RANGAHAUA WHANUI NATIONAL THEME N

# GOLDMINING: POLICY, LEGISLATION, AND ADMINISTRATION

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# LIST OF ABBREVIATIONS

| | |
|---|---|
| AJHR | *Appendices to the Journals of the House of Representatives* |
| AJLC | *Appendices to the Journals of the Legislative Council* |
| BPP | *British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon, Irish University Press, 1968–69) |
| ch | chapter |
| DNZB | *Dictionary of New Zealand Biography* |
| doc | document |
| *Epitome* | *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (H H Turton (comp), Wellington, 1883) |
| G | Governor series |
| JPS | *Journal of the Polynesian Society* |
| MA-MLP | Maori Affairs–Maori Land Purchase Department |
| NLC | Native Land Court |
| no | number |
| NZJH | *New Zealand Journal of History* |
| NZPD | *New Zealand Parliamentary Debates* |
| p, pp | page, pages |
| pt | part |
| RDB | *Raupatu Document Bank* (139 vols, Wellington, Waitangi Tribunal, 1990) |
| s | section (of an Act) |
| sec | section (of this report, or of an article, book, etc) |
| sess | session |
| vol | volume |
| Wai | Waitangi Tribunal claim |

CHAPTER 1

# INTRODUCTION

## 1.1 THE COMMON LAW TRADITION OF OWNERSHIP OF GOLD AND PRECIOUS METALS

The Government's policy with regard to minerals in New Zealand has been formulated within the framework of the common law. The Government has acted in the belief that the prerogative rights of the Crown applied as soon as English law was received, at the time of proclamation of sovereignty. Included within those prerogatives was the Crown right to 'royal metals'.

A series of legal precedents, dating back to *Case of Mines* in 1568, was regarded as establishing the ownership of subsurface resources. The Court of Exchequer found in *Case of Mines*, that base metals – tin, lead, iron, copper, and non-precious minerals – belonged to the owner of the soil, but that the right to gold, silver, and their ores and admixtures, lay with the Crown. That right was not an incident of ownership of the soil, but rather, an attribute of the monarchy. The Elizabethan assertion of the prerogative reflected the pragmatic needs of the developing English state to control the coinage, and finance an army, but its theoretical foundation lay in the supremacy of the monarch. The application of that pre-eminent right of the Crown in the case of minerals was summed up by Counsel for the Queen: '[F]or of all things which the soil within this realm produces or yields gold and silver is the most excellent; and of all persons in the realm the King is in the eye of the law the most excellent'.[1]

Much of the early pronouncement of a Crown right in minerals in New Zealand was developed with reference to lands which had been already acquired from Maori. The first explicit assertion of a prerogative over minerals was contained in clause 30 of chapter 13 'On the Settlement of Waste Lands of the Crown' of the Royal Instructions of 1846. This empowered the Governor to demise Rural Allotments 'supposed to contain any valuable minerals, reserving to us, our Heirs and Successors a royalty of not less than 15 per centum on the minerals to be raised upon and from any such Lands'.[2] By a further instruction of 22 December 1847, the royalty was reduced to one-fifteenth.[3]

A statutory tradition followed in which the Crown's right was preserved, and on occasion, expanded. The Gold Fields Act 1858 provided for the statutory regulation

1. *Case of Mines* (1568) 77 ER 472. For a discussion of the case, see J C Parcell, 'A Thesis on the Prerogative Right of the Crown to Royal Metals', Wellington, 1960, pp 11–24.
2. Earl Grey to Governor Grey, 13 December 1846, BPP, vol 5, p 541
3. Despatch from Earl Grey to Governor Grey, 31 December 1847, BPP, vol 6, p 133

of mining while explicitly acknowledging the continuation of the 'royal right' under section 43 which stated that, 'Nothing in this Act contained shall be deemed to abridge or control the prerogative rights of Her Majesty the Queen in respect of the goldmines and goldfields of the colony'. Again, the focus of the legislature's attention was on lands already acquired by the Crown. The goldfield was defined as comprising that part of the wastelands of the Crown on which persons were engaged in mining for gold and which were proclaimed as goldfields, as provided for by statute. The 1858 legislation stated that the Crown's prerogative applied over 'private lands', but excepted such areas from the jurisdiction of the warden who was the Government officer responsible for the application of mining law. The means of enforcing the Crown's power, thus, remained undefined. Accompanying legislation imposed a royalty of 2s 6d per ounce on gold.

The Crown also claimed the power to 'resume' privately owned lands, required for mining. That power was first exercised with reference to lands held under title granted after 1873, in the Resumption of Land for Mining Purposes Act of that year. While provision was made for 'full compensation', this sum was not to include the value of the gold or silver. That basic principle of a Crown right in precious minerals was confirmed under the progressive application of powers of resumption to other title categories in 1882, 1886, and 1891. Governments in the twentieth century have also expanded, or, preserved those rights. In 1937, the Government extended the prerogative over petroleum. The prerogative tradition remains embodied in current law, which declares under section 10 of the Crown Minerals Act 1991 that:

> Notwithstanding anything to the contrary in any Act, or in any Crown grant, certificate of title, lease, or any other instrument of title, all petroleum, gold, silver, and uranium existing . . . in land (whether or not the land has been alienated from the Crown) shall be the property of the Crown.

It is to be noted, however, that the same statute also requires, under section 4, that due regard be given to the principles of the Treaty of Waitangi.

At first, the New Zealand legislature hesitated to assert a royal prerogative to precious minerals lying under lands still held by Maori. Gradually, however, the assumption of Crown ownership, first pronounced with reference to minerals found on lands which had already transferred from Maori hands, was also explicitly applied to lands still held under native title, or which had been reserved. Much of this encroachment on Maori ability to withhold their lands from the ambit of mining legislation, was formulated within terms of rights of 'access to', rather than 'ownership of' gold and silver. This process will be discussed, more fully, in a later section.

The common law tradition, and the application of the prerogative right to gold and silver in the colonies, was confirmed by the courts. New Zealand law-makers looked to the Privy Council's finding in *Woolley v Attorney-General of Victoria*, and to *Attorney-General of British Columbia v Attorney-General of Canada* as establishing colonial jurisprudence on the question.[4] The decision in both cases rested, ultimately, on the rule set by the Case of Mines. It was accepted that the

Crown had the right to the minerals; the question was rather, whether particular statutes had explicitly passed title to 'precious metals'. *Esquimault and Nanaimo Railway Company v Attorney-General of British Columbia*[5] based on the above findings, also provided support for legislators seeking to ensure the Crown's access to land, it having been found that a conveyance of the land by Act of Parliament did not carry with it the prerogative to royal metals unless express mention was made, and that the words 'mine or mineral substance' were insufficiently precise and apt to constitute such a grant.[6]

The prerogative was also generally accepted by the New Zealand courts. Again, the first New Zealand authoritative decision, *Borton v Howe* in 1899, concerned the rights of Europeans – of a duly authorised miner to discharge fouled water. The Court of Appeal based its decision on the existence of a Crown right to precious metals, subject to the power of the legislature, stating that 'The auriferous deposits belong to her Majesty, subject to the gold-fields laws of the colony; but her Majesty could not, therefore, be entitled to foul streams beyond the gold-fields to the detriment of grantees of the Crown'.[7] Chief Justice Stout commented, in a decision of the Court of Appeal, *Skeet and Dillon v Nicholls* in 1911: 'There is no doubt that the Mining Act [of 1908] proceeds on the presumption that at common law precious metals belong to the Crown, and the Crown has a right to mine for them. . . . This will explain, no doubt, the interference with private property in mining districts.'[8]

The exercise of the Crown's prerogative was, however, also constrained by statute, The courts might act to protect Maori interests with reference to goldmining, as set out by legislation. The ability of the Crown to extend its jurisdiction over reserves was an issue of increasing debate at the turn of the century. Re Application by Beare and Perry[9] concerned the warden's right to grant a goldmining licence over part of the bed of the Arahura River, including a portion within a native reserve, established under statute. Chief Justice Stout, in this instance, upheld the right of Maori to withhold such lands from the jurisdiction of the Government. Stout found that the bed of the river outside the reserve, was Crown land in respect of which a mining licence could be granted, but that the remaining area was a native reserve within the meaning of the current legislation, in respect of which the warden had no jurisdiction. He took two facts into consideration; that the river was not navigable, and therefore, the common law rule applied that the bed belonged to the riparian proprietors; and that the Public Trustee had exercised proprietary rights in the river within the confines of the reserve, leasing islands, and so on. He did not support the wider claim to the bed of the river where it ran through Crown land. He looked to the deed of sale, negotiated by James Mackay in 1860, which purported to convey the land with 'its trees, minerals,

4. *Woolley v Attorney-General of Victoria* (1876–77) 2 AC 613; *Attorney-General of British Columbia v Attorney-General of Canada* (1889) 14 AC 295. For fuller description of these cases, see Parcell, pp 28–31.
5. (1896) AC 561
6. See Parcell, pp 27–28
7. (1875) 2 NZ Jur 117. Cited in O Morgan, 'The Crown's Rights to Gold and Silver in New Zealand', paper delivered to New Zealand Law and History Conference, 1994, at fn 48.
8. (1911) 30 NZLR 623. Cited in Morgan, fn 46.
9. (1899–1900) 2 GLR 242

waters, rivers, lakes, streams, and all pertaining to the said land'. In Stout's opinion, it was clear that Mackay had intended that the riverbed should be given back to the signatories. This had been indicated both in his report on the transaction and by the sketch map, accompanying the deed which stated that, 'The whole of the riverbed of the Arahura belongs to the Natives to its source'. The Crown had failed, however, to fulfil that promise, and in this circumstance, Stout believed that the warden could not treat the riverbed above Mount Tahua (beyond the boundaries of the reserve) as anything other than Crown land. [10]

The question of royal mineral rights versus customary rights has had little place in the court's deliberations. In the 1890s, the Supreme Court dealt with two cases in which questions of native rights were relevant to the argument of the litigants, but which, again, were not directly concerned with Maori customary title. These decisions assumed a royal right of ownership, although not of a derivative right to access, and primarily involved questions relating to the meaning of Crown grant. The court, however, implicitly downgraded the significance of Maori consent in establishing Government authority over the goldfield. In both cases, the court ruled, in the light of *Parata v Bishop of Wellington,* that the Government could not rely on early agreements made with Maori as giving it authority to apply mining laws to land which had been subsequently granted without any restriction on the title, and then, sold to private persons.[11]

## 1.2 THE QUESTION OF CUSTOMARY TITLE: A BRIEF BACKGROUND

The common law tradition of the Crown's right to 'royal metals' separates out the right to gold, silver and its admixtures from other attributes of the soil and lodges them in the person of the Crown. Such thinking ran directly against the grain of Maori tikanga which, in the naming of geographical features, in the identification of their tupua in stones, and in their story-telling, demonstrated a deep spiritual and cultural affinity with the land in all aspects, including any minerals to be found within it. Tuhua-nui, named Mayor Island by Pakeha, gained its name from the presence of obsidian. Pounamu was the child of Tangaroa, the sea god, and Anumatao personifying cold, while Hine-tu-a-hoanga and her sisters, Hine-one and Hine-tu-a-kirikiri, were personifications of sandstone (hoanga), sand, and gravel. According to Maori legend, greenstone had attempted to land on Mayor Island and had been driven away by obsidian and flint. The stories surrounding Hine-tu-a-hoanga link her, symbolically, with daily life. She was the mother of Rata (meaning sharp) who is said to have asked her to help him sharpen his adze, which he whetted on her backbone, so that he could cut down a tree for a canoe.[12] The presence of oil had also been marked by Maori in Taranaki who believed that Seal Rock, a submerged reef off the coast, had once been an island of bituminous matter which

10. *Re Application by Beare and Perry for Mining Area in the Arahura River* (1899–1900) 2 GLR 243–244
11. See *Aitken v Swindley* (1897) 15 NZLR 517; *Chambers v Busby* (1898) 16 NZLR 523
12. See A W Reed, *An Illustrated Encyclopedia of Maori Life*, Wellington, 1963, pp 81, 132, 154

had been ignited by supernatural agency and had burnt to below sea-level. Ernest Diffenbach who visited the area in 1839 noted the existence of a local legend that an atua had drowned and was 'still undergoing decomposition' at a spot where there were strong emissions of sulphuric hydrogen gas.[13] Although no example of pre-contact knowledge or mythologising of gold has been found, Maori clearly demonstrated interest in, and use of, other forms of minerals, for example, coal, pounamu, sandstone, Tahanga basalt, before 1840.[14]

In the United States, where no mineral prerogative operates and, a legal separation between surface and subsurface rights has rarely been made,[15] the principle of indigenous ownership of all minerals is recognised even though such minerals might not have comprised part of the traditional economy. It has been accepted that unless otherwise provided, a tribe's right in the land extends to all elements that make the land valuable.[16] As early as 1853, in *Choteau v Molony* [17] concerning the purchase of mining rights from Native American Indians, the court supported their claim to subsurface rights on the grounds of aboriginal occupancy. The underpinning Supreme Court decision is to be found in *United States v Shoshone Tribe* (1938), which stated that the tribe's aboriginal title gave it 'the right of occupancy with all its beneficial incidents'. A treaty guaranteeing the Shoshone 'absolute and undisturbed use and occupation' of their remaining tribal lands had been signed in 1868. The court decided, however, that the Shoshone's claim to minerals and timber derived from an inherent aboriginal right rather than from the reservation by treaty. It found that for 'all practical purposes, the tribe owned the land' and that minerals and standing timber were 'constituent elements of the land itself'. The court also discussed the Government's fiduciary obligation, noting that while the United States held legal title to the land and power to control the affairs of the Shoshone, 'it did not have the power to give to others or to appropriate to its own use any part of the land without rendering, or assuming the obligation to pay, just compensation to the tribe, for that would be, not the exercise of guardianship or management, but confiscation'.[18]

The United States Federal Government has also given consistent recognition to the principle of an aboriginal right to minerals. Although, some of the bitterest episodes in American Indian history of their relationship with white settlers – for example, the forced displacement of California tribes from the Sierra Nevada, and of the Sioux from the Black Hills – were triggered by the discovery of gold in their territories, the value of minerals, generally, has been included in the compensation for lands lost.[19] The reservations that remained to American Indians after a process of treaty negotiation, purchase, or compensation after forced expulsion, have been

13. Cited in J D Henry, *Oil in New Zealand*, London, 1911, p 9
14. See P McHugh, *The Maori Magna Carta*, Oxford, 1991, p 254
15. See John D Leshy, 'Indigenous Peoples, Land Claims, and Control of Mineral Development: Australian and US Legal Systems Compared', *University of New South Wales Law Journal*, vol 8, 1985, pp 287–290
16. *United States v Klamath and Moadoc Tribes of Indians*, (1938) 304 US 119, 123 (cited in Allen H Sanders and Robert L Otsea, *Protecting Indian Natural Resources: A Manual for Lawyers Representing Indian Tribes or Tribal Members*, Colorado, 1982, p 7)
17. (1853) 57 How 203, 240 (cited in Sanders and Otsea)
18. *United States v Shoshone Tribe* 304 US 11 (1938) (cited in P McHugh, p 133)
19. See Leshy, pp 277–278

assumed to encompass the minerals as well as the land. In the late nineteenth century, the Congress, in pursuit of assimilationist goals, distributed minerals as well as land among individual Indians. Allottees were then authorised to lease the minerals for development on the approval of the Secretary of the Interior. At the same time, numerous statutes were passed, authorising the leasing of tribal minerals for development.[20] As policy shifted away from assimilation to tribalism, the Government practice was to accord tribes with joint control of mineral exploitation. This principle became embedded in legal usage, being adopted as part of omnibus mineral leasing legislation, enacted in 1938, in an attempt to bring uniformity to the statutes governing Indian mineral development. When underlying policy again shifted towards acceptance of tribal self-determination, the Government passed the Indian Mineral Development Act 1982, which sought to give recognition to the desire of some tribes to become more directly involved in mineral exploitation, and to share more directly in the profits, or losses, of ventures. It is to be noted, however, that the statute preserved the trust responsibilities already assumed by the Government, stating that nothing in the Act would 'absolve the Government from any responsibility to Indians, including those which derive from the trust relationship and any treaties, Executive orders, or agreement between the United States and any Indian tribe'.[21]

In the past 15 years, the Canadian Government has also given increasing recognition to indigenous rights in subsurface resources, despite an earlier acceptance of the royal prerogative. There have been three landmark settlements recognising a native right to minerals, including oil and gold. The discovery of the Beaufort Sea field prompted the Government to conclude negotiations with the Inuvialuit, setting a benchmark for subsequent treaty settlements in Canada. The Western Arctic (Inuvialuit) Native Claims Settlement Act 1984, contained a final settlement of absolute title to 91,000 square kilometres of territory, surface rights to an additional 13,000 square kilometres, a sum of $152 million (to be received between 1984 and 1997), and an ongoing role in resource management. This was followed by the Council for Yukon Indians Umbrella Final Agreement of 1993 which again combined absolute ownership of a large tract of territory, surface rights to a smaller area, and a share in Government royalties from the resource development, as well as a degree of self-government. The fullest recognition of native ownership is contained in the recent Nisga'a Treaty of British Columbia. The Agreement in Principle, dated 16 February 1996, states that the Nisga'a Government will own 'all mineral resources on or under' the surface, including precious and base metals, coal, petroleum, natural gases and geothermal resources, earth, soil, peat, marl, sand, gravel, rock, and stone. In addition, the British Columbia Government must enter into agreement with the Nisga'a regarding the Crown collection of Nisga'a royalties, and the application of provincial administrative systems with reference to claim-staking, recording, and inspection of subsurface exploration and development on Nisga'a lands.[22]

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20. Ibid, p 282
21. Ibid, pp 282–284
22. My thanks to Alison Mortimer, Department of Indian Affairs, Canada, for this information.

CHAPTER 2

# GOLDFIELD NEGOTIATIONS AND AGREEMENTS, 1850 TO 1880

## 2.1 INTRODUCTION

Law-makers in New Zealand tended to work from the assumption that the royal prerogative applied, gradually bringing in legislation to ensure Crown access to 'royal metals' as well as other minerals. As statutory powers expanded, the attitude to negotiations on the ground also changed. Whereas early agreements with Maori regarding mining for gold on their lands were in the nature of minor treaties which took some account of the existence of the Treaty of Waitangi, later consents tended to be more formalistically constructed, being conceptualised as a bargain for a right of access or easement. The terms of opening became less advantageous to Maori as their ability to withhold lands and negotiate satisfactory arrangements was undermined by increasingly aggressive Government tactics, backed by arguments of public interest and equal right under the law, and by expanded executive powers under mining legislation.

From the earliest years of the colony, settlers and Government were keen to develop its mineral potential. Various minerals – most particularly, copper an manganese – had been discovered in the islands of the Waitemata gulf in the late 1830s and early 1840s. A practical demonstration of the potential commercial value of subsurface properties was given by early mining ventures in the islands of Kawau, Great Barrier, Waiheke, and Pakihi although these operations, requiring little machinery and of short duration, far from prepared Maori for the later impact of gold discoveries. Nor, of course, did the discovery of copper and manganese raise issues of the Government's right since non-precious minerals were accepted as belonging to the owner of the soil, not to the Crown.

It is clear that Maori expected to be paid for sub-surface resources in the land, and in the early years of the colony, could demand further payment when Pakeha started to mine on land they had purchased. Edward Ashworth recorded an incident at a ship building station at the mouth of the 'Wangari River', where the schooner on which he was travelling, made anchor in order to pick up a cargo of manganese for Sydney. Work on loading was soon interrupted:

> The owner had slept on shore and was already at work . . . when some distant canoes and an old whaleboat drew near. They landed near us and the chief . . . seized the hammers and sleeping furniture of the Europeans flung them into the boat untied the painter and moored the boat further from the shore. The dispute that followed this

act was held in English which language the chief understood 'Why do you stop my work, I have bought this land and paid for it.' 'You buy de land you no buy de stones, de stones good to paint Maories faces when go to war.' 'If you come and take things on my land it is robbing me.'[1]

According to Ashworth, the Maori party then began to make camp, and to paint their faces with manganese stain. They refused an offer that they might take as much dye as they pleased, and to the indignation of the Europeans, insisted on a written promise of a cask of tobacco.

The transfer of subsurface resources was explicitly mentioned in some deeds signed by the Hauraki people holding rights in lands known to be rich in minerals. Translations expressed the concept of minerals by the word for 'stones'. In 1845, Ngati Maru, for example, signed a deed conveying minerals as well as land on Waiheke to John Brigham: 'E tino whakaae ana ano hoki matou kia tuku atu, kia hokoa atu ki a Hoani Pirikama. Ki ona uri i muri iho i a ia, me ona e pai ai, nga rakau katoa, nga wai, nga ana, nga kohatu o ronga, o raro raro ia nei i taua whenua', translated as 'We also fully consent to make over, and sell to John Briggham his heirs after him, and those he shall appoint, all woods, caves, stones, or metals, above, or below the surface of the said land'.[2] There could be little doubt that Maori quickly appreciated the opportunity for trade and profit. In negotiations to finalise the sale of Pakihi, which had been found to contain 'ores and ochres', Maori repudiated earlier payments as inadequate and saw the island as providing leverage in the settlement of other outstanding transactions now that its value in European eyes was appreciated. Mclean reported:

When the Natives connected with the said Island were collected, I informed them that His Excellency was about sanctioning the sale of that Island to Mr Tayler who would on completion of a further payment commence mining operations theron, at the same time giving them to understand that as they had previously complained of you of not having received an equivalent payment for the Island that an additional payment would be now made. The Natives replied that the original payment received from Captain Herd was a double barreled gun for which they would willingly pay the Government two ship loads of manganese.[3]

## 2.2 THE COROMANDEL AGREEMENT, 1852

Interest in mineral development ran high amongst the Auckland settler community where there were high expectations of gold discovery which, it was hoped, would prove a counter-attraction to California and New South Wales. The search for gold resulting in the first discovery on land still held under native title, in the Coromandel, in 1852, was thus actively promoted by community leaders. A gold discovery committee had been formed, offering a reward of £500 for the discovery

1. Edward Ashworth, 'Journals', entry for 28 January 1844, MS 0103–0106, ATL
2. See OLC 1/1216–1218, repro 1673
3. McLean to Chief Protector, 1 July 1844, OLC 1/1216–1218, repro 1673

of payable quantities of gold. The Ring brothers, who had mining experience and who were well-known to local Maori, claimed the reward within the week.[4]

At this stage, no laws had been formulated with regard to the discovery of gold in the colony whether on native, Crown or Crown-granted land. The New Ulster Government had given some thought, however, to what its policy should be if gold should be discovered on land held by Maori. Wynyard recognised that Maori would have to be negotiated with, and their interests given some form of recognition:

> In the event of the discovery leading to an available field, I instantly saw it is with the Natives of the Province (60,000 in number) the greatest prudence and circumspection will be required. As regards the white population (12,000 by last census) my course, I conceive as Lieutenant Governor is simple enough, but with Natives it will be necessary to make them thoroughly understand any proceedings and convince them I have on the part of the Government, their interests, their rights, and their welfare at heart, in all I may arrange.[5]

He took prompt action, assembling the Executive Council for their advice on how to best proceed. In the meantime, Nugent, the Native Secretary for New Ulster, was instructed to convince Maori of 'the necessity of relying on the Government for good order and tranquillity' and in order 'to reap the advantages they would otherwise fail to obtain from the thousands that would soon resort to New Zealand from all parts of the world'.[6] Accompanied by a special gold sub-committee composed of provincial council members, Nugent set sail for the Coromandel. [7] On arrival, the committee members went to the Kapanga site where they found favourable indications of a payable field.[8] Nugent, having identified Paora Te Putu as the principal right-holder in the area, proceeded to his settlement where he delivered Wynyard's address:

> The white people will perhaps go down to search – but do not be alarmed, there is no harm in their searching – but they will not be allowed to carry much away with them until Regulations have been made by the Government.
>
> As soon as it is known that gold has in truth been found on your land, I will come down, and we will hold a committee as to the best means of making the discovery available.
>
> If no regulations are made, and the Natives are left to themselves, there will be nothing but confusion but if the Natives and the Government act together, all will be well.[9]

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4. The Ring brothers had first arrived in the Coromandel in the 1820s. They had conducted a milling operation there, with the consent of Horeta Te Taniwha, rangatira of Ngati Whanaunga. In 1848 they had left for the California goldfields.
5. Wynyard to Grey, 25 October 1852, 'Inward Correspondence from Lieutenant Governor to Governor', dispatch 121, G 8/8
6. Wynyard to Grey, 25 October 1852, 'Inward Correspondence from Lieutenant-Governor to Governor', dispatch 121, G 8/8; Wynyard to Nugent, 18 October 1852, encl A, 'Inward Correspondence from Lieutenant Governor to Governor', dispatch 121, G 8/8
7. W C Daldy, James Mackay, John Williamson, John McFarlane, and Patrick Dignan comprised the sub-committee.
8. Forsaith to Cockcraft, 23 October 1852, dispatch 121, encl F, G 8/8

In reply, Paora, called for consultation with Taraia, Katikati and other Hauraki chiefs. Wynyard's address was sent to them and a meeting called at Kikowhakarere, to discuss the matter.[10]

The minutes of the Executive Council indicate ambivalent, and ultimately, equivocal thinking with regard to the ownership of gold. It was agreed that the 'great object for the Government would be to endeavour to make the discovery available to both races' without destroying Maori confidence in the good faith of the Government or, on the other hand, completely abandoning the royal prerogative to minerals.[11] While the Executive Council saw the ownership of gold within the common law tradition, it acknowledged that any attempt to assert the Crown's prerogative over minerals would be resisted by Maori as in contravention of the guarantees of the Treaty of Waitangi:

> Although the Crown is entitled to all gold wherever found in its natural state the Council is unanimously of the opinion that it would be inexpedient to attempt fully to enforce Her Majesty's Prerogative Rights in the case of gold found on Native land because it would be impossible to satisfy the owners of the particular land in question – or the Natives of New Zealand generally, that such a proceeding on the part of the Government is consistent with the terms of the Treaty of Waitangi which guarantees to them the undisturbed possession of their lands, estates &c . . .[12]

The political reality was that 'no proceeding could be taken by the Government which the Natives might deem to be an infringement of the Treaty' without arousing suspicion and anger amongst all Maori. The Executive Council was not willing, however, that Maori right-holders at Coromandel should manage the field themselves since this would mean the virtual abandonment of the Crown's prerogative, endanger the ability of Europeans to gain access to minerals, and result in the 'loss of a fair and certain means of providing for the increased expense which would be entailed upon the Colony in consequence of the discovery'.[13] It was resolved, therefore, that an arrangement should be made whereby the Government would manage the goldfield and Maori receive 'a fair proportion of the proceeds of the license fee to be imposed'. The figure suggested was one-third of a licensing fee of 30 shillings per month.

The Executive Council recommended a series of measures to establish the Government's jurisdiction. The first step was to determine the 'owners of the soil' according to Native law and usage and to enter their names on a register as either the owners of the land in question, or as trustees for the tribe. If they entered into an agreement to entrust the management of the goldfield to the Government, the Crown would 'acknowledge' them as such and would undertake 'to maintain their right as against hostile claimants and to put the law in force to prevent unauthorised persons' from working their lands.[14] The council contemplated a system of

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9. Nugent to Colonial Secretary, 23 October 1852, dispatch 121, encl E, G 8/8; Wynyard to Chiefs, 18 October 1852, dispatch 121, encl B, G 8/8
10. Nugent to Colonial Secretary, 23 October 1852, dispatch 121, encl E, G 8/8
11. 'Extract of Minutes of Executive Council', 19 October 1852, dispatch 121, encl D, G 8/8
12. Ibid
13. Ibid

administration which moved authority from Maori into Government hands, arguing that 'with a view to regularity and the preservation of order', all persons, whether Maori or European, should be required to hold a license issued by an officer appointed by the Government'.[15] A limited role was contemplated for Maori, in the regulation of the field. Registered owners would act as constables, helping to maintain order, preventing trespass and escorting prospecting parties.

