RANGAHAUA WHANUI DISTRICT 11B

HAWKE'S BAY

DEAN COWIE

SEPTEMBER 1996

WORKING PAPER : FIRST RELEASE

WAITANGI TRIBUNAL

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FOREWORD

The research report that follows is one of a series of historical surveys commissioned by the Waitangi Tribunal as part of its Rangahaua Whanui programme. In its present form, it has the status of a working paper: first release. It is published now so that claimants and other interested parties can be aware of its contents and, should they so wish, comment on them and add further information and insights. The publication of the report is also an invitation to claimants and historians to enter into dialogue with the author. The Tribunal knows from experience that such a dialogue will enhance the value of the report when it is published in its final form. The views contained in the report are those of the author and are not those of the Waitangi Tribunal, which will receive the final version as evidence in its hearings of claims.

Other district reports have been, or will be, published in this series, which, when complete, will provide a national theme of loss of land and other resources by Maori since 1840. Each survey has been written in the light of the objectives of the Rangahaua Whanui project, as set out in a practice note by Chief Judge E T J Durie in September 1993. The text of that practice note is included as an appendix (app I) to this report.

I must emphasise that Rangahaua Whanui district surveys are intended to be one contribution only to the local and national issues, which are invariably complex and capable of being interpreted from more than one point of view. They have been written largely from published and printed sources and from archival materials, which were predominantly written in English by Pakeha. They make no claim to reflect Maori interpretations: that is the prerogative of kaumatua and claimant historians. This survey is to be seen as a first attempt to provide a context within which particular claims may be located and developed.

The Tribunal would welcome responses to this report, and comments should be addressed to:

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Waitangi Tribunal
PO Box 5022
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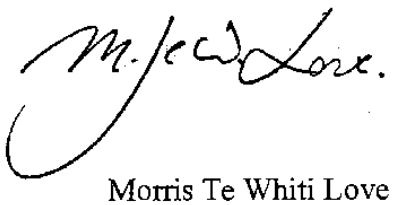

Morris Te Whiti Love
Director
Waitangi Tribunal

THE AUTHOR

Tena koutou. My name is Dean Cowie. I am a Pakeha male, of Scottish ancestry. My family live in Kaitaia, Muriwhenua. I am a historian, currently residing in Wellington. My qualifications relate to the study of New Zealand history. In May 1994, I graduated from the University of Auckland with a master of arts (first class honours) degree in history. The thesis I wrote as part of that degree was titled 'To Do All the Good I Can: Robert FitzRoy, Governor of New Zealand, 1843–45'. It analysed issues relating to land, finances, politics, racial ideas, and war in mid-1840s New Zealand, focusing on the administration of Governor FitzRoy. It was completed under the supervision of Waitangi Tribunal member Professor M P K Sorrenson. I commenced work as a commissioned researcher for the Waitangi Tribunal in April 1994. My first tasks were to assist Dr G A Phillipson with his research for the Chatham Islands claims and his Rangahaua Whanui district report. In August 1994, I was employed as a permanent research officer, and was assigned claims facilitation functions for the Wairoa ki Wairarapa claims. In 1994 and 1995, I provided assistance to the Te Whanganui-a-Orotu and Turangi township Tribunals. I commenced research for this district report in November 1995. In March 1996, I was appointed to the temporary position of senior research officer, a position I currently hold.

September 1996

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Note on illustrations: Figure 1 shows the Rangahaua Whanui districts, and where the Wairarapa district (11A) and Wairoa district (11C), are situated in relation to the district of this report, Hawke's Bay (11B). It also gives an approximate idea of where the Mohaka ki Ahuriri claims district is situated, and shows the difference between the present-day and former courses of the Tukituki, Ngaruroro, and Tutaekuri Rivers. Figures 2, 3, and 4 situate the main blocks or areas of Crown purchasing in chronological order. Figure 5 continues this progression and also includes an indication of the position of the Mohaka–Waikare confiscation district. Figure 6 is a copy of Native Reserves Commissioner Major C Heaphy's map, which was drawn in 1864. The darkened portions indicate areas of Crown purchases. The dotted line cutting east to west across the North Island is the 39th parallel, which was used to determine the boundary of the former Auckland and Hawke's Bay Provinces. Figure 7 shows in greater detail the Mohaka–Waikare district. This map was filed with the Tribunal by the Wai 299 (Maungaharuru–Tangitu Trust) claimants and appears in the Wai 201 record of documents (doc J7). It is hoped that more detailed maps will be included when this report is published in its final form.

INTRODUCTION

This report is part of a series of district reports written for the Waitangi Tribunal's Rangahaua Whanui project. As described in a practice note of 23 September 1993, the project was initiated by the Tribunal in order to provide an historical review of relevant Crown policy and action to enable both single-issue and major claims to be properly contextualised (see app I).

Initially, this district report was intended to provide an overview of the major causes of land alienation for a region spanning the east coast of the North Island, from Cape Palliser to Te Mahia Peninsula. This was called the Wairoa ki Wairarapa district, number 11 of the 15 Rangahaua Whanui districts. Helen Walter was commissioned to write the district report in 1993, and had completed two draft chapters before being re-assigned to other research. In November 1994 it was realised that there were too many issues to cover sufficiently in one report, and the Wairoa ki Wairarapa district was split into three. The Wairarapa district (11A) report has been written by P J Goldsmith, the Wairoa district (11C) report by J Hippolite. The boundaries of this district report, therefore, fall between those of Wairoa, and Wairarapa. None of the three boundaries are meant to represent iwi boundaries, and the divisions between the three, and with other districts, are flexible in the sense that the authors of these reports have gone beyond them where necessary.

The southern boundary of this district is the easiest to define. It is delineated by a line leading from the mouth of the Waimata River, south of Cape Turnagain, inland to the Manawatu Gorge (see fig 1). Two large blocks purchased by the Crown sit on this line, Tautane, and Tamaki-nui-a-Rua. The western boundary is the most vague, as it is defined by the long line of ranges, part of the spine of Te Ika a Maui, which divide Hawke's Bay from Manawatu and the volcanic plateau. These mountains, the Ruahine, Kaweka, Ahimanawa, and Kaimanawa Ranges, also act as the catchment areas of the many rivers and streams which snake toward the Pacific Ocean. The major ones mentioned in this report are the Tukituki, Ngaruroro, Tutaekuri, and Mohaka Rivers.

Of course, using natural features to describe boundaries is problematic. A study of land alienation inevitably leads the researcher to talk of the land in the linguistic currency provided by European land administration. The land of Hawke's Bay, therefore, has been sub-divided, partitioned, and fragmented into thousands of *blocks*. While it is not included in the scope of this report to argue the issues pertaining to every block, or, indeed, even to mention every one, some decisions have been made on what blocks and areas to exclude from study. This mostly affects the claimants of the Kaweka, Kaimanawa, and Runanga area. Not all the blocks they might expect to have been covered by this report will be included. The same applies to the Waiau area further north.

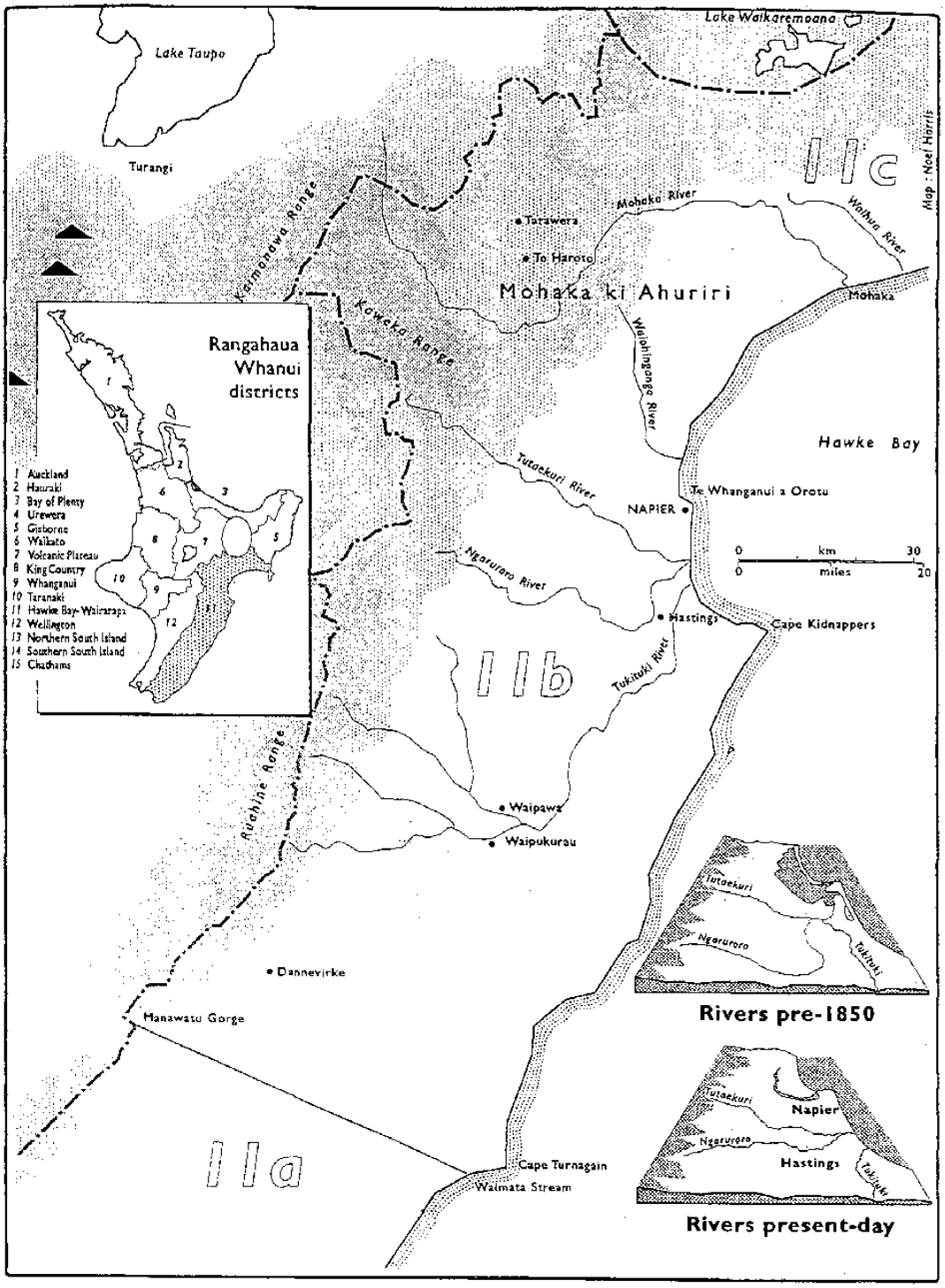

Figure 1: Location map

The northern boundary of this district is formed by the Waihua River, and any events and issues north of this point are dealt with in Ms Hippolite's Wairoa district report. Owing to inexact boundaries, it is impossible to provide accurate figures of the amount of land in this district. Very approximately it contains about 2,500,000 acres (1,011,750 hectares). This figure is calculated backwards, by adding together the blocks as they were alienated from Maori, hence it is a very rough estimate. A thorough and regionally focused mapping of the district is required before more accurate figures could be provided. The maps in this report, in most cases, have avoided ascribing definitive block lines to the Crown purchases and confiscation area. This is because this report has not gone into the detail necessary to accurately display precise cartographic information. The maps are intended to be an aid to the text, to enable readers to situate places mentioned in the chapters.

Needless to say, the combined Mohaka, Mohaka-Waikare, Ahuriri, Kaweka, Heretaunga, Waimarama, Porangahau, Waipukurau, Ruataniwha, Ruahine, Waipawa, Patangata and Tamaki-nui-a-Rua regions represent a huge and divergent geographical area. Pre-contact (and for a lengthy period after, and to a limited extent still) the area was known for rivers, lakes and lagoons teeming with life-sustaining resources, forests alive with succulent parrots, mutton-birds and other avifauna, fertile plains suitable for root-crops, and a coastline continually traversed by schools of fish. Europeans immediately saw vast potential for the native-grassed, fern, tussock and bracken covered plains and valleys as sheep and cattle grazing areas, with the promise of a successful arable industry also apparent. Today Hawke's Bay represents one of New Zealand's leading horticulture areas, and boasts a fine reputation in viticulture. Sheep stations, dry stock, dairy farms, and other pastoral uses also feature. Further inland, among the higher altitudes, forests of *Pinus radiata*, and some left as indigenous, dominate.

In 1840, despite the claims of W B Rhodes (see sec 2.6), all of this 2,500,000 acre area was owned, occupied, and utilised by Maori. By 1930, under 200,000 acres remained in Maori ownership. This report is designed to act as a general overview of the major ways in which this land was alienated from Maori. Its first task is to describe when the land was alienated. The second, to provide explanation of how and why the land was purchased, leased, and sold. Identifying with whom these transactions were negotiated is important also. To that end, this report commences with a brief description of the iwi and hapu of Hawke's Bay. It provides readers with a chance to become familiar with the Maori groups that inhabited and claimed customary rights in Hawke's Bay in 1850, and some of their chiefs, as well as providing some links between the groups of 1850 and those who have claims before the Waitangi Tribunal today.

The rest of the five chapters follow a chronological pattern. Chapter 2 describes the events of first contact between Maori and Europeans, and discusses some of the impact that it had on Maori, as well as discussing some of the aspects of Maori culture as it related to land. Chapter 2 serves as an introduction to the arrival in 1850 of Donald McLean, the Crown's first official charged with the task of purchasing Hawke's Bay land. Chapter 3 details the events of the first purchases made between the Crown and several hundred Maori the following year. The Waipukurau, Ahuriri,

and Mohaka block purchases of November and December 1851 realised 649,000 acres for the Crown. By 1862, the Crown had purchased another 30 or so blocks, totalling a further 900,000 acres. Chapter 3 describes some of the methods used by the Crown in obtaining this land, and offers some explanation of the motives of Maori during that period. Chapter 4 discusses the aspirations of Maori and European in the development of Hawke's Bay for the years between 1865 and 1873. Attention during this period was focused on the constitution of the Native Land Court, the European-style court charged with the function to investigate title to Maori customary land, and award certificates of title to the Maori owners of blocks. Its first hearings were held in Hawke's Bay in March 1866. Alienations of prime land on the Ahuriri–Heretaunga Plains, and elsewhere, followed. Chapter 4 provides case studies of some of the blocks that were alienated, spending most of its pages detailing the alienation of the 19,000-acre Heretaunga block, the site of modern-day Hastings. Further understanding of the practice of the Native Land Court in this period can be found in a chapter written by Dr G A Phillipson, which is attached to this report as appendix II. Dr Phillipson's chapter was written for the Crown Congress Joint Working Party (CCJWP) in 1993. It was part of a large report entitled 'Historical Report on the Ngati Kahungunu Rohe'. Dr Phillipson's research focused on the impact of the Native Lands Act 1865 (and amendments) had on Hawke's Bay Maori, and some of the attempts at reform made by the Crown in response to contemporary complaints. Chapter 5 covers a similar period as chapter 4, 1862 to 1875, yet its focus relates to raupatu, or confiscation, and the context provided by the New Zealand wars of the 1860s. Chapter 5 also traces further large purchases of land by the Crown. Chapter 6 continues to focus on the activities of the Crown land purchasers, for the period 1875 to 1930. It also attempts to introduce ways in which the social and economic status of Hawke's Bay Maori could be evaluated. Some of the subjects dealt with in chapter 6 are not carried through to 1930, and there are many events after 1930 which still need to be addressed. I hope to complete the narrative of relevant post-1930 issues in a further chapter, to be written later this year. This chapter will, hopefully, bring events into the present. Chapter 7, the conclusion, draws together the common issues and themes developed in the text of the chapters, offering some preliminary findings for the claimants, Crown, and others to discuss.

This dialogue is vital if this report is to present a balanced account of the major ways in which land was alienated in Hawke's Bay. It is also hoped that claimants, in particular, look carefully at the text where it deals with their claim, or at lands in their tribal rohe, and make submissions which add to the accuracy and breadth of the information so far written. The Rangahaua Whanui district reports were to be written as much as possible from existing secondary research. This report reflects that directive. Only occasionally was it felt necessary to go back to the primary sources and data, due to the volume of material and reports that had already been written on Hawke's Bay. This research was generated by the Tribunal hearings into the Mohaka River and Te Whanganui-a-Orotu claims, the soon to be heard Mohaka ki Ahuriri claims, and by the Tribunal's commissioning of Angela Ballara and Gary Scott, on behalf of the claimants, to provide block alienation histories of Crown purchasing

in the early Hawke's Bay provincial period. Ballara and Scott's reports, the documents filed with them, and the introduction summarising the possible breaches of the Treaty of Waitangi, have been used extensively in this report. With her 1991 PhD thesis, her many entries on Hawke's Bay figures in the *Dictionary of New Zealand Biography*, and other articles, the influence of Ballara's scholarship dominates. Other authors on which this report has relied are Patrick Parsons and Richard Boast. The interpretation of their work in this report, however, is that of my own. Several volumes of claimant research were presented to the Tribunal at the end of July 1996, and were unable to be incorporated into this report.

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
app	appendix
ATL	Alexander Turnbull Library
GBPP	*Great Britain Parliamentary Papers*
ch	chapter
doc	document
fn	footnote
MB	minute book
NA	National Archives
NZJH	*New Zealand Journal of History*
NZPD	*New Zealand Parliamentary Debates*
p	page
ROD	record of documents
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
Wai	Waitangi Tribunal claim

CHAPTER 1

AN INTRODUCTION TO THE HAPU AND IWI OF HAWKE'S BAY

1.1 INTRODUCTION

As stated in the introduction to this report, this chapter serves two main purposes. It will provide a brief summary of the Maori communities who were living in Hawke's Bay at about the time when Crown land purchaser, Donald McLean, arrived in 1850. It will also indicate where those groups resided. Comment on the relationships between these groups can be found in chapter 2. The purpose here, is merely to introduce these groups, to enable readers to appreciate their origins; to have an idea of hapu and iwi names, and the names of some principal chiefs. This should serve as a useful aid, when reading the following chapters of this report. References for further reading, for those after more particular information, will be provided where known. The second purpose of this short chapter is to bring the account of these Maori groups into the present, by use of the claims they have lodged with the Tribunal.

By way of disclaimer, this chapter is not intended to argue the merits of any one Maori group's interests over another's, or to exclude any hapu who are not mentioned specifically. The district studied in this report is an artificial construct; and, while it has been kept sufficiently vague so as not to hinder effective contextualisation of issues and situations, it has, nevertheless, resulted in emphasis being placed on some groups, at, perhaps, the expense of others. Again, it is important to remember that this is a by-product of a district overview report, and any omissions or wrongly-weighted emphasis will, hopefully, be rectified when all detailed and outstanding claimant research is completed.

1.2 MAORI OCCUPATION

1.2.1 Introduction

McLean's arrival in Hawke's Bay in 1850 saw him encounter various Maori groups, all of whom had endured a tumultuous previous 30 years. Ballara estimates that the Maori population of Hawke's Bay was possibly halved between 1769 and 1840, and that most of this decline occured in the period after 1820.[1] The fateful period was, of course, the so-called 'musket war' era, when Hawke's Bay Maori faced invasions

1. H A Ballara, *The Origins of Ngati Kahungunu*, PhD thesis, Victoria University of Wellington, 1991, p 59

from northern and western tribes.[2] Historian James Belich believes the Musket Wars accounted for the deaths of more New Zealanders than in World War I.[3] During this period, by far the majority of Hawke's Bay Maori fled to Nukutaurua in Wairoa, to shelter with the Nga Puhi chief, Te Wera,[4] and from there built up a cache of arms by trading with whalers and Pacific traders.[5] Others (notably Ngati Hineuru, Ngati Te Upokoiri, and Rangitane) took shelter with inland and western tribes, some were captured and became slaves, and a small few braved it out on the Hawke's Bay Plains, keeping the fires of occupation lit. Obviously, the above is over-simplified: people came and went; led invasions, and were invaded; were imprisioned, and held others captive; suffered defeat, and had their turn at vanquishing the enemy.[6] For the purposes of this chapter, however, it is important merely to note the unsettled and uncertain immediate past of Hawke's Bay Maori, prior to McLean's arrival to purchase land. From the late 1830s, peace was brokered with former enemies, and the supra-Ngati Kahungunu alliance formed at Nukutaurua dissipated, as various groups of Maori began to resettle on their former customary lands.

