, who lodged the claim ‘on behalf of themselves and

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1. Claims 1.10, 1.10(a)

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on behalf of the whanau and hapu of Reweti, Haranui, Araparera, Puatahi and Kakanui Marae.<sup>2</sup>

The 1999 statement of claim sets out a number of ‘causes of action’:

- ▶ the Crown’s failure to fulfill certain terms of the ‘mutual alliance’ that the Crown and Ngāti Whātua entered into in 1840;
- ▶ the Crown’s failure to protect the claimants’ land base and other resources;
- ▶ the Crown’s failure to investigate certain pre-Treaty transactions or old land claims;
- ▶ the pre-emption waiver purchases of the 1840s;
- ▶ Crown purchases of land in southern Kaipara between 1848 and 1867;
- ▶ the operation of the Native Land Court and land sales between 1864 and 1900;
- ▶ land disposals between 1900 and 1941, including takings for public works, the operation of the Tokerau District Māori Land Board, and the socio-economic consequences of land loss;
- ▶ the Crown’s failure to provide redress when Ngāti Whātua became ‘effectively landless’ by the end of the nineteenth century;
- ▶ Crown breaches of the terms of the gift of the Te Awaroa 10-acre block by Ngāti Whātua for public purposes (the ‘Helensville courthouse reserve’);
- ▶ the Crown’s failure to comply with conditions of the gift of land for the Kaipara to Riverhead railway in 1871; and
- ▶ the Crown’s taking of land for roads between 1874 and 1885 without compensation.

We note here that there was no pre-emption waiver purchase in the southern Kaipara inquiry district. The single old land claim in the district was overlaid by subsequent Crown purchases, and it is dealt with below in that context.

The Wai 312 claims will be reviewed in this and subsequent chapters, taking a more-or-less chronological approach. As noted in chapter 1, several other claims – Wai 121, Wai 279, Wai 470, Wai 733, and Wai 756 – cover the same or similar issues. In the treatment that follows, it is assumed that the claims made by the Wai 312 claimants also apply generally to these claims, unless otherwise indicated. Each of these other claims has distinctive features as well, and these will be dealt with in a concluding chapter.

Claimant counsel identified ‘two interrelated threads’ in the Wai 312 claim. The first was the concept of an alliance between Ngāti Whātua and the Crown, which imposed certain obligations on both parties. The second was the ‘steady and consistent erosion of the land base of Ngāti Whātua by or facilitated by the Crown, without regard to the consequences for Ngāti Whātua until Ngāti Whātua were effectively landless.’<sup>3</sup> The second thread runs through all the discussion that follows. It is the first, which informs and is unique to the Wai 312 claim, that we must deal with at the outset.

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2. Claim 1.10(a)

3. Document Q1, p7

**6.3 NGĀTI WHĀTUA'S 'ALLIANCE' WITH THE CROWN**

The Wai 312 claimants have made it a central part of their case that in 1840 Ngāti Whātua entered into an alliance with the Crown which imposed obligations on both parties. They say that Ngāti Whātua met its obligations under this alliance, but that the Crown did not. 'Breach of alliance' is the first cause of action in the Wai 312 second amended statement of claim, and much of the claimants' historical evidence was based on the concept of this alliance.

**6.3.1 The growth of Auckland**

In September 1840, Governor Hobson established the capital of the new colony at Tamaki on the southern shore of Waitemata Harbour. Over two days, 16 and 17 September, a preliminary agreement was reached with Ngāti Whātua leaders to purchase land for the new town, and the capital was formally proclaimed on 18 September. During 1839, a number of Ngāti Whātua had moved from the shores of Manukau Harbour to Okahu Bay to establish a permanent kainga in the Orākei area, where they had their gardens. With the decision to establish the capital, many more Ngāti Whātua moved to this kainga.<sup>4</sup> On 20 October 1840, a deed was signed by 'Kawau, Tinana, Te Reweti Tamaki and other chiefs of the (tribe) Ngatiwhatua' and the protector of aborigines, George Clarke, for the Crown, conveying to the Crown about 3000 acres of an area now occupied by the Auckland city centre. In addition to £6 paid to Te Reweti in September, payment for this land was 'Fifty Blankets, Fifty Pounds of Money, Twenty trowsers, Twenty shirts, Ten waistcoats, Ten caps, Four Casks of Tobacco, One box of pipes, One hundred yards of gown pieces, Ten iron pots, One bag of sugar, One bag of flour, Twenty Hatchets'.<sup>5</sup>

We have received conflicting evidence and submissions on behalf of the Wai 312 claimants and the Crown about Ngāti Whātua's involvement in encouraging the establishment of the capital in Tamaki, and about the nature of the arrangements made by Ngāti Whātua in relation to land for the new settlement.<sup>6</sup> Such matters fall well outside our inquiry area, and we therefore draw no conclusions about them. What is clear and uncontested, however, is that Ngāti Whātua welcomed the arrival of the Governor and the new settlers. It is also clear that proximity to the capital allowed Ngāti Whātua of southern Kaipara to establish a relationship with the colonial administration earlier than Māori in most other regions.

The new town grew rapidly as shiploads of settlers arrived through the 1840s, and Ngāti Whātua provided much of the pork, potatoes, and other produce to feed them. By 1845, Auckland was home to over 3500 settlers and several hundred Māori, including many who

4. For an account of the founding of Auckland, see RCJ Stone, *From Tāmaki-makau-rau to Auckland* (Auckland: Auckland University Press, 2001), pp 246–265.

5. Henry Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877–83), vol 1, deed 206 (pp 268–269)

6. See doc Q1, pp 14–25; doc Q16, pp 19–21

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had brought produce to sell from other tribal areas. In 1850, the European population of 'Auckland District' was 8301, and by 1852 it was over 9159.<sup>7</sup> Most of the immigrants wanted to buy land, either for business in the town or for farming in the vicinity, and by the early 1850s most of the land around Waitemata Harbour had been sold, leaving only a small Ngāti Whātua enclave at Orākei. There was still no European settlement in southern Kaipara, apart from James Honey's small timber-extraction enterprise at Whakatiwai on the Kaukapakapa River (this land was the subject of an old land claim, reviewed below).

By 1853, however, the expansion of land purchases and Pākehā settlement north of Auckland was beginning to encroach on the southern margins of Kaipara, along the portage route connecting the upper Waitemata Harbour at Pitoitōi/Riverhead with the head of navigation on the Kaipara River. The Honey old land claim was subsumed in the Kaukapakapa purchase in 1858, the first of a series of purchases negotiated by John Rogan between 1858 and 1864. In 1864, the Native Land Court under Judge Rogan began investigating titles to Māori customary land in Kaipara. The principal form of land alienation in southern Kaipara before 1865 was therefore by Crown purchase.

**6.3.2 Claimant submissions**

Wai 312 claimant counsel submitted that the Ngāti Whātua alliance with the Crown was entered into as a mutually beneficial arrangement imposing obligations on both parties. For its part, the Crown gained 'cheap land for settlement and security for the fledgling European settlements within the Ngati Whatua rohe'. In return, at different times it held out 'promises of education, medical facilities, settlement infrastructure, equal laws, protection of tino rangatiratanga and personal relationships between the Crown representatives and Ngati Whatua'.<sup>8</sup>

However, according to the Wai 312 claimants, the Crown failed to make good on these promises while at the same time encouraging Ngāti Whātua's belief that the alliance was still in place. Eventually, by the late 1860s the Crown had effectively repudiated the alliance. As a result, Ngāti Whātua were left worse off than if they had never entered into the alliance. The implication is that somehow they had been tricked by the Crown into selling much of their best land at low prices in the expectation that the Crown would actively promote their interests by facilitating Pākehā settlement and providing services and infrastructure in the Kaipara region. The Crown had encouraged this expectation, counsel submitted, but had done nothing to meet it.

The components of the alliance, as summarised by claimant counsel, were:

- a close personal relationship between Crown officials and Ngāti Whātua rangatira;

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7. Document 08, p 6

8. Document Q1, p 9



- ▶ an obligation on both parties to protect each other;
- ▶ an obligation on the part of Ngāti Whātua to remain loyal to the Crown;
- ▶ an obligation on the part of Ngāti Whātua to make land available for settlement;
- ▶ an obligation on both parties to treat each other fairly and with the utmost good faith; and
- ▶ an obligation on the part of the Crown actively to foster Ngāti Whātua's interests and to assist in their development.<sup>9</sup>

Claimant counsel set out the context for the establishment of the alliance in 1840. In summary, it was suggested that by 1840 Ngāti Whātua had secured their position in both the Auckland and the Kaipara areas as a result of alliances made with Waikato to the south and Ngāti Hine of Ngā Puhi in the north. The Crown, on the other hand, was in a weak position: it needed Ngāti Whātua's support because of the numerical and military superiority of Māori throughout the country. The Pākehā population also depended on Ngāti Whātua for food, and the Crown and the Pākehā settlers remained vulnerable into the 1850s.

The Crown also needed Ngāti Whātua, it was argued, because they had the land around Auckland which the Crown needed for Pākehā settlement. More specifically, Ngāti Whātua supplied the land which the Crown needed for the colonial capital at Auckland. The claimants say that this land was 'gifted' by Ngāti Whātua, but also maintain that, even if it was not gifted, Ngāti Whātua's agreement to make this land available was crucial to the formation of the alliance with the Crown.

Wai 312 historical researcher Philippa Wyatt stated that the alliance was 'entered into on the basis of a perceived equality in need and a recognised equality in status and authority'.<sup>10</sup> Claimant counsel's submissions suggested that, if anything, the Crown's need in 1840 was greater, and its position weaker, than that of Ngāti Whātua.

Claimant counsel also suggested that Ngāti Whātua fulfilled their obligations under the alliance by:

- ▶ making land available for Pākehā settlement in both the Auckland and the south Kaipara regions;
- ▶ remaining loyal to the Crown and working in cooperation with Crown institutions; and
- ▶ making particular gifts of land, notably the 10-acre block at Te Awaroa and the land for the Kaipara railway between Riverhead and Helensville.

Claimant counsel submitted that the Crown had breached its obligations under the alliance by:

- ▶ failing to ensure that Ngāti Whātua were given political or legal equality, which included failing to provide for direct participation by Ngāti Whātua in government;

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9. Ibid, pp 25–26

10. Ibid, pp 10–25; doc F4, p 2

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- ▶ undermining Ngāti Whātua's ability to exercise tino rangatiratanga; and
- ▶ failing to ensure that Ngāti Whātua developed as envisaged in the alliance by neglecting to provide the promised services, infrastructure, and settlement at a time when Ngāti Whātua were still in a strong position to benefit from these.

In relation to the last item, claimant counsel stressed that the alliance could not be reduced to the alleged promises of development alone and that it 'also encompassed far wider political and personal relationships'.<sup>11</sup> Equally, counsel submitted that the issue of promises of development made in association with Crown purchases of land, while acting as an affirmation of Ngāti Whātua's special relationship with the Crown, could be separated from the issue of the alliance: 'promises made in the course of Crown purchases nonetheless stand by themselves irrespective of the alliance'.<sup>12</sup> In other words, it was argued that, even if the Tribunal rejected the alliance thesis, it would still need to consider whether promises of development were made at the time of the Crown purchases.

Whether arising from the alliance or from Crown purchases, the alleged promises of development were used as the yardstick against which the provision of services and socio-economic outcomes for Ngāti Whātua were to be measured. This standard was considered to hold true regardless of other contextual issues, such as Ngāti Whātua's population and location, the Crown's capacity to provide such services or to achieve particular outcomes, the ideologies prevailing at the time, and the level of services then provided to Pākehā.

The signing of the Treaty of Waitangi by Ngāti Whātua was seen by the claimants as laying the foundations of the alliance.<sup>13</sup> The claimed relationship between the alliance and the Treaty is somewhat ambiguous. The alliance was said to represent 'a blueprint of how the Treaty relationship should work in practice', but it was also claimed that 'the relationship between the Crown and Ngāti Whātua went well beyond the Treaty'.<sup>14</sup> Wyatt argued that:

the notion that the Crown (or Treaty) was understood to offer the same things to all iwi is patently incorrect. The signatures on the Treaty were not the representatives of a race but the representatives of individual groups with whom the Crown made not one but many individual and separate agreements.<sup>15</sup>

The meaning and nature of the Crown-Māori relationship, she said, varied according to the undertakings made by Crown officials and the circumstances, needs, and aspirations of the Māori group concerned.

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11. Document Q27, p 10

12. Document Q1, p 86

13. Ibid, p 10

14. Ibid, p 7; doc F10, p 4

15. Document F4, p 1. Wyatt's argument about the importance of localised agreements between the Crown and Māori is very much in tune with the argument of another Crown Forestry Rental Trust historian, Vincent O'Malley, in his article 'Treaty-making in Early Colonial New Zealand', *New Zealand Journal of History*, vol 33, no 2 (1999), pp 137-154 (reprinted in Judith Binney, ed, *The Shaping of History* (Wellington: Bridget Williams Books, 2001), pp 129-145).

It appears that the claimants saw the alliance as not only embracing Treaty principles such as partnership and good faith but also going beyond them. However, because claims to the Waitangi Tribunal must be based on breaches of Treaty principles, the claimants have said that the Crown's alleged failure to meet its obligations under the alliance was in breach of the Treaty principles of utmost good faith and partnership.<sup>16</sup> Claimant counsel submitted that:

it was inconsistent with its obligations under the Treaty for the Crown to have continually endorsed the alliance up to the late 1860s while progressively neglecting the interests of Ngāti Whātua. Likewise it is also unconscionable for the Crown to have reaped the benefits of a close relationship with Ngāti Whātua based on the Treaty only to ignore Ngāti Whātua when the relationship no longer was required to meet the objectives of the Crown.<sup>17</sup>

### 6.3.3 Crown submissions

Crown counsel responded to the Ngāti Whātua alliance claim in terms of both the evidence and Treaty jurisprudence. Counsel argued that the claimants were using the concept of an alliance as a way of reconciling apparently willing land sales from the 1840s to the 1870s with allegations of Crown Treaty breaches, particularly the failure to protect Ngāti Whātua's land base.<sup>18</sup>

Much of Crown historian Dr Donald Loveridge's response to Wyatt's research report consisted of a minute critique of her evidence about the beginning of the claimed alliance in and around Auckland in 1840.<sup>19</sup> The matters in contention are far too detailed to summarise here and relate mainly to the Crown's acquisition of land and the establishment of the colonial capital at Auckland, outside the Kaipara inquiry district. The key points made by Crown counsel in relation to the claimants' evidence on the alliance were that:

- ▶ Ngāti Whātua were not in a position of strength in 1840;
- ▶ specific promises of immediate benefit to Ngāti Whātua were not needed in order to get them to sign the Treaty or to sell land;
- ▶ land sales took place in the context of a belief by both the Crown and Māori that Pākehā settlement would lead to advantages and development for Māori; and
- ▶ there was no evidence that specific promises were made to Ngāti Whātua about the provision of such benefits as schools, hospitals, and roads. The claimants' evidence relied on general statements about the benefits to be obtained by Māori from Pākehā settlement, converting them into specific promises to Ngāti Whātua.<sup>20</sup>

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16. Claim 1.10(a), p 4

17. Document Q1, p 52

18. Document Q16, p 13

19. Document O4, pp 9–13

20. Document Q16, pp 16–25

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Crown counsel argued in opening submissions that the alliance concept was used to screen the fact that there was no evidence of specific promises being made: ‘Moreover the nature of the “promises” portrayed in claimant evidence sits unconvincingly alongside what we do know about the capacity (technological and economic) and philosophy of the State at the time.’<sup>21</sup>

In closing submissions, Crown counsel argued that, in relation to Treaty jurisprudence, the claimants had sought to identify ‘not simply Treaty breach, but breach of a heightened relationship, over and above orthodox Treaty principles. The implication must be more was “owed” to Ngāti Whātua than other iwi/hapu/individuals.’<sup>22</sup> The Crown did not accept that there was ‘any higher threshold than orthodox Treaty principles against which to test Crown action in the Kaipara.’<sup>23</sup>

**6.3.4 Submissions of other claimant groups**

No other claimant group in the Kaipara inquiry district has claimed that it had an alliance with the Crown. Counsel for the Wai 688 (Ngā Hapū o Whangarei) claimants argued that Crown actions created reasonable or legitimate expectations of Māori benefit from land sales, an argument which is similar to the Wai 312 claims about promises of development, but without the overlay of the alliance concept.<sup>24</sup>

In addition, counsel for Wai 619 (Ngāti Kāhu o Torongare/Te Parawhau) argued that Ngāti Whātua did have an alliance with the Crown and that this alliance was itself a Treaty breach because it led the Crown to treat Ngāti Whātua, and Ngāti Whātua-aligned hapū, more favourably than other Māori hapū (particularly those aligned with Ngā Puhi). More specifically, counsel claimed that, as a result of the alliance with Ngāti Whātua, the Crown transacted with hapū who identified themselves with Ngāti Whātua when conducting the 1854 Mangawhai purchase.<sup>25</sup>

We have already set out our findings on both these claims in chapter 5.

**6.3.5 Tribunal comment**

There is a passing reference in the *Report on the Orakei Claim* to Ngāti Whātua having ‘an alliance with the Crown.’<sup>26</sup> This term was not defined and the concept was not further developed in that report. As counsel for Wai 312 pointed out, the Muriwhenua Tribunal referred

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21. Document 09, p 8

22. Document Q16, p 15

23. Document 09, p 8

24. Document Q2, pp 8–9

25. Document Q20, pp 9–12

26. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 3

in its report to a 'Maori alliance with the Governor'.<sup>27</sup> However, the Muriwhenua Tribunal's discussion on this point does not support the fully fledged alliance argument of the Wai 312 claimants. The Muriwhenua Tribunal considered that part of the kaupapa of Muriwhenua in relation to sales of land to the Crown was a belief in a haumi, or alliance, with the Crown as represented by the Governor. The Tribunal stated that a partnership and an alliance were essentially the same thing, but it used the term 'alliance' because of the military arrangements made with the Governor by Muriwhenua Māori in the 1840s and 1860s. The Māori kaupapa was not shared by Europeans, who 'did not see an alliance as existing at this time'. However, it appeared to Māori that 'the Governor saw an alliance as well'.<sup>28</sup>

The 'alliance' as described by the Muriwhenua Tribunal is nowhere near as far-reaching as that described by the Wai 312 claimants. The key components of the alliance identified by the Muriwhenua Tribunal were:

- ▶ The concept of partnership between Māori and the Crown. This is, of course, a well-established Treaty principle regardless of any claimed alliance with a particular Māori group.
- ▶ This partnership (or alliance) was seen as being 'personal to the monarch or the Governor'. Rangatira retained their authority in their local areas, and did not see themselves as subordinate to local Pākehā officials.
- ▶ Muriwhenua Māori were consistently loyal to the Crown. They affirmed their loyalty to, and their alliance with, the Crown by selling land to the Crown, and by siding with it during the New Zealand wars.<sup>29</sup>

Clearly, there is some overlap between this concept of an alliance and that of the Wai 312 claimants, but the Muriwhenua Tribunal did not suggest that the alliance imposed mutual obligations on the Crown and Māori over and above those already implicit in the Treaty.

We consider that the issue of the alleged promises of development made to Ngāti Whātua in connection with Crown purchases needs to be separated out from a discussion of the concept of an alliance. We deal with Crown purchases later. Moreover, the Tribunal has to consider a more fundamental question: even if historical evidence supports the Wai 312 claimants' contention that Ngāti Whātua had an alliance with the Crown, would such an alliance be something to which the Tribunal should attach any weight in its deliberations? Can there be what Crown counsel described as a 'higher threshold than orthodox Treaty principles against which to test Crown action in the Kaipara'? The breaches of the alliance identified by the claimants can mostly be framed in terms of orthodox Treaty principles. But, by relating them to the alliance, it does appear that the claimants are alleging a 'heightened relationship' (Crown counsel's words).<sup>30</sup>

27. Document Q27, p10; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp191–194. The relevant section of the *Muriwhenua Land Report* is reproduced at document Q27, app A.

28. Waitangi Tribunal, *Muriwhenua Land Report*, pp191–194

29. Ibid

30. Document Q16, p15

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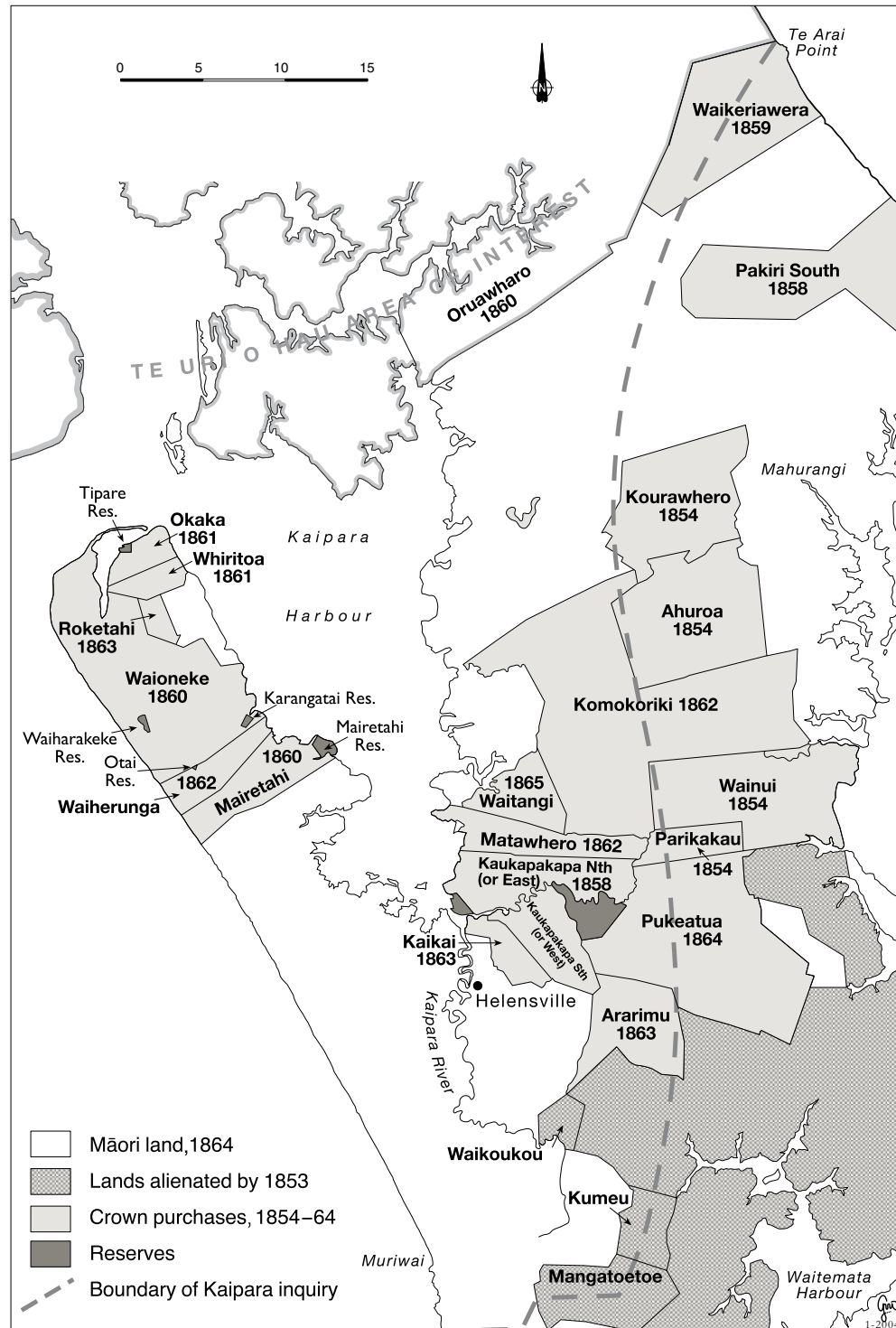


Figure 25: Crown purchases in southern Kaipara before 1865

In our view, the idea that the Crown might have had greater obligations to Ngāti Whātua than to other iwi or hapū as a result of its claimed alliance is highly problematic. The Treaty provides the same protections and guarantees to all Māori individuals and groups. Even if a special relationship between the Crown and a particular Māori group could be demonstrated to have existed, such a relationship should have no bearing on the Crown's Treaty responsibilities to that group. Nor should the Crown be considered to have greater responsibilities towards Māori groups classified by the Crown as 'loyal' than towards those classified as 'rebels', or towards those who sold land to the Crown as opposed to those who exercised their Treaty-guaranteed rights not to sell land. Article 3 of the Treaty extended the rights and privileges of British subjects to all Māori.

### 6.3.6 Findings

We find that, whatever relationship may or may not have been established with the Crown by Ngāti Whātua in Auckland in 1840, when the colonial capital was founded, these events lie outside our inquiry district. Furthermore, our jurisdiction requires the Tribunal to consider claimed breaches by the Crown against the principles of the Treaty of Waitangi. We are not required to consider any alleged relationship beyond the terms of the Treaty itself. We have not been persuaded, therefore, that the conceptual gloss of an 'alliance' has significantly altered the historical context of the Crown's actions or inactions in the Kaipara inquiry district, or our consideration of them.

We turn now to consider the Crown's land purchases in southern Kaipara up to 1865. These purchases fall into three groups, and different issues are associated with each. We present our findings at the conclusion of the chapter.

## 6.4 CROWN PURCHASES, 1848–53

The pattern of land alienation in southern Kaipara before 1865 is summarised in figure 25. Between 1848 and 1853, a number of Crown purchases were carried out in the upper Waitemata region. Many of these transactions fall outside our inquiry district, and we restrict our discussion here to three which do fall within our inquiry and whose boundaries were disputed: those of Waikoukou, Kumeu, and Mangatoetoe. These early Crown purchases were conducted by Survey Office officials, generally working with an interpreter. Despite the involvement of survey officers, these purchases were not properly surveyed (although a sketch plan was attached to the deeds), and there is little documentary evidence about how they were negotiated.



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In October 1851, four Ngāti Whātua rangatira signed a deed for the sale of the Waikoukou block (estimated area 1320 acres) and received a payment of £30 as a first instalment on the sale price of £60. The boundaries of the purchase were defined in relation to certain natural features and to the boundaries of other blocks sold to settlers.<sup>31</sup> It seems that the additional £30 was never paid, probably because of the dispute over the boundaries, which arose fewer than three months after the deed was signed. The details are unclear, but it seems that a Māori named Haimona said that the Waikoukou Stream should be the boundary of the block, and that the land to the west of that stream should remain in his possession. Haimona was opposed by one of the signatories to the Waikoukou deed, Arama Karaka. No formal resolution of the dispute was reached, and the Crown subsequently sold part of the land to the west of the stream to a settler, who built a house there.<sup>32</sup>

In 1867, the Native Land Court upheld a claim by Pāora Tūhaere and another claimant to the land west of the Waikoukou Stream (the Waikoukou 1 block). The Crown's claim to this land was rejected by Judge Rogan on the grounds that the Crown had failed to survey the block after purchase and that the Crown's claim to the 256 acres of land west of the Waikoukou Stream had been opposed by Māori at the time of the purchase. Māori did not dispute the Crown's claim to land east of the Waikoukou Stream, which appears to have been included in other Crown purchases as well.<sup>33</sup> The matter was thus finally resolved in Ngāti Whātua's favour, although it took more than 15 years to sort out the confusion created by the failure to survey the block or to resolve the dispute when it first arose.

The adjoining Kumeu and Mangatoetoe blocks (estimated at 2800 and 4480 acres respectively) were purchased for £100 each on the same day in August 1853. The Kumeu deed was signed by four Ngāti Whātua rangatira, while the Mangatoetoe deed was signed by six rangatira of Ngāti Whātua and Te Kawerau a Maki, including Watarauhihi. The blocks were not surveyed but the boundaries were described in terms of natural features and the boundaries of other blocks.<sup>34</sup> In 1856, 1861, and 1865, the boundaries of these purchases were challenged by Māori, although it is not clear whether the same part of the boundary was in dispute in each case. The argument was not resolved until 1867, when the adjoining Taupaki block went before the Native Land Court. The survey of Taupaki confirmed what Māori had long claimed: that an area of 118 acres around where the Mangatoetoe, Kumeu, and Taupaki blocks met had not been included in the earlier Crown purchases (as the Crown had believed). This land had since been bought from the Crown by a settler. As a result, in September 1867 £59 was paid to Pāora Tūhaere for this land.<sup>35</sup>

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31. Turton, vol 1, deed 140 (p 184)

32. Document F4, pp 175–177

33. Ibid, pp 177–178; doc F5, pp 415–418, 427–428; doc Q16(b); Maurice Alemann, 'Early Land Transactions in the Ngāti Whātua Tribal Area', MA thesis, University of Auckland, 1992, pp 51–52

34. Turton, vol 1, deeds 144–145 (pp 187–189)

35. Document F4, pp 179–180; doc F5, pp 276–279

Kumeu and Waikoukou were specifically referred to by Pāora Tūhaere in an 1871 petition, which stated that the land had been purchased by the Government ‘without the deeds describing the lands being properly read over and explained to the Natives before they were executed, and lands not intended by the Native owners to be sold were often, through error, inserted in the deeds.’<sup>36</sup>

### 6.5 THE HONEY OLD LAND CLAIM AND KAUKAPAKAPA PURCHASES

The Kaukapakapa blocks were the first of John Rogan’s acquisitions in southern Kaipara, a transaction complicated by an old land claim. In October 1841, Edward Parker lodged a claim with the Old Land Claims Commission for investigation of two pre-Treaty transactions made with his partner, James Honey. One was concerned with land at Hokianga, where Parker was based, which is outside our inquiry district. The other related to land at Whakatiwai on the Kaukapakapa River in southern Kaipara, where James Honey was living. The latter transaction was claimed to involve about 2000 acres, for which gunpowder valued at about £3 was paid in 1839, with a further payment of goods being made some time in 1840, to a total value of £50 15s 9d. The vendors were ‘Terewaike, King George, Rae, Tatarahua and Tine Papahia.’<sup>37</sup>

Wyatt suggested that none of these names was Ngāti Whātua and that the names of Terewaike and Tatarahua also appeared as vendors in the Hokianga transaction. She identified Tine Papahia as Wi Tana Papahia, a Te Rarawa chief of Hokianga. He was one of a number of Te Rarawa who moved into northern Kaipara with the kauri-timber industry and lived on the Wairoa River and Ōtamatea. His particular connections with Ngāti Whātua are not known. Thomas Outhwaite, the registrar of the Supreme Court in Auckland, who had been Honey’s lawyer since at least 1843, remarked in December 1850 that ‘Old Terrewaike appears to be head chief in the district. Honey is a great favourite with the old chief.’ Outhwaite also recorded that ‘Terrewaike’ had given land to Honey ‘at Aotea’ in the Kaipara district as well, but he noted that this claim had not been investigated by the Old Land Claims Commission. Outhwaite then commented: ‘At that time it appears that every chief was proud of a white man under his protection in that it gave him importance with the other chiefs and nothing was so much feared as a white man leaving as that lessened a chief in the opinion of the others.’<sup>38</sup>

Commissioner Edward Godfrey heard the application for the Whakatiwai land (OLC 301a) in April 1844 and subsequently dismissed it. Godfrey’s record is brief:

36. ‘Petition of Paora Tuhaere,’ 12 April 1871, AJHR, 1871, 1–2, p 5 (doc F4, p 186)

37. TB Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: TB Byrne, 2002), p 320; doc F4, p 81

38. Thomas Outhwaite, journal, 28 December 1850, on a visit to Whakatiwai (Byrne, p 444)

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The Claimants appeared before the Commissioner, but being unable to produce their Native Witnesses there, liberty was granted them to bring them to Auckland, at any period before the 30th of Sept 1844. The Claimants having neglected to do so, No Grant is Recommended.<sup>39</sup>

Wyatt suggested that this failure to produce Māori witnesses to confirm the transaction indicated that it was 'fraudulent'. She conceded, however, that there must have been 'some agreement' with local Ngāti Whātua because they let Honey 'remain there undisturbed for some fourteen years'. She also noted that the missionary William Colenso had visited Honey at Whakatiwai in 1842. Colenso recorded the visit of Maata, the wife of Te Ōtene Kikokiko, and held a service for local Māori and Europeans there. Wyatt argued that the arrangement 'was doubtless nothing more than an agreement to allow him to use and occupy the land under the authority of the resident Ngati Whatua rangatira' and that it did not extinguish Māori customary title.<sup>40</sup>

On 30 December 1844, Governor FitzRoy issued a Crown grant to James Honey and Edward Parker for 1600 acres of land at Whakatiwai. No record has survived in the Old Land Claims Commission files of how this decision was arrived at or whether Ngāti Whātua rangatira had been consulted or had agreed. Wyatt suggested that FitzRoy had been persuaded to exercise his prerogative right as governor to issue a Crown grant, and had bypassed the provisions of the Land Claims Ordinance to conduct a proper investigation by a land claims commissioner.<sup>41</sup> However, as the *Muriwhenua Land Report* illustrated, FitzRoy did alter or overturn Godfrey's recommendations without recording his reasons. We note too that, although a plan was included on the grant, this plan does not appear to have been a careful survey on the ground (fig 26).

After Grey took over from FitzRoy as governor, he was made aware of doubts about the legality of a number of Crown grants issued by his predecessor where the land concerned was not surveyed, boundary descriptions were vague, and there was uncertainty whether the Māori 'vendors' had fully agreed to transfer of title. However, any doubts that emerged in the late 1840s were dispelled by the Quieting Titles Ordinance 1849. In section 1, every grant of land made 'in the name and on behalf of the Crown, by the Governor, Lieutenant-Governor, or other Officer administering the Government for the time being, shall be deemed and taken to be a good, valid, and effectual conveyance of land'. Section 2 provided that compensation could be awarded to Māori owners 'if it shall be proved to the satisfaction of a Judge of the Supreme Court that the Native Title to the land comprised in any such Grant . . . hath not been fully extinguished'. However, proceedings under this section had to have been commenced in court on or before 1 January 1853. We do not know whether Ngāti Whātua

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39. Report by Godfrey on claim 301a, 30 September 1844, OLC1/707 (doc F4, p 82)

40. Document F4, p 83

41. Ibid, pp 83–84

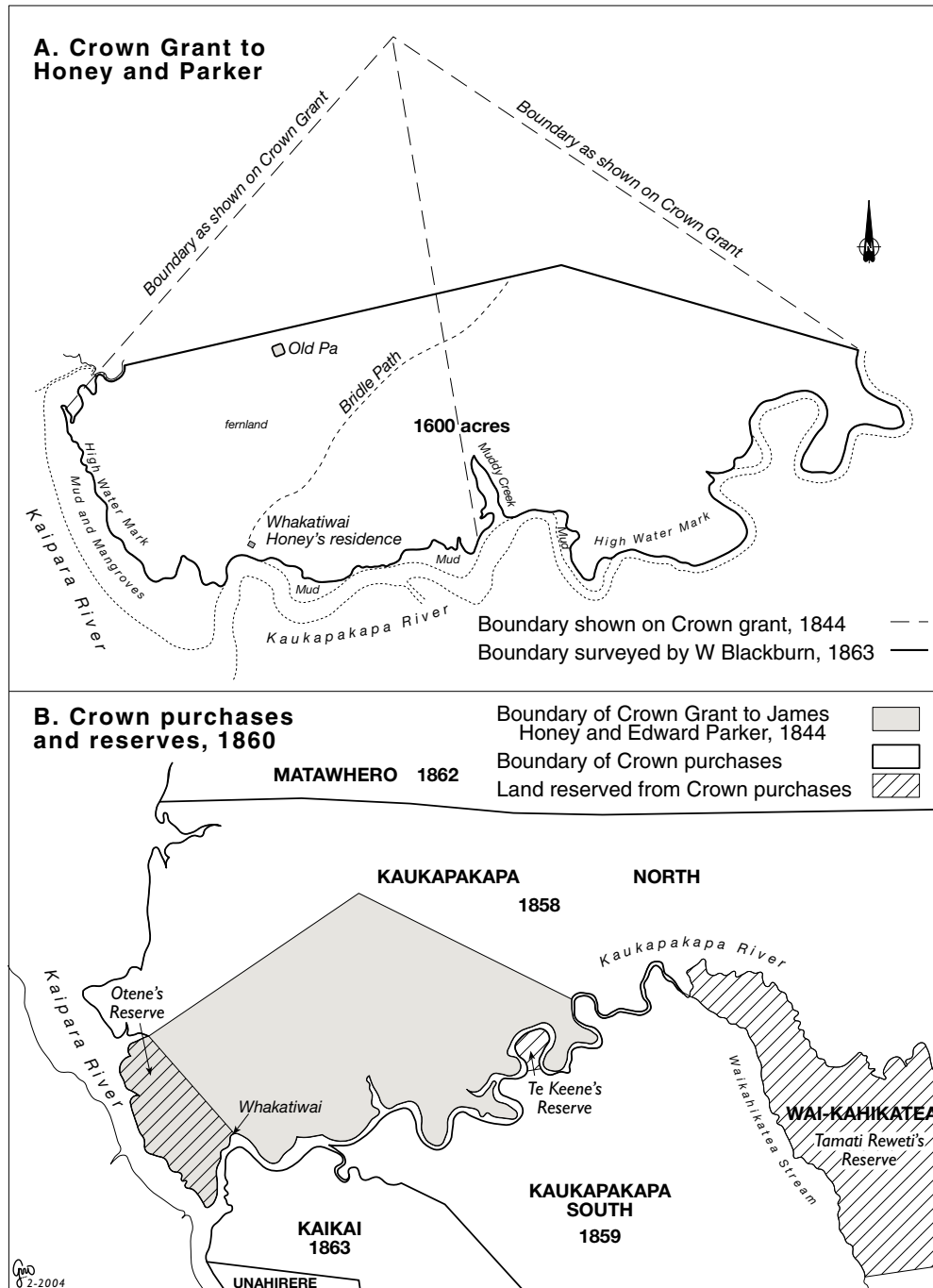


Figure 26: The Honey claim and Kaukapakapa purchases. Source: OLC plan 257 and SO1263.

were aware of this provision, which put the onus on them, but no proceedings in respect of Whakatiwai were begun.

Meanwhile, neither Honey nor Parker had picked up his Crown grant, Honey explaining in one letter that he could not afford the fees of £11 10s. In 1849, he wrote to the Colonial

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Secretary asking for the 1600-acre grant to be exchanged for land in Auckland, retaining only 34 acres at Whakatiwai on which he resided. He was told in a memorandum dated 25 July 1849 that the Crown grant could not now be issued 'without the expressed direction of the Governor'. The Quieting Titles Ordinance was passed in August 1849. Honey and Parker were finally issued with a Crown grant for Whakatiwai in November 1851, whereupon Parker transferred his half-share to Outhwaite.<sup>42</sup>

By early 1854, local Ngāti Whātua leaders had become aware that they had lost title to Whakatiwai. On 10 June, Te Ōtene Kikokiko wrote to Charles Davis, the interpreter assisting with the Crown purchases, seeking help with court proceedings over the land. Threats were made against Honey, and the dispute escalated. On 22 June, Honey wrote to the Colonial Secretary, complaining that he had been told by Davis that 'Otene and others intend to burn my house and buildings . . . and destroy my property unless I leave the ground'. He asked that Davis be supplied with a letter to be given to local Ngāti Whātua explaining that he had 'full authority from the Crown Grant to exercise ownership of the land'. He then explained that he had already spent eight weeks in Auckland arranging to put cattle on his land and to build additional houses and stockyards with the intention of supplying meat for the Auckland market. He had also arranged 'to supply a vessel from Melbourne' with spars and timber:

All this will entail great expense and will make me liable in case I am prevented by the Natives from carrying out any contracts that I intend to enter into. There is also much kauri gum on the land. I wish to avail myself of all the benefits of the place inasmuch as I have never derived any great gain during fourteen years that I have lived there. During that time I have been unmolested and Eleven years ago had 6 then employed cutting timber on the same ground without interruption from these or any other Natives.<sup>43</sup>

Honey then commented: 'I have never known Te Otene make a claim before, but as land everywhere is becoming valuable the Claim is no doubt sent in to get money.' He stated that 'My chief was Tarawake', that Tarawake had sold him the land, and that he was prepared to explain that to Te Ōtene and Ngāti Whātua.

There was no immediate response to this letter, and in August 1854 Honey wrote again. This time, John Johnson, the district land purchase officer, was asked to investigate. Johnson reported at the end of August, noting that the time for lodging claims in the Supreme Court under the Quieting Titles Ordinance had expired on 1 January 1853:

The Natives were not likely aware of this limitation of time and the Claimant [Honey] knowing his purchase of the Native title was never proved before a Commissioner ought if actuated by a desire to obviate future difficulties to have brought the matter forward before.<sup>44</sup>

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42. Document F4, pp 87–90

43. Ibid, p 91

44. Honey to Colonial Secretary, 22 June 1854, 24 August 1854, OLC/707 (doc F4, pp 91–92); doc F4(b)

Johnson then suggested that Honey should pay a share of legal and administrative expenses if, on further investigation, it was found that the Ngāti Whātua claim was valid and they would sell a block of land, including the Whakatiwai grant, to the Crown. This arrangement, he thought, might be to the advantage of both the public and Honey.

Upon investigation, Johnson found that Honey's Crown grant was 'strictly legal' but that the native title was 'defective' and had never been thoroughly examined by a commissioner. Honey wanted to remain 'in quiet possession' at Whakatiwai and refused to pay any expenses. Johnson knew that there had been no proper investigation of Māori customary title, but he was concerned that if the Government paid off Ngāti Whātua in this case it would create an undesirable precedent for other cases where titles derived from old land claims were in dispute. Wyatt commented that, 'As a result of Johnson's inquiries it would appear an arrangement was finally made whereby the Crown agreed to purchase Ngati Whatua's claim for £700'.<sup>45</sup> Wyatt also quoted the record of the meeting on 28 September 1855 between Governor Gore Browne and Te Ōtene in which it was agreed that the Whakatiwai land should be returned to Te Ōtene, who in acknowledgement 'had sold a large block of land', including most of Whakatiwai, to the Crown for £700.<sup>46</sup>

The dispute dragged on with no resolution while officials argued about who should pay for the expenses. In 1855, Honey sold 200 of his 800 acres to Charles Short, who also wrote a letter to the Colonial Secretary seeking a resolution of the Ngāti Whātua claims. The chief land purchase commissioner, Donald McLean, had supported making a payment to Ngāti Whātua on condition that it be done in conjunction with other large purchases being negotiated in Kaipara. In the opinion of the Attorney-General, Honey held a valid Crown grant, but the Crown had no obligation to pay expenses in settling Ngāti Whātua claims.

Still no resolution was reached, and by September 1856 Short and Outhwaite, who had by this time purchased Honey's remaining 600 acres, wrote to the Colonial Secretary seeking action, 'as the Natives are continually offering threats to the tenants upon the premises and committing trespasses thereon to the damage of the property'.<sup>47</sup> Short followed this up in October with an offer to pay a share of the expenses, but by June 1857, when there was still no action, he withdrew the offer on the ground that he was losing money by being prevented from using the land.<sup>48</sup> Local Ngāti Whātua also maintained pressure on the Government.

A resolution was finally reached in December 1858. The Crown would purchase the Kaukapakapa block, including Honey's Whakatiwai grant. Final negotiations were conducted by Rogan. The deed for the Kaukapakapa North block was signed on 8 December, 'by us the chiefs and people of the Tribe Ngatiwhatua'. There were 40 signatories, and the receipt for £500 for 5787 acres was signed by Te Ōtene and Matini.<sup>49</sup> In a letter sent with the deed

45. Document F4, p 93

46. Ibid

47. O'Brien to Colonial Secretary, 23 September 1856, OLC1/707 (doc F4, pp 94–95)

48. Byrne, p 446

49. Turton, vol 1, deed 154 (pp 200–201)

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to McLean, Rogan explained that the purchase included ‘Honey’s Grant, excepting a strip of land . . . the natives could not be induced to surrender.’<sup>50</sup> The boundary description on the deed excluded about 200 acres at the western end of the Whakatiwai land, which became known as ‘Otene’s reserve’ (fig 26). However, this too was sold on 6 January 1860 by Te Ōtene Kikokiko for £27.<sup>51</sup> It is not known what arrangements were made with Outhwaite, since Otene’s reserve included part of the land he had purchased from Parker. Perhaps that was his contribution to expenses, but we have no documentation to confirm this. The Crown presumably confirmed his title, because the Whakatiwai land was part of the Outhwaite estate in the 1890s.<sup>52</sup>

On 24 March 1859, the Kaukapakapa West block of 5223 acres was sold for £300 in a deed with 11 signatories. This deed reserved about 30 acres ‘at a turn on Kaukapakapa river’, but this land, known as ‘Te Keene’s reserve’, was sold on 5 January 1860 for £15 by Te Keene, Paraone, and Paora.<sup>53</sup>

**6.6 JOHN ROGAN’S PURCHASES, 1858–65**

John Rogan was appointed to the Kaipara region as district land purchase commissioner in 1857, with the principal task of negotiating the purchase of land for settlement. Initially, as explained in chapter 5, he focused on northern Kaipara. It was not until late 1858 that he made his first purchase in southern Kaipara, at Kaukapakapa, as mentioned in section 6.5.

In 1860, he began a series of purchases in southern Kaipara (fig 27). The issues relating to these purchases are the failure to make reserves inalienable (which led to their being sold soon after being set aside), the considerable quantity of land purchased, and whether specific promises of future benefits were made at the time. The purchases were in two separate areas: at the northern end of South Head and on the eastern shore of Kaipara Harbour, extending north and east to connect with lands already alienated. The intention was to provide a large contiguous area of Crown land to be opened up for settlers. Rogan had the assistance of a surveyor, Stephenson Percy Smith, and in most cases a survey preceded the purchase negotiation.

On South Head, Rogan reported in October 1859:

Okaka and Waioneke have not been purchased, as they are small detached blocks, and it was considered inadvisable by the Government to complete the purchase until a larger

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50. Rogan to chief commissioner, 11 December 1858, AJHR, 1861, C-1, p 97

51. Turton, vol 1, deed 160 (pp 209–210)

52. Byrne, p 447

53. Turton, vol 1, deeds 157, 159 (pp 205–206, 208–209)



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Figure 27: Rogan's Crown purchases, 1858–65

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| Block      | Date sold        | Area<br>(acres) | Total price<br>(£ s d) | Price per acre<br>(s d) | Reserve<br>(name and acreage)   |
|------------|------------------|-----------------|------------------------|-------------------------|---------------------------------|
| Mairetahi  | 24 August 1860   | 5950            | 297 10 0               | 1 0                     | Mairetahi 350                   |
| Waioneke   | 21 December 1860 | 20,600          | 1030 0 0               | 1 0                     | Waiharakeke 81<br>Karangatai 41 |
| Okaka      | 19 November 1861 | 1851            | 138 16 6               | 1 6                     | Tipare 54                       |
| Whiritoa   | 28 November 1861 | 1551            | 116 17 0               | 1 6                     | Atiu 37                         |
| Waiherunga | 24 July 1862     | 2884            | 216 0 0                | 1 6                     | Otai 36                         |
| Roketahi   | 5 August 1863    | 810             | 101 5 0                | 2 6                     | No reserve                      |
| Total      |                  | 33,646          |                        |                         | 599                             |

**Table 9: Land transactions on Kaipara South Head, 1860–63.** Source: T B Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: T B Byrne, 2002), p 374; Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland, Rangahaua Whanui Series* (Wellington: Waitangi Tribunal, 1996), p 203.

extent of land should be offered in that locality. The land offered by Paora is adjacent to Waioneke, and it will probably be found, after the survey of Mairetahi, desirable to purchase these blocks, as the land situated on the Kaipara [Harbour] is of good quality.<sup>54</sup>

At this stage, the survey of Waioneke was 5000 acres, but the area finally conveyed on 21 December 1860 was 20,600 acres. The initial attraction of this area was the proposed pilot station on South Head, on the Okaka block, which was eventually established in August 1864.<sup>55</sup> Much of the land was covered in fern and manuka scrub, with high sand dunes on the western coast, but it had the advantage of access to Kaipara Harbour on the east. The transactions on Kaipara South Head over the period 1860 to 1863 are shown in table 9. Within these purchases, six separate reserves were set aside for Māori. All were well under 100 acres each, except for Mairetahi (350 acres). However, as shown in table 10, by September 1862 four of these reserves had been sold to the Crown.

We have no information about why the reserves were set aside or why they were sold so soon afterwards. In 1865, only two reserves – Mairetahi and Karangatai (41 acres) – remained in Māori hands on South Head, along with fewer than 3000 acres on the shore of Kaipara Harbour to the south of the kainga at Kawau. South of the Mairetahi block to beyond Muriwai, however, all the land remained in Māori control in 1865.

On the eastern side of Kaipara Harbour, Rogan's purchases began with the Kaukapakapa blocks in December 1858 and March 1859. He was then diverted to purchases on Kaipara South Head and of Te Uri o Hau lands in northern Kaipara. Between 1862 and 1865, he finalised further purchases of land connecting with Johnson's 1854 purchases and earlier transactions in the upper Waitemata Harbour area (see table 11).

54. Rogan to chief commissioner, AJHR, 1861, C-1, pp 99–100

55. Byrne, pp 235–237

## LAND TRANSACTIONS IN SOUTHERN KAIPARA, 1840–65

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| Reserve     | Date sold         | Area<br>(acres) | Total price<br>(£ s d) | Price per acre<br>(s d) | Parent block |
|-------------|-------------------|-----------------|------------------------|-------------------------|--------------|
| Tipare      | 10 December 1861  | 54              | 7 10 0                 | 2 9                     | Okaka        |
| Waiharakeke | 10 December 1861  | 81              | 7 10 0                 | 1 10                    | Waioneke     |
| Atiu        | 26 June 1862      | 37              | 2 15 6                 | 1 6                     | Whiritoa     |
| Otai        | 16 September 1862 | 36              | 2 14 6                 | 1 6                     | Waiherunga   |
| Total       |                   | 208             |                        |                         |              |

Table 10: Reserves on Kaipara South Head sold to Crown. Source: Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland, Rangahaua Whanui Series* (Wellington: Waitangi Tribunal 1996), p 204.

| Block             | Date sold         | Area<br>(acres) | Total price<br>(£ s d) | Price per acre<br>(s d) | Reserve<br>(name and acreage) |
|-------------------|-------------------|-----------------|------------------------|-------------------------|-------------------------------|
| Kaukapakapa North | 8 December 1858   | 5787            | 500 0 0                | 1 8                     | Te Otene's 200                |
| Kaukapakapa South | 24 March 1859     | 5223            | 300 0 0                | 1 1                     | Te Keene's 30                 |
| Komokoriki        | 29 September 1862 | 35,395          | 3500 0 0               | 2 0                     | No reserve                    |
| Matawhero         | 26 November 1862  | 5480            | 685 0 0                | 2 6                     | Te Karae 24                   |
| Ararimu           | 14 February 1863  | 7165            | 1433 0 0               | 4 0                     | No reserve                    |
| Kaikai            | 31 July 1863      | 2230            | 334 0 0                | 3 0                     | No reserve                    |
| Pukeatua          | 20 January 1864   | 23,800          | 3550 0 0               | 3 0                     | Waikahikatea 1752             |
| Waitangi          | 18 July 1865      | 4068            | 762 15 0               | 3 10                    | No reserve                    |
| Total             |                   | 89,148          |                        |                         | 2006                          |

Table 11: Rogan's purchases between 1862 and 1865. Source: T B Byrne, *The Unknown Kaipara: Five Aspects of its History, 1250–1875* (Auckland: T B Byrne, 2002), pp 158–162.

The last purchase, that of the Waitangi block, was negotiated, but title had to be investigated by the new Native Land Court. On 26 June 1865, the court vested title in nine grantees, who sold it to the Crown a month later, as had already been agreed. The signing of the deed was not completed until 1873, however, when successors to one of the grantees signed.<sup>56</sup>

Rogan had also begun negotiations over the Hoteo block (41,400 acres) in 1860, but this purchase had not been completed by 1865. The block was investigated by the Native Land Court in 1867 and vested in five grantees. It was eventually purchased by the Crown in 1868 for £10,350, a price of five shillings per acre. That price was considerably higher than for the earlier purchases, although Wai 312 researcher Bruce Stirling suggested that the final instalments may not have been received by the grantees.<sup>57</sup>

Not all of these purchases had reserves set aside for Māori. Of the four that did, by 1862 three of these had been sold (see table 12). Again, we have no information as to why these reserves were set aside or why they were sold so quickly afterwards. The remaining reserve,

<sup>56</sup>. Document F5, pp 455–459

<sup>57</sup>. Ibid, pp 496–507

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| Reserve    | Date sold        | Area<br>(acres) | Total price<br>(£) | Price per acre<br>(s d) | Parent block      |
|------------|------------------|-----------------|--------------------|-------------------------|-------------------|
| Te Keene's | 5 January 1860   | 30              | 15                 | 1 6                     | Kaukapakapa South |
| Te Otene's | 6 January 1860   | 200             | 27                 | 2 8                     | Kaukapakapa North |
| Te Karae   | 22 November 1862 | 24              | 3                  | 2 6                     | Matawhero         |
| Total      |                  | 254             |                    |                         |                   |

Table 12: Sales of reserves in Rogan's purchases. Source: Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland, Rangahaua Whanui Series* (Wellington: Waitangi Tribunal, 1996), p 204.

Waikahikatea (1752 acres), was investigated by the Native Land Court in 1865 and sold to a private purchaser in 1866.<sup>58</sup>

In table 13, we set out a chronological summary of Crown purchases of land in southern Kaipara up to the end of 1865.

## 6.7 CLAIMS RELATING TO CROWN PURCHASES, 1848–65

### 6.7.1 Claimant submissions

In relation to the Honey old land claim, Wai 312 claimant counsel submitted that FitzRoy's action in overturning Commissioner Godfrey's recommendation and issuing a Crown grant for 1600 acres at Kaukapakapa was 'completely unjustifiable and in breach of the Crown's obligations under the Treaty of Waitangi, particularly the principle of active protection and utmost good faith'.<sup>59</sup> Counsel did not refer to the subsequent repurchase of the same land by the Crown, which included the making of a payment to Ngāti Whātua owners.

Wai 312 claimant counsel considered the Crown purchases in two parts. The first series, between 1848 and 1853, were 'poorly documented', and 'the careless manner in which the Crown negotiated the purchases and in particular its failure to survey led to considerable confusion and, in turn, drawn out complaints and petitions'.<sup>60</sup> Counsel claimed that the second series, negotiated by Rogan between 1854 and 1867, were 'certainly more comprehensive in both scale and detail and made a determined assault on significant areas within the Ngāti Whātua rohe'. Counsel also suggested that Rogan's failure to create inalienable reserves ensured that Ngāti Whātua were 'to all intents and purposes permanently alienated from a significant area within their rohe'.<sup>61</sup>

58. Document F5, pp 453–454

59. Document Q1, p 71

60. Ibid, pp 83–84

61. Ibid, pp 84–85

## LAND TRANSACTIONS IN SOUTHERN KAIPARA, 1840–65

6.7.1

| Year sold | Block               | Block area<br>(acres) | Reserve area<br>(acres) |
|-----------|---------------------|-----------------------|-------------------------|
| 1851      | Waikoukou           | 1320                  |                         |
| 1853      | Kumeu               | 2800                  |                         |
|           | Mangatoetoe         | 4480                  |                         |
| 1858      | Kaukapakapa North   | 5787                  |                         |
| 1859      | Kaukapakapa South   | 5223                  |                         |
| 1860      | Otene's reserve*    |                       | 200                     |
|           | Te Keene's reserve* |                       | 30                      |
|           | Mairetahi           | 5950                  |                         |
|           | Waioneke            | 20,600                |                         |
| 1861      | Okaka               | 1851                  |                         |
|           | Whiritoa            | 1551                  |                         |
|           | Tipare*             |                       | 54                      |
|           | Waiharakeke*        |                       | 81                      |
| 1862      | Waiherunga          | 2884                  |                         |
|           | Atiu*               |                       | 37                      |
|           | Otai*               |                       | 36                      |
|           | Komokoriki          | 35,395                |                         |
|           | Matawhero           | 5480                  |                         |
|           | Te Karae*           |                       | 24                      |
| 1863      | Roketahi            | 810                   |                         |
|           | Ararimu             | 7165                  |                         |
|           | Kaikai              | 2230                  |                         |
| 1864      | Pukeatua            | 23,800                |                         |
| 1865      | Waitangi            | 4068                  |                         |
| Total     |                     | 131,866               | 462                     |

\* Reserves set aside from purchase

Table 13: Crown land purchases in southern Kaipara to 1865

Counsel further submitted that a number of 'undertakings or promises of development . . . were made by the Crown to secure those purchases' and noted that Governor Grey's purchase policy included 'collateral promises of development' of infrastructure for the benefit of Māori vendors.<sup>62</sup> Counsel concluded that the Crown failed to deliver on 'the promises of development made, in the context of Crown purchase, at the time when the delivery of such infrastructure would have assisted Ngati Whatua.' This 'failure' was 'in breach of the Treaty principles of good faith and active protection'.<sup>63</sup>

62. Ibid, p 86

63. Ibid, p 91

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**6.7.2 Crown submissions**

Crown counsel noted that, although the original transaction in the Honey old land claim was not negotiated with Ngāti Whātua rangatira, the local leaders had not tried to remove Honey from the land and had accepted the Crown offer to purchase the land from Ngāti Whātua for £700. This issue, it was claimed, was therefore of ‘minimal significance’ in the Wai 312 claim.<sup>64</sup>

In relation to Crown purchases between 1848 and 1853, Crown counsel submitted that the disputes alleged by the claimants were not ‘major’. They were the result of ‘bungling’ rather than breaches of the Treaty, and were generally resolved. The disputes that did occur, it was argued, might suggest that Ngāti Whātua were keeping a watchful eye on their interests.<sup>65</sup> While the Crown purchases between 1858 and 1865 were more extensive, counsel rejected the claimants’ suggestion that the Crown was making a profit at the expense of Ngāti Whātua, pointing out that Government resources were slender and that ‘well in to the 1850s land receipts were largely offset by the costs incurred in order to generate them.’<sup>66</sup>

Crown counsel noted that the claimants had accepted that Ngāti Whātua ‘willingly participated’ in land sales to the Crown. He submitted that Ngāti Whātua were largely in control of the sales process, offering unoccupied and poorer quality land while ‘keeping for themselves the spots they were actually living on and using and most of the land around those locations for good measure’. Counsel cited Dr Loveridge in submitting that ‘No evidence is in fact presented to suggest that Rogan had any idea of effecting a “general extinguishment” of Ngāti Whātua title’, that he ‘purchased what he was offered by the chiefs’, and that generally the correct chiefs were brokered with.<sup>67</sup>

Counsel referred to the passage in Lord Normanby’s instructions to Hobson which suggested that the real value of land for Māori would be created by the introduction of capital and settlers (see sec 3.6). However, counsel submitted that there were no specific promises of infrastructure, such as schools, hospitals, and roads, throughout the region, regardless of population or location. The context of any alleged promises was relevant to a reconstruction of the understandings at the time of a transaction, counsel said.

Counsel also rejected claimant charges that the Crown failed to make inalienable reserves, noting that by 1865 Ngāti Whātua rangatira had sold seven of the 11 reserves made in Crown purchases since 1853. Counsel suggested that the ‘practical reality’ of insisting on the inalienability of reserves was ‘problematic’ in the 1850s: ‘It seems unlikely that Crown management of land transactions by insisting on land retention would have been welcomed or have been seen to be consistent with the Treaty.’<sup>68</sup> Crown counsel concluded that in the mid-1860s a small Ngāti Whātua population still held a significant area of land in southern Kaipara, that

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64. Document Q16, pp 28–29

65. Ibid, p 36

66. Ibid, p 38

67. Ibid, p 41; doc 04, para III.6.13

68. Document Q16, pp 41–42

there had been material advantages to them from land sales and that there was prosperity and little evidence of dissatisfaction up to that time.<sup>69</sup>

### 6.7.3 Tribunal comment

Although there were deficiencies in the investigation of the Honey old land claim at Kaukapakapa, we consider that this was recognised by the Crown and that full payment was made to Ngāti Whātua owners for this land.

In relation to the 1848 to 1853 purchases, we agree that they were handled carelessly by the Crown. However, the disputes were eventually resolved in Ngāti Whātua's favour and the areas under dispute were not large (256 and 118 acres).

Rogan's purchases between 1858 and 1865 were conducted openly, and he ensured that the boundaries were clearly identified by survey. Wyatt outlined the process:

. . . Rogan relied heavily on the leading rangatira to work with him in coordinating the purchases. Offers were in the first instance directed by the leading chiefs to Rogan, at which point some agreement was probably arrived at as to the general boundaries and extent of the proposed purchase. An advance payment was often also made at this time to effectively tie the chiefs into concluding the purchase. Rogan then directed a surveyor to survey the block while the leading chiefs identified and collected together the appropriate people to oversee the survey. Once surveyed, negotiations would then resume with Rogan as to price; a process which could take up to two years at a time and on occasions even longer . . . Having agreed on a price, a deed would then be drawn up and the final payment made, with specific chiefs often being listed on the deed itself as receiving the payment. That the chiefs were given the responsibility for paying all those with interests in the land presumably meant that the responsibility for previously identifying, informing, and obtaining the agreement of all claimants also rested with them.<sup>70</sup>

An analysis of the signatories to the various deeds may not, therefore, tell the full story of the extent to which individuals were involved in the transactions. For example, there were 37 signatories on the Kaukapakapa North deed, 16 on Komokoriki, 11 on Kaukapakapa South and Waitangi, 10 on Matawhero, and eight or fewer on all the rest. It seems to have been assumed that the rangatira had the right to negotiate and to dispose of their land to the Crown. Certainly, as Wyatt pointed out, there were few subsequent disputes over Crown purchases before 1865:

The greater accuracy facilitated by surveying the blocks and the greater level of consultation and involvement afforded those with interests in the land undoubtedly laid the

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69. Ibid, p 42

70. Document F4, p 254



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basis for few misunderstandings. That efficiency was probably attributable to both Rogan and the leading chiefs, and to the level of co-ordination and communication they together achieved.<sup>71</sup>

Ngāti Whātua leaders remained loyal to the Crown and cooperative in all their dealings with Crown officials.

We were given no specific evidence that promises were made by Rogan beyond a general expectation of benefit for Ngāti Whātua arising from European settlement on the purchased lands. No such promises by the Crown were set out in any of the purchase deeds.

In summing up the impact of Crown purchases in southern Kaipara by 1865, Dr Loveridge suggested that Ngāti Whātua were able to sell ‘without damage to their immediate requirements because their customary rights encompassed such a huge large area of land relative to the number of people concerned’. He estimated that in 1840 Ngāti Whātua in Orakei and southern Kaipara numbered 500 to 600 people in an area of over 750,000 acres. Although a great deal of land had been sold by 1865, Ngāti Whātua, then numbering 300 to 400, still retained all the land they had been occupying, and there was still a surplus. Dr Loveridge suggested that, from 1840, Ngāti Whātua rangatira pursued a ‘consistent policy of progressively selling off their unoccupied and unused lands for the dual purpose of encouraging further European settlement and economic development and providing a useful stream of additional income.’<sup>72</sup>

It is of concern, however, that so many reserves were sold before 1865. This would appear to contravene McLean’s instructions to Rogan in 1857 to provide for ‘ample and eligible reserves . . . for the use of the Natives, the selection, number, and extent of which must be determined by the wishes of the vendors themselves, and your own discretion.’<sup>73</sup> Wyatt suggested that Rogan’s justification was ‘undoubtedly the relatively large extent of remaining Ngāti Whātua land in the district’, quoting his November 1865 report on the district that Ngāti Whātua ‘have yet left several hundred thousand acres of land . . . The land now in their possession is so valuable that the period is far distant before they become paupers.’<sup>74</sup> Unfortunately, there is little evidence available to indicate how and why particular areas were reserved from sale or why they were sold to the Crown within a few years.

We agree that Ngāti Whātua were willing sellers of land in southern Kaipara in order to encourage Pākehā settlement with its perceived benefits. Within the southern Kaipara inquiry district, a total of 131,866 acres had been sold to the Crown by 1865. Ngāti Whātua still retained sufficient land and resources for their own requirements. However, we consider that the Crown should not have purchased the reserves set aside for Māori use and occupation at the time of sale, since most of these were papakainga, urupa, and wāhi tapu. It can be

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71. Document F4, pp 264–265, 267

72. Document O4, p 178

73. McLean to Rogan, 31 January 1857, in Turton, vol 1, sec C, p 101

74. Document F4, p 267

argued, as it was in the 1860s, that the Crown has no right to interfere in the property rights of citizens and that any special controls for Māori would have been resisted by Ngāti Whātua. However, the Crown did have an obligation actively to protect the interests of Māori, a principle arising out of the Treaty of Waitangi. There is a potential conflict between rights as citizens in article 3 and the protection of interests – tino rangatiratanga – in article 2. As Dr Loveridge commented:

In hindsight, looking back across 140 years during which Ngāti Whatua sold most of the land which had remained in their hands at 1865, it may well be argued that the Crown should have set in place a system for establishing reserves of land for the benefit of hapu or iwi which could not, under any circumstances, be alienated by sale. It would certainly have saved a good deal of hardship and contention in the future if such a step had been taken at this point in time. The creation of such reserves at Orakei, in the Kaipara River valley and in other selected locations, would have provided Ngāti Whatua with a basic safety net against excessive sales of land.<sup>75</sup>

But no inalienable reserves were created, and there was nothing to prevent the chiefs from selling reserves vested in them.

#### 6.7.4 Findings

We make the following findings on Crown purchases between 1848 and 1865:

- ▶ There was a failure of process in the investigation of Honey's old land claim at Kaukapakapa, but this was later recognised by the Crown, and Ngāti Whātua accepted payment of £700 in compensation.
- ▶ The Crown land acquisitions in southern Kaipara before 1865 were not excessive, in that the areas purchased were largely determined by the rangatira involved, who were actively encouraging Pākehā settlement.
- ▶ Crown officials did make general statements about the expected benefit for Māori of Pākehā settlement on lands purchased from Māori, but we have no substantive evidence that specific promises were made in southern Kaipara. None was recorded in purchase deeds.
- ▶ The Crown failed to establish an effective mechanism whereby lands reserved for Māori were protected and remained in Māori control. By vesting title to reserves in individual rangatira, the Crown failed to provide protection of land resources for all members of whānau or hapū with rights in such land.
- ▶ In section 8(d) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged that:

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75. Document 04, p181

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it did not ensure that there was sufficient protection from alienation for the few reserves that were provided. This failure by the Crown to set aside reserves and protect lands for the future use of Te Uri o Hau was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

We find that Ngāti Whātua were similarly prejudiced.

## CHAPTER 7

### OPERATIONS OF THE NATIVE LAND COURT AND LAND SALES IN SOUTHERN KAIPARA, 1864–1900

#### 7.1 INTRODUCTION

In chapter 3, we described the legislative provisions and administrative arrangements for the Native Land Court, which began operating in southern Kaipara in June 1864, and the generic issues associated with its operations under the various Native Lands Acts from 1864 to 1900. In this chapter, we review the operations of the court in southern Kaipara, and then examine the land sales that it enabled, before presenting our conclusions on the generic and specific issues related to these.

A great many individual land transactions are detailed below. To provide context, we summarise now the main grievances of the Wai 312 claimants. Because of the Crown's 'abject failure to protect the Ngāti Whātua land base in the South Kaipara', it was argued, Ngāti Whātua 'were rendered effectively landless' by 1900. Further, this loss of land had 'played a huge role in destroying any hopes that Ngāti Whātua had of participating in the settler economy'.<sup>1</sup> The claimants' specific concerns were:

- ▶ the costs involved in the Native Land Court process;
- ▶ the role of judges in this process;
- ▶ the 'legal obstacles' which they said prevented Ngāti Whātua from 'maximising their returns for land disposed of';
- ▶ the 'collateral consequences' of the court's individualisation of land interests, which led to the fragmentation of land holdings;
- ▶ the Crown's 'failure to rectify defects in the Native Land Court system'.<sup>2</sup>

All of these issues should be borne in mind when reading the account that follows. They will be addressed further in section 7.4.

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1. Document Q1, pp 53, 58, 62–63

2. Ibid, pp 92–93

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**7.2 OPERATIONS OF THE NATIVE LAND COURT**

The first hearing of what became known as the Native Land Court was held in southern Kaipara at Te Awaroa on 7 and 8 June 1864. Judge John Rogan reported that the hearing was held at the request of local Māori leaders to ascertain the owners of some land on the Kaipara River.<sup>3</sup> He had received no specific instructions, although section 7 of the Native Lands Act 1862 stated:

Upon the application of any Tribe Community or Individuals of the Native Race it shall be lawful for the Court to ascertain by such evidence as they shall think fit the right title estate or interest of the applicants or of any other claimants to or in any land within the jurisdiction of the Court . . .

Rogan used his own discretion in setting the procedures of the court. In a report of December 1864, he explained that, 'as it was left to myself to initiate the proceedings I have pursued the course which appeared to me the best adapted to the natives themselves, and the circumstances of the district'. He then described how, once the hearing date was set, he sent messengers 'by boat and overland to all the settlements in the district' and called on Kaipara Māori to attend the court. He also said that 'the parties interested meet, and by previous arrangement among themselves, they agree that the title shall be issued in favour of a certain member of the party, as the case may be, before calling on the Judges to investigate the title'.<sup>4</sup> Unfortunately, no record has survived (if any was made) of the *kōrero* among the *rangatira*.

The first hearing involved two small blocks of land which had been occupied by John and Isaac McLeod for two years, and for which there was already an agreement to purchase. However, at the hearing, held in John McLeod's house, Rogan empanelled a jury of local Māori, and he and his two Māori judges, Wiremu Tipene and Matikikuha, listened for a whole day to Te Ōtene Kikokiko and others, who provided detailed accounts of the traditional history and whakapapa relating to the Ōtamateanui block (396 acres). The court agreed that 14 people were the correct title holders. The next day, the same process was gone through to determine title to the Te Pua a Mauku block (67 acres), for which it was agreed that nine people held title. However, since it had already been agreed that both blocks would be sold to the McLeods, an arrangement was subsequently made that only one name, Te Ōtene, should be put in the title of both blocks in order to expedite the transfer.<sup>5</sup>

When Rogan's procedures to establish title were questioned by the commissioner of Crown lands late in 1864, he vigorously defended his findings. They had been based on the unanimous and public identification of persons who should be named in a certificate of title

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3. Document 07, pp 212–213

4. Rogan to commissioner of Crown lands, NA (A) BADW A588/530, pp 25–28 (doc 07, pp 213–214); and see doc F8, pp 47–48

5. Document 07, pp 214–216; doc F8, pp 48–49

with no objections raised, he said. Rogan and his two co-judges considered this conclusive and no dispute was expected to arise subsequently. As Dr Loveridge remarked, ‘it was the Court’s view that the owners of the land should themselves decide what names went on certificates of title.’<sup>6</sup>

Most of the inquiries to the Native Land Court at this time seem to have related to land that Māori had already agreed to sell. Wai 312 claimant researcher Bruce Stirling suggested that Ngāti Whātua were ‘essentially driving this process’ of investigation of title by the court. When Rogan later received a copy of the regulations that were to be applied in the new Bay of Islands land court district, he responded that they ‘shall be adopted by me if the natives in this district concur’ but he did not think that they would be applicable in Kaipara. Stirling also suggested that ‘assertions of Maori control were galling to Rogan’, because, as he admitted in a private letter to McLean, he was not enamoured of the ‘new institutions’ or the Native Lands Act.<sup>7</sup> Dr Loveridge disputed the suggestion that Rogan did not like working with Māori: ‘It is not a convincing argument about a man who was, very clearly, quite proud of the procedures which he personally had adopted’ and which ‘assigned Maori owners and Judges a very substantial role in the process of title determination.’<sup>8</sup> Both researchers conceded that Rogan was unhappy with the new regulations brought in at the end of 1864, which established a new structure for the Native Land Court and regulated its practice and procedure. They also agreed that Rogan found his new role in the court tedious but that he contented himself with his £500 salary. Moreover, he was offered land by Ngāti Whātua so that he could live at Te Awaroa. Rogan also purchased the Te Makiri and Mangakura blocks south of Te Awaroa and established a farm.

The next hearing, from 26 to 30 June 1865, was the last to be held in Kaipara under the Native Lands Act 1862. Titles to 13 blocks were investigated, mostly around Te Awaroa, where the township of Helensville was to develop over the next few years. Five of the blocks were township sections of five or fewer acres, and each was vested in a single individual. The details for the larger blocks given titles at both hearings are shown in table 14.

Clearly, Rogan was willing to put individual rangatira into the titles. As with Ōtamateanui and Te Pua a Mauku, the blocks heard in the first hearing, which were vested in Te Ōtene Kikokiko, most of the blocks heard in the second hearing were vested in one or two people, rangatira representing hapū, and one woman, Maata Tira Koroheke, Te Ōtene’s wife.<sup>9</sup>

The process established by Rogan in the early hearings was continued under the Native Lands Act 1865. Although under section 23 of the Act a maximum of 10 owners could be put in the title of a block, in many southern Kaipara titles far fewer names were listed in blocks investigated between 1865 and early 1873. Our analysis of the titles of 64 blocks over this

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6. Document 07, p 218

7. Document F8, p 53

8. Document 07, p 219

9. Document F8, pp 48–50

## THE KAIPARA REPORT

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| Block                | Area<br>(acres) | Owners                                       | Date of sale | Location      |
|----------------------|-----------------|----------------------------------------------|--------------|---------------|
| Ōtamateanui          | 396             | Te Ōtene Kikokiko                            | 1864         | Te Awaroa     |
| Te Pua a Mauku       | 67              | Te Ōtene Kikokiko                            | 1864         | Te Awaroa     |
| Mairetahi reserve    | 350             | Te Keene Tangaroa                            | 1900         | South Head    |
| Paparoa              | 4525            | Te Keene Tangaroa                            | 1894–1912    | South Head    |
| Pukeatua             | 1754            | Wiremu Reweti                                | 1890–1902    | South Kaipara |
| Tikpoku              | 4015            | Wiremu Hopihana Moe                          | 1882         | South Kaipara |
| Te Tou Kauri         | 561             | Te Ōtene Kikokiko and<br>Maata Tira Koroheke | 1866         | Te Awaroa     |
| Waikahikatea reserve | 1752            | Tamati Reweti Pou and<br>Maata Tira Koroheke | 1866         | East Kaipara  |
| Waipiro              | 1734            | Paraone Ngaweke                              | 1870         | South Head    |
| Waitangi             | 4068            | Nine: Hori Te More and eight others          | 1865         | East Kaipara  |

Table 14: Larger blocks given titles at Native Land Court hearings, 1864–65. Source: document F5.

period indicates that 30 blocks were vested in a single owner, seven in two owners, eight in between three and five owners, nine in between six and nine owners, and 10 in 10 owners. Of the blocks with 10 owners, only three had additional owners listed in a memorial under section 17 of the Native Lands Act 1867, and these lists contained only 11, 12, and 15 owners in total. Of the 30 blocks vested in a single individual, nine were of five or fewer acres, three were of six to 20 acres, and nine were of 21 to 100 acres.<sup>10</sup>

An impending sale was probably the main reason for vesting in so few owners. There were several instances of large areas vested in a single owner. One was Paparoa (4525 acres), which was vested in Te Keene Tangaroa in 1865. Paparoa was initially leased, then partitioned, and all but a small area was sold in several lots between 1894 and 1912. Kiwitahi (2249 acres) was vested in Paikea in 1869 and sold in 1871. Mataia (3100 acres) was vested in Hori Te More in 1869 and sold in 1870. The Hoteo block (41,400 acres) was vested in four owners in January 1867, although negotiations for sale to the Crown had begun in the early 1860s, and the land was finally transferred in December 1868. The Taupaki block (12,868 acres) was vested in four owners, who arranged with two Pākehā agents to sell. The block was partitioned, and sold between 1867 and 1882. A total of 5932 acres was sold in separate sections by public auction in August and September 1867, February and December 1868, February and September 1869, February 1870, and July 1876, and the residue of 6936 acres in one block in September 1882. When the costs of subdivision, survey, advertising, and charges were deducted, there was little profit for the Māori owners, who were caught by falling prices and a glut in the land market caused by the opening up of Waikato land.<sup>11</sup>

When Rogan reported to Chief Judge Fenton in July 1867 on the workings of the Native

10. Document F8, app 1

11. Document P1, p 126



Lands Act 1865 in Kaipara, he focused on the positive effects, as he saw them, of encouraging settlement by ascertaining Māori land titles:

Now that my experience has extended over a considerable period of time, and I am better acquainted with its practical working, I do not hesitate to say that it has effectually met all the cases with which I have had to deal, and it is in my opinion complete in itself.