Wynyard's decision 'only to permit gold digging to be carried on with the consent of the Native owners of the soil', was approved by Governor Grey who recognised that Maori were 'to desire some advantage from acquiescing in the search for gold' and that any attempt to do otherwise would endanger the peace. On the other hand, he rejected the council's proposal that Maori should receive a set portion of revenues generated by the field, arguing that Maori were incapable of handling the potentially large sums of money, liable to be 'foolishly squandered' or to provoke the envy of both Europeans and other Maori. [16] Grey's preference was to pay Maori 'owners of the soil' a fixed sum for the opening, and to devote the one-third of revenues to an endowment for the construction of hospitals and schools, and for general purposes for the benefit of all.[17]

In the meantime, Wynyard had set sail for the Coromandel to seek permission from resident Maori for the further exploration of their lands. It was agreed that prospecting could take place along the ravines, but that if gold was found in any quantity, Maori would look to the Government for a more definite arrangement, protecting their property and rights.[18] During early November, a meeting was sought by both sides. The Government wished to ensure Maori cooperation in 'establish[ing] some regulations for the good government of the gold diggings'.[19] Maori were divided in their stance on the question of allowing their lands to be mined, but were anxious, at the least, for mutually agreed arrangements to be established before the district was explored further.[20] A proclamation was gazetted on 10 November, prohibiting mining until agreement with Maori could be finalised and a system of regulation set in place. All gold procured without a licence would be seized and persons found possessing it, would be prosecuted. However, until such time as the licensing system was introduced, permission to explore for gold might be sought from the Colonial Secretary's Office.[21]

An important meeting, extending over several days, took place between Coromandel Maori and Crown officials at Patapata, in late November. Present were Wynyard, Bishop Selwyn, Chief Justice William Martin, and on the Maori side – Ngati Whanaunga, Ngati Paoa, Patukirikiri, Te Matewaru of Ngati Tamatera who had rights at Tokatea, and Te Moananui, and Taraia representing those sections of

14. Ibid
15. Ibid
16. Grey to Wynyard, 12 November 1852, dispatch 90
17. Ibid
18. Wynyard dispatch re discovery of gold, *New Ulster Gazette*, 30 October 1852
19. C W Ligar (Surveyor-General) to Lieutenant-Governor, 6 November 1852, *New Ulster Gazette*, 10 December 1852, p 182
20. Ligar to Colonial Secretary, 6 November 1852, G 8/8; 'Lanfear to Heaphy', 3 November 1852, dispatch 125, encl D, G 8/8; Wynyard to Grey, 13 November 1852, dispatch 127, G 8/8
21. *New Ulster Gazette*, 10 November 1852, p 163

Ngati Maru and Ngati Tamatera who held interests at Moehau and the western coast from Tikapa Moana to Kauaeranga. In his opening address, Wynyard emphasised the Crown's obligation to safeguard Maori in the security of their person and property:

> I come to offer the protection of the Government to you the same as I would if the gold had been found on the land of the Europeans, to protect you from all and every annoyance, you might otherwise be exposed to from the strangers that may come here . . . and to preserve good right to your land and property, as subjects of the Queen.[22]

Maori discussion demonstrated a willingness to cooperate with the Government and to benefit from the discovery of gold within their territory, but they also acknowledged the threat that was posed to their ability to maintain charge over their lives and land. They wanted a limited opening only, and expected the Government to provide proper protection of lands they wished to be excluded from exploration. Complaining that prospectors had already transgressed the preliminary agreement, Hohepa Paraone of Ngati Whanaunga, advocated a gradual approach to the question:

> We shall only give up Waiau to be worked. We shall look to the good of that and then give up other places. The Europeans went to Manaia and broke this rule which we have agreed upon. I told them to go back . . . This is the thing that we are averse to, the going of the Europeans without authority rather let them come and tell the owners of the land . . .[23]

He then defined both the extent of his agreement and his expectations of good Government:

> Let not the European take the gold and me too . . . if we knew how to work the gold, we should reserve it for ourselves. The Europeans understand the working of it. Let them work it, what we promise is that if the agreement of the Government is just, we will accede to it. If the arrangement is not just we will not grant it . . .[24]

Pita Tarurua of Patukirikiri consented that the gold should be given to the Governor but on the condition that the land was to be held 'for ourselves and our children'. Tauroa Te Tawaroa affirmed this stance, 'All I am agreeable to, is that the gold should be worked. The land will not be given up to you. The gold only will be given up. You have already heard that you are to have the gold – but the land is for myself.'[25]

On 27 November 1852, an agreement was signed between Wynyard, and Ngati Whanaunga, Ngati Paoa and Patukirikiri. Although sketchy in details of administration, this compact attempted to provide for the needs of both races, allowing for the development of the resource in a manner which gave at least some

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22. Wynyard's address, encl in Wynyard to Grey, 25 November 1852, dispatch 128, G 8/8
23. 'Speeches Of Native Chiefs At A Meeting At Patupatu [sic] In Coromandel Relative To An Agreement For Working Gold On Their Lands Taken Literally 19, 20, 22 November 1852', dispatch 128, encl C, G8/8
24. Ibid
25. Ibid

recognition to Maori rights. It was first agreed that a uniform system for the regulation of all prospecting activities should apply from Moehau (Cape Colville) to Kauaeranga River (near present-day Thames). Only those portions belonging to the three signatory tribes, Ngati Whanaunga, Ngati Paoa and Patukirikiri, were to be opened to mining – an area calculated by Wynyard to cover only 17 square miles. Clause 8 emphasised that this was a leasing arrangement only, stating, 'The property of the land to remain with the Native owners; and their villages and cultivations to be protected as much as possible'.

It was recognised that Maori had the right to work their own lands without payment although they had to register themselves to obtain a licence under sanction from the Government. A small role in the administration of the field was contemplated for Maori who would 'undertake to assist the Government as much as possible', by reporting all persons who were found digging without licence. [26] They also exerted a potential check on the system, attaching their signatures to the returns of licenced diggers, by which payments would be calculated.[27] Maori were directed 'to register themselves, and point out their boundaries to the Government . . . the money paid to each body of owners so registered to bear the same proportion to the whole sum that their land does to the whole block'. Wynyard, influenced by Grey's directive, was now unwilling that they should receive moneys on an 'uncontrolled basis' as this would 'lead to idleness tending to vice and disease' and reported that he had decided against the council's recommendation of paying out a third of the licensing revenues since this sum would fluctuate and could not be spent judiciously by Maori.[28] Thus, in consideration for opening their lands, Maori right-holders would receive a fixed sum worked out at a 'rate of £1 per square mile if under 500 diggers – if above that number and under one thousand, £1 10s per mile etc at an increased rate of 10 shillings per square mile'.[29] Wynyard acknowledged, however, that Maori would find such a payment 'insignificant' and too small a sum in relationship to the license fee revenues to be acceptable. He offered, therefore, a 'further guarantee' of a 2 shillings tax on every licence issued, 'for the purpose of paying . . . and for rewarding the Native owners for their faith and confidence in the Government, as well as recompensing them for any damage, annoyance, or inconvenience they may experience from Europeans'. The provision was represented as a 'just and correct measure' that would place the Government . . . in a 'parental position', and induce others to also open their lands.[30]

Provisional regulations, modelled on mining ordinances in Victoria, were also issued by Wynyard on 27 November 1852. These permitted working of alluvial gold only. The importance of abiding by the regulations, and of respecting the bounds imposed by the agreement was stressed, since infractions would jeopardise future negotiations with those Marutuahu tribes who had withheld their lands. Mining licenses would cost £1 10s, had to be renewed on monthly application to the Gold Fields Commissioner, and would be effective from 1 December.[31] The

26. 'Agreement with Maori', 20 November 1852, *New Ulster Gazette*, 26 November 1852, pp 166–167
27. See IA 1853/704, 1560, and 1774
28. Wynyard to Grey, 25 November 1852, dispatch 128, G8/8
29. Ibid
30. 'Minute from Wynyard for the Executive Council', 24 November 1852, dispatch 128, encl D, G 8/8

payment of the license fee was waived, however, until January 1853. In February, in response to pressure from the Auckland Reward Committee and the Coromandel mining population, he abolished it altogether, reporting to Grey that the Government could not 'permanently enforce' the fee 'either advantageously for the Public good or in fairness to the diggers'.[32] Under the new regulations, fees were demanded only when a prospector sought to establish a claim.[33]

Government policy was developed with an eye to Te Matewaru and the wider tribal grouping of Ngati Tamatera, who declined to open their territory to mining. Paora Te Putu, the principal right-holder at Tokatea, regarded Grey with suspicion because of his earlier military response to Maori rejection of Government at Wellington and Whanganui. Nor was he satisfied with the terms of payment proposed by Wynyard, arguing that the entire licence fee should be handed over to Maori who would reimburse the Government for administrative expenses. 'Paul' was, however, prepared to tolerate the opening of a limited area by the other tribes and promised to review his position in light of the working of that arrangement.[34] The notorious Hauraki chief, Taraia, also decided to pursue a strategy of 'wait and see' with regard to the prospecting of his lands.[35] Those who refused to open their land expected the Crown to protect them in the undisturbed possession of their territory, and clause 9 of the Patapata agreement guaranteed that, 'If any of the tribes of the peninsula decline this proposal, their land shall not be intruded upon till they consent.'[36] The Government did not, however, actually see this guarantee as safeguarding Maori from pressure to open their territory to mining, and acquiesced in secret prospecting on Te Matewaru lands.

A number of finds outside the 'Government district', indicated that rich gold deposits existed on the eastern slopes of the Coromandel on territory in which Paora Te Putu held interests. Paora had agreed to a small extension of the field, in December, but this had involved only lands admitted to belong to Patukirikiri.[37] In an effort to win further cooperation, the Government moved from its original stance of not paying for the early diggings, and adopted Gold Commissioner Heaphy's proposal that 2 shillings be paid to Te Matewaru in compensation for each of the 51 diggers, who had worked their lands without permission, before the Patapata conference.[38] This sum was paid out, in March 1853, along with the first moneys to the signatory tribes, that amount being calculated on a monthly return of diggers, duly endorsed by the chiefs, and at the rate of £1 per annum per square mile on the 17 square miles that had been ceded.[39]

Heaphy reported that the successful termination of the first quarter payment, coupled with compensation to Te Matewaru for the October and November digging

31. Wynyard to Grey, 26 November 1852, dispatch 129, G 8/8
32. Wynyard to Grey, 4 February 1853, dispatch 148, G 8/9
33. *New Ulster Gazette*, 1 February 1853. See J R Haglund, 'History of the Coromandel Goldfield, 1853–68', MA thesis, University of Auckland, 1949, pp 10–11.
34. 'Speeches of Native Chiefs at . . . Patupatu', dispatch 128, encl C, G 8/8
35. Angela Ballara, DBNZ, vol 1, p 428
36. 'Agreement with Maori', 20 November 1852, *New Ulster Gazette*, 26 November 1852, p 167
37. Heaphy report, 14 December 1852, encl in dispatch 142, G 8/8
38. See Heaphy to Colonial Secretary, 19 March 1853, IA 1 1853/700
39. Wynyard memo, 29 March 1853, IA 1 1853/704

'inclined the natives generally to re-open the discussion for the extension of the district'.[40] It is clear, however, that most of Ngati Tamatera were unimpressed by the Patapata arrangements. In discussions held later in the week, Paora proposed a system of payment which was more directly related to the anticipated value of the gold than one calculated primarily on acreage and population numbers. He argued that 4 shillings be paid for every digger working on the field, each month, and that the Government, in the event of a large amount of gold being found, should make additional payments, proportionate to the quantity obtained. According to Heaphy, this proposition had been supported by Taraia and the southern portions of Ngati Tamatera, when 'Hoani Ngamu, a chief of considerable importance' objected, demanding the payment of 30 shillings for every digger, thereby bringing negotiations to an end.[41]

Government efforts to extend the goldfield onto Tamatera lands were also rebuffed because of the behaviour of diggers who resented having to abide by limits dictated by Maori. The Government had promised to maintain control on the field but made limited response to trespass onto closed lands, partly because of the rudimentary state of its machinery of order, and partly because its underlying role was to open the area to European miners. Reconciling its obligations to Maori with efforts to satisfy miner demands was likely to prove difficult. Heaphy, as Gold Commissioner, reported that Maori resident in the area were complaining of miner conduct. Pita complained that he had been abused by a digger for threatening to stop up a path leading through plantations where his peach trees were suffering damage and fruit was being stolen. He demanded that the digger should be 'punished by the English law, in preference to the tribe following the native custom'. Heaphy reported that he had arrested the miner – a step he had considered to be necessary, since other tribes in the area who had not yet made any mining concessions were watching with interest to see how Maori who had opened up their land were treated. Heaphy was subsequently prosecuted for false imprisonment, and on legal advice, made an out-of-court settlement. Although the Government compensated him because he had taken on his new duties as Gold Commissioner without an increase in salary, it warned him against repeating the action.[42]

Interest in the Coromandel field petered out by mid-1854, Maori registered owners receiving several more small payments in the interim, reflecting the limited numbers working the field. In June 1853, a total of £9 5s was paid out to Maori; in September, £16; £4 5s in March and June of 1854.[43] Little definite is known about the initial Coromandel yield. Estimates vary widely. Heaphy noted the difficulties in forming an exact picture since 'very little credence [could] be placed on the reports of the diggers, so much do they vary in respect to whether they [were] told to a private or an official person, nor [was] it possible to obtain a fair estimate by seeing the men washing'.[44] He estimated, however, that 350 ounces of alluvial gold, with a value of between £1200 and £1500, was extracted by virtue of the agreement.

40. Gold Commissioner report, 26 April 1853, IA 1 1853/1108
41. Ibid
42. Gold Commissioner report, 16 April 1853, IA 1 1853/1106
43. See IA 1 1853/1560 and 2196; IA 1 1854/1089 and 2000
44. Wynyard to Grey, 13 December 1852, dispatch 133, encl D, G 8/8

The *Thames Miners' Guide* set the figure at £11,000. Maori received some £50 for the opening of their Coromandel lands in the same period.[45]

## 2.3 MAORI AND GOLDMINING AT 1860

Many Maori responded with enthusiasm to the discovery that gold was valued by Pakeha. Grey was reluctant, ultimately, to accord Maori anything but a subsidiary role in the goldfield, but anticipated that the unearthing of gold at Coromandel would spark local Maori interest. He informed the Colonial Office:

> It appears from the character of the Maories to be tolerably certain that if they once see the method in which gold diggings are worked and the character of the rocks which it is to be found associated with, they will then themselves soon examine considerable districts of country . . .[46]

Although European interest in the Coromandel field died down, Maori continued to prospect in the peninsula, and when gold was later discovered on Crown land at Nelson, Maori comprised an estimated third of the population employed at the alluvial workings.[47] Maori interest in diggings did not, however, translate into simple acquiescence in opening their land to mining exploration and development. In the 1850s, such agreement remained confined to only a small area at the Coromandel, and to tribes already well-disposed to Europeans. Ngati Tamatera and Ngati Maru, important right-holders in the Thames and its upper valley which were suspected to contain major gold deposits, remained opposed. Their objections centred, not on goldmining per se, but on allowing control of that activity into the hands of Europeans, and on the probability that such a concession would result in the entire loss of their lands.

A meeting of Ngati Maru and other Hauraki chiefs was held at Kauaeranga (Thames) in late 1857 when gold was found there, by Joseph Cook. The discussions were recorded and then sent to McLean, outlining their objections to Europeans being allowed access for mining. Some expressed fear of the social disruption that would result from the presence of a digger population but the major concern was the effect on their capacity to hold onto their territory. Riwai Te Kiore summed up the fears of most speakers, 'Friends, we may bid farewell to the land, inasmuch as gold has been discovered, the Europeans' great treasure'.[48] Only Eruera Te Ngahue was ready to give up supervision of the goldfield lands to the Crown, confident that the 'Government will not mismanage them, because it was they who gave us just laws. The Governor will not break his own laws'.[49]

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45. *The Thames Miner's Guide*, Auckland, 1868 (reprinted Christchurch, 1975), p 61
46. Grey to Pakington, 9 November 1852, 'Dispatches from Governor Grey', no 1, BPP Australia, 1852–53, vol 16, p 166
47. See discussion, p 20.
48. Chiefs of Hauraki to McLean, 27 November 1857, 'Papers relative to the Probability of Finding Gold at the Waikato and at the Thames', AJHR, 1863, D-8, p 3
49. Ibid

While the overwhelming majority of speakers wished to keep Europeans out, they were less united on the question of mining itself. Te Kapihaua Tuahurau argued that Maori had brought trouble on themselves by engaging in mining activity, and should have no more to do with the matter. Te Kapihaua's views were predicated on Maori ownership of gold, but he saw danger in their attempts to utilise a resource over which Europeans held technological hegemony:

> Hearken, O Ngatimaru! You say do not allow the Pakeha to come and dig gold. Yes, that is right, but the Pakehas would not have come had you not dug the gold for yourselves. How are you to dig, and the Europeans and ourselves stay away? . . . better let all the gold you have obtained be brought, and cast in the waters, here . . . Then your words to keep away the Pakeha would be right; as it is, you drive off the Europeans and persist in digging yourselves. Who are you digging it for? . . . The greenstone is the only treasure of the Maoris; gold is the Pakeha's treasure. The only plan to keep away the Europeans is for the Maoris to cease digging. If the Maoris dig it, they do not know how to make it into money; and then not being able to make it into money themselves, they will say, – I will sell my gold to the Pakehas. Then the Europeans see it, they will ask – Where did this gold come from? . . . Then the Pakehas will flock thither . . .[50]

Others believed that Maori should exploit subsurface resources for themselves. Aperehama Te Reiroa summed up this position:

> Friends, think of the land that descended to us from our ancestors. They died and left us their words, which were these – 'Farewell; hold fast to the land, however small it may be'. And now as gold has been discovered in our land, let us firmly retain it, as we have power over our own lands, lest the management of them be taken by the Europeans. Who made them chiefs over us? No we will ourselves be chiefs.[51]

In Hauraki, this intention was to become increasingly politicised, those wishing to retain control over the development of their lands, identifying with, and calling on the assistance of the King movement.

## 2.4 THE GOLD FIELDS ACT 1858

The first major gold rushes in New Zealand took place at Otago and Canterbury on land which had already been purchased by the Government. Legislators drawing up the first statute for the management of goldfields in 1858, thus, did not take any direct cognisance of the question of goldmining on land still under native title. The Gold Fields Act 1858 stated, however, that it was 'lawful for the Governor from time to time by Proclamation to constitute and appoint any portion of the Colony, to be a "Gold Field" under the provisions of this Act, and the limits of such Gold Field from time to time to alter as occasion may require'. The intention of the statute was pragmatic rather than to assert the prerogative right. Indeed, legislators apparently

50. Ibid
51. Ibid

saw the measure as potentially infringing upon the rights of the person of the Crown, it being stated that nothing in the Act should be 'deemed to abridge or control the Perogative . . . of Her Majesty in respect of the Gold Mines and Gold-Fields of the Colony'. Although the Governor's power would seem to encompass land under customary title, policy continued to demand negotiation with Maori right-holders before their lands were brought within the compass of goldfield legislation. In the following decade, further legislative definition also was considered necessary to deal with the transfer of control and management of such lands from Maori hands into those Government.

The Governor was empowered to proclaim goldfields under the 1858 Act so that a structure of management could be imposed on both auriferous lands and the body of men working them. A rudimentary system of regulation was established which was to remain at the core of goldfield operations but be greatly expanded over the next 50 years. Under the Gold Fields Act 1858, only duly authorised persons would be permitted to mine for gold within the bounds of the proclaimed field. That authorisation took the form of a 'miner's right' issued annually, on payment of £1. Mining within a field without proper authority, and on lands belonging to private individuals without their permission were liable to a maximum fine of £5 for a first offence, and of £5 to £10 for a second. The Governor in Council could also issue, on payment of £5, annual licences for a maximum of 20 perches of land, 'authorising the Holder to occupy Waste Lands of the Crown for the purpose of carrying on business upon any Gold Fields', or leases for mining purposes with attendant water rights and easements, for a maximum of 15 years on payment of 'rent or royalty for the same respectively' The amount of that rent would be fixed by the Government. Section 39 provided for any future need to change the regulation of fields proclaimed under the Act:

> In all cases where no provision, or no sufficient provision, is made by this Act, it shall be lawful for the Governor in Council, from time to time, for the purpose of facilitating or more effectually carrying into execution any of the objects thereof, to make and prescribe all such rules and regulations touching any of the matters intended to be hereby provided for . . .

This right had serious implications for Maori who allowed the Government to take over control over their lands for goldmining purposes because it meant that new rules effecting their rights could be introduced without any negotiation on the Government's part. Further sections set up a warden's court for the administration of justice on the field; to decide on breaches of mining legislation, complaints respecting boundaries and encroachments on claims, and questions pertaining to partnerships. Again, the creation of the semi-judicial officer of the warden, although the standard practice in goldfield administration, had important implications for Maori. Increasingly, the warden was to take on a dual function, interpreting and applying the mining legislation affecting Maori land, and acting as trustee for any revenues received by them, from the goldfield. The Gold Fields Act 1862, which repealed the 1858 statute, still made no provision for the inclusion of

customary land within a proclaimed goldfield, and was significant largely because it empowered the Governor to delegate powers to the Provincial Superintendents.

## 2.5 THE OPENING OF MAORI LAND TO GOLDMINING IN THE EARLY 1860s

The 1858 Act was still in operation when gold was found on Maori land in Nelson, in early 1862. Taitapu, the area in question, was a block of 88,000 acres which had been excluded from the larger scale cession of rights to the South Island by Ngati Rarua, Ngati Tama, and Te Ati Awa, in 1855. The Golden Bay region was known to be rich in minerals and its purchase was considered to be of great advantage to the colony. The mineral wealth of the area was, however, a fact which the Government had been reluctant to convey to Maori. Major Richmond, the Superintendent of Nelson, carried out an inspection of coal and other mineral resources in the area north of Aorere at Golden Bay in 1851. The mineral wealth of the area (which became known as Pakawau block) convinced Richmond that he should purchase it immediately before Maori became aware of its value. He entered into negotiations with local Te Atiawa, rejecting their demand for £1000 on the grounds that the soil was poor and the land of limited use, and offered only £500 for the whole district, with the stipulation that the money was to settle the claims of all those persons connected with the district. Yet, as Phillipson points out, Richmond was eager to complete the purchase as soon as possible and had informed the Colonial Secretary:

> With the prospect of such abundance of good coal and other valuable minerals in the district, I was the more anxious to acquire it for the Government at once, as the longer the purchase was delayed (it appears to me) the more difficult it would be of accomplishment, for I found the cupidity of the Natives had already been aroused by the reported value of minerals on their land, and if they were advised that it would be more to their interest to retain the ownership, the present opportunity might be lost of acquiring it.[52]

James Mackay, who was to be instrumental in many of the goldmining arrangements reached between the Crown and Maori, also recorded that:

> These mineral lands had been completely sealed to the colonists prior to the pnrchase, as any attempt to ascertain their worth would, in all probability, have induced the natives to attach a value to the lands which would have precluded their sale.[53]

Later discussion will show that this sort of effort to obscure the real value of auriferous and mineral-rich lands characterised much of Government dealing with Maori right-holders. Similar actions on the part of Crown agents have been condemned by the Waitangi Tribunal in the Ngai Tahu claim: 'In offering to pay no

52. Richmond to Colonial Secretary, 21 May 1852, in Mackay, *Compendium of Official Documents Relative to Native Affairs in the South Island*, vol 1, Wellington, 1873, p 320 (cited in G Phillipson, p 107)
53. Mackay, *Compendium*, vol 2, p 6

more than a nominal price for land which had the potential for a very early substantial rise in value, the tribunal concluded that the Crown failed to act with the degree of good faith required of one Treaty partner to the other'.[54]

Taitapu was reserved from the extinguishment of Maori interests by the Waipounamu purchase, in order to provide an area 'together with what they elsewhere possess, of sufficient extent for their present and future requirements' for pastoral requirements. The wish of Maori to keep Taitapu reflected its important mahinga kai and other resources, especially pingao, kiekie, and flax. The reserved area was considered to be large, but was acceptable to officials such as McLean, because of its poor soil quality and its remoteness from European settlement.[55]

While the Government had pursued the Waipounamu Purchase, suspecting that the area was rich in minerals, the presence of gold in payable quantities at Golden Bay, was not confirmed until the discovery of the Aorere field in 1856. Interest was immediate amongst both races. Phillipson points out that labour rather than expensive technology and equipment was required for the exploitation of alluvial deposits, encouraging direct and immediate Maori engagement.

Salmon notes that whole Maori hapu worked claims, enabling them to undertake larger projects than were usually attempted by Europeans – for example, building earth dams to divert the river courses. In the rush to Parapara, Maori dominated the field for a time. Their numbers on the field gave them considerable strength on the Collingwood workings. At Anatoki River, there were many Maori amongst those first on the field. They then occupied claims temporarily abandoned by Pakeha, refusing to let them return from the Takaka camp, where they had been driven by 'lack of food, incessant rain and the hostility of the Maoris'. Unoccupied claims they kept for their 'brothers in Manawatu'. Eventually, however, the balance shifted. A few months later, 250 Pakeha miners had established themselves at Anatoki, outnumbering Maori by two to one.[56] By this stage, in 1857, some 1300 Europeans as opposed to 600 Maori were reported to be prospecting the valleys of the Collingwood, Parapara, and Aorere Rivers.[57]

Maori eventually discovered gold on their own land at Ngatuihi, in January 1862, immediately seeking the assistance of four Pakeha whom they persuaded to accompany them on a prospecting expedition. According to Mackay, the reports of the find sparked immediate excitement amongst miners at the declining Collingwood field, many expressing 'their intention to proceed to Taitapu for the purpose of mining for gold on the Native lands . . . a "rush there." '[58] Maori objected to the working of their land unless their prior agreement was gained, that assent being grounded in the demand that they receive the same sorts of revenues that went to the Crown on the Nelson field. Mackay as Assistant Native Secretary, intervened to ensure that order, and the Crown's right to regulate all transactions with regard to gold and Maori land, were maintained:

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54. *Ngai Tahu Report*, 1991, vol 1, p 125 (cited in G Phillipson, p 107)
55. Phillipson, The Northern South Island (pt 1), Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1995, p 200
56. J H M Salmon, *A History of Gold Mining in New Zealand*, Wellington, 1963, pp 36–37
57. Phillipson, p 201
58. Mackay to Native Secretary, 12 February 1862, in Mackay, *Compendium*, vol 1, p 321

> Seeing the probability of a serious misunderstanding arising if Europeans were permitted to occupy the native lands previous to some definite and binding arrangement being entered into with the owners thereof, I immediately issued notices cautioning Europeans from mining for gold within the district of Taitapu, and informing them that by occupying lands over which the Native title had not been extinguished they would render themselves liable for a penalty of any sum not exceeding £100 or less than £5.[59]

He then proceeded to Taitapu where he met with Riwai Turangapeke, Pirimona Matenga Te Aupouri and several other members of Ngati Rarua who expressed willingness that the block be opened to mining and presented him with a deed of agreement proposing that every person – European or Maori – should pay a licence fee of £1 per annum for working on their land. Mackay reported that he had found the proposal objectionable in some of its clauses, but faced with the immediate prospect of the land being rushed, and in order to prevent 'bad feeling and disputes between the two races, and for the preservation of order', had acceded to their demands and entered into formal agreement with them.[60]

This model reflected Maori expectations, based on their experience of the Collingwood fields which were alluvial in character, and already in decline. Phillipson points out that, 'This was very significant in terms of Maori expectations with regard to their own role in the process, their ability to control the use to which their land was put, and the length of time for which their land might be subject to mining operations'.[61] They anticipated little impact on the land, and short-term European intrusion, to which a system providing for annual renewal was well adapted. The prospect was one of almost immediate return to the conditions prior to the discovery of gold – the use of the land for traditional resources and pastoral purposes for their continuing sustenance. Ngati Rarua were, however, to be disappointed in this expectation, losing immediate control of the block, and of the complete freehold, over the next 20 years.

Under the deed of cession, signed by the two Ngati Rarua chiefs and Mackay, on 10 February 1862, permission was given for any person to live on the land, mine for gold, or cut timber for goldmining provided that they held a licence issued annually by a Government officer. Maori promised to protect miners, and to assist in the maintenance of the law. In return, the Government undertook to maintain law and order, and to collect and pay over to the two chiefs, £1 for every licence issued, for division amongst themselves, their relatives and any other owners of the block. This apparently straightforward relationship was, however, belied by the implications of the final clause which stated:

> We also consent that the Governor, or those whom he shall appoint in that behalf, shall have power to make other rules or regulations for the 'Taitapu Gold Fields', if he or they shall at any future time deem it necessary to bring into operation any such new rules or regulations.[62]

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59. Ibid, p 322
60. Ibid
61. Phillipson, ch 10, p 3
62. 'Deed of Agreement', 10 February 1862, in Mackay, *Compendium*, vol 1, pp 322–333

The agreement of other groups with possible interests at Taitapu – Ngati Tama and Te Atiawa – was not sought. Mackay informed the Government that the Ngati Tama claim was 'supposed to be given up' in exchange for Ngati Rarua having relinquished their interests at Wakapuaka, and that the other 'owners', a few members of Te Atiawa, were not resident in the area.[63] The Government ignored the potential for problems and quickly ratified Mackay's actions, recording that, 'It is with great satisfaction that the Government have learnt the willingness of the Natives to permit the peaceable pursuit of goldmining on their own land, and the promptitude with which you have met and provided for what might have been a great difficulty.'[64]

The South Island model of an annual payment for every person working on the field was, then, applied to the Hauraki area, where gold had been found again in late 1861. The system was acceptable to Maori because it implied that the land would return to them but less well-suited to the longer-term requirements of quartz mining. It will be seen in later discussion that the Government soon introduced longer term leases to give greater security to mining interest although Maori consent had been given initially in terms of an annual payment for persons working the field. Furthermore, the terms of agreements negotiated in the 1860s provided only for Maori to receive the annual fee paid by miners for their right to work a claim. The introduction of other mining entitlements in the form of leases, licensed holdings, and special claims, and the generation of fees for other uses of the field, for example residence, batter, and machine sites, was to create considerable confusion about what was due to Maori right-holders in the land.

The gold discoveries in Nelson, in 1857, and more especially, those in Otago in 1861, rekindled public and Auckland Provincial Government interest in the Hauraki area.[65] The Government promoted the development of the Coromandel field as an economic panacea for the province in a vision that assumed the extension of mining to areas where Maori had previously refused their consent. The Superintendent of Auckland, pointing to the dangers of population loss to the province, advocated greater Government intervention – the purchase of land from those Maori willing to sell and the negotiation of prospecting arrangements elsewhere. The Colonial Secretary assured the Superintendent, Williamson, that the subject was under consideration.[66] In the meantime, public pressure grew for greater Government intervention.[67] At a large public meeting, chaired by Heaphy, it was resolved that the Coromandel field should be opened immediately, and that the Government should extinguish native title to auriferous areas in the province. These resolutions were conveyed by deputation to Governor Grey.[68] The Government responded on 14 October 1861. Preece was instructed to proceed with the purchase of lands in the Coromandel. McLean was to define inter-tribal boundaries clearly

63. Mackay to Native Secretary, 12 February 1862, in Mackay, *Compendium*, vol 1, pp 321–322
64. Acting Native Secretary to Mackay, 5 March 1862, in Mackay, *Compendium*, vol 1, p 323
65. See Haglund, pp 21–23
66. Williamson to Colonial Secretary, 20 September 1861; Colonial Secretary to Williamson, 30 September 1861 (cited in *New Zealander*, 2 October 1861)
67. See Haglund, pp 24–26
68. *Daily Southern Cross*, 1 October 1861; *New Zealander*, 2, 5 October 1861

and ascertain the willingness of Maori to come to an arrangement whereby their land could be opened to mining without previous sale. Having determined the territorial boundaries of the various hapu inhabiting the area, McLean was then to draw a boundary across the peninsula, between Coromandel and Mercury Bay, to the north of which he was to gain immediate access for prospectors.[69]

The preferred option, always, was to acquire the freehold of auriferous lands, but the Government 'attach[ed] such importance to a present arrangement being made for the exploration of the Gold Field believed to exist' that McLean was to make this the 'first object of his attention' should he 'find the Natives still resolved to keep their land'. Maori were to be given assurances that the arrangement contemplated by the Government would not involve the alienation of territory or the sanction of mining activity beyond that required for prospecting:

> The Natives should be distinctly assnred that such an arrangement would be independent of any question as to the sale of the land itself . . .
>
> You will carefully explain to them that . . . the Government has no power to issue Licenses under the Gold Fields Act within Native Land, and that they need therefore be under no apprehension of any infraction of their rights.[70]

The Government also accepted that Maori should receive some compensation for their agreement to open up the Coromandel area to exploration and development. Fox instructed McLean to come to some fair arrangement with Maori, holding out an apparent prospect that they might be paid in proportion to the value of the gold taken.