1.2.2 'Ancient' and 'Migrant' descent

So who were these people who became identified as Ngati Kahungunu? Again, risking error through simplification, they were descended from two groups. Firstly, 'ancient' peoples – some of whose whakapapa stretched back to the gods; and including others who had occupied Hawke's Bay since the arrival of Awanuiarangi, Toi, and Whatonga, for example.[7] While these peoples went by many tribal names, some of the more common mentioned as occupying Hawke's Bay were: Ngati Awa (situated at Otatara and Heipipi pa, Ahuriri), Ngati Apa (situated in the mountainous Kaweka, Ahimanawa area, and elsewhere), Ngati Whatumamoa (situated at Heipipi pa, Petane and surrounds), Ngati Hotu, Ngati Moe, Ngai Tara, Moaupoko, and Rangitane.[8]

Secondly, the 'migrants' – descendants of Kahungunu, of the waka Takitimu, who had arrived under Taraia and company, sometime, it is estimated, in the sixteenth century. Taraia and the first Kahungunu travellers settled north of the old path of the Ngaruroro River (see fig1). With Taraia, was Te Aomatarahi, who eventually settled his group, later known as Ngai Tahu and Ngati Ira, south of the Tukituki River.[9] Through might and marriage, the descendants of Kahungunu took hold in the majority of Hawke's Bay, but they did so, according to Ballara, *conditionally*. Some

2. For further explanation see the Waitangi Tribunal's *Te Whanganui-a-Orotu Report 1995*, Wellington, Brooker's Ltd, 1995, fig 5 and pp
3. James Belich, *Making Peoples*, Auckland, 1996, Penguin Books (NZ) Ltd, p 157
4. Angela Ballara, 'Te Wera Hauraki', *People of Many Peaks*, DNZB vol I, pp 295–298
5. Angela Ballara, 'Te Paraihe', *People of Many Peaks*, DNZB vol I, pp 219–222
6. For further reading, see, in no particular order, J Te H Grace, *Tuwharetoa*; H Guthrie-Smith, *Tutira*; T Lambert, *The Story of Old Wairoa*; J M McEwen, *Rangitane*; J H Mitchell, *Takitimu*; S Percy Smith, *Maori Wars of the Nineteenth Century*; J Belich, *Making Peoples*; J G Wilson, *The History of Hawke's Bay*
7. Ballara, *Origins of Ngati Kahungunu*, p 63
8. Ibid, pp 60–71, 145–165
9. H A Ballara and G Scott, 'Claimants report to the Waitangi Tribunal. Crown Purchases of Maori Land in early Provincial Hawke's Bay', Wai 201 ROD, document I1, Porangahau block, p 1

of the ancient groups maintained an independent identity, for example, Rangitane, Ngati Tauiri, and Ngati Moe. Also, groups claiming descent from Kahungunu tended to emphasise links with ancient ancestors as well. Indeed, Ballara argues that high-ranking Hawke's Bay chiefs of the 1840s and 1850s gained mana whenua through this 'dual' whakapapa. According to Ballara, claiming descent from Kahungunu ancestors only, gave chiefs mana tangata, but not necessarily mana whenua as well.[10]

To explain the links between ancient and migrant people further, it is necessary to provide examples from the different locations of Hawke's Bay. The following paragraphs will do that, by starting in the northern extremity of this Rangahaua Whanui district (Hawke's Bay), and moving south. When mentioning locations, readers should note that chiefs and Maori groups' *centres* of geographic influence are being situated, not necessarily their complete rohe. It is not the intention of this chapter to constrict or define particular people or groups' customary interests in any way, but merely to provide a guide to readers, for subsequent chapters.

1.2.3 Mohaka

The Hawke's Bay Rangahaua Whanui district stretches north to the Waihua River district. In 1850, the part of Hawke's Bay south of this river, with Mohaka as its centre, was identified with Ngati Pahauwera, an iwi[11] with which a number of different hapu associated themselves.[12] One of their chiefs with whom McLean had considerable involvement, was Paora Rerepu. His whakapapa traced his descent from Awanuiarangi, through Tuteihonga; and from Kahungunu, through Purua and Te Huki. Through his mother, Paora Rerepu descended also from Te Whatuiapiti, linking him to further lines of dual Kahungunu, and pre-Kahungunu descent groups such as Ngati Ira and Ngai Tahu.[13] Ngati Pahauwera have presented a comprehensive claim to the Tribunal. Aspects relating to the Mohaka River were heard separately, and reported on in 1992. The remainder of their claim, relating to grievances arising principally from land alienation, is being managed by the Ngati Pahauwera Section 30 Incorporation, a group appointed by the Maori Land Court in 1994. Ngati Pahauwera are represented on the Maungaharuru Tangitu Trust, the body that manages Wai 299, the comprehensive claim which concerns principally the Mohaka–Waikare confiscation. The Maungaharuru Tangitu Trust represents Maori hapu of the Mohaka–Waikare district.

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10. H A Ballara and G Scott, 'Claimants report to the Waitangi Tribunal. Crown Purchases of Maori Land in early Provincial Hawke's Bay', Wai 201 ROD, document I1, Introduction, p 36
11. Too much should not be read into the use in this report of the terms 'iwi' and 'hapu'. While it suits European notions of political and social structures to pyramidise Maori society (ie tangata make up whanau, which make up hapu, which make up iwi, which make up supra-iwi, which comprise the sum of the race: Maori), this graphic compartmentalisation does not necessarily sit comfortably with Maori representations of themselves. Therefore, this report has been guided by other authors' use of terms, and has, accordingly, used them interchangeably, and without prejudice.
12. Cordry T Huata, 'Wai 119 Report to the Waitangi Tribunal for Ngaati Pahauwera Society', 1991, Wai 201 ROD, document A14, p 5; Ballara, *Origins of Ngati Kahungunu*, pp 183–184
13. Ballara, *Origins of Ngati Kahungunu*, pp94–98

1.2.4 Mohaka–Waikare

Ngai Tatara–Ngati Kurumokihi, and Ngati Tu, are also represented on the Maungaharuru–Tangitu Trust. They can claim dual descent from, among others, the ancient occupants Ngati Tauira, descended from Tangaroa and Hau, through Tunui, (and from the important Koaupari line). They claim descent from Kahungunu through, for example, Kahutapere II, (whose children carved up much of this district between them). Many other important descent lines can be traced.[14] Ngati Matepu are a further group involved with the Wai 299 claim. McLean met them, and their chief Te Tore, at Petane, in 1850.[15]

Ngati Hineuru are also represented on the Maungaharuru–Tangitu Trust. They are an iwi which occupy the inland Mohaka–Waikare district and surrounds, their centre being Te Haroto and Tarawera. This area served as 'the gateway to the interior', and as an important buffer zone between many tribes; Ngati Tuwharetoa, Ngati Manawa, Tuhoe, and, to the east, the Hawke's Bay hapu. Due to their central position, Ngati Hineuru can trace ancestry to all of these tribes. Links with ancient tribes are prominent in Ngati Hineuru whakapapa. Ngati Hotu, Ngati Marangaranga, Ngati Awa, and Ngati Apa all feature.[16] Claimants currently cite Ngati Kurupoto and Ngati Maruahine, among others, as being distinct hapu associated with the iwi, Ngati Hineuru. According to Ballara and Parsons, Ngati Hineuru had, prior to McLean's arrival, lived for periods under the mana of Kahungunu descendants Kahutapere II, and Te Ruruku; and under the mana of the Ngati Tuwharetoa chief, Te Heuheu.[17] McLean encountered one of the principal Ngati Hineuru chiefs, Te Rangihiroa, at Tangoio in April 1851.[18]

1.2.5 Ahuriri and Heretaunga

The representatives of many hapu met McLean on the foreshore of Te Whanganui-a-Orotu, in 1850. Ballara described this collection of hapu as Ngati Kahungunu-ki-Heretaunga.[19] Claimants have tended not to use this term, but instead have filed claims which identify individual hapu or ancestors. Nevertheless, for the purposes of this report, combining the hapu of Ahuriri and the Heretaunga Plains under one umbrella term has benefits; it is convenient and enables easy distinction from other major Hawke's Bay Maori groups, such as Ngati Te Whatuiapiti (who also descend from Kahungunu). Therefore, subsequent chapters will refer to the Ngati Kahungunu hapu, or coastal Ngati Kahungunu of Ahuriri and/or Heretaunga. This derivation should not be seen, however, to limit the autonomy of hapu associated with the umbrella term, or to deny these hapu their whakapapa links with pre-Kahungunu tribes. Using a couple of examples, it is clear that the hapu of Ahuriri and

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14. See P Parsons 'The Mohaka–Waikare Confiscated Lands Ancestral Overview (Customary Tenure)', 1993, Part B, Maungaharuru–Tangitu District, pp 32–99 for a full explanation of the whakapapa links.
15. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, p 39
16. See P Parsons, 'Ancestral Overview', Part A, Tarawera–Tataraakina District, pp 4–31, for a full explanation of Ngati Hineuru's whakapapa links; and Ballara, *Origins of Ngati Kahungunu*, pp 184–188
17. Ballara, *Origins of Ngati Kahungunu*, p 186, and Parsons, 'The Interests of Kahutapere II', 1994
18. Ballara and Scott, I1, Ahuriri block file, p 17
19. Ballara, *Origins of Ngati Kahungunu*, p 188

Heretaunga did act autonomously, and did claim dual ancient and migrant whakapapa.

One example is the hapu Ngati Hinepare and Ngati Mahu. Their influence centred around Moteo and Wharerangi. Their female tipuna, Hinepare, was descended from, among others, Paikea and Whatonga. She married Taraia, the chief who led the Kahungunu descendants into Hawke's Bay. Apparently this marriage took place prior to Taraia's migration.[20] The marriage of Hinepare and Taraia, then, would appear to embody the twinning of the ancient and migrant peoples. Of course, marriage alone did not secure the Kahungunu migrants a home in Hawke's Bay. Oral traditions relating the battles between Taraia, and Turauwha of Otatara, are readily retold as part of tribal oral narratives.[21] Paora Torotoro and Paora Kaiwhata, were prominent chiefs of these hapu when McLean negotiated the purchase of Ahuriri in 1850–51. Ngati Hinepare and Ngati Mahu have claims relating to this purchase (Wai 400), and are involved in claims, with other hapu, relating to the Kaweka Forest (Wai 382), and other areas of Heretaunga.

In 1850 McLean dealt chiefly with Kurupo Te Moananui, Tareha (from 1861, Tareha Te Moananui), and Karaitiana Takamoana, for the purchase of Ahuriri. Kurupo Te Moananui claimed principal descent from his grandfather Hawea, a descendant of Kahungunu.[22] Tareha referred to Nga Tuku a te Rangi as his principal hapu in the 1850s and 1860s. He could also claim certain rights under Kahutapere II, who Tuku a te Rangi descended from (through Hikawera II), and both were linked to ancient lines, leading to Tangaroa.[23] Between 1861 and 1880 Tareha was the acknowledged leading chief of Ahuriri. His descendants today, who reside at Waiohiki (referred to in the 1850s as Pa Whakairo), have lodged a claim against the Crown on behalf of Ngati Paarau (Wai 168). They, along with Ngati Hinepare, Ngati Mahu, Ngati Tu, Ngati Matepu, Ngai Te Ruruku and Ngai Tawhao, came together to bring the claim (Wai 55) relating to their lagoon, Te Whanganui-a-Orotu. Claimant submissions emphasised strongly the relationship between ancient and migrant peoples, summed up in the saying: 'The land is Turauwha's but the mana is Taraia's'.[24] The Tribunal reported on the Te Whanganui-a-Orotu claim in 1995.

Karaitiana Takamoana, who married Tareha's sister, escorted McLean to Hawke's Bay from Manawatu. He was there negotiating for the return (under the patronage of Te Moananui) of further Ngati Te Upokoiri and Ngati Hinemanu to Hawke's Bay. They were refugees from the musket war era. Karaitiana, principally descended from Hawea, could also claim Rangitane links through his father. This became important when the Crown negotiated the purchase of the Tamaki Bush in the early 1870s.[25] He was also associated with other Ngati Kahungunu-ki-Heretaunga hapu, such as

20. Ibid, pp 193–194
21. Parsons, A12, section 1, pp 8–10
22. Ballara, 'Kurupo Te Moananui', *The People of Many Peaks*, DNZB vol I, pp 211–214
23. Parsons, 'The Interests of Kahutapere II', p 13; and Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, p 15
24. Parsons, A12, section 1, p 10
25. Ballara, 'Karaitiana Takamoana', *The People of Many Peaks*, pp 127–131

Ngati Hori.[26] Other hapu represented within the coastal Ngati Kahungunu group were Ngati Hinemoa, represented by Te Waka Kawatini; and Ngai Tamawahine, represented by Paora Torotoro.[27]

Further inland of the Ahuriri–Heretaunga Plains, centred around Omahu and looking west (inland Patea), were Ngati Te Upokoiri and Ngati Hinemanu. They had links with the Ngati Kahungunu hapu of Heretaunga, Ngati Te Whatuiapiti further south, and with ancient ancestors, Whatumamoa, Awanuiarangi and Whitikaupeka.[28] Their principal chiefs were Renata Kawepo,[29] and Noa Huke. Both were closely associated with Colenso for a period, and both met McLean in 1850. A claim relating to grievances in the Kaweka region (Wai 382), has been brought on behalf of Ngati Te Upokoiri and Ngati Hinemanu, yet also acknowledges Ngati Tuwharetoa, Ngati Maruawahine, Ngati Tamawahine, Ngati Hineuru, and Ngati Mahu.

1.2.6 Ngati Te Whatuiapiti and hapu

Part of Ballara's reasoning behind collating hapu under the Ngati Kahungunu-ki-Heretaunga umbrella, is to provide a distinction between that group and those hapu identified as, and associated with, Ngati Te Whatuiapiti. This iwi could trace descent from Kahungunu through, among other ancestors, Taraia's sister, Taiwha; and, could also trace whakapapa back to Te Porangahau, Tahu, Ira, and Whatonga II, leading ultimately to Toi.[30] In 1850, (Kuini) Hine-i-Paketia, a close relation of the Ngati Te Whatuiapiti chief Te Hapuku, was said to best represent the whakapapa combination of ancient lines of descent, and Kahungunu links.[31] Ngati Te Whatuiapiti had several main centres of influence, including Waipawa, Waipukurau, Patangata, Te Hauke and others. Ballara believes that Ngati Te Whatuiapiti was 'genealogically distinct' from Ngati Kahungunu-ki-Heretaunga.

The split between the Heretaunga Ngati Kahungunu and Ngati Te Whatuiapiti, Ballara argues, continued to develop.[32] It is important to note this tension, as it reared its head again in the 1850s, partly as a result of McLean's according Te Hapuku a status beyond that acceptable to other Maori. Claimants who have identified grievances in central, inland, Hawke's Bay (Gwavas Forest, Wai 397), have listed themselves as both Ngati Te Whatuiapiti and Ngati Kahungunu, and also Ngati Raingikoinake, Ngati Te Upokoiri, Ngati Hinemanu and Ngati Te Ao. This would appear to acknowledge the major ancestors, Te Whatuiapiti and Kahungunu, and the equally important descendants of them.

A number of hapu who could identify with Ngati Te Whatuiapiti in 1850, also operated autonomously of them, according to Dr Ballara's thesis. These hapu

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26. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, pp 24–25
27. Ballara, *Origins of Ngati Kahungunu*, pp 190–193
28. Ibid, p 202
29. Ballara and Parsons, 'Kawepo, Renata Tama-ki-Hikurangi', *The People of Many Peaks*, pp 26–28
30. Ballara, *Origins of Ngati Kahungunu*, pp 100–102
31. Ballara, 'Hine-i-Paketia', *The People of Many Peaks*, pp 10–11
32. Ballara, *Origins of Ngati Kahungunu*, pp 194–199

included, for example, Ngati Te Rangikoinake; and, Ngati Hawea, who became associated with the Te Awanga, Matahiwi and Pakowhai communities.[33] People with a claim relating to Mangateretere (Wai 71), in this vicinity, have brought their claim on behalf of Ngati Kahungunu, Ngati Hawea, Ngati Hori and Ngati Tuku o Te Rangi.

Ngati Hawea were prominent at Te Matau a Maui (Cape Kidnappers), as were another autonomous Ngati Te Whatuiapiti hapu, Ngati Kurukuru. Te Teira Tiakitai, son of prominent Ngati Kurukuru chief Tiakitai, (who had been the patron of the Rangaika whaling station until his death in 1845), met with McLean in 1850. Ngati Kurukuru, in 1850, lived at Waimarama with Ngati Whakaiti and Ngati Kautere, who were descended from Ngati Ira.[34] A claim (Wai 517) before the Tribunal relating to this area has been brought on behalf of Ngati Kurukuru and Ngati Whakaiti.

Another area where descendants of Te Whatuiapiti were prominent in 1850 was Porangahau. There, Ngati Kere, Ngati Hinetewai and Ngati Manuhiri emerged as an autonomous group, who could link with original Ngati Ira, Ngai Tahu and Rangitane people.[35] Henare Matua, a young man when McLean negotiated the Waipukurau block purchase in 1850–51, and who became increasingly prominent from the late 1860s, was a Ngati Kere chief.[36]

1.2.7 Tamaki-nui-a-Rua

Henare Matua was also a politically influential figure in the Tamaki purchase, yet, he was not represented on any Crown grants in the area. He acted for some of grantees and other customary owners who were not on the grants.[37] Various descendants of Toi occupied this area, including Te Aitanga-a-Whata, Ngai Tara, and Rangitane. It is important to note that, as Ballara has stated, 'Rangitane people were never expelled from their homes or dominated by Ngati Kahungunu; they are there still'.[38] This is evidenced by a claim (Wai 166) brought on behalf of Rangitane o Tamaki-nui-a-Rua, relating to grievances in this area. Nevertheless, the influence of the Ngati Ira, Ngai Tahu and Ngati Kahungunu migrants can not be discounted. Intermarriage has resulted in a situation where 'many Rangitane can trace their descent via Te Manakawa, Te Rehunga, Te Kikiri', who were descended from Te Whatuiapiti and Kahungunu.[39]

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33. Ibid, pp 197–198
34. Ballara and Scott, Matau a Maui block, I1, pp 1–2
35. Ballara and Scott, Porangahau block, I1, pp 1–7
36. Ballara, 'Henare Matua', *The People of Many Peaks*, pp 43–46
37. Evidence of Henare Matua, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, evidence, p 137
38. Ballara and Scott, Tamaki block, p 4
39. Ballara and Scott, Tamaki block, I1, pp 6–7

1.3 CONCLUSION

Hopefully this chapter has explained, albeit in a rudimentary fashion, who the different hapu and iwi of Hawke's Bay were, their origins, and how they have represented themselves as claimants to the Waitangi Tribunal. Not all claims have been mentioned in this section; a complete list is in appendix III.

This report has concentrated on identifying, where possible, the links between the 'ancient' and 'migrant' people. The fusion of these two peoples into the various groups that met with McLean in 1850, is a useful place to start this report. It gives due credit to the breadth of history and traditions held by Hawke's Bay Maori. It provides a human perspective to the bones and artifacts found in archealogical sites.[40] And, it introduces two somewhat ambiguous, yet vital terms: mana whenua, and mana tangata. As proceeding chapters will hopefully show, these concepts of Maori identification with and control over land and resources, (and whether the Crown paid adequate notice) rests at the heart of a number of grievances.

The Introduction to this report has explained how it was originally anticipated that one district report would cover the whole Wairoa ki Wairarapa area. This was based on the assumption, made in 1991, that all the claims of Wairoa ki Wairarapa could be grouped for a single inquiry, and led to the drafting of a comprehensive Ngati Kahungunu claim (Wai 201). Both these assumptions have proved unworkable in practice. This report was redefined to cover a smaller area of Hawke's Bay, which excluded Wairarapa and Wairoa. Meanwhile, claimants pursued grievances on behalf of, and which reflected, defined hapu and ancestors, rather than solely under the iwi name, Ngati Kahungunu.

It remains to note once again the debts owed by this chapter to the historians Angela Ballara and Patrick Parsons.

40. See Waitangi Tribunal's *Te Whanganui-a-Orotu Report 1995*, pp 15–17; and *Mohaka River Report 1992*, p 14. For further reading see Mark Allen's 'Warfare and Economic Power in Simple Chiefdoms: The Development of Fortified Villages and Politics in Mid-Hawke's Bay, New Zealand', PhD thesis, University of California, Los Angeles, 1994

CHAPTER 2

EARLY CONTACT: LAND ISSUES, MAORI SOCIETY, AND THE IMPACT OF EUROPEANS

2.1 INTRODUCTION

This chapter serves as an introduction to the programme of land purchasing initiated by the Crown in Hawke's Bay in 1850. The period of intensive land purchasing from 1850 to 1862 is dealt with in chapter 3 of this report. As Paul Goldsmith has similarly written, in chapter 2 of his Wairarapa Rangahaua Whanui district (11A) report,[1] this chapter deals with issues such as Maori concepts of land ownership, old land claims, and the economic and social implications of contact with whalers, traders and missionaries, prior to the arrival of McLean in 1850.

