NATIONAL OVERVIEW

volume iii

Professor Alan Ward

Waitangi Tribunal Rangahaua Whanui Series

WAITANGI TRIBUNAL 1997

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

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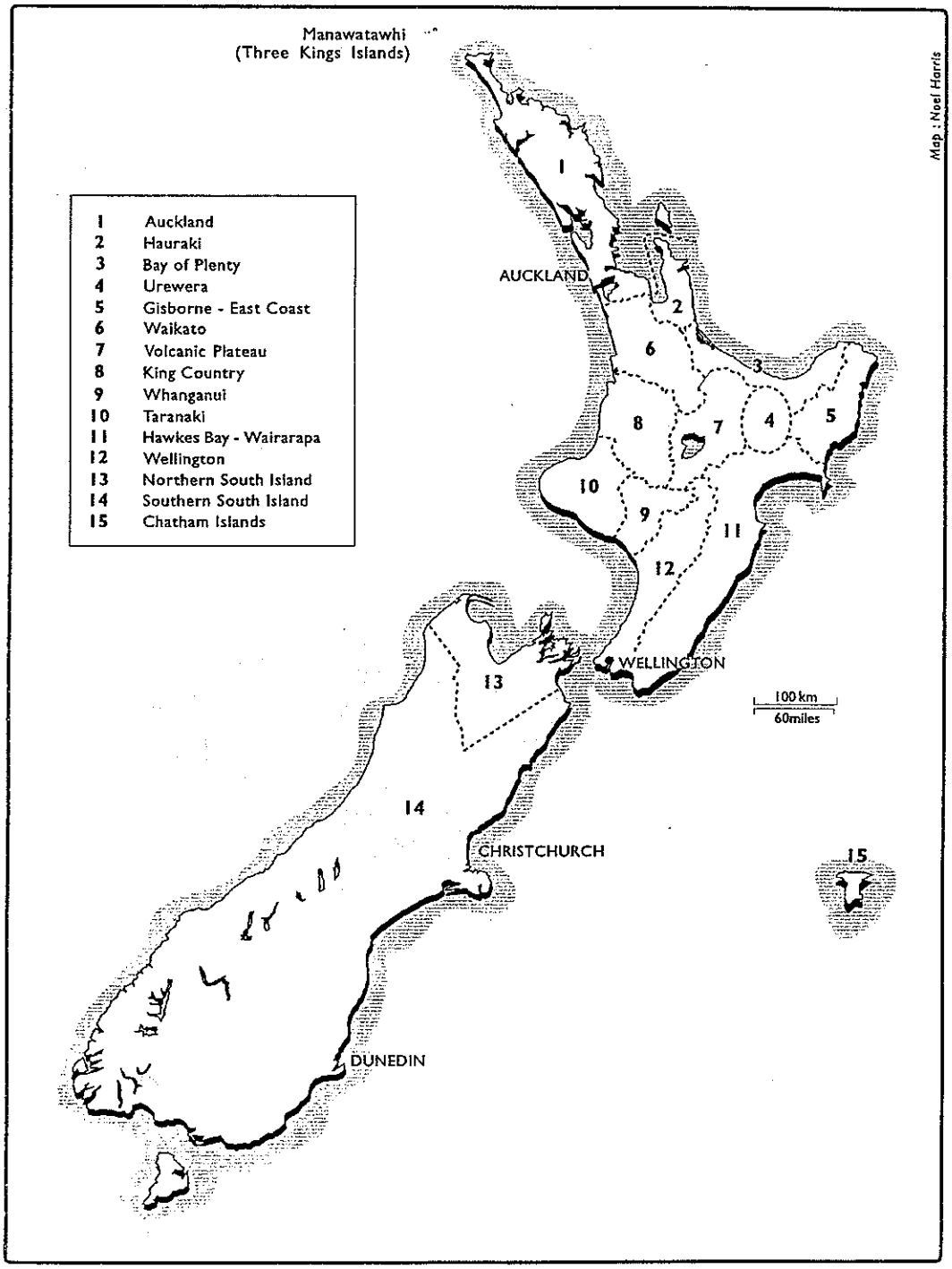

Figure 1: Rangahaua Whanui districts

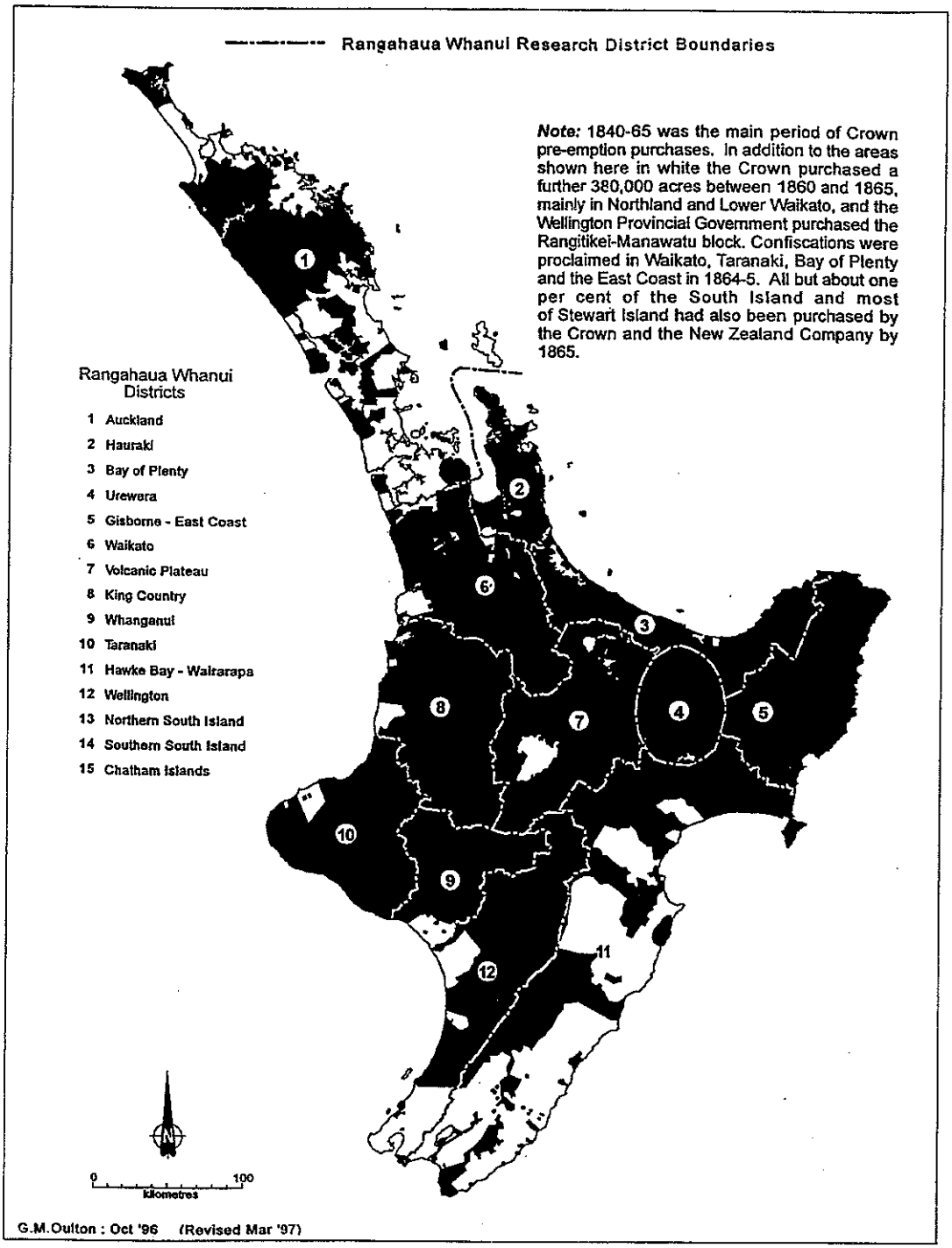

Figure 2: Alienation of Maori land in the North Island at 1860

The maps on pages viii to xiii have been drawn from maps compiled for the 1940 *Historical Atlas* (the project was abandoned because of the Second World War), which are now held in the Alexander Turnbull Library map collection. These are large-scale maps and cannot show blocks below a certain size. Together with the

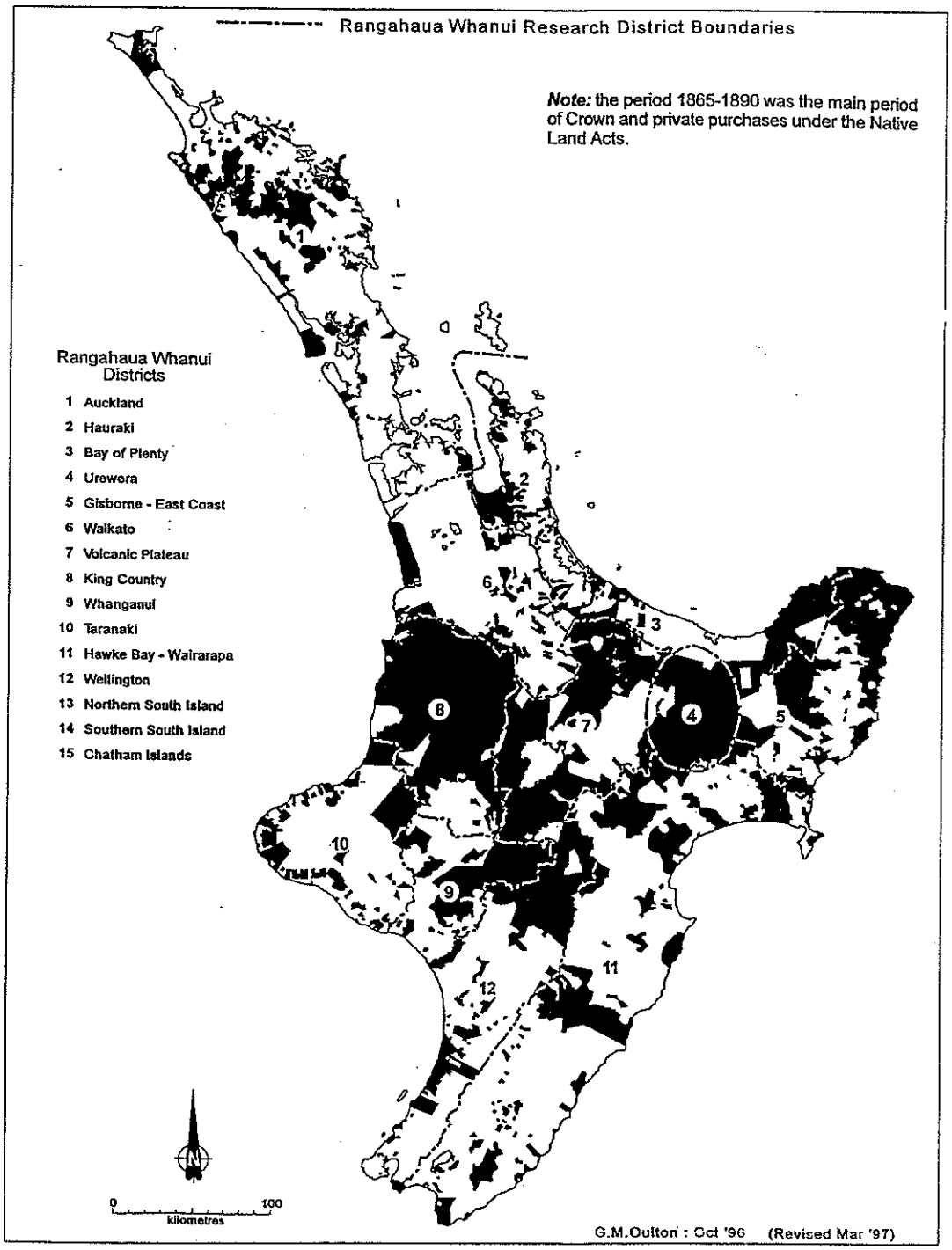

Figure 3: Alienation of Maori land in the North Island at 1890

accompanying tables and graphs, they nevertheless show the progressive alienation of Maori land in the various Rangahaua Whanui research districts, according to the main legal and administrative regimes put in place since 1840.

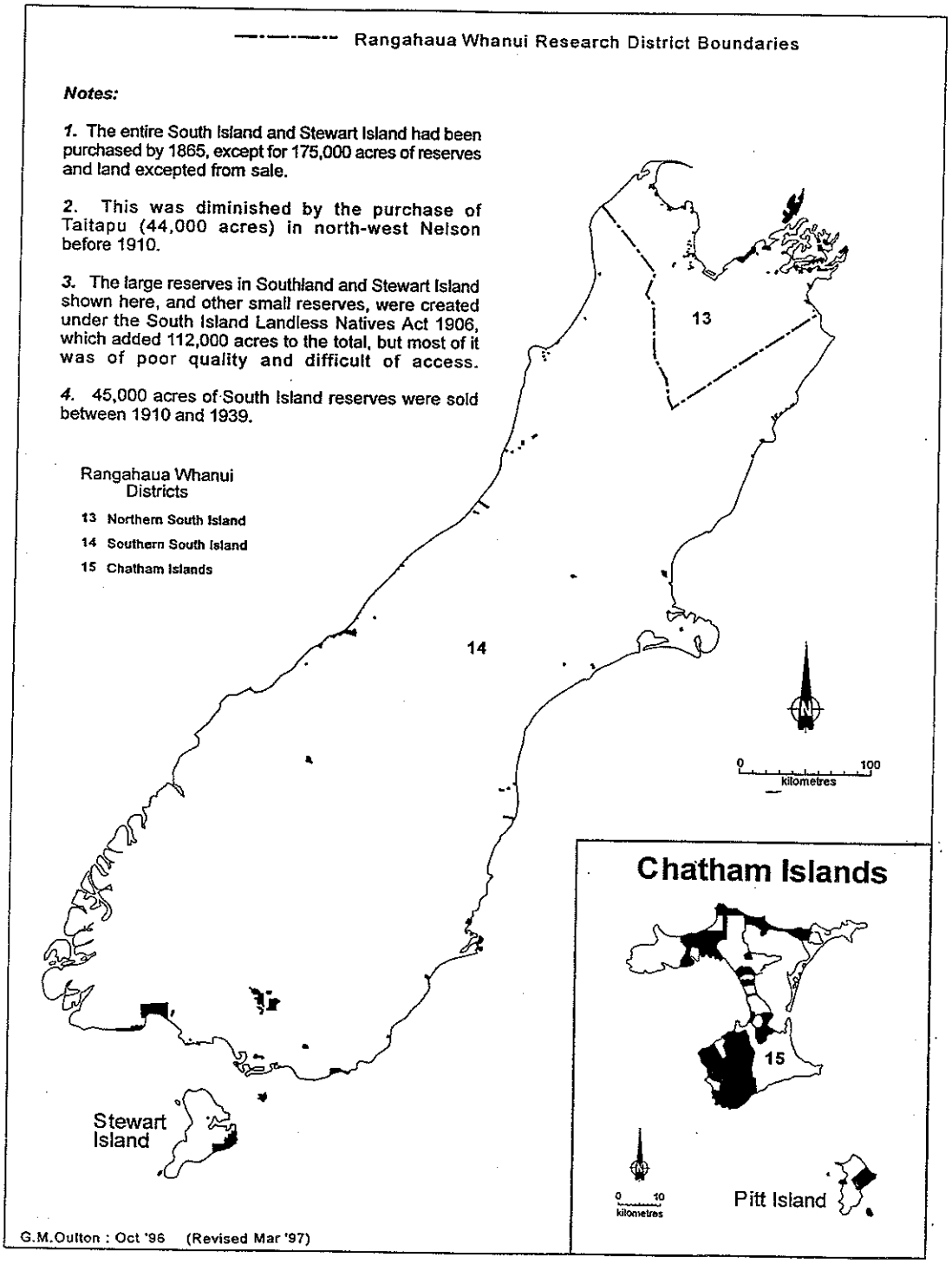

Figure 4: Alienation of Maori land in the South Island at 1910

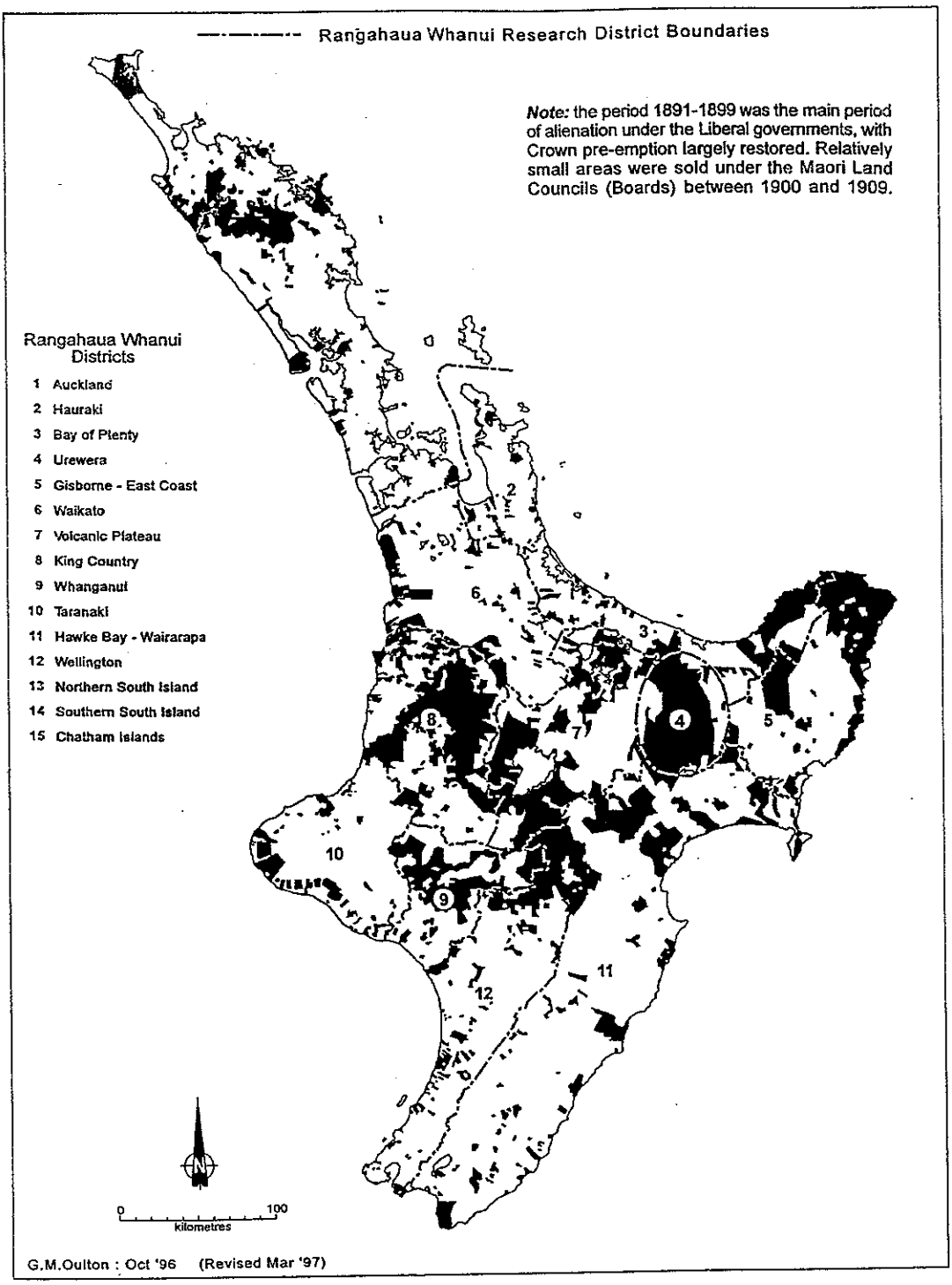

Figure 5: Alienation of Maori land in the North Island at 1910

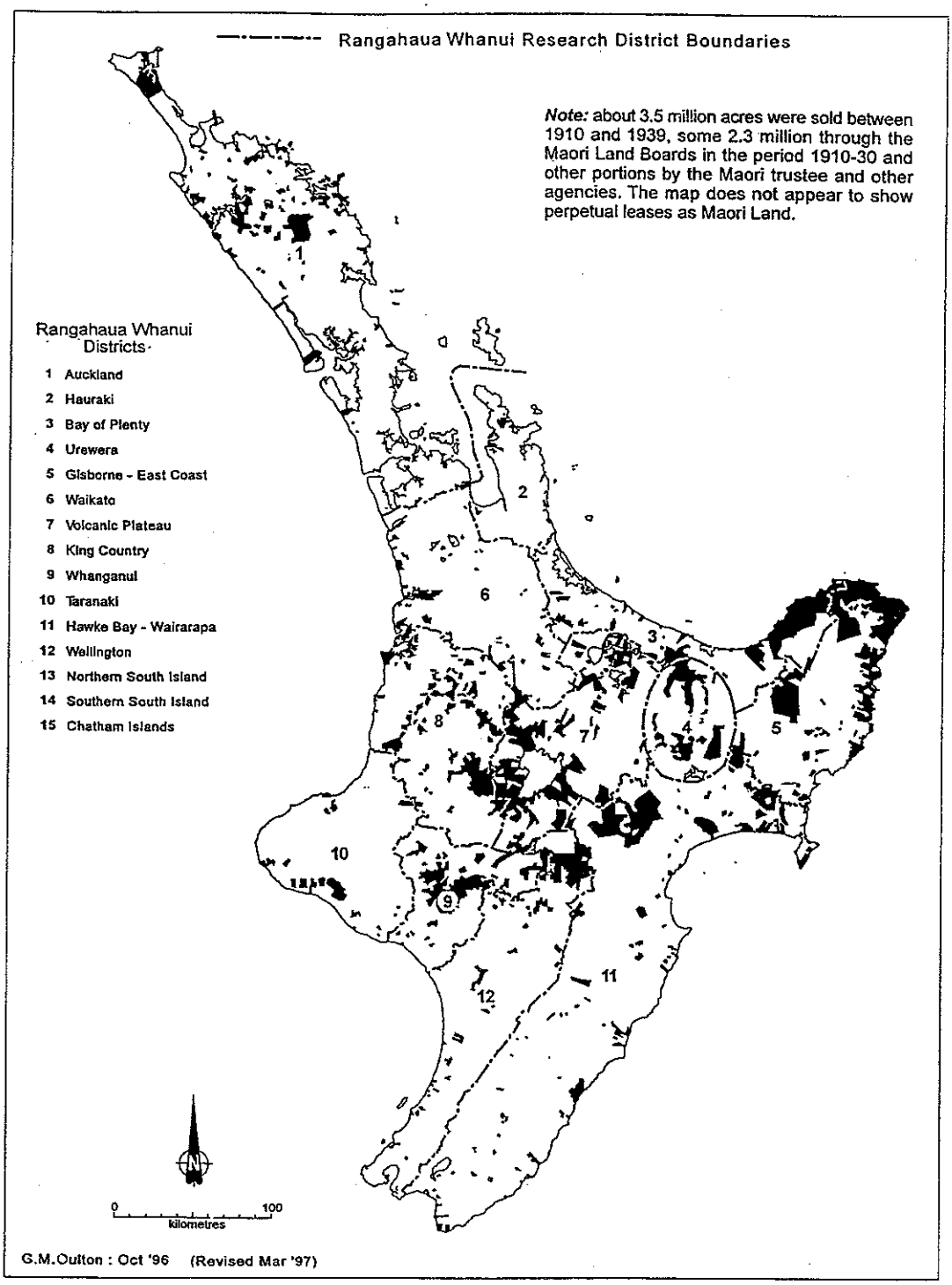

Figure 6: Alienation of Maori land in the North Island at 1939

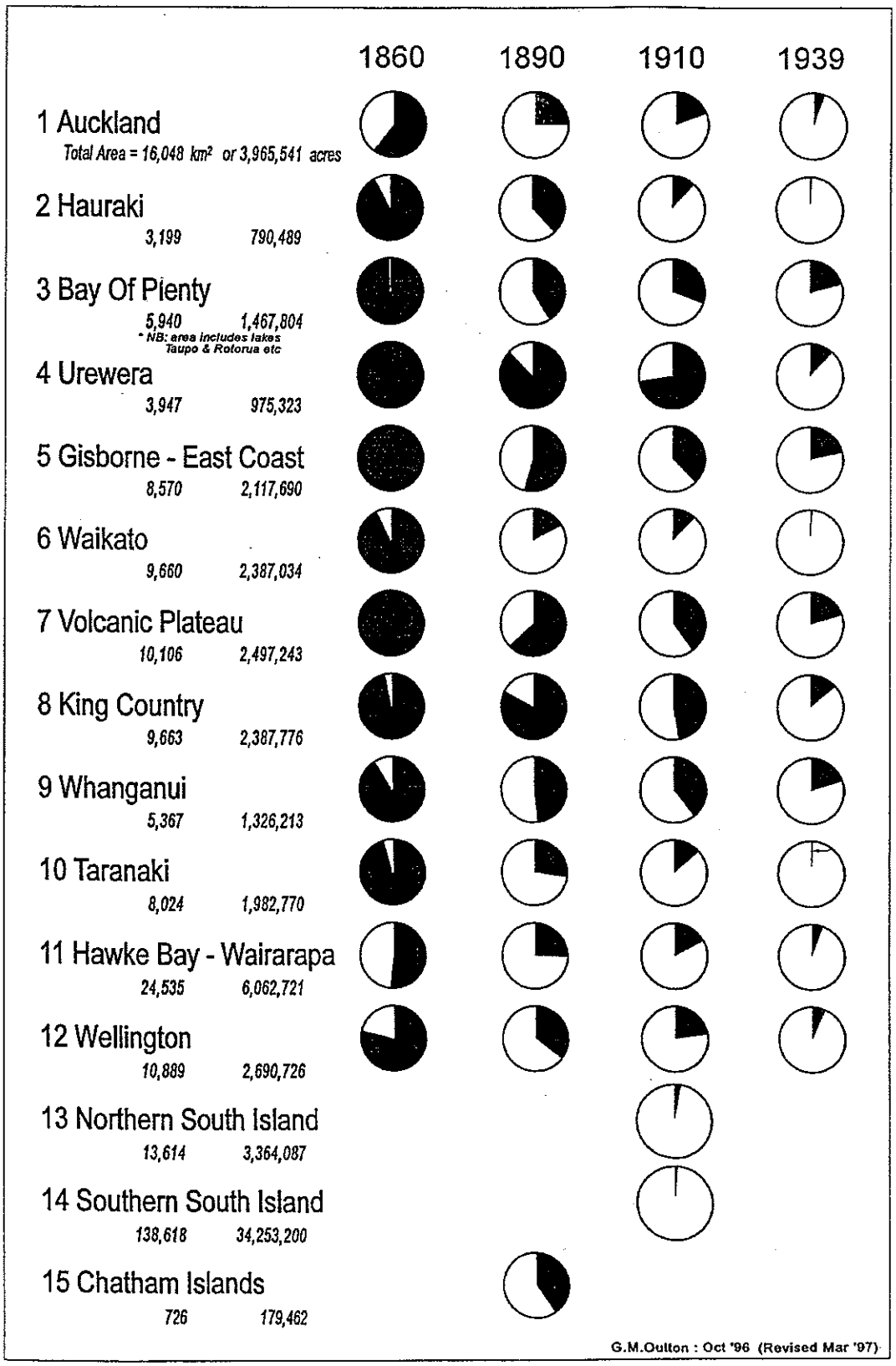

Figure 7: Proportions of Maori land by district at 1860, 1890, 1910, and 1939

Total district area			1860			1890			1910			1939		
District	km²	acres	km²	acres	%	km²	acres	%	km²	acres	%	km²	acres	%
Auckland	17,000	4,200,784	9815	2,425,378	58	4058	1,002,804	24	3108	768,109	18	884	218,461	5
Hauraki	3313	818,659	2975	735,073	90	1225	302,617	37	386	95,370	12	29	7141	1
Bay of Plenty	5862	1,448,530	5862	1,448,530	100	2464	608,795	42	1835	453,413	31	1223	302,106	21
Urewera	4105	1,014,366	4105	1,014,366	100	3471	857,692	85	2859	706,384	72	471	116,288	11
Gisborne–East Coast	8576	2,119,172	8576	2,119,172	100	4666	1,152,997	54	3262	806,015	38	1832	452,726	21
Waikato	9856	2,435,467	8980	2,218,894	91	1665	411,534	17	1173	289,792	12	133	32,984	1
Volcanic plateau	10,121	2,500,950	10,121	2,500,950	100	6388	1,578,517	63	4067	1,004,919	40	2038	503,568	20
King Country	9890	2,443,868	9358	2,312,292	95	8014	1,980,253	81	4577	1,130,898	47	1315	324,891	13
Whanganui	5415	1,338,074	4910	1,213,328	91	2597	641,781	48	2129	526,005	40	1082	267,256	20
Taranaki	8034	1,985,242	7679	1,897,598	96	2217	547,765	28	1104	272,700	14	81	20,060	1
Hawke's Bay–Wairarapa	24,404	6,030,350	12,686	3,134,675	52	6303	1,557,612	26	4257	1,052,010	17	1408	347,840	6
Wellington	11,020	2,723,097	8622	2,130,552	78	3886	960,371	35	2490	615,180	23	760	187,857	7
Northern South Island	13,614	3,364,087	—	—	—	—	—	—	429	105,981	3	—	—	—
Southern South Island	138,618	34,253,2o1	—	—	—	—	—	—	909	224,591	1	—	—	—
Chathams	726	179,462	—	—	—	—	—	—	295	72,881	41	—	—	—

Proportions of Maori land by district at 1860, 1890, 1910, and 1939

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
app, apps	appendix, appendixes
BPP	*British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon, Irish University Press, 1968–69)
ch, chs	chapter, chapters
doc, docs	document, documents
DOSLI	Department of Survey and Land Information
ed	edition, editor
encl	enclosure
ff	following
fol, fols	folio, folios
GBPP	*Great Britain Parliamentary Papers*
ma	Maori Affairs series
ms, mss	manuscript, manuscripts
n	note
NA	National Archives
no, nos	number, numbers
NZLR	*New Zealand Law Reports*
NZPD	*New Zealand Parliamentary Debates*
olc	old land claims (see F D Bell, 'Report of the Land Claims Commissioner', AJHR, 1862, d-14, app)
p, pp	page, pages
para, paras	paragraph, paragraphs
pt, pts	part, parts
RDB	*Raupatu Document Bank* (139 vols, Wellington, Waitangi Tribunal, 1990)
rod	record of documents
roi	record of inquiry
s, ss	section, sections (of an Act)
sec, secs	section, sections (of this report, or of an article, book, etc)
sess	session
td	Turton's deed (see H H Turton (ed), *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1877, vol i)
vol, vols	volume, volumes
Wai	Waitangi Tribunal claim

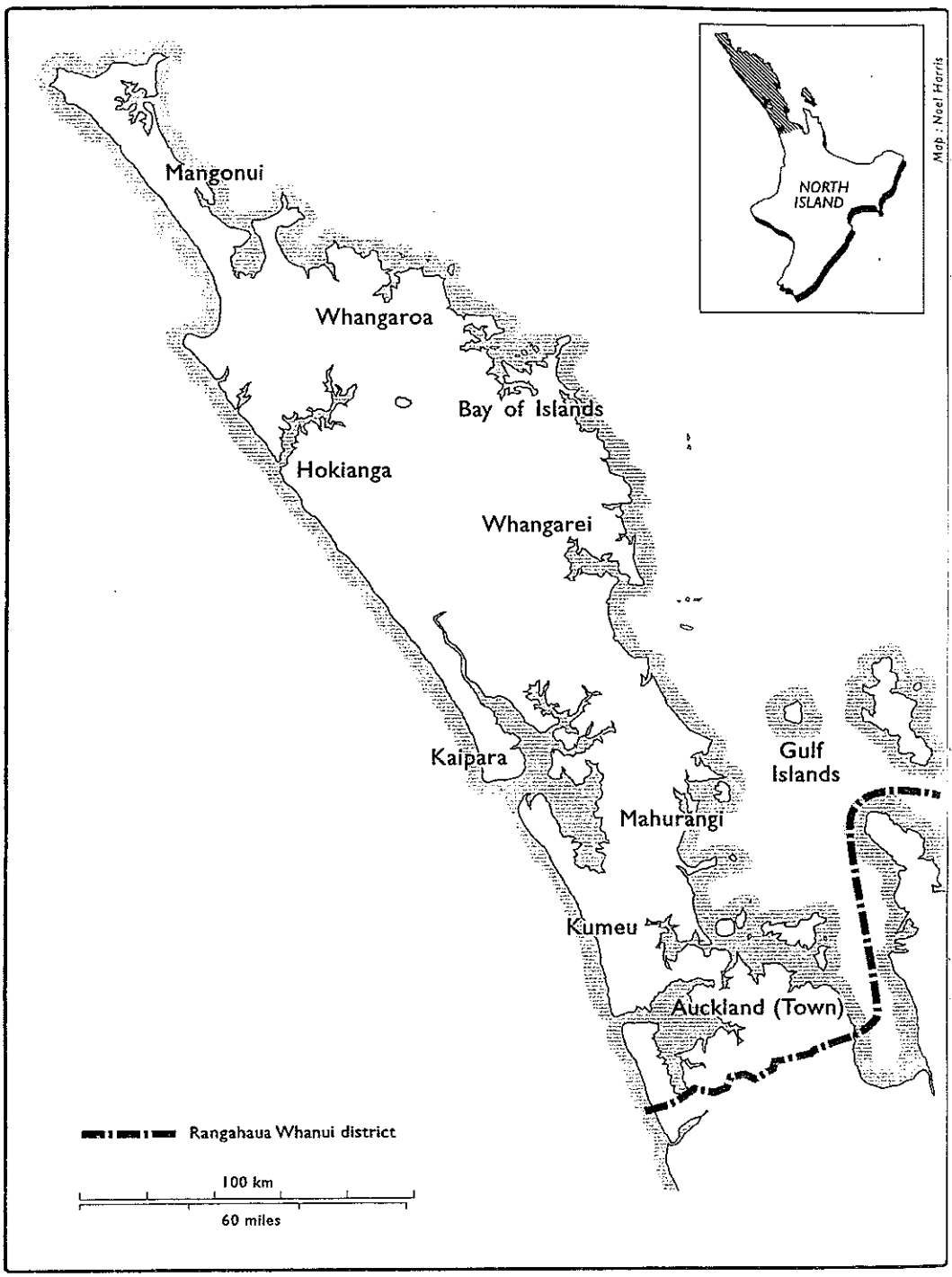

Figure 8: District 1 (Auckland)

CHAPTER 1

AUCKLAND

1.1 Principal Data

1.1.1 Estimated total land area for the district

The estimated total land area for district 1 (Auckland) is 4,200,784 acres.

1.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 1 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was approximately 60 percent in 1860, 25 percent in 1890, 19 percent in 1910, and 5 percent in 1939 (or 9.7 acres per head according to the 1936 census figures provided below).

1.1.3 Principal modes of land alienation

The principal modes of land alienation in district 1 were:

- old land claims (including surplus lands);
- pre-1865 Crown purchases;
- confiscations;
- purchases under the Native Land Acts; and
- pre-emption waiver purchases.

1.1.4 Population

The population of district 1 was approximately 16,000 to 17,000 in 1840 (estimated figure), 9542 in 1891 (estimated from census figures), and 22,426 in 1936 (also estimated from census figures).

1.2 Main Geographic Features Relevant to Habitation And Land Use

The boundaries of research district 1 stretch from Manawatawhi (Three Kings Island) to a line running from Waiuku on the west coast to Kaiaua on the east coast. The district includes the main islands of the Hauraki Gulf and Great Barrier Island.

Since the district is almost entirely surrounded by water and contains numerous bays and harbours, the tangata whenua were never far from food resources and a

means of transportation. Settlements were clustered around the bays and harbours, which were also highly prized by European traders and settlers. One of these bays, the Bay of Islands, contained the principal port in New Zealand in the early nineteenth century, the place where the Treaty of Waitangi was first signed and where the Governor first resided. The upper half of the district was dominated by stretches of forests, mainly kauri, and became the centre of the timber and ship-building industries before and after 1840. The booming kauri gum industry was also at its height in the latter decades of the nineteenth century. In the south of this district in the area between the Manukau and Waitemata Harbours, there are a number of volcanic cones upon which Maori settled. These cones provided a place of refuge when security was threatened. Distributed around these cones were cultivations which flourished in the rich volcanic soil. Two important canoe portages (To Waka) were also in this area: the first at Otahuhu, which connected the Tamaki River and the Manukau Harbour, and the second at Waiuku, which connected with the Waikato River.

1.3 Main Tribal Groupings

Relations between the northern tribes, who share close connections through their waka and early descendants, have been affected by, among other things, Ngati Whatua's migration south to Kaipara and the Kaihu Valley in the early seventeenth century, as well as extensive battles between Ngati Whatua and local Maori, including Waiohau at Titirangi, Auckland, and Tamaki. Battle also occurred along the east coast in the early 1790s between, among others, Ngaoho and Ngati Paoa, as well as Ngati Paoa and Ngati Rongo. In the early part of the nineteenth century a series of battles also occurred between Ngapuhi and Ngati Whatua, as well as Ngapuhi and Ngati Paoa around the 1820s.

1.3.1 The situation around 1840

General Ngapuhi boundaries of the late eighteenth and early nineteenth centuries have been described as running from Puhanga-tohora to Te Ramaroa to Whiria, to Panguru, to Papata, to Maunga-taniwha, to the Bay of Islands, to Cape Brett, to Whangarei Heads, to Tutameo, to Manganui Bluff, and back to Puhanga-tohora.[1] There has been some discrepancy over the boundary of the Muriwhenua land, home to Ngati Kuri, reflecting the changing relationships between Muriwhenua tribes Te Aupouri, Te Rarawa, Ngati Takoto, and Ngati Kahu with Ngapuhi in the early nineteenth century. The Waitangi Tribunal in recent years has, for the purposes of hearing the Muriwhenua claims, extended the original southern boundary from Whangape Harbour to Mangonui (including the outlying islands) to the area east of

1. J R P Lee, *I Have Named it the Bay of Islands*, Auckland, Hodder and Stoughton, 1983, pp 289–291

the Mangonui Harbour.[2] Te Rarawa also have rights south of the area extending into the Hokianga, well south of the area included in the Muriwhenua claim.

A complicated relationship interconnecting the tribes present in the Orakei lands makes it difficult to summarise occupation in that particular area, although by one estimation, Ngati Whatua had slackened their grip on the land before 1840 but had not surrendered it to competing hapu from Ngati Paoa (among other tribes).[3] Ngati Paoa have, however, been recognised as holding the rights to Waiheke, in conjunction perhaps, with Ngati Maru, with whom Ngati Paoa share close relations.[4] Waikato–Tainui claims to the Manukau and lower Waikato have, on the other hand, been recognised as largely undisputed, although it is also recognised that this occupation was shared by related Kawerau, Waiohau, and Ngati Whatua tribes. The Ngapuhi invasion into Tainui lands has been regarded by the Waitangi Tribunal as a 'temporary abberation in tribal affairs'. The only long-term effect of this was the closer union of the Manukau tribes.[5] Furthermore, the Waikato (Tainui) tribes are said to have amalgamated with the inhabitants west and south of Manukau, giving rise to Ngatiteata, Ngatitamaoho, and Ngatipou, who were dominant in the Franklin area by 1840. Roughly speaking, Ngatiteata were situated in the Waiuku area, Ngatitamaoho in the Patumahoe–Drury area, and both tribes had pa sites on the Waiuku Peninsula. Ngatipa occupied the south bank of the Waikato River (and claimed land at the northern side), while Ngati Pou were living at Tuakau, Pokeo, and Maketu. Ngati Paoa were over on the Thames Coast and had little contact with other tribes in the Franklin area.[6] It appears also that by 1840 Ngati Whatua and Kawerau had more or less divided interests in the land around the Manukau Heads, Waitakere, and Muriwai among themselves.[7]

Te Uriohau are claimed to have occupied lands north of a line between the Kaipara Heads and Te Arai Point on the east coast, while Ngati Rongo were said in 1897 to live south of that boundary, having 'inherited' the land from Waiohua by conquest.[8] The Kaipara itself was considered the domain of Ngati Whatua 'proper', while Te Roroa occupied the area between Kaihu and Waimamaku.[9] Of the Whangarei region, it has been noted that by 1840 this area was occupied by closely related sections of Te Parawhau tribe.[10] (Ngai Tahuhu, closely related to Te Parawhau, are claimed to have occupied the upper Wairoa and Mangakahia Val-

2. Waitangi Tribunal, *The Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed, Wellington, Government Printing Office, 1989, p 3
3. I H Kawharu, *Orakei: A Ngati Whatua Community*, Wellington, New Zealand Council for Education Research,1975, p 5
4. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed, Wellington, Government Printing Office, 1989, p 8
5. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed, Wellington, Department of Justice: Waitangi Tribunal, 1989, p 11
6. N Morris, *Early Days in Franklin*, Auckland, Franklin City Council and Pukekohe, Tuakau, and Waiuku Borough Councils, 1965, pp 18–19
7. S P Smith, *The Peopling of the North: Notes on the Ancient Maori History of the Northern Peninsula and Sketches of the History of Ngati-Whatua Tribe of the Kaipara, New Zealand*, New Plymouth, Polynesian Society, 1897, pp 76–77
8. Ibid, p 63
9. S P Smith, *Maori Wars of the Nineteenth Century*, Wellington, Whitcombe and Tombs, 1910, p 478

leys.[11]) Te Tao (Ngati Whatua hapu) have also been identified around the Whangarei Heads, while Ngati Wai worked land to the east of Waiotira Creek in the Waikeikei area, somewhat 'sandwiched' between Ngati Whatua to the south and Uriohau on the Tangiteroria and Titoki side.[12]

The pattern of land alienation in the Auckland district differs from that in most other districts. In other areas, the major losses of Maori land occurred at particular periods in the nineteenth and early twentieth centuries, as the colonial frontier swept over the tribes of the region. For South Island tribes, the land went in early Crown purchases, for Taranaki and Waikato it went through confiscation in the 1860s, while for the central North Island it went in purchases around the turn of the century. For the Auckland district, however, the pattern of alienation was more persistent over the whole period from the 1840s to the 1930s. Almost all the main instruments used by the Crown to allow for the extinguishment of Maori title were used in the Auckland district. Land was alienated early, through old land claims and Crown purchases and the temporary waiver of pre-emption in the mid-1840s. A relatively small proportion of the total area was confiscated during the wars of the 1860s. When the Native Land Court was introduced in 1862, and then as a more invigorated instrument of alienating Maori land in 1865, roughly half the total area was still in Maori ownership, however unevenly this ownership was spread over the whole district. The court allowed for private purchasing until the 1890s. The Crown too was in the market place, purchasing a substantial proportion of an ever-reducing estate, particularly in the 1870s and 1890s. The processes of alienation continued inexorably, even after the turn of the century, despite considerable concerns about the region's ability to sustain its high Maori population.

1.4 Principal Modes of Land Alienation

1.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

In 1840, the European population of the country was settled largely in the north, with the largest settlements around the harbours of the Bay of Islands, the Hokianga, and Mangonui. Small European towns were already evident, trading with Maori and servicing the varied needs of passing shipping. Missionaries too had established model communities attempting to combine instruction in Christianity with the arts of European agriculture and industry. These 'old settlers' claimed rights to lands from Maori tribes and had them joined with those of speculators who flocked across the Tasman in the months before the Treaty of Waitangi was signed, hoping to achieve a significant profit once New Zealand became a Crown colony.

10. N Preece Pickmere, *Whangarei: The Founding Years, 1820–1880*, Whangarei, N Pickmere, 1986, pp 17–18
11. Smith, *Peopling*, p 36
12. J T Stephen, *Early Northland Waikiekie Pioneers, 1860–1900, and Their Descendants*, Whangarei, Small Cords Press, 1989, p 16

These claims to land were heard by a series of commissions, which attempted to determine whether land had been sold, the extent of the land sold, as well as which land should be claimed by the Crown as free of aboriginal title and which should be granted to European claimants. The issues surrounding these commissions are more fully discussed in volume ii, chapter 2. Many of the claims were not pursued because they were frivolous or unlikely to succeed, particularly those of the fleeting speculators. In the north, however, owing to the higher percentage of European residents, more claims were heard and grants subsequently awarded, than elsewhere. Because of the way the land was treated by the prevailing European interpretations of aboriginal title, the land involved can be divided into four categories: land reverting to or retained in Maori ownership; land where it was determined that aboriginal title had been extinguished, grants made to European claimants supposedly within the territory where Maori rights no longer existed; and a residual area of land not granted to European claimants and not returned to Maori that the Crown retained as 'surplus land'.

Although the land alienated from Maori ownership was supposedly alienated by agreements entered into prior to 14 January 1840, the actual blocks and their total area were not usually determined on the ground until Francis Dillon Bell's Land Claims Commission (1856–63). It was only at this time that proper surveys were required and that the Crown was able to enforce its claims. So convoluted and drawn out was the process of initial application, hearings by the court, Crown grants, recalled grants, new investigations, quieting titles, survey, rehearing, and reissuing of Crown grants, that the final determination of title was often only an approximation of the original agreement. None the less it was, in most cases, Bell's decisions that were enforced by the Crown.

Reworking Bell's decisions from the original files, Dr Barry Rigby with other Tribunal researchers have been able more accurately to estimate the extent of Maori land alienation through this process, particularly in some important sub-regions within the Auckland district.

In total in the Auckland district, the Crown granted 255,433 acres in pre-Treaty transactions and acquired 133,372 acres of surplus land in the process, from a total area claimed of 1,509,348 acres.[13] The figures are still subject to error because some of the surplus land was also included in later Crown purchases, other pieces reverted to Maori ownership, and the total area claimed was always an estimate. Nevertheless, the Auckland district accounts for 82 percent of the total area granted to private individuals and 95 percent of the area of surplus land acquired by the Crown.[14]

The effect of this varied across the district. Almost half the claims (45 percent) came from the Bay of Islands, a further one-fifth (18 percent) coming from the Hokianga. Ten percent were from Auckland, including islands in the Gulf, while

13. R Daamen, P Hamer, and B Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1996, p 218. This figure has been adjusted to allow for a clerical error in the original database, which gave the area granted as 363,584.
14. Ibid, p 220

the number of claims from Kaipara, Muriwhenua, Whangaroa, and Whangarei ranged from around 5 to 7 percent of the total.[15] The areas lost in different parts of the district also differed significantly. Case studies undertaken as part of the project show that 11 percent of the land at Muriwhenua and 25 percent of the land in the Bay of Islands were included, but only 5 percent of the land in Kaipara passed out of Maori ownership in this manner.[16] In South Auckland, the Crown granted 10,786 acres to old land claimants and acquired 23,963 acres of surplus land in the process.[17] It should be noted, however, that the huge Fairburn purchase south of Tamaki, dating from 1836, is essentially an old land claim, yielding the Crown a surplus of some 70,000 acres. It is not usually counted in the old land claims statistics because in the 1850s the Crown made payments to Maori protesters on the land to extinguish their claims, although both the purchase deed and the Land Claims Commission proposed that one-third of the block be returned to named Maori tribes.

The following table shows a sample of some of the larger old land claims in the district. Missionaries such as Henry Williams, William Fairburn, and James Kemp were prominent private purchasers of land, and the Church Missionary Society and other missions also purchased land separately for their missionary activities.

1.4.2 Pre-1865 Crown purchases

Between 1840 and 1865, the Crown purchased land under pre-emption, with the exception of a brief period during FitzRoy's governorship when pre-emption was waived. The Crown negotiated directly with rangatira for the purchase of specific blocks. Payments to other tribal groups with rights in these blocks were often negotiated subsequently. The intention was to purchase land at minimum cost, on the assumption that Maori would benefit substantially from the rising values of their land as European settlement increased.

While the 3000-acre Waitemata purchase in October 1840 allowed for the development of the newly chosen capital, and netted a significant profit for the Crown, comparatively small amounts of land were purchased in the 1840s. A dire shortage of capital and war in the north made further acquisitions difficult. Less than 10 percent of the land purchased by the Crown between 1840 and 1865 was acquired in the 1840s.[18] While there were some abortive attempts to purchase land in Muriwhenua, the vast majority of the land acquired in the 1840s was around the growing town of Auckland. The Mahurangi purchase, which included land from Devonport to Leigh, took over a decade to complete as the interests of different tribes were extinguished piecemeal. In the meantime, Maori land was being pro-

15. Appendix to B Rigby, M Russell, and D Moore, 'Old Land Claims', Waitangi Tribunal Rangahaua Whanui Series unpublished draft
16. Daamen et al, p 215
17. P Husbands and K Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, no 9, pp 9–10
18. The figure from Dr Rigby's Crown purchases database is 105,509 acres, or 6 percent of the total. However, a higher percentage of deeds in this area were vague about their actual dimensions.

gressively acquired south of Auckland to the Bombay Hills and around the Manukau and Waitemata Harbours.

In the early 1850s, the emphasis on clearing title around Auckland continued, with substantial purchases in South Auckland. There were further acquisitions from islands in the Hauraki Gulf and purchase of blocks of increasing size in Waiuku and north to Mahurangi and Whangarei. The amount of land involved increased fourfold. In the last decade of the Crown pre-emption era and with most of the land around Auckland already available for settlement, Crown purchases officers spread themselves around the district more generally. There were substantial sales in Muriwhenua, including the largest block to be acquired in one purchase, the 86,885-acre Muriwhenua block in 1858. The Bay of Islands, Kaipara, and Whangarei regions also saw significant areas of land sold to the Crown. Between 60 and 70 percent of the total 1,643,243 acres was purchased during this decade, including almost all the land north of the Mahurangi purchase.

The Crown purchased an estimated 53 percent of the land in Kaipara, about 20 percent in the Bay of Islands and 36 percent in Muriwhenua. In Muriwhenua, the Crown purchased approximately 215,187 acres for £8097, while in South Auckland, the Crown purchased 416,386 acres for £16,051.[19]

Locality	Number	Acres	Percentage
Muriwhenua	24	215,187	13
Whangaroa	2	25,800	2
Hokianga	5	14,584	1
Bay of Islands	26	70,597	4
Whangarei	49	266,527	16
Kaipara	39	372,103	23
Mahurangi–Kumeu	22	188,195	11
Waitemata–Auckland	36	28,299	2
South Auckland	73	416,386	25
Hauraki Gulf	7	45,556	3
		Σ 1,643,234	Σ 100

Crown purchases, 1840–65. Source: Daamen et al, pp 153, 219.

Between the Bombay Hills in the south and Whangarei in the north, Maori had very little land left on the east coast or in the Hauraki Gulf in 1865. Only around the Kaipara Harbour were there significant blocks of Maori land. North of Whangarei, very substantial proportions of the land in Muriwhenua and around the Bay of Islands were in Crown hands, but all the rest of the west coast and most of the land

19. Daamen et al, p 219

Claim no	Claimant(s)	Locality	Originally claimed	Surveyed	Grant(s)	Scrip	Surplus
23–24	Busby	Whangarei	40,000	12,000	12,000		1010
36	Abercrombie, Nagle, and Webster	Great Barrier Island	20,000	56,387	30,732		15,382
590	W Fairburn	Auckland	40,000	8,055	8054		21,500
603–606	J King	Bay of Islands	5150	21,226	12,480		8757
802–808	Shepherd	Whangaroa, Upokorau, and Bay of Islands	8860	18,920	9,685		8098
175	Elmsley, Walton, and Walton	Kaipara	6000	44,171	11,708		5825
875–877	Southee (Maxwell)	Kaitaia	10,000	13,800	5,310	3200	8174
1324	Busby and Leivington	Ngungururu		2544	292	14,200	1220
521–526	H Williams	Bay of Islands	11,000	9226	9203		3042
9	Wright and Graham	Kaipara	40,000	11,800	6744		5345
594–598	J Kemp	Waimate, Kerikeri, and Bay of Islands	5276	7207	6967		4000
633–634	G Clarke	Waimate	5500	10,383	7994		2426
114–115	Clendon	Okiato–Waikare	300	10,000	10,000		320
704–705	S H Ford	Mangonui–Kaitaia	8000	8280	2627	1725	5653

809	J Orsmond	Waimate	3000	11,741	5014		4926
517–519	White and Russell	Hokianga	10,720	3871	1280	6259	2372
889–893	Partridge	Mangonui	8000	184	184	2310	7252
328–329	J Mathews	Kaitaia	2200	10,451	4197		5229
14–22	Busby	Bay of Islands	9545	10,315	3264		4800
734–736	CMS Families	Kerikeri–Waimate	3600	6780	5395		1412
899–905	J Hamlin	Manukau, Otahuhu	3350	5,803	5213		587
453	H Taylor and Sparke (Campbell)	Weiti	20,000	5569	5569		
626–628	T Forsaith	Kaipara	3078	1752	1074	3390	678
160	Davis	Kaitaia	1000	4880	466		4414
1047	G Mair	Whangarei		4800	910		3890
773	de Sentes (R Davis)	Bay of Islands	3000		4,308		362
161	Davis	Waimate	15	4613	4251		362
599–602	J Kemp	Whangaroa	4000	4464	2736	68	1742
549–550	W Baker	Whangaroa	10,015	4178	1289		2889
106–107	Clayton	Auckland	1300			4000	

Old land claims: Auckland district

in the Hokianga (excluding old land claims) was retained in Maori ownership. With the 'surplus' land from the old land claims also being determined in this period, the late 1850s and early 1860s were the period of greatest land loss for the district overall.

1.4.3 Pre-emption waiver purchases

In the north Auckland area, under the pre-emption waivers introduced by Governor FitzRoy in 1844 to 1846, around 250 parcels of land changed hands, ranging from a few perches to a few thousand acres. For a further discussion of these purchases, see volume ii, chapter 4. In South Auckland, the Crown apparently granted 2140 acres to pre-emption waiver claimants (probably acquiring 5000 acres of surplus land in the process). In total, for the Auckland district, the Crown granted 28,381 acres in pre-emption waiver grants while acquiring 31,468 acres of surplus land. All such grants were made in the Auckland district, where 97 percent of the surplus land also lay.

1.4.4 Confiscations

In early 1865, the Crown proclaimed 135,907 acres in South Auckland under the New Zealand Settlements Act 1863 (although there is some uncertainty of the actual extent of the lands confiscated because the acreage of some blocks was not documented and some lands were later returned). The confiscated land, which covered east Wairoa (estimated at 50,000 acres), west Pukekohe (1133 acres), Mangere, Pukaki, Ihumatao, and Kerikeri (2730 acres), also included the reserves from previous Crown purchases in the Waiuku North and Waiuku South blocks. Land was also forcibly taken by the Crown at Patumahoe (702 acres), Pokeno (19,000 acres), Pukekohe (5381 acres), Tuakau (10,887 acres), and Tuimata (640 acres). The Crown reserved about 4 percent of the total area for Maori from earlier Crown purchases, but it then confiscated a further 7000 acres, leaving less than 3 percent as Maori land.[20] An estimated 100,000 acres were confiscated from Maori overall within the district.

1.4.5 Purchases under the Native Lands Act (Crown and private)

(1) *1865–85*

The momentum of land alienation established in the late 1850s continued into the period of the Native Land Court. Pre-emption was waived and the court was able to convert land from customary title to a transferable Maori freehold title. The Native Lands Act 1865 was introduced to break down a growing resistance to land sales by allowing Maori to trade their land individually, free from the constraints of a collective title, and negating any veto on sale that could be applied by non-sellers.

20. Husbands and Riddell, pp 41–47

In the Auckland district, however, there is little evidence that there was open or effective resistance to land purchases, even during the wars themselves. Almost as much land was purchased in the district between 1860 and 1865 as between 1855 and 1860.

Because of this lack of resistance to sale and continued Maori 'loyalty' to the Crown, the Native Land Court was very quickly established in the district and its impact was dramatic. Of a sample of 477 blocks awarded title in the Auckland province between 1865 and 1869, two-thirds were in the Auckland district. In the rest of the province, much of the land awarded through the court was in very large blocks, averaging 3102 acres. In the Auckland district, the average block size was 1104 acres.[21] Sixty percent of the number of blocks was retained in Maori ownership, but almost half the area (149,766 acres) had been alienated by 1869. While this figure does not account for all the land alienated in this period, it would suggest that the rate of Maori land loss established prior to the establishment of the court declined considerably in the late 1860s to a good deal less than half what it had been in the previous five years.

Between 1865 and 1885, around 1,576,450 acres were granted in titles issued by the Native Land Court in 1136 blocks. Almost three-quarters of this land came from the Hokianga, Kaipara, and Whangarei regions, with the remaining 27 percent coming from the Auckland, Mahurangi, Bay of Islands, and Mangonui regions. The Auckland numbers in particular were small, since that land had already been largely acquired by 1865.[22]

The introduction of private purchasers allowed some very substantial blocks to pass directly from Maori to European hands. Often the Maori ownership had been reduced by the Native Land Court to a very small number of owners. The Nukutawhiti block of 12,768 acres was bought from four owners for £600, soon after its grant in 1867. The Muriwhenua block of 56,678 acres was bought from seven owners in 1873, six months after title was awarded. In 1878, the year after title was awarded, the Aoroa block, of 13,839 acres, was purchased for £3000.[23] Even when ownership was shared more generally, blocks were not protected from sale. The Kaihu block of 43,700 acres had title awarded in 1871 to 10 owners, with an additional list of 66 owners.[24] The whole block was sold in 1880 for £3865. The table below gives the total amount of land privately acquired through the court between 1865 and 1908 at 9 percent. The actual figure must be seen as slightly higher than this, since this is the most difficult figure to estimate and is the area left when all other forms of alienation, and remaining Maori land at 1908, are subtracted from the total area of the block. There is good reason to believe that there is some duplication in areas included for other instruments of alienation, inflating their totals slightly.

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21. See M Belgrave and R Nightingale, 'Counting the Hectares: Quantifying Maori Land Loss in the Auckland Rangahaua Whanui District, 1865–1908', Waitangi Tribunal Rangahaua Whanui Series unpublished draft, 1996, fig 3.6
22. Ibid, table 3.1
23. Ibid, Maori land database for the Auckland district
24. Waitangi Tribunal, *The Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 44

Private sales of land that had passed through the Native Land Court from 1865 to 1873 in the Kaipara district included the following: Makiri (515 acres) around 1865; Oahau (113 acres) in 1866; Unuwhao (2800 acres) in 1868; Paraheke (1633 acres) in 1869; Tunatahi (167 acres) in 1872; Mateanui (80 acres) in 1871 for £144; Huarau (100 acres) in 1871 for £50; Ahikiwi (1000 acres) in 1872 for £2000; Te Opu (795 acres) in 1877 for £590; Waikino 1 (90 acres) in 1879; and Te Wairau (just over five acres) in 1881.[25]

The Native Lands Act 1865 was designed to allow the direct private purchase of land and to limit the necessity for direct purchase by the Crown. Despite this, and despite the absence of any special reapplication of pre-emption in this region, the pace and extent of alienation in this period was still being set by direct Crown purchases. Direct Crown purchasing between 1865 and 1908 totalled at least 843,818 acres, which could be as much as two-thirds of all the land alienated from Maori ownership in this period. When the whole period from 1840 to 1908 is included, the old land claims accounted for almost as much land as private sales through the land court.

Pre–1865	Acres	Percentage
Old land claims	382,627	9
Pre-emption waivers	59,849	1
Crown purchases	1,623,937	39
Confiscation	120,000	3
1865 to 1908		
Crown purchases	843,818	20
Private Purchases	383,248	9
Remaining Maori Land	787,305	19
	Σ 4,200,784	Σ 100

Land loss, 1840–1908

Crown purchasing was far from uniform throughout the period, however, with the major thrust of purchasing being in the late 1870s and in the 1890s. Crown purchases associated with the Vogel development era made up more than two-thirds of the total acquired by the Crown, and all of this was acquired in the short period between 1875 and 1879. The process of Crown purchases at this time has been extensively discussed in the Tribunal's *Te Roroa Report 1992*.[26] In the 1890s, it was the Crown determination to provide land for settlers that led to a new and wide-spread programme of land acquisition, supported by the reintroduction of partial pre-emption in 1894. While sales in the late 1870s yielded a lot more than the

25. Daamen et al, p 266
26. *The Te Roroa Report 1992*, ch 2

107,000 acres acquired by the Crown after 1894, they were from a much larger total estate. The techniques used by the Crown also changed. In the 1870s, the Crown negotiated to purchase whole blocks, using the carrot of pre-payment. In the 1890s, the Crown purchased individual shares over a number of years and then applied to the court to have the Crown interest partitioned out. Almost another 90,000 acres were identified for purchase but were not acquired because of resistance by individual Maori to sell their shares.

Years	Acres	Percentage
1865–69*	12,868	2
1870–74	52,020	6
1875–79	568,981	67
1880–85	68,587	8
1885–89	18,979	2
1890–94	15,279	2
1895–99	99,341	12
1900–08	7,764	1
	Σ 843,819	Σ 100

* The 68,000-acre Waiuku purchase, although concluded in 1867, has been included as a pre-1865 purchase.

Crown purchases

The following list of Crown purchases of blocks over 10,000 acres shows how heavily concentrated these acquisitions were in the late 1870s, as land purchase officers used loan money raised on the London market to open lands for settlement.

In addition to sales, from the 1870s to the 1890s, leasing played a significant part in the alienation of land, with over one-third of the area under some kind of formal lease in 1891, including 59 percent of Auckland and Whangarei, 55 percent of Kaipara, and 50 percent of the land at Hokianga. Only 2 percent of land at Muriwhenua was leased. Dr Belgrave notes, however, that formal leasing does not appear to have provided a useful source of income for Maori at any time and by 1891 was on the decline. The majority of long-term formal leases were entered into in the 1870s, at the same time that very large areas of land were being alienated to the Crown. Few additional areas of land were leased in the 1880s, however, and it would seem that most of these long-term leases were allowed to lapse in the 1890s, often as the blocks were partitioned and sold. The Maori preference for leasing rather than selling land did not, therefore, become a practical option.

The Belgrave study shows that by 1908 only 13 percent of the area granted by the court prior to 1890 remained in Maori ownership. For blocks where title was

Block Name	Acres	Pounds	Locality	Date
Taupaki	12,868	59	Riverhead	18 September 1867
Kaitaia	11,026	124	Kaitaia River, Bay of Islands	5 September 1872
Kaitaia	11,026	726	Kaitaia Hokianga	31 July 1872
Hukerenui	12,500	1513	KawaKawa, Bay of Islands	5 November 1873
Wairua	27,800	2402	Kawakawa	2 June 1875
Waoku 1	17,650	1250	Bay of Islands Hokianga	28 April 1875
Takahue 1	24,122	2814	Bay of Islands Mangonui	4 May 1875
Purua	15,410	1861	Whangarei	23 June 1875
Tangihua	15,600		Whangarei	23 June 1875
Opouteke	42,000		Kaipara	18 September 1876
Waimamaku	27,200	1203	Waimamaku River Hokianga	10 January 1876
Waipoua	35,300	2200	Hokianga	8 February 1876
Maunganui	27,591	2300	Waipoua	8 February 1876
Kairara	25,700	2079	Kaipara	1 February 1876
Tauroa	10,510	175	Northern	8 March 1877
Opuawhanga 4	15,157	826	Whangarei	5 November 1878
Otonga 1	26,810		Whangarei	5 November 1878
Tikinui	10,702	1605	Kaipara	4 October 1882
Puhipuhi 1	14,490	8574	Whangarei	5 September 1883
Hukatere	10,410	1248	Kaipara	26 June 1885
Mangakahia 1, 2a	12,515	1685	Whangarei	8 October 1896
Pouto b, 2d	15,835	118	Kaipara	10 October 1898

Crown purchases of blocks over 10,000

awarded between 1865 and 1869, the retention rate was as low as 10 percent. While almost a quarter of the land awarded title after 1885 was still in Maori ownership in 1908, this made up only a small part of the total area.

Blocks awarded	Acres	Remaining at 1908	Percentage at 1908
1865–69	395,908	41,501	10
1870–74	258,461	33,085	13

Land retention at 1908. Source: Belgrave and Nightingale, table 9.3.

1875–79	778,780	94,646	12
1880–84	122,391	29,299	24
1885+	20,908	9,973	48
	Σ 1,576,450	Σ 208,504	Σ 13

Land retention at 1908. Source: Belgrave and Nightingale, table 9.3.

The alienation of Maori land was significantly more dramatic for larger blocks than for smaller blocks. Of the 25 blocks larger than 12,355 acres (5000 ha), only three had any land at all left in 1908. The Pouto block of 50,647 acres, granted in 1878, was still 65 percent in Maori ownership. Of the other 24 blocks comprising 522,055 acres, only 6322 acres, or 1.2 percent, remained in Maori ownership in 1908.

(2) *Post-1910*

With respect to post-1910 purchases, the Auckland research district fell largely within the Tai Tokerau Maori Land Board district, as well as the very northern portion of the Waikato–Maniapoto Land Board's district. While the Tai Tokerau Maori Land Board alienated 376,911 acres of land in the Auckland district between 1910 and 1930, it is difficult to calculate the amount of land alienated by the other land board without an exhaustive search of the files. The amount of land involved would, however, be limited. The table of alienations for the boards as a whole is set out at the end of this volume. More than half the land that remained in Maori ownership in 1910 had been sold by 1930.

1.5 Outcomes for Main Tribes in the Area

By 1865, Maori in the Bay of Islands were left with 54 percent of their lands, which was of marginal quality, relatively rugged, and remote from the main commercial and transport centres. Maori in Kaipara were left with approximately 43 percent of their lands with reasonable water access, although the value of the land would depend largely on the use of the forest resources.[27] Overall, around half the land in the district had been alienated by 1865. While for some tribes this meant comparative landlessness, for others most, and in some cases all, of the tribal estate was still in Maori ownership.

By 1908, all but 18 percent of the land in the Muriwhenua area (or around 53.4 acres per capita) was owned by non-Maori, and Maori controlled about 9 percent of the entire area (the other 9 percent was usually leased through the Tokerau Maori Trust Board without the owners' consent).[28] By about the same time, Maori in the

27. Daamen et al, p 213
28. W H Oliver, 'The Crown and Muriwhenua Lands', report commissioned by the Waitangi Tribunal (Wai 45 rod, doc l7), pp 2–3

Bay of Islands retained about 89 acres per capita, while around the Kaipara Harbour, Maori retained 83.3 acres per capita.[29] Over the whole area, Maori land ownership had been reduced to less than 20 percent of the total area. For those tribes who had lost much of their land prior to 1865, continued alienation through Crown purchases and the court reduced levels of ownership to below 5 percent. This was particularly true in areas where economic development had been most intensive. By 1930, the overall amount of land remaining in Maori ownership had fallen to less than 9 percent of the total area, the vast majority of this being in isolated, under-developed, and economically marginal areas in the north.

1.6 Examples of Treaty Issues Arising

With its high Maori population and its long contact with the Crown, the Auckland district is not dominated by a single Treaty issue, in the way that war and confiscation overshadow the history of Waikato and Taranaki or early Crown purchases dominated the relationship between the Crown and iwi in the South Island. The broad and persistent relationship between the Crown and the tribes of the Auckland district means that most of the major Treaty issues involved are covered in the national theme discussions. For FitzRoy's pre-emptive waivers, the national theme is almost completely contained within the Auckland area. The vast majority of land alienated through the old land claims process was within this district, if the company purchases are excluded.

The significant impact of many national themes on Auckland should be considered. The combined effect of old land claims, pre-emption waivers, confiscation, Crown purchases throughout the period, and private purchases from 1865 was particularly significant on a district with a very high Maori population. It was also a district where 'loyalty' to the Crown was maintained throughout the entire period of extensive Crown purchasing. The very persistence of Crown purchasing, especially after 1891, when there was ample evidence that many Maori were being made landless, needs particular attention. Equally important in assessing the Treaty implications of the alienation of Maori land since 1840s was the stripping of land from Maori ownership in the most economically developed areas of the district. Almost no land within the Auckland metropolitan area remained in Maori ownership after 1939. Although good agricultural land was retained in Maori ownership in southern Taranaki despite being under perpetually renewable leases to Europeans, no such bank of quality agricultural land remained in the Auckland district. Isolation and under-development remained almost the only criteria for retention of Maori interests. When after the 1920s Maori development schemes began to attempt to ensure Maori participation in mainstream agriculture, it was often on poor land, unsuitable for intensive farming.

29. Stout–Ngata commission report, AJHR, 1908, g-1j, p 1

At no time prior to 1930 was there a determined attempt to enforce restrictions on the alienation of Maori land in the light of Maori needs. When officials warned that further land alienation could only be detrimental to Maori, the warnings went almost universally unheeded. That half of the land remaining in 1910 was no longer in Maori ownership in 1930, when the Stout–Ngata commission had carefully detailed both Maori views on sale and the limited amount of land remaining to them, is a major issue. So is the way that individual shares were acquired until blocks could be cut off by the court.

The enthusiasm of the Crown for acquiring very large blocks of land with little or no reserves also needs to be carefully examined, particularly given the comparatively large number of Maori that had to be supported on what remained. Maori willingness to engage with the European economy and continued loyalty to the Crown was exploited through policies that divided people into sellers and non-sellers and sacrificed the long-term needs of Maori in the interest of European settlement.

The use of case studies has highlighted a series of anomalies in the process of alienation as applied to relatively small areas within the whole district. These anomalies must be regarded as only a small example of similar, as yet unidentified, issues elsewhere in the district. Concerns about individual blocks abound at a local level. These concerns included the failure adequately to determine boundaries (particularly those of reserves), the often contradictory and ever-changing regime for private purchasing, and issues of consent and adequacy of payment. Some of these issues have become evident in the case studies, but these cannot be regarded as comprehensive or even representative of Maori complaint. Dr Rigby, too, has proposed a series of standards for evaluating Crown responsibilities to Maori in the old land claims process and some of the following flows from his discussion.

1.6.1 Old land claims in the Bay of Islands: representation of Maori interests

In 1834, James Busby began a series of private transactions at Waitangi. It is uncertain whether he was dealing with all the people with legitimate interests in the land because no recorded evidence has survived. Busby eventually acquired the entire area along the northern side of the Waitangi River from the Treaty House to a point several miles west of and including Puketona Pa.[30] The Crown also granted Busby 9374 acres without implementing reserve provisions.

At Orongo (Pomare Bay), Maori rights remain unclear. While Ngati Manu were involved in negotiations, other Maori appeared to have claimed rights, although Kemp's report failed to identify who held these rights or how they were extinguished.[31] Also, in one case at least, although Maori had not extinguished their rights, the Crown acquired scrip land (that is land vacated by settlers when an equivalent in land or cash was offered by the Crown). For example, in the Parahau–Tuainui claim near Mongonui Te Tii, Commissioner Fitzgerald reported that there

30. Daamen et al, p 75
31. Ibid, p 83

was no proof that the land was purchased from the natives.[32] Despite this, the area was surveyed and the claimant received scrip for the land.

1.6.2 Pre-1865 Crown purchases in the Kaipara region

Further discussion of pre-1865 Crown purchases is available in volume ii, chapter 5. The following discussion is limited to questionable acts particular to the Kaipara region only, as discussed in the Auckland report.

(1) *Representation of Maori interests*

Despite the creation of district runanga empowered to decide Maori land disputes, the Crown failed to establish a native district at Kaipara until February 1864 (although Kaipara Maori had pledged common loyalty to the Crown and defended their respective tribal interests during the Kohimarama conference in 1860). By the time the district was established, Maori had taken matters into their own hands with the dispute at Mangakahia in 1862 and 1863, which began as a conflict between Maori (Te Uri o Hau and Ngapuhi) over land at Mangakahia and broadened into a dispute over land and authority in the larger Te Wairoa area. It has been argued that, in order to solve the dispute, the Crown would have had to ascertain the political authority and define the proprietary rights of Maori. Furthermore, in order to avoid such disputes recurring in the future, the Crown needed to devise an equitable way of determining Maori representation in the structures of government. The extent to which the Crown provided active protection of Maori interests is thus questionable.

(2) *The adequacy of the equivalent*

Rogan's correspondence with McLean reveals that the Crown took full advantage of its superior bargaining position on some occasions in its dealings with Maori, such as in the statement that: 'you got that Pakiri block [south of the river] at a ridiculously low price the Kauri alone is worth twenty times the sum paid by the Govt.'[33] This arguably constitutes a breach of active protection of Maori interests on the part of the Crown, especially in light of the lack of reserves allocated to Maori for their future needs.

(3) *Sufficient endowments?*

The Crown's main attempt prior to 1865 to fulfil its obligations to protect Maori interests was in the form of reserves allocations. McLean instructed Rogan to take care that ample and eligible reserves were made for the use of the natives, the selection, number and extent of which must to determined by the wishes of the vendors themselves, and his own discretion.[34]

In accordance with his instructions, Rogan presided over the creation of 15 Kaipara native reserves.[35] However, between January 1860 and November 1862

32. Robert A Fitzgerald report, 15 October 1844, olc 1/380
33. Rogan to McLean, 12 January 1858, McLean papers, fol 541
34. McLean to Rogan, 31 January 1857, Turton, *Epitome*, c101

(that is to say, within 18 months of being originally created), the Crown purchased nine of these reserves from Maori. No records survive to explain why the Crown acted in this manner, although it has been suggested that inaccurate information received by the Crown concerning the population of Kaipara Maori may have convinced Crown officials that reserves could be extensively purchased without depriving Kaipara Maori of necessary resources.[36]

1.6.3 Crown purchases, 1866–73

Despite the fact that the Crown was required under the Native Land Act 1865 only to purchase land for which Maori title had been determined by the Native Land Court, in the case of the 1872 Kaitaia North and the 1873 Pakiri North purchases, the Native Land Court appears to have legalised purchase arrangements prior to the determination of title by means of cooperation between the Native Land Court and Crown purchase agents. In the case of the 1873 Pakiri purchase (as the last coastal outlet for Maori along the east coast from Auckland to Whangarei), title to the land had been awarded by the court to a woman and two minors in 1870. A dramatic series of events resulted in an agreement which required simultaneous Native Land Court and parliamentary action to allow the completion of the purchase (which had begun in 1872). When it became evident to the Crown that the original purchase may not have been valid, it nevertheless allowed it to proceed. This resulted in a deed that purported to transfer title to the 31,000-acre block, despite the fact that one of the three owners opposed the sale. Of the £700 transferred in payment, only £300 was banked in the name of the trustees, while the rest went on expenses. Notwithstanding the fact that it later withdrew from further negotiations for the land, the Crown had allowed public funds to be drawn on the understanding that the purchase would be legalised after the fact by means of simultaneous action by the Native Land Court and Parliament. Furthermore, the fact that the purchase had been disallowed was not made public, and in 1876 efforts were still being made to legalise the purchase. The Crown succeeded in completing the purchase of two-thirds of Pakiri North in 1881.

The lack of satisfactory documentation in respect of the Pakiri North purchase is typical of the 13 provincial purchases for which the general government did not register a deed of conveyance in its own files. The issue is whether the Crown fulfilled its Treaty obligations to Maori in failing to preserve a satisfactory record of its purchases.[37] Purchases for which documentation does exist also raise serious questions. Retrospective action in transactions such as the Pariki purchase may have been legal, but it is questionable whether it was consistent with the Crown's Treaty obligation to act in the utmost good faith with Maori.

35. Listed in Daamen et al, p 203
36. Ibid, pp 205–207
37. Daamen et al, p 236

1.7 Additional Reading

The following are recommended for additional reading:

Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Michael Belgrave and Richard Nightingale, 'Counting the Hectares: Quantifying Maori Land Loss in the Auckland Rangahaua Whanui District, 1865–1908', Waitangi Tribunal Rangahaua Whanui Series unpublished draft;

Paul Husbands and Kate Riddell, *The Alienation of South Auckland Lands*, Waitangi Tribunal Research Series, 1993, number 9; and

Barry Rigby, Matthew Russell, and Duncan Moore, 'Old Land Claims', Waitangi Tribunal Rangahaua Whanui Series unpublished draft.

CHAPTER 2

HAURAKI

2.1 Principal Data

2.1.1 Estimated total land area for the district

The estimated total land area for district 2 (Hauraki) is 818,659 acres.

2.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 2 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 90 percent in 1860, 37 percent in 1890, 12 percent in 1910, and one percent in 1939 (or 3.5 acres per head according to the 1936 population figures provided below).

2.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- purchases under the Native Land Acts; and
- some public works takings and old land claims.

2.1.4 Population

The population of district 2 was approximately 2000 to 3000 in 1840 (estimated figure), 1971 in 1891 (estimated from census data), and 2056 in 1936 (also estimated from census data).

2.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district encompass the entire Coromandel Peninsula, together with the Hauraki Plains southward to the Piako Swamp and bordered to the west by a line running south from Miranda and then eastwards to Waihi.

The Coromandel Peninsula is largely mountainous in nature and covered in rugged bush. Rights to mill kauri on Maori land had been arranged by lease prior to 1865.[1] Numerous harbours and bays dot the peninsula: Manaia, Te Kouma, and Coromandel Harbours and Colville Bay on the west coast; Waikawau and Kennedy Bays and Whangapoua, Whitianga, Tairua, Wharekawa, and Whangamata Har-

bours on the east coast. At the base of the Firth of Thames, the Hauraki Plains, where dairy farming predominates, stretch southward into the Piako Swamp. The Piako and Waihou Rivers drain from the swamp across the plains and into the Firth. As well as milling, both goldmining (which began in the early 1850s) and coalmining took place in this district.

2.3 Main Tribal Groupings

The following summary is drawn from a report prepared for the Crown Forestry Rental Trust, which provides a more detailed discussion of the Hauraki rohe and iwi.[2]

A mixed group of iwi occupied the Hauraki region prior to the seventeenth century: the Marutuahu confederacy, comprising Ngati Maru, Ngati Paoa, Ngati Tamatera, and Ngati Whanaunga; the 'original' peoples, such as Patukirikiri, Ngati Hei, Ngati Hako, Ngati Tara, and Ngati Koi; and incoming groups such as Ngati Pukenga, Ngati Porou, Ngati Rahiri, and Whakatohea.

The Ngapuhi raids in the early nineteenth century, along with other skirmishes between various iwi such as Marutuahu and Ngati Whatua, continually challenged tribal relations in the area. The arming of all tribes with muskets greatly exacerbated these tribal rifts immediately prior to the declaration of British sovereignty. The retreat of the Hauraki tribes to the interior and their subsequent expansion brought them into competition with Waikato tribes and Ngati Whatua for control of the shores of the southern gulf and greatly complicated claims of native tenure in the region.

2.4 Principal Modes of Land Alienation

2.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

After 1840, claims were lodged by private parties in respect of 53 transactions in the Hauraki district made between 1836 and 1840. 100,388 acres were originally claimed, of which 21,726 acres were surveyed. Of the amount surveyed, 14,602 acres were awarded to settler claimants, plus scrip in lieu of a further 4002 acres (the claim thereafter being taken over by the Crown) plus 48 acres of Crown surplus after grants were made to the settlers. Special mention should be made of the claims by McCaskill in the Thames area in 1839, which amounted to over 16,000 acres (as discussed below).

1. R Anderson, 'Hauraki Historical Overview Report', Hauraki claimant report (confidential working draft), July 1996, p 109
2. Anderson

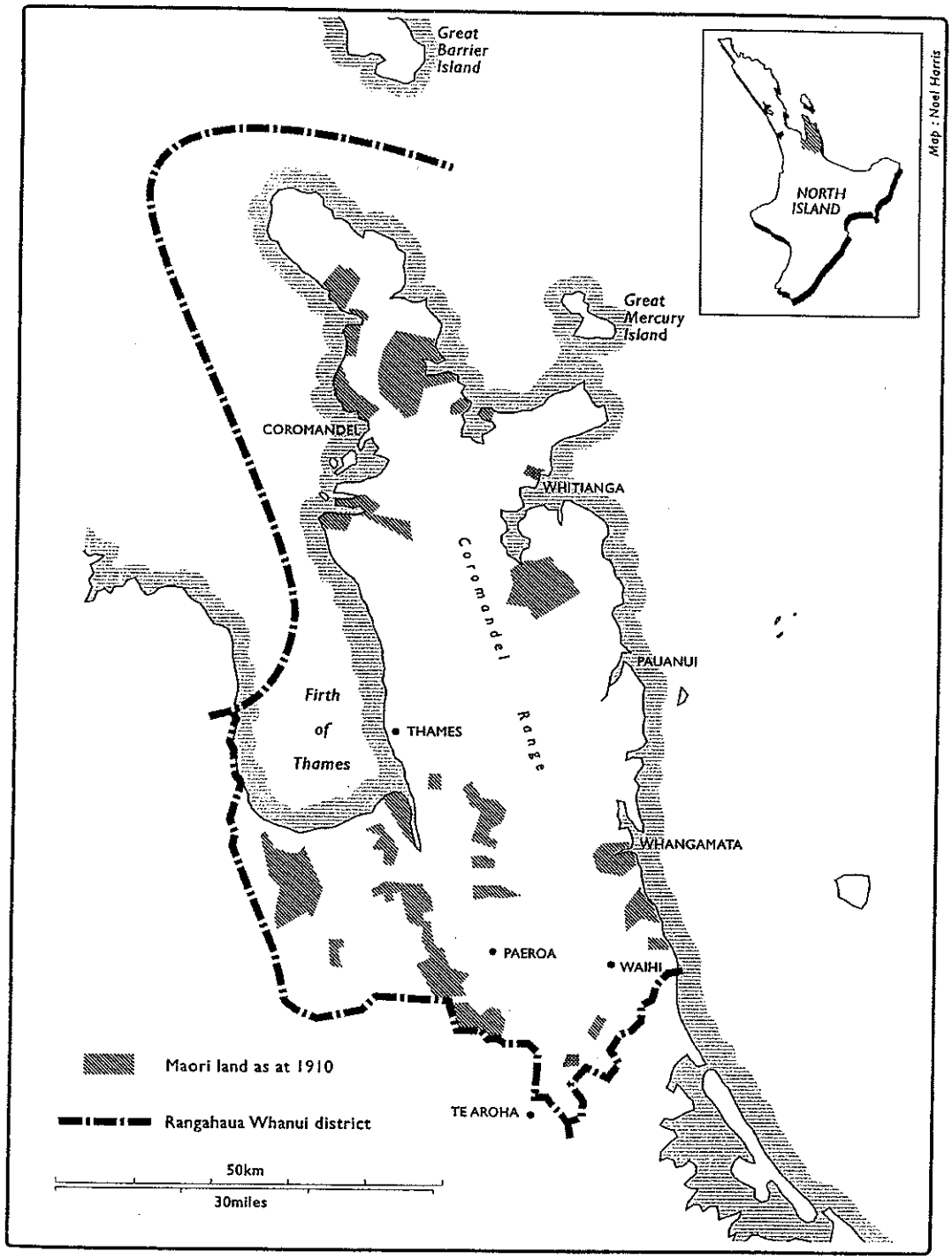

Figure 9: District 2 (Hauraki)

2.4.2 Pre-1865 Crown purchases

In April 1841, 30,000 acres at Mahurani were purchased from Ngati Paoa, Ngati Maru, Ngati Tamatera, and Ngati Whanaunga for £200, 400 blankets, and other goods. Also in 1841, the Crown purchased 6000 acres at Kohimarama (in the Auckland district) from 24 Ngati Paoa chiefs for £100 and assorted goods.

Only general information was available at the time of writing regarding other Crown purchases prior to 1865. From 1853 to 1855, McLean made a series of down-payments purporting to extinguish the interests of different persons in vaguely defined blocks in the Piako and Thames district. From 1857 to 1859, a series of deeds was signed for blocks on Coromandel Harbour, Mercury Bay, and Mercury Islands.[3] For example, in November 1857, a deed was signed for Piako block (Turton deed no 398), with reserves made for Ngati Paoa's various claims in the district, which included eel fisheries. Also in 1857, the Patapata block, which adjoined the goldfield district, was purchased for £120 from Patukirikiri. Two other Waiau blocks, Matakitaki and Papawhakanoho, were also acquired in the same year from Patukirikiri and Ngati Whanaunga respectively.

A further wave of purchases was subsequently effected from 1864 to 1865 at Mercury Island off Whitianga, at Pungapunga at Whangapoua, and on several blocks at Waiau.[4] Hauraki tribes had also been involved in transactions to the north-west of their rohe boundaries in the 1840s – in particular, the sale of Mahurangi, the Gulf Islands, Kohimarama, and Howick in Auckland (see ch 1).

2.4.3 Pre-emption waiver purchases

Pre-emption waiver purchases in the Hauraki district included 3500 acres purchased by Whitaker and Du Moulin at Great Barrier Island from Ngati Maru (disallowed in 1848 for a lack of survey, although Bell awarded 5463 acres in the late 1850s from a surveyed area of 28,608 acres, with the Crown claiming the difference); 850 acres purchased by Chisholm from Patukirikiri at Waiheke (formally disallowed, although the Crown assumed control of the land); 700 acres purchased by de Witte from Ngati Paoa with the consent of Patukirikiri at Waiheke (disallowed in 1848, although Bell awarded 280 acres in the late 1850s); 2550 acres purchased by Brigham from Ngati Maru and Ngati Paoa at Waiheke (compensated for in 1848 with debentures for £290); 900 acres purchased by Merrick from Ngati Paoa at Waiheke (disallowed in 1848, with 368 acres later granted by Bell); 600 acres acquired by McGregor from Ngati Tamatera at Coromandel (disallowed in 1848, with 93 acres later awarded by Bell); and 800 acres purchased by Peppercorne from Patukirikiri at Coromandel and Colleville (disallowed in 1848, but £125 compensation was paid at that time).

Further pre-emption waiver purchases in the district include: Chalmers at Thames (olc 147); Warbrick at Thames (olc 1245); Moores at Coromandel

3. Turton, *Deeds*, nos 292–304, 306–313
4. Ibid, nos 336–343

(olc 1257); McGreggor at Cape Colville (olc 1259); and Oakes in the Taipoke block at Thames (olc 1286, Turton deed no 121/518, signed 20 October 1845).

2.4.4 Confiscation

In May 1865, an Order in Council brought the Tauranga district under the provisions of the New Zealand Settlements Act 1863 (see chapter 3 for confiscation boundaries). The boundaries of this confiscation block transected the interests of Hauraki Maori at Ngakuriwhare and Te Aroha. In September 1866, Hauraki hapu were paid for their interests in confiscated Tauranga lands. Ngati Hura received £100 for claims at Katikati and Te Aroha; Tawera, based at Manaia, received £500 for interests in lands extending from Katikati to Waimapu; Te Moananui received £600 for specific claims at Katikati and Aroha-auta; the Ngati Tumutumu hapu of Ngatimaru were given £500 for their interests in the block between Katikati and Te Puna; and £25 was paid for a claim on behalf of Ngati Whanaunga.

The central Waikato district, which was proclaimed forfeit in May 1865, also implicated Hauraki Maori interests, particularly in the East Wairoa block at the back of the Hunua Ranges. Hearings were held in the Compensation Court for East Wairoa in 1865, followed by Native Land Court hearings, which extinguished the rights of 'rebel' Maori north of the East Wairoa confiscation line and awarded certificates of title to 'loyal' Maori. In 1866, the interests of Maori on the eastern side of the Waikato River were brought by the Crown in a series of transactions described as 'compensation' rather than purchase.[5]

2.4.5 Purchases under the Native Lands Act (Crown and private as indicated)

(1) *1865–73*

In December 1872, the Crown paid £1000 to a mixture of tribal groups and individuals to satisfy claims to land at Piako, in order to complete the purchase of this land. Subsequently, in late 1873 the purchase of 12 blocks totalling some 38,000 acres was reported, including Piako (19,500 acres); Waitoa (8000 acres); Hangawera (3680 acres); Mohonui (2580 acres); Te Nge (1070 acres); Otamatai; Te Hina; Te Hotu; Aronga; Waemaro; Te Awaroa; and Mangakahika.