Despite these pragmatic concessions on the part of the settler Government, policy was founded on a number of assumptions which undermined Maori control of their subsurface resources. They were seen as having little choice, ultimately, but to agree to full-scale mining, and were threatened with the consequences of disorder if they did not let the Government control the situation:

> At the same time it will be your duty earnestly to advise them to consent placing the district under the supervision of Government, even if they should not be willing to sell any of the land. You should point out, that in the event of prospecting been [sic] really successful, and a large number of persons being consequently attracted to the district, it would be indispensable that police and other regulations should be established for the maintenance of order, and for the prevention of any collision between the races; that their own interests would therefore be best served agreeing on their part to any measures which should be found necessary for these objects being taken by the government; and that as a considerable expense might ultimately be found necessary, some source of revenue must accrue out of which the same could be defrayed.[71]

Crown royalties on gold were gathered in the form of a duty of 2s 6d per ounce levied on the exportation of gold. Fox indicated that Maori expected to receive

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69. Fox to Mclean, 21 November 1861, *New Zealand Gazette*, 22 November 1861, p 300
70. Ibid
71. Ibid, p 301

those moneys but argued that the application of that revenue was limited by law, and that, it was 'not possible therefore to make any appropriation of it towards such an arrangement as [was] contemplated with the Natives'.[72] Later administrations were to point to that early refusal to concede a right of Maori to revenues in direct relation to the value of their subsurface resources as proving that the Crown had also never conceded any native right to the gold itself.

Successive administrations also tended to assume that they could change arrangements once Maori consent to mining had been gained. This supposition underlay Fox's instructions to McLean:

> It appears to the Government that *for the present at least*, an equitable basis for that arrangement would be, that the Natives should receive out of other funds, for the permission of prospecting, a sum which should bear a proportion to the total amount of gold revenue collected in the district during a given period. You are authorised therefore to treat with them either on that basis, or (if you find that impracticable) then on the basis of a fixed annual payment, or as a last resort, of a sum for the present year so as to allow exploration to proceed without further delay. [Emphasis added.][73]

McLean made an interim arrangement only. On 2 November 1861, a deed was signed by McLean and 39 signatories from Ngati Paoa, Ngati Whanaunga, and Ngati Patukirkiri who agreed to the immediate opening of lands from Waiau to Moehau (Cape Colville) to prospecting. The terms for the regular working of that area were left, however, to be worked out with the Government 'if gold should really be found in considerable quantities'. The signatories affirmed their continuing ownership of the land. As in the 1852 Patapata agreement, it was emphasised 'that the title of the land remains to us; and will not be at all affected by this arrangement'.[74] While wishing to open their territory to development, Maori were clearly concerned to retain a measure of control of that process. McLean reported that they were willing to afford prospectors 'every facility' for exploration 'if only, in the first instance, they gave notice to the Native proprietors of their intention to do so'.[75] That right was acknowledged within the terms of the agreement, it being stated that Europeans would be conducted by each tribe to its 'own piece of land', but in the event of a large influx of diggers, the Government agreed to 'adopt measures to preserve order among the Europeans and Maories'.[76]

McLean emphasised the importance of respecting Government obligations of protection if the territory was to be successfully and peacefully opened to further development:

> From the disposition evinced by the Natives, I am satisfied that as a body, they will not throw any serious obstacles in the way either of prospecting or working the Coromandel gold-fields, if they are treated with a just consideration for their

72. Ibid
73. Ibid
74. '2 November Agreement', *New Zealand Gazette*, 22 November 1861, p 302
75. McLean to Minister for Native Affairs, 7 November 1861, *New Zealand Gazette*, 22 November 1861, p 301
76. '2 November Agreement', *New Zealand Gazette*, 22 November 1861, p 302

> prejudices and customs, and with an equitable recognition of their rights as proprietors of the soil. Care, however, should be taken that the opening of the goldfields which they so readily granted may not involve them in difficulties with Europeans, in the event of a large influx of people to the diggings; and their co-operation with the Government should be fully reciprocated, by affording them ample security and protection against violence or ill-usage to which they might be exposed by sudden contact with strangers unacquainted with their language and habits.[77] In fact, the Government was able to afford little facility for the protection of Maori, and ultimately, preservation of peace depended on Maori willingness to compromise and to allow Europeans full access to the goldfield.

The Government reached its accommodation at Coromandel on the understanding that Paora's land at Koputauaki would be again excluded from the area that could be prospected, in accordance with his deathbed wish that the area be reserved for Maori diggers. McLean advised the Government that:

> It should . . . be distinctly understood and notified to persons searching for gold, that the land known as Paora's claim, at Koputauaki, is not to be interfered with. These claims extend from a place near Rings mill to Koputauaki, and on to Umangawha, and thence to Arataonga on the east side of the range, where a portion of land has been given by Paora to the Ngati Porou tribe of the East Coast. These reservations will be pointed out to a surveyor at any time by the claimants, and it would be desirable to define the boundaries without delay.[78]

Miners and press immediately protested the limited terms of the agreement, and most especially, the exclusion of Paora's land which was suspected to contain the more valuable portion of the gold reef which outcropped at Coromandel.[79] Despite understandings reached in 1852, and reaffirmed 10 years later, the Crown worked to satisfy mining and settler demands by arranging for the opening of this land, against the known wishes of the right-holders in it. In February 1862, the Colonial Secretary (Fox), received a delegation of diggers, from Victoria, who wished to prospect in the Coromandel and requested assurances from the Government of their protection. In response, Fox showed them the agreement reached with Maori, and arranged an introductory meeting with some of the chiefs who were visiting Auckland. He also ordered H H Turton to accompany the diggers to the district where he was to 'facilitate the operations of the party and prevent misunderstandings with the Natives', with the assistance of sub-commissioner Preece.[80] As the Government's man-on-the-spot, Turton attempted to ensure that Paora's reservation was respected, but worked continually towards bringing the block within mining operations. He warned that newly arrived diggers scorned the

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77. McLean to Minister for Native Affairs, 7 November 1861, *New Zealand Gazette*, 22 November 1861, p 302
78. McLean to Sewell, 14 November 1861, *New Zealand Gazette*, 22 November 1861, p 305
79. See 'Brackenbury to McLean', 9 November 1861, *New Zealand Gazette*, 22 November 1861. For criticism see *Daily Southern Cross*, 29 November 1861.
80. Fox to Superintendent of Auckland, 4 February 1862, Auckland provincial council papers, sess 14, NZ MS 595

notice prohibiting working on Koputauaki, and argued that the peace of the district would be broken unless Paul's land was thrown open immediately.[81]

The question of the Coromandel field was also brought before the provincial council which recommended that the sum of £500 be placed on the supplementary estimates for the purpose of development. A resolution was passed, requesting the Government to either purchase the whole of the auriferous district from Cape Colville to Kauaeranga, or to renegotiate the terms reached with Maori to allow the area to be fully and freely worked by Europeans.[82] Sewell, acting for Fox, assured Williamson that the General Government was 'fully sensible of the importance of acquiring the land . . . or, if that be not possible, of having a definite agreement on the subject of prospecting', and reported that Grey was engaged with 'personal negotiation with the native owners of the land, in the hope of effecting satisfactory arrangement'.[83]

Towards the end of February 1862, only 30 diggers were reported to remain in the district. The provincial council intervened with the offer of £2000 for the discovery of an 'available goldfield' capable of affording three months' employment for 500 men at fair average wages. Under this impetus, a set of regulations was drawn up, signed by 46 diggers and assented to by H H Turton, as resident magistrate, on behalf of the Government. Increasing numbers of diggers began to arrive, and by early April, Turton estimated that there were some 248 diggers in the vicinity of Coromandel alone. Of these, 199 had arrived in the preceding week.[84]

As European numbers increased, so did pressure on Paora's land. Miners worked the land right to the boundary.[85] A shaft was sunk within a few feet of the reserved area and diggers began stealing across to the reserved area at night. In reaction, Te Matewaru began to patrol the boundary, under the leadership of Te Hira, Paora Te Putu's nephew, to whom his mana had passed.[86] Since Te Hira, a King supporter, advocated the retention of land and resources in Maori hands, officials began seeking the support of Paora's niece, Riria Karepe (also known as Lydia) who eventually accepted what she deemed to be the inevitable.[87] Te Hira, however, remained firm in his opposition. An offer by Fox of £10,000 for outright sale or a payment of 10 shillings per miner for permission to prospect the block for a month was refused.[88] There was wild talk of rushing the block, and early in June, Maori were reported to have performed the haka on the boundary of the closed land to indicate their determination to repel any attempt to force its opening.[89]

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81. Turton to Attorney-General, 27 and 30 June 1862, 'Coromandel Resident Magistrate's Outward Letterbook', BACL A 208/634
82. 'Votes And Proceedings Of The Auckland Provincial Council', vol 14, 1862, pp 62, 82–83; Haglund pp 36–37
83. Sewell to Superintendent, 4 March 1862. Auckland provincial council papers, sess 14, NZ MS 595
84. Haglund, p 40; Turton to Secretary for Crown Lands, 5 April 1862, BACL A 208/688
85. *Daily Southern Cross*, 8 April 1862 (cited Haglund, p 41)
86. *Daily Southern Cross*, 6 May 1862
87. See Turton to Secretary for Crown Lands, 5 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
88. Haglund, p 43
89. Ibid, p 44

Governor Grey intervened directly, arriving unannounced at Coromandel on 4 June 1862. He informed Lydia that he wished Paul's land to be opened at once. Grey suggested that she arrange with Turton for the registration of the owners' names and field's interim working, until a final arrangement could be made, when compensation would be made for that occupancy.[90] The most pressing concern for Lydia's party, was to be paid for the gold which had been removed illegally by miners, during night forays onto the block.[91] Turton reported that he had eventually agreed to Riria's request for £100 on the condition that the reserved land at Tokatea was 'surrendered' immediately to the Government for mining purposes.[92] Turton thought that he had secured the agreement of 'all the chief parties', but support for the transfer of control of Tokatea was lukewarm. After consulting with other right-holders within her party, Lydia offered to a open only a small piece of the reserved area. Turton declined to proceed and called for Grey to return.

Te Hira attempted to counter Grey's tactics by calling on the support of the King movement. A large meeting of Hauraki and Waikato people was held in the Piako from which all Europeans were excluded. On 18 June, Fox wrote privately to Grey that Te Hira had placed the district under the mana of the King despite missionary efforts at dissuasion.[93] Turton reported that it was the intention of the King party to 'work the gold for themselves and convert it into sovereigns at Waikato for the benefit of the Maori nation'.[94] Grey was enraged by what he saw as the 'evil deeds' of the King, writing a 'very angry letter' criticising him for his intervention at Hauraki. This was a provocative step, in the view of the King party, who replied that, 'if nobody had been harmed, it was idle to talk of punishing the King for his evil deeds'.[95]

Grey was determined that neither Te Hira nor the Maori King should be allowed to prevent access to the block and pushed ahead with the negotiations against the advice of his ministers.[96] Continuing with his strategy of 'divide and rule', he signed an agreement with one party of right-holders – Riria, Tareranui, Karaitiana and nine others – on 23 June 1862 whereby mining was permitted in return for a flat annual rent of £500, to commence from that date. Payment for two years' rent was to be made in advance and the Government agreed also to pay an additional £1 per annum for every miner in excess of 500 on the field. Maori were dissatisfied that the 1852 arrangement had previously been allowed to lapse without warning and the Government was now required to give a year's notice of its intention to terminate the agreement.

The announcement of this arrangement was received with approval by Pakeha, while Grey congratulated himself on narrowly averting a 'serious collision between

90. Turton to Secretary for Crown Lands, 21 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
91. *Daily Southern Cross*, 6 May 1862 (cited Haglund, p 42)
92. Turton to Secretary for Crown Lands, 21 April 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
93. Fox to Grey, 18 June 1862, Grey Collection, 'New Zealand Letters', GLNZ F 23 (2)
94. Turton to Secretary Crown Lands, 20 June 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
95. J E Gorst, *The Maori King*, 2nd ed, London, 1864, 1959, p 298
96. Bell to Browne, 30 June 1862, Gore Browne MSS (cited in K Sinclair, *Origins of the Maori Wars*, p 249)

the two races'.[97] At a large public meeting in Auckland, chaired by Whitaker, Grey was praised for his success in arranging the 'opening the Coromandel goldfield to European enterprise'.[98] The Government congratulated itself that it had proved, by the high price paid, that any suggestion that the colonists were determined to 'rob the Maori of their gold' was false.[99] Gorst argued, however, that Grey's high-handed actions at Coromandel had helped convince King supporters that the Government meant war.[100] From this point onwards, the legitimacy of Te Hira's title tended to be downgraded in the mind of officials by their conception of him as unduly influenced by the King. Te Hira, for his part, was faced with a fait accompli unless he was prepared to take up arms over the matter. Te Matewaru reached a temporary accommodation amongst themselves, although the split caused by Grey's interference, continued to divide right-holders at Tokatea for many years. Te Hira, accompanied by some Waikato, arrived at Koputauaki on 28 June to protest the transaction. Turton reported that he appeared to be 'very wrathful with Lydia' and had threatened to write to 'his friends at Tauranga and the Thames, to come and reside with him on the boundary'. It was suggested by Turton that Te Hira's speech was partly dictated by the presence of Waikato, and that he eventually accepted £600 from Lydia, stating that '[i]n future the land [w]as to be considered as belonging to him and the gold to Riria'.[101]

Te Hira tried to argue, in the following month, that he had accepted the money as a penalty for the Government having 'trampled under foot the Maori law – viz that the gold diggings of Coromandel should not be worked by European miners'. Turton, ignoring the complications of the transaction, rejected the assertion, arguing that 'in law' the money had been given in a straightforward recognition of his 'joint proprietorship in the land'. He condemned Te Hira's claim as an 'afterthought' prompted by greed, the 'scheming suggestions' of the Waikato, or, by Te Hira's efforts to 'protest against any occupation of this district which he [had] been instructed to make by the Piako runanga' but only after he had secured a portion of the money.[102]

## 2.6 ADMINISTRATION OF EARLY GOLDFIELD AGREEMENTS

At Taitapu, problems arose with the description of the reserves and the question of entitlement, reflecting defects in both the original deed, and the subsequent mining agreement. Mackay had been aware of the dispute as to the correct customary owners, but arguing urgency, had chosen to deal with one set of right-holders only.

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97. BPP, vol 13, p 155
98. *Daily Southern Cross*, 25 June 1862
99. Turton to Cochrane and Creighton, 20 June 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
100. Gorst, p 299
101. Turton to Secretary of Crown Lands, 1 July 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', 1862–68, BACL A 208/688
102. Turton to Pollen, 13 August 1862, BACL A 608/288

In order to obtain an immediate opening, he had accepted not only Ngati Rarua's right to control the disposal of the subsurface resources of the reserve, but also, the receipt by the two signatory chiefs of the revenues for distribution. But once his immediate object had been obtained, Mackay refused to abide by the terms of the agreement, insisting that the rights of other iwi with interests in the area must be accommodated.

When approving the mining agreement, the Government had sent Mackay a copy of the original 1855 deed of sale and the map which had accompanied it. Mackay realised that the boundaries delineated on the map did not correspond to the description in the deed. He wrote to the Native Department to correct the mistake, sending his own sketch plan, showing the land claimed by Maori, and redrawing the boundaries in accordance with the deed's description, although this was admitted to be 'very vague'. Mackay requested that the Government give its approval for the boundaries as redrawn by himself, 'to prevent any misunderstanding arising with the Natives' in the event of the diggings being extended.[103] The Acting Native Secretary, Halse, gave Government approval for Mackay's boundaries in February 1863, although this did not end the confusion over the actual size of the reserve.[104] Nor was it clear which groups had been intended to have rights in the reserve. Mackay believed that the land belonged to those specific communities which had cultivated it in the recent past and which included, therefore, only small sub-groups of Ngati Tama and Te Atiawa.[105]Alexander Mackay, who took over responsibility for the administration of Taitapu in 1864, was of a different view; that, as the block had been set aside from a general sale by the Nelson hapu, it was 'a reserve set aside for all the Natives of the Ngatirarua, Ngatiawa and Ngatitama tribes, residing in Blind and Massacre Bays'.[106]

In April 1863, James Mackay reported that £93 had been collected in licence fees since February of the proceeding year. Of this sum, he had paid out only £19 10s to Maori, another £9 10s going to the Receiver of Land Revenue and £1 for printing costs. Mackay advised the Native Department, that he was using the balance as leverage to obtain a revision of the original agreement to accommodate non-signatory iwi whose claims had been ignored:

> With reference to the balance in hand, £63, I have not considered it prudent to hand it over to Riwai Turangapeke and Pirimona Matenga, in accordance with the agreement entered into with them . . . as they are disposed to act unfairly towards the other claimants to the Taitapu Reserve, especially those of the Ngatitama and Ngatiawa Tribes.[107]

A meeting of the claimants had been held over two days, at Collingwood, in September. Mackay reported six months later, that he had been unable to gain consent to his proposals for the division of money and land among the various groups, but as he had 'publicly announced [his] intention of holding the money

103. Mackay to Native Secretary, 27 September 1862, in Mackay, *Compendium*, vol 2, pp 323–324
104. See Phillipson, p 204
105. See Phillipson on this point, p 205
106. A Mackay to Native Minister, 6 December 1865, in Mackay, *Compendium*, vol 1, p 310
107. Mackay to Native Secretary, 16 April 1863, in Mackay, *Compendium*, vol 2, p 324

until they could agree as to the division of it, and [had] since adhered to the terms then laid down, they [were] beginning to feel a little more desire to have the question finally settled'.[108] The matter was finally arranged in July 1863. The integrity of the Government's negotiation with Ngati Rarua was preserved, the claims of non-participating iwi being satisfied by a redistribution of land rather than gold revenues. After 'many stormy arguments', Mackay succeeded in winning agreement to an adjustment of the terms of the opening. Ngati Tama and Te Atiawa agreed to give up all claims to the moneys arising from goldmining licences, and to the block itself, except for their cultivations along the coast between Kaukauawai to Te Wahi Ngaki, an undefined portion of the area Ngati Tama had shared with Ngati Rarua at Paturau, and in the case of the Te Atiawa of Pariwhakaoho, in Golden Bay, their cultivations between Turinawiwi and Taumaro.[109] Agreements between the tribes were signed, and Mackay then paid out the balance of the money owing on the Taitapu field to three Ngati Rarua chiefs.

After renegotiating the Taitapu agreement, James Mackay administered the field until his departure, in early 1864, to Auckland, where he was to play an active role in opening the Thames. Alexander Mackay (his cousin), took over responsibility for the administration of the Taitapu revenues, in his capacity as Commissioner of Native Reserves and Warden of the West Wanganui Gold Field. Alexander Mackay wished to bring Taitapu under the formal control of the 1856 Native Reserves Act, so that revenues could be appropriated for general 'native purposes', but thought that 'even then, the Natives chiefly interested in the land would expect the rent'.[110] Phillipson argues that his intention was 'to share it [the gold field revenue] out among the wider Maori communities of Tasman and Golden Bay, in the belief that the reserve had been set aside for all of them'.[111] The Taitapu reserved lands were, however, governed by goldfield rather than reserve legislation. There is little information about the actual administration of the field in this early period. Mines Department was not set up until 1880, and as Phillipson points out, the *Appendices to the Journals of the House of Representatives* fails to:

> provide details of the revenues paid to Maori . . . the extent of profit made by miners from alluvial gold, the relationship between the warden and the Maori owners, or the degree in which part of what must have been a very small revenue from licence fees was swallowed up by administration costs.[112]

The West Wanganui field was not, however, very successful, and the major gold resources still controlled by Maori were located on Hauraki lands.

Coromandel was proclaimed to be a goldfield, under the Gold Fields Act 1858, on 28 June 1862. While the 1858 Act enabled the Governor 'from time to time, by Proclamation, to constitute and appoint any portion of the Colony to be a Gold Field' it did not actively contemplate the question of land still held under native

108. Ibid
109. Ibid, p 325
110. A Mackay to Native Minister, 6 December 1865, in Mackay, *Compendium*, vol 2, p 310
111. Phillipson, ch 10, p 9
112. Ibid

title. In order to bring the area within the terms of the Act, the Coromandel field was, thus, defined as comprising:

> All land, being Waste Lands of the Crown, situate within that part of the Coromandel Peninsula lying to the North of the line drawn from the mouth of the Waihou River on the West to the mouth of the Whitianga River on the East, thence following the Whenuakite River to its source, and thence by a straight line to the Haho point.[113]

An Order in Council setting out the regulations, issued by the Governor, pursuant to his authority under the 1858 Gold Fields Act, was also gazetted. These set out the requirements for miners' rights, the extent of ground that could be worked, and permitted the diversion of water-courses for mining purposes. This was accompanied by a notice from the Colonial Secretary's office stating that the penalties of the Native Land Purchase Ordinance which prevented the taking of minerals, along with any other use of lands under native title, would not apply in the district provided that a proper licence was held. Licences would be issued only to persons who held miners' rights.[114]

The proclaimed field encompassed lands still being worked under the interim November 1861 agreement and for which Maori right-holders had not yet received payment, as well as the Tokatea block. On 23 July 1862, a second arrangement was reached with Pita Taukaka (also known as Pita Taurua) of Patukirikiri, Kitahi Te Taniwha (son of Horeta) of Ngati Whanaunga and Patene Puhata of Ngati Paoa, patterned on the Taitapu model, whereby the Government would pay £1 per annum for every miner working their lands at Kapanga, Ngaurukehu and Matawai, in other words, the revenues collected by the Government for the miners' rights by which persons were authorised to work on the field.[115] There was, however, no real consensus between Maori and the Government about the terms of the agreement, the relationship that had been established between them by the fact of cession, or, of the principles under which the field was to operate.

Later inquiry into the 1862 goldfield agreements between Hauraki and the Government, revealed that little attention had been paid to how they would be administered. Responsibility for the issue of licences and miners' rights fell largely on the shoulders of Turton, and his successor, Lawlor, who performed the unpaid duties of goldfield warden in addition to those of Commissioner of Crown Lands, resident magistrate, and coroner. No mechanism was set up for the distribution of revenues among the various right-holders. Nor did the agreement state the date on which the July 1862 agreement was to come into effect, resulting in debate regarding the calculation of rents. In September 1863, a year after the opening of the field, Pita Taraua requested that he be paid for Patukirikiri lands worked by diggers, urging that he had been the 'first to throw open land, had done so without stipulation for payment and paved the way for negotiations with Paul's people, that they had received payment and that though the late commissioner had talked of

113. *New Zealand Gazette*, 28 June 1862, p 233
114. Ibid, p 234
115. Letter from Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E

making some arrangements with regard to the diggers working on different native lands he had heard nothing further in the matter'.[116] A claim for revenues dating from 1861 when the diggers first began working the field was rejected by Lawlor who argued that Maori were entitled to payment only from the date of the signing of the actual cession.[117]

Maori at Coromandel found themselves in constant dispute with Turton over rents, bridges, landing sites, and the use of firewood. Turton generally assumed that the public good lay with the mining interest and refused to countenance Maori efforts to participate in the profits being generated by the field. Maori for their part, did not see themselves as prevented from seeking profits outside the £1 for every licence, which they had yet to be paid, and attempted to charge ground rent for tent sites, and for the removal of all timber. Turton complained, however, that Maori were making 'extortionate' demands. In his opinion, miners paid £1 per annum for mining, and 'residence' was implied in the 'contract'. Maori should receive ground rent only from those buildings situated on land reserved to them. Turton also regarded the charges for timber as outside the terms of the agreement which he saw as excepting kauri only, from the free use of the diggers. He argued that otherwise, the Government had 'entered into a very hard bargain indeed, and one which [he] fear[ed] the diggers [would] not long comply with'.[118]

Maori challenged the Government's right to use land for public purposes without payment or against their wishes. They objected when whare (according to Turton, 'old and forsaken') were pulled down in order to give road access to ceded land, and argued about the width of the streets. They attempted to lease a part of the landing place, considered by Turton to be 'absolutely required for public purposes', to private parties, and challenged the Government's right to build a bridge over the ford which would potentially interfere with their ability to navigate the Kapanga Creek. Turton reported that, 'they say that only one bank belongs to us and that we may build half a bridge if we please'. To emphasise their point, Maori anchored their cutter across the ford, preventing timber from reaching Keven's crushing mill and the site of the new court-house.

Turton dismissed the capacity of Maori to hold up these projects, partly because it was expected that they would benefit from the field, partly because it would create a dangerous challenge to European authority:

> As to the native right to lease away the road or wharf now that the Gold Field is established . . . I deny it altogether; His Excellency declared at Waikato that he would not allow the acknowledged roads to be shut up then how much less here in a district where thousands of men will be located . . . the natives by agreeing to our occupation and working of the Gold Field necessarily give np the right of road to it . . . [and] right of all suitable landing places leading to them. I suppose that they are to derive a large revenue from the gold mines and yet interfere with the means . . . quite inconsistent with the question of property and would soon occasion the Government and diggers

116. Lawlor to Native Minister, 1 September 1863, BACL A 608/634
117. See Lawlor to Native Secretary, 26 February 1864, BACL A 208/688
118. See Turton to Pollen, 28 August and 12 September 1862, BACL A 208/688; 'Turton memo', February 1863, BACL A 208/634

> much embarassment. By the same rule they might disallow or block up a road any where and at any time and thus the concession of such a principle would be a dangerous precedent . . .[119]

In the absence of a regulatory system, there is no reliable record of how many people worked the Coromandel field in the early 1860s. According to Haglund, 160 miner's licences were issued at the official opening of the field on 30 June 1862.[120] Turton's reports recorded that 261 men, only three of whom were unlicensed, were working the field in July. By September, Turton's figure had risen to 304.[121] Preece, however, put the numbers at a higher level.[122] The first signatories received no moneys for these persons until they were paid compensation, estimated by Mackay at £250, in 1864.

It was soon apparent that hopes of accessible alluvial deposits on Tokatea had been unfounded, and that quartz reef mining would be required. To ease the expense, companies or associations were formed, and eventually the Government would alter the regulation of the field to accommodate their requirements for long-term security of mining title. In the meantime, the December news of another strike in Otago enticed many diggers away. Proprietors of the more promising claims remained, however, and by September 'considerable quantities of rich quartz were being accumulated on many claims'.[123] Within a month of the arrival of crushing machinery on the field, gold, and quartz specimens to the value of £2005 had been exported to Auckland.[124] Confidence in the viability of the Coromandel field was badly shaken when Keven's Reef proved to be non-payable.[125] However, the better reefs and leaders lay along the Driving Creek.

Again, little can be said with certainty about the production of the Coromandel field in these years. From December to February the Golden Point Company forwarded 1001 ounces of gold to the Union Bank for export to Sydney, and in April, Robert Kelly, who also worked a claim in the area, arrived in Auckland with over 716 ounces.[126] It was estimated that from the opening of the goldfield to the end of May 1863, when the field was abandoned because of the threat of war, some £12,200 worth of gold had been taken from Driving Creek.[127]

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119. Turton to Pollen, 28 August 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688
120. Haglund, p 55
121. See Turton to Secretary of Crown Lands, 26 July, 19 August, and 12 September 1862, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688
122. Preece's estimates have not been located. See Lawlor to Native Secretary, 26 February 1864, 'Coromandel Commissioner of Crown Lands Outward Letterbook', BACL A 208/688
123. Haglund, p 60
124. *New Zealander*, 4 October 1862 (cited in Haglund, p 60)
125. Haglund, p 65
126. *Daily Southern Cross*, 12 February, 23 April 1863 (cited in Haglund, p 68)
127. *Daily Southern Cross*, 3 June 1863 (cited in Haglund, p 71)

## 2.7 RENEGOTIATION OF THE COROMANDEL AGREEMENTS

In early 1864, miners began to return to the Coromandel district. On 22 July 1864, Governor Grey utilised his powers under the Goldfields Act 1862, to remove any doubt as to their right to take up abandoned claims:

> And whereas the Government have made certain promises or have undertaken obligations to protect the claims of companies or of individuals in the Coromandel Gold Field during the Maori Insurrection, and it is expedient to make additional regulations to authorise such protection . . .
>
> Permission to retain a claim unworked may be granted by the Warden . . . if it shall appear to the Governor that such unworking shall be caused or shall have been caused in consequence of the Maori Insurrection . . .[128]

Maori right-holders had not yet received payment for mining undertaken in the Coromandel field in 1861 to 1863 and were now making 'clamorous demands'.[129] The Government was anxious to satisfy its friends and to win consent to extension of the goldfield from groups previously hostile to allowing it control. Mackay was directed, therefore, to settle 'outstanding questions relative to the occupation of Native lands [at Coromandel] for gold-mining purposes'.[130] A meeting was held on 6 October 1864. In the negotiations which followed, serious defects were revealed in the administration of McLean's agreement, with little concurrence between the Government and Maori about its terms, and no record of how many men had been working the field. Pita Taukaka and Kitahi Te Tamiwha argued that they had been promised the same terms as those pertaining in the 1852 Patapata agreement – a claim which was confirmed by Preece. They maintained that they should be paid from the date of their lands being opened to prospecting. Mackay resisted this interpretation, referring to the provision in the 2 November 1861 agreement whereby negotiations for payment were to be deferred until gold had been found in 'payable quantities'.[131] Maori countered that they had not fully understood the implications of their agreement to this arrangement. Mackay was told, 'This may be so; but we never supposed it would take upwards of eight months to try the land, or that we should have 500 diggers from Otakou to damage it.' In that period, actual mining rather than mere prospecting had occurred, and they believed that 'these men must have abstracted considerable quantities of gold'.[132]

Mackay concluded that, 'the only course which appeared open was to endeavour to effect a compromise with the Natives, and to enter into a fresh arrangement for the future working of the field'.[133] Detailed negotiation followed, Mackay eventually agreeing to the payment of head-money, which was calculated for the period, November 1861 – July 1864. Mackay beat down Maori demands, arguing

128. Order in Council, 21 July 1864, 'Return of Rules and Regulations Made Under The Gold Fields Act, 1862', AJHR, 1864, C-4, p 14
129. 'Letter Mackay to Native Minister', 19 October 1864, AJHR, 1869, A-17, encl E, p 17
130. Ibid, p 16
131. Ibid, p 16
132. Ibid, p 17
133. Ibid, p 17

that in the absence of any means of ascertaining the numbers of miners on the field, 'the Natives would invariably have claimed more than their right'.[134] Pita Taukaka was thus compensated for loss of kauri but otherwise bargained down from his demand of £153 to £101. The request of Tanewha and Patene Puhatu for £150 each was similarly reduced to £75 each.[135] Mackay reported that this was a 'good price' for the Government:

> With respect to the payments to Patene Puhata and Te Taniwha, I do not consider they have been too liberally dealt with. Their lands have been worked to a considerable extent, and they have made no complaint, and they have received no compensation for damage done to their timber.[136]

He argued that the payments were necessary in light of the failure of the Government to keep correct accounts, and in order to satisfy the demands of Maori for payment without further delay. Mackay emphasised further the 'very bad effect which any appearance of breach of faith would have on the Natives, and the probability of its preventing any future arrangement for the working of other gold-fields in the district'.[137]

The July 1861 agreement for Kapanga, Ngauruheku and Matawai was re-negotiated on the Taitapu model to prevent future dispute about miner numbers and head-money due. Tanewha Renata, Pita Taurua, Kapanga, Patene Puhata and four others signed an agreement on 11 October 1864 that these three blocks, except for 'pieces reserved for cultivation, burial grounds and sacred places', would be open to goldmining. Only those holding miners' rights would be permitted to work the field and permission had to be sought from the commissioner before a miner could move to a new locality. In consideration for their consent to mining, Maori owners were to receive £1 for every miner's right issued in the previous twelve months. This sum was to be paid on a specified date, each year that the agreement was in operation, and was 'to be apportioned amongst the owners of Kapanga, Ngaurukehu and Matawai Blocks, in proportion to the number of goldminers who shall have been employed on each as shown by the "Gold Fields Register"'. The Government would pay a further sum of £1 and £2 respectively, for every business and publican licence issued for buildings erected on Maori land.[138] Mackay saw the great advantage of the new agreement as making the Government liable only for duly authorised persons. This would also give Maori a 'direct interest in assisting the police to prevent illegal mining', Mackay recommending that the Government adopt the system he had instituted in the South Island whereby Maori owners could be authorised to inspect miners' rights under the Gold Field Regulations.[139]

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134. 'Report by Mackay on the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, encl E, p 4
135. Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E, p 17
136. Ibid
137. Ibid
138. Kapanga agreement, 11 October 1864, AJHR, 1869, A-17, encl E-A, p 18
139. Mackay to Native Minister, 19 October 1864, AJHR, 1869, A-17, encl E, p 17

## 2.8 THE GOLD FIELDS ACT 1866 AND THE GOLD FIELDS ACT AMENDMENT ACT 1868

In 1866, the Government made its first move to bring Maori-owned land directly within the ambit of mining legislation, but merely by altering the definition of 'Crown lands' to include areas ceded by Maori for mining purposes. 'Crown lands' was construed after the passage of the 1866 statute, to mean 'not only Demesne lands of the Crown in New Zealand but also any other land whatever over which the Governor shall by lease agreement or otherwise have obtained power to authorise gold mining thereon'. The Act reiterated the powers established by previous legislation and enabled the Governor to issue 'special claims' for an area greater than that allowed by regulation in a standard mining claim, in order to overcome extraordinary difficulties in working the area, to compensate large capital expenditure, or encourage enterprise. Section 33 enabled the Governor to lease the surface of the goldfield for agricultural purposes with the ultimate right of purchase on the Governor's proclamation. That provision was not, however, generally deemed to fully apply to Maori land which was specifically excluded from at least some aspects of its operation by later legislation. It was reiterated that nothing in the Act should be taken 'abridge' the royal right to precious metals.