This chapter was written prior to the splitting of the Wairoa ki Wairarapa Rangahaua Whanui district into three separate districts. Therefore, this chapter refers to events at Wairoa and Te Mahia. In many ways, it is better that these references remain included for the Hawke's Bay district, as a considerable number of the hapu and iwi of Hawke's Bay were living at Nukutaurua during the early contact period. The new ideas, and lessons learnt from events in Wairoa and Te Mahia, presumably stayed with Hawke's Bay Maori when they returned to their customary lands in the 1840s.

2.2 MAORI SOCIAL AND POLITICAL STRUCTURE

2.2.1 Introduction

Chapter 1 of this report introduced the hapu and iwi of Hawke's Bay. It drew heavily on the work of Angela Ballara. This chapter relies on Angela Ballara and Gary Scott's 'Crown Purchases of Maori Land in early Provincial Hawke's Bay', a report commissioned by the Tribunal on behalf of Hawke's Bay claimants. Their report identifies many important facets of Maori social and political structure which require examination in order to assess the impact of early whalers, settlers, traders, and missionaries, and the new ideas of leases and land alienation that they brought. It should be noted at this point that the Crown was not directly involved to any great extent in the dissemination of these ideas in the Hawke's Bay until late 1850. This

1. P J Goldsmith, *Wairarapa*, Wellington, Waitangi Tribunal Rangahaua Whanui Series, (working paper: first release), Wellington, July 1996, pp 3–17

chapter, then, will rely on interpretations of the sources which narrate the lives and experiences of the early Pakeha settlers, and on Ballara and Scott's arguments and evidence.

Ballara and Scott stress that no unified tribal hierarchy existed in the Hawke's Bay area prior to (or indeed after) 1850.[2] One of the major themes of the consequent Crown purchasing programme involved the Crown endowing and bestowing on certain chiefs the right to alienate land, with and without the consent of their respective people, so that it is important to identify the rights and obligations of chiefs within a Maori socio-political framework. For a comprehensive explanation of the complexities of iwi, hapu, whanau, rangatira and tangata relations of Hawke's Bay, interested readers should consult Ballara and Scott's report, Ballara's 1991 thesis, and evidence presented in support of the Mohaka River (Wai 119), Te Whanganui-a-Orotu (Wai 55), Mohaka Waikare confiscation (Wai 299) and other claims.[3]

2.2.2 Rights through whakapapa

Ballara and Scott believed that although paramount chiefs existed, such as Te Hapuku, Tareha, Kurupo Te Moananui and Puhara at Ahuriri–Heretaunga–Waipukurau; Paora Rerepu at Mohaka; and Te Koari, Te Apatu and Ihaka Whaanga at Wairoa; many other 'less illustrious chiefs' still exercised independent rule over both people and specific areas.[4] As discussed in chapter 1, chiefs in the first half of the nineteenth century exercised 'mana tangata' through their whakapapa links to Kahungunu, and gained their 'mana whenua' through a combination of whakapapa links to Kahungunu and the earlier pre-Taraia ancestors, such as Awanuiarangi, Kupe, Whatumamoa, Tara, Rangitane and Toi.[5] These chiefs ruled over a complex group of closely related hapu who generally identified with a recent common ancestor, who shared territory, and often exercised different rights within it. These communities lived alongside each other, shared resource use rights with other people, yet remained for the most politically and socially independent.

2.2.3 Shared resource use rights

Examples of such inter-community shared resource use rights (sometimes referred to as a whanaunga right) were readily supplied to the Tribunal at both the Mohaka and Te Whanganui-a-Orotu hearings. Toro Waaka told the Mohaka River Tribunal of how Ngati Hineuru had an agreement to fish for kahawai at the river mouth at certain times. Ngati Pahauwera shared use of the upper reaches of the Mohaka River

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2. 'Claimants' Report to the Waitangi Tribunal. Crown Purchases of Maori Land in early Provincial Hawke's Bay', Introduction, Wai 201 ROD, doc I1, p 33
3. Apart from Ballara's thesis, these documents have been entered on the Tribunal's Wai 201 record of documents. A list of the reports and submissions is available from the Tribunal offices.
4. Ibid, pp 33–36
5. Ibid, p 36; numerous whakapapa charts are held on the Wai 201 record of documents – see, for example, B Taylor, 'Mohaka–Waikare Confiscated Lands: Customary Usage Report', Wai 201 ROD, doc J5, end pages; Patrick Parsons, 'Claimants Report to the Waitangi Tribunal: Te Whanganui-a-Orotu', Wai 201 ROD, doc A12, sec 1; and Cordry Huata, 'Purchase of the Mohaka Block', Wai 201 ROD, doc A14.

with Ngati Tuwharetoa.[6] Fred Reti explained to the Te Whanganui-a-Orotu Tribunal how various iwi exercised whanaungatanga rights at Te Whanganui-a-Orotu:

> Mountain tribes like Hineuru through their close connection with Ngati Hinepare and Ngati Mahu would often camp at places designated for them during the summer. Ngati Whatuiapiti and Kahuranaki from Te Hauke would fish and gather around the port area and Ngati Hawea also. Ngati Tu and Ngai Te Ruruku would often take their whanaunga from Tuhoe in and around Whareponga and Keterau when they were visiting. Many hapu used the Whanga on this basis.[7]

Given that this shared resource use right occurred not only within the hapu of Ngati Kahungunu, but with other iwi outside the Hawke's Bay rohe, such as Tuhoe and Ngati Tuwharetoa, there is some justification for Ballara and Scott's argument that the communities of Hawke's Bay Maori were independent of an overarching Ngati Kahungunu tribal structure, and applied whanaungatanga rights indiscriminately, within and outside the prescribed Hawke's Bay–Ngati Kahungunu rohe.

2.2.4 War alliances

Alliances formed to ward off invading foe were made between the Maori hapu of Hawke's Bay and other iwi who resided outside the Hawke's Bay rohe, during the musket war era, in the 1820s and 1830s. In a war between Ngati Te Upokoiri and Ngati Te Whatuiapiti, both invited other outside iwi to help. One of Ngati Te Upokoiri's allies, Ngati Tuwharetoa, were defeated at Te Roto-a-Tara. Fearing reprisal, Pareihe, a Ngati Te Whatuiapiti chief, led his iwi and other Wairarapa, Heretaunga, and Ahuriri Maori to Nukutaurua on the Mahia Peninsula.[8] There an alliance was formed with Te Wera Hauraki, a Nga Puhi chief, who helped defend the peninsula stronghold.[9] After a period of trading for muskets from the whalers and traders frequenting the Te Mahia whaling station, Pareihe was able to join with those who had remained behind (and who had suffered defeat at Te Pakake, an island in Te Whanganui-a-Orotu), to drive out the Ngati Raukawa who had attempted to establish occupation at Puketapu.[10]

In the early 1840s the Nukutaurua sanctuary was gradually abandoned as the iwi and hapu reclaimed their particular customary land. Ballara and Scott argue that once this process was complete, and when peace was secured, the 'Ngati Kahungunu alliance' as such, dissipated. Hapu and iwi resumed their community status, continuing to operate as they had previously, with independent autonomous control.[11]

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6. Waitangi Tribunal, *Mohaka River Report 1992*, Wellington, 1992, Brooker and Friend Ltd, p 17
7. Frederick Reti, evidence to the Te Whanganui-a-Orotu Tribunal, Wai 201 ROD, doc D27, p 10 (taken from Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Wellington, 1995, Brooker's Ltd, p 21)
8. See Angela Ballara's entry on 'Te Pareihe' in *The People of Many Peaks* and Maori entries from the *Dictionary of New Zealand Biography*, Bridget Williams Books, Department of Internal Affairs, Wellington, 1990, vol 1, pp 219–222.
9. For an account of Te Wera Hauraki's protection of Ngati Kahungunu at Nukutaurua in the 1820s and 1830s, see Ballara's entry on him, 'Te Wera Hauraki', *The People of Many Peaks*, pp 295–298.
10. Ballara and Scott, introduction, pp 39–42
11. Ballara and Scott, Introduction, p 42

2.2.5 Rights within communities

Communities generally functioned under the protection and mana of rangatira, who gained their status through a combination of whakapapa, marriage alliance, the bestowal of responsibility passed on from an older rangatira, and from the continued support of whanau under their control. These chiefs could, and often did exercise individual rights for themselves and their whanau, to the exclusion of other whanau within the community. An example of such was given to the Te Whanganui-a-Orotu Tribunal. Kurupai Koopu said it was Tareha's privilege to go to Pania's rock. Hineipitia (Beattie) Nikeria explained that Pania's rock:

> represents the Tareha family. I reckon that place belongs to them. They can go and fish there. They're the ones who can go right up to the rock. They're the only ones allowed.[12]

This right was protected, Beattie Nikeria said, by the taniwha Moremore, who would only let the Tareha whanau go to Pania's rock. Kurupai Koopu linked Napier local authorities' destruction of Pania's Rock, (for harbour development purposes) which had commenced in 1929, to the Napier earthquake of 1931. Werate Te Kape saw Moremore in a previously unseen form on the morning of the quake.[13]

Other instances of whanau having particular rights to resources in certain areas, such as eel weirs and rat trails, were common among Hawke's Bay hapu. Ballara and Scott stress that such rights as exercised by chiefs were particular and localised, and that chiefs did not have similar exclusive rights, over all the land and resources for which they held mana.[14]

2.2.6 Land alienation between Maori

Ballara and Scott contend that although some sort of land alienation did take place prior to Pakeha arrival and settlement, it was an uncommon practice, and differed from the concept of complete and permanent alienation conceptualised by Pakeha settlers and the Crown. For example Te Uamairangi, of Ngai Te Upokoiri, gave over his lands to Hawea, of Ngati Te Whatuiapiti, and went to live on his mother's land at Whakatane. Some years later, however, he returned and resumed his occupation unopposed.

Most instances of land alienation took place after defeat in war. Yet even when defeat was involved, 'the giver usually retained occupancy rights; mana, not land, was alienated . . . Voluntary and permanent withdrawal of the whole population as well as the chief was necessary for true alienation'.[15] Some twenty years after the

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12. Oral evidence cited in Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Wellington, 1995, Brooker's Ltd, pp 14–15
13. Ibid, p 15
14. Ballara and Scott, Introdnction, p 43
15. Ibid, pp 45–46; the sections presented to the Tribunal as part of the Ballara and Sccott report, are mostly taken from Ballara's thesis. See pp 364–374 for the section on land alienation.

defeat and dispersement of Ngati Te Upokoiri at Te Roto-a-Tara, Renata Kawepo was able to bring his people back to reoccupy their customary land.[16]

To illustrate their point further, Ballara and Scott gave the example of Te Kohea Tahanga, who told the Native Land Court hearing of the Hinewaka block (in Wairarapa) that his ancestor Ngana had rights in the block based on paying a calabash of preserved birds to Hikutoto. Another witness to the Court said that Ngana continued to fill the calabash. 'Rather than purchasing land, Ngana was assigned land by a high chief whose mana he continued to acknowledge', Ballara and Scott concluded.[17] Indeed, this perpetual payment appears more similar to Pakeha concepts of leasing, rather than a situation of permanent alienation.

Ballara and Scott's evidence on land alienation between Maori shows that other conditions existed which made these transactions quite different from Pakeha concepts of permanent land alienation. Primarily, the deals involved mana, they were not necessarily permanent, and the agents involved in the transactions were clearly identified; that is, third parties did not feature. For Maori to legitimately alienate land, Ballara stated, agreement was necessary between chiefs who held the mana over the land, with occupants who shared proprietary rights with the chief. The chiefs would be expected to conduct negotiations, but would require the public consent of their people.[18]

2.3 TRADERS AND WHALERS

2.3.1 Introduction

There are many general histories recounting the arrival of Pakeha whalers and traders in Hawke's Bay, the most useful being Lambert's *The Story of Old Wairoa,* and Wilson's *History of Hawke's Bay.*[19] For the purposes of the Rangahaua Whanui district report, I am interested in discovering the impact these early visitations and settlements had on Maori society, how Maori reacted to these visitors, and the ideas that they brought.

2.3.2 Trade

Hawke's Bay Maori's first recorded interaction with Europeans was distinguished by trade. Four waka gathered alongside Captain Cook's *Endeavour* on 10 October 1769 when it sailed near Te Mahia peninsula. The European crew received clothes, ornaments, pounamu and whalebone patu, spears, and a couple of waka paddles. In return Maori took away a collection of beads, trinkets, glass, Tahitian tapa cloth, an

16. Angela Ballara, 'Kawepo, Renata Tama-ki-Hikurangi', in *The People of Many Peaks*; Maori entries from DNZB, Bridget Williams Books, Department of Internal Affairs, Wellington, 1990, vol 1, pp 26–28
17. Ballara and Scott, introduction, pp 47–50
18. Ballara, 'Origins of Ngati Kahungunu', p 373
19. Thomas Lambert, *The Story of Old Wairoa,* Coulls Somerville Wilkie Ltd, Dunedin, 1925, Capper Press reprint, Christchurch, 1977; and J G Wilson and others, *History of Hawke's Bay,* A H & A W Reed, Dunedin and Wellington, 1939

axe and a tomahawk.[20] Encounters further south in the bay were punctuated by Maori shows of defiance, indicating that they were jealous of their territory, and were not afraid to physically defend it. Maori off the coast at Te Matau-a-Maui, or Cape Kidnappers, learnt that trading could be fatal, when they attempted to test the strength of the visitors, by 'cheating' on a trade, and, in the confusion that followed, kidnapped Tayeto, the son of Tupaia, Cook's Tahitian guide and translator. One of the Maori abductors was shot, allowing Tayeto to escape, and two other Maori were also shot. Colenso was able to find out in 1851 that the dead were Whakaruhe and Whakaika, and that Te Ori was injured.[21] Te Reo Areare, a coalition of Maori education groups, were reported in the *Evening Post* of 30 December 1995, as saying: 'Maori believed their ancestors thought the Tahitian was being held by Captain Cook's crew, and wanted to free him. The accusation of kidnapping was inaccurate'.[22]

Despite this unfortunate incident, Maori, through trade with Cook, encountered new tools such as axes, and were given new vegetables to grow, such as cabbages and potatoes. They had also learnt that the musket was an essential item to have if a balance of power was to be maintained between two trading parties.

It is therefore no surprise that muskets were considered by Maori to be the most valuable item to secure. This was further fatally proved when Maori at Parapara and Te Ihu o te Rei, islands in Te Whanganui-a-Orotu, were slaughtered by invaders from the north and west. As a result one of the hapu was thereafter known as Ngati Matepu, or those who perished by the gun.[23] One of the benefits of the retreat to Nukutaurua was to secure the support of Te Wera Hauraki, who had muskets, and that Te Mahia peninsula was on the irregular Pacific trade route. As Lambert wrote, 'The possession of guns . . . became almost a mania'.[24]

The traders who fulfilled this need for muskets and gun powder were often agents of Sydney based merchants. Barnet Burns, who later achieved some notoriety in England for his full facial moko, was the first such agent to set up operations in Hawke's Bay. He was contracted by L B Montefiore and Co, who already had J W Harris working for them at Turanganui. Burns traded muskets, powder, blankets and tobacco for flax at Te Mahia from about 1829. To ingratiate himself as the 'Pakeha' of Te Wairoa, he married Amotawa, the daughter of the chief whose patronage he depended on.[25] In his own account Burns wrote that he took full part in Maori society, from receiving moko, to fighting against other Maori, and eventually leading a hapu of a couple of hundred people as their chief.[26] Putting to one side obvious reservations about the authenticity of Burns' account, we are left with a record of someone who, for the eight years he was there, became immersed in the

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20. Anne Salmond, *Two Worlds*, Penguin Books, 1991, p 141
21. Ibid, pp 149–150
22. *Evening Post*, Wellington, 30 December 1995
23. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Brookers Ltd, 1995, Wellington, p 29
24. Thomas Lambert, *The Story of Old Wairoa*, Coulls Somerville Wilkie Ltd, Dunedin, 1925, reprint Capper Press, Christchurch, 1977, p 351
25. A H Reed, *The Story of Hawke's Bay*, A H & A W Reed, Wellington, 1958, p 26; A E Korver, 'Burns, Barnet', DNZB, vol 1, p 57
26. Extracts of Burns' pamphlet, published in London in 1835, can be read in Lambert (pp 355–362).

prevailing Maori culture. To remain at Te Wairoa, Burns had to rescind most aspects of his previous culture, and adopt those of the Maori on whose sufferance he remained.

This theme appears to continue with other traders, and especially whalers. For example Alexander Alexander arrived at Ahuriri in 1846, married Harata, of Ngati Te Upokoiri and who lived with her uncle at Poraiti, and set up trading stores at Onepoto (now Napier), Ngamoerangi (near Tangoio), and Waipureku (now Clive).[27]

On behalf of Sydney merchants Cooper and Holt, W B Rhodes set up trading stations in Hawke's Bay in 1839, leaving agents to husband pigs on a commission basis.[28] Maori obviously did not accept all these traders. Rhodes' Ahuriri agent, a Mr Simmons, had his store and goods razed by local Maori. At the end of 1841 Rhodes closed all his trading posts at Ahuriri, Te Mahia and Te Wairoa.[29]

2.3.3 Whaling

To separate the impact of the whalers from that of the traders is to impose an artificial distinction. In reality the whalers, to survive, had to trade with Maori, and did. From the series of profiles that Lambert provided, many whalers also appeared to adopt the cultural norms of the Hawke's Bay Maori with whom they were associated. This is evident in the number of Maori families who are descended from the whalers who married significant wahine, and thus substantiated their position within the various communities in which they lived. For example, John (Happy Jack) Greening's descendant, K Greening, has a claim with the Tribunal regarding the Whangawehi block, Te Mahia peninsula, which was the original site of Happy Jack's whaling and trading station.[30]

The first station to be set up in Hawke's Bay was that of the Ward brothers at Waikokopu in 1837. Others quickly followed, and by 1851 there were 140 Europeans manning 26 shore boats, operating from stations at Te Wairoa, Waikokopu, Moeangiangi, Whakaari (near Tangoio), Whakamahia, Kimikini and Cape Kidnappers.[31] According to Lambert, some Maori operated their own boats, and Maori were employed as crew on European owned boats.[32] Because the right (from 1842 predominantly sperm) whales only swam past Hawke's Bay for part of the year, resident European whalers justifed their existence in the off-season by operating as traders. Wilson writes that Captain Ellis, who arrived from the Bay of Islands in 1837, married into a Waikokopu hapu, and ran a trading store to supplement his three whaling boats. He paid for Maori labour with goods.[33] (It should be remembered that the English pound as a currency was not in sufficient

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27. J G Wilson, *History of Hawke's Bay*, A H & A W Reed, 1939, p 148
28. Brad Patterson, 'Rhodes, William Barnard', DNZB, vol 1, pp 361–362
29. A E Woodhouse, *George Rhodes of the Levels and his Brothers. Early Settlers of New Zealand*, Whitcome and Tombs Ltd, 1937, p 31
30. Lambert, p 370; Karanema Greening's claim is Wai 101
31. Vincent O'Malley, 'The Ahuriri Purchase', overview report commissioned by the Crown Forestry Rental Trust, 1995, Wai 201 ROD, doc J10, p 10
32. Lambert, pp 366–367
33. Ibid, p 368

quantity to be an effective medium until the late 1840s.[34]) Apparently the whalers paid a yearly rent for whaling, fishing and occupation rights. Colenso recorded the example of William Morris, of the Rangaika station south of Cape Kidnappers, who was paying £5 per annum.[35]

The *Wellington Spectator,* on 12 December 1854, described the Hawke's Bay whalers as all having Maori wives, and that they spoke a piebald language called, undeceptively, 'whaler's Maori'.[36] Most reports from the time indicated that by the late 1850s the trade was in significant decline. Therefore those whalers who remained were likely to be the ones who stayed on as pastoral farmers and permanent traders, and were likely to have Maori wives and some understanding with a hapu as to use of land.

The 'lawlessness' of whaling communities in New Zealand is legendary, and Hawke's Bay, it appears, was no exception. Joseph Mason wrote to McLean in 1851, complaining that his overseer, Samuel Harrington, following an intense bout of rum drinking, had attacked him with a blubber cutting spade, and the next day, 'raving like a mad man took up an axx [sic] and threaten[ed] to kill all around'. Apparently he struck one of five Maori working for him on the back with the axe, but 'did not do him much hurt . . . the Native running at the time'. Mason concluded that it 'appear[ed] he did not wish to pay us by his behaivour', and asked McLean to intervene.[37] McLean's response is unknown. Social activities of whalers, most notably the drinking of copious amounts of rum for entertainment purposes, was a new spectacle for Maori. Although Lambert believed that Maori did not join their whalers in such indulgence, and generally occupied a sober and moral high ground, William Colenso certainly feared the effect that alcohol would have on local Maori.[38] Hawke's Bay was described as a 'favourite resort from justice' for ship-jumpers, convicts from Australia, and elsewhere.[39] In the 1840s at least, such men were safe from the reach of the fledgling British justice system, although there were a couple of notable examples of fugitives being arrested.[40] It appears likely, however, that if shipwrecked on the Hawke's Bay coast, as the *Falco* was on 26 July 1845, that the whalers would plunder any goods worth salvaging. As it happened, the *Falco* was carrying American muskets, gunpowder and rockets, possibly to be sold to the chiefs at war with the Government in the Bay of Islands.[41] Wilson records other instances of wrecks being plundered.[42] It is unclear how Maori viewed this behaviour by the whalers, yet with the presence of missionary families (the Colensos, the Hamlins, and the Williams), other examples of how Europeans conducted themselves were readily available.