By the end of 1873, the Government had purchased Hikutaia 2 and 3 (around 8000 acres) for £2065, and Whangamata 1, 3, and 5 for £5067. These blocks were endowed with valuable timber resources. Also in 1873, it was reported that the Government had purchased 17 blocks, together comprising some 96,000 acres, that had previously been subject to private timber leases, technically in breach of the Land Purchase Ordinance 1846. Down-payments had also been made on a further 17,000 acres also subject to timber leases.[6]

5. Whitaker to Colonial Secretary, 19 February 1866, and minutes, RBD, pp 42,858–42,859
6. AJHR, 1875, c-3, p 3; c-3a, p 2

By early 1873, the Crown had paid over £1350 to Maori grantees for their interests in some 600 acres of the foreshore blocks. A further £250 commission was paid to the son-in-law of chief Rapana for his part in the sale.

Between 20 March and 5 April 1872, an estimated £3064 was paid to members of Ngati Tamatera for land at Waikawau and Moehau (together comprising some 98,988 acres). Signatures on a deed dated 31 May 1872 (understood to be a preliminary agreement) indicated the conveyance of the freehold at Waikawau, excepting reserves at Te Puru and Waiomu. By March 1873, advances on both blocks had increased to just over £13,966. A second deed was signed in 1875, which stated that Ngati Tamatera conveyed the Waikawau block to the Crown for the sum of £8500. Following delays in the purchase (during a period in which the land was leased to the Government), the transaction was finalised in 1878 when the Native Land Court found in favour of Ngati Tamatera claimants. The whole block was subsequently vested in the Crown, except for 16 reserves totalling 5017 acres. With respect to the Moehau block, the transfer of interests to the Crown was advanced by a deed in December 1876 whereby certain Ngati Tamatera agreed to the alienation of 32,930 acres for £953 plus reserves. In September 1878, the Native Land Court awarded subdivisions in favour of Ngati Whanaunga and the Crown.[7]

(2) *1874–90*

In September 1874, on behalf of 'all' their tribe 48 Ngati Paoa signed a deed that transferred to the Government their lands adjacent to the Piako and Waitoa Rivers (comprising an estimated 200,000 acres), as well as land on the west side of the Waihoa River (namely Thames) and some pieces of land at Waitakaouru and Pukorokoro, in return for £5400. The Government agreed to set aside an area for permanent residence and cultivation.[8] The block was then proclaimed under negotiation, and by 1877 down-payments and credit amounting to £16,500 had accrued with Ngati Paoa and their kin Ngati Tai. Further developments were delayed until 1888, however, at which point the Government returned to the purchase of Piako, and further attempts were made to have the land pass through the court. In late 1889, it was proposed that 120,000 acres of the block (exclusive of the land promised to be returned to rebels) be set aside for the Crown in payment of debts accrued by Maori. Further negotiations followed as details regarding the amount of the debts and the identities of the debtors were debated. For their part, Ngati Paoa were largely anxious to settle the matter and admitted their debt to the Government, which the Government took to be a willingness to sell. The hapu offered the Government 45,000 acres in payment for the £11,776 received by them. The Government accepted this offer, and Piako went through the court in early May.

By 1877, £7000 had been paid to Hauraki tribes for their interests in land at Te Aroha (within the confiscation boundary in the Tauranga district) in addition to payments made to Ngati Haua and the Waikato tribe for their interests (see chapter 3 for a further discussion of these confiscated lands). Following protest by

7. Anderson, p 129
8. Ngati Paoa deed, 5 September 1874, nlp 81/167, in Piako special block ma 13/64 (b)

Ngati Rahiri regarding their unrecognised interests in the land, a special land court hearing granted 7500 acres to Ngati Rahiri at the Omahu end of the block. The following month, a deed was signed with Ngati Rahiri for 53,902 acres at Te Aroha in exchange for £2752.[9]

In 1880, all but the northern end of the Ohinemuri goldfield (comprising 73,231 acres) was brought before the Native Land Court and subsequently divided into 21 blocks: Ohinemuri 1 to 19 and Owharoa 1 and 2. Following delays in determining the Crown's title in Ohinemuri (when it was revealed that some Maori had been overpaid for their interests and others had not received adequate compensation), the Crown's title was considered in 1882 and evidence was presented of the purchase of various interests in the goldfields by the Crown. Non-sellers (who were forced to define where their interests lay) had 7213 acres reserved for them, while Ngati Tamatera were awarded 3430 acres; Ngatikoi, 1170 acres; Uriwha, 793 acres; and Ngatitaharua, 147 acres. No restrictions were placed on the reserved lands. The total reserved area (including a further six inalienable reserves) comprised 6636 acres.

From 1880 to 1885, at least 8000 acres were purchased. Larger purchases included Ahuroa 1b (313 acres); Horete 3 (1459 acres); Ipu o Moehau (1245 acres); Ipu o Moehau 2 (605 acres); Iringa o Pirori 2 (240 acres); Kuaotunu 1b (1151 acres); Mangakirikiri 3 (409 acres); Moehau 3g (422 acres); Ohinemuri divisions (acreage unknown); Otautu 1 and 2 (176 acres); Te Tauiti 2 (300 acres); Waihou West 1a (1211 acres); and Waihou West 2 (279 acres).

(3) *1891–1910*

Although research was not available regarding purchases made between 1891 and 1910, calculations using maps reproduced in volume i of this report indicate that approximately a further 200,000 acres were alienated during this time from the Hauraki district.

(4) *Post-1910*

With respect to post-1910 purchases, the Hauraki research district fell within the Waikato–Maniapoto Maori Land Board district, which also included most of the Waikato district and parts of the Bay of Plenty and the King Country. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all files would be necessary to establish which of the board's alienations fell within the Hauraki district. Calculations using maps reproduced in volume i, however, indicate that alienations under the Native Land Act 1909 in this district totalled approximately 88,200 acres between 1910 and 1939.

9. Anderson, p 131

2.4.6 Examples of land taken for public purposes

Some general projects in Hauraki which required the taking of Maori land for public purposes included the improvement of the navigation of the Waihou River, the construction of the road along the east bank of the river, and the railway to Ohinemuri, connecting Waikato and Tauranga. For a further discussion of public works policy and the law in general, see volume ii, chapter 11. The following are examples of public works identified in research:

- In 1898, just over two acres were taken from the Moehau block for the purposes of a road. The land taken was not under title derived from the Crown.
- In 1913, 40 acres were proclaimed in the *Gazette* as having been taken from the Moehau 2a block according to section 393 of the Native Land Act 1909.
- In 1928, over 80 acres of land were proclaimed as public roads in the Moehau and Waikanae blocks under sections 49 and 50 of the Native Land Amendment Act 1913.

2.5 Outcomes for Main Tribes in the Area

The heaviest land purchasing by the Crown in the Hauraki district was between 1870 and 1885. During this time, 400,000 acres were purchased by the Crown and 70,000 acres by private individuals.[10] Robyn Anderson comments that:

> Already by 1880 it was clear that the land was leaving the hands of Hauraki people at too fast a pace . . . The pace of alienation slowed temporarily. With the transfer of much of Ohinemuri, immediate interest in the Hauraki area declined . . . The respite was shortlived . . . A new wave of purchasing developed in the mid 1890s stimulated by the heavy debts accumulated in putting the first Piako blocks through the Land Court.[11]

By 1939, Maori retained only about 7000 acres, or just one percent of the original district.

2.6 Examples of Treaty Issues Arising

2.6.1 Goldfields

Despite the fact that the Crown initially recognised the right of Hauraki Maori to retain their possession of land on which gold was found, as early as the 1850s pressure mounted from miners to open up this land. The Government consequently attempted to bring Hauraki land still under native title within the State's mining jurisdiction. Furthermore, it refused to relinquish control of land in Hauraki after mining activity had ceased, instead pursuing its freehold. Maori were paid an

10. Anderson, p 189
11. Ibid, pp 194–195

increasingly small percentage of the revenue from the mining on their land and, in most cases, also eventually lost the freehold of the land. For further discussion of goldmining policy and law, see volume ii, chapter 10.

Following the 1852 Coromandel (Patapata) agreement between Ngati Whanaunga, Ngati Paoa, Patukirikiri, and the Government, which opened up for mining purposes approximately 17 square miles of land belonging to the signatory tribes, Hauraki Maori made reasonable efforts to cooperate with the Government. According to Anderson, however, doubts soon arose among Maori as to whether the Government would honour its promises of paying for and protecting property. The extension of the goldfields remained the primary objective for the Government, despite the Patapata agreement and the Treaty of Waitangi.[12] In particular, transgressions on Te Matewaru territory were condoned by the Government, and some finds (often made without Maori knowledge) that indicated rich gold deposits on the eastern side of the peninsula were compensated for after the fact. The failure of the Coromandel goldfield, which petered out in mid-1854, was blamed by non-Maori on the insecurity of capital invested in lands that could be closed by Maori and the confinement of mining activity to the negotiated areas. This indicates the way in which public interest and Maori interest conflicted in respect of mining. There was also the problem that fields could be rushed by miners to the detriment of all concerned without appropriate collaboration between the Crown and Maori.

Over the next decade, the Crown began to acquire the holdings of signatory tribes to the 1852 agreement. For example, the Patukirikiri block, which adjoined the goldfield, was purchased in 1857 for £120. By 1862, it was clear that the sales were having a detrimental effect on Waiau Maori (notably the purchases of the Matakitaki and Pawhakanoho blocks in 1852), but purchases continued regardless.[13] In particular, McLean was aware that Ngati Paoa based in Waiheke and Kawakawa Bay were falling deeply into debt by the late 1850s.[14] Anderson comments that:

> Ten years after the Patapata agreement, the Crown broke guarantees that lands would not be entered without the willing consent of right-holders and forced open lands which had been withheld by Ngati Tamatera from its jurisdiction.[15]

For example, declining hapu were encouraged to sell off their lands (even in the face of wider tribal opposition), although reserves were not considered necessary for individual hapu as much land remained to the tribe as a whole.[16]

Attempts frequently made by Maori to avail themselves of the Crown's active protection and at the same time increase their economic self-reliance by offering the Crown lease arrangements for land were largely rebuffed by the Government. For

12. Ibid, p 10
13. Turton to Minister Native Affairs, 12 September 1862, Coromandel resident magistrate outward letter-book, bacl a 208/634; Turton to Pollen, 17 June 1862, Coromandel commissioner of Crown lands outward letterbook, bacl a 208/688
14. McLean papers, mss 32, folder 9, diary notes, 6 January 1857
15. Anderson, p 12
16. See Hay to chief commissioner, 4 July 1861, in H H Turton (comp), *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, 1883, c338

example, a proposal by Patene Puhata to allow the mining of 4 or 5 square miles of land was refused because the arrangement interfered with the ultimate acquisition of the land by the Crown.[17] Furthermore, Drummond Hay (the land purchase officer for Hauraki) pursued the tactic of supporting minority sellers at the expense of majority non-sellers,[18] and he accepted offers by minority sellers, especially where the majority of the tribe was opposed to the alienation of their territory.[19]

Although the Crown can argue that it had no *legal* obligation to acknowledge Maori Treaty rights in respect of gold-bearing land in Hauraki or elsewhere, in the 1850s and 1860s it in fact did so. The progressive diminution of Hauraki Maori rights over the land (and hence of rights in respect of gold mining), which the Crown had initially acknowledged, has elements of bad faith.

2.6.2 McCaskill's old land claim

A source of ongoing protest for Hauraki Maori has been the McCaskill claims at Hikutaia, which derive from the alleged purchase of four blocks of land in 1839: two at Hikutaia, one at Opukeko, and one at Ohinemuri. In the case of the first two blocks at Hikutaia, the relationship between the McCaskill brothers and the Maori residents of the land (who did not reside in the immediate vicinity of the claims) was initially harmonious, owing largely, perhaps, to the absence of a survey establishing the claim boundaries. When the McCaskill grants were eventually surveyed in 1851, however, Maori resistance to the boundaries of the purchase became evident. When the survey was attempted again in 1858, it was obstructed by Ngati Maru and Ngati Tamatera, who disputed the sale of land east of the Paiakau Ridge. Prior to this surveying, Maori had beseeched Commissioner Bell to settle the matter. Bell eventually arrived in February 1859. When Maori opposition became apparent, proceedings to investigate the claims under question were postponed until such time as McCaskill could produce evidence to support his claims. Bell, however, did not return to Hikutaia. Instead, Drummond Hay appeared before Bell in Auckland in 1862 and gave evidence that Maori opposition to the survey could be removed by the appropriate financial compensation.[20] Bell subsequently recommended that grants be reissued for the block south of Hikutaia (among others), on the basis of the evidence provided by Hay that there was no risk of disturbance by Maori in issuing the grant. Until the time the grants were reissued, Maori were under the impression that McCaskill had yet to produce evidence in support of his claim to South Hikutaia and that Bell would return to Hikutaia 'to complete his work and fulfil his promise'.[21]

As it was, the feeling among Maori that an injustice had been committed by the non-fulfilment of Bell's 1859 promises was enduring. Maori continued to deny

17. Chief commissioner to Governor, 5 June 1857, *Epitome*, c299
18. Anderson, p 21
19. Hay to chief commissioner, 29 October 1859, *Epitome*, c333
20. Hay to Bell, 14 May 1862, ma, 13/36, pt 4, NA Wellington
21. Mackay, 'Native Statements Respecting the Lands at Hikutaia Granted to Messrs McCaskill', 5 September 1866, olc 1/287, vol 1, NA Wellington

McCaskill access to timber on disputed lands and continued to correspond with various colonial officials. In a new form of resistance, Maori also took up continuous residence at Hikutaia. As the dispute escalated, acts of violence were perpetrated by both sides. The acquittal of Lachlan McCaskill following one particular incident, and his subsequent return to Hikutaia in 1872, brought renewed Maori protest, forcing McCaskill to sell his interests to Hawke's Bay settler Henry Alley (given that the Colonial Government had refused to buy out McCaskill's shares). Maori resistance continued. Finally, in 1879, the issue went to the Native Land Court, where Judge Henry Halse was sympathetic to the grievances raised by Maori in relation to Hikutaia, ruling that compensation should be paid to Maori (since the court was unable to rule on the validity of the grants themselves). While the exact nature of the settlement reached has yet to be thoroughly researched, it is clear that Bell's proceedings were not adequate to meet the situation.

2.6.3 Pre-1865 land transactions

Anderson identifies several questionable aspects of the Crown's early dealings in Hauraki. For example, she presents evidence that purchase commissioners took advantage of Crown pre-emption to pay Hauraki Maori as little as possible and to cheat them of the value of their sub-surface resources. For example, one purchase officer recommended that the Government give quick approval of a purchase before Maori could become aware of the quantities of coal existing within the land.[22] Maori themselves came to see the payments as inadequate.

Only limited thought was given to the future of Hauraki tribes in the deeds signed in this period, with only one deed for Piako in 1853 making provision for 10 percent of the sale profits to be redirected back into Maori welfare. In addition, with the exception of Motutapere Island, very little provision was made for reserves. There were growing indications of stress at Hauraki by 1860. McLean himself was aware of the debt among Ngati Paoa in Waiheke and Kawakawa Bay by the late 1850s.[23] Turton, as the resident magistrate, had also noted the impact of sales in the district and had suggested that Maori in the region were in a 'declining state'.[24]

In theory, land purchase officers were to await offers of sale, but in practice Drummond Hay pursued 'divide and rule' tactics in actively encouraging those indicating a willingness to sell. According to Anderson, he consciously operated on the basis of individual interests in Hauraki with a view to deliberately undermining tribal authority. Hay stated at one time:

> the Natives were distinctly told that if any natives, however few, could prove a sound title to land that they wished to sell, the offer would be entertained; and that if

22. Preece to McLean, 8 July 1858, ms 32–516
23. McLean papers, mss 32, folder 9, diary notes, 6 January 1857
24. Turton to Minister of Native Affairs, 12 September 1862, Coromandel resident magistrate outward letterbook, bacl a 208/634; Turton to Pollen, 17 June 1862, Coromandel commissioner of Crown lands outward letterbook, bacl a 208/688

> opposed by the tribe on no better grounds than that the land should not be sold, such opposition would carry no weight with it.[25]

Instances are recorded where payments were made to claimants for land to which they did not hold exclusive title. For example, a down-payment to Te Urikaraka (of Ngatai) did not cause the immediate transfer of Maori interests in Piako but did work as a wedge when the Crown later called on Ngati Paoa to honour the debts of one hapu. Officials were also known to enter into arrangements with other Maori whose claims were known to be doubtful, while Maori were left out when payments were made for interests in the land, as in the case of Ngati Maru at Waiheke.[26]

2.6.4 War and confiscation

Only a few sections of Hauraki were drawn into fighting against British troops when war broke out in Waikato. Those who remained in the district attempted to preserve their neutrality but suffered increasingly under the Government's campaigns. For example, a strict blockade imposed upon the whole coast between Maraetai Point and the River Thames to Cape Colville cut across tradelines established between Hauraki and Auckland tribes. One Crown official objected to this measure, insisting that the restrictions 'would be most severely felt by the Natives of Hauraki who have taken no part in the war – who have been frequently assured that if they remained quiet they would not be interfered with'.[27] Nevertheless, the blockade went ahead.

In appraising the confiscation of Hauraki lands, Anderson comments:

> That the Hauraki interests were forfeit in these lands – or that they were forced to accept their loss and to take compensation instead – was unjust, more especially in light of the efforts of the majority to adhere to a peaceful and neutral position.[28]

While there was the opportunity for the Compensation Court to sit and hear the claims of Hauraki Maori, this did not happen. Instead, Hauraki Maori only attended hearings for East Wairoa in May 1865 with awards made to Ngati Tai and Ngati Paoa claimants.[29] Following that hearing, Hauraki Maori were forced to deal with Mackay outside the court in his capacity as Civil Commissioner, in what Anderson has described as 'a compulsory sale of their interests within the lands declared as forfeited'.[30] Over the course of two months, Mackay acquired the interests of 'loyal' Ngati Paoa, Ngati Whanaunga, and Ngati Maru in a series of 'complex payments'[31] totalling some £1475, the greatest portion of which (£1045) went to

25. Hay to chief commissioner, 4 July 1862, *Epitome*, p 338
26. Anderson, p 18
27. Shortland to Fox, 2 November 1863, ma 1/1 1863/342, RDB, vol 55, pp 21,153–21,160
28. Anderson, p 41
29. See RBD, pp 19,903–19,905
30. Anderson, p 48
31. Ibid, p 50

Ngati Paoa. For a general discussion of confiscation policy and legislation, see, volume ii, chapter 6.

2.6.5 The purchase of Ohinemuri

There appears to be some confusion over the pre-1865 payments made for Ohinemuri, the Government maintaining that these were for the complete alienation of the block, while Maori right-holders understood them to be for the opening up of the block for mining.

The MacCormick commission later stated that those least willing to sell Ohinemuri are likely to have been most unduly penalised by the transaction, noting that:

> It is clear that all revenues from 1875 (the date of opening of the Goldfield) to 1882 (the date of completion of the purchase) were retained by the Government as a set-off against the £15,000 payment and no Goldfield revenues were distributed to the Natives. It is possible that some individual owners who sold later in the purchase negotiations did not participate in any part of the £15,000 payment, and in addition, did not receive any revenues.[32]

2.6.6 Purchase of the foreshore

Hauraki Maori expressed a strong preference in the 1870s to lease foreshore blocks rather than to sell them outright, largely because of the limited amount of land remaining under their control.[33] This course of action was flatly denied to them, however, and Maori were advised to surrender their exclusive use of the foreshore in order to avoid conflict with the settler population.[34] Control of the foreshore had slipped from Maori control by the end of the decade. By 1885, the Government presumed that the question of the ownership of land below the high-water mark in Hauraki was covered by common law prescripts.[35] Concerns presented to the Government by Hauraki Maori were rejected on the grounds that Maori could not maintain any exclusive right to the foreshore.[36] For a further discussion, see volume ii, chapter 13.

2.6.7 Control of the rivers

In Hauraki, the Government undertook river ‘improvements’ along the Waihou and Ohinemuri Rivers to allow access for steamer traffic (under the Timber Floating Act 1873). Following protest from Maori, the clearing of snags in the Paeroa region was delayed until 1883, by which time even the most ardent opponents had weak-

32. Thames County petition, ‘Statement of the Facts and Circumstances Affecting the Ohinemuri Block’, ma 13/35(b), p 18
33. Puckey to Civil Commissioner, 17 August 1870, ma 1/16/1854
34. Pollen to McLean, 12 June 1871, ms 32 (508)
35. Anderson, pp 105–106
36. AJHR, 1885, g-1, pp 38, 40

ened in their stance. The subsequent loss of Maori traditional food traps was not considered a matter of significance by the Government, and no compensation was paid.

2.6.8 The impact of debt on Hauraki Maori

It was apparent that Mackay deliberately fostered debt among Ohinemuri and Piako right-holders by allowing them to run up credit, in order to secure leverage for Government purchases.[37] While the Government, in the early 1870s, checked the practice of land officers making advances against land before it had passed through the land court, in the case of the Ohinemuri and Piako blocks in particular, considerable debt had mounted against the land by this time, which constituted a considerable pressure upon Maori to sell. Under what was referred to as the 'raihana' system, Maori were given credit by the Crown on undefined interests on extensive tracts of territory, which had not necessarily passed through the court. Fairly small sums of money would be regularly paid out to Maori and would accrue over the years and culminate in a series of individual 'final payments' for land, at which time signatures would be attached to an incomplete deed.[38] Through this method, a debt of over £11,000 was listed against Ohinemuri by 1875. This is an example of a practice that was widespread across New Zealand at this time.

2.6.9 The loss of timber resources

The Crown generally insisted that timber on land was acquired when the land was purchased, without paying extra for it in the transaction. Maori did not always agree. Also, when kauri was removed from Ohinemuri block 20 without payment to the Maori right-holders, Maori protested to the Government.[39] While this grievance was partly resolved by the Government's payment of £150 for legal costs in bringing the case, nothing was done to satisfy similar instances of timber being removed without payment from other parts of Ohinemuri.

2.6.10 Public works

In 1885, Hauraki Maori complained to Ballance that the route of roads at best ignored Maori needs while respecting Pakeha interests and, at worst, took essential Maori land in order to avoid acquiring the land of European owners. The example of the Paeroa township was used, with the comments that:

> The Council have determined to run a road right through the Native cultivations. The Maoris say 'No; it should not be so, because you take land from us that is valuable for cultivation.' The Council say, 'We want to do it in order to make the road straight.' Now there is a European block close to it; the road goes over it, but the road

37. Anderson, p 118
38. Ibid
39. Ibid, p 165

> is bent, and the Council never attempted to straighten it; but over this Maori land they straighten it by taking it through the land.[40]

For a general discussion of public works policy and law, see volume ii, chapter 11.

2.6.11 Post-1910 sales

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

2.7 Additional Reading

The following are recommended for additional reading:

A comprehensive report on the Hauraki district that is currently being prepared by Robyn Anderson for the Hauraki Maori Trust Board; and

Robyn Anderson, *Goldmining: Policy, Legislation, and Administration*, Waitangi Tribunal Rangahaua Whanui Series (first release), 1996.

40. AJHR, 1885, g-1, p 33

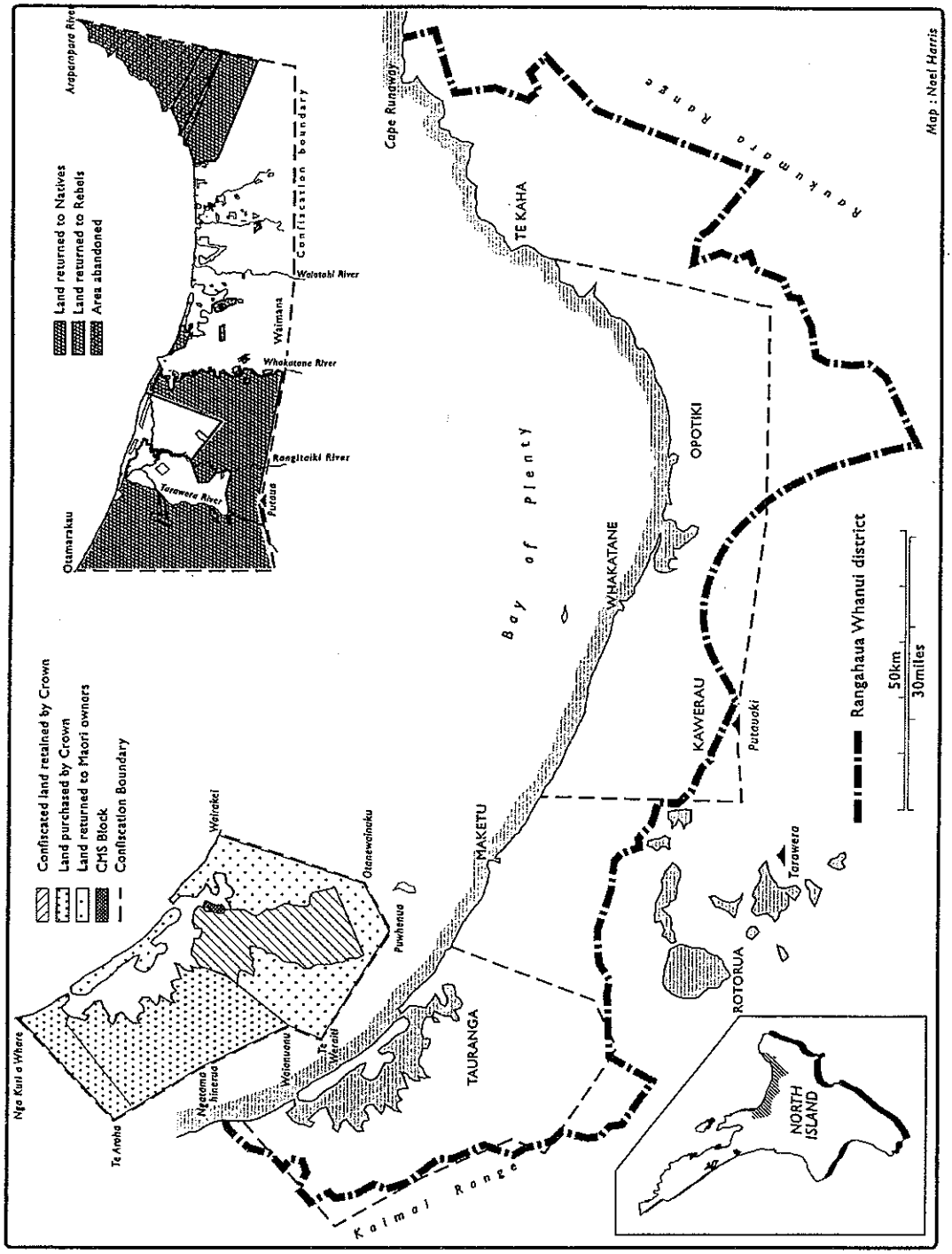

Figure 10: District 3 (the Bay of Plenty)

CHAPTER 3

THE BAY OF PLENTY

A Rangahaua Whanui district report was not commissioned for the Bay of Plenty because of the amount of claims-related research being undertaken there. This discussion therefore comes from alternative sources. The discussion of the Western Bay of Plenty (roughly west of Maketu) is drawn largely from reports by Evelyn Stokes and Vincent O'Malley.[1] For the Eastern Bay of Plenty, the discussion is based on submissions presented by claimants and the Crown held on the record of documents for Wai 46. In addition to these reports and submissions, independent research was commissioned by the Waitangi Tribunal to show the extent and timeframe of land alienation in the Te Puke area. This discussion is an introduction only to the issues pertaining to this district and is not comprehensive or exhaustive.

3.1 Principal Data

3.1.1 Estimated total land area for the district

The estimated total land area for district 3 (the Bay of Plenty) is 1,448,530 acres.

3.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 3 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was almost 100 percent in 1860, 42 percent in 1890, 31 percent in 1910, and 21 percent in 1939 (or approximately 39.4 acres per head according to the 1936 census figures provided below).

3.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- confiscation;
- purchases under the Native Land Acts

1. E Stokes, 'Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands', report prepared for the Waitangi Tribunal, 1990; V O'Malley and A Ward, 'Draft Historical Report on Tauranga Moana Lands', report commissioned by the Crown Congress Joint Working Party, June 1993; V O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864–1981', report commissioned by the Crown Forestry Rental Trust, June 1995

3.1.4 Population

The population of district 3 was approximately 7500 to 8500 in 1840 (estimated figure), 3515 in 1891 (estimated from census figures), and 7671 in 1936 (also estimated from census figures).

3.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch from Waihi inland to a point east of Te Aroha and then along the Kaimai Ranges and across to Kawerau, keeping north of the Rotorua Lakes. From Kawerau, the boundary runs across the Raungaehe Ranges and then south, following the Kahikatea and Huiarau Ranges to a point north-east of Maungapohatu. The boundary then heads north-east via the Raukumara Ranges to the coast just east of Cape Runaway.

The district is mountainous on its inland boundary and has a long coastal frontage in the Bay of Plenty. Numerous rivers drain into the bay, including the Kaituna, Tarawera, Rangitaiki, Whakatane, and Motu Rivers. A number of harbours and inlets also dot the coast, the largest being Tauranga Harbour. Food sources along the rivers and in the harbours provided for substantial Maori coastal settlement. Fish could be caught in the rivers, sheltered harbours, open ocean, and inland waters. Eels and freshwater fish flourished in the rivers that flowed into the harbour. Along the coastal lowlands, kumara grew well in the mild climate. The forests of the ranges provided a valuable source of food in the form of berries and birdlife, as well as timber for building whare and canoes.[2]

3.3 Main Tribal Groupings

3.3.1 Western Bay of Plenty

The earliest inhabitants of Aotearoa, Te Tini o Toi, and Te Kawerau, were closely associated with the Bay of Plenty region. They intermarried with later migrants from Te Arawa known as the descendants of Hei, Waitaha, and Kinonui. These people claimed the land at Katikati and Te Puna, and later at Tauranga, and were known as Waitaha a Hei. Also, Ranginui of the Takitimu waka returned to Tauranga, having landed at Mount Maunganui, and he gave his name to the people who settled there. They originally maintained peaceful relations with Ngamarama Maori (descendants of Toi who already resided there) but eventually drove Ngamarama inland to Irihanga. Finally, another waka, Mataatua, briefly visited Tauranga, leaving Toroa (among others), who became an important ancestor for some tribes in the region, including Ngaiterangi and Ngati Pukenga, who migrated west to Tauranga. Ngaiterangi later moved east from Tauranga and established a very uneasy peace with Te Arawa.

2. Stokes, p 3

By the end of the eighteenth century, Ngaiterangi had migrated from the eastern Bay of Plenty to the coastlands from Maketu to Nga Kuri a Wharei. Waitaha and other Te Arawa tribes were established at Te Puke, having been largely displaced by Ngaiterangi. Ngaiterangi in turn established close relations with Ngati Ranginui through marriage. Sections of Tainui people (Ngati Haua and Ngati Raukawa) dwelt over the ranges inland and maintained a long-standing rivalry with Te Arawa people.

A series of skirmishes in the early nineteenth century were the undercurrent to a long-standing conflict between Ngaiterangi and Te Arawa. In 1836, Ngaiterangi joined with Ngati Haua in an attack on Te Arawa, who in turn responded quickly and effectively, recovering some ancestral lands lost previously.

3.3.2 About 1840

Ngaiterangi were a leading tribe in the area, largely occupying the coastline at the eastern end of Tauranga Harbour. The label 'Ngaiterangi', however, was inappropriately used in the nineteenth century by Government and land purchase officers to refer to all Tauranga Maori.

On the other hand, Ngati Ranginui were reluctantly acknowledged by the British in the nineteenth century. According to O'Malley, they were in the Katikati–Te Puna block at the time of its purchase.[3] In particular, Pirirakau, a hapu of Ngati Ranginui, were located inland at Whakamarama (near the Kaimai Ranges). Pirirakau and other hapu who claim descent from the Takitimu waka developed close ties with some Tainui tribes over the Kaimai Ranges.

Ngati Pukenga forced Ngaiterangi from Opotiki in the early eighteenth century, later supporting them at Maunganui and settling at Papamoa. Ngati Pukenga claim descent from Waitaha and had close relations with the Ngaiterangi hapu, Ngati He.

Te Arawa hapu battled for 10 years with Ngaiterangi and eventually settled on a boundary between the groups in 1845 that ran from Wairakei inland to Puwhenua and on to the Kaimai Ranges. Waitaha and Tapuika of Te Arawa occupied the Te Puke area and maintained a long-standing rivalry with the Tainui people.

Ngati Tokotoko and Ngati Hinerangi are both descendants of Ngamarama, and both claim land in Te Puna on the Tauranga side of the Kaimai Ranges, having been pushed there by pressure from Ngati Raukawa and Ngati Haua to the west and Ngati Ranginui to the east. They later developed close relations with these tribes.

Ngati Haua (of Tainui) were granted occupation of Tauranga by Ngaiterangi allies after a successful campaign against Te Arawa, settling more or less permanently at Omokoroa. Ngati Haua, along with Ngati Raukawa sections of the Tainui people, maintained close ties with the coastal people and relied on Tauranga moana for their food resources.

3. O'Malley and Ward, p 12

3.3.3 Eastern Bay of Plenty

The following discussion is drawn largely from claimant evidence on the record of documents for Wai 46. It is intended to introduce a number of the hapu and iwi with an interest in the area, and is not intended to be comprehensive or exhaustive.

Ngati Awa ancestors derive their chiefly authority from the Toroa line of the Mataatua waka. In particular, Maruahaira, Hikakino, Taiwhakaea i, Awatope, and Irawharo played a part in the conquest and settlement around Otamarakau, Pukehina, Maketu, and Tauranga. Various divisions of Ngati Awa that have assumed their own independent identities include Ngatiterangi and Te Whanau a Apanui.[4] In addition, prior to 1865, Ngai Te Rangihouhiri and Ngati Hikakino (both independent Ngati Awa hapu) occupied territory in the Te Awa a te Atua and Otamarakau regions, neighboured by allied Ngati Awa hapu, Ngati Irawharo, and Te Tawera. Also prior to 1860, the Ngati Awa hapu Warahoe lived at Otipa (near the Matahina Dam) and owned a large area of land between Awakeri and the present location of the dam.[5] Te Patutatahi and Te Whanau o Taiwhakara occupied territory at Otamauru and further inland to Te Tiringa and the vicinity of present-day Edgecumbe and Te Teko.[6]

Further to this, the following evidence was given in the Compensation Court:

> All the land from Te Awao te Atua to Otamarakau and on to Maketu belonged to Ngati Awa by conquest. The defeated tribe were Waitaha [who were driven up to Rotoehu] . . . All this land has been in the possession of Ngati Awa for eleven generations. Our northern boundary went from Waitahanui to Tipuaki, Manawahe and Otitapu. From there to Te Wahe o Te Pareta then to Otamaka and Te Paripari on the Tarawera River. This was the boundary of the lands of Ngati Awa. The hapu of Ngati Awa who own these lands were Ngati Rangihouhiri, Hikakino, Nga Potiki, Te Tawera, Ngati Runa, Ngati Reki, Kawerau and Ngati Awa.[7]

Whakatohea traditionally occupied the coastal lands surrounding Opotiki, which they largely deserted following a series of attacks on them in the 1820s and 1830s (in particular, raids by Ngapuhi in 1823 and 1825). Under the leadership of Tikoto, however, Whakatohea re-established themselves in their ancestral lands at Opotiki from 1840.[8]

Ngati Makino traditionally occupied the area between the Bay of Plenty coast and the Rotorua lakes. Ngati Makino were earlier known as Waitaha, after their ancestor Waitaha-a-Hei. They are closely interrelated with the larger tribal group, Ngati Pikiao, of the Arawa waka.[9] Incursions by Ngapuhi in the 1820s forced Ngati Makino to move inland, vacating their traditional coastal lands. In their absence,

4. Submission on behalf of Ngai Taiwhakaea–Te Patutatahi, Ngati Hikakino, and Ngai Te Rangihouhiri hapu (Wai 46 rod, doc l6), pp 5–8
5. Ibid, p 4
6. Ibid, p 1
7. Ibid, p 9
8. B Gilling, 'The Raupatu of Whakatohea: The Confiscation of Whakatohea Land, 1865–1866' (Wai 46 rod, doc c9), p 5
9. D Alexander, 'Nineteenth Century Crown Purchases of Ngati Makino Lands' (Wai 46 rod, doc g4), p 5

other Arawa hapu moved out towards the coast to live on the lands abandoned by the raid, thwarting the ambitions of neighbouring tribes (at the same time creating confusion among Arawa hapu as to the priority of authority in the vacated and later reoccupied lands).[10] Bordering Ngati Makino to the west were Ngati Whakahemo, also of Waitaha-a-Hei and with whom Ngati Makino are closely related, and, to the east, Ngati Hikakino and Ngai Rangihouhiri hapu of Ngati Awa, with whom Ngati Makino have shared a tradition of enmity, although there are linkages between these hapu owing to their close proximity.[11]

3.4 Principal Modes of Land Alienation

3.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Archdeacon Brown purchased land in the Western Bay of Plenty on behalf of the Church Missionary Society in 1838 and 1839. Te Papa 1 of 30 acres extended from 'Taumatakahawai, going on to Herekura, and from thence to the Kauere, going on by the seaside . . . from thence to the sandbanks called Maruru and Aopo', and it included 'whatever may be found growing thereon or deposited therein'.[12] Goods to the value of £24 were given in exchange for the land, and the deed was signed in late 1838. The second block of 1000 acres was purchased from 27 chiefs, who signed a deed in early 1839. Goods to the value of £92 8 shillings, and a calf worth £8 were given in payment for the land, which extended from Taumatakahawai to Herekura and Kauere, inland to the river and on to Warepapa (and other places listed), crossing over the land to Pukahinahina and on to Pokorau, on again to Ririiti (and other places) and finally back to Taumatakahawai. Once again, the deed included all things growing on, and deposited above or below, the earth.

A 3840-acre block at Pakihi, sold by Whakatohea in January 1840, was claimed by specific missionaries. The adjoining 2500-acre Ngaio block was also sold in January 1840 to the Church Missionary Society itself, and 11,470 acres were surveyed, with 3832 acres granted to the claimants, 853 acres issued in scrip, and 6785 acres going to the Crown as surplus land.

3.4.2 Pre-1865 Crown purchases

There were no pre-1865 Crown purchases in district 3.

3.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 3.

10. Ibid, p 6
11. Ibid, p 5
12. Transcribed from H H Turton and F D Bell, *Maori Deeds of Old Private Land Purchases in New Zealand*, Wellington, Government Printer, 1882, pp 378–379

3.4.4 Confiscations

(1) *Western Bay of Plenty*

By Order in Council of 18 May 1865, the tribal area of Ngati Ranginui and Ngaiterangi (extending from Nga Kuri a Wharei on the coast inland to Te Aroha mountain, along the crest of the ranges south to Puwhenua, east to Otanewainuku, and out to sea at Wairakei on the coast) was confiscated by the Crown under the New Zealand Settlements Act 1863.[13] The area was originally estimated to contain 214,000 acres and was known as the Tauranga block. The confiscated land was subsequently administered in a variety of ways. A 50,000-acre block known as the 'confiscated block', located between the Waimapu and Wairoa Rivers, was retained by the Crown.

The Crown paid £11,700 for the Katikati–Te Puna blocks (within the confiscation boundary), which amounted to 93,188 acres. From this forced purchase, reserves were made at Ohuki, Matapihi, Rangiwaea, Matakana, and Motuhoa. Ngaiterangi were paid £7700 for their interests in the land and were reserved 6000 acres of what was described as 'good agricultural land'.[14] This purchase can be described as a 'compulsory purchase' on account of Civil Commissioner H T Clarke's statement that 'It was distinctly understood by the Natives at the time that peace was made, that Te Puna would be absolutely required by the Government, but that it would be paid for'.[15]

Ngati Pukenga were also paid £500 in 1866 for any interest they might have had to the west of the Waimapu River. Ngati Tamatera received £600 as their half of the share of the payment for the Katikati block, while Te Moananui apparently accepted £380 (see chapter 2 for a further discussion and alternative figures). Ngati Pukenga received £500 plus some reserves, while Ngati Paoa (a hapu of Ngati Hura) accepted £100 for their claims to land near Hikurangi.

The Crown also acquired the 'CMS block' in 1864 (originally purchased from Maori prior to 1840) and subsequently surveyed the land for the township of Tauranga. Finally, 210 blocks of land with a gross area of 136,191 acres were returned to 'Ngaiterangi' under the Tauranga District Lands Acts of 1867 and 1868.

(2) *Eastern Bay of Plenty*

In September 1865, following the deaths of the Reverend Carl Sylvius Volkner (at Opotiki in March 1865) and Fulloon (at Whakatane in July 1865), the Government issued a proclamation pardoning those who had been in rebellion against the Crown in the early 1860s and announcing its intention to send a military expedition into the Bay of Plenty to apprehend the parties responsible for the deaths. Martial law was declared two days later. Resistance to this military expedition led to confiscations in the region in January 1866. The report of the select committee on confiscated lands indicated in 1866 that a total of 480,000 acres was confiscated. The

13. *New Zealand Gazette*, 1865, p 187
14. AJHR, 1867, a-20, p 27
15. Ibid, p 12

boundaries of the lands taken (which also included Ngati Awa lands) were described by Order in Council as running from:

> the mouth of the Waitahanui River, Bay of Plenty, and running south for a distance of twenty miles; thence to the summit of (Mount Edgecombe) Putanaki, thence by a straight line in an easterly direction to a point eleven miles due south from the entrance of the Ohiwa harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara River, and thence following the coastline to the point of commencement at Waitahanui.[16]

Of the land described, approximately 100,000 acres would be used for compensation and reserves for 'friendly' Maori. The committee stated that, because about:

> one half the original Native owners had been friendly or neutral, one-half of the land must be restored to them; that of the other half, or 50,000 acres, 25,000 acres will be required for military settlement; and that the remaining 25,000 acres will be available for any other purpose.[17]

A reserve at Opape (acreage unknown) was set aside for the rebels of the Whakatohea tribe who had surrendered. Two other reserves, Hiwarau and Hokianga, were established for the 'surrendered rebels and loyal natives' of the Upokorehe hapu (once again the acreage is not provided). A reserve was also established at Whakatane for Ngati Pukeko and Ngati Awa, and smaller reserves were set aside for particular Whakatohea chiefs (in some cases on the condition that they remain loyal until Crown grants were issued in 1870[18]).

According to one set of figures, by mid-1873 the confiscated lands in the Bay of Plenty district had been disposed of as follows: 96,261 acres were awarded in compensation to 1074 loyal Maori; 104,952 acres were awarded to 1717 surrendered rebels (at 61 acres each); 87,000 acres were awarded to Te Arawa (for loyal service to the Crown); 40,832 acres were surrendered; 23,461 acres were used for military settlers; 10,325 acres were allocated to university endowments and so forth; 3832 acres for old land claims; 10,930 acres were identified as miscellaneous; 5000 acres were identified as an error in the former estimate; 98 acres had been sold; and 500 acres had gone to surrendered Urewera. This left a balance of 56,809 acres in the hands of the Government.[19]

16. *New Zealand Gazette*, 11 September 1866, p 348 (RDB, p 4118)
17. 'Report of the Select Committee on Confiscated Lands', 14 August 1866, AJHR, 1866, f-2, p 3
18. AJHR, 1867, a-18, pp 3–4. Boundaries for the larger reserves are also given.
19. J H H St John to Native Minister, 12 August 1873, AJHR, 1873, c4b, pp 5-6

3.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) *1865–73*

Note that confiscations, the Katikati–Te Puna purchase, and re-purchases of confiscated lands returned to Maori by the Compensation Court and commissioners were occurring between 1865 and 1873, as discussed below.

(2) *1874–90*

From 1873 to 1885, negotiations were made with Ngati Pikiao for 30,000 acres at Waitahanui. Eventually in May 1885, following payments amounting to at least £4000, the court awarded the block to the Crown.

In 1879, advances were made on the Tahunaroa block, which had been reserved from the Waitahanui negotiations. In 1883, a deed was drawn up that awarded the Crown 5619 acres of Tahunaroa 1, for which £297 was paid (after costs had been removed), and five reserves were set aside for the 10 original grantees.[20] It was subsequently discovered that the actual size of this block was 8980 acres. Following adjustments to the boundaries, Tahunaroa 1 (excluding the Parakiri, Otumarukura, and Te Kapua reserves) was awarded to the Crown in August 1885.

Following this sale, the court awarded a 3000-acre block within the remaining land at Tahunaroa to an individual Maori for the sum of £230. The remaining 12,217 acres (later revised to 8590 acres), called Tahunaroa 3, was awarded to the 10 original grantees on the deed for the entire block.[21]

From 1879 to 1880, £329 was paid to the trustees of the Whakarewa block, which was under lease. It is unclear as to whether this was rental money or money advanced on a purchase of the land.[22] In February 1884, the Whakarewa block (excluding two reserves of 1000 acres and one of 112 acres) was declared to be Crown land.

The Crown also acquired Rangiuru 3 in 1883 (6746 acres); Waitahanui 1 in 1885 for £180 (26,407 acres); Waitahanui 2 in 1887 (no acreage available); and the Tumu Kaituna block in 1889 (3000 acres). Private purchases were made in 1888 at Paengaroa a1 (656 acres) and Tahunaroa in the early 1900s (3300 acres).

In 1893, Tahunaroa 3 was partitioned by the court into Tahunaroa 3a (300 acres) and Tahunaroa 3b (8290 acres). In November 1894, 11 of the 14 shares in block 3b were purchased at the price of three shillings an acre. In October 1885, the court partitioned out the Crown's interest in the block and reserved 1185 acres for the one owner who had not signed the deed.

(3) *1890–1910*

According to digital calculations made using the maps reproduced at the start of this report, land alienation between 1890 and 1910 amounted to 155,382 acres. In

20. Alexander, p 168
21. Ibid, p 171
22. Ibid, p 198

particular, it would appear that the Whakatohea back country land was beginning to be acquired during this time.

(4) *1910–35*

With respect to post-1910 purchases, the Bay of Plenty research district fell within the Waiariki and Waikato Maori Land Boards, which also included the Waikato, volcanic plateau, and Urewera Rangahaua Whanui districts. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all the files would be necessary to establish which of the board's alienations fell within the Bay of Plenty. According to maps reproduced in volume i, however, approximately 151,000 acres were alienated in district 3 between 1910 and 1939.

(5) *Examples of public works takings*

As in all districts, takings were made in the Bay of Plenty for certain public works. For a general discussion of public works policy and law, see volume ii, chapter 11. Public works takings and the subdivision of Maori-owned blocks into residential suburbs had a considerable impact on Maori land in the western Bay of Plenty, especially after 1886, as the Tauranga urban area expanded. In particular, the post-1940s expansion of Tauranga city into Ngati He and Ngai Te Ahi lands and the construction of a motorway through these lands are both issues currently before the Waitangi Tribunal (Wai 342 and Wai 370 respectively). For example, the Maungatapu and Hairini blocks were awarded to Maori in 1883 and 1884, having been part of the earlier confiscation, and were later partitioned into numerous subdivisions. In the 1960s, land in these blocks was proclaimed for the construction of a motorway to connect Maungatapu to the Matapihi Peninsula.[23] According to Heather Bassett, Maori were denied the right to fair, equitable, and timely compensation for the land taken.[24]

3.5 Outcomes for Main Tribes in the Area

In 1908, the Stout–Ngata commission reported on Opotiki County, which ran from Ohiwa to Whangaparaoa and included the lands of Whakatohea, Ngaitai, Whanui-a-Apanui, Whanau-a-te-Ehutu, and Whanau-a-Pararaki. It made the following observations:

(a) Overall, within Opotiki County, 85,312 acres were leased or under negotiation for lease, and 23 acres per head remained in Maori hands for their occupation (with a population of 1319).

(b) Whakatohea were reported as having only 35,444 acres in 1908, with no surplus land for sale.

23. H Bassett, 'Aspects of the Urbanisation of Maungatapu and Hairini, Tauranga', report commissioned by the Waitangi Tribunal for Wai 342 and Wai 370, June 1996
24. Ibid, pp 17–18

(c) North of Whakatohea, Ngaitai held 64,706 acres, including 12,000 acres of papatupu land.
(d) The bulk of Whanau-a-Apanui land, north of Ngaitai, was still papatupu land, estimated at around 40,000 to 50,000 acres. Whanau-a-Apanui also held title to 31,126 acres, much of which was leased to Europeans.
(e) The lands of Whanau-a-te-Ehutu and Whanau-a-Pararaki were inextricably mixed, although it appears that little of their land had passed through the Native Land Court.
(f) Ngai Taiwhakaea–Te Patutatahi at that time held 270 acres of poor quality land, which was leased for $25 per acre for five years, and, in conjunction with another Ngati Awa hapu, had an interest in a 240-acre block, which was leased for 21 years in 1987. There are over 1000 owners in both blocks.[25] Ngati Awa hapu also owned the Rurima Islands and were the custodians of wahi tapu totalling 25 acres.[26]

By the 1880s, 96 percent of Ngati Makino lands had been alienated.[27]

By 1908, less than one-seventh of Maori land in Tauranga remained. While some hapu were reasonably well-endowed with land, according to the Stout–Ngata commission, other Maori had virtually none left. In 1900, a return of 'Landless Maori in the Waikato, Thames Valley, and Tauranga districts' included the names of several hundred Tauranga Maori. In 1927, the Sim commission reported that one 600-acre block was owned by 111 members of the Ngaitamarawaho hapu, while a second block containing 59 acres was owned by 61 persons, and a further 41-acre block was owned by 112 persons. It was noted that, for a rural people, this was hardly ample land, even for their subsistence.

Research commissioned by the Waitangi Tribunal relating to the land between the Tauranga confiscation block and the Otamarakau block (that is, the area around Te Puke) indicated that, of the 193,892 acres in this area, only 12,430 acres (6.4 percent) remain in the ownership of the Arawa tribes today. Most of this land was purchased in the early twentieth century.[28]

3.6 Examples of Treaty Issues Arising

3.6.1 Old land claims

The commissioner who examined and appraised the pre-Treaty Tauranga purchase in 1844 appears to have disregarded evidence that Maori named in the deed were not present at the distribution of the payment and, furthermore, that some Maori had been absent at the time of the sale and received no payment at all. The evidence of Alfred Brown was also questionable – including his assertion that he had enjoyed

25. Submission on behalf of Ngai Taiwhakaea–Te Patutatahi et al, p 13
26. Ibid, p 14
27. Alexander, p 3
28. For details of this land, see the submissions on the record of documents for Wai 46 supplied by Harris Martin (no document number was available at the time this report was written).

'undisturbed possession' of the land since its purchase. Although they might not have challenged Brown's occupation of the land, intermittent complaints had been made by groups claiming to have interests in the land that were not recognised at the time the deeds were signed.[29]

Further discrepancies arose over the surveying of the land once the deeds had been signed, which revealed that the area under negotiation was 1333 acres, not the 1030 acres originally estimated. O'Malley argues that, had a survey been required for a Crown grant, this situation might have been avoided altogether.[30] It should be noted, however, that Maori at that time used natural features to delineate an area under negotiation, rather than using precise acreages.

3.6.2 Confiscations

(1) *Western Bay of Plenty*

According to the Waitangi Tribunal's Manukau report, 'the Tainui people of Waikato never rebelled but were attacked by British troops in direct violation of article 2 of the Treaty of Waitangi'.[31] O'Malley and Ward comment that:

> in view of the Waikato tribes' experiences, it is difficult to know whether Tauranga Maori could possibly have interpreted the arrival of British Imperial troops on their own doorstep as anything other than Governor Grey's intention to attack them. From this perspective, their decision to take up arms was not a rebellion but a prudent effort to defend their ancestral lands against an unexpected British assault.[32]

The confiscation of the 50,000 acres of land at Tauranga as punishment for 'rebellion', and the subsequent inclusion of other lands in the 1865 Order in Council (discussed later), were violations of the Tauranga tribes' article 2 right to the undisturbed possession of their lands. Furthermore, the Crown considered 'loyalists', 'ex-rebels', and 'surrendered rebels' eligible for grants, while 'unsurrendered rebels', in particular those Pirirakau who refused to attend meetings and opposed surveying prior to 1866, were omitted.

The Governor's decision to retain one-fourth of the land (that being the 50,000 acres between the Waimapu and Wairoa Rivers) and to return the other three-quarters to Maori, and the subsequent decision to 'purchase' land north of the Wairoa River at three shillings per acre, meant that the Crown officials erroneously continued to refer to the return of three-quarters of the land when the 'compulsory purchase' of the Katikati–Te Puna blocks meant that less than half the district was available for Maori.[33] Furthermore, O'Malley and Ward argue that Government compensation paid to 'friendly Maori' was not equitable. For example, while £1000

29. O'Malley and Ward, pp 23–34
30. Ibid, p 27
31. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed, Wellington, Department of Justice: Waitangi Tribunal,1989, p 17
32. O'Malley and Ward, p 62
33. O'Malley, p 11

compensation was paid to nine 'Ngaiterangi' chiefs in August, Government officials did not distinguish between Ngaiterangi and Ngati Ranginui but rather referred to all Tauranga tribes as 'Ngaiterangi'.[34] Those lands to which Ngati Ranginui had the strongest claim were among those confiscated (and retained) by the Crown, despite the fact that Ngati Ranginui were no more involved in the war than Ngaiterangi had been.

(2) *Eastern Bay of Plenty*

The Crown has acknowledged that 'the confiscation of land, as it occurred in the Eastern Bay of Plenty region, constituted an injustice and was therefore in breach of the principles of the Treaty of Waitangi'.[35] The following discussion considers issues on a tribal basis, as raised in evidence on the record of documents of the Waitangi Tribunal.

(a) *Ngati Awa:* There appears to be some inconsistency in the manner in which the law was applied within the boundaries of Ngati Awa land in that, during the trial for the murder of Fulloon, evidence was given that certain other Maori had also been killed or 'murdered', but the perpetrators of those crimes were not brought to trial.[36] Other grievances of the Ngati Awa hapu against the Crown include the military campaign against Te Hura and his supporters and the destruction of many hapu and kainga by Crown forces.

Furthermore, the confiscation of all the hapu lands and resources has been described by claimants as a 'double punishment' in view of the imprisonment and execution of Te Hura and his supporters, who were charged with murder. Even if the confiscations were an appropriate punishment for the charge of murder, only six hapu were immediately involved in the incident, although all Ngati Awa hapu were subject to confiscations.[37]

Some of the confiscated lands returned to Hikakino, such as the Rangitaiki 31 block, actually belonged to other Ngati Awa hapu, including Ngati Pukeko.[38] Furthermore, Te Rangihouhiri and Hikakino were awarded an 'insultingly insignificant area of land', which included pa sites and kainga of Omarupotiki and Te Matata.[39] Ngati Awa also object to the award of their lands to the Crown's kupapa supporters, such as Ngati Tuwharetoa, Ngati Manawa, Ngati Pikiao, and Ngati Raukawa. In 1874, J Wilson (the land commissioner in the area) commented on the state of Te Rangihouhiri ii and Hikakino when compared with other Ngati Awa hapu who had been given land in the Tarawera River region. He said:

> Some of the Natives adjacent got as little as four acres per head, but the Tarawera Natives obtained twenty-two and a half ares per head for men, women and children.

34. O'Malley and Ward, p 41
35. Wai 46 roi, paper 2.116, para 3 (memo of Crown counsel concerning raupatu and proposed interim report)
36. Wai 46 rod, doc l6, p 3
37. Wai 46 rod, doc l9 (closing submissions of counsel for Ngati Awa), p 9
38. Wai 46 rod, doc l6, p 4
39. Ibid, p 8

> The hapu that recieved four acres per individual Rangihouhiri and Nga Potiki are in a far worse position, they live at Rangitaiki.[40]

The Sim commission also recommended that Te Rangihouhiri and Hikakino be given some land at Matata or Kawerau because they clearly did not have enough land to sustain themselves. The commission stated that:

> The land returned to these hapu is estimated at approximately 278 acres . . . of [which] 187 acres were taken under the Public Works Act, leaving them with an area of slightly over 100 acres, the bulk of which, according to evidence submitted, is sandy and poor quality . . . We think that, owing to the confiscations, these hapu have not sufficient reserves for their ordinary maintenance, and recommend that some land in the locality of Matata be given to them.[41]

According to claimant evidence, the Crown's response was that suitable land was not available.[42]

(b) *Whakatohea:* Despite the fact that Whakatohea had land at Opotiki confiscated for their 'rebellion', evidence shows that, after the first few months of the military invasion, there was very little 'rebellion' by Whakatohea and that only about 50 Maori were engaged in such activities, led by Maori from other tribes such as Te Kooti and Eurei Tamaikowha, and that other Whakatohea actively supported the Government's forces.[43]

It has also been argued that the confiscation of the Whakatohea lands contravened the principles and restraints of officially declared confiscation policy. For example, while Colonial Secretary Fox had stated that the objective of confiscation was 'neither punishment nor retaliation',[44] these were clearly the motivations for the confiscation of Whakatohea's rohe after the killings of Volkner and Fulloon. Whakatohea's most productive land was confiscated, leaving the tribe to survive from the resources provided by the sea, the forests, and the mountains.

While the 1865 proclamation of peace stated that land would be taken in order to maintain peace and compensate the bereaved families of Volkner and Fulloon, considerably more land was taken than was required for these purposes.[45] In addition, Whakatohea were not given sufficient time to comply with the provisions of the proclamation and martial law before troops invaded the district (a period of three days). The resistance given by Whakatohea in response to this invasion could be termed 'armed resistance' at best, but it is not easily characterised as 'rebellion'. Rather, Whakatohea can be seen as defending their homes from attack.[46]

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40. Ngati Awa research, petitions relating to Wai 46 (revised 9 June 1995), pp 43–44
41. AJHR, 1928, g-7, p 24
42. Wai 46 rod, doc l6, p 15
43. Gilling, p 110
44. *New Zealand Gazette*, 21 May 1864, pp 233–237. Also printed in AJHR, 1864, e-2.
45. Gilling, p 179
46. Ibid, p 180

When confiscations were made, there was little indication that attempts had been made to focus punishment on the individual convicted murderers, as opposed to the whole tribe. All Whakatohea who surrendered in 1865 and 1866 were confined to the 20,000-acre Opape reserve, which had previously been Ngati Rua rohe. This led to conflicts between hapu over living space and resources.[47] The Compensation Court awarded little extra land to Whakatohea. Those awards it did make were controversial, particularly the awarding of land at Ohiwa to Wepiha, which outraged Whakatohea and Government officials alike.

It would appear that those Maori who were in 'rebellion' against the Government after 1866 were forced into that position by Government action. While the level of Whakatohea involvement in the murder of Reverend Carl Sylvius Volkner in 1865 (central to the confiscations) is uncertain, there is some indication that two major hapu, Ngati Rua and Ngati Ira, may not have been involved in the killing at all and may even have opposed it.[48]

The 1920 Native Land Claims Commission found that Whakatohea had been disproportionately disadvantaged by the confiscations that were adjudged by the Sim commission to be illegal because they were based upon revenge for a criminal act rather than rebellion. Sim thought that the confiscations had been excessively harsh for Whakatohea, but recommended only £300 compensation per annum.[49] In 1946, the Labour Government paid Whakatohea £20,000 compensation for the settlement of grievances. This was administered by the Whakatohea Maori Trust Board following its establishment in 1952.[50] In 1992, Mokomoko received an official pardon for the murder of Volkner, and in 1996, heads of agreement were reached between Whakatohea and the Crown for $40 million in compensation for all historical grievances suffered by Whakatohea.

(c) *Ngati Makino:* The confiscation line passed through Ngati Makino land, implicating them in the punishment for rebellion. In fact, there were varying responses and motivations among different branches of the tribe to the events of 1865 and 1866.[51]

The sale of the Tahunaroa block also raises questions that require further consideration. First, according to Alexander, there is an indication that the names on the deed were intended only to be trustees of the land, although in negotiating the purchase of the land, the Crown chose to interpret these names as owners with the right to sell on behalf of all those with an interest in the land. Furthermore, it appears that those who had an interest in the land understood that Tahunaroa was the land reserved for Ngati Makino from the Waitahanui purchase and was not to be sold. The Crown, in purchasing this land, only obtained the signatures of three of the 10 names listed on the deed.[52]

47. Gilling, p 181
48. Ibid, p 178
49. AJHR, 1928, g-7, p 22
50. NZPD, vol 275, p 727
51. Alexander, p 29
52. Ibid, pp 160–170

3.6.3 The management of lands to be returned to Maori

District Surveyor Heale expressed concern at the injustices to the Maori inhabitants caused by the Government's delays in proceeding with the scheme for military settlement, because Maori were refraining from settling and cultivating until decisions had been made by Government officials.[53] The survey began in 1864, but not until 18 May 1865 was the actual confiscation made by Order in Council. Heale also noted that:

> it is impossible to deny that the long delay in taking any decisive steps at Tauranga is at variance with the spirit of the engagement made in August 1864 [by the government of the day with respect to giving back to Maori a portion of the confiscated land] and that it has been productive of consequences unfavourable to the Government in the eyes of the Natives.

Heale went on to attribute the increasing dissatisfaction among Maori and their developing relationship with Pai Marire to Government delays in proclaiming and surveying the lands.[54]

3.6.4 The Tauranga District Land Act 1867

The Tauranga District Lands Act 1867 resolved questions of validity with respect to the earlier Order in Council in what amounted to, according to O'Malley, 'an implicit acknowledgement on the part of the Government that it had not thus far acted in accordance with the requirements of the New Zealand Settlements Act 1863', which provided for compensation courts to hear the claims of 'loyalists' and 'rebels' on confiscated lands.[55]

The 1867 Act specifically named Ngaiterangi as the owners of the land confiscated under the New Zealand Settlements Act 1863. The claim of Ngaiterangi to the land was challenged by other hapu and tribes in the area; the strongest dispute coming from Pirirakau (a Ngati Ranginui hapu), who had refused to participate in the surrender of land in August 1864. Maori also alleged that some who had not fought had lost land and that not all owners had been consulted (including paramount Ngaiterangi chief Tupaea) nor had they consented to the Katikati–Te Puna purchase.

Under the Act, tribes with competing interests were not allowed the opportunity to protest and were prevented from lodging a legal challenge against Crown actions in Tauranga. They were instead forced to compete for some share of the payment. Even within Ngaiterangi proper, according to O'Malley, there were Maori who did not know of the transaction until it was completed.[56]

An amendment to the Act in 1868 extended the boundaries of the block to include land west of the Wairoa River, despite strong protest from Maori. Appeal by

53. AJHR, 1867, a-20
54. Ibid
55. O'Malley, p 19
56. Ibid, p 42

Maori was not possible because all Government transactions were declared legal under the legislation.

3.6.5 Commissioners of Tauranga lands

Because the whole Tauranga district was confiscated and thereby became Crown land, there was no investigation of the land by the Native Land Court. Some applications were made (applicants unspecified) for the investigation of title in 1865, but the Crown refused to allow the Native Land Court (or the Compensation Court) any meaningful involvement in the process of returning the lands in the district, instead doing so in a 'haphazard and protracted manner' by means of specially appointed commissioners of Tauranga lands. Chief Judge Fenton advised the Government that 'a sitting is necessary',[57] and when no hearing occurred, he wrote to the Native Minister on several occasions insisting that claims at Tauranga be heard by the court, explaining that he felt the Government did not have 'any right to deprive the considerable class of Her Majesty's subjects of the benefit of the Courts'.[58] The official response was that 'the Government does not consider that in the present unsettled state of the District it would be advisable to hold a Court at Tauranga'.[59]

It was decided by Commissioner Brabant that, because the whole of the Tauranga moana tribal area was confiscated by the Crown, commissioners were not bound by considerations of traditional or tribal rights in deciding the location of reserves and land grants.

The commissioners of Tauranga appeared to have had no clear guidelines as to how to proceed in the returning of land to Tauranga Maori. In 1881, Brabant commented that 'There is no direction in the Acts as to how the enquiry should be made'.[60] O'Malley asserts that the absence of clear and open guidelines for the proceedings of the commissioner was undoubtedly prejudicial to Maori interests because the commissioners were under no obligation to determine customary ownership in returning lands and in fact often did so on the basis of 'loyalty' to the Crown as they perceived it.[61] Furthermore, the land was returned as individualised title, not to hapu groupings.

3.6.6 Reserves

At the same time, Brabant assured Maori that the commissioners would try to ensure that all hapu were granted sufficient land for their kainga and cultivations and that land grants were made to individuals for services rendered to the Government and the military. Evelyn Stokes concludes that whatever other criticisms can

57. DOSLI files
58. Ibid
59. Ibid
60. Brabant to T W Lewis, Under-Secretary of the Native Department, 16 May 1881, 'Miscellaneous Papers, 1879–85', DOSLI Hamilton Tauranga confiscation file 4/26 (RBD, vol 127, pp 48,670–48,671)
61. O'Malley, p 32

be made of the administration of the Tauranga District Lands Act, the commissioners made an effort to ensure that all the hapu of Tauranga moana had reserves granted to them.[62]

In 1878, alienation restrictions were imposed on all lands returned to Maori from that date. Commissioner Wilson said:

> all reserves as are necessary to the support of the Natives in the way of cultivation and residence should be rendered inalienable; otherwise . . . the Natives will sooner or later be tempted to sell them. I think the reserve of each hapu should, if possible, be separate, that it should be of good quality, and sufficiently large to support the hapu. In making reserves I am endeavouring to conform to these conditions . . .[63]

Despite this restriction, a number of these blocks had been sold by the 'trustees'. In addition, some of the 'native reserves' were subsequently translated into individual or Maori freehold title, while some were held in trust by the Crown as Crown land and used for other purposes such as Tauranga educational endowment reserves (under the 1896 Act of that name).

In 1877, H T Clarke (the Native Secretary) estimated that, for Maori to retain 50 acres per head as sufficient land for them to live on, a minimum of 62,250 acres was required, leaving a mere 6750 acres available for European purchase within the confiscation area.[64] Wilson, on the other hand, was of the opinion that 'there is much surplus Native land in the district, which the Natives cannot cultivate or occupy'.[65] While Clarke's estimates may have been unreliable, according to O'Malley there is no evidence that Wilson had made a substantial study of this matter and purchasing of the land continued.

By the beginning of 1879, about 19,734 acres of the land so far investigated and Crown granted to Maori had been either sold or granted without restrictions.

John Bryce, the Native Minister, stated in 1882 that Crown policy with regard to the removal of alienation restrictions was to ensure that Natives had 'amply sufficient land for their maintenance', that alienation should only occur with the unanimous agreement of all Maori owners, and that the price paid for land must be prima facie fair and reasonable.[66] But it appears that these instructions were only as effective as the officials who administered them.[67] For example, Brabant, the commissioner of Tauranga lands, was of the opinion that Tauranga tribes owned more land than they needed for their own purposes, and he recommended the removal of alienation restrictions in just about every case he was involved in. In 1882, Brabant noted that:

> Although the Tauranga lands are all inalienable, except by leave of the Governor, a native who can show any evidence of title can, it appears, always obtain advances, the

62. Stokes, pp 156, 217
63. AJHR, 1879, sess 1, g-8
64. Clarke to Native Minister, May 1877, AJHR, g-1, vol 2
65. Wilson to Native Minister, 8 July 1879, AJHR, 1879, vol 1, g-8, p 3
66. DOSLI Hamilton file 4/25 (RDB, vol 126, pp 48,638–48,639)
67. O'Malley and Ward, p 81

> purchaser trusting that time or turn in the political wheel to enable him to perfect his title.[68]

More generally, between 1 April 1880 and 31 March 1885, restrictions were removed in respect of 33,033 acres of Maori land in the Tauranga district. The typical reason provided for removing restrictions was that the 'Natives have sufficient land for their subsistence', when in fact little consideration had been given to whether remaining land was adequate.[69] O'Malley writes that 'the alienation restrictions were regarded by settlers, speculators and Crown officials alike as little more than formalities to be completed before land transactions were confirmed'.[70] For example, Ngati Haua, who had been recognised in reserves granted at Omokoroa, were 'persuaded' to sell 83 acres for £350 (in order to settle another dispute). In another instance, Ngati Tokotoko and Ngati Hinerangi, who had occupied the Tauranga side of the Kaimai Ranges, were also recognised in reserves granted at Omokoroa, Huharua, and the parish of Te Puna. When quarrels arose between Ngati Tokotoko and Mangapohatu at Huharua, however, a Government official 'took possession of this strip to separate the disputants'. No separate reserves were allocated to Ngati Tokotoko. One township section at Tauranga was reserved for Ngati Raukawa.

In 1885, a commission investigated the matter of restrictions on the alienation of Maori land and called into question the whole process of private land purchasing in Tauranga and the actions of Brabant in particular. The report, which was rejected by Parliament's Native Affairs Committee at the time, indicates that the Crown, after purporting to make all lands returned to Tauranga Maori inalienable, subsequently failed to enforce this policy for a number of years and only belatedly took action on a handful of cases.[71] Had the Crown diligently administered this policy, more Tauranga hapu might have been able to retain land, or at least the rate of alienation would have been considerably slowed. Furthermore, despite the original agreement that only a quarter of the confiscated block at Tauranga would be retained by the Crown, as a result of the repurchase of returned land, less than a quarter of the block remained in Maori hands by 1908. In 1877, H T Clark warned that without Government protection Tauranga Maori would 'inevitably pauperise' themselves. The Native Land Court Act Amendment Act 1888 gave the court the authority to remove restrictions upon the application of a simple majority of the owners. In 1900, a return of the 'Landless Maoris in the Waikato, Thames Valley, and Tauranga Districts who lost their Land by Confiscation' included the names of several hundred Tauranga Maori.[72]

68. AJHR, 1882, g-1, p 5
69. AJHR, 1883, g-4, p 5
70. O'Malley, p 74
71. Ibid, p 88
72. AJHR, 1900, g-1, pp 7–8, 13

3.6.7 The Sim commission and other twentieth-century developments

The Sim commission adopted the view that the confiscation was acceded to by Tauranga Maori and was not excessive. The commission's inquiries were limited in that they rejected petitions from Ngati Ranginui on the basis that the tribe's claims were covered in the settlement with Ngaiterangi, thereby perpetuating the belief that Ngati Ranginui were part of the Ngaiterangi tribe, when they were in fact distinct.[73]

In 1975, a deputation from all the tribes of Tauranga approached the Government with claims, which were accepted in principle by the Government of the day. The Tauranga committee submitted a new petition in 1978, and following further petitioning and negotiation, the Government recognised the validity of the Tauranga claims, and the Tauranga Moana Maori Trust Board Act 1981 was passed. According to the preamble to the Act:

> the Crown should pay and those descendants [of Tauranga Maori] should accept the sum of $250,000 in full and final settlement of all claims of whatever nature arising out of the confiscation or other acquisition of any of the said land by the Crown.

Section 7 of the Act also recognised that Maori in Tauranga had not been engaged in rebellion.

According to Stokes, the establishment of the trust board has not resolved all the grievances over confiscation. Stokes says that many felt that the $250,000 payment by the Government was a paltry sum for the loss of lands and the anguish of war, given that Tauranga Maori had requested $2,000,000; some felt that it should have been refused and were critical of the fact that Tauranga Maori had not been consulted on the level of compensation or the terms of the settlement.[74] Further protest has followed the Act and claims have been lodged with the Waitangi Tribunal. O'Malley believes that fresh resentments were created by 'the manner in which the Crown had rammed through the 1981 Act in the face of obvious and widespread dissatisfaction with its contents on the part of Tauranga Maori'.[75] Given no option, Tauranga Maori accepted the settlement, at the same time insisting that it should not be considered full and final.

3.6.8 Purchases under the Native Land Acts

The purchase of most of the Te Arawa land around Te Puke, and the minimal reserves for Maori, reduced the already diminished Arawa rohe, including valuable coastal lands. In the eastern Bay of Plenty, purchases further reduced the Whakatohea land already diminished by confiscation. The main Treaty issue involved in land court purchases is whether the customary title should have been converted to a

73. O'Malley and Ward, p 91
74. O'Malley, p 220
75. Ibid, p 220

form of absolute ownership in which each individual named in a title could severally sell his or her interest.

3.7 Additional Reading

The following are recommended for additional reading:

Evelyn Stokes, 'Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands', report prepared for the Waitangi Tribunal, 1990;

Vincent O'Malley and Alan Ward, 'Draft Historical Report on Tauranga Moana Lands', Crown Congress Joint Working Party, June 1993; and

Vincent O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864–1981', report commissioned by the Crown Forestry Rental Trust, June 1995.

See also the submissions on the record of documents for the Eastern Bay of Plenty claim, Wai 46.

CHAPTER 4

UREWERA

The Rangahaua Whanui district report for Urewera was not completed at the time of the writing of the *National Overview*. This summary has therefore been written with the assistance of Anita Miles, the author of the district report. It should be noted that, when it is released, the district report will include issues that have not been discussed here.

4.1 Principal Data

4.1.1 Estimated total land area for the district

The estimated total land area for district 4 (Urewera) is 1,014,530 acres.

4.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 4 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 100 percent in 1860, 85 percent in 1890, 72 percent in 1910, and 11 percent in 1939 (or 55.2 acres per head according to the 1936 population figures provided below).

4.1.3 Principal modes of land alienation

The principal modes of land alienation in district 4 were:

- confiscation; and
- Crown purchases after 1910.

4.1.4 Population

The population of district 4 was approximately 1000 to 2000 in 1840 (estimated figure), 1189 in 1891 (estimated from census data), and 2105 in 1936 (also estimated from census data).

4.2 Main Geographic Features

The boundaries of this research district run east along the Rangitaiki River from Matahina toward Murupara, and inland via Minginui, Maungataniwha, and the northern shore of Lake Waikaremoana. The eastern boundary runs north through the Huiarau and Kahikatea Ranges towards Taneatua.[1]

This district is largely mountainous in nature and is dissected by the Whirinaki, Whakatane, and Waimana Rivers. The principal areas of Maori settlement were along the Waimana River valley, at Ruatahuna, and at Ruatoki. In the south-eastern corner, Lake Waikaremoana provided food resources. Between the Rangitaiki River and the Ika Whenua Ranges is a relatively flat area of land known as the Galatea Basin. Centres of population in this area were at Murupara, Waiohau, and Ahikereru.

Valuers in the late nineteenth century noted that the western and southern portions of Urewera were largely mountainous, while the southern portions of the Te Whaiti, Ruatahuna, and Muanuoha blocks, all of the Waikaremoana block, and the western boundary of the district running from Whirinaki River to the Tamatamaiere trig station were described as very broken birch country.[2] Most of the Urewera district was in fact heavily forested.

4.3 Main Tribal Groupings

Prior to the arrival of the Mataatua waka (some 16 generations ago), a number of groups are thought to have lived in and around the Urewera district. The following discussion of these groups, as well as the later arrivals, is drawn from Anita Miles' research for Rangahaua Whanui, which, in turn, relied largely on secondary sources in producing a description of Urewera traditional history described as 'brief and tentative'.

Nga Potiki occupied the valley of the Whakatane River southwards from Karioi to the west of Maungapohatu. According to Best, Nga Potiki, for whom no waka tradition exists, is the ancient name for the Tuhoe, or Te Urewera. A second group, Te Hapu-oneone, originally occupied lands from Ohiwa inland to Te Waimana and across the Taiarahia Range to Ruatoki. Finally, Te Whakatane (descendants of Haeora) lived to the west of the Tauranga (lower Waimana) River between Maungapohatu and Matahi. These three groups are believed to have intermarried and forged alliances and groups with new identities.

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1. The 'egg' shape of the Urewera district on the Rangahaua Whanui maps was intended to approximate the Tuhoe rohe. Because issues such as confiscation and land purchase straddle Rangahaua Whanui boundaries, however, discussion of some matters involving land in the Urewera 'egg' will be found in chapters on adjacent districts, such as the volcanic plateau (ch 7) and Wairoa (ch 11).
2. A Wilson and A B Jordan to chief surveyor Auckland, 1 August 1915, ma-mlp 1, 1910, 10/28/1, pt 1 (cited in Miles, 'Urewera', Wellington, Waitangi Tribunal Rangahaua Whanui Series unpublished draft, ch 8)

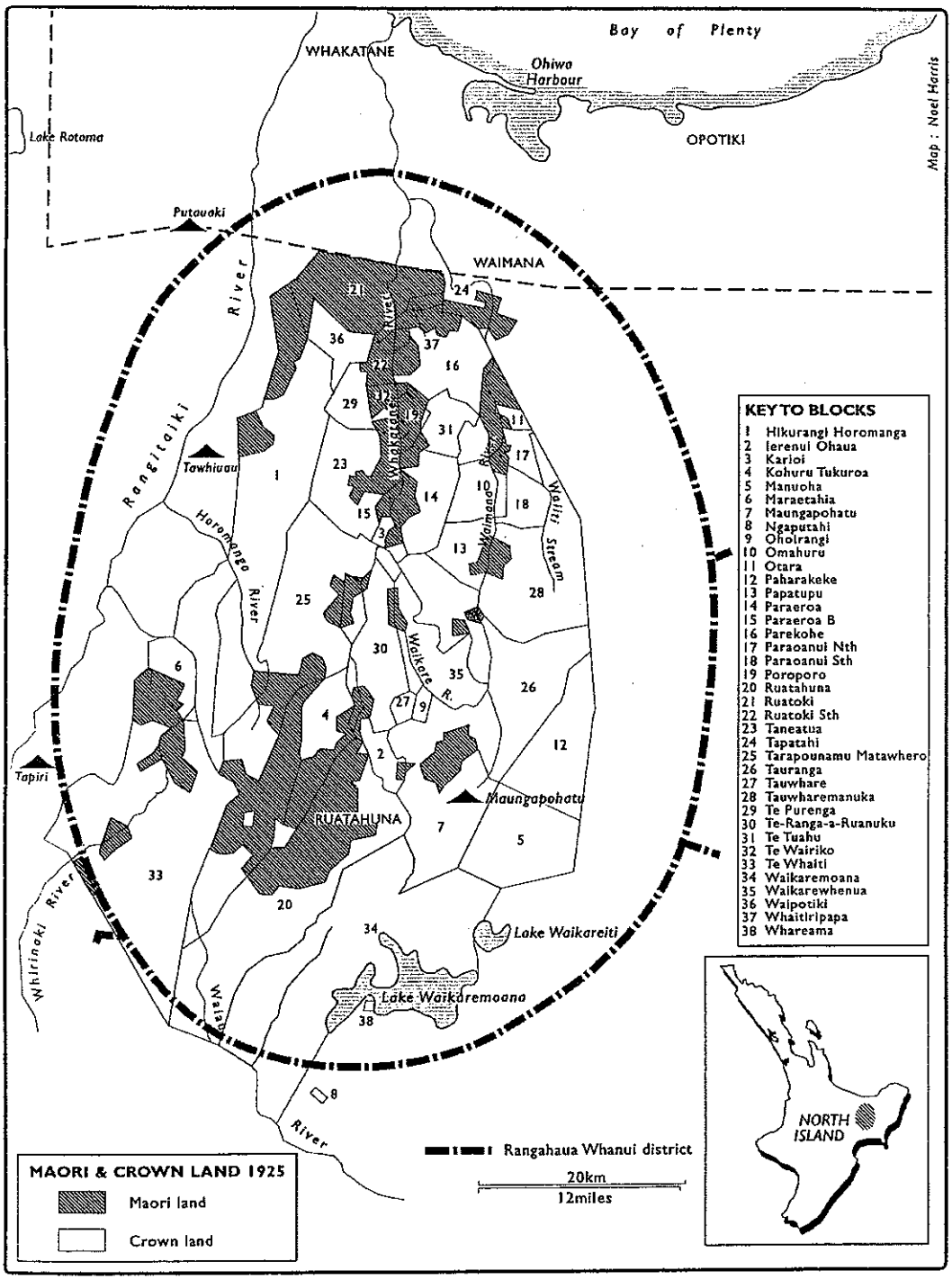

Figure 11: District 4 (Urewera)

Ngati Ruapani, with ancestors in Poverty Bay, are also believed to have occupied Waikaremoana prior to the arrival of the Mataatua waka. Ruapani made alliances with Kahungunu and have a history of feuding with Tuhoe from the 1600s until an uneasy peace was established between them in the nineteenth century. In 1823, however, Tuhoe pushed back Kahungunu and began to occupy the shores of Waikaremoana with Ruapani to the east of the lake. Tuhoe were also known to feud with Ngati Awa, among others, which eventually resulted in Tuhoe moving back out of the interior and settling in Ruatoki and Te Waimana.

Ngati Manawa and Ngati Whare share a common ancestry in the migration of Tangiharuru and Wharepakau from Waikato, who conquered and intermarried with the Marangaranga (the original inhabitants of the Ika Whenua Valley descended from Toi Karakau). Ngati Manawa descendents settled in the Rangitaiki Valley, including Kaingaora (see also chapter 7), and Ngati Whare occupied the Whirinaki Valley. Both have an ancestry distinct from that of Tuhoe, although subsequent intermarriage between these iwi made for very close relationships.[3]

The Mataatua waka arrived some 16 generations ago in the Bay of Plenty. Intermarriage between the original inhabitants and the more recent arrivals gave rise to the ancestors of Tuhoe.

4.4 Principal Modes Of Land Alienation

4.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

There were no pre-1840 purchases in district 4.

4.4.2 Pre-1865 Crown purchases

There were no pre-1865 purchases in district 4.

4.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 4.

4.4.4 Confiscation

By Order in Council in 1865, land was confiscated in the eastern Bay of Plenty (see chapter 3 for boundary descriptions and a further discussion). According to one estimate, approximately 57,344 acres of Tuhoe's most promising agricultural and farming land were taken in the very north of the Urewera district.[4] Although Government schedules indicate that 500 acres of this land were later returned to

3. H Bird, 'Kuranui o Ngati Manawa' (Wai 212 rod, doc b4(c)(3))
4. Sim commission papers, RDB, vol 52, p 20,221. The Sim commission itself quotes a lesser figure of 14,731 acres confiscated from Tuhoe: AJHR, 1928, g-7, p 21.

'surrendered' Tuhoe, it has not been possible to locate this land in the *Raupatu Document Bank* sources. By the end of April 1867, military settlers had been granted lots in Waimana and Opouriao lands. Tuhoe resistance, however, confined settlement to the north-eastern portion of the Waimana Valley. In the event, none of the objectives of the settlements were attained, and none of the settlers stayed on their lots. One reason cited for the failure of the settlement was constant attack by Tuhoe, who had been driven off their land.[5] Once peace was established in the Waimana Valley in 1870, unoccupied lots were further subdivided and disposed of by ballot.

4.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) *1865–1910*

In 1874, the Whakatane Cattle Company bought all the deserted military land from Poronui Mill, four miles south of Whakatane, to the confiscation line. This included 586 acres of reserves and individual grants set aside for loyal Ngati Pukeko from which restrictions on alienation were removed (except for allotment 70 at Puketi, which remained inalienable).

In 1876, the cattle company leased 12,000 acres across the Whakatane River to the west and north of the confiscation line.

From 1882 to 1885, Major Swindley privately purchased or leased most of the land from Ohiwa to Waimana estate south of the confiscation line (which had previously been through the Compensation Court or the Native Land Court in 1878). In 1882, his run in Waimana comprised some 16,000 acres. In addition, he leased 11,000 acres of Maori land to the north of Waimana. In July 1884, he also purchased 5333 acres just north of the confiscation line. All Swindley's land was later to be taken over by the bank that held Swindley's mortgages following economic depression in 1887.

Following the eruption of Mount Tarawera in 1886, remaining Ngati Pukeko allotments around Taneatua and Opouriao were sold (except, once again, inalienable lot 70).

In 1896, the Crown bought land at Opouriao for £24,261. The land was subsequently divided into 44 sections of 60 to 300 acres in size, in addition to 15 smaller sections. The town of Taneatua was laid out at the junction of the Whakatane and Waimana Rivers. The first ballots for these sections were held in early 1896.

(2) *1910–20*

Government purchasing in Urewera began in 1909 and 1910 in the eastern Urewera blocks, which had been approved for sale by the general committee of Urewera hapu, appointed under the Urewera District Native Reserve Act 1896. Those blocks that had formal approval from the committee for sale by the end of 1910 were

5. H G D White (ed), 'The Diary of Alfred Parkinson', *Historical Review*, vol 20, no 1 (May 1972), p 34

Maungapohatu, Tauranga, Otara, Paraoanui North, Paraoanui South, Waikarewhenua, Tauwharemanuka, Omahuru, Karioi, and Pukepohatu. In addition to these blocks, the Government's Native Land Purchase Board approved the purchase of certain other blocks in September 1910 without the formal consent of the Tuhoe general committee. These were Ruatoki 1, 2, and 3, as well as the Waipotiki, Karioi, and Whaitiripapa blocks. The second schedule of Government purchasing in Urewera is reproduced below.

Block	Area	Total shares	Shares acquired	Amount paid	Rate
Waikarewhenua	12,400	5029	$2215^{51}/_{140}$	£3181 5s 8d	12s per acre
Tauranga	39,020	4558	$2536^{2}/_{9}$	£16,159 4s 9d	15s per acre
Maungapohatu	28,462	6238	$823^{1}/_{10}$	£2258 12s	12s per acre
Paraoanui North	3300	918	$474^{4}/_{21}$	£1419 8d	17s 6d per acre
Paraoanui South	5410	1733	$1014^{7}/_{12}$	£2770 9s 7d	17s 6d per acre
Otara	2530	2660	$1635^{9}/_{26}$	£1597 2s	20s per acre
Omahuru	6450	2377	$1369^{31}/_{42}$	£3716 6s 4d	20s per acre
Parekohe	20,960	6655	12	£35,000	
Waipotiki	8200	4126	31	£23	14s 6d per share
Karioi	2428	2972	30	£9	6s per share
Ruatoki 1	8735	4239	65	£49 10s	15s per share
Ruatoki 2	5910	4512	60	£29 2s 6d	9s 6d and 9s 9d per share
Ruatoki 3	6800	4517	60	£33 12s 6d	11s per share
Total	150,605			£31,353 6s	

Second schedule of Government purchasing in Urewera.
Source: ma-mlp 1, 1910/28/1, pt 1.

Following a break, the Crown's land purchase agent, Bowler, recommenced purchasing in Urewera in 1915. By July 1915, Bowler had acquired over 500 signatures (representing roughly 15,920 acres), which resulted in the Crown owning most of the blocks.

By April 1916, the Native Land Purchase Board sought to complete purchases in the Ruatoki South, Te Purenga, Te Wairiko, Poroporo, Te Tuaha, Taneatua, Pukepohatu, and Paeroa blocks, for which advances had previously been paid.[6]

6. Miles, ch 8

By mid-1916, the Crown had not yet managed to purchase one entire block, but it had acquired substantial interests in many blocks, as Bowler's purchasing returns for 1916 indicate (see the table on the following pages).