Two years later, in response to the opening of the Thames (see below), fuller description was made of the parameters of Government power with reference to land under customary title: 'An Act to regulate Mining for Gold on Native Land and for that power to extend and apply certain provisions of the Gold Fields Acts to Mining on such Lands and for other Purposes'. In the first instance, the intention was to strengthen the Government's control over the administration of goldfield revenues. The General Government wanted the legal power to 'stop what was necessary as a first charge out of the gold revenues' in order to pay any rents which they had agreed to for lands leased from Maori.[140] This right was authorised under section 4 of the Act. The Act, under section 3, was also broadly intended to confirm the legality of proclamations of goldfields wherever the Governor had won Maori consent to mining operations because private parties had been challenging cession agreements, and negotiating new arrangements for ceded lands once they began passing through the Native Land Court. The Act stated:

> It shall be lawful for the Governor if and whenever he shall have by lease agreement or otherwise by consent of the Native owners of any land over which the Native title has been extinguished . . . or not extinguished obtained power from such Native or other owners to authorize such entry for mining for gold . . . to include such land within any Gold Field . . .

Section 5 established regulation of prospecting on Maori lands outside the goldfield in order to 'secure that we [the Government] should not be drawn into quarrels with the Native proprietors'.[141] Under section 8, the Governor in Council was given explicit authority to make, revoke or alter regulations for goldmining in

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140. NZPD, 1868, vol 1, pp 27–28
141. NZPD, 1868, vol 2, p 247. See s 5 Gold Fields Act Amendment Act 1868.

the case of lands upon which the Governor had obtained 'power by lease agreement or consent of the Native owners thereof to authorize mining', whether that area was still held under native title or a certificate of title issued under the Native Land Act.[142] A degree of legislative recognition also was given to Maori ability to control the use of the foreshore by section 9 which pointed to the Government's need to negotiate with them for the opening of such lands to mining (This aspect of the statute will be discussed more fully in section 3.3.2).

## 2.9 THE HAURAKI GOLDFIELD CESSIONS, 1868 TO 1869

Faced with the neutrality of most of the Marutuahu people during the war, and with their attention focused on the Waikato region, the Government forebore to confiscate Hauraki gold-bearing lands, although it should be noted that other lands in their rohe, including Miranda coal fields, were taken.[143] Government policy remained that of gaining full control of the goldfield at Thames, as part of its intensifying policy of regulation of the economic development of the colony.

The agent of that policy was James Mackay who had been ordered to the Auckland district in his capacity of Assistant Native Secretary. During his circuit of the Hauraki area in early 1864, taking oaths of allegiance and surrender of arms, Mackay reported the presence of gold at Ohinemuri and Kauaeranga, and in the following month, the Government also received word of the discovery of alluvial gold at Te Aroha. It was apparent that the fields to the south were richer than that of Coromandel but on speaking to resident Maori, Ngati Maru, about leasing their auriferous lands, Mackay found them 'very determinedly opposed' because of their fears of the consequences of a large influx of population.[144] He later reported that he had been 'met invariably by the old arguments used by the Land League party'.[145] Mackay attempted to assure Maori of their fair treatment at the hands of the Government, calling on Nepia te Ngarara, a member of Ngati Raukawa who had reported the discovery at Ohinemuri, to reassure the others that Maori miners had received the same protection as European at Collingwood where he had mined previously.[146]

Fox directed Mackay, appointed as civil commissioner in May, to 'use every exertion to make arrangements for the opening up' of those lands for mining'.[147] At this stage, however, further exploration of the country was not possible because of its 'disturbed' state. Resistance to the Government continued to simmer, but the efforts of Ngati Maru to maintain their position of withholding their lands from European-controlled mining, slowly crumbled after the war. On the one hand, they had had ample demonstration of the power of the Government in its blockade of the

142. Section 8 of the Gold Fields Act Amendment Act 1868
143. For fuller discussion of the negotiation of these agreements, see R Anderson's historical overview report, Wai 100.
144. Mackay to Colonial Secretary, 22 April 1864, AJHR, 1869, A-17, encl D, p 16
145. 'Report by Mackay on Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 4
146. Letter from Mackay to Colonial Secretary, 22 April 1864, AJHR, 1864, A-17, encl D, p 16
147. 'Report by Mackay on the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 4

gulf and bombardment of Whakatiwai, and on the other, of the benefits of cooperation with regard to mining, as the outstanding Hauraki complaints at Coromandel were settled. Ngati Maru unity had been fractured during the war; most remained neutral but were perceived by the Government to be sympathetic to the Waikato, while another section, led by Te Moananui and Taipari, were 'friendly' to the Crown.

The unsettled state of the upper Thames dictated caution, but there was mounting pressure for mining operations to be extended further into Hauraki lands. By the mid-1860s, the province was in depression, and the Provincial Government to whom responsibility for the management of the Hauraki goldfield district transferred under the Gold Fields Act 1867, was anxious for the chance to develop a new field.[148] Gold was reported to have been found at Puriri in February 1867. Later in the year, the Superintendent of the Province used the opportunity offered by the tangi for Wiremu Hoete and Patene Puhata, to promote Maori interest in the further opening of their lands to mining. In July 1867, Mackay finally managed to negotiate a very limited opening of Kauaeranga (Thames) with Taipari's people. Over the next two years, Mackay expanded on this beginning, progressively arranging for the opening of the western side of the Coromandel peninsula to mining, wooing neutrals and so-called 'friendlies', cajoling when the opportunity presented itself, but otherwise 'just working it quietly, putting in [his] wedges and letting them draw'.[149] Mackay divided the area into nine large blocks, reflecting general hapu divisions, arranging boundaries on the spot, and making verbal arrangements with those he deemed to be principal right-holders in each area, to the exclusion of King supporters such as Te Hira. During this time, Mackay signed two further preliminary deeds with Ngati Tamatera, Ngati Maru, and Ngati Whanaunga, The final deed of cession (known as Te Mamaku 2) was signed in March 1869 by 80 signatories of Ngati Maru and Ngati Whanaunga.

The territory covered by the 6 March 1868 deed went to the Omahu Stream where Te Hira declared an aukati against any further opening. The deed incorporated both the lands leased under the Kauaeranga Gold Fields Agreement, signed on 27 July 1867, and those for which Mackay had subsequently entered verbal arrangements. This area comprised almost the whole of the western divide of the Coromandel peninsula from Cape Coleville to Omahu Stream, excepting a few coastal flats and the northern bank of the Waihou River. The boundary extended from Te Mamaku in the north, eastwards 'by the boundary of the lands of Ngatitamatera' to the watershed of the ranges, and then south to Omahu Stream. It then ran towards the coast, skirting reserved land, southwards to Kararimata, and along Waiwhakarunga Stream to the sea, 'thence along the sea coast of Hauraki to the point of commencement at Te Mamaku'.[150] Maori leaders agreed that 'all lands' within described boundaries and 'excepting places occupied by Natives for residence, or used for cultivation or for burial grounds' would be open to all persons

148. *New Zealand Gazette*, 15 October 1866

149. Mackay to Rolleston, 29 November 1867, Rolleston MSS (cited J Hutton, 'Troublesome Specimens: A Study of the Relationship between the Crown and the Tangata Whenua, of Hauraki, 1863–1869', MA thesis, University of Auckland, 1995, p 107)

150. 'Report by Mackay on the Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 4

for mining. They consented on the behalf of themselves and their heirs to 'release (give over)' or 'tukua' to the Governor and his successors that land for goldmining purposes within the meaning of the Gold Fields Act 1866.

The Te Mamaku 2 agreement built on the earlier model established at Taitapu, setting out the respective entitlements of Maori and miner, and a rudimentary system of administering licensing revenues. The miners' rights were to be issued by an unspecified officer of the Government. Any person holding such a right was entitled to mine for gold, and to construct dams and water-races. Timber for firewood or mining purposes could be taken but a payment of 25 shillings would be made for each kauri felled, and an additional licence was required by those wished to cut timber for purposes other than mining. Ngati Whanaunga and Ngati Maru would be paid £1 for each right and licence issued, those amounts to be paid quarterly. If a miner moved his claim to land belonging to another tribe, Maori right-holders in the original site would be paid for the period up to the end of the year. Shortland (Thames) and any other township built in the area also would be 'left for the Natives', the Government undertaking to lease the land and pay over the rent on the same day as the revenues from miners' rights and timber. This agreement would hold for as long as the Governor required the land for mining or could be terminated by the Crown on six months' notice.[151] According to Mackay, 'The agreement was carefully read over twice, and explained to them before signing, and they perfectly understood its meaning.'[152]

The written cession was attended by other understandings. The Government again emphasised long-term advantage and partnership to Maori in opening their Thames lands to mining. Williamson, the Superintendent of Auckland Province, told Hauraki Maori at the tangi for Hoete and Puhata:

> If we unite together in this way we shall have treasures and riches, become a great people, and have everything that the heart can desire . . . This requires co-operation, mutual aid and assistance . . . Your children will be benefited, our children will be benefited . . .[153]

Mackay, too, framed his negotiations in terms of ongoing benefit, suggesting that the presence of a digger population would give rise to market and trade opportunities, and later testified before the Native Affairs Committee on the question of Government use of sites, given by Maori for public purposes, that it was in this expectation that Ngati Maru had given their consent to the opening of Thames.[154]

On 16 April, the area which Maori had agreed to open for goldmining was proclaimed a goldfield, and the accompanying rules and regulations published in the *Auckland Provincial Gazette*. The area was initially brought under the Gold Fields Act 1866, but subsequently declared a goldfield district, and administered under the regulations established by the Gold Mining Districts Acts 1871 and 1873.

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151. Turton, deed 359, pp 466–469
152. 'Report by Mackay on Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 8
153. *Daily Southern Cross*, 5 June 1867 (cited in Hutton, p 104)
154. See petition no 395/1877, Le 1/1877/5

The most significant aspect of this legislative change was the introduction of new types of fees, largely related to workings on a quartz field. The question of Maori rights with reference to such usages and fees, not specifically provided for by the cession agreements, was to form an issue of contention between the Hauraki tribes, the Government, and the mining community. These will be discussed more fully in chapter three.

## 2.10 LATER EXTENSIONS OF THE GOLDFIELD DISTRICT, 1870 TO 1900

In the 1870s, the Government retreated from the original models of negotiation and partnership that had characterised the conception, if not the application, of goldfield agreements between Maori and the Crown. Policy changed from the negotiation of agreements whereby Maori ceded the right to mine on their land, to the purchase of the land itself in order to obtain gold and other resources. At the same time, Maori ability to hold onto their lands was rapidly declining as a consequence of the Government's individual dealing, and the success of the great Ngati Tamatera chief, Te Hira in holding Omahu Stream as the boundary of Hauraki lands to be opened to mining was short-lived.[155] Between 1870 to 1875, a number of blocks outside the ceded district were guided through the land court system by Mackay, purchased on behalf of the Government, and proclaimed within the goldfield. Included here were the auriferous foreshore blocks which fell outside the original cession agreements at Thames. Omahu 1, Hikutaia 2 and 3, and Whangamata 1, 3, and 5 were also purchased, and brought within the compass of the Hauraki Gold Mining District in 1873.[156] As in the case of Nelson and Coromandel, the Government deliberately sought to obscure the full value of these lands from Maori during negotiations. When, for example, Thomas Boyle found gold at Hikutaia in 1872, thus proving that gold ran right through the Coromandel Ranges, Mackay requested that he 'keep the matter quiet as [he] was negotiating for the purchase of the land'.[157] Mackay also requested a party who had discovered a gold-bearing reef at Whangamata to stop prospecting as it would 'tend to make obstacles as to the acquirement of the district'.[158] In 1875, the boundaries of the field were again extended to incorporate further Crown purchases; Whenuakite, Purangi, Te Puia, Te Hoho, Te Karo 1 and 2, Tairua (except for a reserve of 1000 acres), Rangahau, Kapowai, Puketui, Wharekawa East 1 and 3, Whitipirorua, Tautahanga and 'that portion of the block known as Tapararahi, Korongo, and Takatakaia not before included within the Hauraki Gold Mining District'. [159]

At the same time, the Government began purchase operations on the west divide of the Coromandel Ranges within the goldfield lands which had been ceded in 1868 or 1869. At Thames, the Shortland township blocks numbering 1 through 32

155. For more detailed discussion on gold field purchases see R Anderson, 'Historical Overview', Wai 100
156. *New Zealand Gazette*, 13 April 1873, p 21
157. See Mackay to Superintendent, 9 January 1873, AP 2/2 125/1873
158. Mackay to Eyre, 8 January 1873, AP 2/2 276/1873
159. *New Zealand Gazette*, 8 April 1875, p 237

comprised the Maori blocks of Karaka, Nokenoke A and B, Rangiriri A to L, Tapuae, Tapuae o Whakaruaki, Hangaruru, and Whakaharatau. These were put through the Native Land Court almost immediately after the final cession, in April 1869, and each awarded to one or two individuals largely from Ngati Maru and Ngati Whanaunga. The subsequent history of alienation of this area is not, however, yet known. In the goldfield, in general, 'progress' of Crown purchase was a little slower than in the adjoining lands which had not been subject to the cession prior to alienation. The predisposition of Crown agents was, however, to purchase these blocks outright, it being 'the wish of the public . . . that the Government should acquire the freehold of the Gold Field whenever possible, and not private speculators'.[160] Thus, by 1885, the Government had purchased the majority of the area opened by cession agreement in 1868–69. Included here were Ahuroa, Hihi-Piraunui, Horete 1A, 3, and 4, Hotoritori, Iranga o Pirori 2, Kaipitopito (part of Waiotahi), Karaka North and South, Karioi 2 and 3, almost all of Mangakirikiri, Mangarehu, Manginahae, Ohuka, Opango, Owhataroa, Owhao, Rapatikiato 1, Ruapekapeka North, Te Ipu o Moehau, Te Pohu, Te Wharau, Waiotahi, Waiu, Waiwhakaurunga, Waiwhariki, and all of Waikawau except for reserves.[161]

From 1868 to 1875, Mackay also worked consistently towards the opening of the goldfield lands at Ohinemuri (an estimated 132,000 acres), over which Te Hira was recognised to hold mana. In order to undermine Te Hira's ability to withhold the area, Mackay scattered money 'like maize to the fowls'.[162] He first made a payment of £500 as an advance on miners' rights fees to 'friendlies' in 1868, and thereafter, many individual payments on Ohinemuri, although title to the block had not yet been decided by the Native Land Court. Such payments, amounting to over £15,000, frequently took the form of goods, orders on storekeepers being freely given, to be charged as advances against land purchases and then redeemed by promissory notes issued by Mackay, who would be then repaid by the Government.[163] As part of his strategy, Mackay encouraged elements among Ngati Tamatera to run up debt on their lands elsewhere in the peninsula (at Waikawau and Moehau), as a key to unlocking the more desired interior territory. The thrust of those purchase operations was later summarised by the Under-Secretary of the Native Department:

> This move on the part of the Government seems obviously to have been an attempt to break down the opposition of the Natives by gradually purchasing interest by interest in the land and thus bring about by dealings with individuals that which could not be accomplished with the Natives in a body.[164]

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160. Wilkinson to Whitaker, 21 March 1881, MA-MLP 1898/119
161. See AJHR, 1876, G-10; 1878, G-4; 1879, C-4; 1881, C-6; 1882, C-4; 1883, C-3; 1884, C-2; 1885, G-6. For full discussion of these purchases, see D Alexander, 'Hauraki Block Histories', and R Anderson, 'Historical Overview', Wai 100
162. Rawiri Taiporutu at Te Paeroa meeting, 21 May 1882, MA 13/54A. See also Mackay to Gillies, 20 March 1872, AJHR, 1873, G-8, p 7; *Epitome*, C, pp 312–313.
163. 'Statement of the Facts and Circumstances affecting the Ohinemuri block', p 15, MA 13/35B
164. Under-Secretary to Solicitor General, 30 August 1937, MA 1 19/1/193. For a discussion of inquiry prompting this comment, see pp ?

It is more than ironic, then, that Mackay should throw the blame on Te Hira for failing to 'manage his people better' when he complained of the way in which the Government encouraged debt to accumulate on the goldfield lands.[165]

In the short-term, however, Mackay was unable to complete the transaction. Although opposition was conceptualised as 'hau-hau' inspired, it is clear that the wish to retain the area was also held by others with interests in it. Included here were chiefs, such as Te Moananui, who had formerly cooperated with the Government.[166] That opposition stemmed in part from their disappointment in the workings of the cession agreements at Thames, which will be discussed in the following section. Those within the tribe who continued to oppose sale to the Government attempted to forestall the complete loss of their territory, agreeing to the alienation of the freehold of Waikawau and Moehau but to only a cession of Ohinemuri.[167] In view of the continuing opposition, the Government decided to accept the cession which would bring the land under mining legislation rather than hold out for the complete acquisition, but by calling in debts, was able to impose far more stringent terms than in earlier negotiations. Despite Mackay's practice, on occasion, of paying deposits on mining revenues, both he and the Government insisted that the payments for Ohinemuri had been for the complete freehold and that all moneys would have to be repaid. Under the terms of the cession Maori would, in theory, receive 'all rents, royalties, moneys and fees . . . payable to the Receiver of Gold Fields Revenue' but that money would be retained by the Government until the debt was wiped out. Maori also had to cede rights of mining over all minerals, including coal and kauri gum, and agree to the issue of agricultural as well as mining leases, in accordance with the regulations prescribed by the Gold Fields Act 1866.

Few companies were interested in investing in large-scale development until they had 'greater security of title' provided by Crown ownership of the freehold. At the same time, the Government had little interest in checking up on whether all persons required to hold miners' rights were in compliance, and was later accused of negligence in this area. Although the Ohinemuri goldfield would become extremely valuable later in the decade, revenues were low in the first few years of its operation, while it remained in Maori ownership. Only £4317 had been generated in revenues, by 1881, these moneys being set off against the £15,000 debt when the freehold transferred to the Government.

Opponents of sale had reluctantly agreed to the mining cession on the understanding that the land would return to them, but the Government had no intention of allowing Maori to regain control of subsurface properties or retain freehold rights in Ohinemuri. It clearly considered the 1875 cession to be a temporary measure, taken only for the sake of convenience. Within two years, purchase of freehold interests in the block had resumed. In 1880 to 1881, 73,000 acres of the Ohinemuri goldfield block were brought before the land court and an area of 66,000 acres which included the soon to be valuable, Karangake and Waihi

165. 'Proceedings of Native Meeting Held at Thames on 11 and 12 December 1874', WTL, MS 2520, p 25
166. Power to McLean, 15 April 1873, MS 1350 (vol 40)
167. For a more detailed discussion of Ohinemuri, see 'Historical Overview', Wai 100.

reefs, were awarded to the Crown. The portion not brought to court at this stage (comprising in large, Ohinemuri 20) remained subject to the cession agreement and was gradually acquired by the Government over the next 20 years.[168]

The declining respect of the Government for the rights of Maori to withhold their lands from mining development was demonstrated elsewhere within the Hauraki rohe. The extension of the goldmining district in March 1875 had included Pakararahi which remained in the ownership of Maori who had not fully consented to that opening.[169] Matiu Poono and Tautoru protested to the Superintendent of the Province, 'The land is ours which has not been adjudicated upon. Therefore do not be led ignorantly into granting a lease of that land but let the applicant come to us the owners of the land.'[170] When the Government went ahead, W H Grace objected on behalf of Maori right-holders that they had 'never ceded any rights or interests to the Government or any other party, or . . . dealt in any way with any one, either for lease or sale for any purpose whatever, neither have they been consulted in the matter.' According to Grace, 'one native only who claim[ed] a small interest in the Block, consented to the opening of the said land for goldmining purposes, and partly in consideration of sanction obtained, without the knowledge of other claimants, a one half promoter's share.' The objectors pointed to the contrast with earlier negotiations in which 'the minutest details of agreement were entered into' and apparently followed.[171] They attempted to prevent the issue of a mining claim over part of the block by objection before the goldfield warden. The warden refused, however, to rule on the matter. As warden he had simply to adjudicate as though the land was the property of the Crown, and the complaint, thus, fell outside his jurisdiction.

Mackay defended his – and the general government's – actions with reference to Pakirarahi, from political attack by Sir George Grey, arguing that he had dealt with the major right-holders (Taipari of Ngati Maru, and Harata Patene and Nikorima Poutotara of Ngati Tamahanu), and that problems had arisen only because private parties had informed Maori of the value of the gold discovered on their land. In the view of the Government's legal officer, Reid, the terms of the agreement were 'not very clearly shown by the papers, although it may perhaps be assumed that the agreement was sufficient to make the lands "Crown lands" within the meaning . . . of the Gold Mining Districts Act 1873'.[172] There was, however, no written agreement, that arrangement being verbal only.[173]

Matiu Poono and others petitioned the House regarding the conduct of the opening. The Maori petitioners were not examined, but the evidence of Grace suggests that there were two concerns; who had right to deal with the block and to receive revenues from it, reflecting arguments about title and boundary which were yet to be decided by the land court, and what constituted a fair return on gold

168. See D Alexander, Hauraki block report, Wai 100
169. See AP 2/51
170. Tautoru and Matiu Poono to Superintendent, 19 April 1875, 1875/1188, AP 2/51
171. W H Grace letter, 24 June 1875, 1777/1873, AP 2/51
172. Mackay to Colonial Secretary, January 1875; W S Reid to Colonial Secretary, 2 July 1875, 1875/1843, AP 2/51
173. See evidence of Mackay, Le 1 1875/12, app S, no 24, p 8

resources. At particular issue, in the cross-examination, was an alleged promise to Nikorima, made by a private company but with Mackay's endorsement, that he would receive shares in the mining claim, whether those shares had been intended for Nikorima alone, and whether the receipt of those shares was necessary to establish consent to the opening. In Grace's view, all the major right-holders in the block were entitled to a share equivalent to that given to Nikorima, and to 'thousands instead of hundreds', although in negotiations, as their agent, he had been prepared to settle for a far lesser figure if money was paid at once. In the view of the Government, Nikorima's shares had been intended for the whole of his party. The tone of McLean's questioning suggests, too, that this arrangement was seen as a concession to Maori who were otherwise adequately recompensed for the mining of their land, by the receipt of revenues from miners' rights and for the taking of timber:

> Q: What benefit are these native receiving out of the field? Do they not receive the miners rights?
>
> A: Yes; they will receive the rights. They have not received them yet. . . .
>
> Q: Is not that a great inducement to opening land apart from the shares?
>
> A: Yes. It would have been . . . if all had been treated alike . . . . That is the reason of the dispute.
>
> Q: Do not these natives receive all the benefit of all the rights, fees for kauri trees, and timber licenses? Is not that a great inducement to the opening of the field?
>
> A: It is, but sometimes they are obstinate, as for instance at Ohinemuri.[174]

The Native Affairs Committee rejected the petition, finding that a claim for compensation had not been established but recommending that the real owners be determined by the Native Land Court.

At Te Aroha, where gold was discovered on land promised as a reserve from sale, the Government 'negotiated' an opening, but was prepared to override Maori wishes and proceed without full consent. Wilkinson (the native agent) and Kenrick (the mining warden) in the late early 1880s, refused demands that the Government pay £1000 for the right to declare the land a goldfield, as 'extortionate', since Maori would 'get for themselves all the miners' rights fees, timber licenses, &c, as well as town rents'. Wilkinson, like his predecessor, Mackay, first sought the support of Taipari and other known Government-supporters who 'readily signed the agreement to open the field in so far as their blocks were concerned'. A reduced demand for £500 was then refused, and the reserved land opened, despite lack of complete Maori consent:

> as it was now apparent that the bold but necessary stroke of opening the field, whether some of the Natives were willing or not, could be carried out without any real danger, it was decided to do so; and acting under the instructions from the Hon Mr Whitaker, arrangements were made for the opening, which took place by Proclamation, read by Mr Warden Kenrick from the prospectors' claim, on the 25th November last, much to the surprise and chagrin of some of the dissenting Natives; who, seeing that this was

174. Evidence of Grace, Le 1 1875/12, appendix R, no 22, pp 25–26

> the first time, for a number of years, that any policy (however necessary for the public good) at which they chose to express disapproval, should be forced upon them, seemed quite taken aback, and unable at first to realize the position.[175]

According to Wilkinson, the dissenters accepted the fait accompli, the majority signing the agreement and taking out miners' rights for themselves.

The declining power of Maori in the Hauraki region was reflected, not only in the coercion backing the Government's negotiating position, but also in the more restrictive terms of the cession at Te Aroha. In particular, the Government again ensured that it gained the right to mine for all minerals.[176] Wilkinson and Kenrick also excluded rents from long-term leases from the schedule of goldfield sources from which Maori were to receive revenues since this concession to Maori at Thames, in the early 1870s, had come under increasing attack from the county council to whom those moneys would have otherwise gone, under the Financial Arrangements Act 1876.[177] The issue of changes in the revenue entitlement of Maori at Thames will be discussed more fully in Section Three on statutory developments.

## 2.11 ADMINISTRATION OF 'NATIVE GOLD FIELD REVENUES', 1868 TO 1900

In the first boom years of the Thames field, sizeable returns were generated by the township rents, kauri revenues, miners' rights and other fees generated by the field. In the period 1 August 1867 to 31 March 1881, Maori were assessed as entitled to receive £62,451 from the goldfield blocks in the Hauraki district, some £7000 of this amount going to pay off the debt on Ohinemuri. In that period, revenues had steadily declined. In the first three years of the field's operation, revenues amounted to over £25,000. Thereafter, returns fell off considerably. In the period 1 July 1870 to 30 June 1873, the amount generated had dropped to under £13,000. In following years, the annual return rarely topped £3000.[178] After 1880, revenues dropped even more precipitously, less than £27,000 being paid out to Maori for the whole of the district (Coromandel, Thames, Paeroa, Waihi and Te Aroha), in the period, 1881 to 1897.[179] The question of the equity of revenues received by Maori in comparison to value of the gold taken from their land, weighing in a factor for capital expenditure on the one hand, and of general benefit to the Auckland economy on the other. None the less, figures for the quantity and value of gold exported (for which the Government received a royalty of 2s 6d per ounce) show that the sums received by Maori comprised only a fraction of the general returns from the goldfield. In the period 1867 to 1880, exports of gold from the Hauraki goldfields totalled 1,271,083 ounces, with an estimated value of £4,680,077. From 1881 to 1897, 834,545

175. Wilkinson to Gill, 28 May 1881, AJHR, 1881, G-8, p 10
176. AJHR, 1882, H-19, p 12
177. 'Report on the question of Miners' Rights . . .', NO 89/1255, J 1/96/1548
178. See 'Hauraki Gold Fields Native Revenue: Treasury Statement relative to . . . ', MA 13/35C
179. AJHR, 1940, G-6A, app C

ounces, at a value of £3,280,957, were exported from the district.[180] Thus, while it is true that production of the field had dropped by some 30 percent over the period, Maori revenues had declined by nearly 60 percent. From 1895 onwards, the production of the fields located on Hauraki lands started to rise again, as the Waihi mine began to make good returns, but since this concerned Ohinemuri lands now owned by the Crown, Maori received no direct benefit from this development. In face of increasing administrative problems, payment of revenues to Maori practically ceased after 1897 until the 1930s when a final adjustment of accounts was made.

Hauraki groups expressed increasing dissatisfaction with the implementation and administration of the goldfield agreements. In 1876, the Assembly received two petitions from Hauraki chiefs about goldfield matters; one from Aperahama Te Reiroa about mismanagement, the other from Te Moananui, regarding the late payment of revenues. In the following year, W H Taipari, complaining about failed expectations of partnership, asked for the return of various sites in the Thames township which had been given to the Government for public purposes at the time of the initial agreement in 1867.[181] In 1881, Te Moananui petitioned twice more about the non-payment of miners' rights. Further petitions, in 1888, 1894, 1895, and 1896, objected to the impact of legislation on revenues due to Maori, and made complaint about the poor administration of Maori-owned blocks within the goldfield.