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34. R P Hargreaves, *From Beads to Banknotes*, Dunedin, 1972, pp 28, 53
35. Reed, p 87
36. Reference found in Wilson, p 135
37. Joseph Mason to Mr Maclane [sic], 3 December 1851, folder 130A , McLean Papers, copy, micro 0535, reel 34, ATL
38. Lambert, p 374; for an analysis of Colenso's attitude, see P J Goldsmith, 'Aspects of the Life of William Colenso', MA thesis, University of Auckland, 1995.
39. Lambert, p 351
40. See Wilson, p 139
41. Dean Cowie, 'To Do All the Good I Can', MA thesis, University of Auckland, 1994, pp 156–157
42. Wilson, pp 138–139

So what was the effect that whalers and traders had on Maori in Hawke's Bay? The most obvious is the contact it brought with men of many different parts of the world. By 1842 an American, Captain Perry, exercised a large influence in the Te Wairoa area, perhaps giving Maori a different understanding of British imperialism, than that supplied by British whalers and the missionaries. A number of the whalers came from the Australian colonies. Other ideas about the worth of becoming a British Colony are most likely to have been aired, certainly around 1840. The most concentrated area of whaling activity was on the Te Mahia peninsula, which coincided with the largest population of Maori at the time, including a number of the influential Hawke's Bay and Wairarapa Ngati Kahungunu chiefs. Whalers would surely have passed on their thoughts about Kororareka – the possible effect of a large permanent settlement, and, from 1840, the imposition of customs duties. If they had not, then Maori who visited the Bay of Islands during this period, such as Te Hapuku and Renata Kawepo, may well have.[43] Ideas concerning land ownership and alienation would surely have surfaced at this time as well.

As well as ideas, different work patterns were introduced. Maori were employed on whaling stations, and were also engaged in planting, harvesting and preparing flax for trade. Other foodstuffs were grown to supply the whalers, and husbandry of a variety of introduced animals was carried out. As a result of participation in the commercial market, according to A McKirdy, tension among chiefs and members of hapu resulted from disputes over land and resource use.[44] O'Malley adds that such tensions worsened as Ngati Kahungunu chiefs became aware of the economic value that Europeans placed on their land.[45]

2.4 MISSIONARIES

William Williams led the Church Missionary Society's charge on the East Coast of the North Island, visiting Te Mahia in 1834, and, with his wife and family, established a mission station at Turanga in 1840. Although Williams had limited contact with Hawke's Bay he did petition the Queen on behalf of Maori, concerning the purported purchases of Captain Rhodes (see below).[46] Maori adherents of the faith had already toured Hawke's Bay in the early 1840s, and, when he visited in 1842, Bishop Selwyn was impressed by Ahuriri Maori; their attempts at literacy, and at having built a chapel capable of seating 400 people.[47] Te Hapuku and Puhara asked that Hawke's Bay be supplied with its own missionary, and in December 1844 two men, their wives and families, arrived. The Hamlins set up at Te Wairoa, and

43. Angela Ballara and Patrick Parsons, 'Kawepo, Renata Tama-ki-Hikurangi', *The People of Many Peaks*, Maori entries from DNZB, vol 1, pp 26–28; and Angela Ballara, 'Te Hapuku', ibid, pp 159–163
44. A McKirdy, 'Maori–Pakeha Land Transactions in Hawke's Bay, 1848–1864', MA thesis, Victoria University of Wellington, 1994, p 11, from O'Malley, pp 11–12
45. O'Malley, p 12
46. William Williams to the Queen, 1 February 1840, enclosure in Dandeson Coates to Lord Russell, 9 March 1841, BPP, 1841, no 311, p 140, cited from B Gilling 'Te Whanganui-a-Orotu. Brief of Evidence', Wai 201 ROD, doc E1(b), p 5
47. Wilson, p 177

William and Elizabeth Colenso settled at Waitangi, on the coast south of present-day Napier.

Secondary sources reveal little of James Hamlin's activities, in contrast with almost intense interest in Colenso. P J Goldsmith has conducted the most recent analysis of Colenso's personal attitudes towards his first years spent in Hawke's Bay. Colenso was, undoubtedly, of substantial influence on Maori in the period leading up to Crown purchasing. Along with his 20 or so Maori missionaries (known as native teachers), Colenso represented a potential 'rival power base in villages to the chiefs and a serious political threat'.[48] Colenso's substantial journals and correspondence remain a well used source for claimant researchers such as Patrick Parsons:

> When it comes to determining ancestral and occupational rights to the Esk Forest these journals are invaluable as a record of which sub tribes were in occupation and where, prior to the Mohaka – Waikare confiscation.[49]

Colenso had no success in converting principal chiefs until July 1848, when Kurupo Te Moananui and Tareha were baptised, with others quickly following. Te Moananui's conversion, however, was possibly motivated by an effort to disassociate himself from Te Hapuku.[50] Certainly Maori politics played a significant part in Colenso's popularity, and this intensified when issues concerning land alienation arose.

Colenso's advice to Maori concerning land transactions was clear and well documented. In 1846 he lectured Wairarapa Maori on the benefits of leasing small blocks of land – not to sell outright.[51] When the Crown asked for his assistance in their purchase of large tracts of Hawke's Bay land, Colenso refused to assist either side in the negotiations, and yet went ahead to advise Maori that if they did sell land, that they insist on large reserves, and make sure that identifiable natural boundaries were agreed upon.[52] Colenso called a meeting of Hawke's Bay chiefs on 22 December 1848, held at Puhara's Pakowhai pa, warning them not to part with the whole of their land.[53] Although Colenso welcomed the friendship afforded by McLean, he also opposed wholesale colonisation. Colenso often managed to isolate himself from the principal chiefs, even the Christian ones. In January 1850 he refused to attend a meeting held by Te Moananui, Tareha and Karaitiana Takamoana to discuss Church matters, and was assaulted and threatened because of it.[54] Despite his character flaws, and personal failings, he provided Maori with positive, and most importantly, different advice concerning land alienation, than that provided by the Crown.

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48. Goldsmith, p 60
49. Patrick Parsons, 'The Mohaka–Waikare Confiscated Lands Ancestral Overview (Customary Tenure)', report for Wai 299 claimants, 1993, pt G, p 244
50. Goldsmith, pp 62–64
51. Ibid, pp 76–95
52. O'Malley, pp 28–29
53. Ballara and Scott, p 53
54. Ibid, p 72

2.5 LAND

2.5.1 Old land claims

Old land claims refer to purchases said to have taken place prior to the signing of the Treaty of Waitangi. There were five such land claims identified in the Hawke's Bay area, and they were eventually investigated by commissioner Francis Dillon Bell in the 1850s. Four of these involved whaling station land and whalers who had decided in settle in the area. Robert Brown claimed 500 acres on the north-eastern side of Te Mahia peninsula, purporting to have a deed written in English, but did not bring any such evidence to the Old Land Claims Commission. John (Happy Jack) Greening claimed to have been gifted land, presumably at Whangawehi, but again brought no such evidence before the commission. As noted above, Greening's descendants are still associated with the former whaling and trading station at Whangawehi. Thomas Bateman claimed the four to six acres that his whaling station resided on, but withdrew the claim as it was 'of little value except as a whaling station'.[55]

In 1837 George Clayton had apparently purchased the 37 acres surrounding the whaling station at Waikokopu, and this 'deed' had been sold to J W Harris in 1841. By the time Bell issued a Crown grant for the 37 acres in 1858 the station was run by Captain John Salmond, who complained to Bell that Maori were resisting his claim to the land and were preventing his occupation of the site. Ihaka Whaanga and Matenga Tukapeaho wrote to Bell in 1859 arguing that it was not their desire to sell land (in 1837), but that the whalers had scared them about the Queen taking the land from them anyway. O'Malley suggests that Maori were opposing the award in 1859 because the original 'purchaser' of the land, George Clayton, was no longer the occupier, and therefore as a third party, Captain Salmond had no claim.[56]

The most impressive old land claim was that made by Captain William Barnard Rhodes. Acting for Sydney merchants Cooper and Holt, Rhodes wrote on 27 January 1840 that he had purchased, save for obtaining one further signature, about 1,400,000 acres of land including Te Mahia peninsula, Te Wairoa, Hawke's Bay and Wairarapa. He paid £150, and also said he negotiated the reservation of one tenth of the area for Maori.[57] O'Malley notes many inconsistencies in the claims made by Rhodes, concerning the estimated amount of land, a further purchase deed, and further purchase money and goods. Eventually Rhodes, with Cooper and Holt, were awarded 2560 acres in settlement of their claim. This land was to be selected 'in three to four blocks in any locality where Maori had admitted the bona fides of the purchases, but only once the Government had acquired the title to these lands'.[58] Evidence is scant as to whether Rhodes accepted this, and the locality of any blocks remains uncertain. Wilson believed that Rhodes' Clive Grange pastoral run originated from this 2560-acre award.[59] Rhodes presumably had little cause for

55. All the evidence for these three claims came from their respective old land claim files, deposited at National Archives, Wellington. I have used them as summarised and quoted from O'Malley, pp 24–25.
56. O'Malley, pp 25–26
57. A E Woodhouse, *George Rhodes of the Levels and his Brothers: Early Settlers of New Zealand*, Whitcome and Tombs Ltd, 1937, pp 18–19
58. O'Malley, pp 20–21
59. Wilson, p 144

concern over the denial of his enormous claims, as he quickly became one of Wellington's richest men, and he and two brothers eventually amassed ownership of a staggering 300,000 acres of land in New Zealand, a good portion of which was in Hawke's Bay.[60]

2.5.2 Leasing and the Crown

Hawke's Bay Maori were well aware of the leases Wairarapa Maori had negotiated from 1844, and in the late 1840s Hawke's Bay was increasingly seen as an ideal place to establish further pastoral runs. Wairarapa leaseholders conducted negotiations with Te Hapuku about the possibility of moving north into Hawke's Bay in 1847. By 1849 Thomas Guthrie was paying an annual rental of £69 for a run at Castlepoint, a rental which, according to McLean, had risen to almost £200 a year by 1851.[61] In 1849 J H Northwood was leasing land at Pourerere for between £60 and £100 a year.[62] Wilson compiled a list of the early pastoral stations, a number of which had commenced operations in 1851 and earlier.[63]

As Paul Goldsmith has explained, in the late 1840s the Crown was actively discouraging Europeans from squatting on Maori land, and was starting to threaten leaseholders with prosecution under the Native Land Purchase Ordinance 1846.[64] This Ordinance was passed by Governor Grey in order to make illegal transactions of land between Maori and settlers. Grey wanted to reinstate the right of Crown pre-emption that his predecessor, Governor FitzRoy, had allowed to be waived. The Ordinance gave the Crown a monopoly in purchasing or leasing land from Maori. With the momentary suspension of Crown purchase negotiations in Wairarapa in February 1849, following the New Zealand Company's preference for Port Cooper (Canterbury), attention shifted to Hawke's Bay. It had been mentioned previously that Hawke's Bay might be included as part of the proposed settlement, possibly as a re-settlement area for the displaced Wairarapa squatters.[65] Certainly the pressure was on for the Crown to purchase sufficient Hawke's Bay land prior to the mass arrival of eager pastoral run-holders, and avoid the problems experienced with illegal squatters in Wairarapa. When McLean arrived in Hawke's Bay to commence negotiations for the Waipukurau, Ahuriri and Mohaka blocks in December 1850, he warned off men such as H S Tiffen, writing to declare Tiffen's lease 'cancelled', and asking him to remove his sheep from the Ahuriri Plains.[66] When reporting the purchase of the three blocks a year later, McLean mentioned that settlers were arriving at Ahuriri with their flocks of sheep and herds of cattle.[67]

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60. Patterson, p 362
61. O'Malley, pp 60–61; Donald McLean, Memorandum to His Excellency the Governor-in-Chief, enclosure in McLean to Colonial Secretary, 6 January 1852, no 11, AJHR 1862, C–1, p 317
62. O'Malley, p 61; Wilson records that the run started in 1847.
63. Wilson, pp 225–228
64. Goldsmith, 'Wairarapa', p 16
65. O'Malley, pp 83, 91
66. McLean to Tiffen, 16 December 1850, enclosure 2 in McLean to Colonial Secretary, New Munster, 21 December 1850, AJHR, 1862, C–1, p 308
67. McLean to Colonial Secretary, Wellington, 29 December 1851, AJHR, 1862, C–1, pp 315–316

2.5.3 Maori offers to sell

It is clear that Maori wanted Europeans to settle in Hawke's Bay. George Thomson wrote that in the 1840s to the mid-1850s, the 'skills and trade opportunities, the markets and employment that came with Pakeha were seen as outweighing the disadvantages' of European settlement.[68] Stephanie McHugh records that Kurupo Te Moananui and Tareha offered land for sale to the Crown in 1844.[69] In 1849 a letter was sent by Te Hoipipi, Hou and Hoani Waikaui asking that the Governor come and discuss the settlement of white people, cows, sheep, horses, and goats on their land.[70] Two weeks later another letter was written by Hawke's Bay chiefs, translated as saying:

> Our land we have consented to sell to the white people. . . . and do not throw overboard this our Letter because this seems to be what pleases you viz. The consenting on our part for the selling of the land – Friend Gov. Grey approve of this our request for White People for this our land and let them be Men of high principle or Gentlemen no people of the lower order – let them be good people – let them be the Colony of Missionaries who [we] have heard . . . are coming out.[71]

The list of 'principal talking Men' included Karaitiana Takamoana, Kurupo (Te Moananui), Paora Torotoro, Te Whakaunua, Wiremu Wanga, Hona Te Hopera and Puhara. Ballara and Scott have outlined how the prospect of the Crown purchasing their land excited Hawke's Bay Maori, and that as a result conflict over boundaries and overlapping use rights multiplied from 1849.[72] Building on their understanding of traditional Maori land ownership as outlined above, Ballara and Scott warned that certain chiefs 'failed to distinguish between their mana to 'tuku' or give land, with the concomitant limits with which such gifts were bound, and the power to alienate it', and that the pressure of possible Crown purchasing helped those same rangatira 'to convert their chiefly mana over land into a new right to sell land without consultation with the occupants'.[73] The tension concerning iwi and hapu boundaries and the right to alienate land came to dominate the politics of Hawke's Bay Maori in the 1850s and 1860s.

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68. George Thomson, 'Ngati Kahungunu Land Loss in the Area between the Mohaka, Te Hoe and Waiau Rivers, Northern Hawke's Bay, 1864–1930', 1991, Wai 201 ROD, doc A23, p 7
69. Stephanie Louise McHugh, 'The Issue of the Hawke's Bay Purchase Instructions, June 1848–October 1850', Wai 201 ROD, doc C2, p 17
70. Te Poihipi, Hou, Hoani Waikaui to His Excellency, 12 April 1849, transcript of a translation, G7/6/61, NA Wellington, Wai 201 ROD, doc A21(d), p 827; see also McHugh, Wai 201 ROD, doc C2, pp 17–18
71. Tareha, on behalf of 'the principal talking Men', to His Excellency, transcript of a translation, G7/6/61, National Archives, Wellington, Wai 201 ROD, doc A21(d), p 828; see also Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Brooker's Ltd, Wellington, 1995, p 36
72. Ballara and Scott, introduction, pp 53–54
73. Ibid, p 57

2.6 CONCLUSION

This chapter has outlined a selection of Ballara and Scott's main points concerning their summary of Maori societal framework, and their attitudes to customary land ownership, and has illustrated their argument with a couple of examples from Tribunal hearings. Compared to other parts of the North Island, Hawke's Bay had little contact with settlers, and almost none with the Crown, in the first decade following the signing of the Treaty, and immediately prior to the arrival of McLean in 1850. This chapter has argued that the contact they did have, with the whalers and early traders, did not significantly alter Hawke's Bay Maori's societal structure. New ideas and people, on the whole, were absorbed within the prevalent cultural framework.

Since there were so few examples of land alienation in Hawke's Bay prior to the arrival of Donald McLean in 1850, Maori may have been unprepared to negotiate such important and far-reaching deals. This appears to be what Bryan Gilling argues.[74] While the lack of contact is noted, Hawke's Bay Maori had had the opportunity to contemplate the experiences of those at the Bay of Islands and Wellington, and had also the advice of the missionaries. Colenso's views against selling were sufficiently documented for Maori to have had at least some warning about the possible consequences of agreeing to large scale alienations. Ballara and Scott boldly conclude that 'by 1850 Hawke's Bay Maori knew that if the land was bought, it was gone forever', and that this view is confirmed by Mclean's use of the phrase 'o muri iho I a ia ake tonu atu' ('and afterwards for ever').[75] O'Malley has questioned the degree to which Maori understood that they were to permanently alienate Ahuriri. This is discussed further in chapter 3.[76] Whatever the extent of Maori understanding, it is quite clear that they were eager to have settlers live amongst them, and to have Hawke's Bay become part of the new Colony's economic and social future.

74. Gilling, p 6
75. Ballara and Scott, introduction, p 196
76. O'Malley, p 231

CHAPTER 3

CROWN PURCHASE ISSUES, 1850–62

3.1 INTRODUCTION

The Crown claimed to have purchased approximately 1,500,000 acres between 1851 and 1859. This amounted to over half of the land in Hawke's Bay. The Tribunal has received a number of claims relating to the circumstances of these purchases. To address this period in a comprehensive manner, the Tribunal commissioned Angela Ballara and Gary Scott to provide reports on each block purchased by the Crown. Ballara and Scott's report also drew together the common issues that arose from the individual block studies, and identified breaches of the Treaty they believed were a result of the Crown's purchasing.

This chapter has used their report extensively, but has adopted a slightly different approach. Instead, the purpose of this chapter will be to maintain a cohesive chronological narrative of the 1850s Crown purchasing period. Differences between the purchases conducted within separate time periods, and geographical regions, will be examined; as will the tensions within iwi and hapu, and the consequent causal effect such tensions had on the Crown's land purchase programme. The issue of agency becomes important here. It is important to assess the balance between Maori actions and aspirations, and those of the Crown. This balance is exposed further in the late 1850s and early 1860s, as Maori adopted an anti-land selling policy. Comment on the areas of land reserved from the Crown purchases will form a separate section of this chapter, as will an attempt to quantify the amount of land purchased during this period.