By 1917, those blocks in which the Crown had not begun purchasing were located in the south and centre of Urewera. In May 1917, the Minister approved purchasing in Hikurangi–Horomanga, Te Ranga a Ruanuku, and Tarapounamu–Matawhero. In July 1918, the Minister of Native Affairs approved the purchase of the Ohiorangi, Tauwhare, Ierenui–Ohaua, Ruatahuna, and Kohuru–Tukuroa blocks.

(3) *Summary of Crown purchases in the Urewera reserve*

Crown purchases in the Urewera reserve are summarised in the following table.

Year	Acres
June 1910–March 1912	40,795*
June 1915–March 1916	84,770†
April 1916–March 1917	56,741
April 1917–March 1918	64,303
April 1918–March 1919	42,672
April 1919–March 1920	29,996
April 1920–March 1921	9404
April 1921–July 1921	16,394
	345,076‡

* Acquired by the Lands Department.
† Acquired by the Native Land Purchase Department.
‡ For which the Crown paid £193,076: Miles, ch 8.

4.4.6 Urewera lands consolidation scheme

Following purchases in most Urewera blocks, the remaining scattered lands were consolidated by the Crown in order to facilitate settlement, and the economic use of the land. Consolidation, negotiated with Tuhoe, began in 1921, and only alienations to the Crown in Urewera were permitted until the scheme was completed. This process continued well into the 1920s with the regrouping of non-sellers. Following some negotiation, Tuhoe finally agreed to contribute £20,000 (in land) for roading to the interior villages. While Tuhoe support for the scheme was divided, it is thought that they eventually agreed because they thought that they would get defined sections on the road, surveyed and ready for farming. Similarly, it has been suggested that Tuhoe had little option, given that the Crown did not want to partition and Tuhoe interests were geographically undefined and had to be located in order for Tuhoe to use them. Through the process of consolidation, the Crown

Block	Area	Bought by 31 March 1916	Purchased since	Total purchase	Unpurc-hased 1 December 1916	Price per acre	Price per block
Tauranga	39,320	33,549	1464	35,013	4307	15s	£29,490
Otara	2680	2096	127	2223	457	£1	2680
Omahuru	6600	5190	140	5330	1270	£1	6600
Paraoanui North	3400	2701	126	2827	573	17s 6d	2975
Paraoanui South	5510	4464	259	4723	87	17s 6d	£5071 5s
Waikarewhenua	12,500	8947	501	9448	3052	12s	7500
Maungapohatu	28,462	10,931	1240	11,174	17,298	12s	£170774s
Te Whaiti 1	45,048	16,646	6952	23,598	21450	8s 3d	£18,687
Te Whaiti 2	26,292	16,080	4238	20,318	5974	£1 1s 3d	£28000
Otairi	6910	4304	507	4811	1099	5s	£1727 10s
Maraetahia	5512	2606	593	3229	2372	5s	£1378
Parekohe	20,960	5609	4283	9892	11,068	£1	£20960
Waipotiki	8200	2318	1888	4206	3994	12s 6d	£5125
Karioi	2420	773	328	1101	1319	10s 10d	£1210
Tauwharemanuka 1	1190				1190	11s 11d	£707 14s
Tauwharemanuka 2	1289	1040	2425	465	1289	12s 6d	£807 6s
Tauwharemanuka 3	5852	19	20	39	2387	10s 10d	£3163 18s

Tauwharemanuka 4	476	978	237	1215	437	11	263
Tauwharemanuka 5	1448		792	792	233	10s	724
Tauwharemanuka 6	2003	227	1258	1258	1211	10s 6d	1052
Tauwharemanuka 7	2380	7017	163	390	1122	10s 5d	£1240 8s
Tauwharemanuka 8	872		3187	10,204	482	10s	£436 9s
Tauwharemanuka 9	20,833		1487	1487	10,629	7s 5d	£7700
Ruatoki South	6020		1377	1377	4533	12s 6d	£3760 10s
Te Purenga	5680		794	794	4303	10s	£2840
Te Wairiko	2240		731	731	1446	12s 6d	£1400
Te Poroporo	2470		3877	3877	1739	10s	£1235
Te Tuahu	6300		4873	4873	2423	10s	£3150
Taneatua	17,200		996	996	12,327	10s	£8600
Paraeroa a	13,006		6	6	12,010	10s	£6503
Paraeroa b	410				404	10s 8d	£205
Total	300,743	125,495	44,869	170,394	130,349		

Bowler’s purchasing returns for 1916. Source: Bowler to the Under-Secretary of the Native Department, 9 December 1916, ma-mlp 1, 1910/28/1, pt 2 (as reproduced in Miles, ch 8).

acquired 137,224 acres. Of the Waikaremoana block of 73,667 acres, 29,060 acres at Ruatahuna were exchanged at a rate of six shillings per acre, while the remaining 44,000 acres were purchased for an average of 15 shillings per acre, largely paid in debentures. The Crown also paid Tuhoe small amounts for abandoned improvements.

4.5 Outcomes for Main Tribes in the Urewera Reserve

By the end of June 1918, Bowler had managed to acquire approximately 251,826 acres in Urewera, which left a balance of 184,671 acres to Tuhoe.[7]

Returns to the end of July 1921 indicated that the Crown had made purchases in 44 Urewera blocks, which represented an area of 518,329 acres. Blocks excluded from purchase totalled approximately 130,000 acres. In the blocks under purchase, the non-sellers retained 173,232 acres (valued at £78,479), as well as two small blocks and six larger blocks intact.[8]

Therefore, from June 1910 to July 1921, the Crown purchased the equivalent of two-thirds of all blocks under purchase.[9] In addition, the Crown acquired 137,224 acres via consolidation, amounting to 482,300 acres, or nearly 75 percent of the reserve area, acquired by the Crown by 1927.

4.6 Examples of Treaty Issues Arising

4.6.1 Confiscation

Following confiscations in the Bay of Plenty, a Compensation Court was appointed for the eastern Bay of Plenty confiscation block, according to the New Zealand Settlements Act 1863. The evidence suggests, however, that J A Wilson (who acted both as a Crown agent in court and a special commissioner making out-of-court arrangements) seems to have acted administratively rather than through an open court process. He attempted to reduce the area claimed by Maori as much as he could in an effort to better the Crown's holding.[10]

According to one source, Tuhoe's claims to return land via the Compensation Court were dismissed because of their participation in the defence of Orakau in 1864 and for their alleged involvement in the killing of Volkner and the sheltering of Kereopa (see ch 3), as well as for their illegal possession of firearms. Miles reasons that Tuhoe involvement at Orakau and in the killing of Volkner ought not to have disqualified Tuhoe from compensation, in view of the pardon given to Bay of Plenty Maori in the peace proclamation of 1865. She notes that favour was shown towards loyal tribes, particularly where territory was disputed.[11]

7. See schedule of Urewera purchases, 16 July 1918, ma-mlp 1, 1910, 10/28/1, pt 3 (cited in Miles, ch 8)
8. AJHR, 1921, sess 2, g-7, p 3 (cited in Miles, ch 8)
9. Miles, ch 8
10. J A Wilson to F Whitaker, AGG Auckland, 4 November 1866, RBD, vol 120, pp 46,353–46,357

For a further discussion of Treaty issues arising from confiscation policy and law, see volume ii, chapter 6.

4.6.2 Urewera District Native Reserves Act 1896

The purpose of the Urewera District Native Reserves Act 1896 was to ascertain native title and make provision for the 'Local Government of the Native Lands in the Urewera District'. The Act established the general committee to deal with these issues in the district as a whole. Its decisions were to be binding on all owners. In this sense, the Act was a recognition by the Crown of the hapu and tribal structure, via the committee.

The Urewera District Native Reserve Amendment Act 1900 enabled the commissioners to partition blocks and reserved to the Native Minister the power to set aside any Urewera land for leasing periods of 21 years upon the recommendation of the Urewera commissioners. Miles notes that the amendment Act indicates 'an attempt to wrest the initiative on Urewera land policy from Tuhoe control'.[12] She goes on to say that, through the Act's provisions, the democratic committee structure envisaged under the 1896 Act was sidestepped in favour of a concentration of power on Carroll and the commissioners.[13]

Despite this early intention, Miles notes:

> Government policy, however, was firmly focussed on the purchase of Urewera land, not on the promotion of Maori development of land and agricultural enterprise (in spite of Tuhoe efforts at Ruatoki). This came in spite of Ngata's assurances in Parliament that section 8 of the Urewera Amendment Act 1909 was 'for the purpose of promoting settlement on their lands by Natives themselves'.[14] From this point onward, Tuhoe non-sellers were placed in a position of reacting to and protesting against aggressive Government purchase policy in the Urewera.[15]

In the event, the Government did not protect the rights granted to the block committees to make collective forms of alienation, nor did it protect the right of the Tuhoe general committee to approve or veto those offers. In eventually dispensing with this provision, the Government was also dispensing with Tuhoe's expression of local self-determination.[16]

4.6.3 The Tuhoe general committee (Komiti Nui)

(1) *The establishment of the committee*

Under the Urewera District Native Reserves Act, each block committee was to elect a representative to the general committee. Carroll, however, considered that a

11. Miles, ch 6
12. Ibid
13. Ibid
14. Ibid, ch 8
15. Ibid
16. Ibid

committee comprising a member for each of 33 blocks, which had been proposed by hapu, would be 'unworkable'.[17] Instead, only 20 members were chosen by the minister, in consultation with Numia Kereru (the chairman of the committee). Their selection or appointment proved contentious, and the committee was not finally gazetted until March 1909, some 13 years after the Act was passed. There is also evidence that Carroll amended this membership soon after it was announced, and prior to an amendment being made to the governing Act allowing him to do so.[18]

In 1908, Ngata, as a commissioner with the Stout–Ngata commission, met with Tuhoe and raised the matter of the cession of Urewera lands in order to compensate the State for approximately £7000 in debts owed by Tuhoe for survey and other charges, saying that the 'time was ripe' for sales.[19] Tuhoe responded by offering to sell the Government 28,000 acres. The Government was presumably less than satisfied with this offer, given the size of the district available. In April 1908, Rua Kenana, the Tuhoe prophet leader, announced that he was prepared to sell other Tuhoe land in order to reserve his own land.[20] Again, in November 1908, Rua is said to have met with Carroll and offered to sell land with the support of 1400 signatures on a petition.[21] Having agreed to consider Rua's requests, which he considered 'reasonable', Carroll was faced with the problem of having the sales legally authorised by the general committee.

(2) *Title determination*

The Urewera District Native Reserves Act 1896 seems to imply that title determination would be carried out according to the wish of a majority influence of Tuhoe commissioners. However, the amendment Act of 1900 disqualified any members with a personal interest in the block from sitting or voting on its ownership, which seriously jeopardised the Tuhoe majority. The objective of the commissioners was, as far as possible, to divide the Urewera district into blocks along traditional hapu boundaries and determine the ownership of those blocks. Since hapu were not discrete entities sitting within tidy boundaries, the whole attempt at defining 'hapu boundaries' was setting the Tuhoe commissioners a near-impossible task. In fact, the commission reduced the original 58 hapu areas into just 34 blocks. The commission noted later that, had it worked to distinct hapu boundaries only, interests would have been scattered through many blocks and the process would have been considerably slower.[22] This simplification, however, grouped separate hapu together in a single block, which ultimately resulted in many hapu appeals for partition.

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17. NZPD, 9 October 1909, vol 145, p 1116 (cited in Miles, ch 7)
18. Miles, ch 7
19. ma 78/11 (cited in Miles, ch 7)
20. P Webster, *Rua and the Maori Millennium*, New Press and Price Milburn, 1917, p 231 (cited in Miles, ch 7)
21. J Binney, G Chaplin, C Wallace, *Mihaia: The Prophet Rua Renana and his Community at Maungapohatu*, Auckland, Oxford University Press, 1979, p 40 (cited in Miles, ch 7)
22. Chief Judge Jackson Palmer to Under-Secretary of the Native Department, 6 May 1912, ma 13/90, NA Wellington

When it became clear that it was not possible to create neat hapu blocks, it was decided that the title to the whole area would have to be investigated before the commission could determine any block boundaries. Before the commission had finished hearing all the Urewera blocks, appeals for readjustments and rehearings were steadily flowing in. A second Urewera commission began hearings at Wairoa in 1906, and was largely concerned with Waikaremoana evidence and, subsequently, other blocks also. While the first commission had encountered difficulties in consistently allocating shares in blocks (and had often done so before the hapu boundaries were determined), the second commission attempted to adjust the shares of owners to accommodate groups with greater interests. Even after the commission had completed and published the land titles for the Urewera district, appeals continued to flow in from Urewera Maori, and they were serious enough to warrant a complicated round of legislative amendments that enabled the chief judge of the Native Land Court to amend titles after they had been ascertained. Furthermore, the Urewera District Native Reserve Amendment Act 1909 converted the Urewera orders into freehold orders of the Native Land Court, and made them registrable as such.

In 1909, when Fisher (the Under-Secretary of the Native Department) instructed the Waiariki District Maori Land Board (established under the Act of 1900) that the function of the Tuhoe general committee was to make recommendations and arrangements for the leasing of Tuhoe land only, it was clear that the relationship between the general committee and the Government was being redefined without consultation with Tuhoe. While both Fisher and Carroll encouraged and directed the committee to consider issues relating to land settlement, Miles notes that they were ‘at the same time making preparations for the Native Land Court to undertake functions which Tuhoe might have originally thought would be carried out by their local and General Committees’. She notes that this shift (evident as early as 1908) was never directly communicated to Tuhoe.[23]

Miles notes that:

> the extension of the Native Land Court jurisdiction to the Urewera [under the Urewera District Native Reserve Amendment Act 1909] must have been unpleasantly surprising for many Tuhoe, given their opposition to the Court in previous years.

She adds also that the cost of applications to the court could have been avoided if the applications had been undertaken by the general committee. However, she concludes that:

> further research would be needed to conclusively establish whether Tuhoe were consulted by Carroll on the matter of Native Land Court jurisdiction and what the general Tuhoe consensus on the extension of jurisdiction actually was.[24]

23. Miles, ch 7
24. Ibid

At the passing of the amendment, Ngata made clear his intention to purchase, rather than lease, land on behalf of the Government from Tuhoe.[25] The land was to be vested in the Maori Land Board, but not without the prior consent of the general committee.

Miles states that:

> It has to be questioned whether Tuhoe were informed of Ngata's expansive plans for Urewera lands as it subsequently became clear that they had not been consulted by Carroll or Ngata when the 1909 legislation was drawn up. This can be inferred from the fact that the Minister received objections to several aspects of the Act in a report from the General Committee in March 1910.[26]

(3) *Crown purchases*

In approving purchases in the Ruatoki 1, 2, and 3, Waipotiki, Karioi, and Whataitiripapa blocks in September 1910, the Government was clearly circumventing the Urewera District Native Reserves Act process. By dealing with Rua and other individuals, Carroll was signalling that the Government would no longer recognise a collective, tribal authority over Tuhoe lands, such as that represented by the general committee. This decision ushered in a new and extended period in which individual interests were purchased in the Urewera 'reserve' and the notion of leasing was pushed aside. Miles notes that 'the acquisition of individual shares undercut the authority of the General Committee and the group control of the process of alienation was no longer possible'.[27]

While Miles acknowledges that it is difficult to determine how representative the Tuhoe general committee was of Tuhoe interests, she also notes that early sales provoked complaints from Maori as they were being conducted. For example, in the sale of the Maungapohatu block, certain areas were agreed to be cut off from the sale, following a request by Numia Kereru. However, the Crown purchased individual interests in the block, rather than surveying particular areas. The question of exactly where the Crown was going to locate its purchases within the Maungapohatu block led to protracted negotiations with Maori.[28]

Problems are also evident in the purchase of other blocks. Miles says that 'Fully cognizant of the problems at Ruatahuna, the Government nonetheless decided to push on with purchasing this block, passing instructions to Bowler in July 1918.'[29] Moreover, in the Omahuru block, purchases were undertaken on the original lists in spite of partition orders, which were then cancelled.[30]

When the Government passed the Native Land Amendment Act 1916, which retrospectively validated its purchases of individual interests in Urewera prior to that date, W Herries (the Native Minister) admitted that there was some doubt

25. 21 December 1909, NZPD, vol 148, p 1386 (cited in Miles, ch 7)
26. Miles, ch 7
27. Ibid
28. Ibid, ch 8
29. Ibid
30. Ibid

concerning the validity of the Crown's purchases because of the requirement that the Crown purchase only from the general committee. Remarkably, Miles notes, Herries told Parliament that the general committee had never been set up and this was why the validation had been required.[31]

4.6.4 Timber licences

One particular objection by the general committee to the 1909 amendment was the issue of the granting of timber licences under the Act. The general committee envisaged a system of timber licences controlled by the committee, this being one of the few revenue earners at Tuhoe's immediate disposal, while the 1909 Act envisaged no more than a consenting role for the committee.[32]

In 1915, valuers in Urewera noted how heavily timbered the area was, but they cautioned that the timber was too dispersed and isolated to be of any real commercial value. They therefore decided to place no value on the timber on the land when estimating the value of a block.[33]

There appeared to be some confusion over the status of the timber on the Te Whaiti block at the time of its purchase.[34] The owners, Ngati Whare and Ngati Manawa, had to consider whether they would sell only the timber or both the land and the timber. In 1915, the timber on the land (covering 12,000 acres and valued at 50 shillings an acre) and the land itself, amounted to £30,000. On the basis of this valuation, it was decided by the Crown that the block would be purchased largely as a timber reserve and that settlement would be limited so as not to interfere with the extraction of timber. As sales of interest in the land began, the non-sellers requested a partitioning of the block to separate out those shares acquired by the Crown. A legal technicality made partitioning the land impractical, and the purchase of Te Whaiti interests continued until 1921. The timber on the land, which in 1915 had been seen to be of only limited value, was now able to be accessed by a road, and was identified as 'very valuable'.[35]

Miles concludes that the purchase of the Te Whaiti timber reserves was typical of the Government's lack of effort to help Tuhoe retain and use their resources other than land (which resources were vital to them, given the scarcity of good land in the district). Furthermore, she notes that it does not appear that the owners were given the opportunity to sell only the timber to the Crown.[36]

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31. W Herries, 3 August 1916, NZPD, vol 177, p 741 (cited in Miles, ch 8)
32. Miles, ch 7
33. R Pollock to commissioner of Crown lands, 3 August 1915, ma-mlp 1, 1910/28/1, pt 1 (cited in Miles, ch 8)
34. Miles, ch 8
35. W Bowler, memo to Under-Secretary of the Native Department, 6 April 1920, ma-mlp, 1910, 10/28/4 (cited in Miles, ch 8)
36. Miles, ch 8

4.6.5 Public works

Miles notes that, in order to keep prices of land low in the Urewera district and in order to prevent the Crown from enjoying an 'unearned increment', roading and development took place only once the Crown had purchased the land it wanted in the district. In 1894, Seddon promised to construct roads and employ Tuhoe,[37] but this was not done to the scale that Tuhoe had anticipated. The only public works attempted were the construction of a road at Te Whaiti in the late 1890s and the Gisborne to Ruatahuna stock track. Miles notes that much-needed development did not eventuate.[38]

4.6.6 The consolidation scheme

While special legislation was recommended in 1921 to give effect to the consolidation scheme, opinion was expressed in the House that the negotiations were best carried out in an informal manner 'unhampered by legislative or other restrictions'. It was further asserted that the:

> ordinary machinery of the Courts would have been at a serious disadvantage . . . [and] could not have conducted negotiations such as resulted in the acquisition of the Waikaremoana forest area, or the settlement of the Te Whaiti Blocks, where the Crown's objective was the large area of valuable milling-timber. Its own rules would have caused delays and adjustments at a time when the fullest advantage had to be taken of the complete representation of all non-sellers' interests at one place.[39]

It is evident that the scheme was actually carried out in a manner to which many Maori objected. At a meeting in February 1922, Maori stated that they opposed the relocation of Waikaremoana interests northward; the transfer of interests which took the relative valuations into account, instead of on an acre-for-acre basis; the contributions to roading; the rating of Urewera land; and the payment of surveys, which had apparently not been discussed at the initial meeting to discuss the scheme.

In the event, the consolidation scheme allowed the Crown to secure the title of the Waikaremoana block (for conservation and scenic purposes) and the good timber blocks at Te Whaiti. The interior roads promised to Maori were not made, and Tuhoe were compensated £100,000 in 1958 for this and for the faulty location of their blocks in the Whakatane and Waimana Valleys.

4.7 Additional Reading

The following are recommended for additional reading:

37. AJHR, 1895, g-1 (cited in Miles, ch 5)
38. Miles, ch 8
39. AJHR, 1921, sess 2, g-7, p 6

Anita Miles, ‘Urewera’, Wellington, Waitangi Tribunal Rangahaua Whanui Series unpublished draft;
Vincent O’Malley, ‘The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa–Waikaremoana Area, 1865–1875’, report commissioned by the Waitangi Tribunal, October 1994 (Wai 144 rod, doc a3); and
Vincent O’Malley, ‘The Crown’s Acquisition of the Waikaremoana Block, 1921–25’, report commissioned by the Waitangi Tribunal, May 1996 (Wai 144 rod, doc a7).

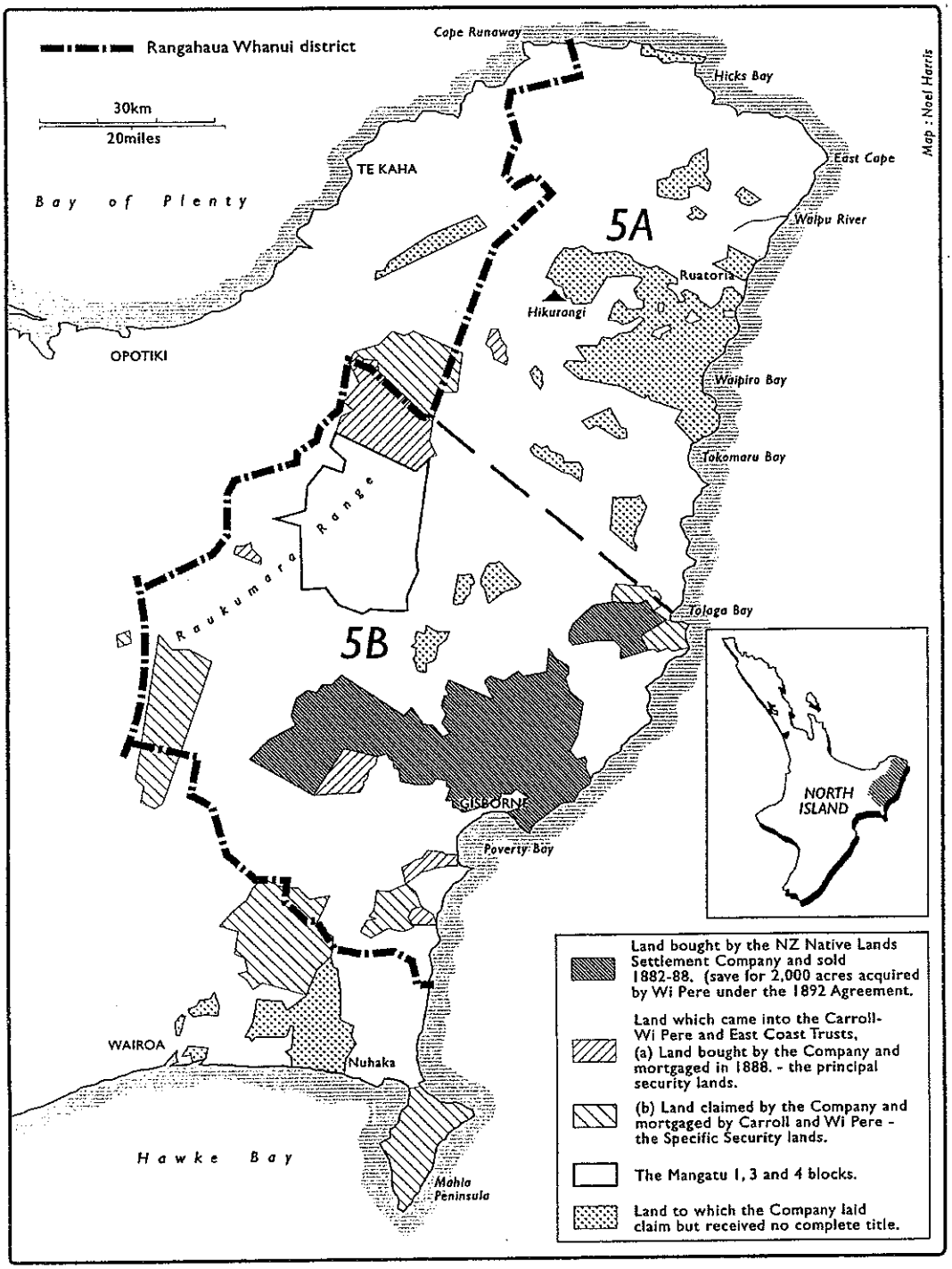

Figure 12: District 5 (Gisborne and the East Coast)

CHAPTER 5

GISBORNE AND THE EAST COAST

5.1 Principal Data

5.1.1 Estimated total land area for the district

The estimated total land area for district 5 (Gisborne and the East Coast) is 2,119,172 acres.

5.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 5 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 100 percent in 1860, 54 percent in 1890, 38 percent in 1910, and 21 percent in 1939 (or approximately 53.6 acres per head according to the 1936 census figures provided below).

5.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- purchases under the Native Land Acts (especially private purchases); and
- confiscation or cession in Poverty Bay.

5.1.4 Population

The population of district 5 was approximately 9000 to 10,000 in 1840 (estimated figure), 3526 in 1891 (estimated from census figures), and 8449 in 1936 (also estimated from census figures).

5.1.5 Main geographic features relevant to habitation and land use

The boundaries of this district run from a point just east of Cape Runaway south-west through the Raukumara and Huiarau Ranges before turning south-east between the Ruakituri and Hangaroa Rivers and out to the coast just north of the Mahia Peninsula. The Gisborne sub-district coastal boundary between Ngati Porou to the north and Rongowhakata, Aitanga-a-Mahaki, and Ngai Tamanuhiri to the south was near the mouth of the Turanganui River (at the present location of the port of Gisborne), but is more indeterminate in the high country.

This district is largely mountainous, with a number of rivers draining into the Pacific Ocean (including the Awatere, Waiapu, Uawa, Turanganui, Waipaoa, and Maraetaha Rivers). The coastline is dotted with bays, such as Hicks Bay, Tokomaru Bay, Tolaga Bay, and Turanganui a Kiwa (Poverty Bay). Maori settlement was located primarily on the coast and the small flood plains. The only substantial areas of flat-lying land surround the Waiapu, Uawa, and Waipaoa River valleys. The flat lands have become notable for dairy farming and, more recently, for horticulture and viticulture. The high country supports sheep and cattle farming as well as a growing forestry industry.

5.2 East Coast

5.2.1 Main tribal groupings

Although there are numerous notable ancestors of mana from whom Ngati Porou claim descent, they derive their name from Porourangi, through whom all the people of Tairawhiti can link their whakapapa. It is argued that 'Through intermarriage, raupatu, occupation and alliance the descendants of Porourangi, Ngati Porou, have continued to hold mana whenua from his [Porourangi's] time until the present.'[1] The boundaries of Ngati Porou's land, as laid down by the Native Land Court, run from Potikirua on the coastline between Cape Runaway and East Cape and Te Toka a Taiau (a rock in the mouth of the Turanganui a Kiwa River, which was blasted away during Gisborne harbour works). The inland boundary is marked to the west by the Raukumara Range and to the south by the Waipaoa and Waimata Rivers, emerging via the Raparapararíriki Stream at Kaiti. Some of the Ngati Porou interests on the border of this region intersect with the interests of other iwi. For example, Te Aitanga-a-Mahaki have significant interests in the Mangatu blocks.[2] Furthermore, Te Whanau-a-Apanui, though centred around Torere in the eastern Bay of Plenty, had interests extending into the mountain ranges on the inland side of this district.

5.2.2 Principal modes of land alienation

A full research report is being written by Ngati Porou researchers under the umbrella of the Rangahaua Whanui programme.The complete report was not available as this report was concluded, and the data that follows is drawn largely from the initial scoping report prepared by the Ngati Porou team.

(1) ***Pre-1840 purchases (including approved old land claims and surplus lands)***

Captain William Stuart claimed to have purchased 500 acres near East Cape in 1825. While a grant was initially awarded, the transaction was later declared to be

1. 'Exploratory Report' (Wai 272 rod, doc a1), p 5
2. Ibid, pp 5–7

void on the ground of uncertainty. All other land claims in the Ngati Porou rohe (involving approximately 3300 acres) either lapsed or were disallowed.

(2) *Pre-1865 Crown purchases*

From 1846 to 1866, there was no Crown purchasing in the Ngati Porou rohe. In 1862, however, 110 acres were gifted to Resident Magistrate Baker at Waiapu for the purposes of a courthouse. While no land was sold in this period, Pakeha living in the area occupied some land under informal transactions negotiated on Maori terms.

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 5.

(4) *Confiscations*

There were no confiscations in this part of district 5.

(5) *Purchases under the Native Land Acts (Crown and private as indicated)*

(a) *Crown purchases, 1865–90:* The first sale of Ngati Porou lands took place on 2 September 1872, when 88 acres were purchased by the Crown at Awanui for £88. In September 1873, Ngati Porou accepted £5000 in lieu of 10,000 acres in the Patutahi block (situated in Poverty Bay, as discussed below) that had been promised to them in return for their loyalty to the Crown during Te Kooti's raids.

In 1876, the Crown purchased 20,000 acres at Arakihi. In 1877, 11 purchases were made on Mount Hikurangi and in the surrounding areas. In 1879, 44,000 acres of the Tauwhareparae block were also acquired. The blocks sold included Te Papatipu (19,000 acres), Aorangi Wai (7000 acres), Arawhawhati (3800 acres), Waitahaia (47,000 acres), and portions of Honokawa. In 1881, the Crown purchased Huiarua 1 (8000 acres). In 1884, the Crown purchased Pirauau (acreage unknown) and the northern block Pukeamaru 5.

(b) *Private purchases, 1865–90:* In 1877, Cooper purchased Waingaromia 2 (27,682 acres inland from Anaura). In 1881, five private purchasers acquired Waipaoa 2 (32,250 acres at Tutamoe). Other lands purchased by private interest in the 1870s and 1880s included Puketiti and Takapau, Pouawa, Aorangi Maunga, and Ruangarehu 1, which covered some 150,000 acres in all. These were mostly inland blocks situated in the southern Ngati Porou area, including large sections of the Raukumara Range. Also see below for a discussion of the New Zealand Settler Company purchases made during this time.

(c) *Crown purchasing, 1890–1910:* During the 1890s, the Crown turned its purchasing energies away from the largely inland blocks previously purchased towards land that Maori were either occupying or farming closer to the coast. Many blocks were purchased in whole or in part, such as around 7000 acres from the Pukeamaru blocks.

In 1894, Ngati Porou protest over Crown purchases and New Zealand Settler Company purchases led to some 170,000 acres being withdrawn and kept out of the court until 1902.

(d) *Post-1910:* With respect to post-1910 purchases, the East Coast fell within the Tairawhiti Maori Land Board district, which also included the northern part of Gisborne. Annual returns of alienations through the land boards do not specify block names and an exhaustive search of all files would be necessary to establish which of the board's alienations fell within Ngati Porou territory, although by 1908, some 25,000 acres of land within Waiapu County had been vested in the Tairawhiti Maori Land Board. The table of alienations for the Tairawhiti district as a whole is set out in appendix viii of volume i.

In the late 1910s and early 1920s, the Crown acquired interests in numerous blocks, including Waipiro, Whareponga, Poroporo, Matarau, and Kaupeka a Haumia. Consolidation (the gathering of diverse interests into economic holdings) allowed the Crown to exchange its interests in these and other blocks for clear title to areas of land awarded to it under the consolidation scheme.[3]

(6) *Land taken for public purposes*

In this, as in other districts, land was taken for the purposes of public works. While it is not possible to provide an exhaustive list of these takings, preliminary research indicates that Whangaokena Island (East Cape Island) was taken in 1897 for the purposes of a lighthouse, as well as 330 acres proclaimed within the Mangahauini block in August 1940 for a road. It is unclear whether compensation was paid.

(7) *The New Zealand Settlement Company, the Carroll–Wi Pere Trust, and the East Coast Trust lands*

This section relates to the East Coast, Gisborne, and Wairoa (northern Hawke's Bay) districts. Several of the large blocks involved cross tribal boundaries and more detailed research on them would be necessary to determine which hapu were affected in each case.[4]

Between 1879 and 1882, Maori leaders and block committees made agreements and signed deeds relating to upwards of 400,000 acres of land, with W L Rees and Wi Pere to act as trustees or agents for the development and sale of the land for settlement. In 1882, Rees and Wi Pere formed the East Coast and Native Land Settlement Company (soon changed to the New Zealand Native Land Settlement Company) for the purpose. Maori who signed deeds conveying the land were often paid little or nothing immediately but received shares in the company, entitling them to two-thirds of net profits on the sale of the land. Such arrangements were

3. 'Exploratory Report', pp 32–33
4. The information summarised here is derived from K Orr-Nimmo, 'Report for the Crown Forestry Rental Trust on the East Coast Maori Trust', report commissioned by the Crown Forestry Rental Trust, 1996, and A D Ward, 'The History of the East Coast Maori Trust', MA thesis, Victoria University of Wellington, 1958.

subsequently interpreted by Justice Richmond in the Court of Appeal in 1884 as actual conveyances of title, not simply agency agreements. The deferred method of payment was not considered illegal. There is evidence that some of the conveyances to the company involved land that had not passed the Native Land Court or land from which the restrictions on title had not been duly removed. In short, the conveyances did not always conform with the land law and either did not in every case receive a trust commissioner's certificate under the Native Land Frauds Prevention Act 1870 or, if they did, should not have. Subdivisions in freehold tenure had been made in respect of between 125,000 and 130,000 acres by early 1883. Rees secured the signatures of the Maori to an agreement apportioning to various blocks the costs incurred thus far. These blocks included Pouawa, Kaiti, Waimata, and Makauri near Gisborne, Okahuatiu, and Tangihanga further inland, Mangatu 5 and 6 in the mountain chain, and several blocks on the Mahia Peninsula. Other blocks acquired by the company or affected by its dealings were Paremata near Tolaga Bay, Maungawaru north of Mangatu, Whangara near East Cape, Kaiparo, Motu 1, Mangaheia, Pakowhai, and Whataupoko.[5]

Between 1882 and 1888, the company sold about 20,000 acres of land around Tolaga Bay and Gisborne. But, because of economic depression and problems of title, sales then slowed and the company became heavily in debt to the Bank of New Zealand. Little if any payment was distributed to the former Maori owners of the blocks sold. Maori began petitioning about the loss of their land for no return. In 1888, various block committees met with Wi Pere, Rees, and the company directors and apportioned the liabilities of the company among the Waimata blocks, Mangaheia 1, Mangatu 5 and 6, Ohahuatiu 1 and 2, Motu 1, Tangihanga 1, Paremata, Pakowhai, Kaiparo, and the Mahia Peninsula blocks, and agreed to their sale to redeem the mortgage to the Bank of New Zealand. Rees and Wi Pere appear to have signed the deed on behalf of the committees.[6]

On 26 October 1891, the Estates Company of the Bank of New Zealand put the mortgaged blocks up for sale. Those sold included portions of the Waimata, Pouawa, Whataupoko, Te Hapara, Tangihanga, Matawhero, Kaiparo, Gisborne North, and Mangaheia blocks, totalling about 20,000 acres.

Wi Pere and others had meanwhile begun to press for Government intervention and the Native Affairs Committee in 1891 recommended some action, largely to protect Maori. No action was taken at that time, however, on their behalf. In 1892, a new agreement was signed, transferring the sold land and executing a mortgage of £58,000 over the remaining estate (including Rees's expenses and Carroll's and Wi Pere's fees). These blocks were parts of Whataupoko, Matawhero and Pakowhai, Mangaokura 1, Motu 1, Okahuatiu 2, and Mangatu 5 and 6 (the 'principal security' blocks). A number of blocks were conveyed exclusively to Wi Pere. Another long list of blocks, from Waiapu to Mahia, the trustees' title to which was stated as 'imperfect doubtful or bad, interest uncertain', were listed as 'specific security'

5. Orr-Nimmo, pp 15–32. For a map of all lands affected by the company's dealings, see AJHR, 1897, i-3a.
6. Orr-Nimmo, pp 49–50

blocks. The trustees undertook to complete the title of these and bring them in to support the mortgage.[7]

Meanwhile, the Atkinson Government, via the Native Land Courts Act Amendment Act 1889, had appointed commissioners to validate transactions that had infringed various requirements of the complex land legislation. Under the Liberal Government this led to the creation of a special court, the Validation Court. Many of the transactions of the settlement company and the mortgage arrangements in respect of the 'specific security' blocks by the Carroll–Wi Pere Trust came before the court and were usually approved. Voluntary agreements by Maori to their lands being included to support the mortgage to the estates company were brought to the court by Rees and Wi Pere. Block committees were usually involved and one or more of their number made additional trustees. Nevertheless, there is some doubt as to whether the owners were fully consulted and understood the implications of the arrangements. Maori objectors appeared in some early cases but their objections were generally not sustained.[8] Under Judge Barton, 20,224 more acres were mortgaged and under Judge Gudgeon 152,980 acres. It appears that Gudgeon saw the process as ultimately likely to be beneficial to Maori, as the value of the blocks was believed to be much greater than the mortgage assigned to them.[9]

In 1897, the trustees made application to the Validation Court to bring under their authority a huge list of blocks allegedly involved with the settlement company.[10] Many of these were in the Ngati Porou rohe and the young law graduate Apirana Ngata appeared on behalf of the Maori owners. Also in that year, a new judge of the Validation Court, Judge Batham, arrived. His own scepticism about sacrificing any more blocks to the trust's mounting debt, and Ngata's challenges on various legal points, stopped more blocks being brought in. In particular, many cases where the company had been dealing with land before it became subject to Native Land Court title lapsed.[11]

Nevertheless, about 250,000 acres remained in the trust with a mortgage of £138,000, and again the bank proposed a forced sale. Since 1897, the Government and Parliament had been considering some form of intervention. The East Coast Native Trust Lands Act 1902 finally put an end to the Carroll–Wi Pere Trust and established a special statutory trust with complete control over the estate. In debate on the Bill, Hone Heke, a member of the House of Representatives, proposed that the State advance half a million pounds to redeem the mortgage to the bank and have the land farmed by Maori farmers under experienced advisers. This proposal, based on article 3, was not accepted.[12] The land remained firmly under the East Coast Trust for 50 years.

In 1904 and 1905, the trust board sold all or part of Paremata, Maraetaha, Whataupoko, Okahuatiu, Matawhero, Pakowhai, Tahora, Moutere, and Tawapata

7. Orr-Nimmo, p 82
8. See vol 2, ch 9, of this report; Orr-Nimmo, pp 60ff
9. Orr-Nimmo, p 101
10. The list is given by Orr-Nimmo, p 110, n 124
11. Orr-Nimmo, pp 114–115
12. Ibid, p 148

(34,939 acres altogether) and cleared the debt to the Bank of New Zealand. Some of the blocks sold had not previously been charged with the debt. Some 15,000 acres were leased and about 57,000 remained for development. Most of the land was successfully developed over the life of the trust.

The trust then began a complex process of internal accounting whereby blocks that were sold or considered to have borne too heavy a share of the redemption of the debt were regarded as 'creditor blocks' and those that had carried little of the burden were deemed 'debtor blocks'. Efforts were made to even the load and continued until 1951, when the profits of the wool boom resulting from the Korean War created an opportunity to bring the trust to an end. Maori beneficial owners had been petitioning for much greater involvement in the trust or for handing back the land. The East Coast Trust Maori Council was formed in 1949, chaired by Mr Turi Carroll. The Mangatu Incorporation (relating to Mangatu blocks 1, 3, and 4) had been administered by the East Coast commissioner since 1917; it returned to the control of the owners in 1947. Most of the 17 sheep and cattle stations now under the trust were debt-free and running well.

In 1951, an agreement was reached within the trust to pay compensation to the owners, or their descendants, of blocks that had been sold to salvage the remainder of the Carroll–Wi Pere Trust lands. Payments were allocated for blocks sold after 1902.[13] A further £3000 was allocated for parts of Whataupoko, sold between 1892 and 1902. Orr-Nimmo raises the question of whether land sold before 1892 (notably in the forced sale of 1891) should have been considered.

It was further agreed, through Mr Rongo Halbert, representing the Aitanga-a-Mahaki tribe, that that tribe take over Mangaotane station, on Mangatu 5 and 6, in consideration of their compensation award in blocks where they were principal owners (notably Mangatu 5 and 6, the Whataupoko blocks, Okahuatiu, and Motu 1). The determination of owners and the return of this land did not finally take place until 1974.[14]

In 1954, the East Coast Trust was wound up and 22 blocks, totalling about 107,000 acres, and being farmed as 15 stations, were returned to the beneficial owners.[15]

(8) *Native townships*

It appears that the major thrust for townships came from the Crown and settlers. In 1897, land at Te Puia (which encompassed the thermal springs) was set aside as a township at the Crown's instigation. The taking of the land at Te Puia was largely

13. The blocks sold were: Motu 1 (£1703); Mangaokura 1 (£2594); Pakowhai (£16,302); Whataupoko d (£48); Okahuatiu (£21,287); Matawhero b or 5 (£293); Mangawaru 2 (£2495); Matawhero 1 (£1814); Mangawaru 3 (£3429); Mangawehi a1 (£304); Mangawehi 1b1c (£3211); Moutere 2 sub 1 (£263); Tawapata North 1a (£2187); Tawapata North 2 sub 1 (£2375); Maraetaha 2 sec 4 (£9603); Paremata (£14,627); and Mangatu 5 and 6 (£26,487), as listed in Orr-Nimmo, p 281.
14. Orr-Nimmo, pp 283, 335–343
15. These were: Mangaheia 2d; Mangapoike a, b, 2, 2a3, 2b, and 2d; Maraetaha 1d and 2; Pakowhai; Paremata 3, 4, 48, 64, 73, and 73a; Tahora 2c1 sec 3, 2c2 sec 2, and 2c3 sec 2; Tahora 2f2; Tawapata South 1; Te Kuri and Tangotete; and Whaitiri 2, as listed in Orr-Nimmo, pp 305–306.

compulsory. The owners' efforts to have land on the eastern side of the main road, including an eeling lagoon, excluded from the township were declined. Subsequently, the owners were consulted as to the location of their allotments.[16]

Other East Coast townships at Tuatini, Waipiro Bay, and Kawakawa (Te Araroa) were discussed by Surveyor-General Percy Smith, James Carroll, and the local owners in 1899. Some effort was made to respect existing cultivations and residences, and the township was declared. The layout of Te Araroa, however, took less account of the owners' wishes and encompassed many cultivations.[17]

Very few sections were taken up in Te Puia and owners received virtually no rent during the first 10 years of the twentieth century. One owner remarked in 1906 that the township was useless to its owners 'and to this fact the owners only are aware'. His suggestion was that the land be sold to the Crown and the Maori owners be given first option to buy it back so they could obtain a 'better title'.[18] The Department of Lands and Survey and the Department of Tourist and Health Resorts (after 1908) both neglected Te Puia, which degenerated badly. Maori became interested in selling in the hope that the Government would invest more in the springs.

The 1910 Act also provided that (as in the Native Land Act 1909) a majority in value of a 'meeting of assembled owners' could approve an alienation (rather than the previous requirement of a deed of sale signed by the owners).

The sale of Te Puia, then under negotiation, was in fact completed under the 'assembled owners' provisions of the 1909 Act. At the meeting, representatives of 294 shares (40 percent of total shareholding) voted for sale, and 192 shares (26 percent) were opposed. The sale was thus legalised by the votes of a minority of the total shareholders.[19]

5.2.3 Outcomes for main tribes in the area

The heaviest period of land alienation for Ngati Porou was 1873 to 1900. Although exact figures for the amount of land alienated at this time are not available, figures are available from the Stout–Ngata commission for the northern portion of the district, which fell within Waiapu County. These figures indicate the total area of the county was 705,228 acres, of which 322,000 acres were acquired by private settlers and the Crown, 383,228 acres were owned by Maori or held in trust for them, and 113,025 acres were under lease to Europeans – some 60 percent in total.[20]

16. Wai 272 rod, doc a1, p 7
17. Ibid, pp 8–14
18. Te Puia township file, ma-mlp, no 80, file 1910/3, NA Wellington (cited in Woodley, p 23)
19. Wai 272 rod, doc a1, p 17
20. AJHR, 1908, g-1, p 1

5.2.4 Examples of Treaty issues arising

(1) *The actions of the Native Land Court*

There are numerous instances in Ngati Porou rohe where the vesting of land by the Native Land Court has led to protracted disputes within the iwi, raising questions as to whether the people awarded land by the court had the right to sell the land. In the case of Tauwharepare and Waingaromia 2 blocks, for example, allegations were made that the former block was passed through the court without the consent of many of the principal right-holders, while the latter block was awarded to a group of Maori who had expressed an interest in selling the land, despite the fact that their claim over the land was questionable.[21]

Ngati Porou claimants suggest that debt, resulting from survey and court costs, was a factor contributing to the sale of their land. Expenses were particularly onerous where title was disputed, as was the case with the Waipiro block, in which one of the parties to the dispute had to sell other land in order to cover expenses.

There is evidence that the distribution of payments to Maori were not supervised by the Crown, resulting in at least some of the money being misspent or misappropriated by officials or others involved. (There is evidence that Maori did not regard a sale as valid unless they had participated in the distribution of payments, as discussed in volume ii, chapter 1.)

In 1908, the Stout–Ngata commission noted that some Ngati Porou had questioned the wisdom of selling at the low prices offered by the Crown. While Maori land in the area had sold for between one and three shillings per acre, European land was selling at the same time at a rate of two to five shillings per acre.

For a further discussion of the policies of the Native Land Court, see volume ii, chapter 7.

(2) *Confiscations*

It appears that, while the East Coast Land Titles Investigation Act 1866 was not used directly to confiscate Ngati Porou land, the Act put pressure on the tribe to 'voluntarily' cede their lands to the Crown. In 1868, Ngati Porou petitioned Parliament objecting to the Act.[22] According to one petition, the Government had assured them that land would not be confiscated from Ngati Porou, but had subsequently tried 'coaxing, intimidation, and numerous other artifices' to get them to give up their lands.[23] The Crown did not, however, accept the petitioners' complaints and iwi were obliged to offer to cede certain lands. In October 1868, the Crown informed Ngati Porou that the area they had offered was too small. The following month, Te Kooti attacked Poverty Bay. Owing to Ngati Porou's assistance to the Crown at this time, plans to confiscate Ngati Porou's land were abandoned, as announced by McLean in 1870.[24] Lands were subsequently purchased by the Crown instead.

21. Wai 272 rod, doc a1, p 15
22. Petitions from East Coast natives, AJHR, 1868, a-16, pp 1–13
23. Wai 272 rod, doc a1, pp 10–11
24. J A Mackay, *Historic Poverty Bay and the East Coast, North Island, New Zealand*, p 306

(3) *Crown purchasing*

Initially, many coastal areas were leased to Pakeha settlers, in keeping with the general preference of Ngati Porou to lease rather than alienate the freehold of their lands. This included substantial areas such as the Pouawa (19,200 acres) and Whangara blocks (21,450 acres). From 1876 to 1893, the leases were also arranged further to the north. While it was the declared policy of the Crown with respect to Ngati Porou only to purchase that area of Ngati Porou lands deemed to be 'waste land',[25] and while this policy was largely adhered to by the Crown during the 1870s and 1880s, by the 1890s this policy was abandoned, provoking sustained protest from Ngati Porou. This resulted in all Papatipu lands (those set aside for Maori occupation) being withdrawn from the Native Land Court. Some 170,000 acres (mostly north of Waiapu) were kept out of the court until 1902. In 1902, the Seddon Government assured Ngati Porou that the Crown would not purchase in that area.[26] Ten years later, however, under the Reform Government, the purchase of individual interests by Crown agents resumed.

(4) *Reserves*

In the case of Tauwhareparae, Ngati Ira hapu requested reserves of 30,000 acres. They had, however, been awarded (according to the deed of sale) 10,250 acres reserved in the two blocks 'inalienably' and 'for the use of the vendors and their heirs for ever'.[27] In the event, the two reserves created (5125 acres each) were not inalienable, and large portions of them were sold in the 1880s to a private interest.

(5) *East Coast Trust lands*

The New Zealand Native Land Settlement Company was a private company. Its dealings in land became a matter of notoriety on the East Coast by the mid-1880s, however, and the Crown's responsibilities are at issue in a number of ways:

(a) The company's acquisitions from Maori did not conform strictly to the requirements of law in many cases, yet they passed the scrutiny of the trust commissioners or were subsequently legalised by the Validation Court. In particular, many blocks were mortgaged to the Bank of New Zealand and subsequently sold. Although these may have involved a form of agreement with some of the Maori owners, doubts were cast on the adequacy of consultation, and it is significant that the practice of bringing more blocks in to support the mortgage ceased after Batham became judge and Ngata counsel for the Maori owners.

(b) Although requested from 1891, the Government did not intervene to salvage the settlement company or the Carroll–Wi Pere Trust until 1902, when the debt had escalated and more land had to be sold (in 1904 and 1905) to salvage the remainder of the estate.

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25. AJHR, 1908, g-1, p 16
26. Ibid
27. Deed of sale for Tauwhareparae, 3 May 1879, deed auc 1259

(c) The form of intervention that was eventually taken in 1902 effectively shut Maori out from farming their own land or sharing in the management of the East Coast trust. Although ultimately very effective in redeeming the debt, developing the asset, and handing the land back to Maori in good order, (thanks in part to the wool boom), the trust was also paternalistic and reduced the beneficial owners' autonomy and opportunity for important management experience.

(6) ***Post-1910 alienations***

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection. This was also true for the East Coast because, although a greater area of land remained in Maori hands than in most districts, much of it was steep and mountainous. Flat and fertile land was scarce in this region.

5.3 Gisborne

5.3.1 Main tribal groupings

The common marriage and extensive intermarriage of groups in the Gisborne area have created a complex tribal history. The Rangahaua Whanui Gisborne district report provides only a broad outline of the pre-1840 occupation of Poverty Bay, as summarised below.

The two waka primarily associated with Poverty Bay are Horoutu and Takitimu. These arrivals are thought to have assimilated with the people already living in Poverty Bay.[28] The three main tribal groups resulting were Te Aitanga-a-Mahaki, Rongowhakata, and Ngai Tamanuhiri. Intermarriage and the residual interests of other groups in the area make it difficult, as always, to comment definitively on the land rights of particular hapu in the area.

The migration and movement of various hapu within the region led to the evolution of larger tribal groupings in Poverty Bay by 1840. Struggles occurred among the direct descendants of Ruapani (descendants of Kiwa) and Kahungunu and involved all the people of the area, including Rongowhakata and Ngai Tahu (who later migrated south). Migrations of Kahungunu from the Gisborne area followed at around ad 1600 and ad 1630 as the result of further fighting.

28. Discussed in S Daly, *Poverty Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997, pp 3–7

About 1840, Te Aitanga-a-Mahaki were bordered to the north by the Waimata River (with interests beyond it); to the west by Arowhana; to the south-east (meeting Tuhoe interests) by the Huiarau Range and Maungapohatu; and to the south (with Rongowhakata) at Repongaere and Tangihana.[29]

Rongowhakata met with Aitanga-a-Mahaki as described above, and also with Ngai Tamanuhiri at Muriwai. To the south and south-east, Rongowhakata interests met with those of Ngati Kahungunu, while to the west and south-west, at Te Reinga-Ruakituri, they met Ngati Kahungunu–Ngati Ruapani of Waikaremoana.[30]

Ngai Tamanuhiri (formally known by the tribal name Ngai Tahupo) are of Kahungunu descent and also share connections with Ngai Tahu, prior to that iwi's migration south. At 1840, this group continued to occupy the Muriwai area and south to Paritu, including Te Kuri o Pawa (Young Nick's Head), neighbouring the interests of Rongowhakata and Ngati Kahungunu.

5.3.2 Principal modes of land alienation

(1) ***Pre-1840 purchases (including approved old land claims and surplus lands)***

Land transactions took place in the 1830s in the Gisborne area and they continued into the 1840s, despite the Crown's pre-emptive right under the Treaty. These transactions were not investigated by the first Land Claims Commission (Godfrey and Richmond).[31] Some lapsed and by the 1850s others were being repudiated by Maori. Commissioner Bell could not settle any of the transactions in 1859. Some claims were reinvestigated by the Poverty Bay Commission in 1869, and grants were subsequently issued for several of these.

Roger Espie lodged two claims for 130 acres at Turanga, both of which were originally disallowed. In 1871, however, the Poverty Bay Commission awarded Espie 154 acres and issued a grant for land called Tutae-o-Rewanga.

Thomas Halbert made two claims on 1004 acres at Pouparae, which he purported to have purchased for £300 in goods in 1839. Bell disallowed these claims in 1859, but in 1871, grants were issued for 482 acres and 19 acres.[32]

J W Harris made three claims: one for 150 acres; one for one acre by the Turanganui River; and one for two acres at Wai-o-ngaruawai (at the confluence of the Taruheru and Turanganui Rivers). Harris was granted 57 acres of land at Opou 3 on the banks of the Waipaoa River for the first claim,[33] and although Bell originally disallowed the other claims, a grant of just over two acres was issued for the land (to G E Read) in 1871.[34] Harris also claimed 150 acres (although other sources identify this as 250 acres) where he had established his whaling stations at Papawhariki, and a grant of 112 acres was made (to G E Read) in 1871.[35]

29. Daly, p 13
30. Ibid, pp 14–15
31. W L Williams p 16 (cited in Daly, p 28)
32. Mackay, pp 141–142, Curnin's register, p 25 (cited in Daly, p 45)
33. olc 5/18 (cited in Daly, p 45); r15a, fol 375
34. Mackay, pp 139–140; Curnin's register, p 26; olc 5/18, return of claims settled since 1862 (cited in Daly, p 45)

Siân Daly notes that in 1869 the Poverty Bay Commission strenuously opposed a claim by Rhodes to a 300-acre block between Karaua Creek and the edge of Poverty Bay (plus 1½ acres at Muriwai), supposedly purchased in 1840. The commission awarded just 1 acre 2 roods 23 perches to Rhodes.[36]

W H Wyllie claimed, and was awarded, 64 acres in 1871. Other grants in 1871 included 51 acres to R Poulgrain; 25 acres to A Dunlop; 17 acres to the mixed-race children of Goldsmith; five acres to Read; 185 acres plus an extra 36 acres to Thomas Uren; and a further 319 acres (although the old land claims appendix estimates this at 335 acres) to Read.

(2) *Crown purchases before 1865*

On 29 January 1857, following long negotiations, Resident Magistrate Herbert Wardell (on behalf of the Crown) secured the sale of 57 acres of land at Turangi for the magistrate's office, for which he paid £85.

Large areas in Poverty Bay were leased informally during the 1860s for sheep-runs. For example, the Kaiti block (4350 acres) was leased as early as 1856, and the Pouawa block (19,200 acres) was leased in 1865.

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 5.

(4) *Confiscations*

It was initially proposed, following the brief conflict in Poverty Bay in 1865, that land in the area be confiscated and military settlements be established in the 'rebel' district to bring tribes under British rule. The experience in other parts of New Zealand, where this method had proved costly and ineffective, encouraged further consideration of a new form of confiscation that would be 'less costly to the government and more palatable to Maori'.[37] McLean was soon considering taking the whole area and subsequently returning Crown-granted portions to 'friendly' Maori.[38]

The East Coast Land Titles Investigation Act 1866 was introduced to carry out the function described above. It allowed the Native Land Court to determine the title to lands claimed by Maori or European in the area, whether or not this was desired by Maori claiming title to the land (s 3a), and to award certificates of title to those with interests in the land who had not been engaged in rebellion (s 3b). Most significant, however, was the provision allowing the court to investigate title on its own initiative, or upon application by the Crown, regardless of the wishes of Maori with an interest in the land.

In October 1867, the Act was amended and attempts were made to get chiefs to cede a single block of land. While this was unsuccessful, on 27 February 1868,

35. olc 2/7, Curnin's register, p 91; olc 5/18 (cited in Daly, p 45)
36. Mackay, p 141
37. Daly, p 61
38. Ibid

McLean secured for the Government the cession of 1000 acres for the purposes of establishing a township at Turanganui (later Gisborne), for which the Government agreed to pay £2000.

Raids upon both Europeans and Maori in Poverty Bay by Te Kooti and his supporters in November 1868 shocked European settlers and increased their desire for 'rebel' lands to be confiscated. It also encouraged Maori fearful of further attacks to cede their lands to the Crown in return for military protection. A deed of cession was signed in December 1868 by 279 chiefs from Te Aitanga-a-Mahaki, Rongowhakata, and Ngaitahupo for the whole of the Poverty Bay district (estimated to contain more than one million acres). The boundaries of the block were described as running along the sea coast from Turanganui to Paritu, inland to Reinga, along the Ruakituri River to its source, along the line of Maungapohatu Maungahaumi to Tatamoe, then to the sea by way of Pukahikatoa, Arakihi, Wakaroa, and Rakuraku to Turanganui. Claims lodged within three months for title to the lands would be considered by the Native Land Court, and valid claims would receive Crown grants. In addition, the Governor was able to award the lands of 'rebel' Maori to loyal Maori as compensation, should they be affected by blocks reserved for European and Maori military settlements.

The Poverty Bay Commission began hearing claims in June 1869. It was headed by Native Land Court judges John Rogan and Henry Monro. On the second day of the hearings, Rongowhakata and Te Aitanga-a-Mahaki agreed to cede three blocks of land to the Crown in exchange for the waiver of the Crown's claims to the rest of the land. Te Mahunga (approximately 15,000 acres), Patutahi (approximately 50,000 acres), and Te Arai (735 acres) were ceded, although there was confusion about how much of that was actual transferred (see below).

The commission sat from 29 June until 10 August 1869 and heard claims covering 101,000 acres of the block ceded in 1868. In 1869, the commission awarded a further 150,000 acres of land under joint tenancy (under which, on the death of an interest holder, the holder's interests pass to the other owners, not the heirs).

Blocks of land were returned to tribes by the commission in 1873 as follows: Aitanga a Mahaki initially received 400,000 acres, Ngaitahupo about 51,600 acres, and Rongowhakata 5000 acres. The final total of land returned to Maori from that originally confiscated was around 800,000 acres (although the validity of the tribal allocations of this land are not known, because customary title had not been investigated in Poverty Bay before the 1860s).

(5) *Purchases under the Native Lands Act*

(a) *Private purchases, 1865–90:* By 1869, only a very small area on the flat, fertile land of the flood plains and river mouths was claimed as having been purchased by Europeans. Leasing, however, which had often begun prior to 1865, was continuing. For example, the Whangara block (21,450 acres) was leased for £280 in the first year in 1867 and at an increasing rate for the next 15 years. The Maraetaha block of 20,000 acres was also leased from 1867, along with Te Arai (10,691 acres, part of which was later confiscated), Repongaere (9900 acres), Ngakaroa (12,360

acres), Pukepapa (11,000 acres), and Ruangarehu (3146 acres). Daly comments that all these leased lands would pass from leasehold into freehold once Maori title had been ascertained.[39] The lessees would approach individual right-holders and buy their shares, then making an application to the Native Land Court to have their interests separated out from those of the non-sellers.

G E Read was a prominent land speculator who, by 1876, had leased or purchased interests in 29 blocks. Read purchased many seaward blocks on Rongowhakata lands along the plains by the early 1870s, as well as the Kaiti, Whataupoko, and Makauri blocks in the north of Gisborne, which he held under partial freehold and leasehold.[40]

(b) *Crown purchases, 1865–90:* Most blocks of land in Poverty Bay came before the Native Land Court between 1873 and 1877, once the court had resumed its normal functions in 1873 following the confiscation of land in the district. Following the awards of the Poverty Bay Commission in 1873, speculators began buying up the interests of owners in the smaller blocks on the flood plains. The only Crown possessions in the area in the first half of the 1870s were the township block and the two 'ceded' areas of Patutahi and Muhunga.

Crown purchases in the following years were as follows: 162,354 acres in 1875; 6190 acres in 1876; 63,157 acres in 1877 (possibly including the Tauwharetoi, Whakaongaonga, Tuahu, and Hangaroa Matawai blocks).

Sittings of the court resumed in 1880, following a temporary suspension of its activities on the East Coast in 1877. Approximately 392,101 acres were purchased by the Crown in the East Coast–Poverty Bay region between 1879 and 1884, with 239,734 acres of that purchased in 1880. Another lull in Crown purchasing followed, lasting until approximately 1892.

The confused state of titles in the 1890s and the introduction of the Maori land councils under the 1900 legislation served to slow the pace of new Maori land sales in the Gisborne area before 1910, although many purchases under previous legislation were being 'completed'.

(c) *Crown purchases, 1890–1930s:* A number of Gisborne blocks passed to the Government on subdivision in the 1890s, including Tarawera 1 (six acres) in 1894; Tauwharetoi 1b and c (totalling 801 acres) in 1897; Whakaongaonga 2c in 1896; Whakaongaonga 2d to 2j (1736 acres in total), awarded to the Crown in 1897; Waipaoa 1 and 2 (2911 acres each) in 1889; and part of Waingaromia 3a (536 acres) in 1889.

Up until the 1930s, subdivisions were made from earlier partitions. These small, individual holdings were often later consolidated under the Manutuke or Waiapu consolidation schemes. Blocks affected included the Poroporo block, which was subdivided in 1915 and eventually largely alienated; the Tarewa lands, which were first partitioned in 1894, with all but 19 acres subsequently alienated; the Pakirikiri

39. Ibid, p 122
40. Ibid, p 135. See pages 135 to 143 for more detail on these and other purchases by Read.

block (30 acres), which was subdivided and then largely purchased by the Crown. A similarly complex list of subdivisions, consolidations, and sales are evident in the files for the Pakarae, Papakorokoro, and Waihoa 1 and 2 blocks.

(d) *Post-1910 alienations:* Land was also vested in the Tairawhiti Maori Land Council (established under the Maori Land Administration Act 1900). Only 1122 acres were voluntarily vested in 1904, with a further 85,185 acres compulsorily vested between 1906 and 1909 (following the Maori Land Settlement Act 1905). Approximately 2325 acres were vested from Cook County (which was approximately the same area as the Poverty Bay district).

(6) *Examples of land taken for public purposes*

In 1894, the Government allegedly acquired pieces of 16 blocks of Maori land in Gisborne, possibly as public works takings, although further research is required to determine details.[41]

There are many examples in the early twentieth century of public works takings from small remaining Maori sections of blocks. Compensation was paid for these takings. For example, the whole of the Waiohiharore 2 block was also taken for railway purposes in 1900, and it was recorded that compensation was being assessed for the block. Whenuakura c was taken for roading and railways purposes in 1914 and compensation was paid: half to the lessee on the block and half to the owner. In 1915, sections 65 and 66 of the Patutahi block were taken under the Public Works Act for the East Coast Main Trunk Railway.

(7) *East Coast Trust lands*

A considerable amount of Maori land in Poverty Bay was affected by the activities of the New Zealand Settlement Company and its successors, the Carroll–Wi Pere Trust and the East Coast Trust. For a full discussion, see section 5.2.2(6).

The tables on the following page summarise the status of remaining Maori lands in Poverty Bay as determined by the Stout–Ngata commission in 1908.

In 1951, the East Coast Trust directly affected an estimated 8000 Maori owners, who anticipated the return of their lands in an improved state from the trust. (The 108,664 acres of the Mangatu lands had also been brought under the control of the East Coast Commission in 1917, but were returned to their owners in a body corporate in 1947, with an elected committee employing farm managers.) When the East Coast Trust was wound up in 1953, a total of £59,505 was paid to the descendants of Maori owners in most blocks sold since 1902, principally the Pakowhai and Paremata blocks and about 110,000 acres (not including the Mangatu lands) were returned to incorporated Maori owners as substantially improved, valuable, and debt-free lands.[42]

41. Oliver and Thompson, 1971, p 179 (cited in Daly, pp 175)
42. Orr-Nimmo, p 300

Category	Area
East Coast Trust lands	60,768 acres
Whangara	11,646 acres
Mangatu 1	47,726 acres
Lands vested in Maori land board	2325 acres
Approved by Maori land board	29,434 acres
Other leases (exclusive of Wi Pere Trust estate)	20,653 acres
Total area leased	172,552 acres

Lands under lease

Category	Area
East Coast Trust lands	33,786 acres
Whangara	67 acres
By the commission (schedule 7a)	23,999 acres
Total	58,464 acres

Lands set aside for Maori occupation

Category	Area
East Coast Trust lands (for lease or Maori occupation)	91,834 acres
Mangatu 1	32,020 acres
Total area	123,854 acres

Lands available for settlement

Category	Area
Lands under lease	172,552 acres
Lands set aside for Maori occupation	58,464 acres
Lands available for settlement	123,854 acres
Lands to be further considered and reported on	71,715 acres
Wi Pere Trust estate	38,168 acres
Total area of Maori land	464,753 acres
East Coast Trust lands not in Cook County	92,339 acres
Maori land of all classes in Cook County	372,414 acres

Summary table

5.3.3 Outcomes for principal tribes in the area

By 1876, the Tangihanga block and the Mangatu lands were the only substantial blocks of non-alienated Maori land remaining, owing to the sale and lease of land to the Crown and private interests. By 1881, the Crown owned about 720,000 acres of a total 1.9 million acres. Private European freehold at this time amounted to 530,750 acres and Maori land (largely north of Gisborne) amounted to 576,630 acres.

By the late 1890s, Maori had sold the freehold of most of the leased land and very little land remained to them, apart from the two large areas of the Mangatu and Mangapoike blocks. The rest was in reserves and other small subdivided areas scattered throughout the hill country and in some smaller blocks on the flats. Daly comments that the largest blocks still in Maori ownership by 1890 were under the administration of the Carroll–Wi Pere Trust and, later, the East Coast commissioner.[43]

In 1908, Stout–Ngata reported that 946,600 acres of Cook County, estimated to contain 1,319,014 acres, had been acquired by the Crown, with the balance of 372,414 acres remaining to Maori, including those lands held in trust for them.[44]

5.3.4 Examples of Treaty issues arising

(1) *Old land claims*

In 1859, Bell advised Domett to let the matter of old land claims drop, saying 'I would leave these alone . . . and we may wink at any little irregularity provided the ghosts of these claims do visit us no more'.[45] These numerous 'irregularities' included the fact that most of the transactions were illegal (because they had occurred after the January 1840 proclamation), were not supported by written deeds, and the acreage awarded by Bell was in some instances well in excess of that originally claimed.

(2) *Confiscations*

(a) *Pre-confiscation issues:* McLean presented the Maori of Poverty Bay with an ultimatum on 13 November 1865 for siding with the Pai Marire following the entry of their emissaries into the district. He demanded that they should accept his terms for peace and should surrender their lands in payment for their 'rebellion' or have them confiscated. This amounted to treating the tribes of Poverty Bay as rebels before they had clearly become so, as well as placing them in the situation of losing their lands whether they agreed to the Government's conditions or not.[46] The

43. Daly, p 188
44. 'Native Land and Native Land Tenure: Interim Report of Native Land Commission, on Native Land in the Counties of Cook, Waiapu, Wairoa and Opotiki', AJHR, 1908, g-3, p 1 (cited in Daly, p 248)
45. olc 4/21, lc 71/65, letter to Domett from Monro, Poverty Bay Compensation Commission, Auckland, marginal note by Bell, July 1871
46. Binney, p 48 (cited in Daly, p 59)

resulting siege and capture of their principal pa at Waerenga-a-Hika in November 1865 lasted only one week, but it had lasting consequences for Poverty Bay Maori.

In early 1866, with confiscations looming, Maori were encouraged by land speculators to sell their lands before the Government took them. Many Maori appeared willing to do so, and they also began negotiating informal leases of lands. The Government responded by advising Maori that 'such proceedings are calculated to interfere with the suppression of rebellion on the East Coast and are hereby warned to abstain from carrying out such arrangements'.[47] Daly notes that 'This notice could not have had any legal standing as the district had not been proclaimed under the Settlements Act and the Native Land Act 1865 still had operational standing there'. She argues that the Government 'had a vested interest in preventing the Native Land Court from carrying out any business on the East Coast which might affect their acquisition, through confiscation, of the best land in the area'.[48] In the event, the activities of the Native Land Court in Poverty Bay were suspended, despite Chief Judge Fenton's demand that the Government not interfere with the course of the law. During the court's suspension, the East Coast Lands Titles Investigation Act 1866 was passed. This sequence of events, according to Daly, gives some weight to the proposition that the court was suspended in order to keep it from sitting until a law could be passed to give the Government power to use the court's sway to vest in the Crown land of those deemed to be 'rebels'.[49]

(b) *East Coast Lands Titles Investigation Act 1866:* Under the East Coast Lands Titles Investigation Act 1866, the Native Land Court had become:

> an instrument whereby Government would obtain very large tracts of land; thereby confiscating by a side-wind, in direct opposition to the instructions of the Imperial Government, and in spite of an asserted promise made by the Governor that no land should be taken.[50]

Governor Grey had apparently made the promise in Poverty Bay early in 1866 when he visited the area.[51] J C Richmond (the Native Minister) denied this, but he admitted that the Act was flawed in that it 'attempted in an indirect manner to effect that which could only be treated as confiscation'.[52]

Daly also notes that the Act made no provision for the setting aside of lands for military settlements, or for the transfer of confiscated lands to 'loyal' Maori, as earlier promised by Richmond.[53] During 1867, it became evident that 'loyal' and 'rebel' interests were peppered throughout the district and that 'rebel' and 'loyal' could be found within one family. This situation made the settlement of the area by

47. *Hawke's Bay Herald*, 29 May 1866 (cited in Daly, p 62)
48. Daly, p 63
49. Ibid, p 64
50. H Carleton, Bay of Islands, 26 August 1868, NZPD, 1868, p 39 (cited in Daly, p 74)
51. 26 August 1868, NZPD, 1868, p 39 (cited in Daly, p 74)
52. 19 August 1868, NZPD, 1868, p 518 (cited in Daly, p 74)
53. O'Malley, p 58

non-Maori a costly and complex matter. Maori themselves were disinclined to assist, which made it virtually impossible for the process to continue.

Further problems arose when it was discovered that much of the land to which the Government sought access (including agricultural land and oil springs) was not within the boundaries of the Crown's control as set out in the 1866 Act. In February 1867, the Government amended the Act to include these lands. When Maori opposition to this extension of the potential land-taking under the Act became evident, it appeared that the Act would be unworkable.

In July 1867, Maori petitioned the Government, stating that they had not received notification of its intentions to take lands at the cessation of hostilities in 1865 and 1866 and, furthermore, that it had been two years since then and this notification had only just been made.[54] Maori continued to boycott the court as long as the East Coast Lands Titles Investigation Act was in force. Following a sitting by the court in March 1868, Maori again petitioned Parliament regarding the 328 men, women, and children who, in 1865 and 1866, had been taken to the Chatham Islands for a period of no more than 12 months but who had been kept there while arrangements were made for the taking of the land on the East Coast by the Government.[55] The petition stated that these prisoners had been on the Chatham Islands for two and a half years and that some had died. The petitioners felt that the punishment was severe, considering that no one had been murdered and that the disturbance in Poverty Bay had 'only lasted one week and ended for ever'.[56] Major Biggs (the resident magistrate) had, in fact, written to McLean in June 1867 advising that the return of the prisoners be delayed until difficulties encountered by the Government in securing the cession of certain Poverty Bay lands had been overcome.[57]

(c) *The East Coast Act 1868:* The East Coast Act 1868 made provision for the Native Land Court to continue to use discretionary power in the division of the land of rebel Maori between loyalists and the Crown. Nevertheless, as Daly observes, under the provisions of the new Act, rebels were still to lose their lands entirely and the lands of loyal Maori were no more guaranteed than they had been under the earlier repealed legislation. The difference was, however, that the Government had stated its intentions to pursue 'voluntary' rather than compulsory cession of lands.[58] The Act was to remain in force until 1891, which theoretically allowed the Native Land Court to continue to exclude claimants on the basis of their being deemed 'rebels', although this provision was largely ignored.

(d) *The Poverty Bay Commission 1869:* There appears to be some confusion regarding the amount of land ceded by Rongowhakata and Te Aitanga-a-Mahaki in

54. 'Petitions Presented to the House of Representatives and Ordered to be Printed', (petition 9), AJHR, 1867, g-1, p 10 (cited in Daly, p 71)
55. Williams, p 49 (cited in Daly, p 61)
56. 'Petitions from East Coast Natives Relative to their Lands' (petition no 1), AJHR, 1868, a-16, pp 5–6
57. Biggs to McLean, 13 June 1867, 'Papers Relative to Prisoners and Guard at the Chatham Islands', AJHR 1868, a-15e, p 19; Binney, p 71 (both cited in Daly, p 77)
58. Daly, p 77

1868, with figures submitted by various parties ranging from 40,000 acres to 67,000 acres. Daly notes that this problem requires further exploration, and she suggests that, if the tribes were deliberately deceived over the amount of land to be taken, it is possible that Maori present when the commission announced the boundaries were not concerned about the acreage identified because they had been assured that excess lands would be returned to them once surveys had been conducted.[59]

Furthermore, while it was supposed that all the land outside the three blocks ceded to the Crown would be returned to loyal Maori and that reserves would be set aside for 'rebels' who would become landless according to the East Coast Act 1868, neither of these things eventuated. Instead, loyal Maori were not compensated for their lands confiscated within the block, and rebel Maori remained in possession of their lands outside the confiscation block.

There are several issues arising from the method by which the Poverty Bay commission returned land and the nature of the title granted:

First, when the commission adjourned in 1869, about 80,000 acres remained to be returned to Maori. Regardless, the Native Land Court was scheduled for a sitting in November 1870, despite Chief Judge Fenton's concern that the court did not have jurisdiction over the lands ceded because these were no longer under native title. It was later commented that the court's actions in 1870 were 'null and void' and that objectors to the court's sitting at all were 'justified in defending themselves against the persistently illegal action of the Government'.[60] The claims heard by the court during this period were not revisited by the Poverty Bay Commission when it sat again in 1873. Instead, the Government passed the Poverty Bay Title Act 1874 to eliminate problems arising from the court's actions.

From 1872 onwards (once Crown grants had been issued for titles awarded by the Poverty Bay Commission), grantees showed enormous dissatisfaction over the awarding of title as joint tenants rather than tenants in common, since this meant that they could not hand the land on to their children. In addition, the real owners of blocks brought before the commission in 1869 had been advised by certain Government agents, present in Turanga at the time, to include as many names as possible on the title for their land to ensure they held on to the land. Maori had done so, assuming that the grants would then be awarded relative to the grantees' entitlements.[61] The Crown, however, issued shares of equal value to all owners listed. Maori strongly objected to this policy, stating that:

> we gave up all our lands for a time with full faith that the Government would perform their promise and return them: they have not done so, they have only returned us a portion of our possessions and that small right that they have given us we cannot leave to our children it is given back to us in a manner as to be almost useless to us – Is this justice?[62]

59. Ibid, pp 74–75
60. *Poverty Bay Standard*, 15 February 1873
61. W H Tucker to Native Minister, 30 July 1872, ma 62/7 (RBD, vol 129, pp 49,833–49,834) (cited in Daly, p 95)

Apparently some Maori who had been added to the lists then sold the land, to which they had no customary right. It was subsequently recognised at an official level that Maori were 'suffering from a substantial hardship', although there was some debate about who was to blame for this occurrence. Despite this, the Government took no action to resolve the problem, preferring instead to partition the land upon the agreement of all joint tenants in equal shares. Maori were forced to secure their interests for their children by deed of conveyance in trust.[63]

(e) *The Patutahi block:* The Patutahi block, which was originally ceded to the Crown by Rongowhaakata, Te Aitanga-a-Makahi, and Ngati Kohatu, was to be awarded to Ngati Porou and Ngati Kahungunu for their support for the Crown during Te Kooti's raids (as discussed earlier). Ngati Kahungunu wanted to return the land to the traditional right-holders but the Crown would not allow this to happen. In November 1872, the Crown decided that Ngati Porou would be awarded 10,000 acres from the 57,000- to 60,000-acre block. Ngati Kahungunu agreed to accept money in lieu of their land, until they heard of Ngati Porou's award. In the meantime, chiefs at Turanga were requesting that the land be given to them. A scramble for the lands ensued.

Further problems occurred once the block had been surveyed. Maori disputed both the boundaries given and the various estimates of the acreage offered. In September 1873, however, Ngati Porou agreed to give up their claims to Patutahi for £5000, and in November, Ngati Kahungunu received two payments also totalling £5000. 'Loyal' Maori at Turanga argued that they should also receive £5000 compensation. McLean, however, rejected this request on the basis that the people of Turanga 'have hitherto not shown yourselves capable of managing your own affairs', citing the example of their ready acceptance of the Pai Marire doctrine.[64]

It also appears that 19,445 acres were added to the Patutahi block at the time of survey, without Maori consent and in breach of the 1869 agreement.[65] Te Aitanga-a-Mahaki and Rongawhakata claimed that they only agreed that the Crown retain 15,000 acres. The 1921 Native Lands Commission concluded that 20,337 acres was the balance of land the owners had been deprived of without their consent.[66] No recommendation was made for compensation, however, although the Government inserted section 33 into the Native Land Claims Adjustment Act 1922, authorising the Native Land Court to determine the compensation for the entitled interest holders in the Patutahi block. The beneficiaries, identified as those Rongowhakata who could prove occupation, requested £122,022 for the lands not returned. The Government rejected this proposal, and following lengthy negotiations, £38,000 was finally accepted by the beneficiaries in 1950.[67]

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62. RBD, vol 129, p 49,834 (cited in Daly, p 95)
63. Memo from Prendergast, 17 March 1873, hb 3/5, 'Dissatisfaction of Poverty Bay Maori on Account of Tenure of Land Awarded by Poverty Bay Commission' (RBD, vol 131, p 50,613) (cited in Daly, p 97)
64. AJHR, 1874, g-1, p 3
65. O'Malley, p 151
66. AJHR, 1921, sess 1, g-1, p 20

(f) *The Poverty Bay Commission 1873:* By 1873, the granting of large areas of land under joint tenancy (rather than tenants in common) had been acknowledged by various officials as an injustice to Maori. Despite this, no action was taken to remedy the situation at that time, or later. On 14 August 1873, Judge Munro acknowledged this injustice to a crowd of 300 Maori gathered before the commission. He asserted, however, that land must come before the commission in order for it to be restored to Maori.[68] Maori complained further that the blocks confiscated were in excess of the area agreed to in 1869. The following day, Maori refused to have their claims heard by the commission, and when disorder erupted, the courthouse was cleared and the doors locked. On 19 November 1873, the court resumed and Wi Pere requested the return of all land within the ceded area to a committee of Maori trustees, who would then allocate the lands to the appropriate parties. The commission agreed to return the remaining lands in whole blocks.[69] The court closed again on 24 November. Daly comments that further research is required to determine why Rongowhakata were awarded such a substantially smaller amount of land than other tribes (only 5000 acres), despite their relatively limited support for Pai Marire and general adhesion to the Crown during the wars.[70] O'Malley comments that the Government had lost interest in the return of lands in Poverty Bay after it had received the blocks it sought and completed negotiations with the loyalist tribes, Ngati Porou and Ngati Kahungunu.[71]

(3) *Post-1875 Crown purchases*

In order to compete with successful private buyers, the Government began mimicking their procedures in Poverty Bay after 1877, including making cash payments to certain Maori identified as having an interest in the land, prior to title to the land having being determined by the Native Land Court. In particular, Daly comments on the work of purchase officer Wilson, who engaged in prior payments.

(4) *Inalienable lands*

Daly provides examples of the removal of restrictions in Poverty Bay and notes that:

> It seems, from the evidence, that many Maori leaders were keen to hold their land under restrictions as a way of preventing the sale of undivided shares by individuals. This still occurred, however, and applications for the removal of restrictions on subdivision were common, and always hotly disputed by non-sellers.

For a further discussion of restrictions on alienation, see volume ii, chapter 8. Daly also notes that:

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67. H Nepia et al to Minister of Maori Affairs, 22 October 1950 (copy), ma1 5/3/189, vol 3, 1950–60 (RDB, vol 66, pp 25,478–25,479)
68. R de Z Hall, sec 15; O'Malley, p 150 (cited in Daly, p 106)
69. O'Malley, p 153
70. Daly, pp 108–109
71. O'Malley, p 155

> the activities of the New Zealand Native Land Settlement Company and its aftermath must be seen as having had negative repercussions both in the short and long terms for Maori of Poverty Bay, as they resulted in much hardship over a number of decades, and the very serious loss of parts of the tribal estate.[72]

Carroll's involvement while a Minister of the Crown in the loss of Maori lands closest to Gisborne through the mortgagee sale by the BNZ Estates Company involves a possible conflict of interest.

Land held in trust for Maori, according to figures released in 1908, amounted to 350,000 acres. Some Maori were already landless, and the management of the land remaining to Maori was, according to Daly, a continuing focus of attention and discontent among local Maori.[73] Owners of the Mangaheia and Paremata lands, for example, petitioned Parliament in 1909 over the mortgaging of their lands, and they asked for them to be removed from the trust's administration. Petitions were also made to Parliament by Maori owners who were critical of attempts to shut Maori out of farming their own land and of being left with too little to live on and cultivate themselves.[74] The hardship endured by Maori who had their lands administered under this scheme, or who found their lands implicated in the mortgage to the BNZ through no fault of their own, was particularly harsh for Maori in Poverty Bay who were desperate to hold on to their remaining lands, such as the Maraetaha and Whaitiri blocks. On the other hand, it must be recognised that the East Coast Trust redeemed the remaining land from debt (along with the Mangatu blocks) and returned the land debt-free and in good order to Maori after the war. The trust compensated with money and shares those owners whose lands were sold to reduce the mortgage.

(5) *The Validation Court*

Poverty Bay was one of the districts most affected by the operation of the Validation Court under the legislation of 1892 and 1893. The court was empowered to validate titles to land acquired from Maori that were technically in breach of the requirements of the very confused land law of the previous 25 years but were considered by the court to be acquired under equitable contracts. The technical breaches were in fact commonly neglect by the purchasers to comply with the provisions put in place to protect Maori from fraudulent or inequitable dealings, and the Validation Court in the period 1892 to 1908 frequently overrode Maori objections. It is in fact a very subjective judgement as to whether a breach of the law was merely technical or something more serious. Arguably, Maori should have been given the benefit of any doubt that existed. There is also some doubt as to whether the notification provisions regarding land before the Validation Court reached Maori owners or

72. Daly, p 289
73. Ibid, p 272
74. AJHR, 1906, i-3; AJHR, 1919, p 16 (cited in Daly, p 274)

enabled them to prepare adequately for the hearing. The enactment of validation legislation was a dubious proceeding on the part of the Crown in Parliament.

(6) *East Coast Trust lands*

See section 5.2.2(7) for a discussion on the East Coast Trust lands.

(7) *Public works takings*

Daly notes that:

> It is clear . . . that town planning processes have had an adverse impact on Maori land, and there is evidence of a lack of adequate consultation and communication with Maori owners, as well as a lack of respect for their concerns about the possible usage of land taken . . . There is sufficient evidence to indicate that Maori in this area, as in other districts, have not been well-served by the public works legislation or the exercising of taking powers by the government and local bodies and this has been the cause of lasting bitterness amongst some Gisborne Maori.[75]

A particular example of this pressure concerned Awapuni Lagoon, an important resource for Rongowhakata. For a further discussion of public works policy and law, see volume ii, chapter 11.

(8) *Post-1910 alienations*

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

5.4 Additional Reading

The following are recommended for additional reading:

- Siân Daly, *Poverty Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1997;
- Vincent O'Malley, 'Report for the Crown Forestry Rental Trust on the East Coast Confiscations Legislation and its implementation', report commissioned by the Crown Forestry Rental Trust, 1994; and

75. Daly, pp 287–288

Katherine Orr-Nimmo, 'Report for the Crown Forestry Rental Trust on the East Coast Maori Trust', report commissioned by the Crown Forestry Rental Trust, 1996.

Also see the submissions made by Ngati Porou on the Wai 272 record of documents (doc a1).

CHAPTER 6

WAIKATO

6.1 Principal Data

6.1.1 Estimated total land area for the district

The estimated total land area for district 6 (Waikato) is 2,387,034 acres.

6.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 6 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 91 percent in 1860, 17 percent in 1890, 12 percent in 1910, and one percent in 1936 (or 5.3 acres per head according to the 1936 population figures provided below).

6.1.3 Principal modes of land alienation

The principal modes of land alienation were:

- confiscation; and
- purchases under the Native Land Acts.

6.1.4 Population

The population of district 6 was approximately 10,000 to 11,000 in 1840 (estimated figure), 2998 in 1891 (estimated from census data), and 6242 in 1936 (also estimated from census data).

6.2 Main Geographic Features Relevant to Habitation and Use

The boundaries of this research district run from Waiuku on the west coast across to Kaiaua on the Firth of Thames and then in a southerly direction along the edge of the Hauraki Plains before traversing the Piako Swamp to the east. The eastern boundary of the district follows the Kaimai Ranges, sweeps down to include Atiamuri and then continues westward towards the coast passing Arohena, Waikeria, Te Kawa, and Pirongia, hitting the west coast just south of the Aotea Harbour. As defined for the purposes of the Rangahaua Whanui project, the Waikato district encompasses all the territory of seven counties. These counties are, from north to

south, Manukau, Franklin, Waikato, Piako, Raglan, Waipa, and Matamata.[1] All or part of four major geographical regions are located within this district: the hills and plains to the north of the lower Waikato and Maungatawhiri Rivers up to the Manukau Harbour and Tamaki Strait; the Waikato and Waipa River valleys; the upper Hauraki Plains (from approximately Paeroa south to the Waikato River); and the western coast, including the harbours of Aotea and Raglan (Whaingaroa). Kawhia Harbour, although mainly within the King Country Rangahaua Whanui research district, has been discussed in the Waikato district as well, because of its important to both districts.

These four regions have been referred to in this report as follows: South Auckland (Manukau Harbour to the Waikato River, including the Bombay Hills and Hunua Ranges); the Waikato claim area (the Waikato and Waipa Rivers and the lower Waikato lakes); eastern Waikato (the Piako and Waihou Rivers from the Kaimai Range to the east); and the western harbours (Mount Pirongia and the coastal hills and the Kawhia, Aotea, and Raglan–Whaingaroa Harbours).

6.3 Main Tribal Groupings

See section 7 of the Waikato Raupatu Claims Settlement Act 1995 for a list of the hapu of Waikato affected by the raupatu settlement and the boundaries of that settlement. Sections of Ngati Haua, Ngati Raukawa, and other tribes lie inside district 6, mainly to the east and south of the research district.