These complaints were generally explained away, by officials, as indicative of Maori greed, or their puzzlement at the decline of revenues when the gold on their land petered out. The growing disappointment with the goldfield arrangements may be seen, however, as deriving from a number of causes other than the decreasing profitability of the field in general. These included the channelling of goldfield returns into the hands of the few; the loss of revenues as freehold interests were alienated, and new fields brought into operation under tougher terms; failures in administrative responsibility; and unilateral changes in the organisation of the field, through legislation and gazetted regulation, which directly impinged on the moneys received by Maori. Pressure on Maori revenues increased as their interests were sacrificed in response to the declining proceeds of the field. At the same time, the administration of the field moved into the hands of mining officials who had declining knowledge of, or care for, the original understandings by which the land had been opened. Maori retention of goldfield lands and revenues also came under attack from local bodies to whom those moneys would have gone if they had been generated upon Crown land.

Responsibility for the administration of the revenues was taken, initially, by Mackay who worked in a wide variety of capacities during the first years of the operation of the Thames field, filling the position of warden, and acting with a considerable amount of autonomy. A miners' rights deposit account was opened in his name, with that of Pollen, and the revenues paid out on a quarterly basis. Much

180. 'Table showing the Total Quantity and Value of Gold entered for Duty for Exportation', AJHR, 1897, sess 2, C-2, p 17; 1898, C-2, p 15

181. See Le 1/1877/5

of the goldfield land had not yet passed through the court, and as in the case of down payments for land, Mackay made independent and arbitrary judgments about where entitlement lay, relying on the information of a few chiefs whose interests he promoted. One of those chiefs, W H Taipari with whom Mackay went into business partnership, described how the two of them had decided on divisions within the blocks for revenue purposes: 'The owners had nothing to do with laying out the lines, but Mr Mackay and myself did it at the best of our knowledge.'[182]

Some sizeable revenues were generated in these boom years, but tended to flow from Mackay's hands into those of a few chiefs, with no guarantee that a fair portion would reach all those with interests in the area. A return, tabled in 1869, named thirty recipients of a total of over £10,000 paid out on the Thames field in the first two years of its operation. A total of £9000 of this sum had gone into the hands of only four chiefs, for distribution to others.[183] The subsequent apportionment of those sums fluctuated at their discretion, and as their circumstances permitted. Hoterene Taipari, for example, later indicated that in the first years of production on Te Hape and Karaka he had gradually brought in different tribal groups – his own people of Ngati Maru for the first two years, and then Ngati Te Aute, Ngati Kotinga, and Te Whakatohea. He was, however, far more reluctant to distribute gold field moneys when returns started to decline.[184] Puckey, native agent for Thames and Coromandel in the 1870s, reported that 'it was merely an act of grace' on the part of the two original owners of Waiau, that any others were admitted into the block, from which they had 'had almost exclusive enjoyment of the proceeds for some years'.[185]

It is clear that the early divisions of revenues were not accepted by all. When Tokatea, arbitrarily opened by Grey in 1862, was brought through the court as Moehau no 4, 20 years later, it was awarded to more owners than had been in traditional receipt of the gold field rent. Following this judgment, Te Matewaru who had opposed the opening and missed out on the payments, demanded their share of the rents received from the Crown. The court stated that it had no power to make an order about monies received before title to the land had been decided but suggested that any rents being held by the Crown while title was settled should be distributed in proportions set by its finding.[186]

It is clear that the divisions made in those days were not accepted by all. The boundaries set by Mackay for the goldfield were challenged when the land was brought before the Native Land Court.[187] Puckey acknowledged that the Thames blocks were awarded to more owners than had received the revenues.[188] The blame for the inequable early division of revenues was, however, seen as lying solely with the Maori leaders, and used by Puckey to promote acceptance of the land court.

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182. Hauraki minute book 9, hearing for Hihi and Piraunui, 5 September 1872
183. 'Return of Revenue Received from Miners' rights at the Thames Gold Fields', 31 August 1869, in 'Hauraki Gold Fields Native Revenue: Treasury Statement relative to . . .', MA 13/35c
184. See evidence re Karaka 1, 2, and Te Hape, 26 August 1872, HMB 7, pp 123–124
185. Puckey to Under-Secretary of Native Department, 31 July 1880, MA 13/35c
186. Hauraki minute book 14, 21 January 1882, pp 160–161
187. See Hauraki minute book 9, 5 December 1872, pp 40–58
188. Puckey report, 31 July 1880, pp 3, 6, MA 13/35c

Puckey admitted that revenues on Opitomoko, Kuranui, and Moantaiari had been paid to only one or two owners, and stated:

> I was aware there were other persons who ought to receive a portion, but their claims were in no way recognised by the principal owners. These persons, acting on my advice at length, had the land, in which they claimed to be interested, surveyed and adjudicated on by the Native Land Court and the extent of their interests defined.[189]

Kingites who were reluctant to attend the court, lost out almost completely. Keriwera, strong opponents to the alienation of land in the district, protesting in 1871 that they had received no portion of the goldfield moneys.[190]

Puckey took over responsibility for 'native gold field revenues' in 1869, operating the deposit account for the next 10 years. At first, Puckey followed Mackay's procedure, but in response to falling returns and changes in the system of regulation, he started dividing the annual total into four amounts so that the totals received by Maori would not fluctuate so widely.[191] If much of the profit of the early boom years of the Thames field had been channelled into the hands of a few, the remaining revenues were dribbled out, and dissipated among the many, to settle small debts. Maori, removed from any direct involvement in the operation of the goldfield accounts, were dismayed by the fall of their revenues as the boom died down, and had no assurance that the amounts being collected and paid out represented a correct accounting.[192] In 1876, Te Moananui and Taipari complained that fees at Thames were overdue. Pollen, in whose name the account continued to be jointly held, denied that any malpractice had taken place, or that moneys were being kept back. He stated before the Native Affairs Committee that Maori had not received any revenues in the last quarter because, previously, overpayments had been made through the misplaced 'kindness' of Puckey. Pollen blamed Maori profligacy for their distressed situation, argued that they had ample opportunity to inform themselves of the whole matter 'if they chose to take the trouble', and condemned Puckey's practice of making payments in advance so that Maori could meet their liabilities.[193] The Native Affairs Committee accepted that no wrong-doing had occurred, reporting that accounts had been kept regularly and that no unnecessary delay had taken place, but also recommending that the Government give full facility for an inspection of the books by a Maori appointee.[194]

Puckey defended his handling of the revenues against attack from the Treasury and Audit Departments, which criticised the system for its lack of accountability. He identified the problem as lying in the assessment of the various fees and rents owing on each block rather than in his own subsequent distribution of those amounts, and reported that the task of overseeing the Maori revenues had become increasingly difficult, as the administration of the field moved further and further from the terms initially established in the cession. Puckey argued that the Receivers

189. Ibid
190. Power to McLean, 10 October 1871, MS 1347 (vol 37), p 177
191. Puckey report, 31 July 1880, MA 13/35c
192. Power to McLean, 15 April 1873, MS 1350 (vol 40)
193. 'Evidence of Pollen', 26 July 1876, Le 1 1876/7
194. AJHR, 1876, I-4, p 5

of Gold Revenue had become 'callous' to those original terms. At the same time, passage of the Mining District Act 1871, and the new regulations put in force, completely changed the manner in which revenues were assessed for the individual blocks which comprised the Hauraki Gold Mining District. According to Puckey, 'There was no machinery for the transfer of Miners' Rights and it became merely a matter of approximate allocation'.[195]

It is clear that corruptions developed in collection and distribution of revenues. As the goldfield began to decline, the Superintendent of the Province instructed McIlhone, the Inspector of Miners' Rights at Thames, supposedly in place to look after Maori interests, to exercise his discretion in the collection of fees so as not to hold them up unduly.[196] Abuses in the administration of the 1870s were acknowledged by later officials. Kenrick and Wilkinson, who took over responsibility for the miners' rights deposit account on Puckey's dismissal in 1880, reported that:

> much must be left to the discretion of the officers in the field – upon whose report the revenue is allocated. When taking over the allocation of this revenue I found the grossest abuse if this discretionary power had been permitted to grow up.[197]

A later receiver of the gold revenues also admitted that, under these arrangements, 'many errors were made some owners not receiving what they were entitled to'. [198]

At Taitapu, once the Government achieved its object of gaining Maori consent to mining activity, it altered the regulation of the field at will. As at Thames, growing interest in quartz mining generated pressure for long-term leases rather than annual licences. Government officials acknowledged no obligation to consult with the Taitapu owners about the duly gazetted or enacted introduction of that system.

Mining activity revived at Taitapu in the 1870s, when quartz reefs were discovered, requiring, it was argued, greater security of title for investment in heavy machinery. Alexander Mackay initially refused to grant leases since the field was operating under an 1868 proclamation issued by the Superintendent of Nelson Province under the Gold Fields Act 1866, which included Taitapu in the Golden Bay Gold Fields. Mackay regarded the proclamation as ultra vires because the 'property in question had not been ceded to the Crown' and insisted that Taitapu be brought under the Gold Fields Act 1868.[199] He argued that the 1866 Act made no provision for the 'issue of either miners' rights or mineral leases to meet the special requirements of the case' – in other words, continuing Maori ownership. Apparently, those special requirements did not encompass the need for Maori to be consulted about a modification of the basic presumption of the opening that the handing of control to Europeans would be of an essentially short term character. Mackay reported that a valuable field might be developed if the Government had the power to offer secure leases and to create a better infrastructure of roads and

195. 'Puckey Report', 31 July 1880, p 5, MA 13/35c
196. 'Notes of Hauraki Goldfields Inquiry', 6 March 1939, M8, MA 13/35c
197. Kenrick to Under-Secretary, 1 May 1884, MD 1 84/497
198. Jorlasse to Receiver General, 23 February 1898, T 1 40/71
199. A Mackay to Under-Secretary of Gold Fields, 2 August 1878, AJHR, 1878, H-4, p 25 (cited in Phillipson, p 209)

services.[200] On 14 October 1873, the Government, acting on A Mackay's advice, proclaimed the West Wanganui Gold Field to be under the Gold Fields Act Amendment Act 1868which gave specific authority to the Governor to bring Maori land within its jurisdiction in instances where owners had agreed to 'entry on such lands for mining for gold'. Section 3 of the Act stated that 'publication of any such Proclamation in the *New Zealand Gazette* shall be conclusive proof that the consent of the owners of the land . . . has been obtained'. The proclamation of 1873 stated that 'the consent of the Native owners of the land described in the Schedule hereto, authorizing entry thereon for the purpose of mining, has been obtained by the Governor as required by the . . . Act'. It is apparent, however, that the Government relied on the original 1862 compact rather than seeking new agreement to the arrangements being now contemplated.

Despite the discovery of a quartz reef and Government efforts to encourage its exploitation, the West Whanganui field did not prove the bonanza hoped for by Mackay. Alluvial mining continued to decline, and only one mining concern, the Golden Ridge Gold Mining Company, which was granted a lease of 15 acres for £16 per annum in 1875, operated with any success in the area. Phillipson remarks that 'West Whanganui produced significantly less revenue than other goldfields in the South Island or Hauraki'. He points out that, while little can be said with certainty regarding the equity of the returns receivedp by Maori, 'it seems remarkable that gold was selling for £4 per ounce in 1877, a year in which the Taitapu field produced only £36 6s for its owners in rents, fees, and other gold-related revenue'.[201] The year of greatest return, 1884, when £91 19s was derived almost completely from the operation of six leases over a total of 87 acres, also saw the alienation of the freehold of the block to private parties. This sale was seen as removing the block from the jurisdiction of the 1868 Act since this was intended to apply only to Maori land.[202]

200. A Mackay to Provincial Secretary, 20 November 1872; A Mackay to Superintendent of Nelson, 22 March 1873, 'Outward Letters of A Mackay', 1871–76, MA-MT-N/1/2 (cited in Phillipson, p 209)
201. Phillipson, p 210
202. For further discussion, see Phillipson, pp 212–216

CHAPTER 3

# STATUTORY DEVELOPMENTS, 1868 TO 1900

## 3.1 INTRODUCTION

Maori found that their authority was diminished in ways that they had not contemplated when entering agreements with the Governor to cede their lands for mining purposes. The balance of power, with the added weight of a huge influx of white population, shifted inexorably towards the Government which quickly abandoned models of partnership without adopting commensurate measures of protection. In effect, all power passed into the hands of the Crown even though the land had not been sold.

The powers of management and regulation exercised by the Government included control over the structure of mining licences, rents and leases which generated the 'native gold field revenues', authority to sell trees and to alter watercourses on Maori land, and the introduction of a special system of justice under a warden on whom Maori were largely reliant for protection of their interests. Futhermore, the Gold Fields Act 1862, and following Acts, enabled the Governor to delegate his powers to the Provincial Superintendent whose imperatives were less likely to encompass negotiated obligations or considerations of Maori welfare. Maori were increasingly distanced from the operation of the goldfield. Whereas a role had been contemplated in the agreements of the 1850s and 1860s, for Maori to participate in keeping control of the field, by the 1870s, the suggestion that Hami Ropiha Tuirangi be authorised to check on miners' permits at Kennedy Bay was rejected out of hand by the Superintendent of Auckland, on the grounds that it was not 'expedient to grant any native the authority to inspect miners' rights as it might lead to a breach of the peace'.[1]

Mining legislation also provided for the use of surface rights, the Government being empowered to issue pastoral licences. These powers were, however, developed with Crown lands in mind. There was no attempt to exercise such powers over Maori land (with the exception of Ohinemuri) until the 1880s, by which time, mining wardens looked to the wording of the statute rather than to the terms of the original agreements. That issue of pastoral licences was strongly, and successfully, resisted by Hauraki Maori who pointed out that no such right had been accorded to the Government. It will be seen, however, that the Government, shortly thereafter,

1. Fraser to Puckey, 30 January 1871, 'Coromandel Commissioner of Crown Lands, Outward Letterbook', BACL A 608/688

strengthened its general powers over Maori land, by-passing protections within the cession agreements.

Nor was there any requirement for the Government to obtain Maori consent to changes in mining regulations even though such might severely reduce revenues supposedly guaranteed by the goldfield agreements. Maori found, too, that while the Government could change the rules under which the field operated, they could not, themselves, withdraw their lands from its jurisdiction, even after mining had declined.

## 3.2 REDUCTION OF 'NATIVE REVENUES' AT THAMES

### 3.2.1 The introduction of leasing

Once land had been ceded, it became subject to mining law. The statutory development of mining law affected Maori in two major areas; by reducing revenues supposed to be guaranteed to them by negotiated cession, and by expanding the Crown's powers at the expense of Maori authority over the land and its subsurface properties. The first legislative innovation effecting revenues in the Hauraki district, occurred in 1868. The miner's right system under which the field had been initially opened, gave rise to dissatisfaction among the larger mining interests who considered it to be 'necessary to take out miner's rights for every small interest they held in shares or companies', in order to prevent claim jumping. Miners complained that this had not been contemplated by the cession agreements, and it was proposed that a leasing system be introduced in order to reduce payments to Maori and to give greater security for the investment of capital.[2] The failure of the field to attract large investment was blamed largely on its ownership by Maori. It was explained:

> The tenure of property on the field, together with the uncertain aspect of Native affairs generally, had great weight with capitalists in causing them to refrain from entering upon work, and investing capital upon undertakings from which the undertakers might at any time, as it would appear to them, be dispossessed at the caprice of the aboriginal owners of the land. To give therefore a better tenure to the property, the leasing regulations were brought into force. [3]

On 29 October 1868, the Superintendent of Auckland, calling on the powers vested in him by the Governor under the Gold Fields Act 1866, issued new regulations to give effect to that proposal. Under clause 1, all former regulations with reference to leases were revoked. Clause 23 set forth the new conditions of the lease:

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2. 'Mackay evidence before Public Petitions Committee of Legislative Council', 5 August 1869, MA 13/35c, special file no 62
3. AJHR, 1870, D-40, p 19

> In every lease granted under these Regulations for mining purposes, there shall be in the first place a rent reserved after the rate of £2 per acre, per annum, payable half yearly and in advance, for every 15,000 square feet of land comprised therein.[4]

There was no provision, at first, to pay such rents to Maori right-holders.

This innovation was entrenched the following year when the Government passed legislation to protect security of mining title in the Hauraki district. A political challenge to the legal authority of Mackay and, thus, the validity of the original cessions, had been raised at the Native Land Court determination of Maori interests at Kauaeranga. Fenton told the Legislative Council that:

> it was doubtful whether Mr Mackay was at the time a Land Purchase Commissioner, and had a legal right to make the agreements which he did make with the Natives. [T]he proclamation of Mr Weld [revoking the appointments of Land Purchase Commissioners] was well known, and it was not shown that Mr Mackay had received any new appointment, so that there existed doubts as to Mr Mackay's position in the matter.[5]

Other doubts to the status of the goldfields arose because the form of title under which those lands were held, had changed since the leasing arrangements had been made. Private lands were exempted from the operation of both the 1866 Act (under section 3) and the 1868 Amendment (under section 10). Fenton pointed out that, 'the moment these lands passed through the court, and the Native got Crown Grants, the doubt arose whether they did not become so far private lands, and were exempt from the operations of the Gold Fields Act'.[6] To remedy these difficulties, the Auckland Gold Fields Proclamations Validation Act 1869, stated that the agreements of 27 July 1867, 9 November 1867, 9 March 1868, and 13 May 1868 were valid and binding, even though native title might have been subsequently extinguished. The lands covered by the agreements and set out in the accompanying schedule, were deemed 'so far as mining purposes for gold is concerned but not further or otherwise to be Crown lands and not private lands'.[7] Included within the validated proclamations and extensions of the preceding two years, were Williamson's leasing provisions.[8]

Hauraki Maori protested this unilateral alteration in the way the field was run; not merely the reduction of revenues it would entail, but also the General Government's abrogation of power in favour of the provincial body and the movement away from a yearly accounting to one which allowed long-term leases. Thirteen chiefs of Ngati Maru, Ngati Whanaunga and Ngati Tamatera, all of whom had been signatories to the Kauaeranga agreements, petitioned the Government in August 1869. While declaring their loyalty, they protested that Williamson had not consulted with them about the proclamation, and that revenues had been reduced without their

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4. *Auckland Provincial Government Gazette*, 29 October 1868, p 485
5. NZPD, 1869, vol 6, p 4
6. Ibid
7. Section 2 of the Auckland Gold Fields Proclamations Validation Act 1869
8. The Act validated the proclamations of 7 August 1867, 22 August 1867, 20 November 1867, 14 April 1868, 16 May 1868, and 29 October 1868: see the schedule to the Act.

agreement, or acknowledgement of their right as owners to receive a portion of the rents from such leases. They confirmed their willingness to abide by the original understanding and to promote the development of the field but insisted on their right to payment and to be consulted about any alteration to negotiated arrangements:

> Your petitioners now object to any gold-mining leases being granted to any persons for the lands included in the said agreements until a definite arrangement is entered into between themselves and the Governor relative to the said leases. That your petitioners are qnite willing to render every facility for the outlay of capital, and desire to carry out all arrangements heretofore entered into by them; but they humbly and respectfully submit that the agreements entered into by them did not empower the Governor or his delegate to lease lands for mining purposes.[9]

Mackay supported Maori rejection of the 1869 measure, advising that 'the agreements with the Natives would require amendment, before it would be quite clear that these conferred on the Governor the power to lease lands for mining purposes'.[10] He pointed out that he had assured Maori at the time that all claim holders and their servants would be obliged to take out miners' rights. As long as claims were held under this system, mine owners had a 'direct interest' in ensuring that each employee held a right in order to prevent that claim being jumped, but this incentive was lost under the leasing regulations. In absence of inspection, penalties for non-compliance with the requirement that all servants should hold miners' rights, were rarely enforced.[11] Mackay anticipated that the regulations would reduce the revenues payable to right-holders:

> I hope I may be pardoned for stating that in my opinion the leasing regulations issued by His Honour the Superintendent of Auckland are likely to cause considerable injustice to the Native owners of the gold field, as entailing a certain falling off in the miners' rights fees received, and a consequent diminution in the amount payable to them by the Crown.[12]

Early in the following decade, the General Government provided for the requirements of the Hauraki field by creating a second stream of mining legislation. From 1871 to 1886 when the two branches were again united, the Hauraki district operated under the Gold Mining Districts Acts, while Ohinemuri and the South Island fields came under the jurisdiction of the Gold Fields Acts. The Gold Mining Districts Act 1871 provided for claims to be worked either under miners' rights, or as 'licensed holdings', which gave complete mining tenure for 21 years on an annual payment of £1 for every 15,000 square feet. Other sections of the Act set up licences for machine, business, and residence sites on payment of an annual fee of £10, £5, and £1, respectively. The Thames township was, however, excepted from

9. 'Petition of Certain Natives at Hauraki . . . Relative to the Thames Goldfield', in MA 13/35C. See also 'Public Petitions', Le 1/1869/11.
10. 'Report by Mackay on Thames Gold Fields', 27 July 1869, AJHR, 1869, A-17, p 11
11. Ibid, pp 11–12; 'Petition of certain Natives at Hauraki, and evidence relative thereto given by Mackay', 5 August 1869, MA 13/35C, special file no 62
12. Ibid

this structure of fees. At the same time, the Government acknowledged, tacitly, the injustice of keeping for itself, the revenues established under this new set of rules. Under section 111, 'rents arising in respect of land occupied under licenses' would be deemed 'money arising from miners' rights' in the area encompassed by the Auckland Gold Fields Proclamation Validation Act 1869. This provision was entrenched in section 173 of the Gold Mining Districts Act 1873. The reasoning behind this concession was, however, soon lost sight of by miners, local bodies and Government officials who began attacking the provision as going beyond the terms of the original agreement. A narrowing interpretation of what they should receive culminated in legislation reducing their entitlement, introduced over their protest.

### 3.2.2 The Mining Act 1886

At Hauraki, James McLaren, newly appointed by the Mines Department to oversee the miners' rights system, brought the issue of payments to Maori to his department's attention in 1880. He advocated that the base of the Maori mining income be narrowed, reporting that:

> There is great dissatisfaction, not against me for enforcing the law, but against the law itself, more especially in regard to the double payments that have to be made, thus under a license, £1 per annum has to be paid for every man's ground included in the license and the men employed have each to pay £1 per annum for a miners right to work in the same ground . . . this exclusive of residence sites that may be taken out on the surface . . . .
>
> If these & other monies which are obtained over & above what is required to be given to the natives by their original agreement were returned to the Government, or went to the County and Borough, it would then be understood, and would not be so much objected to, but that an extra tax should be imposed for the purpose of apparently giving additional sums to the natives beyond what they are entitled, seems to go very much against the grain.[13]

This suggestion was met with approval by the warden and other department officials, but was considered impossible under the existing state of legislation. Faced with this fact, and reluctant to admit any claim by local bodies who were arguing that they had been entitled to those moneys, the Under-Secretary suggested that the matter should remain in abeyance for the moment, but that McLaren be instructed to 'exercise some discretion in enforcing the payment of fees, and not to enforce anything which [was] not provided for in the Act'. The Minister of Mines endorsed this suggestion, directing that the Mining Inspector should collect rents and miners' right fees, but not those for water races, machine sites, and batteries.[14]

Continuing pressure was brought to bear on Maori receipt of goldfield revenues by the Thames County and Borough Councils which, under the Financial Arrangements Act 1876, claimed all moneys which would have gone previously to the provincial government. After making complaint to the Premier and the Native Minister, the two bodies petitioned the House about the payment of 'additional

13. McLaren to Under-Secretary for Goldfields, 3 July 1880, MD 1 80/618
14. See Wakefield to Minister of Mines, 9 September 1880, and attached minutes, MD 1 1880/633

fees' to Maori. The Gold Field and Mines Committee found that Maori receipt of these fees was in accordance with the law but that the local bodies in the Hauraki district were placed at a disadvantage vis a vis their southern counterparts. It recommended that the Government either compensate the local bodies or purchase out the Maori interest.[15]

The Government was reluctant to admit any claim to revenues which had been already paid out to Maori, but willing to consider the amendment of legislation. The consolidating Mining Act 1886, which assimilated all mining laws, except those relating to coal, altered the organisation and fee structure of the various goldfields in Hauraki, adopting the model in operation in the South Island. Officials had previously warned that Maori would not understand the sudden withdrawal of revenues which they had been in the habit of receiving, and Maori themselves expressed their concern about the Government's legislative intentions, reminding officials of the existence of agreements which would be violated by the proposed changes. [16] None the less, the Government pressed ahead. The cession agreements and the fact of continuing Maori ownership of a portion of the Hauraki field were not even mentioned in the House.

The 1886 Act retained provision for the payment to Maori of revenues from licences as well as from miners' rights, but greatly reduced the income that would be received from these and other sources. There was no requirement under the 1886 Act that men working under licence should also hold miners' rights, while the size of the ground covered by a miners' right was quadrupled. Reductions were made in the number of men who had to be employed in a lease; only one man for every two acres instead of three men for every one acre, as previously required by the 1873 legislation, and none of whom would be required to hold miners' rights. It was also possible to exchange a lease under the 1873 Act for one under the new Act, at much less cost.[17] In the following year, the Maori revenues were again reduced by an amendment, exempting wages men and tributers (persons who worked as employees of an owner of a licensed holding, and those who had made an agreement for a right to mine within an holding in exchange for a portion of the gold found) from the requirement to hold miners' rights.[18]

Thames Maori immediately protested the impact of the 1886 Act and its 1887 amendment. Raika Whakarongotai and others petitioned the House in 1888, and later in the year, Taipari met with the Minister of Lands, questioning why their revenues from licenced holdings had been reduced to 10 shillings per acre.[19] Wilkinson gave strong support to the complaints expressed by the Thames people. He argued that the Government had not lived up to the underlying commitment of the initial agreement, the terms of which had implied 'that the Government was desirous at that time that the Natives should benefit as much as possible through having thrown open their lands for gold mining'. He estimated that Maori would

15. AJHR, 1882, I-2, p 2. See also MD 1 82/894.
16. Kenrick to Wakefield, 4 November 1880, 'Wakefield memo', undated, MD 1 80/1037; Kenrick to Minister of Mines, 13 July 1885, MD 1 85/776
17. See 'Report on the question of miners' rights . . .', 30 May 1889, NO 89/1255, J 1 96/1548
18. See MD 1 94/886, and s 10(5) of the 1887 amendment.
19. Petition no 171, 1888, Whakarongotai petition, MD 1 1888/496; MD 1 89/85

receive only a fraction (one-sixth) of their former revenues under the new system without being 'in any way consulted, or even considered'. Wilkinson's solution was the standard one for Native Department personnel – purchase – but he did acknowledge that the Government had sacrificed Maori interests for those of the mining community:

> In taking a retrospect of this Miners' Rights question it would almost appear as if Government after entering into certain arrangements with the Natives for the opening of the goldfield (such as to what diggers were to pay annually, what area of land each one was to occupy etc) all of which arrangements tended to show that on their being carried out, as proposed, large sums would accrue to native owners, then, goes as it were, into competition with its Native landlords by offering the gold digger better and cheaper facilities for working the Native lands than he originally had under the Goldfields Act and Regulations that were in force when the field was first opened. Government in taking this step apparently overlooked, or ignored the fact that such action, though beneficial enough to the gold digger, was disastrous to the Natives insomuch as it had the effect of reducing their revenue . . . and thus, in a measure broke faith with them.[20]

### 3.2.3 The Mining Act 1891

The Government was not prepared to move on the question of rents or the size of licensed ground but did concede that Maori were justified in their complaint with regard to the reduction of revenues resulting from the 1887 amendment, relieving wages men and tributers of the necessity of holding miners' rights. The warden who was instructed to investigate the matter, found that the loss to Maori amounted to £567 at Thames, £80 at Ohinemuri, and £30 each at Te Aroha and Coromandel, during the year ending 31 March 1889.[21] In response, the Minister of Mines directed that no more special claims or licensed holdings should be allowed on Maori land unless every person employed held a miner's right, prompting a protest from the warden, that the imposition of such a condition was both illegal and unenforceable.[22]

In 1891, the Government took legislative action to ameliorate this particular loss, the insertion of the pertinent clause into the consolidating statute being prompted by the receipt of a further petition from Hauraki Maori about the reduction of their revenues. Section 50 of the Mining Act 1891 required wages men and tributers to take out miners' rights for claims on native land. The warden's issue of a circular directing attention to this new requirement prompted immediate protest from the mining community. A 'monster' meeting was held under the auspices of the Thames Miners' Union which unanimously called on Seddon to delay implementation of the measure. A delegation also called on the Native Minister, A J Cadman, who acknowledged that Maori had been adversely effected by the legislation, but saw Government acquisition of 'all the land' held by them, as the 'only solution to the problem'. He told the miners' representatives:

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20. See 'Report on the question of miners' rights . . .', 30 May 1889, NO 89/1255 in J 1 96/1548
21. Northcroft to Under-Secretary of Mines, 17 August 1889, MD 1 89/85
22. Eliott to Warden, 20 August 1889; Northcroft to Under-Secretary, 12 September 1889, MD 1 89/85

> By doing so, it would be beneficial in a twofold way; namely, that when the land became the property of the Crown, the fee for a miner's right could be reduced, and also the revenue at present being derived by private parties would be placed to the credit of local bodies.[23]

While the Native Department pursued purchase of the freehold, Seddon, as Minister of Mines, undermined the remedial effects of section 50 of the 1891 Mining Act. Seddon deliberately sought to evade the full implementation of the measure, criticising the officer in the field who was caught between the responsibilities of warden and trustee, for attempting its application. Maori leaders, accompanied by the town's leading solicitor, had called on the current warden, Northcroft, asking what was to be done about the failure of miners to comply with the new law and threatening to bring men, working without miners' rights, before the warden's court.[24]

Seddon tried to argue that the original 1867 agreement, setting out the requirement for miners' rights had been intended to apply only to men working on their own behalf. When the Government's legal officer, Reid, rejected this narrow construction, Seddon sought an alternative strategy, contending that section 6 of the Mining Act 1891 prevented its application to matters arising under prior legislation. Reid, agreed that the Act did not apply to mining claims taken out prior to 1891, but recommended that the signatories of the 1867 cession would still have 'at least a strong equitable claim for breach' of section 2 of the agreement, guaranteeing them £1 for every miner on the ground. Ignoring the unfavourable side to this advice, Seddon directed the mining inspector that the 1891 requirement was not intended to apply retroactively.[25]

In 1893 and 1894, Taipari and Hauraki Maori again petitioned the House about the impact of legislation on the understandings developed with regard to their lands within the goldfield. The petitioners complained that the provisions of the 1886 and 1887 legislation, and the limited application of the remedial measure of 1891, had directly resulted in loss of revenues which they calculated at over £3000. Whereas some 4000 miners had been employed on the field, only £800 in miners' rights revenue had been collected since the 1886 Act had come into force. Other revenues in the form of rents, previously allowed under the Gold Mining District Act 1873 had also been severely reduced.[26] The Goldfields and Mines Committee gave some credence to the Hauraki petitions, reporting:

> That your Committee after careful consideration of the documentary and other evidence at their disposal have come to the conclusion That the Petitioners have sustained some loss through breach of the agreement under which the Natives consented to throw open this portion of the Goldfield for gold mining purposes, and recommend the Government to take steps to ascertain the extent of the loss and recoup the Petitioners.[27]

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23. See *Thames Advertiser*, undated extract, MD 1 89/85
24. Northcroft to Under-Secretary Mines, 14 May 1892, MD 1 89/85
25. Reid to Minister of Mines, 13 May 1892, MD 1 89/85; Seddon minute, 8 September 1892, MD 1 93/513
26. 'Petition of Taipari and 26 others', no 126, 1894, MD 1 94/2887
27. 'Goldfields and Mines Committee Report', 31 August 1894, MD 1 94/2887

The Government delayed acting on the matter, prompting further Maori complaint. In 1895, Taipari tried the forum of the Native Affairs Committee, repeating the claims of the previous year and asking that Government act upon the earlier recommendations.[28] Further petitions were sent into Parliament and referred to the Goldfield and Mines Committee in 1900 and 1905. On each occasion the petition was recommended for favourable consideration, without response from the Government.