3.2 WAIPUKURAU, AHURIRI, AND MOHAKA: THE SALES OF 1851

Of the approximately 32 blocks of land purchased by the Crown prior to the introduction of the first Native Land Court hearings in 1866, the first three, signed in late 1851, remain distinct. An impression exists that the first three purchases were conducted with considerable consultation, and that this made them more 'fair' as a result. This perception probably originated from a speech by Ngati Te Upokoiri chief Renata Kawepo in 1860. He spoke of the Waipukurau and Ahuriri blocks as being 'fairly transferred to the Queen' ('i Marama te rironga ko a te Kuini'), to distinguish

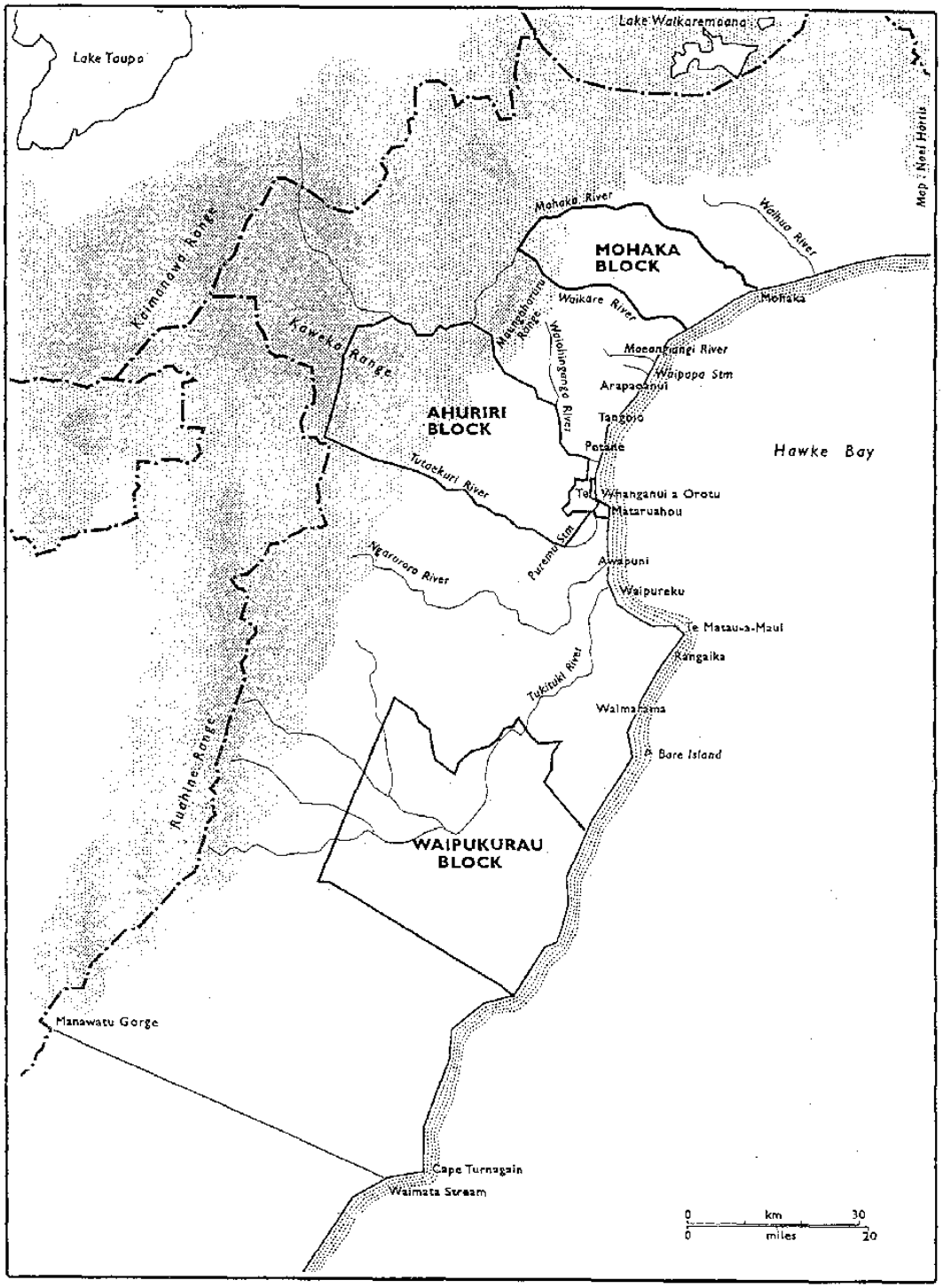

Figure 2: 1851 purchases

them from the 'sale[s] by single individuals' that occurred later.[1] Each of the 1851 purchases were separate entities, requiring their own contextualisation. Given the lack of instructions forwarded to McLean,[2] it becomes necessary to compare and contrast the three purchases, pointing out inconsistencies in McLean's methods of purchase. Both the claimant research, and research completed on their behalf, find many faults in the Crown's 1851 purchasing programme. Yet there is a considerable difference between the first purchases, and the later post-1854 'purchases by stealth'. Readers should keep in mind the change from 1851, to the purchases of 1854 onwards, but note also the inconsistencies within the three 1851 purchases, which are discussed below.

The 1851 purchases had their genesis in letters written by Hawke's Bay Maori to the Government, offering land in exchange for receiving European settlers (see sec 2.6.3). This desire was confirmed in speeches to the newly appointed land purchase officer, Donald McLean, upon his arrival.[3] The general areas to be offered for sale had been chosen by some of Maori customary rightholders prior to McLean setting eyes on it. Nevertheless, his influence should not be underestimated. McLean's first four-month visit from December 1850 to April 1851 quickly dominated affairs for Hawke's Bay Maori. Colenso records that Te Hapuku immediately 'called a great meeting of all the chiefs at Te Waipukurau', when McLean's imminent arrival was confirmed.[4] Indicating things to come, Kurupo Te Moananui and Tareha told Colenso that they would not attend, citing difficulties with Te Hapuku.[5] Rivalries between Te Hapuku, of predominantly Ngati Te Whatuiapiti descent, and Te Moananui and Tareha, who identified with different descendants of Kahungunu, escalated throughout the 1850s.[6] In 1851 these three chiefs, along with most of the other leading chiefs, were all in favour of carrying out the swap of land for Europeans.

Crown motives for purchasing land in Hawke's Bay had their origin in Governor Grey's answer to the challenge proposed by the Principal Secretary of State for the Colonies in Britain, Earl Grey, for the New Zealand Government to seize all land not occupied or cultivated by Maori. Governor Grey's response was instead to advance a policy of Crown land purchase which kept ahead of European settlement, and in

1. Renata Kawepo, 'Speech and Letter to the Superintendent of Hawke's Bay on the Taranaki War Question', translation with additional notes on translation, 1861, Wellington, Pamphlets, Williams no 332, ATL, Wai 201 ROD, document A21(c), documents compiled by S McHugh for the Crown Law Office, 1991, p 630
2. S McHugh's 'The Issue of Hawke's Bay Purchase Instructions. June 1848 – October 1850', Wai 201 ROD, document C2; and her further report ' The purchase of the Mohaka Block, December 1851', Wai 201 ROD, document C4, p 7, reveal how little instruction McLean received, and how the instructions were dominated by his having the power to prosecute illegal squatters, as a pressure to be applied on Maori land owners to induce them to sell.
3. McLean Journal, 14 December 1850, Diaries and Notes Donald McLean, ATL, extract copied in Wai 201 ROD, document A21(e), documents compiled by S McHugh for the Crown Law Office, 1991, pp 1209, 1213. A typescript of the Journal entries was also supplied by S McHugh, but does not cover all the selected entries. Where it does I will give the corresponding page number, which in this case is p 1395
4. Colenso Journal, 15 October 1850, vol 2 1840–1850, ATL, extract copied in Wai 201 ROD, document A21(e), documents compiled by S McHugh for the Crown Law Office, 1991, p 1126
5. Colenso Journal, entries for 15 October 1850, 21 October 1850, pp 1126–1127
6. For Te Hapuku and Te Moananui's genealogical background, see Ballara's entries on them in *People of Many Peaks*, DNZB vol I, Bridget Williams Books, Department of Internal Affairs, 1990, Wellington, pp 159–163; pp 211–214

which Maori would be paid a 'trifling consideration' for their land.[7] This policy, in relation to Hawke's Bay, was also designed to clamp down on the growing numbers of illegal squatters in Wairarapa who were negotiating their own leases with Maori, in direct contravention of the Native Land Purchase Ordinance 1846. Hawke's Bay was to provide the grazing lands for Wairarapa squatters, since the Government were unsuccessful in their attempts to purchase Wairarapa blocks in the late 1840s.[8]

Opposition to selling was represented by the Hawke's Bay missionary, William Colenso. Ever keen to protect the 'poor' Maori, 'from being beaten & brow-beaten by the Heathen Chiefs'[9], in November 1850 Colenso noted 'lament' from local Maori occupying Eparaima, rumoured to be included in the block of land that Te Hapuku and Hori Niania were intending to offer for sale. 'They [the Epariama Maori] are not, however, of *first* rank, and therefore they must go to the wall; for here (as in many other places), it is *not right* but *might* which carries off the prizes', Colenso recorded in his journal.[10] Whether certain chiefs had the right to alienate land on behalf of their people, as opposed to the Crown purchasing the customary rights of their people, is central to Ballara and Scott's evidence. They appear to argue that for a purchase to be comprehensive, all Maori with customary interests had to be identified and consultation had to take place, with full consent gained to all the particulars of the purchase, including boundaries and price.[11] Analysis of McLean's method of purchase, understanding of customary and alienation rights, and his relationships with certain chiefs and others, will hopefully go some way toward explaining and clarifying these issues.

McLean quickly expressed strong views on these issues. He was immediately impressed with Te Hapuku, writing that the Ngati Te Whatuiapiti chief, through skillful use of 'flattery and kind words' convinced Hineipaketia to sell.[12] This exaltation of Te Hapuku became a standard feature of McLean's journal entries for 1850–51. Ballara and Scott interpreted McLean's 'aggrandisement' of Te Hapuku's position as a ploy to imbue Te Hapuku with a paramount status (and de facto position as Crown Agent) over the whole Wairoa ki Wairarapa area.[13] Tempted to give Te Hapuku more power outside of Ngati Te Whatuiapiti than he probably had, McLean learnt from Colenso in December 1850 that Te Moananui, Tareha and Puhara were all of similar status. Based on this information, McLean concluded that 'nothing of importance can be affected by the others without their consent, not even the secondary chief who in other districts have great influence are able to do

7. Governor Grey to Earl Grey, 15 May 1848, BPP, Colonies New Zealand, vol 7, p 24 cited in O'Malley, 'Ahuriri Purchase Report', p 50; see also Ballara and Scott, vol 1, Introduction, pp 24–25
8. O'Malley, p 108; see Goldsmith, *Wairarapa*, pp 3–17
9. Colenso to McLean, Manawarakau, 26 March 1851, in McLean Papers MS 32, folder 221, in ROD claim Wai 201, document A21(e), documents compiled by S McHugh for the Crown Law Office, 1991, p 1468
10. Colenso Journal, 12 November 1850, p 1132. His lament proved prophetic, if premature, as Eparaima was not sold in 1851. It was reserved from the Porangahau purchase of 1858. The Crown purchased parts the following year.
11. This is my paraphrase of their argument taken from a reading of all their reports. For aspects of this argument, see Introduction, vol 1, pp 196–197, 201.
12. McLean Journal, 16 December 1850, p 1215; p 1397. Hineipaketia was sometimes called the 'Queen' of Hawke's Bay, by virtue of her impeccable whakapapa.
13. Ballara and Scott, Introduction, vol I, p 66

anything without the consent of either one of the above parties'.[14] Therefore, although there were numerous meetings, speeches, and opportunities for McLean to listen to the views of all, he had already decided that the consent of the chiefs 'of great influence' was the most crucial to obtain. Their consent was pivotal, yet, so was the consent of the occupant hapu.

McLean was also not about to tolerate Te Moananui and Te Hapuku's 'jealousies of each other', holding 'several conversations' with them, urging them to 'unite in the land sale'.[15] They eventually did, both taking leading roles in the sale of all three blocks. Having gained nominal consent to the purchase of Waipukurau in early December 1850, McLean was accompanied by Te Hapuku to Ahuriri, where a large meeting supported the sale of the Ahuriri block.[16] Paora Rerepu, a Ngati Pahauwera chief from Mohaka, was brought down by Te Hapuku to see McLean about selling land in that district.[17] In January 1851 McLean recorded with delight that Te Hapuku was already talking of his next sale, and praised him accordingly:

> Hapuku is acting precisely as I have directed him; he goes about negotiating, and arranging with his tribe, for the sale of more land; and to-day he tells me that he has obtained a very large, splendid district, including the best grazing land at Heretaunga; so that great progress is being made in the negotiation for acquiring the whole of this country[.][18]

Opportunities for McLean to be apprised of viewpoints other than that of Te Hapuku's abounded on the return journey to check the boundaries of the Waipukurau purchase. At Manawarakau many speeches 'for and against Te Hapuku', and in effect, for and against the details of the purchase, were heard. Hoani Paraone angrily 'gave vent to his worse feelings', complaining that they should have sold 'all their lands towards the Ruahine where no people lived . . . [and] that he would have more readily agreed than by selling the lands around the place they were occupying'.[19] After two weeks on horseback accompanying the surveyors around the Waipukurau block, McLean became insensate to the detailed speeches, dryly scribbling in his journal: 'land land land boundaries boundaries boundaries all the talk from morning till dark'.[20] His boredom was only interrupted by a chance offering from a Mr Thomas at Ruataniwha, asking him to invest in a flock of sheep. Having agreed to purchase, and excited at the thought of 'possessing a few thousand [acres] in these plains myself', McLean was instead:

> compelled to listen to a very long korero about ancestors & claimants at the spot from whence the Rua Taniwha takes its name, the principal spokesman and a long winded one he is was Apiata who called and named every man woman & chief at Manawatu

14. McLean Journal, 18 December 1850, p 1217; pp 1399–1400
15. McLean Journal, entries for 19 March 1851, p 1258; and 21 March 1851, p 1262
16. McLean Journal, 20 December 1850, p 1218; p 1401
17. McLean Journal, 7 January 1851, p 1241; p 1414–1415
18. McLean Journal, 16 January 1851, quoted from the typescript, with its added punctuation, p 1421; p 1248–1249
19. McLean Journal, 28 March 1851, pp 1267–1268; see also Ballara and Scott's comment on Hoani Paraone's speech, Introduction, vol I, p 75
20. McLean Journal, 5 April 1851, p 1278

> Wairarapa the Middle Island Waikato Taupo Maketu Bay of Islands Tauranga Turanga &c not forgetting the Ngatiraukawa Ngatiapa Whanganui and all the people[.][21]

This grand speech, which was 'loudly applauded by the natives', only prompted McLean to write that his patience was tried, and that his 'displeasure' would have to remain 'in my pocket'; that is to say, in his notepad.[22] This impatient refusal to comprehend the extent of Maori knowledge of customary ownership characterised McLean's dealings in the Hawke's Bay. More and more he tended towards purchases negotiated with a few select chiefs, with little discussion of the details. The purchases of 1851 illustrate this gradual change. Waipukurau (or Te Hapuku's block, as McLean preferred to call it), occupied most of his time (and gained the most reserves), Ahuriri a lesser amount, and Mohaka very little. As Ballara and Scott noted, 'although aware of the complexities of local social organization', McLean chose to disregard what he had learnt.[23]

Concern over McLean's subversion of group rights in favour of chiefly rights surfaced early in 1851. Acting on rumours that swept through Hawke's Bay in March 1851 Colenso felt compelled to write a strongly worded note to McLean accusing him of departing from his stated intentions to take only unoccupied 'waste land', to deal with the 'right' owners at all times, and to listen to any dissenting voices.[24] The rumours likely manifested from McLean's numerous discussions with first Karaitiana, then Te Moananui and Tareha about extending the Ahuriri block to include Te Taha (Westshore Spit) and Mataruahou Island (present day Bluff Hill, and central business district of Napier), which commanded the entrance to Te Whanganui-a-Orotu,[25] and from his close relationship with Te Hapuku. McLean took Colenso's note seriously, immediately riding out to see the missionary with his entourage of leading chiefs, surveyors, and others: forty in all. Upon hearing the news of McLean's imminent arrival, and of the 'great deal of talk' his complaints had generated, Colenso's 'first impulse was to proceed hence early in the morning', but his Maori hosts convinced him to hear McLean out.[26] McLean assured Colenso that he had been 'misinformed' and that he did not intend to depart from his stated intention of 'not taking any Lands without the full consent of the rightful owners'.[27]

News of the block boundaries offered for sale obviously spread quickly, as Te Moananui reported to McLean on Boxing Day 1850 that Te Heuheu was opposed to the sale, as he was to all sales, in particular to the location of the interior boundary of the Ahuriri block. Although Te Hapuku dismissed the Ngati Tuwharetoa chief's opposition, saying 'we will manage as we think proper without Heuheu or any other Chief's advice' McLean was concerned enough to dispatch letters to Te Heuheu,

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21. McLean Journal, 8 April 1851, p 1282
22. McLean Journal, 8 April 1851, p 1283
23. Ballara and Scott, Introduction, vol I, p 70
24. Colenso to McLean, Manawarakau, 26 March 1851, in McLean Papers, folder 221, in claim wai 201, A21(e), documents compiled by S McHugh for the Crown Law Office, 1991, pp 1468–1469
25. McLean Journal, entries for 1 January 1851, p 1236, pp 1409–1410; 7 January 1851, p 1241, pp 1414–1415; 10 January 1851, p 1246, p 1418; 16 January 1851, pp 1248–1249, pp 1420–1421; see also Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Wellington, 1995, Brooker's Ltd, pp –041
26. Colenso Journal, 28 March 1851, pp 1153–1154
27. Colenso Journal, 29 March 1851, p 1155

advising him that he was purchasing land from Te Moananui, Tareha and Te Hapuku.[28] Colenso reported the arrival of a 'young Heathen Chief of rank from Taupo', Te Rakato, to discuss the interior boundary of Ahuriri, in February 1851.[29] Te Rakato left after a few days' talks with the Ahuriri chiefs. In April McLean heard that a group of Taupo Maori were on their way to the area to dispute Tareha's claim to the interior boundary above the Titiokura saddle, an important historical boundary site.[30] The disputers were Ngati Hineuru, led by Te Rangihiroa, who were often associated with Ngati Tuwharetoa, having returned under the mana of Te Heuheu to the upper Mohaka area after intermittent warfare.[31] Their arrival at Tangoio on 25 April 1851 brought a swift reaction by the Ngati Kahungunu hapu, who mustered an armed force to meet them. The following day McLean told Te Rangihiroa's party to 'return quietly' and not interfere with land not theirs. McLean also 'found fault' with the eagerness of the local tribes to rush to arms, and told them that Te Rangihiroa should always have the opportunity to speak in support of his claims.[32] This message, though slightly contradictory, led McLean to note in his journal that the interior boundary was contracted, but, whether this actually happened is not clear. Parsons presumed that the area left out of the original Ahuriri boundary was part of the Waitara block, which was confiscated in 1867.[33] Ballara and Scott point out that although the report written by surveyor Robert Park in June 1851 had the western boundary at the eastern base of the Kaweka ranges, the actual deed shifted the boundary to the top of the Kaweka range. They suggest that this was done without the consent of either the Ngati Kahungunu hapu, or Ngati Hineuru.[34] Further payment to Ngati Hineuru for their interests in the Ahuriri purchase was made in 1859.[35]

Discussions of boundaries took precious little time at Mohaka. On his first visit to the purchase site in January 1851, McLean stayed only a day, but nominally agreed to purchase a block taking in the coastal frontage from the Mohaka River mouth south to the Waitaha Stream. During his second set of purchase discussions at Mohaka in March 1851 McLean was asked to consider extending the coastal boundary of the purchase area to the Waipapa Stream, just south of the Moeangiangi River (see fig 2). The following month, however, McLean's preferred contact at Mohaka, Paora Rerepu, wrote telling McLean to disregard the extension, and have the southern coastal boundary end at the Waikare River, which he did.[36] S McHugh, Crown Law Office historian, has interpreted this action as recognition that land was required by two separate Maori groups on the coast. Mohaka hapu would have land

28. McLean Journal, entries for 26 December 1851, p 1228, p 1406; 6 January 1851, p 1241, p 1414
29. Colenso Journal, 13 February 1851, p 1141
30. Patrick Parsons, ' The Mohaka–Waikare Confiscated Lands. Ancestral Overview (Customary Tenure)', 1993, part D, pp 146–7
31. See Patrick Parson's ' The Mohaka–Waikare Confiscated Lands. Ancestral Overview (Customary Tenure)', 1993, part A, pp 23–27; also Ballara and Scott, Ahuriri block file, vol 1, p 17
32. McLean Journal, 25–26 April 1851, p 1321
33. Parsons, 'Ancestral Overview', part D, p 148
34. Ballara and Scott, Ahuriri block file, vol 1, p 25
35. O'Malley, p 215
36. Paora Rerepu to McLean, 1 April 1851, McLean Papers, folder 675D, ATL, cited from Ballara and Scott, Mohaka block file, p 2

on the northern banks of the Mohaka River; the Waikare Maori would retain land south of the Waikare River.[37] McHugh infers that this was due to McLean's advice that Mohaka Maori 'retain sufficient land for their own purposes'.[38] This inference is unwarranted. McLean had very little to do with the negotiations concerning the extension and/or contractions of the southern boundary, and, appeared to regard the Mohaka purchase as a stepping-stone for purchasing all the land from Ahuriri to Turanga. This was confirmed by his eager acceptance of a further concession of land, fronted by the coast between the Waikare and Moeangiangi Rivers, by 'Toha, Kopu, Te Teira, Te Awa, Paora and others'. This land had been offered for sale the day after the Mohaka deed was signed. McLean had further discussions at Ahuriri about the possibility of extending this purchase down to the Waiohinganga River mouth, apparently gaining the consent of Tareha and Te Hapuku.[39] McLean was advised by Te Hapuku not to purchase the land between Waikare and Moeangiangi until it was agreed to extend the purchase to the mouth of the Waiohinganga River. Given that Te Hapuku's customary interests in the area were negligible,[40] McLean's purchase discussions with him were ill-advised, yet, understandable, given that Te Hapuku was telling McLean what he wanted to hear: 'he [Te Hapuku] seems quite favourable to further purchasing and does not expect such large payments in the future', McLean noted.[41]