6.4 Principal Modes of Land Alienation

6.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Claims relating to alleged purchases of Maori land made by Europeans before 15 January 1840 were placed before a succession of land claims commissioners during the 1840s and 1850s for investigation. Large amounts of land were claimed in the South Auckland area (particularly on the southern shores of Manukau Harbour) and on the Firth of Thames near the mouths of the Waihou and Piako Rivers. Lesser amounts were claimed on the Waikato and Waipa Rivers and around the Kawhia, Aotea, and Whaingaroa (Raglan) Harbours. The effect of these claims, however, appears to have been minimal outside the South Auckland region. Virtually all those filed either were withdrawn before a recommendation was made or were disallowed by the commissioners. Since very few claims were allowed, it is unlikely that (again, except in South Auckland) a significant amount of so-called ‘surplus land’ (constituting the difference between the amount sold by Maori in

1. Boundaries as given in B Marshall and J Kelly, *Atlas of New Zealand Boundaries*, Auckland, University of Auckland, 1986, vol 1, map 1.5.7

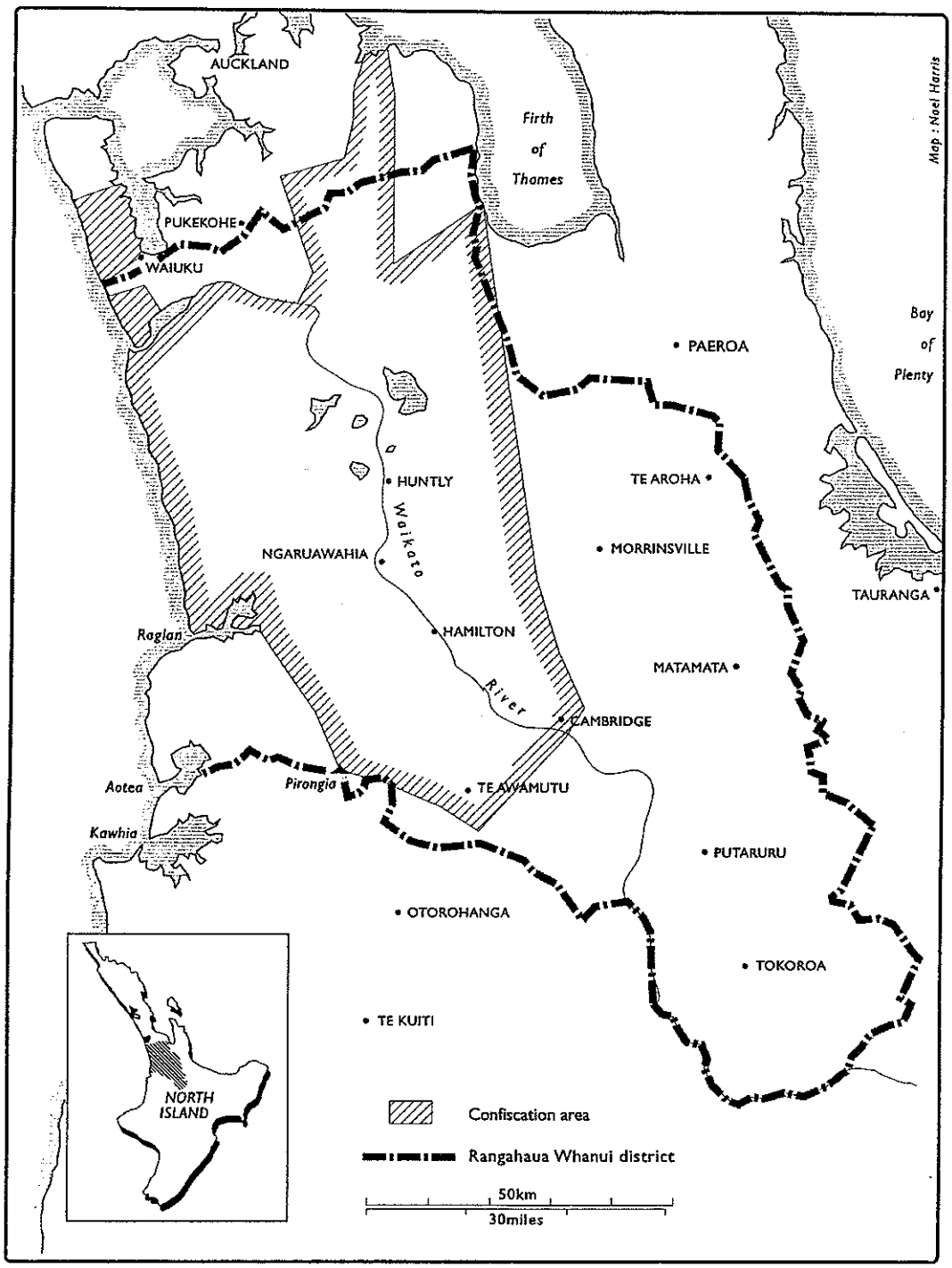

Figure 13: District 6 (Waikato)

transactions later deemed to be valid by the Crown and that granted by the Crown to the European purchasers) reverted to Crown ownership.

(1) *South Auckland*

A total of 18 claims relating to pre-Treaty purchases were investigated by the land claims commissioners in 1842 and 1843. The claims involved some 96,000 acres (largely within the Auckland Rangahaua Whanui research district, but bordering on the Waikato district), the greater part of which was within the poorly defined purchase made by William Fairburn between 1836 and 1839.[2] The commissioners recommended Crown grants totalling some 11,512 acres be made to the Church and Wesleyan Missionary Societies and a half-dozen individuals (some of whom were missionaries). By one count, the Crown acquired 'not less than 71,512 acres' of surplus lands in this region, largely within the Fairburn purchase.[3]

(2) *Waikato claim area*

A total of 21 claims were made relating to purchases along the Waikato River and its principal tributary. They included one at the Waikato Heads, 10 along the Waikato River,[4] and 10 along the Waipa River.[5] The single Waikato Heads claim was for 80 acres and was made by the Church Missionary Society. The commissioners recommended an award be made, but it was not. The society finally received a grant of 168 acres in 1859.[6]

The 'Waikato' claims took in at least 21,835 acres.[7] A larger land area may have been involved, but additional research would be needed to ascertain this and to identify the location of awards. Most of the claims were withdrawn or disallowed. It appears that only 1977 acres were awarded by the first land claims commissioners as a result of Waikato claims. About half of this land went to Charles Marshall, a trader who had settled in the area in the early 1830s.[8]

The 10 'Waipa' locality claims encompassed more than 80,000 acres. Only one of these claims was eventually accepted by the Crown. In 1862, Commissioner Bell awarded the Wesleyan Missionary Society 35 acres at Waipa.

(3) *Western harbours*

A total of 28 claims to land around the harbours relating to pre-1840 purchases were filed with the land claims commissioners in the 1840s.[9] Of these, 20 related to

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2. Alan Ward states that the 74,512 acres of surplus lands represented 74 percent of the old land claims, pointing to about 96,000 acres as the total originally claimed: A Ward, 'Pre-1840 Purchases', in P Husbands and K Riddell, *The Alienation of South Auckland Lands*, Wellington, Waitangi Tribunal Research Series, 1993, no 9, p 10.
3. The figures are derived from Ward, pp 9–10. See also the map of old land claim purchases on page 12. It is not clear which version of the Fairburn purchase boundaries is shown here.
4. One of these, olc 257, also involved land in Taranaki.
5. olc 145–146, 410–413, 474, 500, 950, 1014
6. olc 685
7. olc 73, 147, 257, 320–325, 1018
8. His reminiscences, 'Waikato Forty Years Ago', were published as part of J H H St John, *Pakeha Rambles through Maori Lands*, Wellington, Robert Burnett, 1873.

Kawhia,[10] one to Kawhia and Aotea together,[11] and seven to Whaingaroa.[12] In the case of Kawhia, the claims involved a total of more than 71,574 acres of land,[13] but only two small claims were eventually upheld. The awards amounted to just 122 acres out of the 604 acres involved in these two claims.[14] Many of the other claims appear to have been made by large-scale speculators such as W C Wentworth of Sydney, and were based on alleged purchases made hurriedly in 1839 on the eve of British annexation.

In the case of Whaingaroa, claims involving more than 22,000 acres were submitted. Most, however, either were not followed up by the claimant or were disallowed by the commissioners. The only awards made were for two claims by the Wesleyan Missionary Society for a total of 250 acres. These were cancelled by Bell in 1862, and new grants totalling some 413 acres at Whaingaroa, Kawhia, and Aotea were made to the society at that time.[15]

(4) *Eastern Waikato*

A total of 36 claims were filed that related to the Piako district on the Hauraki Plains.[16] In the absence of a detailed mapping exercise, it is not at present known which, if any, of these encompassed the territory inland that was later included in Piako County. In any case, these 36 claims involved at least 295,670 acres of land. Many were not pursued by the claimants, and more were withdrawn or disallowed. Only two led to awards. In the case of W E Cormack, Commissioner Godfrey awarded 2560 acres in the 1840s (for 18,300 acres claimed), but no grant was actually issued. Bell later granted Cormack 3639 acres.[17] In the case of William Webster (and a number of others whose claims were derived from his), various awards were made at different times during the 1840s and 1850s, including one of 15,290 acres by Bell, but this case was not finally resolved until 1925.[18] It seems unlikely that any grants or surplus lands resulting from the Piako claims affected this portion of the Waikato district.

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9. Figures given here are based on an analysis of data in Bell's tables (AJHR, 1862, d-14), using the claim numbers employed in that report.
10. olc 244, 258–259, 263–266, 501–503, 506–509, 572, 581, 948, 1008, 1026, 1040
11. olc 260
12. olc 261–262, 504–505, 516, 946–947
13. olc 261–262, 504–505, 516, 946–947
14. The Wesleyan mission received four acres for four claimed (olc 948), and W Johnson was granted 118 acres 2 roods 27 perches in 1848 out of 600 acres claimed.
15. See olc 946
16. olc 28, 34–35, 37, 64, 141, 143–144, 164, 170, 195, 198, 245, 282, 286, 292–293, 295, 297–300, 351, 414–415, 459, 585, 630, 632, 726, 747, 762–763, 837, 961, 996. Two of these claims involved 'Piako and Thames'.
17. olc 143–144
18. See the useful summary in Jack Lee, *The Old Land Claims in New Zealand*, Kerikeri, Northland Historical Publications, 1993, pp 46–49. The Webster purchases caused a good deal of trouble for Crown purchase officers in the area in the 1850s: see the reports in AJHR, 1861, c-1, pp 138–140 (Thames and Coromandel district).

(5) *Late claims investigated by Bell*

As part of his investigations of old land claims in the 1850s and 1860s, Bell dealt with a number of claims that had not previously been investigated. Six of the 'new' claims that Bell dealt with were in the Waikato district. Two related to Kawhia, neither of which led to an award,[19] and a similar fate befell a claim arising from an alleged purchase in the Matamata area.[20] Three other claims related to the Waikato claim area. Two were not successful, but the other, which affected an area since purchased by the Crown, reportedly led to a replacement grant at Waiheke.[21]

6.4.2 Crown purchases before 1865

The Crown sought to acquire Maori lands in the South Auckland area for European settlement from 1840 onwards. A large number of purchases were made, some of which overlapped old land claims. During the 1850s, concerted efforts were made to purchase lands around the western harbours, in the northern part of the Hauraki Plains, and along the Waikato River. These efforts met with mixed success, running into the King movement's opposition to further sales of Maori land to the Crown.

(1) *South Auckland*

During the 1840s and 1850s, the Crown purchased virtually all the land in the western half of the South Auckland region. According to one report, 'By 1860 most of the flat, fertile land in the area – with the exception of a few reserves – had passed out of Maori hands.'[22] The Crown also acquired substantial amounts in the eastern half. By one estimate, its total acquisitions in South Auckland, through 73 recorded transactions, totalled in excess of 260,000 acres. The boundaries of purchases were in many cases not clearly defined or surveyed at the time of sale, however, leading to uncertainty as to boundaries and acreages.[23] It should be noted that many of the lands reserved for the owners at the time of these sales were later confiscated by the Crown in the 1860s.[24] It was these purchases, incidentally, which enabled Grey to build the all-weather Great South Road down to Waikato in 1862 without having to cross Maori-owned land. Gorst later described the construction of this road as rendering 'the peaceful solution of the native difficulty, a sheer impossibility'.[25]

(2) *Waikato claim area*

Between 1848 and 1865, the Crown purchased more than 70,000 acres in the Waikato and Waipa River valleys. (Some of this may have been located on the right

19. olc 1314, 1353
20. olc 1356a
21. olc 1325, 1343, 1352. George Graham's claim 1352 fell within the Crown's Waiuku 1 purchase.
22. Husbands and Riddell, p 15. In the early 1850s the Crown's intention was to purchase all the land north of the Waikato River if it could: see Colonial Secretary to Donald McLean, 26 April 1854, AJHR, 1861, c-1, p 105, no 1.
23. Husbands and Riddell, pp 15–16; p 24, map 3
24. Ibid, pp 43–44
25. Sir John Gorst, *The Maori King*, 2nd ed, K Sinclair (ed), Hamilton and Auckland, Paul's Book Arcade, 1959, p 149

bank of the lower Waikato, so falling within the South Auckland region.) More than half the total acreage (44,000 acres) was acquired in two transactions in 1864.[26] The latter deeds were signed a short time before the Waikato confiscations were proclaimed but some considerable time after confiscations had been officially threatened.[27] The 1850s purchases were negotiated in an atmosphere of rising opposition to sales by the Waikato tribes. In 1853, a tapu was imposed on a district stretching from the Maungatawhiri Stream to the Firth of Thames, and the following year the Waikato chiefs placed one on 'The whole of the South bank of the Waikato from Taupo [to the sea] and the North bank, from its confluence with the Whangamarino and up that river to its source'.[28] By 1856, Donald McLean was reporting that, although Crown purchasing was being extended 'towards the Waikato and Waipa Districts':

> I expect it will be some considerable time before any extent of the interior portions of those districts will be alienated by the Natives, as it is with considerable reluctance they even dispose of the homesteads for the few Europeans who have for many years resided in that part of the interior.[29]

There is reason to suspect that some of the late-1850s transactions were of dubious validity. Writing in 1863, for example, John Gorst commented that:

> There are several pieces of land in Lower Waikato which have been partly paid for, and are marked down on our maps as the property of Government, which friendly and loyal chiefs assert to be their property, and to have been fraudulently sold.[30]

All the land south of the Waikato River that had been purchased by the Crown was later included in the Waikato confiscation block. Part of the 'western harbours' region was also included in the Waikato claim area (see below).

(3) *Western harbours*

Crown purchasing around Whaingaroa Harbour during the 1850s was extensive. An influx of European settlers was reported in 1856, and the European name

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26. The 4000-acre 'Awaroa and Otaua' purchase of 20 May 1864 (td 420) and the 40,000-acre 'Horotiu and Waipa' purchase of 15 September 1864 (td 421).
27. In the Governor's proclamations of 11 July 1863, issued on the eve of the invasion of Waikato, Grey warned the chiefs of Waikato that:

    > Those who wage war against Her Majesty, or remain in arms, threatening the lives of Her peaceable subjects, must take the consequences of their acts, and they must understand that they will forfeit the right to the possession of their lands guaranteed to them by the Treaty of Waitangi, which lands will be occupied by a population capable of protecting for the future the quiet and unoffending from the violence with which they are now so constantly threatened.

    (AJHR, 1863, e-5, pp 5–6; RDB, vol 16, pp 6006-6007.) The first formal step towards the confiscation of Waikato land was taken with Grey's proclamation of 17 December 1864.
28. See report from J G Johnson to Donald McLean, 6 October 1854, AJHR, 1861, c-1, pp 105–106, no 8
29. Report of 21 April 1856 in H H Turton (ed), *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1883, vol 1, pp 54–55, no 53
30. Gorst, p 32

'Raglan' was officially attached to the area in 1858.[31] Deeds and receipts suggest that more than 75,000 acres were acquired here in the period 1850 to 1858.[32] The rate and pattern of Crown purchasing appears to be similar to that in South Auckland. Another 80,000-acre block was purchased by the Crown at Whaingaroa in September 1864, shortly before the confiscations were proclaimed but after the threat to take land had been made.[33] Since the northern half of this area was included in the Waikato confiscation block, the specific location of all these purchases, and the effect of the confiscation on them, needs to be ascertained.

The Crown made efforts to purchase lands around the two southern harbours during the 1850s but with much less success than at Whaingaroa. It appears that one small purchase was made at Aotea in 1854,[34] but the amount of land is not given in the deed. Two Crown purchases were made at Kawhia in 1854 and 1857, involving a total of 12,000 acres.[35] It should be noted here that later maps seem to show no Crown lands in the neighbourhood of Kawhia Harbour, which at this point lay well inside the boundaries of the Rohe Potae.[36]

(4) *Eastern Waikato*

Although the Crown expended a good deal of effort on attempts at further purchasing in the lower Hauraki Plains during the 1850s, little or no land further inland (within what later became Piako County) appears to have been acquired by the Crown before 1865. Reporting to Donald McLean in 1861, District Commissioner G W Drummond Hay noted that:

> The land for thirty-five miles south of the mouths of the Waihou and Piako rivers, bounded on the west by the wooded range between the Piako and the Waikato, on the east by the coast line . . . is the only portion of the [Thames and Piako] district at present available for land purchase. The land lying to the south of this tract of country is in the hands of tribes who are thoroughly opposed to the sale of land.[37]

Further investigation is required to ascertain the effect of Crown purchasing on the inland portion of the Hauraki Plains during this period.

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31. See Turton, *Epitome*, vol 1, p 54, no 53, 'Report of 21 April 1856'; p 58, no 57, 'Notice of 2 March 1858'
32. See td 431–445 and receipts 119–132
33. The 'Waitetuna and Waipa' purchase of 17 September 1864 (td 446)
34. 'Aotea' deed dated 6 June 1854, td 448. One hundred pounds was paid for an amount of land that is not specified.
35. The Harihari 1 and 2 purchases of 4 July 1854 and 10 August 1857 (td 450–451). Two receipts worth a total of £69 are recorded for 1854 (nos 133–134), one relating to an old land claim, along with one 1854 deed of gift (no 5) involving 160 acres.
36. See, for example, 'Map of the North Island, New Zealand, Shewing the Land Tenure, June 30th 1884', AJHR, 1884, vol 2, c-1, and also Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993, p 97, map 7.1
37. General report of 4 July 1861, AJHR, 1861, c-1, pp 145–146. Drummond Hay noted that, of approximately 600,000 acres within his district, the native title to some 108,500 acres had been extinguished. Some 15,000 acres of this were old land claims, and 39,500 acres had been acquired by the Crown since 1856.

6.4.3 Pre-emption waiver purchases

As part of his investigations in the 1850s and 1860s, F D Bell also dealt with claims arising from the waiver of the Crown's pre-emptive rights by Governor FitzRoy in 1844 and 1845, under the so-called '10 shillings-an-acre' and 'penny-an-acre' proclamations of 1844. Two of the pre-emption waiver claims that Bell dealt with were in the Waikato claim area. One was for 80 acres and involved land on the Waikato River, and the other, for 42 acres, was located on the Waipa River. The former was disallowed. The latter claim, made by James Wallis, was included in Bell's revised settlement of the Wesleyan Missionary Society's claims.[38]

A larger number of pre-emption waiver purchases were made in South Auckland – some 26 claims in all. Of these, 20 (involving nine separate transactions) eventually led to Crown grants. Although only 2140 acres were granted to the purchasers, between 15,000 and 17,000 acres of land were taken by the Crown as surplus land.[39]

6.4.4 Confiscations

Following the fighting of 1863 and 1864, large quantities of land within the Waikato claim area were confiscated by the Crown under the terms of the New Zealand Settlements Act 1863. As noted above, all claims relating to confiscations within the Waikato claim area defined in the Waikato Raupatu Claims Settlement Act 1995 will not be discussed further here. Claims relating to the South Auckland confiscations north of the Waikato River have not been settled. The East Wairoa block (see chapter 2 for Hauraki interests in this land) is under consideration and was not included in the Act.

6.4.5 Purchases under the Native Lands Act (Crown and private), 1865–1900

The Native Lands Act 1865 permitted the purchase of land from Maori by private persons, as well as by the Crown, after titles had been determined by the new Native Land Court. By this point in time, the only part of the Waikato district where large quantities of land remained in Maori hands was the eastern Waikato region. By the mid-1880s, the greater part of it had been sold, mainly to private purchasers.

(1) *Western harbours*

Two purchases were apparently made by the Crown in the 1870s. One involved a 15,047-acre block in the Whaingaroa–Raglan area,[40] the other a small block of 566 acres in the parish of Pirongia at Aotea in 1875.[41] No evidence concerning private purchases has been located, but it would appear that no land south of Aotea was sold or leased to Europeans before the turn of the century.[42]

38. See olc 1264, 1297
39. Husbands and Riddell, pp 34–35. Map 4 on page 33 shows seven 'pre-emption waiver purchases'. It is not clear exactly what is being portrayed.
40. Ngatitamainu block, 16 July 1874 (td 447)
41. Lot 327, 4 June 1875 (td 449)

(2) *Eastern Waikato*

Starting in the mid-1860s, substantial amounts of land began to be sold on the Hauraki Plains within the northern edge of the Waikato district, to the east of the Waikato confiscation block. Purchasers soon shifted their attentions southwards, culminating in the massive acquisitions in the Patetere block in the early 1880s.

In the period 1866 to 1883, Joseph C Firth, an Auckland businessman, acquired more than 50,000 acres in what later became the northern part of Matamata County for an outlay of less than £12,000. Firth's strategy was reportedly to tie up the desired land in long-term leases before titles had been determined by the Native Land Court, taking advantage of his good relations with Wiremu Tamihana of Ngati Haua and making use of the expert services of former Crown purchase officers such as Drummond Hay and John Wilson. Firth would then exploit the owners' growing debts to gradually secure the freehold title to the land piecemeal.[43]

Other Auckland businessmen and speculators were also active in the area (as they were on an even larger scale in confiscated lands across the aukati line, the boundary of the Waikato confiscation block, to the west). Several acquired large blocks in the Morrinsville area. The Morrin brothers reportedly purchased some 40,000 acres in the period 1873 to 1877 for an average of 3s 3d per acre. Like Firth, they made use of experienced former land purchase officers such as E T Brissenden. One W I Taylor bought another 20,000 acres during this period, and other substantial purchases were made by J Walker, James and Joseph Bell, and J McDonald.[44] Although private purchasers predominated, the Crown also bought four blocks of land in the Piako district late in 1872. These blocks encompassed a total of 56,000 acres.[45]

The purchases in the northern part of the region described above evidently involved lands for which the owners had been determined by the Native Land Court before the Native Land Act 1873 came into effect. Other such lands may have been affected, but no further information is at present available. A parliamentary paper lists 88 sales 'otherwise than to the Crown' in the period 1876 to 1883 for lands in the eastern Waikato region whose owners had been determined after the 1873 Act came into effect. The following table summarises the acreages sold, distinguishing between the northern and southern portions of the eastern Waikato region.[46] This analysis indicates that the bulk of the purchasing prior to 1880 involved lands in the northern part of the region. Thereafter, the emphasis switched to the south, as the

42. See map in AJHR, 1891, vol 2, g-10
43. See R C J Stone, *Makers of Fortune: A Colonial Business Community and its Fall*, Auckland, Auckland University Press and Oxford University Press, 1973, pp 141–143, and the map of his estate on page 133. See also M P K Sorrenson, 'The Purchase of Maori Lands, 1865–1892', MA thesis, Auckland, 1955, p 43.
44. Stone, pp 132–133; see also Sorrenson, p 43
45. The blocks were Waitoa; Te Hotu; Piako, Mohonui, and Te Hina; and Waemaro (td 401–403).
46. 'Dealings with Native Lands', AJHR, 1883, g-6. The return lists all lands that had passed through the Native Land Court under the 1873 Act and that 'have been alienated otherwise than to the Crown'. All are purchases. Using the 'locality' of the block given for each transaction, the 'Thames and Coromandel Districts' list has been reduced to one of blocks, which are probably located within the counties of Piako and Matamata (the eastern Waikato region). See the attached lists.

lands in the huge 'Patetere' block were taken through the Native Land Court and were sold by the persons named as owners.

The original Patetere block consisted, in essence, of all but a northern strip of what later became Matamata County.[47] A report is available that outlines the lengthy and convoluted process that led to the large-scale sales of the early 1880s.[48] The process involved a series of private negotiations for the lease or purchase of these lands. The negotiations were punctuated by two Government proclamations, one each in 1874 and 1878, forbidding private activities where the Government held interests in the lands in question. (These interests, for the most part, were privately negotiated leases that had then been acquired by the Crown.) Following a politically inspired accommodation between the Government and private speculators, most of Patetere was passed through the Native Land Court in 1881. The court defined the Government's interests in the same year. It received the Huihuitaha and Pokaiwhenua blocks, together with part of the Te Tokoroa block, as its share, a total of 28,260 acres.[49] As the table shows, at least 229,649 acres of Maori land in this area were sold to private individuals between 1881 and 1883.

By the mid-1880s, a substantial portion of the Maori lands in the eastern Waikato and western harbours regions had been sold after being passed through the Native Land Court. Contemporary land tenure maps indicate that most of the balance was leased to Europeans at this point in time.[50] It is unlikely that any substantial amount of land in the Waikato claim area that was not already confiscated was sold before end of the century.

6.4.6 Purchases under the Native Lands Act (Crown and private) after 1900

The Royal Commission on Native Lands and Native Land Tenure (better known as the Stout–Ngata commission) spent a good deal of time in the Waikato district. Six of the seven counties in the district were dealt with in their reports.[51] Stout and Ngata dealt with a total of 207,079 acres of Maori land, of which some 59,415 acres (28.7 percent) were already under lease. They concluded that fully 57.4 percent of the remainder (118,890 acres) should be set aside for the 'use and occupation of Maoris' under Part ii of the Native Land Settlement Act 1907. Only 28,774 acres in the whole district were considered to be 'not required for occupation by the Maori owners'. Of these, the commissioners recommended that 13,807 acres be leased,

47. Sorrenson, p 138, and the map in AJHR, 1881, g-13f, p 18. This shows some of the survey blocks within Patetere.
48. Brian Gilling, 'The Purchase of the Patetere Block, 1873–1881: An Exploratory Report', report to the Waitangi Tribunal on behalf of Ngati Mahana, November 1992
49. Ibid, p 60
50. See AJHR, 1884, c-1, which shows that only a scattering of small blocks in the eastern Waikato region remained unalienated at 30 June 1884. It should be noted that the redrawn version of this map in *The Pouakani Report 1993* (map 5.2, p 77) shows as 'private purchases' lands that, on the original, were purchased and leased by private individuals.
51. AJHR, 1909, g-1 (Piako); 1909, g-1a (Manukau and Waikato); 1909, g-1b (Raglan). Waipa County in the south was omitted, for reasons unknown. At that time, Franklin County was part of Manukau County, and Matamata was part of Piako.

leaving just 14,967 acres, which were considered to be surplus to requirements and available for sale to Europeans.[52]

County	Already leased	For lease or sale	For Maori occupation	Total
Manukau (and Franklin)	8514	8316	22,538	39,368
Waikato	4929	4495	2522	11,946
Raglan	17,639	15,663	66,704	100,006
Piako and Matamata	28,333	300	27,126	55,759
Waipa	—	—	—	—
Total	59,415	28,774	118,890	207,079

Stout–Ngata commission recommendations by county

The commissioners concluded their report on Manukau and Waikato with the comment that:

> The lands now held by the Waikato and kindred tribes are but a remnant of the lands they once possessed. Most of the tribal land was confiscated, and much has since been sold. The area left, considering the number of people and the quality of much of the land, is not very large.[53]

If the figure of 207,079 acres includes all or most of the Maori freehold land in the Waikato district in 1909, the total represents less than one-tenth of the 2.7 million acres in the district. All the rest had been sold to the Crown or private individuals or confiscated by the Crown in the seven decades since 1840. Under the provisions, 28,774 acres of land were earmarked for sale and lease, but not all the recommendations of the Stout–Ngata commission were actually implemented.[54] The amount of land vested in the Waikato–Maniapoto Maori Land Board under Part i of the 1907 Act (later Part xiv of The Native Land Act 1909) may thus have been less than this total, and therefore the amount liable for sale may have been less than the 14,967 acres supposedly earmarked.

More than 200,000 acres of land were vested in the Waikato–Maniapoto Maori Land Board, which covered the King Country as well as Waikato.[55] More than 80,000 acres of this land had been sold by the board by 1930. During the period 1911 to 1930, another 146,144 acres of Maori freehold land in the Waikato–

52. The proceeds from a portion of the lands for sale were to be held in trust to form a fund for the purchase of lands at Ngaruawahia and Taupiri.
53. AJHR, 1909, g-1a, p 2
54. See D M Loveridge, *Maori Land Councils and Maori Land Boards: A Historical Overview, 1900–1952*, Waitangi Tribunal Rangahaua Whanui Series, 1996, p 78
55. Some 203,530 acres had been vested under Part xiv by 31 March 1911: see Loveridge, p 113.

Year	Vested lands	Part xviii (to Crown)	Part xviii (private)	Confirmations	Total
1911–12	13,564	0	16,221	48,804	78,589
1912–13	21,870	852	17,748	46,893	87,363
1913–14	13,572	0	7805	39,769	61,146
1914–15	1119	6278	26,370	60,213	93,980
1915–16	958	4785	14,857	29,165	49,765
1916–17	20,141	250	7631	35,566	63,588
1917–18	1450	0	9757	24,597	35,804
1918–19	4733	0	4760	14,227	23,720
1919–20	0	0	4248	31,016	35,264
1920–21	1838	0	9573	27,212	38,623
1921–22	3233	0	2638	14,149	20,020
1922–23	0	0	2913	7212	10,125
1923–24	0	0	387	3999	4386
1924–25	0	825	2686	2391	5902
1925–26	0	793	339	6811	7943
1926–27	385	197	2013	4412	7007
1927–28	0	0	38	7666	7704
1928–29	0	0	281	5682	5963
1929–30	0	0	1899	8751	10,650
Totals	82,863	13,980	132,164	418,535	647,542

Sales of land by and through the Waikato–Maniapoto Maori Land Board, 1911–30.
Source: AJHR, 1912–31, g-9. See Loveridge, pt ii.

Maniapoto Maori land district were sold through the board under the provisions of Part xviii of the 1909 Act, and the board approved privately negotiated sales of some 418,535 acres.[56] It is probable that most of this land was in the King Country, but research will be needed to identify the locations and quantity of lands in the Waikato district that were affected. Even a few thousand acres would have constituted a significant portion of the lands that remained in Maori hands at the turn of the century.

56. Lands with more than 10 owners had to be dealt with under Part xviii, while lands with fewer than 10 had to have private alienations confirmed by the boards.

6.4.7 Land takings for public purposes

No data are available on land takings for public purposes, although the usual takings for roading, railways, and various local body purposes would have applied. For a further discussion, see volume ii, chapter 11.

6.5 Outcomes for Main Tribes in the Area

All the tribes in the Waikato district lost the greater part of their lands in the half century following 1840. The principal mechanisms of land loss were as follows:

(a) *In South Auckland:* old land claims and pre-1865 Crown purchases, with confiscation stripping away most of what was left.
(b) *In the western harbours:* pre-1865 Crown purchases and confiscations (in the northern half of the region).
(c) *In the Waikato claim area:* confiscation.
(d) *In eastern Waikato:* private and Crown purchases under the Native Land Acts of 1865 to 1885.

6.6 Treaty Issues Arising

Extensive historical research is required into all aspects of land alienation in the Waikato district. The following appraisal is exceedingly tentative.

6.6.1 Old land claims

It seems clear that there were serious problems with the way the Crown dealt with some of the old land claims in the South Auckland region. In particular, its failure to ensure that the terms of the original Fairburn sale were fulfilled, and one-third of the land returned to the original owners, appears to have been a serious breach of the Treaty.[57] Serious questions have also been raised about the amount of surplus land taken as a result of the pre-emption waiver claims, and the Crown's failure to provide reserves.[58] The claims in the Waikato district for which awards were made would need to be closely examined to ascertain the validity of the Land Claims Commission's findings.

An appraisal of larger issues concerning the adequacy of the various investigations of old land claims by the Crown has been made in the report of the Waitangi Tribunal in the *Muriwhenua Land Report* (see also volume ii, chapter 2 of this report).[59]

57. See Ward, pp 13–14
58. Husbands and Riddell, pp 35–37
59. Waitangi Tribunal, *Muriwhenua Land Report*, Wellington, GP Publications, 1997

6.6.2 Pre-1865 Crown purchases

The circumstances in which all of the Crown purchases in the Waikato district were made need to be ascertained, along with the prices paid and the reserves created. Purchases in the South Auckland region appear to have excessive, in terms of future Maori requirements, but the adequacy of reserves needs to be considered before any conclusion can be reached. This conclusion, however, will necessarily be affected by the loss of many of these reserves by an act of confiscation that was clearly unjustified (see below).

The aggressive purchasing strategy that the Crown apparently pursued in this area during the 1850s also requires a close and thorough examination. Concerted and continuing efforts were made to buy Maori lands in South Auckland, in the Waikato valley, on the west coast, and in the lower Hauraki Plains. This effort was sustained despite the clearly expressed opposition of many Waikato (and other) chiefs – an opposition given shape and direction by the King movement. The preamble to the Waikato Raupatu Claims Settlement Act 1995 points out that:

> The New Zealand Government at the time perceived the Kiingitanga as a challenge to the Queen's sovereignty and as a hindrance to Government land purchase policies, and did not agree to any role for, or formal relationship with, the Kiingitanga.

There can be little doubt that the Crown's refusal to ease off on its purchasing efforts and come to terms with the Kingitanga was one of the principal causes of the build-up of tensions that led to war in South Auckland and Waikato in 1863.

Lands purchased by the Crown during 1840 to 1865 in the Waikato claim area (including part of the Raglan area) and parts of South Auckland were later included in the confiscations. The Waikato Raupatu Claims Settlement Act defines the 'Raupatu claims' settled thereby as including 'all claims arising out of, or relating to, the Raupatu or any aspect of the Raupatu'. It is not obvious that this definition encompasses grievances relating to the manner in which purchases were made between 1840 and 1865 in the Waikato claim area by the Crown, should any such grievances be identified.

6.6.3 South Auckland confiscations

After the Waikato war of 1863 and 1864, the Crown confiscated approximately 1.2 million acres of Maori land in a continuous block south of the Waikato River under the New Zealand Settlements Act 1863.[60] This encompassed all of what later became Waikato County and large portions of northern Raglan County and north-western Waipa County. In May 1995, the Crown reached a settlement with the hapu of Waikato that were affected by these actions. The settlement was ratified by the Waikato Raupatu Claims Settlement Act 1995, in which the Crown acknowl-

60. See recital f of the preamble to the Waikato Raupatu Claims Settlement Act 1995. Approximately one-quarter of the confiscated land was returned to Maori ownership, 'but not under customary title and generally not to those who had fought for the Kingitanga'.

edged that the invasion of Waikato in 1863 had constituted a breach of the Treaty of Waitangi. In point 1 of section 6, the Crown expressed:

> its profound regret and apologises unreservedly for the loss of lives because of the hostilities arising from its invasion, and at the devastation of property and social life which resulted.

In point 3 of section 6, it acknowledged that:

> the subsequent confiscations of land and resources under the New Zealand Settlements Act 1863 of the New Zealand Parliament were wrongful, have caused Waikato to the present time to suffer feelings in relation to their lost lands akin to those of orphans, and have had a crippling impact on the welfare, economy, and development of Waikato.

This Act defined 'raupatu' as taking in 'the confiscation of land in the Waikato claim area',[61] and including 'the related invasion, hostilities, war, loss of life, destruction of taonga and property, and consequent suffering, distress, and deprivation'. The 'raupatu claims' were defined in section 8(1) as meaning 'all claims arising out of, or relating to, the Raupatu or any aspect of the Raupatu', and included 'all claims arising from the loss of land and of interests in land in the Waikato claim area by confiscation', 'all claims to coal, other minerals, and forests within the Waikato claim area', and a number of specific claims already filed with the Waitangi Tribunal.[62] The settlement of these claims effected by the deed of settlement of May 1995 was deemed to be final: no court or tribunal is able to inquire into or make any finding or recommendation in respect of the raupatu claims, the deed of settlement, or the benefits provided to Waikato under the deed or the Act (s 9).

The raupatu claims do not include any claims by Waikato with regard to rivers and harbours within the Waikato rohe – specifically, those relating to the Waikato River and the harbours on the west coast – or claims relating to the confiscations north of the Waikato River. Also excluded are claims 'by individual hapu of Waikato to non-Raupatu land outside the Waikato claim area', and a number of specific claims already filed with the Waitangi Tribunal (s 8(2)).[63] The effect of the 1995 Act within the Waikato district, therefore, is that claims within the 'Waikato claim area' that do not relate to raupatu, including river and harbour claims, have not been settled. Claims relating to South Auckland, the upper Hauraki Plains, and the western coast south of the aukati line are not affected by the 1995 Act.

61. Defined by a map provided as attachment 1 to the deed of settlement of May 1995.
62. The specific claims identified are Wai 306, Wai 494, Wai 530, and Wai 537.
63. The specific claims identified are Wai 185, Wai 100, Wai 373 (and other claims by the Hauraki Maori Trust Board, past and future), Wai 454, Wai 495, and Wai 349.

6.6.4 Purchases under the Native Lands Act, 1865–1900

Many Maori in the eastern Waikato region had been strongly opposed to sales of land during the 1850s. Opposition to sales continued (in various forms) into the 1870s and 1880s.[64] For this reason alone, until further evidence is available it would be prudent to treat as open the question of whether all the private and Crown purchases made in this region during the period 1865 to 1883 were carried out in a manner that fully protected the owners' Treaty rights under article 2. The extinguishment of customary tenure under the Native Land Acts, and the substitution of a list of owners with individual rights of alienation, undermined the control exercised by hapu over the disposition and disposal of land. After 1865, sales commonly proceeded in a piecemeal fashion through a series of partitions. In the case of Patetere, important parts of the sale process took place behind closed doors, as the Government and private interests negotiated over various issues. Gilling has concluded from this that the 'Maori owners were obviously excluded to some extent from the dealings which closely affected the sale of their own [Patetere] lands'.[65] Major issues on which further information is required include:

- the adequacy of the amounts that were actually received by Maori owners for their land;
- the extent to which reserves were set aside in the course of the eastern Waikato sales and, in general, the adequacy of the lands remaining to the owners after the sales; and
- the role that the Native Land Court played in the alienation of lands in the eastern Waikato region.[66]

6.6.5 Purchases under the Native Lands Act after 1900

The extent of sales made under the Native Lands Act after 1900 has yet to be ascertained. In view of the amount of land that had already been purchased or taken from Maori of the Waikato district during the nineteenth century, it is difficult to see – as Stout's and Ngata's comments in 1909 indicate – how any further sales would have been justified. If any took place, the Crown's involvement in promoting sales through the 1907 and 1909 Acts will require very close scrutiny. The lack of assistance given to Maori of the Waikato district, until the 1920s and 1930s, for the agricultural development of their remaining lands is also an issue that needs to be considered.

64. The murder of a farm-hand near Cambridge in 1873 is a well-known example (see Gilling, p 6), but see also C W Vennell et al (comps), *Centennial History of Matamata Plains*, Matamata County Council, 1951, pp 111–117, for one example of ongoing resistance to 'progress'.
65. Gilling, p 91
66. With respect to Patetere, Gilling has concluded that this 'generally deserves detailed scrutiny', with particular reference to the question of whether the court acted 'as a rubber stamp for the Government or against its statutory duties to fairly ascertain the correct ownership of the lands involved' (p 93).

6.7 Additional Reading

Although the amount of secondary source material relating to Waikato and surrounding areas is of course very substantial,[67] relatively little of a detailed nature has been written about the alienation of Maori lands in this part of the North Island. Research on Treaty claims relating to this area is also in short supply. The Waikato–Tainui Settlement of 1995 was not based on an extensive programme of historical research by the claimants, the Crown, and the Waitangi Tribunal similar to those carried out (for example) for the Ngai Tahu and Muriwhenua land claims. Claims research relating to the South Auckland and eastern Waikato regions is, in essence, confined to one major report each, both of which are exploratory and summary in nature and necessarily raise more questions than they answer.[68] A good deal of work remains to be done on all the matters touched upon here.

67. See especially R C Hallett and A P U Millett (comps), *Bibliography of the Waikato Region*, Hamilton, University of Waikato Library, 1988
68. See respectively Husbands and Riddell, and Gilling

CHAPTER 7

THE VOLCANIC PLATEAU

7.1 Principal Data

7.1.1 Estimated total land area for the district

The estimated total land area for district 7 (the volcanic plateau) is 2,497,243 acres (including lakes amounting to approximately 188,000 acres).

7.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 7 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 100 percent in 1860, 63 percent in 1890, 40 percent in 1910, and 20 percent in 1936 (or 110 acres per head according to the 1936 population figures provided below).

7.1.3 Principal modes of land alienation

The principal modes of land alienation in district 7 were:

- purchases under the Native Land Court (including survey costs);
- public works takings (including scenic reserves); and
- gifts, development schemes, and so forth.

7.1.4 Population

The population of district 7 was approximately 4000 to 5000 in 1840 (estimated figure), 2191 in 1891 (estimated from census data), and 4576 in 1936 (also estimated from census data).

7.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district encompass the area in the centre of the North Island surrounding the central volcanic region, Lake Taupo, and the Rotorua lakes. Stretching from Mount Ruapehu in the south, the boundary runs northwards through the Pureora Forest, encircling the Rotorua lakes, and is marked to the east by the Rangitaiki River, Whirinaki Forest, and the Kaimanawa Range. This district contains an array of natural resources, which the early Maori fought hard to retain,

including lakes and geothermal features. Maori settlement tended to cluster around the lakes, which provided food, transport, and, in some cases, safety from invaders. To the east, the Tarawera region provided a valuable forest area for food gathering and cultivation.

The mountains, lakes, and geothermal activity in this area are world-class scenic and tourist resorts. Large areas were unsuitable for pastoralism until after the Second World War, when cobalt deficiency was identified as the problem and rectified. In the second half of the twentieth century, forestry and hydro-electric and geothermal power have also become features of this district.

7.3 Main Tribal Groupings

The tangata whenua of the volcanic plateau region are primarily the various hapu of Te Arawa and Ngati Tuwharetoa, who trace their descent from founding ancestors.

By about 1800, the principal iwi of Lake Rotorua were Ngati Whakaue (the western lake area); Ngati Rangiwewehi (from Awahou to Mourea); Ngati Pikiao (from Mourea east to Lakes Rotoiti, Rotoehu, and Rotoma); Ngati Rangiteaorere and Ngati Uenukukopako (from Mourea to the south-west); and Tuhourangi (to the south of the lake).

Because intermarriage and traditional liaisons in the district as a whole created a complex structure of tribal relations with flexible boundaries and complicated hierarchical lines of authority, it is helpful to envisage tribal relations according to their more recent geographical location.

7.3.1 Central area: Tuwharetoa and Arawa

Te Arawa interests extend from Ngakuru (south of Rotorua) through the Rotorua lakes area and down the Kaituna River to the sea at Maketu. Tuwharetoa lands, on the other hand, extend from Ngakuru to Mount Ruapehu and encompass Lake Taupo. Between Te Arawa and Ngati Tuwharetoa lands, Ngati Tahu (who came separately, prior to the arrival of the Mataatua waka) occupy the lands around Lake Rotokawa and downstream along the Waikato River between Aratiatia and Orakei Korako, acting as a kind of a buffer between Arawa and Tuwharetoa. Ngati Tahu, who have strong connections with Te Arawa, Tuwharetoa, Ngati Manawa, and Ngati Raukawa, apparently drove off or absorbed the original people in the area, Ngati Ruakopiri and Ngati Kurapoto.

7.3.2 Western boundary: Ngati Raukawa

Ngati Raukawa, from the Tainui waka, established claims to the Waikato Valley between Whakamaru and Lake Taupo by conquering the earlier inhabitants, Ngati Kahupungapunga.

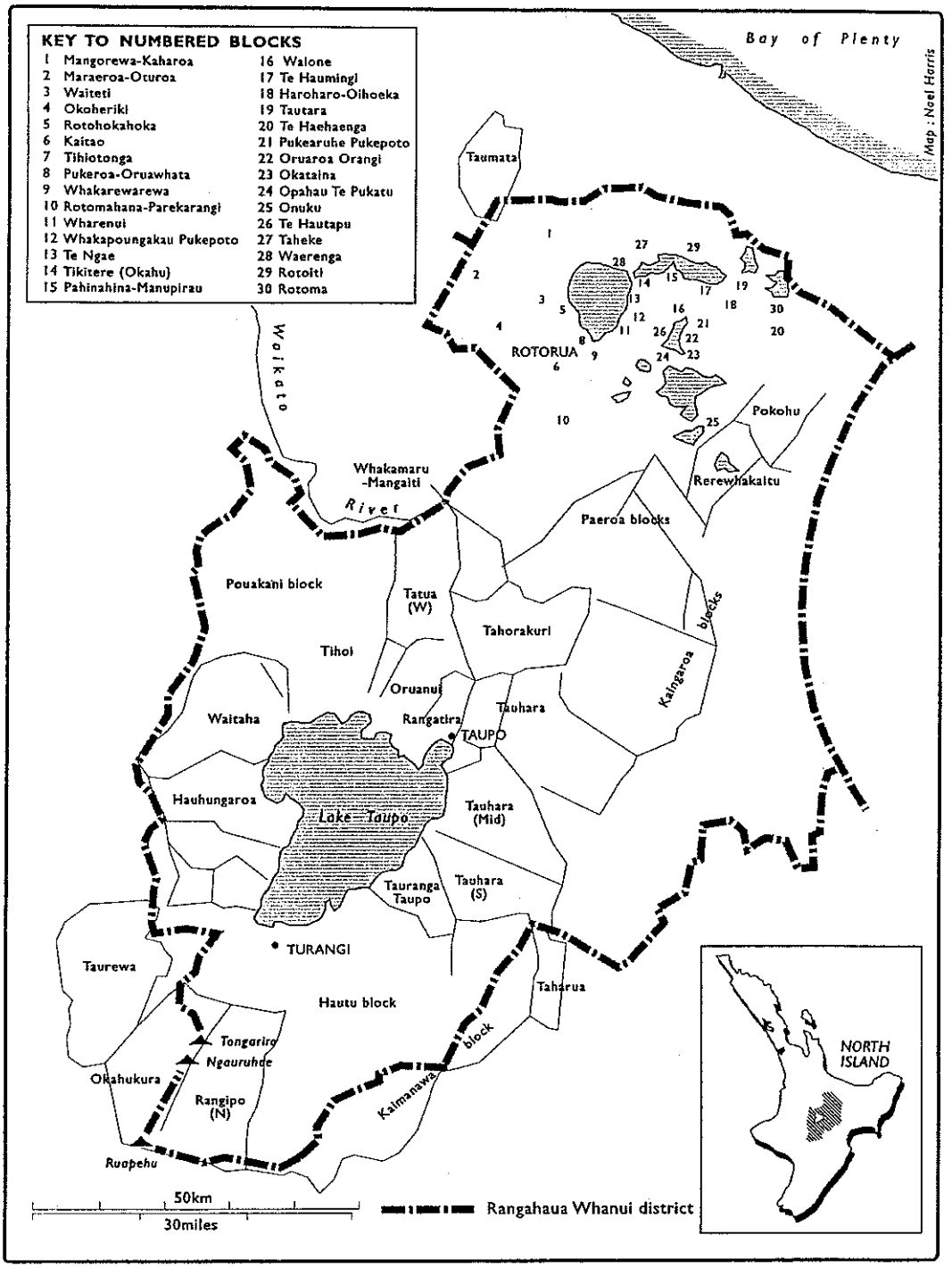

Figure 14: District 7 (the volcanic plateau)

7.3.3 Eastern boundary: Ngati Kahungunu

Ngati Kahungunu were separated from Tuwharetoa by the forested Tarawera district, which itself was eventually occupied by Ngati Kurapoto and later Ngati Apa, who had migrated from the Bay of Plenty. Intermarriage between the latter two tribes created a new iwi, Ngati Hineuru, which remains there to the present.

7.3.4 Kaingaroa Plains: Ngati Manawa

Ngati Manawa are located on the Kaingaroa Plains. They trace their ancestry back to both Hoturoa and Toi. Having migrated to the Hauraki area and to the Bay of Plenty, they overran and defeated the Marangaranga people (who were of te Tini o Kawerau) and settled on the Kaingaroa Plains in the upper Rangitikei and Whirinaki River valleys.

7.3.5 North-eastern boundary: Ngati Awa

Ngati Awa occupied territory from Lake Rotoma north to the coast bordering Ngati Manawa in the south and Te Arawa to the east. The Ngapuhi musket raids disrupted traditional boundaries in the 1800s, however, and Ngati Awa withdrew east and south at that time. The boundary between Ngati Awa and Te Arawa in particular remained 'fluid' until around 1865 (when Ngati Awa had much of their land confiscated).

7.4 Principal Modes of Land Alienation

Much of the following information regarding the alienation of blocks in the volcanic plateau district was drawn from the *Appendices to the Journals of the House of Representatives* and is in addition to that found in the *Volcanic Plateau* report released by the Waitangi Tribunal in November 1995.[1] A more detailed version of this discussion will be included in the district report in its final release.

7.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

The Church Missionary Society claimed to have purchased 600 acres of land at Te Ngae in September 1839 in return for materials and implements. The Church Missionary Society was later given title to that land in 1854 (under 'controversial circumstances', which are not elaborated on).[2] This land was returned upon the recommendation of the Waitangi Tribunal.[3] Around this time, Roman Catholic missionaries also purchased about 20 acres of land in small blocks at Maketu.

1. B Bargh, *The Volcanic Plateau*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first draft), 1995
2. Ibid, p 41

7.4.2 Pre-1865 Crown purchases

At the beginning of the 1870s, documented alienations in the district amounted to less than 1000 acres purchased by the Crown.

7.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 7.

7.4.4 Confiscations

The southern edge of the Whakatohea confiscation touches upon the northern edge of the volcanic plateau research district at Kawerau. For a further discussion, see volume ii, chapter 6.

7.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) *Private purchases, 1881–1938*

Private purchases amounting to approximately 122,723 acres were made between 1881 and 1938 in the following blocks: Wairakei (4203 acres in 1881); Kaingaroa (52,171 acres in 1882 and 1883); Tatua West (38,620 acres in 1883); Whangamata (7649 acres between 1883 and 1901); Whakamaru Maungaite (20,000 acres in 1883); and Rotomahana–Parekarangi (80 acres in 1938).

(2) *Crown purchases, 1865–90*

Crown purchases during the 1870s and early 1880s were situated along the northern and eastern sides of Lake Taupo and on the Kaingaroa Plains along the eastern border of the volcanic plateau district. By the end of the 1880s, largely because of the Native Land Court hearing in 1886 and 1887, the Crown had acquired land south and west of Lake Taupo and around the Rotorua lakes amounting to approximately 546,056 acres, or about 22 percent of the district.

Samuel Locke, the resident magistrate, purchased 534 acres at Tapuaeharuru, Taupo, for £400; 382 acres at Opepe for £100; and 188 acres known as Runanga 2. In January 1871, he purchased 390 acres at Opepe; no payment was recorded, although a deed was completed.

Annual returns of Crown purchases are given in the following table.

(3) *Crown purchases, 1891–1910*

During the 1890s, the Crown acquired 398,382 acres of land in the volcanic plateau district, bringing its total landholding in the area to 944,438 acres, or approximately

3. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990*, 2nd ed, Wellington, GP Publications, 1996

Year	Estimated acres purchased	Block names and acreages
1874	9950	Oruanui
1875	36,337	Tauhara North, Middle, and South
1878	323	Fort Galatea on the Kaingaroa Plains
1880	103,393	Kaingaroa (£7754)
1881	124,567	Kaingaroa (91,529 acres for £6659); North Pokuru (252 acres); Hangihangi (141 acres); Rerewhakaitu (9000 acres); Tauhara Middle (13,250 acres); Runanga (5020 acres); and Oruanui (5375 acres)
1882	5390	Te Hukui (2000 acres); Pokohu (1250 acres); Oruanui (2140 acres)
1884	10,990	Okoheriki
1885	6800	Okoheriki
1886	37,608	Kaimanawa (19,548 acres); Okahukura (10,000 acres); Oruanui (8060 acres)
1887	205,544	Largely from subdivisions of the Tauponuiatia block: Kaimanawa (73,846 acres); Okahukura (6766 acres); Oruanui (3373 acres); Pauakani (20,000 acres); Rangatira (4259 acres); Rangipo North (18,875 acres); Ruapehu (2416 acres); Tahorakuri (5000 acres); Tauhara Middle (40,000 acres); Tongariro (8935 acres); Waihaha (11,824 acres); Whakaipo (500 acres)
1888	57,586	Waiaha (18,076 acres); Paeroa East (9428 acres); Patere South (7000 acres); Waiteti (1000 acres); Tahokuri (8012 acres); Pouakani (2000 acres); Oruanui (7780 acres); Okoheriki (4290 acres)
1889	3542	Okoheriki (570 acres); Pukeroa–Oruwhata (2972 acres)

Crown purchases from 1874 to 1890

38 percent of the district. During the first decade of the new century, the Crown acquired 60,144 acres, or a further 2 percent.

(4) *Post-1910 purchases*

The volcanic plateau, along with the Bay of Plenty, formed the Waiariki Maori Land Board district. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of the files would be necessary to establish which of the Waiariki board's alienations fell within the volcanic plateau district. The total amount of land alienated in district 7 (estimated with the use of

Year	Estimated acres purchased	Block names and acreages
1890s (dates unavailable)	68,254	Acres from Koutu (4820 acres); Owhatiura (8827 acres); Rimu–Horohoro (50,000 acres); Tauri (17 acres); Tihiotonga (4590 acres)
1892	44,260	Tahorakuri (260 acres); Okoheriki (1000 acres); Pouakani (43,000 acres)
1893	284	Okoheriki; Oruamuturangi; Tauhara Middle; Oruanui
1894	5363	Okahukura; Okoheriki; Tauhara Middle
1895	154,852	Maraeroa (7995 acres); Maraeroa Oturoa (4508 acres); Okoheriki (2278 acres); Paeroa East (2653 acres); Paeroa South (18,392 acres); Patere South (2000 acres); Rerewhakaitu (21,275 acres); Rotomahana–Parekarangi (63,117 acres); Ruapehu (6840 acres); Tongariro (9904 acres); Whakarewarewa (904 acres)
1896	14,986	Mangorewa–Kaharoa
1897	2675	Okoheriki; Paeroa East; Rotomahana–Parekarangi
1898	250	Pouakani
1899	203,097	Waiaha (6000 acres); Rangipo North (38,433 acres); Rotomahana–Parekarangi (27,740 acres); Mangorewa–Kaharoa (12,090 acres); Maraeroa (16,480 acres); Niho-o-te-Kiore (401 acres); Okahukura (16,115 acres); Okoheriki (3369 acres); Pouakani (75,127 acres); Waituhi Kuratau (7238 acres); Whakarewarewa (104 acres)
1901	42,584	Paeroa East (822 acres); Tikitere (484 acres sold as Okahu a); Mangorewa–Kaharoa (235 acres); Hurakia (3257 acres); Maraeroa (21241 acres); Ruawahia (16426 acres); Whakarewarewa (119 acres)
1902	4473	Mangorewa–Kaharoa; Okoheriki
1906–09	7272	Rangatira (783 acres in 1906); Hurakia (1895 acres in 1907); Maraeroa (3282 acres in 1907); Maraeroa–Oturoa (110 acres in 1908); Okataina (130 acres in 1908); Hurakia (125 acres in 1909); and Maraeroa (947 acres in 1909)

Crown purchases from 1891 to 1910

the maps reproduced in this report) between 1910 and 1939 was, however, approximately 500,000 acres.

7.4.6 Land taken for public purposes

Public works takings in the volcanic plateau district were made for roading, scenery preservation purposes (especially along the shores of the various lakes), forests, and military purposes. There were also takings under specific legislation, such as the Tongariro National Park Act 1894. While it is not possible to list all takings, examples include the following:

- After the gifting of land in 1887, the Tongariro National Park Act 1894 compulsorily acquired 62,300 acres of land in the Tongariro region under the terms of the Public Works Act 1882.
- In 1909, 3166 acres of the Mangorewa–Kaharoa block were taken under the Scenery Preservation Act 1903.[4]
- In 1919, 138 acres on the shores of Lake Rotoma, including 52 acres from the Waitangi block, were taken for scenic preservation purposes.[5]
- There are indications that, as well as being alienated through purchase, parts of the Rotomahana–Parekarangi block were alienated by public works takings.[6]
- For a discussion of the impact of public works policy and legislation nationwide, see volume ii, chapter 11.

7.4.7 Other alienations

Some 15,000 acres, mainly near Rotorua, became involved in the land development schemes.[7] In the 1930s, nearly 14,000 acres of Okataina lands were incorporated into the development scheme.[8] A discussion of these schemes from the national perspective can be found in volume ii, chapter 17.

In September 1887, 6516 acres of land at Tongariro was gifted to the Government to form a national park; this was subsequently enlarged by a further gift and Crown purchases.

In 1921, 1000 acres in the environs of Lake Rotoiti – part of the Rotoiti, Taheke, Paehinahina, and Waione blocks – were gifted to the Crown as a scenic reserve.[9] Another 59 acres were gifted in 1923.[10]

A map in 1931 shows an area of 2921 acres to the north of Okere 1b2a that was apparently taken in satisfaction of survey liens and for payment of rates.[11]

The *Pouakani Report 1993* suggests that some 48,727 acres of Pouakani land was taken from Maori for survey costs. In 1899, for example, the costs of surveys in the Pouakani block were paid for by cutting out block 1 (of approximately

4. AJHR, 1909, c-6
5. AJHR, 1919, c-6
6. D Moore and S Quinn, 'Alienations of Rotomahana–Parekarangi Lands within the Whakarewarewa State Forest', report commissioned by the Waitangi Tribunal (Wai 153 rod, doc a80)
7. AJHR, 1933, g-10
8. AJHR, 1934–35, g-10
9. AJHR, 1921–22, c-6; *New Zealand Gazette*, 14 April 1921
10. AJHR, 1923, c-6
11. AJHR, 1931, g-10, plan 20

20,000 acres) and vesting it in the Crown. In 1892, other surveys in the area were also paid for in land.[12]

7.5 Outcomes for Main Tribes in the Area

In 1907, the Stout–Ngata commission reported that, of the 629,760 acres within Rotorua County (which it noted belonged to Te Arawa and connected hapu), 358,512 acres (or over half) had been purchased by the Crown.[13] (About 6000 acres remained in customary Maori ownership, the balance being Maori freehold land.)[14] The commission commented that, with the exception of Ngati Pikiao, the 'Rotorua hapus . . . cannot in our opinion be fairly said to have surplus lands for sale'.[15] Vincent O'Malley reinforces this, stating that the majority of the 'Rotorua district' had been alienated by 1908.[16] He added that, in the subsequent decades after the Stout–Ngata commission:

> Te Arawa's small remaining estate was further whittled away by Crown acquisitions, not just under the Public Works Act, but also under the Scenery Preservation Acts of 1903 and 1910, and in the normal course of the Crown's purchase activities.[17]

Land development schemes of the 1930s and later led eventually to further alienations of Arawa lands.

By 1939, Ngati Tuwharetoa retained considerable areas to the south-west and south-east of Lake Taupo under timber leases. Land also remained to the north-west of the lake, and scattered blocks, particularly of Lake Rotorua (and surrounding the smaller lakes), were also retained by Maori in 1939. According to maps reproduced in this report, by 1939 Maori retained approximately 500,000 acres (or 20 percent of the land in the district).

In addition to the Tongariro National Park, other areas in the Kaimanawa Range and elsewhere have also been made into forest parks. Land was also acquired for the Tongariro hydro-electric power development scheme.

7.6 Examples of Treaty Issues Arising

7.6.1 Kaingaroa lands

By 1870, Government land purchase agents had begun to discuss the sale of plateau lands in the east of the district with the iwi concerned, and in 1875 two agents began

12. Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993, pp 209, 215
13. AJHR, 1908, g-1E, p 1
14. Ibid, p 11
15. Ibid, p 4
16. V O'Malley, 'The Crown and Te Arawa, circa 1840–1910', report commissioned by the Whakarewarewa Forest Trust, November 1995, p 248
17. Ibid, pp 267–268

to discuss the boundaries of the Kaingaroa lands with Ngati Manawa and adjacent tribes (Ngati Whaoa, Ngati Tahu, and Ngati Tura). Negotiations were thwarted, however, by Tuhourangi opposition to the surveying and selling of the land. In September 1878, Kaingaroa 1 was investigated by the Native Land Court and title was awarded to Ngati Manawa, after which disputes arose within the tribe regarding the list of owners on the title. When the block was subsequently sold to the Crown for £7754 in December 1880 by some listed owners, other Ngati Manawa protested the sale. In 1925, an inquiry by Chief Judge Jones of the Maori Land Court revealed that 'there must have been many other members of Ngati Manawa entitled to share in this block [than were recorded by the court]'.[18] The court would not, however, modify the original list of 31 names. Instead, it asserted that, failing satisfactory evidence to the contrary, the only inference was that, in purchasing the block, the Crown had selected a limited number of representatives entitled to share in the land in order to facilitate the purchase and that even on rehearing the number on the list had remained more or less the same.[19] The Crown subsequently also purchased Kaingaroa 2 (91,529 acres) for £6659, five or six weeks after the sale of the first block (in early 1881). Some Ngati Manawa protested the transaction, claiming that only the first block had been purchased with the two payments and that the purchase price was unfair. In addition, it appears that only three reserves were made for Ngati Manawa comprising 2735 acres (approximately 1.5 percent of the land sold). On these matters, however, Judge Jones dismissed the appeal.

7.6.2 Rohe Potae–Tauponuiatia lands

The establishment of the Rohe Potae (and the Maori King) was an attempt by Ngati Maniapoto, Waikato iwi, and Ngati Tuwharetoa in the central North Island to control their lands and avoid them passing through the Native Land Court (see chapter 8 for a further discussion). The Native Land Alienation Restriction Act 1884 stated that the Rohe Potae could only be alienated by the Crown with the specific sanction of relevant Maori iwi or hapu. In 1885, the Tuwharetoa leader Te Heuheu Horonuku formally applied to have the Tuwharetoa lands (including those which fell within the Rohe Potae) separately heard by the Native Land Court. He declared that the Rohe Potae 'splits me [my lands] in two'. The Tuwharetoa land (known as Tauponuiatia and comprising some two million acres) was separated in 1886 and had largely been purchased by the Government by 1891 (as discussed earlier).

Given that Maori had established an inter-iwi relationship in order to ensure the retention of lands within the Rohe Potae and given that the Government was aware of and had acknowledged this arrangement, its actions in dealing with Te Heuheu were certainly within the law according to the 1884 Act but were questionable in Treaty terms. This was because the Government had failed to consult with the wider

18. AJHR, 1926, g-6B, pp 1–4
19. Ibid, p 2

Maori community with interests in the land. The implications of this were later felt by other iwi in the Rohe Potae, as discussed in that district report[20]

7.6.3 Thermal springs land

From the time of the earliest settlers, Rotorua tribes had guarded their lands and geothermal resources from Pakeha and had resisted attempts to have the land passed through the Native Land Court, despite pressure from the Government to do so. In 1880, Government representatives met separately with Ngati Whakaue chiefs and Tuhourangi chiefs and managed to get these competing interests to agree to lease some land to Pakeha. In June 1881, the Native Land Court awarded Pukeroa–Oruawhata 1, a block of 3020 acres, to 295 Maori of Ngati Whakaue, which angered other Arawa tribes, including members of Ngati Rangiwewehi, who claimed that the Rotorua Komiti Nui (representing tribal interests in the area) had awarded title to them. The Government appeared to take no action over this protest; the favouring of applications to the court over the decisions of the well-established Komiti Nui appears to be a diminution of rangatiratanga, but the claim by Ngati Rangiwewehi would need to be validated for this issue to be pursued.

The Thermal Springs Districts Act 1881 recognised Maori ownership of lands on which thermal springs were located, but it allowed the Governor to proclaim such lands for the purposes of protecting the resource and allowing colonisation by settlers. The township of Rotorua was laid out on approximately 3020 acres of the Pukeroa–Oruawhata block under the 1883 amendment to this Act. Following subsequent proclamations of land under the Act, Maori petitioned the Crown, claiming that, while they had agreed to cooperate with the Crown to ensure that the hot springs were protected, it was unjust that up to 600,000 acres were being surveyed under the Act.

Partly because of the economic depression, many lessees defaulted on their rents. By 1885, rents were still not being paid. The Government was advised by the Office of Crown Lands that one way out of their obligations to Maori landowners with respect to the payment of rent was to suggest to lessees that, if they could not pay, the Government would ‘re-enter’ their properties, allowing most lessees to walk away from their leases and relieving them of further liability. Ngati Whakaue protested that they were not consulted on this line of action, to which they strongly objected. By 1885, the arrears with respect to rent amounted to £5000, and the Crown was making significant concessions to lessees, who were allowed to stay on the land and not pay back-rent. Moreover, the little rent that was collected was not paid over to Ngati Whakaue in total, despite a Supreme Court ruling that it should be. In reviewing this state of affairs, Brian Bargh comments that the Crown had a responsibility to pursue the collection of rents vigorously. For the Government to allow tenants to default and then purchase the land itself was contrary to the principle of protection of Maori interests.[21]

20. C Marr, T*he Alienation of Maori Land in the Rohe Potae (Aotea Block), 1840–1920*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996

In September 1888, W Kelly, the member of Parliament for Rotorua, strongly urged the Government to buy the Rotorua township lands and extinguish Maori title.[22] In late 1889, after some delay and against a backdrop of dissatisfaction with the price and the allotment of shares in the township block, Ngati Whakaue agreed to sell all the Pukeroa–Oruawhata block that had not already been gifted to the Crown. They did this because of their desperate financial circumstances. In particular, the tribe had accumulated considerable debt against the anticipation of rental income following their agreement with the Crown.

The Stout–Ngata commission reported in 1908 that, if the Crown, in acting as trustee, had prohibited the selling to private buyers of Ngati Whakaue lands but had purchased the land itself at an inadequate price, its actions could not be defended. It also noted that, of the 629,760 acres in the district, over half had been alienated by 1908, including all but one of the blocks containing thermal springs. The commission chose not to investigate the matter further, however, recommending that the Government seek an explanation from the Native Land Purchase Department. The commission, however, noted that, as a result of extensive purchasing, Arawa hapu (other than Ngati Pikiao) did not have sufficient lands either to sell or to lease. The Government passed the Thermal Springs Districts Act 1910, which vested the whole Pukeroa–Oruawhata block in the Crown, thereby validating the Government's actions prior to 1910.

In May 1936, Chief Judge Jones of the Native Land Court found that Ngati Whakaue had the right to claim compensation from the Government for the loss of rent caused by the Government's actions, and he recommended that compensation be paid. The Government did not accept or act on Jones's findings, and Ngati Whakaue continued to petition Parliament in 1938, 1944, and 1945. In 1948, a royal commission also found in favour of Ngati Whakaue in respect of their grievances with the Government (with some qualifications) and recommended the payment of £16,500 compensation. Having originally rejected the offer, Whakaue accepted the payment in 1954 for fear that the offer would be withdrawn. An agreement was reached between the Crown and Ngati Whakaue claimants, which is now being implemented.

7.6.4 National park alienations

The opinion has been expressed in some quarters that the original gifting of Mounts Ngaruahoe, Ruapehu, and Tongariro by Te Heuheu was the result of pressure on him due to his involvement with Te Kooti, although to our knowledge no documented evidence to this effect has emerged.

21. Bargh, p 74
22. Kelly to Native Minister, 26 September 1888, AJHR, 1890, g-10, pp 1, 2 (cited in Bargh, p 75)

7.6.5 The Wairakei block alienation

The purchase of the Wairakei block by Robert Graham from the five recipients of the Native Land Court title led to a rehearing and considerable controversy. Although the title and sale were upheld, this is one of many examples of the alienation of the hapu's interests under laws and proceedings that vested absolute title in only a few owners; permitted secretive prior dealings before the court hearings; avoided sale (or lease) by public tender; and did not ensure that adequate land was reserved for the owners' future needs.

7.6.6 The Paeroa East block alienation

The Paeroa East block went through the Native Land Court at Whakatane in October 1881, and parts of the block were awarded to Ngati Rangitihi and Tuhourangi and sections of Ngati Hinewai and Ngati Tahu. Claimants requested a rehearing, objecting to both the speed of the hearing and the validity of the advice on which the court had acted and made its ruling. A request was also made for a section of the block to be further divided. As a result, further surveying was carried out on a block of 36,700 acres, and a new lien of £586 replaced the previous one (which at 6 percent of the value of the land was a high cost when compared to the price being paid for the land in the district at the time). In January 1883, a dispute arose over the payment of survey costs, with some landholders arguing that they had already repaid the costs held against them. In June 1883, at a hearing at Maketu to determine the boundaries between each hapu in the district, various iwi members claimed that their land had been sold without their knowledge to recover survey costs. Numerous problems arose regarding inadequate representation of all interests at the hearing, the allocation of certain parts of the block, and the owners who were listed on deeds of title in each case. It was revealed 10 years later that the cost of survey (£586) had in fact been quickly repaid to the Government by Ngati Whaoa representatives in order to avoid the 5 percent interest rate charged against the 'loan'. In the confusion that followed, the land in question was subdivided many times, and parts of it had been sold to the Crown despite Ngati Whaoa attempts to retain the land. Furthermore, in this and in other sales in the Paeroa East block, no reserves were put aside for the immediate and future needs of the hapu. The Treaty issue concerns the high scale of survey fees and the usual Native Land Court process of purchasing individual interests and partitioning to circumvent hapu control.

7.6.7 The lakes

A more general discussion of the impact of Government policies and legislation on Maori control of lakes and rivers is in volume ii, chapter 14.

(1) ***Rotorua***

While Te Arawa had long asserted that their ownership of the Rotorua lakes was assured to them under the Treaty of Waitangi, their concerns regarding their rights to the lakes were heightened with the introduction of the Native Land Bill in 1908, which stated, among other things, that the Governor could proclaim lake beds to be Crown land. Despite some objection from Te Arawa, the Bill became law in 1909. Following an unsuccessful attempt to take their case to the Privy Council, Te Arawa went to the Native Land Court in 1912 in order to secure their rights to the lakes, but the case was postponed until 1918 while the lakes were surveyed in order that an approved sketch could be presented to the court. In 1920, and suffering the effects of an eight-year battle, Te Arawa agreed to acknowledge the Crown's ownership of the lakes in return for the Crown granting Te Arawa fishing rights on the lakes. A further two years of negotiations followed, resulting in a settlement acknowledging Te Arawa fishing rights and paying the tribe an annual amount of £6000 in return for Te Arawa acknowledging that 'the fee simple of all lakes was vested in the Crown'.[23] When the Rotorua lakes agreement came into force in October 1922, many Maori immediately signalled their discontent with the settlement in letters to the Native Affairs Minister and the Governor-General. Years later, in 1976, the Maori Land Court in Rotorua had cause to revisit the question of the ownership of Lake Rotokakahi, and it revested the ownership of the lake in a Te Arawa ancestor. Issues over the lakes nevertheless remain unresolved and are currently before the Waitangi Tribunal. These issues include pollution damage to the lakes and the customary ownership of all the lakes, which Te Arawa want returned to them. (The issue of lakes and lake beds parallels in many respects the issue of the tidal foreshore, which is relevant to Arawa at Maketu.)

(2) ***Taupo***

In April 1926, following the negotiation of rights to the Rotorua lakes, and keen to clarify the rights to Lake Taupo, Maori suggested an arrangement similar to the Rotorua lakes agreement, including making a payment of £15,000 to tribes with an interest. This was rejected by Crown representatives, who instead offered 50 percent of the fishing fees in return for Maori ceding all their fishing rights in and over Lake Taupo. Eventually, it was agreed that Maori would be paid either £3000 or 50 percent of the fishing licence fees, whichever proved larger. Maori who were present at the meeting later commented that the stream and river fishing rights were not ceded to the Crown through this agreement, and they requested that reports in the newspaper that stated otherwise should be corrected because they were 'detrimental to our [Maori] interests'.[24] In July 1926, Maori representatives rejected the notion that the beds of Taupo waters should be vested in the Crown as public reserves, but they agreed that the public should have access to and passage over the one-chain foreshore strip. The margin along inflowing rivers was not mentioned in the report of this meeting. The resulting agreement did, however, state that the beds

23. Bargh, p 108
24. Ibid, p 114

of the Taupo waters were to be vested in the Crown, and both the agreement and the subsequent legislation indicated that the negotiators did cede the ownership of the beds of all tributary rivers and streams. It is not clear whether these and other details of the negotiations were clearly understood by the negotiators, and this matter warrants closer examination.

In November 1926, Maori at Waitahanui Stream were refusing people access to fishing spots in protest over the legislation that had given effect to the agreement (in particular the Native Land Amendment and Native Land Claims Adjustment Act 1926). Maori at Waitahanui asked that their land be excluded from the operation of the 1926 Act. In August 1927, the secretary of the Tuwharetoa Trust Board wrote to the Secretary of the Native Department requesting that a list of sites within the chain-wide strip, which included burial sites and other places of importance, also be reserved from 'interference', as provided for in the agreement. In October 1927, the law firm Earl Kent Massey and Northcroft recommended that an amendment be made to section 14 of the Act in order that the owners of the beds that had been proclaimed to be Crown land could claim full compensation in respect of the taking of such rivers. The response from the Secretary of the Native Department was that 'it was not understood that individuals were to obtain compensation'. In 1926, 48 claims had been filed for losses arising out of the exercise of section 14(4) of the 1926 legislation, but it was not until 20 years later that the Compensation Court was convened. In 1946, an amendment was made along the lines suggested by Earl Kent Massey and Northcroft in 1927. A total of £45,000 was awarded by the Lake Taupo Compensation Court for the loss of the right of access to fishing waters, described by the court as being of 'very considerable value'.[25] While the bed of the lake was later returned to the Tuwharetoa Trust Board, this has not satisfied all the hapu grievances currently before the Tribunal, which include issues such as fishing rights and the raising of the water level for hydropower.

7.6.8 Post-1910 alienations

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

25. Ibid, p 119

7.7 Additional Reading

The following are recommended for additional reading:

Brian Bargh, *The Volcanic Plateau*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1995;

Vincent O'Malley, 'The Crown and Te Arawa', overview report commissioned by the Whakatohea Forest Trust, November 1995;

D Moore and J Boyd, 'The Alienation of Whakarewarewa', report commissioned by the Waitangi Tribunal, February 1995 (Wai 153 rod, doc c2)

D Moore and S Quinn, 'Alienation of Rotomahana Parekarangi Lands within the Whakarewarewa State Forest', report commissioned by the Waitangi Tribunal for Wai 153, February 1993;

Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990*, second edition, Wellington, GP Publications, 1996; and

Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993.

CHAPTER 8

THE KING COUNTRY

8.1 Principal Data

8.1.1 Estimated total land area for the district

The estimated total land area for district 8 (the King Country) is 2,387,776 acres.[1]

8.1.2 Percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 8 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 95 percent in 1860, 81 percent in 1890, 47 percent in 1910, and 13 percent in 1936 (or 110 acres per head according to the 1936 population figures provided below).

8.1.3 Principal modes of land alienation

The principal modes of land alienation in district 8 were:

- purchases under the Native Land Acts (largely Crown pre-emption);
- public works acquisitions; and
- alienations under the Maori land boards.

8.1.4 Population

The population of district 8 was approximately 2000 to 3000 in 1840 (estimated figure), 3141 in 1891 (estimated from census figures), and 5744 in 1936 (also estimated from census figures).

8.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of the King Country, or Rohe Potae research district, are as follows. The western coastline forms the western boundary from the Kawhia and Aotea Harbours in the north to the Mokau area north of Taranaki in the south. The

1. The 'Rohe Potae' district, as identified by local iwi in 1883 covered about 3.5 million acres. Moreover, the Aotea block, as identified by the Native Land Court was estimated to contain 1,884,780 acres (or slightly less than the Rangahaua Whanui block).

northern boundary is marked by the Puniu and Waikato Rivers. The eastern side of the district includes some of the Taupo district and part of the Tongariro National Park. The southern boundary runs through the northern portions of Whanganui and Taranaki lands.[2]

As well as encompassing a large area of valuable rainforest, this district abuts the central volcanic region, which is largely tussock land. Much of the remainder of this district is mountainous and covered by dense bush. The district includes the area called the Rohe Potae, to which the Maori King retreated following conflict in Waikato. The western coastal zone of this district is noted for its ruggedness, however, the Kawhia Harbour inlet to the north provided more accessible food resources. Rolling limestone country marks the north of the district. To the south, the Mokau River valley was sought after by Pakeha because of the coal deposits discovered there in the early 1840s and developed in the 1880s.

Traditional Maori settlements in the Aotea block (western King Country) were often small and concentrated along the major waterways and tributaries, such as the Mokau River, the fertile Waipa River valley, and the major west coast harbours of Kawhia and Mokau. In addition to the rivers, the forests and the coastline provided rich sources of food and materials.

8.3 Main Tribal Groupings

The discussion of traditional iwi history in the King Country Rangahaua Whanui report is written on the assumption that claimants themselves will provide detailed evidence of whakapapa and traditional relations between hapu in the area. The report provides only a brief overview, from which this summary is drawn.

The five main iwi of the district are identified by Marr as Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, Whanganui, and Ngati Hikairo. Major iwi to the north of the Rohe Potae trace decent from the ancestor Turongo and the Tainui waka, which landed at Kawhia Harbour. In particular, Ngati Maniapoto took up much of what came to be known as the Aotea block, especially to the west of the district from Kawhia to Mokau. Ngati Raukawa also had interests in the area north of Taupo, including the Patetere Plains, in conjunction with related groups such as Ngati Hikairo, Ngati Matakore, and Ngati Whakatere.

To the east of the district, Ngati Tuwharetoa traced their descent from the Te Arawa waka, and they centred their interests in the expansive area surrounding Lake Taupo, with intersecting interests with Ngati Raukawa in the north, Ngati Maniapoto in the north-west, and upper Whanganui people to the south.

The district was affected by a series of migrations, such as that in the early nineteenth century from Kawhia Harbour down through the western part of the district and on to Wellington and beyond, as well as the large Ngati Raukawa migration to the Wellington region in the 1820s.

2. C Marr, *The Alienation of Maori Land in the Rohe Potae*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p viii

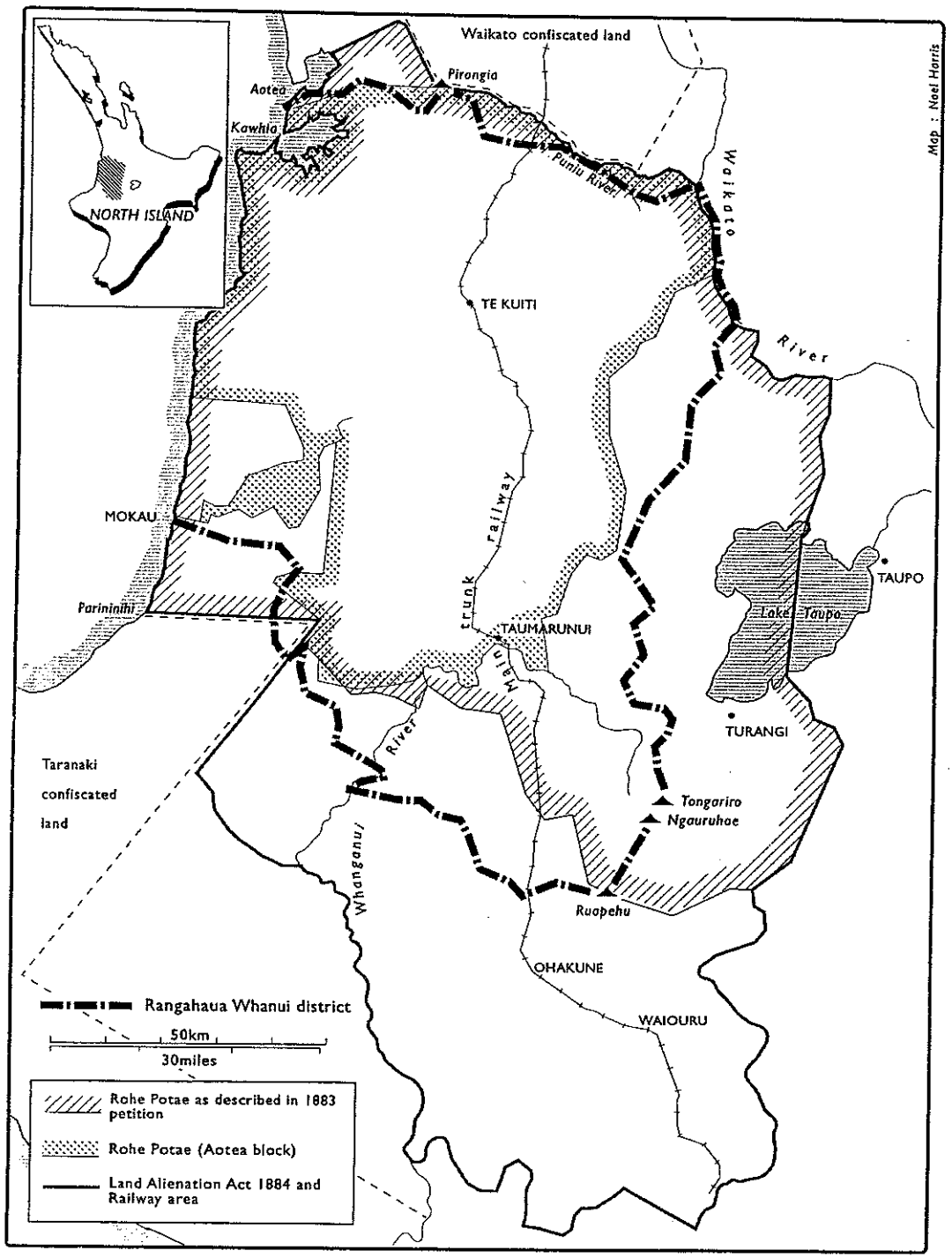

Figure 15: District 8 (the King Country)

8.4 Principal Modes of Land Alienation

8.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

A considerable number of old land claims in the Rohe Potae, amounting to approximately 77,850 acres, either were never investigated or were disallowed. Old land claims located in Kawhia, for which Crown grants were issued in 1855, amount to just over 500 acres.

Cathy Marr comments that, while early dealings such as these were acknowledged by Crown grants, the land (except for that of the Wesleyan Missionary Society) could not be taken up while the King movement exerted authority over the district, and it was only occupied when the Native Land Court began operating in the district in the mid-1880s.[3]

8.4.2 Pre-1865 Crown purchases

From 1854 to 1857, the Crown completed four large purchases, collectively known as the Awakino purchase, including the Awakino block (approximately 16,000 acres for £530) in March 1854; the Mokau block (approximately 2500 acres for £100) in May 1854; the Taumatamaire block (approximately 24,000 acres for £500) in January 1855; and the Rauroa block (approximately 25,000 acres for £400) in July 1857.[4] In addition to these transactions, McLean also signed a deed of purchase with Waitere Pumipi and several other chiefs for 6000 acres of land at Harihari, for which £200 was paid in July 1854 and a further £200 in August 1857.[5]

8.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 8.

8.4.4 Confiscations

There were no confiscations in district 8.

8.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) *1865–1900*

After the late 1850s, and following the initial sales outlined above, the interior tribes followed a policy of active resistance to land sales through the King move-

3. Marr, p 4
4. E Stokes, 'Mokau: Maori Cultural and Historical Perspectives', report for the Ministry of Energy, Waikato University, 1988, p 134 (cited in Marr, p 5)
5. A Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal for Wai 48, 1992, p 15 (cited in Marr, p 5)

ment, which effectively prevented further alienations until at least the late 1870s.[6] Purchases in the southern portion of the district included Mokau–Paraninihi, Kirikau, Retaruke, and Waimarino (see ch 7). The Native Land Alienation Restriction Act 1884 prohibited the acquisition of land in the Rohe Potae (as described in the schedule to the Act) amounting to approximately 4½ million acres. Land purchasing in the Rohe Potae heartland officially began in late 1889. By 1900, the Crown had acquired between a third and a half of the whole Aotea block, or some 687,769 acres, either from sales or from land ceded in payment of survey and other costs and interest charges.[7] The Stout–Ngata commission gave the following yearly totals for land sales in the Aotea block.

Year	Area (acres)
To December 1892	17,213
To August 1894	46,512
To May 1895	50,722
To July 1896	4419
To September 1897	1218
To June 1898	278,250
To June 1899	67,139
To July 1900	6110

Yearly totals for land sales in the Aotea block.
Source: AJHR, 1907, g-1b, p 4 (cited in Marr, p 148).

(2) *1900–10*

While it is not possible to supply an exhaustive list of, or total figure for, purchases made in this district from 1900 to 1910, the following are examples of purchases made during this time that have been identified in the researching of the district.

- On 2 April 1890, land purchase officer Wilkinson reported that he had managed to buy shares in the Mangauika block from two owners.
- In December 1890, the Taorua block (50,000 acres) went before the Native Land Court and was subdivided. Negotiations began for the purchase of the subdivision known as Waiaraia (6000 acres), which had seven listed owners, including Wahanui. Following some delays, purchasing began in the block on 3 April 1891.
- In April 1894, when interests in the Wharepuhunga 1 block were partitioned out, the Crown was awarded 37,767 acres with the balance (the Wharepuhunga 2 block) going to the non-sellers. Excluded from the sale were

6. Marr, p 7
7. Report of the Stout–Ngata commission, AJHR, 1907, g-1B (cited in Marr, p 149)

3776 acres of reserves. This land was largely owned by Ngati Raukawa. By 1907, the Crown had acquired 54,311 acres of the block. This left Maori with 76,955 acres in the block.

- In August 1894, the court awarded Taharoa b, section 2, to the Crown, based on shares purchased representing about 6357 acres.
- By May 1895, Wilkinson reported on partitions awarded to the Crown in the Otorohanga, Hauturu, Maraeroa, and Pirongia blocks, which totalled over 48,000 acres.

(3) *Post-1910*

Very little land was voluntarily vested in the Maniapoto Tuwharetoa Maori Land Board, which encompassed the Rohe Potae. Ngati Maniapoto preferred to manage their lands themselves. According to the Stout–Ngata commission, by 1907 only the three native townships (893 acres in total) and the Maraetaua 10 block (1800 acres) had been vested in the board. An estimation of the total amount of land alienated in district 8 between 1910 and 1939 (using the maps reproduced at the start of this report) is 805,207 acres. These purchases were either to private purchasers with the formal approval of the Maori land board, of to the Crown under the Native Land Act 1909.

8.4.6 Land taken for public purposes

Up until the 1870s, the interior lands of the King Country remained closed to Government public works. Throughout the 1870s, however, public works construction, such as roading construction in Taupo, began to be accepted by those iwi with land on the outer edges of the district. Pressure continued to mount on King movement leaders in the late 1870s to allow more public works projects in the district, and the main trunk railway line was commenced in 1885.[8] The line for the track itself was given by agreement, with compensation payable for the sidings and stations. (For a further discussion, see volume ii, chapter 11.)