It is with much pleasure I have to state that the effects of the Native Lands Act on the welfare of the population of Kaipara, both Native and European, is better than I anticipated. For instance, three years ago the country was almost a wilderness; now the Natives are in receipt of half-yearly payments from settlers who have leased their lands for periods of sixteen and twenty-one years, and are busily occupied in stocking their runs with sheep and cattle . . .<sup>12</sup>

In 1871, Rogan again reported to Fenton:

‘The Native Lands Act, 1865,’ was favourably received by the Natives, and the working of this Act was satisfactory to those Natives who were interested in and attended the Courts over which I presided. Whether it was because it was translated into Maori, or its mere novelty, I cannot say.<sup>13</sup>

He then expressed concern that amendments to the 1865 Act had not been translated into Māori, since this was the source of differing interpretations. He also noted ‘real murmurings’ in his district ‘against the Government for imposing such heavy duties upon their land, subsequent to its passing through the Court, that they say the net proceeds received by them reduces the amount, at times, below the former rates’. He recorded the remarks of ‘some of the younger class of chiefs of ability’ that there was little change, ‘only a system of land-sharking, with the purchaser on one side and the Government on the other, while the interest of the Natives, being left between the two, sinks into the gap of nothingness’. This was the first hint of Māori disenchantment with the Native Land Court in Kaipara.<sup>14</sup>

Rogan was not yet convinced that Europeans had benefited more from a system of direct purchase under the 1865 Act, because such land was ‘not so much for the purpose of land-jobbing as for actual settlement and for a future home, – for cattle and sheep runs, which are well known to require capital and time to make profitable’. The ‘great benefit’ for the country was that ‘a good deal of labour had been employed as well as capital’.<sup>15</sup>

Rogan was also concerned about surveys. He noted the importance of ‘preliminary discussions’ and the resolution of disputes before surveying, which assisted in identifying ‘the

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12. John Rogan, ‘Report by Mr Rogan as to the Working of “The Native Lands Act, 1865” in the District of Kaipara’, 29 July 1867, AJHR, 1867, A-10A, p 3

13. Rogan to Fenton, 26 June 1871, AJHR, 1871, A-2A, p 13

14. Ibid

15. Ibid

THE KAIPARA REPORT

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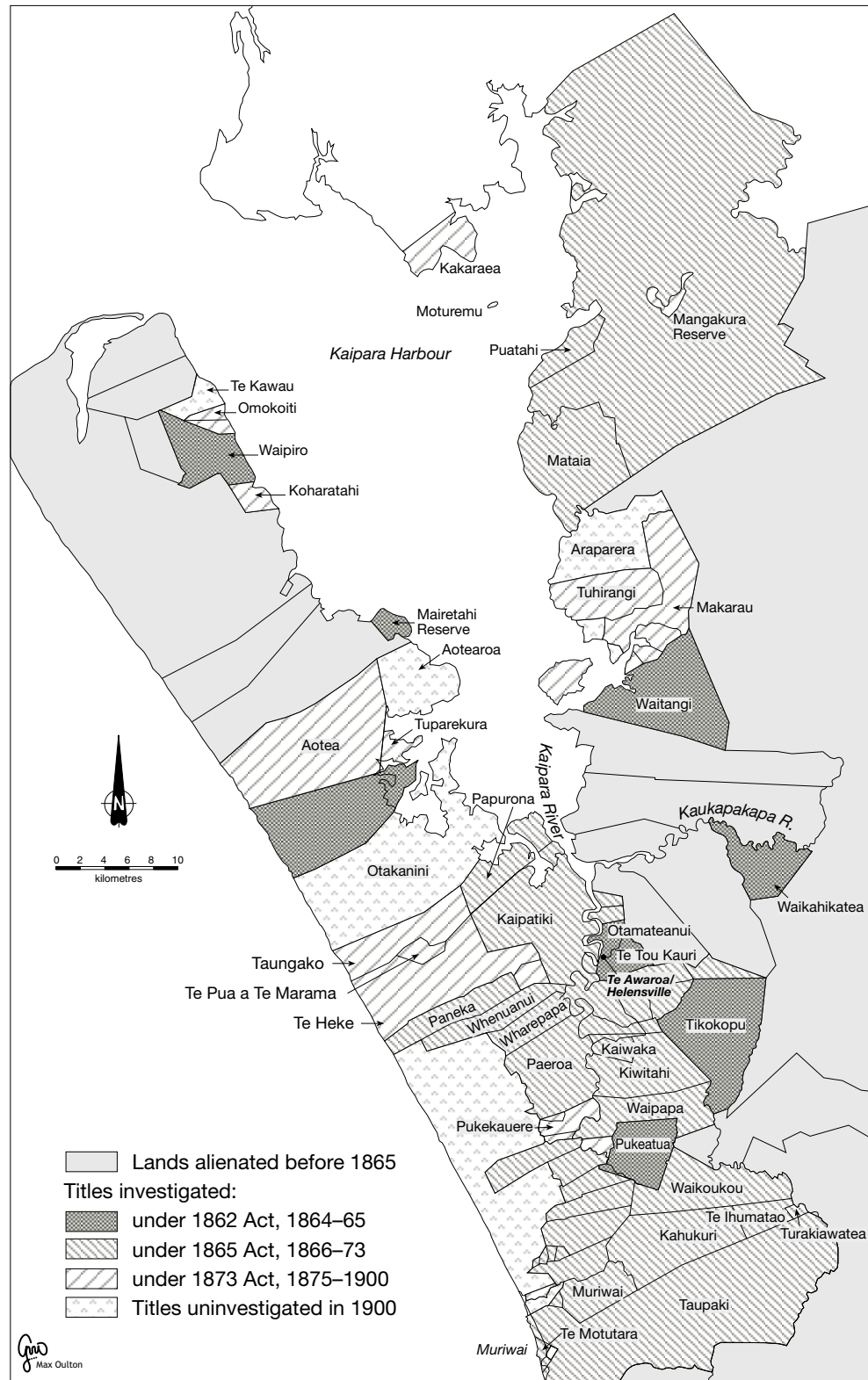


Figure 28: Native Land Court hearings in southern Kaipara, 1864–1900

## THE LAND COURT AND LAND SALES IN SOUTHERN KAIPARA, 1864–1900 7.3

| Years     | Area sold<br>(acres) | Purchase payments<br>(£) | Average price per acre<br>(s d) |
|-----------|----------------------|--------------------------|---------------------------------|
| 1864–69   | 9666                 | 4455                     | 6 7                             |
| 1870–79   | 38,547               | 8399                     | 4 4                             |
| 1880–89   | 15,174               | 3922                     | 5 2                             |
| 1890–1900 | 9765                 | 5920                     | 12 2                            |
| Total     | 73,125               | 22,696                   | 6 2                             |

Table 15: Land sold in southern Kaipara, 1864–1900. Source: document F8, app 1.

real ownership, and leaves the question of title more easily and clearly determinable.' This, he saw as the way to reduce survey costs, because it avoided delays and enabled the use of a single surveyor.<sup>16</sup>

The lands for which title was investigated by the Native Land Court in southern Kaipara between 1864 and 1900 are shown in figure 28. A relatively small area was investigated under the Native Lands Act 1862: it comprised about 19,200 acres in only 15 blocks, mostly around Te Awaroa. By far the largest area was investigated under the Native Lands Act 1865, under the 10-owner system described in chapter 3. Subsequent title investigations under the Native Lands Act 1873 consisted of filling in the scattered gaps remaining.

We turn now to consider the land sales enabled by the investigating and awarding of title by the Native Land Court up to 1900.

### 7.3 LAND SALES

The Crown was not a major purchaser of Kaipara land after 1865. Land selling continued, however, with numerous private purchases. Using figures compiled by Stirling, we have calculated that between 1864 and 1900 the Native Land Court investigated title to 129,225 acres in southern Kaipara, and of this total 114,552 acres had been sold by 1900 (see table 15).

These figures do not include the Crown purchase of Waitangi (4068 acres) in 1865, but they do include the Hoteo block (41,400 acres), which was purchased by the Crown in 1868. This transaction was initiated by Rogan as district land purchase officer in the early 1860s but was still incomplete when the Native Land Court began operations in 1864. The figures also include the limited number of subsequent Crown purchases. There were three small purchases totalling 2300 acres south of Helensville in 1874, at a total cost of £260, and another purchase of 82 acres on the coast at Muriwai in 1890, for £81. The only other Crown purchase was of a contiguous area of 7112 acres in four separate blocks on South Head between 1873 and 1878, for a total cost of £1091. Crown purchases between 1864 and 1878, including Hoteo,

16. Rogan to Fenton, 26 June 1871, AJHR, 1871, A-2A, pp 13–14

## THE KAIPARA REPORT

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| Date of purchase | Block     | Area<br>(acres) | NLC title     | Price<br>(£) | Price per acre<br>(s d) |
|------------------|-----------|-----------------|---------------|--------------|-------------------------|
| February 1873    | Onekura   | 323             | February 1871 | £30          | 1 10                    |
| May 1876         | Papurona  | 1220            | February 1871 | £250         | 4 1                     |
| May 1876         | Taungako  | 2115            | March 1875    | £411         | 3 10                    |
| July 1878        | Kaipatiki | 3454            | February 1871 | £400         | 2 4                     |

Table 16: Crown purchases on South Head. Source: document F8, app 2, pp 3, 4.

therefore amounted to 50,812 acres. With the other 82 acres acquired in 1890, Crown purchases in this period totalled 50,894 acres.

The remaining reserves in the pre-1865 Crown purchases were also sold, but not to the Crown. Waikahikatea (1752 acres), reserved from the Crown purchase of Pukeatua in January 1864 and sandwiched between the Kaukapakapa North and South purchases, was investigated at the second hearing of the Native Land Court, in June 1865, and vested in two owners: Tamati Reweti Pou and Maata Tira Koroheke. There is no reference to a reserve in the court record, and no restriction on alienation in the Crown grant. It was stated in court that all of Ngāti Whātua were owners, but it had been agreed that the title would include only two names. It seems that arrangements had already been made to sell. In March 1866, the two owners transferred the block to John Sheehan, an Auckland lawyer, land dealer, and politician, who paid £1051.<sup>17</sup>

The Mairatahi reserve (350 acres) on South Head was also investigated by the Native Land Court in June 1865 and was vested in Te Keene Tangaroa as trustee for the minors, Hira Pateoru and Te Keene Te Wiremu Reweti. In May 1870, Rogan as resident magistrate was asked to submit a list of Kaipara reserves that could be set apart for the benefit of Māori under the Native Reserves Act. Rogan responded that most of the reserves had been sold, but he described Mairatahi as 'a permanent settlement of Te Keene and 20 others with a fishing station on it'. However, he did not recommend that it be given status under the Native Reserves Act, since he thought the occupants valued it and would not sell. Unfortunately, after Te Keene's death in 1885, legal questions of succession arose because, in spite of the trust specified in the grant, Te Keene had also bequeathed the land to other whānau members. In 1886, the Native Land Court confirmed title in the two minors, who had by then come of age. In 1892, these two and another entered into a 21-year lease, arranged by Auckland lawyer Edmund Dufaur, to Elizabeth McLeod, the wife of Isaac McLeod of Helensville. Over the next two years, the two owners took out mortgages with Dufaur secured against the land, a debt of £165. They defaulted on the mortgages and in 1900 Dufaur's son and two other trustees of his estate (he died in 1899) sold the block at auction in Auckland.<sup>18</sup>

17. Document F5, pp 453–454

18. Ibid, pp 15–21

THE LAND COURT AND LAND SALES IN SOUTHERN KAIPARA, 1864–1900  
7.3.1

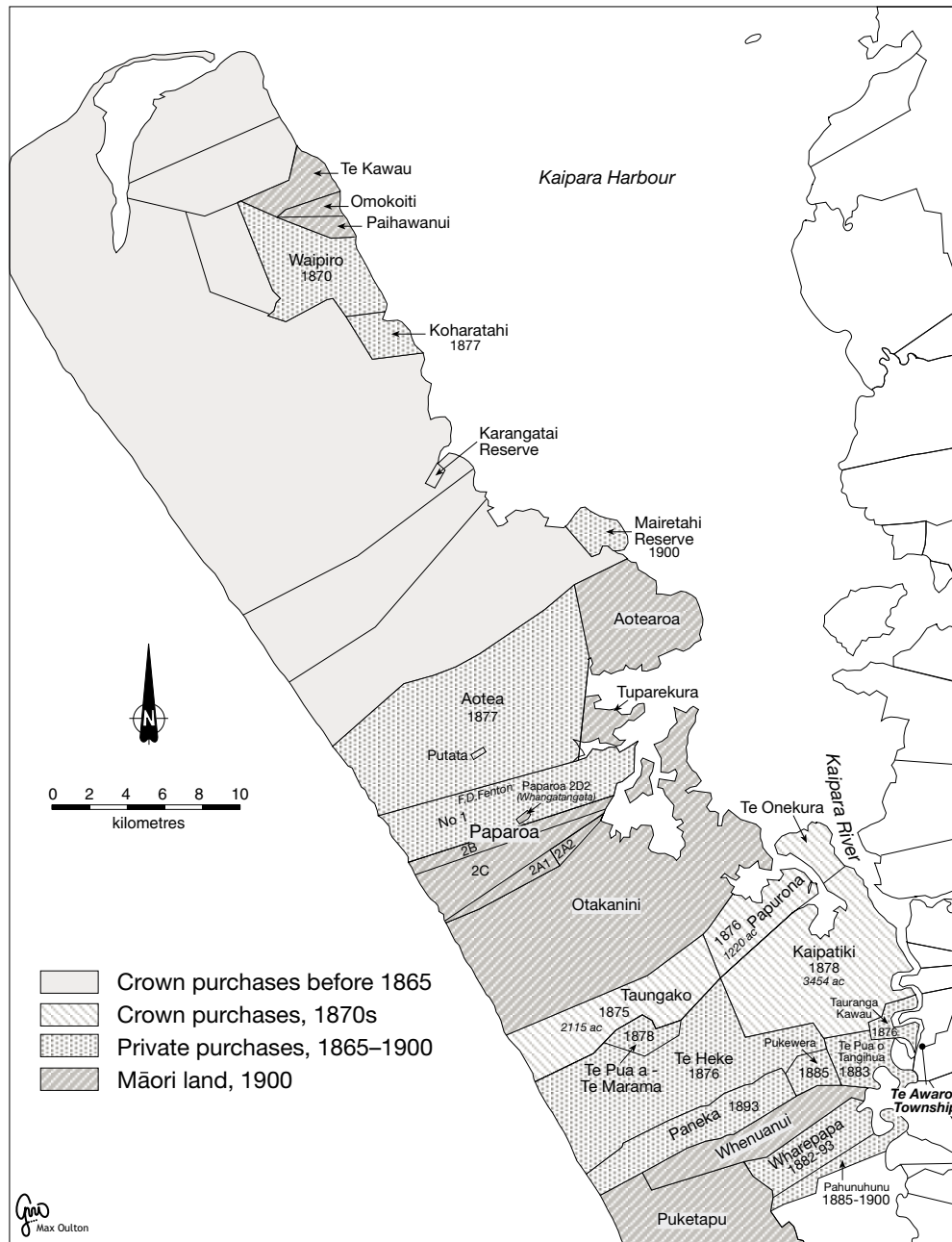


Figure 29: Land sales on South Head, 1865–1900

### 7.3.1 Sales on South Head

Land sales on South Head between 1865 and 1900 are set out in figure 29. We detail the four Crown purchases first, as set out in table 16. These purchases were instigated by the Auckland Provincial Council in 1871, although for administrative reasons the final conveyance was not completed until 1878. From 1870 on, various private purchasers also acquired blocks on South Head, and these are shown in table 17.

## THE KAIPARA REPORT

7.3.1

| Date of purchase | Block              | Area<br>(acres) | NLC title  | Price<br>(£ s) | Price per acre<br>(£ s d) |
|------------------|--------------------|-----------------|------------|----------------|---------------------------|
| March 1870       | Waipiro            | 1734            | June 1865  | 110 0          | 1 3                       |
| 1877             | Te Heke            | 4105            | July 1876  | Unknown        | Unknown                   |
| July 1878        | Te Pua o te Marama | 329             | July 1878  | 49 0           | 3 0                       |
| 1878             | Aotea              | 6131            | March 1877 | Unknown        | Unknown                   |
| February 1881    | Tuparekura 2       | 20              | July 1880  | 10 0           | 9 10                      |
| 1882             | Koharatahi         | 420             | June 1877  | Unknown        | Unknown                   |
| December 1888    | Tuparekura A       | 7               | July 1880  | 10 0           | 14 0                      |
| 1894–96          | Paparoa 1          | 2108            | July 1900  | 457 10         | 4 4                       |
| 1900             | Mairetahi reserve  | 350             | June 1865  | 165 0          | 9 5                       |
| 1898–1911        | Paparoa 2A1        | 247             | May 1903   | 280 13         | 1 2 9                     |
| 1912             | Paparoa 2B         | 460             | May 1903   | 523 5          | 1 2 9                     |
| 1912             | Paparoa 2C         | 1457            | May 1903   | 1657 7         | 1 2 9                     |

Table 17: Private purchases on South Head. Source: document F8, app 2, pp 2,4–6.

The alienation of the Aotea and Paparoa blocks, which ended up in the 1900s in the ownership of the Fenton family – Chief Judge Fenton and his two sons and a daughter – provides an example of how the individualisation of Māori interests (referred to in section 3.9) led to the piecemeal alienation of Ngāti Whātua lands. The title to Aotea (6131 acres) was vested in 13 owners by the Native Land Court in 1877. The block was initially leased, then sold the following year, to one CS Nelson, an interpreter and assistant to Crown land purchase officer E W Brissenden in the 1870s. Few details of this transaction are known. Nelson immediately sold the land to two Auckland businessmen, who in 1881 sold it to Fenton, who settled there following his retirement as chief judge. In 1878, a wāhi tapu of about 20 acres called Putata, which had been reserved from the sale, was vested in Kataraina Ngatai, and remained in Māori ownership.

To the east of Aotea lay the Tuparekura block, which in 1880 was awarded by the Native Land Court to a single grantee, Patoromu Te Akariri. At the same time, the block was partitioned into two. Tuparekura 1 (about 290 acres) was leased to Nelson, who assigned the lease to Fenton in 1881. Tuparekura 2, comprising about 20 acres of road from the Aotea block to the easternmost point in Kaipara Harbour, was purchased by Fenton in 1881. Seven years later, Fenton purchased Tuparekura A, a small headland of seven acres, part of Tuparekura 1 adjacent to the south-east corner of Aotea.<sup>19</sup>

The Paparoa block (4540 acres) was investigated by the Native Land Court in 1865 and awarded to Te Keene Tangaroa, who had paid £100 for the survey. Te Keene had named 20 others as co-claimants for the block and, although there was some dispute over the

19. Document F5, pp 30–35

boundaries in the north-east corner and the omission of names, it seems to have been agreed to let the survey stand, since no one was prepared to pay a share of the original survey cost or to pay for a new survey. The certificate issued by the court under the Native Lands Act 1862 noted that Te Keene and 22 others 'were the sole owners', but that it had been agreed that the title would vest in Te Keene. The Crown grant issued under the Native Lands Act 1865 vested the block in Te Keene alone. There was no mention of a role as trustee on the title.<sup>20</sup>

In 1876, Te Keene agreed to a 21-year lease with a right of purchase for £1000 to Auckland businessman and land dealer Thomas Morrin, presumably with the intention of paying off the survey debt. In 1878, Morrin sold this lease to another Auckland businessman, Alfred Buckland, who also purchased the Koharatahi block in 1882 and who had acquired Crown land on the adjacent Waioneke block for a cattle-farming enterprise. The lease passed through several hands, accumulating mortgage debts held by Edmund Dufaur, who had arranged the original lease. Te Keene died in December 1885 and his will named six successors to the block, not the 22 referred to in 1865 or their descendants. The succession was disputed in the Native Land Court in September 1886, but the court ruled that Te Keene was the sole owner, not a trustee, and it vested the land in the six named in his will. Pāora Tūhaere and others applied for a hearing under the Native Equitable Owners Act 1886 to have the other interests recognised in the title. Dufaur contested this and went to the Supreme Court, which ruled that the case should be heard. In 1893, the Native Land Court investigated the title anew, and the final list of owners in the title numbered 44; namely, the 38 successors to the original 22, plus the six named in Te Keene's will. Meanwhile, one of the latter six, Pateoro, his debts amounting to over £300, had mortgaged the land to Dufaur. The lessee had defaulted on his lease, which then reverted to Dufaur.<sup>21</sup>

By 1894, Fenton's sons, Roger and Carleton, had purchased a number of interests from the 44 owners, some of whom had been employed on the Fenton farm with their families. In January 1896, the Fentons were issued a certificate under section 118 of the Native Land Act 1894 confirming the purchase of some of the shares in Paparoa. In 1900, the block was partitioned, with Paparoa 1 (2108 acres) vested in Roger and Carleton. Paparoa 2 (2321 acres) was further partitioned in 1903 into Paparoa 2A, 2B, 2C, and 2D. Meanwhile, in order to avoid accusations of acquiring too large an area, Fenton's daughter, Edith, had been acquiring interests in all three blocks, but these purchases were not confirmed by the Tokerau District Māori Land Board until 1912. The three owners who had not sold their shares were left with 153 acres in Paparoa 2A2. The wāhi tapu Whakatangata, Paparoa 2D (20 acres), remained vested in 55 Māori owners. The acquisition of the Fenton farm illustrates what had become an inexorable process of the piecemeal purchase of individual Māori interests over many years.<sup>22</sup>

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20. Ibid, pp 36–38

21. Ibid, pp 36–45

22. Ibid, pp 36–67



## THE KAIPARA REPORT

7.3.2

| Date of purchase | Block       | Area<br>(acres) | NLC title  | Price<br>(£) | Price per acre<br>(s d) |
|------------------|-------------|-----------------|------------|--------------|-------------------------|
| October 1870     | Mataia      | 3100            | May 1869   | 500          | 3 3                     |
| 1878             | Kukutango   | 487             | June 1877  | Unknown      | Unknown                 |
| September 1878   | Tokomai     | 106             | June 1877  | Unknown      | Unknown                 |
| September 1878   | Waitangi    | 178             | March 1877 | Unknown      | Unknown                 |
| 1880             | Moturemu    | 12              | July 1878  | Unknown      | Unknown                 |
| 1880             | Mangakura   | 300             | July 1876  | Unknown      | Unknown                 |
| April 1885       | Tuhirangi B | 946             | June 1885  | 155          | 3 4                     |

Table 18: Private transactions in eastern Kaipara. Source: document F8, app 2, pp 4–5.

**7.3.2 Sales in eastern Kaipara**

Land sales in eastern Kaipara between 1865 and 1900 are set out in figure 30. Following the completion of the Crown purchase of Waitangi (4068 acres) and Hoteo (41,400 acres) in 1865 and 1868, there were several small private purchases and a larger one at Mataia (renamed Glorit) in the 1870s and 1880s. When the Hoteo purchase was negotiated, several areas were to be reserved from sale: Mataia (3100 acres), Puatahi (823 acres), Mangakura (300 acres), and Piritaha (26 acres). Mataia and Mangakura were later sold privately, as detailed below. Puatahi, the land given to Ngāti Hine by Ngāti Whātua, remained in Māori ownership. The title to Piritaha was not clarified until 1930. Private transactions on blocks in eastern Kaipara are shown in table 18.

The Mataia block was vested in Hori Te More by the Native Land Court in May 1869 and was sold to John Gardner on 31 October 1870. Stirling suggested that Gardner held the survey lien and that this was a factor in the sale of the block.<sup>23</sup> The Mangakura block was vested in Hori Te More and Takerei Te Rangi in July 1876 and was sold to Robert Greenwood in 1880. No details of this transaction are available, but Stirling suggested that survey costs of £30 7s 3d may have been a factor.<sup>24</sup> Also in 1880 the small island of Moturemu was sold by its five owners to the surveyor, Stephenson Percy Smith, who used it as a camping place for himself and his friends. In 1886, he gifted the island to his daughter-in-law, Rachel Smith, as a wedding present. She transferred the island to the Crown in 1951 as a recreation reserve.<sup>25</sup>

To the south of the Hoteo purchase, in 1900 the Araparera, Taitetere, and Pareparea blocks remained papatipu, customary land for which title had not yet been investigated by the Native Land Court (the Araparera title was investigated in 1901). The Makarau title was investigated in 1895, and this too remained in Māori ownership. In 1878, two small blocks on the northern margins of the 1865 Crown purchase of Waitangi were also sold: Waitangi (178 acres) by Te Hemara Tauhia and Hori Te More, and Tokomai (106 acres) by these two and

23. Document F5, pp 510–511

24. Ibid, pp 525–526

25. Ibid, pp 527–529

THE LAND COURT AND LAND SALES IN SOUTHERN KAIPARA, 1864–1900 7.3.2

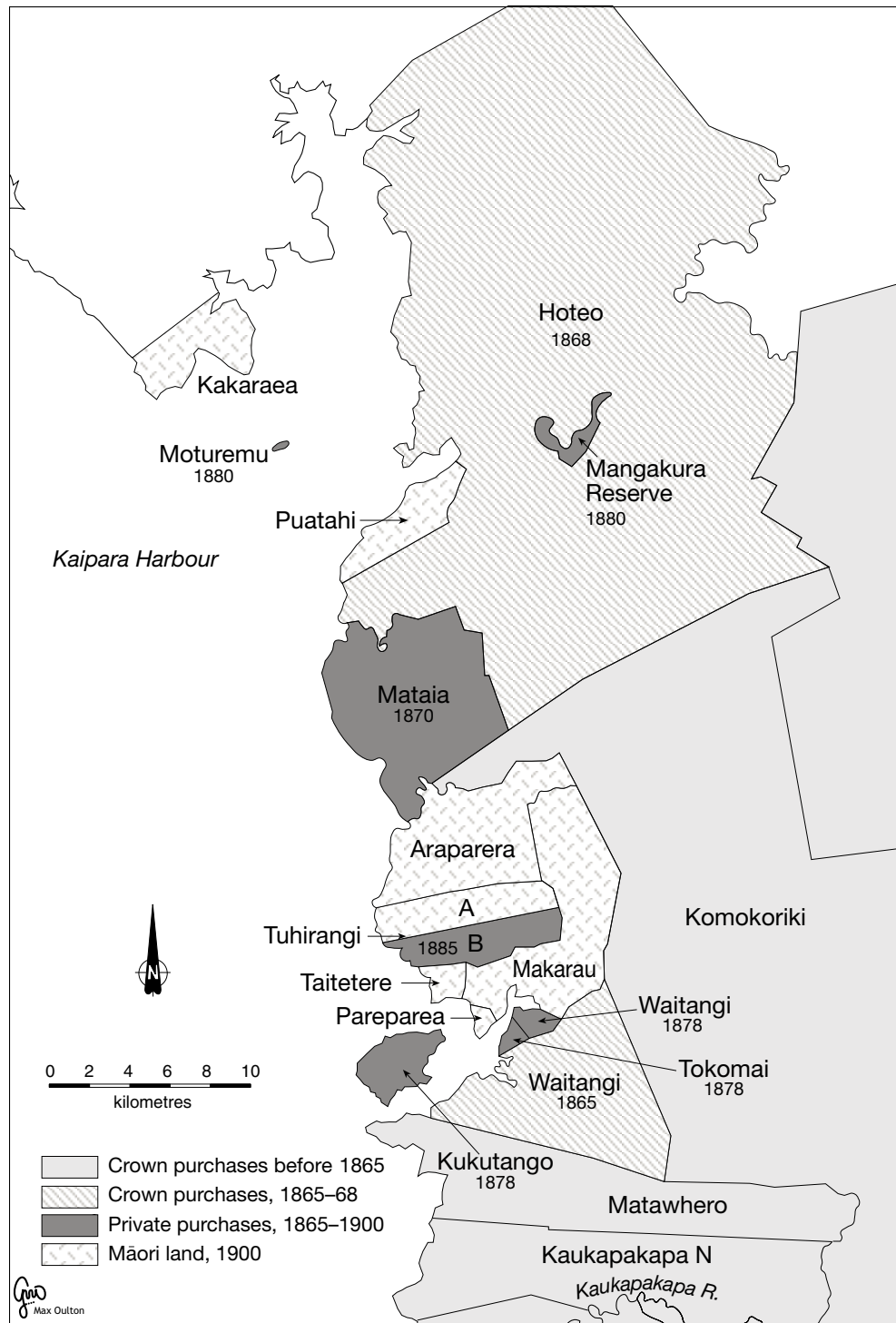


Figure 30: Land sales in eastern Kaipara, 1865–1900

## THE KAIPARA REPORT

7.3.2

| Date of purchase | Block         | Area<br>(acres) | NLC title     | Price<br>(£) | Price per acre<br>(£ s d) |
|------------------|---------------|-----------------|---------------|--------------|---------------------------|
| January 1874     | Pt Waipapa    | 1306            | January 1867  | 150          | 0 2 3                     |
| April 1874       | Arakiore      | 470             | February 1871 | 10           | 0 0 5                     |
| October 1874     | Owhetu        | 524             | February 1871 | 100          | 0 3 10                    |
| September 1890   | Te Motutara 1 | 82              | May 1890      | 81           | 1 0 0                     |
| Total            |               | 2382            |               | 341          |                           |

Table 19: Crown purchases south of Te Awaroa, 1865–1900. Source: document F8, app 2, pp 3, 5.

four others. Both blocks were sold to James Hand, a storekeeper in Helensville.<sup>26</sup> Kukutango was also sold in 1878 by Te Hemara Tauhia and two others to Richard, John, and Andrew Davis, builders, of Auckland.<sup>27</sup> There are few details about the transactions on these three blocks, but the fact that the titles were granted in 1877 and were followed by sales the next year suggests that the transactions were under negotiation before the Native Land Court investigation of title.

While most of the transactions in eastern Kaipara appear to have been outright sales, the transactions on the Tuhirangi block (2012 acres) became complicated by timber leases and mortgages held by Dufaur. The block was vested in 19 owners by the Native Land Court in 1877 and was leased for 21 years at one shilling per annum to Robert Lamb of Waikato, who also paid £300 for timber-cutting rights. The lease was transferred a few months later to timber merchants Philip and Isaac McLeod, who used it as security for a mortgage with the National Bank. In the meantime, Dufaur had been purchasing the interests of individual owners, even though the title carried a restriction on alienation for longer than 21 years. In 1885, the block was partitioned into Tuhirangi A (1053 acres), which was vested in 14 non-seller owners, and Tuhirangi B (946 acres), which was vested in eight owners who had sold their interests to Dufaur. Both blocks were still encumbered with the lease and mortgage, and there was some doubt about the legality of Dufaur's transactions, which had been made while there were restrictions on the alienation of the block. The Native Land Court was also unaware of the lease and mortgage at the time of partition, and there were doubts about the legality of the lease. (The timber had been extracted by this time.) Dufaur tried to register his 'title', but this was refused by the district land registrar in 1885. He went ahead anyway with a 'sale' in 1890 to Robert Barton, a Mangere farmer, who took out a mortgage with Dufaur to finance it. The district land registrar refused to register this deed too. However, with the support of only one of the sellers present, Dufaur was able to persuade the Validation Court in 1895 to legalise his title under the Native Land (Validation of Titles) Act 1893, and he

26. Document F5, pp 460–464

27. Ibid, pp 465–466

## THE LAND COURT AND LAND SALES IN SOUTHERN KAIPARA, 1864–1900

7.3.3

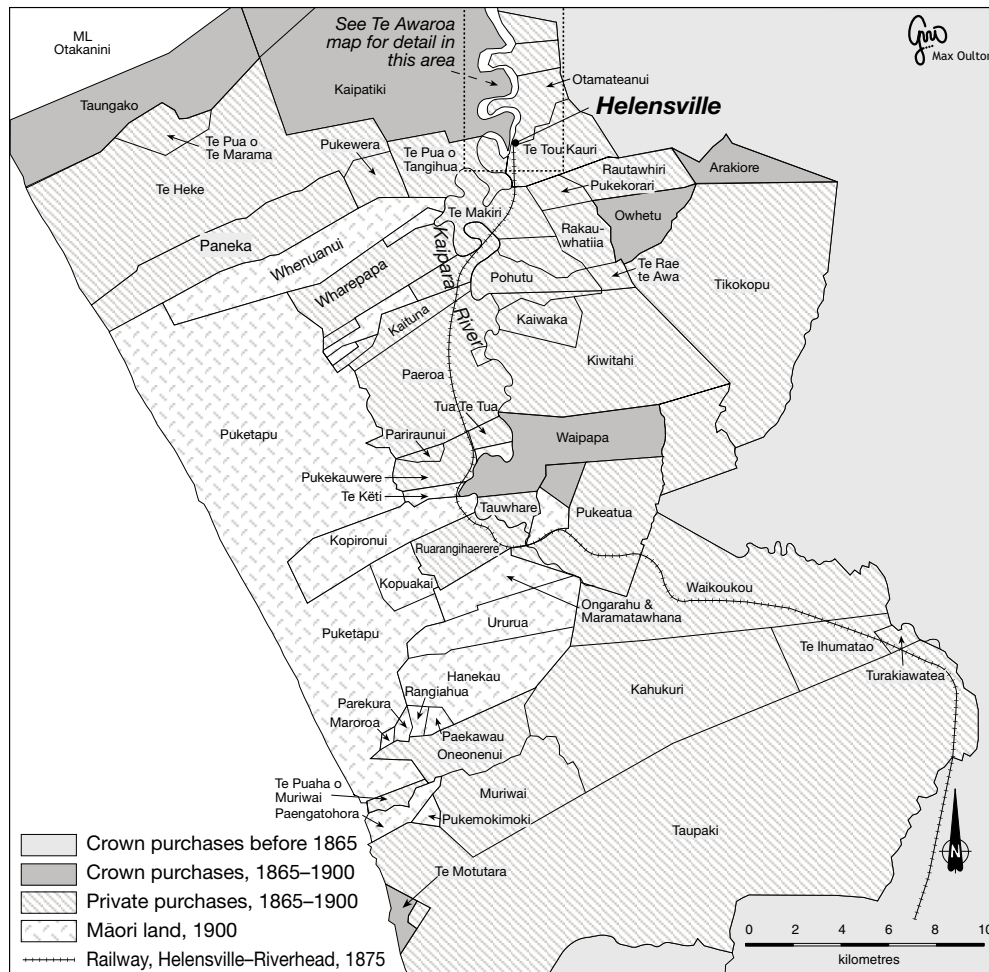


Figure 31: Land sales south of Te Awaroa, 1865–1900

could then legally transfer Tuhirangi B to Barlow.<sup>28</sup> The transactions on the Tuhurangi block provide another example of how complex dealings dragged on over many years and how restrictions on alienation imposed by the Native Land Court failed to prevent sales and the validation of doubtful transactions.

### 7.3.3 Sales south of Te Awaroa

Land sales to the south of Te Awaroa–Helensville between 1865 and 1900 are set out in figure 31. The four Crown purchases here are scattered, with no apparent pattern (see table 19).

Both the Arakiora block and the Owhetu block were forested land, awarded to two owners, Pāora Tūhaere and Riwarā Te Ro. The initial deeds negotiated by land purchase officer E T Brissenden were invalid, because no interpreter had been present to explain the transactions,

28. Ibid, pp 477–489

## THE KAIPARA REPORT

## 7.3.4

and there were no witnesses. New deeds were signed in late 1874. However, there are few details recorded about these transactions, and no explanation of the large discrepancy in price per acre, although the 'dense kauri forest' may have been a factor in Owhetu.<sup>29</sup>

The Waipapa block was vested in nine owners, and its sale was negotiated by Crown land purchase officer Colonel Thomas McDonnell, who arranged in 1873 to join in the transaction with Allen Taylor, an Auckland businessman and member of the Auckland Provincial Council. Stirling suggested that Auckland lawyer John Sheehan, also a member of the provincial council, was involved, along with the Auckland province solicitors in the legal firm of Duignan and Armstrong. The details are sketchy and inconsistent, but the outcome was that Taylor had first choice and purchased the eastern end of the block (600 acres), which McDonnell described as the best part, and the balance (1306 acres) went to the Crown. In 1888, the Crown land was made part of an endowment for the Auckland Institute and Museum.<sup>30</sup>

The Te Motutara 1 block was vested in three owners in May 1890, but the Crown had already indicated an interest in acquiring the area as a public reserve, because it included the Muriwai beach area, headlands, and offshore islands (now known as a gannet nesting area). The purchase was completed in September 1890. However, as Stirling commented, only a small area was to remain public reserve, the rest being subdivided and sold to private owners in a beach settlement.<sup>31</sup>

As figure 31 shows, the bulk of land sales south of Helensville were to private purchasers. By 1900, only scattered patches of Māori land remained in the Kaipara River valley, most of which bordered the extensive area along the western coast, from west of Helensville and south almost to Muriwai, which remained in Māori control. In 1900, much of this area, including the Puketapu block, remained papatipu. We do not have information on how much of the remaining Māori land was leased to Pākehā farmers. Some of the blocks sold had already been leased for some time before the sale was finalised. Most of the private sales were made in the 1870s and involved lands for which the titles had been awarded to 10 or fewer owners before the Native Lands Act 1873 came into effect. Even after this, however, a number of blocks were awarded to only a few owners, often with the intention of a sale.

**7.3.4 Sales at Te Awaroa**

Te Awaroa was the name of the land on the east bank of the Kaipara River where it is joined by the Awaroa Stream. It was there that the township of Helensville had its beginnings when John and Isaac McLeod, two brothers originally from Nova Scotia in Canada, were invited by Te Ōtene Kikokiko to set up a timber mill. In September 1862, the two families began work

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29. Document F8, pp 212–214

30. Ibid, pp 211–212; doc F5, pp 388–390

31. Document F5, pp 273–275

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| Date of purchase | Block              | Area<br>(a r p) | NLC title     | Price<br>(£ s d) | Price per acre<br>(£ s d) |
|------------------|--------------------|-----------------|---------------|------------------|---------------------------|
| November 1864    | Ōtamateanui        | 396 0 0         | June 1864     | 158 0 0          | 0 80 0                    |
| November 1864    | Te Pua a Mauku     | 67 2 0          | June 1864     | 27 0 0           | 0 8 0                     |
| January 1866     | Kikikiki           | 0 1 15          | June 1865     | 5 0 0            | 15 0 0                    |
| May 1866         | Te Tou Kauri       | 561 0 0         | June 1865     | 336 12 0         | 0 12 0                    |
| April 1867       | Te Makiri          | 515 0 0         | January 1867  | 337 16 0         | 0 13 1                    |
| April 1868       | Rautawhiri         | 93 0 0          | August 1866   | 100 0 0          | 1 1 6                     |
| April 1868       | Rakauwhatiia       | 413 0 0         | January 1867  | 100 0 0          | 0 4 10                    |
| April 1868       | Pukekorari         | 188 0 0         | January 1867  | 30 0 0           | 0 3 2                     |
| April 1869       | Ngatapahari Tuarua | 5 0 2           | June 1865     | 5 0 0            | 1 0 0                     |
| November 1869    | Waiomu pt          | 2 0 1           | June 1865     | 90 0 0           | 45 0 0                    |
| July 1870        | Porotahi 1 and 2   | 2 0 36          | June 1865     | 40 0 0           | 20 0 0                    |
| July 1870        | Te Rewarewa pt     | 7 0 0           | May 1869      | 15 0 0           | 2 2 0                     |
| January 1871     | Mangakura          | 257 0 0         | May 1869      | 75 10 0          | 0 5 10                    |
| February 1871    | Te Kauri pt        | 0 3 22          | May 1869      | 28 3 0           | 34 0 0                    |
| February 1873    | Te Kauri pt        | 1 2 33          | May 1869      | 52 0 0           | 30 0 0                    |
| December 1873    | Te Rawerawwa pt    | 15 0 0          | May 1869      | 30 0 0           | 2 0 0                     |
| June 1874        | Te Kauri pt        | 1 1 15          | May 1869      | 50 0 0           | 38 0 0                    |
| October 1874     | Owhetu             | 523 3 0         | February 1871 | 100 0 0          | 0 3 10                    |
| September 1876   | Waiomu pt          | 0 2 38          | June 1865     | 25 0 0           | 33 0 0                    |
| September 1876   | Tungotungou        | 243 0 0         | February 1871 | 110 0 0          | 0 9 0                     |
| November 1876    | Tauranga kawau     | 190 0 0         | February 1871 | 62 10 0          | 0 6 7                     |
| July 1878        | Kaipatiki          | 3454 0 0        | February 1871 | 400 0 0          | 0 2 4                     |
| March 1879       | Wai Horo I Kai     | 2 3 7           | June 1865     | 20 0 0           | 7 0 0                     |
| December 1879    | Te Horo            | 109 0 0         | May 1869      | 80 0 0           | 0 14 8                    |
| February 1882    | Ahukaroro S pt     | 2 3 0           | August 1880   | 8 10 0           | 3 0 0                     |
| February 1882    | Ahukaroro S pt     | 0 3 19          | August 1880   | 6 10 0           | 7 8 0                     |
| 1882             | Ahukaroro S pt     | 3 0 0           | August 1880   | 50 0 0           | 17 0 0                    |
| August 1882      | Te Whenua Hou      | 2 1 2           | August 1866   | 80 0 0           | 40 0 0                    |
| May 1883         | Te Pua o Tangihua  | 8 0 0           | February 1871 | 360 0 0          | 0 16 0                    |
| 1883             | Ahukaroro S pt     | 2 0 0           | August 1880   | Gift             | Unknown                   |
| 1884             | Ahukaroro S pt     | 2 0 0           | August 1880   | Unknown          | Unknown                   |
| November 1884    | Ahukaroro S pt     | 3 0 15          | August 1880   | Unknown          | Unknown                   |
| December 1885    | Ahukaroro N        | 2 2 2           | August 1880   | Gift             | Unknown                   |
| December 1886    | Te Tou Kauri 3     | 0 0 18          | August 1882   | 7 0 0            | 56 0 0                    |

Table 20: Land sales at Te Awaroa. Source: document F8, app 2, pp 1–3.

on establishing the mill, a wharf, and homes for themselves there.<sup>32</sup> The name Helensville was derived from ‘Helen’s villa’, the name given to the house John McLeod built for his wife. Several Ngāti Whātua who gave evidence to us complained that this name had supplanted the Māori name, Te Awaroa, and asked that the original name be reinstated. In 1864, as noted above, titles to two blocks were investigated by the new Native Land Court, and these two blocks were purchased by the McLeod brothers.

32. Colleen Sheffield, *Men Came Voyaging: A History of Helensville and the Southern Kaipara* (Auckland: Whitcombe and Tombs, 1963), pp 44–46, 55–57

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An important factor in the growth of the township was John Rogan's decision to base his courthouse and his home there – his were the earliest purchases after those of the McLeod brothers. Timber milling and hearings in the Magistrate's Court and Native Land Court became the principal activities in Helensville, with services attracted to support both. Helensville also became the point for travellers and settlers from Auckland to trans-ship from land to water transport on Kaipara Harbour. This role increased with the completion of the railway from Riverhead in 1875 and the establishment of scheduled ferry services on the harbour. But Helensville was never a large town: there were 326 people in 1881, and numbers increased to 742 in 1891 and declined to about 600 in 1900, following the closure of local timber mills.<sup>33</sup>

By 1886, all of the land at Te Awaroa had been sold (fig 32), except for the 10-acre courthouse reserve, which was gifted by local rangatira to the Crown for public purposes in 1864 (see sec 8.2). The sales are shown in table 20.

There is a striking difference in the price per acre paid for the small township sections and that paid for the surrounding larger blocks. Not all of these blocks were sold immediately, some being held until the 1880s. By 1886, however, the only remaining Māori land anywhere near the township of Helensville was the Whenuanui block, at the eastern end of which was the small Māori community of Te Pua. A one-acre native reserve was set aside in 1879 in the courthouse reserve (see sec 8.2). A temporary kainga called Te Awaroa was established in the 1860s across the Awaroa Stream from John McLeod's timber mill, but this seems to have been abandoned within a few years. In the early 1870s, a new kainga was established at Reweti, but by the 1880s there was no longer a permanent Ngāti Whātua presence in Helensville.

**7.4 CONCLUSIONS ON THE NATIVE LAND COURT AND LAND SALES, 1864–1900**

In 1871, Charles Heaphy, the newly appointed commissioner of native reserves, warned that Ngāti Whātua 'had sold recklessly, and are in danger of becoming paupers'.<sup>34</sup> He recommended a moratorium on land sales, but while Crown purchases after this date were few, private sales continued. The total Ngāti Whātua population in southern Kaipara and Orākei in Auckland in the 1870s was about 250. Officials had pursued the possibility of imposing restrictions on alienation, but, as we have noted, Rogan responded that it was not necessary to set aside reserves and Ngāti Whātua opposed any Government interference in their management of their lands. Crown researcher Paul Goldstone noted that the issue was discussed at the 1879 Orākei Parliament, where, while some speakers sought restrictions on land sales,

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33. Sheffield, pp 62, 88

34. Document F8, p 202



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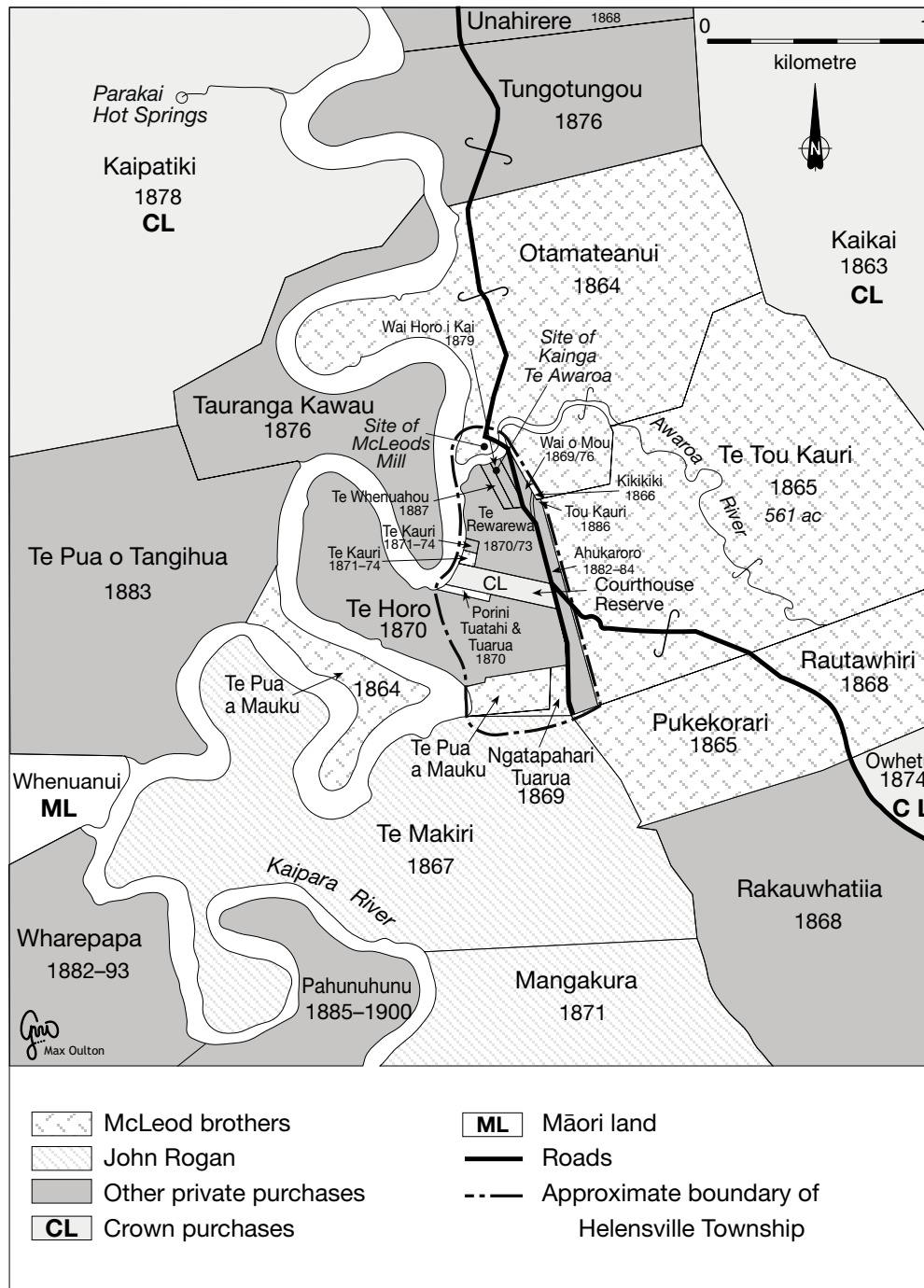


Figure 32: Land sales at Te Awaroa, 1864–1900

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there was general opposition to Government-imposed restrictions on the management of their land.<sup>35</sup>

Goldstone estimated that in 1877, excluding land not yet passed through the Native Land Court, there were about 100 acres of land for each man, woman, and child of Ngāti Whātua. By 1900, the total Ngāti Whātua population, including Orākei, was fewer than 200, and Goldstone estimated that there were then about 200 acres per person in the land remaining to all Ngāti Whātua. Even when the poor-quality sand-dune lands and swampy mudflats were deducted, there was still enough land available to meet the Government measure of ‘sufficient land to allow self-sufficiency (50 acres per person of second class land),’ as required in section 24 of the Native Land Act 1973. The remaining Ngāti Whātua lands in southern Kaipara were concentrated ‘around the core Ngati Whatua settlements of Reweti, Haranui (Otakanini) and Makarau’ in eastern Kaipara.<sup>36</sup> These bare ratios of population per acre mask a much more complex relationship between people and their land.

We review the impact of loss of land and the situation of Ngāti Whātua by 1900 at the conclusion of the next chapter. Here, we consider the submissions on the Native Land Court and land sales from 1864 to 1900.

## 7.4.1 Claimant submissions

Claimant counsel for Wai 312 argued that ‘the period 1864–1900 was probably the most devastating for Ngati Whatua,’<sup>37</sup> and that the Crown had breached the Treaty ‘through its abject failure to protect the Ngati Whatua land base in the South Kaipara.’ The principles of the Treaty ‘impose an absolute obligation upon the Crown to ensure that Maori retain sufficient endowment of land for their present and foreseeable needs and to otherwise actively protect the Maori interest.’<sup>38</sup> Counsel quoted Lord Normanby’s instructions and some Tribunal reports in support. Several warnings by Government officials in the 1870s were ignored, but no effort was made by the Crown to reduce land sales or to explore alternative forms of tenure: ‘The inevitable result was Ngati Whatua were rendered effectively landless.’<sup>39</sup> Counsel concluded that ‘the loss of land has played a huge role in destroying any hopes that Ngati Whatua had of participating in the settler economy and eventually achieving economic prosperity or retaining social cohesiveness.’<sup>40</sup>

In considering what were called these ‘collateral consequences’ of the Native Land Court process, claimant counsel commented on what Dr Loveridge termed ‘the “civilising” intent’

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35. Document P1, pp 188–189

36. Ibid, pp 188, 191–192

37. Document Q1, p 92

38. Ibid, p 53

39. Ibid, p 58

40. Ibid, pp 62–63

of the various Native Lands Acts (see sec 3.7): ‘The type of civilisation that was heralded by the Native Land Court was however predicated on breaking down the traditional societal structures of Maori through the individualisation of what had been to that point, communal land interests.’<sup>41</sup> Counsel noted particularly that, in framing the legislation that imposed the Native Land Court system, there had been no consultation with Māori and that individualisation of interests in land had been destructive of Māori social organisation. By 1900, the ‘individualisation process had led to a substantial fragmentation of the remaining land holdings of Ngati Whatua so that much of the land that remained was effectively useless or otherwise unable to be utilised by Ngati Whatua.’ Counsel concluded that ‘the nature of the system that was imposed on Ngati Whatua was completely inconsistent with the guarantees in Article 2 and thereby in breach of the principles of the Treaty.’<sup>42</sup>

In concluding submissions on the Native Land Court, Wai 312 claimant counsel noted examples of ‘the Crown’s manifest refusal to change the system when Maori identified their concerns.’ This, it was argued, breached not only the Treaty principle of active protection but also the Crown duty to remedy breaches and to prevent further breaches.<sup>43</sup> In addition to the individualisation of interests in Native Land Court titles and the costs of obtaining title, Māori concerns included the failure to provide for inalienable reserves, the 10-owner system of the Native Lands Act 1865, and the criticisms of the Native Land Court that emerged from the 1879 Orākei Māori Parliament. It was submitted that ‘Far from curbing the excesses of the Native Land Court system the prolific series of amendments to the legislation rather had the effect of streamlining its efficiency in order to facilitate the processing and alienation of Maori land.’ Counsel concluded that the operation of the land court ‘materially prejudiced the ability of Ngati Whatua to participate effectively in the settler economy and the cumulative effect . . . is a significant breach of the principle of active protection.’<sup>44</sup>

The costs involved in the Native Land Court process, including court fees, lawyers’ and interpreters’ costs, survey costs, and food and travelling expenses in attending court sessions, were also described as ‘a major burden’ for Ngāti Whātua. Such costs, claimant counsel argued, ‘clearly breached both Article 2 and the principle of active protection of the Maori interest.’<sup>45</sup> Counsel also submitted that the Native Land Court system gave excessive autonomy and influence to the judges, in particular Judge Rogan, without ‘a proper accountable system of checks and balances’, and that therefore the Crown ‘again failed to actively protect the Maori interest and failed in its duty to maintain utmost good faith.’<sup>46</sup> As well as the numerous changes to Māori land legislation, counsel cited the transactions on the Taupaki

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41. Ibid, p 105

42. Ibid, pp 107–108

43. Ibid, p 108

44. Ibid, p 111

45. Ibid, p 98

46. Ibid, p 99

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block (referred to in section 7.2) as an example of the legal obstacles that disadvantaged Ngāti Whātua in their attempts to maximise returns from sales of land.<sup>47</sup>

**7.4.2 Crown submissions**

In responding to claimant submissions that the Native Land Court system was imposed on Māori contrary to article 2 and in breach of the principles of the Treaty, Crown counsel emphasised several points:

- ▶ While there was a settler demand for land through a direct purchase mechanism, Ngāti Whatua in the mid 19th century was also keen for a mechanism to enable conversion of customary title to a legal title enabling formal identification and recognition of customary interests and enabling leasing and sale.
- ▶ There seem to have been comparatively few disputes associated with incorrect names going on titles.
- ▶ In most cases the sale of land seems to have been organised prior to land going through the Court. In some cases land was put through the Court and retained (eg the area around Reweti). This indicates Kaipara Maori saw some benefit in securing Crown grants, quite aside from effecting sales.
- ▶ The claim that debt and costs associated with Court proceedings forced the sale of land does not seem well supported by evidence in the Kaipara area . . .
- ▶ A halting of land sales in and around 1870 is unlikely to have been well-received by Kaipara Maori at the time, or to have been seen as consistent with the Treaty. There was at that stage still a sizable land holding for the small population.<sup>48</sup>

In addressing the origins of the Native Land Court, Crown counsel noted that article 2 of the Treaty guarantees:

exclusive and undisturbed possession of lands so long as Maori wish to retain them in their possession but also, of course, provides for the Crown's right of pre-emption and sale of lands. Article 3 provides for equality of rights and privileges as amongst citizens.

The Treaty principles of Crown duty actively to protect Māori interests and to act in good faith were also considered relevant. However, 'the ultimate Treaty principle of good *faith* needs to be judged in the context of ideologies which were honestly held, even if no longer in favour or even palatable' (emphasis in original).<sup>49</sup>

Citing Dr Loveridge's evidence, counsel submitted that the intentions behind the Native Lands Acts of 1862 and 1865 were not in bad faith. If Māori were to sell land, 'there was a need

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47. Document Q1, pp 100–105

48. Document Q16, pp 42–43

49. Ibid, p 43

for a mechanism to investigate customary title and delineate boundaries’, and this was recognised by Kaipara Māori. Crown counsel submitted that in the context of the 1850s, when such issues were being debated and legislation proposed, some sort of tribunal to ascertain Māori title was seen as necessary, and it is unlikely that any attempt to curb sales by greater restrictions on alienation would have been acceptable to Māori. As citizens under article 3 of the Treaty, Māori were able to deal with their lands as they saw fit.

The ‘practical need’ for a mechanism to ascertain Māori title, counsel argued, was ‘coupled with the colonisers’ intentions to “civilise” Maori – to raise them from what was seen as their semi-barbaric condition to the same level as British citizens’. The colonisers’ intentions also included the notion that ‘civilisation was the real payment Maori were to receive for ceding their sovereignty and passing their land to the British government’.<sup>50</sup> Counsel stated:

The Crown accepts that land transactions took place in the context of a belief by Crown and Maori that settlement would produce advantage and development for Maori. Transactions with Ngati Whatua would have reflected this. Doubtless the Crown’s viewpoint emerged from a ‘Eurocentric’ view of advantage through the ‘civilising’ impact of missionaries and settlers. The assumptions about the good of ‘civilisation’ were overt, not covert.<sup>51</sup>

Crown counsel also suggested that claimants’ arguments concerning the level of Māori protest about the Native Land Court and land sales were exaggerated. That Māori welcomed the court was demonstrated by the large numbers who applied for investigations of title.<sup>52</sup> Counsel cited Goldstone’s evidence that in the Kaipara district, of the total of 107 blocks investigated during the nineteenth century, 101 blocks with a total area of 85,930 acres had been passed through the court by 1880, and only another 1848 acres by 1900. Moreover, the Kaipara court under Judge Rogan operated on the basis that local rangatira, having already held meetings and arranged who should be put into titles for specific blocks, then submitted their arrangements for court approval. This process was similar to that established by Rogan for Crown purchases before 1865, and there were few disputes.<sup>53</sup>

Counsel also noted that discussions recorded in the Orākei Māori Parliament in 1879 acknowledged that ‘Ngati Whatua were not identifying the Crown as solely responsible for land alienations’. Land was ‘willingly sold’, and the evidence did not indicate that Ngāti Whātua were pressured by debt or other external forces into selling land. Prices for land did fluctuate, but transactions had to be assessed in relation to ‘economic circumstances and the nature of the land’. The Taupaki transactions, where the land was sold by public auction, for example, were not typical, and the poor prices obtained were due to the market being ‘glutted with Auckland and Waikato land at the time’.<sup>54</sup> Counsel also submitted that

50. Ibid, p 44

51. Ibid, pp 23–24

52. Ibid, pp 45–47

53. Ibid, pp 47–49

54. Ibid, pp 54–57

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debt to storekeepers was not a major factor in land sales, that there were other sources of short-term income, such as gum digging or timber extraction, as well as land sales, and that Ngāti Whātua still retained enough land to sustain food production. Crown counsel therefore rejected the claimants' argument that the Crown should have prevented Ngāti Whātua from selling any more land in the 1870s in spite of warnings from some officials about potential landlessness. It was argued that Ngāti Whātua still possessed enough land in 1900 to be self-sufficient. In the introductory section of closing submissions, Crown counsel concluded that in the nineteenth century Ngāti Whātua 'were small in number, laying claim to a large land area, much of which was low quality'. Counsel suggested that there was, therefore, 'a significant acreage which could be sold without affecting Ngāti Whātua's subsistence'.<sup>55</sup>

Crown counsel also addressed the issue of the costs involved in the Native Land Court process, noting that there was inadequate evidence to assess the impact of court fees and the costs of interpreters and lawyers, and of hospitality during court sessions. Survey costs were not excessive for the times, counsel maintained, and it was 'questionable whether Crown management and subsidising of surveys could be said to be required by the Treaty'. Crown counsel also rejected claimants' suggestion that Judge Rogan had acted improperly, noting that he had been 'held in high regard by Ngāti Whātua'.<sup>56</sup>

**7.4.3 Tribunal comment**

In chapter 3, we provided an overview of the establishment of the Native Land Court, the system of individualisation of Māori interests in land, and the succession to those interests which led to the fractionation of interests and the fragmentation of titles. In this chapter, we have reviewed the operations of the Native Land Court in southern Kaipara and provided a narrative of land sales after 1865 which resulted in the alienation of a substantial proportion of Ngāti Whātua lands by 1900. In this section, we comment on some specific matters raised by claimant researchers, and reserve to the end of the following chapter our discussion of the substantive issue of Crown responsibility for the impoverished and almost landless situation of Ngāti Whātua by the end of the nineteenth century.

There is no doubt that the Native Lands Acts of 1862 and 1865 and the operation of the Native Land Court imposed a tenurial revolution on Māori. There was an obvious need, when the sale of land was contemplated, for a tribunal of some sort to investigate and record rights in land, and for a way of identifying boundaries. The system imposed by legislation – reached after very little consultation with Māori, who were not represented in Parliament at the time – was applied to all Māori land. The 10-owner system of the 1865 Act had the effect of disinheriting an unknown number of Māori. The system of allocating individual, undivided interests in land gave to each owner an individual disposable property right and

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55. Document Q16, p 13

56. Ibid, pp 52–53

effectively undermined the collective authority of whānau and hapū. Even after the Native Lands Act 1873 took effect, however, there was some evidence that the Ngāti Whātua chiefs were still heavily involved in negotiating sales, although the Crown was no longer a major land purchaser.

Claimant researchers suggested a causal link between the Native Land Court and land sales, arguing that loss of land and poverty were among the ‘collateral consequences’ of the court’s operation. Stirling wrote that ‘As early as 1871 the link between the Native Land Court and the loss of control over the debt-laden land put through it, with the consequent alienation of much of that land, seems to have become apparent to Ngāti Whatua.’ He suggested that this was the reason that fewer blocks were taken through the court. Increasing debt increased the pressure to sell: ‘By this time land could be utilised as the security for the credit Ngāti Whatua needed to obtain for any unexpected expenditure as might be caused by a major tangi, a poor season, or a drop in gum prices, so as soon as the title was obtained it could be passed on to the creditor.’<sup>57</sup> Stirling considered that Ngāti Whatua were ‘vulnerable’ and ‘easily targeted’ because of their fragile economy, limited sources of income, limited access to capital, and loss of control of their lands.<sup>58</sup>

There was a significant increase in the number of private purchases in the 1870s. Stirling commented that Crown land purchase activities were ‘largely dwarfed by those of the predatory horde of surveyors, lawyers, land agents, and speculators holding debts against Ngāti Whatua.’ Up to 1869, he suggested, most sales were to individual settlers, but then the pattern changed, with higher prices being offered. The Crown could not compete and the ‘true payment’ – in the form of Pākehā settlement and Crown-provided infrastructure – seemed less significant to Māori vendors.<sup>59</sup> We have no substantive evidence that supports this assertion, beyond the anecdotal inferences (some of which have been noted in the course of the above account) that are scattered in the voluminous pages of ‘block histories’ of Kaipara lands produced in evidence to us.

It is difficult to be clear about the role of lawyers. Two names of Auckland lawyers recur, those of Dufaur and Sheehan, but in all of the southern Kaipara inquiry district sales listed by Stirling, Dufaur appears as purchaser of only two blocks, in 1882 and 1885, and Sheehan appears in three Te Awaroa purchases (two in 1870 and one in 1879) and, in association with another buyer, in the purchase of a large block, Kiwitahi (2249 acres), in 1871. On occasion, Auckland lawyers did act as agents for Auckland land purchasers, and Dufaur, for example, did offer loans secured against land to a number of Ngāti Whātua rangatira. We were not provided with sufficient evidence to draw any conclusions about the role of Pākehā facilitators in transactions involving Māori land. Nor do we have evidence of the extent of leasing of Māori land, which often preceded a sale. However, we question whether the Māori vendors

57. Document F8, pp 226–227

58. Ibid, pp 235–236

59. Ibid, pp 228–229



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had access to adequate, or indeed any, independent legal advice when land transactions were under negotiation. We have no evidence that such advice was available to them.

Claimant researchers referred to the high cost of Native Land Court investigations of title.<sup>60</sup> There were certainly costs for Māori in taking their lands through the court: not only court fees, but also the costs of survey, and expenses incurred by having to go to Helensville to attend court hearings. Other Tribunals – for example, Orākei, Pouakani and Turanga – have acknowledged that these costs were imposed on Māori. We have not been given any detailed analysis by the Kaipara claimants' researchers, but we have no reason not to accept that there were ongoing costs for Kaipara Māori participating in the Native Land Court process of investigation of title and subsequent appearances for the partitioning of land and succession to individual interests.

Crown researcher Paul Goldstone suggested, however, that Stirling had exaggerated the burden of court costs. Using figures from Stirling's reports,<sup>61</sup> Goldstone calculated that the court fees per block ranged mostly between £2 and £3 4s, with an average of just under £3; there were a few with costs at £4, and only one at £6. The total cost of court fees for 88 title investigations in southern Kaipara heard by the Native Land Court between 1864 and 1880 was £254 12s 6d. This represented about 2 per cent of the £11,000 realised from known leases and sales over the same period.<sup>62</sup>

Goldstone also questioned Stirling's assessment of survey costs. One of the difficulties of such an assessment is that the court did not record survey charges before 1869. There is no evidence of forced sales to meet survey charges; on the contrary, surveyors often had to wait long periods for payment. Not until 1878 was the court empowered to award a surveyor payment in money or land. Furthermore, survey liens remained on some blocks for several decades, with interest accruing on the debt. Goldstone also noted that there were few boundary disputes, which would have increased survey charges. This was probably because Rogan encouraged Māori owners to settle the boundaries before a block came before the court.<sup>63</sup>

We have no evidence of the actual costs of attending court hearings, although Goldstone noted that Rogan provided food and accommodation for those attending court hearings in Helensville until the 1870s. The total number of days the court sat in Helensville between 1864 and 1880 was about 50, or an average of three days a year, with the longest hearing of 10 days in February 1871.<sup>64</sup> There were certainly costs to Māori in the Native Land Court process, but these were not as 'ruinous' as Stirling suggested.

The role of land court judges was also questioned. We have no evidence that Rogan, or any other judge of the Native Land Court in Kaipara, acted improperly, inappropriately, or

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60. Document F8, pp 192–194

61. Documents F5, F8

62. Document P1, pp 99–101

63. Ibid, p 102–107

64. Ibid, p 101

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outside the legislative provisions governing the court's operation. We therefore make no comment on this matter.

The Crown has acknowledged that, by the end of the nineteenth century, there was a good deal of poverty among Ngāti Whātua, who enjoyed few long-term benefits from land sales. There were also factors beyond the control of the Crown that depressed the local economy, notably the decline in the timber and kauri-gum trade. There is insufficient evidence to indicate that the costs of the Native Land Court process were a direct cause of land sales, but debt was a likely factor in sales of individual interests in land. There is no doubt that during the 1870s and 1880s a large portion of the Ngāti Whātua land base in southern Kaipara was transferred, mainly to private purchasers. We address the impact of the Native Land Court and nineteenth-century land loss on Kaipara Māori, and give our findings, at the conclusion of the next chapter.

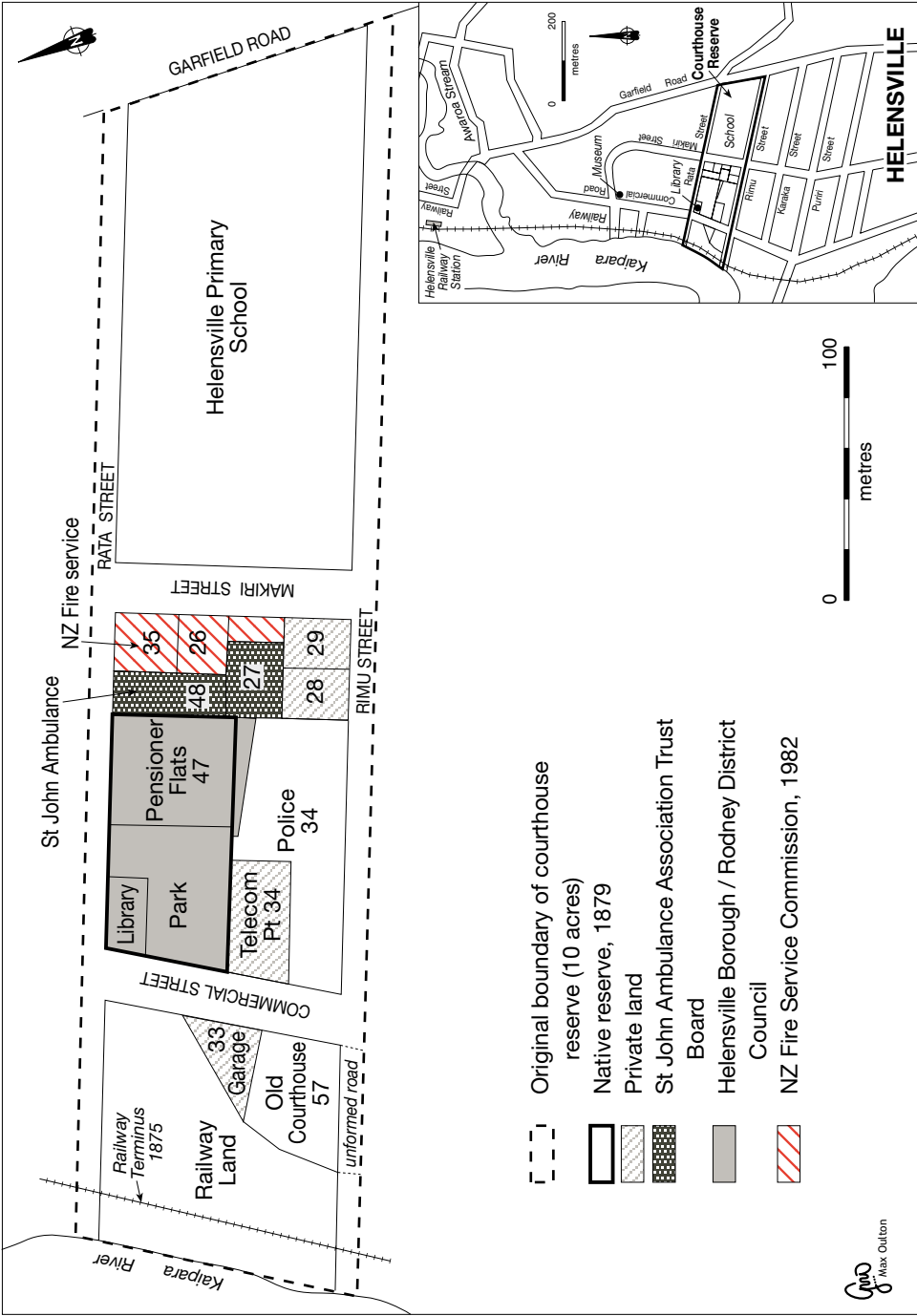


Figure 33: The Helensville courthouse reserve

## CHAPTER 8

### LAND DONATIONS AND THE SITUATION OF MĀORI IN SOUTHERN KAIPARA BY 1900

#### 8.1 INTRODUCTION

In this chapter, we conclude our review of land loss in southern Kaipara during the nineteenth century. We begin by examining specific donations of land by Ngāti Whatua to the Crown for the general economic development of the district before 1900. We then examine the situation in which Ngāti Whātua found themselves by 1900.

#### 8.2 THE HELENVILLE COURTHOUSE RESERVE

The most contentious piece of land in Te Awaroa (Helensville) was not a purchase but a gift. The claim, which figures in Wai 756 as well as Wai 312, is based on subsequent Crown actions or inaction in fulfilling the terms of the gift.

##### 8.2.1 The history of the reserve

When Native Minister William Fox met Ngāti Whātua at Te Awaroa on 14 March 1864, he not only introduced their new resident magistrate, John Rogan, but also, as the official reporter recorded, ‘invited them to grant a site for a Court-House, schools, and church.’<sup>1</sup> Fox recorded later:

On the evening of the same day, I was present when the Natives made a gift of ten to twelve acres on the right bank of the Kaipara, between the Awaroa creek and the landing place, for a Court House. At first they desired to make a deed of gift to Mr Rogan, but that gentleman made it clear that the reserve was for Government purposes, and that he could have no right or title to it. This preliminary having been arranged, the boundaries were fixed, and the dedication made to Mr Fox on behalf of the Government, in the presence of Mr Rogan and several visitors.<sup>2</sup>

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1. Document P1, pp 10–11. No church was built on the reserve.