McLean's insufficient consultation with the customary owners of the Mohaka block contrasts with the more considerable time spent at Waipukurau and Ahuriri. McLean's arrival at Ahuriri on 18 December 1850, a visit described by Colenso as 'so long expected and wished for by the Natives', was followed by a meeting of a large group of chiefs assembled to discuss 'the selling of the harbour and adjacent localities', (which gives a good indication of what McLean had told Colenso was his primary goal). Determined to remain aloof from the proceedings, Colenso journeyed to Petane, where he found most parishioners had left to take part in McLean's purchase of Ahuriri.[42]

McLean's reason for spending more time at Ahuriri was not because he was more interested in the bulk of the land on offer, the surveying of which he left to Park (as he did with the Mohaka block), but through his desire to obtain the crucial Te Taha and Mataruahou land which controlled the entrance to Te Whanganui-a-Orotu. That it was with 'considerable reluctance' that the leading chiefs decided to part with this land, and that Te Whanganui-a-Orotu (the 'harbour') was not included by them, was confirmed by the Waitangi Tribunal in its *Te Whanganui-a-Orotu Report 1995*.[43] The Tribunal found that there was no intention on the part of Maori to alienate Te Whanganui-a-Orotu. Although McLean assumed he had purchased control of the

37. S McHugh, 'The Purchase of the Mohaka Block, December 1851', Wai 201 ROD, document C4, pp 19–20
38. S McHugh, document C4, p 20
39. McLean Journal, entries for 6 December 1851, p 1373; and 9–10 December 1851, pp 1377–1378
40. Te Hapuku had whakapapa links with Paora Rerepu and other Ngati Pahauwera, Cordry Huata, 'Report to the Waitangi Tribunal for Ngati Pahauwera Society', 1991, claim wai 201 ROD, document A14, p 13, but is not cited as having any other links with the area.
41. McLean Journal, 9 December 1851, p 1377
42. Colenso Journal, entries for 18–20 December 1850, pp 1136–1137
43. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, p 54

lagoon by virtue of purchasing the surrounding land, the Tribunal found that he had not sufficiently explained to Maori that that was his understanding; nor had he actually purchased all of the surrounding land. The other major argument presented in hearings by the Crown, that the lagoon was in fact a saltwater harbour, was rejected also by the Tribunal. Based on hydrological evidence, the Tribunal decided that the Te Whanganui-a-Orotu water, on the whole, had greater proportions of fresh water than salt, and that therefore, they could not accept the Crown's argument that Te Whanganui-a-Orotu was 'part of the sea'. Following from that conclusion, the Tribunal found that common law principles relating to the sea bed did not apply, and that further, even if they were wrong in their conclusion, they found that the Crown should not rely on common law to deprive Maori of their taonga, which was protected by the rights of tino rangatiratanga gauranteed in article 2 of the Treaty of Waitangi.[44]

The signing of the Ahuriri deed was well attended, Colenso noting that practically all the coastal inhabitants of Tangoio, Arapaoanui, Petane and Moeangiangi were present.[45] In all, 300 Maori signed the Ahuriri deed on 17 November 1851. The deed stated that they had 'sighed over, wept over and bidden farewell to' 265,000 acres.[46] McLean's instructions from Grey to obtain the 'lowest price' acceptable[47] were carried out, as Tareha's £4000 price tag (which included Te Taha and Mataruahou) was beaten down by McLean to £1500, of which £1000 was paid in gold sovereigns. Unlike at Waipukurau, Ahuriri sellers were not given the opportunity of putting their case for a higher price to the Governor.

McLean's discussion concerning the purchase price for Waipukurau appeared to be conducted within Maori protocol. First the kaumatua spoke, then the leading chiefs including Hoani Waikato whose 'long tedious speech', recited 'the names of the natives and tribes concerned in the purchase', all the speeches being frequently punctuated by waiata 'lamenting the land', which were led by the women.[48] Although unanimous about 'parting with the land', the block they referred to as 'wenua "tapu"', the chiefs detailed how they had fought over it, lost hundreds of lives defending it from Nga Puhi, Waikato, Ngati Paoa, Ngati Raukawa and others, reaped all sorts of food from it, and, above all, had continually occupied it. McLean linked all of these accounts to the purpose for which he was there, to negotiate the lowest price possible, choosing to record the passage: 'let your price . . . be what we ask for it do not reduce it do not reduce it'. His next recorded passage revealed much about the Maori perspective of the Crown's purchasing programme: 'we have sent for you and we shall treat you [meaning Europeans] . . . with the utmost consideration but let the price of our land be 10 mano or 20,000'.[49]

It appears that Maori felt that up to this point they had controlled the purchase. McLean had been invited to come – and had indeed arrived. The reserves and other boundaries had been discussed, and agreed upon – it just remained to secure a price

44. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, in particular, p 206
45. Colenso Journal, entries for 11–12 November 185, p 1162
46. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, vol II, p 491
47. A Domett, Colonial Secretary Wellington, to McLean, 9 July 1851, AJHR 1862, C–No 1, p 311
48. McLean Journal, entries for 10 April 1851, p 1285; and 17 April 1851, p 1292
49. McLean Journal, 17 April 1851, pp 1293–1294

befitting the value they placed on the land. In reply to their five-figure offer, McLean argued that the land was good, but worthless until settled by Europeans, and that he could only offer prices within a fiscal cap imposed by the Governor.[50] Te Hapuku earned even more praise from McLean with his 'masterly speech', which indicated a good understanding of land purchases in other regions, culminating in Te Hapuku comparing McLean to Kemp, who had offered too little for the Wairarapa. Pointing out that some Maori earned a thousand pounds a year from rents, Te Hapuku formerly withdrew his support for McLean to help him purchase Wairarapa. Impressed by Te Hapuku's speech, and the satisfaction he gained from dealing with someone 'who took such an interest in his tribe', McLean said that he would refer the question of price to Governor Grey. Even so, McLean managed to get them to ask for £4800, rather than their highest figure, £20,000, mentioned.[51] Te Hapuku included a personal disclaimer in the letter to the Governor: 'the land is not entirely mine, it is the property of this man and that man; mine is merely handing it over to Mr McLean', a principle to which McLean obviously paid little heed, especially in later purchases. Te Hapuku, too, soon forgot his own words. The simple swap of land for people was baldly evident, as Te Hapuku asked for a 'large, large, large, very large town' populated by 'respectable European gentlemen . . . direct from England'.[52] McLean, when in Wellington in May 1851, was able to meet with Governor Grey, resulting in the price of £4800 being accepted. It was widely known, however, that included in the deal was an understanding that Te Hapuku was to 'remember the Governor's kindness',[53] and help in further purchases. Another significant block of land, Aorangi, was also apparently ceded by Te Hapuku to McLean, and factored into the increased price.[54] In all, 376 Maori signed the Waipukurau deed on 4 November 1851.[55] The higher price paid for Waipukurau, only fractionally bigger in acreage than Ahuriri, 279,000 as opposed to 265,000 acres (though better in quality of soil and grass),[56] appears to be inconsistent. Purchasing the Ahuriri block, after all, McLean knew to be crucial in order to secure a site for the major Hawke's Bay town, and the only harbour between Port Nicholson and Turanga.

The distribution of the purchase gold in November 1851 was also inconsistent. At Waipukurau, where the first instalment was £1800, McLean had to wait two days in order to get the 600 people present to assemble into tribal groups, as they were busy dividing food and taking part in the formal proceedings that such a large gathering

50. McLean Journal, 17 April 1851, pp 1297–1301
51. McLean Journal, pp 1310–1314; and Te Hapuku and others to Governor Grey, W[h]akatu, 3 May 1851, translation printed in AJHR 1862, C–No 1, p 312
52. Te Hapuku and others to Governor Grey, W[h]akatu, 3 May 1851, translation printed in AJHR 1862, C–No 1, p 312
53. Colenso Journal, 7 November 1851, p 1161
54. See Ballara and Scott, Waipukurau block file, vol II, pp 15, 66– 90. Claim Wai 161, brought by Don Ihaia Hutana and others, has indicated interest in the inclusion of the Aorangi block in the Waipukurau purchase.
55. Turton, p 487
56. See surveyor Robert Park's report to McLean, 7 June 1851, enclosure 2 in McLean to Colonial Secretary Wellington, 9 July 1851, AJHR 1862, C–No 1, p 313

demanded.[57] Wi Tako was eventually able to record all the hapu names, and decisions on the distribution of money were made by the leading chiefs. Hoani Waikato was paid separately, but the tribes with rights in the rest of the block were paid equal amounts of the first £1800 instalment. As always, McLean had his eye on the next purchases, and to this end he convinced Te Hapuku to advance Te Potangaroa and Wereta (sellers of the Castlepoint block, Wairarapa) £100.[58] Unfortunately this meant that there was no money to pay a tribe who had missed out in the original distribution, but McLean again convinced Te Hapuku that they could be paid from the next instalment.[59]

How the cash was spent by Maori is revealing. Te Hapuku gave the visiting Wi Tako £5, for what McLean presumed to be Ngatiawa's (later Te Atiawa) payment. McLean received some of the money back again, for horses and goods he had purchased on people's behalf while in Wellington. Te Haurangi, Ropata and Te Hapuku paid from £20 to £35 to McLean for mules or mares. Those visiting Te Hapuku's kainga gave a portion of their money, or all of it, to Te Hapuku as they left. This practice bemused McLean, as he reflected upon how hard he was pressed for more money, only to see it handed on to someone else.[60] Again this lack of understanding by McLean of the protocol involved in such situations boded ill for later purchases. The Mohaka and Ahuriri purchase gold was also used to buy, among other things, horses. Debts were also settled.[61]

The Mohaka block (estimated to contain 87,000 acres) deed was signed by 296 Maori on 4 December 1851.[62] Colenso noted that the smallness of the first instalment at Mohaka of only £200 was not well appreciated. They had cause for complaint, the twenty hapu identified as representing the 'Waikari' Maori, receiving just £5 each (or about enough to buy the hind-quarters of a horse). It is no wonder that McLean recorded that the assembled group left with: 'some discontented some dissatisfied'.[63] The constant heavy rain and bad weather no doubt only added to their frustration. One response by Mohaka Maori was to offer further land, through 'being vexed at not getting more money for the land at Mohaka', as Colenso saw it, although Tangoio Maori wrote to Colenso swearing their opposition to the proposed sale.[64]

Division of the first £1000 at Ahuriri was also not a pleasant occasion for some. Tangoio Maori were reportedly arguing with Te Moananui and Tareha about their share in the money. This was not resolved until Te Moananui waived his share in the proceedings, though he still remained committed to the sale. One hundred pound amounts were handed over to nine different 'heads of tribes', with those representing Tangoio, and Oneone, splitting the remaining £100 evenly.[65] In anticipation of the

57. McLean Journal, 3 November 1851, p 1340
58. McLean Journal, 4 November 1851, p 1344
59. McLean Journal, 6 November 1851, p 1344
60. McLean Journal, 6 November 1851, p 1345
61. Colenso Journal, 21 November 1851, p 1165
62. Turton, p 495
63. McLean Journal, 6 December 1851, p 1373
64. Colenso Journal, 12 December 1851, p 1168
65. McLean Journal, 7 November 1851, p 1358–1362. Hopefully claimant research for Wai 400 will shed light on this process. Oneone was Tareha's father.

pay-out, Colenso sent bills to Ngati Kurukuru who owed him money, for which he was re-imbursed. Colenso worried that the money was not enough to settle existing debts for horses and other supplies, and was disgusted at Te Hapuku and son arriving at the mission station 'intoxicated' following the payment. The missionary may have been smarting at the lack of support shown to his fund-raising scheme, in which he had proposed that all chiefs receiving purchase money donate a 'small sum' to a fund to help health requirements in their villages. Colenso envisaged funding a 'sick hut' in each kainga, but instead only received three sovereigns.[66] Colenso's revelation that Noa Huke's sovereign was the full amount he received, it being one-fourth of the total share for Ngai Te Upokoiri, and the first sovereign he had ever owned, shows how little money there was to go around.

The negotiation of land reserved from the three sales differed. McLean allowed eight reserves, totalling 4378 acres, to be made from the Waipukurau block, remarking at one point that he thought that the demanded size for a '100 acre bush land reserve', was 'rather moderate'.[67] Surveyor Park wrote that having 'good timber' in reserves would not inhibit European development, as the 'Natives are willing to sell the wood at a moderate rate'.[68] This attitude was not maintained when negotiations for the Ahuriri block took place. McLean's attitude there was to constrict and limit the requested reserves. This seems an unwarranted assumption of power by McLean. He had been invited to the area, was shown the block to be purchased and the areas to be excluded from purchase, but then took it upon himself to decide which areas Maori would be allowed to sell or reserve. It is perhaps easier to understand (though without necessarily condoning) his reservations about having sizable Maori reserves in the midst of the planned town of Napier, but his obstinance over the Puketitiri reserve defies adequate explanation. In November 1851 McLean noted that he was having difficulty getting Maori to restrict their desired size of the heavily forested Puketitiri reserve from 'several thousand acres' to five hundred.[69] In the end the Ahuriri Deed of 17 November 1851 described the reserve as 500 acres, though, as O'Malley has pointed out, at that time the reserve had not been surveyed, and the concept of how much land was contained within an imperial acre was not clear to Maori.[70] McLean appeared motivated by a desire to secure the valuable timber at Puketitiri. The difference in his attitude, as expressed in relation to the reserves of Waipukurau timber, and those for Puketitiri, appears to confirm that McLean's negotiations were inconsistent. The Mohaka sellers apparently only asked for one reserve, Heru o Tureia, which Park noted when he surveyed the interior boundary. Discussion of the issues concerning reserves is continued in a later section of this chapter.

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66. Colenso Journal, 1 December 1851, p 1167; one sovereign equals one pound (£)
67. McLean Journal, 25 March 1851, p 1264. The intended size of the Oero Reserve came under scrutiny at the Hawke's Bay Native Lands Alienation Commission 1873, see AJHR 1873, G–7, reports, p 41 for Commissioner Richmond's report.
68. Park to McLean, 7 June 1851, enclosure 2 in McLean to Colonial Secretary, Wellington, 9 July 1851, no 6, AJHR 1862, C–No 1, p 313
69. McLean Journal, 14 November 1851, p 1354; see also O'Malley, p 203
70. O'Malley, p 203; see also Tony Walzl, 'The Ahuriri Purchase', claim wai 201 ROD, document F9, pp 30–31. McLean let Wi Tako explain how big 100 acres was, to which Wi Tako replied, indicating that Te Whanganui-a-Orotu was about 100 acres. In fact it was several thousand.

Although labelling the 1851 purchases 'nearest to being satisfactory', Ballara and Scott take McLean and the Crown to task on all three. They conclude that no permanent provision for the economic future of Maori was made; the purchase prices were inadequate; reserves were sometimes not allowed, and were not secured from alienation; access to natural resources was not guaranteed; no proper inquiry into the extent of customary ownership was undertaken; Maori did not receive the independent counsel they required; and, the Crown's fiduciary obligations derived from the Treaty of Waitangi were not fulfilled.[71] Ballara and Scott do not advance any argument based on Maori not understanding the concept of permanent alienation, or that they did not know that they were selling their land forever, as the deeds stated.[72]

In his report on the Ahuriri block, O'Malley suggests that a 'tuku whenua' type argument might be advanced for the first Hawke's Bay purchases. His evidence for such rests on an argument that Maori preference for leasing, and their own understanding and management of those leases, indicated that Maori land dealings with Europeans remained within the domain of 'an essentially Maori cultural framework'.[73] Building on this argument, O'Malley stated that for Ahuriri Maori, the 'agreement to "sell" the land' was based on an understanding that an important reciprocal and continuous relationship between themselves and the Crown (and settlers) was being initiated. This understanding contrasted with the European view, that a one-off transaction was being conducted. Pointing to the promises made by McLean of the additional benefits (other than the purchase money) to be gained from the sale, O'Malley concluded that Ahuriri Maori would most likely not have understood that 'exclusive rights over the block were being transferred',[74] and that instead, McLean probably reinforced an impression held by Maori that 'both races would share the land and become prosperous on it.'[75]

O'Malley's argument has merit: the evidence is strong that Maori preferred to lease, and that the Crown used the Native Land Purchase Ordinance 1846 to deny them that option; this, given obvious Maori desire to have settlers introduced a 'strong element of compulsion' toward gaining consent to sell. Certainly, McLean's insistence on keeping to his own low price favoured the Crown, as it had assumed a monopoly in the land market. The suggested tuku-whenua scenario, however, is a much less convincing argument. O'Malley does not establish a clear link between the general promises of prosperity made by McLean, with evidence of Maori not understanding that they had sold their land forever. Generally, yes, Maori had hoped that the influx of enterprising settlers would secure them a beneficial future, but this does not necessarily lead to Maori then thinking that they had sold something less than the permanent ownership rights to the land within the boundaries as they understood them.

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71. Ballara and Scott, Waipukurau block file, vol II, pp 90–94; Ahuriri block file, vol I, pp 51–52; Mohaka block file, vol I, pp 6–7
72. For discussion on the 'tangi clause' or the 'all appertaining clause', see *Te Whanganui-a-Orotu Report 1995*, pp 63–65; see also Ballara and Scott, Introduction, vol I, p 196
73. O'Malley, p 227
74. O'Malley, p 231
75. O'Malley, p 233

If it is accepted that Hawke's Bay Maori fully understood the concept of permanent land alienation, and that that was their understanding when they signed the 1851 deeds (while noting those who did not sign, or were not afforded the chance to do so), the Crown's moral obligation to not allow alienation of the reserves made, and other lands Maori did not wish to sell, grew enormously. The issues surrounding the 1851 purchases, then, should remain focused on grievances relating to rightful owners, consent, price, boundaries, reserves, and the Crown's fiduciary obligations, as outlined by Ballara and Scott, and which are, on the whole, concurred in by O'Malley. These issues are reflected in the statements of claim for Wai 119 (Mohaka), 161 (Waipukurau), 201(general Ngati Kahungunu claim), and 400 (Ahuriri).