8.4.7 Land taken for survey costs

Marr reports that large areas of land in the Rohe Potae were acquired by the Crown in payment of survey costs, although details are not available in the report.[9] (For a more general discussion, see volume ii, chapter 12.)

8.4.8 Native townships

Four Native townships were proclaimed under section 8 of the Native and Maori Lands Laws Amendment Act 1902. Three of these, Taumarunui, Te Kuiti, and Otorohanga, were in the King Country (comprising 893 acres) and were vested in

8. Marr, p 10
9. Ibid, p 86

the Maniapoto–Tuwharetoa Maori Land Board. Originally, the urban sections were leased, but under an amendment Act of 1910, tenants and the Crown progressively acquired the freehold (see vol ii, ch 16).

8.5 Outcomes for Main Tribes in the Area

Within the Rohe Potae, 687,769 acres had been acquired by the Crown by purchase or in payment of survey liens between 1892 (when the Crown commenced purchasing) and 1900. Crown purchases practically ceased in 1900, but they resumed again in 1906, with a further 69,360 acres being purchased by the Crown.

Out of a total area of approximately 1,844,780 acres (being the Rohe Potae district, as defined by the Stout–Ngata commission), about 774,977 acres had been purchased, mostly by the Crown; 217,763 acres were leased or under negotiation and at least 110 acres had been taken for public works or scenic reserves, leaving a balance of 851,930 acres in Maori hands in 1907.

The Stout–Ngata commission reported in 1908 that, in the previous year, an area of about 40,000 acres had been leased or had come under negotiation for lease and the Crown had purchased interests in various blocks. No acreage was provided by the commission.[10]

8.6 Examples of Treaty Issues Arising

8.6.1 The Native Land Court

Despite the fact that Maori within the King Country originally resisted the operations of the Native Land Court in their district, the court was operating on the edges of the district and was whittling away at its outer boundaries. When, in keeping with Kingite policy, the court was boycotted by King Country iwi with customary interests in the border lands, the land was simply awarded to interested parties who did appear at the hearing. As Marr observes, it was simply not possible for Rohe Potae Maori to ignore the Native Land Court process. By the late 1870s and early 1880s, Maori living just within the boundaries of the district were applying to the court for the hearing of their land. Their initial preference once title was established, however, was to lease the land.

As this process continued, tensions mounted among Maori in the district. In the 1880s, the Government negotiated directly with iwi with traditional claims to Rohe Potae lands, in particular leaders such as Wahanui, Taonui, and Rewi Maniapoto. The likelihood of Rohe Potae lands passing through the court precipitated a division between traditional Maori owners and the more recent Waikato arrivals. Thereafter, Tawhiao was largely bypassed by Government officials who interpreted the rift as a decline in support for the Kingitanga and its policies. In 1891, Judge

10. AJHR, 1908, g-10, p 1

Fenton (referring to the non-recognition of the interests of Waikato Maori who had moved into the Rohe Potae in the 1860s) stated that the '1840 rule' (see vol ii, ch 7) provided 'one of the great reasons of the break-up of the coalition'.[11]

8.6.2 Leasing

The King movement responded to the internal and external pressures to engage in the developing national economy by attempting to lease land. The 56,000-acre lease agreement with Joshua ('Mokau') Jones in the Mokau–Mohakatino block demonstrates the problems Maori encountered in leasing rather than selling. Evelyn Stokes has called this case 'one of the most dubious of any transactions involving Maori land in the nineteenth century'.[12] In an exceptional request, the owners of the block applied to the court to secure title to the land and, therefore, income from the lease also. In 1888, the block was surveyed according to Jones' interpretation of the lease agreement (Jones being the lessee), rather than the boundaries agreed to by the owners when the lease was signed. Cultivations and burial grounds were disrupted as a result. The years of legal action that followed regarding many aspects of the lease agreement forced Jones to remortgage the lease, and the block was eventually sold to other interests.[13]

8.6.3 The 1883 agreement

The Ngati Maniapoto 'compact', or 'Aotea agreement', was a series of understandings and agreements negotiated by iwi leaders and the Government from 1882 to 1883. A petition was subsequently presented to Parliament in June 1883. It asserted Maori rights to exclusive and undisturbed possession of their lands but indicated a willingness both to consider leasing (and possibly some sale controlled by Maori) and to admit the railway. It came from Wahanui and his followers and was strongly disapproved of by Tawhiao, who sent a counter-petition, which was ignored by the Government. The Government subsequently took legislative steps to meet some of the petitioning leaders' requests.

A second series of meetings in 1883 addressed the possibility of a survey of the Rohe Potae external boundary. In these negotiations also, the Government refused to acknowledge that Ngati Maniapoto leaders were speaking for a confederation of tribes. This, in turn, led to a fundamental misunderstanding regarding the external boundary of the proposed survey, particularly when the Native Minister, John Bryce, persuaded Ngati Maniapoto chiefs alone to sign the application to the court. In addition, Bryce appears to have intended the Native Land Court to determine internal tribal and hapu boundaries in the district, despite clear indications from

11. Cited in D V Williams, 'The Use of Law in the Process of Colonization: An Historical and Comparative Study, with Particular Reference to Tanzania (Mainland) and to New Zealand', PhD thesis, Dar es Salaam, 1983, p 315
12. Stokes, p 148 (cited in Marr, p 14)
13. Marr, pp 12–14

Maori that more detailed investigations would be entirely within the control of Maori, who looked to native committees, or a reformed Native Land Court, to assist in this process.[14] The agreement on the external boundary survey was confirmed by an exchange of letters between Government surveyors and chiefs in December 1883. Wahanui and other leaders agreed to an external boundary of 'our block' and insisted that the agreement not be altered by other arrangement or by any future government, which the Surveyor-General agreed to in reply.[15]

In the event, despite Government reassurances and Maori expectations of the survey, the letters were vague enough to allow for differing interpretations; Maori assumed the 'block' to be surveyed was the entire rohe of the associated tribes as set out in the agreement, while the Government used the survey to separate out from the larger region the mainly Ngati Maniapoto Aotea block, which comprised only part of the district. Also, while Maori had understood that an external survey would in no way implicate then in internal surveys of the Rohe Potae, Government officials were operating on the assumption that internal hearings would proceed as soon after the external survey as possible.[16] Marr comments that the Government's encouragement of applications for internal survey was an important means of undermining the Maniapoto chiefs' desire to delay proceedings until more appropriate alternatives to the land court were in place.[17] She notes also that the Government was 'less than honest' in revealing its intentions concerning the land court operation within the district to the Ngati Maniapoto leaders. This was particularly true in the early years, when the support of these leaders was crucial to the Government's success in advancing negotiations and Maori were reliant on the Crown's good faith in the agreements made.[18]

Following the passage of the Railways Authorisation Act 1884, the Government decided that compensation for land taken for the railway would only be paid when title was determined by the Native Land Court, in direct contrast to Maori appeals to exclude the court from internal adjudications of the Rohe Potae. As pressure mounted against iwi and concern grew regarding the implications of the survey, further splits appeared within the confederation. In 1885, Ngati Tuwharetoa applied separately for a hearing of the Tauponuiatia block. Whanganui and other tribes, who had been writing to the Government since 1883, also eventually filed separate applications for the determination of their interests.

In June 1886, the Native Land Court began its sittings at Kihikihi to determine the boundaries of the Aotea block of 1,844,780 acres of largely Ngati Maniapoto land, a considerable reduction from the 3.5 million acres referred to by Maori in the 1883 petition. Within two years (by 1888), the Native Land Court had begun hearings relating to internal division within the district, which, Marr asserts, again undermined the aspirations of certain chiefs and communities, who wanted to wait

14. Ibid, pp 29–30
15. Ibid, p 33
16. Ibid, p 39
17. Ibid, p 40
18. Ibid, pp 42–43

until a more satisfactory arrangement than the court was established.[19] As early as 1890, Wilkinson (a land purchase officer and 'native agent') acknowledged in a report that Maori in the Rohe Potae were forced, very reluctantly, into the Native Land Court process by the unpleasant reality that their title to land within the district would not be recognised by law unless it was proved in the court.[20] He reported also that the court's requirement of a list of owners before it would issue an order for title encouraged 'jealousy, ill-feeling, bickerings and quarrelling', which resulted in the subdivision of the original large block into numerous small blocks within the Rohe Potae, with a list of owners for each.[21] In the late 1880s, officers used their links with Maori communities in the Rohe Potae to take advantage of divisions among Maori and buy land from disaffected sections of rank and file owners. Wilkinson appeared to both condone this method and use it to the Crown's advantage.[22] Marr observes that 'the government was to determine the extent, pace and method of purchasing without the effective participation of Ngati Maniapoto leaders'.[23] The Native Land Court judges' insistence that the law required them to submit lists of individual names also opened the way to the piecemeal acquisition of signatures by the land purchase agents.

8.6.4 The role of officials

Serious questions are raised regarding the Crown's active protection of Maori interests in respect of the conflict of interests of officials such as Wilkinson, who simultaneously held positions as a Government native agent and a local land purchase officer. The Government relied on Wilkinson's reports as a native agent in determining purchasing policy, despite the fact that Wilkinson had a vested interest in land purchasing, while at the same time he was required to investigate Maori grievances as the Government native agent.[24] The appointment of W H Grace in 1890 as a temporary land purchase officer and court interpreter also involved a likely conflict of interest, especially because Grace had left the Government service in the late 1880s and, in so doing, avoided prosecution for the unauthorised use of purchase payments.[25] Grace was to assist Wilkinson 'in any way' he could with purchases in the Rohe Potae.[26]

Marr argues that Government officials 'clearly believed they had a duty to manipulate the Court system to make it more effective in enabling Maori land to be freeholded' and that they also had a hand in legislative amendments such as the Native Land Alienation Restriction Act 1884, which strengthened the Government

19. Ibid, p 46
20. AJHR, 1890, g-2, p 3 (cited in Marr, p 46)
21. AJHR, 1890, g-2, p 3 (cited in Marr, p 47)
22. Telegram from Wilkinson to Lewis, 19 March 1890, ma 13/78, nlp 90/69 (cited in Marr, p 74)
23. Marr, p 55
24. Ibid, p 61
25. Note by Sheridan on Lewis report, 19 August 1889, ma-mlp box 26, nlp 89/240 and attachments (cited in Marr, p 64)
26. ma-mlp box 27, nlp 90/166, 90/172 (cited in Marr, p 65)

land purchasers' position with respect to Maori land in the Rohe Potae.[27] She refers to the substantial evidence that collusion between officials and judges existed, identifying, for example, connections between Lewis and the chief judge of the Native Land Court, with whom Lewis discussed issues of court policy and practice that affected land purchasing.[28] When the task of defining interests in the Rohe Potae appeared too vast and complex for the court to manage, it appears that Lewis and Wilkinson were instrumental in convincing the chief judge to have two courts sit in the district in late 1891 in an attempt to clear the backlog of definition of interests. Furthermore, land purchase officers were apparently able to manipulate the timing of hearings and the use of costs and fees to force further subdivisions and sales.[29] By contrast, Maori had considerable difficulty in obtaining Government assistance with the Native Land Court, because the Government refused to interfere in the court process on their behalf.[30] Marr concludes that, while there was no illegality in the influence of land purchasing officials in the court system, the evidence suggests that the Crown's obligation to ensure that Maori interests were fairly protected was allowed to become subservient to the needs of purchasing.[31]

8.6.5 Crown purchasing techniques

Despite the fact that, by March 1891, the Maori interests in three-quarters of the area passed through the court in the Rohe Potae were undefined, the Government was unwilling to delay purchasing any longer, and the Minister of Native Affairs was advised by Lewis that purchasing would begin before interests were defined.[32] This meant that it was not possible to be accurate about the quantity of land represented by the shares, the exact location of the shares on the ground, or the relative value of individual shares.[33] The Government was warned of the risks of buying possibly unequal shares before they were defined,[34] and it appeared aware of the danger of antagonising sellers and creating dissatisfaction among them with respect to purchases made by the Crown.[35] Rather than taking this advice, the Government moved in the other direction, making further exceptions to standard purchasing policy in order to advance selling in the district. It was assumed, for example, that undefined shares were of equal interest, and while it was general policy not to buy the shares of minors, Wilkinson was able to do so if such a purchase would complete title for the Crown.[36] Other purchasing techniques practised by the Crown that raise Treaty issues include using indebtedness to storekeepers, who had an important role in providing credit in the district, to try and force

27. Marr, p 67
28. Lewis to Wilkinson, 28 December 1889, ma 13/78, attachment to nlp 89/332 (cited in Marr, p 68)
29. Marr, pp 68–69
30. ma-mlp box 29, nlp 91/210 and attachments (cited in Marr, p 69)
31. Marr, p 69
32. Lewis to Native Minister, 18 December 1889, ma 13/78, nlp 89/332 (cited in Marr, p 79)
33. Marr, p 80
34. J H Edwards to Native Minister, 27 May 1890, ma 13/78, nlp 90/173 (cited in Marr, p 81)
35. Marr, pp 80–81
36. Telegram from Sheridan to Wilkinson, 21 January 1891, ma 13/78, nlp 91/13 (cited in Marr, p 130

transfers of land.[37] Since a prohibition on private dealing prevented land from being transferred straight to a storekeeper for debts, the land purchasers would recommend credit for particular owners, who then had to pay off debts in cash with their purchase money.

Government interference in the process of establishing title to the land was strongly criticised by Ngati Maniapoto leaders, who felt that such pre-purchasing was in breach of an agreement with the Government not to buy individual interests before title was settled by Maori committees, an understanding rejected by Government officials.[38]

The secret purchasing of individual interests was, according to Marr, a direct attack on the authority of chiefs and the ability of the hapu and iwi to make decisions on the management of land. Furthermore, it was a tactic that undermined the overt determination of a majority of owners to resist sales.[39] Grace advocated this tactic in attempting to purchase the Mahakatino–Paraninihi 1 block in early 1890. He knew that the Ngati Maniapoto owners of the block were leading men and that if they sold their interests it might create dissatisfaction among others and encourage them to sell also.[40]

Wilkinson was not supportive of Maori attempts to create sustainable sources of income for themselves in the Rohe Potae (through sheep farming, for example) as an alternative to selling the land. He believed such ventures were doomed to failure. In addition, during the 1890s, Wilkinson suggested ways to create a need for cash among owners that would induce them to sell the land, taking advantage, for example, of hapu that were having to sell land in order to finance hearings for more important blocks of land elsewhere.[41] According to Wilkinson:

> Want of money alone will make them sell . . . So long as they do not require money, an increase in price has with very exceptions, no other effect than to show an increased desire on our part to acquire the land quickly, which, in itself, is detrimental to land purchase. As soon as any of the owners require money they will sell, regardless of price.[42]

Wilkinson was typical of Government officers who believed that Maori would benefit from opening themselves up to European trade and who exhibited an indifference towards Maori inexperience in commerce and an eagerness to acquire land. In Treaty terms, such actions do not sit well with the principle of active protection of Maori interests by the Crown, or with the terms of the Treaty itself at article 2, which state that Maori would retain their taonga for as long as they wished.

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37. ma-mlp box 59, nlp 1900/137 (cited in Marr, p 76)
38. Marr, p 83
39. Ibid, p 83
40. Memo from W H Grace, not dated, attached to Wilkinson memo, 13 March 1890, ma 13/78, nlp 90/51 (cited in Marr, p 74)
41. Marr, p 85
42. ma-mlp box 60, nlp 1901/6 (cited in Marr, p 86)

In short, Government officials made a determined effort to break down Maori resistance to sales in the Rohe Potae. The pressure to sell was unremitting and, in the end, successful.

8.6.6 Survey and other costs

Maori in the Rohe Potae were obliged to pay survey costs when surveys had to be repeated because of original errors,[43] as well as paying the costs of subdivisions that Maori had not, initially at least, intended to have done. Marr indicates that, by 1907, survey costs had contributed to the sale of an estimated 40,000 acres of land in the district.[44] (For a further discussion, see volume ii, chapter 12.)

8.6.7 Reserves

Ngati Maniapoto chiefs were assured by officials that sufficient reserves would be made for them when land was purchased.[45] Deeds of sale in the Rohe Potae commonly included a provision for a 10-percent reserve for the sellers.[46] Government officials appear to have been motivated by the hope that this would encourage owners to sell rather than a concern for Maori wellbeing, and as a result, policy discussions concerning reserves appear to have had very little consideration for Maori interests. Wilkinson later made attempts to buy up reserves, and survey liens were imposed on reserves, forcing further sales (as was the case with reserves just north of the Mokau River).[47]

8.6.8 Purchase price

Given that the Crown had established a virtual monopoly in the Rohe Potae by means of the Native Land Alienation Restriction Act 1884, it follows that it had a certain obligation to Maori to protect their interests in setting a purchase price for land. Maori were further assured by officials that a reasonable price would be paid for the land.[48] In the event, however, the Crown used its monopoly to set and maintain low prices for land, to withhold information about the real value of the land from potential sellers, and to restrict alternative sources of income for Maori, such as leasing the land.[49] The Government also refused to acknowledge the additional value of resources attached to the land in the Rohe Potae, such as timber, coal, and limestone, which considerably increased its value. At the same time, the

43. Marr, p 86
44. Ibid, p 125
45. Letter sent to Ngati Maniapoto chiefs under signature of Native Minister, 26 June 1889, ma 13/78, nlp 89/184 (cited in Marr, p 87)
46. Marr, p 100
47. For example, memo to commissioner of Crown lands at New Plymouth, 24 November 1890, re lodging survey liens against reserves, ma-mlp box 60, nlp 1901/6 and attachments (cited in Marr, p 89)
48. For example, R J Seddon, NZPD, vol 86, p 374 (cited in Marr, p 90)
49. Marr, p 90

Government refused to buy sections on which improvements had been made, in order to hold prices down. Such was the case with various township sections in the Rohe Potae. It was in the Government's interest to refuse to help in the development of Maori land for the same reason.[50] When the Native Minister visited the King Country in April 1891, Maori gave great emphasis to, and appeared unanimous in their support for, the removal of the restrictions of private purchasing within the Rohe Potae block.[51] In 1907, the Stout–Ngata commission found that these restrictions against private dealings deterred Maori from properly utilising and settling their own lands. The commission also considered that the Crown's price was 'below the market value'.[52]

In 1889, the Native Minister set a purchase price of five shillings per acre.[53] Lewis, however, instructed Wilkinson to buy land in the authorised blocks for 3s 6d per acre, with no distinctions made on the quality of land. The price could be raised if these attempts were unsuccessful.[54] Marr notes that the flexibility in price, when it occurred, was generally to the Government's advantage.[55] While it is difficult to make comparisons on purchase prices between districts, the low price paid for land in the Rohe Potae is evident when the average price of land there in the 1890s, which was four shillings per acre, is compared with the 6s 4d average price per acre for Maori land in the North Island generally at this time.[56]

8.6.9 The Taorua transaction

When the Taorua block was subdivided, Wahanui and others offered to sell at least one subdivision to the Crown. The Government, on the other hand, unilaterally changed the basis of the purchase and issued instructions to purchase the entire block. As a result, Wilkinson not only bought the land offered but also, through secret individual purchases (discussed above), continued to purchase interests in the entire block, thereby undermining the authority and wishes of chiefs such as Wahanui.[57] This was despite the fact that such chiefs had resisted these sales, saying that 'some of the owners would not have any land to live upon'.[58] This, according to Marr, seemed of little consequence to Wilkinson.[59]

In keeping with their objective to have all owners agree to sales and in an attempt to comply with the requests for sale, chiefs requested time to consult with those living on the extra land required by the Government. When it was evident to

50. Ibid, p 92
51. AJHR, 1891, sess 2, g-5, pp 2–6 (cited in Marr, p 93)
52. Stout–Ngata report, AJHR, 1907, g-1B, p 4 (cited in Marr, p 93)
53. Instructions from Native Minister Mitchelson to Lewis, 20 December 1889, ma 13/78, nlp 89/332 and attachments (cited in Marr, p 94)
54. Instructions from Native Minister to Lewis, 17 April 1890, ma 13/78, nlp 90/60 (cited in Marr, p 94)
55. Marr, p 94
56. Tom Brooking, '"Busting Up" the Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, p 78 (cited in Marr, p 97)
57. Marr, p 109
58. Wilkinson to Lewis, 10 April 1891; ma 13/78, nlp 91/61 (cited in Marr, p 110)
59. Marr, p 110

Wilkinson that those consulted were generally reluctant to sell, he suggested to his superiors that secret individual purchases be used to overcome this reluctance. Senior officials agreed with this approach.[60] Marr comments that 'This purchase revealed that the government was determined to decide on the pace, scale and methods of land purchase without real participation from the Ngati Maniapoto leaders'.[61]

8.6.10 The Wharepuhunga transaction

Marr comments that the Wharepuhunga block purchase of some 133,706 acres was an example of the type of purchase conducted by the land purchase officers entirely against the wishes of the principal owners (in this case, a hapu of Ngati Raukawa).[62] Early in negotiations in 1890, the Government recognised that it would only be able to buy land through secret purchase.[63] The owners, however, requested that the Government place the land under restriction according to the Lands Frauds Prevention Act 1881 to protect it from sale. In September 1890, Lewis advised Maori that such applications must be made to the Native Land Court, and the very next day, he instructed that purchasing on the block begin at 2s 6d an acre. The sellers were advised that 10-percent reserves would be excluded from sale.[64] Maori wrote to Wilkinson and asked him to stop paying for shares in the block. There is no record of an acknowledgement or a reply to this letter.[65]

In August 1891, Lawrence Grace offered the Land Purchase Department his services in obtaining the signatures of about 100 owners in the Wharepuhunga block. The owners were informed that the Native Minister 'has authorised bonus payments of two shillings and sixpence (2/6) for signatures obtained during two months through the agency of Ngakura, or any other chief who influences his people to sign'.[66] Further appeals by resident Ngati Raukawa hapu for the protection of this land, as their only land remaining, were also ignored by officials.[67]

8.6.11 Native townships

The Native Townships Act 1895 provided for land to be compulsorily set aside for native townships. In the King Country, however, the initial arrangements for the townships seem largely to have been agreed between the Native Minister, James Carroll, and the Ngati Maniapoto leaders from the fixed-term leases. In 1910, the Government amended the Act to allow leaseholds to be made perpetual or to be

60. Wilkinson to Under-Secretary of Native Department, 10 April 1891; reply 1 May 1891, ma 13/78, nlp 91/61 (cited in Marr, p 110)
61. Marr, p 111
62. Ibid, p 112
63. Ibid
64. Ibid, p 113
65. Ibid
66. Correspondence, August 1891, ma-mlp box 61, nlp 91/264 (cited in Marr, p 115)
67. Marr, p 115

freeholded. Carroll, and Apirana Ngata, concurred very reluctantly with Liberal party policy in this change, which appears to infringe article 2 of the Treaty.

Marr comments that:

> The subsequent history of these townships has raised a number of issues about the Crown's commitment to the protection of Maori interests, the Crown's willingness to balance conflicting Pakeha and Maori interests, and the Crown's commitment to enabling Maori to participate in modern economic developments and opportunities. In general, much of this history appears to confirm Heke's fears that the Crown would inevitably tend to give priority to settler interests. [Heke was the member of Parliament for Northern Maori.][68]

For a further discussion see volume ii, chapter 16.

8.6.12 Post-1910 alienations

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

8.7 Additional Reading

The following are recommended for additional reading:

Cathy Marr, *The Alienation of Maori Land in the Rohe Potae (Aotea Block), 1890–1920*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993;

Evelyn Stokes, 'Mokau: Maori Cultural and Historical Perspectives', report for the Ministry of Energy, Waikato University, 1988; and

Alan Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal (Wai 48 rod, doc a20).

68. Ibid, p 142

CHAPTER 9

WHANGANUI

9.1 Principal Data

9.1.1 Estimated total land area for the district

The estimated total land area for district 9 (Whanganui) is 1,338,074 acres (although the Whanganui Maori rohe, including what was later known as the Waimarino block, was approximately 1.77 million acres in 1840).

9.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 9 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 91 percent in 1860, 48 percent in 1890, 40 percent in 1910, and 20 percent in 1936 (or 115.6 acres per head of largely mountainous land according to the 1936 population figures provided below).

9.1.3 Principal modes of land alienation

The main modes of land alienation in district 9 were:

- the New Zealand Company's purchase (completed by Crown purchase in 1848);
- purchases under the Native Land Acts; and
- public works and scenic purposes takings.

9.1.4 Population

The population of district 9 was approximately 4000 to 5000 in 1840 (estimated figure), 1051 in 1891 (census data), and 2312 in 1936 (census data).

9.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch inland in a northerly direction from the coast near Maxwell to the Whanganui River. In the Whanganui National Park, the boundary changes direction across to Mount Ruapehu and the Kaimanawa

Range. From there, it travels south-west, following sections of the Turakina and Whangaehu Rivers, back to the coast.

The Whanganui district essentially comprises the catchment area of the river and its major tributaries, as well as some of the more open plains to the north and east. Both the Whanganui River and Mount Ruapehu are regarded by Whanganui Maori as sacred tupuna (ancestors), to whom they look for identity and right of occupancy. The river was a valuable source of eels and fish, with the tidal estuary providing both shallow water and sloping banks where catches could be unloaded. More generally, the river was a source of life and sustenance for the Whanganui hapu in a holistic sense, providing not only fish, birds, and transport but also spiritual dimensions intrinsic to Maori life. The river was traditionally navigable to Maori from the sea to the very upper reaches, providing Whanganui and other Maori with a valuable mode of transport. The land surrounding the river, which was dominated by gorges, encouraged pockets of settlement, with the lower reaches of the river supporting cultivations and the coastal areas providing important seasonal food resources. Fertile land along the various reaches of the river also supported cultivations. While relations between Whanganui Maori and iwi from further afield were complex, rights of access ensured that the river mouth was used seasonally by a number of tribes. The more northerly and eastern Murimotu–Rangipo area of the district was characterised by tussock grasslands, later much sought after by run-holders for grazing.

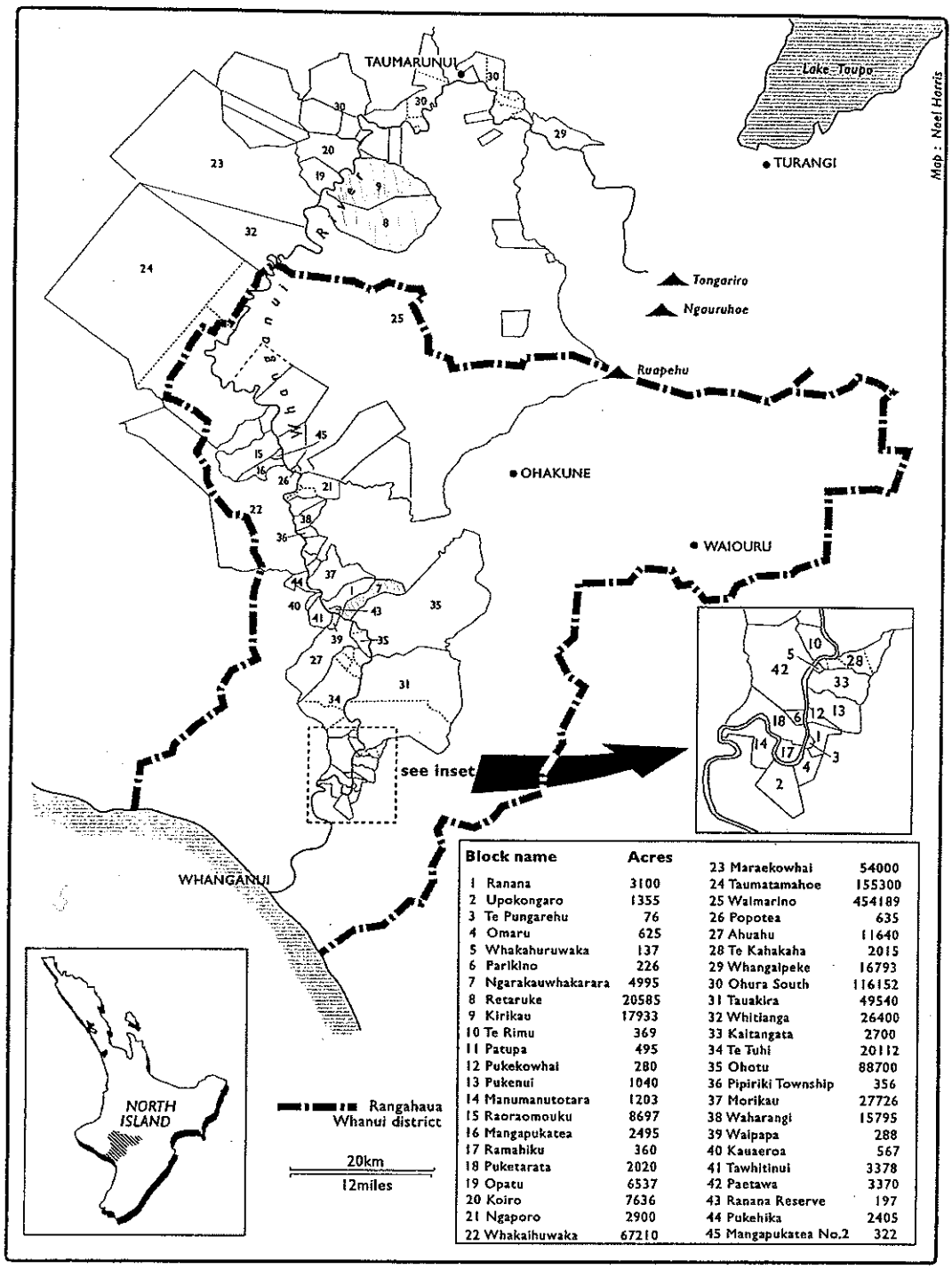
9.3 Main Tribal Groupings

Whanganui was settled by the descendants of Tamakehu and his three children: Hinengakau, Tama-upoko, and Tupoho. The upper reaches of the river, north of Manganui-o-te-Ao, were settled by descendants of Hinengakau (Tamakehu's daughter); the middle reaches from Manganui-o-te-Ao to Matahiwi were settled by the descendants of Tama-upoko (Tamakehu's eldest son). The claims of these two groups stretch across the Waimarino and Tuhua districts to Murimotu and Mount Ruapehu. Finally, the lower reaches of the river down to the coast were settled by descendants of Tupoho (Tamakehu's youngest son). The confederation of these people refer to themselves as Te Ati Haunui-a-Paparangi.

The history of the Whanganui people is uncomplicated by conquest or dispossession, and Whanganui hapu are connected under an 'iwi umbrella',[1] while at the same time demonstrating a certain amount of independence from each other. Whanganui Maori trace their lineage to neighbouring iwi, with whom old alliances were maintained and new ones were formed through intermarriage.

The loose conglomeration of hapu that made up the Whanganui iwi were closely linked by marriage and the common use of river resources, which did not restrict hapu to a particular rohe. For example, movement down river to use seasonal

1. S Cross and B Bargh, *The Whanganui District*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), April 1996, p 7



Block name	Acres		
1 Ranana	3100	23 Maraekowhai	54000
2 Upokongaro	1355	24 Taumatamahoe	155300
3 Te Pungarehu	76	25 Waimarino	454189
4 Omaru	625	26 Popotea	635
5 Whakahuruwaka	137	27 Ahuahu	11640
6 Parikino	226	28 Te Kahakaha	2015
7 Ngarakauwhakarara	4995	29 Whangaipeke	16793
8 Retaruke	20585	30 Ohura South	116152
9 Kirikau	17933	31 Tauakira	49540
10 Te Rimu	369	32 Whitianga	26400
11 Patupa	495	33 Kaitangata	2700
12 Pukekowhai	280	34 Te Tuhi	20112
13 Pukenui	1040	35 Ohotu	88700
14 Manumanutotara	1203	36 Pipiriki Township	356
15 Raoraomouku	8697	37 Morikau	27726
16 Mangapukatea	2495	38 Waharangi	15795
17 Ramahiku	360	39 Waipapa	288
18 Puketarata	2020	40 Kauaeroa	567
19 Opatu	6537	41 Tawhitinui	3378
20 Koiro	7636	42 Paetawa	3370
21 Ngaporo	2900	43 Ranana Reserve	197
22 Whakaihuwaka	67210	44 Pukehika	2405
		45 Mangapukatea No.2	322

Figure 16: District 9 (Whanganui)

resources at the river mouth was an important aspect of entitlement, which complicated ownership rights along the coast. While demonstrating interaction, groups within the iwi and hapu structures also maintained some independence from each other, with evidence of some animosity between upper and lower river hapu over the control of river traffic. In addition to intra-tribal relations, Whanganui iwi demonstrated strong ties with neighbouring tribes. For example, common ancestry between Whanganui, Ngati Tuwharetoa, and Ngati Maniapoto to the north meant that Whanganui Maori helped Tuwharetoa in times of conflict, and vice versa. Similarly, connections are evident between Whanganui Maori and Maori from Taranaki (such as Nga Rauru to the north-west, with whom they shared ancestry), as well as Maori to the south of Whanganui, such as Ngati Apa. Groups occupying the Ohakune area are also affiliated with Whanganui Maori. Apparently, a group known as Ngati Rangi (a pre-fleet people) moved up river to Tuhirangi, later splitting up and moving to Ngamotu a Taka (to the back of Rangipo) and Huriwaka (near the Waiouru Army Camp). Another group, Ngati Uenuku, pushed its way up river and spread out to Makotuku (now Raetihi) and the Waimarino Plains.

9.4 Principal Modes of Land Alienation

9.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

In November 1839, New Zealand Company agents transacted a deed with three chiefs belonging to the Whanganui tribes for 'all those Lands Islands, Tenements, Woods, Bays, Harbours, Rivers, Streams and Creeks . . . from Manewatu to Patea and inland . . . to the mountain of Tonga Ridi'.[2] Goods valued at £700 were distributed as payment. Commissioner Spain investigated this purchase in 1843, and he awarded the company 40,000 acres of the land identified in the original deed and ordered that Maori be paid £1000 in addition to the original payment of goods. Some Maori continued to object and refused the payment. Following protest from Maori regarding the reserves allocated to them and the method of payment, a further deed was negotiated and signed by around 200 Maori on 28 May 1848. The deed was for 86,200 acres, with 15 reserves estimated at 5450 acres. The area was increased somewhat, apparently with Maori consent, when the back boundary was settled in 1850, Maori being happy (in the absence of a surveyor) to see the line run along prominent natural features, notably the Whangaehu River. The average additional payment by McLean to each iwi (21 claimant iwi in all) was £50.

9.4.2 Pre-1865 Crown purchases

In July 1863, the Waitotara–Okehu block (which for the most part falls outside this district) was purchased by the Crown from Nga Rauru in exchange for a £500

2. Copy of the deed of sale, nzc 3/8, no 60, p 387 (cited in Cross and Bargh, p 9)

down-payment (which had been paid earlier in May 1859) and a further £2000 in July 1863. Seven reserves totalling 6052 acres were listed in the deed.

In October 1863, the Okui eel fisheries, which had been reserved within the 1848 Whanganui deed, were relinquished by Ngapairangi chiefs for £35. The deed specifically identified the:

> rights title and interest in the Eel Weirs and Manga Fisheries situated in the streams in the Okui district, ie in the Matarawa, Kaukatia, Puwharawhara, Matakarohe, Mangamouku, Mangamutu, Mataongaonga streams and their tributaries.[3]

The deed makes no mention of land.

9.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 9.

9.4.4 Confiscations

The original Taranaki confiscation boundary (proclaimed in September 1865) encompassed part of the Whanganui district west of the Whanganui River and south of a line running from Mount Taranaki to Parikino (on the Whanganui River). However, the area between the Waitotara and Whanganui rivers was later abandoned by proclamation in January 1867, when the resident hapu in that area was identified an ally of the Crown.[4]

9.4.5 Purchases under the Native Lands Act (Crown and private as indicated)

(1) *1865–90*

It appears that land purchases in the Whanganui district from 1865 to 1874 were largely negligible, owing partly perhaps to the isolation of the area but also to a deliberate strategy by Maori leaders not to sell land.[5] Settlers were moving stock to the Murimotu grasslands during this time, however, and rent or 'grass-money' paid to various chiefs was leading to quarrels.

In January 1868, the Parikino block (acreage unknown), which was located between the Whanganui and Mangawhero Rivers, was sold to the Crown by the chiefs and people of Ngapoutama, Ngatituera, Ngatihinearo, Ngatihine, Ngatituhekerangi, Ngatitukorero, Ngatihinga, Ngatihou, and Ngatipuru. According to the deed, the transaction included the block's trees, minerals, waters, large streams, lakes, small streams, and 'everything belonging to that land whether on the surface

3. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1878, deed 79 (cited in Cross and Bargh, p 24)
4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 124
5. For further discussion, see A Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal for Wai 48, 1992, pp 20–23; Cross and Bargh, pp 24–31

or under the surface'.[6] Two reserves of 1000 acres each were set aside, as well as three smaller reserves, comprising approximately 60 acres, which included cultivations and kahikatea bush.

In 1875, the principal land purchase officer at Whanganui reported that in the past year he had completed the purchase of 17 blocks (amounting to 46,284 acres) at an average price of five shillings per acre for flat land and 1s 6d for hilly land. He also reported that reserves had been made at not less than 50 acres per man, woman, and child, in accordance with the requirements of the Native Land Act 1873.[7]

On 15 March 1876, the Retaruke block was purchased by the Crown from Te Mamaku and Ngati Haua, with two reserves left for Maori of 185 and 500 acres. The Kirikau block was also sold to the Crown in 1876 by Hoani Paiaka.

In 1881, some 38,000 acres were acquired by the Crown for about £17,000 (some of the blocks straddled the Whanganui–King Country district boundary or abutted the Whanganui River on the King Country side). The blocks purchased included Karewarewa 1 and 2 (3679 acres combined) for £1705; Te Parapara (915 acres) for £438; Atuahae (4152 acres) for £1754; Puketotara 2 (5178 acres) for £2756; Umumore (842 acres) for £513; Rangitaua North 1, North 3, West, and South (together 22,261 acres) for £8990; Turuamouku (214 acres) for £173; and Huikumu (1204 acres) for £597.

It is also worth noting the passing of the Native Land Alienation Restriction Act 1884, which reasserted the Crown right of pre-emption over certain lands, including the northern half of the Whanganui district.[8]

In 1886 and 1887, the Crown acquired from upper Whanganui Maori the Waimarino block of almost half a million acres (located along the main trunk railway from north of Ohakune to Taumarunui). The price paid was two shillings an acre; £1192 was paid before 31 March 1881 and £40,182 after. Some 50,000 acres were reserved for the vendors.

It is difficult to identify any one point at which the control of the Whanganui River became vested in the Crown. Incremental moves by the Crown for greater control of the river are evident from at least the 1880s, when the Government began clearing and deepening the river to allow for steamboat travel. In 1882, the Whanganui River Council started taking gravel from the river. In 1891, the Whanganui River Trust Board was established to develop travel on the river. In 1892, the board began to levy tolls on cargo on the river, and after 1893, it began to remove gravel from the river. In 1903, the beds of all navigable rivers were vested in the Crown (and assumed to have always been so vested) under the Coal Mine Act Amendment Act 1903.

6. Turton, deed 80 (cited in Cross and Bargh, p 24)
7. Booth to under-secretary, 22 July 1875, nlp 75/316, ma-mlp n4
8. Cross and Bargh, pp 56–58

(2) *1891–1910*

Purchasing from 1891 to 1910 was largely a response to the opening up of the Rohe Potae (see ch 8) and the development of the main trunk railway line. Block purchasing tended to follow the proposed railway line.

According to the Stout–Ngata commission, from 1881 to 1907 the Crown purchased 1,273,000 acres within the Whanganui rohe (some of which may not be within the Rangahaua Whanui district) at a cost of £273,340.[9] A large portion of this land (130,000 acres) had come from the Taumatamahoe block (155,300 acres in total), while 44,514 acres were acquired from the Whakaihuwaka, Te Tuhi, and Ahuahu blocks. Further up river, the Crown purchased 22,529 acres of the Maraekowhai block (54,000 acres) and 14,807 acres of the Whitianga block (26,399 acres). To the east, in the Waimarino block (which extends into the King Country district), the Crown was awarded 378,081 acres, while reserves amounted to 33,115 acres for sellers and 41,000 acres for non-sellers. Crown purchases in the lands adjacent to the railway and lying in the basins of the Mangawhero, Turakina, and Whangaehu Rivers totalled 192,013 acres.

Other Crown purchases included the Raunui block (1610 acres), bought for £966 by May 1893; the Ngarukehu block (1120 acres), bought in June 1896; the Raketapauma block, bought in June 1899 for £2600; the Raetihi block (4085 acres), bought for £840; 22,000 acres of the Rangiwaea block bought in 1896, with a further 6000 acres by the end of 1899; and the Murimotu 2A, 3A, 4A, and 5A blocks (29,404 acres combined), bought for £4666 during 1900.

By 1910, land remaining in Maori ownership amounted to 40 percent of the original district.

(3) *Post-1910*

Whanganui fell within the districts of the Aotea Maori Land Board (which also included Taranaki and parts of the King Country) and the Ikaroa Maori Land Board (which also incorporated much of the Wellington region). Annual returns of alienations through the land boards did not specify block names, and an exhaustive search of files would be necessary to establish which of the board's alienations fell within this district. The maps reproduced on pages vi to x, however, indicate that alienations under the Native Land Act 1909 in this district amounted to approximately 258,749 acres between 1910 and 1939.

9.4.6 Examples of public works takings

Generally speaking, takings in the Whanganui district were made for the purpose of constructing railroads and roads, and scenic reserves along the river, with some takings made more specifically for the purpose of defence and for State forests, as well as for the Tongariro National Park. Compensation was payable according to the prevailing conditions of the Public Works Act. It tended to be low, although

9. AJHR, 1907, g-1A, pp 15–16 (cited in Cross and Bargh, p 71)

Bennion gives £1 per acre for Whanganui lands.[10] This is thought to have been a relatively high rate, possibly because of resistance by Whanganui hapu to the taking of the land. For a general discussion of public works policy and law, see volume ii, chapter 11. The discussion below gives examples only of the kind of takings made.

In all, some 5000 acres of Maori land are estimated to have been compulsorily acquired for scenery preservation purposes along the Whanganui River from 1908 to 1920, including 1000 acres in 1911, about 3800 acres in 1912, and 1000 acres in 1913. Later, between 1924 and 1928, at least 500 acres from various small blocks (such as a 30-acre native reserve at Puketotara) were acquired for scenery preservation purposes.[11] The Maori owners could ill afford to lose these apparently small amounts from their already tiny land-holdings.

In 1887, a deed of gift was signed by Te Heuheu Tukino of Ngati Tuwharetoa to effect the transfer of 6508 acres for a national park surrounding Mounts Ruapehu, Ngaruhoe, and Tongariro.

This arrangement was expanded by the Tongariro National Park Act 1894. Under this Act, 62,300 acres were acquired for the national park, which included land in the East and West Taupo and Whanganui Counties. According to the Liberal Government's view, some of this very considerable increase was acquired by agreement with 'the natives' (23,510 acres according to Lands Minister McKenzie, 33,000 acres according to James Carroll, the member for East Wairoa), some was already Crown land (15,380 acres), and the balance was compulsorily acquired.[12] Compensation was proposed by McKenzie, but further research is necessary to determine whether it was paid and, if it was, to whom it was paid and how much was paid.

9.5 Outcomes for Main Tribes in the Area

In 1907, the Stout–Ngata commissioners 'liberally estimated' that Maori retained about 500,000 acres in the 'Whanganui District' out of an original Maori estate of nearly 1,773,000 acres (noting that the Rangahaua Whanui district encompasses only 1.2 million acres of that area). This amounted to an average interest per head of 250 acres, but according to the commissioners, the reality was somewhat different, interests varying from 30 or 40 acres to 3000 or 4000 acres per head. Much of the land was steep and difficult to farm.

By the 1930s, sales of Maori land to the Crown, sales through the Aotea Maori Land Board, and acquisitions for the preservation of scenery had resulted in the alienation of a further 250,000 acres, leaving Maori with approximately 250,000 acres or about 15 to 20 percent of the Rangahaua Whanui Whanganui district

10. T Bennion, 'The Aotea Maori Land Board and Scenery Preservation', supplement to the Whanganui River report, 15 April 1994 (Wai 167 rod, doc a19(f)), p 12
11. For a further discussion of scenery preservation and public works takings in the Whanganui region, see Bennion, p 12.
12. NZPD, vol 79, p 309

(excluding the Taurewa and Rangitoto–Tuhua lands). Maori in the Waimarino and upper Whanganui areas were left with very little land, while others south and west of Ohakune to the Whanganui River retained significant areas of land, though most of it was in steep country.[13]

9.6 Examples of Treaty Issues Arising

9.6.1 New Zealand Company purchases

Ian Wards has suggested that the 'chiefs' who signed the deed in 1839 (on the British vessel *Tory*, anchored off Waikanae) had neither the rank nor the authority to enter into such transactions.[14] Furthermore, Cross argues that Colonel William Wakefield, the company's principal agent, and E J Wakefield made very inadequate attempts to ascertain that they were dealing with the correct parties when purchasing the land at Whanganui in March 1840.[15] As evidence of the careless and inequitable distribution of the payment, Cross notes E J Wakefield's description of the distribution of goods on board the *Tory* as 'Seven hundred naked savages . . . twisted and entangled . . . like a swarm of bees over the line of goods'. Wakefield also commented that when some Maori tried to return the goods to him because they were not satisfied with their share, he advised them that 'the bargain was now concluded and they must now arrange the division in their own way'.[16] Cross notes that 'It is an issue for consideration whether Wakefield held the primary responsibility for the equitable division of the sale goods'.[17]

Surveying of the Whanganui district began in December 1840, and in September 1841, Colonel Wakefield made the first selections under a provisional waiver of Crown pre-emption by Hobson, as a consequence of the company's agreement of November 1840 with the British Government.

Commissioner Spain began investigating the company's purchase at Whanganui on 13 April 1843. He found that two of the principal chiefs of the area had not been present at the signing of the deed and that both of them denied ever consenting to the sale or receiving part of the payment. Other Maori denied receiving any payment for the land, despite the fact that they had agreed to the sale. Further questioning of Maori chiefs revealed to Spain that 'different Maori had different ideas of what was happening [at the signing of the deed] and nearly as many were opposed to the sale as were in favour of it'.[18]

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13. Cross and Bargh, p 113
14. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968, p 303 (cited in Cross and Bargh, p 9)
15. Cross and Bargh, p 9
16. E J Wakefield, *Adventure in New Zealand from 1839 to 1844 with Some Account of the Beginning of the British Colonization of the Islands*, London, John Murray, 1845, p 289 (cited in Cross and Bargh, p 10)
17. Cross and Bargh, p 10
18. R Tonk, 'The First New Zealand Land Commissions, 1840–1845', MA thesis, University of Canterbury, 1986, p 194 (cited in Cross and Bargh, p 13)

Cross notes that, on the basis of his findings, Spain's final report criticised Wakefield and his methods of purchasing such a large and valuable tract of land.[19] Despite this, Spain judged that a 'partial sale' had taken place and decided that 'a payment should be awarded to those natives who had thus been excluded in the first instance, to make the purchase complete'.[20] Spain accordingly awarded the company 40,000 acres of land and advised that Maori should be paid £1000 in addition to the original payment of £700 in trade goods. Maori were also to have reserved to them:

> All the pahs, burying-places and grounds actually in cultivation . . . all the native reserves equal to one tenth of the 40,000 acres hereby awarded to the said Company . . . and also . . . St Mary's Lake and all the native eel-cuts and right of fishing upon the lakes St Mary, Medina, Dutch Lagoon and Widgeon Lake.[21]

No mention was made of rights to the river and its resources.

Many Whanganui Maori declined to accept the additional 'compensation' payments offered by Clarke after Spain's investigation of 1844. Some continued to resist the occupation of the settlers and Symond's allocation of reserves in 1846. Nevertheless, when McLean came to the district in 1848, he still stated his purpose to be the making of a further payment of £1000 'compensation' in respect of an existing purchase, rather than a full renegotiation. Moreover, he negotiated for the full extent of the company's survey plan, about double the 40,000 acres awarded to the company by Spain. This procedure (common to the company's Cook Strait settlements) would appear to have the Crown supporting a purchase that was not a true purchase at all. Nevertheless, leading Whanganui chiefs had indicated a willingness to accept a sale and Pakeha settlement, provided agreement could be reached about reserves. McLean's negotiations were very meticulous – far more so than at any other time in his career. He visited every interested hapu and kainga. The making of reserves was precise and the deed of purchase long and explicit. Although at times he resisted Maori demands for particular pieces of land (in the interests of getting good land for settlers), the various Maori vendors were, in the end, apparently genuinely satisfied with the arrangement. In the opinion of surveyor Wills, Maori had 600 or 700 acres less of reserves than Symonds had intended in 1846, although they had gained in the quality of land and had generally reserved the places they desired, including important eel weirs near the settlement. The purchase was 86,200 acres, in McLean's estimate, with reserves of 5450 acres.[22]

In his report to the Colonial Secretary of 4 November 1850, McLean recorded the 'satisfactory completion of the inland Whanganui boundary extending to the Whangaehu river'. McLean went on:

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19. Cross and Bargh, p 14
20. BPP, vol 5, p 96 (cited in Cross and Bargh, p 15)
21. Ibid, pp 90–91 (cited in Cross and Bargh, p 15)
22. J Luiten, 'Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992, pp 9–13

> I am glad to state that the delay [for want of a surveyor] has not been productive of any misunderstanding with the Natives. The Natives sanctioned the running of the line along the most prominent natural features of the country, conceding without further remuneration a considerable enlargement of the purchase.[23]

It is not quite clear whether the enlargement McLean refers to is an enlargement from the 1848 purchase as sketched and estimated or an enlargement from Spain's original 40,000-acre award. In any case, Maori agreement to the inland boundary seems clear.

Although Maori seemed content and did not question the arrangement, the Crown (under Grey's governorship) had departed from earlier proposals to reserve a tenth of purchases (whether in Maori occupation or in Crown hands) as an endowment for Maori purposes or some combination of these.

9.6.2 Maori attempts at iwi-based control of Whanganui lands

Maori attempts in the 1840s at iwi-based control of Whanganui lands was based on the conception the hapu had of themselves as having a whakapapa base along the length of the river and its tributaries and on their conception that the various hapu were, in this sense, a confederation. The question arises in Whanganui, as it had in Waikato earlier and in the Te Arawa rohe concurrently, of supra-hapu organisations forming to try to control land alienations by individual hapu leaders.

In 1877, following a series of meetings among Maori in 1871 and 1872, a 'quasi-parliament house' called Te Paku-o-te-Rangi was erected at Putiki as a place where the Whanganui tribes could meet to discuss those matters that commonly affected them, and to investigate, record, and secure, according to Maori custom, the subdivision of all land under Maori ownership.[24] At the same time as Maori were attempting to unite in order to slow the alienation of their lands in Whanganui, the Crown's continued practice of making advance payments on land before it had passed through the Native Land Court was frustrating Maori efforts. It appears that by the 1870s it had become standard practice for purchase agents to make advance payments to Maori for blocks of land that had attracted the attention of private purchasers, despite the fact that the owners of the blocks had not yet been identified by the Native Land Court. These owners were always individual Maori who favoured the sale and leasing of Maori land and who continued to apply for certain lands to go through the Native Land Court.

The Crown in fact recognised the Arawa runanganui and cooperated with it, initially at least, in defining the manner in which the district developed. The issue arises as to whether the Crown should have given similar recognition and support to comparable efforts, such as those in Whanganui. Maori rights in land were held at various levels, and the Maori conceptualisation of 'iwi' was not meaningless but did refer to a certain level of rangatiratanga (even though the hapu was more

23. McLean to Colonial Secretary, 4 November 1850, AJHR, 1861, c-1, p 255
24. Woon to Native Minister, 25 August 1877, Wanganui ma 2/1 (cited in Cross and Bargh, p 46)

commonly the focus of the control of land rights). Furthermore, the efforts of Kemp and other Whanganui chiefs in the 1870s were palpable evidence of Maori efforts at regional level self-determination. By the Treaty principle of reasonable duty of care, the Crown should therefore have at least discussed with Kemp and his colleagues the mounting concern of Maori, rather than simply encouraging James Booth in the practice of buying individual interests before they had passed through the court.

In the 1880s, Kemp established a 'trust' in a further attempt to secure remaining Maori land from Government purchase and lease. His efforts were triggered in part by his concern about surveys in Murimotu. The duties of the trust, which encompassed about 1.75 million acres of Maori land between Whanganui and Mount Ruapehu, were to pass the land though the Native Land Court in order to ratify tribal agreements and obtain a legal title for it; to set aside inalienable reserves for the Maori owners; to make and contribute to the making of roads and the opening up of the country; and to take all desirable means to effect, on the trust's terms, the settlement of the lands by Pakeha settlers. The trust also endeavoured to discourage the practice of the Government advancing money to individual right-holders of land, a practice which was responsible for the purchase of vast amounts of Whanganui land at the time. The trust was short-lived, however, because the purchase of individual interests eroded the status of organisations like the trust that attempted to straddle tribal lines. By 1879, the purchase of hundreds of thousands of acres of the interior had been secured to the Government through the practice of advances on land. While this practice was not illegal, it undoubtedly undercut the rangatiratanga of hapu, let alone the supra-hapu structures, and can be viewed as a Treaty breach.

In 1883, Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, and Whanganui Maori petitioned the Government expressing a 'plea for a more equitable system of land administration in which Maori had more control of their own affairs'.[25] The Government followed up some of these wishes in legislation in 1883 and 1884 (in the Native Committees Act 1883[26] and the Native Land Laws Amendment Act 1884, which made advance payments illegal). In addition, it also passed the Native Land Alienation Restriction Act 1884, which effectively reasserted the Crown's right of pre-emption under article 2 of the Treaty of Waitangi. The pre-emption clause was hotly debated in the House when the Bill was introduced. Some members felt that Maori had a right to the highest bid for their land, while Sir George Grey explained that:

> When we entered New Zealand . . . we undertook that every Native should be preserved in the possession of their property held at the time . . . In return for that, they should grant the Crown the right of pre-emption.[27]

25. The Waitangi Tribunal has recently found that the Native Committees Act 1883 gave Maori 'no effective power to administer their lands': Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993, p 96.
26. Ibid, p 306
27. NZPD, vol 50, p 479 (cited in Cross and Bargh, p 58)

He expressed the concern that:

> If we gave over to the committees the power of selling the land exactly as they liked, they might possibly send an agent to England, and the whole of this valuable land might be sold in the markets of England . . . and I think we should place a restriction on that kind of sale.[28]

Although there was some consultation with lower Whanganui Maori (who were anxious about the activity of speculators), the large area of land affected by the Act (4.5 million acres) and the low prices paid by the Crown (relative to offers by the private purchasers) were challenged by the Maori members of the House and by Maori subsequently, and were strongly criticised in the 1891 Commission on the Native Land Laws (and in the report of Commissioner James Carroll).

Whanganui Maori also expressed concern over the size of the districts of the native committees. In particular, Paori Kuramate, the chairman of the Whanganui Native Committee under the 1883 Act, pushed for a committee that would be confined to the Whanganui district. This was a proposal that Ballance supported, and he undertook to subdivide the huge district (which included Whanganui) under the 1883 Act, insisting, however, that the main role of the committees would be in assisting the Native Land Court and that central dealings with land would be through a board, which would cover a much larger area and be chaired by a Government-appointed commissioner. The proposal came to nothing.

In 1900, only in Whanganui and on the east coast did the Maori leadership have sufficient confidence in the new process to voluntarily vest their lands in a Maori land council, which were established under the Maori Land Councils Act 1900. Approximately 100,000 acres in the Whanganui district (57,455 acres of that being the Ohutu block) were vested in the Aotea Maori Land Council for leasing. An amendment to the 1900 Act in 1903 required the council to pay compensation to lessees for any improvements made to the land at the expiration of the lease. Maori landowners argued that they were effectively subsidising the settlement of Pakeha on their lands. Where land already vested in the council was affected by this amendment, the lease terms were significantly changed after the event. It is not clear how much Whanganui vested land was affected.

9.6.3 The main trunk railway line

The acquisition of land for the main trunk railway line involved negotiations in respect of land for the actual track itself and for stations and sidings and for land on either side of the railway, which was to be resold to settlers to repay the 1883 railways loan and to provide a community who would use the railway and make it viable. Both matters were the subject of complex negotiations with Maori. In the event, a strip of land for the track (ranging from two to four chains wide) was taken compulsorily in order to give the Government clear title and to allow the payment

28. NZPD, vol 50, p 479

of compensation under the Public Works Act. In respect of the large purchases in the district, there is considerable evidence of bad faith on the part of the Government. After Bryce's and Ballance's initial talk of leasehold and purchase through the native committee on strict conditions, Ballance and subsequent Ministers preferred to purchase hapu interests. Ballance also misled Maori by making statements such as: 'Land which is worth not more than five shillings an acres will be worth five pounds an acre when the railway runs through the land.'[29] In fact, Maori did not receive this sort of price for their land until the 1920s.

9.6.4 The Waimarino block

In September 1885, Rangihuatau of Ngati Maringi and 15 others applied to the Native Land Court for the Waimarino block (the top portion of which falls into the King Country district), claiming rights to the land. In March 1886, the claim was heard and the court awarded 454,189 of the 490,000 acres to the 1006 claimants on Rangihuatau's list. In March 1887, a land purchase officer called Butler applied for a subdivision of the land. Topia Turoa, who was not on the original list of owners but who claimed an interest in the land, opposed the list of shareholders and requested time to discuss the matter with Butler before the subdivision. Other Maori also requested an adjournment in order to make an application for a rehearing. The court stated that the claim had been duly gazetted and notices had been sent to everyone involved and it was therefore not prepared to overturn the original investigation and award revised title.[30] By such strict rules, claimants likely to have interests in the block were effectively denied recognition of those interests.[31] Other owners, such as Te Kere and those he represented, were omitted from the title because they had refused on principle to participate in the court process. Despite knowing that other interested Maori were attending hearings of Whanganui land held at the same time at other courts, the court also refused to adjourn in order to hear more evidence.

Instead, the court heard the evidence of Rangihuatau, who made a statutory declaration as to the various hapu boundaries. The declaration was received in evidence by the court. Although some extra names were added to the list of owners, the combination of the deeds of sale collected by Butler and Rangihuatau's statutory declaration were sufficient for the court to set aside the protests of hundreds who were deliberately or accidentally absent from the proceedings. Given the prior dealings in the land and the requirement that witnesses present their case in court or be cut out of the title, it is questionable at best whether the Waimarino purchase can be considered to have had the willing and witting consent of all the owners, as required under the rangatiratanga guarantee of the Treaty.[32]

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29. AJHR, 1885, g-1, pp 4, 63 (cited in Cross and Bargh)
30. Typescript of the Native Land Court, 13 Whanganui, doc 8B, p 31
31. Ward, p 70
32. P Hamer, 'The Crown Purchase of the Waimarino Block', report commissioned by the Treaty of Waitangi Policy Unit, August 1992, p 20

No proper survey of the massive Waimarino block was conducted, and only an uncertified sketch was available. Furthermore, despite the original agreement giving some 50,000 acres of reserves to the vendors, the reserves (which were not surveyed until 1895) finally encompassed only 34,634 acres. The court refused to become involved in the setting of reserves, instead leaving this matter to the discretion of the land purchase agents. It has been suggested that the reserves were set aside by agents 'without meaningful consultation as to their location'.[33] In failing to take responsibility for the establishment of adequate reserves for Maori, the Crown was breaching its Treaty obligation to protect actively the interests of Whanganui Maori.

The claims of those who had been left off the deed have been rejected by the Government, with a few exceptions. For example, in 1887, Te Kere appealed to the Native Affairs Committee against the sale of the Waimarino block without his consent. While the committee noted in 1888 that it had no recommendation to make, in 1901 approximately 1500 acres in Tawata Valley was awarded to Te Kere's whanau in recognition of his grievance. In 1914, Rangi Whakahoutu and eight other Maori petitioned Parliament, claiming that their land, known as the Kirikiriroa block, was wrongly included in the boundaries of the Waimarino purchase by the Crown and should be returned to them. The Under-Secretary of Native Affairs replied that, according to his records, there was no obligation to return the land to Maori. Three years later, the petitioners were advised of this opinion when they again petitioned Parliament. Later petitions by other groups relating to this purchase involved requests by Maori who claimed they were 'landless' for land to be granted to them, and others requested payment for land taken for public purposes. While a response to many of these petitions was not forthcoming, in one instance Chief Judge Jones of the Native Land Court found that petitioners Tamihana and Kupe had been 'wrongfully excluded from the sale'. Because several partitions and sales of the land had since occurred, however, the owners would be required to accept 'adjustments'. In this manner, the Maori landowners had to pay for a mistake made by the court and no compensation was payable.

9.6.5 The Stout–Ngata commission

Despite Whanganui Maori stating to the Stout–Ngata commission that they wished to retain sufficient lands (in terms of quality and quantity) to sustain themselves immediately and in the foreseeable future, the Native Land Act Amendment Act 1907 subsequently required as much land to be sold as was leased. This was in excess of what Whanganui Maori wished to offer.

33. Ibid

9.6.6 The Whanganui River and other compulsory takings for scenery preservation purposes

The Whanganui River Trust Act 1891 established a separate authority for the Whanganui River in order to make use of the river as a major arterial route once a full-time steamer service was established. The purpose of the Act was to conserve the scenery and protect the navigation of the river, thus enabling the trust to remove obstructions from the river (including Maori eel weirs), erect jetties, and impose tolls. Some exceptions were later made for Maori rights in these provisions at the insistence of James Carroll, the member for Eastern Maori, but there was no consultation with Whanganui Maori in the drafting or debating of the Act or subsequent amendments, which also overrode Maori protections. For example, in 1910, an amendment to the Scenery Preservation Act 1903 authorised the Native Secretary to compulsorily acquire Maori lands for scenery purposes. The 5000 acres taken in this manner was land that had largely been reserved from earlier sales, and it was taken with compensation averaging £1 per acre paid to Maori.

In 1914, petitions came before the Maori Affairs Select Committee in relation to land taken for scenery preservation purposes asking either that there be an investigation into lands taken or that compensation be paid for lands taken or the lands be returned. According to the statements of Maori made before the Whanganui Reserves Commission in 1916, the Crown had taken good farmland in excess of what was required for scenic purposes, had cut off access to Maori land behind the river, had taken burial caves and other wahi tapu and cultivation areas, and had failed to consult with Maori owners.

Maori resistance to the Crown encroaching on their rights to the Whanganui River from the 1880s led to some debate within the Government about the relationship between the ownership of adjacent land and river rights. This debate was overruled, however, by the passing of the Coal-mines Act Amendment Act 1903, which gave ownership of the navigable rivers to the Crown. Despite this, Maori protests regarding the extraction of gravel from the river continued. Maori initiated court proceedings over the ownership of the river, and in 1938, the Native Land Court ruled that, under Maori custom and usage, Maori had been the owners of the river in 1840. The decision regarding the ownership rights in 1938 (the time of the hearing) was delayed until 1947, at which point it was decided that, having sold the land adjacent to the river (although much of it had been subject to compulsory takings), Maori had also sold their rights to the riverbed. Following further protest, a commission of inquiry again considered the matter in 1950. This commission found that Whanganui hapu had owned the river in 1840 and that Maori should be compensated for gravel removed from the river since then. The Crown was found to have rights of ownership to tidal waters only, which in the case of the Whanganui River was the riverbed up to Roarikia. The Crown rejected this finding and appealed to the Court of Appeal in 1952. This court rejected the Crown's contention that the Whanganui River Trust Act 1891 overrode Maori customary rights to the riverbed. At a rehearing in 1958, however, the Maori Appellate Court found that, in selling their land either side of the river, Maori had also sold their riverbed. In 1962,

the Court of Appeal then reheard the case (taking the Maori Appellate Court's judgment into account) and ruled against Maori, saying that there had never been separate rights under Maori custom to the whole length of the Whanganui riverbed and that each land block carried with it the rights to the adjacent riverbed to the centre of the river. Despite the ruling, Maori continued to protest the Crown's right to the river and the gravel in the river (valued at between $8 million and $20 million). The matter of the ownership of the Whanganui River is currently a matter for consideration by the Waitangi Tribunal and a report is pending.

The land around the upper Whanganui River appears to have been most extensively taken for scenery preservation purposes, with little regard for the dwindling amount of Maori land in that area. From 1904 to 1924, over 4000 acres of Maori freehold land were taken along the river banks under public works and scenery preservation legislation. Most of the land was taken in 1911 and 1912. Maori protest about these takings was largely ignored. The minutes of the Scenery Preservation Board meetings contained no discussion of the merits of areas proposed for preservation nor the weight given to Maori concerns.[34]

9.6.7 Native townships

In 1930, it was observed that certain land taken without compensation at Pipiriki in 1897 under the Native Townships Act 1895 had never been used for township purposes, having instead been rented to private enterprise, with the Department of Lands and Survey retaining the rental payments. When the Aotea Maori Land Board demanded that the beneficial owners be entitled to the payments, the department refused, saying that the land was administered under the Public Reserves, Domains, and National Parks Act 1928 (just one of the many Acts pertaining to Maori land at the time, which made for confusing management of land).

9.6.8 Post-1910 sales

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

34. Bennion, pp 13–14

9.7 Additional Reading

The following are recommended for additional reading:

Tom Bennion, 'The Aotea Maori Land Board and Scenery Preservation', supplement to the Whanganui River report, 15 April 1994 (Wai 167 rod, doc a19(f));

Suzanne Cross and Brian Bargh, *The Whanganui District*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Jane Luiten, 'Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992;

Alan Ward, 'Whanganui ki Maniapoto', report commissioned by the Waitangi Tribunal for Wai 48, March 1992; and

Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968.

CHAPTER 10

TARANAKI

10.1 Principal Data

10.1.1 Estimated total land area for the district

The estimated total land area for district 10 (Taranaki) is 1,985,242 acres.

10.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 10 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 96 percent in 1860, 28 percent in 1890, 14 percent in 1910, and one percent in 1936 (or approximately 5.2 acres per head according to the 1936 population figures provided below).

10.1.3 Principal modes of land alienation

The principal modes of land alienation in district 10 were:

- New Zealand Company purchases;
- Crown pre-emption purchases;
- confiscations (including subsequent purchases);
- Native Land Court purchases; and
- sales under Maori land boards and the Maori Trustee.

10.1.4 Population

The population of district 10 was approximately 4000 to 5000 in 1840 (estimated figure), 3114 in 1891 (estimated from census figures), and 3828 in 1936 (also estimated from census figures).

10.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch eastward from a point just south of Mokau and then south-east to the Whanganui River. After following the west bank

of the river, the boundary runs south to the coast between the Waitotara and Whanganui Rivers. To the west, the district is bordered by the Tasman Sea.

The principal geographic feature of this district is Mount Taranaki. The fertility of the district is due largely to the rich volcanic soil and the drainage from the mountain. While much of the district in the nineteenth century was dense bush, a strip of land along the coast had been cleared by Maori for cultivations and habitations. The rugged eastern area of the district was by nature more inaccessible. The coastal boundaries of this district provided Maori with ample food resources, including both fish and shellfish from the coastal reefs. This was supplemented by food resources from the fertile valleys of the numerous rivers that drained into the Tasman Sea. In recent years, Taranaki has witnessed the large-scale development of the district's energy resources of oil and natural gas, both on- and offshore.

10.3 Main Tribal Groupings

Kaumatua before the Waitangi Tribunal for Wai 145 stated that their ancestors derived from two sources, the Kahui Maunga (family of the mountain) and the Tangata Waka. Aotea, Tokomaru, and Kurahaupo are the principal Taranaki waka. According to Taranaki traditions, Patea was the final resting place for the Aotea waka, and it is from this waka that the southern Taranaki iwi trace descent. North Taranaki iwi whakapapa to the Tokomaru waka, which made final landfall at Tongaporutu. There is debate over whether the Kurahaupo waka reached New Zealand, but its crew are said to have eventually settled in Taranaki, their descendants being the central Taranaki iwi. Figure 4 in *The Taranaki Report: Kaupapa Tuatahi* shows the iwi boundaries within Taranaki. In the case of Rangahaua Whanui district 10, there may be some overlapping interests with Ngati Maniapoto to the north and Whanganui iwi to the east.

Conflict between Taranaki iwi and iwi from further north is a constant theme of the early part of the nineteenth century. Wave after wave of taua came south to Taranaki, principally containing combinations of Tainui, Ngapuhi, Ngati Whatua, Ngati Raukawa, and Ngati Toa. Owing to kinship ties, some north Taranaki iwi for a time avoided casualties, but they were inevitably drawn into the conflict. The result of these continuing raids was a number of heke, or migrations, by mostly north Taranaki iwi to Otaki, Waikanae, Whanganui a Tara, and even the South Island. Some Maori remained to 'keep the fires burning', and they retreated into the dense bush inland or to offshore refuges like Nga Motu. South Taranaki iwi apparently remained, having reached peace with the Waikato iwi.

Of those iwi who had migrated south, a group of Ngati Mutunga and Ngati Tama went to the Chatham Islands in 1835. Some returned to Taranaki in the late 1840s.

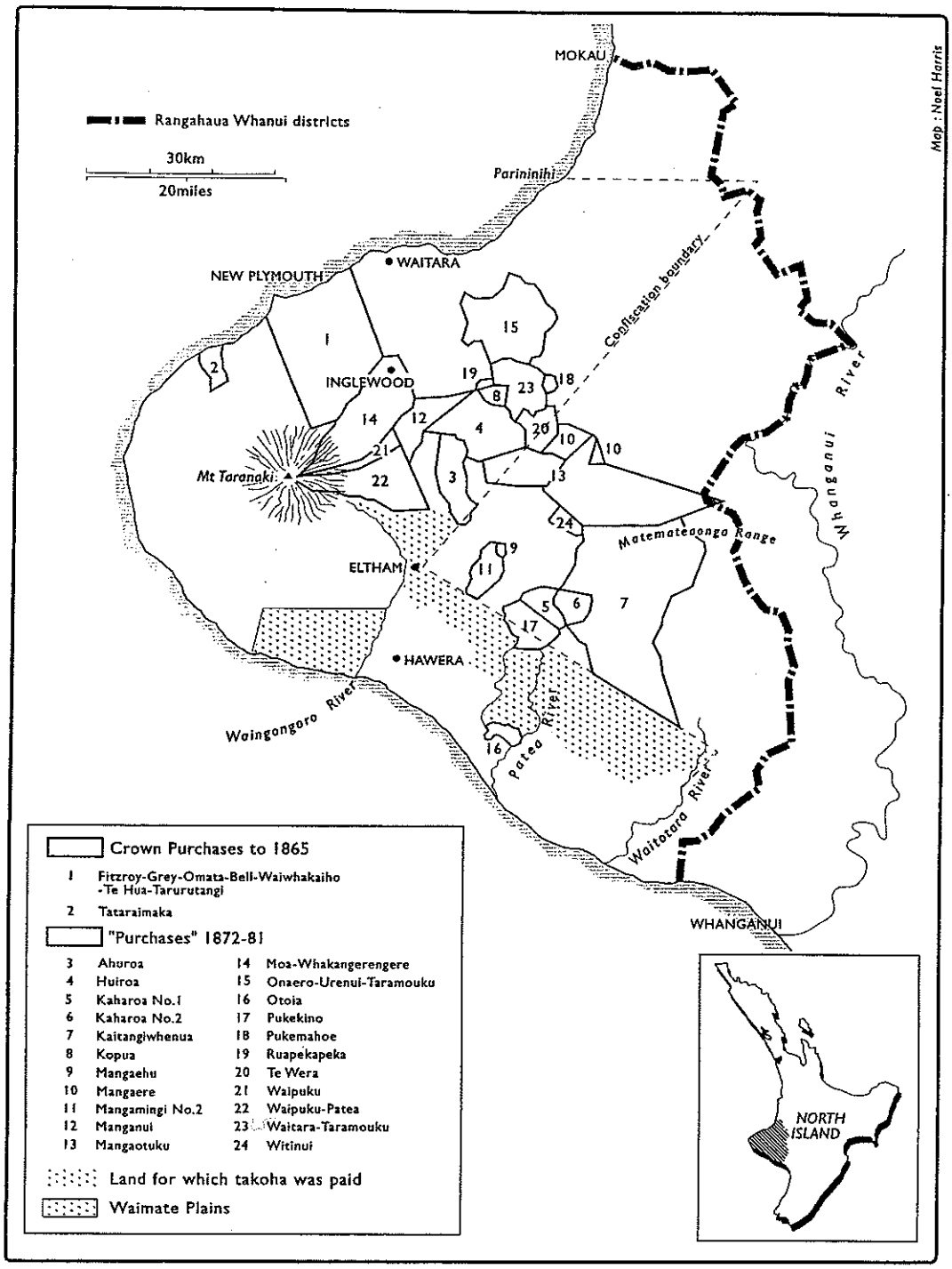

Figure 17: District 10 (Taranaki)

10.4 Principal Modes of Land Alienation

10.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Colonel Wakefield arranged two purchases at New Plymouth by deeds that were drawn up on 15 February 1840 (after Hobson's proclamation on 30 January 1840 and the Treaty of Waitangi on 6 February 1840). The completion of the deeds saw the distribution of an assortment of guns, blankets, and other chattels. The first of the deeds, 'Nga Motu deed', purported to purchase an area extending from New Plymouth to embrace the coastal lands of north Taranaki. Included in the deed was the Maori settlement of Waitara, the value of which was recognised by Maori and European alike. The size of the block is uncertain, although it was obviously large.[1] The second deed was for land directly south of New Plymouth, which was also a large area of uncertain size. In both transactions, the company undertook to retain 10 percent of the land purchased for Maori purposes. In May 1844, the Spain commission commenced its inquiries into the Taranaki transactions, at which point the company withdrew all but the Nga Motu claim, for which the commission recommended an award of 60,500 acres, while reserving a tenth for Maori purposes. When Maori protested, an agreement was reached, whereby the FitzRoy block of 3500 acres at New Plymouth would be transferred on the condition that the settlers expanded no further than its boundaries.

10.4.2 Pre-1865 Crown purchases

Over a period of 15 years (from 1844 to 1859), purchases were made of 75,378 acres either side of New Plymouth – land that had been included in the New Zealand Company's deeds for either central or northern Taranaki.

Transactions were effected by the Governor in relation to five blocks of land (amounting to 27,000 acres) during 1847 and 1848. The blocks were the Tataraimaka block of 4000 acres (with no reserves), bought for £150, and the Omata block of 12,000 acres (with two reserves totalling 381 acres), bought for £400, both from Taranaki hapu; the Grey block of 9770 acres (with four reserves totalling 1187 acres), bought for £380, Cooke's farm of 100 acres (with a single five-acre reserve), for which cattle were preferred as payment, and the Bell block of 1500 acres (with a 165-acre reserve), bought for £200, all from Te Atiawa.[2] In 1853 and 1854, the Crown also effected transactions for two further blocks that amounted to 30,500 acres.[3] These were the Waiwhakaiho block of 16,500 acres (with 17 reserves amounting to 2663 acres), bought for £1200, and the Hua block of 14,000 acres (with four reserves amounting to 250 acres), bought for £3000. Both deeds were negotiated with Te Atiawa. In 1859, the Governor purported to have acquired from

1. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 23
2. Ibid, p 30. Turton deed numbers for these purchases are 6, 7, 8, 9, and 10, respectively.
3. The Turton deed number for the latter purchase is 15 (the earlier one is unknown).

Te Atiawa a further 14,000 acres (the Tarurutangi block) with a single 10-acre reserve, for which £1400 was paid.

In 1863, the purchase of the Waitotara block, a transaction that had begun in May 1859 with the payment of £500 to some 13 Maori, was completed with the payment of an additional £2000 to some Nga Rauru. Eight reserves totalling 6713 acres were created.

In November 1859, a £100 advance was made on the Pekapeka block at Waitara. On 24 February 1860, a deed of purchase was executed for the block with a section of right-holders. Boundaries were listed in the deed, but no reserves were allocated. Payment of £500 was made. The Te Atiawa tribe under Wiremu Kingi resisted the survey, and the army was sent against them. War followed.

10.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 10.

10.4.4 Confiscations

During 1865, some 1,199,622 acres of Taranaki land were proclaimed confiscated under the New Zealand Settlements Act 1863.

The proclamation of 26 October 1864 announced that Maori who surrendered themselves and their lands to the Governor would be pardoned. In a second proclamation on 17 December 1864, seven days after once the pardon period had expired, it was announced that the Governor would assume the lands of rebels while assuring 'loyal' Maori the retention of their lands.[4] By a further proclamation on 30 January 1865, the Governor declared that the district that extended from the Waitara River in the north to the Waimate Stream in the south was a district where Maori were, or had been, in rebellion since 1 January 1863, and from which suitable sites for settlement might be taken. On 2 September 1865, the confiscation area was substantially expanded to include the Ngati Awa and Ngati Ruanui districts.[5] Within these confiscated districts, eligible sites for settlement were set aside: two areas described as 'Waitara South' and 'Oakura' in January 1865 and a further two areas, 'Ngatiawa coast' and 'Ngatiruanui coast', in September 1865. The only area that was not taken as an eligible site for settlement was the area around New Plymouth, which the Crown had already purchased.

On 25 January 1867, the confiscated land south of the Waitotara River was abandoned by the Crown, apparently because it was claimed by a Whanganui hapu that was fighting as an ally of the Crown.

In the early 1880s, the West Coast Commission finalised the return of confiscated lands to Maori in Taranaki at 201,395 acres for 5289 people (an average of 38 acres each). Another 13,280 acres were later added. In the north, 39,265 acres were divided among 1467 grantees; in the south 43,609 acres went to 1967 grantees; and

4. *New Zealand Gazette*, 1864, no 49, p 461
5. *New Zealand Gazette*, 1865, no 35, p 266

in the centre, 1855 grantees received 118,520 acres, known collectively as the west coast settlement reserves. These returned lands were passed to the Public (later Maori) Trustee for administration. As at 1912, reserves totalled 193,996 acres, of which 120,110 acres were held by Europeans in perpetual leases; 18,400 acres by Europeans under 30-year leases; 24,800 acres by Maori under occupation licences; 25,798 acres by Maori as papakainga or commonages; and 4890 acres by Maori under 'various tenures'.

10.4.5 Purchases under the Native Lands Acts (Crown and private as indicated)

(1) *1865–90*

Aside from the individual interests acquired in awards, grants, and reserves, the Crown claimed 648,098 acres in Taranaki by claim, deed, or gratuity from 1872 to 1881 (or approximately 32 percent of the district). The lands involved are indicated in the following table drawn from *The Taranaki Report*.[6] Curiously, a large number of these blocks fell within the confiscation boundary.[7] The Tribunal has made a number of findings on these purchases, which call into question the Crown's actions.[8]

In 1882, judgment was given by the Native Land Court on the Mohakatino–Parininihi block (66,163 acres), which lay between the Mohakatino River and the northern confiscation boundary. Despite debate about whether Ngati Tama title had been extinguished through conquest by Ngati Maniapoto and whether Ngati Tama's resettlement on the land was a re-establishment of ancestral occupation, judgment was made in favour of Ngati Maniapoto rather than Ngati Tama.[9] The Tribunal believes that 'it was a foregone conclusion that the Native Land Court would find against Ngati Tama in respect of the lands north of the confiscation line'.[10]

Little research has been done into the area of land in the east of this district abutting the Whanganui Rangahaua Whanui district.[11] Some of the land along the upper reaches of the Whanganui River is scenic reserve, some is State forest, and some is Crown land or Crown leasehold.[12] Much of the area is isolated and mountainous.

(2) *1891–1910*

While it is possible that some of the west coast settlement reserves were alienated in this period, further research is required to determine the extent of these aliena-

6. *The Taranaki Report*, pp 174–175
7. Ibid, see p 172, fig 13
8. Ibid, pp 171–198
9. E Stokes, 'Mokau: Maori Cultural and Historical Perspectives', report for the Ministry of Energy, Waikato University, 1988, pp 135–140
10. *The Taranaki Report*, p 281
11. Ibid, p 278
12. S Cross and B Bargh, *The Whanganui District*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, fig 10

tions. Calculations using the maps reproduced in volume 1 of this report indicate that approximately 275,000 acres were alienated between 1890 and 1910 (or 14 percent of district 10).

(3) *Post-1910*

Between 1911 and 1976, about 63 percent of Maori reserves were purchased by the Crown and subsequently on-sold to lessees. In 1975, those reserves remaining were passed into Maori management, and then sold, except for 5 percent of the original reserves, which are held under Maori freehold title today (mostly under the Parininihi-ki-Waitotara Incorporation).

Taranaki fell within the Aotea Maori Land Board district, which also included parts of Whanganui (district 9) and the King Country (district 8). An exhaustive search of files would be necessary to determine which of the Aotea board's alienations fell within the Taranaki district. However, the maps reproduced in this report indicate that alienations under the Native Land Act 1909 in this district totalled approximately 252,700 acres between 1910 and 1939.

10.4.6 Public works takings

Public works takings in the Taranaki district included numerous parcels of land taken by the Crown and local bodies, principally for the purposes of railways and roading, with some additional takings for an airfield and public buildings. Examples of takings identified by Waitangi Tribunal researchers include land taken for a railway between New Plymouth and Waitara, land taken for an aerodrome from the Puketapu block, and land taken for a school at Waitara.[13] Exhaustive research would be necessary to determine the level of compensation paid (if any) or if the land remained dedicated to the purpose for which it was taken. For a further discussion of public works national policy and law, see volume ii, chapter 11.

10.5 Outcomes for Main Tribes in the Area

The outcomes for the main tribes of the area can be summarised as follows:

(a) The Waitangi Tribunal recently reported that virtually the entire district was alienated from Taranaki iwi in a manner 'inconsistent with the principles of the Treaty'. The pre-1860 purchases in north Taranaki and at Waitotara amounted to 107,578 acres; the confiscations to 1,199,622 acres.

(b) Only 4987 acres, or 6.6 percent of the alienated land, had been reserved for Te Atiawa hapu in the pre-1860 purchases in north Taranaki. By 1976, 90

13. S Woodley and B White, 'The Acquisition of the Puketapu Blocks for the New Plymouth Airport', report commissioned by the Waitangi Tribunal, April 1996 (Wai 143 rod, doc m30), p 3; S Woodley, 'Pukekohatu', report commissioned by the Waitangi Tribunal, June 1995 (Wai 143 rod, doc m3), pp 1–2; S Woodley, 'Manukorihi', report commissioned by the Waitangi Tribunal, June 1995 (Wai 143 rod, doc m7), pp 26–47

Block	Deeds		Date	Acres	Amount	Reserves (acres, roods, perches)	Sellers	
	O	T					No	Hapu
Kopua	14	91	1 August 1872	3140	£230	2r	23	Ngati Maru
Waitara–Taramouku	19	50	27 February 1873	12,800	£1600	231a	23	Ngati Maru–Ngati Tu hapu of Ngati Mutunga
	20	51	19 February 1874		£200		5	
Moa–Whakangerengere	13	26	14 November 1873	32,830	£3750	Nil	107	Puketapu–Pukerangiora
	35	27	27 February 1874		£1700		103	Puketapu
	63	28	19 May 1874		£50		40	Puketapu (at Waikawa)
	64	29	25 May 1874		£150		38	Puketapu (at Nelson)
Pukemahoe	31	53	28 February 1874	1000	£125	1a	7	Ngati Maru
Ruapekapeka	18	52	28 February 1874	400	£50	Nil	1	Ngati Maru
Onaero–Urenui–Taramouku	32	46	3 March 1874	36,000	£3530	700a	85	Ngati Uenuku, Ngati Tupaewhenua, Ngati Rangi, Ngati Teuruwhakawai, Ngati Maru
	55	47	8 October 1874		£400		1	Mitiwai (of Nelson)
Waipuku	33	60	12 March 1874	7000	£875	Nil	31	Ahitahi
Waipuku–Patea	34	61	22 May 1874	20,700	£2500	700a	29	Ahitahi
	62	62	20 November 1874		£700		7	Residents of Nelson and Wellington

Manganui	60	41	21 August 1874	11,200	£1350	397a 2r 28p	24	Pukerangiora
	60	45	20 November 1874		£500		6	Residents of Wellington
Te Wera	57	42	1 September 1874	6320	£787	50a	14	Ngati Maru
Huiroa	58	43	25 September 1874	25,300	£3100	1050a	3	Ngati Ruanui
	61	44	20 November 1874		£500		11	'Wellington aboriginal natives'
Ahuroa	80	54	24 February 1875	12,600	£1575	Nil	33	Ngati Ruanui
Otoia	79	55	16 March 1975	2660	£322 10s	Nil	45	Ngati Ruanui
Mangaehu	81		11 November 1875	560	£70	Nil	5	Natives of Taiporohenui
Pukekino	82		16 December 1875	11,870	£1482 10s	10a	12	Ngati Ruanui (Ngati Hine hapu)
Mangaotuku	83		16 December 1875	61,200	£7650	Nil	18	Ngati Ruanui and Ngati Maru
Kaharoa No 1	84		16 December 1875	8750	£1093 15s	Nil	3	Ngati Ruanui
Kaitangiwhenua	173		18 December 1880	92,186	£11,723 05s	Nil	6	As owners named by Native Land Court
Witinui	196		24 August 1881	2080	£260	Nil	12	Natives of Hawera district
Mangaere	174		25 August 1881	6250	£781 5s	Nil	7	Natives of Hawera
Mangamingi No 2	193		25 August 1881	8200	£1025	Nil	20	Natives of Patea district
Kaharoa No 2	176		9 September 1881	7300	£506 5s	Nil	11	Nga Rauru living at Whenuakura
				370,346	£48,586 10s	3140a 1r 28p		

O: Original deed number T: Turton deed number

percent of the reserves had been alienated, and today only 480 acres remain, representing 9.6 percent of the original reserves. Of these 480 acres, most are either wahi tapu or subject to perpetual leases to Europeans.[14]

(c) Some 214,675 acres of the confiscated lands were returned to Taranaki iwi as the west coast settlement reserves. The Tribunal concluded that, 'at the time they were created, the Maori reserves were the least desirable lands for farming. They included a significant proportion of bush requiring clearing and grassing.'[15] Passed to the Public Trustee for administration, by 1912 the reserves amounted to 193,666 acres, of which 138,510 acres were leased to Europeans mostly on perpetually renewable terms and for peppercorn rents. This meant not only that the leases could not be terminated and negotiated afresh on better terms to the beneficial owners but also that periodic rent revision, in accord with economic rents in the community generally, could not be levied. Only 24,800 acres were being farmed by Maori under occupation licences.[16] Of those reserves that were not leased, many were too small to be economic and were sold, or they became too small owing to successions and partitions.

(d) Between 1911 and 1976, approximately 63 percent of the west coast settlement reserves were purchased by the Crown, most of which were on-sold to lessees. In 1976, the remaining reserved lands (about 25 percent of the original amount) were vested in the Parininihi-ki-Waitotara Incorporation. Around 20 percent have since been sold, leaving less than 5 percent in total.[17]

(e) Post-war purchases outside the confiscation line included an estimated 189,000 acres; the Ngati Tama expropriation through the Native Land Court amounted to 66,000 acres. The balance, where native tenure was expropriated, included approximately 360,000 acres.[18] All Taranaki iwi were represented in these alienations.