2. BPP, vol 13, p 18 (doc P1, p 13)

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No deed of gift has been found, but there is sufficient other evidence to support the claim that the local rangatira, Te Ōtene Kikokiko, on behalf of Ngāti Whātua, made the gift of 10 acres of land which became known as the courthouse reserve (fig 33).<sup>3</sup> The Kaipara resident magistrate's letterbook, compiled by Rogan, includes several references to the gift of the courthouse reserve. On 30 November 1864, he wrote:

The natives proposed to give me a piece of land about 10 acres on which the Court House is now built, this land has since been conveyed to the Crown for public purposes, and is the only place at present available for a Government building.<sup>4</sup>

Crown researcher Paul Goldstone stated that the Government had allowed £150 for the construction of the building, and that the timber was purchased for £50, not given by Ngāti Whātua, as suggested by Bruce Stirling in his report for the Wai 312 claimants. Tirarau of Te Parawhau in northern Kaipara provided kauri posts and rails for a fence around the building, but Rogan subsequently gave him 1000 bricks in return. Goldstone suggested that Rogan was 'concerned lest gifts incur potential future obligations upon the Government, and he was careful to make payment for them, so as to avoid this'.<sup>5</sup> In May 1865, Rogan reported to the Government on how valuable the courthouse reserve had become for public purposes:

Te Otene Kikokiko who was the principal proprietor has been ridiculed lately by his neighbours for being so foolish as to give land even to the Government and I respectfully recommend that I may be authorised to give Te Otene a sum of ten pounds, more by way of present from the Government, than payment for the land, by way of showing to those who laugh at him, that there is not much lost by maintaining a liberal spirit towards the Government.<sup>6</sup>

Two years later, on 4 July 1867, Rogan referred to this payment and the use of the land:

Subsequently Mr Mantell authorised a present of £10 to the owners and a deed of cession to the Queen was signed by the Chief Otene which is recorded in the Resident Magistrates office at Kaipara and there can be no question of disputed title as far as the natives are concerned as it is possible that a question may arise at a future time as to the legality of this deed. I shall have no trouble at any time in obtaining Te Otene's signature to a form of deed which may be furnished to me from Wellington if it is considered necessary. The Court House has been erected on this land at the expense of the public and I have occupied an office within the building to the present time. There is a lockup, guardroom, and a dispensary erected by the Govt at the back of the Court House and attached. There is a House detached therefrom built by the Gov't for the accommodation of natives coming from a distance. There is

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3. Document F2

4. Document P1, p 14

5. Ibid, p 16; doc F8, pp 35–37

6. Document F2, app

also a boat mans cottage on the Govt land and a stable built at my expense which is easily removed at any time should the Govt have any objections to this place being erected on public property.<sup>7</sup>

In his report on 6 January 1873, Rogan repeated the history of the 'Govt reserve in Helensville', saying that it was a gift for a site for Government buildings:

£10 was paid by the Govt through me to Te Otene to effectually extinguish the Maori title and time has proved that this was a judicious payment as the terminus of the Kaipara Railway is actually on this reserve. I have called the attention of the Govt years ago to the advisability of doing something more than holding a mere receipt for the title. It might be passed through the Native Land Court and conveyed to the Crown. If this land be valued at so much per foot hereafter a question of defective title might arise.<sup>8</sup>

There is no record that the block went through the Native Land Court, and Rogan's remarks suggest that there was no deed of gift either. Goldstone suggested that, while Te Ōtene may have considered the land conveyed to the Crown, others may have claimed residual rights. Several claims to land called Noki, which was either part of the courthouse reserve or a road alongside it on the bank of the Kaipara River, were lodged with the Native Land Court in 1875, 1877, 1878, 1885, and 1889, but in every case were dismissed because the land was Crown land.<sup>9</sup>

On 9 May 1879, one acre of the courthouse reserve was 'temporarily reserved' under section 144 of the Land Act 1877 for the 'Use of aboriginal natives of the colony'. On 28 July, this land was confirmed as 'permanently reserved' under section 145 of the same Act.<sup>10</sup> This gazettal was probably related to agreements reached over the Kaipara railway, which we discuss below. (A brief chronology of transactions on the courthouse reserve is shown in table 21, and see also figure 33.)

Many of the current uses of the courthouse reserve can be described as public purposes, including its use as the site of the Helensville Primary School, fire station, police station, library, park, and pensioner flats (the latter three facilities being on land vested in Helensville Borough and, later, the Rodney District Council). Some blocks have been conveyed to others but are still used for public purposes. One is the Saint John Ambulance Association land, although it is not clear why title was transferred to allow this use without protection from future sale for a non-public purpose. Both the Telecom and railway lands were formerly State-owned but were privatised by the Government in the 1980s. The Telecom land was transferred subject to a memorial on the title under section 27B of the State-Owned

7. Rogan, letterbook, 4 July 1867, NA(A)BADW 10512/1a (doc P1, p 23)

8. Rogan, letterbook, 6 January 1873, NA(A)BADW 10512/1a (doc P1, p 24)

9. Document P1, pp 24–25

10. 'Land Temporarily Reserved in the Provincial District of Auckland', 15 May 1879, *New Zealand Gazette*, 1879, no 51, p 643; 'Lands Permanently Reserved', 31 July 1879, *New Zealand Gazette*, 1879, no 81, pp 1053–1054

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| Year       | History                                                                                                                                                                                                                 |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1864       | Courthouse reserve (10 acres) given to Crown for public purposes                                                                                                                                                        |
| 1865       | Courthouse and other buildings constructed on section 57                                                                                                                                                                |
| 1879       | Native reserve (one acre) gazetted                                                                                                                                                                                      |
| 1884       | Railway land proclaimed as terminus of Kaipara railway                                                                                                                                                                  |
| 1890       | Library site gazetted on part of native reserve                                                                                                                                                                         |
| 1894, 1912 | School site gazetted (four acres)                                                                                                                                                                                       |
| 1924       | Section 38 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act vests native reserve in Helensville Town Board for park, public garden, and recreation ground, and validates library site gazettal |
| 1956       | Sections 28 and 29 sold by Crown to Helensville Borough                                                                                                                                                                 |
| 1958       | Police station gazetted on section 34; section 37 vested in Helensville Borough as recreation reserve                                                                                                                   |
| 1966       | Pensioner flats constructed by Helensville Borough on section 47, part of former native reserve                                                                                                                         |
| 1968       | Saint John Ambulance Association purchases sections 27 and 48                                                                                                                                                           |
| 1969       | Crown sells section 33 to private owners for a garage                                                                                                                                                                   |
| 1973       | Part of section 34 gazetted as automatic telephone exchange                                                                                                                                                             |
| 1982       | Sections 25, 36, and part of 27 vested in New Zealand Fire Service                                                                                                                                                      |
| 1982       | Section 57, old courthouse site, vested in Ngāti Whātua trustees                                                                                                                                                        |
| 1990       | Automatic telephone exchange site transferred to Telecom, subject to section 27B of the State-Owned Enterprises Act 1986                                                                                                |
| 1991       | Sections 28 and 29 sold by Rodney District Council to private buyers                                                                                                                                                    |

Table 21: Transactions on the courthouse reserve.

Source: document F2; document F8, pp 33–44; document F3, pp 165–174.

Enterprises Act 1986. The status of the railway land, which includes the site of the original Helensville South station, the terminus of the Riverhead to Kaipara railway constructed in 1875, is unknown.

Some of these transactions failed to acknowledge the original gift to the Crown by local Māori, and this has given rise to two issues of concern. One is the transfer of sections 28, 29, and 33 to private ownership, all titles now registered in the Land Transfer Office. Section 33 was Crown land disposed of in 1969 as surplus to the requirements of the Department of Justice. Sections 28 and 29 were sold separately in 1991 by the Rodney District Council. These three transfers constitute a failure of the Crown to acknowledge the nature of the original gift of land for public purposes.

**8.2.2 The native reserve**

The second issue is the failure of the Crown to protect the one-acre native reserve set aside in 1879. The 'native hostelry', which Rogan had constructed in 1866, was beside the courthouse, across the road from the reserve. It was a basic structure and, after complaints of cold, Rogan requested funds for the construction of a fireplace and chimney. However, the structure does not seem to have been maintained, and by the 1880s it was reported as being



in a disgraceful state – with only tramps using it – and a fire hazard to the courthouse. It was eventually demolished in 1896. In 1899, a Ngāti Whātua complaint to the Native Minister led to a recommendation that a disused police house, which was in need of some repairs, be made available to accommodate visiting Māori. It is not known what became of this recommendation.<sup>11</sup>

Meanwhile, in 1890 the Helensville Town Board had set aside 18 perches of the native reserve as a library site under section 227 of the Land Act 1885.<sup>12</sup> In 1908, this site was vested in the Helensville Public Library Trust Board (Incorporated), in trust, ‘for a site for a library’ under section 4 of the Public Reserves Act 1881.<sup>13</sup> These gazettals were subsequently found to be without lawful authority and had to be validated later, as detailed below. Although Crown land, the area was gazetted as a reserve for the use of Māori, but there seems to have been no consultation with Ngāti Whātua on this use of the reserve. In 1906, the Helensville Town Board asked the Native Minister for its use as a site for municipal buildings. The request was declined by Cabinet. At this time, the land was fenced and used by the local constable as a horse paddock. In December 1906, Poata Uruamo advised the Helensville Town Board that the Ngāti Whātua Māori Council wanted to build a ‘council chamber’ on the site. This request was forwarded to the Native Minister and approved.<sup>14</sup>

In 1908, the ‘Helensville native reserve’ was considered by the Stout–Ngata commission, which recommended that the block be reserved for Māori occupation under part II of the Native Land Settlement Act 1907.<sup>15</sup> The commission was apparently unaware of the gazettal of a library site on the reserve. In 1909, the committee for the ‘Maori House for Awaroa’ petitioned the Native Minister for funds for a hostel to house Māori visiting Helensville to attend the Native Land Court or there for other purposes, such as visiting the doctor. The committee sought £300, being a pound-for-pound subsidy on local fundraising. The request was declined. In 1911 and 1912, there were similar requests, this time supported by local businessmen James and Isaac McLeod. It is not coincidental that in 1911 Sarah McLeod, James’s wife, had purchased the Aotearoa block, on which a meeting house had been built in 1883. It was proposed that this house be moved to the Helensville native reserve.<sup>16</sup> However, nothing came of this proposal, and the old house was later shifted to Ōtamatea. Meanwhile, visiting Māori still had problems finding accommodation in Helensville.

In 1919, a deputation met the visiting Minister of Justice in Helensville and asked that the native reserve be made into a public park for Māori and Pākehā. The Native Department responded that the reserve was for Māori use, and would not agree to any rights over it

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11. Document F8, pp 41–42

12. ‘Lands Permanently Reserved’, 30 January 1890, *New Zealand Gazette*, 1890, no 5, pp 114–115

13. ‘Vesting a Reserve in the Helensville Public Library Trust Board (Incorporated)’, 20 February 1908, *New Zealand Gazette*, 1908, no 12, p 622

14. Document F3, pp 166–167

15. Robert Stout, ‘Lands Recommended to be Reserved for Maori Occupation’, AJHR, 1908, G-1G, sch 1B, p 3

16. Document F3, pp 167–169

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being given to the Helensville Town Board. There was still no decision in 1922 when H R H Balneavis, the private secretary to the Native Minister, J G Coates, who was also the member of Parliament for Kaipara, suggested that the town board could have temporary use of the land, since no funds were available for a hostel and he thought there was a reduced need for one. Ngāti Whātua petitioned the Minister against the reserve being given to the town board. They reiterated their desire to build a hostel and cited their use of the reserve for their horses and traps when they visited Helensville. The town board did not want only temporary use of the land if it was to spend money on it. The Helensville Chamber of Commerce organised a petition, signed by 332 citizens, asking Coates to vest the land in the town board for a park and warning that the petitioners had 'a very serious objection to a Maori hostel'. Coates's response was that the town board could begin work on a park but that the title would be sorted out later. A lease had been suggested, he said, but the Native Department refused to grant one.<sup>17</sup>

The town board began work on creating a park, but in 1924, when more funds were required, it moved to secure title to the land. Coates's response to this request, given at a meeting in Helensville with board representatives, was minuted as:

What I told you was that you should go ahead. It is a piece of land given for a Maori Hostel and comes under the Native Administration. The Maoris protested. I asked them to write to me and say they were willing for this to become a park for Helensville. The idea is that you go on and make use of the land as soon as possible it will need a small clause in the Native Lands Adjustment Act which alters the title. Whether it can be done this year I am unable to say. I think you had better carry on quietly and when the park is opened you should invite the Maoris to come to the opening and make a speech.<sup>18</sup>

The enabling legislation was contained in section 38 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924. Stating that the native reserve was 'no longer required for such purpose, and it is desirable to dispose of it', the legislation cancelled it, validated the gazettals of the library site in 1890 and 1908, and vested the balance of the reserve (three roods 22 perches) in 'the Helensville Town Board in trust for the purposes of a park, public garden, and recreation-ground'. Clearly, Native Minister Coates had put the wishes of his Pākehā electorate in Kaipara ahead of local Ngāti Whātua.

One very small piece of the courthouse reserve has been returned to Ngāti Whātua. On 10 November 1982, on the application of the commissioner of Crown lands under section 436 of the Māori Affairs Act 1953, the Māori Land Court vested section 57 (1444m<sup>2</sup>) in Te Ōtene Kikokiko (deceased), and created a trust under section 438. Margaret Kawharu,

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17. Document F3, pp 170–173

18. Notes on file to Balneavis on 2 January 1924 meeting between Minister, Lambert, and Stewart in Helensville, MA1 1919/729, DB4/3/8 (doc F3, p 173)

claim manager for Wai 312, explained that in 1979 the Department of Justice advised Ngāti Whātua that the old courthouse on section 57 in the Helensville courthouse reserve was no longer required. There had been ‘some lengthy negotiations’ before the land was returned to Māori ownership: ‘The best rational compromise in contemporary Ngāti Whatua thinking was to be as inclusive as possible in terms of beneficiaries of a trust estate.’<sup>19</sup> The five trustees appointed under section 438 of the 1953 Act were representative of the five main Ngāti Whātua communities: Orākei, Reweti, Helensville, Haranui, and Kakanui/Araparera.

Only the land was returned to Ngāti Whātua. The negotiations included a discussion of the future of the original courthouse, which was built in the 1860s and had been recognised and classified by the Historic Places Trust. Ngāti Whātua wanted the building left on the site to be used for tribal and community purposes. The Helensville Borough Council and Helensville Historical Society wanted to move the building to a site beside the museum. Finally, the Ngāti Whātua representatives agreed to the disposal of the courthouse and associated buildings. These were relocated to the museum site in April 1982, leaving only a disused toilet block on the land.<sup>20</sup>

### 8.2.3 Claimant submissions

Counsel for Wai 312 submitted that the Helensville courthouse reserve is ‘a piece of land of major significance’ to the claimants and that the Crown had failed to meet the conditions of the gift.<sup>21</sup> Among the conditions alleged was a promise to establish a church (as mentioned by Fox) and a school, and to provide accommodation for Māori on the block. No church was established, but counsel suggested that, even if ‘sectarian politics’ prevented the Crown from doing this on public land, there should have been consultation with Ngāti Whātua. Though a public school was later established on the block, counsel submitted that the promise of a school for Ngāti Whātua had not been kept by the Crown.<sup>22</sup> Counsel conceded that ‘one promise the Crown did meet, at least in the short term . . . was the construction of a much needed small house for the accommodation of Ngāti Whatua and other Maori attending the Courts from distant homes.’ However, the hostel was dilapidated by the late 1880s.<sup>23</sup>

Counsel concluded that the Crown’s failure to give effect to the terms of the gift and to protect the native reserve was a breach of the Treaty: ‘instead of the gift helping to buy Maori into the heart of the settler community at Te Awaroa, [it] was a further and significant step in their total exclusion from the town.’<sup>24</sup>

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19. Document H11, p 7

20. Document F2

21. Document Q1, p 141

22. Ibid, pp 143–144

23. Ibid, p 144

24. Ibid, p 147

**8.2.4 Crown submissions**

Crown counsel noted that the Crown had constructed a courthouse on the block at Government expense. The construction of a hostel beside the courthouse ‘was not the result of any promise but rather an undertaking at Rogan’s initiative.’<sup>25</sup> Counsel also submitted that ‘there were sound reasons why the Government was opposed to the idea of allowing a church to be built on a government reserve’. In any case, counsel submitted, Goldstone provided evidence that Rogan did consult with Ngāti Whātua at a hui, where it was agreed that land not be granted for a church on the courthouse reserve.<sup>26</sup> Counsel submitted that the promise of a school had been kept because a school was established on the land in 1877.<sup>27</sup>

**8.2.5 Tribunal comment**

The courthouse reserve was undoubtedly a gift to the Crown in 1871 by Ngāti Whātua. The payment of £10 to Te Ōtene Kikokiko was described by Rogan as a ‘present from the Government’, not a payment for the sale of the land. Stirling interpreted the gift as a ‘clear indication’ of Ngāti Whātua’s ‘desire to engage with the Crown and encourage an official presence in Te Awaroa’. He suggested that this gift ‘should be considered within the context of Ngāti Whātua’s expectation of their continuing alliance with the Crown, and the ongoing obligations of the Crown to reciprocate by providing the benefits it had promised when granted the free use of the valuable township land.’<sup>28</sup> It should be noted that the land gained its value from Pākehā development, but no evidence of valuation was produced. Geoff Watson, in his evidence for the Wai 756 claimants, Lou Paul and Te Taoū, described Te Ōtene’s gift as ‘an illustration of Te Taoū’s effort to foster a constructive relationship with the Crown’, and said that there was a ‘spirit of partnership implicit in the gifting of the land.’<sup>29</sup> Ropati Saipaia, in his evidence for Wai 756, stated that this gift was a symbol of a ‘constructive attempt at building a positive relationship with the Crown’ by Te Taoū.<sup>30</sup>

Goldstone suggested that ‘greater caution be taken with such an argument’ and that the ‘minimal’ evidence available did not support the ‘alliance’ argument put forward by claimant historians.<sup>31</sup> He considered that the accounts by Fox and Rogan provided ‘no indication at all of any promises’ tied to the gift, and refuted Stirling’s assertion of a ‘treaty of Awaroa’.<sup>32</sup> We have commented in chapter 7 on the alliance argument put forward by Wai 312 claimant historians and we agree that the description ‘treaty of Te Awaroa’ is inappropriate.

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25. Document Q16, p 93

26. Ibid, pp 93–94; doc P1, p 20

27. Document Q16, pp 94–95

28. Document F8, pp 36–7

29. Document N1, pp 41–42

30. Document N4, sec 2.2, p 10

31. Document P1, p 13

32. Ibid, p 15; doc F8, p 38

The terms of the gift were that the land should be used for public purposes, and initially that was done. A native reserve of one acre was set aside for the accommodation of Māori when visiting Helensville, but the Crown failed to build the accommodation facilities (also promised as part of the Kaipara railway gift, which is considered in the next section). The native reserve was later cancelled, and the land vested in the Helensville Town Board, without any consultation with Ngāti Whātua. There have since been other transfers to private ownership of parts of the block. The Crown has failed to make clear to the relevant local authority that the terms of the gift were to use the land for public purposes. We consider that, if parts of the land were no longer required for a public purpose, then they should have been returned to Ngāti Whātua. The return in 1982 of section 57, without the old courthouse building, we consider to be but a small token gesture.

The courthouse reserve, while only a small area in itself, has an acrimonious history. It has become the flagship for the assertion of Ngāti Whātua rights in southern Kaipara, and a symbol of Ngāti Whātua frustration and resentment over being relegated to the fringes as second-class citizens apparently not worthy of consultation in their own ancestral land.

#### 8.2.6 Findings

We make the following findings on the Helensville courthouse reserve:

- ▶ In 1864, Ngāti Whātua donated to the Crown 10 acres of land in the future township of Helensville for use for public purposes.
- ▶ Within this area, one acre was gazetted as a native reserve for Māori use, but this reserve, the only area remaining for Māori use in Helensville, was transferred to the Helensville Town Board in spite of Māori protest. This was a breach by the Crown of its Treaty duty to act reasonably and in good faith toward Māori.
- ▶ While most of the 10 acres was used for public purposes, and some remains so used, other areas were subsequently transferred to private purchasers. This was a breach of the original terms of the gifting, and a breach by the Crown to act reasonably and in good faith toward Māori.

#### 8.3 THE KAIPARA RAILWAY

Ngāti Whātua gifted land in 1871 for the purpose of constructing a railway line between Riverhead, on the upper Waitemata Harbour, and Helensville. The line was completed in 1875. As with the courthouse reserve, there is no dispute about the original gift, but the claims (which figure in the Wai 279 claim by the Uruamo whanau as well as in Wai 312) relate to whether the Crown gave effect to all the conditions of the gifting.

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**8.3.1 The history of the railway**

After the establishment of the capital at Auckland, the Māori portage route between the Kaipara River and the upper Waitemata Harbour at Pitoitoi/Riverhead assumed even greater importance. As with Māori, European settlers relied on the waterways of Kaipara Harbour to bring in people and goods and to export timber and produce. Roads were few, and often impassable in wet weather. In the late 1860s, the Auckland Provincial Council determined that the cheapest and most practical transport option for the Riverhead to Helensville route was a railway, which would provide a much faster and all-weather mode of transport compared with the four-hour trip by horse-drawn coach. The council was given authority to construct the line by the Kaipara Railway Act 1871. The cost was estimated to be £27,000, but this figure assumed that the land for the line would be freely given by both Māori and Pākehā landowners along the route. Some claimant researchers have suggested that only Māori gave their land. Goldstone clarified this by pointing out that all the land along the Riverhead to Helensville line was given for nothing, although a few years later, when the Kumeu to Auckland connection was under construction, some landowners did create a stir by demanding compensation.<sup>33</sup> It was commonly assumed in the 1870s that the public good was paramount, that adjacent landowners would benefit from the improved access, and that compensation would therefore not be paid.

In February 1871, during a sitting of the Native Land Court at Helensville, John Sheehan, the Auckland Provincial Council treasurer, took the opportunity to talk with Ngāti Whātua leaders. At the end of the hearing, a hui was called to discuss the proposed railway and the giving of land along the route. Rogan was also present, and backed Sheehan by offering his own land south of Helensville where it would be crossed by the railway. A number of Ngāti Whātua rangatira spoke in support of giving the land, although Te Ōtene showed some reluctance. However, his wife, Maata Tira Koroheke, was expansive in her support:

We give the land you ask for, and we give it willingly, without cost. You know my lands; take your railway through them. It will do good. Our land will rise in value. We can travel quickly, provisions and clothing will be cheap, and Europeans will come to dwell amongst us. Kaipara will come to be a dwelling place of chiefs, as Auckland now is. When we die, we will leave our children among a people who will treat them kindly, as we, when living, treated the Pakeha. The land is yours to deal with. One thing I ask – let an acre be set apart at the end of the line, as a landing place for us when going to Auckland.<sup>34</sup>

This was the first mention of a reserve for Māori accommodation. Apparently, it was also agreed that an area be set aside at the Helensville terminus, which was located in the court-house reserve, as discussed in the previous section.

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33. Document P1, pp 77–78; doc F8, pp 179, 184

34. Document P1, p 80; doc F8, p 181

In May 1871, a formal agreement was signed at a hui attended by about 450 people, according to the *New Zealand Herald*, and there were 169 signatories to the deed.<sup>35</sup> Unfortunately, the actual deed, which would have set out any conditions for reserves, can no longer be found. Stirling reported that, although there was an Auckland Crown purchase deed (number 4164), this was given to the custody of the Railways Department in the 1950s but cannot now be found.<sup>36</sup> However, it seems that part of the agreement was that the provincial government should set aside a one-acre reserve for Māori accommodation facilities at each end of the line. As Goldstone remarked, ‘when a promise *was* made by the Government to Ngāti Whātua, Ngāti Whātua referred to it repeatedly’ (emphasis in original).<sup>37</sup> The reserves were referred to, for example, in the speeches of Ngāti Whātua rangatira in August 1871 at a ceremony to turn the first sod. There is no contemporary evidence of any promise to provide free travel, as alleged later.

The Riverhead to Helensville line was officially opened on 28 October 1875, at a total cost of £67,329. The route of the line is shown in figure 31. Stations en route were at Kumeu, Waimauku, Reweti, and Woodhill. It was only the second railway line in the North Island, the first, from Auckland to Mercer, having been opened only five months earlier.<sup>38</sup> Ngāti Whātua speakers at this ceremony again reminded the Government of the promised reserves for accommodation facilities.

In 1877, Pāora Tūhaere petitioned Parliament about the alleged promises made to Ngāti Whātua, including the reserves at each end of the line. He also told the Native Affairs Committee that Ngāti Whātua had been promised free railway travel for three years. Sheehan absolutely denied this. Goldstone reviewed the petition file and found some contradictory evidence, which he described as ‘perplexing’ and ‘confusing’, casting doubt on any promise of free travel.<sup>39</sup> The Native Affairs Committee was unequivocal in its report:

There is no foundation whatever for the assertion that the natives were promised free passes for three years in consideration of their conceding lands required for the Kaipara Railway line without payment.

That it does appear that Mr Sheehan promised the natives at the time when the concession was made, that landing sites would be reserved for them at the Helensville and Waitemata [Riverhead] Stations, and that buildings would be erected on the landing sites for the accommodation of Maori travelling by the Railway. The Committee would strongly recommend that those promises should be fulfilled without delay.<sup>40</sup>

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35. Document F8, p184

36. Ibid, p179 fn 432

37. Document P1, pp78, 81

38. Ibid, pp81–83

39. Ibid, pp83–84

40. Ibid, p84



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In 1879, as noted in the previous section, a one-acre section in the courthouse reserve at Helensville was set aside as a reserve for Māori purposes, but no hostelry was ever built on it and the reserve was later cancelled. Neither reserve nor hostelry was made available to Māori at Riverhead. A further petition in 1882 asking about the construction of accommodation facilities on the promised reserves brought no action.

The middle line of the railway had been surveyed and gazetted in 1873 and 1875, and after construction, the land taken up by the line and the stations was proclaimed Crown land in 1884 under section 130 of the Public Works Act 1882, with a deviation at Woodhill taken in 1888.<sup>41</sup> Stirling argued that this ‘taking’ illustrated that the Crown perspective on ‘the railway treaty of 1871’ was ‘apparently of greater symbolic than real value’, and that the ‘railway compact’ with Ngāti Whātua was being ignored.<sup>42</sup> While section 130 gave the Governor power to take land for a railway, the Riverhead to Helensville railway had been operating for nearly 10 years. It is more likely (though we were given no specific evidence on this point) that the 1884 proclamation was intended, as set out in section 130, to provide conclusive evidence that the land was Crown land, in this case for the purpose of a railway, so there could be no grounds for legal challenge to the Crown title. Public works legislation has always made provision for the Crown’s ‘taking’ by agreement.

The taking without compensation of additional land closer to the Kaipara River for the Woodhill deviation and new station in 1888 was a particular concern of the Wai 279 claimants. The original railway route at this point lay across the Te Kēti and Pukekauere blocks. After the deviation, some of this land was used for the main road north from Auckland to Helensville (now State Highway 16), but the balance area, taken for sidings and the original Woodhill station, was not immediately returned to the Māori owners. Part of this area, on the Pukekauere block, was used for Woodhill School and a community hall, and the balance was sold. On the Te Kēti block, a small area (¼ acre) at the western end of the station yard was returned to the owners of the Te Kēti A block in 1927. The remaining Crown land was declared surplus to railway requirements in 1971, and in 1983, following protests about the failure to return this land, three sections of it were vested in the owners of Te Kēti A. About 10 acres in total were taken from the Te Kēti block for the railway at Woodhill, and some of this land remains Crown land.

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41. ‘Limits and Description of Line of Railway from Kaipara to Riverhead’, 3 April 1873, *New Zealand Gazette*, 1873, no 19, pp 211–213; ‘Description, Line, and Limits of Deviation of a Further Portion of the Railway from Kaipara to Riverhead–Helensville Terminus Extension’, 6 May 1875, *New Zealand Gazette*, 1875, no 25, pp 305–306; ‘Land Taken for Further Portion of Kaipara–Waikato Railway (Kumeu–Helensville Section)’, 24 July 1884, *New Zealand Gazette*, 1884, no 86, pp 1161–1163; ‘Land Taken for the Woodhill Deviation of the Kaipara–Waikato Railway’, 16 August 1888, *New Zealand Gazette*, 1888, no 45, p 873

42. Document F8, p 187

**8.3.2 Claimant submissions**

Claimant counsel for Wai 312 submitted that the Crown had failed to honour the conditions of the Ngāti Whātua gift of land for the Kaipara railway. These conditions were that:

- ▶ reserves for Māori, of one acre each, should be set aside at each end of the railway at Riverhead and Helensville;
- ▶ accommodation would be provided on these reserves for the use of travelling Ngāti Whātua; and
- ▶ Ngāti Whātua 'would receive free travel on the Railway during the first three years of its operation.'

Only one reserve was set aside (in the courthouse reserve at Helensville), but it was subsequently alienated, 'no accommodation house was built, and no free travel was provided'.<sup>43</sup>

Furthermore, counsel submitted, 'the Crown aggravated the grievance by taking further Ngāti Whātua land for the railway' without paying compensation or consulting with Ngāti Whātua.<sup>44</sup> Counsel for the Wai 279 claimants also complained about the choice of the railway's route across Māori lands on the western side of the river rather than on land acquired by Pākehā settlers east of the river.

**8.3.3 Crown submissions**

In relation to the Wai 312 claim, Crown counsel submitted that the intention Māori had in gifting the land was that they would benefit by an increase in the value of land adjacent to the railway and by the encouragement of more settlers. Counsel conceded that, while a reserve had been allocated to Māori at Helensville, nothing had been done at Riverhead. However, it was argued that the alleged promise of free travel was not clearly supported by the evidence. The Native Affairs Committee inquiry into the petition from Pāora Tūhaere in 1877 'concluded there were no promises of free passes'. Counsel also commented on the beneficial impact of the Kaipara railway: 'Overall, however, a significant asset had been created and completed by 1875, having cost the Government £63,269'.<sup>45</sup>

In relation to the Wai 279 claim, Crown counsel submitted that Māori welcomed the construction of the railway and gifted the land required in 1871, and that this indicated 'an acceptance of the proposed route'. However, counsel acknowledged that 'it appears that no compensation was paid for the subsequent takings of land under the Public Works Act for railway purposes'. Counsel also acknowledged that, while 'some of the land gifted has been

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43. Document Q1, pp 148–149

44. Ibid, p 150

45. Document Q16, pp 95–97

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revested in the descendants of the original owners, it [the Crown] accepts that some of the land taken was not returned to the owners when no longer required for railway purposes.' Counsel also noted that some, however, was 'used for the purpose of other public works'.<sup>46</sup>

**8.3.4 Tribunal comment**

It was acknowledged by all concerned that the Ngāti Whātua gift of land for the Kaipara railway in 1871 was a major contribution to the economic development of the Kaipara district that would benefit both local Māori and Pākehā settlers. There is insufficient evidence, however, to support the alleged Crown promise of three years of free travel for Māori, and we do not accept this aspect of the claim. The Crown has acknowledged its failure to provide a reserve at Riverhead (outside the Kaipara district inquiry area) and the cancellation of the Helensville reserve. As for the assertion that Māori lands on the western bank of the Kaipara River were preferred over Pākehā settlers' lands on the eastern bank, we have no evidence to support this. It could be argued that settlers on the eastern bank would have preferred direct access to the railway.

It is agreed that no compensation was paid for the Woodhill deviation land taken in 1888, but the question of its return is not so clear-cut. Pukekauere was sold into private ownership before 1900. On the evidence presented to us, we are unable to determine which, if any, parts of the Te Kēti A block taken for railway purposes are still Crown land and no longer required for any public purpose. If there is any such land, we consider that it should be returned to the Māori owners of the block at no cost to them.

We consider that the gift of land for the Kaipara railway indicates the willingness of Ngāti Whātua to engage in the developing economy of the Kaipara district, and that both this and the gifting of the Helensville courthouse reserve represent a substantial contribution by Ngāti Whātua to the development of southern Kaipara in the 1870s and beyond.

**8.3.5 Findings**

We make the following findings on the Kaipara railway:

- ▶ In 1871, Ngāti Whātua donated most of the land taken up by the Kaipara railway and its railway stations south of Helensville to Riverhead.
- ▶ We have no evidence to substantiate an alleged promise of free travel for Ngāti Whātua.
- ▶ A promise was made on behalf of the Crown to create reserves and to provide accommodation for Māori at each terminus of the line. A one-acre reserve was set aside within land already donated by Ngāti Whātua in the courthouse reserve in Helensville, and no

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46. Document Q16, p 108

reserve was created in Riverhead. The Crown failed to fulfil this promise, and it thereby failed to act reasonably and in good faith towards Ngāti Whātua.

- No compensation was paid for the Woodhill deviation land taken in 1888. If any of the land taken for railway purposes on the Te Kēti A block is no longer required for public works, it should be returned to the owners without cost to them.

#### 8.4 THE TAKING OF LAND FOR ROADS

We now consider the Crown taking of Māori land, without compensation, for public roads between 1874 and 1885. Two roads in particular are involved: what is now State Highway 16 on the Puatahi block and South Head Road across the Ōtakanini block. The issues related to each taking will be described under claimant and Crown submissions below, but first we outline the statutory provisions from 1862 on that empowered the Crown to take Māori land for the purpose of public roads.

##### 8.4.1 Statutory provisions

Under section 27 of the Native Lands Act 1862, the Crown could, on any land purchased from Māori, 'take and lay off for public purposes one or more line of public road for public purposes', in area up to 5 per cent of the land, but with no time limit. A general power for the Crown to take any land, whether Māori customary or freehold, or privately owned, for roads or for other public purposes was provided in the Public Works Land Act 1864, and in subsequent public works legislation. In the Native Lands Act 1865, the 5 per cent limit was retained in section 76 and applied to all Māori blocks for which title had been awarded by the Native Land Court, but with the additional provision that there was a 10-year limit from the date of a Crown grant to exercise this power. No compensation was payable. There was also a provision that excluded 'the taking of any lands which shall be occupied by any building gardens orchards plantations or ornamental grounds'. A similar provision was retained in subsequent Māori land legislation, although in section 14 of the Native Land Amendment Act (No 2) 1878, the duration of the Crown power to take land for roads was extended from 10 to 15 years from the issue of a Native Land Court title.

In 1927, these provisions for the Crown to take Māori land for roads without paying compensation were repealed by section 30 of the Native Land and Native Land Claims Adjustment Act. All subsequent takings of Māori land by the Crown for roads or other public purposes came under the provisions of the Public Works Act 1928 and its amendments, and compensation was required to be paid.<sup>47</sup>

47. For a review of public works legislation, see Cathy Marr, *Public Works Takings of Maori Land, 1840–1981*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1994), pp 63–72.

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**8.4.2 Claimant submissions**

Counsel for the Wai 312 claimants stated that Ngāti Whātua at Puatahi (who, the Tribunal notes, also identify with Ngāti Hine as their hapū) ‘were happy to give their consent to the construction of the road’ now known as State Highway 16. However, a dispute arose when the route was surveyed through part of the kainga without any consultation with local people, who then protested. The ‘road was constructed, through the middle of the Puatahi kainga’. In 1887, the Native Land Court awarded £70 to the Māori owners in compensation.

The South Head Road was proposed in 1880 across the Ōtakanini block, which was then still customary land. Local people sought compensation, but none was paid. When the title was investigated by the Native Land Court in 1906, the road route on the land was declared public road.

Claimant counsel concluded that these two examples illustrate the ‘highhanded manner with which the Crown was treating Ngāti Whatua by the end of the nineteenth century’, and were ‘clearly in breach of the Crown’s obligation to act in good faith.’<sup>48</sup>

**8.4.3 Crown submissions**

Crown counsel noted that roading issues in the nineteenth century were largely a function of local government, and central government had a limited role. Moreover, nineteenth-century county councils and road boards did not normally pay compensation, whether to Pākehā settlers or to Māori owners, for roads constructed across their land, because it was argued that the owners benefited from this.<sup>49</sup>

On the Puatahi road dispute, counsel noted that local Māori happily agreed to the construction of a road, but ‘geography dictated the line of the road’. Construction was delayed while the matter was sorted out, compensation of £70 was paid to the owners of the Puatahi block, and there was no subsequent protest.

On the South Head Road dispute, counsel suggested that the reason for the opposition to the proposed road on the Ōtakanini block was not known and that this road ‘was not put through until the 1900s’. Given the previous Ngāti Whātua attitude, which welcomed road construction, counsel proposed that ‘a principal grievance of Kaipara Maori in the late 1870s and early 1880s was the fact that the land was subject to rates’ but did not elaborate on this suggestion.

**8.4.4 Tribunal comment**

While the taking of land for road construction or improvement was mentioned by many claimants, we were given only these two examples, both in the Wai 312 claim. It was not

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48. Document Q1, pp 151–152

49. Document Q16, pp 97–99

explained to us why the roads on the Puatahi and Ōtakanini blocks were raised as specific issues when many other Māori blocks in southern Kaipara were affected by Crown takings for roads laid out over them.

At Puatahi, compensation was paid, but that was probably because the land affected was cultivated gardens and part of Puatahi kainga, and because no alternative route was feasible. The South Head Road at Ōtakanini was treated no differently from other roads laid out over other Māori blocks, for which no compensation was paid. The argument that the local community benefited and therefore payment of compensation was not required was applied to both Māori and Pākehā in the nineteenth century. We do not know how much Māori land was acquired by the Crown under the provisions of the Native Lands Acts before 1927.

#### 8.4.5 Finding

On the question of the taking of Māori land for public roads, we find that the legislative provision allowing up to 5 per cent of a block of Māori land to be set aside without compensation for public roads meant that an undefined area of land was donated by Ngāti Whātua for public use, in addition to the donations of the Helensville courthouse reserve and the Kaipara railway land.

### 8.5 LOSS OF LAND IN THE NINETEENTH CENTURY

A major issue in Wai 312 and all the southern Kaipara claims is the loss of land, and figure 34 illustrates very clearly that substantial losses had occurred by 1900. We have calculated that Crown purchases before 1865 came to 131,866 acres, with another 50,812 acres purchased between 1865 and 1878, and a further 82 acres in 1890, meaning that a total area of 182,760 acres had been acquired by the Crown before 1900. Private sales from 1864 to 1900 amounted to 63,658 acres. The total area sold in the southern Kaipara inquiry district by 1900 was therefore 246,418 acres. Stirling estimated that the land remaining in Māori tenure in 1900 included some 15,000 acres of Māori freehold land and about 23,000 acres in customary tenure. Much of this total of 38,000 acres was also alienated in the early twentieth century, as is described in the following chapters.<sup>50</sup>

The central question, however, is why Ngāti Whātua sold such a large area. The argument put forward by historian Philippa Wyatt, for the Wai 312 claimants, to explain the willingness of Ngāti Whātua to sell land between 1840 and 1865 was based on the assumption that an ‘alliance’ had been forged between Ngāti Whātua and the Crown when they invited Hobson to establish his colonial capital at Auckland in 1840. We have already found, in section 6.3.6, that we are not required to consider any alleged relationship beyond the terms of the Treaty

50. Document F8, p 2



Figure 34: Land alienation in southern Kaipara, 1840–1900



itself. However, we examine now the Wai 312 claimants' arguments about how Ngāti Whātua viewed their ongoing relationship with the Crown between 1840 and 1900, and why it may have led to the sale of such a large area of land.<sup>51</sup>

According to Wyatt, Ngāti Whātua expected that the Crown would stand as 'their parent, or the protector and guardian of their interests' and that the Queen and her agents would 'also actively advance their position'. This was the basis of their support for and loyalty to the Crown from 1840 on. Wyatt also suggested that there 'was a fundamental conflict between the advancement and protection of Maori interests and the views and aspirations of the Government and settlers'.<sup>52</sup> By the late 1860s, as 'the dominance of the settlers increased, so too did the need to maintain the support and cooperation of Ngati Whatua'. Wyatt concluded that 'Ngati Whatua gradually became aware that while the immediate benefits offered by the Crown were important, these were 'worth little without the power to determine policy and to invest their own views and interests into the structures and institutions that governed'.<sup>53</sup>

The theme of an 'alliance' between the Crown and Ngāti Whātua also provided the context for Stirling's research reports on the period between 1864 and 1900.<sup>54</sup> He suggested that over this period Ngāti Whātua had:

maintained and strengthened their hold over their lands through the judicious fostering of an alliance with the Crown; welcomed, adapted to, and benefited from the early expansion of settlement around Tamaki-Makaurau and southern Kaipara; seen themselves swamped by uncontrolled Pakeha settlement.

Despite the staggering pace of change [since 1840] Ngati Whatua made astounding efforts to adapt their social and economic structures to a rapidly changing world. They were, however, overwhelmed by the land sharks, costly surveyors, sharp lawyers, unscrupulous shopkeepers, and wily settlers, all of whom were empowered by the Native Land Acts, just as Ngati Whatua were disempowered by them. These laws undermined the communal basis to their society and their key economic asset. Finally, Ngati Whatua were also undone by the Crown, which acted not as their partner in coming to terms with colonisation but rather as the agent and facilitator of these damaging new forces.<sup>55</sup>

In responding to Stirling's report, Goldstone suggested that the historical evidence presented by the claimants regarding 'the operation of the Native Land Court and the process of land selling in southern Kaipara' was exaggerated. Goldstone concluded that it was not in dispute that by the early twentieth century Ngāti Whātua were 'almost landless', but he

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51. Document F4(d), p 2

52. Ibid, p 6

53. Ibid, p 7

54. Documents F5, F8

55. Document F8, pp 457, 459

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suggested that ‘the historical process by which this came about would appear to be a great deal more complex.’<sup>56</sup> We agree. The relation of land loss to the socio-economic condition of Ngāti Whātua in 1900 is a complex matter. Interpretation may range from regarding Ngāti Whātua as hapless victims of Crown policy to the suggestion that, by recklessly selling land, Ngāti Whātua were the architects of their own misfortune. The reasons lie in the sum of many factors, and we have insufficient evidence about a number of them. But all parties agree that by 1900 Ngāti Whātua had lost most of their traditional land base.

We consider that the situation of Ngāti Whātua by 1900 must be viewed against the broader context of New Zealand’s social and economic conditions in the nineteenth century. At this point, we note Goldstone’s warning about the interpretation of the nature of government and the role of the Crown:

Quite simply, it was not the role of the State alone in the nineteenth century to provide roads, schools, or other social services. This was more properly regarded as the preserve of parents, locally elected boards raising their income from rates, and charities. Government would simply facilitate these groups, and heavily subsidise them, but their organisation was at a local level. The kind of central economic planning and intervention demanded by claimant historians for Ngāti Whātua was unthinkable in the nineteenth century. The idea that nineteenth century bureaucracy (with barely 400 civil servants nationwide by the 1870s) was capable of implementing such programmes is unreasonable. It is anachronistic to expect nineteenth century people to have behaved (let alone thought) like twenty-first century people.<sup>57</sup>

However, the question we need to consider here is whether the Crown could have done more for Ngāti Whātua in the nineteenth century.

Crown counsel suggested that there were social and economic factors at work within Ngāti Whātua and external forces over which the Crown had little control, all of which contributed to the situation Ngāti Whātua found themselves in at the end of the nineteenth century. By the 1880s, many of the strong leaders of Ngāti Whātua had died, and no obvious leaders had emerged by 1900. Changing economic circumstances, including reduced employment in the timber trade and in gum-digging, contributed to Ngāti Whātua poverty in the 1890s. Crown counsel commented:

The reasons for diminution of tribal control are complex and that diminution cannot be accounted for simply by Crown actions.

It is likely that the sale of land may have reduced the influence of tribal leaders; the impact of Christianity probably had its part to play; the adoption of a cash economy by Maori and the elimination of tribal warfare may have also been factors.<sup>58</sup>

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56. Document P1(d), pp 3–4

57. Document P1, p 197

58. Document Q16, p 64

Counsel concluded that by 1900 Ngāti Whātua had gained little from the previous decades of land sales and leases and that any material shift in their fortunes would have required ‘significant government intrusion’, such as requiring Ngāti Whātua to invest rather than consume the proceeds from land sales, gum-digging, or the timber trade. The outcome for Ngāti Whātua in 1900 was that ‘the potential for any collective action over land management had seriously diminished and there was an absence of capital to develop lands.’<sup>59</sup>

Through the nineteenth century, Ngāti Whātua had remained loyal to the Crown, participated actively in the developing economy, sold land for settlement, and welcomed Pākehā settlers. Ngāti Whātua also gave land for public purposes, including the land for most of the roads in southern Kaipara, the railway between Helensville and Kumeu, and the courthouse reserve in Helensville itself. Their reasons for doing so are indicated in the comments made by Maata Tira Koroheke in advocating the donation of land for the railway in 1871: ‘It will do good. Our land will rise in value. We can travel quickly, provisions and clothing will be cheap, and Europeans will come to dwell amongst us. Kaipara will come to be a dwelling place of chiefs, as Auckland now is.’<sup>60</sup>

Initially, local Māori found employment on Pākehā farms, but over time, as the farms were developed, Māori and Pākehā competed with each other to sell produce, especially in the depression years of the 1880s. By the late 1880s, the income available from working in the bush felling timber or digging for gum dwindled. The Pākehā settlers then held most of the good land and were poised to participate in the developing dairy industry. As at 1900, Ngāti Whātua had lost most of their land but had not derived much benefit from the colonial economy, and most were poverty-stricken, eking out a subsistence living on the small scattered remnants of their ancestral estate. As will be seen in the following chapters, the Ngāti Whātua land base was further eroded in the twentieth century, and life in the Māori communities of southern Kaipara remained on the margins of economic development.

At this point, we need to step back a little and consider whether the new tenure regime imposed by the Native Lands Acts in the 1860s and the individualisation of Māori interests in land contributed significantly to the subsequent alienation of that land. The Turanga Tribunal considered the relationship between land loss and poverty in the Gisborne district and remarked:

We are left to conclude that Maori communities could not have withstood the introduction of an aggressive land purchase market if armed only with the land tenure system provided under the 1873 [Native Lands] Act. In fact, no population could have.<sup>61</sup>

The creation of individual, disposable interests in land and a complex legal regime operated by the Native Land Court – a process not controlled by Māori and based on English

59. Ibid, p 65

60. Document P1, p 80; doc F8, p 181

61. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 521

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legal concepts, not tikanga Māori – inevitably led to land sales, landlessness, and poverty. The Turanga Tribunal concluded that the statutory regime of the 1870s ‘led Māori to sell lands individually, which they could never have sold collectively’, and that the Crown failed to provide any effective provision for the community management of land. The Crown ‘was aware of the risks of landlessness and title fragmentation which the system presented and was recklessly indifferent to them.’<sup>62</sup> The Turanga Tribunal also considered that the processes reviewed in the Gisborne district applied generally in the North Island in the later nineteenth century.

The Turanga Tribunal concluded that ‘the extremely high level of land alienation in Turanga and the equally low level of Māori participation in alternative capital investment were effects of the system of tenure provided under the Native Lands Acts’. It did not accept that the alienation of some 70 per cent of the Māori land base of the Gisborne district was the result of the actions of willing sellers. The sales were ‘not the result of conscious choices made by Māori communities selecting from a range of reasonable alternatives’: Turanga Māori were ‘pushed’ into the only option of sale ‘by the structure and objectives of the native land system’ imposed by legislation without Māori consent. The Turanga Tribunal found that Māori landowners were subject to ‘unbearable statutory pressure to sell’ and that this pressure was ‘inconsistent with the Crown’s fiduciary obligation to Māori and its related obligation to actively protect the Māori interest.’<sup>63</sup>

The conclusions in the Turanga report are relevant to Kaipara, where land transactions were carried on under the same legal regime. Furthermore, Kaipara is reasonably close to Auckland, known as a major centre for Māori land purchases in the 1870s and 1880s. The market pressures to sell were significant for Kaipara Māori. There were few other sources of significant income for them, and by the late 1880s employment in timber extraction, in gum digging, or on public works or local Pākehā farms had dwindled. Individualisation of interests did not create individual title for a Māori family to develop a farm as settler families did. Individualisation often created titles with multiple owners of individual, undivided interests. There was no mechanism for creating a governance structure for the corporate management of Māori lands until the Native Land Court Act 1894 provided for Māori incorporations. But that came too late for Kaipara Māori.

The system of succession to individual interests, from both male and female lines by all children, served to fill titles with even more owners of even smaller interests over successive generations, and the partitioning of blocks among owners did not solve this problem. A greater number of smaller and often economically unviable blocks was created, fragmenting parent blocks which might have been managed communally for the benefit of whānau or hapū. Moreover, there was no mechanism to finance corporate Māori farming or other activities, nor any educational programme to encourage Māori to participate effectively in

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62. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, p 532

63. Ibid, pp 536–537

the new economic order created by Pākehā settlement. It was not sufficient to assume that Māori would simply learn by example from their Pākehā neighbours, although a few did try.

In our view, the revolutionary system of land tenure imposed on Māori in the 1860s, without their consent, was a cause of landlessness and poverty among Kaipara Māori by the end of the nineteenth century. We acknowledge that wealth is not necessarily measured by land ownership, nor is the possession of land a guarantee of prosperity. But land does form a basis for creating wealth. In section 7.4, we referred to various ratios of population to land area, including section 24 of the Native Lands Act 1873, which prescribed that 50 acres should be reserved for every Māori man, woman, and child. These numbers do not, however, provide the answer or remove from the Crown the responsibility of ensuring that sufficient land was retained to meet the present and future needs of Kaipara Māori. Land provides the base for creating wealth, but only where the owners have access to the capital, technology, and expertise needed to create it. Kaipara Māori communities in 1900 had none of these available to them.

#### 8.6 FINDINGS ON THE NATIVE LAND COURT AND LAND SALES

We make the following findings on the impact of the Native Land Court and land sales in southern Kaipara between 1865 and 1900:

- ▶ The Native Land Acts of 1862 and 1865, which established the Native Land Court, imposed a tenurial revolution on Kaipara Māori, without consultation or their consent, and had a profound effect on the relationship that Ngāti Whātua had with all their lands. One serious effect of this was the loss of control of the management of Māori lands to the title investigation and other functions of the Native Land Court judge.
- ▶ The allocation by the court of individual, undivided interests in Māori land created individual, disposable, property rights, quite foreign to customary Māori tenure based on collective rights of use and occupation of land. Furthermore, the 10-owner system of allocating interests had the potential to disinherit a number of Kaipara Māori. However, no evidence was presented to us as to its actual effect, if any, in the Kaipara region.
- ▶ Section 24 of the Native Land Act 1873 provided for reserves of 50 acres per person, but the legislation governing Native Land Court operations generally failed to prevent the loss of communally held land (including that subject to restrictions on alienation), which might have provided a base for the future benefit of Kaipara Māori communities.
- ▶ The legislation governing Native Land Court operations also allowed for the direct private purchasing of individual interests in Māori land, and thus Māori were subjected to considerable market pressures to sell their interests. However, we have insufficient

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information about the costs of land court processes, surveys, and other expenses to determine the extent and significance of debt as a factor in sales of land interests, although anecdotal evidence suggests that debt was a factor in some transactions.

- ▶ Given all the pressures to sell interests in land, we find that it is not reasonable to assume that all the individual transactions in Kaipara were made by willing sellers. A free market in Māori land was created without arming Māori with the knowledge, independent legal advice, and expertise to participate effectively in the developing colonial economy in Kaipara.
- ▶ By imposing the legislative regime which governed Māori land tenure and the Native Land Court, the Crown failed in its fiduciary duty, set out by Lord Normanby in his instructions to Lieutenant-Governor Hobson and in the guarantees in the Treaty of Waitangi, to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities.
- ▶ In section 8(e) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged 'that the operation and impact of the Native land laws . . . had a prejudicial effect on those of Te Uri o Hau who wished to retain their land and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'. The Crown also acknowledged that 'the awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau'. In section 8(f), the Crown acknowledged that:

this loss of control over land has prejudiced Te Uri o Hau and hindered the economic, social, and cultural development of Te Uri o Hau. It has also impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.

We find that Ngāti Whātua in southern Kaipara were similarly prejudiced by the effects of these generic issues, as set out in the above acknowledgements to Te Uri o Hau of northern Kaipara.

## CHAPTER 9

### SOUTHERN KAIPARA MĀORI AND WOODHILL FOREST

#### 9.1 INTRODUCTION

In this and the following chapter, we address the further loss of Māori land in southern Kaipara after 1900. This chapter focuses on the issue that loomed largest in the minds of all the claimant groups: the sand-dune reclamation and later development of Woodhill Forest on the western coast of Kaipara South Head Peninsula from the 1920s. A substantial area of Māori land there was acquired by the Crown in the 1930s for sand-dune reclamation and later became the nucleus of Woodhill Forest. The issues relating to the Crown's continuing acquisition of land for the forest are complex and intertwined, involving several claimant groups. We therefore leave our discussion of these issues until later in this chapter, after describing the land acquisition process.

#### 9.2 THE GENESIS OF WOODHILL FOREST

Woodhill Forest now covers an area of about 36,000 acres (14,570 ha) of sand dunes up to seven kilometres wide and extending north for over 37 kilometres, from Muriwai to Kaipara South Head (fig 35). The forest began with a planting scheme to stabilise moving sand dunes that were encroaching on developed farm land, but it was not until the 1950s, after the New Zealand Forest Service took over, that a viable commercial pine forest evolved. In the process of sand-dune reclamation, a number of Māori-owned blocks were acquired by the Crown. Most of the claimant groups in southern Kaipara view this acquisition as a grievance. They also cite the alleged failure of the Crown to protect wāhi tapu, including urupa, and to preserve traditional access to the resources of the sand dunes, lakes, and swamps, and to the kaimoana of the western coast, by shutting them out of the lands included in the reclamation programme from the 1920s on. A further grievance is the later transfer of forestry rights in Woodhill Forest to a private timber company without consultation with Māori.



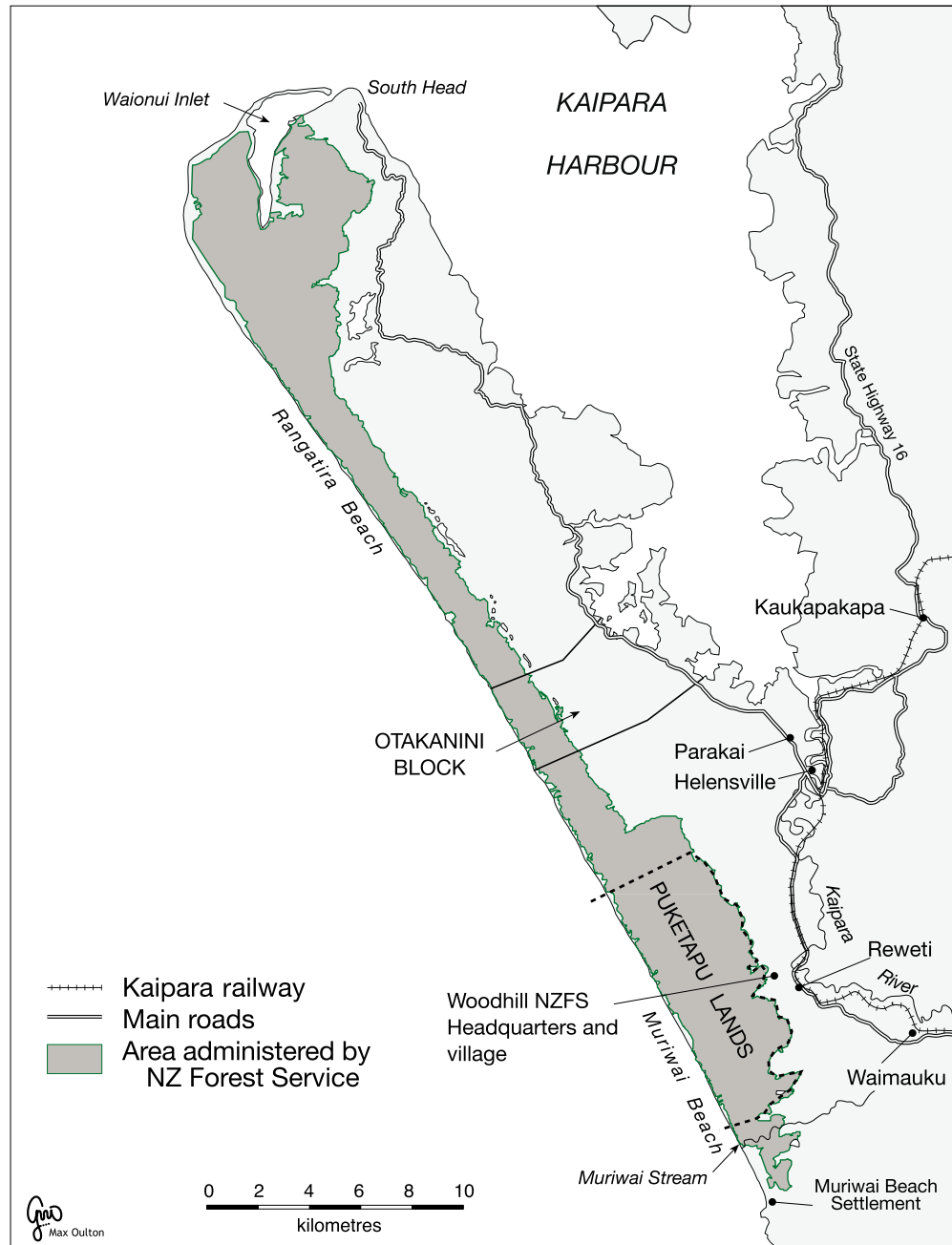


Figure 35: Woodhill Forest

### 9.2.1 A fragile ecosystem

The sand-dune complex on the western Kaipara coast is made up of sands that have been carried north from the mouth of the Waikato River by a littoral current over the past 15,000 years. These dunes have been deposited on the western flanks of older, well-weathered dunes built up over the previous million years to form the fertile, sandy loam soils of South Head

Peninsula. Māori occupation of the area was based largely on this older dune system, where kumara grew well and taro flourished in the swampy valleys. Archaeologist and claimant researcher Wynne Spring-Rice suggested that the peninsula was once covered in a predominantly coastal broadleaf forest and that fires, whether accidental or the result of natural causes, were probably 'the major means of prehistoric forest destruction'. Māori practised a form of swidden agriculture, whereby a plot of land would be cleared by burning the vegetation cover, with the ash providing temporary additional fertiliser. The ground would be cultivated for a few seasons and, when crop production dwindled, a new plot would be cleared in the same way and the old one left to regenerate. If this fallow period was too short (about 70 years could be required for the beginning of forest cover), stands of bracken fern could become dominant, as occurred in some areas in Kaipara. In other areas, almost pure stands of kanuka evolved. The pattern is variable, but there is some evidence that by the early nineteenth century unstable dune sands, blown by the prevailing westerly wind, overtopped the lower parts of the central ridge of older dunes and spilled into the fertile eastern valleys. At least three pa were partly overwhelmed.<sup>1</sup>

The arrival of Pākehā settlers with their cattle and sheep, and the introduction of rabbits, possums, deer, and pigs that lived in the wild, provided a greater threat to the stability of the dunes complex. According to botanist Leonard Cockayne:

The early settlers, tempted by the numerous extensive well-grassed sand-plains, made use of them as grazing-grounds. Also, in order to make room for better growths, they burned the 'rushes' and shrubs which appeared to be occupying good ground. Moreover, the cattle and sheep did not confine their attention to the flats, but, as food got scarce, wandered over the dunes, breaking the surface, and pulling up some of the sand-binding plants. The result was soon manifest. The unstable hills turned into wandering dunes, the fertile flats were buried with sand, and desert conditions grew apace.<sup>2</sup>

In concluding her review of Māori settlement on South Head, Spring-Rice commented that over nearly 700 years there had been:

a progression from a rich and varied environment with its abundant resources of land, forest and sea, to a present-day deforested, eroded, alienated landscape with its two *Pakeha* monocrops, pines and grass; to a few miserable possum, pig and deer modified forest remnants; to over exploited marine resources, eutrophied lakes and drained swamps; and the destruction of a very large part of both the cultural landscape and heritage.<sup>3</sup>

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1. Document H2, pp 11–13

2. Leonard Cockayne, 'Report on the Sand Dunes of New Zealand: The Geology and Botany, with their Economic Bearing', AJHR, 1909, C-13, p 15

3. Document H2, p 27

**9.2.2 Crown policy on sand-dune reclamation**

By the end of the nineteenth century, the threat to farmlands from drifting sand in several coastal areas of the North Island was recognised, but little had been done about it. Under the Sand-drift Act 1903, upon the petition of a local authority or two or more interested persons, the Governor could proclaim a district a 'sand-drift area.' A sand-reclamation scheme could be implemented by the Department of Lands or a local authority, but the costs were to be borne by the occupiers of the affected land. The 1903 Act was replaced by the Sand-drift Act 1908, but no effective reclamation projects came out of it. One reason was that many problem areas were Māori land in multiple ownership, and the owners had no resources to pay for an expensive replanting programme.<sup>4</sup> Nor were Pākehā farmers interested in paying additional rates and they pressed for a comprehensive Crown-funded reclamation scheme.

In 1908, the Department of Lands commissioned Cockayne to report on stabilising the drifting sand dunes.<sup>5</sup> It was not until 1919, however, that, following Cockayne's recommendations, the first experimental planting of marram grass and tree lupins began at Woodhill in southern Kaipara. This work was done on Crown lands by the Department of Lands, funded from the public works vote. In 1921, the Minister of Lands approved the proclamation of the western Kaipara coast under the Sand-drift Act 1908, but this was delayed while the Native Land Court investigated title to the Puketapu lands, which extended north along the coast from Muriwai and were then still in Māori customary ownership.<sup>6</sup>

Reports on sand-dune reclamation work sent to the commissioner of Crown lands regularly complained that the plantings of marram grass and lupins were being destroyed by trespassing stock and by farmers who lit fires to clear scrub. Because much of the land was not yet owned by the Crown, however, Government officials had no powers to control other activities on the land being planted.<sup>7</sup> Thus, during the 1920s, the Waitemata County Council, local farmers, and other organisations lobbied the Government to acquire control of the Puketapu lands so that the sand-dune area could be planted and fenced off. The commissioner had already urged the compulsory acquisition of the Māori blocks involved, and in April 1921, the Native Land Purchase Board resolved to begin this process by calling meetings of owners. Proclamations had been issued under section 363 of the Native Land Act 1909 preventing alienation except to the Crown in the case of the Whenuanui 4, Puketapu South, and Kopironui B2D2 and B2E1 blocks from 1920, and these were renewed at regular intervals until the 1930s.<sup>8</sup> We outline the prolonged process of acquiring these four blocks, and Puketapu, in the next section.

4. Peter McKelvey, *Sand Forests: A Historical Perspective of the Stabilisation and Afforestation of Coastal Sands in New Zealand* (Christchurch: Canterbury University Press, 1999), pp 28–29

5. Cockayne, pp 1–30; Leonard Cockayne, 'Report on the Dune-Areas of New Zealand: Their Geology, Botany, and Reclamation', AJHR, 1911, C-13, pp 1–76

6. Document F6, pp 291–292

7. Document O6, pp 23–26

8. Document F6, p 292

Not a great deal of reclamation was achieved on the sand dunes in the 1920s. The initial work required the establishment of a nursery for marram grass and the collection of lupin seed. Local Māori from Reweti were employed in these tasks. By the end of March 1922, just 142 acres of the estimated 35,000 acres of sand dunes had been planted in marram grass. By 1924, only another 20 acres of marram grass had been planted and some lupin seed sown. In the same year, responsibility for sand-dune reclamation was given to the New Zealand Forest Service, which in 1920 had reported to the Department of Lands that the steep Kaipara sand dunes would not be suitable for afforestation. The Forest Service was reluctant to get involved in expensive reclamation work at Kaipara which would stretch its funds beyond its established role of planting and logging commercial forests, and the reclamation work was closed down in 1925.<sup>9</sup>

However, lobbying by local authorities and adjacent farmers led to a review of this decision in 1928. Much of the Kaipara sand-dune area was by then effectively in Crown ownership, and about 15 adjacent farmers were willing to hand over their sand dunes without compensation for incorporation in a comprehensive reclamation scheme. Preparatory work to establish a new marram grass nursery was authorised in 1929, and the following year additional funding was allocated for planting as unemployment relief work. The Forest Service was still reluctant to spend money on sand-dune reclamation, the work so far having been funded by the Department of Public Works and executed by the Department of Lands, a situation Crown researcher Paul Goldstone described as 'a convoluted arrangement typical of the bureaucratic confusion and inertia that had effectively stalled sand dune reclamation since 1925'.<sup>10</sup>

The Forest Service's reluctance to spend money on sand-dune reclamation persisted through the 1930s, despite a constant stream of letters, petitions, and deputations from local authorities, farmers, and other organisations in Kaipara. There was still no comprehensive programme for the reclamation of the dunes until after September 1931, when Gordon Coates, the member of Parliament for Kaipara, was appointed Minister of Public Works in the new Coalition Government. The Department of Public Works was given responsibility for sand-dune reclamation work, which could employ some of the large number of unemployed people during the Great Depression.<sup>11</sup>

In 1932, planting of marram grass, which had begun in the Muriwai area, was extended north to Woodhill. Four camps were established and large areas planted in marram grass and lupins. The first planting of pine trees began in 1936, and by 1938 over 1000 acres had been covered. A pattern of sand reclamation was then established: a succession of marram grass and tree lupins, followed several years later by pines. Several European species had

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9. Document 06, p 21

10. Ibid, pp 39–41, 43

11. Ibid, p 48

9.2.2

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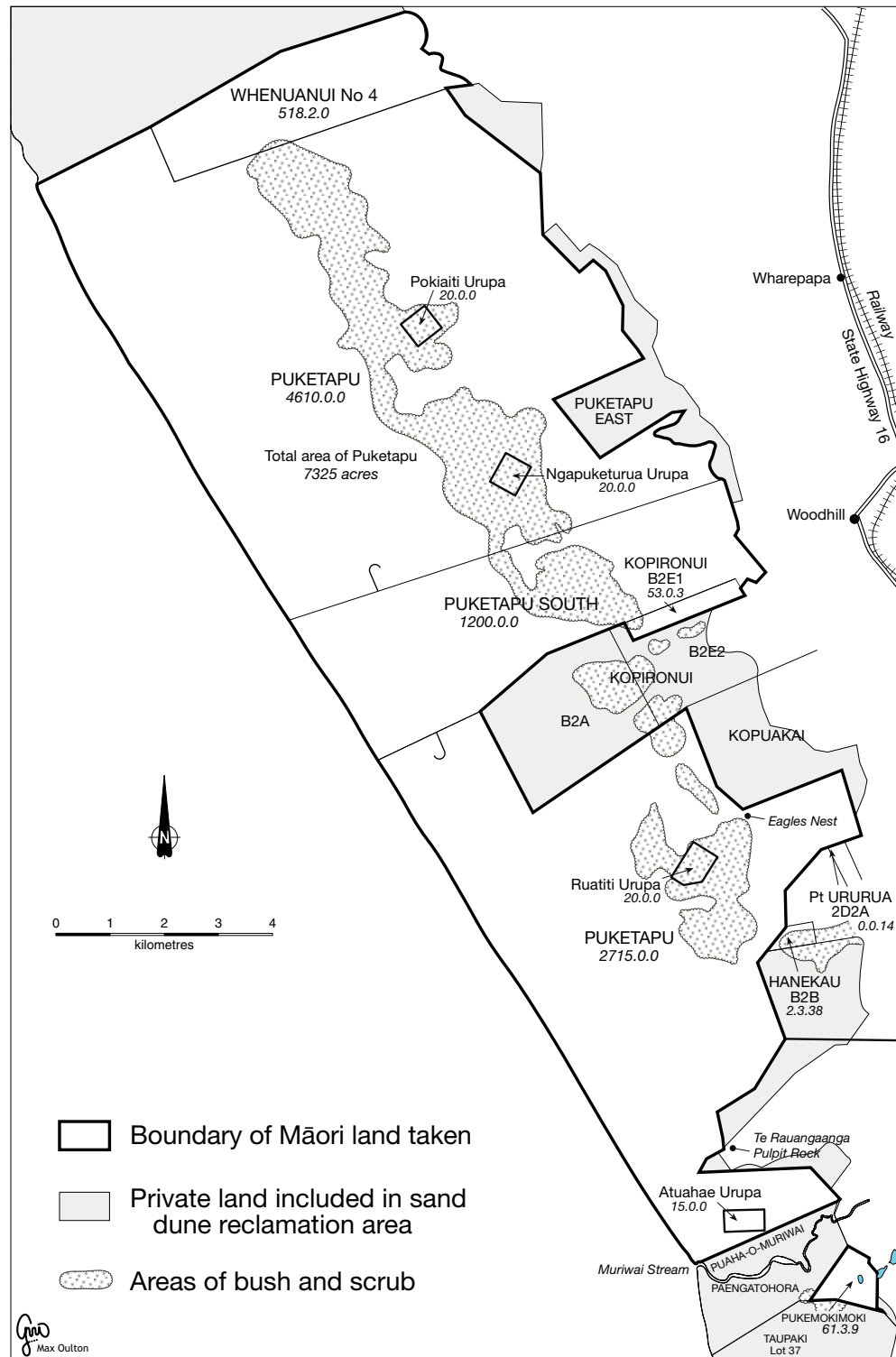


Figure 36: Puketapu lands taken for sand-dune reclamation purposes.

Source: New Zealand Gazette, 1934, no 79, p 3379.

been tried, but it was *Pinus radiata* from California that proved to be the most successful commercial forest species for stabilised sand dunes.<sup>12</sup>

In 1951, under the Forests Act 1949, the New Zealand Forest Service resumed responsibility for the stabilisation and afforestation of sand-dune areas. Former Forest Service official P McKelvey commented that, until the Forest Service became involved:

there had been no planning for subsequent permanent management. The result was that protection of marram grass cover and forest stands was often left a great deal to chance. Consequently there occurred much damage from trespassing farm stock, from sand encroachment due to inadequately stabilised foredunes, and from fire.<sup>13</sup>

After the Forest Service took over, policy shifted: planting programmes intended to stabilise areas of moving sand dunes and to protect adjacent land were replaced by the development of viable commercial pine forests. During the 1960s, the Forest Service negotiated a lease of 1680 acres in the remaining Māori-owned coastal lands of the Ōtakanini Tōpū Incorporation. In the 1980s, the New Zealand Forest Service was restructured, and the management and timber rights in Woodhill Forest were allocated to a private timber company, Carter Holt Harvey.

### 9.3 CROWN ACQUISITION OF PUKETAPU LANDS

During the 1920s, Crown officials began purchasing individual interests in the Whenuanui 4, Puketapu South, and Puketapu blocks. In 1934, the acquisition process was completed by the compulsory taking of the remaining interests in these three blocks, as well as Pukemokimoki, parts of Kopironui, and other small blocks, by proclamation under the Public Works Act 1928 (fig 36).<sup>14</sup> A summary of the various Puketapu lands included in the sand-dune reclamation scheme follows.

The Whenuanui block (1259 acres) was investigated by the Native Land Court in 1871 and awarded to nine owners. A restriction on alienation for 21 years was imposed, but this was lifted at the owners' request in the 1880s. In 1894, a lease for 21 years was granted to G Sydney-Smith. In 1901, the block was partitioned into seven pieces. Whenuanui 4 (458 acres), which comprised sand dunes at its western end, was vested in all the owners and was included in a series of proclamations from 1920 prohibiting alienation except to the Crown. The other Whenuanui blocks were further partitioned, and most were sold piecemeal from 1911 to

12. McKelvey, chs 4, 5

13. Ibid, p 46

14. 'Land taken for Sand-Dune Reclamation', 25 October 1934, *New Zealand Gazette*, 1934, no 79, p 3379

| Year (ending 31 March) | Cumulative percentage of interests acquired |                |             |
|------------------------|---------------------------------------------|----------------|-------------|
|                        | Puketapu                                    | Puketapu South | Whenuanui 4 |
| 1922                   | —                                           | 68.3           | 62.0        |
| 1926                   | 68.9                                        | 98.0           | 94.8        |
| 1932                   | 96.9                                        | 98.0           | 94.8        |

Table 22: Cumulative percentage of interests acquired by the Crown in the Puketapu, Puketapu South, and Whenuanui 4 blocks. Source: document F6, pp 298–299.

1960, until by 1998 only about 33 acres in approximately 10 separate small blocks at Te Pua remained in Māori ownership.<sup>15</sup>

The Puketapu South block (1200 acres) was investigated by the Native Land Court in 1905 and awarded to 17 Ngāti Whātua owners. Poata Uruamo told the Stout–Ngata commission that the owners wanted to lease the block, and a recommendation was made to vest the land in the Tokerau District Māori Land Board. However, no action towards a lease ensued, and in 1921 the first of a series of proclamations under section 363 of the Native Land Act 1909 prohibited any alienation except to the Crown.<sup>16</sup>

The Puketapu East block (153 acres) was investigated by the Native Land Court in 1908 and vested in only two owners (although 15 names had been submitted). The reason given to the court was that a sale to the neighbouring Pākehā farmer, H S Monk, had been agreed, and the transfer was subsequently completed in 1910. Monk later handed over 108 acres of the block (with no compensation) for inclusion in the sand-dune reclamation area in the early 1930s.<sup>17</sup>

The Puketapu block (7325 acres), extending both north (4610 acres) and south (2715 acres) of the Puketapu South block, remained Māori customary land until 1921, when the Native Minister applied to the Native Land Court for an investigation of title under section 14 of the Native Land Act 1909. This application was the result of Pākehā farmers on the eastern boundary lobbying the Government to do something about the sand drifting onto their pastures. The proclamation of all the sand dunes under the Sand-drift Act 1908 was delayed because the owners' names had not been determined by the court, although the Department of Lands had already begun planting marram grass on parts of the block.

The court awarded 7325 acres to 89 owners. Four small urupa blocks, totalling 75 acres, were excluded from the Puketapu block and were awarded to particular individuals as trustees: Pokiaiti (20 acres) was awarded to W W Tautari and M P Kawharu; Ngapuketurua (20 acres) was awarded to E Poata and P Tahana; Ruatiti (20 acres) was awarded to W W Tautari and Te Hira Pateoro; and Atuahae (15 acres) was awarded to O Paora and E Poata.

15. Document F3, pt 1, pp 83–90

16. Ibid, pt 2, pp 153–154

17. Ibid, p 156



The Crown had already indicated its interest in acquiring Puketapu, and a meeting of owners was called in November 1923 to consider an offer to purchase at Government valuation. The meeting had to be adjourned pending an appeal over the ownership, which effected no change. By 1925, rather than calling another meeting of owners, the Crown had begun negotiating with individual owners to purchase their interests, and it issued the first of a series of proclamations under section 363 of the Native Land Act 1909 prohibiting the alienation of Puketapu to anyone but itself.<sup>18</sup>

The Kopuakai block (309½ acres) was investigated by the Native Land Court in 1911 and awarded to four owners. It was sold in 1912 for £100.<sup>19</sup> The Paengatohora block (220 acres) was investigated by the Native Land Court in 1915 and awarded to six owners. It was sold the same year for £35, and in 1934 it was taken under the Public Works Act for sand-dune reclamation.<sup>20</sup> The adjacent Puaha o Muriwai block (50 acres), which had been sold before 1900, was also included in the reclamation area.

The Pukemokimoki block (61¾ acres) was investigated by the Native Land Court in 1871 and awarded to two owners. The Stout–Ngata commission recommended that the block be reserved for Māori occupation. It contained a significant area of sand but also a patch of bush and a small lake. The whole block was taken under the Public Works Act for sand reclamation in 1934.<sup>21</sup>

Small pieces of other blocks adjacent to Puketapu, such as Te Kēti, Kopironui, Hanekau B2B, and Ururua 2D2A, were included in the sand-reclamation area. Four other small blocks, Rangiahua (66 acres), Paekawau (73 acres), Parekura (56 acres), and Maroroa (28 acres), were still Māori land in 1900 but were sold before 1930 – Parekura in 1912, Rangiahua in 1914, Paekawau in 1917, and Maroroa, which had been vested in the Tokerau District Māori Land Board, in 1928.<sup>22</sup>

The Crown began purchasing individual interests in the Whenuanui 4 and Puketapu South blocks from 1921 on, and in Puketapu from 1925 on. Attempts to purchase interests in the Kopironui block were unsuccessful. By the 1930s, well over 90 per cent of the interests in the three large blocks had been acquired (see table 22). Over this period, proposals to take the land under the Public Works Act had been rejected by officials in favour of continuing to purchase the remaining individual interests from the owners. However, a few still refused to sell out of concern for the urupa on the Puketapu block, and some of the owners could not be located.