3.3 SECRET DEALS: THE PURCHASES OF 1854

Four blocks of land, Tautane, Okawa, Kahuranaki and Te Umuopa, were purchased from Te Hapuku, Puhara, Hineipaketia, Hori Niania and others in January 1854. These purchases represent a vast change in purchasing technique from the 1851 transactions. They were made at the instigation of McLean, who had invited Te Hapuku and a party of close associates to Wellington as guests of the Government, following their help in the successful purchase of Wairarapa lands in late 1853.[76] Seizing the opportunity presented by his good relationship with Te Hapuku, and Te Hapuku's stated intentions to willingly sell Hawke's Bay land, McLean negotiated the first purchase, of the 70,000-acre Tautane block, without consultation with the occupants of the land. Ballara and Scott state that Te Hapuku, as Ngati Te Whatuiapiti, had 'no right' to alienate the block, and others in his party had at best, only marginal interests.[77] A number of Wairarapa chiefs also signed the deed, and the inclusion in the deed of a 5 percent re-sale clause suggests that this block, on the borders of Rangahaua Whanui districts 11A and 11B, was a continuation of the major 1853 Wairarapa purchases. In all, 32 people purportedly signed the deed.[78] Of the signatories who did have customary rights in the area, Ballara and Scott contend that they were not actually present, and that marks next to their names look similar to those made by Te Hapuku and Hori Niania.[79] Regardless of whether fraud occurred, McLean's acceptance of the sale without any investigation as to who held the customary ownership of the block was irresponsible, and earned the Crown continuing trouble when ratification of the purchases on the ground was sought.[80]

Why did McLean choose to proceed in this fashion, and, in a sense, abandon the 1850–51 purchase methods in favour of secret deals with a few selected people? A number of reasons are likely. McLean's impatience with the details of Maori customary ownership, and the consultation which this required, have been alluded

76. Joy Hippolite, Wairoa ki Wairarapa The Hawke's Bay Purchases, February 1992, document A33, claim Wai 201 ROD, p 4
77. Ballara and Scott, Tautane block file, vol II, p 4
78. Turton, p 497
79. Ballara and Scott, Tautane block file, vol II, p 5
80. Hippolite, p 7

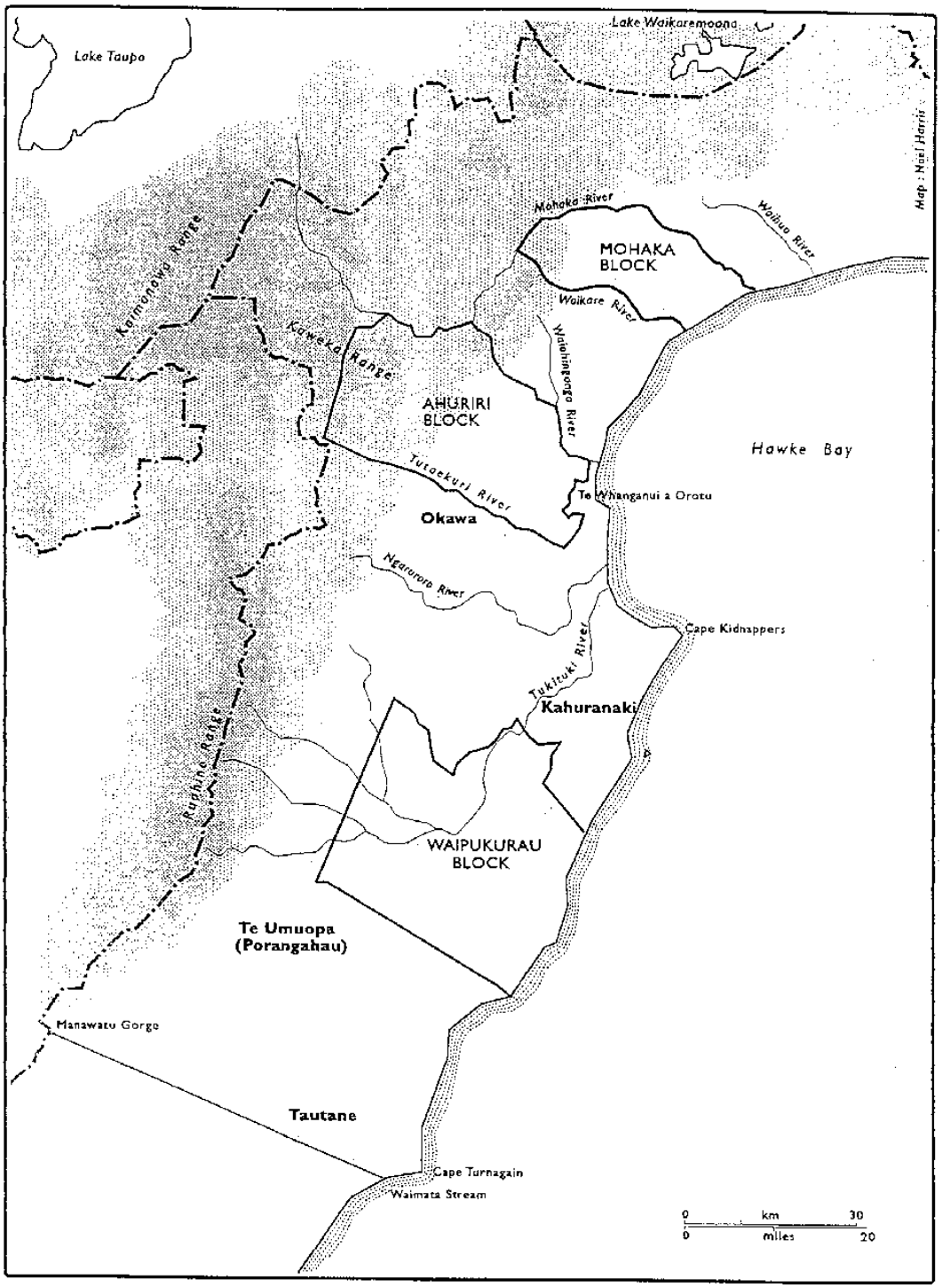

Figure 3: Secret deals

to above. His preference for gaining the consent of the few identified leading chiefs, rather than of all the hapu with customary interests in the block obviously contributed to this change, as did his promotion of and support for Te Hapuku as a chief with the necessary authority and power to make sales on behalf of the owners. Another new tactic McLean employed was to gain title to land in stages, in effect, buying off various peoples' rights (or their perceived rights) to particular pieces of land, and then using one group's consent as a lever for obtaining another group's signatures.

The motivations of Te Hapuku, Puhara, Hori Niania, Hineipaketia, and the other few parties to the further three purchases made in January 1854 must remain uncertain. Ann Parsonson, in 1981, suggested that the sales (among others) were a continuation of Te Hapuku's desire to secure the future of his iwi by bringing European settlers onto the land, and were an opportunity to assert his claims and mana over the blocks sold.[81] Angela Ballara, in 1982, rejected this approach, instead arguing that Maori were motivated by a combination of economic and social conditions, including a desire to have cash, so as to participate fully in the new financial economy.[82] Ballara and Scott have not commented further on Maori motivations, other than to record that in these four cases Te Hapuku and the others were selling land over which they did not themselves have the sole power to alienate, and that the instalment money paid to them was spent in Wellington.[83] It is not necessary, for the purposes of this chapter, to define precisely possible Maori motivations, as it rested fully on the Crown to conduct purchases that did not infringe on the rights of other Maori. This the Crown failed to do.

The locations of the four blocks were spread throughout the Hawke's Bay area (see fig 3). The Te Umuopa block, or 'Part of Ruataniwha', as it was labelled on the deed, was signed on 6 January 1854 by Hineipakeitia, Puhara, Hori Niania, Te Kuru and Te Waihiku.[84] It was later included in the Porangahau purchase. The Okawa deed, signed on 17 January 1854, had the signatures of Te Moananui, Karauria Pupu, Tangotango and Te Hapuku attached.[85]. Exactly what land was purported to have been sold in this block became hotly contested in 1857. The Kahuranaki block was centred around the Ngati Kahungunu sacred mountain of the same name. The deed was signed on 9 Januay 1854, by Te Hapuku, Karauria Kite, Puhara, and Karanema Te Nahua. Why these particular areas were chosen is not clear. Tautane can be explained due to its proximity to Wairarapa. The others could only be guessed at, butMcLean was no doubt pleased to have secured another 100,000 acres, and footholds into four different districts. His changed method of purchase, however, had also secured for the Crown considerable trouble among the hapu resident on the blocks sold, and led to Maori opposition to Te Hapuku's secret deals and

81. Ann Parsonson, 'The Pursuit of Mana', *Oxford History of New Zealand*, W Oliver (ed), Wellington, 1981, pp 148–152
82. Angela Ballara, 'The Pursuit of Mana? A re-evaluation of the Process of Land Alienation by Maori 1840–1890', *Journal of Polynesian Society*, vol 91, no 4, 1982, pp 520–530
83. Ballara and Scott, Introduction, vol I, p 88
84. Turton, pp 498–499
85. Turton, p 501

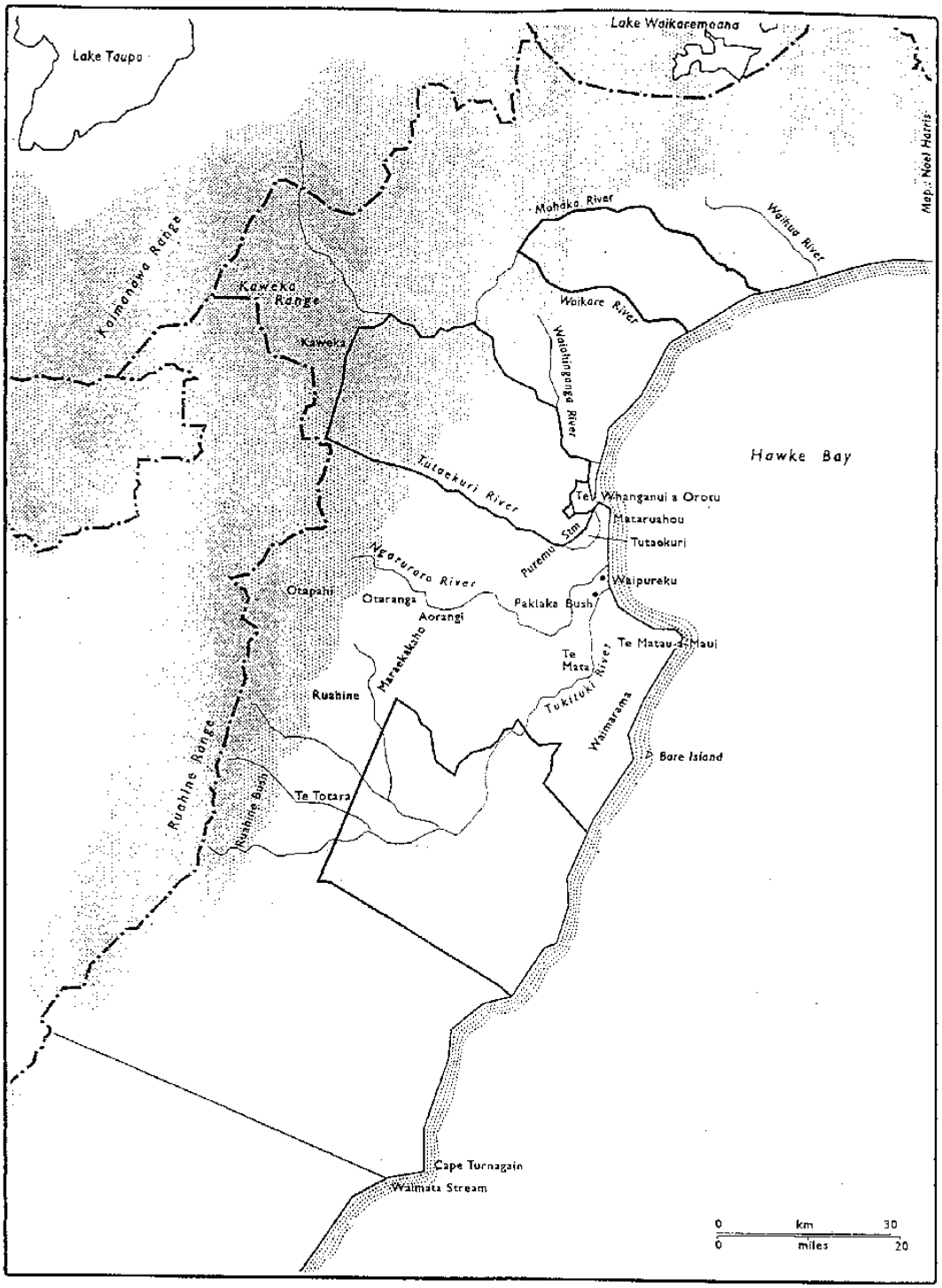

Figure 4: Further Crown purchases, 1855–57

assumptions of customary rights which were disputed by a number of different groups at the time.

3.4 MORE 'TENEI PUKAPUKA TUKU WHENUA': THE PURCHASES OF 1855

The purchases of 1855[86] fall into two main groups, those negotiated with the involvement of Te Hapuku, and of Ngati Te Whatuiapiti, and those with Te Moananui, and the hapu who also identified as Ngati Kahungunu. Tareha, of the latter group, was also targeted by the Crown purchasers, and obliged them by selling two blocks on the fringes of the Napier township: the Tutaekuri block and land adjoining Mataruahou. On 11 April 1855 Tareha received £100, the first half of the total £200 agreed upon for Tutaekuri, and a further £25, the first half for 'Mataruahou Island (land adjacent to)'. The final payments were made on 13 November 1856. Tareha received two town sections in the vicinity of the Mataruahou land sold. No reserve was detailed in the Tutaekuri deed, but Native Reserves Commissioner Heaphy defined a ten acre reserve for Tareha in 1870.[87] Te Moananui, with Karauria, also aided the residential growth of Hawke's Bay, selling 200 acres at Waipureku, to allow for the establishment of the township of Clive.[88] Government needs for land in 1855 then, were firstly, to provide European business and residential areas; and secondly, to continue to provide pastoralists with cheap leases of land on which they could establish large sheep and cattle runs. Land Purchase Department District Commissioner, G S Cooper, often prefixed a discussion of the negotiations of a particular block with a warning that pastoralists were waiting anxiously with their flocks.[89] This pressure from the increasing number of pastoralists saw the purchase of Matau-a-Maui (29,000 acres), which was signed by 33 Maori on 28 March 1855, and Te Mata (16,000 acres), which was signed by 12 Maori on 13 April 1855 (see fig 4).[90]

The course of the negotiations for the Te Mata block reveal the tensions concerning the boundaries between Te Hapuku's Ngati Te Whatuiapiti and Te Moananui's Ngati Kahungunu hapu. The latter group received £500 in April 1855, their deed excluding 'the land of Karanema' (Te Hapuku's son by Te Heipora), as it was not theirs to claim or sell.[91] A year later a second deed was signed by nine different people, and witnessed by Te Hapuku, a further sum of £500 being paid. Cooper noted dissension over this payment, however, writing to McLean that Te Moananui was keen to receive this payment for himself.[92] Victory in the 1857

86. 'Tenei Pukapuka tuku whenua' were the first four words on the Maori language deeds. The English version translated this as 'This document conveying land'.
87. Ballara and Scott, Tutaekuri and Mataruahou block files
88. Hippolite, A33, cites Rev Samuel Williams opinion that the Crown's title to Waipureku only rested on the 'good faith' of the customary owners, as Te Moananui and Karauria were not the only owners, p 13
89. Cooper to McLean, 4 July 1855, AJHR 1862, C–No 1, p 318
90. Turton, pp 501–503. Te Mata only appears in Turton as a deed receipt, see pp 581–582
91. Turton, *Maori Deeds of the Several Provinces of the North Island*, p 582, cited in Ballara and Scott, Te Mata block file, p 2
92. Cooper to McLean, 29 November 1856, AJHR 1862, C–No 1, p 322

Pakiaka battles (see 3.6), when Ngati Kahungunu hapu defeated Te Hapuku and Ngati Te Whatuiapiti hapu, enabled Te Moananui and the Ngati Kahungunu hapu to sell Karanema's (or Te Heipora's) reserve in 1858. The purchase money was then divided evenly between the Ngati Kahungunu hapu and Te Hapuku's party.[93]

The Matau-a-Maui block was also sold by Te Moananui, Tareha, Karaitiana and others (of the Ngati Kahungunu hapu). Te Hapuku demanded payment from Cooper as well, and appeared to receive £300 in January 1857. In 1856, Te Moananui, under pressure from his people unhappy with his land selling activities of 1855, was actively seeking to have some of the block returned, and refused to accept the final payment for the land. Cooper finally managed to pay the final £1000 in July 1857.[94] Ballara and Scott argue that the Crown failed to take the interests of the Waimarama hapu, Ngati Kurukuru and Ngati Kautere, into account when purchasing the Matau-a-Maui block.[95]

1855 also saw the continuation of secret deals. Land at Waimarama (see sec 6.5.3) and a block called Ngaruroro, in the Kaweka area, (see fig 4) were purchased in Wellington in February 1855, from a group of chiefs including Te Hapuku. McLean and Cooper negotiated the deals.[96] The Ngaruroro deed was signed by Te Hapuku, Kerei Tanguru, Paora Te Pakau, Puhara, Wereta and Te Harawira Tatari on 16 February 1855.[97] On the same visit advance money was paid to Te Hapuku for part of the Ruataniwha Plains. Similar secret deals were struck later in August 1855, two deeds being signed by Te Hapuku and a few others while guests of McLean's in Auckland: Otapahi, which was known as part of a larger area, 'Tawhara's sale' (which also included the Okawa block);[98] and Te Totara, part of the Ruataniwha Plains.[99] The Otapahi deed was signed on 13 August 1855 by Te Hapuku, Hakaraia Pohawaiki, and Hirini Hoekau. Watene's assent was placed by his proxy Te Hapuku ('Mo te Watene x tona tohu, na te Hapuku').[100] The Te Totara deed was signed 15 days later by Te Hapuku, Hakaraia and Hirini Koekau.[101]

3.5 THE SALES OF 1856–57

Tension resulting from Te Hapuku's secret sales and alienation of land intensified in 1856. Accordingly, only two block deeds, Aorangi[102] and Maraekakaho[103], both in the same area and with a similar customary occupation history,[104] were signed.

93. Ballara and Scott, Te Mata block file, p 4
94. Ballara and Scott, Matau-a-Maui block file, vol I, p 9–10
95. Ballara and Scott, Matau-a-Maui block file, vol I, p 13
96. Ballara and Scott, Kaweka block file, vol I, p 5
97. Turton, deed receipts, p 578
98. Ballara and Scott, Otapahi block file, vol II, pp 1–3
99. Ballara and Scott, Ruahine–Ruataniwha block file, vol II, p 40
100. Turton, p 504
101. Turton, p 505
102. The Aorangi deed was signed by Te Hapuku and 88 others on 22 March 1856, Turton, p 508. It is not the same block referred to in the Waipukurau purchase
103. The Maraekakaho deed was signed by Te Hapuku and 17 others on 20 November 1856. The approximately 30,000-acre block was sold for £1000, Turton, p 513
104. Ballara and Scott, Aorangi block file, vol I, p 3

Another determinant to the slowing of sales was the initiation of a new mood of anti-land selling, led by Te Moananui and the Ngati Kahungunu hapu. The genesis of their refusal to enter into new purchase negotiations appears to be the adoption of Te Heuheu's views against the Crown's purchasing programme. Cooper wrote to McLean in November 1856, blaming Te Heuheu for inciting trouble on a recent visit to Hawke's Bay, and naming him as behind Te Moananui's resistance to accepting the next Matau-a-Maui instalment, and Ngati Hineuru's claims to the inland portion of the Ahuriri block.[105] Cooper was clearly worried about Te Heuheu's influence, and of the Taupo meeting 'attended by delegates from nearly every tribe of any importance in New Zealand', which discussed establishing a Maori parliament.[106] Proposals discussed at the meeting which most concerned Cooper, and the Crown, were 'an immediate stop to all sales of land to the Government', and a policy 'to induce squatters to settle with flocks and herds'. These policies were based on an underlying principle of re-asserting the 'power and influence' of chiefs over settlers, and the conditions of their settlement. A feature of this policy was the use of squatters' rents to fund the maintenance of chiefly authority.[107] Not surprisingly, Cooper reported that Te Heuheu's visit and proposals were 'stoutly opposed' by Te Hapuku, 'who warned him [Te Heuheu] against interfering with him or his land'.[108]

Cooper tempered his anxiety with the revealing comment that Ngati Kahungunu would not be able to adopt the policies rigorously, due to ever-present financial demands and constraints:

> . . . I believe that the necessities of Ngatikahungunu will oblige them to sell more land in a very short time.
>
> The money they have to receive at present is insufficient to pay their existing debts, and they can no longer get goods upon credit, the late fall in the markets has put a temporary stop to the production of grain and potatoes . . . they have no alternative but to continue selling their lands as a means of obtaining supplies which have now become necessary to their existence.[109]

Cooper, obviously, was not prepared to recommend that chiefs be allowed to receive rents from squatters as an alternative to continued selling. Instead, he anticipated negotiating new purchases from Ngai Te Upokoiri and Ngati Hinepare by exploiting their 'internal jealousies' with Ngati Te Whatuiapiti over the sale of the Maraekakaho, and other blocks.[110] Cooper's explicit intent to exploit both Maori factionalism and Maori financial difficulties in order to purchase Maori land is something the Tribunal should scutinise carefully. One other factor relating to Maraekakaho is of interest. McLean's personal sheep had been running on part of the block since 1853, and he eventually purchased a significant amount of

105. Cooper to McLean, private, 16 November 1856, McLean Papers, folder 227, ATL, in Ballara and Scott, vol VI, document bank part IV, sec 104
106. Cooper to McLean, 29 November 1856, AJHR 1862, C–No 1, no 20, p 323
107. Ibid
108. Ibid
109. Ibid, p 324
110. Ibid; see also Cooper to McLean, 29 November 1856, AJHR 1862, C–No 1, no 18, p 321

Maraekakaho from the Crown.[111] McLean's personal circumstances, therefore, benefited from continued purchasing; his situation mirroring those of other squatters. Although Cooper did the ground work, McLean remained in control. Cooper reported regularly to McLean, both officially and privately. McLean's purchase programme in Hawke's Bay, then, provided the means by which pastoralists such as himself could gain unfettered title to their runs, by denying Maori the right to benefit from managing leases.