10.6 Examples of Treaty Issues Arising

This report concurs in the observations of the Tribunal in respect of the right of the Taranaki tribes and the flawed nature of the company and Crown purchases. The presence of Waikato before the arrival of the British should, however, be noted. While Taranaki tribes had taken certain actions to keep their claims alive during their heke southward, their return migration was facilitated to a degree by the British prohibition on tribal warfare. (Nevertheless, Governor Grey actively sought to discourage the movement of Kingi and his people from Otaki to Waitara.)

14. *The Taranaki Report*, pp 52–53
15. Ibid, p 273
16. Ibid, p 12
17. Ibid, p 273
18. Ibid, p 15

The Crown's proceedings in the Waitara (Pekapeka) purchase sought to override by force the tribal right as expressed by Wiremu Kingi. Te Atiawa and their allies were not rebels but defenders of their legitimate rights. The confiscations under the 1863 Act were therefore in breach of the Treaty, and probably illegal as well, as was the subsequent occupation of the land in the face of Te Whiti's non-violent resistance.

The compulsory vesting of the west coast settlement reserves in the Public Trustee and the Maori Trustee was an abrogation of Maori rangatiratanga and led to the alienation of much of the land and to the loss of economic benefits as a result of the system of perpetual leases and peppercorn rents.

Reserved lands in Maori control were inadequate for the tribes to enjoy an appropriate share of the developing economy or were inadequate even for their own subsistence.

By the individualisation of titles and the piecemeal purchase of interests, and by the progressive removal of restrictions on the alienation of reserves, Maori were left with insufficient land for enduring participation in the new economy. Many reserves were too small to be economic, or have become so by partition and fractionation of title.

Maori have received little or no compensation for the loss of foreshore seafoods and river and lake fish as the result of coastal development and interference with natural waterways. It is arguable that Maori aboriginal title rights still obtain in much of the foreshore between the high- and low-water mark (see vol ii, ch 13).

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

Mount Taranaki was included in the confiscation despite the fact that it was unsuitable for settlement (as envisaged under the New Zealand Settlements Act 1863). The mountain was returned to Taranaki iwi by vesting it in the Taranaki Maori Trust Board under the Mount Egmont Vesting Act 1978. By the same Act, the mountain was passed back to the Government by the trust board as a gift to the nation. The Tribunal was unaware of any evidence that Taranaki hapu had agreed to this gifting.[19]

19. Ibid, pp 299–300

10.7 Additional Reading

The following are recommended for additional reading:

Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996;

Hazel Riseborough, *Days of Darkness: Taranaki 1878–1884*, Wellington, 1989;

Aroha Harris, 'The Purchase of Land in the Taranaki Provincial District, 1872–1883', report commissioned by the Waitangi Tribunal (Wai 143 rod, doc h3);

Ann Parsonson, 'The Purchase of Maori Land in Taranaki, 1839–1859', report commissioned by the Waitangi Tribunal (Wai 143 rod, doc a1); and

Ann Parsonson, 'The Waitotara Purchase and War in Taranaki', report commissioned by the Waitangi Tribunal (Wai 143 rod, doc a3).

CHAPTER 11

WAIRARAPAPA, HAWKE'S BAY, WAIROA

11.1 Principal Data

11.1.1 Estimated total land area for the district

The estimated total land area for district 11 (Wairarapa, Hawke's Bay, and Wairoa) is 6,062,761 acres.

11.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 11 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 52 percent in 1860, 26 percent in 1890, 17 percent in 1910, and 6 percent in 1939 (or approximately 40 acres per head according to the 1936 census figures provided below).

11.1.3 Principal modes of land alienation

The principal modes of land alienation in district 11 were:

- pre–1865 Crown purchases;
- purchases under the Native Land Acts; and
- confiscation.

11.1.4 Population

The population of district 11 was approximately 6000 to 7000 in 1840 (estimated figure), 5332 in 1891 (estimated from census figures), and 8604 in 1936 (also estimated from census figures).

11.2 Wairarapa

11.2.1 Main geographic features relevant to habitation and land use

The Rangahaua Whanui Wairarapa district includes all land on the east coast of the North Island of New Zealand south of the province of Hawke's Bay and east of the Rimutaka and Tararua Ranges. The southern limit is Te Matakitaki a Kupe (Cape

Palliser), and the northern limit is a line inland from the coast at the mouth of the Waimata River extending to the Manawatu River at its southern reaches before entering the gorge.

Just to the north of Palliser Bay, Lake Wairarapa provided inland food resources. This southern area was a focus of Maori settlement. Similar to the Hawke's Bay section of this district, Wairarapa was identified by European leaseholders as early as 1844 as ideal grazing land for sheep and cattle. The mountains to the west form a natural boundary, and the Manawatu Gorge in the north-west corner of the district provided a pathway for movement in and out of the area.

11.2.2 Main tribal groupings

The Rangahaua Whanui report on Wairarapa acknowledges that it can provide only a brief summary of the relevant traditional Maori history, because Maori alone are qualified to produce a comprehensive account. The following discussion is a summary of the district report.

By the mid-eighteenth century, the descendants of Ngati Kahungunu had extended over much of the Wairarapa district, intermarrying and building alliances with the peoples already established there, such as (among others) Rangitane, Ngai Tahu, and Ngati Ira. However, Rangitane in particular retained an important presence in the north, including the Hamua hapu, some of whose members could also trace descent to Ngati Kahungunu. Ngai Tamahau and Ngati Rangiwhakaaewa of Ngati Kahungunu were also major northern hapu, as were Ngati Kahuhuraawhitia, Ngati Moe, and Rakaiwhakairi. There is some evidence that Ngati Kahungunu were politically fragmented in the early nineteenth century, and that hapu in the area maintained substantial independence from each other.[1]

Invasions by Te Ati Awa, Ngati Tama, and Ngati Mutunga from the west saw the retreat of Wairarapa Maori (Ngati Kahungunu in particular) from the Wellington region and, after 1824, from the Wairarapa region also. By 1833, they were in exile around Nukutaurua and the Mahia Peninsula, where they joined with Hawke's Bay Maori. Many Rangitane sought refuge around the Manawatu Gorge. Fighting ended in the late 1830s, and Wairarapa Maori began to return to the region in the early 1840s. Some interest in the region was retained by the invaders, although further research is required to determine whether any of these people remained in the district.

11.2.3 Principal modes of land alienation

(1) ***Pre-1840 purchases (including approved old land claims and surplus lands)***

Couper, Holt, and Rhodes claimed 883,000 acres at Cape Turnagain (situated just north of the Rangahaua Whanui Wairarapa district boundary), which no doubt would have included lands in the Wairarapa district. Scrip was issued to Rhodes and

1. H A Ballara, 'The Origins of the Ngati Kahungunu', PhD thesis, Victoria University of Wellington, 1991, p 280

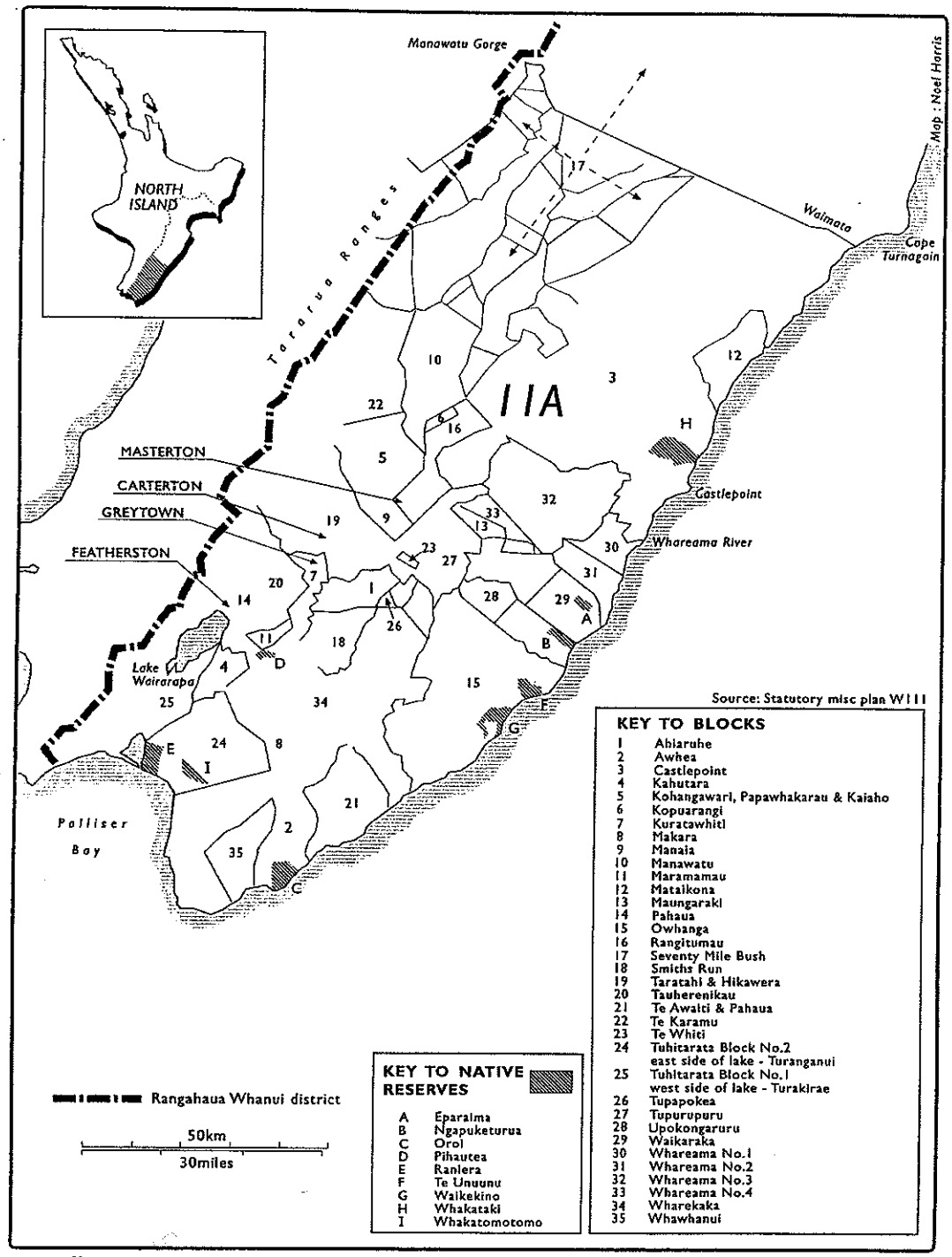

Figure 18: District 11A (Wairarapa)

Buckland for 2560 acres in satisfaction of this and other claims in the Hawke's Bay region.[2]

(2) *Pre-1865 Crown purchases*

Following earlier failed attempts to buy land, from 22 June 1853 and 18 January 1854 about 1.5 million acres were acquired by the Crown in a series of 41 deeds for a total of £23,547 (of which, £14,690 was paid before or on the day each deed was signed).[3] In nine of the largest purchases, Maori were also to receive the 'Wairarapa 5 percents', defined as:

> certain additional consideration for the lands we [Maori] have sold, to be paid to us [when the land is sold by the Crown] for the forming of schools to teach our children, for the construction of flour mills for us, for the construction of Hospitals and for Medical attendance for us, and also for certain annuities to be paid to us for certain of our Chiefs.[4]

In June 1853, 'Castle Point' was purchased for £2500. This area, estimated at 275,000 acres, extended from the Whareama River mouth in the south as far as the Waimata River mouth in the north (a distance of some 45 miles) and inland to the Puketoi mountains. The deed was signed by 301 Maori, including the leading chief Wiremu Te Potangaroa from Mataikona.

In September 1853, purchases were made in the south of the valley, including: the Western Lake block of an estimated 200,000 acres (a large part of which was some of the Rimutaka Range) for £2000; the Eastern Lake block of 120,000 acres for £1100 (with 2840 acres reserved for one chief); the Tuhitarata block of 40,000 acres, which bordered the Eastern Lake block to the north, for £1000; and the Tauherenikau 4 block, estimated at 430,000 acres (of which 40,000 acres was in the valley with the rest extending over the Tararua Range) for £2000.

In October 1853, purchases were made in the Whawhanui block, estimated at 40,000 acres (actually only 25,500 acres) for £1000 (with a 10-acre block and a cultivation of 80 acres reserved to Maori), and the Pahaua block of 110,000 acres (although McLean had mistakenly estimated it at 250,000 acres) for £700. During November and December 1853, four blocks south of Castle Point were purchased, totalling an estimated 188,000 acres for £1000. The Waihora block, an estimated 12,000 acres, was purchased for £300. The Manawatu block (100,000 acres) was purchased for £800, with 1000 acres reserved for the chief Wiremu Waka. The Upokongaruru block was purchased on the same day (50,000 acres for £487). Also in December, the two Kuratawhiti blocks (4000 acres around modern Greytown) were purchased for £220. A block of 18,000 acres was also purchased at Owhanga,

2. See olc 129–134, as listed in the appendix to B Rigby, M Russell, D Moore, 'Old Land Claims', Waitangi Tribunal Rangahaua Whanui Series unpublished draft.
3. The figures provided in this discussion are from Turton's deeds. It should be noted that Turton had overestimated the amount of land sold in this district at the time by about 500,000 acres (although some of these figures have been adjusted where possible).
4. Turton, deed 88, p 267

near modern Featherston, for £1000. On the coast, the Kaiwhata block of 10,000 acres was purchased for £270.

In January 1854, the following purchases were made: the Te Awaite block on the coast, an estimated 100,000 acres (possibly only 35,000 acres), was purchased for £1500 (with three settlements, a cultivation, and 'a possible 500 acres' reserved); 40,000 acres of prime land at Wharekaka for £2000; Ahiaruhe of 5000 acres (east of modern Greytown) for £500; 'Smith's run' containing around 6000 acres for £500; Kuhangawariwari, around modern Masterton; and Awhea on the northern coast, comprising 15,000 acres, for £400.

From 1854 to 1865, about one-third of the land remaining to Maori, or about 25,000 acres, was alienated through Crown purchases. Between the end of November and the beginning of December 1854, McLean paid advances on four blocks: £200 for Kaimatarau (location uncertain); £100 for Kaiaho (north-west of Masterton); £200 for Otahuao (east of Masterton between the Taueru and Whangaehu Rivers); and £100 for Papawhakarau (location uncertain).

In December 1854, the following purchases were made: the Maramamau block (between the lake and the Ruamahanga River), estimated at 5000 acres, for £700; the Kahutara block (to the south of Maramamau), of around 15,000 acres, for £650 (with no mention of reserves in either case); the Waikaraka block (south of Point Ureti) to the Crown for £100 and two (vaguely described) reserves; the Kuripuni block (west of Masterton), of 300 acres, for £150; a part of 'Smith's Run' (2500 acres in all) at Paeora for £300 (as well as an advance of £200 made one year earlier); £400 was advanced on the Te Karamu block (north-west of Masterton) of 30,000 acres; Hikuwera and Taratahi (between Featherston and Masterton) for £600 and an unspecified reserve for eel-fishing, which was not to exceed 100 acres.

In January 1855, two reserves from earlier purchases were sold: 50 acres at Mataikona for £40 and the Whakataki reserve of about 7000 acres, which went for £200. At the same time, advances were made on land within the area known as 'Seventy Mile Bush' (which was until this stage unalienated): £60 on the Aupapa block; £50 on the Puketoi block; and an undefined amount for the Parahihi block. Later in January, McLean purchased a 150-acre block called Kuratawhiti (near Greytown) for an undefined amount of money, and in February, he made an advance on the large Maungaraki block east of Masterton. These blocks, for which advances had been paid, took years to complete, although it was understood by the Government that from the time the advance was made the land had been alienated.

In August 1855, £100 was advanced for an estimated 1700 acres at Kopuaranga and a further £100 on a block 'seaward of Wainuiora' (with no reserves made in either case). Negotiations were also completed for a 640-acre block at Te Whiti, for which three chiefs located in Wellington had been paid £50 in December 1853. Eight people signed for the remaining £150. Instalments were paid on some of the larger blocks: £500 on the West Lake block; £400 on the East Lake block (both in September 1855); a final £400 on the Kurawhawhanui block in October; and £100 on the Kuhangawariwari block in November.

In January 1856, advances were paid to several chiefs for land that is not clearly identified. Advances were also made on the following blocks: £50 on Maungaraki; a further £60 for 'Arama's land' at Maungaraki; and £60 on Makara. Wi Kingi and others agreed to sell 400 acres at Aranga Te Kura for approximately £60 (or three shillings per acre) and then proceeded to buy back 200 acres of the block at 10 shillings per acre. Later in 1856, £1150 was transferred as final payment for Puhangina and Hikawera. From 1858 to 1861, an estimated 173,048 acres of land were sold (although a more accurate figure could be closer to 150,000 acres). In March 1858, £100 was advanced on Whangaehu (450 acres), with 'Tukuwahine' (unspecified) reserved to Maori. In April 1858, £100 was advanced on a large and valuable area of land south of Ngaawapurura (in the region known as 'Seventy' or 'Forty' Mile Bush). In July, 'ad hoc' payments totalling £25 were made to others with an interest in the area.

In June 1858, Manaia (a prime piece of land immediately south of Masterton), containing an estimated 5500 acres, was purchased for £550 with 100 acres reserved. One hundred pounds was also advanced to six major chiefs for the Matapihi–Rangitumau block (with no reserves). The Tirohanga block (an estimated 1700 acres) was also purchased for £160.

By February 1859, Te Kopi, Tupurupuru, Whaiao, and Tupapokia, an area of 49,000 acres from the valley south-east of Masterton, had been purchased for £2370 (just under one shilling per acre). The 1350-acre reserve was described by one official as 'small'.[5] During these negotiations, 518 acres were also purchased east of the lake, at Pihautea.

In February 1859, a £50 instalment was paid for the Korakonui and Ngapaiaka block (2500 acres on the Wainuioru River). An advance of £100 had been made for the land in 1855. The purchase of the Maungariki block estimated at 7500 acres was completed, having begun with an advance payment of £200 in 1855. A further £200 was paid in 1859, and the boundaries were extended. Three other sales were completed in March 1859: the Otahuao block (3000 valuable acres near Masterton) for £200 (with £200 already paid in advance in December 1854); the Matapihi–Rangitumau block of around 8000 acres for £355 (for which £100 had been paid in advance in 1858); and finally the Te Whanga block of 3800 acres (east of the Tauhera River) for £200.

In October 1859, the purchase of the Makuri block estimated at 45,000 acres was completed with a payment of £240, following two advances of £60 and £50 made in March 1855 and March 1858 respectively. An area of 25,000 acres from the Ihuraua block was also purchased for £650, and 21 acres were reserved for just one chief (despite the fact that the deed was signed by 24 Maori).

In November 1859, a 530-acre block, which had been reserved from one of the Whareama blocks, was purchased at Hikurangi and Awatoetoe for £100. The Waikaraka block of 14,000 acres was completed the next day for £600, following

5. Goldsmith, p 60

an advanced payment of £100 in December 1854. A 'reserve at Eparaima' and 100 acres were excluded from the purchase for Maori.[6]

In January 1860, an estimated 1200 acres were acquired at Raparimu for £100, as well as 3500 acres at Korakonui for £500. Only vague boundaries were offered for the piece of land reserved for Maori.

According to Turton's deeds, from 1862 to 1865 about a further 56,902 acres were sold (although a more likely estimate is around 50,000 acres). The following purchases were completed: the Mahara block of 8000 acres, for a further £320 (bringing the total amount paid to £400), with a reserve of not more than 100 acres; the Pahaoa block (an estimated 3900 acres), for which £100 had already been paid, for a payment of £175; the Te Whiti block of 740 acres for a final £60, following £40 in staggered payments since 1860; and a 1000-acre reserve from the Whawhanui block (purchased in 1853) for £80.

In January 1863, the following purchases were made: the Tauheru block of an estimated 21,000 acres for £220 (one of the eight signatories received a 156-acre reserve); the Kahutara Bush block, estimated at 900 acres for £200; and the Otumaunga block for £40. In May 1863, Te Kohutu, a 62-acre block, was acquired from two sellers for £15.

In April 1864, 430 acres at Whangaehu were purchased for £25; 4620 acres (location unspecified) were acquired for £300; 150 acres at Pouawatea near Featherston were purchased for £150; and the Kumurau block at Tauhera (12,000 acres) was acquired for £200 payment. In August, 4000 acres were purchased at Upokongaruru for £100.

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 11.

(4) *Confiscations*

There were no confiscations in this part of district 11.

(5) *Purchases under the Native Land Acts (Crown and private as indicated)*

(a) *1865–73:* Advances had been made against land in Seventy Mile Bush as early as 1855, but by 1865 it remained the single largest unpurchased block of land in Wairarapa. Negotiations from the Hawke's Bay end of the bush were resumed in April 1870, and there is evidence that the negotiations for three blocks, Maharahara, Te Ahuaturanga, and Puketoi, had been concluded by May 1870 with an advance of £50 paid on each block. Most of the bush lying on the Wairarapa side did not go through the Native Land Court owing to the absence of principal claimants, although the Puketoi blocks, some of which were in Wairarapa, did pass through the court. The purchase of land at Tamaki that had passed through the court included about 85,000 to 90,000 acres in the Wairarapa district. The deed for this

6. Turton, deed 163, deed receipt 33 (cited in Goldsmith, p 66)

257,071-acre purchase was signed on 16 August 1871, with no reserves made on Wairarapa land (although some were made in the Hawke's Bay). The Crown paid £12,000 of the £16,000 promised on the day, assuring that the rest would be paid once the surveying and reserving of land was settled. There were 69 signatories to the deed.

Having paid the £16,000, the Government still did not possess all the shares and spent the rest of the 1870s pursuing the interests of those Maori who were still shareholders in the area. The acquisition of all interests cost the Crown around £19,033, with an additional £6191 paid out for expenses.

In October 1871, the deed for the 'Seventy Mile Bush, Wairarapa District' of 125,000 acres (divided in 10 blocks) was signed. The blocks were: Kaihinu 1 (22,000 acres) and 2 (19,000 acres); Mangahao 1 (23,000 acres) and 2 (8000 acres); Manawatu–Wairarapa 1 ('Eketehuna', 6000 acres), 2 ('Mongorongo', 15,000 acres), 2a ('Pukahu', 6000 acres), and 2b ('Pahi Atua', 15,000 acres); Ngatapu 1 (4000 acres) and 2 (7000 acres). A total of £10,000 was paid for these blocks (just over 1 s 7 d per acre) to some 60 sellers. Eight reserves totalling 4369 acres were scattered through six of the 10 blocks.

The 500-acre reserve from the Ngatapu block sale was also purchased in June 1879 for £500. The following year, 350 acres at Mangahao 2 were acquired for £175. Finally, in 1885 two areas of the reserve in Mangahao 1 were purchased for £190 and £175. In summary, by the turn of the century, 1829 of the 4369 acres reserved had been purchased by the Crown.

In April 1873, Kauhanga 1 and 2 (near the Manawatu Gorge), estimated at 7000 acres, were acquired for £550, with two 20-acre reserves set aside for some of the vendors. In October 1873, the Tararua Range (estimated at 103,000 acres extending from the western boundaries of many Wairarapa blocks) was sold for £2792 (with two reserves of 1000 acres each). In 1881, the block appears to have been extended to 113,500 acres for an additional £3885. An advance payment was made on the Mangatainoka block of 62,000 acres by June 1873, with further payments amounting to £770.

Throughout mid-1872, four new agreements were made to sell parcels of land in Wairarapa: 'Upper Tauheru' in March 1872; about 690 acres at Kurumainono also in 1872 for £200; 610 acres at 'Arikirau' for £100; and 1666 acres in the Maungaraki region for £300.

(b) *1874–1910:* In 1876, the Wairarapa lakes were 'sold' by Piata Te Hiko and 14 others. The deed stated that Ngati Kahungunu had retained rights over the water of the lake for eel fishing, which had prevented Europeans from draining areas. These rights were sold for £800 and a £50 per annum pension to principal chief Piata Te Hiko.

By 1881, £242 had been paid on the 2077-acre Whangaehu 2 block, which appears to have completed the purchase. In 1883, the purchase of a 500-acre block called Umukereru was listed as complete (having been under negotiation in 1882).

Following further advanced payments, the Government divided up the Mangatainoka block into smaller parcels in 1882, and these were subsequently bought individually. In 1885, the sub-blocks were rearranged so that six of these had their title fully extinguished for £12,052, plus about £873 in expenses. Following further subdivisions of existing blocks, another five blocks were purchased from Maori by 1888 for a total of £7683. Further smaller subdivisions were purchased over the following years. By 1900, 57,061 of the 66,390 acres from this block that had passed through the court had been purchased. It would appear that the rest of the land remaining was also sold off during the twentieth century, and by 1995, only 459 acres of the Mangatainoka block remained in Maori hands.

(c) *Post-1910:* The Wairarapa district was encompassed within the regions of the Ikaroa and Tairawhiti (later Takitimu) Maori Land Boards, which covered land from East Cape to Wellington. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of the files would be necessary to establish which of the board's alienations fell with the Wairarapa sub-district. However, the total amount of land alienated in district 11 between 1910 and 1939 was 704,170 acres (estimated with the use of the maps reproduced at the start of this volume), although a very small (but important) percentage of this would have been in the Wairarapa sub-district, where most of the land had earlier been alienated through Crown purchases.

(6) *Land taken for public purposes*

In this, as in all other districts, taking of Maori land by central and local government for public purposes regularly occurred. Details of particular takings were not available for this report, but for a general discussion of public works policy and law, see volume ii, chapter 11.

11.2.4 Outcomes for main tribes in the area

Goldsmith notes that, while land alienation in Wairarapa was not characterised by confiscation, by the end of the nineteenth century land alienation had resulted in 'landlessness and social and economic marginalisation on a scale comparable to, if not more severe than, some of those areas affected by confiscation'.[7] Heaphy's return of 1871 shows that approximately 68,000 acres remained in Maori hands in the form of reserves, which represents about 3.5 percent of the total area (although this included some of the choicer pieces of Wairarapa) and did not include Maori customary land, which Heaphy did not attempt to calculate. In 1886, the figure for land in the district not yet passed through the Native Land Court was 95,442 acres, bringing the total figure of Maori land in 1886 to just over 162,012 acres, or about 8 percent of the total area of the district. An estimated 757 people were to share in

7. Goldsmith, p vii

this land in 1886; equating to about 214 acres for each man, woman, and child, although some hapu were worse off than the Wairarapa average.

The 162,000 acres remaining to Maori in the 1890s was gradually reduced through time – some was retained as Maori freehold land under multiple ownership, some became general freehold land owned by Maori, and most was sold to Pakeha. Most of the land held in 1886 was retained until the turn of the century, after which the history of each block becomes too complicated to recount individually.

Goldsmith estimates that, between 1886 and 1994, some 140,000 acres of Maori land were sold and only 30,000 acres have been retained.[8]

11.2.5 Examples of Treaty issues arising

(1) *The Native Land Purchase Ordinance 1846*

Maori made clear financial benefits from their leasing agreements with the early European settlers in Wairarapa. By 1847, they were estimated to be receiving £300 per annum for leased land. In August 1848, rents for 100,011 acres were estimated at £609. While proving a profitable practice, leasing arrangements also meant that Wairarapa Maori retained control over their land. However, the Native Land Purchase Ordinance, which was passed by the Legislative Council in 1846, strongly reaffirmed the Crown's right of pre-emption with regard to purchase (following Governor Fitzroy's waiver in 1844). Under the ordinance, private leasing arrangements were illegal and punishable by fine. According to Goldsmith, the Government's motivation in introducing this measure was 'to guide Maori towards permanently alienating their land.'[9]

As it happened, the ordinance was not brought into effect straight away in Wairarapa for fear of alienating potential Maori sellers, although the provision remained. Leasing flourished from 1846 as Maori seemed unconcerned that the ordinance had been passed, and by August 1851, rents received by Maori in Wairarapa had risen to the order of £1244 (although estimates of this figure vary).[10] This development of leasing was a probable cause of resistance to sales by Wairarapa Maori. In the face of resistance, Governor Grey increased the pressure on Maori to sell, assuring them that 'ample reserves will be retained for you if you will sell your lands'. Grey also warned that, if Maori refused to sell, the Europeans would depart from the land, ending the existing arrangements (and presumably also economically isolating Wairarapa Maori).[11]

In 1851, McLean was instructed to take steps to enforce the ban on leasing and to punish those who persisted in breaking the law in this manner. This is said to have encouraged the sale of land at Castle Point in 1853 after a run-holder on the land was forced off by the Government. Maori responded by offering to sell the

8. Ibid, p 111
9. Ibid, p 7
10. McLean to Colonial Secretary, 26 August 1851, GBPP, vol 9, sess 1779, p 41
11. Grey to Wairarapa chiefs, circa 20 March 1847, GBPP, vol 8, sess 570, p 57 (cited in Goldsmith, p 12)

land in order to allow the farmer to stay.[12] This sale, in turn, encouraged further Wairarapa sales.

(2) *The adequacy of reserves and surveys*

According to the deeds, 12 of the 25 major blocks of land sold between 1853 and 1854 did not provide for reserves. This could, however, be simply a reflection of the vagueness of the deeds. In a majority of cases, the boundaries of land identified in deeds were not surveyed but were instead described by various villages and other landmarks, which left ample scope for disagreement about the precise areas sold after the deed was signed. For example, the deed for 'Part Pahaua Block and Wilson's Run' referred to 'the piece of land shown by Hoera to Te Hapuku and Mr McLean on the east side of the Pahaua River'.[13]

Where reserves were listed, it is difficult to assess their size. It can therefore only be tentatively demonstrated that in some cases the reserves were very small. For example, from the Whawhanui purchase of an estimated 25,500 acres, only 90 acres were reserved to Maori. Also, of the estimated 100,000 acres purchased at Te Awaite (possibly only 35,000 acres), the reserves were described as 'not large' and included three settlements, a cultivation, and a possible 500 acres. Finally, of the estimated 40,000 acres purchased at Wharekaka, 1000 acres (just 2.5 percent of the total) were reserved, but to only one individual. Other purchases appeared to have allowed for more substantial reserves, which were minimal all the same, such as the reserves in the Puhawa block (about 4 percent of the block).

In 1851, McLean had promised Hawke's Bay Maori that their reserves would be inalienable and protected by law. However, the status of the land reserved to Maori in Wairarapa was far from clear after 1853. Even in the first summer of sales in Wairarapa, some reserves were sold. Goldsmith comments that it is unlikely that, by the end of January 1854, any more than 50,000 of the 1.5 million acres (or just 3.3 percent) sold remained reserved to Maori.[14] Questions arise in the light of this finding as to whether the land remaining was sufficient to meet the immediate and future needs of Wairarapa Maori and whether those reserves retained by Maori should have been made inalienable and actively protected by the Crown.

When District Land Purchase Commissioner Searancke arrived in the area in 1858, very little accurate surveying had been done. In 1859, Malcolm Fraser began surveying the blocks and reserves that had been purchased earlier in the decade. Searancke was of the opinion that 'strict accuracy [in surveying] was not so much required as a good general plan or sketch'. He is said to have been critical of an accurate survey of a 5000-acre block south of Seventy Mile Bush because of the expense involved.[15]

The failure to provide reserves that had been promised, though not clearly described, in the deed was also problematic. Goldsmith notes, 'on some occasions

12. Goldsmith, pp 27–28
13. Turton, *Maori Deeds*, p 276 (cited in Goldsmith, p 37)
14. Goldsmith, p 41
15. Searancke to McLean, 10 May 1858, McLean papers (cited in Goldsmith, p 72)

the Crown Lands Commissioner tired of waiting for the necessary surveys and simply sold the land to the settlers'.[16] In the case of the Owhanga block, where this occurred, settlers constructed houses before the matter was resolved with Maori. In the case of the Awhea block (on the south of the east coast), reserves were supposed to be resolved once McLean returned to Wairarapa from Auckland. This did not happen, and Searancke was asked to mark them out when he arrived in 1858. Upon doing so, Searancke discovered the land intended for the reserve was the best in the block, and he made it quite clear that he felt Maori did not require such valuable land. By 1861, the reserve had been agreed to at just under 2000 acres.[17]

The insecure nature of reserves meant that Maori preferred securing title of land to themselves through Crown grant by buying back small sections of land the Crown had purchased from them. Searancke noted himself that:

> [a] general feeling of insecurity respecting the tenure of their reserves now pervades the Native mind . . . and I believe results from a want of tangible proof that the Crown has made over such reserves to them and their prosperity forever. There appears a feeling that they will be deprived by the Europeans of such reserves as are not held either by grant from the Crown, or other documents emanating from the Governor himself.[18]

Furthermore, despite payments by Maori, promises by the Crown, and the enthusiasm of the native land purchase officers, no Crown grants had actually been made by 1862 because of the slow nature of the mechanics of receiving grants. This annoyed Maori and aroused their suspicions. In some cases, Goldsmith reports, a Crown grant could be delayed for over 10 years.[19]

(3) *Land purchasing techniques*

McLean was known to obtain an agreement of sale from interested parties with a tenuous connection to the land and then force the completion of the purchase on the legitimate landowners, regardless of whether they wanted to sell. By refusing to accept return of payments made or stop negotiations once they had started, McLean was able to deprive legitimate landowners of their free choice in selling or retaining their lands. This may have been the case with the many advance payments made, especially when such payments went to chiefs with only a general interest in the land and undermined the wider hapu interests or those of the more immediate occupants. (Note also that the mandate of some younger chiefs to sell was highly questionable.[20]) Four examples of this are the Upokongaruru block, the Kuhanga-wariwari purchase, and the Kaiwhata and Manawatu deeds. Furthermore, while McLean regarded the cession of 'Barton's block' by Maori (as utu for a quarrel) as an injustice to them, he stated that the deed could not be repudiated and suggested

16. Goldsmith, p 72
17. Searancke to McLean, 6 June 1861, c-1/82, p 304 (cited in Goldsmith, p 74)
18. Searancke to McLean, 21 February 1860, AJHR, 1861, pp 288f (cited in Goldsmith, p 77)
19. Goldsmith, pp 78–79
20. Ibid, p 42

that Maori offer a bit more land and be paid for the whole area. After some discussion, Maori assented.[21]

Despite the fact that he had observed the 'helpless state of debt and poverty' of some of the leading chiefs, Searancke encouraged further land alienation. While he was apparently aware of some obligation on the part of the Crown not to encourage 'irresponsible behaviour' by certain chiefs,[22] he argued that the land he continued to purchase was under-used and a constant source of disagreement among Maori.[23] It is important to ask whether the Crown should have refrained from purchasing so much land and taken steps to help Maori resolve disagreements and farm the land themselves.[24]

According to Gary Scott and Angela Ballara, the Government acted improperly when it sent out 'bounty hunters' to acquire the signatures of Maori who still held shares in the Seventy Mile Bush area. In doing so, the interests of Maori hapu were undermined by the Crown (see the Hawke's Bay discussion below)[25].

(4) *The '5 percents'*

The Government was very slow to pay the '5 percents' promised in the sale of some of the larger blocks in Wairarapa. While the Government began receiving money from the sales of the land almost immediately (by March 1854, £8194 had reached the Government), a system of payment to Maori was not set up until 1870. During this time, Maori petitioned the Government to make the payments owed to them. No clear instructions were given to Searancke on the payment of the '5 percents' when he arrived (in 1858), and payments during his time were made in an ad hoc manner. Goldsmith comments that small 'ad hoc' payments made to chiefs as '5 percents' were part of a strategy to foster the support of chiefs or, at least, to buy their neutrality.[26] Goldsmith comments that the Government's attention to the provision of health care, schools, and general economic prosperity for Maori (as promised in the sales) was noticeably absent.[27]

(5) *Wairarapa lakes*

Carter and Ballara argue that Te Hiko, an old man, was placed under extreme pressure by those who supported the sale of the lake in 1876.[28] Piripi Te Maari and others with an interest in the lake were not consulted about the 1876 sale, much less gave their permission. In the Native Land Court, beginning in 1882, Te Maari was successful in getting the Government's claim dismissed and having 137 others listed as the owners of the lakes. In 1885, these owners presented a list of grievances

21. McLean to Featherston, 14 January 1854, AJHR, 1861, c-1/28, p 266 (cited in Goldsmith, p 55)
22. Searancke to T E Smith, 7 November 1859, AJHR, 1861, c-1/59, p 287 (cited in Goldsmith, p 68)
23. Searancke to McLean, 21 February 1860, AJHR, 1861, c-1/61 (cited in Goldsmith, p 69)
24. Goldsmith, p 82
25. A Ballara and G Scott, 'Crown Purchases of Maori Land in the Early Provincial Hawke's Bay', report commissioned by the Waitangi Tribunal, 1994, p 87 (cited in Goldsmith, p 89)
26. Goldsmith, p 79
27. Ibid, p 100
28. M Carter and A Ballara, 'Te Maari-o-te-rangi, Piripi', in *The Dictionary of New Zealand Biography*, Wellington, vol 1, pp 449–467

to the Government relating to the lakes, which included the Government's sale of land raised up out of the lake by earthquake, which Maori said belonged to them; the shooting of ducks around the lake that belonged to Maori; and the proposal to open a permanent drain on the lakes, which would ruin the fishing for Maori.

Following a further proposal by the Ruamahanga River Board to declare Lake Wairarapa a public drain, a commission of inquiry was established to look into the matter in 1891. The report produced by the commission ambiguously stated that endangering the fishing rights of the owners was contrary to the Treaty of Waitangi but that the lake owners were not justified in allowing land sold by them to be flooded. In 1892, the river board forced the issues by digging a channel. Maori protested, but offered no physical resistance. In 1895, following an appeal to the Native Affairs Committee, compensation (arranged in 1896) of £2000 and reserves (30,486 acres in 1915) were awarded to the claimants, although they did not regain control of the eel fisheries, the water, or the land.

11.3 Hawke's Bay

11.3.1 Main geographic features relevant to habitation and land use

The boundaries of the Hawke's Bay section of district 11 are marked to the south by a line leading westward from the mouth of the Waimata River, just south of Te Poroporo (Cape Turnagain), to the Manawatu Gorge. The inland, western boundary (which is the hardest to define) follows the Ruahine, Kaweka, and Ahimanawa Ranges, and the catchment areas of the Ngaruroro, Tutaekuri, Mohaka, and Waikare Rivers. The northern boundary is formed by a line running east to the Waihua River on the coast.

The western boundary of this district consists of a solid chain of mountain ranges, which act as catchment areas for the numerous rivers that exit into the Pacific Ocean. The rivers and lagoons were the centres of Maori habitation, while the plains and valleys of this district were quickly noted by Pakeha to be ideal for grazing sheep and cattle.

11.3.2 Main tribal groupings

The main tribal grouping in the Hawke's Bay, Ngati Kahungunu, include ancient peoples such as Ngati Awa (situated at Otatara and Heipipi Pa, Ahuriri), Ngati Apa (situated in the mountainous Kaweka, Ahimanawa, area and elsewhere), Ngati Whatumamoa (situated at Heipipi Pa, Petane, and surrounds), Ngati Hotu, Ngati Moe, Ngai Tara, Moaupoko, and Rangitane.[29] The descendants of Kahungunu of the Takitimu waka entered the region in the sixteenth century, settling north of the old path of the Ngaruroro River and south of the Tukituki River. Through 'might

29. Ballara (cited in D Cowie, *Hawke's Bay*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996), p 2

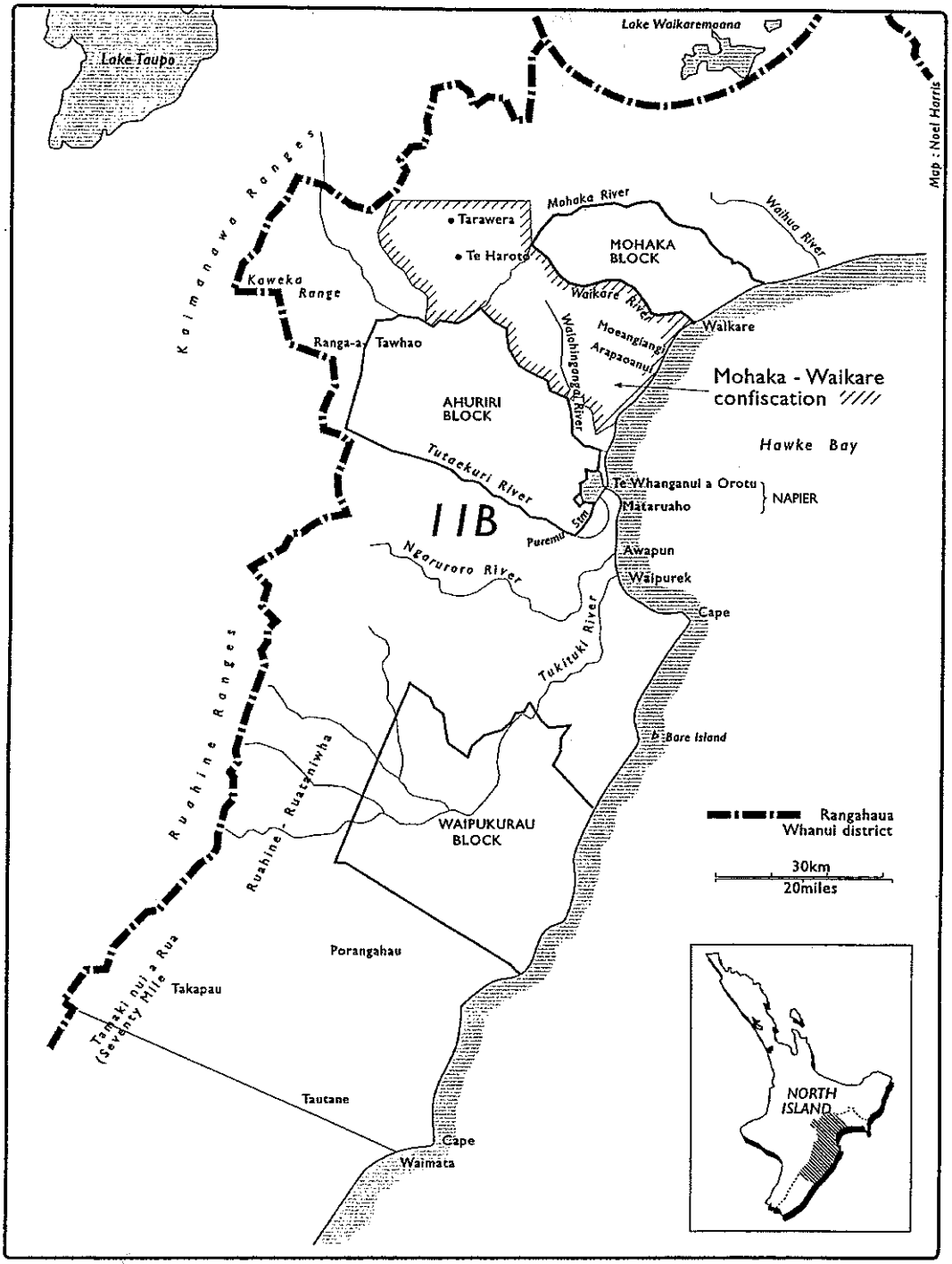

Figure 19: District IIB (Hawke's Bay)

and marriage' the latter group, the descendants of Kahungunu, took hold in the majority of the Hawke's Bay,[30] although some of the ancient groups such as Rangitane, Ngati Tauiri, and Ngati Moe maintained an independent identity. Kahungunu descendants also claim descent and land rights from ancient tribes.[31] The following is a guide to the centres of various Maori groups' main geographic zones (as distinct from their complete rohe) in the nineteenth century.

- *Mohaka:* In 1850, Mohaka was identified with the iwi Ngati Pahauwera; in particular a chief called Paora Rerepu, who claimed ancestry from Kahungunu and pre-Kahungunu descent groups and with whom McLean subsequently had considerable dealings.[32]
- *Mohaka–Waikare:* The hapu of Mohaka–Waikare include Ngai Tatara–Ngati Kurumokihi, Ngati Tu, and Ngati Hineuru. The latter occupy the inland Mohaka–Waikere district and surrounds, centred on Te Haroto and Tarawera, and can trace their ancestry to a number of neighbouring tribes, including Ngati Tuwharetoa, Ngati Manawa, and Tuhoe, as well as Hawke's Bay iwi and other ancient tribes such as Ngati Hotu, Ngati Marangaranga, Ngati Awa, and Ngati Apa.[33]
- *Ahuriri and Heretaunga:* For the purpose of the Hawke's Bay district report, the hapu of Ahuriri and the Heretaunga Plains have been identified under the umbrella identity of Ngati Kahungunu-ki-Heretaunga (although claimants have tended not to use this term). The hapu Ngati Hinepare and Ngati Mahu centred their influence around Moteo and Wharerangi, while Ngati Te Upokoiri and Ngati Hinemanu hapu were centred further inland, around Omahu and inland Patea.
- *Ngati Te Whatuiapiti and hapu:* Ngati Te Whatuiapiti and hapu have different primary descent lines from those under the Ngati Kahungunu-ki-Heretaunga umbrella and ultimately trace their ancestry from both Ngati Kahungunu lines of descent and (on the other hand) back to Toi. Their main centres of influence include Waipawa, Waipukurau, Patangata, Te Hauke, and others. The tension between Ngati Te Whatuiapiti and Ngati Kahungunu-ki-Heretaunga is important to acknowledge because it was re-ignited in the 1850s. Hapu that identify with Ngati Te Whatuiapiti include Ngati Te Rangikoinake and Ngati Hawea.[34] The latter were prominent at Te Matau a Maui (Cape Kidnappers), along with other hapu such as Ngati Kurukuru, who lived at Waimarama with Ngati Whaiti and Ngati Kautere (of Ngati Ira descent).[35] Ngati Kere, Ngati Hinetewai, and Ngati Manuhiri, also descending from Te Whatuiapiti, were prominent in the 1850s at Porangahau.[36]

30. Cowie, p 2
31. H A Ballara and G Scott, 'Claimants' Reports to the Waitangi Tribunal: Crown Purchases of Maori Land in Early Provincial Hawke's Bay' (Wai 201 rod, doc i1), introduction, p 36 (cited in Cowie, p 3)
32. Ballara, pp 94–98 (cited in Cowie, p 3)
33. See P Parsons, 'The Mohaka–Waikare Confiscated Lands Ancestral Overview (Customary Tenure)', 1993, pt a, pp 4–31, and Ballara, pp 184–188 (both cited in Cowie, p 4)
34. Ballara, pp 197–198 (cited in Cowie, p 7)
35. H A Ballara and G Scott, 'Matau a Maui Block' (Wai 201 rod, doc i1), pp 1–2 (cited in Cowie, p 7)

- *Tamaki-nui-a-Rua:* Tamaki-nui-a-Rua was occupied by various descendants of Toi, including Te Aitanga-a-Whatua, Ngai Tara, and Rangitane, the latter never having been expelled from their homes by Kahungunu, according to Ballara, although admittedly many Rangitane also trace descent to Kahungunu (among other tribes).[37]

Many of the hapu discussed above shared resources. For example, Ngati Whatuiapiti and Ngati Hawea would gather fish from around the harbour area. It has been argued that Hawke's Bay Maori also applied 'whanaungatanga' rights indiscriminately within and outside the prescribed Hawke's Bay–Kahungunu rohe, including, for example, other iwi such as Ngati Tuwharetoa and Tuhoe.[38] Hawke's Bay Maori also made alliances with tribes such as these outside their district in order to ward off invaders, particularly during the musket wars of the 1820s and 1830s.

11.3.3 Principal modes of land alienation

(1) *Pre–1840 purchases (including approved old land claims and surplus lands)*

Captain William Barnard Rhodes claimed on 27 January 1840 to have purchased (save one signature) 1.4 million acres of land that included Te Mahia Peninsula, Te Wairoa, Hawke's Bay, and Wairarapa. Payment of £150 had apparently been made and a tenth of the area was reserved for Maori.[39] Eventually, however, Rhodes was awarded just 2560 acres worth of scrip by the Land Claims Commission in settlement of this claim, although the location of these blocks is uncertain. (See below for a discussion of other old land claims in the Wairoa district.)

(2) *Crown purchases before 1865*

Crown purchases before 1865 are summarised in the table on the following pages.

(3) *Pre–emption waiver purchases*

There were no pre-emption waiver purchases in this part of district 11.

(4) *Confiscations*

By Order in Council dated 12 January 1867, 270,000 acres in the Mohaka area were proclaimed confiscated (although only approximately 50,000 acres were retained by the Crown). It was noted that the 'loyal' occupants would retain their land, although no such guarantee was afforded to the 'rebels', who would receive a 'sufficient quantity' for their needs when they submitted to the authority of the Queen.

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36. H A Ballara and G Scott, 'Porangahau Block' (Wai 201 rod, doc i1), pp 1–7 (cited in Cowie, p 7)
37. H A Ballara and G Scott, 'Tamaki Block' (Wai 201 rod, doc i1), pp 4, 6–7 (cited in Cowie, p 7)
38. Cowie, p 3
39. A E Woodhouse, *George Rhodes of the Levels and his Brothers: Early Settlers of New Zealand*, Whitcomb and Tombs Ltd, 1937, pp 18–19 (cited in Cowie, p 19)

Block name	Acreage	Date	Signatures	Price (£)	Reserves
Waipukurau	279,000	4 November 1851	376	4800	8 reserves totalling 4,378 acres
Ahuriri	265,000	17 November 1851	300	1500	3 reserves totalling 2,415 acres, plus a waka landing
Mohaka	85,700	5 December 1851	240	800	1 reserve of 100 acres and a burial site
Tautane (1st) (2nd) (3rd)	 70,000 	3 January 1854 11 March 1858 26 January 1863	32 90 Karaitiana	1000 500 150	Tautane (and forest) Waimata, Tutaki 5 percent included 5 percent excluded Te Wainui 1000 acres Burial site 50 acres
Okawa	16,000	17 January 1854 7 June 1859	4 2	800 50	
Kahuranaki	22,000	9 January 1854	4	1100	
Te Umuopa		6 January 1854	5	300	
Waimarama		10 February 1855	Tamihi–koia		
Ngarururoro	5000	14 February 1855	6	200	
Matau a Maui	29,000	28 March 1855 24 February 1857	33 11	2000 1000	Rangaika 300 acres

Tutaekuri	1000	11 April 1855 13 November 1856	Tareha 3	100 200	Tareha's reserve 10 acres
Mataruahou (land adjourning)		11 April 1855 13 November 1856	Tareha 3	25 25	Tareha's two town sections 178-179 Carlyle Street
Te Mata	16,000	13 April 1855 13 November 1856	12 10	500 500	Karanema's 4000 acres Kohinerakau1200 acres Heipora whanau
Waipureku	200	13 April 1855 15 May 1855	2 2	100 30	
Otapahi	6400	13 August 1855	4	200	
Ruahine- Ruataniwha north	130,000	1855 to 1859		10,500	12 Crown grants 1150 acres 4 Crown grants 1050 acres Tikokino 900 acres
Te Totara	26,000	28 August 1855	3	1300	
Aorangi	38,000	22 March 1856	88	2000	Not named 803 acres
Maraekakaho	30,000	20 November 1856 4 July 1857	18 16	1000	
Manga o Rangipeke	10,000	3 January 1857 29 June 1857	3 19	150 500	
Ruahine bush	100,000	13 July 1857	128	3000	
Te Aute College	1745 816	31 March 1857 31 March 1857	45 45		
Otaranga	50,000	15 March 1857	27	1000	
Puahanui	12,000	3 August 1857	32	1200	

Crown purchases before 1865. Source: Cowie, pp 57–59.

Block name	Acreage	Date	Signatures	Price (£)	Reserves
PorangaHau	145,000	10 March 1858	83	3000	Eparaima 1 and 2, and four reserves totalling 278 acres
Omarutaiari (Takapau)	11,700	1858 16 July 1859 12 August 1859	Uru Peni 2 4	100 50 400	Not named 1000 acres
Karanema's reserve*	4000	5 March 1858 29 September 1858	8 6	400 400	
Middle south Porangahau	16,000	18 July 1859	2	400	Crown grants 1300 acres
Aropaoanui	2000	19 April 1859 20 June 1859	12 5	150 240	
Ranga a Tawhao	5000	28 April 1859	5	350	
Kaweka	50,000	1859 to 1875		430	
Moeangiangi	12,000	7 July 1859	15	310	Moeangiangi 200 acres
Kereru	5000	15 August 1859	12	600	
Tukuwaru reserve*	71	15 August 1859	3	40	
Pourerere* and Tuingarara*		10 August 1859 15 May 1862 15 May 1862	Morena Morena Te Hapu	25 100 280	(82 acres remained)
Te Heru o Tureia*		5 July 1859	11		
Eparaima bush*	500	26 May 1859	5	150	

* Reserves

Crown purchases before 1865. Source: Cowie, pp 57–59.

McLean subsequently negotiated the division of loyal and rebel land, resulting in the Mohaka–Waikare 1 deed, or the 1868 agreement, in which the Crown relinquished its claims to the coastal half of the confiscation district, except for the Tangoio block (8500 acres) and Otumatahi (4470 acres, for which a down-payment was made in January 1866 of £400) and the Moeangiangi and Arapaoanui blocks (13,686 acres), which the Crown claimed it already owned through earlier purchases. In return, Maori withdrew their rights to the rest of the block (about 193,000 acres) and the Crown paid signatories £150 each to relinquish their claims to that area.

In June 1870, the Mohaka–Waikare 2 deed clearly spelt out the land the Government was to retain. The coastal Tangoio block (9050 acres) was to be retained by the Crown, except for one 10-acre reserve. In 1872, this block was transferred to a private individual in exchange for land in Poverty Bay. The Waitara block (40,000 acres, leased in 1872 to a private individual) and redoubt sites at Te Haroto (1000 acres) and Tarawera (2000 acres), as well as those sites the Crown considered it had already purchased (listed within the 1868 agreement), were also retained by the Crown. Tareha and others were paid £400 in full and final settlement of Mohaka–Waikare.

The rest of the confiscation area was divided into 12 blocks, under the names of 30 (on average) loyal Maori to whom the land was returned. The Crown was thereby acknowledging that Hawke's Bay Maori wished to secure for themselves their remaining land in perpetuity. One significant clause of the deed stated that:

> the whole of the land [to be retained by Maori] shall be inalienable both as to the sale and mortgage, and held *in trust* in the manner provided, or hereinafter to be provided by the General Assembly for Native Land held *under trust.* [Emphasis added.][40]

The deed was validated by the Mohaka and Waikare District Act 1870, which was then repealed in 1878. The blocks were then in a kind of limbo, as unallocated Crown land, until the Native Lands Act Amendment Act 1881 reinstituted the provisions of the 1870 Act.

(5) *Purchases under the Native Lands Act (Crown and private as indicated)*

Although this is not an exhaustive list of purchases under the Native Land Acts, purchases of significance are given below.

(a) *1865–73:* What appears to be the final deed for the Kaweka block was signed on 15 June 1864 (for which negotiations had begun with deeds in 1859). Although a survey had not been completed, £300 was paid. A further deed for land that lay entirely within this Kaweka block was later signed in 3 May 1875 by 43 Maori apparently representing Ngati Kurapoto, who were paid £540 by the Crown.

In January 1866, the first deed was signed for the Otimatahi block (north-east of the Moeangiangi block), and £20 was paid to each of the 11 signatories. A second

40. 'Mohaka–Waikere Block No 2', deed, 13 June 1870, in Turton, p 559 (cited in Cowie, p 113)

deed was signed by different people (once the block had passed through the court) in December 1866, at which time £400 was paid out for the 4470 acres. On 9 June 1866, the Crown negotiated the purchase of the land reserved from the Moeangiangi block sold in 1859 (which was by that time identified as comprising 1000 acres).

In 1867, the Heretaunga block (of 19,000 acres) passed through the Native Land Court, and in April 1867, the Crown grant was issued to 10 representatives of 11 hapu. The majority (although not all) of shareholder interests were subsequently purchased (one at a time) until, by 1870, all the grantees had consented to the sale of the block in some form or other. The sale was confirmed by a final signing and distribution of payment in Napier.

On 4 July 1867, a Crown grant was made over to J G Gordon in exchange for £100 for the 300 or so acres originally reserved from the sale of Te Matau-a-Maui in 1855.

On 1 June 1868, the Government paid a further £85 for the extinguishment of the title at Maungaharuru, for which a down-payment had been made in 1865 and 1866 (a block that had previously been confiscated).

On 29 April 1870, preliminary deeds were signed for the Maharahara, Te Ahuaturanga, and Puketoi blocks, and £50 was paid for each block. Having been passed through the court, the Puketoi block (110,000 acre) was split into five, while Te Ahuaturanga was awarded to just seven people, as was Maharahara. The Omaranui block of 3573 acres on the southern bank of the Tutaekuri River passed before the Native Land Court in March 1866 and was purchased outright by a private individual in 1870 for £2500. By April 1871, an estimated £1300 had been advanced to grantees of these three large blocks, which had been subdivided by the court.

On 1 June 1871, 12 grantees signed an agreement to sell 12 blocks within Seventy Mile Bush for £16,000, of which £600 was paid immediately. Following further negotiations with the shareholders, £12,000 was paid on 16 August to the 69 signatories of the Seventy Mile Bush deed. On 25 December 1873, the final £4000 was paid over to about 65 signatories who also largely appeared on the 1871 deed for the sale of 230,000 acres of the 300,000-acre Hawke's Bay part of the Tamaki (Seventy Mile) Bush. By paying small cash advances to customary owners, the Crown was eventually successful in gaining the consent of a majority of shareholders to acquire the land.

(b) *1874–90:* Very little purchasing was done in the Hawke's Bay area between 1874 and 1890. The discussion below includes examples of the purchases made at this time.

From the mid-1880s, purchasing in the Tamaki blocks extended to include other blocks in the southern Hawke's Bay area. In 1888, a down-payment of £122 was made on Waikopiro, estimated at 26,400 acres. Also in 1888, £100 was advanced on the 58,000-acre Manawakitoe block. By 1891, the Tiratu block had a £6 deposit paid against it and Piripiri block had £1013 paid against it (although the block had been awarded an inalienable status by the Crown in 1870).

The Te Awa o te Atua block of 5070 acres came before the Native Land Court in March 1866. A final conveyance was made for the private sale of this block in 1877. One 400-acre reserve was made that remained in Maori ownership.

In 1880, the Crown took possession of a 16,684-acre partition of the 19,792-acre Rotokakarunga block, having purchased 25 of the 30 shares in it. By 1914, the remaining 2805 acres had been sold to Europeans in a piecemeal fashion.

In 1883, the Maungataniwha block was sold to a Wellington accountant.

(c) *1891–1910:* Following something of a lull in land purchasing after 1875, the Crown renewed its energies in land purchasing in the Hawke's Bay district in 1891. Note once again that this is not an exhaustive account of purchases made at this time.

In 1891, the Crown was engaged in the purchasing of the Manawakitoe, Piripiri, Umutaoroa, Waikopiro, and Tiratu blocks in the southern Hawke's Bay area. From 1894, this was extended to include Ngapaeruru, Tamaki, and Rakautatahi. An initial payment of £500 was made on 22,079 acres in the Tamaki block. Also in 1894, payments were made on Ngapaeruru (£700), Waikopiro (£400), Rakautatahi (£100). Waikopiro b (226 acres) was gazetted as purchased by the Crown in July 1896 for £113.

In 1895, Tiratu was purchased for 10 shillings an acre, and Ngapaeruru 1 to 9 for five shillings an acre. Rakautatahi (165 acres) was further subdivided and received 11 shillings an acre, while the Waikopiro subdivision of 506 acres was purchased for 10s 6d an acre. Piripiri was partially purchased for nearly £2000 (a rate of 10 shillings an acre), and in 1899 the bulk of Piripiri, less 933 acres, was gazetted. Ngapaeruru 6c (93,699 acres) was finally gazetted as acquired in August 1898 for 10 shillings an acre, likewise Tamaki 1 and 2, gazetted on the same day.

In 1905, Ngapaeruru 7f2 (617 acres) was finally acquired on 24 August. In 1906, the Crown purchased 5414 acres from Waimarama shareholders (an estate totalling 32,000 acres), and by 1908 it had acquired 10,500 acres of the land. In 1911, 6698 acres belonging to one shareholder were sold to private buyers, and by 1929, Maori had sold most of the Waimarama estate.

(d) *Post-1910:* Until 1910, none of the 'returned' Mohaka–Waikare blocks, which were supposed to be inalienable, had been sold to the Crown. However, 12,030 acres of the Kaiwaka block (one of the blocks of land 'returned' to Maori after the confiscations in the 1860s) was sold for just over £14,100 in 1911. The Crown undertook similar efforts to purchase land in other blocks returned to Maori.[41] By 1928, only three of the 13 blocks, Tangoio South, Tarawera, and Tataraakina, were left wholly in Maori hands.

Crown purchasing of the Mohaka and Whareraurakau blocks commenced in 1912. Most of Whareraurakau was purchased by the Crown between 1915 and 1918, with one section sold to a European. Further remaining land was sold to the

41. For a discussion of the history of the Tarawera and Tataraakina blocks, see R Boast, 'Report on the Mohaka–Waikare Confiscation', February 1994 (Wai 201 rod, doc j1), vol 1, pp 160–214.

Crown as late as 1973. By 1931, the Crown had also purchased outright 19 subdivisions of the Mohaka block and shares in 46 other subdivisions, thereby owning just under half of the original 22,355 acres. Similar proportions of the Waihua block were acquired by the resident lessees between 1910 and 1930, so by that time Ngati Pahauwera retained just 30,000 acres of their original 200,000-acre rohe.

(6) *Land taken for public purposes*

Under the 1870 agreement, 10 acres was taken for a public landing at Whakaari and 50 acres was taken for a ferry landing site on the Mohaka River.

Evidently, land was also taken for the construction of the Manawatu to Napier and Napier to Gisborne railways. Other land was taken mostly in small blocks for a variety of reasons, such as for roads, quarries, river diversion, suburban development, and water supplies, although details of these acquisitions are not supplied in the Hawke's Bay report.[42]

11.3.4 Outcomes for main tribes in the area

According to Samuel Locke's 1873 quantification of land alienation in the southern area of the bay (south of the Petane River and the Taupo road), 1.34 million acres were purchased by the Crown before 1865, and of the remaining 760,000 acres, a further 236,894 acres were purchased before 1873. By 1873, the Native Land Court had awarded certificates of title for 623,433 acres, of which 132,483 acres were identified as inalienable. This left 490,950 acres available for alienation. A further 4668 acres were reserved for Maori. Locke estimated that 136,567 acres were left in Maori customary ownership: about 50,000 acres at Waimanawa; 28,831 acres at Porangaahau; 41,000 acres at Tamaki; and the remaining 13,000 or so acres scattered throughout Hawke's Bay.[43] A list drawn up in 1874 of blocks that had been through the Native Land Court (excluding those that were part of the Wairoa court sittings) demonstrated 'how little Maori were in direct control or occupation of Hawke's Bay lands . . . Only 13,500 acres appear to have still been in Maori occupation.'[44] Cowie concludes that 'most Maori land in the Hawke's Bay had been alienated to Crown or private purchasers. That which remained in their ownership was either leased to Europeans, heavily mortgaged, or suffered from a lack of capital development.'[45]

In 1891, official statistics recorded that Hawke's Bay Maori held just under 100,000 acres of customary land. Officials believed that around 20,000 acres of this were being used by Maori for pastoral or agricultural purposes. Of the approximately 460,000 acres for which title was awarded and that had not been alienated,

42. Cowie, p 174
43. Ibid, p 98
44. Ibid, p 125
45. Ibid, p 124

almost all was leased to Europeans, only 10,000 acres being identified as used directly by Maori.[46]

By 1891, Hawke's Bay Maori had lost most of their traditional rohe.[47] Even so, some hapu had managed to retain land for their own farming and were receiving income from leased land. In the next 40 years, the picture changed considerably, as the Liberals' land purchase policy, and alienations under the Maori land boards between 1910 and 1930, deprived Maori of much of this remaining land. Their economic marginalisation and consequent social problems were probably at their worst in the 1920s and 1930s, just at the time when increasing immunity to epidemic disease was leading to rapid demographic increase.

11.3.5 Examples of Treaty issues arising

(1) *The Crown's 1851 purchasing programme*

As was the case in the Wairarapa district also, the question arose in Hawke's Bay as to whether the chiefs had the right to alienate land on behalf of their people. For an alienation to be comprehensive, all Maori with customary interests had a right to be identified and consulted either directly or through their representatives in open and public proceedings, and their full consent gained to all aspects of the purchase, including boundaries and price.[48] Despite McLean's assurances to Colenso that he did not intend to depart from his stated intention of 'not taking any Lands without the full consent of the rightful owners',[49] McLean's consultation with the customary owners was inadequate in respect of the Mohaka block in particular and was dubious in others.[50]

The distribution of gold in payment for Waipukurau is questionable. McLean was anticipating the next purchases planned for the district and he convinced chiefs distributing the payment among eligible tribes to advance £100 to the potential sellers of the Castle Point block in Wairarapa. As a result, one tribe missed out on its share of the original distribution of money paid for the land.[51]

Maori ceding land at this period were certainly led to expect ongoing benefits other than the initial purchase price (which was very low). But the Crown concentrated these benefits essentially upon a few chiefs, and then for a relatively short period. By not making residential reserves absolutely inalienable, by not leaving a sufficient excess for Maori leasing, and by progressively limiting Maori access to mahinga kai, the Crown failed to ensure that ongoing benefits were made secure for Maori vendors of these vast areas.

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46. Ibid, p 134
47. Ibid, p 163
48. Ballara and Scott, vol 1, pp 196–197, 201 (as paraphrased by Cowie, p 26)
49. Colenso journal, 29 March 1851, p 1155 (cited in Cowie, p 28)
50. Cowie, p 30
51. McLean journal, 6 November 1851, p 1344 (cited in Cowie, p 33)

(2) *1854 purchases*

Under the supervision of McLean, the Crown undertook covert agreements with specific chiefs that resulted in the alienation of land to which many of the customary title holders had not consented. The legitimacy of the 1854 purchases of Kahuranaki and Okawa, in particular, is called into question by the Crown's subsequent actions in 1858, when it effectively repurchased some areas of land where (as Cooper admitted)[52] there had not been adequate extinguishment of native title. Further 'compensation' was paid for the Okawa block (although the original deed in 1854 was defended), and the Kahuranaki block of 12,000 acres was evidently purchased in 1858 (although records are scant on the earlier purchase).

According to Cowie, McLean negotiated the Tautane block purchase without consulting with the occupants of the land.[53] Cowie provides evidence that some of those included in the deed had, at best, only marginal interests in the land.[54] He comments that the Crown, in this respect, failed in its responsibility to conduct purchases that respected the rights of all Maori.[55] Land Purchase Commissioner Cooper noted when land purchasing operations in Hawke's Bay were suspended in 1860 and that, if they were ever to resume, they would first need (among other things) to conduct an investigation into customary ownership of the blocks. This casts doubt upon the adequacy of the Crown's investigation up to that point.[56]

(3) *1856–57 purchases*

The Crown's responsibility to provide Maori active protection is also drawn into question with respect to Cooper's actions in the purchase of the Maraekakaho and other blocks. According to Cowie, Cooper enforced the 1846 prohibition on district leasing, thus denying chiefs rents as a way of repaying debts, and exploited Maori factionalism and Maori financial difficulties in order to purchase Maori land.[57] Cooper explicitly stated to McLean that he intended to 'suspend purchases and starve the Natives into compliance' as a solution to resistance to sales.[58]

(4) *The Pakiaka war*

Crown purchasing is understood to have caused the violence between Ngati Te Whatuiapiti (and associated hapu) and Ngati Kahungunu in the Pakiaka war, because Cooper and McLean insisted on accepting land offered by Te Hapuku, whom the Crown chose to promote as the paramount chief of the whole Hawke's Bay region, thereby exploiting and exacerbating factionalism among Hawke's Bay Maori.[59] When fighting eventually broke out, Cooper was to admit privately to McLean (and in doing so implicate the Crown by association) that there was 'no

52. Ballara and Scott, vol 4, document bank, pt 6, sec 104 (cited in Cowie, p 47)
53. Cowie, p 36
54. Ballara and Scott, Tautane block file, vol 2, p 4 (cited in Cowie, p 36)
55. Cowie, p 38
56. Cooper to McLean, 20 June 1861, AJHR, 1862, c-1, no 74, pp 353–355 (as discussed in Cowie, p 51)
57. Cowie, p 42
58. Cooper to McLean, 29 November 1856, AJHR, 1862, c-1, p 323
59. Ballara and Scott, vol 1, introduction, pp 85–112, particularly p 106 (as discussed in Cowie, p 44)

disguising the fact' that Te Hapuku had 'robbed his enemies to an enormous extent' and that he was bemused as to why Te Moananui and others had not taken action earlier.[60] The Reverend Samuel Williams also later attributed the cause of the fighting to Te Hapuku's agenda of selling land that belonged to others, and he accused McLean of encouraging this behaviour.[61] The peace agreement itself, reached in September 1858 by all Hawke's Bay Maori except Te Hapuku and his immediate family, focused on abolishing the system of selling through chiefs and emphasised that anyone found guilty of selling others' land in the future would face the punishment of death.[62] The tendency among Hawke's Bay Maori themselves, however, was to attribute the blame for the factions in their inter-hapu relation to themselves rather than the Crown. This arguably says more about Maori sense of ongoing authority over their land than it does about absolving the Crown of its responsibility of active protection and article 2 guarantees under the Treaty of Waitangi.[63]

(5) *Reserves in pre-1865 purchases*

According to oral record, McLean gave assurances that a reserve would be made at Kaiarero at the time of the Ahuriri purchase in 1851, although this reserve did not appear on the deed.[64] Inadequate surveying by the Crown also appears to be the cause for further grievances related to reserves, as in the case of the Oreo reserve, which Maori claimed was over 2000 acres, although the Crown had estimated it as just 308 acres. In order to resolve this discrepancy, the Crown purchased all but 308 acres of the land in question in 1859. When the reserve was later reduced to 257 acres, owing to a further surveying error, no compensation was paid to Maori.[65]

Of the approximately 1.5 million acres purchased by the Crown in the 1850s, only about 21,000 acres, or just 1.5 percent, of this land was held back in reserve for Maori.[66] Despite the small size of this land reserved to Maori, few attempts were made to make these reserves inalienable. In fact, the Crown subsequently purchased some of this reserved land itself. For example, the Tukuwaru reserve was purchased in August 1859, as well as parts of Haowhenua and Pourerere in 1861 and 1862[67] and the reserves in Mohaka and Porangahau in 1859.

(6) *The purchase of the Moeangiangi reserve in 1859*

According to Cowie, 'the Crown's role in this purchase deserves wholesale condemnation'. According to Cowie, not only did it involve the acquisition of an area that had been specifically exempted from an earlier, larger sale in 1859, but the

60. Cooper to McLean, 30 March 1857, McLean papers, folder 227, ATL (cited in Cowie, p 45)
61. Memo by Samuel Williams, 9 September 1861, Williams family papers, folder 50, ATL (cited in Cowie, p 46)
62. Cooper to McLean, 30 September 1858, AJHR, 1862, c-1, no 47, p 340 (cited in Cowie, p 46)
63. Cowie p 46
64. Ballara and Scott, Ahuriri block file, vol 1, pp 49–50 (cited in Cowie, p 53)
65. Ballara and Scott, Waipukurau block file, vol 2, pp 30–33 (cited in Cowie, p 53)
66. Cowie, p 54
67. Ballara and Scott, Waipukurau block purchase, vol 2, pp 19–20, 26, 28 (cited in Cowie, p 54)

second purchase was negotiated with men who did not sign the original transaction and reserve agreement. Furthermore, in selecting the 'owners' in this manner, the Crown usurped the court's role in determining customary Maori owners of the land.[68]

(7) *The Heretaunga and other '10-owner rule' transactions*

Despite assurances by the Native Land Court that, under the Native Land Act 1865, individual grantees were trustees for the hapu and did not have the power to alienate shares in the Heretaunga block without the consent of all 10 owners, individual shares were subsequently purchased in a piecemeal fashion (after it was discovered that this was legally possible), until all grantees had, by 1870, consented to the sale of the block.[69] Many other blocks with 10 or fewer owners under the 1865 Act were similarly alienated (particularly in Hawke's Bay and Wairarapa, but in other districts as well). In Hawke's Bay, the manipulations and pressure that were involved, to the advantage of certain prominent men in the province, became an open scandal and a target of attack in the context of settler politics. Native Minister McLean responded by setting up a commission of inquiry into the operation of the land Acts under H W Haultain in 1871. In 1873, a royal commission, the Hawke's Bay Commission, inquired into the operation of the land Acts in that province.

The evidence presented to the commission of inquiry in 1873 shows that the grantees were subject to consistent pressure and threats of prosecution for debt to force them into the sale of their shares.[70] Although the majority of commissioners concluded that this was not unlawful and did not recommend undoing past transactions, the minority view of Commissioner Hikairo is more to the point in Treaty terms; the land law left the Maori grantees bereft of reasonable protections they had customarily had and may have expected under the Treaty. Restrictions against mortgaging began to be introduced under section 17 of the Native Lands Act 1867, but not all land that went though the court was so protected. Maori also remained subject to the pressure to sell unmortgaged land for the repayment of civil debt.

The Government's position in the Hawke's Bay transactions (and land law generally) was clearly that it would not involve itself in private transactions occurring in the market place. However, it did pay to create some statutory protection for Maori. Notably, this included the Native Land Frauds Prevention Act 1870, which provided for trust commissioners to check against outright fraud and certify all transactions. More importantly, a new Act, the Native Land Act 1873, developed out of the 1873 commission. This required that every owner be listed on the 'memorial of ownership' and that each sign a deed of alienation affecting their interests. These lands are discussed in volume ii, chapter 7.

Fundamentally, however, the settler government and parliament sought to create titles in Maori land that were as negotiable as any other titles. Maori also rejected excessively paternalistic controls. The difficulty was that the traditional community

68. Cowie, pp 93–94
69. Ibid, p 68
70. For a further discussion of the experiences of the grantees, see Cowie, pp 71–84.

controls over land had been replaced by a form of title in which every listed owner (whether up to 10 owners or all owners) could individually and severally sell his or her interest. This left Maori fully exposed to market forces but with little prior experience in handling them. They had virtually to compete on an equal footing with Pakeha businessmen in the market place.[71] Indeed, the use of credit as a means of securing a lien on Maori land, together with the individual purchase of interests rather than sale by public auction, was deliberately facilitated by the Legislature, despite strong arguments against it by prominent figures such as former chief justice Sir William Martin.

(8) *War and confiscations*

Confiscations in the Mohaka–Waikare district were undertaken by the Crown on the basis that Maori within the district (largely identified as Ngati Hineuru) had rebelled against the Government. It has been argued, with justification, that the fighting in Hawke's Bay did not warrant the tag of 'rebellion', nor did it justify the Crown's subsequent confiscations.[72] Hawke's Bay tribes were simply caught up in the sequence of events flowing from the Waitara purchase and the rise of Pai Marire as a means of preserving land and self-determination.

Apart from the Treaty breaches involved in land confiscation itself, the Government's handling of the land in the Mohaka–Waikare district is dubious in Treaty terms. A list of owners of the returned land was prepared under McLean's direction in 1869 and formalised by the Mohaka and Waikare District Act 1870. The named owners were not, however, defined as trustees and the returned blocks were not surveyed and Crown granted. (See volume ii, chapter 6, for a more general discussion of raupatu policy and law in general, including the Hawke's Bay confiscations.)

(9) *The sale of Omaranui*

When the case of the purchase of the Omaranui block went to the Supreme Court, the jury found that Ngatihira's interests (affecting 163 acres) should not be affected by the conveyance, because their consent had not been obtained for the alienation. The judge, however, refused to upset the grant awarded as a result of the sale, and he awarded costs to the private purchaser. In identifying the injustice to Ngatihira with this ruling, Cowie comments that the Government 'should have been able to intervene in order to amend the error at Omaranui, and save Paora Kaiwhata's hapu from eviction'.[73] Comment was made at the time also that it was proper for the Government to legislate to overrule the Supreme Court decision.[74] In the case of Te Awa o te Atua, the courts again failed to protect Maori interests, and the Government admitted there was a dispute, but was unable to settle it.[75]

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71. Cowie, p 90
72. Boast, p 40; Ballara and Scott, Mohaka–Waikare file, vol 1, pp 24–29 (cited in Cowie, pp 104–105)
73. Cowie, p 144
74. Evidence for Ormond, AJHR, 1881, i-2b, p 11 (cited in Cowie, p 142)
75. As discussed in Cowie, pp 142–145

(10) ***Reserves***

Of the 36,264 acres that Heaphy reserved for Maori in a trust deed in 1870, only half remained by 1891. Reports indicate that applications to have the inalienable status of reserves removed were accepted when there appeared no better reason for the initial making of the land inalienable, other than the fact that Maori did not wish to sell it. For the inalienable status of the land to remain, Maori were asked by judges to 'rationalise their reasons', a request that, although recognising Maori rights of self-determination, is clearly out of step with the Crown's duty of active protection of Maori against their own immediate pressures and temptations (and in some cases compulsion) to sell. All the same, the removal of restrictions in the Hawke's Bay is rare, at least until 1891.

11.3.6 *Post-1910 alienations*

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

11.4 Wairoa

11.4.1 Main geographic features relevant to habitation and land use

The boundaries of the Wairoa section of Rangahaua Whanui research district 11 cover the area from the Waihua River to Lake Waikaremoana and then run along the southern boundary of the Urewera National Park across the top of the Hangaroa Valley to Maraetaha on the East Coast.

This mostly hilly district is drained by the Wairoa, Waihua, Nuhaka, and Tahaenui Rivers, as well as by numerous smaller streams. Settlement by Maori appears to have been focused inland on the valleys of the Ruakituri, Waiau, and other rivers, and along the coast, particularly around Wairoa and Whakaki Lagoons, where abundant food resources were located. Whaling stations were established at Wairoa and Mahia in the early 1830s.

11.4.2 Main tribal groupings

The account of Maori history in Wairoa given in the district report, upon which this summary is based, is subject to interpretation. Joy Hippolite advises that this is not

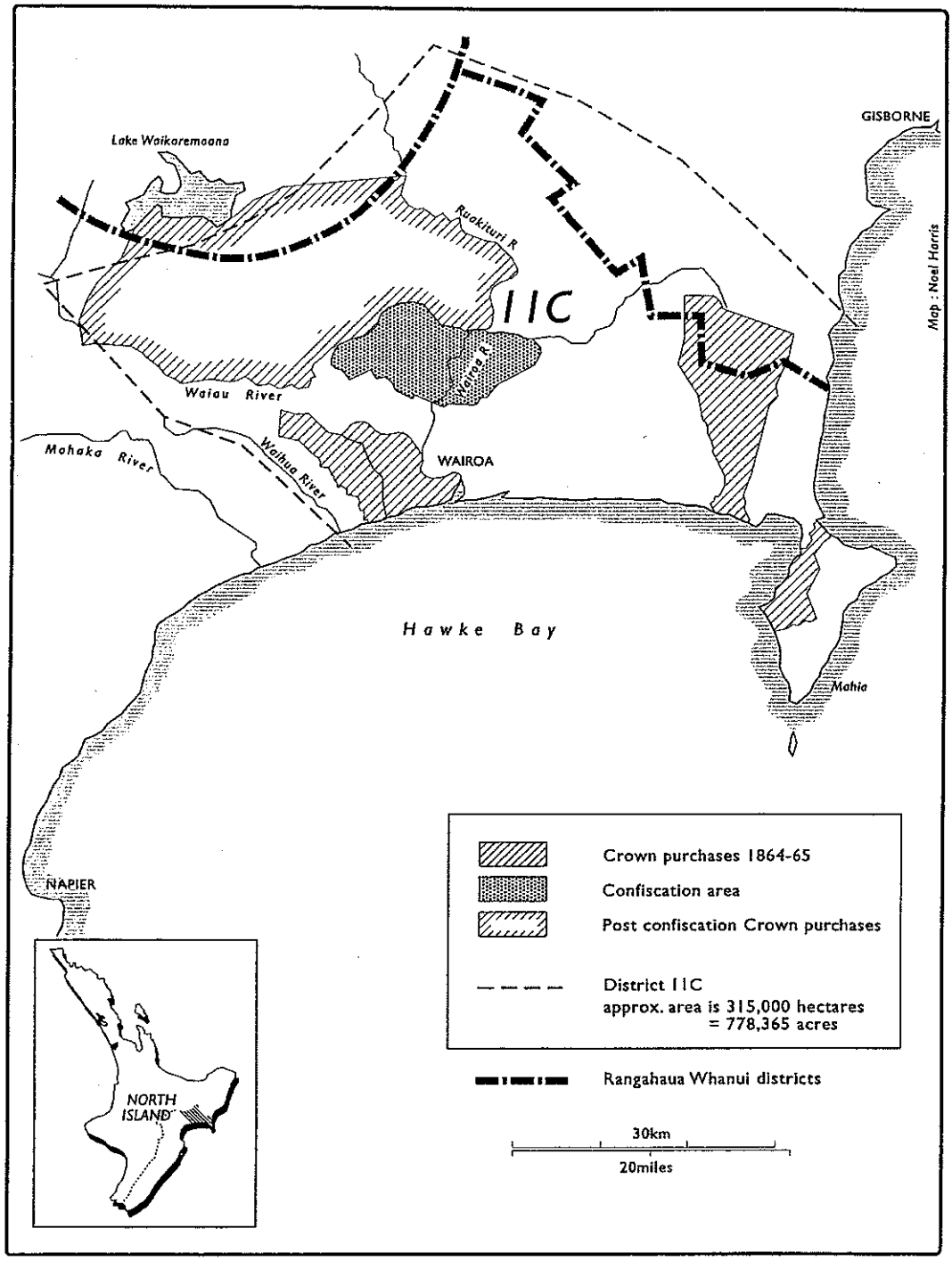

Figure 20: District 11C (Wairoa)

the only version and is intended only to introduce the hapu that had an interest in the district in 1840. The names mentioned here may not be the only hapu associated with the area.[76]

According to one tradition, Ngati Kahungunu began with Tamatea, the commander of the Takitimu waka.[77] Kahungunu himself, Tamatea's great grandson, grew up in Tauranga, later marrying a daughter of Ruapani (from whom Ngati Ruapani descend). Kahungunu travelled on down the coast to the Mahia Peninsula, where he formed an important union with Rongomaiwahine, from which many East Coast Maori descend. Their children eventually migrated from Mahia to Turanganui, where they intermarried with prominent people of the Poverty Bay district.

Kahungunu's grandchildren, Hinemanuhiri and Rakaipaaka, migrated from Turanganui after a fight in which Rakaipaaka's life was spared on the condition that he left the district. He left with Hinemanuhiri, and the two parted ways – she and her people settled at the place now known as Te Mania, while his descendants eventually settled on the Mahia Peninsula, and Rakaipaaka himself settled on the hills behind Nuhaka. Following a battle at Taupara with Ngai Tauira (who were already resident there), Ngati Hinemanuhiri became established in Wairoa.

Two of Hinemanuhiri's children became eponymous ancestors of hapu: Ngaitamaterangi and Ngati Hinganga, who had claims to the Waiau and Ruakituri Rivers respectively.[78] The eastern and western sides of the Wairoa River were named Te ari a Te Maaha and Te ari a Tapuwae respectively, after two brothers who were separated and placed on opposite sides of the river but whose descendants later intermarried, reuniting the family.[79] Tapuwae was, according to one tradition, the principal and outstanding ancestor of the Wairoa district.[80] Other marriages and alliances, discussed in more detail by Hippolite, were important in uniting the people of the area, especially during the musket wars in the first few decades of the nineteenth century.[81] Other important ancestors of the Wairoa district include Te Kapuamatatoru, of the inland Wairoa area, and Pourangahua, whose people's territory included the Te Tahora block at the far end of the Ruakituri Valley.

From 1769 to 1840, the major hapu of the Wairoa and Te Mahia region were: Hinemanuhiri, Rakaipaaka, and Kahu. The latter were located at the mouth of the Wairoa between Rakaipaaka and Ngati Hinemanuhiri to the east and north and Ngati Pahauwera and associated hapu to the south, and there is some debate as to their origins. Ngati Hikairo hapu (of Kahungunu descent) also had interests in the Mahia Peninsula, mainly at Tawapata. Ngai (or Ngati) Tu were also living at Nukutaurua in the 1820s. Ngati Ruapani, on the other hand, were in the Wairoa–Waikaremoana area.[82]

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76. J Hippolite, *Wairoa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 1
77. Ballara, p 61 (cited in Hippolite, p 1)
78. Ballara, p 177 (cited in Hippolite, p 6)
79. J H Mitchell, *Takitimu*, Southern Reprints, 1972, pp 120–121 (cited in Hippolite, p 7)
80. W E Gudgeon, *Journal of the Polynesian Society*, vol 6, 1897, p 183; Mitchell, p 118 (cited in Hippolite, p 7)
81. Mitchell, pp 143–145 (cited in Hippolite, p 7)
82. Ballara, p 167 (cited in Hippolite, p 8)

In the early decades of the nineteenth century, the invasions of northern tribes focused attention on forming a wider hapu alliance in the district. In particular, invasions by musket-bearing Ngapuhi from the north encouraged resident hapu to band together to protect themselves and their land. In 1824, Te Pakake Pa in Heretanga was attacked by Ngati Raukawa, Waikato, and Tuwharetoa. Having claimed victory over the pa, Waikato chiefs made peace with the captive chiefs. Also around this time, northern Ngapuhi came back to the district and attacked Titirangi Pa. The result of these various battles was to concentrate the population that escaped into a single unit at Nukutaurua, with profound implications in the kinship bonds it encouraged between previously disparate elements of the Kahungunu community.

Throughout 1826, Ngati Ruapani, Ngati Hinemanuhiri, and Ngati Pahauwera fought back against Tuhoe and their allies in a series of battles. By 1838, the wars had ended and peace was established between Ngati Kahungunu and Tuhoe and boundaries laid down between them. After this time, Ngati Kahungunu began returning to their former lands. Those hapu based in the Wairoa district by the 1830s were Hinemanuhiri, Rakaipaaka, Kahu, Kurupakiaka, Ngati Hikairo, Rongomaiwahine, Ngati Tu, and Ruapani.

11.4.3 Principal modes of land alienation

(1) ***Pre-1840 purchases (including approved old land claims and surplus lands)***

Old land claims in the Wairoa area were made by W B Rhodes on 10 December 1839 for 345,000 acres, for which he apparently paid £185, and 71,000 acres at Table Cape (Mahia Peninsula) on 13 December 1839, for which he paid £50. These claims were not reported upon or investigated by the Godfrey–Richmond commission. In 1852, the matter was referred to Francis Dillon Bell, the commissioner of Crown lands, who recommended that Cooper and his partners be granted 2560 acres in satisfaction of all claims lodged by them. In 1855, Commissioner Dommett at Ahuriri rejected a conditional acceptance of this grant by Rhodes, and the matter remained unresolved. In 1857, Rhodes complained that the land had been opened for public sale before his claim had been satisfied, but sales continued regardless. The matter was considered again in 1862 by Bell, who referred the matter to the Government for consideration. It is uncertain as to whether Rhodes ever took up the original grant.[83]

(2) ***Pre-1865 Crown purchases***

Seven blocks of approximately 179,370 acres were purchased by the Crown between October 1864 and the middle of 1865, for a total cost of £15,118, including survey costs and any extras. Although these purchases (as discussed below) were completed after the passing of the Native Land Act 1862, none of the blocks passed

83. See Hippolite, pp 15–18

through the Native Land Court before agreements to purchase were made. In fact, the first Native Land Court sitting at Wairoa was not held until 16 February 1867.