In 1932, applications were lodged with the Native Land Court to partition out the Crown's interests. The Native Department responded that a scheme for the consolidation of individual interests in Māori land was in progress, and it was likely that the remaining interests

18. Ibid, pp 157–163

19. Ibid, pt 1, p 117

20. Ibid, p 152

21. Ibid, pp 153–157

22. Ibid, pp 145–151

would be transferred elsewhere. However, some Māori opposed the consolidation scheme, and the Crown's applications were heard by the Native Land Court. According to the Crown representative, it was desirable to have the urupa areas partitioned out, considerable reclamation work had already been done on the sand dunes, and the Crown wanted to define its interests and secure control of the planting area. There was some discussion, unrecorded in the court minutes, and then the court summed up the proceedings before adjourning the hearing to await the production of a plan for the Puketapu and Puketapu South blocks:

The Court holds it is essential for the representatives of the Natives and of the Crown to meet on this land and attempt to settle by agreement the location and boundaries of the various urupas, also the access thereto, also the location and boundaries of the area for the non-sellers, also the roadline access to the Beach.<sup>23</sup>

A site inspection on 26 and 27 March 1934 included a Department of Public Works land purchase officer, a staff surveyor from the Department of Lands and Survey, and Eriapa Poata Uruamo, who was representing the Puketapu owners. Uruamo lived on the Te Kēti block and was the largest shareholder and trustee for several owners of Puketapu and a trustee for two of the urupa. The chief surveyor in Auckland reported to the Under-Secretary for Lands that Uruamo had located the four urupa and had stated that 'the natives had no objection to the urupa being taken for sand dune reclamation, provided they still retain the right to bury if necessary'. Access had been discussed, but 'it was considered highly detrimental to the success of sand fixation operations to allow any traffic of any kind over the areas, the two greatest dangers being fire and creation of wind funnels'.<sup>24</sup> The land purchase officer reported in a similar vein.

Almost immediately, it was decided to take the remaining Māori interests in the blocks under the Public Works Act. In June 1934, a notice of intention to do so was published in the *New Zealand Gazette* and the owners were notified by registered mail.<sup>25</sup> On 31 October 1934, a proclamation was issued taking the Whenuanui 4, Puketapu, Puketapu South, Kopironui B2E1, Kopironui B2D2, Ururua 2D2A, Hanekau B2B, and Pukemokimoki blocks under the Public Works Act 1928 'for sand-dune reclamation purposes' (see table 23).

A number of other privately owned blocks were also listed in the proclamation, including Paengatohora, Taupaki lot 37, small parts of Maroroa, and Ururua 2D2B. The Department of Public Works had also been negotiating with the neighbouring Pākehā farmers, most of whom willingly surrendered their sand-dune lands for the token payment of one shilling per farm, regardless of the area given. By 1934, some 3130 acres of Pākehā farms had been acquired for 31 shillings, with another 2320 acres gained by 1936 for 11 shillings. Goldstone

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23. Kaipara Native Land Court minute book 18, fol 354 (doc F6, p 302; doc O6, pp 63–64)

24. Chief surveyor to Under-Secretary for Lands, 5 April 1934, NA(A)BAA2 1109/399 3/38 (doc F6, p 303)

25. Document O6, p 67

| Block          | Area<br>(a r p) |
|----------------|-----------------|
| Whenuanui 4    | 516 2 0         |
| Puketapu       | 7325 0 0        |
| Puketapu South | 1200 0 0        |
| Kopironui B2E1 | 53 0 3          |
| Kopironui B2D2 | 3 3 5           |
| Ururua 2D2A    | 0 0 14          |
| Hanekau B2B    | 2 3 38          |
| Pukemokimoki   | 61 3 9          |
| Total          | 9166 0 29       |

Table 23: Land taken for sand-dune reclamation.

Source: *New Zealand Gazette*, 1934, no 79, p 3379.

suggested that this indicated ‘the extent to which sand dune country was seen as a liability at this time, rather than an asset’.<sup>26</sup>

The four urupa on the Puketapu block were not listed in the *Gazette* notice, but the Crown acquisition of these was validated in section 11(1) of the Reserves and Other Lands Disposal Act 1934. Pokiaiti (20 acres), Ngapuketurua (20 acres), Ruatiti (20 acres), and Atuahae (15 acres) were vested in the Crown ‘for the purposes of sand dune reclamation, subject to the right of aboriginal Natives interested in such land to bury deceased Natives therein’. In November 1934, a petition signed by Hariata Whareiti and 16 others was sent to Parliament objecting to the Crown taking away their rights to these urupa.<sup>27</sup> The petition was sent to the Native Affairs Committee for inquiry, and the Native Department sought answers to questions about the status of the urupa and access to them. But the Crown’s acquisition of the land and the four urupa had already been implemented, and issues of compensation for the land and access to the urupa, as well as to the beach, were left for the Native Land Court to resolve.

In May 1935, Judge Acheson in the Native Land Court heard the Department of Public Works’ application to assess compensation for the land taken for sand-dune reclamation purposes. A number of Ngāti Whātua people told the court of their concerns about the protection of the urupa and about access to the beach for toheroa and other shellfish and sea fish, which they relied on, especially during winter months. The concerns about the urupa were allayed somewhat by the provision in section 11(1) of the Reserves and Other Lands Disposal Act. However, there was still a major concern about the lack of any right of access across the sand dunes to the beach along traditional tracks, which were used by both local Māori and Pākehā.

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26. Ibid, p 62

27. Ibid, p 69

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The district engineer for the Department of Public Works was adamant that no public access to the sand-dune reclamation area should be permitted:

Certain tracks come down to the beach. One is at Porter's Gap over Puketapu South. It is a wind-funnel. Another is from Reweti from head of Lyon's Road. These tracks cause considerable movement of the dunes. We went to considerable expense in trying to put Porter's Gap right. I consider no tracks should be allowed through the area to be reclaimed. The natives can use the roads. No trespassing is allowed in other countries [in sand-dune reclamation areas]. Wandering cattle are shot. Drastic steps are taken in other lands to prevent damage. Maintenance must be continuous.<sup>28</sup>

The district engineer acknowledged that access to the four urupa would be allowed and gave his assurance that they would be protected. However, local people would have to take the road via Muriwai to get to the beach for their kaimoana, a distance of 14 miles from Reweti and 15 miles from Woodhill, in contrast with the four miles across the dunes. He suggested that riding to the beach by road via Muriwai and back could be done in one day.

The court was not satisfied with the denial of access across the dunes to the beach:

Court recognises that if the pasture lands threatened by the encroaching sand dunes are to be saved by reclamation it is essential for the Public Works Department or other reclaiming authority to be in full control of the sand area and to have the right to forbid traffic across it. The Court would have much preferred the Government officials to have gone to extreme trouble to provide at least one access route to the beach for food supplies but it cannot in the face of the evidence require such access to be given. The access to the beach by way of the sandhills [is] of great value to the Natives for the purpose of food supplies, but if the Court were to attempt to assess or guess at that value it would tend to debar the Natives from securing redress by Petition to Parliament. Further, there are no adequate means whereby the Court could accurately estimate the damage done to each and every Native owner by reason of the taking away of access to the beach for food supplies.

The court accepted that the beach was 'a great and continual source of food supply' and that the Crown's denial of access across the sand dunes would cause local Māori to suffer 'serious hardship' and 'a big financial loss'. The court then made a number of observations, noting that the Māori owners might well appeal or petition Parliament for some redress:

1. That the Treaty of Waitangi guaranteed to natives the rights of fisheries.
2. That the closing of access across the sandhills to the beach in effect and actual practice will entirely nullify the solemn promise given by the Treaty.

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28. Kaipara Native Land Court minute book 19, 10 May 1935, fols 351–353, DB25/2/18–20 (doc 06, p 70; doc F3, pt 2, p 167)

3. That the provision of a long route by main road is not a practicable access route for the great majority of the Natives accustomed to using the sandhills for access.
4. That the Proclamation [under the Public Works Act] ties the hands of the Court and prevents the Court from protecting the Natives in a manner which is of more importance to them than the mere assessment of damages.
5. That the Native Land Court does not believe it will prove impossible to give the Natives access across the sandhills without endangering the reclamation work. The importance of such access for securing food supplies for Natives should challenge the Public Works Department to find a means of safely giving such access.
6. That the objecting Natives are not objecting for the purpose of squeezing out a big sum as compensation but have a genuine need for the access and will suffer real hardship by its loss. Very few of them will benefit by the reclamation. The Europeans affected will benefit greatly.<sup>29</sup>

The court awarded compensation for the Puketapu, Puketapu South, and Whenuanui 4 blocks at the same level as prices paid earlier to other owners – up to seven shillings sixpence per acre, based on the earlier Government valuation. This was higher than the 1934 valuation of about two shillings sixpence per acre. Compensation was not awarded at this time for the Pukemokimoki and Kopironui blocks, because the court wanted new valuations. The owners of Pukemokimoki sought unsuccessfully to have the northern part of their block returned, since it was not subject to sand drift and it contained an old pa site and urupa. The Department of Public Works responded that the whole block, including the bush, was threatened, that there was no sign of any kainga, that the Atuahae urupa was nearby, and that the existence of another urupa on the block was doubted.<sup>30</sup>

For various reasons, compensation for the Pukemokimoki and Kopironui blocks was not determined until March 1946 (see table 24).<sup>31</sup> Although the awards far exceeded the Government valuation, the Crown did not appeal. The court probably took into account the length of time since the taking in 1934. However, no Department of Public Works application, Native Land Court hearing, or award of compensation seems to have been made for Hanekau B2B (nearly three acres) or Ururua 2D2A (14 perches).<sup>32</sup> A small piece of Ururua 2D1 (1½ acres) was taken for roading in 1950 and compensation of £24 was awarded.<sup>33</sup>

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29. Ibid, fols 363–366 (pp 72–73; pp 170–171)

30. Document 06, p 74

31. Ibid, pp 76–80; doc F6, pp 320–321

32. Document 06, p 80

33. Ibid, p 122

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| Block          | Area<br>(acres) | Government<br>valuation (£) | Award<br>(£) | Interest<br>(£) | Total<br>(£) |
|----------------|-----------------|-----------------------------|--------------|-----------------|--------------|
| Pukemokimoki   | 61              | 30                          | 175          | 122             | 297          |
| Kopironui B2D2 | 3               | 2                           | 19           | 10              | 29           |
| Kopironui B2E1 | 53              | 60                          | 140          | 98              | 238          |

Table 24: Compensation for the Pukemokimoki and Kopironui blocks

## 9.4 THE TE KĒTI AND KOPIRONUI BLOCKS

The Te Kēti and Kopironui blocks are centrally located on the eastern margin of the Puketapu sand dunes. There were numerous signs of former Māori occupation in several pa, urupa, kainga, and cultivations along this margin on higher ridges around the swampy flats of the Kaipara River valley (fig 37). Much of this area between the dunes and the river had been sold before 1900, and the land subsequently drained and transformed into pasture,<sup>34</sup> although significant areas of rough scrub remained where Pākehā farmers grazed their stock. A small kainga continued on Kopironui until the 1920s, and members of the Uruamo whānau remained in occupation of part of Te Kēti.

The first taking under the Public Works Act for sand-dune reclamation in Kaipara was the Woodhill 'sand-stop' in May 1920. In about 1913, a drain had been dug near the road access to the subsequent New Zealand Forest Service Headquarters at Woodhill. It probably followed the lower reaches of a natural watercourse which flowed into a flax swamp, a tributary to the Kaipara River. At the head of this stream, drifting sand had begun to flow into the stream-bed. The digging of the drain accelerated the flow of sand down the stream and into the Kaipara River, impeding its flow. The Waitemata County Council decided to acquire the flax swamp, and an area of about three acres adjacent to the road and railway in the Te Kēti and Kopironui blocks was acquired from its Māori and Pākehā owners to create the sand-stop.<sup>35</sup> While this reduced the flow of sand into the Kaipara River, it had no impact on the wind-blown movement of the dunes, which threatened the railway and road. The area taken was subsequently transferred to the Crown.

The Te Kēti block (107½ acres) was awarded by the Native Land Court in 1876 to members of the Uruamo whānau (fig 38). In the early 1870s, as discussed in chapter 8, the Kaipara railway was constructed across the block. In 1904, Te Kēti was partitioned into Te Kēti A (59 acres, less the 10 acres taken for the railway) and Te Kēti B (48½ acres, including a right of way from the main road along the southern boundary of Te Kēti A).<sup>36</sup>

34. 'Land Taken for Further Portion of Kaipara-Waikato Railway (Kumeu-Helensville Section)', 24 July 1884, *New Zealand Gazette*, 1884, no 86, pp 1161–1163; 'Land taken for the Woodhill Deviation of the Kaipara-Waikato Railway', 16 August 1888, *New Zealand Gazette*, 1888, no 45, p 873

35. Document F6, pp 262–264

36. Document F3, pt 1, pp 98–99

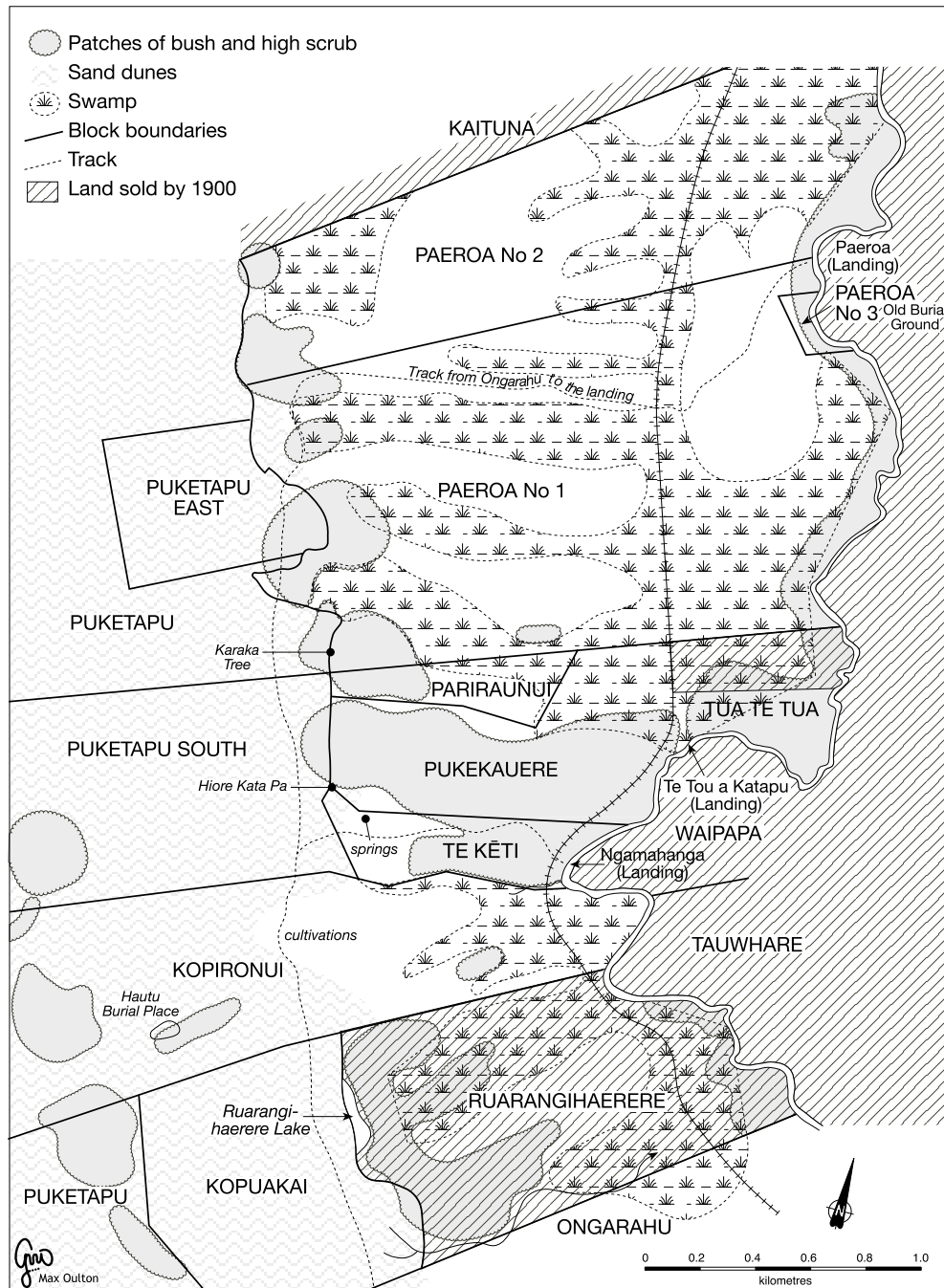


Figure 37: Te Kēti and Kopironui physical environment, circa 1900

Renata Poata Uruamo told the Stout–Ngata commission in 1908 that he owned Te Kēti A and leased Te Kēti B from his younger brothers, and that he had established a dairy farm, was milking 50 cows, and had 120 cattle, including calves. The commission recommended that the whole block be reserved for Māori occupation. Renata died in 1916 and was succeeded by Eriapa and Titiata Poata Uruamo. Titiata exchanged her share in Te Kēti A for



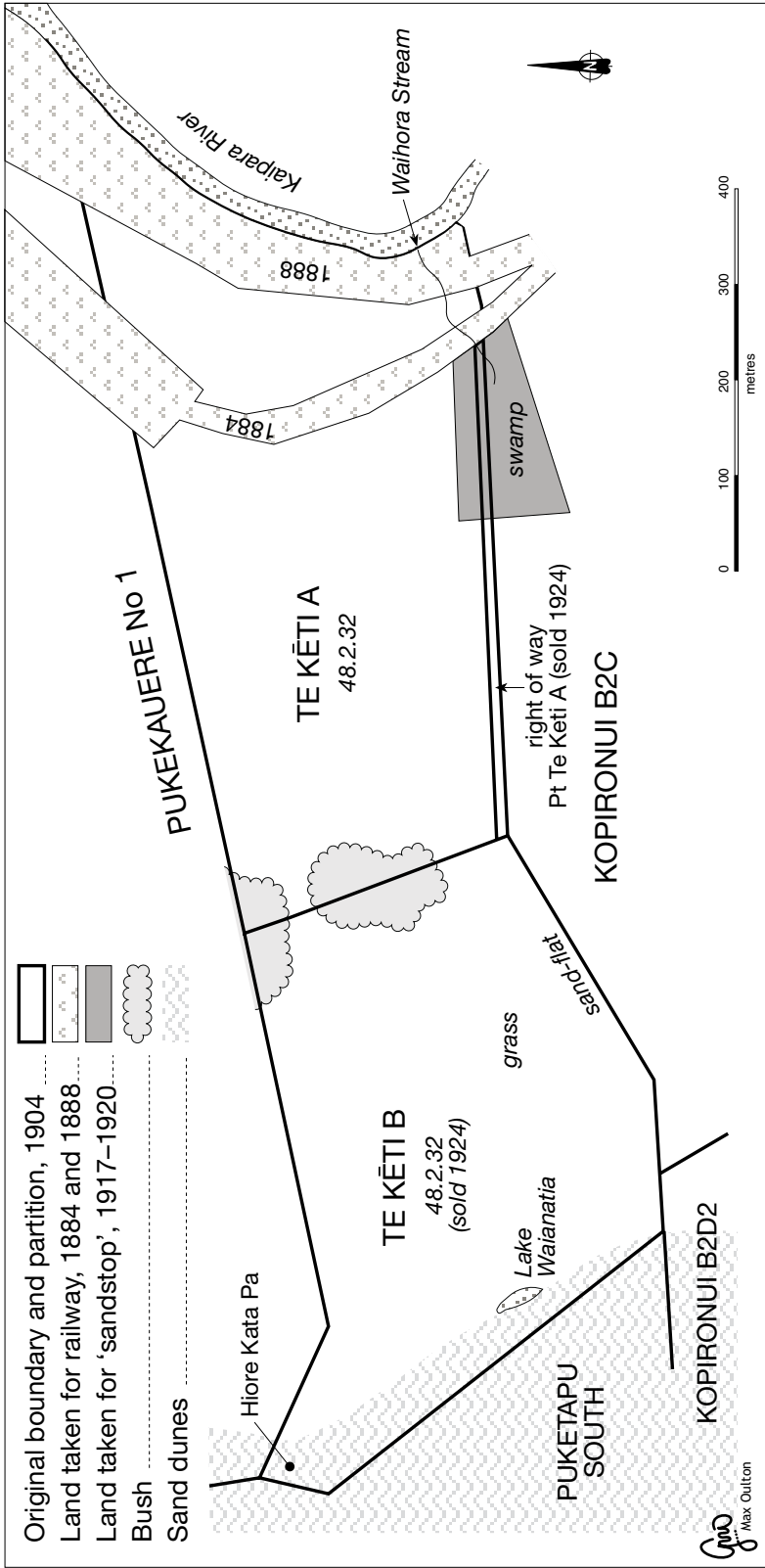


Figure 38: The Te Kēti block, circa 1920

## SOUTHERN KAIPARA MĀORI AND WOODHILL FOREST

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| Block | Area<br>(a r p) | Owners | Comments               | Block | Area<br>(a r p) | Owners | Comments    |
|-------|-----------------|--------|------------------------|-------|-----------------|--------|-------------|
| B2A   | 397 1 14        | 19     | Sold 1913              |       |                 |        |             |
| B2B   | 82 3 31         | 3      | Partitioned 1917 into: | B2B1  | 1 0 0           | 4      |             |
|       |                 |        |                        | B2B2  | 1 0 0           | 1      |             |
|       |                 |        |                        | B2B3  | 13 0 13         | 5      | Sold 1925   |
|       |                 |        |                        | B2B4  | 67 3 18         | 1      | Sold 1931   |
| B2C   | 84 2 21         | 10     | Sold 1912              |       |                 |        |             |
| B2D   | 30 0 0          | ?      | Partitioned 1912 into: | B2D1  | 3 3 36          |        |             |
|       |                 |        |                        | B2D2  | 25 2 9*         |        |             |
| B2E   | 279 2 16        | 1      | Partitioned 1914 into: | B2E1  | 53 0 10         | 1      | Leased 1913 |
|       |                 |        |                        | B2E2  | 226 2 6         | 15     | Sold 1914   |

\* Kainga

Table 25: Kopironui B2 block partitions and sales, 1911–31. Source: document F3, pp 107–116.

Eriapa's interest in Ōtakanini E1 in 1919. It is not known why Eriapa did not take over the lease of Te Kēti B, but from May 1917 it was leased through the Tokerau District Māori Land Board to one J Salisbury, who purchased the block in 1924.<sup>37</sup>

The larger Kopironui block (937 acres) extends from the Kaipara River westward, well into the sand dunes. By 1934, when the taking of Puketapu lands for sand-dune reclamation was proclaimed, most of the block had been sold, although in 1900 it had been all Māori owned (fig 39). The Native Land Court awarded title to seven owners in 1871. In 1885, the block was partitioned into Kopironui A (33.5 acres) and B (904 acres). In 1889, Kopironui B was partitioned into B1 (26 acres), with one owner, and B2 (878 acres), with nine owners. Land at the eastern end of Kopironui A and B1 had been allocated for the Kaipara railway, and the residue of these blocks was sold by 1900. A small additional area of Kopironui B2 was acquired for the Woodhill railway deviation in 1888.

In 1908, Te Kihirini Reweti told the Stout–Ngata commission that Ngāti Whātua people were in occupation of the Kopironui B2 block and had homes and cultivations there and some paddocks in grass. The commission recommended that the block be reserved for Māori occupation. However, between 1911 and 1917 it was partitioned further, and there were more sales between 1912 and 1931. The partitions and sales are shown in table 25.

In 1920, about three acres of Kopironui B2C and Te Kēti were taken by the Waitemata County Council for the sand-stop. In 1934, Kopironui B2E1 and part of Kopironui B2D2 (nearly four acres) were taken for sand-dune reclamation. The remaining Māori land in the Kopironui block consisted of the balance of B2D2 (about 25 acres, including the access route, part of Kopironui B2) and two small blocks, B2B1 and B2B2 (one acre each).

37. Document F3, pt 1, pp 98–99; north Auckland survey, ML7187

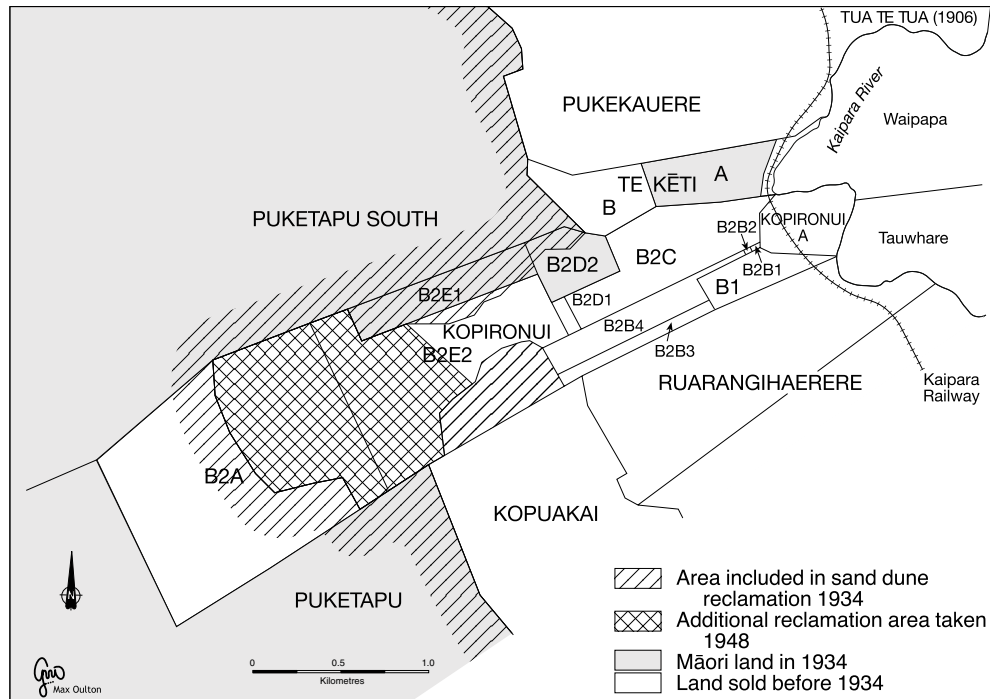


Figure 39: The Te Kēti and Kopironui blocks, 1934

In 1934, there was a farm on Kopironui B2A and B2E2, owned by an H W Hodge. In 1932, Hodge had reluctantly consented to handing over 317 acres of sand dunes for reclamation for a payment of one shilling. The farm remained jutting into the reclamation area and was considered a problem by the mid-1940s because Hodge's stock was allowed to graze on the reclamation area. In 1948, another 293 acres in these two blocks were taken under the Public Works Act for sand-dune reclamation (fig 39). Some consideration was given to taking the remainder of the Hodge farm to provide a camp-site and access route into the reclamation area. However, the 25 acres of Kopironui B2D2, with its access to the main road, seemed more suitable as a central fire-control point. There had been a small kainga there, but the last family occupying the block had moved to Auckland in the 1920s. There was also an urupa in the southern part of the block.

The owners of Kopironui B2D2 opposed the sale of the remaining block. In February 1951, after some negotiation, the Department of Public Works agreed to leave an area of just over five acres in Māori ownership, but it also took the access route from the main road. Table 26 summarises the areas taken from Kopironui B2D2 (see also figure 40).

The access route to Kopironui B2D2, part Kopironui B2 (3½ acres), was also taken in February 1951. The remaining five acres of Kopironui B2D2 were now 'land locked' with no legal access; only informal access over Forest Service land was possible. In 1951, the Māori Land Court awarded compensation of £575 for 16 acres of Kopironui B2D2 and for the access

| Land                 | Area<br>(a r p) |
|----------------------|-----------------|
| Total area of block  | 25 2 9          |
| Area taken 1934      | 3 3 5           |
| Area taken 1951      | 16 1 35         |
| Remaining Māori land | 5 1 9           |

Table 26: Takings from the Kopironui B2D2 block

route.<sup>38</sup> In 1983, the 'Kopironui village and associated burial area', which included the remaining Māori land and surrounding area, was granted protection under the Historic Places Act 1980, because the owners feared the destruction of urupa and pa sites by a sand-mining operation on the adjacent privately owned land.<sup>39</sup>

In April 1951, the Forest Service took over the administration of Woodhill Forest, and the focus shifted to creating infrastructure and further planting northwards. During the 1950s, access roads were put into the pine forest area. The main access became the route from State Highway 16 to Kopironui B2D2. The swamp near the road was drained, raised, and metalled. Kopironui B2D2 was initially developed as the headquarters for the forest, and a camp was established. The site was too cramped, however, and in 1960 the adjacent Te Kēti B block (42 acres) was purchased. The western part of Te Kēti B (about six acres) had already been handed over for sand-dune reclamation. The Forest Service headquarters and village were established on Te Kēti B.<sup>40</sup>

In 1966, there were 10 houses for Forest Service employees on the site and plans to expand this to 25 houses by 1975. However, the temporary sewage system was inadequate. The most suitable site for a new sewage-treatment plant was in the south-west corner of the Te Kēti A block, on Māori land. Other sites on Forest Service land were precluded because of the need for a site near to, and downhill from, the village, but not in the low-lying former swamp. The Uruamo whānau, the owners of Te Kēti A, objected strongly; they were unwilling to sell and refused to negotiate a lease. In October 1968, an area of 25 perches was taken under the Public Works Act for a treatment plant and access, with another 11 perches taken as easement for a pipeline to the plant from the village (fig 40). Compensation of £275 was paid to the owners of Te Kēti A.<sup>41</sup>

By the 1990s, the village had almost disappeared, the treatment plant was no longer in use, and the land had been included in the Crown forestry licence granted to Carter Holt Harvey.

38. Document 06, pp 114–120; doc F6, pp 322–334

39. Document F3, pt 1, pp 115–116

40. Document 06, pp 128–130

41. Ibid, pp 149–153; doc F6, pp 365–378

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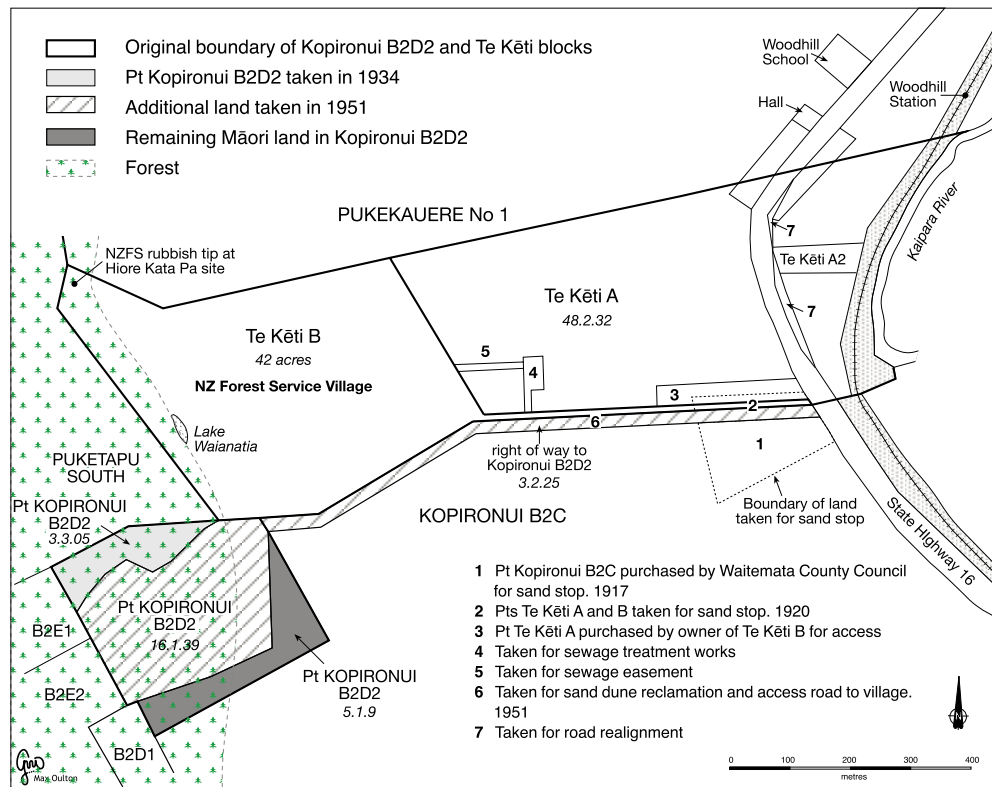


Figure 40: The Te Kēti and Kopironui B2D2 blocks

## 9.5 ŌTAKANINI FOREST LEASE

The Ōtakanini block (7133 acres) was investigated by the Native Land Court in 1904 and vested in the Tokerau District Māori Land Board in December 1906. The block was subdivided and much of it alienated in long-term leases to Pākehā farmers. In the late 1950s, some of these leases were due to expire and the owners sought the return of the Ōtakanini lands to their control. In August 1958, there were 375 owners; most lived in Auckland, the rest at Haranui, on the block, and at Reweti. In 1959, the Ōtakanini Tōpū was established as a Māori incorporation and the several subdivisions were amalgamated into a single title.<sup>42</sup> On the western coastal strip of the Ōtakanini Tōpū's lands lay about 1680 acres of sand dunes. The Forest Service sought control of these for reclamation and to link the northern and southern sections of Woodhill Forest (fig 41). In this section, we consider only the sand-dune area now in forest, and in chapter 10, we review the history of the rest of the Ōtakanini lands.

In the late 1940s, the land purchase officer of the Department of Public Works had inquired about buying the coastal sand dunes from the Tokerau District Māori Land Board:

In view of the undoubted benefit to the remaining lands by the fixation of the sand and later the benefit of shelter when timber is established I think it would not be unreasonable

42. Document F3, pt 2, pp 66–73

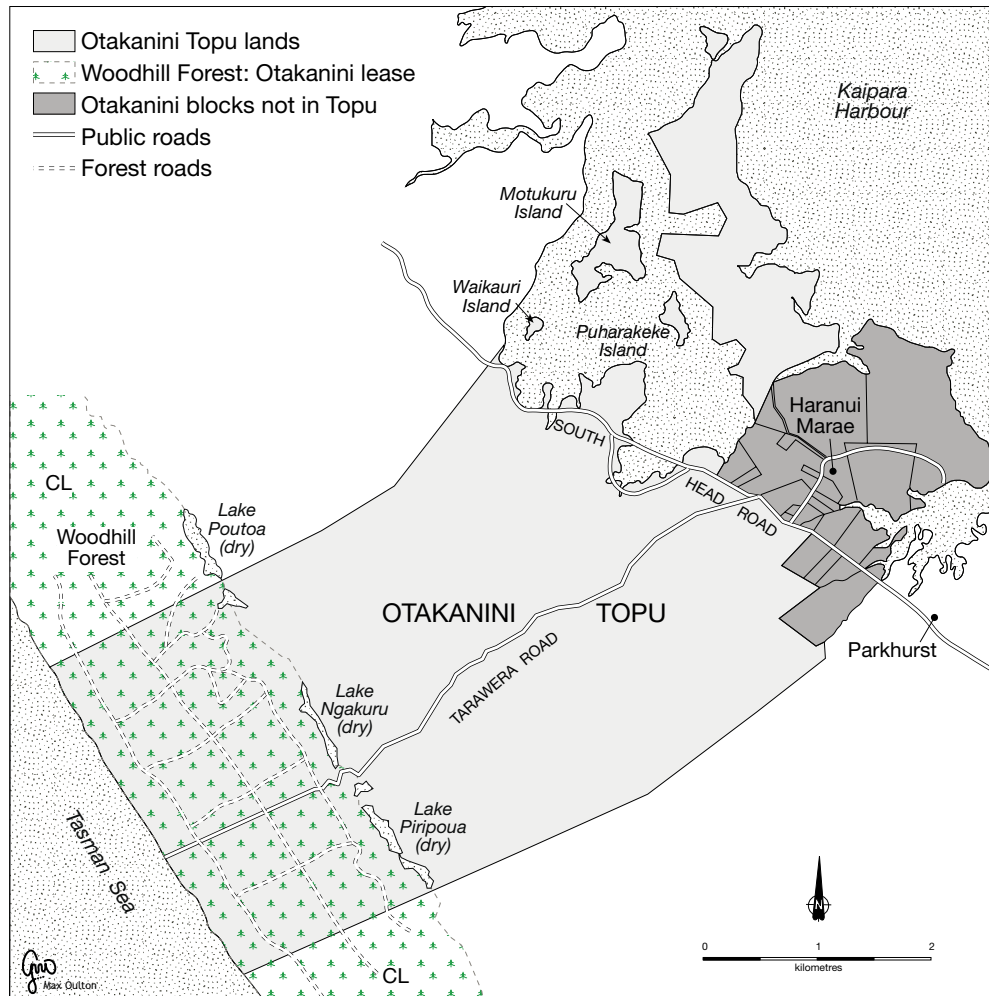


Figure 41: The Ōtakanini Tōpū forest lease

to ask that the land be given without compensation. The European owners of 2334 acres to the north have agreed to give their land free of cost.<sup>43</sup>

The board's registrar responded that the board did not have authority to hand the land over to the Crown and suggested that it would have to be taken under the Public Works Act, with compensation assessed by the Māori Land Court. In 1949, the Pākehā owners of the Paparoa and Aotea blocks, north of Ōtakanini, handed over their sand-dune areas for one shilling per farm, as others had done in the 1930s.

In 1958, the conservator of forests and the commissioner of Crown lands jointly argued for Crown acquisition of the Ōtakanini dunes. A valuation at the time assessed the area of drifting sand at one shilling per acre, or £75 for 1500 acres, and ministerial approval was given to purchase at that figure. When this proposal was put to the Ōtakanini Tōpū management

43. Document 06, p132

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committee in May 1959, it was turned down. The committee preferred to retain the land and to explore undertaking the reclamation work itself and extending the area in pasture, despite the high costs.

In December 1960, the conservator of forests suggested to the management committee that 'the Forest Service might be agreeable to lease the land for the longest possible term at Government valuation'. The committee responded that it opposed a forestry lease, since it believed that the land had 'good farming potential', but it would consider 'a small amount of assistance' from the Forest Service 'by way of initial sand stabilisation'.<sup>44</sup> The Māori Trustee had made sand-dune reclamation one of the conditions for the farm development loan the Ōtakanini Tōpū had already agreed to, and the committee wanted to provide employment for some of the owners by retaining control of the land and by planting the dunes.<sup>45</sup>

After further discussion, on 30 April 1964 the management committee agreed in principle to lease the sand-dune area to the Forest Service. The conditions included a term of 99 years and provision for 'the body corporate to benefit by profit sharing from the forestry operations'. The committee also agreed to the service's immediate planting of marram grass, and this was mostly completed by the end of July 1964.<sup>46</sup> However, negotiations on the specific terms of the lease dragged on for another five years.

On 6 August 1969, an agreement was signed by the Minister of Forests for the Crown and the proprietors of the Ōtakanini Tōpū to lease an area of 1682¼ acres to the Crown for a term of 99 years, expiring on 30 June 2063. The annual rental to be paid from 1 July 1964 was five cents per acre until the 'first marketable thinnings' were sold, and thereafter '30% of the stumpage amount received by the Minister from the sale of any timber or trees or other plants and the produce thereof from any such forest'. Stumpage is a form of royalty and is based on revenue, not profit, as was specified in the agreement-in-principle. It was to be calculated so that in no year would it fall below the equivalent of the rental of five cents per acre. Some confusion arose over the definition of 'stumpage' during the hearing of the Wai 733 claim, and Crown counsel later submitted a memorandum clarifying this:

Stumpage is defined by the New Zealand Institute of Forestry in its Forest Valuation Standards as 'the value of a standing tree. Usually expressed as the value per cubic metre (or tonne) of the logs by quality in the tree. Generally derived from the sale value of the logs at a sale point (eg "at mill", "at wharf gate" or "on skid") by deduction of all the costs incurred in getting the tree off the stump to that point of sale.'

Counsel for the Wai 733 claimants referred to the hypothetical example of a tree worth \$100, but it is more appropriate to consider a tree whose logs are worth \$100 a cubic metre at the point of sale. If the costs of getting the tree to the point of sale were \$10 a cubic metre,

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44. Document 06, pp 134–135; doc F3, pt 2, pp 101–102

45. Document F3, pt 2, p 102

46. Ibid, pp 113–114



then the stumpage or standing value of the tree would be \$90 a cubic metre. Under the Ōtakanini Tōpū forest lease, the tōpū would get 30 per cent of this \$90.

As regards the Ōtakanini Tōpū forest lease, all other costs such as planting and replanting are borne by the lessee (initially the Crown and now Carter Holt Harvey). It is in this context that Goldstone referred to the stumpage scheme as a revenue-based scheme rather than a profit-based scheme.<sup>47</sup>

The lease also required that the Minister:

- ▶ At his own expense shall with due diligence stabilise the sand and shall plant all sand with marram, lupin or such other plants as shall stabilise drifting sand and prevent its encroachment on any land adjoining that now leased.
- ▶ At his own expense shall establish manage and protect a forest thereon in accordance with sound forestry principles including and not limited to planting, re-seeding and re-planting, building of roads and fire breaks and protection of trees from fire, insects and disease and generally in such a manner as will produce a high regular and sustained yield of marketable forest products.<sup>48</sup>

Provision was also made for a reserve of 100 acres for the owners at 'a locality adjacent to the seaward end of Tarawera Road', with boundaries to be determined later.

The Board of Māori Affairs and the Māori Trustee consented to the lease, and it was registered on 24 September 1969. The lease expressly prohibited the Crown as lessee from 'assigning, subletting or parting with possession of the land "save as may be necessary in carrying out the objects of this Lease"'.<sup>49</sup> A complex relationship between lessor and lessee subsequently developed after the restructuring of the Forest Service in the late 1980s, as Goldstone explained:

In August 1990 Carter Holt Harvey purchased the Woodhill Crown Forestry Licence. The Otakanini Crown forestry lease was excluded from this. For the first few years the Crown contracted Carter Holt Harvey to manage the Otakanini lease on its behalf, but after that it was managed directly by the Ministry of Forestry. For protection purposes at least, the entire forest continued to be managed as a single unit.

However, the matter of access for Carter Holt Harvey across the Otakanini Crown forestry lease had not been clarified at the time that Woodhill forest was sold, the pace of selling State assets in the 1980s preventing the matter being properly addressed. The opinion of the Ministry of Forestry, supported by legal opinion from their office solicitor and Crown Law Office, was that as lessees of the Otakanini forestry block they had the right to grant access to whomever they liked. This was disputed by the Otakanini Topu, who asserted that

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47. Document Q16(a)

48. A copy of the lease is attached to document K3.

49. Document K3, p 3

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access across the block by a third party (Carter Holt Harvey) required their consent as the landowners.<sup>50</sup>

Negotiations between the Ōtakanini Tōpū and Carter Holt Harvey on the question of access broke down. The Ministry of Forestry intervened and sought mediation. In 1994, the tōpū began proceedings in the High Court, seeking a declaratory judgment on the rights of the parties. In March 1995, the High Court ruled that the Crown was not empowered to grant access rights to Carter Holt Harvey in the lease area without the consent of the lessor.<sup>51</sup> Further litigation and negotiation followed. In June 2000, just before the hearing of the Wai 733 claim, an agreement was reached between the Ōtakanini Tōpū and Carter Holt Harvey over road access.

**9.6 ISSUES IN THE CLAIMS CONCERNING WOODHILL FOREST**

Five claimant groups – Ngāti Whatua (Wai 312), Kāwharu and Uruamo whanau (Wai 279), Te Kawerau a Maki (Wai 470), Lou Paul and Te Taoū (Wai 756), and the Ōtakanini Tōpū (Wai 733) – have included issues relating to sand-dune reclamation and Woodhill Forest in their statements of claim. Four issues are common to all but the Ōtakanini Tōpū claim:

- ▶ the amount of land compulsorily taken for sand-dune reclamation without adequate investigation of alternative forms of tenure;
- ▶ the Crown's alleged failure to protect wāhi tapu in the areas taken;
- ▶ the Crown's alleged denial of Ngāti Whātua access to coastal food resources; and
- ▶ the Crown's alleged failure to consult with Māori over the restructuring of the New Zealand Forest Service in the 1980s and over the subsequent allocation of forestry rights in Woodhill Forest to Carter Holt Harvey.

In this section, we discuss each of these issues in turn. In subsequent sections, we address the other specific issues relating to sand-dune reclamation and Woodhill Forest that were raised by individual claimant groups.

**9.6.1 Alternatives to Crown acquisition of land**

It is accepted that State intervention was required to address the problem of moving sand dunes encroaching on productive farm land in the Kaipara district and threatening the main road and railway south of Helensville. Kaipara Māori have argued, however, that Pākehā settlers derived the greater benefit from sand-dune reclamation. Their grievances arise out

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50. Document O6, p 145

51. *Proprietors of Otakanini Topu v Attorney-General* unreported, 16 March 1995, Barker J, High Court, Auckland, CL28/94 (doc K3)

of the loss of such a large area of their land in 1934 when there was so little Māori land left. However, it should be noted that by 1934 almost all the individual Māori interests in the Puketapu lands had already been purchased by the Crown and sales of adjacent blocks had continued into the 1920s. The 1934 proclamations were simply a device to ensure that the Crown acquired secure title to the land so that it could spend public money on the public work of sand-dune reclamation.

The contrast between the willingness of the Forest Service in the 1960s to lease Ōtakanini sand dunes for planting pine forest and the compulsory taking by the Crown of Puketapu lands in 1934 raises the question of why the Crown did not consider a lease in 1934 instead. It should be noted that the programme first envisaged in the 1920s was just for sand-dune reclamation. It was not until the 1950s, when the possibilities of the commercial development of pine forest opened up, that Crown policy shifted from viewing pine trees as simply the best form of protective cover to stabilise mobile sand dunes. In the 1960s, when the Ōtakanini lease was negotiated, it was known that commercial forestry on sand dunes was viable.

Claimant researchers questioned the Crown's insistence on acquiring title to the Puketapu lands in the 1920s. Bruce Stirling for Wai 312 suggested that the Government saw complete control as being 'synonymous with outright ownership'. He wrote that it was this ideology which drove both the earlier purchasing programme and the compulsory taking of the remaining interests in the Puketapu lands, and he stated that there was 'no evidence that at any stage alternative concepts, such as long-term leasing, were considered by officials'.<sup>52</sup> Fiona Small, also for Wai 312, commented that 'Unfortunately, the Crown did not seem to consider a joint project with Ngāti Whātua'.<sup>53</sup> Neither researcher offered specific alternative suggestions.

Goldstone considered that 'a serious State programme of sand dune reclamation was not possible without first gaining ownership of the sand country, so the land could be fenced off and grazing and traffic across the dunes restricted'.<sup>54</sup> He also suggested that there was no evidence that in the 1920s the Government regarded sand-dune reclamation as any sort of 'investment', beyond the immediate need to stabilise dunes and to protect the existing farm land, the main road, the railway, and the Kaipara River. He considered that the reluctance of Government departments to spend money on reclamation in the 1920s confirmed this.

Goldstone also explained Crown policy in the early 1930s:

The Crown wanted full and permanent control of the land under sand dune reclamation on the basic principle that sand dune reclamation, once in place, had to remain a permanent project. It was thought that if the land was to revert to private commercial use the sand drift problem would re-emerge.<sup>55</sup>

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52. Document 112, p 21

53. Document F3, pt 2, p 157

54. Document 06, p 4

55. Ibid, p 58

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The attitude of the Department of Public Works in 1932 was that secure Crown title was required: 'In the first place to enable public money to be spent on Crown land, secondly to secure its right to maintenance and control, and thirdly to secure to the Crown any benefit that may later accrue due to the reclamation of these particular lands.'<sup>56</sup>

It remained a basic principle of Crown policy for several more decades that public money spent on public works should be spent on Crown land only, and that any other land required for a public work should be purchased by agreement or taken under the Public Works Act. In the mid-1980s, the role of central government in both forestry development and public works generally was radically restructured. State-owned enterprises were set up, and Crown assets were transferred to them or, in some cases, sold or otherwise assigned to private corporations. There are now many examples where works of public benefit have been carried out on leasehold arrangements of various kinds, including protective covenants.

Māori were at least compensated at Government valuation for their Puketapu lands. Pākehā settlers who had purchased their lands agreed to hand over the sand-dune portions of their farms to the Crown for the token payment of one shilling per farm, and, for some, several hundred acres were involved. Such was the magnitude of the sand-drift problem, as perceived in the 1920s, that Crown acquisition of title was seen as the only way forward to allow the Crown to embark on a comprehensive programme of sand-dune reclamation. Now, in the twenty-first century, we see a viable commercial Woodhill Forest on the Kaipara sand dunes. The claimants see Woodhill as the only substantial area of Crown land, albeit burdened with timber-harvesting rights held by Carter Holt Harvey, that might become part of the assets transferred in a settlement of Kaipara Māori claims against the Crown.

**9.6.2 Loss of access to the beach**

There is no doubt that kaimoana was an important traditional food resource of Kaipara Māori, as were the wild fowl and plants found in the numerous small lakes and swamps within the dune area. A constant theme of the southern Kaipara claimants was that access to these resources was denied to local Māori and that this loss was not recognised in the Government valuation of the land or in the compensation paid for the land taken, as Native Land Court Judge Acheson had observed in 1935.

As set out in claimant research reports, a 1935 petition sent to the Prime Minister from the Reweti Māori community was just the first of many such pleas over the succeeding years for rights of access across the dunes to the beach. But the Department of Public Works remained adamantly opposed to the granting of such rights, as summed up in its March 1936 response:

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56. Document 06, p 58

The matter resolves itself into one of National interest: the fixation of the sand being of paramount importance in order to save roads, railway and good farming country on the landward side of the dunes . . .

The provision of access to the coast by means of tracks over the sand dunes would tend to nullify the good work done by the Public Works Department, as tracks through the plantations cause wind funnels, and to allow any traffic would tend to break the surface and thus court disaster to a scheme on which a considerable sum of Public Money has and is being spent . . .<sup>57</sup>

Goldstone suggested that the department's attitude was not unreasonable, given what was then known about the fragility of the sand-dune ecosystem.

Goldstone further suggested that there was then a great deal of informal pedestrian access to the sand dunes, although concern remained about the potential for fires lit by careless visitors.<sup>58</sup> The Forest Service also sought to restrict public access in the 1950s, but it allowed informal access to local residents, Māori and Pākehā. In the 1960s, it developed a policy of issuing permits on request, with permission being denied only if there was an extreme fire risk or to protect the public from danger in areas where felling was going on. In the 1970s, it opened up certain roads through the pine forest for public use and put in public walking tracks to facilitate the recreational use of the forests. Goldstone observed that 'the only people ever prosecuted for trespass in more than fifty years were hunters or cannabis growers, who were an obvious menace to the forest, workers and public'. The extent of informal access tolerated suggested a more complex situation than the 'total denial of access asserted by claimant historians'.<sup>59</sup> However, it does seem that, before the Forest Service took over, an excessively rigid attitude was shown by Crown officials, who failed to acknowledge traditional Māori access to kaimoana.

### 9.6.3 Wāhi tapu

There were four urupa in the Puketapu block – Pokiaiti, Ngapuketurua, Ruatiti, and Atuahae – which were surveyed in the mid-1930s after consultation with Eriapa Poata Uruamo. These areas were vested in the Crown for sand-dune reclamation under section 11(1) of the Reserves and Other Lands Disposal Act 1934, which gave local Māori the right to continue to bury their dead there but provided no formal right of access. This was not considered a major issue at the time. The district engineer of the Department of Public Works commented:

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57. Savage to Moore, 9 April 1936, NA MA-MLP1/231/1920/55 (doc 06, p 90)

58. Document 06, pp 94–100

59. Ibid, pp 104–105

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this matter has been further discussed with Eddie Porter [Eriapa Poata Uruamo], the representative of the native owners, who confirms his previous opinion that there is a likelihood of only one more native being buried in this locality. In the event of a burial, the coffin would be carried across the sand. Mr Porter considers that a stile or gate is unnecessary owing to the remote possibility of further burials, but stresses the fact that it is essential that permission to carry a coffin across the sand should [be] granted if required.

This seems to be the crux of the situation, and I am convinced that if a promise to this effect were given the native owners would be quite satisfied.<sup>60</sup>

Such an undertaking was given by the Department of Public Works to the Native Department. Goldstone challenged both Stirling's assertions that there were shortcomings in this consultation and Small's suggestion that access to the urupa was denied.<sup>61</sup>

We have no evidence that the Department of Public Works or the Forest Service ever denied access to these urupa. Given the extent of informal access to the sand dunes allowed to local people, and the lack of evidence of any later burials, the issue of access to the four urupa does not assume major significance. We do question, however, why the Crown took the land in the four urupa, which could conveniently have remained in Māori title and been gazetted as urupa reserves.

The alleged failure of the Crown to provide adequate protection of the four urupa and other wāhi tapu in Woodhill Forest is also a significant issue. Goldstone stated that, until the Forest Service extended its tree-planting programme in the 1950s, the four urupa remained largely undisturbed because they were all within the areas of scrub and bush known locally as Half Way Bush (fig 36). He argued that the assertions by Stirling and Small about a lack of respect for the urupa, the planting of pine trees on them, and the lack of consultation with local Māori were 'considerably exaggerated', and that the situation on the ground was more complex.<sup>62</sup>

Goldstone did concede that, before the 1980s, the attitude of the Forest Service was 'casual'; senior service staff were unaware of the surveyed boundaries of the four urupa. However, and in his view more importantly, on the ground Māori workers in the service provided 'a kind of informal system for the protection of the urupa and other sacred sites in the forest'. When clearing or planting came close to a known burial area, work would stop and the area would be left with its existing vegetation cover. Goldstone interviewed the Forest Service officer in charge of Woodhill Forest from 1964 to 1975, who stated that he had always talked to Kelly Povey (who lived at Reweti) and Bill Tangaroa (who lived in Helensville) whenever any new area was being cleared for planting, because they had local knowledge and could advise on the location of any urupa. Half of the Woodhill Forest workforce was Māori,

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60. Document 06, pp 86–87; doc F6, p 308

61. Document 12, p 47; doc F3, pt 2, p 175

62. Document 06, p 154; see doc 12, pp 46–50; doc F3, pt 2, pp 152, 173–175

mostly local Ngāta Whātua, and they made their concerns known and planted around any known burial areas.<sup>63</sup>

Goldstone also provided evidence that, at the request of local Māori, the Forest Service had not planted on other areas outside the four urupa. In 1954, an acre of land around Te Rauangaanga/Pulpit Rock had been set aside as a reserve at the request of Eriapa Poata Uruamo because it was a wāhi tapu. The officer in charge of Woodhill Forest had requested a survey of the reserve and its road access so that a proposed quarry nearby would not encroach on them. Stirling implied that one acre was 'the smallest possible area' and that the real intention was to open up the quarry. Goldstone suggested that this interpretation 'attributed cynical motives' to the Forest Service and was unfair to the officer concerned: Uruamo had asked for a small area, 'say up to one acre', to be set aside as a wāhi tapu.<sup>64</sup>

In the early 1980s, the Forest Service made a deliberate effort to consult Ngāti Whātua elders at Reweti. In 1981, when a private sand-mining operation on the Kopironui block was proposed, the officer in charge consulted Kelly Povey and Bill Tangaroa. At that time, the Puketapu urupa, south of the surveyed Ngapuketurua urupa, was identified, and the work plans were amended to clear it and plant around it. Another urupa called Hautu was identified on an old survey plan of the Kopironui B2E2 block on Hodge's farm, which had been taken for sand-dune reclamation in 1948. This urupa was not known to the elders, but with the assistance of a Forest Service archaeologist, it was located on the ground and also protected.<sup>65</sup>

Goldstone described the state of the four surveyed urupa in the early 1980s:

Pokiaiti – the area, originally native scrub, was evidently cleared and planted in pine in 1968. The very prominent knoll at its southern end, however, was apparently carefully planted around by the Forest Service, leaving the knoll itself scrupulously alone. In 1982, as a result of consultation with local Māori the knoll which had been excluded from planting was identified as the actual traditional burial-site.

Ngapuketurua – this was an area of high ground clad in native bush. In 1981, the traditional burial-site Puketapu was identified as lying to the south of Ngapuketurua. Both areas had been left untouched, and were still covered in manuka.

Ruatiti – lacking any prominent geographical feature within it to distinguish it, Ruatiti had been planted on probably in 1972. In any case the traditional site identified by Māori elders in the 1980s lay just to the south within an area of native bush. This had been left substantially alone by the Forest Service, and was still in its original covering of manuka (though some planting had occurred on the southern edge).

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63. Document 06, pp 155–157

64. Ibid, p 158; doc 12, pp 50–52

65. Document 06, pp 158–161



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Atuahae – The area included a prominent knoll covered in pohutukawas. The knoll itself had been respected, but planting was done up to its edges in 1954, infringing the gazetted boundaries, and there had been some erosion on its northern boundary caused by a nearby quarry. The gazetted urupa coincided with the traditional site identified by Reweti Maori.<sup>66</sup>

In 1990, the Woodhill Forest crop was transferred by the Crown to Carter Holt Harvey. Areas of existing native bush were put under a Department of Conservation protective covenant, including the Ngapuketurua and Puketapu urupa, but not the entire area of the four urupa surveyed in 1934. The licence agreement with the Crown did not specify the urupa as archaeological sites; it simply identified them and stated that ‘Care must be taken with any forest operations alongside or on these sites.’<sup>67</sup> In 1998, the pine trees on Pokiaiti were harvested ‘after an extensive consultation between Carter Holt Harvey and Ngati Whatua, including two hui and a site visit’. Pokiaiti has not been replanted in pine, but Carter Holt Harvey has facilitated access for local people and provided young pohutukawa for them to plant there. In 1999, a similar solution was proposed for harvesting pine trees on Ruatiti, but local dissension between different factions prevented this.<sup>68</sup> Carter Holt Harvey chose not to harvest inside the surveyed boundaries in order to maintain good relations with local Ngāti Whātua.<sup>69</sup>

#### 9.6.4 Impact of Forest Service restructuring

The issue underlying all of the claims concerning Woodhill Forest is the restructuring of the New Zealand Forest Service and, ultimately, the transfer of the Crown forestry licence to Carter Holt Harvey without any consultation with local Māori, many of whom lost their jobs. Goldstone outlined this shift in Crown policy:

Since the late 1940s the ethos of the Forest Service had been gradually changing. In part this was the effect of the 1949 Forests Act, but there also appears to have been a shift away from managing native forests as a commercial asset to the establishment of exotic forests for social, environmental and regional development ends. From the mid 1960s Government was using the Forest Service as an employment creation scheme, and by the 1970s it was accepted that the ‘social and economic stability’ in many regions was dependent on the Forest Service’s tree planting programmes.<sup>70</sup>

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66. Document 06, pp 161–162

67. Crown forestry licence, ‘Woodhill Forest’, app c, sec 3.3, p 173 (doc 06, p 164)

68. In the early 1980s, Reweti elders had suggested that the Ruatiti urupa was really to the south of the surveyed block, so some of the debate was about the existence of an urupa there.

69. Document 06, pp 164–167

70. Ibid, p 169; Michael Roche, *History of New Zealand Forestry* (Wellington: New Zealand Forestry Corporation and GP Books, 1990), pp 343–346

By the late 1970s, there was increasing concern that social and environmental objectives were undermining the Forest Service's commercial role.<sup>71</sup> According to Goldstone:

Woodhill Forest was typical of this culture of placing regional social and political concerns above commercial return. While it was accepted that pine would bring a return to offset the immense cost of sand dune stabilisation and foredune maintenance, it was for environmental and employment reasons that Woodhill was an ongoing Forest Service operation. The number of workers hovered between sixty and seventy during the 1970s, of whom half were Maori. Furthermore, university students during vacation and psychiatric patients undergoing rehabilitation also found seasonal employment at Woodhill, being bussed out to the forest in groups in a way not dissimilar to the way the unemployed were sent out to the sand dune reclamation area in the 1930s. While Woodhill met important social objectives, it never made a significant return for the Government prior to 1987, and almost certainly not one to compensate for the huge cost of sand dune reclamation.<sup>72</sup>

Goldstone was unable to provide comprehensive information to demonstrate the return, but he challenged Stirling's assertion that the Crown had 'departed Woodhill, having profitably converted its earlier investment in the afforestation project'.<sup>73</sup>

For many Ngāti Whātua in southern Kaipara, Woodhill Forest and the Forest Service have played a significant part in their lives. Some, particularly from the Reweti area, had been involved from the 1920s on, beginning with planting marram grass and collecting lupin seed.<sup>74</sup> Te Taoū men started to work regularly in the forest in the Forest Service era and soon became involved in all aspects of the work.<sup>75</sup> Kelly Povey was one of three Forest Service employees who were recognised for their part in creating a marram-planting machine using parts from old army vehicles in 1954.

One of the casualties of the restructuring was the demise of the Forest Service village and headquarters at Woodhill. Goldstone reported on the views of former Forest Service staff:

the entire workforce of about fifty staff and workers, with the exception of a few senior staff who oversaw the transition, were made redundant. One long-serving worker described it as an 'absolute disaster' for the forestry community that had grown up at Woodhill, especially as many of the workers had spent most of their working lives in the forest. Thirteen years later, ex-Forestry personnel from Woodhill still have very strong feelings about the corporatisation of the Forest Service and the elimination of Woodhill as a community. There were

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71. Roche, pp 373–378

72. Document 06, p 170

73. Document 12, p 78

74. Document 06, pp 34–36

75. Peter McKelvey, *Sand Forests: A Historical Perspective of the Stabilisation and Afforestation of Coastal Sands in New Zealand* (Christchurch: Canterbury University Press, 1999), p 73

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undoubtedly powerful economic incentives for restructuring, but these advantages came at a heavy price for the local people.<sup>76</sup>

The Tribunal visited the site of the Woodhill forestry village, which is now almost bare, with the houses gone. In his conclusion, Goldstone remarked: 'While it appears many of the workers may have found work in contract gangs that now worked the forest, the forest as a hub of a community had been destroyed. The destruction of this community affected Māori disproportionately.'<sup>77</sup>

We turn now to address the individual claims relating to Woodhill Forest.

9.7 WAI 312

9.7.1 Claimant submissions

Counsel for the Wai 312 claimants acknowledged that the sand-dune reclamation work was necessary but claimed that 'the way it was done was not consistent with the principles of the Treaty and the Crown's obligation to protect Maori'. In particular, counsel suggested, the Crown had not considered alternative forms of tenure, such as a lease or joint venture, which would have preserved Māori ownership of the land.<sup>78</sup> Counsel contrasted the Crown acquisition of Puketapu lands in the 1930s, by the purchasing of individual interests and the use of the Public Works Act, with the Crown's willingness to negotiate a lease of Ōtakanini lands by the New Zealand Forest Service in the 1960s.

9.7.2 Crown submissions

Crown counsel noted the claimants' acceptance of the need for a sand-dune reclamation scheme to protect the remaining farm land, the Kaipara River, and the railway, and argued that the extent of the scheme was beyond the capabilities of landowners or local authorities. The 'only realistic option' in the 1930s was for the Crown to 'acquire the land and implement a nationally-funded programme'.<sup>79</sup> Crown acquisition of title was necessary to maintain control and ensure permanence of the work: there was 'a very real fear that if land remained in, or was returned to, private ownership, then the reclamation work could be undone', as had occurred in the burning off and grazing of adjacent land.<sup>80</sup>

Counsel submitted that by the 1960s, when the Ōtakanini lease was negotiated, 'a fundamental change' had occurred. The initial scheme was intended only for the stabilisation

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76. Document O6, p171

77. Ibid, p177

78. Document Q1, p123

79. Document Q16, p75

80. Ibid, pp 75-76

of drifting sand dunes, 'a public work in the public interest, with no thought of it as a commercial venture'. As such, there would be no revenue derived which would justify any joint-venture arrangement. Public money could not be spent on land in private ownership, Māori or Pākehā, lest it be 'considered that the State would be improving private land at the tax payers' expense'. By the 1960s, however, it had been successfully demonstrated that a pine forest developed on sand dunes 'could be a significant revenue producing asset'. This revenue would offset the Crown's costs of reclamation, planting, and looking after the forest, and the Crown could therefore consider the possibility of leasing. This was the 'fundamental difference' that allowed the Crown to lease Ōtakanini land in the 1960s but to acquire title to the Puketapu lands in the 1930s.<sup>81</sup>

Crown counsel rejected the claimants' allegation that the proclamations from 1920 on preventing the Māori owners from dealing with anyone but the Crown had exerted 'pressure' on those owners to sell. Counsel submitted that 'such action was taken to protect the public interest from the possibility of land speculators holding the Crown to ransom'.<sup>82</sup> The owners were paid the full value of the land, which at the time was considered to have little economic potential. By the time the proclamations taking the remaining interests in the Puketapu lands were issued in 1934, the Crown had purchased over 95 per cent of individual interests in the large blocks. There was no evidence that these owners were unwilling sellers.

On the issue of access across the sand dunes to the western coast, according to counsel the evidence demonstrated that 'Kaipara Maori were not denied access through the sand country, to the urupa and the coast'. Counsel acknowledged that there was no legal access, because the various Government departments responsible for the sand-dune reclamation work were 'adamant that any formed or permanent access tracks or roads could not be formed due to the risk of blowout and fire hazards'. However, local Māori 'continued to have informal access through the sand country', and 'this access was exercised'. Furthermore, this access and the protection of urupa were also 'safeguarded through the employment of local Maori' in the initial reclamation planting and, later, in Woodhill Forest.<sup>83</sup> Although some planting had occurred on the margins of the gazetted urupa, some confusion had arisen more recently over the precise locations of the urupa. Citing Goldstone's evidence, counsel suggested that the traditional burial-places identified by local people for the Forest Service in 1982 had not been planted in pines. Further, a consultation process was now in place, and Crown counsel submitted that 'both the Crown and Carter Holt Harvey have acted appropriately in attempting to balance the competing interests of the claimant groups'.<sup>84</sup>

On the issue of the restructuring of the Forest Service and the subsequent sale of the forestry rights to Carter Holt Harvey, counsel observed: 'The Crown does not accept that the

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81. Ibid, pp 76-77

82. Ibid, p 77

83. Ibid, p 80

84. Ibid, p 84

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restructuring was in breach of the Treaty. It was a legitimate governance decision impacting upon both Maori and non Maori.<sup>85</sup>

**9.7.3 Tribunal comment**

The alienation of Puketapu lands to the Crown for sand-reclamation purposes is part of a continuing pattern of Ngāti Whātua land loss in the twentieth century. We have reviewed Woodhill Forest separately from other land issues because it has loomed large in the minds of the claimants, many of whom told us they wanted the forest returned to them as part of a settlement of their claims. Counsel for Wai 312 made it clear that appropriate redress would include the forest: ‘In the circumstances, the scale of loss suffered by Ngati Whatua clearly justifies the use of the Tribunal’s resumptive powers, under [sections] 8A and 8HB of the Treaty of Waitangi Act 1975.’<sup>86</sup> Counsel included Riverhead Forest in this submission, but this land lies largely outside the southern Kaipara inquiry district and we make no comment on it. Nor do we wish to comment further on Woodhill Forest as possible redress, because the settlement of Ngāti Whātua’s claims is a matter for later negotiation by the Crown and the mandated representatives of Ngāti Whātua. Our comments are intended as a guide for such negotiations.

We have commented extensively on the other issues raised by the Wai 312 claimants in our overview in section 9.6 and we make no further comment here.

**9.7.4 Findings**

We make the following findings in respect of the Puketapu lands in Woodhill Forest:

- ▶ In the 1920s, the Crown instigated a sand-dune reclamation scheme for the western Kaipara coast between Muriwai and South Head. It is not in dispute that some form of reclamation of the drifting sand was needed to protect farms, roads, the railway, and the Kaipara River, and only the Crown had the resources to implement such a scheme.
- ▶ The Crown began purchasing individual interests in the over 9000 acres of Māori-owned Puketapu lands. In 1934, after acquiring over 95 per cent of the interests in those blocks, the balance of the interests was taken under the Public Works Act for sand-dune reclamation purposes. Māori and the Crown failed to discuss alternative tenure arrangements which would have both allowed reclamation and retained a form of Māori title as distinct from alienation.
- ▶ Within the land acquired by the Crown, four urupa reserves (75 acres in total) were identified, surveyed, and acquired by the Crown under section 11 of the Reserves and Other Lands Disposal Act 1934, instead of gazetting these lands as Māori reserves. It

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85. Document Q16, p 83

86. Document Q1, p 158

was not necessary for the management of the sand-reclamation scheme for the Crown to acquire title, and this was a breach of the Crown's duty of protection and the guarantees set out in article 2 of the Treaty. Furthermore, parts, but not all, of the reserves were planted in pine trees, which represented a further failure of the duty of protection of Māori interest.

- ▶ By the Crown's acquiring of title to the Puketapu lands and its attempting to deny access across them, local Māori were denied their traditional access routes to the western coast for kaimoana. Although there was some informal access, there was no legal right of access for local Māori.
- ▶ In the restructuring of the Forest Service in the 1980s, the Crown failed to assess the social and economic impacts of corporatisation, the sale of forestry rights, and, more specifically, the effects of closing down the Woodhill forestry village, and it did not consult with Ngāti Whātua.

We give our findings and recommendation on the full Ngāti Whatua claim in chapter 11.

## **9.8 WAI 279**

The Wai 279 claim concerns the alleged failure of the Crown to protect Māori interests in lands collectively called Hiore Kata. These lands include part of the Puketapu, Puketapu South, and Te Kēti blocks, on which Woodhill Forest now stands.

### **9.8.1 Claimant submissions**

Counsel for the Wai 279 claimants echoed the wider Ngāti Whatua grievances over Woodhill Forest concerning the loss of land and resources, access to the sea coast, and the protection of wāhi tapu.

The claimants' specific grievances concerned the takings of land on the Te Kēti block for the sand-stop in 1917 and, despite the strong objections of the Uruamo whānau, for the sewage-treatment plant in 1968.

### **9.8.2 Crown submissions**

The issues relating to the taking of the Puketapu and Puketapu South blocks for sand reclamation were covered in the Crown's submissions on Woodhill Forest in relation to the Wai 312 claim, discussed in section 9.7.2.

On the issue of the land taken for a sand-stop by the Waitemata County Council in 1920, counsel noted that 'the claimants have not questioned the need to acquire the land for the purposes of the sand stop'. Compensation was paid to the owners of the Te Kēti A block in

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1925 and to the owners of Kopironui B2 much later, but, counsel stated, ‘the Crown accepts that, due to error, no compensation appears to have been paid for that part of Te Kēti B taken for the sand stop.’<sup>87</sup>

On the issue of the sewage-treatment plant on the Te Kēti A block, counsel noted that of two possible sites the one ‘that was on Forest Service land was not adequate, and also raised concerns about discharge onto school grounds’. Te Kēti A was the ‘only other available and suitable site’. The Ministry of Works had been ‘unwilling’ to acquire the land compulsorily and had proposed a lease, but negotiations broke down. Consequently, the site was taken under the Public Works Act and compensation paid at 10 per cent above the Government valuation.<sup>88</sup>

**9.8.3 Tribunal comment**

The general matters raised by the Wai 279 claimants in respect of Woodhill Forest have been discussed in section 9.6, and we make no further comment here.

On the issue of the land taken for the sewage-treatment plant on the Te Kēti A block, we accept the Crown evidence that physical constraints meant that there was no other suitable site nearby, that all the provisions of the Public Works Act then in force were complied with, and that the Ministry of Works offered a lease. However, the owners considered that the location of a sewage-treatment plant on their land was culturally offensive and appear to have rejected the lease option by refusing to negotiate. The Forest Service was under pressure from the Department of Health to upgrade an unsatisfactory sewage-disposal system and, in order to expedite matters, took the land by proclamation under the Public Works Act. Compensation was paid.

Since the Forest Service was restructured in the 1980s, the Woodhill forestry village has disappeared. The sewage-treatment plant is no longer in use and the Uruamo whānau have occupied the site. We consider that, since the site is no longer required by the Crown, the title to this small piece of land should be returned to the owners of the Te Kēti A block at no cost to them and the pipeline easement should be uplifted.

**9.8.4 Findings**

We make the following findings in the Wai 279 claim concerning the lands compulsorily acquired for sand-dune reclamation and State forestry purposes:

- ▶ We repeat our findings in relation to the Wai 312 claim in section 9.7.4.
- ▶ Compensation was paid for the lands taken on the Te Kēti A and Kopironui blocks but not for that taken on Te Kēti B.

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87. Document Q16, p 109

88. Ibid, pp 82–83



- ▶ The land taken on Te Kēti A for a sewage-treatment plant is no longer required by the Crown, and title should be returned to the owners of that block at no cost to them and the pipeline easement should be uplifted.

We give our findings and recommendations on the full Wai 279 claim in chapter 11.

#### **9.9 WAI 470**

In relation to Woodhill Forest, the issues in the Wai 470 claim are identical with those set out in the Wai 312 claim, as described in section 9.7. We therefore make no further comment here, and reserve our comments, findings, and recommendations on the full Wai 470 claim for chapter 11.

#### **9.10 WAI 756**

In relation to Woodhill Forest, the issues in the Wai 756 claim are identical with those set out in the Wai 312 claim, as described in section 9.7. We therefore make no further comment here, and reserve our comments, findings, and recommendations on the full Wai 756 claim for chapter 11.

#### **9.11 WAI 733**

Because the Ōtakanini claimants leased rather than sold the western portion of their lands to the Crown for Woodhill Forest, Wai 733 falls into a different category from the other Woodhill claims dealt with above. The specific issues in this claim are that:

- ▶ the terms of the forestry lease were unfavourable to the Māori owners;
- ▶ pine trees were planted without consultation with the owners and the forest had an adverse effect on the environment;
- ▶ the Crown failed to consult the Māori owners over the restructuring of the Forest Service; and
- ▶ by assigning or selling the Ōtakanini lease to Carter Holt Harvey, the Crown made it more difficult for the Ōtakanini Tōpū administrators to manage their land.

##### **9.11.1 Claimant submissions**

Counsel for the Wai 733 claimants questioned the terms of the forestry lease; in particular, why the payment was based on stumpage. Counsel also questioned why only *Pinus radiata*

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and not a range of tree species was planted, and claimed that Woodhill Forest had adversely affected the surrounding environment. Further, counsel submitted that the Crown had failed to respect the Ōtakanini Tōpū's desire to have its own people employed in sand-dune reclamation and tree planting, and to provide training and managerial opportunities.