## 3.3 EXPANSION OF GOVERNMENT ACCESS

### 3.3.1 Early statutory definitions

The second aspect of mining legislation affecting Maori in the nineteenth century was the process of definition, and ultimately, expansion, of Crown powers. Two general trends were developed; the extension of the Crown's rights to minerals other than gold, and the securing of access to minerals in all land whatever the state of its title.

The first mining legislation in New Zealand, the Gold Fields Act 1858, passed in response to South Island discoveries, enabled the Governor 'by Proclamation to constitute and appoint any portion of the Colony, to be a "Gold Field"' but did not consider the question of Crown rights with regard to land still held by Maori. [29] Subsequent legislation, enacted in the 1860s and 1870s, largely assumed that Maori could withhold lands from Government management, focusing on the question of the Governor's powers once the consent of Maori right-holders had been gained, or on land privately-owned by Europeans. The initial legislative statement pertaining to mining on land held under native title was contained in the Gold Fields Act 1866, which stated that 'Crown Lands' would be 'construed to mean and include not only the Demesne Lands of the Crown in New Zealand, but also any other land whatever over which the Governor shall by lease agreement or otherwise have obtained power to authorize gold mining thereon'. That basic definition was retained over the next 40 years, but as the century drew to a close, the tenor of mining legislation began to change. After 1880, the legislature actively expanded the rights of Government to gold and other minerals, lying within Maori land whether held under Crown grant, or under customary title, and including blocks specifically reserved from earlier mining cessions.

### 3.3.2 Access to gold lying under foreshore lands

When the Gold Fields Act was amended in 1868, a degree of legislative recognition was given to Maori ability to control the use of the foreshore. Section 9 of the Gold Fields Act Amendment Act pointed to the Government's need to negotiate with them for the opening of such lands to mining. The Government in Council was empowered to include lands below the high-water mark in the goldfield:

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28. Petition no 185, 1895, MD 1 95/2427
29. Section 2, Gold Fields Act 1858

> Provided that when any such land abuts upon any land specified in the last preceding section [lands for which the Governor had obtained power to authorise mining by lease agreement from Maori] such land so lying below high-water mark shall be for the purposes of this Act be deemed to be land over which the Native title has not been extinguished.

This provision was interpreted as confirming the Government's sole power to deal with the foreshore, but also as recognising 'an interest' on the part of Maori.[30]

The Government confirmed its power of monopoly under the Thames Sea Beach Act 1869, representing a retreat from the tacit recognition of native title to the foreshore, of the preceding year, which had proved inconvenient. At Kauaeranga, mining interest (prompt and cheap exploitation) ran counter to that of Maori (return commensurate with its traditional and auriferous value). When Maori refused to give way, the Government attempted to assert its prerogative over both the foreshore and gold, but in view of the strength of opposition, had to rely on a pre-emptive right to ensure its control.

At first, the Government decided to negotiate with Hauraki for the opening of the Kauaeranga foreshore. Richmond, recognising that Maori would challenge any Crown assertion of ownership of the mudflats, which had a history of intense traditional usage, directed Mackay to follow the guide of the Gold Fields Act 1868, as providing for the negotiation of agreement between the Government and owners of adjacent lands.[31] While some Ngati Maru, led by Taipari, agreed to the Government taking over responsibility for the development and administration of the foreshore, others – most notably Rapana Maunganoa – wished to lease the area for themselves. Included in the area withheld from Government management were the mudflats to the north of Karaka Stream, adjoining some of the most valuable goldfield land.

The response of the Government in the form of the Thames Sea Beach Bill, represented a blunt assertion of the Crown's prerogative both over lands below the high water mark, and over 'all precious metals wherever they might be found'. That position was, however, unsustainable at the Thames. Strongly worded petitions were received from various Hauraki groups, including from those willing to open the foreshore to mining, stating that the Government had no rights over the mudflats; that 'our hands, our feet, our bodies, are always on our places of the sea; the fish, the mussels, the shell-fish are there. Our hands are holding onto those, extending even to the gold beneath.' Hauraki Maori were united in the view that 'control of all the places of the sea' lay with them.[32] When the Bill was examined by a select committee, Mackay supported the Hauraki position, testifying that Maori would reject the Crown's assertion of ownership, that they greatly valued the Kauaeranga mudflats and, with the exception of Taipari, had not come to any agreement with the Government regarding their use. He told the select committee that 'I think the Natives will take this position: they will say that they are owners of

30. G S Cooper to Mackay, 17 October 1868, Le 1/1869/133
31. Acting Under-Secretary to Civil Commissioner, 17 October 1868, Le 1 1869/133
32. Petition of Te Moananui, 5 August 1869 (cited in 'Report of Committee on Thames Sea Beach Bill', AJHR, 1869, F-7, app E, p 18)

that land for mining and for every other purpose, and that they will resist any action taken by the Government in the matter'.[33]

In view of Maori protest and earlier Government recognition of their title, by the exclusion of the foreshore in the first Thames goldfield transactions, the passage of the 1868 Act, and subsequent negotiations for the cession of those lands, the Select Committee recommended that the Government delay legislative steps until the question of ownership could be clarified. The Government feared, however, that private competition would 'enormously increase' the expense of bringing the area under the jurisdiction of the Gold Fields Act, if it did not gain immediate control of the foreshore lands.[34] The legislature pushed ahead with the Bill, omitting the prerogative clause but establishing Crown pre-emption over the area. The Crown's control over precious minerals was further strengthened by Fenton's Native Land Court decision at Kauaeranga in which rights pertaining to the foreshore were separated out. Although Taipari and Ngati Maru could demonstrate the proofs of ownership demanded by Fenton, in particular, the setting of acknowledged marks such as stake nets, signifying a 'full and exclusive right', he declined to make a an order for the 'absolute property of the soil, at least below the surface'. Instead, he awarded Maori, 'the exclusive right of fishing . . . the surface of the soil of all that portion of the foreshore or parcel of land between the high water mark and low water mark'.[35]

## 3.4 IMPACT OF MINING LEGISLATION IN THE 1890S

For the next two decades, legislative innovation largely concerned the organisation of the field, affecting Maori in terms of their receipt of revenues, rather than their ability to withhold lands from mining operations, but a revival of mining productivity as a result of new technology in the 1890s, initiated a movement on the part of the Government towards ensuring access and development of mineral resources, including those within reserved Maori lands.

At the same time, Maori began to challenge the status of the cessions and goldfield legislation. Not only was there increasing dissatisfaction with the implementation of the mining agreements, but they now found that the Government was not prepared to release its grip on their lands even though mining activity had finished on them. At the large meeting held at Parawai, Thames, in 1885, Mango pointed out to Ballance that 'Some of the lands that they gave for goldmining are now lying idle, and they want the Government to remove the Goldfields Regulations from those lands where there is no mining'.[36] To the contrary, the trend was for wardens to issue long-term occupation and residence licences, and to bring various categories of reserved lands within the compass of mining legislation. Some Maori sought to withdraw their lands from the operation of the goldfield,

33. 'Report of Committee on Thames Sea Beach Bill', AJHR, 1869, F-7, app E, p 9
34. See Gisborne, NZPD, 1869, vol 6, p 833
35. Fenton judgment, HMB 4, p 245. See NLC order for Te Tapuae o Uenuku no 1, 23 May 1871 as an example of the wording employed.
36. 'Notes of a Meeting held at Parwai, Thames . . .', AJHR, 1885, G-1, p 38

arguing that if the Government failed to pay revenues originally promised, the land should revert to them 'unfettered with gold mining laws'. Some looked to their Crown Grant for protection, while others contested the warden's powers through the courts. These challenges were met by a toughening Crown stance in the 1880s and 1890s. There was a growing assertion amongst officials and legislators of the common law view that the ownership of precious metals lay with the Crown. That position was entrenched by legislation which increased the Government's powers to enter Maori lands, whatever the status of title, and expanded definitions of the rights expressed within the Royal Prerogative to include the power to ensure the development of all mineral resources.

In this period, Maori became increasingly distanced from control of both mineral resources and the land in which they were contained. A deterioration in their position vis a vis the goldfield administration is marked, first, by the Mining Act (No 2) 1887 which provided that, 'where the Natives have ceded their lands for mining purposes, and had made a contract and conditions as to the ceding of that land, the Governor was to have the power to alter and vary the terms of that contract without the consent of the Natives'.[37] The Maori members did not speak on the Bill, but it may be noted that the measure was too rich for the blood of Seddon, although he was generally a strong advocate of the mining interest. As a member of the Opposition, he objected that the legislation took advantage of those who had given their lands into the Government's jurisdiction. He agreed that it was in the interests of mining that the contract should be altered, but pointed out that, 'there ought to be consent, and a mutual give-and-take between the two parties'.[38] Nevertheless, the Act passed.

Maori ability to withhold lands from mining operations also diminished greatly in these years. The Reserves and Endowments in Mining Districts Act 1882 extended the operation of mining legislation to all public reserves and endowments within duly proclaimed districts. Although 'reserves made for the use, support, or education of aboriginal Natives' were excluded from the Act's operation, the Governor in Council was empowered to bring any such reserves, under its jurisdiction, as he saw fit. Under section 205 of the consolidating Mining Act of 1891, the Governor could proclaim any Native reserve to come under its operation and fix the fees payable. Initially, the Government acknowledged that a distinction existed between reserves set up under court-awarded title, and lands reserved from the original agreements by which the goldfield had been opened. The latter remained closed to mining, but in 1896 an amendment declared any lands reserved from cessions for residences, cultivations or burial grounds to be available for mining purposes 'in the like manner in all respects as if they had been ceded'.[39]

Maori protested the trend of this legislation – and, in particular, at how it ate away their rights to revenues and to withhold unopened lands, without their prior knowledge of, or consent to, those changes in the law. In the debates on the Mining Act Amendment Act 1892, Taipua criticised the Government's disregard of Maori

37. NZPD, 1887, vol 59, p 280
38. Ibid
39. Section 56 of the Mining Act Amendment Act 1896

interest: 'What the Natives complained of was this: that each succeeding Parliament endeavoured to make the laws worse than those passed by the previous Parliament'.[40] Taipua also condemned the direction of Government policy towards greater control at the expense of Maori autonomy and rights, the Act setting a standard rental for licensed holdings and special claims, whereas that matter had previously been open to negotiation:

> He could not believe that such an alteration had been made with any desire to benefit the Natives. It seemed to him to be the first step towards confiscation. . . . The Government appeared to be taking year by year more absolute power with regard to the disposal of Native lands, and they proposed now to take all management from the Natives.[41]

Seddon, now in office as Minister of Mines, retreated completely from his former rhetoric of 'mutual consent'. He presented the measure as 'reinstating' Maori to the position they had occupied by the Thames goldfield cessions of 1867 to 1869, in that they were to receive £1 for every man working on the ground, and that 'and to enable this to be done, the rents were to be reduced to the nominal sum of 1s per acre'.[42] Seddon did not explain the logic of this argument. It seems, however, that the rights of Maori were to be met in one area, only by the sacrifice of their interests in another.

A move was made, also, to empower the Native Land Court to bring Maori lands within the jurisdiction of mining legislation. Clause 5 of the Bill (section 16 of the Act) allowed the Native Land Court, on investigation of title or partition, to declare the land in question as ceded for mining purposes, on application of the Governor and consent of the majority of owners. The clause was amended by the Goldfields Committee to read, 'unless a majority of the Native owners object', but as a result of Opposition criticism, was changed back to the original phrase, requiring active consent. Taipua objected, none the less, that the interests of the minority were undermined, again, without telling them that such a step was intended, or ensuring that there was sufficient provision for notice.[43]

Part of the impulse for the 1892 amendment was generated by Maori efforts at Waihi to prevent the warden from issuing an occupation licence giving surface rights over land at Mangakiri–Waitete, reserved under the Native Land Act. In the view of the warden, the block which had not been excepted from the Ohinemuri goldfield lease was 'subject in all respects to the operation of the Mining Act and Regulations as other native lands held by the Crown for goldmining purposes'.[44] Ngati Koi, the owners, objected before the warden's own court, that the original mining cession had been superseded by the Native Land Court award which had issued title without any mining right reserved to the Crown.[45] Investigation by the warden revealed that title to other blocks in the district were in a similarly

40. NZPD, 1892, vol 78, p 429
41. Ibid
42. Ibid, p 430
43. Ibid, p 385
44. Northcroft to Under-Secretary of Mines, 29 September 1893, MD 1 93/1108
45. Warden to Under-Secretary of Mines, 30 October 1891, BACL A 208/29

unsatisfactory state. On Sheridan's suggestion, he adjourned the case until after the next session, so that a clause might be inserted into the mining legislation, 'rectifying the mistake'.[46] Reassured by section 17 of the 1892 Act, and arguing that the Maori grantees were not themselves using the block for agricultural purposes, the warden then proceeded to allow pastoral leases to issue over the Mangakiri–Waitete reserve, except for one or two acres which showed signs of cultivation.[47] When Ngati Koi complained, they were informed that the warden had acted in accordance with the law, and that the Government could not interfere.[48]

In 1895, complications arose again over lands within the Ohinemuri goldfield, with reference to the status of Maori rights to minerals. Waihi blocks nos 1 to 6 had been reserved from the original lease, and had been subsequently awarded to the Maori owners with a specific restriction on their right to alienate the right to mine for gold or other precious metals to private persons except with the written consent of a Native Land Court judge. George Vesey Stewart later claimed to have purchased the 'freehold' of these blocks, but since no such approval had been gained, the mining rights were considered, at least at first, to remain vested in Maori.[49] When gold was found in the area, Te Moananui offered to cede the mining rights to the Government. This offer was initially accepted, but Sheridan later rejected the deed drawn up by Mair, because it implied that Stewart's claim to the surface property was invalid. He now took the position that the restriction in the grant was ultra vires because it implied that the right to mine was vested in the 'Native Owners' rather than in the Crown.[50] The Minister of Mines, Cadman, instructed that the opinion of the Solicitor General be sought 'whether or not the Government has the power to throw it open for mining without negotiating further with the Native owners'. Cooper's report set out the current legal position regarding the ownership of gold and precious metals. His opinion was firmly bedded in the decisions of courts of law, citing the *Case of Mines*, *Johns v Rivers*, and *Woolley v The Attorney-General of Victoria*. In his opinion, the restriction in the grant was 'mere surplusage' since 'the Native owners never had the right to the gold and silver within these lands'. [51]

The Government firmly espoused the position that the Crown did not need to purchase the right to mine from Maori, but already held it.[52] Troubled by challenges to the warden's issue of licences under mining legislation, the Government clarified and expanded its powers through statutory provision. Since 1873, the Crown had reserved the power to 'resume' lands held by Europeans under title granted after that date. The Government now extended the right to lands held under title issued prior to 1873, on the payment of compensation for damage to 'surface rights'. Section 56 also declared:

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46. Warden to Under-Secretary, Department of Justice, March 1892, BACL A 208/29
47. Northcroft to Under-Secretary of Mines, 29 September 1893, MD 1 93/1108
48. Cadman memo, 10 October 1893, MD 1 93/1108. See also MD 1 94/1598.
49. Sheridan to Native Minister, 21 June 1892, NLP 96/15, held with MD 1 97/1664
50. Sheridan to Eliott, 11 June 1896, NLP 96/15, held with MD 1 97/1664
51. Ibid
52. NZPD, 1896, vol 95, p 43

> Whereas in many cases aboriginal Natives, when ceding blocks of land to the Crown for mining purposes, have reserved certain areas used or intended to be used by them as residences, cultivations, burial grounds, or otherwise, and it is expedient that such areas should be available for mining purposes, provided that the use for which they were so reserved is not thereby prejudicially affected: . . . such areas shall . . . be available for mining purposes in like manner . . . as if they had been ceded . . . for those purposes . . .

Two contrasting opinions were expressed in the debates on the Mining Amendment Bill. The Government's position was that the right of the Crown to the Royal metals had been allowed to sleep, but had never been abandoned, and that, it was, therefore, also 'for the Crown to assert these rights in such a manner as [would] best conserve the interests of the colony'.[53] The Bill was, however, strongly opposed by Stout and other members who questioned the application of the common law assumptions of royal ownership of gold and silver to the New Zealand situation. While attention focused largely on the extension of resumptive powers, questions of native title and the status of the Treaty were intrinsic to the debate. Heke, in particular, stressed that the Treaty was still 'alive'. Citing article 2, he argued:

> I think that the rights of the Natives to their properties and to the gold and silver and other minerals thereon . . . were not conveyed to the Crown by the fact of the Natives signing the Treaty of Waitangi. I state this: that the fact of the Natives signing on the one hand and the Queen on the other hand agreeing upon a treaty, which confirms an obligation between two parties, shows completely that the land property and every other property contained thereon . . . belonged to the Natives.[54]

The Government, in the person of Seddon, counter-argued that, if the Treaty had any relevance, it lay in the transfer of sovereignty: 'by the rights ceded to the sovereignty of Her Majesty by the Natives in that treaty, per se, the right to Royal metals passes to Her Majesty'.[55] For most supporters of the Bill, however, the Treaty had no bearing; they felt that it had nothing to say on the specific question, no status in law, as had been confirmed by *Parata v Bishop of Wellington*, and no role in a progressive society.[56]

Even opponents of the measure were reluctant to deny the Crown's right to precious metals, their opposition being framed largely in terms of infringement of surface rights. Some, however, did see a doubt existing as to the operation of the royal prerogative in New Zealand. They pointed out that, in past dealings, the Government had obscured its prerogative claim to minerals: 'Whether from motives of expediency or sentiment, the colony [had] not deemed it necessary to declare what was implied'.[57] In the view of the Opposition, Maori could have had no idea,

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53. Ibid, p 307
54. Ibid, p 312
55. Ibid
56. Ibid, pp 280, 305
57. Ibid, p 290

at the time of the Treaty-signing, that there was 'any such thing as a Royal prerogative to take away the precious metals lying under the surface of the soil'.[58] Heke saw the cession agreements negotiated by past governments as amounting to a recognition of Maori rights to mineral. He argued that 'since 1852 the right of the Natives to the metals and to the lands carrying those metals has been recognised. It was recognised by the then Governor and by the then Government, and up to the present day that right still exists'.[59] Heke and the Opposition pointed to the promises surrounding the Urewera Native Reserve Act as the most recent example of Government seeming to endorse Maori ownership of subsurface resources of their land. Stout, who led the attack, read out to the House, a memorandum written by Seddon to Tuhoe:

> I think, too, that should gold be found in your land the benefit accruing therefrom should be participated in by the hapus owning the land where the gold is discovered; and that before the goldfield is opened arrangements should be made between the Government and the Maoris upon which the field is to be worked either by payment of a royalty per pound or per ounce of the amount received from the working to the owners of the land, or that the balance after paying the expenses of administration of the goldfield, and that the balance on the issue of licenses and miners' rights . . . be paid to the owners of the land . . .[60]

The Government countered these accusations by reliance on common law precepts. Seddon pointed to the distinction in law between surface and mineral rights, stating 'What has been recognised in respect to the Thames has been this: that the right of the Natives has been recognised on account of them owning the lands, not on account of the gold in the lands'. Stout interjected, 'You gave them part of the gold', to which Seddon replied, 'Certainly not; we gave them no part of the gold: we gave them the miners' rights and the business licenses'.[61] He stressed, too, that gold duty had never been paid to Maori.[62]

Later that year, grantees of Waikawau reserves which had been specifically excepted from the original cession of the surrounding Hauraki goldfield, complained that the warden had issued claims which infringed on their property. Kensington of the Justice Department, which now had responsibility for Maori matters, acknowledged that the granting of mining claims over the blocks would have been regarded formerly as illegal, since they had been specifically excluded from the initial cession, and by the Auckland Proclamation Validation Act of 1869. The Amendment Act had, however, opened all Native Reserves for mining. The Government wiped its hands of the matter, arguing that the issue lay between

58. Ibid, p 303
59. Ibid, p 314
60. Ibid, p 285; see also pp 295, 303
61. Ibid, pp 307–308
62. Ibid, p 316

private parties – the owners and the mining grantee.[63] It is not known whether this matter was pursued through the courts.

63. 'Memo re Native Reserves . . .', 29 January 1897, MD 1 97/346

CHAPTER 4

# MINERALS AND MAORI LAND IN THE TWENTIETH CENTURY

## 4.1 MINING LEGISLATION, 1898 TO 1930

A further consolidating measure was passed in 1898. The issue of mining on Maori land was not debated, but the Act was significant in providing, more fully, for the Native Land Court as a mechanism of opening land to mining operations. Section 28 enabled the Maori Land Court to declare Maori land to be open for prospecting, or to be ceded to the Crown for mining purposes on such terms as were agreed by the majority of Maori owners and the Governor General. Section 25 provided that all fees, rents, and royalties should be payable by the Crown to Maori or their trustees.

Although the flurry of mining legislative activity continued into the first two decades of the twentieth century, provisions relating to Maori land remained largely unchanged, except for an amendment in 1910, which quietly dropped the requirement for consent of a majority of Maori to the opening of their lands. Section 19 of the Mining Amendment Act 1910 stated that the words 'and with the written or verbal consent of a majority of Native owners' would be omitted from section 28(1) of the principal Act of 1908, empowering the Native Land Court to declare land ceded for mining purposes. In contrast to 1892, when a similar move had been thwarted by strong opposition within the House, the 1910 amendment provoked no comment or objection.

## 4.2 GOLDFIELD REVENUES, 1900 TO 1928

In 1900, Treasury decided to alter the system by which revenues would be paid out. Previously, the whole amount generated on lands subject to the original cessions was remitted to the paying officer, who allocated those moneys according to the current ownership. Now, the amount considered to be owing to local authorities was remitted to them, directly. Subsequently, some suspicion attached to this decision since it was not possible to say for certain whether payments made to such bodies came entirely from lands the freehold of which had been acquired by the Government.[1] With the fragmentation of holdings, and the much reduced returns on goldfield lands still in Maori hands, distribution of revenues broke down. By 1917,

1. See NZPD, vol 373, 1971, p 2526

a large amount – some £1400 – was unclaimed and repaid to the Treasury from the Imprest Account. In that year, the Imprest Account was closed. Payments were then made through the Post Office on the certificate of the paying officer. Treasury officials later admitted that this was a 'retrograde step' for Maori, as Postmasters returned most vouchers to the paying officer, having been unable to trace the person entitled to receive payment. As a result, only those owners who applied to that officer were actually paid.[2]

## 4.3 HAURAKI GOLDFIELD PETITIONS

Hauraki lay quiescent on goldfield matters for some 15 years. In 1919, however, Maori interest in the goldfield arrangements rekindled, sparked initially by queries into the fate of revenues on adjacent blocks at Thames (Te Pohau 3 and Kapua 2). When questioned on the matter, the receiver of the goldfield revenues, based in Waihi, which was now the main centre of mining activity, complained that the system was unsatisfactory. None of the Maori concerned lived at Waihi; the lack of business knowledge on the part of Maori made it almost impossible to deal with them, without an interpreter; and the office was not kept up to date with successions and other circumstances to do with title so that the lists of owners were 'quite unreliable'.[3] The registrar of the land court subsequently admitted that incorrect information had been supplied, and it was ascertained that a sum of £32 was owing.[4] Further queries regarding Te Uriwha A and B revealed that other amounts were outstanding. It was suggested by Treasury that the distribution of those moneys should be taken over by the Maori Land Board from the Mining Registrar and the Receiver of Gold Revenues.[5] In the meantime, the books at Waihi were examined by an official of the Native Land Court, revealing that although the amounts owed on each individual block were often small, in total, as much as £1282 was outstanding. Stubbings reported that the books were a 'disgrace'; that wrong blocks and wrong amounts had been credited, amounts omitted altogether or entered at random in the accounts, while some block ledgers had been closed by payments, not to the beneficiaries but to the Public Account to be used for general purposes. The figures for closed accounts were not included in Stubbings' estimates which meant that the full extent of revenues owing was still not known.[6]

Again, one branch of Government – in this instance, Treasury – sought to place the burden of administration on Maori. The Paymaster General refused to reimburse Stubbings for travel expenses as 'only being concerned with payment of revenues to natives', and suggested that the amount be deducted from the first distribution made by officers of the land court.[7] This assessment of responsibility

2. 'Hauraki Goldfields Native Revenues: Treasury Statement relative to the Petitions', MA 13/35C
3. Wilson to Warden, 8 November 1919, MA 1 19/1/193, vol 1
4. Registrar of Native Land Court to Under-Secretary, Native Department, 12 September 1923, MA 1 19/1/193, vol 1
5. Under-Secretary of Native Department to Registrar of Native Land Court, 19 June 1928, MA 1 19/1/193, vol 1
6. Stubbings to Under-Secretary, Native Department, 6 September 1928, MA 1 19/1/193, vol 1

was initially adopted when the Waikato Maori Land Board demanded a 5 percent commission on revenues collected, but the Crown Law Office advised, subsequently, that there 'could be no complete discharge for Treasury until the money actually reached the natives entitled' and that 'any expenses incurred . . . could not be thrown upon the native owner'.[8] The money was duly paid over to the Waikato–Maniapoto Maori Land Board for distribution. In 1935, further investigation of 'unclaimed balances' which had been paid to the Public Account revealed that another £1030 was owing to Maori.[9] At a meeting of the Hauraki tribes, it was decided that this amount should be held as a fund for the benefit of all, rather than being disbursed in trivial, individual amounts, and that a body be established by Act to administer those funds.[10] Government decided that the money should be kept intact, until the question of its ultimate disposal was settled. It was held in the interim by the Waikato–Maniapoto Land Board which paid the same interest on the amount, as it did to beneficiaries under section 281 of the Native Land Act 1931.[11] Section 17 of the Native Purposes Act 1938 authorised the application of that goldfield revenue to the general purposes of Ngati Maru and associated tribes. The outstanding amount was declared a common fund to be held and administered by a committee of six to 10 members to be appointed by the court. The committee was empowered, on approval of the court, to:

> expend the moneys in the fund for any purpose having for its object the advancement of the interests and general welfare, or for the general benefit of one or more of the said tribes [Ngati Maru, Ngati Whanaunga, Ngati Tamatera, and associated tribes] or section . . . of the said tribes.

## 4.4 THE MacCORMICK COMMISSION

### 4.4.1 The Hauraki claim

In the meantime, Hauraki Maori had begun, once again, to petition about the conduct of the Government with reference to the goldfield lands and agreements. Three petitions were referred to the Native Land Court for inquiry and report under section 22 of the Native Purposes Act 1935: petition 23 of 1931 from Rihitoto and 83 others asking for the payment of revenues from mining rights for the lands from Moehau to Te Aroha; petition 139 of 1931 from Merea Wikirihi and 22 others from Ngati Tamatera alleging that revenues had been paid into the Consolidated Fund and asking for more information; and no 196/1935 from Hoani Te Anini and 501 others. The Native Affairs Committee of that year also recommended inquiry into a second petition from Rihototo (petition 347 of 1935).

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7. Paymaster General to Under-Secretary, Native Department, 16 August 1928, MA 1 19/1/193, vol 1
8. A M Currie to Secretary to Treasury, 1 October 1928, MA 1 19/1/193, vol 1
9. Registrar to Paymaster General, 20 September 1935, MA 1 19/1/193, vol 1
10. Nikora, Paraone and 3 others to Native Minister, 17 October 1935, MA 1 19/1/193, vol 1
11. Registrar to Under-Secretary of Native Department, 19 December 1935. This sum was paid on 25 May 1936. See Secretary to Treasury to Native Under-Secretary, 14 February 1938, MA 1 19/1/193, vol 1.