On 20 October 1864, the deed was signed for the Mahia block, for which a total price of £2000 was agreed to, with £1500 paid at the time and the remaining £500 to be paid on the completion of the survey. While originally estimated at 16,000 acres, the block turned out to contain 14,600 acres. A mahinga ika at Kinikini, below Taupiri Hill, was reserved from the sale. It would appear that the reserve was sold in 1909.[84]

On 16 March 1865, the Nuhaka block on the north bank of the Huhaka River was purchased for £3300, of which £2200 was paid on the day. The remaining £1100 was paid on 30 March 1866 to Ihaka Whaanga, Paora Apatu, and Hamuera Whaanga of Rakaipaaka. No reserves were set out in the deed, although according to Locke it was 'thoroughly understood' that Ihaka Waanga should be able to purchase about 600 acres at Waikokopu.[85] In 1880, 693 acres 37 perches were listed in a return for Ihaka, although he had died in 1875.

On 31 October 1864, McLean purchased the lower Wairoa block on behalf of the Crown from Pitiera Kopu, Tamihana Te Rautahi, Paora te Aputu, and Hiporakau. The Crown paid £1000 for the 3570-acre block, which included the Whakamahi Lagoon, an important mahinga kai. No reserves were indicated in the deed.

The Upper Wairoa block was purchased on 2 November 1864. The sum of £1200 was paid for the land: £700 on the day and £500 to be paid in Napier. The signatories to the deed included Pitiera Kopu, Hamana Tiakiwai, Tiopira Kaukau, Apirama Te Whenuariri, Maihe Kaimoana, Paora te Apatu, Pakuku, and Paraone. No reserves were marked on the original deed, but two reserves were marked on an attached plan: 28 acres 2 roods at Orere and 71 acres 3 roods at Pouhatu.

The Waihua block, within the area dominated by the Ngati Pahauwera hapu, was estimated at 12,000 acres but, once surveyed, was discovered to be closer to 14,000 acres. On 7 March 1865, £1000 was paid for the block. By the time the deed was signed, the block's area had increased to 21,000 acres and the purchase price had also increased to £1250. There were 72 signatories to the deed, including Paora Rerepu. One reserve of two acres was made at Tarere for Toha of Wairoa.

On 15 July 1865, Locke paid Maraki Kohea, Tamati Te Koari, Nira, and Kohere Nira £300 for their interests in Wairoa and Turiroa. Final payment was made for the Turiroa block proper on 19 July 1865, with £2600 paid for interests remaining in the land and a deed signed by Pitiera Kopu, Karaitiana, Kerei, Hare, Hamuera, Raharuhi, Raihanaia, Hapurona, and Paora Apatu.

By the same *Gazette* notice in 1866 that extinguished native title in the Turiroa block, the Potutu block (north of the Waihua Valley) was also announced to have been sold. At approximately 2800 acres, the block was purchased for £1100. The original deed for the purchase has not yet been located.

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84. ma 94/3, Royal Commission of Inquiry into the Mahia Block, correspondence and notes (cited in Hippolite, p 21)
85. Samuel Locke to McLean, 21 March 1865, McLean papers, ms 32, folder 393 (cited in Hippolite, p 23)

(3) *Pre-emption waiver purchases*

There were no pre-emption waiver purchases in district 11c.

(4) *Confiscations*

Under the East Coast Land Titles Investigation Act 1866, and its 1867 amendment Act, the Native Land Court was required to investigate the title of all lands between Lottin Point and Lake Waikaremoana in order to transfer all rebel land to Crown title and to issue 'loyal' Maori with a Crown grant (see sec 5.1).

On 5 April 1867, a 'deed of cession' was 'agreed' to by Wairoa Maori that ceded their blocks of land lying between the Wairoa and Waiau Rivers and between the Mangapoiki and Kauhauroa Streams on the left bank of the Wairoa River. Approximately 500 acres at Pakowhai and 20 sections of 50 acres each between the Kauhouroa and Wairoa Rivers were reserved to Maori. In return, the Crown withdrew its claim to rebel interests outside the ceded block. A payment of £800 was made to Wairoa Maori in complete extinguishment of native title. The Government retained 42,430 acres, of which 6888 acres were allocated to military settlers or immigrants, with the rest made available for sale.

The remaining land lying between the Waiau and Wairoa Rivers and the Ruakituri Stream stretching inland to Waikaremoana Lake was to be divided into blocks and returned to 'loyal chiefs' with a Government certificate of title. In 1872, Samuel Locke met with Wairoa Maori, and after lengthy discussions, it was agreed that the land to be returned would be divided into four blocks: Ruakituri (52,000 acres), Taramarama, Tukurangi (37,000 acres), and Waiau. An agreement was signed on 6 August by which the Government acquired, in addition to the land originally identified, 250 acres at Onepoto and 50 acres for a proposed road at the crossing of the Waikaretaheke Stream.

Tuhoe, however, laid claim to these four blocks also and the case went to the Native Land Court. The hearings were very short and did little to solve the problem of the ownership of the blocks. Locke proposed a payment of up to £2000 to Tuhoe, plus a reserve, in extinguishment of their claims, indicating that such a settlement had been reached. By a deed dated 12 November 1875, Tuhoe and Ruapani were paid £1250 to relinquish their claims. The four blocks in question (estimated to contain 157,000 acres in total) were almost immediately purchased by the Crown for £12,610. A total of 10,920 acres was reserved from the purchase for Maori. This included the payment to Tuhoe, as well as £9700 to those awarded title by the Crown (£2350 for Waiau, £2350 for Tukurangi, £2600 for Ruakituri, and £2400 for Taramarama). A further £160 was paid to leading Ngati Kahungunu, Tuhoe, and Ruapani chiefs for their assistance in completing the negotiations. A further sum of £1500 was paid to Ihaka Whaanga and 440 other 'loyal' Maori on 15 January 1876. By this transaction, a total of 146,080 acres were acquired by the Crown. The lands were proclaimed wastelands of the Crown on 13 August 1877.

From the ceded block, Ngati Kahungunu were promised 3800 acres out of Tukurangi, 1700 acres out of Taramarama, and 2920 acres out of Ruakituri; while

Block	Acreage	Block	Acreage
Awatere		Pihanui 2	1331
Hangaroa Matawai	3269	Potaka	
Hereheretau	8820	Ruarakaiputara	298
Hinewhaki	229	Takararoa	2707
Huramua 1, 3	1894	Taumataoteo	425
Huramura 2	187	Taupara	693
Kahuitara 1, 2		Tauwharetoi	50,389
Kairangi	418	Tawapata North	6444
Kaiwaitau	1371	Tawapata South	10,408
Kauhouroa 1	225	Te Aranui	453
Kauhouroa 2	440	Te Kiwi	133
Kauhouroa 3	100	Te Koutu	
Kauhouroa 4	458	Te Mahanga 1	2735
Kinikini reserve	115	Te Mahanga 2	932
Kopuawhara	6943	Te Mahanga North	3293
Mangaaruhe East	3878	Te Mahanga South	1120
Mangaaruhe West	2267	Te Matuku	2107
Moutere 1, 2	854	Te Rato	301
Ngaruetepo	75	Te Rewa	194
Nukuroa	10	Te Whakaki	1569
Nukutaurua	3432	Te Whakapau	281
Ohuia	1068	Te Wharepu	91
Opoho		Tuahu	9250
Opoiti		Tukemokihi	
Opoutama	167	Tutaekuri 1	12,542
Orangitirohia	211	Tutaekuri 2	629
Orere	28	Tutaekuri 3	
Owhio	5667	Tutuotekaha	
Paeroa 1	1495	Waihau	13,800
Paeroa 2	1850	Waimana	

Source: Wairoa minute book 1; AJHR, 1880, c-3; 1881, c-6: 1881, g-8; 1886, g-15; 1891, sess 2, g-10

Block	Acreage	Block	Acreage
Paeroa 3	236	Wairau	298
Pakowhai	600	Whakaongaonga	12,418
Paritu	12,142	Whangawehi 1	3071
Pihanui 1	6061	Whangawehi 2	1112
Total	203,534	Total	203,534

Source: Wairoa minute book 1; AJHR, 1880, c-3; 1881, c-6: 1881, g-8; 1886, g-15; 1891, sess 2, g-10

Tuhoe and Ruapani were promised 2500 acres. Crown grants for these reserves were issued in February 1881.

(5) ***Purchases under the Native Lands Act (Crown and private as indicated)***

(a) *1865–86:* In April 1868, the Kopuawhara block, 6312 acres on the west end of the Mahia Peninsula, was purchased by the Crown for £500, once it had passed through the Native Land Court. The deed indicated that Opoutama (167 acres) was reserved, and Kaiwaitau was exempted from the purchase. Also that month, a final payment of £350 (following an earlier payment of £250) was made on the Whangawehi 2 block (1112 acres also on the Mahia Peninsula), which had passed through the court in 1867, after the first payment had been made.

Hippolite notes that the figures in the table above do not represent all the blocks passed through the Native Land Court prior to 1886. Rather, they represent the blocks she was able to find in the time available to her.

(b) *1886–1910:* Large blocks of land in the northern part of the district, including the Mahia Peninsula, were acquired for little or no initial payment by the New Zealand Land Settlement Company directed by Wi Pere and W L Rees. The company was promoted as a trustee company and promised to secure substantial returns to the Maori owners when the land was developed (largely by Auckland capital) and on-sold. Instead, the land became security for the company's mortgages to the Bank of New Zealand. Some land in the area was sold under mortgagee's sale in 1891. In 1896, Nukutaurua and Moutere on the Mahia Peninsula were sold to J D Ormond by the Carroll–Wi Pere Trust, which had taken over from the now-defunct company to try to redeem the mortgage. More blocks were sold in 1904 and 1905, when Carroll and Wi Pere were in turn replaced by the statutory East Coast Trust.[86] (See volume ii, chapter 9, for the role of the Validation Court in these proceedings; for the New Zealand Company and the subsequent trust administrations, see chapter 5 of this volume.)

86. See list of blocks, AJHR, 1905, g-9, pp 1-2

(c) *Post-1910:* With respect to post-1910 purchases, the Wairoa sub-district fell within the Tairawhiti and Takitimu Maori Land Boards' districts, which also ran from East Cape to Wairarapa. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all files would be necessary to establish which of the boards' alienations fell within the Wairoa district. The total amount of land alienated between 1910 and 1930 for district 11 was 704,170. While it is not possible to say how much of this land came from the Wairoa sub-district, it is evident that some sales were made by the board in the area in an attempt to reduce the debt on the trust lands to manageable proportions.

(6) *Land taken for public purposes*

Public works takings in the Wairoa sub-district were particularly made for the purposes of road and rail links. For example, in 1916 customary land between the Awatere block and the north bank of the Wairoa River was taken for railway purposes. The Ministry of Works refused to pay compensation, arguing that this was already Crown land.[87]

(7) *Other alienations*

In 1881, Maori vested about 400,000 acres of land in the East Coast Native Land Settlement Company (renamed the New Zealand Native Land Settlement Company in 1883). Seventeen of the blocks concerned were in the Wairoa sub-district. In 1895, the Validation Court vested approximately 9930 acres of the Mahia Peninsula in the Carroll and Wi Pere Trust Estate, which was mortgaged by Carroll and Pere to redeem debts owed by the trust (see chapter 5 for a discussion of the trust's establishment). In 1896, a further 60,000 acres of inland Wairoa were also vested by the court, as well as 60,000 acres at Tahora 2. By 1897, the trustees controlled 222,094 acres of East Coast land, of which approximately 110,930 acres were in the Wairoa sub-district. Further lands in Wairoa were sold by the East Coast Trust after 1902 in order to clear the debt incurred by the Carroll–Wi Pere Trust. For a further discussion, see chapter 5.

11.4.4 Outcomes for main tribes in the area

By 1875, the Crown had acquired approximately 375,304 acres from Wairoa Maori as the result of 1864, 1865, and 1868 land sales, confiscations, and post-confiscation sales. This represents nearly half the land in the sub-district.[88]

By 1886, the amount of land left in the Wairoa district that had not passed through the Native Land Court totalled 276,300 acres. Of the 200,000 acres that had passed through the court since 1867, 36,622 acres were inalienable Maori land, the rest presumably sold or leased to the Crown and Europeans (not including reserves

87. Wairoa minute book 1 (cited in Hippolite, p 83)
88. Hippolite, p 52

from confiscated land).[89] Much more land was alienated after 1886, including alienations through the Validation Court and the Carroll–Wi Pere Trust.

Today, the amount of land remaining in Maori ownership in the Wairoa district is approximately 14,900 hectares,[90] including lands returned when the East Coast trust was wound up.

11.4.5 Examples of Treaty issues arising

(1) *Early Crown purchases*

Hippolite notes that none of the blocks purchased by the Crown in 1864 and 1865 had been passed through the Native land Court, despite the fact that the Native Land Act had been passed in 1862. She notes that the purpose of the Act was to determine Maori ownership of land prior to its sale or lease and that purchases should not have continued prior to determination of ownership. The Native Land Act 1865 was also not in effective operation in Wairoa (with the first court sitting in February 1867) before the Crown made further purchases. Hippolite concludes that:

> Perhaps because it was not in operation, McLean in at least one instance failed to ascertain whether all the right-holders had agreed to the sale of the land. This set off a chain reaction resulting in the Government buying more land.[91]

(This was typical of the purchasing under Crown pre-emption before 1865.)

At least one purchase was made in Wairoa at this time without adequate consultation with all owners. In the case of the Mahia purchase, McLean failed to ascertain whether all owners had agreed to the sale of the land. Hippolite reports that this led to a bitter dispute, with threats from Rongowhakaata to drive Pakeha off the land if it was not returned to them.[92]

Hippolite observes that, while some Maori in Wairoa wanted to sell land, they would have wanted to control the rate of alienation. She notes:

> They may have been compelled, though, into selling more land than they wanted to by McLean telling them that if they wanted European sellers, they would have to part with a sufficient quantity of land. In the case of Nuhaka, a 'small block of land' was increased to over 100,000 acres, after McLean had talked to them.[93]

She adds that 'McLean's deliberate disparagement of the value of land, which in the case of Wairoa was superb, also sits uneasily with the Crown's duty of active protection of Maori interests'.[94]

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89. AJHR, 1886, g-15, p 1 (cited in Hippolite, p 64)
90. Hippolite, p 75. See also the table that identifies the block names, pp 78–80.
91. Ibid, pp 30–31
92. Ibid, p 34
93. Ibid, p 33
94. Ibid, p 34

(2) *Crown purchases post-1870*

A series of complaints came before the Hawke's Bay Native Land Alienations Commission (established in 1873) regarding sales in Wairoa. According to Hippolite, the Te Kiwi block is an example of land acquired through fraud. William Couper took up a 21-year lease on this 133-acre block in 1869, in joint occupation of the land with the lessors. Couper, however, deceived Maori into signing an agreement giving him exclusive rights to the land. This was done with the knowledge of George Worgan, a licensed interpreter, who was subsequently charged with fraudulent behaviour in relation to a separate incident. Despite these and other occurrences that were acknowledged as genuine grievances of Maori, both Pakeha commissioners did not find any illegality.[95]

(3) *Confiscations*

The return of the four blocks of land to 'loyal' Wairoa Maori by the Crown may have been expedient rather than legal, because the Native Land Court should have issued a certificate transferring the land to the Crown under the East Coast Act (on the basis that the Maori owners were in rebellion) before the Crown could issue title.[96] Maori complained that persons without customary entitlement were admitted. (For a discussion of the implications of the East Coast Land Titles Investigation Act 1866 and subsequent legislation, see volume ii, chapters 5 and 6.)

(4) *Reserves*

Speaking generally of the reserves made from the lands ceded to the Crown, Hippolite notes that 'dissatisfaction over the way the grants for reserves were awarded was to persist into the twentieth century'.[97] Instead of each reserve being granted in accordance with hapu interests and occupation, reserves had been issued on an individual basis to all grantees identified as having an interest in the block. Following a series of petitions by Maori, the Native Land Claims Adjustment Act 1901 allowed the Native Land Court to re-investigate the ownership of the reserves. Further research is required to determine the fate of these reserves.

In 1881, Tamihana Huata requested the return of 300 acres known as Whakamarino, which he claimed had been wrongfully included in the 1100-acre Urewera reserve out of the Taramarama block. The Government took no action, and the 300 acres were eventually sold to private interests, at which point Huata demanded 300 acres elsewhere for his hapu. Upon investigation, it was discovered that the 300 acres had been accidentally omitted from the deed at the time of purchase and that the Native Land Court had ruled that the hapu look to the Government for redress. Upon doing so, the hapu was informed that 'these Natives have no claim and this has repeatedly been explained to them'.[98] Also, in 1887 the Tamihana Huata petitioned the Government claiming that 40 acres known as Ohuka in the Taramar-

95. AJHR, 1873, g-7, p 6 (cited in Hippolite, p 58)
96. Hippolite, p 40
97. Ibid, p 46
98. ma 1/1915/2346, minute dated 12 May 1896 (cited in Hippolite, p 49)

ama block had been loaned to the Government at the time of Te Kooti's raids but had never been returned to them. The petitioners were informed that the matter could not be reopened.[99]

(5) *Trust administrations*

The New Zealand Native Land Settlement Company was a private company. Its dealings in land became a matter of notoriety on the East Coast by the mid-1880s, however, and the Crown's responsibilities are at issue in a number of ways:

(a) The company's acquisitions from Maori did not conform strictly to the requirements of law in many cases, yet they passed the scrutiny of the trust commissioners or were subsequently legalised by the Validation Court. In particular, many blocks were mortgaged to the Bank of New Zealand and were subsequently sold. Although these may have involved a form of agreement with some of the Maori owners, doubts were cast on the adequacy of consultation, and it is significant that the practice of bringing more blocks in to support the mortgage ceased after Batham became judge and Ngata became counsel for the Maori owners.

(b) Although requested from 1891, the Government did not intervene to salvage the settlement company or the Carroll–Wi Pere Trust until 1902, when the debt had escalated and more land had to be sold (in 1904 and 1905) to salvage the remainder of the estate.

(c) The form of intervention that was eventually taken in 1902 effectively shut Maori out from farming their own land or sharing in the management of the East Coast Trust. Although ultimately very effective in redeeming the debt, developing the asset, and handing the land back to Maori in good order (thanks in part to the wool boom), the trust was also paternalistic and reduced the beneficial owners' autonomy and opportunity for important management experience.

(6) *Post-1910 alienations*

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

99. ma 1/1915/2346, 17 April 1890 (cited in Hippolite, p 50)

11.5 Additional Reading

The following are recommended for additional reading:

Angela Ballara and Gary Scott, 'Crown Purchases of Maori Land in Early Provincial Hawke's Bay', report commissioned by the Waitangi Tribunal for Wai 201, 1994;

Richard Boast, 'Mohaka–Waikare Confiscation: Consolidated Report', two volumes, 1996;

Dean Cowie, *Hawke's Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Paul Goldsmith, *Wairarapa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Joy Hippolite, 'Raupatu in Hawke's Bay', report commissioned by the Waitangi Tribunal, 1993 (Wai 201 rod, doc i17);

Joy Hippolite, *Wairoa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996; and

Vincent O'Malley, 'The Ahuriri Purchase', report commissioned by the Crown Forestry Rental Trust, 1995.

CHAPTER 12

WELLINGTON

12.1 Principal Data

12.1.1 Estimated total land area for the district

The estimated total land area for district 12 (Wellington) is 2,967,726 acres.

12.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 12 (as calculated from 1940 *Historical Atlas* maps held in the Alexander Turnbull Library) was 78 percent in 1860, 35 percent in 1890, 23 percent in 1910, and 7 percent in 1936 (or 38.2 acres per head according to the 1936 population figures provided below).

12.1.3 Principal modes of land alienation

The principle modes of land alienation in district 12 were:

- New Zealand Company purchases;
- Crown purchases; and
- purchases under the Native Land Court.

12.1.4 Population

The population of district 12 was approximately 4000 to 5000 in 1840 (estimated figure), 1965 in 1891 (estimated from census figures), and 4924 in 1936 (also estimated from census figures).

12.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district run inland from the mouth of the Whangaehu River towards the Kaimanawa Range and on to a point in the Kaweka Range. From there, the boundary runs south following the Kaweka, Ruahine, Tararua, and Rimutaka Ranges to the coast at a point on the western side of Palliser Bay.

The landscape falls into three principal zones running more or less north to south: the dune belt, the coastal plain, and the forest, which runs up into the mountains. The dune belt (some three to six miles in width) was covered in natural vegetation, some of which was edible. However, the numerous swamps and lagoons along this strip were probably a more important source of food. The second zone, the coastal plain, was a narrow strip of flats and dune ridges divided by westward flowing rivers. This region, in particular the land north of the Kukutauaki Stream on the Kapiti Coast, was highly prized by Maori as an abundant supply of natural food resources, including eels and other fish, and for its fertile soil for cultivation. It was also greatly valued by Pakeha from the 1850s for stock-rearing and cultivation. Lake Horowhenua was a valuable source of fish and flax for Maori, as were the streams running into the coast and the foreshores themselves. In general, permanent Maori settlements were located around the Whanganui-a-Tara and Porirua Harbours, along the fertile Kapiti Coast and the lower reaches of the main rivers (the Manawatu, Rangitikei, Ohau, Waikawa, and Otaki), or inland near the larger bodies of fresh water, such as Horowhenua and Papaitonga. This inland forest zone running to the mountain crests was visited by Maori for bird-snaring and gathering building materials and medicinal and decorative plants. The mainly forested Manawatu Plains contained clearings for the cultivation cycle.

12.3 Main Tribal Groupings

The descendants of Tara, known as Ngai Tara, have been identified as the first occupants of the region and came from the east coast to settle at Te Whanganui-a-Tara and up towards Manawatu. The tribal lands of Ngai Tara met those of Rangitane (also from the east coast) near Kapiti. While intermarriage and shared ancestry established a close interweaving of these groups, Rangitane gradually established themselves as the pre-eminent group, defeating Ngai Tara in a series of battles in the first half of the eighteenth century. Ngati Apa (originally from the Bay of Plenty) settled at the Rangitikei River, north of Rangitane, and Muaupoko (described as a 'tribe of somewhat mixed descent'[1]) flanked Rangitane to the south. Kahungunu, originally from the east coast, also moved south and settled in Wairarapa and the Hutt Valley, among other places, intermarrying with Ngati Ira descendants (another group of east coast origins, which later caused confusion for European identification of 'Kahungunu'). Aspects of the relationship between Ngati Ira and other tribal groups such as Ngai Tara have yet to be fully established.

Earlier Maori patterns of settlement in the area were disrupted between 1820 and 1840 by the invasion of northern tribes from Kawhia Harbour and Taranaki. In 1819, Ngati Toa (led by Te Rauparaha) joined with Ngapuhi and Ngati Raukawa

1. G L Adkin, *Horowhenua: Its Maori Placenames and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948 (cited in R Anderson and K Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, p 5)

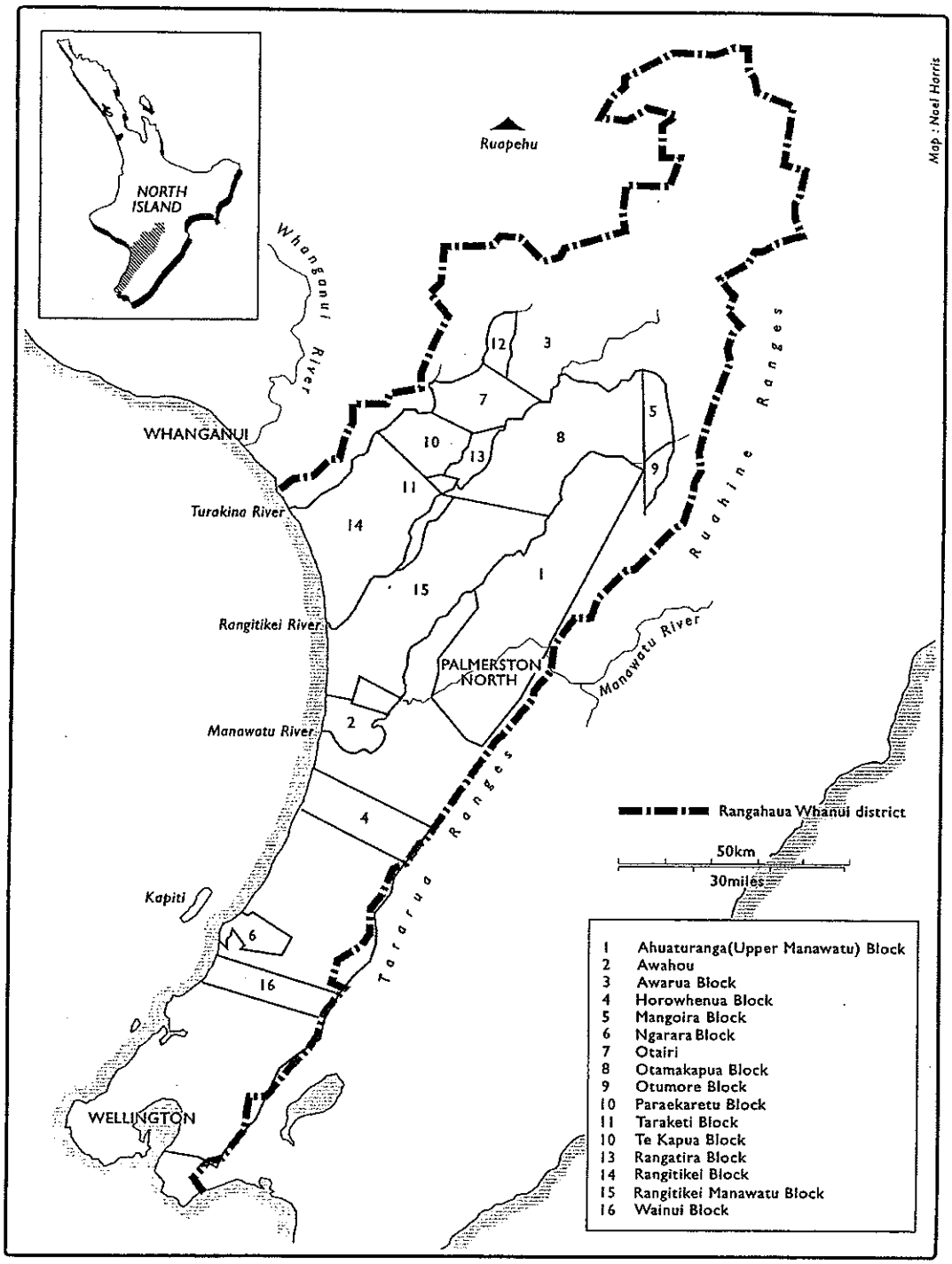

Figure 21: District 12 (Wellington)

(from Maungatautari) in a migration down the west coast. Sections of Ngati Mutunga, Ngati Tama, and Te Atiawa also provided military support and accompanied Te Rauparaha to Kapiti. Relations between resident and migratory Maori were strained at best, with warfare often resulting, particularly as the relationship between Ngati Toa and Ngati Apa deteriorated. Although Te Rauparaha and Ngati Toa asserted wide authority in the region, Te Atiawa and Ngati Raukawa were allied with Ngati Toa, and also acted in their own right. Relationships and boundaries between these tribes were changing throughout this period.

Tensions between local and invading Maori reached crisis point at Waiorua in 1824, when earlier resident Maori groups unsuccessfully attempted to regain control of Kapiti Island from the more recent arrivals. Ngati Toa, in particular, credit their authority in this general region, as well as later migration by other northern tribes into the area, to this victory. Also, following an invasion of Wellington Harbour in 1824, Ngati Mutunga settled at Waikanae, later also occupying land from Te Aro to Kaiwharawhara, while Ngati Tama established themselves at Ohariu in 1824 and later Tiakiwai. Further along the coast, Ngati Raukawa continued to arrive in the Kapiti area in increasing numbers from 1825. By 1827, Ngati Mutunga and Ngati Tama had driven Ngati Ira from the shores of Whanganui-a-Tara. In 1835, the two northern tribes migrated to the Chatham Islands and 'gifted' their land at Waikanae and Whanganui-a-Tara to Te Atiawa kinsmen.[2] Fighting developed between Ngati Raukawa, Ngati Apa, and Muaupoko, in particular, in this area. The battle of Haowhenua in 1834, largely between migrant tribes on the Kapiti Coast, resulted in a further rearrangement of tribal relationships, with somewhat indeterminate boundaries.

By the late 1830s, Horowhenua was occupied largely by Te Atiawa to the south of the Kukutauaki Stream (Waikanae), while Ngati Raukawa had settled predominantly to the north at various locations from Otaki to Manawatu. Muaupoko, the original occupiers of Horowhenua, were still established there. Following attacks by Ngati Raukawa, the Raukawa leader Te Whatanui elected to shelter and protect remaining Muaupoko in an area around the western and northern sides of Lake Horowhenua, where they were flanked on all sides by Ngati Raukawa hapu. The relationship between Muaupoko and Raukawa has been described by observers at the time as a curious, 'semi-independent' relationship.[3] Te Atiawa also settled at Waikanae, where they intermingled with some Ngati Toa. Some Rangitane were in the north of the district.

The relationship between original occupiers and invading Maori, as well as questions of right-holdings and boundaries among the incoming northern tribes, which were still rapidly changing at the time of white settlement, requires clarification.

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2. Anderson and Pickens, p 24
3. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennet and Co, 1929, p 36 (cited in Anderson and Pickens, p 146)

12.4 Principal Modes of Land Alienation

12.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

Three deeds of sale were negotiated by the New Zealand Company in the Cook Strait region in 1839. The first was with Te Atiawa at Te Whanganui-a-Tara for all the land from Sinclair Head and Cape Turakirae converging inland to the Tararua Range, including the islands of the harbour. The second was with Ngati Toa at Kapiti for all the land from 43½ degrees south latitude in the South Island to an imaginary line commencing at approximately 41½ degrees south on the east coast and running north-west to the mouth of the Mokau River. The final deed with Ngati Apa, Te Atiawa, and Rangitane at Queen Charlotte Sound was for much the same land as was in the Kapiti deed.[4] Twenty million acres of land were alleged to have been acquired in this transaction in return for goods variously valued from £360 to £9000. An 1840 select committee found that the company's agents had paid a portion of the £17,000 of the goods loaded on the company ships for the 20 million acres claimed in the southern districts (which works out to be a purchase price of about 1176 acres per pound or 59 acres per penny).[5] The highest reasonable estimate of the company's rate of payment for the 71,900 acres eventually arbitrated and awarded by FitzRoy in 1844 and 1845 (which did not include Nelson, as indicated in volume ii, chapter 3) has been set at threepence per acre.[6] 'Tenths' were also theoretically reserved for Maori in these deeds.

Following inquiries by the Land Claims Commission in 1842, Commissioner William Spain indicated that he would recommend a grant for only a portion of the company's claim at Port Nicholson (in keeping with the Crown's 1840 agreement to award the company four acres for every pound spent on colonisation). Believing that Maori were willing to carry through with the sale of some land, Colonel William Wakefield agreed to offer 'compensation', especially to those Maori who had missed out on the initial payments in 1839, at levels to be agreed with the Protectors of Aborigines and an arbitrator (Spain). Consequently, £300 'compensation' (at rates much lower than Maori requested) was paid to Te Aro occupants, while Maori at the smaller Kumutoto and Pipitea Pa each received £200 and those at Tiakiwai Pa received £30.[7] In February 1842, Spain 'compensated' some 300 Ngati Raukawa from both sides of the Manawatu with goods of an unspecified amount, but he disallowed the Porirua purchase (allegedly transacted at Kapiti), requiring it to be renegotiated later.

Spain also investigated a series of small private claims relating largely to land at Kapiti and Porirua, some of which were upheld while others were disallowed.[8] These included claims by George Young, David Scott, and Robert Tod that they had

4. Statement by Anderson, Anderson and Pickens, p 19
5. D Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839–1846', 3 pts, 1995 (Wai 145 rod, doc e3), pt 1, p 126
6. Ibid, pp 126–127
7. Anderson and Pickens, p 36
8. Ibid, pp 32–34

purchased between ¾-acre and three-acre parcels of land from individual rangatira at Kumutoto and Pipitea. Richard Barrett and Worser Heberley also claimed sites by virtue of marriage.[9] Larger transactions were made for the tapu of the land (as opposed to a purchase as such) by the Reverends Thomas Bumby and John Hobbs for a chapel site at Te Aro Pa.[10]

As well as company 'compensation' payments, Crown officials secured the peaceful occupation of Wellington lands by promising native reserves of one-tenth of all lands granted to the company, a trust fund for Maori purposes of 15 to 20 percent of proceeds of the sale of Crown lands, and the protection of pa and gardens that Maori did not wish to sell. In 1846 and 1847, Governor Grey employed military force to evict Ngati Toa and allied groups from disputed land in the Hutt Valley. In 1847, the McCleverty 'exchanges' were negotiated with Te Atiawa, whereby the tribe relinquished claims to some of the Wellington 'tenths', and some cultivations, in return for reserves in the Hutt Valley and further afield. In 1848, the company was granted 209,572 acres (less Maori reserves), which included the 71,960 acres arbitrated and awarded by FitzRoy, as well as lands within the company's 'exterior boundary' surveyed in 1844.

12.4.2 Pre-1865 Crown purchases

In February 1847, Governor Grey reopened negotiations with Ngati Toa for the purchase of the Porirua district, which was considered vital to the security of the Wellington and Kapiti Coast settlements. Eight Ngati Toa chiefs signed the deed on 27 January 1848 for 68,896 acres from Kenepuru, running to Porirua, Pauatahanui, and Horokiri and extending as far as Wainui, inland to Pouawa and up to Pawakataka, for which they received £2000, as the first instalment of the £6000 price.[11] Three large, contiguous blocks together estimated to comprise 10,000 acres (with undefined boundaries) were excepted from the sale.[12]

In May 1849, following the renegotiation of block boundaries, Ngati Apa agreed to accept £2500 for the 225,000-acre block between the Rangitikei and Turakina Rivers and north of the Whangaehu River. One 30,000-acre reserve between the Whangaehu and Turakina Rivers, 2500 acres in smaller blocks, eel fishing rights in any lake, and the right to cultivate Te Awahou for the next three years, were reserved for Ngati Apa.[13]

Following a delay of almost a decade, negotiations resumed in the late 1850s with Ngati Toa and Ngati Awa in respect of the Waikanae block. This comprised 60,000 acres from Poauwa to Pawakataka, east to 'land sold previously by Ngati Kahungunu', and north to Waikanae. A deposit of £140 was paid for the block, which was variously calculated to contain between 76,000 and 96,000 acres. The full payment

9. Moore, p 57
10. Ibid, p 58
11. Anderson and Pickens, p 46
12. Ibid, p 47
13. Ibid, p 63

of £3200 was rejected by Te Atiawa, and negotiations collapsed. In November 1858, a deed was drawn up for 34,000 acres in the southern part of the block (which excluded Te Atiawa land). Ngati Toa received £800 and 250 acres of reserves.[14]

In November 1858, an initial payment of £400 was made to Ngati Raukawa for 37,000 acres at Te Awahou, just north of Manawatu (around Foxton). Dissent from within Ngati Raukawa regarding the price offered for the land led to its increase to £2500. When payment was dispersed among Maori, this was reduced to £2335. A second deed signed in May 1859 listed, but left undefined, those areas in the block that were to be excepted from the transaction.

In June 1859, 30,000 acres of the Ngati Toa land were purchased by the Crown for £850. The land was situated south of the Whareroa block in Wainui and Paekakariki and had originally been reserved from the Porirua sale for Ngati Toa. Of the 30,000 acres, only 787 acres were reserved for Maori (that is, less than 3 percent).[15] Purchasing continued within the Whareroa and Wainui blocks in July 1859. Confusion consequently arose, however, over exactly what land the Crown had purchased there. This matter was not settled until 1873, when the Waikanae–Ngarara block (which included Whareroa and Wainui within its boundaries) passed through the Native Land Court.

In May 1862, Papakowhai at Porirua was acquired from 13 leading members of Ngati Toa for £210.[16]

In February 1864, a deposit of £100 was paid for the Muhunoa block situated south of Horowhenua (with the purchase price set at £1100). An important eel fishery, Lake Ororokare, and 500 acres were reserved for the vendors.[17]

In mid-1864, the Ahuaturanga block in the upper Manawatu was purchased from Rangitane–Ngati Apa descendants for £12,000. Its boundaries ran east of the Oroua River to a point due west of the Manawatu Gorge. The eastern border ran along the foothills of the Tararua and Ruahine Ranges. Reserves were marked on the accompanying map but not defined within the deed itself.

In December 1864, following six years of negotiations under the control of Featherston, the superintendent of Wellington province, some 1500 Ngati Apa, Rangitane, Ngati Raukawa, Ngati Toa, and Te Atiawa were present at Parewanui to finalise the Rangitikei–Manawatu deed. Dissenting Ngati Raukawa refused to attend the gathering. A lump sum of £15,000 was handed over, while dissident Ngati Raukawa largely refused a £2500 payment to them as an ‘act of grace’. On 22 October 1869, following further delays as the views of dissident groups were heard by the Native Land Court, it was declared that native title over the Rangitikei–Manawatu block (250,000 acres) had been extinguished, except for those portions awarded to Maori. These were an initial court award of 5500 acres to Ngati Raukawa for their interests in the north bank of the Manawatu at the sale of Te Awahou, as well as 4500 acres awarded to Ngati Kauwhata, 1000 acres to Ngati

14. Ibid, p 79
15. Ibid, pp 83–84
16. Ibid, p 89
17. Ibid, p 94

Kahoro and Ngati Parewahawaha, 500 acres to Te Kooro Te One's people, and 200 acres to Wirihirai Te Angiangi (with a 21-year restriction on alienation).[18]

12.4.3 Pre-emption waivers

There were no pre-emption waiver purchases in district 12.

12.4.4 Confiscations

There were no confiscations in district 12.

12.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

(1) ***Private purchases***

Unofficial leases of customary land developed on the coast from before 1840 and extended inland to the grassland areas as pastoralism spread. Many of these began to be formalised, or the land sold, during this period. For example, most of the Porirua reserves (the Taupo, Haukopua, Motuhara, and Hongoeka blocks) were informally leased by Ngati Toa in the 1850s. Quarrels over the distribution of rent money encouraged the owners to put the blocks through the Native Land Court after 1865. For example, the Taupo block went through the court in 1874, and in 1883 the large Taupo 1 block was sold to James Walker, the existing lessee, because the people no longer lived on the land and wished to pay their debts. Other parts of the Taupo block were vested in the Public Trustee, leased, and eventually sold. Other portions of the Ngati Toa lands were initially under restrictions against alienation, except for a 21-year lease, but the restrictions were progressively lifted and the land sold.[19] The company 'tenths' and the McCleverty awards also passed through the court after 1868 and were awarded to named owners; restrictions were progressively removed from many sections and the land sold. A similar pattern applied to most of the reserves made within private or Crown purchases (see vol ii, ch 7). It was not possible to research and include here the hundreds of private purchases made in this district.

(2) ***Principal Crown purchases***

In 1872, 45,675 acres from the Paraekaretu block (north-east of the Rangitikei block) was purchased by the Crown for four shillings an acre. A small area at Ngapuna, as well as 150 acres between Lakes Namunamu and Ngaruru were excluded from the sale, and part of the block known as Tupui–Paretao was reserved. Between 1874 and 1881, James Booth (the purchasing officer) purchased 51 of the 100 blocks (a total purchase of approximately 157,085 acres): 32,233 acres in 1874;

18. Ibid, p 134
19. For a detailed discussion of these events, see R Anderson, 'National Overview of Wellington Region', report commissioned by the Crown Congress Joint Working Party, 1992, pp 76–84.

42,534 acres in 1875 (including Manawatu–Kukutauaki 3 for 2.7 shillings an acre); 26,604 acres in 1876 (from three blocks making up Kukutauaki 7 for 8.4 shillings an acre); 1250 acres in 1877; 9761 acres in 1878; 4035 acres in 1879; and 42,669 acres in 1881 (from Manawatu–Kukutauaki 2 for 5.8 shillings an acre). According to the land purchase agents, Maori were able to have 'whatever reserves they had asked for', and these were normally close to their settlement areas.[20] In practice, however, the areas reserved were small, and some blocks had no reserves made at all.

In 1874, the Government completed the purchase of the Muhunoa block. It offered Raukawa of Horowhenua £1050 to extinguish their claim to the block of land comprising 1300 acres within the southern boundary of Horowhenua. Certain reserves exempted from the transaction were to be surveyed between Lake Papaitonga and the sea.

In January 1874, 19,600 acres of land known as Maunganui (in the Ngarara block, south of the Kukutauaki Stream) were purchased from Te Atiawa by the Government for £600 (leaving 29,500 acres in Atiawa hands). In February 1874, a further £200 was paid to Wi Parata of Atiawa to extinguish his and his family's claim to Maunganui. In 1891, Crown purchases totalling nearly 9000 acres were made (including Ngarara West, sections 24 to 29, and Ngarara West c, part of section 41). Few purchases of significance were made by the Crown in the Ngarara block after this date.

In 1884, the Crown proclaimed as subject to Crown pre-emption the Otairi block (north of Rangitikei), although some 29,000 acres are thought to have been privately purchased from this block from 1880 to 1882 despite this proclamation. In 1883, the Crown announced its interests in two subdivisions of the block, amounting to approximately 19,000 acres. The Crown also proclaimed the Mangoira–Ruahine block (estimated at 35,660 acres) situated north of the Manawatu (possibly in the Ruahine Range).

In 1884, the Crown purchased Otamakapua 2 (104,522 acres north of the Manawatu), with the exception of three sections totalling 1460 acres, for approximately £53,955.

In 1886, following the subdivision of Horowhenua, the Crown purchased an area of 4000 acres to the east of Lake Horowhenua, on which the township of Levin was later established. The Wellington and Manawatu Railway Company also acquired block 1, a long strip running roughly north and south and containing 76 acres, from Kemp and Muaupoko, who gifted the land to the company. Kemp received shares in the company, also described as a gift. Kemp's lawyer, Sievwright, acquired block 10 (comprising 800 acres) in payment of debt owed to him by Kemp.

In the late 1880s, the Crown purchased 21,881 acres from the Te Kapua block, north of Rangitikei.

In October 1893, an area of 1500 acres known as the 'State farm block', or block 9, was purchased by the Government for £2000. In 1899, the Government

20. Anderson and Pickens, p 208

purchased block 6, containing 4363 acres, in Horowhenua, also acquiring 1035 acres in 1900 (Horowhenua 3E5, Horowhenua 6A, Horowhenua 6B, and Horowhenua 6C), as well as two sections at the lake shore (37 and 38) in Horowhenua 11B; 101 acres (Horowhenua 7A) in 1908; 1088 acres (Horowhenua 11B42C1) in 1927; and less than an acre (part of Horowhenua 9A2) in 1929.

In 1894, the Crown purchased 11 subdivisions of the Awarua block (north of Rangitikei), amounting to 142,475 acres, and in 1896 it purchased a further 52,283 acres from the same block.

By 1910, Maori retained approximately 615,180 acres, or approximately 23 percent, of the district.

(3) *Post-1910*

With respect to post-1910 purchases, the Wellington research district fell within the Ikaroa Maori Land Board district, which also included the South Island. Annual returns of alienations through the land boards do not specify block names, and an exhaustive search of all files would be necessary to establish which of the board's alienations fell within the Wellington district, although most would have (since only very small areas of land remained in Maori ownership in the South Island in 1900). The total amount of land alienated between 1910 and 1939 (estimated with the use of the maps reproduced at the start of this volume) was 427,321 acres.

12.4.6 Examples of land taken for public purposes

Public works takings in the Wellington district included numerous parcels of land taken by the Crown and local bodies principally for the purposes of railways and roading, with some additional takings made for airfields, public buildings, gravel pits, and bridges. Some of these takings were formal acquisitions under the various Public Works Acts, while others were purchases made under the pressure of possible compulsory acquisitions. Exhaustive research would be necessary to determine the level of compensation paid (if any) or if the land remained dedicated to the purpose for which it was taken. For a further discussion of public works national policy and law, see volume ii, chapter 11. Examples of takings in this district include:

- In 1872 to 1876, a series of parcels of land was taken from the Te Atiawa reserve at Petone (reserved sections Hutt 1, 2, and 3) for railway construction. Compensation was reasonably substantial, being in the order of £50 per acre.[21]
- In the 1920s, land of an unknown quantity was taken for roading from the two Waikanae blocks, Ngarara West a3c and Ngarara a32c2, with £75 compensation paid to Maori.
- In 1939, 300 acres at Paraparaumu (of which 250 acres were Maori land) were gazetted for an airport, following which £4397 2s 4d compensation was paid to the owners.

21. See 'Report on Wellington Lands', report commissioned by the Crown Congress Joint Working Party, pp 19–22

12.4.7 Land takings for payment of rates

It is not clear how much land along the west coast passed out of Maori control under section 109 of the Rating Act 1925, although numbers of small, and often uneconomic, sections of land were sold by the Public (or Maori) Trustee, usually on application by the local bodies. For a discussion of the national policy and law regarding the rating of Maori land, see volume ii, chapter 19.

12.4.8 Other alienations

In the 1880s, the Wellington and Manawatu Railway Company made numerous purchases of Maori land in the Horowhenua district, totalling some 33,000 acres, via the terms of the Railways Construction and Land Act 1881. In 1908, when the line was nationalised, land still in the company's possession was vested in the Crown.

The Kapiti Island Public Reserve Act 1897 declared Kapiti Island a public reserve, vesting about 750 acres in the Crown. By 1904, the Crown had acquired about 3000 acres of the 4900-acre island, the rest remaining in Maori hands. Subsequent sections were purchased on the island up until 1965.

The Lake Horowhenua Act 1905 conveyed to the Crown the rights to the surface of Lake Horowhenua, while preserving general Maori ownership and fishing. In 1914, following difficulties between resident Maori and Pakeha regarding rights to the lake, an opinion was obtained from the Crown Law Office that Maori had no claim to any part of the lake bed. Through subsequent amendments to the 1905 Act and by other means, the Crown incrementally increased its rights to the lake and surrounding area. The Reserves and Other Lands Disposal Act 1956, however, returned the bed of the lake, the islands in the lake, and other identified areas to Maori ownership.

12.5 Outcomes for Main Tribes in the Area

Notwithstanding the advantages some of the tribes obtained from an alliance with the British against Ngati Toa, the control established by Grey in 1846 and 1847 saw all Wellington groups thereafter negotiating with the Government at some disadvantage. By the 1850s, Te Atiawa, Ngati Toa, and other groups had been largely displaced from the growing town of Wellington, in which they – or at least their chiefs – had been promised substantial participation. Their control of harbours, foreshores, and maritime trade had been reduced to a fraction of the pre-1840 levels.

By the end of the nineteenth century, all tribes had seen the bulk of their lands pass into private hands or to the Crown via the individualisation of titles and large block or piecemeal sales.

Reserves that had initially been inalienable (save by short lease) had mostly been individualised and alienated (some through perpetual leases at peppercorn rents).

By 1900, no substantial tribal patrimony remained, although Muaupoko and Ngati Raukawa managed to retain some lands around Lake Horowhenua and Otaki–Ohau. Much of this land was leased, and reserved lands were eroded over subsequent decades.

Compulsory public works takings removed more, increasingly scarce, Maori land. Although compensation was often substantial in respect of the Crown's takings (for example, the Paraparaumu Airport), this is less certainly the case in respect of acquisitions by local bodies, Maori land boards, and the Maori Trustee. Large blocks in the north-east of the Wellington district were acquired for forestry purposes in the 1960s.

12.6 Examples of Treaty Issues Arising

12.6.1 New Zealand Company purchases and related agreements

(1) *New Zealand Company purchases*

Contemporary accounts of the transaction between the company and Te Atiawa at Te Whanganui-a-Tara raise questions about the validity of the purchase. First, the interpreter, Barrett, had difficulty comprehending the contents of the deed (including the 'tenths' system) and was incapable of translating the real meaning of the sale to Maori.[22] Secondly, Barrett's own doubts that all Maori owners had been consulted about the purchase were ignored by the company, which insisted that Te Aro people were a subordinate section of Te Atiawa and therefore bound by the decisions of the senior chiefs but would in any case be compensated once the transaction was completed.[23] Subsequently, Maori at Lambton Harbour (particularly Maori resident at Te Aro, Pipitea, Kumutoto, and Tiakiwai Pa) and in the Hutt Valley protested that they had not sold the land, nor had the company paid them for it, because the purchase goods had been unfairly divided.[24] Colonel Wakefield's whole strategy of 'buying the land' first from the 'overlord' chiefs, then 'completing' the purchases by making payment to the 'resident' groups, presupposed a view of Maori land law that is highly problematic.

The validity of the second deed, signed with Ngati Toa at Kapiti Island, is challenged by the assertion that Ngati Toa and the company held widely divergent views on their understanding of the deed.[25] The company maintained that Ngati Toa had intended to sell the localities listed in the deed, while Ngati Toa chief Te Rauparaha maintained that he had intended to strengthen rather than weaken Maori title to the areas identified and had intended to alienate only portions of the land within the boundaries indicated by the deed. With regard to the third deed, signed

22. J Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes, 1839–52*, London, Oxford University Press, 1958, p 26 (cited in Anderson and Pickens, p 19)
23. P Burns, *Fatal Success: A History of the New Zealand Company*, Auckland, Heinemann Reed, 1989, p 116 (cited in Anderson and Pickens, p 20)
24. Anderson and Pickens, p 25
25. This assertion was made by Anderson, Anderson and Pickens, p 21

at Queen Charlotte Sound, it has been revealed that the payment goods were distributed between the 30 Maori who signed the deed by means of a scramble on the deck of the company vessel *Tory*.[26]

The reservation and allocation of 'tenths' in New Zealand Company purchases was also problematic. Although the company selected a tenth of the planned Wellington subdivision to be held in trust for the benefit of the chief families of the tribe (a policy that was endorsed in the November 1840 agreement between the Crown and company), the system proved incomprehensible and unacceptable to Maori. Many pa were not reserved for Maori, and the selection of some reserves (which had been allocated to Maori by ballot) required that Maori move to lands traditionally occupied by different whanau.[27]

In May 1841, following Maori resistance to settler surveying in the Hutt Valley, Te Aro, and Porirua (lands Maori claimed they wished to retain), the Spain commission was instructed to inquire into the company's claim to the Cook Strait region to determine the lands the British subjects had obtained, the payments made, and the fairness and legality of those transactions. Despite the fact that hearings, which began in May 1842, revealed that the company's purchase in Port Nicholson was not recognised by Maori as described in the purchase deeds, the Crown and Spain accepted that the purchase was valid but incomplete. In January 1843, the inquiry shifted towards an arbitration to secure a binding Maori agreement to the sale of the company's settlements (the total area of these still being obscure). Spain agreed to allow 'compensation' to be paid to Maori who had missed the original payment, in order to fulfil the dual requirement of establishing title and acquiring land for settlement. Spain and the sub-protector, George Clarke junior, had taken the view that the Maori communities had bound themselves in advance to accept the arbitration. Maori were not given the option of refusing what the arbitrator (Spain) finally determined.

In May 1843, despite pressures from the company, Spain secured company agreement that Maori retain their pa, cultivations, and urupa as separate from those lands for which compensation would be paid. In 1844, Governor FitzRoy reiterated that Maori 'title' to these would not be regarded as extinguished by the company deeds. Actual occupation was usually essential for Maori to retain ownership, although FitzRoy include fallowed gardens in the areas of Maori occupation.[28]

When compensation was finally paid to Maori in June 1844, Port Nicholson Maori were induced to accept the payments by a 'combination of implicit and explicit threats on the part of officials including Spain, Clark and FitzRoy',[29] who warned that the lands had already been built upon and would not be returned. Stressing the allegedly worthless nature of the land in Te Aro (which was in fact a valuable area in the heart of the town), FitzRoy pressured Te Aro Maori to accept

26. Anderson and Pickens, pp 21–23
27. Ibid, pp 23–25
28. Ibid, p 35
29. PAdams, *Fatal Necessity: British Intervention in New Zealand, 1830–47*, Auckland, Auckland University Press, 1977, pp 191–192. This is one of several sources cited in Anderson and Pickens, p 35.

compensation of £300. When Te Puni's people refused the £30 compensation for their land, the money was placed in a bank on their behalf. The Waiwhetu people reluctantly accepted £100 compensation and the promise of reserves after Spain warned them that the land would be taken in any case and the money spent on their behalf.[30] Other instances similarly demonstrate that offers of compensation were reluctantly accepted when it was made clear that the land would go to Europeans with or without Maori consent.[31]

(2) *The Hutt Valley*

Despite assertions by Maori in the Hutt Valley that they had not sold their land, officials continued to attempt to secure a purchase under the misconception that much of the valley was 'unoccupied wasteland' and that Ngati Toa acceptance of compensation was all that was required to establish a purchase because other occupants of the valley were subordinate to Ngati Toa.

When FitzRoy made an award to the company in May 1845 for 71,900 acres in Port Nicholson and the Hutt Valley, it was unclear exactly which land was to go to the company and which was to remain with Maori.[32] The Government attempted to persuade Ngati Rangatahi to vacate the Hutt, however, stating that it would pay compensation to them but would not recognise their claim to the land. In 1846, when Maori returned to warn off settlers in the Hutt Valley, newly appointed Governor Grey retaliated with a demonstration of military power that had devastating consequences for resident Maori and has been described by an official historian as a 'hasty and ill-considered act which put [Grey] irretrievably in the wrong'.[33] Be that as it may, Maori resistance provided Grey with a justification for proclaiming martial law over the area, a move that reflected the Colonial Office's increasing commitment to colonisation and hardening attitude to the rights of Maori. With a view to future expansion to the north, Grey ordered the construction of a military road through the Hutt. This ran through the disputed land, as well as land that belonged to the tribes.

(3) *The McCleverty exchanges*

McCleverty was instructed by Grey to complete the exterior boundary survey of the company's lands at Port Nicholson and to ascertain what lands belonged to Maori under the definition of pa, cultivations, and sacred places. As a result, a number of sections were taken out of company 'tenths' and awarded to individual hapu in return for land Maori occupied for cultivation (largely the most desirable lands), which was required to complete the settlement. In this transaction, Maori agreed to relinquish good, small blocks near the harbour for larger outlying and often inferior

30. R V Tonk, 'The First New Zealand Land Commissions, 1840–45', MA thesis, University of Canterbury, 1986, p 23 (cited in Anderson and Pickens, p 38)
31. D A Armstrong and B Stirling, 'A Summary History of the Wellington Tenths, 1839–88' (Wai 145 rod, doc c1), p 181 (cited in Anderson and Pickens, p 38)
32. Anderson and Pickens, p 40
33. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852*, Wellington, Government Printer, 1968, p 245 (cited in Anderson and Pickens, p 43)

blocks, which they were theoretically to select (although indications are that this occurred only in some cases). By a third series of deeds negotiated by McCleverty in 1847, Maori agreed to give up further disputed cultivations for 'certain other lands'. Their reasons for doing so are currently debated by claimants and the Crown; it is suggested on the one hand that Te Atiawa accepted land because they had little choice and, on the other, that Maori are alleged to have accepted the arrangement because they felt it was genuinely satisfactory and secured them land that had previously been in their occupation but that had also been claimed by Ngati Toa and their recent allies.[34] Nevertheless, the effect was to all but destroy the basis upon which the tenths system was supposed to operate and to remove Te Atiawa from all but a very small share in the growing town.

(4) *Grey's award*

Governor Grey's award to the company of 180,000 acres in 1848 expanded the company's initial grant area by including land regarded as Crown demesne. The basis of the Crown's title to this demesne is not clear. If it is deemed to have arisen from the additional payments of 1844 and the McCleverty exchanges of 1847, it involved explicit or implicit undertakings by the Crown, over seven years, of making Maori reserves, taking a Crown endowment for Maori purposes, and using a portion of the Crown's land fund (from the resale of the land) for Maori purposes. Eventually all of these were abrogated or heavily reduced, Governor Grey taking many of the tenths to endow the schools and hospitals; Maori reluctantly relinquished much of their valuable land in Wellington in exchange for certain reserves in the Hutt Valley and more remote areas. But the schools and hospitals soon became mainly settler institutions, and Maori were increasingly marginalised in the town in which they were supposed to be major participants.

(5) *Wellington 'tenths'*

The Crown's disposition of Wellington 'tenths' and the McCleverty awards increased the marginalisation of Wellington Maori. Most of the reserves subsequently went through the Native Land Court and many were sold. Others passed to the Public (later Maori) Trustee and were let on perpetual lease. As a result, the concept of tribal endowment, a patrimony for the descendants of the 1840 owners of the land, was undermined and vitiated.

12.6.2 Crown purchase of Porirua

The validity of the process by which the Crown purchased the disputed Porirua district in 1847, and the deed itself (which was signed in 1848), could be questioned on four counts. First, with Te Rauparaha and other leaders incarcerated at the time of the negotiations, it is doubted whether the signatories represented the full and willing consent of Ngati Toa to the alienation of the territory. It has been noted that

34. Anderson and Pickens, pp 48–50

the deed did not state that the signatories were acting on behalf of the tribe.[35] Secondly, the signatories apparently neglected to distribute the 1847 payment farther than themselves. Thirdly, the boundaries of the land to be excluded from the sale were not surveyed and records vary on the total amount of land reserved.[36] Fourthly, the reserves were inadequate, the Porirua reserves being small and eroded for railway construction and the inland reserve being of little use for anything except stock pasturage (it was let for this purpose).

12.6.3 The Rangitikei–Turakina purchase

In the Rangitikei–Turakina purchase in the late 1840s, an attempt was made by the Crown to speed up the purchase process and avoid disputes over Ngati Apa's interests in the interior by leaving the inland boundaries of the deed undefined. The large scale of the purchase reflected the Crown's growing concern that Maori would never sell the freehold of land if leaseholding became entrenched and gave them a regular source of income.[37] Furthermore, despite indications that McLean had genuinely attempted to identify the legitimate sellers and obtain their full consent to the sale, he nevertheless failed to accommodate the interests of many individuals and communities in his reserve allocations. While McLean had been directed to 'reserve such tracts for the Natives as they may now or at a further time require',[38] much of his effort was directed towards limiting the reserves, apparently because he believed that the position of Maori would be improved if they reacquired land under Crown-granted title.[39] Furthermore, the later purchase of the south bank of the river from Ngati Apa vendors in 1864 involved a repudiation of the Government's tacit recognition of Ngati Raukawa's overriding authority there, which was acknowledged in the Rangitikei–Turakina block purchase.[40] Finally, when the inland boundary of the purchase was negotiated in 1850, McLean reported that a 'considerable enlargement' of the block had been ceded 'without further remuneration', although there was Maori consent to the fixing of the block boundary by natural features.[41]

12.6.4 Waikanae

The negotiations in the 1850s for the 60,000-acre Waikanae block revealed that the Government had failed to resolve problems of 'numerous conflicting claimants', as well as the extent of the reserves and the final price. Following Te Atiawa's withdrawal from the negotiations, the Government proceeded with its purchase of

35. Statement by Anderson, Anderson and Pickens, p 46
36. Serrantes to Colonial Secretary, 27 March 1848, AJHR, 1861, c-1, p 247 (cited in Anderson and Pickens, p 46)
37. Anderson and Pickens, p 58
38. Dommett to McLean, 12 December 1848, AJHR, 1861, c-1, p 251 (cited in Anderson and Pickens, p 59)
39. Anderson and Pickens, p 60
40. Ibid, p 63
41. Donald McLean, diary, 6 September 1850, Maori notes, 19 July–12 October 1850, ms 1229, ATL; McLean to Colonial Secretary, 17 September 1850, Donald McLean papers ms 32 (3A), ATL (cited in Anderson and Pickens, pp 66–67)

the southern portion of the land known as Whareroa or Matahuka (a block of 34,000 acres).[42] Despite 250 acres of reserves being marked out, it appears that this purchase was not accepted by Te Atiawa, who objected to the northern boundary. There does not appear to have been a deed relating to this purchase.

12.6.5 Muhunoa

Ngati Raukawa, at Otaki, threatened to repudiate the sale of the Muhunoa block, complaining that they had not received any portion of the down-payment. Walter Buller (the resident magistrate assisting Featherston in the sale) denied Government responsibility and stated that the land was sold, arguing that the distribution of payment was a matter for Maori to resolve among themselves.

12.6.6 Rangitikei–Manawatu

When Ngati Apa handed over all the Rangitikei–Manawatu lands to the Government for sale, Ngati Raukawa and Rangitane rejected their right to do so. In return, Featherston, the superintendent of Wellington province, refused to pay rents to Ngati Raukawa and Rangitane until their disputes were resolved. The non-selling tribes argued that this undermined their position in subsequent land negotiations.[43] Furthermore, the Government refused to acknowledge that Ngati Apa interests had been satisfied in the 1847 to 1849 Rangitikei–Turakina deed and contended that Ngati Raukawa did not have status in the area by right of conquest, which was a reversal of the Government's earlier stance during the Te Awahou negotiations in the late 1850s.[44]

The exclusion of the Rangitikei–Manawatu block from the jurisdiction of the Native Land Court in the Native Land Acts of 1862 and 1865 incensed Ngati Raukawa, who were confident that an examination of title would support their claim. Featherston misled Ngati Raukawa and Rangitane in maintaining that it was usual for blocks on which down-payments had been made to be excluded from the operation of the Act, and that the Rangitikei–Manawatu lands were 'virtually in the hands of the Commissioner'.[45]

Featherston contended that it was the responsibility of Maori to decide how the purchase payments would be divided and by whom, while the allocation of reserves would be entirely his own doing. The reserves had not been finally agreed to before the deed was signed.

The authenticity of many signatures on this deed have been questioned – in particular, the methods of Buller are called into question by Ngati Raukawa allegations that he gathered signatures from Maori with no interest in the block and by

42. Anderson and Pickens, p 80
43. Ibid, p 93
44. Featherston to Richmond, 14 November 1866, ma 13/69B, pp 8–9 (cited in Anderson and Pickens, p 107)
45. 'Further Papers Relative to the Manatu Block', AJHR, 1866, a-4, no 6, encl 1, p 15 (cited in Anderson and Pickens, p 99)

further allegations that forgeries and bribery (not necessarily of Buller's doing) also played a part in the negotiations.[46]

Despite receiving advice to the contrary from J C Richmond (the Native Minister), Featherston refused adequately to accommodate the interests of the non-sellers in the terms of the purchase agreement.[47]

Ngati Raukawa argued that the Native Land Court's finding that they had no overriding rights was a misreading of both history and principles of customary usage.[48] The court's finding, which was to have implications for the remaining dissident claims, has been described as a 'thorny issue' concerning 'whether the court was correct in that interpretation of customary usage or whether its findings were made in response to the political imperative to confirm Featherston's purchase'.[49] There is little doubt that Ngati Raukawa were the dominant group at the time of their heke into the area, but Muaupoko groups, much older occupants, also remained on the land. The relationship between these peoples had not matured before white settlement began to enter the area and land purchase negotiations commenced for rights that were still unsettled in 1840 and that had evolved somewhat between 1840 and the 1860s. The '1840 rule' was varied by the Native Land Court judges to reflect the improved position of Ngati Apa (especially) since 1840, relative to Ngati Raukawa. The decision may or may not have adequately reflected real rights on the ground at the time, but it did not fully reflect Ngati Raukawa's position at 1840 and was inconsistent with the court's judgments in the Chatham Islands and Northern South Island, for example. The issue of whether the court should have given greatest weight to the situation before the musket wars, at 1840, or at the time it heard the case is a matter for consideration by the Waitangi Tribunal.

12.6.7 Kukutauaki

By the spring of 1872, the Government had attained support from all tribes that the disputes over land title should be referred to the Native Land Court. The Government was of the opinion that no surveys for Native Land Court hearings were to be made against the will of any occupants, despite its determination to buy the land. In a similar vein, the opinion was expressed that the Government could not force the court upon Maori if they were determined to oppose it. When the Native Land Court hearings began at Foxton on 5 November 1872, however, they were opposed by Major Kemp and Kawana Hunia. The Government's unwillingness to advise the court as to the appropriate action resulted in the judges deciding to proceed with hearing Ngati Raukawa evidence. Muaupoko agreed to re-enter the hearings only when they lost support from other tribes and feared they would lose their title to the

46. Native Land Court, Otaki, 25 March 1868, *Wellington Independent*, Hadfield papers, ms 139 (30), ATL (cited in Anderson and Pickens, p 105)
47. Richmond to Featherston, 21 November 1866, ma 13/70, pp 6–7 (cited in Anderson and Pickens, p 108)
48. Parakaia and others to Williams, 2 May 1868, ma 13/73B, pp 1–2, NA Wellington (cited in Anderson and Pickens, p 123)
49. Statement by Anderson, Anderson and Pickens, p 135

land. The subsequent denial of Muaupoko's request for adjournment represents a shift in the Government's original attitude that the court should not be forced upon Maori determined to oppose it.[50]

Consistent with its finding at the rehearing of the Himatangi judgment in 1869, the court at Foxton rejected conquest as a basis for Raukawa title in its finding on Kukutauaki. In 1840, Ngati Raukawa was undoubtedly one of the dominant tribes in the area. The 1872 judgment (in particular, the finding that the land was occupied by Raukawa with the acquiescence of the original occupiers) has been described by one historian as a 'contrived judgement' based on a 'far-fetched interpretation of historical evidence', which distorted the tribal situation in 1840 to fit the realities of patterns by 1872.[51] Questions remain as to whether this was a political judgment. Nevertheless, in March 1873, the court granted Ngati Raukawa title to Kukutauaki, on the basis of occupation, but did not grant them title to the Horowhenua block.

12.6.8 Horowhenua

Government inaction regarding boundary disputes between Muaupoko (in particular, Hunia and Kemp) and Ngati Raukawa in Horowhenua (which had not been helped by the fact that the Government had allowed Kemp to retain arms from the war) eventually resulted in the dispute being referred to the Native Land Court early in 1872.

At the Horowhenua hearing, which began on 11 March 1873, Ngati Raukawa conceded that Muaupoko had a right to land allocated to them by Te Whatanui (some 20,000 acres) but asserted that Raukawa had title to land north and south of Muaupoko boundaries at Horowhenua. In its finding, however, the court would not acknowledge the claim of Raukawa title by virtue of conquest and allowed them title to only 100 acres of land, thereby disadvantaging Te Whatanui's hapu. Muaupoko were awarded title to the 20,000 acres and an additional 30,000 acres to the north and south of this block, which Ngati Raukawa had long occupied. The court awarded this title specifically to Kemp, despite protests from the wider Muaupoko community.

In relation to the earlier finding in favour of Ngati Raukawa occupation of the Kukutauaki district (see above), the finding against Ngati Raukawa in Horowhenua made little sense. A degree of scepticism arises from the evidence regarding the impartiality of the judges on this occasion, and a corresponding suspicion that the court was acting not judiciously but rather expediently.[52] In particular, Ngati Raukawa's title, which, on the basis of the court's own previous principles, should have been all but guaranteed to them by virtue of occupation, was jeopardised by threats from Kemp (of Ngati Apa and Muaupoko) that he would retaliate and shed blood if he were not awarded title. The Government did not take effective action at the time to disarm Kemp and Hunia, despite requests and petitions to do so. In the opinion

50. Anderson and Pickens, p 196
51. Statement by Pickens, Anderson and Pickens, p 201
52. Statement by Pickens, Anderson and Pickens, p 217

of at least one writer, in awarding title to Muaupoko the authorities wanted to avoid further conflict with Kemp and 'compensate Kemp for his services to the Crown' as a distinguished military commander.[53]

Despite constant and numerous requests from Ngati Raukawa, the Government was unwilling to grant a rehearing because of the implications this might have for the Kukutauaki and other cases already settled from which land had been acquired and used. The Government also advised Ngati Raukawa that it was unable to reopen the hearing because six months had passed since the time of the hearing, despite the fact that Raukawa appeals had been made well within this time-frame with no response. Unable to retrace its steps without significant disruption in its land purchasing, the Government set aside the question of a rehearing. In short, it appeared that Ngati Raukawa were denied a rehearing for reasons of Government expediency.

Despite the fact that the Horowhenua decision was examined by the Native Affairs Committee in 1892 and 1894 and that the Legislative Council's Native Affairs Committee in 1896 (all of which strongly favoured Ngati Raukawa's claim) recommended a rehearing, subsequent governments refused to let the 1873 decision be reconsidered. From around 1900, the Native Affairs Committee made no subsequent recommendations, despite Ngati Raukawa's continuing requests for a rehearing.

In November 1886, when the Horowhenua block was subdivided, an administrative error meant that Ngati Raukawa were granted ownership of both the reserves identified in the deed and the extra 132 acres created by a shifted boundary. Muaupoko appealed the loss of 132 acres from their land, and following a rehearing in 1912, the Native Appellate Court awarded the 132 acres to Raukawa. In the court's opinion, Ngati Raukawa had conquered and occupied that territory. Therefore, after more than 40 years the 1873 decision had been reversed, although only in relation to the 132 acres in question, not the rest of Horowhenua.

Muaupoko (or elements thereof) were adversely affected by the fact that, under the 1886 subdivision of Horowhenua, rights were conferred on persons listed on the deed of sale (namely, Hunia and Kemp), who were given the right to sell without reference to others.[54] The court itself subsequently recognised the severe loss to Muaupoko that this created, noting that the people listed by the tribe were intended to be trustees, not owners. The Government then legislated to ensure that Horowhenua blocks were inalienable until such problems could be resolved. The subsequent sale of block 11, known as the 'State farm block', in October 1893, however, raises questions. Despite the Government's promise that it would consult with Muaupoko before it completed the purchase, Muaupoko protested that they had not been consulted nor had they received any purchase money.[55] It was later revealed in the Supreme Court that the Government had made an offer on the land, despite the uncertain title and Government assurances that no payments would be made until

53. O'Donnell, p 142 (cited in Anderson and Pickens, p 214)
54. Anderson and Pickens, p 261
55. Ibid, p 264

the interests of the beneficiaries had been protected. However, while the Horowhenua Commission found that the Crown had purchased the block knowing that it was trust property, no rebuke was issued, nor was any recommendation made that the land be returned. Instead, the commission suggested that the purchase be validated by the Horowhenua Block Act 1896.

By means of the Native Land Court Amendment Act 1891, block 12 was declared Crown land, despite the fact that there appeared to be little reason for its compulsory purchase. Furthermore, the costs of the process were offset against the value of the land. The block was valued for the purposes of purchase at £1619 5s, but once costs were deducted, the 82 owners of the block were left with £348 and a few coins.[56]

Block 14, 1200 acres of Kemp's personal property in Horowhenua, was also acquired through questionable means. Buller, Kemp's lawyer, invested money in the land before it was established whether the land was held in trust by Kemp or owned by him. In subsequently attempting to prove that Kemp was the owner and not the trustee of the land, Buller was also able to legitimise his own actions in investing in the land. On succeeding, Buller was seeking to charge Kemp for the legal proceedings, leaving Kemp some £7000 in debt. Following Kemp's death in 1898, Buller had the land auctioned and bought it himself, clearing Kemp's debt and leaving 'a little more' for Kemp's family.[57]

12.6.9 Ngarara

In 1887, the 29,500 acres of the Ngarara (Waikanae) block remaining in Maori hands were partitioned and the bulk of the land awarded to a list of some 40 owners from Te Atiawa, with Wi Parata's name at the top of the list. Disputes arose within the tribe about the legitimacy of Wi Parata's title. On the basis of the re-hearing, which commenced in January 1890, Wi Parata became the single largest owner of land that had previously been held in common by the tribe. This is one example of a great many throughout New Zealand in which the listing of a limited number of names of owners in varying proportions of shareholding in what was a tribal patrimony became highly problematic.

12.6.10 Lake Horowhenua

In 1905, and following the recommendation that Lake Horowhenua and its surrounds be preserved under the Scenery Preservation Act 1903, the Government indicated the desire to obtain the consent of the Maori owners before the lake could be secured. A meeting between the Government and Muaupoko later that year resulted in an agreement (or, in Pickens' words, a 'set of decisions imposed on the owners'[58]) that Pakeha were to use the surface of the lake while Maori ownership

56. Ibid, pp 267–268
57. Ibid, pp 270–271
58. Ibid, p 273

and fishing rights were to be preserved. This agreement subsequently formed the basis of the Horowhenua Lake Act 1905. The clause relating to Muaupoko rights and mana over the lake was not mentioned in the Act, however, while the land required for boatsheds was increased from nine acres in the agreement to 10 acres in the Act. Muaupoko sensed that their title to the lake was under some threat and requested in vain that the legislation be repealed. By around 1911, on the other hand, Pakeha resentment that fishing rights on the lake were confined to Maori was beginning to show. Consequently, in 1914 an opinion was obtained from the Crown Law Office to the effect that the lake had 'possibly' once belonged to the adjoining (Maori) landowners but that currently there was no Maori claim to any part of the lake bed.[59] Furthermore, the office advised that the 1905 Act had not prohibited European fishing of the lake but that Maori and Pakeha alike required a licence for trout fishing there. Through subsequent legislation, the authority of the Hokio Drainage Board was gradually extended until the preservation included the lake and one-chain strip surrounds, which had not been agreed to or mentioned in the 1905 Act. Whether intended or not, a substantial and strategically placed area of land was thereby removed from Maori control.

In 1926, despite Muaupoko opposition, activity around the lake by the Hokio Drainage Board left a much depleted source of eel and flax resources. With the lake level lowered, Pakeha farmers around the land extended their fences to the new water's edge, thereby obtaining extra land. When Muaupoko attempted to fence off their flax around the lake shores, they were told that the domain board was the vested owner, not the tribe. An inquiry into title by the Department of Lands and Survey in 1931 declared the land to be Crown owned as a result of the 1905 Act, while recognising the restriction on the title laid out in the Act. A committee of inquiry was held in July 1934 to investigate the matter further, at which Muaupoko asserted that they had never given up ownership of the 'chain strip'. Some measure of compromise was established, although title remained undefined in any legal sense, and Maori persistently requested that both the drained area between the strip and the water's edge and the control of the chain strip be returned to Maori. In the 1950s, a new series of meetings, deputations, and representations to the Government began. The resulting Reserves and Other Lands Disposal Act 1956 stated (among other things) under section 18(2) and (3) that the bed of the lake, the islands in the lake, the drained area, and the one-chain strip, as well as the bed of the Hokio Stream and the one-chain strip along (part) of the northern bank of the stream, were, and had always been, owned by Maori.

Despite the provisions of the 1956 Act, there is an ongoing grievance for Maori in the area with regard to the destruction of fisheries, the loss of flax production, the loss of mana, and the fact that resident Maori cannot restrict access despite their ownership of the resource.

59. 'Horowhenua Lake: The Question of Fishing Rights', ma accession w2459, 5/13/173, NA Wellington (cited in Anderson and Pickens, p 275)

12.6.11 Foreshores and inland waterways

Maori have received little or no compensation for the loss of foreshore seafood and river and lake fish as the result of coastal development and interference with natural waterways. It is arguable that Maori customary title still applies in much of the foreshore between the high- and low-water marks (see vol ii, ch 3).

12.6.12 Native Land Court alienations

By the individualisation of titles and the piecemeal purchase of interests, and by the progressive removal of restrictions on the alienation of reserves, Maori were left with insufficient land for enduring participation in the new economy. Many reserves were too small to be economic or have become so by partition and fractionation of title.

12.6.13 Post-1910 alienations

A main concern about the post-1910 sales under the Maori land board is that the board's check on whether the board's Maori beneficial owners had sufficient other land or means was perfunctory in many cases. In addition, the meeting of 'assembled owners', which authorised sales by the boards under Part xviii of the Native Land Act 1909, commonly did not represent a majority (let alone a totality) of the beneficial owners, either by value or by number. Given the limited areas of land remaining in Maori hands and the burgeoning population, any alienations at this time must be regarded as likely to infringe the Crown's Treaty obligation of active protection.

12.7 Additional Reading

The following are recommended for additional reading:

Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996;

Penny Ehrhardt, *Te Whanganui-a-Tara: Customary Tenure, 1750–1850*, Waitangi Tribunal Research Series, 1992, number 3;

Richard Boast, *The Foreshore*, Waitangi Tribunal Rangahaua Whanui Series (first release), November, 1996;

Jane Luiten, 'An Exploratory Report Commissioned by the Waitangi Tribunal on Early Crown Purchases: Whanganui ki Porirua', report commissioned by the Waitangi Tribunal, 1992 (Wai 52 rod, doc a4);

Duncan Moore, 'The Origins of the Crown's Demesne at Port Nicholson, 1839–1846', report commissioned by the Waitangi Tribunal, 1995 (Wai 145 rod, docs e3–e5); and

Alan Ward et al, 'Crown Congress Joint Working Party Historical Report on Wellington Lands', report commissioned by the Crown Congress Joint Working Party, 1992 (Wai 145 rod, doc a4).

See also the evidence on the record of documents for the Wellington tenths claim (Wai 145).

CHAPTER 13

THE NORTHERN SOUTH ISLAND

13.1 Principal Data

13.1.1 Estimated total land area for the district

The estimated total land area for district 13 (the northern South Island) is 3,359,886 acres.

13.1.2 Percentage of land in Maori ownership

Maps prepared for the 1940 *Historical Atlas* project (now held at the Alexander Turnbull Library and reproduced at the start of this volume) indicate that the total percentage of land in Maori ownership in district 13 at 1910 was approximately 3 percent (or 153.6 acres per head according to the census data provided below). Some of this land, which had been granted under the Landless Natives Act 1906, was largely uncultivable.

13.1.3 Main modes of land alienation

The principal modes of land alienation in district 13 were:

- New Zealand Company purchases; and
- Crown pre-emption purchases.

13.1.4 Population

The population of district 13 was approximately 1500 to 1700 in 1840 (estimated figure), 440 in 1891 (estimated from census figures), and 690 in 1936 (also estimated from census figures).

13.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district stretch from Kahurangi Point on the west coast in a south-easterly direction through the North West Nelson Forest Park to the Cobb Reservoir, before heading south to the Nelson Lakes. From these lakes, the

boundary runs north-east and follows the Awatere River to its mouth on Cook Strait.

This district is largely mountainous in nature, and settlement has been concentrated around the coast and the heads of the sounds, which run in from Cook Strait and have historically provided sheltered harbours and waterways for Maori and settlers alike. The temperate climate in the pockets of land at sea level has allowed successful horticulture and viticulture industries to develop in recent years.

13.3 Main Tribal Groups

The report from which the following account of Maori occupation at the top of the South Island is drawn does not claim to be comprehensive, nor does it attempt to judge between the 'take' of tribes with an interest in the area. It does, however, introduce all the tribes who had an interest in the district in 1840, and it describes their patterns of occupation and the claims that they put forward to be right-holders in 1840.

The first Maori occupants in the Wairau and Kaikoura districts were from the Waitaha tribe, while Queen Charlotte Sound was settled in the fifteenth and sixteenth centuries by Ngai Tara Pounamu. Evidence also suggests that Ngati Kuia were in residence at Te Hoiere (Pelorus Sound) at this time, in conjunction with a small population of Ngai Tara. Ngai Tara also possibly occupied Tasman Bay, while Golden Bay and the west coast were occupied by the migrant Whanganui tribe Ngati Wairangi.

In the sixteenth century, Ngai Tara settlement intensified, and Ngati Mamoe and Ngati Tumatakokiri from the North Island arrived and settled in the Nelson district, probably expelling Ngati Wairangi from Golden Bay and Te Tai Poutini (the top of the West Coast). Also arriving at this time were the forerunners of later Ngai Tahu and Rangitane settlements. By 1700, Rangitane claimed the whole of Queen Charlotte Sound and the Wairau, and Ngati Kuia had pushed Ngai Tara out of Te Hoiere altogether. By 1750, a 'Kurahaupo' alliance of Ngati Apa, Ngati Kuia, and Rangitane Maori had established itself, largely displacing Tumatakokiri's occupancy of the Marlborough Sounds by 1810.[1]

In the 1820s, Tainui tribes from the Kawhia coast (Ngati Rarua, Ngati Toa, and Ngati Koata) and Taranaki tribes (Ngati Tama and Te Atiawa) carried out a series of invasions at the top of the South Island. By 1832, these tribes claimed to have conquered Te Tau Ihu (the top of the South Island), as well as a large part of the Kaikoura and Te Tai Poutini coasts. In particular, the nature and extent of Ngati Toa's right-holding in the Te Tau Ihu region generally, which was based on conquest but was not always followed by occupation, has been described as a 'thorny problem' requiring closer investigation.

By about 1840, tribal groupings were situated in the district as follows:

1. G A Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), pt 1, 1995, p 18

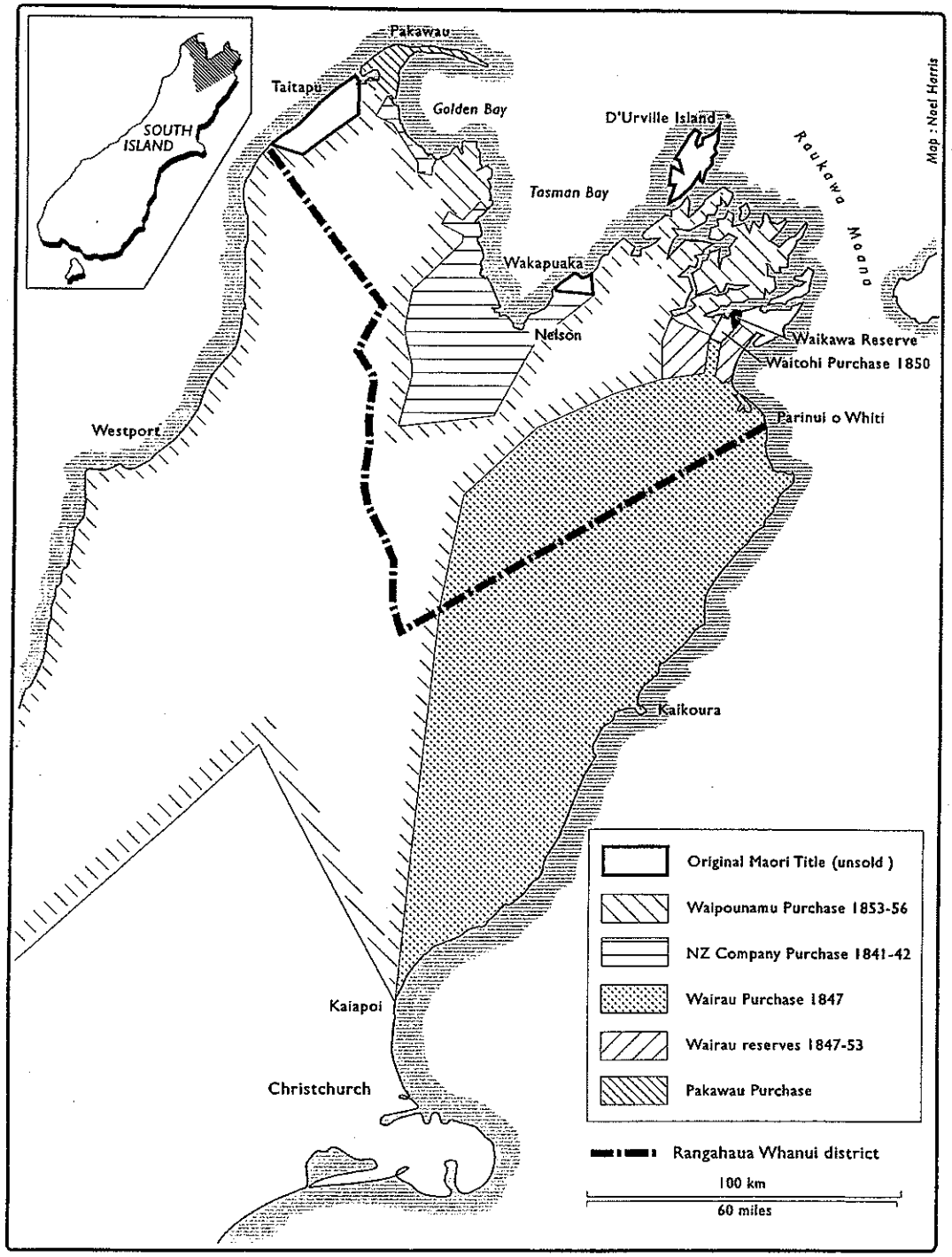

Figure 22: District 13 (the northern South Island)

- Te Tai Poutini had been occupied by a collection of Ngai Tahu and Ngati Rarua–Ngati Tama Maori up until the mid-1830s. While their relationship is unclear, it has been described as something of a 'balance' involving intermarriage. This balance was upset, however, in 1836 when Ngai Tahu regained some independence (although the matters of old boundaries with Tumatakokiri and their relations with Ngati Apa in the area still require clarification).
- Golden Bay was, generally speaking, shared between three iwi in 1840. Te Atiawa and Ngati Tama lived in the Aorere district, while Ngati Rarua and Ngati Tama were resident in the Takaka and Te Tai Tapu areas. Tasman Bay, on the other hand, reflected an extremely complex evolution of rights. Briefly, however, Ngati Tama were predominant in the east of Tasman Bay in the Wakapuaka district, while Ngati Rarua and Te Atiawa were located in the Riwaka and Motueka districts and controlled western Tasman Bay. Ngati Koata also retained some connection with the land at Wakapuaka and Whakatu after they had withdrawn from these areas in the 1830s.
- Rangitoto (D'Urville Island) was inhabited by Ngati Koata, who also occupied Croixelles Harbour (Whangarae) and the French Pass (Te Aumiti). Ngati Toa were present in Te Hoiere at this time and in close relations with Ngati Koata.
- Totaranui (Queen Charlotte Sound) was claimed by Te Atiawa (on either side of Cook Strait) by right of conquest and continuous occupation. Ngati Toa also had rights in this area, especially near Port Underwood. These tribal groupings shared occupation at Te Awaiti whaling site.
- Wairau and Karauripe were mainly occupied by Ngati Toa, in conjunction with Ngati Rarua. Te Atiawa were also resident at Waitohi, the harbour access to the Wairau district. As a result of shifting fortunes in the wars of the 1820s and 1830s, both Ngati Toa and Ngai Tahu claimed the coast between Blenheim and Kaikoura. This issue, and their respective rights on the West Coast, have recently been before the courts.
- The Kurahaupo iwi (Ngati Apa, Ngati Kuia, and Rangitane) were largely killed or enslaved from 1827 to 1832, although for those who remained, the occupation of their takiwa continued without a break. Rangitane remained in the Wairau Gorge, while Ngati Apa continued to occupy the West Coast. The Crown, in purchase activities in these areas, subsequently acknowledged some land rights of the Kurahaupo iwi in the northern South Island.