On the sale of the forests to Carter Holt Harvey, counsel maintained that the lessor, the Ōtakanini Tōpū, had a right to be consulted, particularly about rights of passage across its land. The tōpū had to pay 'many thousands of dollars' in legal costs for High Court proceedings to establish the legal position of roads and access rights, although the full costs of this dispute and litigation have never been assessed.<sup>89</sup>

**9.11.2 Crown submissions**

On the matter of the forestry lease of the western sand dunes, Crown counsel submitted that 'it was considered beneficial to stabilise this land and allow for the [Woodhill] forest to be managed as a single economic unit'. The Tokerau District Māori Land Board did not have the authority to transfer land to the Crown, and no further action occurred until the Ōtakanini Tōpū was established. The Crown was reluctant to take the land under the Public Works Act. The owners did not want to sell but lacked the financial resources to reclaim the dunes and plant them in forest. The Crown therefore proposed a long-term lease, in the negotiations for which, Crown counsel submitted (citing Goldstone), the tōpū 'received an extremely favourable deal'.<sup>90</sup>

On the purchase of the Woodhill Crown forestry licence by Carter Holt Harvey in 1990, Crown counsel noted that the issue of access and the use of roads within the Ōtakanini lease was 'not finalised' before the licence was transferred. 'The Ministry of Forestry, acting on legal advice, was of the view that it had the ability to grant access.' In spite of the Ministry of Forestry's efforts to mediate in the dispute with the tōpū, the matter was settled in favour of the tōpū in the High Court. 'The Topu and Carter Holt Harvey have subsequently negotiated a commercial arrangement as to the issue of access.'<sup>91</sup>

**9.11.3 Tribunal comment**

In considering the terms of the lease agreement, Goldstone suggested that 'the Otakanini Topu has gained a very good deal from the Forest Service'. His reasons were that, because the Government was reluctant to take the land under the Public Works Act, 'it had little choice' and had to agree to a 'generous lease arrangement' in order to acquire control of the gap between the two blocks in Woodhill Forest and to establish road links. Goldstone also

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89. Document Q3, pp 56–58

90. Document Q16, pp 72–73; doc 06, pp 144–145

91. Document Q16, pp 73–74

## SOUTHERN KAIPARA MĀORI AND WOODHILL FOREST

9.11.3

| Lease forest    | Date of lease    | Area<br>(ha) | Stumpage rate<br>(%) |
|-----------------|------------------|--------------|----------------------|
| Tainui Kawhia   | 20 January 1968  | 1138         | 20                   |
| Ōtakanini Tōpū  | 6 August 1969    | 681          | 30                   |
| Parengarenga A  | 28 November 1969 | 6248         | 18.75                |
| Parengarenga 3G | 16 January 1975  | 511          | 18.75                |
| Pouto 2F        | 20 October 1977  | 1392         | 20                   |

Table 27: Forest Service leases of Māori land in the North Island. Source: document O6, p 144.

provided figures for other Forest Service leases of Māori land in the North Island (see table 27). All these forests were on coastal sand-dune areas in Northland except for Tainui Kawhia, which was on iron sands at Taharoa, south of Kawhia Harbour.

Despite this favourable stumpage rate, the Wai 733 statement of claim asserts that the Crown negotiated the lease ‘without informed, sufficient or meaningful consultation’ and with no consideration given to planting alternative species to *Pinus radiata*. The statement also suggests that the Crown failed to protect the interests of the Ōtakanini Tōpū by not allowing it to withdraw from or cancel the lease, or to protect the rights of its beneficiaries and their future prospects to benefit under the lease. No evidence was produced to support these claims.

We consider that the Forest Service’s insistence on a long-term lease was intended to protect the sand-dune reclamation and the proposed forest development. While the claimants now question some aspects of the lease agreement, we have no reason to believe that it was not properly negotiated. For the 1960s, the lease seems to have been a fair deal, and the use of the land appropriate.

The Wai 733 statement of claim also referred to ‘adverse effects occurring to the environment’, which the management committee had been unable to control; in particular, ‘the evaporated lakes.’<sup>92</sup> Philip Hill, a member of the Ōtakanini Tōpū management committee, stated:

With the planting of the Woodhill Forest, the South Head lakes which run parallel to the inner side of the forest started to dry up. There has been a loss of native fishery. Moreover, the toheroa were greatly affected by the loss of fresh water which need to filter down on to Muriwai Beach. When the lakes dried up on the Topu farm we had to install a pump and erect power lines, irrigation and troughs to water stock at the rear of the farm. This was a very expensive exercise at the time and still is because the sand damages the pump regularly. The power accounts are horrendous.<sup>93</sup>

92. Claim 1.29(a), paras 14.2, 14.3

93. Document K4, pp 6–7

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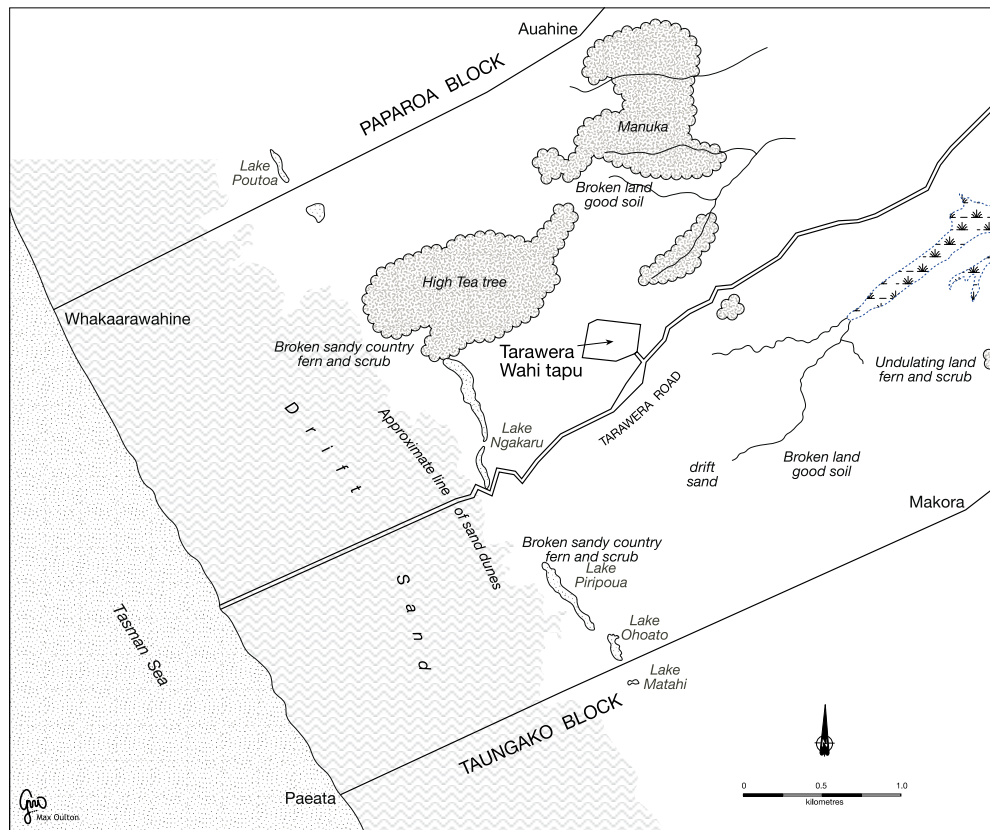


Figure 42: The Ōtakanini sand dunes, 1907. Source: ML plans 7409 and 7413.

The lakes have certainly dried up, and several lakes shown on the 1907 plan are now shown on a modern topographic map as 'dry' (see fig 42). These include Lakes Piripoua and Ngakaru on Ōtakanini Tōpū land, and Lake Poutoa on the Paparoa block close to the northern boundary of Ōtakanini.<sup>94</sup> However, we received no technical evidence to explain this, and it could also be the result of both farming and forestry activities. A single cause in the planting of a pine forest is unlikely. In some cases, the lakes on South Head Peninsula had been partially filled in by moving dunes before any pine forest was planted.

The principal grievance of the Ōtakanini Tōpū management committee was the effect of the restructuring of the Forest Service, and the subsequent transfer of the Woodhill Crown forestry licence to Carter Holt Harvey. One of the complaints was the loss of employment in the forest. Tauhia Hill told the Tribunal that Carter Holt Harvey did not employ local people: 'It has its own gangs to plant and it contracts out nearly all of the other jobs.'<sup>95</sup> We were given no evidence to substantiate this claim. We consider, however, that the Crown can be criticised for failing to consult with the Ōtakanini Tōpū when the licence was transferred to a private company. As for the subsequent dispute over the use of the forestry roads within

94. Document 012

95. Document K2, p14

the Ōtakanini lease area, we were told that, following litigation, an agreement between the parties has been negotiated, but we were not told any details. We accept that a commercial arrangement has been made. We consider that the Ōtakanini Tōpū is now operating in a commercial world, and therefore we need make no further comment.

**9.11.4 Finding**

On balance, we have not been persuaded that the Ōtakanini Tōpū and its shareholders have been prejudiced by Crown action or inaction concerning Woodhill Forest.

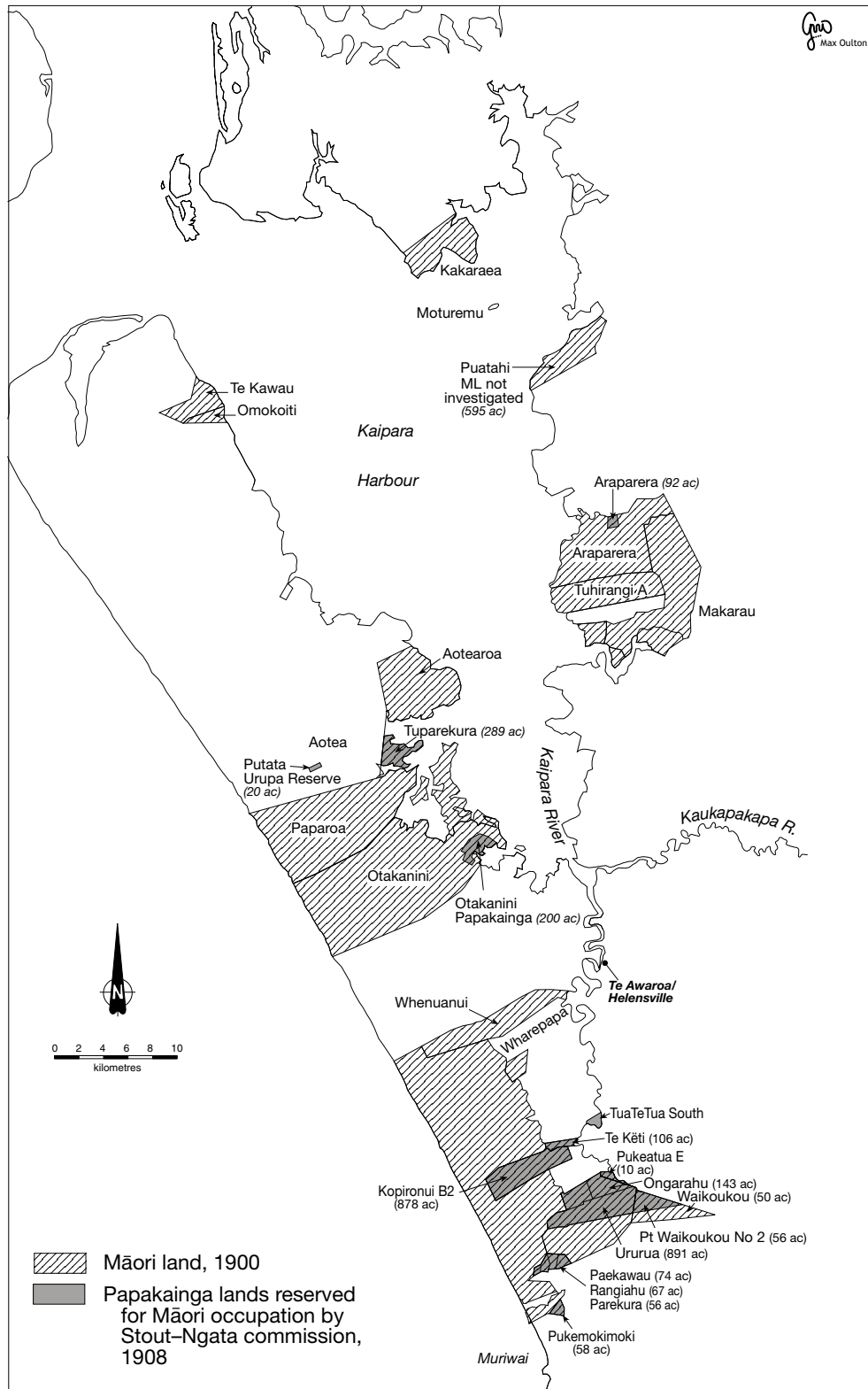


Figure 43: Māori land in southern Kaipara, 1900

## CHAPTER 10

### SOUTHERN KAIPARA MĀORI IN THE TWENTIETH CENTURY

#### 10.1 INTRODUCTION

In this chapter, we conclude our account of the process of land loss and the fortunes of the Māori communities in southern Kaipara. We review in turn the five Māori communities that survive – Te Haranui, Reweti, Puatahi, Araparera, and Kakanui – to show how they kept their remaining land and what state they are in today, commenting on particular points at issue between the claimants and the Crown along the way. We then summarise the extent of the overall land loss in southern Kaipara by 2000, before exploring its socio-economic impact on the Ngāti Whātua inhabitants. We complete this chapter with the Tribunal's conclusions on the two issues that lie behind all this discussion:

- ▶ to what extent is the loss of land responsible for the situation that southern Kaipara Māori find themselves in today; and
- ▶ to what extent is the Crown responsible for that situation?

First, however, we provide a snapshot of the remaining lands held by Māori in southern Kaipara in 1908.

#### 10.2 THE STOUT-NGATA REPORT ON SOUTHERN KAIPARA

The Stout–Ngata commission of inquiry into Māori land in 1907–08 has been discussed in section 3.10. Reporting on Māori land in Waitemata, Rodney, Ōtamatea, and Hobson counties in 1908, the commission divided the land into three categories: A was 'lands under lease or negotiation for lease'; B was 'lands recommended to be reserved for Maori occupation'; and C was 'lands available for general settlement'.<sup>1</sup> Figure 43 shows the areas that were still Māori land in 1900 and the areas that the commission recommended be set aside for Māori occupation, or papakainga, in 1908. Most of the Māori land not included in papakainga areas was already leased by 1908, and in some cases sold or under negotiation for sale. The following breakdown of the blocks within the southern Kaipara inquiry district has been compiled from the schedules to the report.

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1. 'Interim Report of Native Land Commission on Native Lands in the Counties of Waitemata, Rodney, Otamatea, and Hobson', AJHR, 1908, G-1G, pp 3–9



| Category | Land type        | Area (acres) |
|----------|------------------|--------------|
| A        | Leasehold        | 9988         |
| B        | Māori occupation | 2974         |
| C        | For settlement   | 10,799       |
| Total    |                  | 23,761       |

**Table 28: Adjusted totals of land in the southern Kaipara inquiry district, 1908**

Among the blocks listed in category A were the leasehold lands, a total of about 9180 acres. Some of these lands (such as Te Kawau) were under negotiation for sale in 1908. A note attached to the schedule indicates that all but 92 acres of Araparera had been leased and that the remaining area was 'reserved for the occupation of the owners.' This would reduce the total leased area to 9088 acres.

In category B, the papakainga lands reserved for Māori occupation came to a total of about 2682 acres. This total does not include the 92 acres of the Araparera block referred to above or the 200 acres of Ōtakanini papakainga included in category C. With the inclusion of these blocks, the total comes to 2974 acres.

In category C were blocks 'available for general settlement' by lease or sale, which totalled 11,357 acres. In the notes attached to the schedule, Ōtakanini (27 subdivisions) was vested in the Tokerau District Māori Land Board under section 8 of the Māori Land Settlement Act 1905: 'Under the Board's scheme 200 acres are reserved for papakainga, 358 acres to be leased to Maoris.' We discuss the subsequent history of Ōtakanini in the next section. Attached to the Puketapu block was a note that the owners wanted to lease only and a recommendation to vest the block in the Tokerau District Māori Land Board. This recommendation was not followed through, and the Crown acquired the block for sand-dune reclamation in 1934, as described in chapter 9. If the area allocated for papakaingas and Māori occupation on Ōtakanini is deducted, the total area declared to be available for settlement is 10,799 acres.<sup>2</sup>

Table 28 summarises the adjusted totals for each category of land in the southern Kaipara inquiry district in 1908, according to the Stout–Ngata commission. These figures do not include the Puatahi block (823 acres), which was not part of the investigation because there was some doubt about its title in 1908, and Piritaha (26 acres). Including these two would increase the total Māori land in southern Kaipara to 24,610 acres.

The Stout–Ngata commission also commented generally on Māori's use of their lands in the four counties, which include the whole of Kaipara and the east coast north to Whangarei district:

Signs are not wanting that in portions of the Kaipara district the Natives are realising the necessity of utilising their lands in a proper manner. They have not been an idle people,

2. 'Interim Report of Native Land Commission', p 4

but their energy, such as it was, has been expended in other directions, gum-digging, bush-felling, and other employment in connection with the timber industry of the district. The period from 1873 to 1899 or thereabout was marked by great activity in the kauri-gum and kauri-timber industry. At the same time the Maoris of the four counties under review derived large sums of money from the sale of lands.

The commissioners then considered the question of Māori farming their own lands:

A few Natives in each county are dairying and sheep farming; one Native near Helensville is dairying on a large scale, and is anxious to secure more land for his cows and calves. The time seems opportune in the Kaipara district for fostering and directing these attempts to lead a more industrial life; there is need for the proper adjustment of titles to secure to the more industrious the fruit of their efforts, and to the State, or other lending body, a sufficient guarantee of title; above all, there is need for proper instruction and direction, that the energy hitherto used productively under European management and the spur of an assured wage may be diverted to the more difficult task of cultivating land with the incentive of a hard-won and long-deferred prosperity.<sup>3</sup>

At that time in southern Kaipara, with fewer than 3000 acres set aside for Māori occupation, only a few Māori owners were likely to go into farming in the immediate future. Only three farmers on the Ōtakanini block were able to get finance. For most of the Māori living in southern Kaipara, the principal sources of income were labouring for local Pākehā farmers, working on road construction or in the declining timber industry, and digging for much-reduced quantities of kauri gum. There was a continuing reliance on income from lease rentals, although with sales of the leasehold lands and parts of papakainga areas continuing over the first decades of the twentieth century, this income stream also dwindled. Many families eked out a meagre living on their remaining lands.

### 10.3 ŌTAKANINI LANDS

The Ōtakanini block (7638 acres) was vested in the Tokerau District Māori Land Board in December 1906. Most of it was subsequently leased out by the board for 50 years. In the late 1950s, the block was returned to the control of Māori owners, and a large portion of it (6797 acres) was vested in the Ōtakanini Tōpū, a Māori incorporation. This is the largest contiguous area of Māori land remaining in southern Kaipara, and its lengthy administration by the land board has given it a different history from any other Ngāti Whātua lands.

The title to Ōtakanini was investigated by Judge Edger in the Native Land Court in 1904, and orders were made for a number of small subdivisions, blocks A to V, to be awarded to

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3. Ibid, p 2

## THE KAIPARA REPORT

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individual owners, with the large balance area, w block, being awarded to 125 owners. It appears that this unusual partitioning was to give effect to the wishes of the Māori owners, who had reached a compromise among themselves in the layout of partitions to preserve the relationship of existing houses and gardens. They also indicated that w block could be available for lease.

In June 1906, Edger was appointed to head the reconstituted Native Department. His role as under-secretary included supervising the activities of the Native Land Court, Māori councils, and Māori land boards. At the end of June 1906, he sought information on any current or proposed dealings on Ōtakanini from the registrar of the Native Land Court in Auckland and requested a plan from the chief surveyor, also in Auckland. Dr Loveridge commented that it was therefore not a coincidence that Ōtakanini was put forward to the Native Minister as a suitable block to be placed under the administration of the Tokerau District Māori Land Board.<sup>4</sup>

The Māori Land Settlement Act 1905 applied to only the Tokerau and Tairāwhiti Māori land districts, and section 8 set out powers for the Governor by Order in Council to vest in the district Māori land board any Māori land ‘which in the opinion of the Native Minister is not required or not suitable for occupation by the Maori owners.’ The whole Ōtakanini block was vested in the Tokerau District Māori Land Board on 10 December 1906. This vesting was compulsory and, as Dr Loveridge remarked, ‘There is nothing to indicate that any consultation took place between the Native Department and the owners of the block before this decision was taken.’<sup>5</sup> The reasons for the vesting were probably Edger’s opinion that much of Ōtakanini was not used by Māori owners and pressure from local settlers to open up ‘idle’ Māori land.<sup>6</sup> A certificate of title to the whole block was registered in the name of the Tokerau District Māori Land Board on 24 February 1910, under section 14 of the Māori Land Claims Adjustment and Lands Amendment Act 1907.<sup>7</sup>

The board had no power of sale, but it had powers to survey, set out roads, and subdivide the land. Further, under section 8(c) of the 1905 Act, it could ‘reserve and render inalienable any portion of the land for the use and occupation of the Maori owners, or for papakaingas, burial-grounds, eel-pas, fishing-grounds, bird reserves, timber or fuel reserves, or for such other purposes as it may consider expedient.’ The balance area from such reserves could be divided into allotments and leased for any term, or terms, up to a maximum of 50 years, on such conditions as the board thought fit. These allotments could be allocated for lease by the Māori owners of the land. The effect of this vesting was the total loss of control by the Māori owners of Ōtakanini for a period of 50 years from 1908, when most of the leases first took effect.

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4. Document P4, p 33

5. Ibid, p 37

6. Ibid, p 33

7. Certificate of title, north Auckland, NA166/65

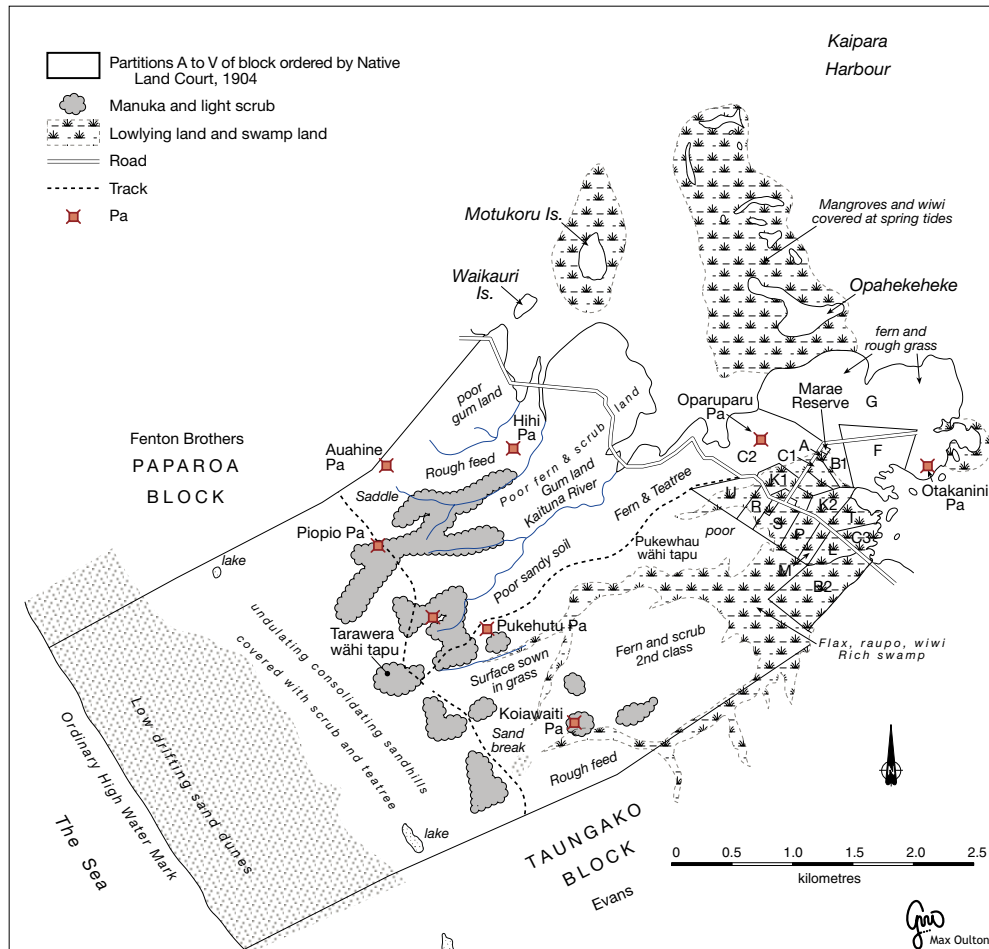


Figure 44: The Ōtakanini block, 1906. Source: sketch plan by Henry Haszard.

Before Edger recommended vesting Ōtakanini in the board, he sought further information about the block. The registrar of the Native Land Court reported no dealings on it, although some informal lease arrangements had been made between some owners and local Pākehā settlers. Auckland district surveyor Henry Haszard had been asked to identify the areas of the block suitable for Māori occupation and the subdivision for leasehold farms and access roads (fig 44). In the 1904 partitions by the Native Land Court, Haszard recommended that the block be subdivided into allotments of no fewer than 500 acres each. He considered that half of that block was of limited value for farm development and recommended that the sand-dune area be reserved. The a to v partitions, he said, 'contain the pick of the block, a considerable portion being rich drained swamp, with a heavy growth of grass', but he thought that local Māori living there could use only about half of this land.<sup>8</sup>

8. Document P4, pp 34–36

## THE KAIPARA REPORT

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The Tokerau District Māori Land Board decided on a scheme of subdivision for leases after the president of the board, Judge Browne, visited Ōtakanini to talk with the Māori owners and to sort out the claims of potential lessees and informal occupiers among local Pākehā settlers. This took some time, because some owners protested about their allocation. In March 1908, the Stout–Ngata commission listened to some of these complaints at a hearing in Helensville. In its interim report of 6 April 1908, the commission commented:

The Board has prepared a scheme of settlement in the case of Otakanini, under which 200 acres are reserved for papakaingas, and three sections amounting to about 360 acres are set aside for lease to Maori applicants. About one-fourth of this block consists of sand hills.<sup>9</sup>

There was a further delay in sorting out local Māori concerns, and it was finally decided to confirm the 200 acres for papakainga and to allow Māori owners the right of first refusal on four allotments adjacent to the papakainga, amounting to about 651 acres. The rest of the block was subdivided into lots for leasing (fig 45). The cost of survey for the subdivision was charged against rentals payable to the board. The allotments were to be advertised for public auction, and leased for terms of 25 years minimum, with a right of renewal for a total term of 50 years. There was to be no compensation for improvements. The upset rental, or reserve price, was set at 5 per cent of the capital value of the land per annum, based on its Government valuation, as set out in section 9(b) of the Māori Land Settlement Act 1905. The claimants have complained that the blocks taken up by Māori farmers had a higher rental than the others. However, as set out in the 1905 Act, the rentals were based on a fixed percentage of their valuation. As Haszard suggested in his report, the land here was better quality and this was reflected in the valuations. We have no evidence that the Tokerau District Māori Land Board did not comply with the provisions of the 1905 Act in setting up the Ōtakanini leases.

The board advertised the auction of the leases on 12 August 1908.<sup>10</sup> Leases of lots 1, 2, 3, and 8 were allocated to Māori owners in the advertisement, but lot 5 was also taken up by a Māori lessee. The rest were leased to Pākehā settlers, who used them mainly as additional grazing areas. Haszard's recommendation that the sand-dune area be reserved was ignored, and presumably the grazing of this area modified the remaining vegetation cover and contributed to greater sand drift and filling-in of lakes. All five Māori lessees gave up their leases before the first renewal, although three had had financial assistance from the State Advances Office. Wai 312 researcher Fiona Small suggested that this showed 'the detrimental effects of the Board's authoritarian attitude, and the effects of external factors such as owner hardship'.<sup>11</sup> Dr Loveridge suggested that insufficient financial and other assistance was available to them. Pākehā farmers had similar problems, but the '100% failure rate here for Maori lessees

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9. 'Interim Report of Native Land Commission', p 2

10. Document F3, pt 2, facing p 35; doc P4, p 6

11. Document F3, pt 2, p 39

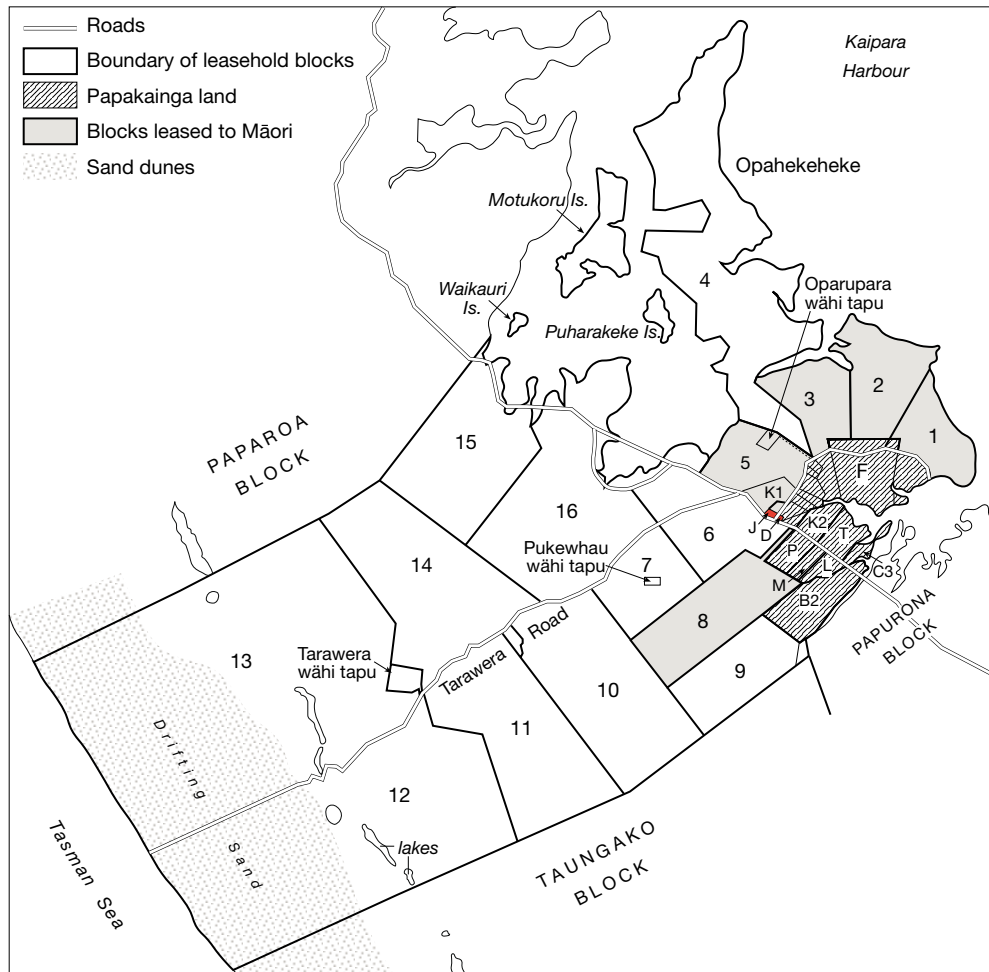


Figure 45: The Ōtakanini block leases, 1909

indicates that they required more assistance, or assistance of a different kind to make a go of it'. Lack of capital was a major factor but, 'in essence, nothing was done by the Crown (or anyone else) to make the necessary resources available'.<sup>12</sup> The leases were then purchased by Pākehā farmers.

During the 1930s, the Pākehā lessees attempted to get the Crown to purchase Ōtakanini. When that failed, they attempted to get the leases renewed, either in perpetuity or with a right to freehold the land, as well as compensation for improvements when a lease was surrendered or expired. But these attempts, which included litigation, also failed. The details of the individual leases are set out in Small's evidence, and we need not review them here.<sup>13</sup> In the 1950s, as the expiry date of the 50-year term loomed, the lessees attempted to purchase or to obtain further renewals beyond 1958.

12. Document P4, p 55

13. Document F3, pt 2, pp 34–64

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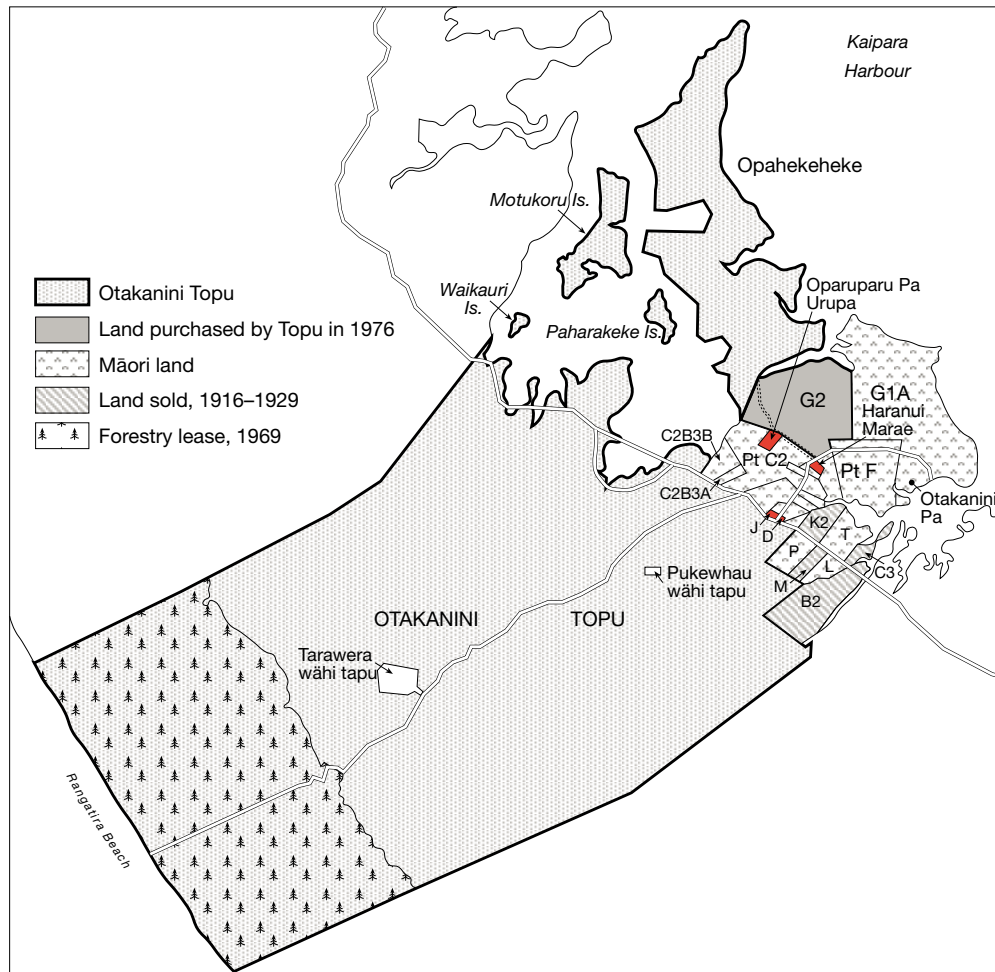


Figure 46: The Ōtakanini block, 2000

As noted in chapter 3, the Māori land boards had been abolished in 1952, and the Māori Trustee took over the administration of Ōtakanini leases under the Māori Vested Lands Administration Act 1954. The decision about the future of the leases was for the 375 Māori owners in 1958 to make. They wanted to resume control of Ōtakanini and told the Māori Trustee not to negotiate any further leases. There was also a problem of numerous breaches of conditions in many of the leases on termination: the claimants alleged that their lands had been ravaged by overgrazing and minimal maintenance of farm structures. The Māori Trustee took successful legal action, although it was several years before all the moneys owing were paid.<sup>14</sup> The Māori Trustee also advised that a Māori incorporation should be established to administer the land and to be responsible for the development loan offered to the owners. In 1958, the Māori Land Court ordered the amalgamation of titles and the

14. Document F3, pt 2, pp 65–97



| Block | Area<br>(a r p) | Date sold |
|-------|-----------------|-----------|
| K2    | 22 0 0          | 1916      |
| B2    | 85 0 0          | 1919      |
| M     | 13 1 16         | 1920–21   |
| D     | 0 2 0           | 1922      |
| J     | 2 0 0           | 1922      |
| C3    | 13 1 0          | 1929      |

Table 29: Land sales in the papakainga area prior to 1930

establishment of the Ōtakanini Tōpū as a Māori incorporation under the Māori Affairs Act 1953 (fig 46).

An issue in the Wai 733 claim by the Ōtakanini Tōpū is the loss of control of land and resources by the compulsory vesting of the Ōtakanini block in the Tokerau District Māori Land Board and the tying up of most of the block in leases to Pākehā farmers for 50 years. But these Pākehā farmers also provided employment for some of the local people, and there was a fair amount of good will on the ground. It could be argued that the 50-year lease period protected the land from sales, so that a substantial area could be returned intact to the Māori owners in 1958. Dr Loveridge commented:

It seems virtually certain, in my opinion, that if the block had not been vested in the Board in 1906, much of it would have been sold over the following years, and particularly during the period 1911–1930 when so much of the land which Maori had held in 1900 was sold under the system introduced with ‘The Native Land Act 1909’.<sup>15</sup>

In 1958, the Ōtakanini Tōpū took over the administration of some 6700 acres of improved land with a capital value of over £100,000.

Some sales occurred in the papakainga area before 1930. It is here that most Māori resentment of board interference in land arrangements seems to have occurred. The board sought to have all ‘idle’ land in production. Some leases to other Māori were arranged, and a lease to a Pākehā farmer had already been agreed before 1906. The board did allow the revesting of some portions in Māori owners, in several cases for the purpose of sale to local Pākehā farmers (see table 29).

Some partitions of the remaining blocks and some transfers between Māori owners also occurred. In 1976, the G2 block (nearly 180 acres) was purchased by the Ōtakanini Tōpū.<sup>16</sup> The Ōtakanini Tōpū lands remain by far the largest land-holding among Ngāti Whātua in southern Kaipara. On the papakainga lands, Te Haranui Marae remains the centre of

15. Document P4, p 56

16. Document F3, pt 2, p 149

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community life on the Ōtakanini block, even though many younger people, and in some cases whole families, migrated to Auckland and elsewhere in the 1950s and 1960s.

The total area remaining in Māori ownership at Ōtakanini is 7133 acres, including the Ōtakanini Tōpū lands (6797 acres) and 32 small blocks. Another Māori-owned block of 293 acres was declared general land in 1971 under section 6 of the Māori Affairs Amendment Act 1967. This section provided that the registrar of the Māori Land Court could declare that any block owned by four or fewer Māori and capable of registration under the Land Transfer Act should cease to be Māori freehold land under the jurisdiction of the Māori Land Court.

**10.4 THE PUATAHI AND KAKARAEA BLOCKS**

The people of Puatahi Marae have links with both Ngāti Hine and Ngāti Whātua, but have joined with the other Kaipara marae communities in the Ngāti Whātua claim (Wai 312) in southern Kaipara. The Puatahi Marae is on the remnant of the Puatahi block on the eastern shore of Kaipara Harbour on the Hoteo River estuary. Across the water to the north-west is the Kakaraea block (1000 acres), which was compulsorily vested in the Tokerau District Māori Land Board in 1909, leased for 46 years, and then sold to the Crown. More than half of Puatahi had been leased in 1912, and sold by 1923. Piritaha (26 acres) is a small reserve north of Puatahi, which was excluded from the Hoteo Crown purchase in 1867 and remains in Māori ownership (fig 47).

**10.4.1 The Puatahi block**

The Puatahi block (823 acres) was investigated by the Native Land Court in 1865 and awarded to Tamehana Maewa, who had resided there with his people for some 30 years. In 1906, the Native Land Court determined the successors to be 30 people holding 63 shares. The Stout–Ngata commission in 1908 did not include Puatahi in its investigation, as the title had not been properly ascertained, but it did list 30 owners and an area of 595 acres. On later survey, the total area was revised to 823 acres. The title for Maewa's successors was finally determined in 1911 for 31 owners.

The first partition in 1912 was to enable 26 of the by now 33 owners to lease part of the block: Puatahi 1 (three acres), an urupa reserve; Puatahi 2 (178½ acres); and Puatahi 3 (517½ acres). In 1914, Puatahi 3, which had been awarded to the group of (mainly absentee) owners who wanted to lease, was further partitioned into three blocks, Puatahi 3A, 3B, and 3C. Negotiations for sale were behind these partitions, as the whole block had been leased in 1912 to G Gardner. Puatahi 3A was sold by four owners in 1915, and 3B by four owners in 1914. On Puatahi 3C, Gardner's lease was transferred to M Glavash in 1917; about 25 owners

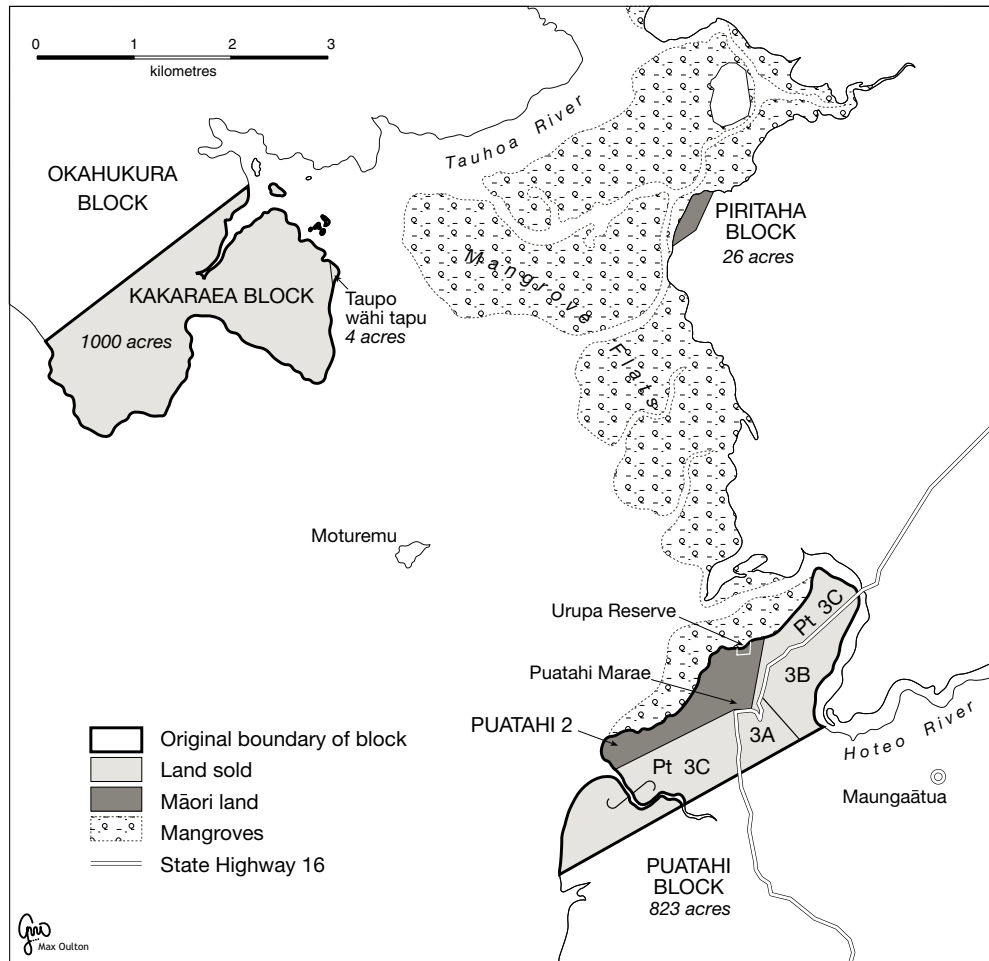


Figure 47: The Puatahi and Kakaraea blocks

sold to Glavash in 1923. This completed the sale of 514 acres, more than half of the Puatahi block, but the rest remained in Māori ownership. Puatahi 2 was partitioned into A, B, C, and D blocks in 1922.<sup>17</sup>

A few families continued at Puatahi, and there have been a few small partitions on the remaining land since 1948. However, this land provided little more than subsistence for a few families, and many of the younger members moved away to seek opportunities elsewhere.

#### 10.4.2 The Kakaraea block

The Kakaraea block was investigated by the Native Land Court in 1895 and awarded to 22 owners, most of them also owners in the Puatahi block. On the eastern shore of Kakaraea

17. Document F3, pt 2, pp 240–257

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was a small wāhi tapu of four acres, the Taupo urupa reserve (fig 47). By 1900, the lands adjacent to Kakaraea in the Okahukura block had been sold, and the only access to Kakaraea was by sea. The Stout–Ngata commission in 1908 recommended that Kakaraea be made available for general settlement. In 1909, the block was vested in the Tokerau District Māori Land Board under the Native Land Settlement Act 1907. A certificate of title issued to the board in 1912 under section 14 of the Native Land Act 1909 stated that the block was ‘to be held in trust for the Natives.’<sup>18</sup>

There had been no consultation with the owners, and at least four letters were sent to the Native Minister between 1909 and 1912 protesting about this vesting. The Minister referred the letters to the board. The Native Department noted that, once an Order in Council vesting land in the board had been issued, nothing could be done. The under-secretary of the Native Department minuted the 1912 letter to acknowledge receipt, and stated that the Native Department had no powers to return the land to owners. He added: ‘If the Natives will await developments they will probably find that the Board will be able to dispose of the land to better advantage than they themselves would be able to do.’<sup>19</sup>

The board leased Kakaraea for an initial period of 22½ years, with a right of renewal for a further 23 years. The rental was set at 5 per cent of unimproved value, and compensation was required for improvements on expiry of the lease. The lease passed through several hands until about three years before it was due to expire in 1957, when the Department of Lands and Survey asked about acquiring Kakaraea to add to its Okahukura farm settlement scheme. In 1954, the Department of Māori Affairs reported that the lessee on Kakaraea was not farming the land, using it only for grazing, there were noxious weeds and rabbits, and fences had not been maintained. The lessee was given notice of these breaches of covenant in his lease. Meanwhile, the commissioner of Crown lands had begun negotiations to purchase the leasehold, for the value of the improvements. It was recommended in late 1955 that the lessee transfer his lease to the Department of Lands and Survey, and that the Māori Trustee withdraw his action for breaches of covenant.<sup>20</sup>

In 1955, there were 119 Māori owners of Kakaraea, and a Department of Māori Affairs officer discussed the possibility of Crown purchase with a few of the principal owners. The Board of Māori Affairs, successor to the Tokerau District Māori Land Board, approved the offer of £1500 for the block, somewhat below the March 1955 unimproved valuation of £1650. A meeting of owners called in February 1956 to consider the Crown proposal to purchase unanimously rejected it. Under the legislation for vested lands, the Crown could develop the property only if it purchased the land or exchanged it for other Crown land. The Māori

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18. Document F3, pt 2, p 259

19. 28 July 1909 annotation on under-secretary, Native Department, to Grace, Native Affairs Department, 2 July 1909, MA1 1912/727, DB5/3/8 (doc F3, pt 2, p 260)

20. Document F3, pt 2, pp 260–263

Trustee had to continue administering the lease and pursue the lessee for breaches of covenant, as the lease had not been transferred to the Crown.

The Department of Lands and Survey made further offers, increasing the price to £3000 and making available three dairy units for Māori farmers that were yet to be developed on other property, to be financed through the Board of Māori Affairs. There remained the question of payment to the lessee of compensation for improvements. The alternative to sale was that the Māori Trustee lease the land for a further 21 years, with a right of compensation for two-thirds of the improvements only. Another meeting of owners was called in May 1957. This was attended by only 15 of the 119 owners, representing 4.7 of the 18 shares in the block. This time the owners unanimously agreed to sell for £3000, the sale being conditional on making available three dairy units on Crown land for settlement by Māori farmers nominated by a four-person committee of the vendors.<sup>21</sup>

The owners of Kakaraea had little choice but to sell, as they did not have the finance to pay the lessee compensation for improvements. The Tokerau District Māori Land Board had failed to set up 'a sinking fund' whereby a portion of lease rentals was set aside each year to build up a fund to pay for improvements on the expiry of a lease, although there was provision for this in section 228 of the Native Land Act 1909, and the provision was continued in the Native Land Act 1931. The royal commission of inquiry into Māori vested lands in 1951 commented critically on leases of Māori lands by Māori land boards that included compensation for improvements, but did not establish a sinking fund for each lease to avoid the heavy financial burden for owners on expiry if they wanted to retain the land or farm it themselves.<sup>22</sup>

The Taupo urupa reserve had been excluded from the sale to the Crown. It had been set aside as a reserve by the Native Land Court in 1939 and vested in five trustees. In 1967, the only surviving trustee, when approached by a Department of Lands and Survey officer to sell the reserve to the Crown, was reported as saying that he knew of no one being buried there in his lifetime, that his people were scattered all over the country, and that no one used it. On 3 October 1967, the Crown purchased the four acres for £145, being 15 per cent above Government valuation. The Department of Lands and Survey wanted it for a scenic reserve. In 1993, it was declared a reserve for local purposes.<sup>23</sup>

In effect, the owners of Kakaraea lost control of their land in 1909, and subsequently had no input into its administration. The subsequent scattering of owners also had an impact on attempts to find suitable Māori farmers among them to take up the offer of three dairy units. In the end, only one dairy farm was settled by a Māori farmer nominated by the owners.

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21. Ibid, pp 264–271

22. 'Report of Royal Commission Appointed to Inquire into and Report upon Matters and Questions Relating to Certain Leases of Maori Lands Vested in Maori Land Boards', AJHR, 1951, sess 1, G-5, p 77

23. Document F3, pt 2, pp 276–277

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## 10.4.3

**10.4.3 The Piritaha block**

Piritaha (26 acres) is a small reserve fronted by mangroves on the eastern shore of Kaipara Harbour, south of the Tauhoa River. It was excluded from the Hoteo Crown purchase in 1867, but no title was issued by the Native Land Court until 1930, previous applications for investigation of title having been dismissed for various reasons. The block was unoccupied in 1930 when title was awarded to Hetariki Hemana and his nephew Te Ruihi Hami Timoti. Piritaha remains in Māori ownership, and legal access is by an unformed paper road across the adjacent farm.<sup>24</sup>

**10.5 ARAPARERA LANDS**

A substantial area of Māori-owned land remained around the two communities of Araparera and Kakanui (on the Tuhirangi A block) in 1900 (fig 48). There were three large blocks – Araparera, Tuhirangi, and Makarau – comprising well over 5000 acres, and two small blocks to the south – Taetetere (186 acres) and Paraparea (85 acres). Tuhirangi B (946 acres) was sold in 1885, a transaction confirmed by the Validation Court in 1895. Taetetere, which had been vested in a single owner by the Native Land Court in 1907, was sold in 1908 to the adjacent Pākehā farmer on Tuhirangi B. Title to Pareparea, which contains an urupa, was not investigated by the Native Land Court until the late 1930s. Interim trustees were appointed, and in 1945 trustees were appointed under section 8 of the Native Purposes Act 1943. Pareparea remains Māori land.

In the following sections, we outline transactions on the three large blocks, Araparera, Tuhirangi, and Makarau. This is followed by an account of Māori land development schemes in the area, and the current situation of the two marae communities of Araparera and Kakanui.

**10.5.1 The Araparera block**

Title to the Araparera block (2537 acres) was investigated by the Native Land Court in 1901 and awarded to 20 owners. Before this, the land had been leased in 1889 for 18 months for £150. This allowed 200 Europeans and 60 Māori to dig gum on the block. In 1893, there was another lease to 15 'Austrian' (Dalmatian) gum-diggers at £1 per digger per month. This lasted five months, until the gum ran out. Cutting rights to the puriri timber on the block had also been sold. In 1906, all but 92 acres reserved for papakainga on the Araparera block was vested in the Tokerau District Māori Land Board, which leased the land for 50 years under the Māori Land Settlement Act 1905. The board formalised some existing lease arrangements, but the owners lost control of all but the 92 acres of papakainga.

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24. Document F3, pt1, pp 179–180

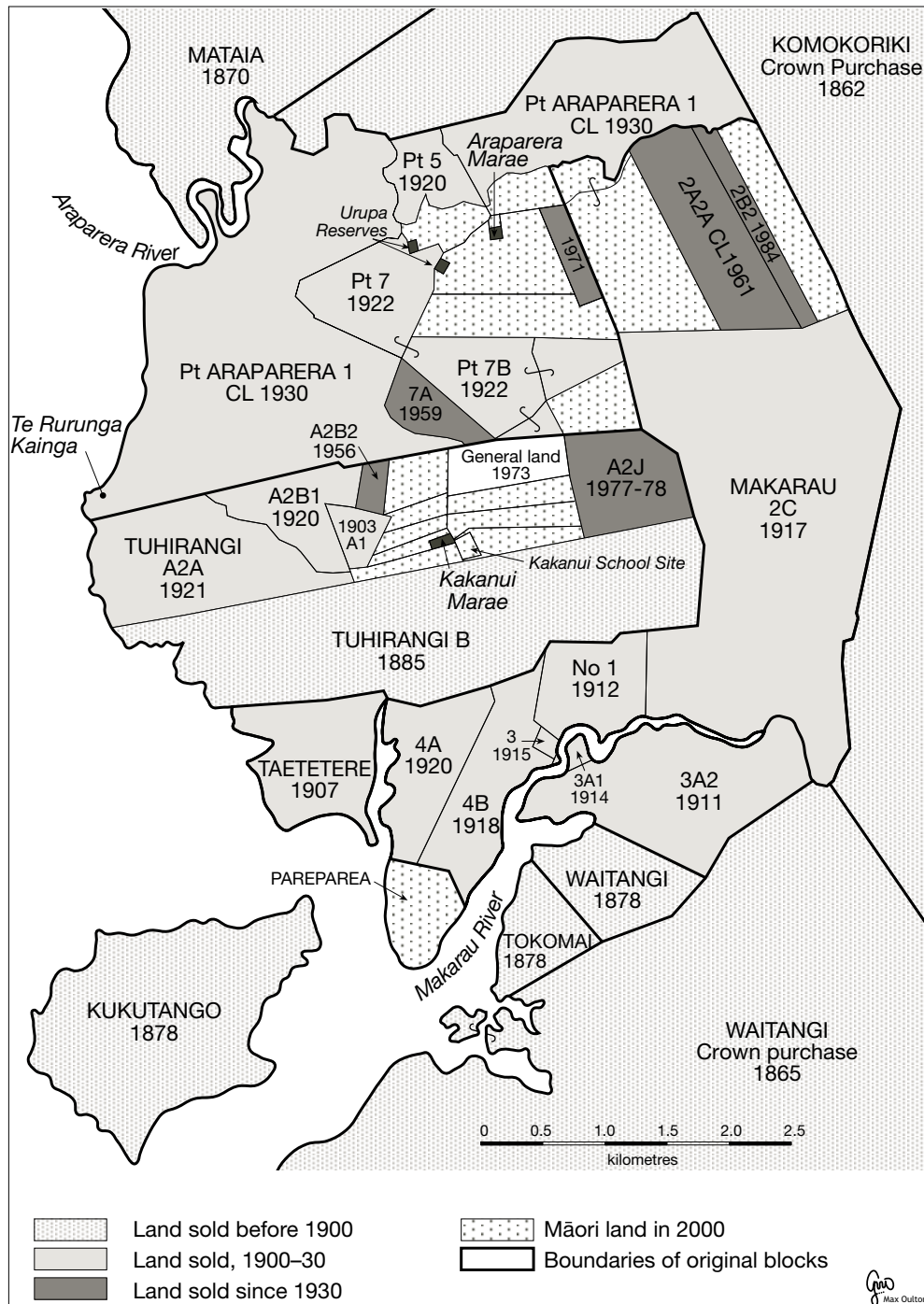


Figure 48: Araparera-Kakanui lands



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## 10.5.2

In 1917, Araparera was partitioned into seven blocks. In the same year, Araparera 5 was divided into two, part papakainga and part leased. In 1920, part (89 acres) of Araparera 5 was sold. In 1921, Araparera 7 was partitioned, and the following year part (391 acres) of 7B was sold. In 1930, a meeting of owners unanimously resolved to sell Araparera 1 (1545 acres) to the Crown. Only 11 of 25 owners, holding 21 of the 45 shares, were present at the meeting, but it was sufficient under the Native Land Act that a majority of shareholders actually present could resolve to sell. The existing lease was renegotiated as a renewable Crown lease under the Land Act 1924. It is not clear why the Crown chose to purchase Araparera 1 in 1930 when it refused the petitions of Ōtakanini lessees (holding similar leases from the Tokerau board) to purchase their lands and issue Crown leases. In 1936, most of the residue of Araparera 5 was included in the Kaipara development scheme, which we discuss below.

No more sales of Araparera blocks occurred until 1959, when Araparera 7A (80 acres) was sold. In 1971, Araparera 4 (40 acres) was also sold. Small areas were taken under the Public Works Act in 1938 and in the early 1960s for road improvements on what is now State Highway 16. The total area of Māori land remaining in the Araparera block is about 373 acres, broken up into 10 blocks.<sup>25</sup>

**10.5.2 The Tuhirangi block**

Title to the Tuhirangi block (2012 acres) was investigated by the Native Land Court in 1877 and awarded to 19 owners. In 1885, the block was partitioned, and Tuhirangi B was sold to the Auckland lawyer Edmund Dufaur (this transaction was reviewed in section 7.3.2). Tuhirangi A (1053 acres) remained intact and was the base for the Kakanui Marae community. In 1903, an area of 40 acres, Tuhirangi A1, was partitioned out and sold in payment of a survey lien of £38 8s. In 1909, an area of 4½ acres, part of Tuhirangi A2, was gifted to the Crown for a school site. Kakanui School was built and served the community as a native school until it was closed in 1960. During the 1970s, the Kakanui community sought the return of the land. In 1977, the land was returned to Māori ownership as the Tuhirangi A3030A block, vested in 14 trustees, and reserved for a recreational and cultural centre.<sup>26</sup>

In 1909, following the recommendation of the Stout–Ngata commission, the balance of Tuhirangi A2 was vested in the Tokerau District Māori Land Board under section 233 of the Native Land Act 1909. There had been no consultation with owners, who protested to the board and to the Native Minister. A petition sent to the Minister in August 1910 explained that this was papakainga land which they had occupied for many generations:

We have many houses, including a meeting house on this block. We have also many food cultivations, a great deal of fencing, some 400 acres, in which our stock run. Our home is

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25. Document F3, pt 2, pp 183–202

26. For details of negotiations prior to revesting, see document F6, pp 242–261.

| Year | Block   | Area<br>(a r p) | Number of owners | Price<br>(£ s d) |
|------|---------|-----------------|------------------|------------------|
| 1920 | A2B1    | 141 1 35        | 11               | 541 11 0         |
| 1920 | A202G1A | 12 0 17         | 1                | 125 0 0          |
| 1921 | A2A     | 314 3 20        | 26               | 405 0 0          |

Table 30: Sales of blocks in western Tuhirangi A2, 1920–21

well known as Kakanui Maori village. Furthermore, we have no food cultivations, houses, Marae, fences or home, elsewhere. This is our only home. It is the place where our fathers, ourselves and our children were born. We number in all 50 persons, including children. We have a Govt school on the land for (the tuition) of our children, and we have agreed that a sufficient area for the school site be granted.<sup>27</sup>

There was little immediate response, but after further representations the owners were advised in 1913 to apply for a revesting of their land under section 18 of the Native Land Amendment Act 1912. They did so in 1914, but it was not until 1916 that an Order in Council was issued revesting Tuhirangi A2 in its Māori owners.

In 1917, Tuhirangi A2 was partitioned into nine blocks. In 1920 and 1921, three blocks in the western half of Tuhirangi A2 were sold (see table 30). In 1938 and 1966, small pieces of blocks adjacent to State Highway 16 were taken under the Public Works Act for road improvement. In 1960, another block, Tuhirangi A2B2 (15 acres), was sold by its two owners. In 1977 and 1978, Tuhirangi A2J, at the eastern end of the block, was sold in two pieces by the single owner. In 1973, the Māori-owned Tuhirangi A2F block was declared general land by status declaration under section 6 of the Māori Affairs Amendment Act 1967.

The Māori land remaining in the Tuhirangi block is about 238 acres, divided into seven small blocks.<sup>28</sup>

### 10.5.3 The Makarau block

Title to the Makarau block (2995 acres) was investigated by the Native Land Court in 1875 and awarded to 12 owners, affiliated to both the Araparera and the Kakanui communities. In 1883, about 24 acres in total was taken by the Crown for roads, and compensation was paid in 1885. The first partition in 1895 saw Makarau 1 (165 acres) separated out from Makarau 2, but the whole block was not surveyed until 1913. An additional area in the south was added to the block to form Makarau 3 and 4. Between 1911 and 1921, several more partitions of the Makarau 2, 3, and 4 blocks occurred, with subsequent sales (see table 31).

27. Petition of Parani Mauriri, Whakatau Mauriri, and nine others to Judge McCormick, 2 August 1910, MA1 1909/414, DB32/3/111 (doc F3, pt 2, p 217)

28. Document F3, pt 2, pp 214–227

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| Year | Partition | Area<br>(a r p) | Price<br>(£ s d) |
|------|-----------|-----------------|------------------|
| 1911 | 3A2       | 316 2 15        | 450 0 0          |
| 1912 | 1         | 164 3 31        | 290 0 0          |
| 1914 | 3A1       | 14 1 8          | 143 0 0          |
| 1915 | Pt 3      | 13 1 0          | 26 10 0          |
| 1917 | 2C        | 1313 2 22       | 1295 0 0         |
| 1918 | 4B        | 192 3 20        | 625 0 0          |
| 1919 | 4A        | 192 3 20        | 1157 5 0         |
| 1921 | 2D        | 98 3 16         | 543 12 6         |

Table 31: Partitioning and sales of Makarau 2, 3, and 4, 1911–21

By the 1920s, the only Māori land remaining in the Makarau block was in the north, adjacent to the Araparera block. In 1954, Makarau 2A2A (198 acres) was sold to R Whokena and included in the Kaipara development scheme. In 1972, Makarau 2A2B was leased to pay rates arrears. In 1984, Makarau 2B2 (74 acres) was sold.

The remaining Māori land in the Makarau block is about 390 acres, in three blocks: 2A1 (a house site of one acre), 2A2B (266 acres), and 2B1 (123 acres).<sup>29</sup>

**10.5.4 Land development**

In 1932, the residue of the Araparera 5 block and the Tuhirangi A2D2G2 block were included in the Kaipara development scheme. This was one in a programme of development schemes on Māori land set up by Native Minister Apirana Ngata in the early 1930s. The Kaipara scheme was established on Te Uri o Hau lands in northern Kaipara, and Ngāti Whātua benefited little from it because so little land was available in southern Kaipara. Here, the scheme consisted of financial assistance to two Māori farmers, Kaipara Mate Komene and his brother, Parata, for dairy farm development on the two blocks. They both initially occupied Tuhirangi A2D2G2 (90 acres), and started with a loan of £66 1s 7d. The brothers later inherited the land through their mother, who died in 1936. In 1945 and 1946, in a series of exchanges of land interests within the family, the brothers concentrated their interests in the Tuhirangi and Araparera blocks, and their siblings acquired their interests in Bay of Islands blocks.

The Komene family farm was one of the success stories of the Kaipara development scheme. By 1933, aided by unemployment relief funds and a loan to pay for materials, 25 acres had been put in grass, fencing constructed, and 30 acres drained, and the brothers were milking eight cows and had three heifer calves and a bull. In January 1935, they began receiving cream cheques from the dairy factory, and in March 1935 their debt was reduced to

29. Document F3, pt 2, pp 204–213

£39 2s 9d, and a year later to £17 15s 2d. By March 1937, their account was in credit of £23 19s. During the 1944–45 financial year, a loan of £44 1s 11d was obtained for building materials, and the brothers restructured the farm, with Kaipara staying on the Tuhirangi block and Parata farming on Araparera 5. In November 1945, Kaipara Mate Komene died, but the family continued dairy farming through the late 1940s. In 1947, the debt was up to £104 11s 7d, but it was being reduced by the cream cheques. Sometime after this, the family stopped farming and the land was leased. By 1951, the debt had been paid off, although it was several years before both blocks were released from the development provisions of the Māori Affairs Act 1931.<sup>30</sup>

A second development loan was advanced in 1954 to Rawiri Whokena to develop a farm on the Makarau 2A2A block (198 acres). Whokena, who had been working locally on a Pākehā farm, purchased the block from its five owners. He was not of Ngāti Whātua and his wife was from Hauraki, but her brother, Awa Brown, was married to a daughter of Parata Komene. The Board of Māori Affairs approved a loan of up to £8000 to purchase the land and develop a dairy farm. Whokena, who was seen as a good prospect as a farmer, was given 100 per cent of the finance needed, and the block was put under part XXIV of the Māori Affairs Act 1953 and included in the Kaipara development scheme.

In June 1955, Rawiri Whokena died of leukaemia, leaving a widow and six children. Awa Brown applied to take over the farm, but the Department of Māori Affairs decided to assume running it directly. The development costs were high, and by 1959 the debt had reached £16,480. In 1960, Awa Brown was settled on the block as lessee, and by June the total debt was £17,135, well above the valuation of the land and improvements. In 1961, the department was granted a charging order against the land by the Māori Land Court. Awa Brown continued farming, but in 1968 he died after a farm accident, leaving no will. Meanwhile, Whokena's widow had moved back to Hauraki with her children, and remarried. There seems to have been little consultation with her and her children, who still owned the land, about what was to be done, and no one wanted to take over such a large debt. In 1971, the department obtained a Supreme Court order for compulsory sale of the land. The block was purchased by the Crown in 1972 for the cost of the debt, and it was added to the Glorit Farm Settlement administered by the Department of Lands and Survey.<sup>31</sup>

#### 10.5.5 The Araparera and Kakanui communities

The Ngāti Whātua communities at Araparera and Kakanui did not benefit greatly from Māori land development schemes. Many families had to leave the area in the 1950s and 1960s, as there was little work locally, and local farming efforts had failed. The remaining Māori blocks lay idle and rates arrears accumulated.

30. Document F6, pp 213–218

31. Ibid, pp 219–232

## THE KAIPARA REPORT

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Conditions for those that remained resembled rural slums. Reports from the Kakanui school teacher, Department of Māori Affairs welfare officers, district nurse, and medical officers in the 1940s and 1950s all suggested that there was a causal relationship between unemployment, substandard housing, overcrowding, inadequate water supply, poor sanitation, and a high frequency of infectious diseases. Tuberculosis, measles, respiratory infections and asthma, ear and skin infections, meningitis, and diabetes were linked to poor housing conditions. Poor health was also a significant reason for the poor attendance of children at Kakanui School. Inadequate sanitation and water supply also accounted for high levels of dysentery, 'summer sickness', and typhoid, and the high mortality rates, especially for babies and small children.<sup>32</sup> In 1941, there were 32 Māori families in the Araparera–Kakanui area with children of school age, but attendance at Kakanui School was often irregular. Sickness was a frequent reason, but older children were often kept home to help look after young ones or assist in other tasks. Families often moved away for a time to take on short-term seasonal work on farms or public works construction, and schooling was disrupted.<sup>33</sup> Sometimes, the children also worked to help family incomes.

Sir Hugh Kawharu, a kaumatua of Ngāti Whātua and later a professor of anthropology at Auckland University, was a Department of Māori Affairs welfare officer in the Kaipara district in the late 1950s. As an appendix to his evidence, he provided a copy of a report from the Health Department on the condition of 26 Kakanui families in 1959 (with names omitted). In note form, it outlines their health and living conditions. The houses were typically described as overcrowded, in 'poor' or 'very poor' condition, and with bad lighting, and many of the children were reported as suffering from tuberculosis and ailments such as 'running noses and ear' and skin infections. Rheumatism, pneumonia, and asthma were also observed in family members.<sup>34</sup>

Among the 124 people in the Kakanui Māori community in 1959, there were 20 confirmed cases and nine suspected cases of tuberculosis. In other words, out of 26 households, 11 households had close contact with family members who had tuberculosis, not to mention the other ills listed.

The outlook for the Araparera and Kakanui communities was still bleak in the 1980s. Ani Hawke of Ngāti Whātua was employed by the State Services Commission in 1987 to assess the impact of restructuring. In 1988, she reported that at Araparera, despite the development of adjacent pastoral land, 'this pocket of Maori owned land has for two generations produced little or no income for its owners. As a result, the standard of housing and economic status of the resident Maori people has been, and is, substandard.'<sup>35</sup> The meeting house, Taumataarangi, had been refurbished by local workers on the Department of Labour's project employment

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32. Document 13, pp 168–170

33. Ibid, pp 133–135

34. Document 19, app B, p 21

35. Document 13, pp 206–207

programme in the early 1980s, but marae labour schemes had been discontinued in Rodney district in 1983. Meanwhile, at Kakanui Marae, buildings have since deteriorated and are no longer in use. The history of unemployment locally was aggravated by a general downturn in employment in the mid-1980s and the drift of urban Māori from Auckland back to their marae communities. The only local employment was still mainly seasonal labouring on local Pākehā farms.

In 1985, the Araparera Trust was formed as a joint forestry venture between Ngāti Whātua (represented by the Māori Trustee) and Rodney County Council on 843 acres of Māori land in the Araparera, Tuhirangi, and Makarau blocks. The blocks were leased for 40 years from 1985, and a forestry encouragement grant was given to assist development. Several local people were employed to plant the forest on a Department of Labour contract work scheme between 1985 and 1988. In 1989, the project offered about four jobs only.<sup>36</sup> We have not been given more details of the Araparera Trust, but Small suggested that the initiative came from both the Rodney County Council, seeking payment of rates, and the Department of Māori Affairs, concerned at so much 'idle' Māori land producing no revenue. In December 1982, a bush fire had swept through part of the land, and in July 1984 total rates arrears were \$14,188, or over \$94 each for the 150 owners.<sup>37</sup> We were not told what long-term benefit there might be for the Māori owners in this forestry venture.

According to Small, a total of 987 acres remain in Māori ownership in the Araparera–Kakanui area: 373 acres in the Araparera block, 238 acres in the Tuhirangi block, 391 acres in the Makarau block, and 85 acres in the Pareparea block.<sup>38</sup> Of this total, 843 acres (301.77 ha) is tied up in the long-term, joint-venture forestry scheme. That leaves very little land to support either the existing residents or any land-owners who may wish to return to live in their marae community.

#### 10.6 REWETI LANDS

West of the Kaipara River and south of Helensville lay the largest contiguous area of Māori land remaining in 1900. However, between 1900 and 1930 most of this area east of the sand dunes was partitioned and sold piecemeal to private buyers. Several blocks were initially vested in the Tokerau District Māori Land Board and leased to local Pākehā settlers, who in many cases began purchasing the individual interests of Māori owners. The numerous partitions were probably related to these piecemeal sales (fig 49). In the west a large area, including the Puketapu blocks and Whenuanui 4, was acquired by the Crown in 1934 for sand-dune reclamation, as outlined in chapter 9.

36. Ibid, pp 197, 208; doc 19, app B, p 23

37. Document F3, pt 2, p 236

38. Ibid, pp 176–177, 201, 212, 225



### 10.6.1 Whenuanui

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| Partitions | Area<br>(a r p) | Number of owners | History                              |
|------------|-----------------|------------------|--------------------------------------|
| Ongarahu A | 56 2 13         | 3                | Partitioned in 1914, 1937, and later |
| Ongarahu B | 15 0 0          | 36               | The marae or papakainga block        |
| Ongarahu C | 49 3 33         | 1                | Sold in 1908                         |
| Ongarahu D | 16 2 20         | 1                | Sold in 1924                         |
| Ongarahu E | 38 2 8          | 1                | Sold in 1915                         |

Table 32: Ongarahu block partitions

owners requested the removal of these restrictions in order to alienate the land, since no one was living on it. The first recorded lease was to a Pākehā, G Sydney-Smith, in 1894. He leased all but about 100 acres of swamp for a term of 21 years. In 1901, Whenuanui was partitioned into seven blocks. By 1911, members of the Bradley family, who had acquired Sydney-Smith's lease, began purchasing individual interests. Whenuanui 5 (141 acres) was sold by two owners in 1911. Whenuanui 3 (50 acres) was sold by three owners in 1912, and Whenuanui 7 (317 acres) by two owners in 1913. Interests in Whenuanui 6 (176 acres) were sold in 1912, and in 1913 a lease on the balance of that and part of Whenuanui 1 was taken out for 42 years.

During the 1920s, the Crown purchased interests in Whenuanui 4 (458 acres), and completed this acquisition in 1934 as part of the sand-dune reclamation scheme. In 1935, Whenuanui 1 (27¾ acres) was partitioned into 1A, which was sold in 1957 by 20 owners, and 1B, which was further partitioned into eight sections, 1B1–8. All these small lots of a little over an acre each are still in Māori ownership. In 1917, Whenuanui 2 (22¼ acres) was partitioned into 2A and 2B, and the latter was sold in two instalments in 1955 and 1957. Whenuanui 2A was further partitioned in 1946 into 2A1 and 2A2. Whenuanui 2A2 was partitioned again in 1949 into 2A2A and 2A2B, and in 1960 Whenuanui 2A1 was partitioned into 2A1A, which was sold that year, and 2A1B.

In this way, the Māori ownership of over 1200 acres in the Whenuanui block has been eroded to about 33 acres divided up into 12 lots, the largest being about seven acres and the smallest a quarter of an acre.<sup>39</sup>

### 10.6.2 The Ongarahu block

The Ongarahu and Maramatawhana blocks, with a combined area of 515 acres, were investigated as a single block by the Native Land Court in 1871 and awarded to 10 owners. In 1901, the two blocks were divided, with the same owners in each, and Ongarahu (174 acres) was partitioned into five blocks (see table 32). The Stout–Ngata commission had recommended in 1908 that the whole block be retained as papakainga for Māori use and occupation, but that did not occur.

39. Document F3, pt 1, pp 83–90

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## 10.6.3

Reweti Marae is located on Ongarahu B, the papakainga block, and the kainga was clustered around it on Ongarahu A and the adjacent Maramatawhana and Pukeatua blocks (fig 49). Ongarahu B remains intact, but numerous partitions of the Ongarahu A block have occurred. In 1914, it was partitioned into A1 (20a 34p), A2 (25a 2r 17p), and A3 (11a 2p). In 1915, Ongarahu A1 was partitioned into A1A and A1B, while Ongarahu A2 was leased by the Tokerau District Māori Land Board from 1915 to 1937.

In 1937, A2 and A3 were amalgamated and repartitioned, and some parts were leased. Between 1946 and 1979, several partitions of A2 and A3 were made, mostly to divide off house lots. In 1971, seven of these were declared general land by status declaration under the Māori Affairs Amendment Act 1967, but one of these was reclassified Māori land in 1981. In 1968, small parts of Ongarahu A3A and A3B6 were taken for road widening on State Highway 16.