The Hauraki petitioners were inspired by a general sense of grievance at the apparent lack of benefit from the mining, the subsequent loss of their lands, and the failure to include all within allocations of land and resources. They lacked, however, specific knowledge of the details of transactions which had taken place 50 years ago. Hori Watene addressed the Native Affairs Committee in terms that stressed the current landlessness of, and lack of attention paid to the Hauraki people. In an allegorical statement, Watene suggested that the first carcass of gold had been scarcely eaten before the ravens flew to a second, comprising the rich Hauraki Plains which he had seen 'devoured and traversed by the wheels of Industry and Progress' in his own lifetime. Despite all these 'developments' he could 'safely say that all the Maori farmers operating in the Hauraki District today' could be 'counted on the tips of his fingers'. A third carcass comprised the Hauraki Gulf and its fishing rights on which Maori in the district were now largely reliant. In Watene's view, the Hauraki people now needed recognition of their ownership of other resources to allow them to participate fully in the twentieth century economy:

> But in the advanced days of education, citizenship and progress, the Maori people of Hauraki cannot hope to keep up the pace with the Pakehas, or with their more fortunate brothers of Waikato, Rotorua, East Coast and Ngapuhi, who are being assisted according to their needs of today.[12]

He told the committee:

> The purpose, then, of our mission here today may be summed up in this manner. We have come to search for the remnants of the missing carcasses of our natural resources, in this instance – the Hauraki Maoris Gold Revenues Claim.[13]

The matter having been referred to the inquiry of the Maori Land Court, a number of adjournments were required to allow for the clarification of the petitioners' claim and for the preparation of the case on both sides. It was clear, however, that the claimants faced a task well beyond their resources. MacCormick, the chief judge of the Maori Land Court, who presided over the commission, informed the Native Department that Maori would require 'competent assistance in an inquiry which apparently will be far-reaching and complicated'.[14] Officials were, however, reluctant, to allow claimants access to the records on which their claim would necessarily be based. Both the judge and departmental officials insisted that the petitioners should supply 'definite information as to the nature of their claims or allegations . . .' and to name particular blocks to be investigated. At a meeting between seven Hauraki representatives and two officials from the Lands and the Native Departments, presided over by MacCormick in January 1937, it was decided that Ohinemuri, Moehau, Waikawau and Omahu West should be looked at more fully.[15] The Native Department and Crown Law Office advised, however,

12. 'Copy of Minutes Taken for the Representatives of Ngati Maru Present at the Second Hearing of the Petition of Rihototo Mataia', 6 March 1935, app A in 'Hauraki Goldfields Native Revenue, Treasury Statement relative to Petitions', MA 13/35C
13. Ibid
14. C MacCormick to Under-Secretary, Native Department, 29 August 1939, MA 1 19/1/193, vol 1

against fulfilling a request from claimant counsel to view Government files, arguing that it was undesirable 'to allow the natives access to records which will enable them to frame the more direct allegations which they have been asked to make and have not yet done'. According to the Crown solicitor, J Prenderville, the records were liable to misinterpretation, and such an inspection 'might seriously embarrass the Crown in its answer to the Petitions and give rise to a lot of allegations that might be fanciful but very difficult to answer'. Permission was denied, accordingly, by the Native Minister.[16]

The focus of the inquiry was gradually defined. Early Hauraki requests to include issues of foreshore and adequacy of the consideration for lands in the district were rejected; the one, because the question was held to be settled by the common law; the other, because the Native Department thought it unreasonable to reopen the question of purchase money after 70 years had lapsed.[17] Hauraki complaint as presented before MacCormick concentrated on two different aspects of its relationship with the Crown; the payment of revenues under the goldfield agreements, and the transfer of the freehold of the goldfield blocks into the hands of the Government.

Maori were expected to prove illegal doing on the part of the Government, being precluded by the state of legal understandings at that time, from arguing their case on grounds based on Treaty rights of rangatiratanga, partnership, consultation, and mutual benefit. An argument that Maori had owned the gold itself was, thus, not central to their case as presented in the 1930s. It was their contention, none the less, that Maori had possessed 'everything there was to possess in connection with the soil', and that the English rule regarding 'royal metals' should not apply:

> It has been held in certain cases in Victoria that that is the law in Australia, but we maintain, although it is not absolutely necessary for our case, we maintain the position in New Zealand was different – that the natives under the Treaty of Waitangi retained for themselves everything except the 'kawanatanga' . . . and that the very fact that the Crown subsequently entered into agreements with the natives relative to the gold shows that at that early stage the rights of the natives were recognised. It is interesting . . . to look at some of those old agreements and see that those old Native Chiefs clearly separated in their minds the gold from the land.[18]

Argument developed along two distinct branches; that under the deeds of cession, the whole of the goldfield revenue belonged to Maori and did not pass with the freehold in sales to the Crown and settlers; and secondly, that the Government occupied a fiduciary position as a consequence of those deeds. As part of the first line of argument, counsel for the Hauraki petitioners pointed to the wording of the

15. 'Hauraki Goldfields Petitions: Notes taken by Shepherd at Conference . . .', 22 January 1937, MA 1 19/1/193, vol 1
16. Crown Solicitor to Sullivan and Winter, 18 June 1937 and memo, 22 June 1837; Crown Solicitor to Under-Secretary, Native Department, 3 February 1938. For denial of access, see Native Under-Secretary to Crown Solicitor, 14 February 1938, MA 1 19/1/193, vol 2.
17. 'Hauraki Goldfields Petitions: Notes taken by Shepherd at Conference . . .', 22 January 1937, MA 1 19/1/193, vol 1
18. 'Notes of continuation of Inquiry of January 1938', 6 March 1939, B 9, MA 13/35c

deeds of cession, guaranteeing revenues to the signatories and their 'heirs', and to various statutes preserving those agreements. In the second line of attack, counsel argued that the deeds had created a fiduciary obligation in which the Crown had failed. The first aspect of that failure was with regard to the gold revenues and timber royalties generated by the lands subject to those deeds. Counsel pointed to the regularity of complaint about maladministration, and to the debits from the account to pay for the services of inspection and distribution. It was submitted further, that the Crown had breached that trust, also, by the fraudulent purchase of those lands. Counsel suggested that some of the purchase moneys had not been paid, prices were inadequate, deeds defective, and that advances had been made on lands prior to title investigation and definition of the extent of the share belonging to the recipient. Underlying this line of attack, was the argument that the Crown as trustee for Maori under the deeds of cession should have observed the principle that a trustee was not entitled to purchase for his own benefit, any of the property included in the trust. Counsel drew the particular attention of the court to the circumstances under which the Ohinemuri goldfield had been purchased and queried references in the record, to £15,000 that had had to be paid back to the Government out of mining revenues in that block.[19]

The Government strongly defended the past actions of the Crown. Norman Smith of the Maori Affairs Department prepared a statement of the circumstances surrounding the purchase of the blocks chosen for investigation, while Dunstan, from Treasury, drew up a year by year statement from account books and ledgers, of the goldfield revenues received and the amounts paid out. Details of payments were incomplete, however, because many of the old records had been destroyed. In particular, transactions in the Miners' Rights Deposit Account could not be found with the result that it was not possible to ascertain to whom payments had gone.[20] It is this same fact which makes it impossible for historians to trace where revenues went, and to say definitively whether Maori received all moneys to which they were entitled under cession agreements and subsequent legislation, or how much of that money was charged to expenses of administration or distributed to others.

The report from Treasury upheld the past activities of Crown agents, pointing out that the early petitions of the Hauraki people in the 1870s and early 1880s had not been supported by the Native Affairs Committee. In Treasury's opinion, the correspondence surrounding those petitions 'indicated very forcibly the unsupported and exorbitant demands made by Natives'. Citing documents that suggested that allegations of neglect and corruption on the part of the Inspector of Miners' Rights in those years were false, Treasury argued further, that payment of such an official to oversee the practical administration of the cession agreements, by Maori themselves, was fair and acceptable. It was emphasised that adequate scrutiny had been made of the system during the nineteenth century, and that any past problems in the payment of revenues under the agreements (the failure to make early payments at Coromandel, the temporary borrowing from the account in 1868

19. For a more detailed discussion regarding the lease and alienation of Ohinemuri, see Wai 100, 'Historical Overview' report.
20. Crown Solicitor to Under-Secretary, Native Department, 3 February 1938; Secretary of Treasury to Crown Solicitor, 21 February 1938, MA 1 19/1/193, vol 2

to 1869, and the accumulation of unclaimed funds in the early twentieth century) had been corrected ultimately.[21] The frequent doubts expressed by Native Department officials as to the equity of charging Maori for the administration of revenues were not mentioned; nor the criticisms of administrative failure contained in the Mines Department record (included among the list of files examined by Treasury for its submission). It is apparent, too, that the strong criticisms on file from the Government's officer, Wilkinson, on the impact of legislation on the understandings contained in the deeds of cession and on 'native revenues', were considered to fall outside the scope of Treasury's report. Nor could Treasury records address the question of whether all those entitled to revenues had received them. It was clear, however, from the little evidence available that distribution in the most lucrative years of the Thames and Coromandel fields had been left to the discretion of a limited number of chiefs, some of whom were noted for their adoption of the Victorian trappings of leisured status as well as more traditional forms of displays of mana. At the time, these persons were pointed to as examples of successful Maori adoption of English modes of gentility and acceptance of a new order. In the twentieth century, this fact was regretted but seen as typical of the times and outside the responsibility of the current Government.

Counsel for the Crown outlined the history of payments to Europeans and local bodies, resulting from the transfer of freehold, discussed the intent of mining statutes dealing with ceded lands, and argued against any interpretation of the deeds as creating a trust, seeing them as merely 'a bargain for a right or easement . . . a profit a prendre that created no trust'.[22] The Crown in its defence, was concerned not with the tactics employed by its agents, in particular, the deliberate undermining of tribal tenure to force open land, which strategy had been noted by Smith in his internal reports – but rather, with a strict accounting of payments to individuals in the purchase of the freehold of those goldfield blocks under particular scrutiny.

## 4.5 FINDING OF THE COMMISSION

The court found the Crown's evidence to be satisfactory in that it could demonstrate the disbursement of goldfield revenues, and payment for land when the freehold was purchased. MacCormick could not support the legal arguments of the claimants, pointing out that it had been conceded by their counsel that there was no case enforceable under law. MacCormick found, 'with doubt and hesitation', that it had not been shown, affirmatively, that the true intent and meaning of the deeds of cession was that the mining revenues should go to the Maori owners notwithstanding the extinguishment of their title to the land. He conceded, however, there may have been some doubt as to whether this point had been fully explained to the vendors.[23] The statutes cited by claimant counsel in support of their contention that successive governments had intended to preserve the payment of

21. 'Hauraki Goldfields Native Revenue, Treasury Statement relative to petitions', MA 13/35C
22. 'Notes of Hauraki Goldfields Inquiry', 6 March 1939, H8–H9, J5, MA 13/35C
23. 'The Native Purposes Act, 1935, Report and Recommendation . . .', AJHR, 1940, G-6A, p 5

revenues to Maori, were, in fact, intended to ensure that no rights of the Crown were prejudicially affected by any subsequent change in title. Nor, in the court's opinion, had governments of the past breached any legal trust in the land itself. The Crown had become a fiduciary agent merely responsible to Maori for 'its actions in regard to mining rights and the revenues collected, but not further or otherwise'.[24] The court did not see anything sufficient to support the contention that the Crown had intended to keep alive the rights of Maori even though the land had been sold, and thus, a claim to revenues that had been paid over to local bodies and private individuals (assessed at £24,717 10s 11d). MacCormick pointed out that the Crown had amply demonstrated its intentions by immediately ceasing to pay out revenues on the purchase of the freehold, and that there had been long acquiescence, by Maori, in that understanding.

On the other hand, the Crown could not render any complete or satisfactory account of the revenue received and expended by it, firstly, because the long delay had made it impossible to inspect many former records, and secondly, owing to the methods adopted for distribution of revenues due to Maori. It was not possible to say definitely, whether accounts faithfully reflected the numbers on the field, all fees, and revenues, nor, whether all right-holders received their due. Since the turn of the century, Treasury records had not distinguished between payments to Maori and others, so it was impossible to tell, also, 'whether the very large payments made to local bodies came entirely from lands the freehold of which had been acquired by the Crown'.[25]

The court found no legal wrong-doing on the part of the Crown and its agents, being satisfied by the accounts produced by Treasury, but did express some unease about the nature of the goldfield transactions. MacCormick had told the petitioners that it was not within the compass of the court to deal with the general moral questions they had raised regarding the loss of their tribal lands and resources, and regarding the Crown's role in that process.[26] In his view, however, Maori had made 'very bad bargains', and '[h]ad the transactions been subject to judicial review it [was] unlikely that they would have been approved, at all events without modification'. On the other hand, MacCormick thought that any grievance of Hauraki was lessened by the similar character of other transactions in the nineteenth century, and because it did not necessarily follow that it was such a bad bargain in light of the knowledge available at the time.[27] The court recommended, none the less, that the Government make a limited payment to the Hauraki tribes, in view of the fact that most Maori in the district were now 'badly off', and found themselves, 'mainly by reason of their selling their lands . . . in a position where they [had] only small areas of land suitable for development or farming remaining to them':

> That in view of the very large sums of money received by the Crown by reason of its purchases of the freehold of land previously ceded to it for mining purposes, and the doubt whether the Natives fully appreciated the effect of their sales, and the

24. Ibid, p 7
25. Ibid, p 4
26. 'Notes of Hauraki Goldfields Inquiry', 6 March 1939, pp G1–G3, MA 13/35c
27. Ibid, p 7

> further doubt as to the proper distribution to the Natives of the moneys they were entitled to, the advisers of the Crown might well consider favourably the making of an ex gratia payment for the benefit of the Natives whom the petitioners represent.[28]

MacCormick suggested that a 'substantial' sum to the extent of £30,000 to £40,000 would be necessary to be of any use and that a fund should be created for general purposes, to be administered by a board or committee under the supervision of the court, or the Native Minister. The implementation of his recommendations was, however, left entirely to the goodwill of the Crown.

## 4.6 GOVERNMENT RESPONSE TO MACCORMICK FINDINGS

The Native Affairs Committee referred the court's report to the Government for consideration, but no action was taken. For the next 50 years, Hauraki attempted, without success, to win Government acknowledgement of MacCormick's recommendation, being thwarted by political turnings, narrow official construction of responsibility, reluctance to admit liability for nineteenth century transactions, and opposition from Treasury. The tone of MacCormick's report was strongly coloured by the outbreak of World War II. He suggested that the time was inopportune to decide on any payment and that the question might be considered later when the circumstances were better. The Government immediately distanced itself from any obligation to act on the court's recommendations. MacCormick's suggestion that any payment 'out of the bounty and grace of the Crown' could be deferred, was endorsed by Campbell, the Under-Secretary of Native Affairs. Langstone minuted Campbell's report, in November 1940, 'No action should be taken in the meantime'; and that, it appeared to him, '[i]n fact . . . that the Natives [were] indebted to the Crown'.[29] That decision was affirmed in March 1941, and approved by Cabinet in August of that year.

It is apparent that there was as little official will, when the war ended, to give substance to the court's recommendation. In 1946, Shepherd, reluctant to open the door to similar claims based on inequities in early contracts between Maori and the Crown, advised his minister (H G R Mason) that the recommended award was not 'referable to any certain loss or definite injustice suffered', and incorrectly surmising a former absence of complaint, suggested that the doctrine of estoppel applied.[30] Mason noted his opinion that the claim was weak, but that it could be marked down for provisional inclusion in a proposed commission on outstanding Maori claims. The view that the goldfield claim was inconclusive, was also taken by Ropiha, Shepherd's successor as under-secretary, who argued that Hauraki had given up their claim to mineral and lands sold in the nineteenth century: 'Law, equity, and commonsense alike discourage stale demands where a party has slept upon his rights and acquiesced for a great length of time'. [31]

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28. Ibid, p 8
29. See 'Memo for Native Minister', 11 November 1940, MA 1 19/1/193, vol 2
30. 'Memo for Native Minister', 30 April 1946, MA 1 19/1/193, vol 2
31. 'Memo for Minister of Maori Affairs', 2 September 1949, MA 1 19/1/193, vol 3

When the war ended, Hauraki raised the question of the award proposed by the court, hoping to use that sum to promote the general benefit of their people. At a meeting held at Thames, a motion by Tukukino was carried unanimously, that:

> The sum of £30,000 or £40,000 granted by the Government to them be accepted, so as to enable them to raise the general standard of living amongst the people as a whole, who are interested in the claim, and to aid them in farming purposes etc, and the amenities of education and rehabilitation of returned servicemen of the tribe.[32]

A representation asking for a monetary settlement to be spent for the general benefit of Maori in the district, was repeated to Prime Minister Fraser, in November 1947. A number of points were emphasised: that the areas concerned included some of the most valuable mining areas; that Maori had been incapable of appreciating the value of their lands and had been reliant on the advice of Crown agents, while successive Governments had pushed inexorably towards acquisition of the freehold of those areas; and that Hauraki were 'practically landless' that day, as a result. With reference to the goldfield revenues, there was also strong doubt as to the correct distribution.[33] At a meeting held two years later, in Rotorua, which was attended by the four Maori members of Parliament, and Maori Affairs' officials, the Hauraki delegation asked for a cash payment in settlement, of £40,000, or £1600 annually, again proposing that such money be spent for the general benefit of Maori in the district. Fraser was sympathetic, informing Hauraki representatives that he was personally inclined towards a solution along the lines proposed, although he could not give a definite answer until Cabinet had considered the matter.[34] The election intervened, resulting in a change of Government before the matter was addressed. A year later, Hauraki claimants visited E C Corbett, the new Minister of Maori Affairs. Recognising that the court's findings, followed by Fraser's statement 'really constituted an understanding which could hardly be disregarded now', Corbett instructed that a submission be presented to Treasury and Cabinet, recommending a settlement of £30,000. At the same time, he stressed to the claimants that, 'whatever was done would be above the legal rights'.[35] The proposal ran into strong opposition from Treasury, on the grounds that there was no claim enforceable under law. The Government remained reluctant to admit an historical claim that might open the doors to many similar complaints regarding the equity of early transactions. Adopting Treasury's view, Cabinet took note that:

> When these rights were acquired in 1867, 1868 and 1875, payment was then made in all good faith, and that the Court which considered the claim had not found any grounds, or indeed made recommendation, which would provide a reasonable basis for a special payment at this distance of time.[36]

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32. Mahutu Makiwhara to Maori Welfare Officer, 17 May 1947, MA 1 19/1/193, vol 3
33. 'Notes of Representations made to Native Minister . . .', 12 November 1947, MA 1 19/1/193, vol 3
34. Ibid
35. 'Notes of Representations to Hon Minister of Maori Affairs', and 'Memo for Under-Secretary', 6 December 1950, MA 1 19/1/193, vol 3
36. 'Secretary to Treasury to Minister of Finance', 9 April 1951, and 'Secretary of Cabinet to Minister of Maori Affairs', 24 May 1951, MA 1 19/1/193, vol 3

Further petitions were lodged in 1953, one from Puti Tipene Watene, Barney Raukopa and 30 others from Marutuahu, and from Ngati Porou whose lands at Haratunga had also been opened by cession agreement as a result of Mackay's negotiations for the western side of the peninsula in the late 1860s, and another from Ngati Porou alone, led by Ahiwera Awatere. Both petitions prayed that the House would give effect to MacCormick's recommendation. These requests were repeated and, in 1959, the Maori Affairs Committee finally recommended the petition of Raukopa, Watene, and 106 others (petition 29 of 1958), for 'favourable consideration'. The issue was picked up by the Nash Government in the following year. In a written representation, Hauraki emphasised the commitments they understood to have been given, stating that they were 'victims of the most cruel fraud perpetrated', if the intention of the first Labour Government had not been to settle, and that 'these people today are still suffering under the handicaps of those land purchase days and are the most landless and the most backward of all Maori Tribes'.[37] Treasury again reported adversely on the claim, adding to reasoning already stated in previous deliberations, the argument that the Petitions Committee had only called for 'favourable' rather than 'most favourable' consideration.[38] J K Hunn, as Acting Secretary for Maori Affairs, recommended, however, that the claim be satisfied in view of the 'moral effect' of a former chief judge's finding which had failed to rule categorically, that the grievance was unfounded. In Hunn's view, it was not possible to refuse satisfaction since successive Governments had treated the claim 'with respect and some degree of sympathy'. He pointed out that:

> Although the adverse Treasury report is no doubt fully justified in law, and perhaps even in equity, nevertheless it is difficult to see how the Government, at this late stage in the history of the petitions can rely on legal defences to deny the claim.[39]

Nash endorsed this view and concluded that the claim 'warrant[ed] settlement', to be considered in the following year. Again, the Government fell before any action was taken. His successor, as Minister of Maori Affairs, J R Hanan, resubmitted the matter for Cabinet consideration, arguing that past demonstrations of sympathy, the likelihood of continuing complaint, and the recent recommendation by the Petitions Committee, all pointed to the need for settlement. Treasury officials immediately expressed concern, that 'the case perhaps could open the way for a revival of the claims on the sale of Horowhenua, Wanganui and Wellington and New Plymouth' and asked that the question be reconsidered.[40] Hunn, when applied to, repeated his earlier advice, that 'morally, if not legally' the claim should be settled, stating that the question of future claims was beyond his control. Hanan, however, minuted Hunn's letter, 'At present no action, bring up in May 1962', and the matter was let drop, subsequently.[41] When the Labour Government came into power under Norman Kirk, in late 1972, MacCormick's

37. 'Hauraki Goldfields Claim', undated, MA 1/19/193, vol 4
38. Secretary to Treasury to Minister of Finance, 15 October 1959, MA 1/19/193, vol 4
39. J K Hunn to Minister of Maori Affairs, 30 June 1960, MA 1/19/193, vol 4
40. 'Memo to McKay', 7 June 1861, MA 1/19/193, vol 4
41. J K Hunn to Minister of Maori Affairs, 3 July 1961 and J R Hanan minute, 5 July 1861, MA 1/19/193, vol 4

recommendation was resubmitted by the Minister of Maori Affairs (M Rata) for the Cabinet to consider. Election defeat again intervened before any action was taken.

## 4.7 MINING AND MAORI LAND AFTER WORLD WAR II

In the 1890s, Hauraki Maori had protested strongly against the warden's exercise of powers, under mining legislation, over their lands. This issue resurfaced some 30 years later, over the granting of resident site licences on Maori ceded lands. Resident site licences were originally intended to provide housing for miners in townships such as Shortland (Thames), Coromandel, and Te Aroha. Since the land belonged to Maori not the Crown, the rents for sites held under such licences went to them until they sold the properties concerned. Those rents were, however, set at artificially low levels, while the decline of mining in much of the region meant that site licences were being issued for purposes totally unconnected with the original intent behind the legislation which had created them. Under section 103 of the 1926 Act, which represented a legislative reiteration of rules established in the late nineteenth century, the warden granted a number of resident and business site licences in the Thames and Coromandel areas, those sites being used later by the licensees to run stock, for holidays, and to build motel units.

In 1948, the Department of Maori Affairs objected when the Mines Department contemplated the issue of a site licence over part of Hape North block. G P Shepherd, the Under-Secretary of Maori Affairs, pointed out that section 32 of the Mining Act preserved the limitations contained in the original deeds of cession, and that, he could not agree that the mining warden had any power to make such a grant, more especially since the licence itself stated that the land was no longer required for mining purposes.[42] In the same month, Judge Beechey of the Auckland District Maori Land Court also drew the attention to the inequitable imposition of resident site licences on Hauraki lands; he had recently come across a case in Thames, in which only 5 shillings per annum rent was received in comparison to an 'adequate' rent of £5 or more. The term of that lease was 42 years, with a right of renewal, while the owners were prohibited from an alienation of more than 50 years. Beechey recommended that the cessions be terminated in areas where mining had ceased, pointing out:

> This is only one instance, but will serve as an example of what has happened to Maori lands in the ceded areas and in the Thames Borough.
>
> It is difficult to imagine that when the lands were ceded for goldmining the Maori owners contemplated that the provisions of the Mining Act would apply so as to give anyone the right to obtain occupation of Maori lands in this way. In any event it is not fair to the Maori owners that lands once required for residence sites in connection with mining should now be retained for residence sites for use apart altogether from mining.[43]

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42. Shepherd to Under-Secretary, Mines Department, 8 September 1948, AAMK 869/202A
43. 'Memo for Under-Secretary, Dept Maori Affairs', 28 September 1948, AAMK 869/202A

In all, 51 licences were identified as operating on Maori ceded lands, at Te Kapua, and Te Kapua 4, Pohaua 2B2 and 3, Te Kopi 1 and 2; Tutukaka, Te Onepu 1, Te Puru 4B1, Ngaromaki 2A, Te Hape North 2 and Te Horo; and in Coromandel, Moehau 4A1, 2A2B, 2B4C2B2 and Harautaunga East 2A.

Tirakatene, as Minister of Maori Affairs, asked that no more licences be issued. His counterpart, for Mines, only reluctantly agreed, arguing that there would be no nett increase in revenues for the owners if the system was altered.[44] The policy was not given legislative effect until four years later, under section 6 of the Mining Amendment Act 1953. Prompted by the doubt that had been raised about the legality of the warden's past grant of such licences, an effort was made, in the Mining Titles Registration Bill, to address the issue of the nominal rents being received under them. Provision was made initially, for an increase in rent of 5 percent of the unimproved value as fixed by the Land Settlement Board on the second renewal after the legislation came into force. This limited provision was, however, dropped from the subsequent draft of the Bill, in 1962, as a result of objections from the South Auckland District Law Society that the existing rights of licencees should not be interfered with.[45] J K Hunn, as Secretary for Maori Affairs, objected that if the licences were invalid licencees 'should, at least, be prepared to concede that the . . . rent should be fixed by reference to the present value of the land'.[46] Officials in the Justice Department disagreed. In their view, the licences had been issued in good faith, and even if it was proved on investigation of every individual case, that some had been granted without authority, 'no remedial action in consequence could with any justification take the form of an increase of the license fee'.[47] Hunn was persuaded by this view, informing his Minister that:

> If the licences were not properly issued, any rights which the Maori owners might have could really be exercised only as against the Crown and not against the licencees. The substantial question would be one of compensation.[48]

The matter rested there until Ivor Prichard, a retired chief judge of the Maori Land Court, looked into the goldfield claim for the Holyoake Government in 1968. He did not support Hauraki, in that instance, but reported:

> There has, however, during my investigations, come to my notice that the Maori owners of some small part of the lands in question have a definite grievance which sooner or later will probably be the subject of a meritorious claim. It seems proper that I should mention it to you but that it should not be included in my report and this letter should not go on the claim file. No claim has been raised in respect of the matter I now mention.[49]

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44. Minister of Mines to Minister of Maori Affairs, 6 December 1948, and Tirakatene to Minister of Mines, 14 May 1949, AAMK 869/202A
45. Secretary to Minister of Maori Affairs re Mining Tenures Registration Bill, not dated, AAMK 869/202A
46. J K Hunn to Secretary for Justice, 11 July 1962, AAMK 869/202A
47. C B Cutler for Secretary for Justice to Secretary for Maori Affairs, 2 August 1962, AAMK 869/202A
48. J K Hunn to Minister of Maori Affairs, 1 November 1962, AAMK 869/202A
49. Ivor Prichard to Minister of Maori Affairs, 22 April 1968, AAMK 869/202A

Prichard described the grant of residential rights over Maori land as providing, on the payment of a rent of 50 cents to $2 per annum, a perpetual right to occupy a section, to build on it, and to assign those rights. A quick search of the Hamilton Land Office had located 38 mining residential site licences on Maori land, 35 of which had also been located in the valuation rolls. According to Prichard's calculations, the unimproved value (the most Maori could own), totalled $14,770. A rent calculated at 5 percent of that value would amount to $738.50 whereas the most Maori could receive under the current system would be $70 per annum.[50] Further investigation showed that there were 52 such licences in existence, covering sections with a total unimproved value of $20,000 for which a total rental of $81.50 was being paid. In one case, 50 cents per annum rent was being received for a property with an unimproved value of $2000.[51]

By the 1960s, there was a growing awareness amongst Government officials that mining legislation required an overhaul, particularly with reference to Maori land. The residence site licences represented the most serious ramification of outmoded legislation which also preserved a number of inconsistencies with regard to Maori goldfield land. During the niueteenth century a complicated set of differentials had developed in the rules regarding the fees and rents to be paid on Maori as opposed to Pakeha-owned land within mining districts. These had survived in twentieth-century legislation. The major general mining statute of the first half of the century, the Mining Act 1926, provided, for example, that rent payable on 'special' or extended claims would be one shilling per acre per annum on Maori land, provided that miners' rights were held by the licensee and his employees and on other lands, 2s 6d per annum for the first six months, five shillings per acre for the ensuing year, and 7s 6d per acre thereafter. The latter scale could be applied on Maori land with the written consent of a majority of owners. Section 34 provided that the fees for residence and business sites, set out by an initial deed of cession would apply, rather than those set out by statute. If, however, the statutory scale was higher, the differential would be paid to local bodies rather than to Maori owners. Under sections 64(h) and 65, the fee for a miner's right on non-Maori land was set at five shillings, as opposed to the 10 to 20 shillings agreed to be paid to Maori owners. Local authorities were, however, able to request the Minister of Finance to reduce the fee for a miner's right to five shillings. Where that was done, Maori were entitled to be paid the amount remitted out of the goldfield revenue before it was apportioned amongst the local bodies. Under section 35, any person found mining on Maori land without proper authority was liable to a fine of £50, whereas section 431 provided for a fine of £200, with an additional £5 for each day that the offence continued, in the case of European land.