13.4 Principal Modes of Land Alienation

13.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

In 1839, the New Zealand Company claimed to have purchased all of the South Island northward of 43 degrees latitude by virtue of its 'Kapiti deed', signed with Ngati Toa chiefs, and the 'Queen Charlotte Sound deed', signed with Te Atiawa chiefs (seen by Wakefield in each case as the 'overlord' chiefs). In November 1840,

as part of the company's agreement with the British Government, these extravagant claims were abandoned in favour of the 'Pennington award' of some 600,000 acres, based on four acres for each pound spent in the New Zealand settlements. (This was later increased to about 1.3 million acres.) Of this, about 221,100 acres were to be in the Nelson area. Subsequent 'payments upon settling', valued at £980, were made to resident groups by the company. Further compensation of £800 was made to resident groups under Commissioner Spain's award in 1844, the company receiving title to 151,000 acres in Tasman and Golden Bays. One-tenth (15,100 acres) was supposed to be reserved for Maori, together with settlements and cultivations. The company's grant was later increased by Governor Grey, and further payments were made in the 1850s in satisfaction of some of the unextinguished rights in Golden Bay.

13.4.2 Crown purchases before 1865

In 1847, all Ngati Toa rights to an area of about three million acres from Cloudy Bay to Kaiapoi were purchased by the Crown in the Wairau purchase. Two reserves were specified, and the deed had only three signatories.

From 1848 to 1850, the area from Waikawa to the northern boundary of the Wairau purchase was acquired by the Crown from Te Atiawa in the Waitohi purchase.

From 1853 to 1856, in the Waipounamu purchases, rights over some eight million acres were purchased by the Crown, north and west of the 1848 Kemp purchase and the Wairau purchase and including Pelorus and Queen Charlotte Sounds, the Wairau reserves of 1847, Tasman and Golden Bays outside the company purchases, and the West Coast south to Arahura. Negotiations began with Ngati Toa in Wellington and were continued in a series of 13 further purchase agreements with resident and nonresident right-holders, for a total payment of £6787 and several small reserves.

In 1859, in the Kaikoura purchase, the interests of Ngai Tahu between White Bluffs (Parinui o Whiti) and the Waiau-ua River were purchased by the Crown.

In 1860, in the Arahura purchase, the interests of Ngai Tahu in the Poutini coast and of Ngati Apa at Kawatiri, except for reserves, were also acquired by the Crown.

13.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 13.

13.4.4 Confiscations

There were no confiscations in district 13.

13.4.5 Purchases under the Native Land Acts (Crown and private as indicated)

An 88,000-acre reserve at Taitapu was the subject of a gold strike in 1862, and local tribes, notably Ngati Rarua, agreed to terms defined by Assistant Native Secretary James Mackay that regulated the field and paid miners' licence fees to Maori. Pursuant to this agreement and to the Gold Fields Act 1866, Taitapu was, by proclamation of the Nelson provincial superintendent, included in the Golden Bay goldfields. Because of doubts over the validity of this proclamation, it was further proclaimed by the Governor in 1873 under the Gold Fields Act Amendment Act 1868. This resulted in long leases to mining companies. In 1883, the reserve was awarded to Ngati Rarua by the Native Land Court; it was sold the following year to a Wellington syndicate for £10,000 with no reserves.

In 1883, the Native Land Court awarded the approximately 40,000-acre Rangitoto block to Ngati Koata. Titles were under restriction and most of the island was alienated by lease. In the twentieth century, restrictions were gradually removed and the freehold acquired by private purchasers. In 1979, 5000 acres remained as Maori freehold land.

13.4.6 Public works takings

In this, as in all other districts, takings of Maori land by central and local government for public purposes regularly occurred. In the northern South Island, these takings were usually small, but they were significant in the context of the minimal reserves made from the big Crown purchases. Details of particular takings were not available for this report, but for a general discussion of public works policy and law, see volume ii, chapter 11.

13.5 Outcomes for Main Tribes in the Area

Out of a district comprising some 3.4 million acres, the customary right-holders of Te Tau Ihu were left by 1865 with about 7000 acres of reserves (which were unevenly distributed between the various tribes), plus Taitapu and Rangitoto (subsequently sold).[2] On an acres-per-head basis, their holdings were little better than those of Ngai Tahu; many were subsequently deemed to qualify for the (negligible) awards under the South Island Landless Natives Act 1906 (and associated commissions of inquiry). In short, the situation of the people of this district was virtually the same as that of Ngai Tahu, in that their rohe and mahinga kai were mostly gone or, in the case of the foreshore, shared with the settlers. A population possibly not a great deal smaller than Ngai Tahu in 1840 had suffered comparable losses and marginalisation. Many were obliged to leave the district in search of work, and the

2. See 'Report of the Commissioner of Native Reserves', 6 December 1865, in G A Phillipson, *The Northern South Island*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), pt 2, 1996, app i

once strong communities resident in the bays and sounds withered and in some cases disappeared. The principal 'overlord' tribe, Ngati Toa, lost virtually all its interests in the district.

13.6 Examples of Treaty Issues Arising

13.6.1 New Zealand Company purchases and related agreements

The 1839 company purchases derived substantially from Colonel Wakefield's deed signed with Ngati Toa chiefs of Kapiti in 1839, which purported to sell the title to about 20 million acres between north Taranaki and latitude 43 degrees south. Ngati Toa clearly did not understand the deed in those terms, and except for Te Atiawa in Queen Charlotte Sound, resident groups in Te Tau Ihu had not been consulted at all. These proceedings fell short of the requirements of the company's own instructions to Colonel Wakefield and of Normanby's instructions to Hobson. Yet the Crown accepted the deed not as wholly invalid but as signifying a 'partial purchase' (in Spain's terms), and it allowed the company to select four acres for each pound sterling spent on colonisation. The company's additional 'payments upon settling' to Maori resident in Golden and Tasman Bays avoided negating the Kapiti deed and circumvented the Crown's pre-emption, which had been established in January 1840.

Wakefield's 'payments upon settling' amounted to £980, but they involved no new deals, no formal cession of rights, and no recorded definitions of what was being given up and what was being retained. Payment was also to be in the form of company 'tenths' reserved for Maori benefit, but the full quotient of tenths was never made and the evidence clearly indicates that Maori did not understand the tenths arrangement.

Spain's refusal of Ngati Toa's request to forbid the company survey of the disputed Wairau Valley and the willingness of magistrates to issue warrants for the arrest of Ngati Toa chiefs for their non-violent obstruction, contributed to the tragic events there in June 1843.

Spain's additional £800 of 'compensation' payments, arbitrated in 1844 and paid mainly to Maori still refusing to vacate contested land in favour of the settlers, was based on inadequate inquiries and was, on several occasions, accepted with great reluctance and under considerable pressure from Spain and sub-protector George Clarke junior. This pressure included assertions that the 1839 to 1842 purchase was deemed valid anyway and the money would be banked and spent on their behalf. Local resident groups effectively were denied the option to refrain from sale altogether or to secure prices higher than those prevailing in 1839 to 1841. In particular, the Motupipi people of Golden Bay refused Spain's award and £290 compensation in 1844, and they conceded only in 1846 when it was apparent that the Government regarded the purchase as a fait accompli.

There is considerable evidence that some promised reserves (additional to tenths) were not made and that areas Maori requested to be exempted from sale were included in Spain's award.

The boundaries of all purchases made between 1839 and 1846 were very vague and continued to cause difficulties for years afterwards.

13.6.2 Crown purchases before 1865

The 1847 Wairau purchase was made when Te Rauparaha and other Ngati Toa leaders were in custody and Te Rangihaeata was in refuge. Only three major Ngati Toa chiefs signed the deed of sale. Governor Grey seems to have accepted Spain's 1845 finding that Ngati Toa alone were the 'owners' of the Wairau, ignoring C W Ligar's 1847 evidence of resident Ngati Rarua and Rangitane groups, who were not separately consulted. The Government did not oversee the distribution of the purchase money, and it continued to pay instalments to the three signatories even when it was aware that the funds were not being distributed. A substantial reserve of 117,248 acres was made in the Port Underwood area, Grey explaining that extensive hunting and gathering zones were necessary until Maori farming practices had evolved;[3] yet these reserves were bought by the Crown within six years. There is considerable evidence that pressure was brought to bear on the Ngati Toa chiefs to sell the Wairau. The purchase from Ngati Toa as far south as Kaiapoi compromised Ngai Tahu, who had interests southward of White Bluffs. (Ngai Tahu interests were acquired by the Crown in the north Canterbury purchase of 1857 and the Kaikoura purchase of 1858.)

The initial purchases of Te Waipounamu (1853–56) was a 'blanket purchase' by Governor Grey and Donald McLean in Wellington with Rawiri Puaha and other Ngati Toa chiefs in August 1853, intended to extinguish all rights in an eight million-acre zone north and west of the Kemp purchase of 1848 and the Wairau purchase. Of the agreed £5000 purchase price, £2000 was paid in the first instance, the balance to be paid and reserves made at a hui with other groups 'conjointly' owning the land with Ngati Toa, to be held at Nelson in January 1854.

Payment also included scrip worth £50 given to each of 15 principal chiefs to buy land at 10 shillings an acre in the Nelson province, but they encountered obstacles from the provincial authorities in exercising their right and it appears that seven of the 15 were unable to do so.

The Governor also offered grants of 200 acres to 12 of the 15 chiefs who received scrip and to each of 26 other chiefs, to be selected within the purchase area and held under individual title. The grants were not made and became a major grievance. A proposal to allocate the land in 1874 also ran up against potential opposition from the province. In the 1880s, a payment of £5200 was awarded by Parliament in lieu, the form of the payment not being entirely to the wishes of the then Ngati Toa leaders (most of the original intended grantees having died).

3. Grey to Earl Grey, 7 April 1847, BPP, 1847–48, p 16

Instead of convening the promised January 1854 meeting in Nelson, McLean made several purchases in Taranaki from Te Atiawa for their interests in Te Wai Pounamu. In November 1854, he briefly visited Nelson but only to sign a deed with the Ngati Hinetuhi hapu of Te Atiawa for their interests in named locations in Queen Charlotte Sound and unilaterally to order surveyors to mark off reserves in the sounds, on the basis of the purchase from Ngati Toa. The surveyors could not get agreement on reserves with resident tribes in the sounds or with resident Ngati Toa at Wairau.

In December 1854, while attending a large tangi at Porirua, McLean paid a further £2000 of the purchase price, still mainly to Ngati Toa chiefs, in exchange for the abandonment of the proposed Nelson hui and an agreement by the chiefs to visit Te Tau Ihu with McLean and persuade resident groups to accept the purchase. This action angered the resident groups, who saw it as a breach of faith and an abandonment of the August 1853 agreement. They took the view that they still had the right to refuse to sell, while officials argued that the land had been sold and it only remained for the balance of the purchase money to be paid and the reserves designated. It is clear that the resident right-holders were placed under great pressure from the earlier purchase agreements with the non-residents.

In November 1855, at Nelson, McLean finally signed further deeds with Ngati Tama and Ngati Rarua chiefs for all their interests in Golden Bay not already sold. Riwai Turangapeke of Ngati Rarua denied the right of the Wellington chiefs to sell the Taitapu block, north of west Whanganui, and it was reserved, though with unclear boundaries.

McLean also argued that Wakapuaka was included in the purchase by virtue of the signature of the Ngati Tama chief Te Wahapiro on the 1853 deed. But Wi Katene Te Manu and the Ngati Tama residents of Wakapuaka objected, and McLean agreed to reserve it (about 18,000 acres). But though he sketched it on his map, he made no mention of it in the 1855 deed, and Ngati Tama refused to sign or to accept payment.

In 1855, McLean instructed John Tinline to purchase from the Golden Bay tribes (Ngati Tama, Ngati Rarua, and Te Atiawa) the remaining ‘claims of a general nature by right of conquest over various portions of this Island’[4] within the old company purchase, notably at Separation Point. Against local Maori assertions that their lands were unsold and that they were therefore free to make new sales at current prices, Tinline was instructed to uphold the Spain award (and thus the 1839 company purchase behind it). While particular claims of local resident groups were to be met, they were to be regarded as subdivisions of tribes who had already sold the land. Tinline was therefore to offer low payments equivalent to a share of the 1844 compensation. On meeting Tinline at Motupipi and also at Te Parapara, the claimants insisted that a new purchase was involved, and they wanted much larger payments. Tinline would not give way, and no agreement was reached.

4. McLean to Tinline, 12 November 1855 (cited in Phillipson, pt 1, p 165)

McLean returned to the area in 1856, and on 7 March the Ngati Tama and Ngati Rarua chiefs finally signed for a payment of £100 for 'all the places for which we did not receive payment in any former deed of sale' (that is, in satisfaction of Spain's compensation money not distributed to them in 1844 to 1846).[5] The local groups were finally capitulating, against their clearly expressed preferences as to the price and the size of reserves, to what was presented consistently by the Government as a fait accompli.

In 1873, a runanga of Ngati Rarua, Ngati Tama, and Te Atiawa declared that their sale to the company in 1839 and to the Government in 1855 had included the coastal area but not the mountains and rivers of the interior and adjacent plains. It was not practicable to have walked the boundaries of the interior in 1855, and McLean relied upon a sketch map accompanying the deed, which gives only two interior place names (Rotoiti and Rotoroa). The vagueness of the deed descriptions and of the map, together with the fact that McLean did subsequently negotiate again for specific places, gives rise to the possibility that Maori participants may not have grasped the significance of the general blanket purchase: namely, that all their rights in the island were alienated except for specified reserves. The fact that settlers did not penetrate the interior for a good number of years, during which time Maori were still hunting in it, may have sustained the impression for some Maori that they retained rights to the interior. Against their claim, however, is the absence of protest before 1873 and the swift dismissal of the claim by Alexander Mackay, the commissioner of reserves in the South Island, a man who had not hesitated to speak up before and since on behalf of South Island Maori against the general run of official opinion.

In January 1856, in completing negotiations with Rangitane, McLean undertook to make 'good large reserves' as well as a payment of £100. But he left it ambiguous as to whether the reserves were for Rangitane alone or whether they were to be shared with Ngati Toa and Ngati Rarua. There is a discrepancy between McLean's diary entry, which referred to an intended reserve at Port Underwood (estimated by McLean at about '4000 acres of good land', but actually about 13,400 acres within the described boundaries), and the actual reserves he ordered at the Nelson office – 770 acres plus a small fishing reserve. It was not till 1862 that serious attempts were made to rectify the discrepancy, and then, the land having passed to the provincial government and been leased, Maori ended up with about 10,000 acres less than was promised at the 1856 hui. Phillipson comments:

> This type of problem with reserves was not uncommon, and there were boundary disputes over the Tai Tapu, Wakapuaka and Whangamoa Reserves, none of which were surveyed or had their boundaries marked until long after 1856.[6]

Between 6 and 9 February 1856, McLean met with Te Atiawa at Waikawa reserve and offered them £500 for their interests in Queen Charlotte Sound. The

5. Richmond and McLean to Private Secretary, 25 June 1856 (cited in Phillipson, pt 1, p 167)
6. Mackay 1, pp 321–325, 333–334 (cited in Phillipson, pt 1, p 178)

reserve initially described in McLean's journal contained about 13,400 acres, but McLean later reported that he had made two small reserves: a 770-acre reserve on the bank of the Wairau River and a fishing reserve.[7] The Tory Channel chiefs asked for £6600 and the Puketapu for £3800, but McLean insisted that the land, already in the Waipounamu purchase deed, was very poor and refused to pay any more.

In the Kaituna Valley, McLean agreed with Ngati Kuia to make about 700 acres of reserves (50 acres were Crown granted to the principal chief Hura Kopapa) and to grant them the right to continue using their cultivations on the right bank of the Kaituna and at Motueka until the land was required for settlement. Ninety-three members of Ngati Kuia and Rangitane signed away their remaining interests for £100 on 16 February 1856.

On 5 March 1856, McLean signed deeds at Nelson with Ngati Koata chiefs for 'all our lands in this Island' for £100 except for reserves previously negotiated but not yet surveyed, and an additional 100 acres at Whangamoa (a bone of contention with Ngati Tama, who were not consulted about it in 1856).

In 1859, during the Kaikoura purchase, McLean authorised payment to Kaikoura Ngai Tahu of around £150 and reserves of 10 to 100 acres per family or individual. The tribe sought £5000 and a reserve of 100,000 acres and finally accepted £300 and 5558 acres of reserves when James Mackay threatened to break off negotiations. The possible interests of Rangitane in the area covered by the deed were not considered. Rangitane now claim that they had interests as far south as the Waiau River that were not previously extinguished by earlier agreements. The Rangitane claim was heard and rejected by the Maori Appellate Court in 1990. The concept of sharp tribal boundaries (as distinct layers of intersecting rights), however, remains problematic in this district, as in all others.

Of the 6724 acres of occupation reserves made in the Arahura purchase in 1860, mainly for Ngai Tahu, 424 acres were made for Ngati Apa at Kawatiri. Although their numbers may have been small, it is highly unlikely that this would have been enough land for local Ngati Apa to have entered the commercial economy. Questions have been raised by Kurahaupo Trust claimants as to whether the interests of Ngati Rarua, Ngati Tama, and Te Atiawa were adequately considered in the allocation of interests in the Arahura reserves. Also, Ngati Apa interests in Golden Bay have been neither considered nor extinguished by the Crown.

Phillipson asks pertinent questions of the Crown purchases as follows:

(a) *Who did the Crown negotiate with, and did it treat with all (or any) of the correct right-holders?* Did the Crown treat with the whole community? with a large group of chiefs? with a small group of chiefs? with residents? with absentees? with people who had never lived on the land or visited it for resource-use? with non-resident chiefs claiming paramountcy over their neighbours? with conquerors? with conquered? with both?

(b) *And in respect to all of these potential vendors, with whom did the Crown negotiate first?* That is to say, did the Crown get the consent of non-residents

7. McLean to Colonial Secretary, 7 April 1856, in Mackay 1, p 302 (cited in Phillipson, pt 1, p 176)

first, and present the purchase as a fait accompli to residents, who were told that they were merely entitled to compensation)? to whom did it give the majority of the payment? how were the payments divided between vendors and did the Crown supervise or control such arrangements? on top of the formal price and reserves, were separate arrangements made with key chiefs as 'inducements'?

(c) *What was contained in the formal agreement (the deed)?* Were there other, informal or verbal agreements? Were the written deeds translated accurately? Were their contents explained adequately to Maori? Was there a clearly defined sale of a clearly defined district? Was there a map? Was the map accurate and did Maori demonstrate an understanding of it? Did the parties walk the boundaries of the sale or of the reserves or of both?

(d) *Did the Crown extinguish all customary interests, and were the phrases about the 'surrender of all rights everywhere' a genuine reflection of the transaction as understood by Maori?* And in particular, did the Crown actually bargain for specific and discrete districts, in contravention of the wording of the deeds? Did it fail to extinguish the rights of Ngati Apa? And was there a 'hole in the middle' of the blanket purchases?

(e) *Reserve issues.* In terms of the sale negotiations, were reserves adequately described in the deed? accurately placed on the map? were the boundaries specified, and if so, were they marked off correctly? were reserves surveyed at the time or marked off much later, and were the original vendors and Crown agents present to ensure that the arrangements were properly carried out?

(f) *Issues of consent.* Were the parties willing? were they constrained, and if so, by what? were the consequences of the permanent alienation clear, and did the Crown deal fairly in terms of ensuring that Maori were fully aware of the economic value of land and minerals? Were the vendors allowed to keep as much land as they wanted to, whether as reserves or unsold land? did the Crown agree to make reserves where the vendors wanted them?

(g) *Price in terms of money.* Did the Crown pay a fair price? (This is a vexed issue, but some reliance may be placed on the comments of Crown agents at the time and later that the prices were frequently nominal in terms of the real value of the land and its resources.)

(h) *Price in terms of 'secure titles'.* The Crown maintained that part of the benefit of land sales was that Maori would get secure Crown grants for their reserves. Did this happen, and was the allocation of grants carried out fairly?

(i) *Undertakings.* Did the Crown fulfil all the undertakings made to Maori during purchase negotiations?[8]

13.6.3 Alienations under the Native Land Acts

James Mackay's Taitapu reserve agreement of 1862 with the Ngati Rarua chiefs, while being in essence a genuine attempt to protect Maori from the consequences of the gold discoveries and give them a share of the revenue, probably required the chiefs to sign away more authority than was necessary to the Crown. (The Crown was then able to make future arrangements without further consultation.) Subsequent proclamations under the Gold Fields Acts were an exercise of kawanatanga

8. Phillipson, pt 2, pp 60–61

that placed the land more firmly beyond Maori control; it is not clear on the available evidence whether Maori right-holders were consulted. The adequacy of the share of goldfields revenue to Maori is also at issue (see also volume ii, chapter 10). So also is the question of whether other groups besides Ngati Rarua (whose interests had been recognised in previous arrangements) should also have been recognised by the Native Land Court prior to the sale of the block.

Questions have also arisen as to whether the Native Land Court decisions regarding Rangitoto adequately reflected custom or the wishes of the right-holders or both. The procedures of the Native Land Court are discussed in volume ii, chapter 7. The removal of restrictions on the titles awarded by the court, which led to the alienation of the freehold of most of the island, is another national issue that is considered below in volume ii, chapter 8.

A number of more general Treaty issues also arise. First, there was a lack of investigation of right-holding before purchases. All major purchases, from the 1839 company purchases to the Kaikoura purchase of 1859, had proceeded without any comprehensive prior investigation of customary right-holding. The company, then the Government, relied on the incomplete and often superficial reports of officials at different times and places, prior to a series of part-purchases. General hui at which complex overlapping interests were discussed were rare and confined only to sections of the right-holders. Doubts exist to this day as to whether the interests of Rangitane (on the east coast) and Ngati Apa (on the west coast) were adequately recognised. The purchases privileged the situation of Ngati Toa as conquerors, and though the rights of resident groups were subsequently recognised, this was in the form of a series of ‘mopping up’ purchases, which left them no opportunity to reject the original blanket purchases as such.

Secondly, there is the question of the adequacy of reserves. The above deficiencies might not have been so serious had adequate reserves been made or lands been left in Maori freehold title with restrictions confining alienability to renewable leases. But they were not. Some statements by Crown agents, such as Grey’s statement of 7 April 1847, clearly recognised that Maori needed large acreages on which to practise their traditional hunting and gathering economy or on which to enter the new pastoral economy. Yet reserves were not made for this purpose, or if they were, they were purchased within a few years. In the Arahura purchase of 1860, occupation reserves of 6000 acres, school and church endowment reserves, and 2000 acres for survey costs were a rare and late part-acknowledgement of Maori needs. McLean and other officials made known their preference for eliminating customary tenure and obliging Maori as individuals to buy general land. But, apart from individual grants promised, though not always made, to some of the chiefs, partly as an inducement to them to sell the remainder of their tribal patrimony, Maori were not in fact facilitated in the acquisition of general land. Increasingly, as land continued to be purchased and Maori numbers increased, Maori simply became landless or nearly so. Many Maori in Te Tau Ihu were listed among those qualifying for grants under the South Island Landless Natives Act 1906. But

the history of those grants is also a travesty, which resulted in very little quality land being added to Maori holdings.[9]

The Nelson 'tenths', and a number of other reserves in the area, were administered by the commissioners of native reserves and then by the Public or Maori Trustee. The quality of that administration varied considerably over the years, and some of the reserves were alienated. Although well-intentioned, and providing some revenue for the educational and other needs of local Maori, the paternalistic administration gave Maori little experience or responsibility in the administration of land reserved for their benefit.

Phillipson draws the following conclusions (among others) in respect of reserves:

(a) the Crown did not ensure that the New Zealand Company's scheme for making reserves was properly carried out;
(b) Maori never received their full tenths awards, and in fact the Government permitted a drastic shortfall in the tenths to occur (partly by direct action, partly by inaction);
(c) the question of who was entitled to the benefit of the tenths may never have been satisfactorily settled;
(d) the Crown did not make all the reserves that it promised to during the Crown purchases, nor did it ensure that those reserves that were made were consistent with verbal or incompletely recorded agreements (or both) with Maori;
(e) the Crown did not ensure that enough (and appropriate) land was reserved for Maori to continue their traditional economic practices if they chose to do so;
(f) from the impressionistic evidence of Alexander Mackay and others, and from the plight of 'landless natives' by the 1880s, it would appear that the Crown did not ensure that enough (and appropriate) land was reserved to meet the 'present and future needs' of Maori; and
(g) only two really large reserves were ever made, the Wairau reserve of 1847 and the Taitapu reserve of 1856, and the Crown did not ensure that Maori were able to exploit these reserves to their fullest extent or to retain them permanently in their possession.

In addition to these issues, there are a number of important questions about reserves that this report was not able to answer. Further research is necessary on:

(a) the administration of the tenths and other reserves that came under the Native Reserves Acts;
(b) the full details of how reserves were finalised after a complicated process of adjustment and swaps, especially in Golden Bay;

9. See AJHR, 1905, g-2; 1914, g-2

(c) the process by which Maori obtained legal title to their reserves, especially James Mackay's allocation of Crown grants in the 1860s and the landmark decisions of the Native Land Court in the 1880s and 1890s;
(d) the extent to which Maori retained the smaller reserves in their possession;
(e) the allocation and suitability of the landless natives reserves and the degree to which they actually alleviated landlessness; and
(f) the use and retention of land on Rangitoto by Ngati Koata and Ngati Kuia.

Finally, there is the matter of the adequacy of consideration. The sums paid for Maori rights over vast areas of land were, like those paid for the Ngai Tahu purchases, remarkably low. In most cases, they bore little relationship to either the income that Maori were already starting to get from rents by the time of the north Canterbury purchase or the resale prices that the Government or private purchasers received almost immediately.

The question of a fair price for unsurveyed, undeveloped, and unregistered lands is a complex one. But on almost any measure, most of the payments made for the very large areas in Te Tau Ihu, much of it containing valuable forests, harbours, and, in some cases, minerals, could justifiably be described as nominal. The true consideration payable was, of course, represented by the company and Crown negotiators, as the increased value given to the vendors' remaining lands, and to the benefits of association with settler communities and with the Crown. In this context, the adequacy of reserves, both for Maori occupation and for commercial development, as well as reserves held in trust to yield revenue for education, medical care, and other benefits, becomes crucial. In fact, reserved lands were not provided in anything like sufficient quantity. Although the trust administration of trust reserves in Nelson and Marlborough was better than in most districts, yielding some revenue for the benefit of the local Maori communities, in general Maori of the northern South Island rapidly became marginalised in much the same way and in the same period as Ngai Tahu. By the 1870s, Maori in this district lost almost all their land in a very short period, without adequate recompense, without their full and free consent to many of the most basic details of the transactions, and without adequate provision for them either to maintain their traditional economy or to engage in a meaningful sense with the emerging settler economy. This is an evident failure on the part of the Crown to honour explicit or implicit undertakings made to Maori during the assertion of British sovereignty and the purchase of land in the northern South Island.

13.7 Additional Reading

The following are recommended for additional reading:

A Mackay, *A Compendium of Official Documents Relative to Native Affairs in the South Island*, two volumes, Wellington, 1873;

J H Barne, *History of Taitapu Estate*, New Zealand Forest Service, December 1986;

M J and H A Mitchell, submission to the Waitangi Tribunal on behalf of claimants (Wai 102 rod, docs a2, a3, a5, a6(a)–(c), a7, a16 (a)–(b));

R Allan, *Nelson: A History of Early Settlement*, Wellington, 1965; and

O Baldwin, *Story of New Zealand's French Pass and d'Urville Island*, Plimmerton, volume 1, 1979; volume 3, 1983.

CHAPTER 14

THE SOUTHERN SOUTH ISLAND

14.1 Principal Data

14.1.1 Estimated total land area for the district (including lakes)

The estimated total land area for district 14 (the southern South Island), including lakes, is 34,253,201 acres.

14.1.2 Total percentage of land in Maori ownership

Historical Atlas maps held in the Alexander Turnbull Library indicate that, as a result of pre-1865 Crown purchases, the total percentage of land in Maori ownership in district 14 at 1890 was approximately one percent (or approximately 101.1 acres of largely mountainous land per head according to the 1936 census figures provided below).

14.1.3 Principal modes of land alienation

The principal mode of land alienation in district 14 was pre-1865 Crown purchases.

14.1.4 Population

The population of district 14 was approximately 1500 to 2500 in 1840 (estimated figure), 1579 in 1891 (estimated from census figures), and 2221 in 1936 (also estimated from census figures).

14.2 Main Geographic Features Relevant to Habitation and Land Use

The boundaries of this research district encompass most of the South Island and Stewart Island southward of a line from Kahurangi Point on the West Coast running inland to the Nelson Lakes and thence in a north-easterly direction to the mouth of the Awatere River.

The most outstanding geographical feature of this district is its mountainous nature. The Southern Alps, with their great ranges and inter-montane basins and valleys, descend to the rich Canterbury plains in the east and the narrow westland

coastal plain. There are splendid harbours at Otakau and on Banks Peninsula. Traditional Maori occupancy centred on fishing villages strung along the coasts, their inhabitants making seasonal forays to the interior for great catches of eels, flightless birds, and forest foods. The Arahura Valley and areas further south were sources of the greatly prized pounamu. The Southern Alps are home to New Zealand's leading ski fields and, combined with the lakes in the southern portion of this district, are one of the nation's most popular tourist locations. On the Canterbury Plains and in Otago and Southland, pastoralism is predominant.

14.3 Main Tribal Groupings

The principal tribe in this district is Ngai Tahu, formed from three main lines of descent that came together. The earliest of these three tribes was Waitaha, which was a collective name given to the ancient tribal groups that occupied the South Island. There is evidence that Maori were in the South Island 1000 years ago. The second tribe, Ngati Mamoe, came from the Heretaunga area around the sixteenth century and filtered down through the South Island, intermarrying with Waitaha. The third tribe, Ngai Tahu, also migrated from the east of the North Island, gradually uniting with Ngati Mamoe.

14.4 Principal Modes of Land Alienation

14.4.1 Pre-1840 purchases (including approved old land claims and surplus lands)

There may have been some pre-1840 purchases on Stewart Island.[1] Some British officials were originally under the misconception that the whole of Banks Peninsula had been sold to the French. Other old land claims by British subjects were found to be valid by the old land claims commission, but they were overlaid by subsequent Crown purchases before they were finally resolved.

14.4.2 Pre-emption waiver purchases

After several weeks of discussion, in July 1844 the Otakou block was transferred from Ngai Tahu to the New Zealand Company for the sum of £2400. Estimated at the time to contain 400,000 acres, the block was later found to contain around 534,000 acres. Three pieces of land within the block were excluded: a large block on the western side of the Otakou Heads, a reserve at Taieri, and a reserve at Molyneaux, together totalling 9615 acres. Based on an estimate that 335 people

1. For some discussion of this, see Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 146.

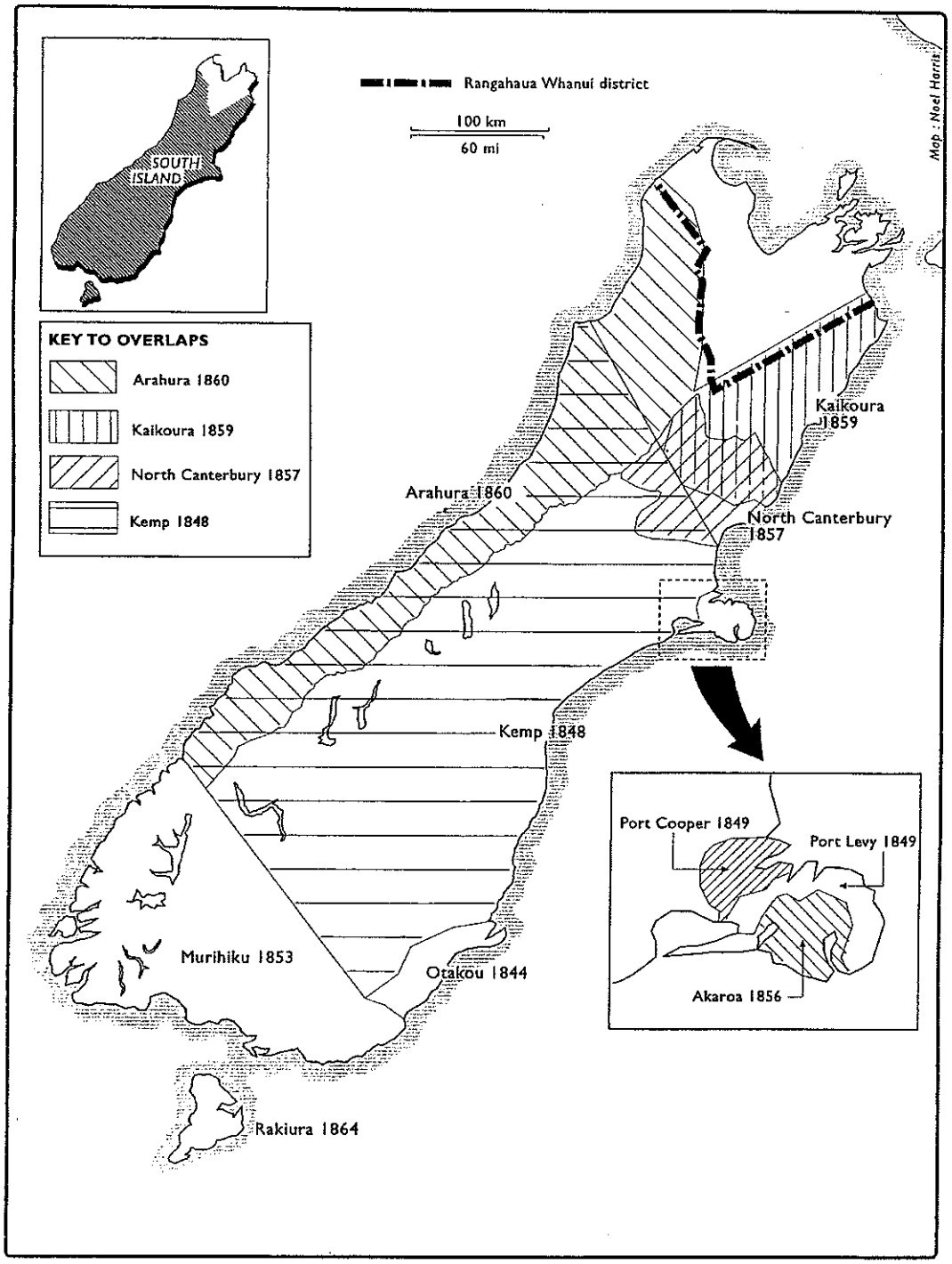

Figure 23: District 14 (the southern South Island)

may have had rights in this block, this left Ngai Tahu with less than 30 acres per head.

14.4.3 Crown purchases before 1865

The Otakou purchase of 1844 was reasonably well conducted, with open discussion with the chiefs and assembled people and joint marking of boundaries. Reserves were made essentially according to Maori wishes in the New Edinburgh block of about 150,000 acres, but they were not made in the wider 400,000-acre purchase within which the New Edinburgh settlement was established.

In June 1848, Kemp transacted a purchase with Ngai Tahu for 20 million acres. This was the largest block of land ever bought by the Crown. Mantell, in implementing the agreement, heavily reduced the amount of land Ngai Tahu considered they were entitled to have reserved, allowing only 6359 acres out of the 20 million acres to be reserved for them. Payment for this block was £2000.

In August 1849, the Port Cooper deed was signed by the Crown and Ngai Tahu, involving 59,000 acres, for which the Crown paid £200. Ngai Tahu retained approximately 900 acres in reserves.

A month later (in September 1849), the Crown transacted another deed with Ngai Tahu for 104,000 acres at Port Levy (Koukourarata). Only 1361 acres were reserved for Ngai Tahu. Most of this reserve was rocky hillside, only 300 acres being good, arable land. A survey carried out in 1880 found that within this reserve there were only three acres of arable land per capita.[2]

In 1856, almost all the remaining land on Banks Peninsula was purchased via the Akaroa deed. Ngai Tahu received 1200 acres of land as reserves. The Crown paid £150 for this block of approximately 67,000 acres.

In August 1853, Mantell (the commissioner of Crown lands) obtained Ngai Tahu agreement to the Murihiku deed. For £2600, the Crown acquired over seven million acres of land, reserving only 4875 acres to Ngai Tahu in seven separate reserves.

In February 1857, a deed was signed for the north Canterbury purchase, estimated to contain well over one million acres. Ngai Tahu were paid £500 but received no reserves. This was justified by the Crown on the basis of the value of Ngai Tahu's existing reserves, but was really due to the fact that the block was already almost totally occupied by European runholders.

In March 1859, the Crown purchased another large block of land, the Kaikoura purchase, estimated to contain 2.8 million acres. Ngati Kuri, a Ngai Tahu hapu centred on Kaikoura, received £300 to extinguish their interests, along with 5558 acres of reserves. There were nine reserves in all, ranging from three to 4800 acres in size. An additional 100,000 acres were requested for a reserve, but this was refused by the Crown. In a similar manner to the north Canterbury purchase, land in this block had already been parcelled out to runholders.

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2. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, vol 1, p 92

In May 1860, the Crown purchased the Arahura block from Poutini Ngai Tahu for the sum of £300. The block contained seven million acres. A total of 6724 acres were reserved for individual allotment, 3500 acres for educational and religious endowment, and 2000 acres for later sale to cover surveying costs. Included was a 2000-acre reserve along the banks of the Arahura River, with which Ngai Tahu were anxious to protect their valuable pounamu resources. The reserves were spread along the coast in 54 different blocks.

In May 1864, the final Crown purchase of Ngai Tahu land was made at Rakiura, or Stewart Island, and included all the adjacent islands. It was completed for a total of £6000; one-third of which was paid in cash, with one-hird allocated to a number of specific individuals, and the final third to be invested for educational and other purposes. Being a valued food resource, 21 of the Titi Islands were reserved for Ngai Tahu and Ngati Mamoe.

14.4.4 Confiscations

There were no confiscations in district 14.

14.4.5 Purchases under the Native Lands Act (Crown and private as indicated)

Portions of the already scarce reserves were purchased after the titles to them had been individualise in 1868 and 1869.

14.4.6 Examples of land taken for public purposes

See the Waitangi Tribunal's *Ngai Tahu Ancillary Claims Report 1995* for details of the numerous ancillary claims, which included claims concerning land taken for public works, defence purposes, and recreational reserves.

Ancillary claim 18, for example, details land taken from one of Ngai Tahu's larger reserves at Mahitahi. In 1938, 48 acres were taken for an aerodrome, in 1941 just over seven acres were taken for a main road, and in 1952, 53 acres were taken for a scenic reserve. The Tribunal found that in all cases the Crown failed to consult or notify Ngai Tahu about the compulsory acquisition of their land for public purposes. There are many more examples of similar practices (see ancillary claims 17, 28, 56, 57, 61, and 67). The Tribunal also voiced concern about the number of small reserves reduced by public works acquisitions without notice, consultation, or consent.

14.5 Outcomes for Main Tribes in the Area

Under the Kemp purchase, Mantell reserved most if not all of Ngai Tahu's places of residence, but he did not include all their existing cultivations. He arbitrarily

allowed an average of 10 acres per person to those Ngai Tahu party to the deed, and the Tribunal found that this was 'insufficient provision for their [then] present needs, viewed on any basis other than that of bare subsistence'. Mantell also failed to make any provision for additional reserves in order to ensure that Ngai Tahu 'were left with generous areas of land fully sufficient to maintain access to mahinga kai and to develop alongside the European settlers, pastoral farming in addition to agriculture'. The Tribunal concluded that 'It is not stating the position too strongly to say that the effect of the Crown's niggardly allocations was to "ghetto-ise" Ngai Tahu on small uneconomic units on which they could do little more than struggle to survive.'[3]

The large Murihiku purchase of seven million acres meant that the Crown acquired land:

> with high agricultural potential and heavily forested areas, of mountains, lakes and other features of great beauty. For the 273 Ngai Tahu recorded by Mantell as living in Murihiku and on Ruapuke, there were left only 4875 acres, or 17.8 acres per head.

The Tribunal concluded that, 'By any standard, this was a totally inadequate provision for the present, let alone future, needs of Ngai Tahu.'[4] Furthermore, the Crown had conceded that:

> although Mantell allowed Ngai Tahu to reserve most of the lands they asked for in the locations they sought, the total amount of land reserved did not 'prove to be adequate in area of quality'. An 1891 survey of Ngai Tahu land holdings showed that only 7.7 per cent of Southland Maori were seen as having sufficient land, while 41.7 per cent had no land at all.[5]

An outcome of all the purchases was that Ngai Tahu gradually lost access to their traditional mahinga kai, yet they were left with insufficient land to engage in the new economy that resulted from European settlement. To participate in agricultural or pastoral farming, they needed to retain more extensive areas of suitable land. Similarly, Ngai Tahu were not able to engage in the pastoral sheep farming that dominated the north Canterbury purchase area, because no reserves were allocated to them under this purchase.

In 1840, over half of New Zealand's land area was owned by Ngai Tahu, but by 1864 this had been reduced to 37,492 acres.[6]

Mackay's 1886 investigation into the extent of landlessness among Maori living in the South Island reported 'that 50 per cent of Ngai Tahu had no land and, using 50 acres per head as a measure of sufficient land holdings, only 10 per cent of Ngai Tahu were found to have sufficient land'. Mackay's report also 'gave a depressing account of poverty, listlessness and despair amongst Ngai Tahu at the time'.[7] The

3. *The Ngai Tahu Report 1991*, vol 1, p 77
4. Ibid, p 107
5. Ibid
6. Ibid, p 166
7. Ibid, p 171

Tribunal has concluded that, despite promises to the contrary, 'little was done to ensure that the lack of educational and health facilities available to Ngai Tahu was rectified'.[8]

14.6 Examples of Treaty Issues Arising

The following discussion is taken from the Tribunal's reports on the Ngai Tahu claims (Wai 27).

The Tribunal found that the Crown's failure to set aside ample reserves from the purchases for the tribe's present and future needs was a serious breach of both the Crown's duty to protect Ngai Tahu rangatiratanga and its obligations when exercising its pre-emptive right.

In considering the system of perpetual leases on the West Coast, which in effect took away forever Ngai Tahu's future rights to the use and enjoyment of their reserves for very little return, the Tribunal concluded that this system was also in breach of article 2 of the Treaty.

A breach was found by the Tribunal in relation to the Crown's neglecting to ensure the tribe's continued use and enjoyment of mahinga kai, as assured in the Maori language deed in the Kemp purchase.

A further breach of article 2 of the Treaty was the Crown's failure to preserve and protect Ngai Tahu's rangatiratanga over their land and valued possessions. In the case of land on Banks Peninsula, land was leased or sold before the Crown had lawfully acquired it.

With regard to the taking of land for public purposes, the Tribunal considered that statutory shortcomings in the notification given to Maori landowners in no way recognised or protected Ngai Tahu's rangatiratanga over their lands. Furthermore, the fact that Maori landowners were not afforded the same rights as non-Maori landowners was a breach of article 3. Crown actions in failing to return lands no longer required for the purpose for which they were originally acquired displayed to the Tribunal the Crown's lack of inclination to act in good faith and to protect Ngai Tahu's rangatiratanga.

The Tribunal found that the Crown failed to protect Ngai Tahu's right to retain pounamu (as they requested) and that it failed to respect their rangatiratanga over this taonga.

14.7 Additional Reading

The following are recommended for additional reading:

Waitangi Tribunal, *The Ngai Tahu Report 1991*, three volumes, Wellington, Brooker and Friend Ltd, 1991;

8. *The Ngai Tahu Report 1991*, vol 1, p 169

Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992*, Wellington, Brooker and Friend Ltd, 1992; and
Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker's Ltd, 1995.

CHAPTER 15

THE CHATHAM ISLANDS

15.1 Principal Data

15.1.1 Estimated total land area for the district

The two main islands within the Chatham Islands group are Chatham Island (approximately 222,399 acres, including Te Whanga Lagoon of almost 40,000 acres) and Pitt Island (approximately 15,635 acres). The principal smaller islands are South East Island (539 acres), Mangere Island (279 acres), Little Mangere, the Castle, the Sisters, the Forty Fours, Star Keys, and the Pyramid.

15.1.2 Total percentage of land in Maori ownership

The total percentage of land in Maori ownership in district 15 was 41 percent in 1890 (as calculated from *Historical Atlas* maps held in the Alexander Turnbull Library) and 11 percent in 1994 (according to evidence held on the record of documents for Wai 64 at the Waitangi Tribunal).

15.1.3 Principal modes of land alienation

The principal mode of land alienation was private purchase under the Native Land Acts.

15.1.4 Population

The population of district 6 was approximately 90 Moriori and 900 Maori in 1840 (estimated figure), 40 Moriori and 148 Maori in 1891 (estimated from census figures), and 10 Moriori and 303 Maori in 1936 (also estimated from census figures).

15.2 Main Geographic Features Relevant to Habitation and Land Use

The group of islands collectively referred to as the Chatham Islands (or ‘Rekohu’) lie in the southern Pacific Ocean, approximately 700 kilometres east of New Zealand. All the islands, and their outlying reefs and rocks, are volcanic in origin,

constituting the ridge of a submarine mountain known as the East Chatham Rise. Chatham Island rises steeply from the sea as basaltic cliffs along its southern coast. It slopes upward into a table-land, which was covered in a tarahinau forest, with a variety of broadleaf trees, tree ferns, and nikau palms commonly found in the gullies running down to the coast. Further north, the land falls away in a series of small hills and valleys, intersected by rivers and streams. This area was formerly covered in mixed forests.

The centre of the island is flat and is made up of limestone and old sand bars, much of which is overlaid with peat. Trees such as kopi, coprosma, and akeake grow in the better-drained areas. The predominant feature of the centre of the island is Te Whaanga Lagoon, which covers about one-fifth (18,200 ha) of the island's area. The northern coast is mainly low lying schist, topped with dunes and peat and dotted with volcanic cones on the western side.

Pitt Island is less varied in appearance. It slopes from a southern volcanic upland down to a sandstone northern coast.

The islands are situated at the convergence of the warm East Coast current from the north and the cold Southland current. They also lie at the convergence of two wind patterns, the Trade Wind Drift and the West Wind Drift. The combination of these conditions produces the islands' climate and weather, which Michael King describes as 'almost incessant wind, near-constant cloud cover, low sunshine hours, wet winters and humid summers'.[1]

15.3 Main Tribal Groupings

15.3.1 Moriori

The first inhabitants of the Chatham Islands were the *tchakat henu* or Moriori.[2] According to Moriori, the ancestor, Kahu, was the first to sail a canoe to Rekohu from the homeland of Aotea. He found the islands in an unsettled state and joined up the disparate fragments and anchored them in the positions they appear today. Three further canoes followed him back to the homeland, namely Rangihoua and Rangimata, and later Oropuke.

Other accounts refer to two autochthonous ancestors created on the island and resident when Kahu arrived, namely Te Aomarama and Rongomaiwhenua. Their origin is not clear, but the islands are said to have been 'planted' when the first people appeared.

King states that the ancestors of the Moriori are the same people as the ancestors of the New Zealand Maori. He states that they were east Polynesians whose ancestors had entered the Pacific from the region now called South-East Asia and the South China Sea and, after migrating around the Pacific, arrived at New

1. M King, *Moriori: A People Rediscovered*, Auckland, Viking Press, 1989, p 17
2. The term 'Moriori' is said to have been adopted *after* contact with Europeans and Maori and, as with the word 'Maori', means 'normal'. Moriori are not a different 'race' of people as once thought but are an early wave of the same east Polynesian people as Ngati Mutunga and Ngati Tama.

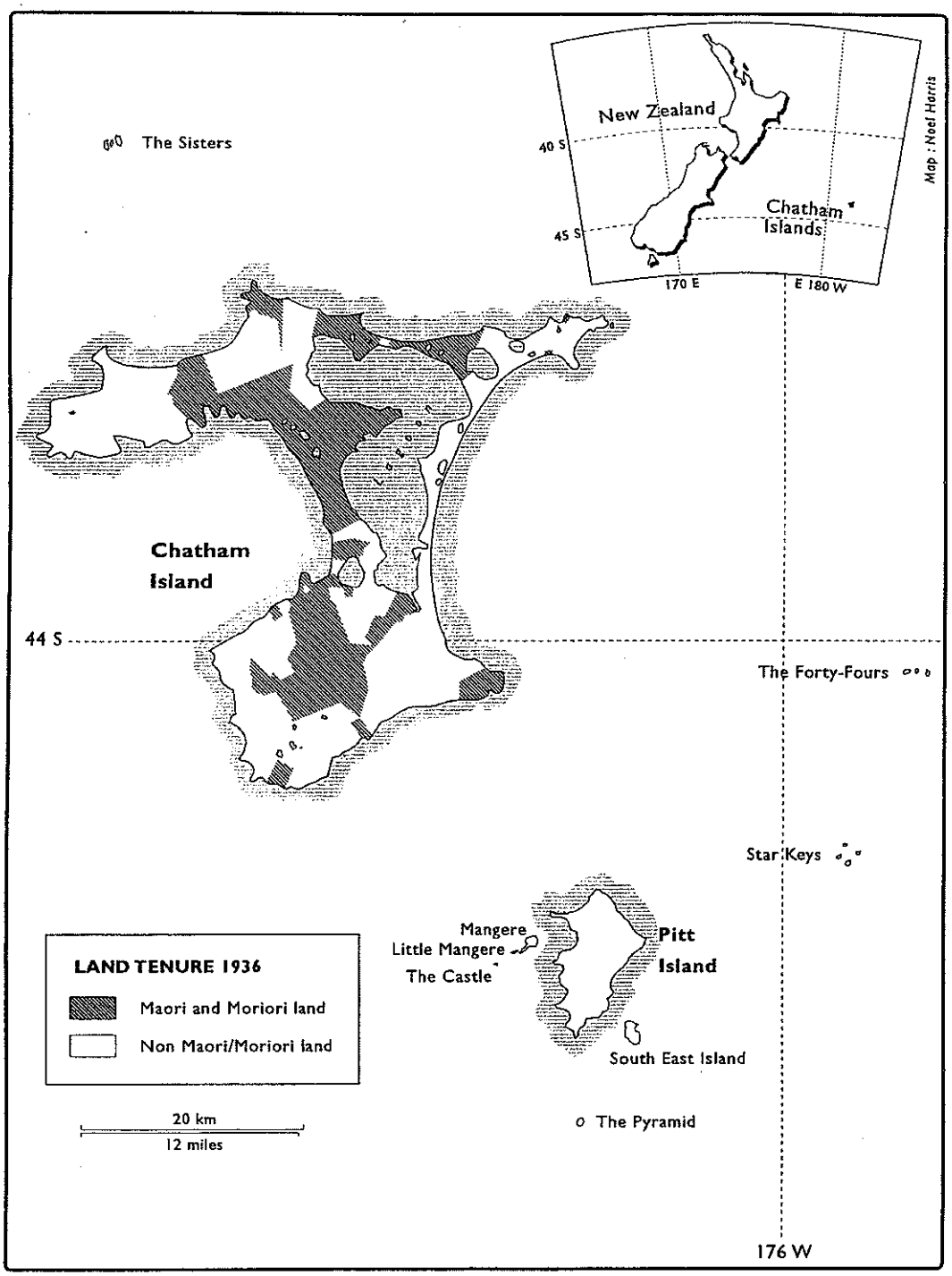

Figure 24: District 15 (the Chatham Islands)

Zealand. Archaeological evidence evinces the final migration of Moriori was from the east coast of the South Island of New Zealand. Estimates of the time of their arrival on the Chatham Islands vary from the ninth to the sixteenth centuries.[3]

In regard to the population distribution on the island, Moriori themselves identified seven tribal districts in 1791, including one in the north-west of Chatham Island (which held about 200 people); two on the western side (containing 330 and 230 respectively); one in the south-east (made up of 360 members); and one more on Pitt (around 300 people). This gave a population density of about 2000 on a total of 266,878 acres of land. The numbers within each settlement are said to have ranged from 10 to 50 people, with each grouping exercising territorial rights over definite tracts of country.

The groupings and location of the Moriori were disrupted following the arrival of Ngati Mutunga and Ngati Tama, and the total disregard they showed towards Moriori and any rights to land they may have held. King describes a process whereby:

> Parties of warriors armed with muskets, clubs and tomahawks, led by their chiefs, walked through Moriori tribal territories and settlements without warning, permission or greeting. If the districts were wanted by the invaders, they curtly informed the inhabitants that their land had been taken and the Moriori living there were now vassals.[4]

In instances where Moriori contested this process, they were slain.

Evidence shows that Moriori were taken as 'slaves'[5] from their traditional places of habitation to the areas that had subsequently been claimed by their 'masters'. It was not until a 'general manumission' (as referred to by King[6]) by the Government in 1863 declaring the end of slavery that Moriori started to re-establish themselves closer to their traditional tribal homes. In some instances, however, Moriori simply settled in the areas where their masters had settled. A census taken in 1864 reveals the distribution of Moriori at that time: 92 were living in the Waitangi and Owenga areas, 25 at Kaingaroa, 9 at Wharekauri, and 6 at Tupuangi.

15.3.2 Maori

Alexander Shand provides an account of Maori occupation on the Chatham Islands, starting from a heke of 540 'Ngatiawa' in 1831. Shand explains that the Ngatiawa who travelled down consisted of members of Ngati Mutunga, Ngati Tama, and Te Kekerewai. The heke started at Taranaki, travelled down the south-western coast of the North Island, and settled for a time around Wellington (some also travelled to the north of the South Island) before leaving for the Chatham Islands in 1835.

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3. King, p 22
4. Ibid, p 60
5. Ballara uses the word 'tangata' for the subjugated groups and war captives on mainland New Zealand: see Angela Ballara, *Iwi*, Wellington, Victoria University Press, in press.
6. King, ch 6, particularly pp 118–122

Shand's published history of Maori occupation on the island mainly identifies three major groupings: namely, Ngati Tama, Ngati Mutunga, and Te Kekerewai.[7] Resident Magistrate Thomas, in his 1864 census, makes a distinction only between Ngati Tama, Ngati Mutunga, and Te Kekerewai.[8] Other hapu identified in addition to these, however, include Ngatiaurutu, Ngatikura, Ngatitupawhenua, and Ngati Haumia. In respect of Te Kekerewai, Tony Walzl identifies evidence of 'the ambivalence of their position' and suggests that, initially, Te Kekerewai were closely linked, probably by descent, to Ngati Mutunga.[9] Over time, however, because of their history and experiences with Ngati Mutunga, a stronger linkage developed with Ngati Tama.

Prior to the *Rodney*'s first voyage, Ngati Tama and Ngati Mutunga chiefs agreed that no land claims to the island would be made until the whole heke had arrived at the island and matters could then be discussed. This, however, did not eventuate. Upon arrival, Ngati Tama set out for Waitangi, Ngati Kura for Otonga, Ngati Tupawhenua for Matarae, and Ngati Haumia for the north of Waitangi.

As stated earlier, the settlement of Otonga was undertaken from Whangaroa by a group of Ngati Mutunga under Te Wharepa. Ngati Mutunga's move into Otonga left other iwi members behind. An account from a land court hearing in 1870 describes how 'the people who had been left behind at Whangaroa had taken possession of land up to the Waitangi river'.[10] Walzl submits that it is likely that it is Ngati Tama who were the people mentioned as being left behind. Ngati Tama were resident in the area of Waitangi until their 'expulsion' by Ngati Mutunga around 1842.[11]

Evidence of the occupation of Maori from Waitangi to Whangaroa is provided in the land court minutes of the 1900 Kekerione hearing.[12] Ngati Haumia were located north of 'Ngati Tama's land'. The boundaries between Ngati Tama and Ngati Haumia were agreed to by both groups. To the east of Ngati Tama's land at Waitangi was the area later to be known as the Te Matarae block. Evidence from the 1870 hearing describes how Te Kekerewai took possession of parts of these lands.

By the time the second group of Maori had arrived, the earlier group had left the Whangaroa area. This second group included a mixture of Ngati Mutunga, Ngati Tama, Kekerewai, and Ngati Haumia. Shand claimed that the latter had no claim to the island nor any rights of their own but lived among their relatives on sufferance.[13]

By this time, the various groups who were located in the vicinity of Whangaroa began to spread into the surrounding countryside with 'competitive results'.[14] In

7. A Shand, 'The Occupation of the Chatham Islands by the Maoris in 1835', *Journal of the Polynesian Society*, 1892, vol 1 (cited in T Walzl, 'Chatham Islands Maori Tribal History to 1870', Wai 64 rod, doc n2, p 14)
8. Walzl, p 14
9. Ibid, p 15
10. Ibid, p 4
11. Ibid, p 5
12. For a more detailed discussion of Maori occupation at this time from Waitangi to Whangaroa, see Walzl, pp 5–6.
13. Shand, p 158 (cited in Walzl, p 7)
14. Walzl, p 7

1868, Pamariki Raumoa described how Ngati Mutunga, shortly after their landing, 'went and cultivated the narrow strips of bush along the coast to Ocean Bay'.[15] Raumoa was later referred to by Resident Magistrate Thomas as being a member of Kekerewai, a section of Ngati Mutunga.[16] This occupation was, however, contested by Piritaka (Pomare's father), described as a member of Ngatikura, another section of Ngati Mutunga. Shand recorded in 1900 that the group who were eventually vanquished from this area later came to be known as Te Kekerewai. He describes how:

> The Kekerewai were driven out of Whangaroa by Toenga's people assisted by the Tupuangi people. Toenga's people were chiefly N[gati] Kura a hapu of N[gati] Mutunga. The Kekerewai people joined their N[gati] Tama friends at Waitangi.[17]

Competition for land around Whangaroa at this time was 'acute'. For example, in 1842 Ngati Tama and Ngati Mutunga fought over the Waitangi area, resulting in the expulsion of Ngati Tama and Te Kekerewai from Waitangi to the north-eastern coast in the vicinity of Kaingaroa. Notwithstanding this departure, the rights of those located in neighbouring areas were apparently not affected.

In late 1842, the population of Maori decreased when Matioro led a colonising expedition of 60 to the Auckland Islands for the purpose of settlement. King states that 30 Moriori were compelled to accompany this group, but it is not clear whether they are included in the 60 or not. It was not until 1856 that word was received at Waitangi that the Auckland Island 'colonists' wanted to return to the Chatham Islands. Approximately 47 returned from the Auckland Islands, described as being 'mostly Maoris', and arrived at Waitangi in February 1856.[18]

During the period from 1860 to 1863, another round of boundary adjustments occurred on the islands. These were described by Shand in 1900.[19] He first describes the setting of the northern boundary of Kekerione as being from 'Te Awahohonu to Kikowhero, thence to the North coast at Waitaha'.[20] The object of the boundary was to separate the Tupuangi people from the Whangaroa people and from Ngati Mutunga. The land to the south of the boundary was described as 'the land of Pomare's section'.[21]

A re-adjustment of the boundary between Otonga and Kekerione occurred around the same time. Thus, the line set at that time was virtually the same as it existed in 1900: namely, from Te Awahau through the island to Te Awatapu. The Kekerione–Te Awapatiki boundary was also set during 1860 to 1863.

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15. 30 April 1868, submission of Pamariki Raumoa, coffee claim (Wai 64 rod, doc c3, 8.3), pp 1–2 (cited in Walzl, p 7)
16. Submission of Pamariki Raumoa (cited in Walzl, p 8)
17. Evidence presented by Shand at a Native Land Court hearing on 13 February, 1900, Native Land Court minute book 3, pp 52–53 (cited in Walzl, p 9)
18. King, p 87; D Loveridge, 'The Settlement of the Auckland Islands in the 1840s and 1850s: The Maungahuka Colony, the Enderby Colony and the Crown' (Wai 64 rod, doc j5), pp 44–46
19. 13 February 1900, evidence of Shand, Native Land Court minute book 3, p 50 (cited in Walzl, p 12). Shand states in his evidence that this readjustment of boundaries was the wish of 'the Maories'.
20. Ibid
21. Ibid

15.4 Principal Modes of Land Alienation

15.4.1 Pre-1840 land purchases (including approved old land claims and surplus lands)

There were no pre-1840 land purchases in district 15.

15.4.2 Crown purchases before 1865

Save possibly for the site of the Government offices at Waitangi, there were no Crown purchases before 1865 in district 15.

15.4.3 Pre-emption waiver purchases

There were no pre-emption waiver purchases in district 15.

15.4.4 Confiscations

There were no confiscations in district 15.

15.4.5 Purchases under the Native Lands Acts (Crown and private as indicated)

In preparation for the expected sitting of the Native Land Court in 1870, Chatham Island was surveyed into five large blocks, representing both the territories taken by the five major chiefs in 1835 and the old tribal districts. These blocks came to be known as Kekerione, Te Matarae, Te Awapatiki, Otonga, and Wharekauri.

A Government agent at the time estimated that by 1868 approximately 120,000 acres of land on Chatham Island had been leased to Europeans (approximately 60 percent of the total land area).[22] This was the case for all the blocks from about 1865, with the exception of Otonga, where it seems that no leases had been negotiated prior to the 1870 hearing.

The first Native Land Court sittings on the Chatham Islands, presided over by Judge Rogan, began on 16 June 1870 and lasted 10 days. Claims brought by Maori were generally based on rights of ownership conferred by their 'conquest' in 1834 to 1836. Moriori counterclaims affirmed their original occupation and asserted their mana whenua over the island. Moriori were in fact awarded only 3 percent of the land in the form of occupation reserves, rather than in recognition of ownership.

The main feature of this hearing, at least as far as Ngati Mutunga is concerned, was the application of the '10-owner rule', whereby, in all instances, only 10 or fewer individuals were admitted on the certificates of title for the blocks. In so doing, the court chose not to apply section 23 of the Native Lands Act 1865, whereby lands exceeding 5000 acres could be corporately vested in a tribal group.

22. Henry Halse, 'Report on the Chatham Islands', AJHR, a-4, pp 3–8 (cited in T Wazl, Wai 64 rod, doc i1, p 2)

The evidence given at the 1870 hearing shows that, for all the blocks, the number of claimants exceeded the number allowed in the Crown grant. In places such as Te Matarae and Otonga, those put in the Crown grant were nearly half the number identified as being claimants. Whereas for Kekerione and Wharekauri, the several hundred claimants that were identified in 1870 were represented by only a few names entered on the Crown grants.

(1) *Kekerione block*

Claims to the Kekerione block were the first to be heard, whereby the court awarded 38,352 acres of the block to Maori and 594 acres (for occupation) to Moriori (including the settlements of Hawaruwaru and Rangatira on Te Whaanga Lagoon). Following the 1870 award, much of the block was leased to Europeans.

When the court sat in 1885, a series of subdivision claims were made, totalling 22,000 acres and accounting for more than half the block. Approximately 24 partitions went through the court, with Wi Naera Pomare claiming 10 of these himself. The orders that were initially made at this hearing, however, were not confirmed, because many blocks were in the names of people who were not on the original Crown grant or had not succeeded those on the Crown grant. Subsequently, the partition applications were reheard in March 1887 and orders that were made in favour of the non-grantees were cancelled, Pomare's children instead being admitted to the grant (presumably, therefore, receiving the full 22,000 acres). By 1891, four of the blocks partitioned in 1887, totalling 1800 acres, had been sold to European purchasers.

In February 1894, the court heard claims to the Kekerione block under section 13 of the Native Equitable Owners Act 1886. The claims included some by persons who had previously been awarded blocks within Kekerione in 1885 and had subsequently lost them in 1887. The court found at that hearing that 'the grantees were trustees but an application under section 13 was not the proper method of admitting fresh persons into the title'.[23] Later that year, however, the Native Land Court Act was passed, which amended and consolidated the law relating to the court's operation. And as a result of section 14(10) of this Act, which empowered the court to further inquire into and determine the beneficiaries to any land under an implied trust, and to include their names on the certificate of title, most of the original 1885 grantees had their land returned, with new orders being made in December 1895 (with the exclusion of the Pomare blocks, which had already been awarded to Pomare's children in 1887 and therefore did not come under this section of the 1894 Act).

Another hearing for Kekerione took place at Waitangi on 30 January 1900. One of the issues at that sitting was whether the four original grantees of the Kekerione block were intended to be 'trustees' and, in the event that they were, who else was then able to be added to the title. The court found that the original grantees were trustees only and that other people had interests in the land. Thus, the court

23. Chatham Island minute book 2, p 153 (cited in Walzl, p 13)

announced that it would hear further applications. On 19 March 1900, the court gave its decision and noted that although the Pomare family had possibly obtained more than its fair share of the block, those lands that were being claimed lay outside the jurisdiction of the court. Of the 150 names submitted for consideration, 50 were rejected, leaving a list of beneficial owners of about 103 persons in 43 whanau groups. After hearing all the claims in respect of this block, the court eventually allocated 28 groups 96 shares of the tribal land held. The total land available for relocation by this time was only 9632 acres, and therefore each share in the tribal land represented approximately 100 acres.

Sales of the Kekerione block before 1910 amounted to approximately 4000 acres and were mainly the result of four larger blocks being sold from the Pomare family estate. Up until 1955, there were no further alienations of the Pomare blocks and only 14 percent (less than a third) of the original block had been alienated. This is markedly less in comparison to alienations that had occurred within the other blocks by this time.

In total, an estimated 13,085 acres of the block were alienated from Maori title through private purchases and all but 1374 acres of that total were sold after 1900. An application under the public works legislation resulted in the alienation of a further 72 acres. Some 3593 acres were removed from Maori freehold title under the Maori Affairs Act 1953, and a further 2929 acres were sold by the Maori Trustee. A further 7102 acres were made European land under the Maori Affairs Amendment Act 1967.

Of the original area awarded to the Maori claimants, an estimated 15,449 acres remain in Maori freehold title.

(2) *Te Matarae*

In 1870, the court awarded 6326 acres of the Te Matarae block to Maori and 198 acres to be held in reserve for two individual Moriori. A 21-year lease was subsequently signed on 30 June of that year between the grantees of the Matarae block and Alexander Shand and Felix Arthur Douglas Cox. The lease was for the Matarae block (no 1434), excluding the Whareama Moriori reserve.

By 1893, the interests of the 10 original grantees had been ascertained and nearly the entire block had been partitioned and sold (thereby precluding a re-investigation of the title, which would have been allowed under the 1894 native land legislation). By 1898, even more of the block had been alienated either by sale or by lease to Europeans, with only four blocks remaining in Maori ownership. After 1900, no further subdivisions occurred, although one of the Te Matarae blocks (no 4.5) changed from sole ownership to multiple ownership through several successions.

In summary, some 4414 acres of the block had been alienated through private purchase transactions that occurred in the 1900s, including the reserves originally awarded to Moriori. Almost 1000 acres were alienated under the Maori Affairs Amendment Act 1967. Approximately 201 acres remain in Maori freehold title.

(3) *Te Awapatiki*

In the case of Te Awapatiki, 32,495 acres were awarded to Maori and 1977 acres to Moriori (most of the land was alienated under the Maori Affairs Amendment Act 1967). Soon after the awards were made, part of the block was leased to Thomas Ritchie.

A subdivision claim by Wi Naera Pomare was made on 7 February 1885 and the block was subsequently divided into Te Awapatiki 1a (of 7161 acres) and Te Awapatiki 1b (of 23,544 acres). By 1898, Wi Naera Pomare had passed away and Te Awapatiki 1a was leased to Shand and Cox, while Te Awapatiki 1b was owned by Ronald MacDonald.

Further partitions and subdivisions occurred between 1899 and 1915, with parts of the block alienated to Europeans, including N R A Cox and Ernest Day. By 1955, three blocks remained in Maori ownership with no further subdivisions having occurred, although there had been several successions.

In total, nearly 25,000 acres of the block have been alienated through private sale and almost 4357 acres were made European land under the Maori Affairs Amendment Act 1967. Approximately 1111 acres remain in Maori freehold title.

(4) *Otonga*

In the case of Otonga, 39,657 acres were originally awarded to Maori. Moriori were awarded two reserves. One was for 600 acres near Tuku which was alienated through a private transaction in 1943. The other was for 50 acres around the settlement at Waikarepe, which remains in Maori freehold title.[24]

Sales of the block began shortly after the hearing with, for example, part of the interest of one of the grantees, totalling approximately 2000 acres, being acquired by Robert Kerr on 8 April 1876. As a result of the 1887, 1893, and 1894 hearings, the block had been further subdivided into five blocks, and by 1898, much of the area had been sold. By 1900, Otonga had experienced a series of partitions, all of which had gone to the original grantees (under the 10-owner rule) and their successors. All the Otonga blocks experienced some partitioning and subdividing, which eventually led to sales to Europeans.

By 1936, comparatively little land remained in Maori ownership. From 1937, it appears there were no further subdivisions in the remaining Maori-owned Otonga blocks, although by now several had become multiply owned, with interests in some being vested with the Maori Trustee, such as those in Otonga 1e12 in 1962.

As a result of further private transactions, approximately 28,767 acres had been alienated by 1953. Nearly 8000 acres were converted to ‘general land’ under the Maori Affairs Amendment Act 1967, leaving approximately 2100 acres in Maori freehold title.

24. See B Mikaere and J Ford, ‘A Preliminary Report to the Waitangi Tribunal on the Claims Relating to the Chatham Islands’, report commissioned by the Waitangi Tribunal (Wai 64 rod, doc a8), for these figures.

(5) ***Wharekauri***

The court had awarded the entire Wharekauri block to the Maori claimants. However, two reserves were promised to Moriori: 49 acres at Te Whakaru and 593 acres around Wairua.[25]

Purchases of the block began after the 1870 sitting with, for example, Thomas Ritchie acquiring the interests of two grantees of over 1000 acres of the block. At a sitting of the court in September 1881 (which was presided over by Resident Magistrate Samuel Deighton), a succession claim was brought by Riwai Te Ropiha and Hirawanu Tapu for the 50-acre block set aside as Wharekauri 3. The claim was based solely on ancestry, and succession was eventually awarded to both. A further five subdivisions also occurred over the period between 1885 and 1887.

The block was inquired into under equitable owners' provisions at the March 1900 sitting. The court was informed at this sitting that, of the 10 original grantees, six had already disposed of what amounted to a large part of the block. It was later revealed that these interests added up to 25,000 acres, which, by that time, lay outside the court's jurisdiction because it had already been sold. The court, therefore, heard claims to the two substantial strips of land that they still had jurisdiction over (about 13,300 acres and 6670 acres) and awarded 2100 acres to the new claimants with the remainder going to the successors of the original four claimants. The 12 blocks eventually awarded became known as Wharekauri 1g to Wharekauri 1s.

By 1936, there had been very few further partitions within the Wharekauri Maori blocks, the primary exception being Wharekauri 1g, which had been subdivided into 10 blocks. Of these, three had been sold and three had been leased to Europeans, with the remainder used for settlement purposes. Between 1937 and 1955, Wharekauri 1g was subjected to further partitions and, along with Wharekauri 1a, was also subject to survey liens. Most of the other Wharekauri blocks remaining became multiply owned, a trend which continued through to the 1960s.

In total, about 83 percent of the block had been alienated by 1955. Of this, approximately 17,572 acres had been alienated by nine private sales that occurred between 1897 and 1916, and 177 acres had become European land under the Maori Affairs Act 1953. Almost 8500 acres had been converted to 'general land' under the Maori Affairs Amendment Act 1967. The remaining 6001 acres have been retained by Maori under Maori freehold title.

(6) ***Summary***

In total, 148,651 acres had been under claim at the 1870 sitting. Maori had been awarded approximately 144,599 acres and Moriori approximately 4053 acres. In almost every case, Maori had retained land suitable for grazing and leasing, while the bulk of Moriori land was forests or wetlands. Of the total area first awarded to

25. It should be noted that the Mikaere and Ford report, from which the information in this section relating to the alienation of the Wharekauri block has been drawn, states that 'Maori Land Court records do not exist for approximately 28,833 acres of the Wharekauri block, [therefore] making a comprehensive estimation [of alienation] impossible': see Mikaere and Ford, p 52.

Maori, approximately 25,170 acres (approximately 17 percent) are thought to be held as Maori freehold land today.

(7) *Outlying islands*

Moriori claims to Pitt (Rangiauria) and South-East Islands at the 1870 hearing were dismissed because, according to Judge Rogan, their rights had been extinguished by Maori conquest and by the fact that no Moriori had cultivated on either island for at least 20 years. The court therefore awarded Rangiauria (15,630 acres) to Maori. By 1900, 6510 acres (41.65 percent) had been purchased through private transactions. A further 874 acres (5.59 percent) were sold directly by their Maori owners between 1900 and 1990.

Approximately 18 acres of Rangiauria were compulsorily acquired under public works legislation. Some 1098 acres were sold by the Maori Trustee acting as agent for the Maori owners, while 1115 acres were alienated by way of the Maori Affairs Amendment Act 1967. As a result of these alienations, of the 15,630 acres originally awarded by the court, only 50 acres have been retained by Maori, although Maori might still own land declared 'European'.

At a court sitting in 1885, a claim by Hirawanu Tapu, for Moriori, was heard for those outlying islands that had not been specifically dealt with in the 1870 hearing. Motuhara became a test claim for other islands. A counterclaim was lodged by Wi Naera Pomare, who argued that the original Maori claim in 1870 had been for the whole Chathams group of islands and that, since that claim had been successful, these outer islands were also included in the Maori ownership that was determined at that hearing. Deighton agreed that the adjacent islands were included in the 1870 judgment, and the certificate was awarded jointly to Wi Naera Pomare, Mere Naera Pomare, and Piripi Niho.

The Motuhara claim, however, was reheard in a sitting on 10 March 1887. Wi Pomare had since passed away, and therefore Mere Naere, his daughter, was claiming his share on behalf of his children. Judge Samuel Deighton and assessor Tamati Taituhi presided once again, with Alexander Shand as interpreter. The only other speaker in respect of this claim was Hamuera Koteriki; however, he agreed to a joint share with the children. Thus, with no further evidence or opposition to her claim, a certificate was granted jointly in favour of the children of Wi Naera Pomare and Koteriki.

15.4.6 Private purchases, 1900–96

Evidence suggests that approximately 37,161 acres were privately purchased on the Chatham Islands between 1900 and 1996.[26] These purchases came from most of the larger blocks in the district.

26. J Ford, 'A Revised Title History of Land in the Chatham Islands' (Wai 64 rod, doc c6(a), app)

15.4.7 Land taken for public purposes

According to Buddy Mikaere and Janine Ford, almost all public works alienations occurred in the Kekerione block, from which an estimated 73 acres were taken.[27] Mikaere and Ford also refer to approximately 18 acres compulsorily taken from Rangiauria under the Public Works Act 1928.[28]

15.5 Outcomes for Main Tribes in the Area

In 1907, a Government survey officer reported the state of landholdings on the Chatham Islands. He noted that 93,413 acres had been sold to Europeans (this total included sales on Pitt Island and sales of Moriori land). Of the five blocks belonging to Maori on the main island, approximately 75,000 acres had been sold, leaving 97,604 acres in Maori hands. Of this, 38,692 acres had been leased.[29]

In terms of Maori involvement in the economy of the Chathams, Walzl notes that from the turn of the century Maori sought to be involved in sheep farming, although this was hampered by the fact that, for many, the use of their land was restricted to being near subsistence level. Through to the 1950s, those with small land holdings or poorer quality land could only make a marginal living from the land. Maori sheep flock sizes did not come near to the flock size held by other farmers.[30]

A 1949 report noted that, of the 175,000 acres (excluding Pitt Island and Te Whanga Lagoon), 85,000 acres had been sold to Europeans. Of the 90,000 acres in Maori ownership, 9000 acres were leased to Europeans.[31] In 1961, it was noted that Maori still held 76,857 acres, with 36,122 acres of it being leased to Europeans.[32]

A 1972 report on the economy of the Chatham Islands concluded that the Native Land Court process had conferred land rights on so many Maori that:

> some of the Wharekauri block and most of the rich Kekerione block (from Port Hutt to Waitangi) were fragmented into small uneconomic units. To make matters worse the surveyors strove to ensure that even the smallest blocks should have, wherever possible, both sea and lagoon frontages. Consequently, previous grazing leases over much of the best farming land were subdivided into narrow, undersized strips expensive to farm and fence.[33]

Furthermore, large areas of land remained undeveloped, with approximately 100 titles with 1200 individual owners and much of the land occupied by part owners or relatives of part owners. Many of the blocks were too small to be self-supporting and were scattered widely over much of the main island. This fragmentation and

27. Mikaere and Ford, p 53
28. Ibid, p 59
29. Ibid, p 36
30. T Walzl (Wai 64 rod, doc k15), pp 75–76
31. Ibid, p 41
32. Ibid
33. Ibid, p 36

occupation meant there was only limited potential to introduce large-scale development.

The Native Land Court's investigation of title in 1870 saw only 4100 acres awarded to Moriori. Approximately 1381 acres were alienated by private sale between 1930 and 1943. An estimated 1516 acres were 'Europeanised' under Part 1 of the Maori Affairs Amendment Act 1967.[34]

15.6 Examples of Treaty Issues Arising

Several claims have been lodged with the Tribunal by Moriori and Maori in respect of the Chatham and outlying islands. In general, the claims concern the legislative measures or acts, omissions, policies, or practices of the Crown that have prejudicially affected the claimants and those on whose behalf they claim. The Treaty issues outlined in the various claims concern land (particularly the alienation of land through the Native Land Court process), fisheries, and resources on or around the Chatham Islands. There were also claims made that deal with issues of 'self-determination' for Maori on the islands.

15.6.1 Land alienation

In a 23 December 1993 amendment to their original statement of claim, the claimants for Wai 64 and Wai 308 alleged that the Crown failed to recognise and protect Moriori customary rights to their lands on Rekohu and outlying islands. In particular, they alleged that the Crown omitted to provide the adequate legislative machinery to guide the Native Land Court in its investigations of claims in respect of Rekohu and that the Crown applied the '1840 rule' (which effectively deprived the claimants of interests in 97 percent of their customary lands), and they complained of the failure of the Native Land Court to correctly apply the customary lore of Moriori in making its determinations in respect of Rekohu and the outlying islands.

The claimants alleged that the Crown failed to protect Moriori rangatiratanga over their lands and that it failed to set aside or make available sufficient land to allow Moriori to establish an adequate economic base for themselves.[35] It is further alleged that the Crown failed to import to Moriori ancestors the rights and privileges of British subjects because, from 1840, Moriori were subjected to a life of 'unremitting enslavement while supposedly under the protection of the Crown'.[36]

It is alleged that the Treaty was breached by the application of the 1840 rule by the Native Land Court in 1870, and the alleged refusal of the Crown to reconsider the land ownership issue after 1870, despite requests by Moriori for it to do so. The claimants submit that the Native Land Court, in making awards of land at the 1870

34. Mikaere and Ford, p 54
35. Gary Alister Solomon for the Moriori Tchaket Henu Association (Wai 308 claimants), 4 September 1992
36. Ibid

hearing based on take raupatu, 'failed to look critically at the efficacy of raupatu as a source of right at 1840 but relied upon occupation since 1840'.[37] The claimants allege, however, that it was during this period that Moriori were denied Treaty protection and that they were, therefore, unfairly prejudiced at the Native Land Court sitting in 1870.

Claimants have also alleged that the Crown failed to give proper statutory guidance to the Native Land Court, failed to ensure that appointments to the court were made on the basis of an understanding of Maori and Moriori tikanga and custom, and failed to intervene in performance of the Treaty guarantee, when it was evident that the application of the 1840 rule, in relation to the Chatham Islands, was not in accordance with the principles of the Treaty of Waitangi.

In regard to the Native Land Court, the claimants asserted that the underlying rationale for the court's decision in 1870 is only valid if one assumes that Moriori had lost all rights at that date. They allege that the court did not explore, in terms of custom, why Moriori rights were not revived when their state of subjugation was lifted or when Maori virtually abandoned the Chathams in 1868. Instead, according to claimants, the 1870 Native Land Court determinations were based upon principles of conquest and evidence of occupation to 1870. Nowhere, they state, is it questioned whether raupatu followed by occupation for only five to seven years was sufficient to displace entirely the rights of tangata whenua who remained on the land.

Thus, in regard to this aspect of their claim, the claimants submit that if Treaty principles had been properly applied:

(a) the tika of the raupatu would have been judged according to Moriori and Maori custom;
(b) the raupatu would have been judged according to the principles of the Treaty and its promise to bring the law and to settle wars that in the post-contact period were outside the range of what had been customary; and
(c) the length of time of the raupatu, unsupported by occupation (since a large number of Maori returned to Taranaki during the 1860s), would not, according to Maori custom, have displaced tangata whenua still on the land. To the extent that Moriori had been enslaved and precluded from exercising rights over their lands since 1835, their reoccupation of those lands (or at least parts thereof) within three generations would, according to Maori custom, have maintained their entitlement.[38]

In general, the claimants for Wai 65, namely James Pohio and other descendants of Ngati Mutunga o Wharekauri, and Wai 460, namely Albert Tuuta (on behalf of Te Runanga o Wharekauri Rekohu Incorporated and Ngati Mutunga ki Wharekauri), allege that they have been prejudicially affected by, inter alia, the negligent manner in which lands were designated by the Native Land Court and, in particular, the application by that court of the '10 owner rule'.[39] The claimants state that their claim, and the evidence in support of it, seeks to advance the rangatira-

37. Outline of opening submissions on behalf of claimants (Wai 64 rod, doc c1), p 12
38. Closing submissions on behalf of claimants (Wai 64 rod, doc g14), p 19

tanga of Ngati Mutunga, but not to the detriment of the mana of any other group.[40] In regard to the Native Land Court, the claimants do not seek to challenge the decisions that resulted from the 1870 hearing. Rather, it is the events subsequent to the awards made at that time, and the appropriateness of the individualisation of title, which are called into question. In relation to claims by Moriori, they say that 'it is the function of the Tribunal to report on both cases as distinct claims involving a connected factual matrix'.[41]

The claimants also allege that they were prejudicially affected by, inter alia, the policy of the Crown to individualise iwi or hapu rights via the Native Land Court awards and the omission of the Crown to prevent the ongoing effects of the land court system in the Chatham Islands, which has consequently been a hindrance to iwi economic and social development.[42] Counsel for the claimants also referred to the '10-owner rule' and the 'devastation that it wrought on Ngati Mutunga', and specifically referred to the disruption of the Ngati Mutunga tribal estate, the fractionalisation leading to land loss, and the dispossession of those not named (and their descendants) in the 1870 and 1900 Native Land Court investigations.[43] The claimants allege that the title issued by the court was deficient in naming only a few who had rights to that land and in not accurately giving effect to the subtleties and complexities of the Maori land tenure system.[44]

15.6.2 Other Treaty issues arising

In addition to the grievances concerning land and the actions of the Native Land Court, the claimant groups raised matters concerning fisheries, resources, wahi tapu, and other taonga.

Both Moriori and Maori claimant groups made claims in respect of fisheries on the Chatham Islands. The Chatham Island fishery was described as including the area within and including the 200-mile exclusive economic zone, and also the inshore waters, beaches, inlets, lagoons, tidal rivers, and estuaries.[45] The Treaty issues that arose related primarily to the effects on the claimants of fisheries legislation (including the Fisheries Act 1877, the Fisheries Act 1983, and the Maori Fisheries Act 1988), the 'quota management system' (which was established by the Fisheries Act 1983), and the actions of Te Ohu Kaimoana, the Treaty of Waitangi Fisheries Commission.[46] In general, it was claimed that the Crown's application to

39. Statement of claim for Wai 65 (Wai 64 roi, claim 1.3) and Wai 460 (Wai 64 roi, claim 1.8). It should be noted, however, that the evidence presented to the Tribunal by the claimants for Wai 65 did not address all the matters outlined in their statement of claim.
40. Statement of position of Wai 65 claimants (Wai 64 rod, doc h5), p 1
41. Ibid, p 5
42. Preliminary opening submissions of Wai 65 claimant counsel (Wai 64 rod, doc f19)
43. Opening submissions of Wai 65 claimant counsel (Wai 64 rod, doc i2), p 3
44. Ibid
45. See Wai 64 roi, claim 1.2(b)
46. For a further discussion of the Chatham Island fishery and the application of the above-mentioned fisheries legislation, see T Walzl 'The Crown's Administration of the Chatham Islands', report commissioned by the Waitangi Tribunal (Wai 64 rod, doc h1).

the Chatham Islands of legislation and policies concerning fisheries was not in accordance with the claimant's rangatiratanga and manamoana over their fisheries.[47] Furthermore, it was claimed that the Crown failed to recognise, respect, and protect the claimants' traditions associated with their customary fisheries.

Claimants raised issues concerning resources and taonga within their respective rohe. In general, the claimants allege that the Crown failed adequately to provide for the protection and preservation of areas of customary significance for mahinga kai and cultural harvest, and the traditions associated with these areas.[48] The claimants alleged that legislation (such as the Wildlife Act 1953, the Marine Mammals Act 1978, and the Resource Management Act 1991) and policies (including the conservation management strategy) failed to adequately provide for the interests of the tangata whenua. Further issues arose concerning the management and, in some cases, harvesting of resources on the Chatham Islands. Some examples of the species referred to by the claimants were the titi, toroa, puhia, and tahora.

Another important resource over which claims were made is the Te Whaanga Lagoon. The claimants asserted that Te Whaanga was a revered and treasured taonga, over which they exercised rangatiratanga and kaitiakitanga.[49] In general, the claimants alleged that they never relinquished title to the lagoon and that they were and continue to be prejudicially affected as a result of the title of the lagoon being vested in the Crown. The claimants further alleged they were prejudicially affected by legislation, including the Resource Management Act 1991, which directly or indirectly affects Te Whaanga Lagoon and the management of it. A significant issue that arose during the hearing of evidence concerning Te Whaanga was whether or not it was an 'arm of the sea'.[50]

The claimants, particularly the Maori claimants, raised issues concerning their alleged right of self-determination and right of development in respect of the islands.[51] The claimants relied on the Treaty of Waitangi as governing their relationship with the Crown. They alleged that the Crown failed to provide greater political autonomy, failed to give tangata whenua an opportunity to participate in the decision-making concerning the government of the islands, and failed to support tangata whenua in 'devis[ing] and implement[ing] their own economic development strategy'.[52] The claimants further alleged they were prejudicially affected by the Crown's failure adequately to provide services, including health and education services, and 'basic amenities' (such as sealed roads, street lighting, and proper sewerage systems) to the islands.

47. For a further discussion, see Wai 64 roi, claims 1.2, 1.2(b), 1.3, 1.3(d), 1.5.
48. For further details on the claims made in respect to conservation matters, see Wai 64 roi, claims 1.7, 1.8, and Wai 64 rod, docs g14, m2.
49. For further details on the claims made in respect to Te Whaanga, see Wai 64 roi, claim 1.7, and Wai 64 rod, docs g14, m2 (for claims by Moriori), and Wai 64 roi, claims 1.3, 1.8, and Wai 64 rod, doc i-2 (for claims by Maori).
50. For a further discussion on whether or not Te Whaanga can be described as an 'arm of the sea', see the historical report by G Williams (Wai 64 rod, doc k10).
51. See Wai 64 roi, claim 1.8, and Wai 64 rod, docs i2 and m4, for a further discussion on these matters.
52. See Wai 64 roi, claim 1.8

15.7 Additional Reading

For additional reading, see:

M King, *Moriori: A People Rediscovered*, Auckland, Viking Press, 1989; and the Wai 64 record of documents.