The remaining blocks of Māori freehold land are the 15-acre papakainga block Ongarahu B and five small blocks (A2B2A, A2B2B, A3A2, A3B1, and A3B5), making a total area of 41 acres.<sup>40</sup>

**10.6.3 The Maramatawhana block**

The Maramatawhana block (341 acres) was separated from Ongarahu in 1901 and partitioned in 1905 into Maramatawhana A (124 acres), B (20 acres), C (106a 1r 37p), D (35a 3r) and E (48a 1r). Maramatawhana E and B were sold in 1912 and 1910 respectively. Maramatawhana C was sold in two instalments in 1906 and 1911, and Maramatawhana E was partitioned in 1952.

The several partitions of Maramatawhana were related to sales. In 1914, Maramatawhana A1 (43a 3r 10p) was sold and A2 (80a 30p) was partitioned into A2A (33a 2r 58p) and A2B (46a 2r). The following year, A2A was partitioned into A2A1 (7a 30p) and A2A2 (26a 2r 28p), and these blocks were sold in 1916 and 1917 respectively.

In 1952, both Maramatawhana A2B and D were partitioned into A2B1 and 2 and D1 and 2, but were not sold. In 1971, Maramatawhana D1 (two acres) was declared general land. The total area of remaining Māori land is about 82 acres.<sup>41</sup>

**10.6.4 Pukeatua**

Most of the large Pukeatua block (1754 acres) was sold before 1900, part to the Crown and part to a private purchaser, leaving only 113 acres in Māori ownership. Pukeatua A (93 acres) was leased in 1915 and sold in 1918. Pukeatua E (10 acres) was partitioned in 1915 and sold piecemeal over the same period: Pukeatua E1 (5a 32p) was sold in 1915, while Pukeatua E2 (4a 3r 8p) was partitioned in 1916 into E2A and E2B (both 2a 1r 24p), and these were sold in 1919 and 1920 respectively.

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40. Document F3, pt1, pp 118–126

41. Ibid, pp 127–130

| Year | Partition | Area<br>(a r p) | Price<br>(£ s d) |
|------|-----------|-----------------|------------------|
| 1912 | 1B East   | 53 1 13         | 105 0 0          |
|      | 1A2       | 104 0 0         | 208 0 0          |
| 1913 | 1B West   | 20 0 0          | 70 0 0           |
|      | 3B        | 169 0 0         | 524 7 0          |
|      | 2D2B      | 62 1 8          | 309 7 10         |
| 1915 | 1C1       | 59 1 13         | 353 6 8          |
| 1916 | Pt 1C2    | 46 2 37         | 300 0 0          |
| 1917 | Pt 1C2    | 110 3 31        | 440 0 0          |

Table 33: Ururua block partitions

Pukeatua F (10 acres) was partitioned in 1926 into F1 ( $\frac{5}{8}$  acre) with 13 owners, F2 ( $2\frac{1}{4}$  acres) with five owners, and F3 ( $7\frac{3}{8}$  acres) with eight owners. Part of F2 was taken in 1937 for road widening on State Highway 16. In 1965, Pukeatua F2 was partitioned into F2A ( $\frac{1}{2}$  acre) and F2B (nearly two acres). In 1971, F2A was declared general land.

In 1972, Pukeatua E2A, part of a neighbouring farm, was exchanged for Ongarahu A3A1, in order to provide access from State Highway 16 to Reweti Marae, and became Māori land. Except for half an acre of general land owned by Māori, all of the 10 acres in Pukeatua F have remained Māori land.<sup>42</sup>

#### 10.6.5 The Ururua block

Title to the Ururua block (891 acres) was awarded by the Native Land Court in 1871 to 12 owners. In 1901, the block was partitioned into Ururua 1 (439 acres), which was itself partitioned in 1904 into five blocks; Ururua 2 (216 acres), which was partitioned in 1907 into four blocks (with further partitions in 1911 and 1912); and Ururua 3 (219 acres), which was partitioned in 1913 into two blocks.

It is likely that many of these later partitions were related to sales between 1912 and 1917 (see table 33). In 1917, Ururua 3A1 (25 acres) was purchased by a Māori buyer and remained in Māori ownership, but was declared general land in 1972. In 1934, the Crown took 14 perches of Ururua 2D2A for sand-dune reclamation, and in 1950 just over  $1\frac{1}{2}$  acres of Ururua 2D1 for the same purpose. Small areas were also taken from Ururua 2B in 1938 and 1967 for road widening on State Highway 16. In 1968, the sole owner sold Ururua 2D2A ( $12\frac{1}{2}$  acres) and 1A1 (40 acres).

The remaining Māori freehold land in the Ururua block comprises four small blocks (2B2, 2C2, 2D1, and 3A2) with a combined area of about 106 acres.<sup>43</sup>

42. Ibid, pp 160–162

43. Ibid, pp 131–139

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## 10.6.6

**10.6.6 The Hanekau block**

Title to the Hanekau block (1154 acres) was awarded by the Native Land Court in 1871 to 10 owners, and the block was partitioned into two in 1889. Hanekau A (349 acres) was sold in two instalments in 1901 and 1909. Hanekau B (805 acres) was further partitioned in 1902 into B1 and B2. More partitions and sales followed. Hanekau B1 (499 acres) was partitioned in 1919 into B1A (29 acres) and B1B (470 acres), while Hanekau B2 (309 acres) was partitioned in 1908 into B2A (290 acres) and B2B (19 acres). Hanekau B1B was sold in 1904, B2A in 1912, and B1A in 1931. In 1934, the Crown took almost three acres of Hanekau B2B for sand-dune reclamation. The residue, about 16 acres, is adjacent to Woodhill Forest, but has no legal access. It remains Māori land.<sup>44</sup>

**10.6.7 Reweti Marae development**

Many of the men in the Reweti Marae community had jobs in Woodhill Forest. In the early years, women had also been employed in collecting lupin seed and planting marram grass, but, once the pine trees were established, pruning and other forestry jobs were predominantly a male occupation. Some families lived at Woodhill village, others around Reweti Marae and at Te Pua. The few other jobs available were mainly labouring and seasonal work on farms. Many Māori left for jobs in the city in the 1950s and 1960s, but the forest provided an economic base for some families at Reweti that was lacking in other marae communities.

The Reweti Marae community was still poor and many families eked out a subsistence living based on their large gardens, hunting, fishing, and collecting kaimoana. Sir Hugh Kawharu told us about attempts in the 1950s to improve housing in the Reweti papakainga and to encourage commercial horticulture. These efforts came to little, however, because support was lacking from the Department of Māori Affairs, which was focused on farming stock, not horticulture, in its lending regime, and on financing houses in the city, where there were jobs, not around rural marae:

Kin-based communities were left devoid of official recognition, generally divided in their landed assets through individualisation of title, and spiralling ever downwards in their per capita levels of income. These influences left their mark on Reweti.<sup>45</sup>

Disaster also overtook the Reweti community in 1963, when a bus full of its people crashed while returning from a gathering at Waitangi Marae at Paihia, where Queen Elizabeth II and the Duke of Edinburgh had been present. Fifteen people died, 10 of them from Reweti and the rest connected with the community in some way. Twenty-one were injured, many

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44. Document F3, pt1, pp140–144

45. Document G16, p 7

seriously. Sir Hugh observed: 'No Reweti family was left untouched, the leadership fell into disarray, and all plans for development were abandoned for a decade.'<sup>46</sup> Te Kahuiti Morehu, who lost her mother and her grandfather, kaumatua Eriapa Uruamo, in the accident, commented: 'The Marae community just fell to bits. Everyone was grief stricken and traumatised. There was no going to the Marae for support so we had to rely on our own strength and resources.'<sup>47</sup>

The Reweti families slowly put their lives back together. In 1973, the Reweti Marae Trust Board was re-formed, and fund-raising began to build an ablution block and repair the chapel. Road access from State Highway 16 to Reweti Marae was achieved following an exchange of interests between the adjacent farmer and one of the Ongarahu blocks. More money was raised to build a multi-purpose community hall on the marae land, which provided a venue for indoor games for young people. Sir Hugh, speaking in 1999, commented:

At the time (1980s) Reweti was still feeling the impact of loss of kaumatua and kuia and a decline in population, on Ngati Whatua tikanga. Among the majority, several generations of different religious attitudes had also contributed to the loss of spoken Maori, knowledge of oral history and involvement in Ngati Whatua tribal affairs beyond Reweti.

However, another generation has since emerged in the present decade and has been attempting to salvage the remnant – witness Kohanga Reo initiatives and a modest papa-kainga housing scheme. It remains to be seen whether a minimal level of recovery of the language and customs will be the cause or outcome of the rebuilding of the planned meeting house.<sup>48</sup>

Sir Hugh also outlined the difficulties in administering the remaining small blocks of Māori land at Reweti. In 1976, seven blocks were put into the Reweti Trust by the Māori Land Court under section 438 of the Māori Affairs Act 1953:

In some, the blocks were unoccupied remnant pieces of much larger blocks left after the processes of individualisation, partition and succession had done their work. They were not revenue producing, arrears of rates were accumulating and the land was in danger of being taken over by the rating authority. The purpose of appointing trustees was to try to circumvent the danger by leasing the land. On balance the scheme has to date been a failure; two blocks which were viable leasehold properties have in fact been leased and have no debt; but the others, either because of their awkward remnant shape or because they were landlocked have failed to attract lessees and the arrears continue to mount.<sup>49</sup>

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46. Ibid

47. Document 111, pp 4–9

48. Document G16, pp 7–8

49. Ibid, pp 8–9

| Original block              | Area<br>(acres) | Partitions |
|-----------------------------|-----------------|------------|
| <b>South Head Peninsula</b> |                 |            |
| Ōtakanini                   | 7133            | 33         |
| Tuparekura                  | 41              | 1          |
| Total                       | 7144            |            |
| <b>Eastern Kaipara</b>      |                 |            |
| Piritaha                    | 26              | 1          |
| Puatahi                     | 177             | 7          |
| Araparera                   | 373             | 10         |
| Tuhirangi                   | 238             | 7          |
| Makarau                     | 390             | 3          |
| Pareparea                   | 85              | 1          |
| Total                       | 1289            |            |
| <b>South-west Kaipara</b>   |                 |            |
| Whenuanui                   | 33              | 6          |
| Te Ketī                     | 47              | 4          |
| Kopironui                   | 6               | 2          |
| Pukeatua                    | 10              | 1          |
| Ongarahu                    | 41              | 6          |
| Maramatawhana               | 82              | 4          |
| Ururua                      | 106             | 4          |
| Hanekau                     | 17              | 1          |
| Total                       | 342             |            |
| Grand total                 | 8775            |            |

Table 34: Māori land remaining in southern Kaipara in 1998. Source: document F3.

## 10.7 OVERVIEW OF LAND SALES, 1900–98

### 10.7.1 The remnants by 1998

As this review of Māori lands around the five southern Kaipara marae shows, land sales continued well into the twentieth century, especially between 1900 and 1930. The Māori land remaining in 1998 is shown in figure 50, and summarised in table 34.<sup>50</sup>

Apart from Ōtakanini (7133 acres), the remaining Māori land in southern Kaipara consists of small, scattered pockets, only 1642 acres in total. This forms a meagre base for any proposed community enterprise for Ngāti Whātua in the future.

We explore the impact of and reasons for the continuing loss of land during the twentieth century later in this chapter. At this point we pause briefly to provide an illustration of the

50. A number of blocks owned by four or fewer Māori have been declared general land by status declaration under the Māori Affairs Amendment Act 1967. These blocks are predominantly house sites of up to about one acre. They have not been included in these figures, which show only Māori freehold land under the jurisdiction of the Māori Land Court.

alienation process at work. This account of the Tuparekura block, north of Ōtakanini, gives an insight from two members of one family into the sale of individual interests in their land.

#### 10.7.2 The Tuparekura block and the sale of individual interests

The Tuparekura block was investigated by the Native Land Court in 1880 and partitioned into Tuparekura 1 (289½ acres) and Tuparekura 2 (20¼ acres). Tuparekura 2 was a roadway that bisected Tuparekura 1 and gave access from Kaipara Harbour to the farm on the Aotea block. It was sold privately in 1881. In 1911, Tuparekura 1 was partitioned into 1A and 1B, because the latter block (216 acres) had been leased in 1910. Harold Monk acquired all the interests in 1B, and the block was transferred in two portions in 1920 and 1921. In 1930, Percy Monk began acquiring interests in 1A. However, 18 of the 20 owners were minors, and the Native Land Court ruled that Monk's transactions with their trustees were not in the minors' interests, and called for a meeting of owners. A majority of owners opposed sale of the whole block, but Monk was able to acquire shares equating to about 30 acres of the 41½ acres in 1A. His share was partitioned out as Tuparekura 1A1.

Tuparekura 1A2 remained in Māori ownership, although some share exchanges occurred as part of a consolidation of interests by a few owners. In 1963, E G Leighton, who had acquired the adjacent blocks, began buying shares in 1A2. He had also applied to reclaim about 312 acres of mudflats adjoining his farm. His proposal included a stopbank and grassing of 78 acres of mudflats adjoining Tuparekura 1A2. In 1965, the reclamation was approved by the Marine Department. The Māori Appellate Court in 1965 confirmed the transfer to Leighton of 45.24 of 57.143 shares in Tuparekura 1A2. In 1970, Leighton acquired the 2.381 shares of another owner through the Māori Trustee. In 1983, the Māori Land Court declared Tuparekura 1A2 to be Māori freehold land, although Leighton, recorded as a European, held most of the shares. The remaining shares were held by Eruini and Wirihana Hawke.<sup>51</sup>

Ani Hawke told the Tribunal about the family's efforts to maintain their links with Tuparekura, which she described as their 'tupuna whenua'. She represented the Wirihana Takanini Hawke Trust Board, comprising the five children of Wirihana Hawke:

We have succeeded to Tuparekura 1A2 as a whānau . . . All that remains in Maori ownership is 1/27th owned by our Trust Board and 1/27th by our 1st cousins, the children of my father's brother Eruini Panapa Haaka Hawke.

Unfortunately Mina Haaka Brown (nee Hawke), my father's sister, sold her shares, along with all the others.<sup>52</sup>

51. Document F3, pt1, pp 73–79

52. Document 19, p 2



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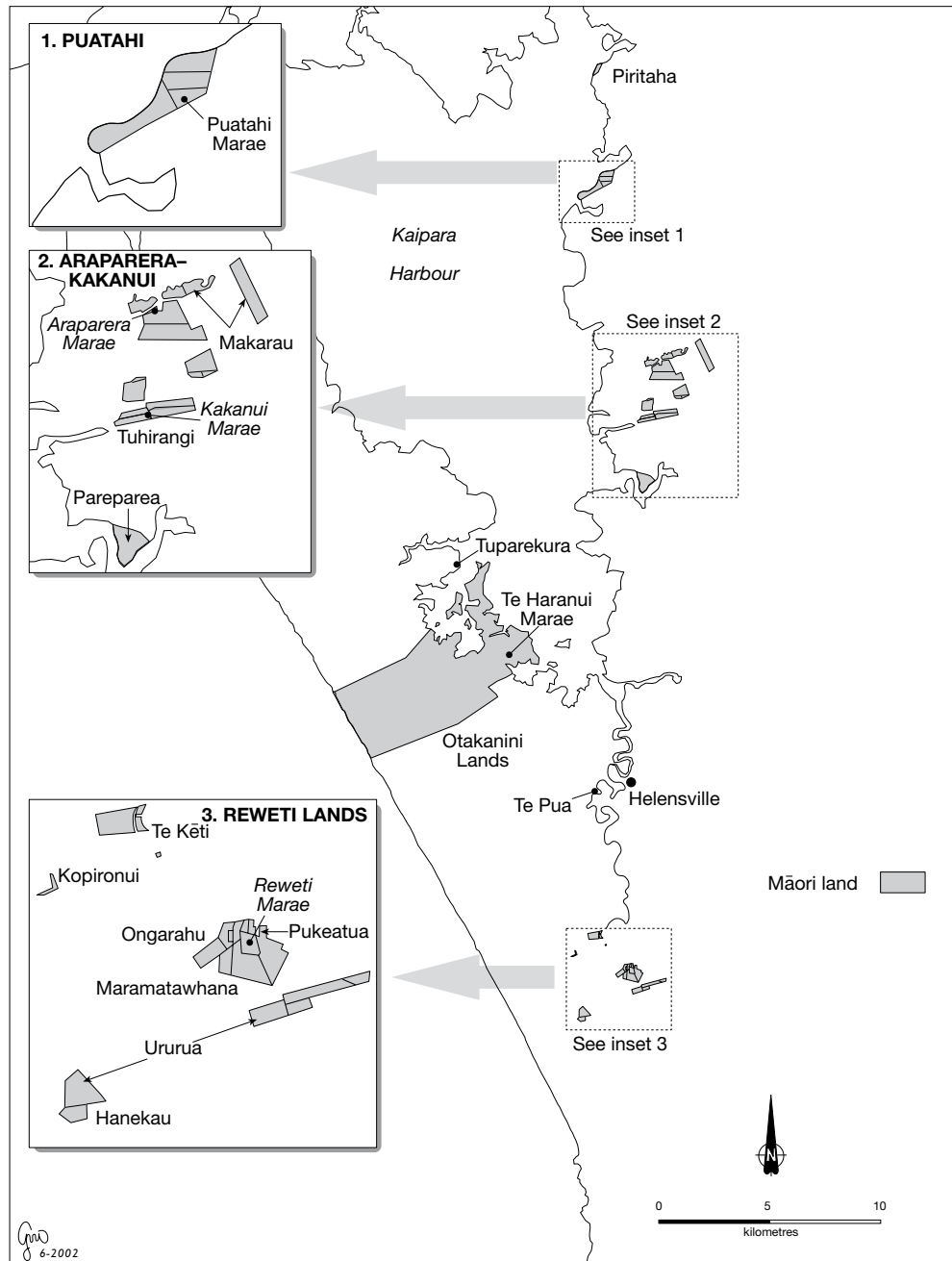


Figure 50: Māori land in southern Kaipara, circa 2000

Ani Hawke then explained how her father's family had lived at Tuparekura and Te Haranui, but, after her grandmother died in the 1918 influenza epidemic, her grandfather moved back to Orakei with his children, where various aunts looked after them. In 1954, her father succeeded to his interests in Tuparekura, and he then began to take an interest in his Kaipara connections:

My father's sister Mina Brown sold her shares in Tuparekura in the 1960s. The economic and social state of Maoridom of that time was desperate. People were desperate. There was real poverty and there were people like Mr Leighton Senior who had ready cash available for shares in Maori land. The temptation to sell was too great for many, including my aunt, who had a large family to bring up, the majority of the time by herself after the passing of her husband.

The partitioning and selling of his family shares had a bad effect on my father. He told me that had he known his sister was thinking of selling her shares, he would have stopped her or raised the money himself and kept the land in the family.<sup>53</sup>

What upset Wirihana most was that the family had no legal access to the land and the family urupa because Leighton farmed all the land. Wirihana was forced to 'belittle himself' by 'having to ask for access to his tupuna whenua'.<sup>54</sup>

Nellie Tepora Clay, a daughter of Mina Brown, explained the family's circumstances to the Tribunal. There were nine children, and her father worked 'extremely hard to raise his large family'. After her husband's death in 1962, at the age of 53 years, Ms Brown took her younger children to Whangarei 'to live with three of her older sons, one of whom was married with one child, so that they could support her'. Ms Clay was living in Auckland and sending money to her mother from her wages, 'to assist her in settling outstanding accounts left by my father'. In 1963, Leighton had put 'pressure on shareholders' to sell their shares in Tuparekura 1A2. Ms Clay's mother was by this time 'desperate for money' and, with several other shareholders, she agreed to sell in February 1964. Ms Clay commented:

My mother often talked about her land, but I don't ever recall her talking about the sale. It must have hurt her very much because I know she valued her land.

The only Maori interests now left in Tuparekura 1A2 are those of the children of Mina's two brothers Wirihana and Eruini. All that remains of our tupuna kainga is a group of lonely graves down on the point, and the outlines of gardens and buildings amongst the scrub.

Ms Clay felt not only her mother's loss but also 'a loss for all her descendants'.<sup>55</sup>

Ms Clay also told the Tribunal of her concern about Leighton's reclamation of about 300 acres of mudflats adjacent to Tuparekura 1A2 without any consultation with Māori owners. Wirihana Hawke was also upset by the reclamation, which had 'disrupted the natural resources' valued by the whānau.<sup>56</sup> This was also an issue with Ōtakanini owners, because an application in the 1980s by the Ōtakanini Tōpū to reclaim an area of mudflats within its title had been turned down. In 1993, Leighton's application to have Tuparekura 1A2 declared

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53. Document 19, p 4

54. Ibid

55. Document 110, pp 3-4

56. Document 19, p 6

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general land was dismissed by the Māori Land Court because the Māori owners had not been consulted. Tuparekura 1A2 remains Māori freehold land, substantially owned by a Pākehā; the Māori owners' interest comprises about one acre. But it is not the economic value of the land that matters to the family – it is the symbolic importance of retaining shares in the ancestral land.

**10.8 THE IMPACT OF LAND LOSSES BY 2000**

There is no doubt that the disparity in socio-economic status between Pākehā settlers and Māori communities in southern Kaipara widened during the twentieth century. Many other tangata whenua witnesses told us of their experiences. While some asked not to be identified, we have been able to build up a picture of life for those who remained in these communities. Some of the older people told us of poor housing in the 1930s, of raupo and nikau whare and of wooden-framed shacks with sacking walls, corrugated-iron roofs, and dirt floors. The better houses with weatherboards and wooden floors were small, and up to a dozen children, their parents, and often other relatives as well, were crammed into them. Tuberculosis was rife, and other diseases such as typhoid and gastric infections were exacerbated by the poor water supply (often the local stream) and poor sanitation (the long-drop toilet was universal).

Food resources of the land and sea were still available in the 1950s but are now less plentiful or no longer found. There were plenty of fish in Kaipara Harbour, along with eels in tributary streams and kaimoana on the western coast; watercress, puha, blackberries, and other plants, both food and medicinal, could be gathered. Most families had gardens producing potatoes, kumara, kamokamo, melons, sweet corn, and other vegetables. Many had at least one house cow, and some had several that supplied milk. Many spoke affectionately of the warmth and support of growing up in kin-based communities. Others pulled no punches in telling of the stresses of unemployment and poverty – the domestic violence, drunkenness, and anti-social behaviour in some families. Others spoke of diseases and the high mortality rates, especially among young children. One woman told us how she became a whangai to an elderly aunt whose six children and her grandchildren had all died. Others spoke of being moved around when a parent or grandparent with whom they lived had died, and a few ended up as State wards in foster homes. A constant theme in these very personal stories was poverty and deprivation, a sense of hopelessness, and resentment that Ngāti Whātua in southern Kaipara had been buffeted by Pākehā laws and officialdom but had not benefited from Pākehā settlement in their lands.

Sir Hugh Kawharu told the Tribunal about the problems of addressing the needs of rural, kin-based Māori communities within the Board of Māori Affairs policy on land development from the 1950s:

That policy . . . included lending money to Maori people not only for sheep and cattle farming but also for housing. But first of all if people had shares in land they were expected to partition them out to provide a collateral security for the government's finance. Rural Maori, however, often ran into the difficulty of being in an area that was labelled 'remote', that is to say remote from secure employment and therefore a steady income with which to repay a loan. Although Ngati Whatua of the southern Kaipara more often than not had shares in land, enough to enable them to partition out those shares and build a house on it, they were unable to achieve at least the latter, either because of a lack of a job or, which I suppose is the same thing, they were in an area considered 'remote', with the result that state finance was unavailable to them. The net effect was that their housing remained sub-standard, with all the consequences for the occupants of poor health and low levels of the children's educational performance.<sup>57</sup>

The Department of Māori Affairs also encouraged rural Māori unemployed to seek jobs in urban areas. Sir Hugh commented:

In the 1960s, the Department was obsessed with a final solution to 'remoteness', a solution called 'relocation'. By transferring people, even those who had interests in land but were unable to use them or gain employment in the vicinity, to where there were jobs all problems would be solved. Thus members of Ngati Whatua from the southern Kaipara were persuaded to move into the state suburbs of Glen Innes, Otara and West Auckland. By leaving their community and their lands they generally solved one set of problems, but created a number of others. And many of these remain with the present generation today.

In depicting relocation as a final solution to the Maori welfare problem of the southern Kaipara, I am not suggesting that there was something sinister about it. It must nevertheless be seen in the political context of the 1960s.<sup>58</sup>

All these pressures impelled many southern Kaipara Māori, especially young people, to leave and seek work in Auckland. There, at least they had support from relatives at Orakei. But even then they shared the pain of the eviction of Ngāti Whātua from their kainga at Okahu Bay in 1950 and the events at Bastion Point in the 1970s, which have been reported on in the Tribunal's *Report on the Orakei Claim*.<sup>59</sup> Life in the city was often little better for some young Māori migrants from Kaipara, because many had received minimal education and few were qualified for more than low-paid, menial jobs. Some went to work in the market gardens at Pukekohe, and others went into trade-training schemes run by the Department of Māori Affairs in the 1950s. We also heard about the chequered employment careers of

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57. Document G16, p 3

58. Ibid, pp 6–7. See chapter 3 above for a discussion of the political context of the 1960s.

59. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991)

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many who travelled to various parts of the country to work on farms, construction sites, and hydro schemes and in forestry, shearing gangs, and so forth.

In the 1980s, many Ngāti Whātua began drifting back to their marae communities, a process accelerated by rising unemployment rates in the city. But rural communities were also suffering from job losses in the restructuring of the 1980s. We have already noted in chapter 9 the impact of job losses in forestry and the removal of the Woodhill forestry village. Ani Hawke was employed by the State Services Commission early in 1987 to 'look at the effects of corporatisation of the Woodhill and Riverhead forests, the Post Office, and the restructuring of the Ministry of Works'. The local dairy factory at Helensville closed at about the same time, and New Zealand Rail was corporatised, downsized, and later sold (in 1993). Ms Hawke told the Tribunal about the impact on local Ngāti Whātua families:

Due to the closure of these major employers, people were being relocated and in effect displaced. People had to leave their forestry and railway homes. The school rolls went down at Woodhill Primary School and Kaipara College, which meant teachers were dismissed. The local dairy, butcher and community organisations failed and folded. As an added knock to the tangata whenua forestry workers, the new state owned enterprise Timberlands employed contractors from Taupo and Rotorua to do their work.

The psychological and health effects on tangata whenua were huge. The social effects during this time included fighting and drinking, marriage break-ups and children being neglected. There were a number of suicides.

Health was a major problem of all the workers and their families. The living conditions were very poor. I witnessed personally the lack of housing, poor housing conditions, lack of electricity, fresh water, hot water, people still bathing in the polluted creeks, poor sanitary conditions including longdrops, lack of proper access to their homes, bare floors, open fires for cooking, overcrowding.

It was obvious to me these health problems had always been there but became manifest to a greater extent during the corporatisation process. The mental health in particular suffered. I saw our men, who were strong and good providers for their families, diminish in their heart and soul.<sup>60</sup>

Ms Hawke was then appointed coordinator of a 'Job-Search' programme in the Helensville area, based initially at Reweti Marae. She was able to organise some of the forestry workers into their own contracting gang so that they could return to forestry work 'under their own legal entity'. Others were able to put their redundancy money to good use:

Other men and their wives realised they had other skills, and formed themselves into lawn-mowing, catering, landscaping, horticulture businesses of their own. Other people

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60. Document 19, pp 8–9

went back to school and university. The Job-Search programme was open to the whole community, as the community as a whole was affected.<sup>61</sup>

Unfortunately, at the end of 1987 the programme was moved to the employment services at Henderson, despite objections that it continued to be needed at Reweti because of 'high unemployment and high stress levels' and because public transport to Henderson was non-existent and few locals had access to private cars.

In her 1988 report on the housing needs of Kaipara Māori families, Ani Hawke emphasised the stark contrast between the homes of Pākehā families and those of Māori:

In the rural area most of the poor living conditions of the Maori people are not visible from the roadside. The ageing homesteads are placed in beautiful glades or amongst the natural landscapes of their ancestral land, accepting the natural facilities of down drop [toilet], creek washing etc.

The people are very protective of their land and not all are able to see the conditions that they live in, the shacks, buses, vans, tents and the overcrowdedness they are experiencing. In several instances families up to 20 are living together in these types of conditions.<sup>62</sup>

Inadequate housing, unemployment, and dependence on welfare benefits are still characteristic of Kaipara Māori communities in the twenty-first century. While local initiatives have made significant progress in marae development, papakainga housing, kohanga reo, and the teaching of tikanga Māori to young people, there is still a meagre economic base in these communities to ensure that they have a viable future.

#### 10.9 TRIBUNAL CONCLUSIONS

There is no dispute that since 1840 most of the Ngāti Whātua land in southern Kaipara has been alienated, and that Ngāti Whātua in the twentieth century have suffered from poverty and deprivation. We heard some heart-breaking stories from tangata whenua witnesses, and the Crown does not dispute their accounts as evidence of their poverty and inability to participate fully in the Kaipara economy. We accept these stories as evidence of Ngāti Whātua's socio-economic circumstances in the late twentieth century.

The two issues for the Tribunal, then, are the role of the Crown in acquisition of this land since 1900 and the extent to which the Crown might have intervened to ensure that Ngāti Whātua retained their limited land holdings in 1900.

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61. Ibid, p 10

62. Ibid, app B, p 4

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10.9.1

**10.9.1 Claimant submissions**

Counsel for the Wai 312 claimants submitted that, although Ngāti Whātua were ‘already effectively landless and indeed little more than a marginalised minority within their own rohe’ at the beginning of the twentieth century, the Crown made ‘no serious attempts’ to stop further land alienation. In 1865, Ngāti Whātua still held some 156,000 acres within the Kaipara inquiry area. This landbase had dwindled to approximately 36,381 acres by 1900, and by 1998 only 8811 acres, or 5.6 per cent of that held in 1865, was still retained by Ngāti Whātua.<sup>63</sup> The claimants argued that the Crown had played a significant role in this process, both directly by purchase and taking land for public works and indirectly by allowing private purchases through the Tokerau District Māori Land Board.

Counsel argued that Ngāti Whātua’s land interests continued to be fragmented by the ‘ongoing effects of the Native Land Court’ under the Native Land Act 1909, ‘which undermined existing ownership structures without replacing them with any workable form of individual ownership’. In particular, individual interests were fragmented by the system of bilineal succession, or inheritance through both male and female lines by all children. The interests or shares often became uneconomic, and ‘therefore vulnerable to alienation, at a time when the economic position of the owners was also worsening, making them more likely to have to sell their interests in land.’<sup>64</sup> Counsel also criticised the role of the Tokerau District Māori Land Board in taking over the administration of land, and the lack of capital provided for land development, which meant that Ngāti Whātua lost control of their own land. Despite the recommendations of the Stout–Ngata commission, the Crown had not restricted the alienation of reserves nominated for Ngāti Whātua’s occupation, and some 80 per cent of these lands had been sold by 1935.

Counsel rejected the Crown’s suggestion that Ngāti Whātua continued to sell land voluntarily after 1900 as being ‘too simplistic’ and submitted that the factors outlined above circumscribed ‘the degree of free choice’. It was claimed that the ‘cumulative effect’ of these during the twentieth century had prejudiced Ngāti Whātua:

At the time when Ngāti Whātua were already landless the Crown’s continued encroachment on the remaining landbase through both the Native Land Court system and the Public Works Act constituted a severe breach of the principles of the Treaty of Waitangi including the principle of active protection and the principle of utmost good faith.<sup>65</sup>

Counsel further submitted that the Crown had failed even to attempt to provide any redress, although it was obvious by the 1920s that Ngāti Whātua were landless and impoverished. Ngāti Whātua received no benefit from uncompleted consolidation schemes intended

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63. Document Q1, p 112. In our analysis, the total area of the Māori land remaining in 1998 was 8775 acres (see sec 10.7.1 above).

64. Document Q1, pp 112–113

65. Ibid, p 129



to reform land tenure. There was so little suitable land left in southern Kaipara that Ngāti Whātua could not participate effectively in the Māori land development schemes which began in the late 1920s. Counsel also argued that the Crown had failed to respond to Māori requests for agricultural training and access to capital to develop their lands, which had been advocated by native land laws commissioner James Carroll in his 1891 minority report and by the Stout–Ngata commission in 1907 and 1908.<sup>66</sup> “There was no rural renaissance for Ngāti Whātua in the 1920s.”<sup>67</sup>

In reviewing the socio-economic impact of land loss, claimant counsel submitted that Ngāti Whātua had derived little benefit from Pākehā settlement on their lands:

the anticipated benefits have not eventuated and . . . Ngāti Whātua within the South Kaipara are today struggling to survive on what remains of their ancestral lands, many in conditions that are simply unimagined by either their Pakeha neighbours or the wider population of Auckland.<sup>68</sup>

Counsel emphasised that, from an original tribal land base of 400,000 acres, only about 8800 acres remained in Ngāti Whātua hands. With the exception of the Ōtakanini Tōpū, much of that was ‘largely fragmented and development is hamstrung by multiple ownership’. Ngāti Whātua had been left with a limited ‘economic base’ which ‘has resulted in the gross economic and political marginalisation of Ngāti Whātua over the past 100 years’. Counsel described the poor socio-economic position of Ngāti Whātua today as a result of ‘the actions by the Crown in the nineteenth [century]’, and concluded that:

the claim is not just an abstract exercise in determining the culpability of the Crown for actions in the distant past. This claim is as much about the collective experiences of the individual claimants themselves and the prejudice that they have suffered in their own lifetimes because of decisions and actions of the Crown since the signing of the Treaty of Waitangi.<sup>69</sup>

#### 10.9.2 Crown submissions

Crown counsel acknowledged that Ngāti Whātua land sales continued well into the 1930s but did not accept the claimants’ allegations that the Crown’s failure to intervene was a principal factor:

Over this period the Crown did not ignore problems with Maori land ownership and use, but the remedies which were put forward continued to be based on the belief that Maori

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<sup>66</sup> Ibid, pp 131–132

<sup>67</sup> Ibid, p 139

<sup>68</sup> Ibid, p 153

<sup>69</sup> Ibid, pp 153–154, 157

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generally had more land than they could effectively use. Attempts during the first decade of the century to promote leasing rather than sale (via voluntary and compulsory vesting in Land Councils and Boards under the 1900 and 1905 Acts), and to ascertain the exact state of affairs in relation to Maori lands (via the Stout–Ngata Commission of 1907–09) did not produce the desired effect of putting sufficient ‘idle’ Maori land to commercial use.

Counsel then suggested that the Native Land Act 1909 provided a system which ‘facilitated sale and leasing by the Maori owners themselves, under the supervision of the Maori Land Boards.’<sup>70</sup>

Crown counsel acknowledged that by the 1920s there was little suitable land available for Ngāti Whātua to benefit from Māori land-development schemes, and suggested that, if more land had been vested for leasing under the 1900 and 1905 Acts, it would not have been lost to permanent alienation:

The critical problem, then, is not simply one of land alienation, but rather is the retention of a sufficient land-holding combined with access to the capital and expertise required to develop it. Had the Crown put a stop to permanent alienation in 1900, the latter requirements would still have remained. Given that Ngāti Whātua at this time had neither capital, nor sufficient expertise in commercial agriculture to develop their own lands, one would have to postulate Crown financial and administrative intervention on a major scale in order to enable the development of some portion of their land.

One difficulty with that postulation is that it is not realistic in historical terms. Another is that Government intervention in Maori affairs on such a scale has invariably attracted opposition and criticism by the Maori affected.<sup>71</sup>

Counsel suggested that Māori complaints in both the Wai 312 and the Wai 733 claims about the Ōtakanini block being vested in the Tokerau board and leased for 50 years demonstrate this point. Counsel also noted that financial assistance was made available to Māori farmers on the Ōtakanini block. Counsel submitted:

While it is accepted that no agricultural training was provided to Maori in southern Kaipara in the first two decades of the 20th century, this should be viewed in light of the fact that no such training was provided to anyone in this period, and was not contemplated by the Government of the day.<sup>72</sup>

Crown counsel expressed concern about Wai 312 claimant allegations that ‘the actions of the Crown have resulted in gross economic and political marginalisation over the past 100 years.’ Counsel did not dispute the experiences related to the Tribunal by the tangata

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70. Document Q16, p 66

71. Ibid, p 67

72. Ibid, p 85

whenua witnesses, but was critical of the Wai 312 research report by Fiona Small, 'The Socio-Economic Consequences of Land Loss for Ngati Whatua of South Kaipara from 1900':

What the Crown does take issue with is the apparent assumption that the Crown is required to guarantee a level of economic prosperity regardless of the social and economic circumstances of the time. While Ms Small's report may record the social and economic position of Ngati Whatua during the 20th century, it fails to assess the position of Ngati Whatua relative to other New Zealanders of the time, Maori or non-Maori. Ms Small's benchmark for the social and economic welfare of Ngati Whatua is consistently the benefits that claimant historians argue were expected as the results of promises allegedly made by the Crown in the 19th century. Such an approach fails to take account of the practical ability of the State to provide the outcomes Ms Small argues were promised to Ngati Whatua.<sup>73</sup>

Counsel further submitted that Small's report gave no indication of 'the inherent limitations of land, and the rural economy to provide employment and financial support for a growing population such as that of Ngati Whatua in the 20th century'. Nor was there any consideration of 'the worldwide trend of urbanisation that dominated the 20th century'. Counsel therefore submitted that this was a failure to indicate the complexities of the situation and suggested that there was 'insufficient evidence before this Tribunal to allow it to make a finding that the social and economic position of Kaipara Maori is a direct result of the extent of their land holding'.<sup>74</sup>

### 10.9.3 Tribunal comment

Ngāti Whātua's claim is about their loss of land and subsequent impoverishment. The typical sequence of land loss in the twentieth century began with a lease to a local Pākehā farmer, who then began to buy up individual interests. A number of partitions followed, often initially to separate out different family interests, but subsequently to divide off the interests of those who were willing to sell for transfer to a Pākehā buyer. Apart from the Crown acquisition of coastal lands for sand-dune reclamation, almost all sales of Māori land after 1900 were to private buyers.

The question then has to be asked: Why did Māori owners go on selling their land when there was so little left by 1900? Most of the transactions before 1930 were administered by the Tokerau District Māori Land Board, which has been blamed by many claimants. However, it should be noted that the board only confirmed a sale after the Māori owners had agreed to sell. Some criticism can be directed at the legislation that allowed a meeting of owners to pass a resolution to sell on the basis of a majority of shareholders in attendance or holding

73. Ibid, p 87; see also doc 13

74. Document Q16, p 88

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proxies, rather than a majority of the total shareholding. Many of the sales, however, resulted from individual Pākehā purchasers going to individual Māori and buying their individual interests in particular blocks for cash. One of the reasons individual owners sold is that they could. A Māori owner did not have to consult anyone else.

Few paying jobs were available for rural Māori in southern Kaipara. The native timber and gum-digging industries were declining in the early 1900s and had almost disappeared by the 1920s. There were fewer labouring jobs on farms, and those that existed were mainly seasonal. There was widespread poverty in Kaipara Māori communities, and so the offer of cash for an individual's interests in land, particularly land that was not occupied by Māori, must have seemed very attractive. Some Māori had moved away and had other demands on their resources, so the sale of interests in land that they could not, or would not, use provided ready cash. Sporadic land sales continued after 1930 because the same pressures to sell remained.

The alienation of so much land has been suggested by many witnesses as the cause of the poor socio-economic state of southern Kaipara Māori at the beginning of the twenty-first century. As one witness indicated, with land loss we lost our self respect and our rangatira-tanga. Some talked of the hopelessness they felt as though it was not possible to beat the Pākehā. They saw the cause of all their ills as the Crown, the Government, and Pākehā laws and regulations. But the issues have more complex causes than a direct relationship between land loss and poverty. There is more to community prosperity and well-being than the possession of land. Other important factors in this equation include the quality and location of the land, suitable productive uses for it, tenure, management structures to promote development, and access to capital and skills to assist development.

Sir Hugh Kawharu explained that the five remaining Māori communities in southern Kaipara are bound into a 'network of kinship' and 'expectations of reciprocity' within Ngāti Whātua:

And as with like groups the world over it is subject to forces that are both centrifugal and centripetal in their effects. Put another way, the recognition of descent tends to exclude and divide, that of kinship to include and bind. On another level, internal factionalism is countered by the need to confront external threat. To survive requires the effective exercise of rangatiratanga to maintain a balance between these contradictory forces.<sup>75</sup>

The hearing of the Ngāti Whātua claim was held mostly at Te Haranui Marae. To illustrate his point, Sir Hugh referred to the Tribunal's visits to other marae:

Though brief, each [marae visit] was a symbolic reaffirmation of local grievances that had been accumulating for over a century. The administrative convenience of Haranui as the

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75. Document 112, p 4

principal venue for the hearing could not override the obligations of reciprocity across the various kin groups covered by the claim, obligations to give, to receive, and to repay.<sup>76</sup>

A strong part of the Ngāti Whātua kin network and resulting obligations includes the Orakei Marae community in Auckland, which lies outside our inquiry district. We note that the Orakei community is moving towards reconstruction, and we consider that a strong cooperative association of the five marae communities in southern Kaipara should be encouraged to advance to the next stage the negotiation of a settlement of their grievances with the Crown.

We set out our general finding on the socio-economic impact of land loss in southern Kaipara, and our recommendation on the Wai 312 claim, in the next chapter.

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76. Ibid



## CHAPTER 11

### CONCLUSIONS ON THE SOUTHERN KAIPARA CLAIMS

#### 11.1 INTRODUCTION

In this chapter, we sum up each of the claims relating to southern Kaipara that were heard by the Tribunal but not included in the Te Uri o Hau settlement: Wai 121, Wai 279, Wai 312, Wai 470, Wai 508, Wai 733, and Wai 756. Many aspects of these claims have been discussed in preceding chapters, and here we present our overall conclusions and recommendations. The most comprehensive claim is Wai 312 (Ngāti Whātua), which we address first. Many of the other claims raise the same or similar issues, and in several instances we recommend that claimant groups be joined with the Wai 312 claimants to negotiate a single comprehensive settlement of the southern Kaipara claims with the Crown. There are also some outstanding issues in individual claims, and these are dealt with below.

Four claims – Wai 121, Wai 312, Wai 508, and Wai 733 – also raise more general constitutional issues to do with Māori governance and representation. These are addressed in the next chapter.

#### 11.2 WAI 312

##### 11.2.1 The claim and the issues

The Wai 312 claim was made on behalf of the marae communities of Ngāti Whātua o Kaipara ki te Tonga, the five marae of southern Kaipara – Te Haranui, Puatahi, Araparera, Kakanui, and Reweti. Theirs is the major claim in southern Kaipara, and all their specific grievances have been addressed in the preceding five chapters. Here, we comment on the issues that underlie the whole claim and present our findings and recommendations on them.

##### 11.2.2 Interpretations of the historical evidence

As noted at the end of chapter 10, both the claimants and the Crown agree that since 1840 most of the Ngāti Whātua land in southern Kaipara has been alienated and that Ngāti Whātua in the twentieth century have suffered from poverty and deprivation. The differences between the claimants and the Crown lie in their interpretation of the historical evidence.



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In concluding submissions for the Crown, counsel referred to ‘the complexity of the task of reconstructing history and of judging values and actions of the past’. Crown counsel rejected as ‘unsustainable’ the claimants’ views of Kaipara Māori history as an ‘account of “consistent betrayal” by the Crown’ which breached the Treaty and of ‘the Native Land Court regime’ as ‘the equivalent of land confiscation’. Counsel summed up:

What is apparent is that Kaipara Māori have not retained tribal control of their lands. There are complex causes behind that outcome. Some contribution was certainly made by the actions of Government; however it is rejected that any conduct on the Crown’s part was a breach of the Treaty principle of good faith. Any conclusions by the Tribunal about the Crown’s failure to actively protect Maori interests must bear in mind historical context which has been elaborated in the evidence before it, and needs to be tempered by an assessment of the actions and choices made by Kaipara Maori.<sup>1</sup>

In reply, Wai 312 claimant counsel began by suggesting that ‘Crown counsel has avoided any meaningful engagement’ with the issues raised. Counsel criticised Crown counsel’s emphasis on historical context and failure to have any regard for ‘the cultural imperatives which underlay Ngati Whatua’s actions throughout the period covered by the claim’, and contended that Crown counsel ‘throughout holds Ngati Whatua responsible for the loss of their lands and the resulting socio-economic predicament.’<sup>2</sup> The Crown was accused of rejecting any responsibility under the Treaty for its actions since 1840, without providing ‘any explanation for the resulting detriment suffered by Ngati Whatua in the south Kaipara.’<sup>3</sup>

In chapter 6, we addressed the claimants’ concept of a Ngāti Whātua ‘alliance’ with the Crown, which coloured the Wai 312 research reports of Philippa Wyatt, Bruce Stirling, Fiona Small, and others. We have not accepted this ‘alliance’ concept, which postulates some relationship over and above the Treaty of Waitangi. The Tribunal’s task is to investigate claims against the Crown and determine whether there has been a breach of the principles of the Treaty. In doing this, we must take into account not only those principles but also the historical context of the Crown action or inaction complained of. One test is reasonableness: Was the Crown’s action or inaction toward Māori reasonable or unreasonable in the circumstances of the time? Was there significant Māori protest or other relevant evidence?

We are concerned that the claimant researchers have let themselves be constrained by their view of an ‘alliance’ and their preconceived view of the expectations of Ngāti Whātua. For example, in the socio-economic evidence from the 1840s on, we were not given any comparison with the rest of New Zealand, Māori or non-Māori, or even with comparable services available for Pākehā settlers in Kaipara in the nineteenth and twentieth centuries.

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1. Document Q16, pp 129–130

2. Document Q27, p 2

3. Ibid, p 3

Nor was there any hint of the broader outside influences, such as economic recession or urbanisation, which the Crown could not control. As a result, we were faced with a massive amount of evidence about Ngāti Whātua and their land since 1840 but little comparative data by which we might assess the Crown's role. Our reading of other local histories quoted in chapter 2, for instance, indicates that, in the early years of Pākehā colonisation, the Pākehā settlers were often as poor as their Māori neighbours and that all their children had equal access to public school education.

### 11.2.3 Reasons for selling land

There is no doubt that Ngāti Whātua were willing sellers of land and eagerly participated in trade and the cash economy created by the establishment of the colonial capital at Auckland in 1840. Certainly, while Auckland was the capital, Ngāti Whātua prospered. There was a ready market for their surplus produce and they had the ear of Government officials, cooperated willingly with the colonial administration, and remained 'loyal' during the troubled years of military campaigns in Taranaki, Waikato, and elsewhere.

The 1860s saw not only the departure of the colonial administration to a new capital in Wellington but also the introduction of a new institution, the Native Land Court, and a revolution in the tenure of Māori land. In Kaipara, the 1860s also saw the beginning of systematic Pākehā settlement. However, in a short time the settlers became competitors with Māori in the sale of surplus produce and for employment as farm labourers and in road and railway construction, timber extraction, and gum-digging. Ngāti Whātua welcomed Pākehā settlers and sold extensive areas of land to them in the 1870s, and went on selling into the early decades of the twentieth century. But, by the end of the nineteenth century, most of the employment had gone, and Ngāti Whātua either largely subsisted in small communities on their remaining lands, cultivating their gardens and living on the food resources of waterways and the sea coast in Kaipara, or migrated to the growing city of Auckland.

We do not know precisely why Ngāti Whātua went on selling land. Claimant researchers have speculated – often with scant evidence – on reasons which included indebtedness, the Native Land Court system, survey costs, unscrupulous lawyers, and land purchasers. We have no Māori records of the full range of factors influencing the minds of Māori sellers of their shares in ancestral lands. A revolutionary system of land tenure was imposed on Māori by the Native Lands Acts of 1862 and 1865 with little consultation. This was a massive intervention by the Crown, the effects of which greatly disrupted Māori society. The operation of the Native Land Court created a means of identifying individual, undivided interests in land, a property right that an individual owner could dispose of without reference to his or her whānau or hapū or other collective. Many blocks were purchased in the twentieth century by the piecemeal acquisition of individual interests over a period of years.

Perhaps the short answer to why Ngāti Whātua sold their land is because they could. An individual Māori owner in need of cash did not have to consult anyone else. The net result of all these individual transactions was the loss of the land. There was no mechanism to ensure the long-term protection of papakainga for the benefit of hapū.

#### 11.2.4 Crown responsibility for land loss

Should the Crown have intervened to ensure that Ngāti Whātua retained sufficient land and resources for their present and foreseeable needs? Crown counsel has suggested that Crown intervention would have been problematic; it would have been resented and opposed by Māori and could have been a breach of their article 3 rights as British citizens. So what could the Crown have done to prevent this loss of land without infringing individual Māori rights to deal with their land as they wished? Complaints against the Crown include the taking away of Māori rights by vesting land in the Tokerau District Māori Land Board. The prime example was the Ōtakanini block, but there were others too. The nineteenth-century Māori land legislation had no effective mechanism which provided for a corporate management structure for Māori to administer their own lands. There was no provision for setting up a form of trust whereby the proceeds of sales could be preserved as capital for the development of other land by Ngāti Whātua. In 1891, for instance, James Carroll identified a need to educate Māori in commercial agriculture and to provide access to capital to support farm development on the same basis as Pākehā settlement schemes in the 1880s.

There seems to have been an implicit assumption in the nineteenth century that, in the process of Pākehā settlement, local Māori would somehow become ‘civilised’ and learn the necessary skills from their settler neighbours. From our twenty-first century viewpoint, we now know that it was unlikely that people who had lived in a traditional, communal, subsistence economy would, by some process of osmosis, shift their customs and attitudes and immediately embrace an individualised, modern, industrial economy. However, we cannot simply impose our contemporary views in judgement of the past. There is ample evidence that most Pākehā officials and settlers genuinely believed that Māori would benefit from the influence of British culture that was being opened up for them through colonisation. This ‘civilising’ mission failed because the Crown neither consulted Māori effectively in working out a future in which both peoples participated nor established a policy that would ensure that Kaipara Māori retained a sufficient land base, as well as access to capital and appropriate education to participate fully in a modern industrial economy. Ngāti Whātua sought to retain their own identity and to embrace British colonisation on their own terms. Instead, by the end of the nineteenth century they were almost landless and subsisting on the margins of the Kaipara economy or had migrated out of the region, thus weakening their ties with their ancestral land, language, and culture.

**11.2.5 Te Uri o Hau settlement**

In our discussion of the Wai 312 claims in our *Kaipara Interim Report*, we stated: ‘The generic historical issues raised in this claim are the same as those breaches of the Treaty of Waitangi and its principles already acknowledged in clause 8 of the Te Uri o Hau Claims Settlement Bill.’<sup>4</sup> This Bill is now law, having been passed in October 2002. In chapter 3 of the present report, we discussed these generic issues in relation to the Act. In chapters 6 to 10, we outlined in some detail the land transactions of Ngāti Whātua in southern Kaipara. As a result of this investigation, we reiterate our earlier statement that the issues which the Crown has already recognised as breaches of the Treaty of Waitangi and its principles in the Te Uri o Hau claims in northern Kaipara are the same as those claimed by Ngāti Whātua in southern Kaipara. We think that this should be acknowledged by the Crown in the Wai 312 claim.

**11.2.6 Tribunal findings**

In this section, we summarise our findings on the various aspects of the Wai 312 claim to do with the loss of land, as detailed in chapters 6 to 10, before presenting our overall finding on the socio-economic impact of the loss of land.

**(1) Crown purchases, 1840–65**

We make the following findings in respect of Crown purchases between 1840 and 1865:

- ▶ The Crown land acquisitions in southern Kaipara before 1865 were not excessive, in that the areas purchased were largely determined by the rangatira involved, who were actively encouraging Pākehā settlement.
- ▶ We have no evidence that specific promises were made in southern Kaipara about the expected benefit to Māori of Pākehā settlement on lands purchased from Māori.
- ▶ The Crown failed to establish an effective mechanism whereby lands reserved for Māori were protected and remained in Māori control. By vesting title to reserves in individual rangatira, the Crown failed to provide protection of land resources for all members of whānau or hapū with rights in such land.
- ▶ In section 8(d) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged that:

it did not ensure that there was sufficient protection from alienation for the few reserves that were provided. This failure by the Crown to set aside reserves and protect lands for the future use of Te Uri o Hau was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

We find that Ngāti Whātua were similarly prejudiced.

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4. Waitangi Tribunal, *The Kaipara Interim Report* (Wellington: Legislation Direct, 2002), p 15

**(2) *The Native Land Court and land sales***

We make the following findings in respect of the Native Land Court and land sales:

- ▶ The Native Land Acts of 1862 and 1865, which established the Native Land Court, imposed a tenurial revolution on Kaipara Māori, without consultation or their consent, and had a profound effect on the relationship that Ngāti Whātua had with all their lands. One serious effect of this was the loss of control of the management of Māori lands to the title investigation and other functions of the Native Land Court judge.
- ▶ The allocation by the court of individual, undivided interests in Māori land created individual, disposable, property rights, quite foreign to customary Māori tenure based on collective rights of use and occupation of land. Furthermore, the 10-owner system of allocating interests disinherited an unknown number of Kaipara Māori.
- ▶ Section 24 of the Native Land Act 1873 provided for reserves of 50 acres per person, but the legislation governing Native Land Court operations generally failed to prevent the loss of communally held land (including that subject to restrictions on alienation), which might have provided a base for the future benefit of Kaipara Māori communities.
- ▶ The legislation governing Native Land Court operations also allowed for the direct private purchasing of individual interests in Māori land, and thus Māori were subjected to considerable market pressures to sell their interests. However, we have insufficient information about the costs of land court processes, surveys, and other expenses to determine the extent and significance of debt as a factor in sales of land interests, although anecdotal evidence suggests that debt was a factor in some transactions.
- ▶ Given all the pressures to sell interests in land, we find that it is not reasonable to assume that all the individual transactions in Kaipara were made by willing sellers. A free market in Māori land was created without arming Māori with the knowledge, independent legal advice, and expertise to participate effectively in the developing colonial economy in Kaipara.
- ▶ By imposing the legislative regime which governed Māori land tenure and the Native Land Court, the Crown failed in its fiduciary duty, set out by Lord Normanby in his instructions to Lieutenant-Governor Hobson and in the guarantees in the Treaty of Waitangi, to protect Māori interests and to ensure that a sufficient land base was reserved for the present and future needs of Kaipara Māori communities.
- ▶ In section 8(e) of the Te Uri o Hau Claims Settlement Act 2002, the Crown acknowledged 'that the operation and impact of the Native land laws . . . had a prejudicial effect on those of Te Uri o Hau who wished to retain their land and that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'. The Crown also acknowledged that 'the awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau'. In section 8(f), the Crown acknowledged that:

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this loss of control over land has prejudiced Te Uri o Hau and hindered the economic, social, and cultural development of Te Uri o Hau. It has also impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.

We find that Ngāti Whātua in southern Kaipara were similarly prejudiced by the effects of these generic issues as set out in the above acknowledgements to Te Uri o Hau of northern Kaipara.

**(3) *The Helensville courthouse reserve***

We make the following findings in respect of the Helensville courthouse reserve:

- ▶ In 1864, Ngāti Whātua donated to the Crown 10 acres of land in the future township of Helensville for use for public purposes.
- ▶ Within this area, one acre was gazetted as a native reserve for Māori use, but this reserve, the only area remaining for Māori use in Helensville, was transferred to the Helensville Town Board in spite of Māori protest. This was a breach by the Crown of its Treaty duty to act reasonably and in good faith toward Māori.
- ▶ While most of the 10 acres was used for public purposes, and some remains so used, other areas were subsequently transferred to private purchasers. This was a breach of the original terms of the gifting and a breach by the Crown to act reasonably and in good faith toward Māori.

**(4) *The Kaipara railway***

We make the following findings in respect of the Kaipara railway:

- ▶ In 1871, Ngāti Whātua donated most of the land taken up by the Kaipara railway and its railway stations south of Helensville to Riverhead.
- ▶ A promise was made on behalf of the Crown to create reserves and to provide accommodation for Māori at each terminus of the line. A one-acre reserve was set aside within land already donated by Ngāti Whātua in the courthouse reserve in Helensville, and no reserve was created in Riverhead. The Crown failed to fulfil this promise, and it thereby failed to act reasonably and in good faith towards Ngāti Whātua.
- ▶ No compensation was paid for the Woodhill deviation land taken in 1888.

**(5) *Taking of Māori land for roads***

On the question of the taking of Māori land for public roads, we find that the legislative provision allowing up to 5 per cent of a block of Māori land to be set aside without compensation for public roads meant that an undefined area of land was donated by Ngāti Whātua for public use.

**(6) Woodhill Forest**

We make the following findings in respect of Woodhill Forest:

- ▶ In the 1920s, the Crown instigated a sand-dune reclamation scheme for the western Kaipara coast between Muriwai and South Head. It is not in dispute that some form of reclamation of the drifting sand was needed to protect farms, roads, the railway, and the Kaipara River, and only the Crown had the resources to implement such a scheme.
- ▶ The Crown began purchasing individual interests in the over 9000 acres of Māori-owned Puketapu lands. In 1934, after acquiring over 95 per cent of the interests in those blocks, the balance of the interests was taken under the Public Works Act for sand-dune reclamation purposes. The Crown failed to consider alternative tenure arrangements which would have both allowed reclamation and retained Māori title.
- ▶ Within the land acquired by the Crown, four urupa reserves (75 acres in total) were identified, surveyed, and acquired by the Crown under section 11 of the Reserves and Other Lands Disposal Act 1934, instead of gazetting these lands as Māori reserves. It was not necessary for the management of the sand-reclamation scheme for the Crown to acquire title, and this was a breach of the Crown's duty of protection and the guarantees set out in article 2 of the Treaty. Furthermore, parts, but not all, of the reserves were planted in pine trees, which represented a further failure of the duty of protection of Māori interest.
- ▶ By the Crown's acquiring of title to the Puketapu lands and its attempting to deny access across them, local Māori were denied their traditional access routes to the western coast for kaimoana. Although there was some informal access, there was no legal right of access for local Māori.
- ▶ In the restructuring of the Forest Service in the 1980s, the Crown failed to assess the social and economic impacts of corporatisation, the sale of forestry rights, and, more specifically, the effects of closing down the Woodhill forestry village, and it did not consult with Ngāti Whātua.

**(7) The socio-economic impact of land loss**

We make the following findings in respect of the socio-economic impact of land loss:

- ▶ Ngāti Whātua participated enthusiastically in the emerging colonial economy following the establishment of Auckland as the capital in 1840, and they willingly sold land to the Crown to encourage Pākehā settlement in southern Kaipara.
- ▶ The Crown's imposition in the 1860s of new Māori land laws and the Native Land Court replaced a system of customary tenure based on ancestral, collective, kin-based rights with a system of individual and undivided, but disposable, interests in land, and undermined the traditional social and economic structure of Māori communities.
- ▶ By the 1890s, a substantial proportion of Ngāti Whātua land had been alienated, mainly to private purchasers after 1865, while economic opportunities for Kaipara



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Māori dwindled. This situation continued into the twentieth century, leaving Kaipara Māori communities eking out a subsistence living on the margins of the Kaipara and Auckland economies. Kaipara Māori did not benefit from the Māori land development schemes of the 1930s because there was not enough land left.

- By the mid-twentieth century, many Ngāti Whātua, now virtually landless, had moved to Auckland and elsewhere in search of education and jobs, a process accelerated by Crown policies implemented by the Department of Māori Affairs in the 1960s. The Government's subsequent restructuring and sale of State enterprises in the 1980s and 1990s caused a further loss of employment in southern Kaipara.

The legacy to Ngāti Whātua of over 150 years of Pākehā settlement in southern Kaipara is a number of small Māori communities struggling to survive on remnant scraps of land with limited resources. Many families are living in poverty, with low levels of educational attainment, poor health status, and few economic opportunities. The Crown must take some responsibility for this state of affairs. The communities themselves are struggling to retain their language, culture, and identity, and to strengthen the attenuated kinship ties with migrants who were forced to leave, particularly among the younger generation brought up away from their home marae.

We conclude that Ngāti Whātua have been prejudiced by Crown actions and inaction in southern Kaipara and by the Crown's failure to meet the fiduciary obligations and guarantees of protection of lands and resources made in the Treaty of Waitangi. We therefore find that the Wai 312 claim of Ngāti Whātua ki Kaipara ki te Tonga is well founded.

#### 11.2.7 Tribunal recommendation

We recommend that the Crown and mandated representatives of Ngāti Whātua proceed to negotiate a comprehensive settlement of Ngāti Whātua claims in southern Kaipara.

### 11.3 WAI 733

#### 11.3.1 The claim and the issues

The Wai 733 claim was lodged by the late Tauhia Hill on behalf of himself, the Ōtakanini Tōpū Māori incorporation, and the interests of Ngāti Whātua Tuturu at Ōtakanini.<sup>5</sup> The land involved in the claim is the Ōtakanini block, which straddles South Head Peninsula. Also raised in the claim are issues related to the foreshore and seabed on the Tasman Sea and Kaipara Harbour boundaries of the block and more general issues concerning sand-mining and the health of Kaipara Harbour. We make no comment on these aspects of the claim in

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5. Claims 1.29(a),(b)



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this report. The claim also concerns the question of Māori representation, and we comment separately on that in chapter 12.

We consider here matters relating to the land and the people of the Ōtakanini block. Major issues for the claimants are the 1906 compulsory vesting of the whole block in the Tokerau District Māori Land Board under the Māori Land Settlement Act 1905, the alienation of most of the block by lease for 50 years from 1908, and the consequent loss of control of the land and access to traditional resources over that period. We have reviewed these matters in chapter 10.

The Wai 733 claim also raises issues about the lease of the western sand dunes by the New Zealand Forest Service in 1969, the planting of trees and the construction of service roads as part of Woodhill Forest, and the 1990 transfer of management and timber rights to Carter Holt Harvey without consultation with the Ōtakanini Tōpū and the owners of the land. We have reviewed these matters in chapter 9.

**11.3.2 Claimant submissions**

Claimant counsel stated that Wai 733 concerned the grievances, not of an iwi but of ‘the members of an incorporation whose administration and benefits are directly connected to the Ngāti Whatua Tūhura people’. The Ōtakanini Tōpū ‘does not include all descendants of Ngāti Whatua Tūhura but it does include some who are not Ngāti Whatua Tūhura’.

The vesting of the Ōtakanini block in the Tokerau District Māori Land Board and the alienation by lease of most of it to Pākehā farmers for 50 years meant that ‘Ngāti Whatua Tūhura were not able to retain the mana to control their lands in accordance with tikanga, their own customs, and having regard to their own cultural preferences’. Furthermore, Ōtakanini Māori had to ‘stand by as non Maori changed the land of gardens to their cultural preference of pastoral grazing’. Counsel submitted that, not only had Ngāti Whātua Tūhura lost access to kaimoana of the western coast and to resources of the land and waterways, but the land itself, particularly the western portions, had been ‘ruined by uncontrolled grazing’ by pastoral farmers.<sup>6</sup> By taking away the freedom of the Māori owners of the Ōtakanini block to control the use and management of their lands, the Crown had failed to provide the protection guaranteed in article 2 of the Treaty of Waitangi and had also denied the owners the rights of citizenship set out in article 3.

As for the lease of the western dunes to the Forest Service, ‘In summary as regards the forest issue the Topu complains that there was an almost total lack of consultation with the tangata whenua over the forest sale, over royalties and over road access.’<sup>7</sup>

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6. Document Q3, pp 3, 7

7. Ibid, p 58

**11.3.3 Crown submissions**

Crown counsel submitted that, because many of the issues raised by the Wai 733 claimants related to matters occurring before the establishment of the Ōtakanini Tōpū, the question arose whether the tōpū was a sufficiently representative body to be the subject of any recommendations. Counsel also noted that some of the allegations ranged beyond the Ōtakanini Tōpū and the Ōtakanini block.<sup>8</sup>

On the early history of the Ōtakanini block, counsel submitted that the compulsory vesting of the block in the Tokerau District Māori Land Board in 1906 was done ‘at least partly to prevent further alienation of the land’ as well as being ‘a response to the pressure from settlers that “idle” Maori land be put to productive use’. Counsel acknowledged that there was ‘no evidence to indicate whether any consultation took place between the Native Department and the owners of the block before the land was vested in the Land Board’.<sup>9</sup>

Counsel acknowledged that the effect of the vesting and subsequent leasing was to deny the owners any control over their land for 50 years. ‘However, it is submitted that little prejudice has been suffered by the Wai 733 claimants and that ultimately this action was of benefit to the claimants.’ Counsel noted that lease income had risen from virtually nil to £400 per annum and that by 1915 lessees had made improvements worth some £4000. ‘More significantly, the principal benefit of the vesting of Ōtakanini in the Maori Land Board under the 1905 Act was that the land was available for return to the control of its owners fifty years later.’ Counsel referred to sales of parts of the papakainga area and, citing Dr Loveridge’s opinion, suggested that, if the Ōtakanini block had not been vested in the board in 1906, ‘much of it would have been sold over the following years’.<sup>10</sup>

The Crown’s submissions on the terms of the forestry lease of the western sand dunes and the access and other issues arising out of the purchase of the Woodhill Crown forestry licence by Carter Holt Harvey in 1990 have been summarised in section 9.11. Crown counsel also noted that the ownership of the land had not been transferred and remained with the Ōtakanini Tōpū.

**11.3.4 Tribunal comment**

The Crown has correctly raised the question of the representativeness of the Ōtakanini Tōpū, a Māori incorporation set up and bound by the provisions of the Māori Affairs Act 1953. The Wai 733 claim concerns matters that occurred before the establishment of the tōpū and that extend beyond the land it administers and the people who are its shareholders. The tōpū’s shareholders are eligible to become beneficiaries in any comprehensive settlement of

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8. Document Q16, p 69

9. Ibid, pp 70–71

10. Ibid, pp 71–72; doc P4, pp 55–56

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Ngāti Whātua claims, and many of the issues raised in Wai 733 are the same as those already reviewed in our discussion of Wai 312.

In considering whether the claimants were prejudiced by the vesting of the Ōtakanini block in the Tokerau District Māori Land Board in 1906, and the alienation of most of this land by lease for 50 years, we must weigh up both the costs and the benefits. On the one hand, compulsory vesting can be seen as a form of temporary confiscation, and there is no evidence of consultation with the owners in 1906. On the other hand, the land was preserved in Māori ownership. The board resisted attempts by Pākehā lessees, and the Crown in the case of the western sand-dune area, to purchase parts of the block. In contrast, other blocks vested in the board were sold, and even in Ōtakanini papakainga some blocks were sold before 1930. We question, however, the wisdom of leasing the sand-dune areas for grazing against the advice of the Auckland district surveyor in 1906. Considerable damage to vegetative cover and acceleration of sand drift probably resulted. Certainly, the owners' access was limited (although there was a paper road across the block to the western coast), and it depended to some extent on the goodwill of the Pākehā lessees.

The administration of the leases may have been inadequate, particularly in later years when breaches of covenant were not followed up and resulted in costly litigation after the leases expired in 1958. However, the initial subdivision of the block and establishment of the leases did comply with the 1905 Act. On balance, we consider that the Ōtakanini owners were no more prejudiced by the leasing of their lands than the owners of many other leasehold blocks in southern Kaipara. The Ōtakanini owners got their land back, whereas in so many other blocks, the leasehold, and the piecemeal purchase of individual interests by the lessee, ended in total alienation by sale. Furthermore, when the Ōtakanini owners did resume control of their land in 1958, they inherited a substantial asset – developed farm land – in the largest contiguous piece of Māori land in southern Kaipara.

We have already commented in section 9.11.3 on the long-term leasing of the western sand dunes to the Forest Service in the late 1960s, and on the later transfer of the forest management and timber rights to a private company. Although we criticised some aspects of these arrangements, we consider that an asset has been created for the shareholders of the Ōtakanini Tōpū that will yield a substantial income in the long term with little effort from the tōpū itself.

**11.3.5 Tribunal findings**

On balance, we have not been persuaded that the Ōtakanini Tōpū and its shareholders have been specifically prejudiced by Crown action or inaction concerning the Ōtakanini block. The claimants do, however, share with the rest of Ngāti Whātua in southern Kaipara in the prejudicial effects of land loss and social disruption identified in our findings on the Wai 312 claim.

**11.3.6 Tribunal recommendation**

We recommend that the Wai 733 claimants should be joined with Wai 312 and others in the southern Kaipara inquiry district in the negotiation of a comprehensive settlement of their claims with the Crown.

**11.4 WAI 279****11.4.1 The claim and the issues**

The Wai 279 claim was lodged by Eriapa Maru Uruamo on behalf of himself and other descendants of Paora Kawharu and Aperahama Te Karu Uruamo of Te Taoū. The claim concerns the alleged failure of the Crown, through the operation of the Native Land Court, to protect Māori interests in lands collectively called Hiore Kata, which include the Puketapu, Puketapu South, Pariraunui, Pukekauere, Tua Te Tua, and Te Kēti blocks (all lying between the sea and the Kaipara River) and the Waipapa block (east of the river).

Further grievances concern the lands taken by the Crown for public works and, in some cases, the Crown's failure to pay compensation or to return lands no longer required. These takings include land for the Woodhill deviation of the Kaipara railway in the 1880s; the Puketapu and Puketapu South blocks for sand-dune reclamation in 1934; land on the Te Kēti block for a sand-stop in 1920 and for a sewage-treatment station for the Woodhill forestry village in 1968; and, more recently, land used for the realignment of State Highway 16. All these matters except the last have been dealt with in chapters 9 and 10.

**11.4.2 Claimant submissions**

Claimant counsel presented the Wai 279 claim of the Uruamo whānau as a 'case study for wider grievances in the South Kaipara'.<sup>11</sup> Counsel submitted that the Native Land Court investigation of titles had failed to acknowledge the traditional custom of *tuku whenua* in awarding title to the Hiore Kata lands. In particular, the claimants allege that, because the court did not recognise the gift by Paora Kawharu to Tahana of land in the Waipapa block, the land gifted by Paora to Aperahama Uruamo in the Te Kēti block had to be shared with his brother, Tahana. Te Kēti was partitioned between the descendants of the two brothers. In 1917, Te Kēti B was leased through the Tokerau District Māori Land Board, then sold to the lessee in 1924 by descendants of Tahana, while the Uruamo whānau remained in occupation of Te Kēti A. By this time, the Pariraunui, Pukekauere, and Tua Te Tua blocks west of the river had been leased or sold to private purchasers, and Waipapa had been sold to the Crown and a private purchaser. In 1934, the Puketapu and Puketapu South blocks, including four

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11. Document H12, p 2

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urupa, were taken by the Crown for sand-dune reclamation in land which was subsequently developed into Woodhill Forest.

Counsel concluded that the Uruamo whānau, through the impact of Native Land Court operations and subsequent public works takings, had suffered from the ‘erosion of their ancestral base at Hiore Kata’, reducing them to ‘a marginal foothold’ on the Te Kēti A block.<sup>12</sup>

**11.4.3 Crown submissions**

Crown counsel referred to earlier comments on generic issues relating to Native Land Court operations and the sale of lands. The evidence in regard to the Hiore Kata lands indicates that ‘in almost all respects the Native Land Court acted in accordance with the wishes of the owners’. Furthermore, the evidence indicates that ‘the various owners willingly sold these lands’, and there was ‘no evidence of any contemporary complaint or objection’. In relation to the sale of Te Kēti B and the role of the Tokerau District Māori Land Board, counsel noted that the lease and subsequent sale approved by the board was ‘at the request of the owners.’<sup>13</sup>

**11.4.4 Tribunal comment**

The issues in this claim in respect of the alienation of the Hiore Kata lands are similar to those addressed in our discussion of Wai 312. We make no comment on the alleged failure of the Native Land Court to acknowledge the *tuku whenua* of Paora Kawharu to Tahana on the Waipapa block, and to Aperahama Uruamo on the Te Kēti block, because we have no specific evidence to support this assertion by the claimant, Eriapa Uruamo. Nor can we comment on the sale of the Te Kēti B block in 1924 by descendants of Tahana because we have no evidence that they were not willing sellers, as recorded by the Tokerau District Māori Land Board at the time, or that the board acted inappropriately in this transaction.

The matters raised by the Wai 279 claimants in respect of the taking of Puketapu lands under the Public Works Act for sand-dune reclamation have been addressed in chapter 9. The issues concerning the loss of land and resources, access to the sea coast, and the protection of *wāhi tapu* are similar to those in Wai 312, and we make no further comment here.

Most of the issues specific to the Te Kēti block have been dealt with in chapters 8 and 9. But one grievance has not yet been addressed: the small pieces of land used for the realignment of State Highway 16 in 1975 and 1983. On the evidence presented to us, it is not clear whether these areas were already Crown land or part of the Māori land in the Te Kēti A block.

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12. Document Q10, pp 35–36

13. Document Q16, pp 107–108

We have previously suggested that, if there is any Crown land remaining on the Te Kēti A block that is not required for public works, it should be returned to the Māori owners of the block at no cost to them. We repeat that suggestion here.

The Uruamo whānau still occupy the Te Kēti A block. They perceive their efforts to retain their hold on this small pocket of Māori land, which is all that is left of the Hiore Kata lands, as a continuing struggle against the Crown and its bureaucracy. The claimants feel strongly about the seeming failure of Crown officials to acknowledge their view of their world. Wai 279 was heard in a tent in Woodhill Forest, on the site of the former Forest Service village rubbish-tip. This is just below the site of the ancestral Hiore Kata Pā, which had been planted in pines. The choice of site was deliberate, despite the difficult access, the wind, and the rain, because the claimant, Eriapa Uruamo, wanted to express his feelings that the mana and identity of his whānau as tangata whenua had been eroded, that their ancestral pā had been desecrated, and that so little remained of their ancestral lands of Hiore Kata.

#### 11.4.5 Tribunal findings

We make the following findings in the Wai 279 claim concerning the Hiore Kata lands and the Te Kēti block:

- ▶ The operation of the Native Land Court and the subsequent sales of the Hiore Kata lands were similar to those identified in the Wai 312 claim as breaches of the principles of the Treaty of Waitangi. In this respect, the Wai 279 claim is well founded.
- ▶ On the only remaining Māori-owned land in Hiore Kata, the Te Kēti A block, takings of land under the Public Works Act further eroded the holding of the Uruamo whānau. Most of these takings were for public works: the railway, the highway, the sand-dune reclamation, and the sewage-treatment plant. However, there remain in Crown ownership some pieces of this land that are no longer needed for any public purpose and these should have been returned to the Māori owners. In respect of public works takings, therefore, the Wai 279 claim is well founded.

#### 11.4.6 Tribunal recommendations

We make the following recommendations in the Wai 279 claim concerning the Hiore Kata lands and the Te Kēti block:

- ▶ The Wai 279 claim should be included in the negotiation of a comprehensive settlement of Ngāti Whātua land claims.
- ▶ On the Te Kēti A block, the land taken for the sewage-treatment plant and any other Crown land taken under the Public Works Act that is no longer required for any public purpose should be revested in the owners of the block.