There was also growing awareness amongst officials that the continuing designation of remaining Maori lands on the peninsula as subject to mining legislation, as a result of cession agreements signed one hundred years ago, was no longer appropriate. That perception was grounded partly in the fact that mining had largely ceased on the Thames–Coromandel field, and partly in the belief that the

50. Ibid
51. B E Souter, Deputy Secretary to Minister of Maori Affairs, 1 July 1968, AAMK 869/202A

cession agreements were 'superfluous' and a 'dead letter' since the Government had the power to deal with minerals by legislation.[52] At a meeting of departmental officers in July 1968, it was decided that the Crown should, with certain exceptions, renounce any rights under the deeds of cession.[53] Those exceptions included, however, all rights and titles granted by the Crown under the cession agreements. The committee, comprising representatives of Maori and Islands Affairs, Treasury, Lands and Survey, State Forests and Mines, could not agree on a proposal that the Crown should purchase Maori interests in the properties concerned. The view prevailed that the Government should take no action since the Maori owners had failed to make any representation on the matter.[54]

While the Government saw the remedy in terms of legislative prevention of further inequities, and the acquisition of interests which were 'uneconomic' because of the impediment on title, Maori sought the return of their lands, unencumbered by mining grant or legislation. In 1967, a request from the chairman of the Hauraki Goldfield Trust Committee, Barney raukopa, for information on the licenses was reluctantly complied with.[55] In the meantime, Raukopa assured the registrar of the Hamilton Maori Land Court, that any attempt on the part of the Maori Trustee to acquire those interests would be strongly resisted.[56] A formal request was made to the Commissioner of Crown Lands, in May, for the return of the properties concerned.[57] In 1970, Ngati Tamatera, Ngati Whanaunga, and Ngati Maru, through the locally-organised Maori Ceded Lands Committee, made further representation to the Parliamentary Committee examining the Mining Bill, protesting that the draft legislation preserved an inequitable arrangement that was being exploited for purposes that had nothing to do with those for which land had originally been ceded. They argued that the Crown had 'failed lamentably in the responsibility it assumed to the . . . owners through neglecting to revise the rentals at suitable intervals', and that it was, now, 'the duty of the Crown to ensure that the land [was] returned free of any equitable claims and certainly free of any so unjustly created'.[58]

The Government did not respond immediately to these concerns. The Mining Act 1971, in section 34, renounced the Crown's rights under deed of cession, but preserved the arrangements established under them. The legislation was seen as placing Maori, substantially, on the same footing as Pakeha with regard to mining on their land, except as to mechanisms of consent which, in the case of Maori, could involve the intervention of the land court. Section 37 established procedures for declaring land open despite the refusal of owners except in cases where land was within 100 feet of a burial ground, or was set apart as a Maori reserve under section 439 of the Maori Affairs Act 1953. Where, for practical reasons, general

52. Draft of suggested amendments to the Mining Act 1926, AAMK 869/704H
53. E W Williams, for Secretary for Maori and Islands Affairs to Under-Secretary for Mines, 31 July 1968. AAMK 869/202A
54. J M McEwen, 13 August 1968, in AAMK 869/202A
55. B Raukopa to Minister of Maori Affairs, 12 March 1969, AAMK 869/202A
56. I D Bell to Head Office, 2 July 1869, AAMK 869/202 A
57. See Phillips and Powell to Minister of Lands, 14 October 1970, AAMK 869/202A
58. Before the Labour and Mining Committee, 12 March 1970, AAMK 869/202A

provisions were unworkable, the Act adopted the necessary machinery from Maori land legislation, providing for consents and agreements, either by signed agreements in writing, or by a meeting of the owners. Moneys payable to owners were to be distributed under the Maori Trustee.[59]

A settlement was reached, subsequently, with regard to lands held under resident site licences, which had been left untouched by the Government's renunciation of rights under the nineteenth century deeds. In 1972, D MacIntyre, of the Marshall Ministry, indicated that the Government was willing to open negotiations on the matter, conducted on the Hauraki side, by the New Zealand Insurance Company with nominees of the owners as advisory trustees. The Government eventually agreed to buy out lessees on sites where there were no buildings in order to return that land, or, make exchange for sites, owned by the Crown, elsewhere. In order to overcome problems in working out these arrangements, the Government also offered monetary compensation which took into account the value of the sites, and inadequate rentals, plus offered a solatium for the fact that owners had been placed in a situation in which they had little alternative but to agree to being purchased out. A trust was set up to administer those moneys. A number of sites in 'Irishtown' remain the subject of ongoing negotiation between Hauraki claimants and the Government.[60]

In general, the trend of legislation in the twentieth century was away from any differentiation in the way Maori and Pakeha landowners were treated with reference to gold and minerals. The complicated set of rules and fees pertaining to Maori land were swept away, while at the same time, access to it was placed on the same footing as that of Pakeha. The Government was eventually prepared to satisfy the more obvious Maori grievances – the lapse of goldfield payments at the turn of the century and the continuing application of the warden's powers with reference to resident site licences – provided remedies did not infringe on private interests. Successive governments have been less willing, however, to admit any fault in the application of legislative powers, or to reopen query into the correctness of early transactions with reference to mining on Maori lands, focusing on the honesty of accounting rather than the equity of the bargains struck.

59. J M McEwen to Minister of Maori Affairs, 21 August 1969 and 29 June 1970, AAMK 869/202A
60. My thanks to Hauraki claimants for this information.

CHAPTER 5

# EXPANDING CLASSIFICATIONS OF MINERALS

## 5.1 SILVER AND OTHER METALS

While the Government strengthened its powers of access to, and claim to ownership, of gold and silver, it also expanded the categories of minerals which fell within its purview. Initially, the focus of the Crown's claim had been solely on gold. Coal and copper were regarded as belonging to the owners of the land. The position of silver was more ambivalent. In theory, silver fell within the Crown's right of ownership being considered a 'royal metal', but the first mining statutes were limited in their application to mining for gold. Under the Gold Fields Act 1858, the word 'mining' connoted mining for gold and nothing else. The Act defined 'mine' as being 'for the purpose of obtaining gold', 'gold mine' and 'gold field' to mean waste lands of the Crown on which persons were 'engaged in mining for Gold', and following common law tradition, 'gold' as including 'any earth, clay, quartz, stone, mineral, or other substance containing Gold'. These definitions were repeated in the legislation of the 1860s under which the Taitapu and most of the Hauraki goldfields were opened.

Silver was not included in the agreements negotiated at Coromandel, and by James Mackay in Golden Bay and the Thames, in the 1860s. The mining agreements signed in 1867 with reference to Thames, where silver was to become an important component of production, concerned gold solely. The signatories agreed to 'release' or 'tukua' their lands 'for gold mining purposes'; land within the boundaries described, was open 'for gold mining'; holders of miners' rights were 'entitled to mine for gold'.[1] That understanding was confirmed by the Auckland Gold Fields Proclamations Validation Act 1869 which authorised goldmining on the land affected by the 1867 agreement, and declared that such land should be deemed 'for all the purposes of the Gold Fields Act 1866 so far as mining purposes for gold is concerned but not further or otherwise to be Crown Lands and not private lands'.

Despite this supposed limitation on mining activity, there are indications that silver production began as soon as the Thames was opened. Later records give 1869 as the year in which silver was first mined in the country.[2] If, in fact, silver was taken from the Thames field in these years, it is far from clear upon what authority,

1. See deeds in AJHR, 1869, A-17, pp 18–23
2. See AJHR, 1901, C-2, p 12

that mining was carried out. In subsequent agreements, imposed on Maori right-holders at Ohinemuri, in 1875, and at Te Aroha in 1881, the Government ensured that it gained the right to all subsurface properties. In the case of Ohinemuri, this included even kauri gum. Statutory definitions were not expanded until 1877, when the Mines Act first brought other minerals within the compass of the general legislation. 'Mining purposes' now meant, for 'obtaining gold, or any metal or mineral other than gold'. The 1877 Act did not, however, provide for the issue of mineral licences pertaining to minerals other than gold, and did not, in any case, apply to Hauraki district. In 1880, the warden complained that he had to refuse applications to mine hematite and silver, and recommended an alteration of the original agreements:

> The discovery of valuable hematite ore within the proclaimed gold field has brought prominently to the front the nature of the existing agreement between the Natives and the Government. By that agreement permission was given to mine on Native lands for gold only. Applications for leases for the purpose of mining for hematite and silver-lead ore (also known to exist in considerable quantities) have necessarily been refused. Unless, therefore, arrangements can be made directly with the Natives by the discoverers, they will fail to reap the fruit of their enterprise, and the district will suffer materially through the non-development of these deposits of valuable minerals. I would submit that it is certainly advisable, and might be found practicable, to revise the existing agreements under which the gold field is worked. The agreements in question were evidently entered into at a time when the one paramount object was to obtain the consent of the Natives to the opening of their lands for the purpose of mining for gold. Many questions of importance naturally were left unsettled at the time, and others not provided for, the necessity for so doing not being apparent or urgent. Experience has, I believe, shown the necessity for some modification or extension of these agreements – notably in the direction of permitting mining for other minerals than gold. [3]

The Government decided to purchase the block in which the discovery had been made, and at the same time, moved to incorporate silver and other minerals within its legislative framework of powers. The Governor in Council exercising powers under the Gold-Mining Districts Act 1873 Amendment Act 1885, proclaimed that all the provisions in the 1873 Act should also apply to 'mining for silver and any other metals and minerals as well as to gold-mining' in the districts, such as Hauraki, which had been constituted under the 1873 legislation.[4] In 1886, section 130 of the consolidating Mining Act extended the warden's jurisdiction to include the issue of a general mineral licence to prospect Crown land for any metal other than silver and gold.

Maori revenues were not linked directly to the value of the field, and there is no record of changes being brought to their attention, even though their consent at Thames had encompassed gold only. Nor is it clear how widely the warden utilised powers with regard to other subsurface resources in the Hauraki district, where the cession agreements were preserved by successive statutes. The records of the Mines

3. Kenrick to Under-Secretary for Gold Fields, 30 April 1880, AJHR, 1880, H-26, p 7
4. *New Zealand Gazette*, 1885, vol 1, p 1219

Department do not appear to contain reference to the matter in the nineteenth-century. As in the case of residence sites, a problem surfaced in the twentieth century when the warden attempted to grant a licence in a way which blatantly transgressed both the understandings held by Maori. At Moehau, in 1943, the warden acting under section 169(y)(ii) of the Mining Act 1926, recommended that ministerial consent be given for a 42-year licence to mine limestone over 9½ acres in Moehau 4A2 – Maori-owned land. Having ascertained that the block fell within the definition of 'native ceded land' as required by the Mining Act, he consented to the grant of the application. The owners when they found out, three years later, were interested in working the limestone for themselves, and complained to the Native Minister that they had not consented to such a grant and that the warden had acted beyond his jurisdiction. The Crown solicitor, looking at the wording of the cessions which had been preserved under the Mining Act 1926, supported that contention, informing the under-secretary that the grant was ultra vires.[5] The Minister of Mines wished to leave the quashing of the licence to the Maori owners – an intention criticised by the Native Department as meaning that they would have to go the expense of a Supreme Court action to rectify a mistake in a transaction of which they had no knowledge. The matter was settled subsequently, by negotiation.[6]

## 5.2 PETROLEUM

The trend during the twentieth century was for Governments to bypass provisions under the general mining statutes, and to introduce, instead, special legislation to provide for the mining of valuable minerals deemed to be of national benefit. In 1937, the Petroleum Act was passed. In 1959, the Iron and Steel Industry Act empowered the Minister of Mines to authorise persons to prospect within iron sand areas while providing for the payment of compensation to owners. The passage of that Act supervened the Minister's application under the Mining Act 1926, to bring the Taharoa iron sand area near Kawhia into the Maori Land Court so that an order could be made declaring it open for prospecting, and actually interrupted negotiations with the Maori owners for a cession of mining rights in their land. Other statutes designed to promote new mineral projects and to provide mechanisms for the compulsory opening of land for development, include the Atomic Energy Act 1945, the Geothermal Energy Act 1953, and the Bauxite Act 1959. This legislation provides for Crown ownership (in the case of uranium and oil), or sole right of access (in the case of geothermal and iron sands), or the right to prospect and take land on payment of compensation (in the instance of bauxite).

Petroleum was brought explicitly within the Government's ownership in 1937, sparking a debate about Maori rights to subsurface resources in their land. Given the significance of petroleum as a strategic resource in the immediate build-up to World War II, the Government was anxious to remove any obstacle to exploration and development which might discourage overseas capital. The greatest deterrent to

5. MA 1 19/1/650
6. Memo for Minister of Native Affairs, 16 July 1947, MA 1 19/1/650

investment was perceived to he the necessity of negotiating with a large number of private landowners.[7] Following the British example, the Labour Government decided that oil rights should vest in the Crown, while owners of the land would be compensated for surface damage only. The rationales for the separation of those rights were the interests of defence, and the migratory character of oil deposits which could lie under one person's land yet be tapped on the property of another. Ultimately, the Government's claim was based in the right of eminent domain (the right of the State to take private property for public use), which was carried with sovereignty. That right was not seen as inhibited by the Treaty. Whereas Maori proposed an arrangement based on partnership under the Treaty, the Government model stressed equal treatment along with equal benefit for the two races, both in the operation of society generally, and under article 3 of the Treaty itself.

Under section 3(1) the legislation stated that:

> Notwithstanding anything to the contrary in any Act or in any Crown grant, certificate of title, all petroleum existing in its natural condition on or below the surface of any land within the territorial limits of New Zealand, whether the land has been alienated from the Crown or not, is hereby declared to be property of the Crown. . . .

And under section 29(4) that:

> Compensation shall not be payable under this Act or any other Act in respect of any petroleum existing in its natural condition on or below the surface of any land.

Further sections provided for a 5 percent royalty to be paid to the Crown, and for conditions of access. Licencees did not require consent of either owners or occupiers, provided due care was taken to minimise damage to the surface, and compensation was to be paid in the case of legitimate claims. Owners had to be given 14 days' notice of the intention to enter their property, except in the case of Maori land which fell under section 24(1), requiring instead that notice be given to the registrar of the Maori Land Court and to any non-Maori occupiers. Section 26 provided for lands to be taken under public works legislation, 'for the purpose of facilitating the carrying on of any mining operations'.

In November 1937, Ngati Porou petitioned against the proposed legislation on the grounds that it took away rights which they had formerly wielded. The tribe had long been aware of the presence of oil in the region, and had been in 'treaty' with Europeans since 1881 when the first agreement had been signed with the Southern Cross Petroleum Company whereby Ngati Porou had agreed that their lands might be prospected in exchange for a 5 percent royalty on any crude oil discovered. This deal had been followed by others, with the result that options were currently secured over practically all land in the district, whether in Maori or European hands, including Matakaoa, Waiapu, Uaiwa and Cook Counties as well as part of Wairoa.[8] Ngati Porou representatives argued that a proportion of the royalty should be set aside, either as a general fund for all Maori, or to go to the tribes owning the land in

7. NZPD, 1937, vol 249, p 1036
8. A E Edwards memo, 4 September 1861, MA 1 19/10/2

the district, or to individual owners as adjudged by the land court. The tribe favoured the latter option and made that recommendation to the Native Affairs Committee. All amendments proposed by Ngata (clause 2 to was remove the application to native land, clause 3 was to provide for prior agreement with Maori beneficial owners, and clause 12 was to give 50 percent of royalties to them) were supported by other Maori members on the committee, but rejected by the majority.[9]

In the meantime, the opinion of the Solicitor General was sought by the Gold Field and Mines Committee which was also examining the Bill. H H Cornish supported the Bill, founding his argument first on Right of Eminent Domain. He stressed that the Act would not 'take from any Native a single foot of land . . . without compensation' but only 'something it [would] take equally from the European owner – a something that was never thought of . . . when the Treaty of Waitangi was signed'. Citing other instances when Treaty guarantees had been put aside, Cornish argued that there could not be two sets of laws: 'In New Zealand we may have two races, but we have only one people, all of whose members enjoy the same essential rights and are subject to the same obligations'. Because the Bill proposed to take no more from the Maori landowners than from the European, it did 'no violence to the spirit of the Treaty of Waitangi'.[10]

In the House, Ngata protested the royalty provisions rather than those pertaining to access, arguing that the measure amounted to an appropriation of property that would otherwise belong to private landowners. He believed that this was the view of all tribes, and dismissed objections raised by the Attorney-General that Maori had no claim to resources of which they had been ignorant at the time of transfer of sovereignty:

> 'Did the Maoris know that there was oil under their lands when they signed the Treaty of Waitangi in 1840?' No. Nor did they know that there was gold or coal under their land, or that the timber which grew on their lands had a greater value than for making canoes and carvings for their houses . . . Is the argument now, that, because the poor savage was ignorant in 1840 of the things that have been made possible by the pakeha, he is to have no advantage from them today?[11]

He pointed to the American example as showing that the course intended by the New Zealand Government amounted to theft and argued that if oil should be found, the legislature would find itself besieged with Maori petitions 'for compensation for rights confiscated':

> They have been doing that for the last seventy years with respect to other rights, and in regard to oil rights they will come down session after session and ask for some recognition of the rights that have been taken away by the Crown.[12]

He proposed a model of partnership; that the Government share equally with Maori in the royalty when oil was found on their land.

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9. 'Native Affairs Committee Minute Book', 24 November 1937, Le 1/1937/15
10. Solicitor General to Minister of Mines, 26 November 1937, Le 1/1937/4
11. NZPD, 1937, vol 249, p 1044
12. Ibid

The Government countered with the argument which had been used in justification of public works takings since the 1870s, that Maori were being treated no differently from Pakeha. The introductory speech by the Minister of Mines (Webb), drawing on the Solicitor-General's comments, was strongly flavoured by a rhetoric of equality between the two races. Webb emphasised that there could not be two measures because this would be contrary to the growing national character of all the peoples of New Zealand:

> I want our Maori friends to feel that we are not going to place them on a different footing than the Pakeha. The whole spirit of Article Three of the Treaty of Waitangi is one of equality and equity. The people of that day pledged themselves to give equity, justice, and liberty to their Maori brothers, and we do the same in this Bill. We are making no distinctions . . . As long as this Government is in power I am sure we will insist upon the Maoris being given the fullest rights.[13]

The Government stressed that 'Maori would benefit equally with the pakeha' should oil be discovered in payable quantities.[14] Thorn, the member for Thames, also reassured the House, 'we are not taking from the Maoris any rights which we are not also taking from the whites'. He welcomed a new order in which old feudal usages that maintained when an individual held land 'he also held everything beneath it to the centre of the earth and everything above it' would be swept away. In his view, valuable resources such as petroleum and coal, should belong to the nation, not the individual:

> It raises the moral issue as to who owns the natural resources that happen to be deposited in the soil of New Zealand. Certainly not the individual pakeha; certainly not the individual Maori; certainly not this Maori tribe or the other. They are owned by the whole of the people.[15]

The Bill was given urgency in December and was passed without a Division on the understanding that there would be opportunity to discuss the issue of royalties later in the session. On the invitation of Ngata, Webb agreed to meet Ngati Porou but was prevented from doing so. In March 1938, the question of royalties was discussed further, but no amendment passed. From the debates, it is clear that Maori did not completely reject the ethos of equal participation, supporting the Government in legislation to set up machinery to ensure the complete survey and development of the oil fields of the country. But, since the Act affirmed that a royalty had to be paid, it was claimed (by Bodkin), that any attempt to take that royalty away from Maori was 'a direct infringement of the Treaty of Waitangi'. Ngata recited the haka, prepared by Ngati Porou for Webb's visit, which expressed the depth of their feelings on the subject:

> Let me move, let me travel,
> That I may see the western sea.

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13. Ibid, p 1039
14. Ibid
15. Ibid, p 1047

That I may see the seas of Poneke
Whose roaring I hear. Hei!

Mr Webb, Sir!
It has fallen, it has collapsed,
The Treaty of Waitaugi!
It is perhaps the work of the Labour Government
Which has altered the Laws
Which has absorbed all our money,
Which is confiscating our lands!
And so I weep. Au! Alas!

The disturbing news of the measure for developing petroleum penetrated to the remote East Coast.

I was repelled from Wellington!
I was rejected from Wellington!
And I sat me down in bewilderment
And I stood and gazed in pained wonder
And asked 'Has the Prime Minister of New Zealand broken his word?

And where is he now?'
Mr Webb, Sir, with your followers and your sham companies
You have kicked over the Treaty of Waitangi
You have lifted your foot against the Treaty of Waitangi
And thrust it from the lions' den at Wellington
Or maybe suspended it on the House of Laws as
a bandage for bloodstained brows!
Thou boiled head!

At this point, the Speaker ruled that such an expression could not be used in connection with a Member of the House, and Ngata continued with the final verse:

Is it that you Mr Webb
Will say to the Maori
Go back empty handed!
Ask and you shall not receive!
Knock and I shall turn my back on you!
Alas! Alas!

CHAPTER 6

# CONCLUSION

The Crown in its dealings with Maori, in regard to gold, precious metals, and latterly, oil and subsurface resources of 'national importance', has adopted as its theoretical starting point, the rules applying in England, at the time sovereignty was declared. At 1840, sovereignty carried with it the royal prerogatives including a right to gold and all 'most excellent things' which dated back to the Elizabethan period. Maori held the position of 'owners of the soil' only, in the framework of the common law. It was that assumption which ultimately set the position of Maori in relation to the Government when it came to mining on their land, at first for gold, and in the twentieth century, for other important subsurface resources. In practical terms, however, the right to 'royal metals' was of lesser importance in defining the relationship of the Crown to Maori, than were the other attributes of sovereignty – in particular, the right to make law, enabling Governments to bring other rights of mineral access and development within the compass of the Crown's powers. It was through legislation that Maori rights to withhold lands from mining, and their rights to revenues generated by their lands when such permission was given, were delineated.

Maori had no reason to believe that gold found on their land did not belong to them. Although there is no evidence of pre-contact knowledge of precious metals per se, maori clearly demonstrated interest in, and used other sorts of subsurface resource, while the concept of separating attributes of the land, inherent in the royal prerogative, ran counter to the grain of tikanga. British officials had not asserted any prerogative claim to gold and precious metals at the negotiations for the signing of the Treaty, and early transactions involving non-precious minerals suggested to Maori that they had every right to dispose of subsurface resources as they pleased. That view would seem to have been confirmed by the first negotiations for goldmining on Maori land. There is no evidence in the record that officials explained the niceties of the common law distinctions to Maori; that they were agreeing to access only, and were not capable of transferring the right to the gold itself. Maori readiness to allow mining on their land varied. Some readily gave their consent to Pakeha bringing their technological expertise to the land while others believed that they should have nothing to do with gold, that it was something valued only by Pakeha, and that Maori should stick to the traditional ways. But there is nothing to suggest that Maori thought that they did not own any gold which lay within their land. This came to be seen as 'Maori gold' to be kept or to be exchanged for the 'Queen's gold'.

While successive governments have assumed the existence, and have preserved the royal prerogative with reference to gold and valuable minerals, practice has been more ambivalent. Indeed, Maori were treated initially, as an autonomous people who, in all practical senses, owned the subsurface resources, and were entitled to withhold their lands from the Government's jurisdiction. Officials, in the 1850s, when the question of gold ownership was first at issue, were pragmatically conscious of the power of even small iwi and the significance of the Treaty as an inhibition on the prerogative. While they were not prepared to abandon the right to 'royal metals', they accepted that a blunt assertion of that prerogative would be strongly resisted by Maori, looking to the Treaty guarantees of rangatiratanga over the land and its attributes. It was decided, therefore, that an agreement should be negotiated whereby Maori would 'cede' the right to mine for gold on their land, to the Government, which would take responsibility for the management of the field and the miners on it. In exchange for their consent, Maori would receive a portion of the revenues generated by the field, in the form of fees for working claims. The rhetoric of negotiation which underlay this agreement was characterised by promises of partnership and mutual benefit.

This basic method of opening Maori land to mining was used throughout much of the nineteenth century, although the trend was for the Government to negotiate increasingly stringent terms of cession, or to hold out for the complete freehold in order to gain access to the gold. The rhetoric, too, remained unchanged, as the Coromandel, Taitapu, and Thames goldfields were opened on Maori land in the 1860s. Maori agreed to allow mining under Government management, in exchange for various fees, generally comprising payments for the miners' rights under which work on the field was authorised, township rents, and for the felling of valuable timber. The Government agreed to administer those revenues, to maintain law and order, and to respect areas reserved to Maori. For the Government, the model of negotiated cession had the early advantage of promoting Maori consent which would not have been gained otherwise, without directly infringing upon the 'royal right' since the question of actual ownership was by-passed. But in later discussion, the Government was able to argue that it had never negotiated for the gold itself, and had never paid royalties on it, only revenues for the use of the field.

An important exception to the general mode of cession was provided by the case of Tokatea, a piece of land withheld by a section of Ngati Tamatera from the agreement at Coromandel, in an effort to retain and work gold resources for themselves. The issue of Maori control of the Tokatea block became increasingly politicised in the early 1860s. The mining community, and the Government, in the person of Grey, insisted on access to that land while one of the two principle right-holders in it, looked to the King movement. Pursuing 'divide and rule' tactics, Grey forced an opening over this opposition, allowing one group a yearly rental. This presented opponents with a fait accompli which they had to either accept or reject by resort to arms.

The willingness of the Government to use coercive tactics at Tokatea belied promises to respect Maori wishes with regard to keeping control of their lands, and suggested that its policy was predicated on the assumption that Maori had no choice, ultimately, but to agree to mining. Thus, Maori were told that not only

would they benefit from mining, but they also would suffer if they tried to prevent it. On the one hand, the Government would be unable to prevent the white population from 'rushing' their lands; on the other, only the Government would be able to control that population once the area was duly opened.

It was highly unlikely that the Government could both satisfy the demands of mining interests and honour its promises of protection to Maori with regard to their right to keep land closed. Policy with regard to auriferous lands began to harden in the 1870s, taking greater account of settler and mining interests There was considerable dissatisfaction in Government, and in the mining community, that ownership of goldfield lands should have been left in the hands of Maori, and decreasing patience with Maori aspirations, and with the need to gain full tribal consent to mining. Policy changed from the negotiation of cession of mining rights to one of outright purchase of the land, followed by incorporation into the existing goldfield. In complete disregard of its promise of mutual benefit in the development of minerals, the Government generally attempted to conceal the real value of subsurface resources from Maori during the course of negotiations. Purchase of the freehold of blocks outside the areas ceded by Maori in the 1860s was rapidly followed by the complete acquisition of blocks already opened to mining activity. While governments pursued the complete acquisition of the most valuable of the goldfield blocks, Maori ability to hold onto both land and resources, and to negotiate terms to their own satisfaction, was rapidly diminishing as a result of declining returns on their lands, native land court activity, and the deliberate undermining of tribal authority by Crown agents.

Decreasing respect for Maori rights, and increasing use of coercive tactics on the ground, was demonstrated in the negotiations for mining at Ohinemuri, Pakirarahi and Te Aroha where the Government effected openings without full Maori consent. That trend was confirmed by the legislative expansion of Crown powers at the expense of Maori rights. If the early colonial statutes preserved the 'royal prerogatives', they also assumed that Maori land could be brought within the compass of mining law only by agreement with the owners. Although the first colonial statute, the Gold Fields Act 1858, declared that the Governor in Council could proclaim any part of the colony to be a goldfield, that power was not assumed to apply to customary land. Later legislation, passed in 1866, redefined the terms used in the statute to include lands where Maori right holders had given their consent, within the Governor's powers to proclaim as a goldfield.

In the final quarter of the nineteenth century, legislative acknowledgement that Maori had the right to withhold their lands from mining was gradually abandoned. The Governor was empowered to bring reserves set up by the land court within the goldfield, then lands which has been specifically reserved from the original cession of mining rights, and finally, all types of lands. At the same time, the legislature moved to strengthen Government access to other types of minerals. This trend continued into the twentieth century, as on the one hand, mechanisms of establishing access to Maori land were simplified through the mechanism of the land court, and on the other, special legislation was passed, asserting the Crown's ownership of oil and uranium, or sole right of access to geothermal energy, iron sands, and bauxite.

The Government argued that these mining statutes represented an assertion of a royal prerogative which may have been let sleep for much of the nineteenth century, but which had never been abandoned, and justified the extension of its powers of access to include subsurface resources in Maori land, by maintaining that this represented the equal treatment of the two races. Maori, however, saw such legislation as innovative, and as contrary to both the Treaty of Waitangi and the spirit of early mining agreements.

In the meantime, Maori who had ceded their lands for goldmining purposes, in the 1850s to the 1870s, found themselves unable to withdraw from those agreements even after the terms of operation had been unilaterally altered to their disadvantage, and mining had long since ceased on their lands. The Government did not loosen its hold on the Hauraki goldfield, exercising powers over the surface, under general mining legislation, until the passage of the Mining Act 1971. Even then, perpetual leases of Maori land issued at small rentals, under mining legislation, remained untouched since the interests of third parties would be effected. A compromise was only reached after extensive negotiation, in the 1980s.

At contention here, were the Government's obligations and rights under the cession agreements. Maori who had signed the original agreements had been willing to cooperate with the Government, but on terms which assumed their ultimate control of the land and what it contained. They were prepared to open their land to Europeans for mining, provided that they received payment for what was taken, were protected in their person and property, and retained ultimate authority over the land. They were led to believe that they would equally participate in the benefits of mining. The Government, however, tended to forget the commitments it had made to Maori once their consent to mining had been gained. Upon cession of mining rights, the land in question became subject to mining law which evolved in response to the needs of the industry rather than of Maori right-holders. The conflict between the terms and implications of the original agreements and changing statutory provisions which tampered with standing arrangements, soured relations between Maori and successive governments in the Hauraki district for over 100 years.

The transfer of control consequent upon cession was more extensive in nature than had been contemplated by Maori signatories. The balance of power, with the added weight of a huge influx of white population, shifted inexorably towards the Government which abandoned models of partnership without adopting commensurate measures of protection. Successive statutes enabled the Governor to introduce new regulations on the goldfield, delegate his powers to the Superintendent of the Province, and issue authorisation for a growing variety of uses and types of mining tenure within the goldfield. Whereas the original consents had been framed in simple terms, of an annual payment for each person working the land, based on individual miners' rights, the Government soon introduced new forms of authorisation for working a claim within the field – in particular, 'licenced holdings', which gave the licensee 15 to 21 years' tenure.

Maori protested that the innovations in mining tenure would result in a reduction in the revenues to which they were entitled under negotiated agreement. At first, the Government conceded that Maori should be compensated for losses consequent on

the such changes, and should receive all forms of revenue generated in the forms of rents and fees for authorisation to occupy lands within their ownership. During the late 1870s and early 1880s, however, mining interests and Government bodies expressed considerable dissatisfaction that these moneys should be going to Maori rather than into Government coffers or to the relief of the industry. Despite Maori protest, the Mining Act 1886 reduced the requirements for persons working on the goldfield to hold the miners' rights, the fees for which comprised a large part of their revenues. Later legislation reinstated certain of those requirements, but at the same time, removed other revenues which had been conceded to Maori after the original deeds of cession had been signed.

There was no requirement for the Government to obtain Maori consent to any of these changes. Through out the last quarter of the nineteenth century, Maori had protested against the Government conduct with reference to mining on their lands; about the way in which it wielded legislative powers in furtherance of mining interests, chipping away at Maori revenues and their right to withhold lands from mining activity, either over their protest, or without informing them of the implications of those measures. The Government, however, tended to dismiss Maori complaint as deriving from causes over which it had no control – in particular, from the decline in their revenues reflecting a drop in the profitability of the field after the first boom years. It is clear, however, that legislative change, the increasingly tough Crown negotiating stance as new Maori lands were brought within the field, and its pursuit of the acquisition of the freehold of goldfield blocks, greatly contributed to the declining position of Maori.

By the time the mining industry underwent a revival at the turn of the century, Maori were in no position to enjoy any direct advantage from the resource. The descendants of the original signatories to the cession of the goldfield blocks could not understand why they should seem to have benefited so little from the development of mining, and should now retain so little of the land itself The question of the Crown's conduct with reference to the Hauraki goldfield was submitted to the inquiry of the court, and defended by the Government in the 1930s. Various administrations, in the twentieth century, have been prepared to acknowledge the more obvious Maori grievances with regard to ceded lands – lapses in goldfield payments, and the continuing application of the warden's powers over lands on which mining had long-ceased – provided that the remedies did not infringe on private interests. But Government has been far less willing to admit any fault in the application of legislative powers, or to reopen query into the correctness of early transactions, and the equity of its bargains. It has been reluctant to acknowledge the principle of Maori rights to valuable sub-surface resources either as an aboriginal right or under the Treaty, or any trustee-like status with regard to customary lands under cession agreement.

APPENDIX I

# PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

**PRACTICE NOTE**

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL

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