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**11.5 WAI 756****11.5.1 The claim and the issues**

The Wai 756 claim, lodged by Lou Paul of Te Taoū, is concerned with the loss of lands and resources in the Reweti area, including Woodhill Forest. These issues are the same as those already considered in our discussion of the Wai 312 claim and will not be repeated here. The distinguishing feature of the Wai 756 claim is its concern with tribal identity and the mana of Te Taoū. The claimant alleges that ‘actions of the Crown have resulted in an erosion of the tribal identity of Te Taoū’, because it has been treated as a hapū of Ngāti Whātua rather than a tribe with its own mana and identity. The alienation of land has exacerbated Te Taoū’s sense of dislocation from its tribal rohe, heritage, and taonga.<sup>14</sup>

**11.5.2 Claimant submissions**

Claimant counsel stated that Lou Paul ‘represents’ Te Taoū in the Wai 756 claim and that a ‘mandate’ was given to him at a hui at Reweti Marae on 6 December 1999. Counsel acknowledged that it was not the role of the Tribunal to settle disputes between Māori but observed that Lou Paul ‘disputes Wai 312’s claim to represent Te Taoū before this Tribunal’.<sup>15</sup> We note that, during the hearing of the Wai 756 claim, counsel for Wai 312 and Wai 279 stated that there were many people who identified as Te Taoū in both claimant groups, and that the Wai 312 and Wai 279 claimants saw Te Taoū as an integral part of the Ngāti Whātua claims in southern Kaipara. Counsel for Wai 756 also submitted that the evidence in this claim ‘largely mirrors evidence brought by other claimants including Wai 312’.<sup>16</sup>

Counsel for Wai 756 submitted that the claim had three parts. The first was concerned with Crown actions or inactions which ‘caused or contributed to’ the loss of tribal identity and rangatiratanga of Te Taoū. The second was concerned with the alienation of land, and the third with specific issues, including those relating to the courthouse reserve in Helensville, the Kaipara railway, and Woodhill Forest, including the taking of land for sand-dune reclamation, loss of access to kaimoana, and the protection of wāhi tapu. Counsel acknowledged that the research reports compiled for Wai 756 relied heavily on the work of Wai 312 historians, but the focus of Wai 756 was on Te Taoū lands.<sup>17</sup>

In submissions concerning the loss of tribal identity, counsel suggested that since the nineteenth century, when they were acknowledged as a separate tribe, Te Taoū had gradually ‘become characterised as a “subtribe” of Ngāti Whātua’. In the process, ‘Te Taoū’s distinct identity became obscured’. The reason for this, counsel argued, was that ‘the Crown

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14. Claim 1.30(c)

15. Document Q14, p 2

16. Ibid, p 6

17. Documents N1, N2, N3, N4, N5

classified Maori society according to a rigidly defined “tribe” and “subtribe” hierarchy’. Thus, Te Taoū became submerged in Ngāti Whātua, which led to ‘the loss of independence and control over the tribe’s destiny’. Therefore, it was argued, the Crown had failed to ‘protect the mana of Te Taoū as a tribe separate to and independent of others with rangatiratanga over its land’. This was demonstrated in the evidence of Te Taoū feeling ‘a profound dislocation from their history, culture and their land.’<sup>18</sup>

#### 11.5.3 Crown submissions

Crown counsel rejected the allegation that ‘the Crown had a duty to protect tribal structures and that it failed to do so.’<sup>19</sup> Māori society has always been fluid and dynamic, and in the nineteenth-century it underwent economic and social changes in response to factors such as environmental and population change. Changes in political structures, including the need to form larger political units, were one likely response. Counsel argued that the evidence did not support the charge that the Crown had caused or contributed to the erosion of Te Taoū’s tribal identity:

Te Taoū themselves often used different affiliations, referring to either Te Taoū or Ngāti Whatua as they saw fit in the circumstances. It is also clear that both the Crown (through the compilation of official lists) and the Native Land Court (through title investigations) recognised the existence of Te Taoū as a separate identity in both the 19th and 20th centuries. There is no evidence to suggest that the Crown in any way forced a tribal identity onto Maori or removed their ability to affiliate with a particular tribal grouping. Maori themselves identified their affiliations for the purposes of the Native Land Court or other official lists.<sup>20</sup>

#### 11.5.4 Claimant response to Crown submissions

In response to the Crown’s submissions, counsel for the Wai 756 claimants acknowledged that the Crown was ‘not the sole cause of loss of tribal identity, mana and rangatiratanga’. However, this ‘in no way resiles from the main thrust of the [Wai 756] submissions, that is that the Crown nevertheless had a substantial responsibility for this, and that this amounts to a breach of the Treaty obligations to preserve mana and the rangatiratanga.’<sup>21</sup>

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18. Document Q14, pp 3–5, 7

19. Document Q16, p 99

20. Ibid, p 100

21. Document Q17, p 4



**11.5.5 Tribunal comment**

In chapter 2, we made it clear that we have used the name ‘Ngāti Whātua’ when referring collectively to a number of hapū of southern Kaipara and Tamaki Makaurau, including Te Taoū. There is also a hapū which we have distinguished by the name ‘Ngāti Whātua Tūturu’. We have also used the term ‘Ngāti Whātua confederation’, which includes hapū of Ngāti Whātua and the related tribes of Te Uri o Hau, Ngāi Tahu, and Te Rōroa in northern Kaipara and Te Kawerau a Maki of west Auckland. The Wai 756 claimants have challenged the categorisation of Te Taoū as a hapū of Ngāti Whātua, but we do not believe that this contradicts our inclusion of Te Taoū in our collective definition of Ngāti Whātua.

The Wai 756 claimants are not the sole representatives of Te Taoū, because Te Taoū are also well represented among the Wai 312 claimants. The Wai 279 claimants are also Te Taoū. It seems that there are differences within Te Taoū about whether or not they are part of Ngāti Whātua. The objection of the Wai 756 claimants appears to be to the classification of Te Taoū as a subtribe, or subordinate group, within Ngāti Whātua. The claimants consider Te Taoū to be an autonomous tribe in its own right, albeit having connections through marriage and otherwise with Ngāti Whātua. This contention is supported not only by the evidence of Te Taoū claimant historian Dr Geoff Watson but also by Garry Hooker’s historical report for Te Rōroa, which states that ‘historically Te Taoū, Ngāti Whātua, Ngāti Rongo, Te Uri o Hau and Te Roroa were regarded by the tupuna as tribes.’<sup>22</sup>

We do not disagree with Hooker’s statement, since we follow previous Tribunals in regarding the hapū as the ‘tribe’ – that is, ‘the unit exercising corporate functions on a daily basis.’<sup>23</sup> As the Law Commission has pointed out in a report on *Māori Custom and Values in New Zealand Law*, ‘Hapū is often incorrectly translated as sub-tribe with the connotation that the hapū is politically inferior to an iwi. The relationships between hapū and iwi are complex and are not in a vertical hierarchy of authority.’<sup>24</sup> Historian Angela Ballara has shown that the hierarchical notion of hapū as subtribes which were ‘dependent parts’ of larger tribes was a creation of Pākehā commentators and officials in the nineteenth century.<sup>25</sup>

We therefore accept that a group such as Te Taoū, often considered to be a hapū, had its own mana and autonomy. However, we do not go so far as to deny that, over time, a Ngāti

22. Document L2, p 51; see also doc N1, ch 2

23. Waitangi Tribunal, *The Ngāti Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 13 (see also pp 132–133); Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 1 fn 2; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 14; Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), pp 17–18; Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, pp 4–10

24. Law Commission, *Māori Custom and Values in New Zealand Law*, Study Paper 9 (Wellington: Law Commission, 2001), p 42

25. Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), esp p 70

Whātua entity larger than a hapū but smaller than a confederation has come to exist. The emergence of this Ngāti Whātua grouping, which can be described as an iwi, is probably a relatively modern development. It seems likely that, as Wai 756 researchers Shane Paul and Lily George suggested, the formation of a multi-hapū Ngāti Whātua iwi began after Te Ika ā Ranganui, when various related peoples decimated by the battle coalesced under the leadership of rangatira such as Te Kawau.<sup>26</sup> This process was consolidated during the colonial period. It is therefore inaccurate to take this modern meaning of Ngāti Whātua and project it back to the seventeenth century or earlier, as the ethnographer Stephenson Percy Smith and others following him have done.<sup>27</sup> Nevertheless, this meaning of Ngāti Whātua existed in the historical period with which we are concerned, and it is one with which many claimants in this inquiry (including people of Te Taoū whakapapa) identify.

We emphasise that our use of the name Ngāti Whātua should not be taken as indicating that Te Taoū or any other hapū was subordinate to a larger Ngāti Whātua ‘tribe’. Nor do we wish to impose an identity on anyone. Wai 756 claimant Lou Paul indicated that he wanted to be identified as Te Taoū, not Ngāti Whātua. Others of Te Taoū whakapapa have identified with Ngāti Whātua. We recognise that kin groups have the right to decide which iwi or hapū names they want to identify themselves with. We acknowledge that some Pākehā scholars in the past, such as Smith, may have imposed interpretations that are not acceptable today. We also warn that, while the identification of Māori kin groups is the result of the dynamics of social and economic change over time, today’s categories should not be imposed on the past. These social processes cannot be blamed on the Crown, although Crown actions may well be a significant factor in the dynamics of social change. We consider that any dispute over identity and nomenclature is a matter for Māori to resolve among themselves.

#### 11.5.6 Tribunal findings

We make the following findings in respect of the Wai 756 claim:

- ▶ The first part of the claim, that the Crown caused or contributed to the erosion of Te Taoū identity, is not well founded, because Te Taoū continues to exist as a recognised kin group, even though some of its members may be unaware of all their kin connections.
- ▶ The second and third parts of the claim, concerning the loss of land and resources, and specific issues relating to the courthouse reserve, Kaipara railway, and Woodhill Forest, are similar to those that we have reported on in Wai 312 and are therefore well founded.

26. Document N5, p 43

27. For a discussion of Smith’s account of ‘Ngāti Whātua’ history, see Ballara, pp 100–101.

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**11.5.7 Tribunal recommendation**

We recommend that the Wai 756 claim be included in a comprehensive settlement by the Crown of Ngāti Whātua claims in southern Kaipara.

**11.6 WAI 121**

**11.6.1 The claim and the issues**

The Wai 121 claim was lodged by Mohi Wiremu Manukau on his own behalf and that of his whānau, as beneficiaries of the Manukau Māori Trust Board. The Manukau whānau are descendants of the Kaipara chiefs Rewharewha Manukau, Te Ōtene Kikokiko, and Paraone Ngaweke. Their land interests extended throughout Kaipara, including Te Uri o Hau lands, and, by descent, members of the whānau may be beneficiaries of the settlement between Te Uri o Hau and the Crown. We are concerned here with their interests in Ngāti Whātua lands of southern Kaipara. The claim concerns the loss of lands in the nineteenth century through Crown purchases and the operation of the Native Land Court, the consequent loss of the resources of the land, and the loss of mana directly attributed to the loss of land.

A further issue in the Wai 121 claim concerns section 71 of the Constitution Act 1852. We comment on this in our discussion of constitutional issues in chapter 12.

**11.6.2 Claimant submissions**

Claimant counsel stated that the Wai 121 claim is ‘about mana’. The claimants have ‘shared in the injustices suffered by the people of Kaipara. But in addition they have lost their mana.’ The Manukau whānau ‘claim rights in Kaipara as tupu tupu whenua – people of the land’. Their traditions date from before the present tribes of Te Uri o Hau and Ngāti Whātua in Kaipara. ‘They do not claim to be a waka people, or descendant from a waka.’<sup>28</sup> Counsel cited the evidence of anthropologist and claimant researcher Larisa Webb about the lands of the three rangatira, Rewharewha Manukau, Te Ōtene Kikokiko, and Paraone Ngaweke.<sup>29</sup> Te Ōtene had no children, and the connections of the Manukau whānau are to his sister, Tarewa Kiwara. Counsel stated that the principal asset of these rangatira was the land and its resources. For a time after the arrival of Pākehā settlers, prosperity from trade in foodstuffs, timber, kauri gum, and other commodities, and from land sales, ‘enhanced the mana of established rangatira’. But, counsel submitted, this process was ‘sowing the seeds of destruction of wealth and reduction of mana’ and the end result of land sales was ‘poverty and

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28. Document Q11, p1

29. Document K5

dependency'. By the 1880s, all three rangatira were heavily in debt, 'and this debt played a significant role in forcing the permanent alienation of the land'.<sup>30</sup>

### 11.6.3 Crown submissions

Crown counsel submitted that the 'essence' of the Wai 121 allegations is 'that the Crown had a duty to protect tribal structures and that it failed to do so'. The evidence given by Wai 121 claimants on the operation of the Native Land Court, in particular, made 'little reference' to the late nineteenth-century context and the changes in society that would 'necessarily have impacted upon tribal structures, and the relationship of rangatira to their communities'.<sup>31</sup> Counsel then noted that the Kaipara Māori population was declining until the end of the nineteenth century; that there was a dramatic increase in the Pākehā settler population; that there was an increasing Māori focus on commercial activity and economic change; and that by 1885 about half of the southern Kaipara lands had been sold. By the end of the century, several significant rangatira had died, and this was another factor in the dynamics of the Māori political and social system.

Crown counsel submitted that the Wai 121 claimants 'essentially allege that the Crown, through its actions and particularly its participation in land sales, caused the destruction of rangatira'. Counsel suggested that, while some other claims accuse the Crown of failing to recognise rangatira, 'the Wai 121 claim is that the Crown gave too much recognition to rangatira'. The evidence suggested that rangatira did act with the consent of kin, that 'Maori leadership was always fluid', and that Māori determined the form of leadership and who should take this role. Counsel concluded that 'it is a gross-oversimplification to allege that the breakdown of tribal structure was caused by Crown actions and omissions'. Changes in tribal structure were responses by Māori to the changing social, political, and economic context brought about by the arrival of settlers and the introduction of government.<sup>32</sup>

### 11.6.4 Tribunal comment

We agree with Crown counsel that the role of rangatira in the changing political, social, and economic environment of the late nineteenth century was complex. It is too simple to blame the Crown for the debt and poverty that occurred after lands were sold. The rangatira were active participants in the sale process. We have not been persuaded that the Manukau whānau have been any more prejudiced by land sales than many other whānau in southern Kaipara whose ancestral leaders sold their lands. We have addressed the loss of land in the

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30. Document Q11, pp 1–7

31. Document Q16, p 99

32. Ibid, pp 100–101

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nineteenth century in some detail in chapter 3 and in the discussion of the Wai 312 claim. We conclude that the issues raised in Wai 121 are similar to those in Wai 312.

**11.6.5 Tribunal finding**

We find that the issues raised by the Wai 121 claimants in respect of loss of land have much in common with the findings in the Wai 312 claim, and to that extent are well founded.

**11.6.6 Tribunal recommendation**

We recommend that the Wai 121 claim be included in a comprehensive settlement by the Crown of Ngāti Whātua claims in southern Kaipara.

**11.7 WAI 470**

**11.7.1 The claim and the issues**

Wai 470 was brought by Hariata Ewe and Te Warena Taua on behalf of themselves, Te Kawerau a Maki iwi, and the Kawerau a Maki Trust. They state that in 1840, through ‘inter-marriage, peace agreements and continued occupation,’ Te Kawerau a Maki remained in southern Kaipara, where they ‘continued to exercise some exclusive interests’ in the south-west and shared interests in the rest. The issues in this claim relate to loss of land and resources, old land claims, pre-emption waiver claims, Crown purchases, the operation of the Native Land Court, and public works takings, especially the Crown acquisition of land for Woodhill Forest. Apart from the assertion of exclusive rights for Te Kawerau a Maki, the issues in this claim are identical with those in the Wai 312 claim, which we have already addressed.<sup>33</sup>

**11.7.2 Claimant submissions**

Counsel for the Wai 470 claimants submitted that Te Kawerau a Maki are today landless except for a few remaining acres. ‘They have no functioning marae, no traditional kainga and no urupa within which to bury their dead.’ They have lost access to ancestral lands and resources and to sites of cultural and historical significance, and most now live ‘at a distance from their ancestral lands’. The Crown is blamed for this ‘sad state of affairs’, by failing to ensure that Te Kawerau a Maki retained ‘a land and resource base sufficient for their present and future needs’ and by failing to protect sites of significance to Te Kawerau a Maki.<sup>34</sup>

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33. Claim 1.13(b)

34. Document Q8, p 3

While acknowledging that the processes of land alienation were similar to those experienced by Ngāti Whātua, counsel stated that ‘the Te Kawerau a Maki experience is in many respects, different’.<sup>35</sup> To explain this difference, a great deal of evidence concerning the origins of Te Kawerau a Maki and ‘their ancient ties and emergence in southern Kaipara’ was put before the Tribunal. The claimants wished to ‘dispel incorrect assumptions and myths that surround the existence of Te Kawerau a Maki’. Counsel emphasised that ‘Te Kawerau a Maki are not a hapu of Ngati Whatua. Their whakapapa alone differentiates them from Ngati Whatua.’ They were ‘greatly pained’ that, during the Kaipara inquiry, they had been ‘continually lumped in under the generic heading of Ngati Whatua’.<sup>36</sup>

The claimants also objected to historical accounts by ‘non-Maori historians’ who have ‘poorly served Te Kawerau a Maki’ by quoting from the victors, Ngāti Whātua, by ignoring or misunderstanding the identity of Te Kawerau a Maki, and by implying that they had been vanquished and disappeared. Apart from the historical evidence of Graeme Murdoch that was submitted to the Tribunal for this inquiry, there was no published account from ‘a Te Kawerau a Maki perspective’. Counsel referred to the Native Land Court minutes of the investigation of title to the Ōtakanini block in 1910, which ‘details the whakapapa links between Ngati Whatua and Te Kawerau a Maki and subsequent marriages between the two iwi which allowed them to co-exist in peace’.<sup>37</sup> Counsel then summed up the claimants’ view of Te Kawerau a Maki history:

- ▶ It cannot be denied that there was a Ngati Whatua invasion of southwest Kaipara in the early 17th century and that a long period of conflict ensued between Ngati Whatua and Te Kawerau a Maki.
- ▶ Te Kawerau a Maki do not deny that Ngati Whatua and Te Taou came to settle in much of southwestern Kaipara.
- ▶ There is no traditional Te Kawerau a Maki account of a Ngati Whatua conquest of all southern Kaipara or of an exclusive occupation of all of the district by Ngati Whatua alone.
- ▶ Traditional Te Kawerau a Maki accounts describe an attack by a combined Ngati Whatua force on the specific hapu of Te Kawerau a Maki who had been responsible for the death of Haumoewharangi. Some Kawerau hapu in occupation of the eastern Kaipara, namely Ngati Manuhiri and Ngati Rongo were not involved in the conflict. As such Te Kawerau a Maki bore the brunt of the Ngati Whatua invasion however they emphatically reject the contention that they were completely driven out of the Kaipara.<sup>38</sup>

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35. Ibid

36. Ibid, p 5

37. Ibid, p 7

38. Ibid, p 8

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Te Kawerau a Maki 'continued to have shared associations over specific parts of south western Kaipara between Kopironui and Motutara', as well as 'wider ancestral associations throughout the wider Kaipara which were not removed by the Ngati Whatua invasion'.<sup>39</sup>

Much of claimant counsel's submission traversed the same issues as those in the Wai 312 claim: old land claims, pre-emption waivers, Crown purchases, Native Land Court operations, and public works takings (in particular, the lands taken for sand-dune reclamation). The underlying theme of these submissions was that the Crown had consistently failed to recognise Te Kawerau a Maki's identity, whakapapa, and associations with the lands of southern Kaipara, so that by the end of the nineteenth century they were effectively marginalised. The result today is the dislocation and fragmentation of Te Kawerau a Maki. 'Although they meet regularly in wananga and have a small body of kaitiaki holding strong to their traditions and origins, a reality for many of them is that they know little of Te Kawerau a Maki history, origins, identity and land rights'.<sup>40</sup>

**11.7.3 Crown submissions**

Crown counsel submitted that the Wai 470 claimants are 'attempting to establish the existence of their rights and interests within the boundaries of the Kaipara regional inquiry, and then subsequently claiming that any such rights and interests were effectively ignored' by the Crown in the various processes of land alienation. Counsel also noted that the claimants 'rely almost entirely on oral history' and that 'very little documentary evidence' was produced by researcher Graeme Murdoch, making it 'difficult for the Crown to test or verify these claims'.

Crown counsel questioned 'the nature and extent of the rights claimed' in the blocks with 'shared' interests, asking whether this meant a right of veto or merely a right to share in the proceeds of sale. Although Te Kawerau a Maki were apparently not involved in sales of lands in which they claimed interests, 'it does not necessarily follow that any interests were ignored'. While the evidence on such rights was insufficient, there was evidence that Te Kawerau a Maki received distributions of the sale proceeds and were therefore aware that such transactions were occurring. Counsel suggested that this indicated 'some level of agency whereby other rangatira were representing the interests of Te Kawerau a Maki, a small hapu with limited interests in the Kaipara region'. Counsel further submitted that 'the protests by Te Kawerau a Maki were few' and concluded that 'the implication is that the claimants acquiesced to the transactions, on the basis either that their interests were not sufficient to warrant involvement, or that they were being represented by other rangatira involved in the transactions'.<sup>41</sup>

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39. Document Q8, p 8

40. Ibid, p 63

41. Document Q16, pp 105–106

**11.7.4 Claimant response to Crown submissions**

In responding to the Crown's submissions, claimant counsel cited the cases where the evidence indicated that Te Kawerau a Maki were involved in transactions: four Te Kawerau a Maki rangatira were signatories to the Crown purchase of the Mangatoetoe block and Te Watarauhi received a share of the payments for the purchases of the Okaka, Mairetahi, and Hoteo blocks and was one of the grantees in the Taupaki block.<sup>42</sup> Counsel accepted that there was a lack of documentary evidence of Te Kawerau a Maki interests in southern Kaipara but submitted that this is 'the crux of their case'; that is, 'their interests have not been well served by the documentary record'. Counsel warned against viewing 'oral history of Maori traditions, rights and associations' as being 'inferior or second-rate to that of the documentary record'. Counsel also commented:

Just as the Crown has urged upon all concerned to take into account the relevant historical context of the 19th century in which the Crown and Maori were operating, it is urged upon the Crown to try and understand the nature of Maori customary land rights by looking not through today's lens as we understand land rights, but as Maori traditionally understood them to be.<sup>43</sup>

**11.7.5 Tribunal comment**

We heard a great deal of detailed evidence about various ancestors of Te Kawerau a Maki and places associated with them in southern Kaipara. There is no dispute that people called Kawerau were in occupation before Ngāti Whātua began moving south. Te Warena Taua stated that the ancestral interests of Te Kawerau a Maki extended north into Kaipara Harbour to include all of South Head Peninsula, east across the harbour to the Hoteo River and to the coast around Te Arai, and south to include Omaha, Mahurangi, the upper reaches of Waitemata Harbour, the northern shores of Manukau Harbour, and the Waitakere Ranges.<sup>44</sup>

The ancestor Maki came originally from Kāwhia and travelled north with a band of his people, settling for a time near Manurewa, among Waikato relatives, on the southern shores of Manukau Harbour. He then became involved in fighting in southern Kaipara and Tamaki Makaurau against the occupants, Ngā Oho. Maki and his wife settled for a while in the Kaipara, near Parakai, where one of his sons, Tāwhiakiterangi (also known as Kawerau a Maki), was born. It is from this son that Te Kawerau a Maki are descended. Other sons were Manuhiri, who was an ancestor of Ngāti Wai, and Ngāwhetu and Maraeariki, ancestors of Ngāti Rongo and others on the eastern coast south of Ōmaha. Maki himself eventually

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42. Document Q24, p 12; doc J2, p 115

43. Document Q24, p 13

44. Document J6, p 11



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returned to Kāwhia and died there.<sup>45</sup> Tāwhiakiterangi is said to have lived at Kopironui, at Korekore Pā, and at other places, and he was buried at Hautu on the Kopironui block. He had a son, Taimaro, and his son was Te Hawiti, later known as Te Au o te Whenua, who was based at Korekore Pā and was involved in the peacemaking at Taupaki, described below.

Graeme Murdoch criticised the ‘authorised version’ of Kaipara Māori history recounted by Stephenson Percy Smith and George Graham (and later by others), which refers to ‘a complete “conquest” of “southern Kaipara” by “Ngāti Whatua”’ and implies that ‘the earlier inhabitants were killed off or absorbed’. Murdoch suggested that these writers used mainly Ngāti Whātua sources, and therefore only the version of the victors was told. This led to ‘a trail of historical confusion’, because there was no published Te Kawerau a Maki account, although the traditional accounts had been preserved by kaumatua of Te Kawerau a Maki and passed on.<sup>46</sup> However, we consider this view to be somewhat exaggerated, since neither Smith nor Graham suggested that Te Kawerau a Maki had disappeared. Indeed, both writers emphasised the marriages that had been made between Ngāti Whātua and Te Kawerau a Maki ancestors from the beginning of Ngāti Whātua migration into southern Kaipara. There were many fights with Kawerau and Waiohua occupants, but most of these were followed by peacemaking and strategic marriages between the warring parties. This followed the traditional pattern of take raupatu.

The Ngāti Whātua ‘conquest’ of southern Kaipara and the establishment of a ‘boundary’ between Ngāti Whātua and Te Kawerau a Maki were described by Smith:

They [Ngāti Whātua] settled down in the country extending round the present town of Helensville and increased and multiplied. There must have been many of the women of the Wai-o-Hua tribe who were spared and became the mothers of many of the later generations of Ngāti Whatua, indeed it is very evident from the genealogies that this amalgamation with that tribe, with Kawerau, and other local divisions had been going on for many years previously; no doubt the 150 years or so that Ngāti Whatua had been their near neighbours was not spent in constant warfare. One branch of the Kawerau, soon after the conquest, were still occupying their ancestral lands about Manukau Heads, Wai-takere and Muriwai, as the following incident shows. It must have been soon after the conquest, say a little prior to 1740, that Pou-tapu-aka, one of the conquering Ngāti Whatua, started from Otaka-nini on a journey to the south to *takahi kainga*, or take possession of the country. At a place named Taupaki, he met Te-Au-o-te-whenua, a chief of the Kawerau, and an ancestor of Whatarauhi who lived at Muriwai in 1860. The two chiefs had a long discussion as to what should be their boundary; Pou-tapu-aka wishing to go as far as Hikurangi (in the Wai-takere district),

45. Document J6, pp 6–9; doc J2, pp 23–29. For a Tainui account of Maki’s activities compiled by Pei Te Hurinui Jones, see *Nga Iwi o Tainui: The Traditional History of the Tainui People – Nga Koorero Tuku Iho o nga Tuupuna*, ed Bruce Biggs (Auckland: Auckland University Press, 1995), pp 272–276.

46. Document J2, pp 33–34

the other insisting that he should return. To settle the dispute, Pou-tapu-aka dug a trench with his *hoeroa*, or whalebone baton, and sticking it upright therein, declared that should be the boundary between the two tribes.<sup>47</sup>

Te Warena Taua provided an account of this incident in his evidence, explaining, as Smith had done, that the place was named Taupaki to mark the peace agreement made there between the two chiefs:

Poutapuaka was travelling south when he was stopped by Te Au o te Whenua. Te Au o te Whenua enquired as to where Poutapuaka was going. He replied, 'Ki Hikurangi', 'to Hikurangi'. Te Au o te Whenua was suspicious of the intentions of Poutapuaka and disallowed him to continue. Te Au o te Whenua drew his mere (stone club) and cut a line into the ground and stated that Poutapuaka should return from here. Tensions were high, but peace was finally made when Poutapuaka realised that he had not the strength to continue south. It was from this incident, that Te Hawiti was to receive his new name 'Au o te Whenua', or 'current of the land'. Taupaki became an Aukati, or a line, which one may not pass.<sup>48</sup>

It matters little which of the two rangatira cut the line. The point of the story, told by both Ngāti Whātua and Te Kawerau a Maki, is that a line was made and agreed on.

Graham also referred to the peacemaking at Taupaki:

This peace lasted for some time until about AD 1760, when the Kawerau became involved in the warfare between the Ngāti-Whātua and Wai-o-Hua of Tamaki. This war was that in which the Tamaki Isthmus was conquered by Ngāti Whātua, who, however, do not appear to have claimed to have conquered the Kawerau *mana* to Waitakere. Hence we find remnants of that people, still recognised as the *iwi-whenua* (land tribe) of those parts . . .

In this warfare the Ngāti Whātua seemed to have contented themselves by sending punitive expeditions into the forest territories of the Kawerau. But by this time they had much inter-married with them. In fact the Kawerau were in the latter stages of the warfare against the Waiohūa of Tamaki, allied with the Ngāti-Whātua.

In these times, [1920s] Kawerau still exist as a recognised tribe. Their numbers now reduced to some fifty or sixty people, they are resident at Mahurangi, Omaha and various other localities within their ancient tribal domain.<sup>49</sup>

Graham cited as his sources 'several old men' of Kawerau, including Matekino of Opahi, Mahurangi, and Tutawhana of Awataha, Shoal Bay, Auckland.

47. Stephenson Percy Smith, *The Peopling of the North: Notes on the Ancient Māori History of the Northern Peninsula and Sketches of the History of the Ngāti-Whātua Tribe of Kaipara, New Zealand* (1897; reprint, Christchurch: Kiwi Publishers, 1998), p 76

48. Document 16, p 15

49. George Graham, 'History of the Kawerau Tribe of Waitakere', *Journal of the Polynesian Society*, vol 34, no 133 (March 1925), pp 22–23

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Taupaki, where peace was arranged between Te Kawerau a Maki and Ngāti Whātua, is near the western coast on the southern boundary of the Taupaki block, which is the southern boundary of the Kaipara inquiry district. In 1853, Crown purchase agents began negotiating the purchase of blocks in west Auckland south of Taupaki. Kumeu, Mangatoetoe, and Hikurangi were all purchased that year, and Te Pae o te Rangi and Puatainga were bought the following year. Te Kawerau a Maki names appear in all these deeds except that for Kumeu. The 1853 deed for Hikurangi had 17 signatories, ‘the Chiefs of the Ngatiwhatua and the Akitai tribes and the Ngatiteata’. In 1856, another deed for Hikurangi was signed by ‘the Chiefs and People of a branch of the Ngatiwhatua’ – Watarauhi, Pera, Hamuera, Natanahira, Henare, Himiona, and Utika.<sup>50</sup> Significantly, this separate deed for Te Kawerau a Maki’s interests in Hikurangi refers to them as ‘a branch’ of Ngāti Whātua; the Māori version reads ‘nga rangatira me nga tangata o tetahi o nga manga o te Iwi o Ngatiwhatua’. None of the names on this deed was on the earlier deed. The Hikurangi deed, like the Mangawhai deed discussed in chapter 5, contained a ‘10 per cent clause’. Murdoch, citing a report by Heaphy, states that in 1874 the ‘tenths’ payments were ‘given to Te Kawerau a Maki, as the “original territorial owners of Hikurangi”’.<sup>51</sup> In the Waitakere district, south of Taupaki, it seems that Te Kawerau interests were recognised by the Crown.

The Taupaki peacemaking was a factor in resolving the dissension over the sale of Puatainga, which lay between the Taupaki and Pae o te Rangi blocks, by Manihera and Ihaka Takanini, the two signatories to the deed. Murdoch suggested that Manihera, described in the deed as a chief of Ngāti Whātua, ‘may have had a partial right to the block through his Kawerau descent’, but the right of Ihaka of Te Akitai, a hapū of Waiohua, ‘was more ancient and obscure’. Murdoch commented that the sale was:

a clear ‘political’ statement which was bound to cause controversy as the transaction was accompanied by a physical occupation of the area. It would appear that Te Watarauhi and Te Kawerau a Maki backed the Te Waiohua initiative, possibly to reassert their land rights which had been so severely eroded by their Ngati Whatua relatives.

In 1854 Te Kawerau a Maki rebuilt the defences of Parawai Pa beside the lower Waitakere River, ready to host a large heavily armed Te Waiohua force, and to face the predicted reaction from Te Taou.

This force of about 300 had assembled at Mangere. Ihaka Takanini was one of its leaders, and it included people who had ‘suffered at the hands of Ngati Whatua several generations before.’<sup>52</sup> Most were from around Manukau Harbour, including several Waikato hapū from the southern shore. The group arrived at Parawai and camped there with Te Kawerau a Maki.

50. Henry Hanson Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1877), vol 1, deeds 144–145, 270–272, 280 (pp 187–189, 326–329, 339)

51. Document J2, p 120

52. Ibid, p 122

The next day, they walked over the Taupaki block, set up boundary markers, and claimed the land north to Maukatia/Māori Bay at Muriwai. Murdoch cited Te Kawerau a Maki kaumatua as the source of this account.

The same incident was also referred to in the minutes of the Native Land Court's 1869 title investigation of the Ruarangihaerere block. An armed force, led by Te Ōtene Kikokiko, was quickly assembled and moved south. Paora Tuhaere told the court that 'we met at Taupaki, we met because the Waikato were taking our land away. Ihaka, Mohi and Te Kawerau was [*sic*] attempting to take it away, they said that it belonged to them.'<sup>53</sup> Te Ōtene Kikokiko told his version:

I recollect the quarrel at Taupaki that was my fight. It was a fight with Te Kawerau – Te Watarauhi – Natanahira – Hoani – Hapimana – Ihaka – Manakau – Te Pepene – Te Tihi. These people brought the quarrel to Waitakere. I went from Ongarahu and stopped at Taupaki. I fired at the boundary of the land and sent for Te Watarauhi and thus a fight was prevented.<sup>54</sup>

The confrontation was resolved by both parties agreeing to put the dispute in the hands of Apihai Te Kawau, who arrived to mediate. Donald McLean agreed that there would be no Crown purchases of land north of Taupaki until the parties agreed to sell.

It seems that the resolution of this dispute lay in recognising the old boundary at Taupaki. The Taupaki block (12,868 acres) was investigated by the Native Land Court in 1867. Paora Tuhaere referred to the dispute and stated that the land had been given over to Apihai Te Kawau. However, because he was now old and ill, Paora and Te Keene were acting for him on behalf of the many claimants, who included Ngāti Whātua Tūturū, Te Taoū, and Te Kawerau. Ōtene Kikokiko and Wātarauhi both supported Paora's statement. The block was awarded to Te Keene Tangaroa, Paora Tuhaere, Te Wiremu Reweti Te Whenua, and Wātarauhi, and between 1868 and 1882, it was subdivided and sold to private purchasers.<sup>55</sup> Thus, Te Kawerau a Maki interests at Taupaki were also recognised.

In concluding that a 'boundary' was established at Taupaki between Ngāti Whātua and Te Kawerau a Maki, we do not wish to imply that this was a strictly demarcated line. It was more like a zone where interests merged, and this was recognised by the inclusion of Wātarauhi as one of the grantees in the Taupaki block to look after Te Kawerau a Maki interests alongside and in cooperation with Ngāti Whātua rangatira. We note here the comments on boundaries made by the Ngāti Awa Tribunal:

To insist that the groups should define the boundary lines between them is to ask them to do that which is culturally impossible, or that which is an affront to cultural values. The

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53. Kaipara Native Land Court minute book 2, fol 107 (doc J2, p 124)

54. Ibid, fol 128 (p 124)

55. Document F5, pp 276–286

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relationships between the groups have been such that each can point to sites of ancestral significance to it well within the territories of the others, and each can whakapapa to persons who lived in the kainga of another group.<sup>56</sup>

It is to be expected that Te Kawerau a Maki identify places associated with their ancestors within the territory occupied by Ngāti Whātua in southern Kaipara. Te Kawerau a Maki leaders are to be commended for attempting to educate their younger members about their history and traditions. Some of the younger people admitted to the Tribunal that they knew little of their history, but since the 1980s, through wananga and site visits, they have been learning. We hope that this learning process will clarify for them the close relationships and shared whakapapa many of them have with Ngāti Whātua. In focusing on their Kawerau lines of descent, the claimants have played down their equally significant Ngāti Whātua descent, particularly their kin links with Te Taoū in south-west Kaipara.

The number of people identifying themselves as Te Kawerau in the late nineteenth century was small. Crown researcher Paul Goldstone analysed population figures and concluded that 'Te Kawerau in the last half of the nineteenth century numbered between 16 and 36 adults and children residing mainly at Waitakere'.<sup>57</sup> In contrast, in 1869 Rogan identified 112 people of 'Ngatiwhatua' living at Papurona, Kawau, and Mairerahi on South Head Peninsula and 118 'Taou' living at Ongarahu and Orakei, a total of 230 people who would be included in our definition of Ngāti Whātua. Rogan also recorded 15 Kawerau people at Waitakere and 10 at Muriwai, while the 1870 census listed a total of 25 people in both places and named the 'leading chiefs of Te Kawerau' as Nopera Murupaenga and Wātarauhi.<sup>58</sup> The 1877 Kaipara district tribal register listed Te Kawerau at Waitakere (seven), Muriwai (four), and Kōpiro-nui (five), a total of 16 people.<sup>59</sup> The 1874, 1878, and 1881 official censuses of the Māori population named Te Kawerau as a hapū of Ngāti Whātua and had them resident at Waitakere only. Their numbers were 27 in 1874, 26 in 1878, and 36 in 1881.<sup>60</sup> The later censuses did not identify Māori by hapū or by tribe.

We have commented above that the terms 'hapū' and 'iwi', 'subtribe' and 'tribe' were used flexibly in the nineteenth century, and still are. The name of Kawerau was not lost in nineteenth-century records, and there is enough evidence in official documents to indicate that a group called Kawerau still existed and was recognised in the Waitakere area. Their

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56. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 134

57. Document 05, p 13

58. 'Return Giving the Names etc of the Tribes of the North Island', AJHR, 1870, A-11

59. Kaipara district tribal register, 1877, MS734, Auckland Institute and Museum Library (doc 05, pp 36-40)

60. 'Approximate Census of the Maori Population (Compiled by Officers in the Native Districts)', 1 June 1874, AJHR, 1874, G-7, p 4; 'Papers Relating to the Census of the Maori Population, 1878', AJHR, 1878, G-2, p 13; AJHR, 1881, G-3, pp 12-13

small numbers meant that they could have been perceived as part of the larger Ngāti Whātua group, but there is sufficient evidence to suggest that they were never deprived of their identity and recognition by name as Kawerau.

Te Kawerau a Maki stated that they ‘continued to exercise some exclusive interests’ in south-west Kaipara north of Taupaki; in particular, the ‘exclusive occupation of Kopironui, Paekawau, Te Korekore, Te Muriwai and Motutara’ in 1840.<sup>61</sup> According to the claimants, Kopironui was occupied by a hapū called ‘Ngati Te Kahupara, who were of both Te Taou and Te Kawerau descent.’<sup>62</sup> Te Warena Taua explained that ‘Ngati Kahupara’ were descendants of the marriage – arranged after battles with Ngāti Whātua – between Te Kahupara, a descendant of Tāwhiakiterangi, and Te Waitaheke of Te Taoū.<sup>63</sup> Of the other places referred to above, Korekore is an old pā, Paekawau a lake east of Korekore, and Motutara the name of the block at Muriwai. We have no evidence of the exclusive occupation of these places by Te Kawerau a Maki, and we prefer the phrase used by counsel for the Wai 470 claimants: ‘shared associations.’<sup>64</sup>

#### 11.7.6 Tribunal findings

We make the following findings in the Wai 470 claim:

- ▶ Te Kawerau a Maki are descended from the people called Kawerau, who occupied the land of southern Kaipara before the migration of Ngāti Whātua into the region. Ngāti Whātua exerted their rangatiratanga over the region through a series of battles. These were followed by peacemaking arrangements, reinforced by marriages between Kawerau and Ngāti Whātua, and their descendants can whakapapa to ancestors in both groups. Many Ngāti Whātua families acknowledge Maki as an important ancestor. The rights established by Ngāti Whātua follow the traditional Māori concept of take raupatu, strengthened by marriage and the long occupation of southern Kaipara.
- ▶ Traditional evidence – and the meaning of the name itself – acknowledges Taupaki as a place of peacemaking, a boundary of Ngāti Whātua influence. The region south of Taupaki, along the western coast and the Waitakere Ranges of west Auckland, has always been acknowledged as the area where Te Kawerau a Maki are tangata whenua.
- ▶ The southern boundary of the Kaipara inquiry district is at the traditional Taupaki and is the southern boundary of the Taupaki block. Te Kawerau a Maki lands are therefore outside our inquiry district, and we make no recommendations on the Wai 470 claim.

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61. Claim 1.13(b), p 2

62. Document J2, p 158

63. Document J6, pp 9–10

64. Document Q8, p 8

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**11.8 WAI 508**

**11.8.1 The claim and the issues**

The Wai 508 claim was lodged by Whititera Kaihau on behalf of Ngāti Te Ata, whose interests lie principally in the Awhitu Peninsula, the Waiuku district, and around the shores of Manukau Harbour. The Tribunal received lengthy submissions from both Mr Kaihau and Roimata Minhinnick setting out Ngāti Te Ata whakapapa and traditional links with Kaipara lands.<sup>65</sup>

The Wai 508 claim also referred to section 71 of the Constitution Act 1852. We discuss this issue in chapter 12.

**11.8.2 Claimant submissions**

Counsel for the Wai 508 claimants stated that Ngāti Te Ata claim ‘tangata whenua interests, particularly in the Hikurangi area.’<sup>66</sup> We referred to the Crown purchase of the Hikurangi block in section 11.7.5, and also in chapter 5, because the Hikurangi deed also contained a ‘10 per cent clause’. The Hikurangi land, however, is in west Auckland, well to the south of the southern boundary of the Kaipara inquiry district.

In his statement of claim, Mr Kaihau included all of southern Kaipara within the boundaries of the Wai 508 claim.<sup>67</sup> Mr Minhinnick stated that ‘Ngāti Te Ata do not perceive their claim as a claim to the extent that the iwi are making a claim against other Maori claimant groups in Kaipara or even to land in Kaipara proper’. He also made the point that boundaries are not precise and that Ngāti Te Ata ties to Kaipara and other areas are interrelated through tikanga, whakapapa, and manākitanga.<sup>68</sup> Claimant counsel also referred to the sanctuary provided by Ngāti Te Ata and other Waikato people to Ngāti Whātua who fled south after Te Ika ā Ranganui in 1825. Marriages between Ngāti Whātua and Waikato people established some whakapapa links, and the claimants also suggested much older links with the ancestral Ngāi Tahu and Waiohau.

**11.8.3 Crown submissions**

Crown counsel made no specific comment on the Ngāti Te Ata claim.

**11.8.4 Tribunal comment**

We accept that there are kin linkages between Ngāti Te Ata and Ngāti Whātua of southern Kaipara. However, the existence of whakapapa links, important as they are to the individual

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65. Documents K11, K14

66. Document Q12, p 1

67. Claim 1.15, pp 4–5, 8, map

68. Document K14, p 3

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families concerned, does not necessarily establish a basis for claims to land. We have not been persuaded that Ngāti Te Ata have established a claim to land within the southern Kaipara inquiry district.

**11.8.5 Tribunal finding**

We find that the Wai 508 claim concerning lands in the southern Kaipara inquiry district is not well founded.





## CHAPTER 12

### CONSTITUTIONAL ISSUES

#### 12.1 INTRODUCTION

In this concluding chapter, we deal with the nineteenth-century constitutional issues raised by the Wai 121, Wai 312, Wai 508, and Wai 733 claimants. These concern the possibility of Māori governance in separate ‘native districts’, as provided for in section 71 of the Constitution Act 1852, and the lack of representation in the Legislature for Māori after 1840. We deal with each issue in turn.

#### 12.2 MĀORI GOVERNANCE

The claimants in both the Wai 121 and the Wai 508 claims asserted an independent Māori sovereignty, rangatiratanga, which they claim was recognised by the Crown in the Declaration of Independence signed at Waitangi in 1835. In his evidence for the Wai 121 claim, Mohi Manukau focused on the mana of ‘Nga Rangatira o te Whakaminenga’ or the ‘Confederation of United Tribes’ derived from traditional rangatiratanga and tikanga Māori.<sup>1</sup> For the Wai 508 claim, Whititera Kaihau stated that the declaration constituted a legitimate recognition of Māori sovereignty, necessary in order for Māori to accept the Treaty of Waitangi.<sup>2</sup> Both claimant groups asserted that the Crown’s failure to implement section 71 of the Constitution Act 1852 was a failure to recognise this independent Māori sovereignty. Before addressing this assertion, we provide some historical background to the declaration.

##### 12.2.1 Historical background

In 1832, before the Treaty of Waitangi was signed, the British Government had appointed James Busby, an officer in the colonial government of New South Wales, as British Resident in the Bay of Islands. Busby’s principal task was to keep the peace among visiting seamen and local Māori. One of his first public actions in New Zealand was to suggest that locally built trading vessels should be registered in New Zealand and sail under a New Zealand

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1. Document K10, pp 4–6

2. Document K11, p 55

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ensign. This proposal was duly approved by the British Government. Busby called a meeting of about 30 local rangatira, held on the lawn in front of his house at Waitangi, in March 1834. The new flag was raised and thereafter New Zealand-built ships were registered in the name of ‘the Independent Tribes of New Zealand’.<sup>3</sup>

There is some doubt whether the assembled rangatira fully understood the implications of these proceedings, but the hui marked the beginning of the concept of a confederation of Māori tribes which held some sort of sovereignty. This concept was expressed in a document described as a ‘Declaration of the Independence of New Zealand’, which was signed at another hui organised by Busby in October 1835. The 35 rangatira who signed or made their marks on it were described by Busby as ‘Hereditary chiefs or Heads of tribes, which form a fair representation of the tribes of New Zealand from the North Cape to the latitude of the River Thames’. The principal statements included a declaration of ‘an Independent State, under the designation of the United Tribes of New Zealand’. In the Māori version, this read ‘Ko te Wakaminenga o nga Hapu o Nu Tirenī’. In this confederation (whakaminenga) resided ‘All sovereign power and authority’, translated as ‘Ko te Kingitanga, ko te mana i te wenua’. The declaration also stated that the rangatira would meet annually ‘in Congress at Waitangi’ to frame laws for maintaining peace and good order and for regulating trade. It was also agreed to send a copy of the declaration to the King of England and, ‘in return for the friendship and protection’ to be extended to British subjects, ‘entreat that he will continue to be the parent of their infant State, and that he will become its Protector from all attempts upon its independence’. In the Māori version, ‘independence’ was translated as ‘Rangatiratanga’.<sup>4</sup>

The ‘congress’ of rangatira proposed in the declaration never met. The rangatira retained their independent mana, and no confederated Māori decision-making body emerged out of the transaction, which had been largely engineered by Busby. Historians see the declaration as Busby’s way of thwarting an attempt by Baron de Thierry to establish a French settlement in the Hokianga. But it did recognise a stage in the movement toward the establishment of a British colony and the growing influence of the humanitarian movement on colonial policy.<sup>5</sup>

The 1835 Declaration of Independence had no effect in law, since it was transacted before the proclamation of New Zealand as a British Crown colony in 1840. It also had no practical effect for Māori in the 1830s. However, it served as a reminder of an undefined Māori

3. Alexander McLintock, *Crown Colony Government in New Zealand* (Wellington: Government Printer, 1958), pp 21–23; Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), pp 63–68

4. ‘Declaration of the Independence of New Zealand’ enclosed with Busby to Under Secretary of State, 2 November 1835, in Henry Hanson Turton, preface to *Facsimiles of the Declaration of Independence and the Treaty of Waitangi* (Wellington: Government Printer, 1976)

5. McLintock, p 25

sovereignty, sufficient to be referred to obliquely in the Treaty of Waitangi as ‘the Chiefs of the Confederation of the United Tribes of New Zealand’. The declaration has thus been seen by many Māori as Crown recognition of the independent authority or rangatiratanga of Māori, and it is referred to in those terms in the evidence for the Wai 121 and Wai 508 claims. It is doubtful, however, whether the kind of independent Māori sovereignty spoken of by the claimants was intended in the original declaration. In any case, the Tribunal is concerned with the Treaty of Waitangi, which was an agreement between Māori and the Crown to establish a government, to protect rangatiratanga for all Māori, and to extend the rights and obligations of British citizenship to both resident Māori and incoming settlers.

Both claimant groups cite as a grievance the failure of the Crown to implement section 71 of the Constitution Act and to provide for Māori governance in ‘native districts’. The Act provided for the establishment of representative government in New Zealand – that is, a separate New Zealand Parliament to govern the country. Section 71 set out an option for the governance of Māori:

And whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs, or usages should be so observed.

It shall be lawful for Her Majesty, by any letters patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand, or in any part thereof, in anywise notwithstanding.

This provision remained on the statute book until it ceased to have effect under section 26 of the Constitution Act 1986.

#### 12.2.2 Claimant submissions

Counsel for both Wai 121 and Wai 508 produced a similar closing submission for each claim. A memorandum on section 71 of the Constitution Act 1852 produced for Wai 121 was also attached to the Wai 508 submission. We review both claims together here. In closing submissions, counsel suggested that section 71 of the Constitution Act embodied ‘a constitutional issue. But it is also a Treaty issue.’ Counsel suggested that the section outlined two separate forms of governance:

- a) Māori could use their *laws, customs and usages* in all their dealings with each other – ie for the *governance of themselves*.

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- b) The second part of the section provides for special districts to be set aside in which such *laws, customs and usages* should be observed. [Emphasis in original.]<sup>6</sup>

Counsel then submitted that, under the first form, Māori could govern themselves according to custom anywhere, and that the setting aside of ‘special districts’ under the second form referred to areas set aside where Māori custom applied to everyone. The failure of the Crown to set aside such native districts and to ‘recognise the right of Maori to govern themselves’ was, he claimed, a breach of the Treaty ‘of particular significance to rangatira, whose responsibility it was to govern according to tikanga.’<sup>7</sup>

In his memorandum, counsel discussed two phrases in section 71 which were ‘seemingly superfluous’. The first was ‘And may be expedient’, but expedient for whom was not defined or qualified. The second was ‘for the present’, and this ‘present’, it was argued, would last for as long as the statute endured. Counsel maintained that both phrases were ‘vague and ambiguous’ and ‘should be read in a way that allows the spirit of the legislation to have effect.’<sup>8</sup>

12.2.3 Crown submissions

Counsel for the Crown made no submission on issues relating to the interpretation of the Declaration of Independence 1835 or section 71 of the Constitution Act 1852.

12.2.4 Tribunal comment

We received no evidence on the historical context of the passing of the Constitution Act 1852 by the British Parliament that might guide us in our consideration of section 71. We are aware, however, that in New Zealand there is a long history of pleas from Māori, in *kōrerō* on marae and in petitions to Parliament, for Māori forms of governance, along with efforts to create pan-tribal confederations.<sup>9</sup> We do not intend to review this history here, since that would take us well beyond the scope of our inquiry into the Kaipara claims.

We have sought an answer to the question of why the Crown did not choose to implement section 71 of the Constitution Act 1852. We found part of the answer in the phrase ‘it may be expedient’. Claimant counsel described this phrase as superfluous. We see it as significant, because it suggests that the new government proposed in the 1852 Act was not required to implement this provision, but that it was empowered to do so if it were deemed ‘expedient’

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6. Document Q11, p 6; doc Q12, pp 3–4

7. Document Q11, p 6; doc Q12, p 4

8. Document K13, p 2

9. See, for example, John Williams, *Politics of the New Zealand Maori: Protest and Cooperation, 1891–1909* (Seattle: University of Washington Press, 1969), and Lindsay Cox, *Kotahitanga: The Search for Māori Political Unity* (Auckland: Oxford University Press, 1993).

in whatever undefined circumstances. The New Zealand Government did not consider it expedient to set aside any 'native district'. Instead, it chose the policy option of requiring all Māori to comply with British law and New Zealand statutes, including special legislation to establish a Native Land Court and to translate Māori customary land tenure into titles cognisable in British law.

Perhaps the clearest statement of Crown policy in New Zealand was the response to a petition to Queen Victoria signed by King Tāwhiao and others and taken by them to London in 1884.<sup>10</sup> The petitioners did not see the Queen but were received by the Colonial Secretary, the Earl of Derby, who referred the petition back to the Governor of New Zealand for comment. The petition contained numerous complaints about the New Zealand Government, including non-compliance with the Treaty of Waitangi, confiscation of land, operations of the Native Land Court, and inadequate Māori representation in Parliament. The first request to Queen Victoria for remedy was:

that you will resolutely consent to grant a government to your Maori subjects, to those who are living on their own lands, on those of their ancestors, and within the limits of Maori territory, that they may have power to make laws regarding their own lands and race, lest they perish by the ills which have come upon them; that they may be empowered so to direct themselves and their own lands, lest they be altogether destroyed by the practices of the government, unknown and not evident to the Maoris; and that also the Maoris possessing lands contiguous to the Europeans should have those lands brought under the direction of the said Maori Government, for there are many tribes who thus own land.<sup>11</sup>

Tāwhiao was seeking, in particular, a native district for the King Country. But he also acknowledged that a 'Maori Government' would help retain the lands of other tribes who had suffered.

The New Zealand Governor, Sir William Jervois, responded in due course, enclosing a memorandum signed by the Premier and Attorney-General, Sir Robert Stout, which stated, *inter alia*:

As to the provisions of section 71 of the Constitution Act, 15 & 16 Vict Cap 72, Ministers would remark that it appears from the very terms of the section that the Imperial Parliament contemplated that that section should only be used for a short time and under the then special circumstances of the Colony. The words used in the Section are, 'It may be expedient.'

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10. The principal source of the following account is *Correspondence Respecting a Memorial Brought to this Country by Certain Maori Chiefs in 1884*, British Parliamentary Paper C-4413 (1885). A continuation of this correspondence is in *Further Correspondence Respecting a Memorial Brought to this Country by Certain Maori Chiefs in 1884*, British Parliamentary Paper C-4492 (1885). Both papers are reproduced in BPP, vol 17, pp 105–179. See also the New Zealand publication, AJLC, no 11, 1886, and the Māori language version in AJLC, no 11A, 1886.

11. 'Memorial of the Maori Chiefs Tawhiao, Wiremu Te Wheoro, Patara Te Tuhi, Topia Turoa, and Hori Ropihana', 15 July 1884, BPP, vol 17, pp 111–112

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‘Should for the present be maintained.’ So far as allowing the laws, customs, and usages of the Natives in all their relations to and dealings with each other to be maintained, Ministers would point out that this has been the policy of all the Native Lands Acts. The Courts that have to deal with native land, and it is the land that to the Natives seems the most important, decide according to Native customs and usages. Vide Native Land Courts Act, 1880, section 24; see also sections 5 and 6 of the Native Lands Frauds Prevention Act, 1881, and Section 6 of the Native Land Laws Amendment Act, 1883.

Copies of these Acts were enclosed with the memorandum. The relevant provisions cited referred to the Native Land Court investigation of title according to Māori customs and usages. Stout’s memorandum also suggested that:

the county of Waipa is practically a Native district, and if the Natives desired such a form of local government as the Counties Act affords, there would be no difficulty in granting their request by the Colonial Parliament. What, however, the Petitioners desire is really the setting up of a Parliament in certain parts of the North Island which would not be under the control of the General Assembly of New Zealand. Seeing that in the Legislative Council and the House of Representatives the Natives are represented by able Chiefs, and that they have practically no local affairs to look after that cannot be done by their committees, local bodies recognised by the Government, Ministers do not deem it necessary to point out the unreasonableness and absurdity of such a request.<sup>12</sup>

In other words, no separate Māori government was to be tolerated. The only option was local government under either the Counties Act 1876 or the Native Committees Act 1883 – that is, under statutes passed by the New Zealand Parliament. The memorandum concluded: ‘Ministers do not consider that there is any allegation in this petition that has not been before the Imperial Government, replied to by the Colony, and dealt with before.’<sup>13</sup> Meanwhile, on 13 August 1884, the Colonial Office wrote directly to Tāwhiao acknowledging receipt of the petition and noting that it had been sent to the New Zealand Government for comment. The letter explained that ‘Her Majesty’s Government are not able to require the Government of New Zealand to interfere with the Land Courts, which are duly established by law’.<sup>14</sup>

The provisions of section 71 of the Constitution Act were mentioned in other petitions, often by implication, but this appears to be the clearest exposition of why that section was never used. It was intended to provide only a short-term, expedient measure, and was made redundant by the Native Lands Act 1862 and subsequent Acts. It was never envisaged as a long-term arrangement, although it was not repealed until the passing of the Constitution Act 1986.

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12. ‘Memorial of the Maori Chiefs’, p 115

13. Ibid, p 116

14. Ibid, p 114

We do not believe that the failure of the Crown to implement a provision in a statute which empowers, but does not require, the Crown to do something is of itself a breach of the Treaty. The fundamental question is whether the New Zealand Government should have implemented a separate structure of Māori governance in native districts set aside under section 71 of the 1852 Act.

What form that structure might have taken must be pure speculation. The claimants have produced no specific evidence of possible alternative forms of governance put forward by Māori in the Kaipara district in the nineteenth century. A central theme of much of the evidence in the Kaipara claims was the cooperation and good will that existed between Kaipara Māori and the Crown. There were also complaints about loss of land and control of resources, of course, and these form the substance of our inquiry.

We therefore make no finding on section 71 of the Constitution Act 1852 and related matters in the Wai 121 and Wai 508 claims. We have received insufficient evidence on matters which might affect all Māori and which might raise constitutional issues that are well beyond the scope of our inquiry into the southern Kaipara claims.

### 12.3 MĀORI REPRESENTATION

A later addition to the Wai 733 Ōtakanini Tōpū statement of claim set out as a grievance the failure of the Crown to provide representation for Māori ‘in the legislative councils and/or administration set up or created by the Crown from 6th February 1840 until 1867’ and, further, ‘the failure to provide effective representation’ for Māori from 1840 to the present day.<sup>15</sup> The Wai 312 statement of claim alleged that the Crown, among other obligations, failed to provide ‘political equality’. The result was that Ngati Whatua have ‘suffered the destruction or erosion of their economic base, social patterns and traditional leadership structures’, and their ability ‘to exercise tino rangatiratanga’ had been ‘consistently undermined’.<sup>16</sup>

#### 12.3.1 Claimant submissions

In closing submissions, counsel for Wai 733 sought compensation for the ‘lack of effective representation’ for Māori since 1840, including the failure of the Crown to respond to Māori requests for representation, and suggested an immediate remedy in ‘a reform of the seating of what is now (since the Constitution Act 1986) the Parliament of New Zealand’. Counsel also submitted that advice from tangata whenua to the Crown had been ‘peripheral, informal, minimal and unequal’.<sup>17</sup> He referred to the hui of Māori leaders at Kohimarama in

15. Claim 1.29(b)

16. Claim 1.10(a)

17. Document Q3, p18



1860 and to Dr Loveridge's comment that 'What they wanted was to be placed on the same footing as their fellow British subjects in all respects, including legislative representation, treatment by the Courts and land tenure'.<sup>18</sup>

Counsel also emphasised the 'special nature of Ngāti Whatua', who, having 'persuaded the new Governor Hobson to site his capital in Auckland . . . probably enjoyed a position of political strength not found in any other iwi before or since'. From 1840 until the capital was shifted to Wellington in 1865, Ngāti Whātua leaders 'had the ear of the Governor of the day'. They were able to participate fully in the developing economy and became more affluent than most other tribes at that time. The move of the capital to Wellington was a 'serious setback' and meant that Ngāti Whātua, lacking effective representation in Parliament, now 'had less control and ability to lobby'.<sup>19</sup>

When the four Māori seats in Parliament were established under the Māori Representation Act 1867, Ngāti Whātua's interests were not seen to be adequately represented by the single member for Northern Māori, who was from Ngā Puhi. Counsel rejected Dr Loveridge's view that a group of only about 300 or 400 Ngāti Whātua could not expect separate representation, describing it as an attempt 'to provide for cultural advancement according to numbers – a modern definition of "democracy" – in a tribal society' that subscribed to different values. In other words, it was claimed that the Crown should have found a way to incorporate the values of tikanga Māori in Government decision-making.<sup>20</sup>

In closing submissions, counsel for Wai 312 also cited the Crown's failure to 'afford Ngāti Whatua direct involvement in governance' and, in particular, its failure to follow up the initiatives set out by the Māori participants in the hui at Kohimarama in 1860. The Constitution Act 1852 provided the opportunity for the New Zealand Parliament, which became fully operative in 1856, to 'involve Ngāti Whatua and other Maori in the governing of the colony and the administration of the law'. The Crown had 'refused' to involve Māori, and the existing 'franchise qualifications effectively excluded most Maori from involvement' in the General Assembly in Wellington or in provincial councils.<sup>21</sup> Counsel then cited the comments of Professor Alan Ward on Governor Grey's failure to ensure that Māori were given an equal place in the new constitutional arrangements: 'a frank inclusion of the Maori leadership in state power was just what Grey and the settlers could not make.' Grey's practice was to exert Government control of Māori by 'a variety of devices designed to manage and placate them, without open discussion of the fundamental questions about land, law, police power or political representation'.<sup>22</sup> Counsel also quoted Paora Tuhaere's plea at the Kohimarama hui:

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18. Document 04, p 96

19. Document Q3, pp 19–20

20. Ibid; doc 04, pp 98–99

21. Document Q1, pp 39–40

22. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1974), p 86

let us be admitted into your councils. This would be the very best system. The Pakeha have their councils, and the Maories have separate councils, but this is wrong. The evil results from these councils not being one. I therefore say let Maori chiefs enter your councils . . . There would then be but one law for both Pakehas and Maories, and the understandings of both people would be exercised in council.<sup>23</sup>

Counsel submitted that, because Māori were not given adequate representation in either central or provincial government, ‘Government thereby denied Ngati Whatua not only the means of self-advancement, but the means of accessing the same institutions and systems under which Pakeha worked and local development depended’. Although there was Māori representation in Parliament in 1867, ‘four Maori representatives against forty-one Pakeha representatives meant neither Ngati Whatua’s views nor the views of Maori in general would be able to be heard’. Counsel concluded that Ngati Whatua ‘were not equal’ because they were not ‘afforded an equal share in Pakeha power and the institutions that supported it.’<sup>24</sup>

#### 12.3.2 Crown submissions

In respect of franchise issues, Crown counsel made brief submissions:

In New Zealand, once representative institutions were introduced with the Constitution Act of 1852, the franchise for British subjects was based on the tenure of property whose title was recognisable in English law. This meant that Maori holding land under customary tenure were not eligible to vote.

The lack of representation for Maori in the House of Representatives was recognised as a problem during the 1850s, but efforts to find a way around it were not successful.

Counsel then suggested that one of the factors leading to the Native Lands Act 1862 was the need to enfranchise Māori by creating ‘a mechanism whereby customary tenure could be converted into a title recognisable by the Crown.’<sup>25</sup>

Crown counsel concluded with the comment that all adult male Māori could vote for the four Māori representatives in Parliament:

This was the first application of universal male suffrage in the British Empire. The same principle was not applied to Europeans in New Zealand until 1879 (men) and 1893 (women).

Ngati Whatua hoped for, but did not get their own representative in Parliament. It is submitted, however, that no group of this size could realistically expect to be guaranteed their own member in the House.<sup>26</sup>

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23. Document Q1, p 43

24. Ibid, pp 46–47

25. Document Q16, pp 101–102

26. Ibid, p 102

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**12.3.3 Tribunal comment**

The Crown submission connecting the enfranchisement of Māori in 1867 with the passage of Native Lands Acts was challenged by counsel for Wai 312, who pointed out that, under the 10-owner system of the Native Lands Act 1865, many Māori would have been disenfranchised.<sup>27</sup> We have not been presented with detailed evidence on the Māori Representation Act 1867 and the context of its passage through Parliament.<sup>28</sup> We have no evidence that the Crown intended deliberately to exclude Māori from the franchise. We do note, however, that the Government was somewhat tardy in devising a way to achieve Māori franchise within the existing property-holding qualifications that enabled men to vote. Until 1893, women could not vote or hold office in Parliament, and they rarely held property in their own name anyway. We agree with counsel that representation of Māori in the Pākehā male councils of the land was inadequate.

Neither the Wai 733 nor the Wai 312 claimants provided sufficient evidence for us to determine with any clarity just how far Ngāti Whātua were or were not prejudiced by this. These claims also raise more general constitutional issues affecting all Māori – indeed, all citizens of New Zealand – which are well beyond the scope of our Kaipara district inquiry. For these reasons, we make no specific findings on the issue of the alleged Crown failure to ensure adequate Māori representation in the governing bodies of New Zealand.

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27. Document Q27, p 50

28. For background, see Ward, p 209, and M P K Sorrenson, 'A History of Māori Representation in Parliament', in *Report of the Royal Commission on the Electoral System* (Wellington, Government Printer, 1986), app B.

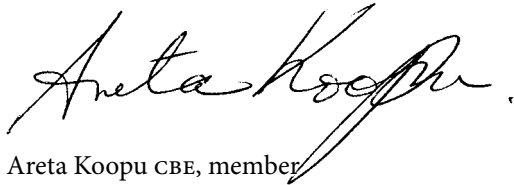
Dated at *Wellington* this *9<sup>th</sup>* day of *January* 2006



Dame Augusta Wallace, presiding officer



Brian Corban QSO, member



Areta Koopu CBE, member





## CHAPTER 13

### MINORITY OPINION

#### 13.1 GENERAL FINDING

I agree with the claim that the Crown breached the principles of the Treaty of Waitangi, as I understand them, in relation to the taking of land for public works, and also a native reserve at Helensville (secs 8.2.6; 8.4.5). Further, I support the report's recommendation at section 11.2.7 that the Crown should move to remedy harm caused to southern Kaipara Māori, notwithstanding the fact that I believe that the extent of that harm was less than is suggested in this report. I support the Tribunal's recommendations at section 5.8.4 rejecting the claims of Wai 619 and 620. And I support the Tribunal's finding in: section 5.9.4 in relation to the Mangawhai lands; section 8.3.6 in relation to the Kaipara railway; section 11.7.6 regarding Te Kawerau a Maki; and section 12.3.3 regarding constitutional issues. I am unable to agree with the report's finding on the Te Kopuru lands at section 4.4.7, or with the finding regarding the Elmsley–Walton grants at section 4.6.7.

There are several points in the report where the Tribunal in my view failed adequately to take into account some of the evidence presented to us. The report does not grapple adequately with the overall historical background to these claims. While the Crown failed Māori in several respects, many Māori failed their own descendants with actions they took during the nineteenth century.

#### 13.2 UNIQUE FEATURES OF THE KAIPARA CASE

The Kaipara case is unlike any other that I have been associated with for several reasons. The historical background of the Kaipara area is unusual:

- The landholdings of Māori in the Kaipara area in 1840 were probably greater than were enjoyed by Māori anywhere else except in the South Island. Because of the inter-tribal wars in the early years of the nineteenth century, there were relatively few Māori (between 700 and 800) left in an area variously estimated to cover between 750,000 and one million acres of land. At the time of the first European settlement, Māori landholdings averaged 1250 acres for every man, woman, and child.

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- The large open spaces were a problematic asset. Ever since Te Ika ā Ranganui in 1825, another outbreak of violence between Ngāti Whātua and Ngā Puhi lurked as a possibility, and many Māori shifted south and east out of fear. It is clear that some parts on the eastern side of the claim area were largely deserted for many years after 1825. Ngāti Whātua invited Governor Hobson to establish his capital in Auckland in the hope that a settler presence in the wider area would contribute to their greater security. It quickly became clear that there were other advantages from a European presence. As a result of their first sales to the Crown, the city of Auckland mushroomed on the northern portion of the isthmus, creating trading opportunities for Māori. Many Ngāti Whātua appear to have gone to Orakei, where market gardening to supply the town thrived into the late 1860s. Evidence was provided that many of them made a living from this trade. During this period, they inclined towards accepting approaches from settlers desirous of buying their largely abandoned western lands.
- By the early 1860s, most Māori chiefs appear to have understood what was at stake in the European concept of 'sale' and to have made a conscious choice to sell land deemed surplus to requirements. Enough evidence was supplied to us to show that settlers paid money to Māori willing to sell. Māori in turn were active in assisting the Native Land Court after 1865 with the process of establishing their rights to sell. Much intermarriage between the races took place. Some Māori appear to have used the proceeds of sales to help them meld into settler society. Everywhere in New Zealand Māori populations declined after 1840 as disease decimated numbers. It is often overlooked that others intermarried to the point where the law as it then stood meant that their descendants could no longer be classified as Māori. The 'integration' process seems to have been particularly rapid in and around Auckland. By 1900, the number of people still legally deemed to be Māori within our claimant area appears to have been no more than 270.

Understanding these points is essential to appreciating the fate of Kaipara Māori in this case.

**13.3 CONSEQUENCES OF THESE REALITIES**

Claimant groups experienced considerable difficulty mounting credible arguments that the Crown was responsible for the steady erosion in the amount of land retained in Māori hands. Claimant submissions cited a warning from the Governor to chiefs in or around 1844 that land was not an inexhaustible possession and that Māori needed to be mindful of their possible future needs. However, such was the surplus land in Kaipara Māori's hands that they continued to sell. To cover for this historical reality, some claimants mounted an argument that something akin to a 'contract' existed between the Crown and Ngāti Whātua whereby

Māori would sell in return for the Crown caring for all their needs – an argument that at times sounded like some form of permanent welfare, albeit in an era when the concept was unknown. The Tribunal rightly dismissed this claim for want of supporting evidence.

#### 13.4 CROWN ACTION AFFECTING THIS CASE

Without waiting for any Tribunal findings, the Crown suddenly announced in early 2000 that it was prepared to negotiate directly with the northern section of the Kaipara claimants known as Te Uri o Hau. The Crown asserted that it had been ‘historically proven’ that claimants had been adversely affected by many Crown actions in the Kaipara area. No such thing had been ‘proven’, yet the Crown proceeded to settle with Te Uri o Hau and passed the Te Uri o Hau Settlement Act 2002 containing many acknowledgements that were based on no more than untested assertions. The Kaipara Tribunal found itself presented therefore with a *fait accompli* covering the north-west corner of the claimant area. It is entirely possible that, had the Tribunal been given time to weigh the claimant arguments before the Act was passed, it might well have been less sweeping with its findings against the Crown than was the legislation. In the report to which this minority finding is attached, doubts are expressed about any ‘alliance’ between Kaipara Māori and the Crown, although such an acknowledgement appears to underlie section 8 of the 2002 Act. Legislating history will always be a murky business.

In my opinion, the procedure adopted by the Crown in this instance bordered on irresponsibility. Tribunal members were left with no option but to decide that in fairness they must ensure that southern Kaipara Māori were treated with the same level of generosity as Te Uri o Hau. Careful readers of this report will notice that its findings against the Crown are less extravagantly worded than the Crown’s own findings against itself in the 2002 Act.

In particular, in section 8(d), (e), and (f) of the Te Uri o Hau Claims Settlement Act 2002, the Crown accepted responsibility for ‘failures by the Crown’ that were not proven. For instance, in section 8(d), the Crown appears to accept the blame for the failure to set aside adequate reserves of land for Māori and to protect those reserves from alienation no matter what opinions Māori might have expressed at the time. This is a sweeping finding that appears to exclude Māori from any responsibility for their ultimate landlessness. It is a judgement that fails to take into account the evidence supplied to us that some Māori stressed their Treaty right to sell their land as early as the 1850s. Moreover, in section 8(e) of the Act, the Crown appears to hold to the dubious notion that it would have been possible for it in perpetuity to have prevented individual Māori from gaining title to their share of their lands, and then to sell. How this would have sat with article 3 of the Treaty, which guaranteed Māori ‘all the Rights and Privileges of British Subjects’, is nowhere explained by



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13.5

the Crown. Nor is there an explanation of the extraordinarily heavy-handed paternalism implicit in preventing Māori from engaging in the free sale of their surplus assets. Having spent several years listening to claimant evidence, I formed the impression that Kaipara Māori were only occasionally passive victims of Crown actions, and that the inferences that can reasonably be drawn from section 8 of the 2002 Act are unduly patronising of Māori. As a result, I am unconvinced by the Tribunal's finding at section 8.6 regarding the operations of the Native Land Court.

**13.5 CONCLUSION**

While this report is commendably less censorious of the actions of the Crown than the Te Uri o Hau Claims Settlement Act 2002, it contains assertions in chapter 11 that go beyond what I believe to be a reasonable reading of the history of Kaipara Māori. The Crown did warn Kaipara Māori about the undesirability of treating their lands like an inexhaustible bank account. Those warnings should have been much more frequent than they were. However, whether such warnings would have deterred chiefs like Te Hemara Tauhia, who readily disposed of nearly every piece of land to which he could establish title, is another matter altogether. Article 2 of the Treaty reserved rights to chiefs in relation to their lands, and the Crown could have been in default of its obligations had it prevented chiefs practising what Māori custom acknowledged was their right: to dispose of land in the name of their hapu or iwi.

For some reason, neither the claimants nor this report fastened sufficiently on the key role played by chiefs in the alienation of Māori land. In my view, the actions of chiefs contributed ultimately to the collapse of their status, and, more than any other factor, that gradual occurrence contributed to the break-up of traditional Māori society and to a feeling of helplessness experienced by some Kaipara Māori by the early twentieth century. I am unconvinced, therefore, by the Tribunal's fourth finding at section 6.7.4 regarding Crown purchases in general.

Neither the claimants nor the Tribunal examined adequately the extent to which many Kaipara Māori succeeded in 'integrating' into Auckland's settler society. I formed the distinct impression that for every Māori who 'lost' land in Kaipara after 1840 there was at least one other who benefited from the proceeds of sales, and who used the money to integrate into the world of settler culture that was developing in their midst.

Notwithstanding my reservations about the depiction of the Crown's role in this case, and my feeling that there are inadequacies in the report as it is here tabled, I favour a settlement on a pro-rata basis that would not disadvantage Māori in southern Kaipara in comparison with Te Uri o Hau.

Dated at *Wellington* this *9<sup>th</sup>* day of *January* 20*06*

*Michael Bassett*

Michael Bassett, member





## APPENDIX

### RECORD OF INQUIRY

#### RECORD OF HEARINGS

##### THE TRIBUNAL

The Tribunal constituted to hear the Kaipara claims comprised Dame Augusta Wallace (presiding), the Honourable Dr Michael Bassett, Brian Corban, and Areta Koopu.

##### HEARINGS

###### Stage 1

The first of the stage 1 hearings was held at Waikaretu Marae, Pouto, from 11 to 15 August 1997; the second at Aotearoa Marae (Ōtamatea Marae), Maungaturoto, from 18 to 22 August 1997; the third at the Auckland District Court from 20 to 21 November 1997; the fourth at the Forum North Convention Centre, Whangarei, from 27 to 29 April 1998; and the fifth at Aotearoa Marae, Maungaturoto, from 15 to 17 June 1998.

###### Stage 2

The first of the stage 2 hearings was held at Haranui Marae, Parkhurst, from 8 to 12 March 1999; the second at Haranui Marae, Parkhurst, from 12 to 16 April 1999; the third at Haranui Marae, Parkhurst, from 8 to 11 June 1999; the fourth at Haranui Marae, Parkhurst, from 8 to 10 November 1999; the fifth at the Arataki Visitor's Centre, Auckland, from 6 to 10 March 2000; the sixth hearing at Dalma Court, Henderson, from 2 to 16 June 2000; and the seventh at Rangimarie Marae, Oruawharo, from 6 to 10 November 2000.

###### Stage 3

The first of the stage 3 hearings was held at the Flames Hotel and Conference Centre, Whangarei, from 11 to 13 September 2000 and the second at Northland Polytechnic, Te Puna o Te Matauranga Marae Raumanga Valley Road, Whangarei, from 2 to 4 October 2000. The Crown hearing was

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held at the Quality Hotel Logan Park, Auckland, from 7 to 11 May 2001 and at the Dalma Court Function Centre, Henderson, from 11 to 15 June 2001, and the claimants' and Crown's closing submissions and right of reply were heard at the Hobson Motor Inn, Hobsonville, Auckland, from 3 to 7 and from 10 to 12 September 2001.

RECORD OF PROCEEDINGS

\* Document confidential and unavailable to the public without a Tribunal order

1. CLAIMS

1.1 Wai 106

A claim by Te Kahu Iti Morehu and others concerning Kaipara fisheries, 5 April 1988

1.2 Wai 121

A claim by Tamihana Aikitou Paki and Eru Manukau on behalf of Ngati Whatua concerning Ngati Whatua lands and fisheries, 28 March 1988

- (a) Amendment, 28 December 1989
- (b) Amendment, 5 March 1990
- (c) Amendment, 5 December 1990
- (d) Amendment, 24 December 1990
- (e) Amendment, 28 November 1990
- (f) Amendment, 18 September 1991
- (g) Amendment, 10 January 1992
- (h) Amendment, 27 April 1992
- (i) Amendment, 14 July 1992
- (j) Amendment, 29 June 1992
- (k) Amendment, 29 June 1992
- (l) Amendment, 29 May 1994
- (m) Amendment, 8 March 1999
- (n) Amendment, 16 May 2000

1.3 Wai 229

A claim by Russell Kemp and others concerning Te Uri o Hau and Poutu Peninsula, 5 August 1991

- (a) Amendment, 13 November 1991
- (b) Amendment, 23 July 1997

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**1.4 Wai 244**

A claim by Lucy Palmer and others concerning Pouto Peninsula, 27 March 1987

(a) Amendment, 30 July 2000

**1.5 Wai 271**

A claim by Ross Wright concerning Te Uri o Hau and Poutu peninsula, 30 November 1991

(a) Amendment, 16 December 1996

**1.6 Wai 279**

A claim by Eriapa C Uruamo concerning Te Taou Reweti Charitable Trust, 3 April 1992

(a) Amendment, 15 August 2001

**1.7 Wai 280**

Claim severed from Wai 674

**1.8 Wai 294**

A claim by Harry Pomare concerning Poutu lands, 19 June 1992

**1.9 Wai 303**

A claim by Haahi Walker and others concerning Te Runanga o Ngati Whatua, 22 July 1992

**1.10 Wai 312**

A claim by Takutaimoana Wikiriwhi and others concerning West Auckland lands, 8 September 1992

(a) Amendment, 23 February 1999

(b) Amendment, 3 August 2001

**1.11 Wai 409**

A claim by Kapairoa Kepa Te Awe Taane concerning Pouto 2E7B2 block, 1 March 1993

**1.12 Wai 468**

A claim by Morley Paikea Powell and others concerning Ngapuhi lands, 11 February 1995

**1.13 Wai 470**

A claim by Hariata Ewe and another concerning loss of land within the tribal territory of Kawerau-a-Maki, 1 July 1994

(a) Amendment, 23 December 1999

(b) Amendment, 15 February 2000

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**1.14 Wai 504**

Claim severed from Wai 674

**1.15 Wai 508**

A claim by Whititera Kaihu concerning Ngati Te Ata, 12 May 1995

**1.16 Wai 532**

Claim severed from Wai 6749

**1.17 Wai 619**

A claim by Hare Pepene and others concerning the Far North, 18 August 1996

(a) Amendment, 31 July 2000

(b) Amendment, 3 October 2000

**1.18 Wai 658**

A claim by Waipapa Pomare Totoro and others concerning lands and resources in the Kaipara region, 26 November 1996

**1.19 Wai 38**

Claim severed from Wai 674

**1.20 Wai 683**

A claim by Weretapou Tito concerning Te Iwi o Te Parawhau, 15 June 1997

**1.21 Wai 259**

A claim by Awhina Kemp concerning Tawhiri Pa, 12 June 1989

**1.22 Wai 688**

A claim by Mate-Paihana Puriri concerning Nga Hapu o Whangarei lands, waters, forests, and resources, 23 October 1997

(a) Amendment, 3 August 2000

**1.23 Wai 689**

A claim by Maria Makoare MacLeod concerning Pouto blocks and forestry, 21 July 1997

**1.24 Wai 697**

A claim by Rangitane Marsden, 11 November 1997

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**1.25 Wai 632**

A claim by Garry Hooker and another concerning Te Kopuru and Aratapu blocks, 8 August 1996

(a) Amendment, 4 July 2000

(b) Amendment, 11 September 2000

**1.26 Wai 719**

A claim by Lionel Wilfred Brown and others concerning Kaipara land and resources, 28 May 1998

(a) Amendment, 30 July 2000

**1.27 Wai 720**

Claim severed from Wai 674

**1.28 Wai 721**

A claim by Te Uira Mahuta Hone Eruera (John Edwards) concerning Ngati Tahinga Ki Kaipara land and resources, 20 January 1998

(a) Amendment, 21 May 1999

(b) Amendment, 24 October 2000

(c) Amendment, 12 December 2000

**1.29 Wai 733**

A claim by Tauhia Lewis Hill concerning Ōtakanini lands and resources, 1 August 1998

(a) Amendment, 15 May 2000

(b) Amendment, 12 June 2000

**1.30 Wai 756**

A claim by Lou Paul (Paora) concerning southern Kaipara lands and resources, 30 September 1998

(a) Amendment, 20 February 1999

(b) Amendment, 5 October 1999

(c) Amendment, 25 October 2000

**1.31 Wai 763**

A claim by Margaret Mutu concerning Kapehu blocks and rating, 23 June 1998

(a) Amendment, 30 June 2000



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**1.32 Wai 620**

A claim by Mitai R Paraone Kawiti and others concerning Te Waiariki–Ngati Korora hapu land and resources, 26 August 1996

(a) Amendment, 31 October 1996

(b) Amendment, 7 July 1999

(c) Amendment, 30 July 2000

**1.33 Wai 798**

A claim by Pamara Te Ruihi Timoti-Warner concerning Kaipara Ki Waitemata (Ngati Rango), 1 June 1999

**2. PAPERS IN PROCEEDINGS**

**2.1** Tribunal, memorandum directing registration of Wai 106 claim, 30 November 1989

**2.2** Tribunal, memorandum inviting Wai 121 claimants to file amended claim, 31 October 1989

**2.3** Tribunal, memorandum directing registration of Wai 121 amendment, 19 February 1990

**2.4** Tribunal, memorandum directing registration of Wai 121 amendment to claim, 3 April 1990

**2.5** E Manukau letter concerning petition of support for Ngati Whatua claim, 1 June 1990

**2.6** Tribunal, memorandum directing registration of Wai 271 and Wai 229 claims, 13 February 1991

**2.7** Tribunal, memorandum directing registration of Wai 121 amendment, 1 March 1991

**2.8** Tribunal, memorandum directing registration of Wai 121 amendment, 12 September 1991

**2.9** Tribunal, memorandum directing registration of Wai 229 claim, 12 September 1991

**2.10** Notice of Wai 229 claim, 16 September 1991

**2.11** Tribunal, memorandum directing registration of Wai 244 claim, 11 November 1991

**2.12** Notice of Wai 244 claim, 13 November 1991

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- 2.13** Tribunal, memorandum directing registration of Wai 259 claim, 13 November 1991  
**(a)** Notice of Wai 259 claim, 28 November 1995
- 2.14** Kaipara District Council, letter acknowledging objection of Manukau Māori Trust Board concerning Pahi reserve, 15 January 1992
- 2.15** Tribunal, memorandum directing registration of Wai 121 amendment, 31 January 1992
- 2.16** Tribunal, memorandum directing registration of Wai 229 amendment, 13 February 1992
- 2.17** Notice of Wai 229 amendment, 18 February 1992
- 2.18** Notice of Wai 271, 18 February 1992
- 2.19** Tribunal, memorandum directing registration of Wai 279 claim, 28 April 1992
- 2.20** Tribunal, memorandum directing registration of Wai 280 claim, 30 April 1992
- 2.21** HW Hammond, letter concerning Pahi reserve, 5 May 1992
- 2.22** Notice of Wai 279 claim, 13 May 1992
- 2.23** Notice of Wai 280 claim, 14 May 1992
- 2.24** Department of Conservation, letter concerning Pahi reserve, 22 May 1992
- 2.25** Manukau Māori Trust Board, letter concerning Sylvia Park and other matters, 11 June 1992
- 2.26** Tribunal, memorandum directing registration of Wai 294 claim and joining Wai 271 and Wai 294 for research and hearing purposes, 16 July 1992
- 2.27** Notice of Wai 294 claim, 29 July 1992
- 2.28** Tribunal, memorandum directing registration of Wai 303 claim, 25 August 1992  
**(a)** Notice of Wai 303 claim, 28 August 1992
- 2.29** Tribunal, memorandum directing registration of Wai 312 claim, 16 October 1992
- 2.30** Notice of Wai 312 claim, 23 October 1992

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- 2.31 Tribunal, memorandum directing registration of Wai 409 claim, 26 November 1993
- 2.32 Notice of Wai 409 claim, 15 December 1993
- 2.33 Tribunal, memorandum directing registration of Wai 121 amendment, 19 January 1995
- 2.34 Tribunal, memorandum directing registration of Wai 470 claim, 27 February 1995
- 2.35 Tribunal, memorandum directing registration of Wai 468 claim, 2 March 1995
- 2.36 Notice of Wai 468 claim, 3 March 1995
- 2.37 Notice of Wai 470 claim, 3 March 1995
- 2.38 Minister for the Environment, letter concerning royalty for sand extraction from sea for beach replenishment at Mission Bay, 21 March 1995
- 2.39 Tribunal, memorandum directing registration of Wai 504 claim, 5 May 1995
- 2.40 Notice of Wai 504 claim, 15 May 1995
- 2.41 Tribunal, memorandum directing registration of Wai 508 claim, 19 May 1995
  - (a) Notice of Wai 508 claim, 22 May 1995
- 2.42 Ōtamatea Māori Trust Board, letter concerning Pahi reserve, 23 June 1995
- 2.43 Morley Powell, letter concerning Pahi reserve, 28 June 1995
- 2.44 Te Runanga o Ngati Whatua, letter concerning Pahi reserve, 29 July 1995
- 2.45 Tribunal, memorandum directing registration of Wai 532 claim, 16 August 1995
- 2.46 Notice of Wai 532 claim, 16 August 1995
- 2.47 Morley Powell, letter concerning consolidation, 6 September 1995
- 2.48 Morley Powell, letter concerning Puketutu Island and background information on Wai 468, 18 September 1995

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**2.49** Vacant

**2.50** John Sellers, letter concerning sand extraction for Mission Bay, 19 February 1996

**2.51** Gregory McDonald, letter concerning removal of memorial from land owned by Peter Charles and Esther McIntyre, 3 March 1996

**2.52** Manukau Māori Trust Board, letter concerning Mangawhai Road land and uplifting of memorial, 19 April 1996

**2.53** Russell Kemp, Ōtamatea Māori Trust Board, letter objecting to removal of memorial from land owned by Peter Charles and Esther McIntyre, 19 April 1996

**2.54** Tribunal, memorandum directing registration of Wai 532 amendment, 17 May 1996

**2.55** Whititera Kaihau, letter concerning Mangawhai Road land and uplifting of memorial, 29 May 1996

**2.56** Notice of Wai 532 amendment, 7 June 1996

**2.57** Tribunal, memorandum directing registration of Wai 532 amendment, 28 August 1996

**2.58** Gregory McDonald, letter concerning sand extraction for Pahiri and Te Arai Point, 29 August 1996

**2.59** Notice of Wai 532, 2 September 1996

**2.60** Tribunal, memorandum directing registration of Wai 619 claim, 21 October 1996

(a) Tribunal, memorandum directing registration of Wai 632 claim, 21 October 1996

(b) Notice of Wai 632 claim, 23 October 1996

**2.61** Notice of Wai 619 claim, 30 October 1996

**2.62** Crown memorandum in response to jurisdictional questions and proceedings before Tribunal, 6 November 1996

**2.63** David Williams, letter concerning heads of agreement and boundaries, 26 November 1996

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**2.64** L T Collier, letter concerning Hapu o Te Waiariki–Ngati Korora and Te Kahu o Torongare Ki Parawhau on claim background, 3 December 1996

**2.65** Tribunal, memorandum directing registration of Wai 271 amendment, 15 January 1997

**2.66** Notice of Wai 271 amendment, 16 January 1997

**2.67** Whititera Kaihau, letter concerning interest in Kaipara claims, 17 January 1997

**2.68** David Williams, letter to Office of Treaty Settlements concerning Te Roroa record of mandate, 14 February 1997

**2.69** Tribunal, memorandum directing registration of Wai 658 claim, 3 March 1997

**2.70** Notice of Wai 658 claim, 6 March 1997

**2.71** Chairperson, memorandum appointing Dame Augusta Wallace presiding officer of claims in Kaipara region, 10 March 1997

**2.72** Pierre Lyndon, letter concerning Te Kahu o Torongare and Te Parawhau and Ngapuhi research, 11 March 1997

**2.73** Manukau Māori Trust Board, letter concerning request for urgent hearing for Otene Kikokiko block, 27 March 1997

**2.74** Tribunal, memorandum directing registration of Wai 532 amendment, 23 April 1997

**2.75** Notice of Wai 532 amendment, 23 April 1997

**2.76** Office of Treaty Settlements, letter concerning settlement initiatives for Wai 468, 28 April 1997

**2.77** Takiri Puriri, letter concerning appointment of claims coordinator for Wai 619, 2 May 1997

**2.78** Morley Powell, letter concerning Kaipara settlement proposals, 11 May 1997

**2.79** Morley Powell, letter concerning opposition to Kaipara settlement proposals, 12 May 1997

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- 2.80** Wai 271 claimant counsel, memorandum concerning judicial conference, 5 June 1997
- 2.81** Wai 229 claimant counsel, memorandum concerning judicial conference, 5 June 1997
- 2.82** Crown counsel, memorandum concerning judicial conference, 5 June 1997
- 2.83** Wai 229 claimant counsel, memorandum concerning representation, 5 June 1997
- 2.84** Chairperson, memorandum constituting Tribunal for Kaipara claims, 9 June 1997
- (a) Notice of first and second stage 1 hearings on 11–15 and 18–22 August 1997, 15 July 1997
- (b) Dispatch notice of hearings, 15 July 1997
- 2.86** Wai 271 claimant counsel, memorandum concerning issuing of interim reports, 21 July 1997
- (a) Crown counsel, memorandum concerning interim reports, 22 July 1997
- 2.87** Wai 312 claimant counsel, memorandum concerning interim reports, 23 July 1997
- 2.88** Wai 38 and Wai 632 claimant counsel, memorandum concerning interim reports, 23 July 1997
- 2.89** Wai 229 claimant counsel, memorandum concerning interim reports, 23 July 1997
- 2.90** Wai 229 claimant counsel, memorandum concerning translator and recording of proceedings, 25 July 1997
- 2.91** Tribunal, memorandum concerning interim reports, 31 July 1997
- 2.92** Tribunal, memorandum concerning consolidation of Wai 674 and withdrawal of Wai 279 from Wai 406, 21 July 1997
- 2.93** Tribunal, memorandum directing registration of Wai 229 amendment, 6 August 1997
- 2.94** Notice of Wai 229 amendment, 7 August 1997
- 2.95** Riripeti Hayward (Wai 658), memorandum in support of Wai 271, 13 August 1997
- 2.96** Tribunal, memorandum concerning stage 1 hearing and issues to follow third hearing, 9 September 1997

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- 2.97** Crown Law Office, memorandum concerning stage 1 hearing and issues to follow third hearing, 12 September 1997
- 2.98** Tribunal, memorandum directing registration of Wai 683 claim, 17 September 1997
- 2.99** Notice of Wai 683 claim, 24 September 1997
- 2.100** Notice of third stage 1 hearing on 20 November 1997, 24 September 1997
- 2.101** Dispatch notice of hearing, 24 September 1997
- 2.102** Wai 271 claimant counsel, memorandum concerning presentation of Crown evidence and issuing of interim reports, 26 September 1997
- 2.103** Tribunal, memorandum concerning filing of stage 1 evidence, 9 October 1997
- 2.104** Wai 229 claimant counsel, memorandum concerning presentation of Crown evidence and issuing of interim reports, 1 October 1997
- 2.105** Crown counsel, memorandum concerning filing of evidence relevant to stage 1 hearing, 17 October 1997
- 2.106** Tribunal, memorandum following telephone conference of 3 November 1997, 7 November 1997
- 2.107** Wai 229 claimant counsel, memorandum concerning case study by Maurice Alemann, 6 November 1997
- 2.108** Wai 312 claimant counsel, memorandum concerning stage 1 and 2 hearings, 31 October 1997
- 2.109** Crown counsel, memorandum in response to paper 2.107, 17 November 1997
- 2.110** Tribunal, memorandum directing release of report by Matthew Melvin, 19 December 1997
- 2.111** Tribunal, memorandum directing registration of Wai 688 claim, 23 December 1997
- 2.112** Notice of Wai 688 claim, 15 January 1997

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- 2.113** Tribunal, memorandum directing registration of Wai 689 claim, 23 December 1997
- 2.114** Notice of Wai 689 claim, 20 January 1998
- 2.115** Tribunal, memorandum directing registration of Wai 697 claim, 18 February 1998
- 2.116** Notice of Wai 697 claim, 19 February 1998
- 2.117** Tribunal, memorandum directing consolidation of Wai 632, 16 February 1998
- 2.118** Wai 271 claimant counsel, memorandum concerning timing and venue for claimant closing submissions, 20 February 1998
- 2.119** Notice of fourth stage 1 hearing on 27 April 1998, 25 March 1998
- 2.120** Dispatch notice of hearing, 25 March 1998
- 2.121** Tribunal, memorandum concerning hearing date for claimant closing submissions, 27 March 1998
- 2.122** Crown counsel, memorandum in response to paper 2.118 and concerning direct negotiations, Crown evidence, and interim report, 30 March 1998
- 2.123** Wai 271 claimant counsel, memorandum in response to paper 2.122 and concerning direct negotiations, Crown evidence, and interim report, 1 April 1998
- 2.124** Wai 229 claimant counsel, memorandum in response to paper 2.122 and concerning direct negotiations, Crown evidence, and interim report, 7 April 1998
- 2.125** Tribunal, memorandum concerning submissions of Crown counsel and Wai 271 claimant counsel and interim report, 9 April 1998
- 2.126** Wai 229 claimant counsel, memorandum concerning confidential documents, 21 April 1998
- 2.127** Wai 229 claimant counsel, memorandum concerning tenths policy, 21 April 1998
- 2.128** Wai 229 claimant counsel, memorandum concerning preliminary matters prior to opening submissions of Crown counsel, 27 April 1998



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- 2.129** Wai 271 claimant counsel, memorandum concerning preliminary memorandum, 23 April 1998
- 2.130** Wai 312 claimant counsel, memorandum concerning interim reports, 24 April 1998
- 2.131** Notice of fifth stage 1 hearing on 15 June 1998, 15 May 1998
- 2.132** Dispatch notice of hearing, 15 May 1998
- 2.133** Tribunal, memorandum following fourth hearing, 15 May 1998
- 2.134** Wai 532 claimant counsel, memorandum concerning interim reports, 26 May 1998
- 2.135** Wai 697 claimant counsel, memorandum concerning interim reports, 1 June 1998
- 2.136** Wai 508 claimant counsel, memorandum concerning interim reports, 5 June 1998
- 2.137** Wai 38 and 632 claimant counsel, memorandum concerning interim reports, 5 June 1998
- 2.138** Wai 688 claimant counsel, memorandum concerning interim reports, 4 June 1998
- 2.139** Crown counsel, memorandum concerning interim reports, 5 June 1998
- 2.140** Wai 619 claimant counsel, memorandum concerning interim reports, 8 June 1998
- 2.141** Wai 719 claimant counsel, memorandum concerning interim reports, 16 June 1998
- 2.142** Wai 271, Wai 229, and Wai 294 claimant counsel, memorandum, 18 June 1998
- 2.143** Tribunal, record of 18 June 1998 judicial conference, 29 June 1998
- 2.144** Takiri Titore Puriri, letter advising of resignation as Wai 619 claimant, 16 June 1998
- 2.145** Crown counsel, submissions concerning issuing of preliminary memorandum, 25 June 1998
- 2.146** Tribunal, memorandum directing registration of Wai 719 claim, 22 June 1998
- 2.147** Notice of Wai 719 claim, 30 June 1998

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- 2.148** Tribunal, memorandum directing registration of Wai 720 claim, 22 June 1998
- 2.149** Notice of Wai 720 claim, 30 June 1998
- 2.150** Tribunal, memorandum directing registration of Wai 721 claim, 22 June 1998
- 2.151** Notice of Wai 721 claim, 30 June 1998
- 2.152** Wai 106 claimant counsel, submissions concerning issuing of preliminary memorandum, 17 June 1998
- 2.153** Tribunal, memorandum directing release of report by Dr Barry Rigby, 12 August 1998
- 2.154** Tribunal, memorandum following application for release of preliminary indications, 31 August 1998
- 2.155** Tribunal, memorandum directing registration of Wai 733 claim, 31 August 1998
- 2.156** Notice of Wai 733 claim, 3 September 1998
- 2.157** Wai 312 claimant counsel, memorandum concerning judicial conference on 3 November 1998, 9 October 1998
- 2.158** Wai 720 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 12 October 1998
- 2.159** Wai 721 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 15 October 1998
- 2.160** Wai 229 and Wai 271 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 15 October 1998
- 2.161** Crown counsel, memorandum concerning 3 November 1998 judicial conference, 15 October 1998
- 2.162** Wai 470 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 15 October 1998
- 2.163** Vacant

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- 2.164** Wai 508 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 20 October 1998
- 2.165** Wai 121 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 28 October 1998
- 2.166** Wai 508 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 28 October 1998
- 2.167** Wai 720 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 3 November 1998
- 2.168** Crown counsel, memorandum following 3 November 1998 judicial conference, 6 November 1998
- 2.169** Record of 3 November 1998 conference of parties, 16 November 1998
- 2.170** Tribunal, memorandum directing registration of Wai 756 claim, 18 November 1998
- 2.171** Notice of Wai 756 claim, 24 November 1998
- 2.172** Maungarongo Foundation Trust Board, letter concerning old Te Kopuru Hospital, 27 November 1998
- 2.173** Tribunal, memorandum directing registration of Wai 763 claim, 24 December 1998  
(a) Tribunal, memorandum directing registration of Wai 720 amendment, 24 December 1998
- 2.174** Notice of Wai 763 claim, 11 January 1999
- 2.175** Notice of Wai 720 amendment, 1 February 1999
- 2.176** Wai 229, 271 claimant counsel, memorandum concerning 3 November 1998 judicial conference, 7 December 1998
- 2.177** Notice of first and second stage 2 hearings on 8–12 March 1999 and 12–16 April 1999, 11 February 1999
- 2.178** Dispatch notice of hearings, 11 February 1999

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- 2.179** Tribunal, memorandum directing registration of Wai 312 amendment, 24 February 1999
- 2.180** Notice of Wai 312 amendment, 24 February 1999
- 2.181** Tribunal, memorandum directing withdrawal of report by David Armstrong (doc F7), 25 February 1999
- 2.182** Wai 303 claimant counsel, memorandum concerning section 8D application by H Warner King with respect to land at Wade River Road, Whangaparaoa, 12 February 1999
- 2.183** Tribunal, memorandum directing registration of Wai 756 amendment, 15 March 1999
- 2.184** Notice of Wai 756 amendment, 17 March 1999
- 2.185** Chairperson, memorandum appointing Brian Corban presiding officer, 1 April 1999
- 2.186** Tribunal, memorandum concerning Ngati Whatua o Kaipara ki te Tonga archaeological evidence, 27 April 1999
- 2.187** Notice of third stage 2 hearing on 8 June 1999, 31 May 1999
- 2.188** Dispatch notice of hearing, 31 May 1999
- 2.189** Matthew Melvin, letter concerning Te Ketī Block report, 2 June 1999
- 2.190** Wai 312 and Wai 470 claimant counsel, joint memorandum concerning future stage 2 hearings, 5 July 1999
- 2.191** Wai 312 claimant counsel, memorandum concerning status of tangata whenua briefs, 12 July 1999
- 2.192** Tribunal, memorandum directing registration of Wai 121 amendment, 12 July 1999
- 2.193** Notice of Wai 121 amendment, 15 July 1999
- 2.194** Tribunal, memorandum concerning filing of evidence and 8–12 November 1999 hearing, 19 July 1999
- 2.195** Tribunal, memorandum directing registration of Wai 721 amendment, 20 July 1999

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**2.196** Notice of Wai 721 amendment, 20 July 1999

**2.197** Tribunal, minute, 11 August 1999

**2.198** Tribunal, memorandum directing registration of Wai 620 amendment, 27 September 1999

**2.199** Notice of Wai 620 amendment, 27 September 1999

**2.200** Memorandum for Wai 720, 5 October 1999

**2.201** Notice of fourth stage 2 hearing on 8 November 1999, 12 October 1999

**2.202** Dispatch notice of hearing, 12 October 1999

**2.203** Tribunal, memorandum concerning conference of parties and filing of evidence, 14 October 1999

**2.204** Tribunal, memorandum concerning severance of stage 2 claims (Wai 280, Wai 532, Wai 720) and stage 3 claims (Wai 38, Wai 504) from Kaipara inquiry, 14 October 1999

**2.205** Tribunal, memorandum concerning confidential documents, 30 October 1999

**2.206** Wai 756 claimant counsel, memorandum concerning 11 November 1999 judicial conference, 5 November 1999

**2.207** Wai 721 claimant counsel, memorandum concerning 11 November 1999 judicial conference, 5 November 1999

**2.208** Wai 470 claimant counsel, memorandum concerning 11 November 1999 judicial conference, 5 January 1999

**2.209** Record of conference of parties concerning 11 November 1999 judicial conference, 22 November 1999

**2.210** David Williams, memorandum in response to paper 2.203, 1 November 1999

**2.211** Wai 312 claimant counsel, memorandum concerning issues raised in cross-examination of Fiona Small, 3 December 1999

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- 2.212** Tribunal, memorandum directing release of report by Rose Daamen, 4 December 1999
- 2.213** Wai 721 claimant counsel, memorandum in response to paper 2.203, 23 December 1999
- 2.214** Counsel for CFRT, memorandum concerning 18 January 2000 judicial conference, 13 January 2000
- 2.215** Wai 733 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 22 December 1999
- 2.216** Wai 756 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 13 January 2000
- 2.217** Wai 721 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 13 January 2000
- 2.218** Wai 121 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 14 January 2000
- 2.219** Wai 508 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 14 January 2000
- 2.220** Wai 733 claimant counsel, memorandum concerning 18 January 2000 judicial conference, 17 January 2000
- 2.221** Tribunal, memorandum directing registration of Wai 756 amendment, 23 December 1999
- 2.222** Notice of Wai 756 amendment, 24 January 2000
- 2.223** Notice of fifth stage 2 hearing on 6 March 2000, 2 February 2000
- 2.224** Dispatch notice of hearing, 2 February 2000
- 2.225** Tribunal, memorandum following 18 January 2000 judicial conference, 31 January 2000
- 2.226** Tribunal, memorandum directing registration of Wai 470 amendment, 7 February 2000
- 2.227** Notice of Wai 470 amendment, 7 February 2000

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- 2.228** Te Roroa, memorandum concerning support for Kawerau tupuna Maki, 7 February 2000
- 2.229** Tribunal, memorandum directing registration of Wai 798 claim, 17 December 1999
- 2.230** Notice of Wai 798 claim, 21 January 2000
- 2.231** Tribunal, memorandum directing registration of Wai 470 amendment, 17 February 2000
- 2.232** Notice of Wai 470 amendment, 18 February 2000
- 2.233** Wai 470 claimant counsel, memorandum seeking extension to Tribunal inquiry, 10 February 2000
- 2.234** Wai 470 claimant counsel, memorandum supporting extension of Tribunal inquiry, undated
- 2.235** Wai 312 and Wai 279 claimant counsel, memorandum concerning application to extend Kaipara boundary (paper 2.233), 17 March 2000
- 2.236** Counsel for Ngati Whatua o Orakei Māori Trust Board, memorandum concerning application to extend Kaipara boundary (paper 2.233), 16 March 2000
- 2.237** Wai 756 claimant counsel, memorandum requesting judicial conference, 24 March 2000
- 2.238** Tribunal, memorandum concerning request for judicial conference (paper 2.237), 28 March 2000
- 2.239** Tribunal, memorandum concerning paper 2.236, 29 March 2000
- 2.240** Crown counsel, memorandum concerning Wai 470 application to extend Kaipara boundary (paper 2.233), 4 April 2000
- 2.241** Tribunal, memorandum concerning Wai 470 application to extend Kaipara boundary (paper 2.233), 7 May 2000
- 2.242** Tribunal, memorandum following 12 April 2000 chambers meeting, 7 May 2000
- 2.243** Wai 721 claimant counsel, memorandum concerning filing of historical evidence, 10 May 2000

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- 2.244** Notice of sixth stage 2 hearing on 12 June 2000, 9 May 2000
- 2.245** Dispatch notice of hearing, 9 May 2000
- 2.246** Wai 508 claimant counsel, memorandum concerning filing of evidence, 17 May 2000
- 2.247** Tribunal, memorandum directing registration of Wai 733 amendment, 18 May 2000
- 2.248** Notice of Wai 733 amendment, 19 May 2000
- 2.249** Tribunal, memorandum directing registration of Wai 121 amendment, 23 May 2000
- 2.250** Notice of Wai 121 amendment, 23 May 2000
- 2.251** Wai 756 claimant counsel, memorandum, 2 June 2000
- 2.252** Wai 721 claimant counsel, memorandum, 2 June 2000
- 2.253** Wai 508 claimant counsel, memorandum, 2 June 2000
- 2.254** Hori Kupenga Manukau Konore, memorandum, 26 June 2000
- 2.255** Wai 733 claimant counsel, memorandum concerning sand mining, 9 June 2000
- 2.256** Tribunal, memorandum directing registration of Wai 733 amendment, 3 July 2000
- 2.257** Notice of Wai 733 amendment, 6 July 2000
- 2.258** Tribunal letter concerning reports by Dr Barry Rigby, 17 May 2000
- 2.259** Takiri Titore Puriri, Richard Nathan, Mate-Paihana Puriri, Ivan Joseph Pivac, Tuhirangi Keremeneta Puriri, letters concerning resignations from Wai 688
- 2.260** Record of 13 June 2000 chambers meeting, 6 July 2000
- 2.261** Record of 15 June 2000 chambers meeting, 6 July 2000
- 2.262** Wai 312 claimant counsel, memorandum concerning access to evidence, 7 July 2000



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**2.263** Wai 312 claimant counsel, memorandum concerning issues addressed at 31 July 2000 judicial conference, 28 July 2000

**2.264** Wai 619 claimant counsel, memorandum concerning issues addressed at 31 July 2000 judicial conference, 31 July 2000

**2.265** Wai 721 claimant counsel, memorandum concerning issues addressed at 31 July 2000 judicial conference, 31 July 2000

**2.266** Notice of stage 3 hearing on 11 September 2000, 8 August 2000

(a) Dispatch notice of hearing, 8 August 2000

**2.267** Notice of stage 2 and 3 hearing on 2 October and 6 November 2000, 5 September 2000

(a) Dispatch notice of hearings, 5 September 2000

**2.268** Wai 733 claimant counsel, memorandum concerning Wai 312 memorandum on access to evidence, 7 August 2000

**2.269** Memorandum of Tribunal following 31 July 2000 judicial conference, 10 August 2000

**2.270** Tribunal, memorandum directing release of report by Tom Bennion, 11 August 2000

**2.271** Tribunal, memorandum directing release of report by Kristen Rose, 11 August 2000

**2.272** Tribunal, memorandum directing release of report by Larisa Webb, 11 August 2000

**2.273** Tribunal, memorandum directing registration of Wai 688 amendment, 8 August 2000

(a) Notice of Wai 688 amendment, 8 August 2000

**2.274** Tribunal, memorandum directing registration of Wai 763 amendment, 21 August 2000

(a) Notice of Wai 763 amendment, 28 August 2000

**2.275** Tribunal, memorandum directing registration of Wai 719 amendment, 21 August 2000

(a) Notice of Wai 719 amendment, 28 August 2000

**2.276** Tribunal, memorandum directing registration of Wai 632 amendment, 21 August 2000

(a) Notice of Wai 632 amendment, 28 August 2000

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- 2.277** Tribunal, memorandum directing registration of Wai 620 amendment, 21 August 2000  
(a) Notice of Wai 620 amendment, 28 August 2000
- 2.278** Tribunal, memorandum directing registration of Wai 619 amendment, 21 August 2000  
(a) Notice of Wai 619 amendment, 28 August 2000
- 2.279** Tribunal, memorandum directing registration of Wai 244 amendment, 21 August 2000  
(a) Notice of Wai 244 amendment, 28 August 2000
- 2.280** Wai 312 claimant counsel, memorandum concerning evidence, 24 August 2000
- 2.281** Wai 632 claimant counsel, memorandum concerning evidence, 24 August 2000
- 2.282** Wai 632 and Wai 38 claimant counsel, memorandum concerning issues raised in opening submissions of Wai 303 claimant counsel, 13 September 2000
- 2.283** Wai 229 and 271 claimant counsel, memorandum concerning negotiations with Crown, 8 September 2000
- 2.284** Wai 719 claimant counsel, memorandum, 18 September 2000
- 2.285** Wai 619 claimant counsel, memorandum, 4 October 2000
- 2.286** Tribunal, memorandum directing registration of Wai 688 amendment, 23 September 2000
- 2.287** Notice of Wai 688 amendment, 6 October 2000
- 2.288** Tribunal, memorandum directing registration of Wai 632 amendment, 23 September 2000
- 2.289** Notice of Wai 632 amendment, 6 October 2000
- 2.290** Notice of change of venue for 6 November 2000 stage 2 hearing, 16 October 2000
- 2.291** Dispatch notice of hearing, 16 October 2000
- 2.292** Tribunal, memorandum directing registration of Wai 721 amendment, 26 October 2000

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- 2.293** Notice of Wai 721 amendment, 27 October 2000
- 2.294** Tribunal, memorandum directing registration of Wai 756 amendment, 26 October 2000
- 2.295** Notice of Wai 756 amendment, 27 October 2000
- 2.296** Counsel for Ngati Whatua o Orakei Māori Trust Board, memorandum concerning second Wai 756 amendment, 6 November 2000
- 2.297** Tribunal, memorandum directing registration of Wai 619 amendment, 30 November 2000
- 2.298** Notice of Wai 619 amendment, 6 December 2000
- 2.299** Wai 721 claimant counsel, memorandum, 6 November 2000
- 2.300** Wai 721 claimant counsel, memorandum concerning application for urgency, 12 December 2000
- 2.301** Tribunal, memorandum concerning Wai 721 application for urgency, 13 December 2000
- 2.302** Tribunal, memorandum concerning delegation of Wai 721 application for urgency to the deputy chairperson, 13 December 2000
- 2.303** Memorandum concerning mandated negotiators for Te Uri o Hau, 20 December 2000
- 2.304** Crown counsel, memorandum opposing application for urgency, 22 December 2000
- 2.305** Counsel for Ngati Mauku–Ngati Tahinga ki Kaipara, memorandum, 24 January 2001
- 2.306** Tribunal, memorandum concerning Wai 721 urgency application, 25 January 2001  
(a) Te Uri o Hau advice concerning non-attendance at conference on 2 March 2001, 22 February 2001
- 2.307** Wai 721 claimant counsel, memorandum concerning urgent hearing, 2 March 2001  
(a) Waitangi Tribunal, *The Pakakohi and Tangahoe Report* (Wellington: Legislation Direct, 2000), p 57
- 2.308** Waitangi Tribunal, draft policy for urgent inquiries, undated

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- 2.309** Tribunal, memorandum directing release of report by Richard Nightingale, 20 March 2001
- 2.310** Tribunal, memorandum directing release of report by Dr Geoff Watson, 20 March 2001
- 2.311** Wai 312 claimant counsel, memorandum concerning judicial conference on 28 March 2001, 22 March 2001
- 2.312** Wai 688 claimant counsel, memorandum concerning request for clarification of issues, 28 March 2001
- 2.313** Tom Parore (Wai 303), letter concerning CFRT funding, 28 March 2001
- 2.314** Tribunal, memorandum concerning Wai 721 urgency application, 3 April 2001
- 2.315** Tribunal, memorandum following judicial conference on 28 March 2001, 3 April 2001
- 2.316** Wai 619 claimant counsel, memorandum concerning written questions seeking Crown position on specific issues, 3 April 2001
- 2.317** Wai 620 claimant counsel, memorandum concerning written questions seeking Crown position on specific issues, 3 April 2001
- 2.318** Crown counsel, memorandum in response to the Tribunal direction concerning Wai 721 urgency application, 6 April 2001
- 2.319** Notice of Crown hearings on 7–11 May and 11–15 June 2001, 11 April 2001
- 2.320** Dispatch notice of hearings, 11 April 2001
- 2.321** Wai 470 concerning written questions seeking Crown position on specific issues, 3 April 2001
- 2.322** Counsel for Ngati Whatua o Orakei Māori Trust Board, memorandum concerning evidence of Donald Loveridge and others, 10 May 2001
- 2.323** Tribunal, memorandum concerning Wai 388 memorandum on scope of Kaipara inquiry, 5 June 2001

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- 2.324** Tribunal, memorandum concerning final judicial conference on 6 July 2001 and filing dates for submissions and evidence, 20 June 2001
- 2.325** Wai 312 and Wai 279 claimant counsel, memorandum concerning procedural issues for closing and reply submissions, 5 July 2001
- 2.326** Record of judicial conference on 6 July 2001, 11 July 2001
- 2.327** Crown response to issues raised by counsel for Wai 279, 22 May 2001
- 2.328** Crown response to issues raised by counsel for Wai 312, 22 May 2001
- 2.329** Crown response to issues raised by counsel for Wai 619, 22 May 2001
- 2.330** Crown response to issues raised by counsel for Wai 470, 22 May 2001
- 2.331** Crown response to issues raised by counsel for Wai 688, 22 May 2001
- 2.332** Crown response to issues raised by counsel for Wai 620, 22 May 2001
- 2.333** Notice of hearing on 3–12 September 2001, 2 August 2001
- 2.334** Dispatch notice of hearing, 2 August 2001
- 2.335** Wai 279 claimant counsel, letter to Crown counsel seeking response to issues raised in Wai 279 claim, 2 April 2001
- 2.336** Wai 312 claimant counsel, memorandum concerning 18 August 1870 letter from Rogan to Fenton, 3 August 2001
- 2.337** Tribunal directions concerning late filing of closing submissions, 13 August 2001
- 2.338** Memorandum seeking leave to file amended statement of claim for Wai 279, 15 August 2001
- 2.339** Memorandum seeking leave to file amended statement of claim for Wai 312, 15 August 2001
- 2.340** Tribunal, memorandum directing registration of Wai 312 amendment, 24 August 2001

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- 2.341 Tribunal, memorandum directing registration of Wai 279 amendment, 24 August 2001
- 2.342 Tribunal, memorandum concerning Wai 721 section 30 Te Ture Whenua Māori Application, 3 October 2001
- 2.343 Waitangi Tribunal, *The Kaipara Interim Report* (Wellington: Legislation Direct, 2002)
- 2.344 Inquiry into Kaipara interim decision of the Waitangi Tribunal for Wai 881, 16 December 2002
- 2.345 Presiding officer, memorandum, 10 December 2002
- 2.346 Counsel for Ngati Mauku Ngati Tahinga Ki Kaipara, memorandum, 27 January 2003
- 2.347 Counsel for Ōtakanini Tōpū, memorandum, 27 January 2003
- 2.348 Application to Waitangi Tribunal to report finally on part of Kaipara claims, 23 January 2003
- 2.349 Wai 619 claimant counsel, memorandum concerning full report and recommendations, 23 January 2003
- 2.350 Wai 470 claimant counsel, memorandum, 3 February 2003
- 2.351 Wai 620 claimant counsel, memorandum, 31 January 2003
- 2.352 Office of Treaty Settlements, letter concerning Te Uri o Hau Settlement Act 2002, 30 January 2002

**3. RESEARCH COMMISSIONS**

- 3.1 Tribunal, memorandum commissioning Alan Pivac to produce research report, 28 June 1995
- 3.2 Tribunal, memorandum extending term of commission 3.1, 17 November 1995
- 3.3 Tribunal, memorandum commissioning Matthew Melvin to produce research report, 20 November 1996

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- 3.4 Tribunal, memorandum commissioning John Nepia to produce research report, 30 June 1995
- 3.5 Tribunal, memorandum commissioning Dr Barry Rigby to produce research report, 25 September 1997
- 3.6 Tribunal, memorandum extending term of commission 3.6, 30 April 1998
- 3.7 Tribunal, memorandum commissioning Garry Hooker to produce research report, 30 November 1998
- 3.8 Tribunal, memorandum commissioning Rose Daamen to produce research report, 11 March 1999
- 3.9 Tribunal, memorandum extending term of commission 3.8, 17 May 1999
- 3.10 Tribunal, memorandum commissioning Tom Bennion to produce research report, 8 July 1999
- 3.11 Tribunal, memorandum commissioning Larisa Webb to produce research report, 21 September 1999
- 3.12 Tribunal, memorandum commissioning Kirstie Ross to produce research report, 21 September 1999
- 3.13 Tribunal, memorandum commissioning Dr Geoff Watson to produce research report, 21 September 1999
- 3.14 Tribunal, memorandum commissioning Richard Nightingale to produce research report, 14 October 1999
- 3.15 Tribunal, memorandum extending term of commission 3.13, 10 March 2000
- 3.16 Tribunal, memorandum extending term of commission 3.11, 10 March 2000
- 3.17 Tribunal, memorandum extending term of commission 3.10, 1 April 2000
- 3.18 Tribunal, memorandum commissioning Rose Daamen to produce research report, 23 September 2000

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**4. TRANSCRIPTS AND TRANSLATIONS**

- 4.1\* Translation and transcript of kaumatua evidence from 8–12 March 1999 hearing, undated
- 4.2 Transcript of evidence from 7–11 May 2001 hearing, undated
- 4.3 Transcript of evidence from 11–15 June 2001 hearing, undated
- 4.4 Transcript of Hauraki cross-examination of document 04, undated

**RECORD OF DOCUMENTS**

\* Document confidential and unavailable to the public without a Tribunal order

**A. STAGE 1 : FIRST HEARING**

**A1** Wiremu Wright, Te Uri o Hau o Te Wahapu o Kaipara, 'Manawhenua Report', report, December 1996

- (a) Supporting documents
- (b) Further evidence, 'Manawhenua Report'
- (c) Haumoewarangi, waiata

**A2** David Armstrong, 'Te Uri o Hau and the Crown: 1860–1960', report, November 1996

- (a) Supporting documents to document A2, vol 1
- (b) Supporting documents to document A2, vol 2
- (c) Supporting documents to document A2, vol 3
- (d) Supporting documents to document A2, vol 4
- (e) Supporting documents to document A2, vol 5
- (f) Supporting documents to document A2, vol 6
- (g) Supporting documents to document A2, vol 7
- (h) Supporting documents to document A2, vol 8
- (i) Supporting documents to document A2, vol 9
- (j) Excerpt from transcript of evidence given by former Governor Sir George Grey to Smith–Nairn commission, 1878

**A3** Bruce Stirling, 'The Nineteenth Century', vol 1 of 'The Lands of Te Uri o Hau o Te Wahapu o Kaipara', 3 vols, report, November 1996

- (a) Supplementary evidence



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**A4** Bruce Stirling, 'Pouto Lands: Control and Alienation in the Twentieth Century', vol 3 of 'The Lands of Te Uri o Hau o Te Wahapu o Kaipara', 3 vols, report, November 1996

**A5** Bruce Stirling, 'Pouto Land No 2: Twentieth Century Block Histories', vol 3 of 'The Lands of Te Uri o Hau o Te Wahapu o Kaipara', 3 vols, report, November 1996

**A6** Document bank to document A5

- (A) Native Land Court and Māori Land Court minutebooks
- (B) Certificates of title, memoranda of transfer, provisional registers of title
- (C) Crown land purchase deeds
- (D) Pouto block order files, Whangarei Māori Land Court
- (E) Applications file K664, 1877–1959, Whangarei Māori Land Court
- (F) Correspondence file K664, 1873–1941, Whangarei Māori Land Court
- (G) Recent Crown correspondence with Te Uri o Hau and documents supplied by Te Uri o Hau
- (H) Māori land (ML) survey plans, DOSLI
- (I) Auckland provincial government records (AP series), Archives NZ
- (J) Department of Customs records (C series), Archives NZ
- (K) Department of Internal Affairs records (IA series), Archives NZ
- (L) Department of Justice records (J series), Archives NZ
- (M) Department of Lands and Survey records (LS series), Archives NZ
- (N) Department of Lands and Survey, Auckland district office records
- (O) Department of Māori Affairs records (MA, AAMK, AAVN series), Archives NZ
- (P) Māori Affairs, Māori Land Board, Auckland and Whangarei district office records (BAAI series), Archives NZ
- (Q) Māori Land Court records (BABG series), Archives NZ
- (R) Māori Land Purchase Department records (MA-MLP series), Archives NZ
- (S) Ministry of Transport records (TR series), Archives NZ, S-1 TR 1/46/3/11, Kaipara Harbour (Pouto 3)
- (T) Colonial Office correspondence (CO209 microfilm collection), Archives NZ
- (U) Supplement to evidence of Bruce Stirling

**A7** Vacant (replaced by doc A13)

(a) Vacant (replaced by doc A13(a))

**A8** Moira Jackson, 'Desecration of Taonga by Andreas Reischek in Northern Kaipara–Wairoa', report, November 1996

**A9** Moira Jackson and Vanessa Burrridge, 'GIS Map Supplement', November 1996

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**A10** Department of Land and Survey Information, 'Pouto Forest Land Database', October 1992

**A11** Summary of evidence of Moira Jackson, Bruce Stirling, and David Armstrong

**A12** Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series, July 1996

**A13** Moira Jackson, 'Pouto Peninsula: An Achaological Perspective', report, April 1997

(a) Supporting documents to document A13

**A14** Maurice Alemann, 'The Mangawhai Forest Claim', report, undated

(a) Map 1

(b) Map 2

(c) Map 3

(d) Map 4

**A15** Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 1

**A16** Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 2

**A17** Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 3

**A18** Rod Clough, 'An Archaeological Assessment of the Northern Kaipara', report

**A19** Supporting documents to document A14

**A20** Supporting documents to document A15

**A21** Tony Walzl, 'Land Issues within the Otamatea Area, 1839–1950', report

(a) Supporting documents to document A21, vol 1

(b) Supporting documents to document A21, vol 2

(c) Supporting documents to document A21, vol 3

(d) Presentation summary (withdrawn)

**A22** Weretapou Tito, brief of evidence

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A23 Morley Powell, brief of evidence

A24 Cyril Brown, brief of evidence

A25 Pamera Te Ruihi Warner, brief of evidence

A26 Morley Powell, brief of evidence

A27 Vacant

A28 Morehu Kena, brief of evidence

A29 William Pomare, brief of evidence

A30 Hemi (Jimmy) Connelly, brief of evidence

A31 Hemi Kena, brief of evidence

A32 Pop (Alexander) Wright, brief of evidence

A33 Mani Piripi, brief of evidence

A34 Hilda Manakau, brief of evidence

A35 Kerehi Holyoake, brief of evidence

A36 Tuini Kena, brief of evidence

A37 Colin Taurua, brief of evidence

A38 Des Leslie, brief of evidence

A39 Ngawai Gedye, brief of evidence

A40 Edward Kerei, brief of evidence

A41 Merilee Hart, brief of evidence

A42 Pomare Kena, brief of evidence

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- A43 William Wright, brief of evidence  
(a) Secretary of Internal Affairs, letter, 26 November 1996
- A44 Noel Harrison, brief of evidence
- A45 Rodney Clough, brief of evidence
- A46 Maurice Alemann, brief of evidence
- A47 Doreen Kemp, brief of evidence
- A48 Jimmy Connelly, brief of evidence  
(a) Map of Otara blocks
- A49 Constance Marsden, brief of evidence
- A50 Tapihana Kua-Pania Shelford, brief of evidence
- A51 Taki Marsden, brief of evidence (withdrawn)
- A52 Henry Kemp, brief of evidence
- A53 Russell Kemp, brief of evidence
- A54 Sir Graham Latimer, brief of evidence (withdrawn)
- A55 Esther Gray, brief of evidence
- A56 Tom Parore, brief of evidence, 12 August 1997
- A57 Wai 271 claimant counsel, opening address, 9 September 1997

**B. STAGE 1 : SECOND HEARING**

- B1 Wai 229 claimant counsel, opening address, 18 August 1997
- B2 Tom Parore, brief of evidence

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**B3** Johnson Henare, brief of evidence

**B4** Laly Haddon, brief of evidence

**B5** Erana Arano, brief of evidence

**B6** Whakaotinga Ote Temepara Te Rangi, brief of evidence

**B7** Russell Kemp, brief of evidence

(a) Supporting documents to document B7

**B8** Sir Graham Latimer, brief of evidence

**B9** Wai 229 and Wai 271 claimant counsel, submission, 22 August 1997

**B10** Merihana Rawnsley, brief of evidence

**C. STAGE 1 : THIRD HEARING**

**C1** Maurice Alemann, brief of evidence

(a) Summary of document C1

**C2** Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 1

(a) Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 2

(b) Noel Harrison, 'Te Uri o Hau and its Relations with the Crown: Political, Economic and Social Deprivation', 3 vols, report, vol 3

**C3** Tony Walzl, 'Land Issues within the Otamatea Area, 1839–1950', report

(a) Supporting documents to document C3

(b) Summary of presentation

**C4** Ashley Gould, brief of evidence

**C5** Matthew Melvin, 'Te Keti Block History', July 1997

(a) Supporting documents to document C5

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**C6** Michael Belgrave, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series, July 1997

**D. STAGE 1 : FOURTH HEARING**

**D1** Ashley Gould, 'Pouto, Otamatea, and Other Development Schemes', report, April 1998

- (a) Supporting documents to document D1, vol 1
- (b) Supporting documents to document D1, vol 2
- (c) Supporting documents to document D1, vol 3
- (d) Supporting documents to document D1, vol 4
- (e) Supporting documents to document D1, vol 5
- (f) Supporting documents to document D1, vol 6
- (g) Supporting documents to document D1, vol 7
- (h)\* Supporting documents to document D1, vol 8
- (i)\* Supporting documents to document D1, vol 9
- (j)\* Supporting documents to document D1, vol 10
- (k) Supporting documents to document D1, vol 11

**D2** Ashley Gould, 'Evidence in Response to Mr Walzl's Review of the "White Transaction"', report, April 1998

**D3** Summary of document D1

**D4** File MA85/A8, Archives NZ

**D5** Maria MacLeod, brief of evidence

**D6** Crown counsel, opening submissions, 27 April 1998

**D7** Extracts referred to in cross-examination by Wai 271 claimant counsel

**D8** Extracts referred to in cross-examination by Wai 229 claimant counsel

**D9** Map information on kauri harvest and timber and gum in the north, 1860s to 1920s

**D10** J Edwards, assessor, 'Otioro-Topuni', Māori Land Court, Whangarei, minute book 2

**D11** Ashley Gould, 'An Introductory Overview with Representative Case Studies, Māori Land Development, 1929-1954', CFRT report, 1996

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**E. STAGE 1 : FIFTH HEARING**

**E1** Wai 271 claimant counsel, closing submissions, 15 June 1998

- (a) Documents concerning wahi tapu on Pouto Peninsula
- (b) Claimant and Crown counsel, memorandum concerning document E1(a)

**E2** Wai 229 claimant counsel, closing submissions, 15 June 1998

**F. STAGE 2 : FIRST HEARING**

**F1** Dr Barry Rigby, 'The Crown, Maori, and Mahurangi 1840–1881', report, August 1998

**F2** Maurice Alemann, 'Donation of 10 Acres in Helensville by Te Otene Kikokiko', report

**F3** Fiona Small, 'Twentieth-Century Blocks in the Ngati Whatua Southern Kaipara Rohe', report, December 1998

- (a) Supporting documents to document F3, vol 1
- (b) Supporting documents to document F3, vol 2
- (c) Supporting documents to document F3, vol 3
- (d) Supporting documents to document F3, vol 4
- (e) Supporting documents to document F3, vol 5
- (f) Supporting documents to document F3, vol 6
- (g) Supporting documents to document F3, vol 7
- (h) Supporting documents to document F3, vol 8
- (i) Supporting documents to document F3, vol 9
- (j) Summary of document F3

**F4** Philippa Wyatt, 'Ngati Whatua o Kaipara ki te Tonga and the Crown, 1840–1869', report, December 1998

- (a) Supporting documents to document F4, vol 1
- (b) Supporting documents to document F4, vol 2
- (c) Supporting documents to document F4, vol 3
- (d) Summary of document F4

**F5** Bruce Stirling, 'Ngati Whatua Native Land Court Block Histories, 1864–1900', report, November 1998

- (a) Supporting documents to document F5, vol 1
- (b) Supporting documents to document F5, vol 2

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- (c) Supporting documents to document F5, vol 3
- (d) Supporting documents to document F5, vol 4
- (e) Supporting documents to document F5, vol 5
- (f) Supporting documents to document F5, vol 6
- (g) Supporting documents to document F5, vol 7
- (h) Supporting documents to document F5, vol 8
- (i) Supporting documents to document F5, vol 9

**F6** David Alexander, 'Consolidation, Development and Public Works Takings in Southern Kaipara', report

- (a) Supporting documents to document F6, vol 1
- (b) Supporting documents to document F6, vol 2
- (c) Supporting documents to document F6, vol 3
- (d) Supporting documents to document F6, vol 4

**F7** David Armstrong, overview report (withdrawn)

- (a) Supporting documents to document F7, vol 1
- (b) Supporting documents to document F7, vol 2

**F8** Bruce Stirling, 'Ngati Whatua and the Crown 1864–1900', report

**F9** Summaries of documents F8 and F5

**F10** Counsel for Ngati Whatua o Kaipara ki te Tonga, opening submissions, 8 March 1999

**F11** Moira Jackson, GIS map book, March 1999

**F12\*** Naida Glavish, brief of evidence, 12 March 1999

**F13** Powhiri and kaumatua evidence, VHS videotape, 9 March 1999

**F14** Narrated copy of flight over Kaipara, VHS videotape, 9 March 1999

**F15** Cross-examination of Philippa Wyatt, VHS videotape, pts 1, 2

**F16** Map used in 9 March 1999 site-visit



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G. STAGE 2 : SECOND HEARING

G1 Summary of document F6

G2 Moira Annette Jackson, 'An Overview of the Methodology and the Map Outputs', report

G3 Wai 312 claimant counsel, opening submissions, 12 April 1999

G4 Pages referred to from supporting documents F3(a)–(d)

G5 Ngati Whatua o Kaipara ki te Tonga, *Ko te Mamae o Kaipara*, waiata

G6\* Ngakuru Hemana, brief of evidence

G7\* Ngareta Panui, brief of evidence

G8\* Marion Rudolph, brief of evidence

G9 Gloria Timoti, brief of evidence

G10 Oti Te Rangi, brief of evidence

G11 Theresa Karena, brief of evidence

G12 Richard Nahi, brief of evidence

G13\* Haahi Walker, brief of evidence

G14 Map used in 14 April 1999 site visit

G15 Tauhia Hill, brief of evidence

G16 Sir Hugh Kawharu, brief of evidence

G17 Takutai Moana Wikiriwhi, brief of evidence

G18\* Te Rarangi Ratima, brief of evidence

G19 Te Warana Ratima, brief of evidence

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- (a) Ngati Whatua o Kaipara ki te Tonga, waiata
- (b) Ngati Whatua o Kaipara ki te Tonga, waiata

G20\* Toiroa Richards, brief of evidence

G21\* Waata Richards, brief of evidence

G22 Henry Smith, brief of evidence

G23 Eriapa Uruamo, brief of evidence

**H. STAGE 2 : THIRD HEARING**

H1 Paul Thomas, 'The Crown and Maori in the Northern Wairoa, 1840–1865', report, April 1999

- (a) Supporting documents to document H1, vol 1
- (b) Supporting documents to document H1, vol 2
- (c) Supporting documents to document H1, vol 3
- (d) Supporting documents to document H1, vol 4
- (e) Supporting documents to document H1, vol 5

H2 Wynne Spring-Rice, 'Maori Settlement on South Kaipara Peninsula – A Geographical and Archaeological Perspective', report

H3 Wai 312 claimant counsel, opening submissions, 8 June 1999

H4 Eriapa Uruamo, amended brief of evidence, 10 June 1999

- (a) Supporting documents to document H4, vol 1
- (b) Supporting documents to document H4, vol 2

H5\* Awa Hudson, brief of evidence

H6 Ani Pihema, brief of evidence

H7\* Elon Bycroft, brief of evidence

H8\* Joanne Moki, brief of evidence

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H9\* Ernestine Moki, brief of evidence

H10\* Te Waru Hill, brief of evidence

H11 Margaret Kawharu, brief of evidence

H12 Wai 279 claimant counsel, synopsis of submissions

H13 Site visit agenda, 10 June 1999

H14 Memorandum concerning issues raised in cross-examination of Fiona Small, 1 June 1999

1. STAGE 2 : FOURTH HEARING

I1 Bruce Stirling, memorandum concerning issues raised in cross-examination of documents F5, F8, and F9, 2 June 1999

I2 Bruce Stirling, 'Land for the Trees; A Shadow for the People: Maori and the Woodhill Forest', report, October 1999

(a) Supporting documents to document I2

(b) Summary of document I2

I3 Fiona Small, 'The Socio-Economic Consequences of Land Loss for Ngati Whatua of Southern Kaipara from 1900', report, October 1999

(a) Supporting documents to document I3, vol 1

(b) Supporting documents to document I3, vol 2

(c) Supporting documents to document I3, vol 3

(d) Summary of document I3

I4 Dr Wynne Spring-Rice, brief of evidence

(a) Supporting documents to document I4

I5 Rose Daamen, Paul Hamer, and Dr Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series, July 1996, extract

I6 Summary of Dr Barry Rigby, 'The Crown, Maori, and Mahurangi 1840-1881', August 1998

I7 Wai 312 claimant counsel, opening submissions, 8 November 1999

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18 Cherie Povey, brief of evidence

19 Ani Takanini Haaka Hawke, brief of evidence

110 Nellie Clay, brief of evidence

111 Te Kanui-iti Morehu, brief of evidence

112 Sir Hugh Kawharu, brief of evidence

**J. STAGE 2 : FIFTH HEARING**

J1 Ngati Tahinga Ki Kaipara/Ngati Mauku scoping report by Rose Daamen, August 1999

J2 Te Kawerau A Maki and the Crown in Kaipara, report by Graeme Murdoch  
(a) Summary

J3 Wai 470 claimant counsel, opening submissions

J4 AJHR, 1870, A-11

J5 Hariata Ewe, brief of evidence

J6 Te Warena Taua, brief of evidence

J7 *Nga Tohu a Nga Tupuna*, booklet

J8 Agenda for site visit with map attachments

J9 Hori Winikerei Taua, brief of evidence

J10 Koringo Joe, brief of evidence

J11 Miriama Tamaariki, brief of evidence

J12 Pareteuenga Thompson, brief of evidence

J13 Charlie Patuwai, brief of evidence

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J14 Helen Kahui, brief of evidence

J15 Hamuera Taua, brief of evidence

J16 Robert Harvey, brief of evidence

J17 Sheryl Thompson, brief of evidence

J18 Tiria Thompson, brief of evidence

J19 Herbert Alexander, brief of evidence

J20 Takutai Moana Gregory Wetere, brief of evidence

J21 Audrey Te Hehira Thompson, brief of evidence

J22 Raymond Taua, brief of evidence

J23 Saul Roberts, brief of evidence

(a) Overhead information

J24 Te Warena Taua, brief of evidence

K. STAGE 2 : SIXTH HEARING

K1 Statement of evidence by Wynne Spring-Rice

(a) Map book of plans and certificates of title for Ōtakanini

(b) Summary

(c) Supporting documents to document K1

(d) Certificate of titles

(e) Supporting documents to document K1

K2 Tauhia Hill, brief of evidence

(a) Whakapapa

K3 Thomas Cross, brief of evidence

(a) Ōtakanini Tōpū Incorporation, *Annual Report, 1999*

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**K4** Philip Hill, brief of evidence

(a) Plan of Ōtakanini Tōpū Farm Incorporation

**K5** Larisa Webb, 'The Manukau Whanau of Ngati Whatua and the Crown in Kaipara', report

(a) Supporting documents to document K5

(b) Summary of document K5

(c) Larisa Webb, memorandum in response to questions raised at 14 June 2000 hearing

(d) Larisa Webb, letter responding to Crown questions concerning document K5(c)

**K6** Wai 733 claimant counsel, opening submissions

**K7** Māori Land Settlement Act 1905, extract

**K8** Whakapapa submitted by Mohi Manukau

**K9** Wai 121 claimant counsel, opening submissions

(a) New Zealand Constitution (Amendment) Act 1857, extract

**K10** Eru Manukau, brief of evidence

**K11** Whititera Kaihau, brief of evidence

(a) Corrections to document K11

**K12** Aroha Hudson, brief of evidence

**K13** Wai 121 claimant counsel, memorandum, 15 June 2000

**K14** Roimata Minhinnick, traditional report of Ngati Te Ata

(a) Supporting documents to document K14

(b) Whakapapa

**L STAGE 3 : FIRST HEARING**

**L1** Tom Bennion, 'Kapehu Blocks Rating claim', Wai 763 overview report, June 2000

(a) Supporting documents to document L1, vol 1

(b) Supporting documents to document L1, vol 2

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**L2** Garry Hooker, 'Maori, The Crown and the Northern Wairoa District – A Te Roroa Perspective', Wai 632 report, March 2000

- (a) Supporting documents to document L2
- (b) Addendum to document L2, 3 August 2001

**L3** Kirstie Ross, 'The 1854 Mangawhai Crown Purchase', Wai 244 report, June 2000

- (a) Supporting documents to document L3
- (b) Summary of document L3
- (c) Summary of document L3
- (d) GIS map booklet

**L4** Robyn Anderson, 'Nga Hapu o Whangarei and Lands in the Stage III Kaipara District', Wai 688 report, July 2000

- (a) Supporting documents to document L4, vol 1
- (b) Supporting documents to document L4, vol 2
- (c) Supporting documents to document L4, vol 3
- (d) Summary of document L4
- (e) Garry Hooker, reply as to cultural and customary evidence in document L4, 8 August 2001

**L5** Rangitane Marsden, submission on Te Kopuru claim, July 2000

- (a) Supporting documents to document L5

**L6** Waimarie Bruce, manawhenua report, July 2000

- (a) Summary of document L6
- (b) Garry Hooker, reply as to cultural and customary issues raised in document L6, 10 August 2001

**L7** Ngaire Brown, 'Te Waiariki/Ngati Korora Iwi Hapu and the Crown in the Northern Kaipara', report, September 2000

- (a) Te Waiariki–Ngati Korora, GIS map booklet
- (b) Summary of document L7

**L8** Marie Tautari, report on block files, July 2000

- (a) Summary of document L8

**L9** Fiona McCormack, 'Parore te Awha: A Discussion of Social Complexity in the Northern Kaipara', report, August 2000

- (a) Summary of document L7

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**L10** Wai 632 claimant counsel, opening submissions, 11 September 2000

**L11** Wai 244 claimant counsel, opening submissions, 11 September 2000

(a) Treaty of Waitangi (Māori version)

(b) Treaty of Waitangi (English version)

**L12** Brief of evidence of Laly Paraone Haddon

**L13** Brief of evidence of Russell Kemp

**L14** Brief of evidence of Thomas Parore

(a) *New Zealand Maori Council v Attorney-General* [1992] 2 NZLR 576

(b) *New Zealand Maori Council v Attorney-General* [1994] 2 NZLR 513

(c) *Te Runanga o Te Ika Whenua Incorporated Society v Attorney-General* [1994] 2 NZLR 2

**L15** Rogan letterbook, letter, 11 May 1864

**L16** *Ko Rakaumangamanga*, waiata

**L17** Wai 303 claimant counsel, opening submissions, 12 September 2000

**L18** Wai 632 and Wai 38 claimant counsel, memorandum concerning issues raised in document L17, 13 September 2000

**M STAGE 3 : SECOND HEARING**

**M1** Vacant

**M2** Te Raa Nehua, brief of evidence

**M3** Hoori Tuhiwai, brief of evidence

**M4** Fred Tito, brief of evidence

(a) Wai 688 claimant counsel, letter, 4 October 2000

**M5** Ngati Edmonds, brief of evidence

**M6** George Edwards, brief of evidence



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M7 Sophie Tito, brief of evidence

M8 Sharon Kaipo, brief of evidence

M9 Marina Fletcher, brief of evidence

M10 Tapa George, brief of evidence

M11 Wai 688 claimant counsel, opening submissions, 29 September 2000

(a) GIS map booklet

M12 Wai 619 claimant counsel, opening submissions, 3 October 2000

M13 Poai (Bosie) Peihopa, brief of evidence

M14 Rapata Pepene, brief of evidence

M15 Hakopa Hakaraia, brief of evidence

M16 Wiremu Pohe, brief of evidence

M17 Hagen Tautari, brief of evidence

M18 Vacant

M19 Frank Kaire, brief of evidence

M20 Marie Tautari, brief of evidence

M21 Winiwini Kingi, brief of evidence

M22 Riripeti Te Kohukoroa Pepene, brief of evidence

M23 Arthur Harawira, brief of evidence

M24 Haane Kingi, brief of evidence

M25 Wai 620 claimant counsel, opening submissions, 5 October 2000

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**M26** Mitai Paraone-Kawiti, brief of evidence

**M27** Personal introduction of Ngaire Brown

**N STAGE 2 : SEVENTH HEARING**

**N1** Geoff Watson, 'Te Taou and the Crown in the Southern Kaipara', report, October 2000

(a) Supporting documents to document N1

(b) Summary of document N1

**N2** Richard Nightingale, 'Block Files Report of Pukeatua', report, November 2000

**N3** Dr Caroline Phillips, archaeological report

(a) List of photographs

**N4** Ropati Saipaia, 'Block File Report – The Helensville 10 Acre Reserve', report, November 2000

**N5** Shane Paul and Lily George, 'Manawhenua Report – The Historical and Spiritual Pathways of Te Taou', report, August 2000

(a) Summary of document N5

**N6** Lou Paul, 'Oral History Report', report, November 2000

**N7** Lily George, 'Oral History Report', report, October 2000

**N8** Rose Daamen and Richard Nightingale, 'Ngati Mauku and Ngati Tahinga Ki Kaipara', Wai 721 report, October 2000

(a) Map book

(b) Summary of document N8

(c) Supporting documents to document N8, vol 1

(d) Supporting documents to document N8, vol 2

**N9** Wai 271 claimant counsel, opening submissions, 6 November 2000

**N10** Thomas Benjamin de Thierry, brief of evidence

(a) Appendix 1A

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**N11** Benjamin de Thierry, brief of evidence

**N12** Kui Katoro (Kate) de Thierry (née Eruera), brief of evidence

**N13** Letter, 27 April 1951, MA61/1/9

**N14** Ted Hetaraka, brief of evidence

**N15** Wai 756 claimant counsel, opening submissions, 8 November 2000

**N16** Lou Paul (Paora), brief of evidence

(a) Oral brief of evidence

**N17** Amato Akarana Rewi, brief of evidence

**N18** Judgments delivered in Compensation Courts and Native Land Court, 1866–1879

**N19** John Edwards, brief of evidence

**N20** Tataiarangi Akarana, brief of evidence

**N21** Sabrina Aukino, brief of evidence

**N22** Shane Paul, brief of evidence

**N23** Rebecca Edwards, brief of evidence

**N24** Kaipara Native Land Court minute book, vol 26, folio 109

**O. CROWN HEARING**

**O1** Thomas Benjamin de Thierry, affidavit in support of application for urgent hearing in respect of Wai 721, 12 December 2000

**O2** Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000)

**O3** Te Puni Kokiri, *Risk Assessment Report*

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**04** Donald Loveridge, 'Ngati Whatua and the Crown – The First Quarter-Century: An Appraisal of the Wyatt Report', report, April 2001

- (a) Supporting documents to document 04
- (b) Summary of document 04

**05** Paul Goldstone, 'Maori Population in the Kaipara, 1840–1920', report, January 2001

- (a) Summary of report of document 05

**06** Paul Goldstone, 'A History of the Woodhill–Helensville Sand Dune Reclamation Scheme and the Woodhill State Forest', report, January 2001

- (a) Supporting documents to document 06, vol 1
- (b) Supporting documents to document 06, vol 2
- (c) Supporting documents to document 06, vol 3
- (d) Supporting documents to document 06, vol 4
- (e) Supporting documents to document 06, vol 5
- (f) Supporting documents to document 06, vol 6
- (g) Supporting documents to document 06, vol 7
- (h) Supporting documents to document 06, vol 8
- (i) Supporting documents to document 06, vol 9
- (j) Supporting documents to document 06, vol 10
- (k) Supporting documents to document 06, vol 11
- (l) Supporting documents to document 06, vol 12
- (m) Supporting documents to document 06, vol 13
- (n) Supporting documents to document 06, vol 14
- (o) Supporting documents to document 06, vol 15
- (p) Summary of document 06

**07** Donald Loveridge, 'The Origins of the Native Land Acts and Native Land Court in New Zealand', report, 3 November 2000

- (a) Supporting documents to document 07, vol 1
- (b) Supporting documents to document 06, vol 2
- (c) Summary of document 07

**08** Dr Donald M Loveridge and Paul Goldstone, 'Selected Statistics for the Auckland/Kaipara Region, 1840–1870', report

**09** Crown counsel, opening submissions, 7 May 2001

**010** Dr Donald M Loveridge, report on Ngati Pahauwera

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- (a) Hariata Whareiti, letter, 28 November 1934
- (b) Letter to Prime Minister Fraser, 3 February 1945

O12 Map of Ōtakanini Tōpū

P. CROWN HEARING

P1 Paul Goldstone, 'Ngati Whatua and the Development of Southern Kaipara Economy, 1864–1900', report, May 2001

- (a) Supporting documents to document P1, vol 1
- (b) Supporting documents to document P1, vol 2
- (c) Supporting documents to document P1, vol 3
- (d) Summary of document P1

P2 Dr Ashley Gould, 'Nukuroa Development Scheme and Hone Eruera', report

- (a) Supporting documents to document P2, vol 1
- (b) Supporting documents to document P2, vol 2
- (c) Summary of document P2

P3 Dr Don Loveridge, 'Maori Lands and British Colonization 1840–1865: A Preliminary Analysis', report, May 2001

- (a) Summary of document P3

P4 Dr Don Loveridge 'Issues relating to the Ōtakanini Block 1904–1908', report, May 2001

- (a) Summary of document P4

P5 Robert Hayes, brief of evidence

- (a) Supporting documents to document P5, vol 1
- (b) Supporting documents to document P5, vol 2
- (c) Summary of document P5
- (d) Tables
- (e) Tables
- (f) Tables

P6 Peter Little, brief of evidence

Te Puni Kokiri, 'Nukuroa Development Scheme and Hone Eruera', report

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- (a) Supporting documents to document P6
- (a) Definition of 'perambulate', *Concise Oxford Dictionary of Current English*
- (b) Definition of 'perambulate', *New Shorter Oxford*

P8 Eruera, letter to Ngata, 2 August 1933, MA20/BB/24, vol 2, Te Puni Kokiri, Wellington

**Q. CLAIMANT AND CROWN CLOSING AND RIGHT OF REPLY**

- Q1 Wai 312 claimant counsel, closing submissions, 2 August 2001
- Q2 Wai 688 claimant counsel, closing submissions, 6 August 2001
- Q3 Wai 733 claimant counsel, closing submissions, 8 August 2001
- Q4 Wai 244 claimant counsel, closing submissions, 9 August 2001
- Q5 Wai 721 claimant counsel, closing submissions, 10 August 2001
- Q6 Wai 697 claimant counsel, closing submissions 697, 9 August 2001
- Q7 Wai 620 claimant counsel, closing submissions, 8 August 2001
- Q8 Wai 470 claimant counsel, closing submissions, 13 August 2001
- Q9 Wai 632 claimant counsel, closing submissions, 15 August 2001 (errata attached)
- Q10 Wai 279 claimant counsel, closing submissions, 15 August 2001
- Q11 Wai 121 claimant counsel, closing submissions, 16 August 2001
- Q12 Wai 508 claimant counsel, closing submissions, 16 August 2001
- Q13 Wai 619 claimant counsel, closing submissions, 20 August 2001
  - (a) Maps and whakapapa
- Q14 Wai 756 claimant counsel, closing submissions, 21 August 2001

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**Q15** Wai 763 claimant counsel, closing submissions, 23 August 2001

(a) Amendments to document Q15, 20 September 2001

**Q16** Crown counsel, closing submissions

(a) Crown counsel, memorandum concerning issue of stumpage arising out of cross-examination of Paul Goldstone

(b) Crown counsel, memorandum concerning Waikoukou and claims for compensation, 6 September 2001

**Q17** Wai 756 claimant counsel, submission in response to document Q16, 10 September 2001

**Q18** Wai 620 claimant counsel, submission in response to document Q16, 10 September 2001

**Q19** Wai 244 claimant counsel, submission in response to document Q16, 10 September 2001

**Q20** Wai 619 claimant counsel, submission in response to document Q16, 10 September 2001

**Q21** Wai 763 claimant counsel, submission in response to document Q16, 10 September 2001

**Q22** Wai 733 claimant counsel, submission in response to document Q16, 11 September 2001

**Q23** Wai 721 claimant counsel, submission in response to document Q16

(a) Minister in Charge of Treaty of Waitangi Negotiations, letter to Wai 721 claimants, 29 August 2001

(b) Office of Treaty Settlements, letter to Wai 721 claimants, 15 August 2001

**Q24** Wai 470 claimant counsel, submission in response to document Q16, 10 September 2001

**Q25** Wai 632 claimant counsel, submission in response to document Q16, 11 September 2001

**Q26** Wai 279 claimant counsel, submission in response to document Q16, 11 September 2001

**Q27** Wai 312 claimant counsel, submission in response to document Q16, 11 September 2001

(a) Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991)

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