Cooper continued to negotiate for land at Waimarama and Porangahau, requesting money from Treasury for the blocks on 22 September 1856.[112] McLean's instructions for their purchase told Cooper to 'proceed at once against all squatters upon lands not acquired by the Crown'.[113] Despite holding the power to prohibit Maori–European negotiated leases, Cooper was unable to complete sales. He reported that the Waimarama Maori had refused to accept the offer of £600 for their land, and that the Porangahau Maori, although 'greatly in want of money', resisted the offered price of £1400. Cooper, however, felt that the sight of the gold in front of them would prove successful for the Crown, and accordingly asked McLean for permission to 'avoid meeting them' until he physically had the money.[114] Capitalising on Porangahau Maori's troubled economic situation, it appears, was Cooper's preferred tactic to ensure alienation. On 25 March 1857 the offer was again resisted, though Cooper recorded that they might accept £3500, which would include payment for the Te Umuopa land sold secretly in Wellington in 1854. Cooper stressed the need for McLean to meet some of their demands as 'the land is greatly wanted for settlement', pointing out that a number of squatters were already occupying the block. They were sent notices warning them of prosecution, but Cooper appeared sympathetic to their plight, stating that they had 'no place to go'.[115] Cooper's solution to this 'problem' involved the speedy purchase of the land required by the squatters. McLean, although bitter at what he saw as the squatters inflating the price, due to their demands for the land, decided that squatting was too far advanced in Porangahau to check, and that therefore it would be more efficient to pay £2500 for the block. McLean's remarks on the danger of allowing continued squatting are worth repeating:

> we shall soon have a repetition of the Wairarapa squatting with all the evil and expense it has entailed – a general scrambling for runs over unpurchased districts would ensue. The Natives would soon find it in their interest to coalesce with the settlers in opposing the sale of land to the Government; land purchasing would cease; those who had already sold to the Government would say, what fools we have been to sell, when our opponents to those sales have held out against the Government and are now reaping the fruit of their opposition by obtaining heavy annual payments for their runs, and are greater men than we are by having the English settlers at their mercy and altogether in their power

111. Ballara and Scott, Maraekakaho block, vol I, p 13; and Porangahau block file, vol II, p 22; see also Matthew Wright, *Hawke's Bay The History of a Province*, 1994, Palmerston North, The Dunmore Press Limited, p 41
112. Cooper to McLean, 22 September 1856, enclosure 2 in no 14, AJHR 1862, C–No 1, p 320
113. McLean to Cooper, 7 October 1856, AJHR 1862, C–No 1, no 16, p 320
114. Cooper to McLean, 29 November 1856, AJHR 1862, C–No 1, no 19, p 322
115. Cooper to McLean, 25 March 1857, AJHR 1862, C–No 1, no 27, pp 329–330

> and subject to their caprice, so that they can order any man off his run who does not comply with their present demands, not only for a stipulated rent, but for anything additional they may covet.[116]

Underpinning McLean's tirade against Maori controlled leases were racist assumptions about Maori landlords and European tenants. McLean's belief in European superiority[117] would not allow for Maori to have authority over settlers because Maori were incapable of being trusted with such power, were likely to flaunt their power unjustly, and would seek to cheat their European lessees at any opportunity. These attitudes, perhaps more than anything, provided the backdrop of the Crown purchasing programme in the 1850s.

3.6 1857 PAKIAKA WAR

The causes of the 1857 Pakiaka war between Ngati Te Whatuiapiti and associated hapu, led by Te Hapuku, Puhara and others, and Ngati Kahungunu hapu, led by Te Moananui, Karaitiana, Tareha, Renata Kawepo and others, were both internal and external. The question most requiring an answer in order to understand the causes of the war, is the extent to which Crown purchasing caused the violence. Ballara and Scott lay the blame firmly on the Crown, arguing that the animosity between the two factions would not have escalated into warfare, if the Crown had not insisted on accepting the land offered by Te Hapuku, and conducting sales in Wellington and Auckland.[118] The Crown did indeed exploit the factionalism, and chose to promote Te Hapuku as paramount chief of the whole Hawke's Bay, with the power to alienate land to the Crown of which Ngati Te Whatuiapiti were not necessarily in occupation, or did not have the only customary interests over. What the chiefs decided at the time, however, should not be discounted. Following the war, the causes, and measures towards prevention, were understood and explained internally. Blame was levelled at Te Hapuku, not the Crown. I will discuss this further after relating a brief narrative of events leading to the outbreak of fighting in August 1857.

Relations between the Ngati Te Whatuiapiti and Ngati Kahungunu factions had been cool throughout the 1840s. Some of the reason for this was Te Moananui's sponsorship of the return of Renata Kawepo and Noa Huke's Ngati Te Upokoiri to their ancestral lands, and Te Hapuku's refusal to recognise the return of these exiles, earlier defeated by a largely Ngati Kahungunu and Ngati Te Whatuiapiti alliance. Since his return to Hawke's Bay Renata Kawepo had steadily increased his influence, authority and standing within the Ngati Kahungunu hapu at Heretaunga. Personal animosity between Te Moananui and Te Hapuku was als o set at a constant simmer.

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116. Donald McLean, Memorandum on no 26, 25 March 1857, AJHR 1862, C–No 1, p 330
117. For a further discussion of McLean's beliefs and career see A Ward, 'McLean, Donald', entry in DNZB, vol 1, 1990, Allen and Unwin NZ Ltd and the Department of Internal Affairs, Wellington, pp 255–258
118. Ballara and Scott, Introduction, vol I, pp 85–112, in particular p 106

McLean invited Te Hapuku to Auckland late in 1856 to negotiate further land sales. While the invitation was extended to Te Moananui, McLean could hardly have expected the two of them to negotiate together, especially after the Taupo meeting, which Te Moananui attended. He appeared to support the anti-land selling sentiments expressed at that meeting. Perhaps McLean felt he was exercising his duty to treat with all owners. If so, his efforts were the bare minimum, as McLean did not wait for Te Moananui's consent. Te Hapuku and two others signed a deed selling the Manga a Rangipeke block on 31 December 1856 and 3 January 1857.[119] In late February 1857 Cooper reported that Te Moananui and Tareha were 'jealous of Hapuku's growing influence & of the notice that is taken of him by the Govt and & the Europeans generally'.[120] He also noted that the Ngati Te Whatuiapiti and Ngati Kahungunu parties may 'come to blows', and complained to McLean, with a well-developed sense of sardonic self-pity, that if fighting occurred 'all the blame . . . will fall upon my shoulders. Epai ana. I suppose I must take things as they come, it is my destiny'.[121] As well as absolving himself of blame, then, Cooper was obviously not prepared to attempt to prevent war by halting land purchasing. Encouraging an unrepentant Te Hapuku, money was paid in April 1857 to the Ngati Te Whatuiapiti chief for Otaranga, as well as another instalment for Aorangi.[122] This, according to the missionary Samuel Williams, led to an immediate declaration of war.[123]

Before the actual fighting in August 1857 commenced, however, and in what appears to be a classic example of Maori selling land 'in pursuit of mana', in March 1857 the Ngati Kahungunu hapu formed an armed group seventy strong. Accompanied by Cooper, they toured the contentious area which contained blocks recently sold by Te Hapuku.[124] The tour resulted in three different blocks of land being offered for sale, totalling 129,100 acres in the Ngatarawa, Ruahine, and Kaokaoroa Plains. Cooper felt the prices asked for the land were far too high, despite admitting that 'even the whole sum asked by the Natives is a trifle in comparison with the revenue it would immediately yield'.[125] The land was within Ngati Te Whatuiapiti's customary rohe, but others also had major claims, particularly Ngati Te Upokoiri. Naturally Te Hapuku was upset at what he perceived to be a 'usurpation of his "special work" – selling land to the Crown'.[126] Cooper's response to it all was to admit privately to McLean that there was 'no disguising the fact' that Te Hapuku had 'robbed his enemies to an enormous extent', and he remained bemused at why Te Moananui and others had not taken action earlier.[127] Cooper's candid admission would appear to implicate the Crown, by association, in Te Hapuku's 'theft'. Instead of doing something to rectify the injustice, and rescue the

119. Hippolite, A33, p 17; see also Ballara and Scott, Manga a Rangipeke block, vol I, p 2
120. Cooper to McLean, 24 February 1857, private, McLean Papers, folder 227, ATL, in Ballara and Scott, vol IV, document bank part VI, section 104
121. Ibid
122. Hippolite, A33, p 18
123. Hippolite, A33, p 18
124. Cooper to McLean, 27 March 1862 [printing error: should be 1857], AJHR 1862, C–No 1, p 331
125. Cooper to McLean, 27 March 1862 [1857], AJHR 1862, C–No 1, p 331
126. Ballara and Scott, Introduction, vol I, p 100
127. Cooper to McLean, 30 March 1857, private, McLean Papers, folder 227, ATL, cited in Ballara and Scott, Introduction, vol I, p 100

Crown from charges of impropriety, Cooper was more concerned with the perceived high price asked. He proposed, privately, to 'suspend purchases and starve the Natives into compliance'.[128] Publicly, Cooper cited his reasons for not taking up the land on offer as being the opposition of Te Hapuku to the deals.[129] Upsetting his number one seller was not on Cooper's agenda. McLean attempted to settle matters, which saw him pay the Ngati Kahungunu hapu £1300 as 'compensation' for their interests in the lands sold by Te Hapuku without their knowledge, and he placated Te Hapuku by purchasing Ruahine Bush and Puahanui blocks from him, paying Te Hapuku £4200 in July and August 1857.[130] Given the proximity of this payment to the commencement of fighting, it is highly likely that at least some of this money was used by Te Hapuku for war supplies.

Te Hapuku forced matters with the Ngati Kahungunu hapu by camping at Wakawhiti, near Whakatu. McLean and Williams brokered a peace deal whereby Te Hapuku, although told to leave by Karaitiana, could stay where he was but was not to construct a pa. Flouting these conditions imposed on his authority Te Hapuku went ahead and built a pa, using timber from the Pakiaka Bush.[131] The result was war, which, after three battles, numerous casualties, and a general loss of support for Te Hapuku, led to the chief's withdrawal in March 1858 to Poukawa.[132] Williams later attributed the cause of the fighting to Te Hapuku's agenda of selling land belonging to others, and accused McLean of encouraging Te Hapuku.[133] In the Tanenuiarangi peace agreement of September 1858, the Hawke's Bay Maori, except Te Hapuku and his immediate family who boycotted the proceedings, agreed that 'the system of selling through the Chiefs should be abandoned, and that any one who should hereafter be guilty of selling anothers property or of misappropriating any payment for land, should be punished with death'.[134] Ballara and Scott argue that this peace agreement left no doubt that the Pakiaka war was about Crown land purchasing methods.[135] Yet in a translation of their letter to the Governor, the chiefs described how they had decided to store their lands in 'the whata of Te Herunga'. The explanation provided stated that:

> Te Herunga was a sacred man and so was his whata (storehouse, elevated upon poles) sacred also; if any food which had been put upon this whata was stolen by a dog, that dog must be killed so with our lands that have been thus hung up; if anybody steals these lands he shall be killed whether he belongs to this tribe or to any other tribe of us, he shall be killed , for it is a sacred whata, and he had no business to climb up to a sacred place to steal there.

128. Cooper to McLean, 30 March 1857, private, McLean Papers, folder 227, ATL, cited in Ballara and Scott, Introduction, vol I, p 101
129. Cooper to McLean, 27 March 1862 [1857], AJHR 1862 C–No 1, p 331
130. Hippolite, A33, pp 18–19.
131. Hippolite, A33, p 20; Ballara and Scott, Introduction, vol I, pp 101–102
132. Ballara and Scott, Introduction, pp 102–103
133. Memorandum by Samuel Williams, 9 September 1861, Williams Family Papers, folder 50, ATL, cited from Ballara and Scott, Introduction, p 105–106
134. Cooper to McLean, 30 September 1858, AJHR 1862, C–No 1, no 47, p 340
135. Ballara and Scott, Introduction, vol I, p 106

This passage indicates that the blame and warning was put squarely on errant chiefs, not the Crown. Although the Crown's purchasers accepted Te Hapuku's offers, and Cooper and McLean knew full well that other people and tribes had customary interests in the blocks being sold, the victorious chiefs maintained that Te Hapuku was at fault, and should have known better. This preference to attribute blame amongst themselves, rather than to the Crown, indicates that Hawke's Bay Maori in the late 1850s wished to retain authority over the regulation and management of their land. They were not yet at the stage of appealing to the Government or expecting European law to correct improper Crown policy and action; they would do that themselves.

3.7 THE WHATA OF TE HERENGA

Only two land sales were concluded in 1858, both of which had been in negotiation for a number of years. The Porangahau hapu finally agreed to sell, and on 3 August 1857 Cooper paid over the £2500 McLean had permitted him to spend. The sellers held out for an additional £500, refusing to divide the money, and burying it in the grounds of the pa until McLean arrived in March 1858 with the extra cash.[136] This block included Te Umuopa, the land sold by Hori Niania, Te Hapuku and others while in Wellington in 1854. The 1858 deed was signed by 83 people. The Tautane block followed a similar course. One thousand pounds was paid on 3 August 1857, and on receipt of a further £500 in March 1858, a deed was signed by 90 people. Part of the re-negotiation for Tautane involved trading in the 5 percent clause included in the 1854 deed, an act which Ballara and Scott describe as 'nothing less than fraud'. They do not, however, develop or substantiate their charge to any degree.[137] This tactic of re-purchasing areas already sold, and re-negotiating deals supposedly already final, invited problems for the Crown. If the 1854 deeds did not represent the final consent of all the owners to alienate the lands, as it was admitted by Cooper that they did not,[138] then surely they were not adequate enough to extinguish native title. By getting further deeds signed the Crown could be seen to be covering its tracks. Where, then, does this leave the other two deeds signed in 1854: Kahuranaki and Okawa? The further instalments for the Okawa block were repeatedly contested by other owners not party to the original deed. Eventually Renata Kawepo did accept £50 in June 1859 as compensation.[139] This was not a re-negotiation, however, leaving the Crown still defending the original Wellington deed as sufficient consent for extinguishment of title. The written history of the alienation of Kahuranaki is almost non-existent. No area was indicated on the deed, and no deed plan drawn and attached. No protest has been found in official records, and no further deeds were signed, but a later Native Office map of Hawke's Bay showed the area as 12,000

136. Ballara and Scott, Porangahau block file, vol II, pp 22–23
137. Ballara and Scott, Tautane block file, vol II, p 8
138. For Te Umuopa–Porangahau see Cooper to McLean, 25 March 1857, AJHR 1862, C–No 1, p 330; and for Tautane see Cooper to McLean, 19 April 1856, private, McLean Papers, folder 227, ATL, in Ballara and Scott, vol IV, document bank part VI, section 104
139. Ballara and Scott, Okawa block file, vol II, p 10

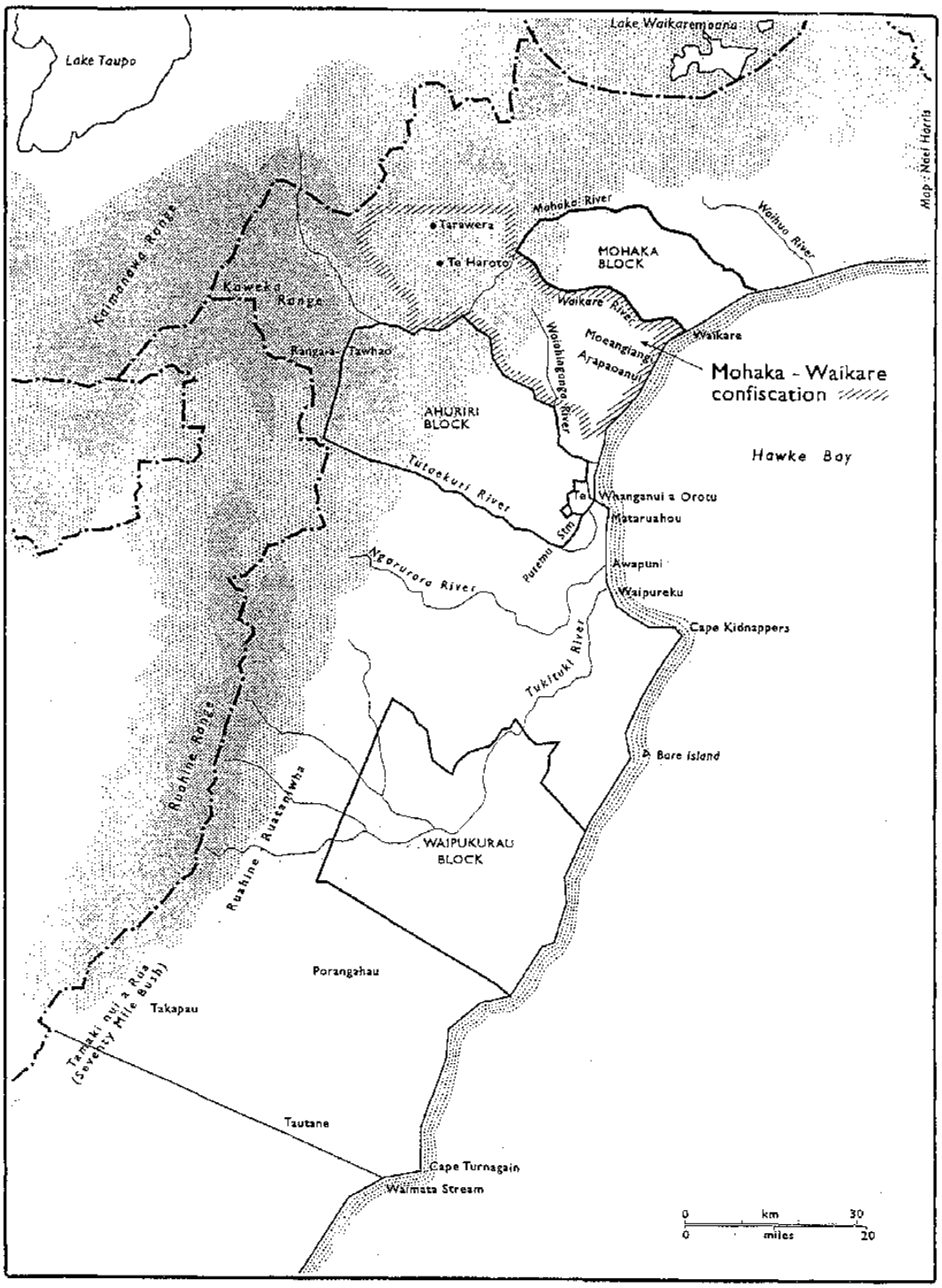

Figure 5: Crown purchases, 1858–62

acres, surrounding the sacred Ngati Kahungunu mountain, and that the block was sold in 1858.[140]

Six further purchases were completed in 1859, which represented the last major Crown purchases in Hawke's Bay prior to the introduction of the Native Land Court. Two of these, Middle South Porangahau, or Porangahau South, and Ruahine–Ruataniwha, concluded earlier negotiations. The legitimacy of the Porangahau South sale deed, signed by Wi Matua and Te Ruru, (but which was negotiated with a wider group), was contested by others from 1860 onwards.[141] The largest of the six purchases was the 130,000 acre Ruahine–Ruataniwha area. Te Moananui and the Ngati Kahungunu hapu received £3700 to complete its purchase.[142] Te Hapuku had been paid separately for the area.[143]

The Crown's long-awaited move into the area between the Ahuriri and Mohaka blocks finally occurred with the purchase of two blocks in the Waikare district, Moeangiangi and Arapaoanui, in 1859. On 19 April 1859, £150 was paid to 12 people supposedly representing Ngati Te Rangitohumare and Ngai Te Aonui. In May, however, Cooper told McLean that the Runanga had vetoed the sale, and were planning to return the money to the Government. Cooper felt it 'prudent to temporise' following the Runanga's talk of 'enforcing their intentions by an appeal to arms', and accordingly wrote to those who had received the money telling them to withhold from distributing it until McLean arrived in Hawke's Bay.[144] A second deed was signed on 20 June 1859 with what appear to be Runanga chiefs such as Tareha and Karauria Pupu, and others. A third deed was signed by Kopu Parapara on 7 July 1859. The Arapaoanui block occupied land between the Arapaoanui River and the Waipapa Stream, and although estimated as 2000 acres, it was never surveyed. Judging from the written boundaries cited in the deeds, Ballara and Scott believe the second deed covered a much larger district. It is virtually impossible to accurately ascertain the boundaries now, as the block was amalgamated with that of Moeangiangi when the whole district was confiscated in 1867.[145]

On the same day as Kopu Parapara received £10 for his claim to Arapaoanui, 7 July 1859, he and 14 others were paid £300 for the Moeangiangi block. Although estimated as 10,000 acres, the deed contained a curious clause whereby the sellers would be compensated for any further land found to be within the ascribed boundaries, following completion of a survey. A Crown schedule in 1860 listed the Moeangiangi block as 12,000 acres, but with no change in the price paid. Although a further £150 was paid to three people as the 'final settlement' for Moeangiangi in 1862, Ballara and Scott doubt whether this could be considered as fulfilling the obligations under the clause in the 1859 deed. Instead, they believe that this payment was made to different people, to extinguish their claims, as they had not received

140. Ballara and Scott, Kahuranaki block file, vol I
141. Ballara and Scott, Porangahau block file, vol II, p 32
142. McLean to T H Smith, Assistant Native Secretary, 29 June 1859, AJHR 1862, C–No 1, No 56, p 345
143. McLean to Assistant Native Secretary, 3 September 1859, AJHR 1862, C–No 1, No 58, p 346
144. Cooper to McLean, 10 May 1859, AJHR 1862, C–No 1, p 342, cited from Ballara and Scott, Arapaoanui block, p 5
145. Ballara and Scott, Arapaoanui block, pp 5–7

any of the 1859 payment.[146] Complicating the acreage figures is the 200 acre reserve which was made in the deed. In 1862 it was listed as being 670 acres, and it had grown to 1092 acres by the time it went before the Native Land Court in December 1866.[147]

The Crown also managed to purchase the Ranga a Tawhao block (situated in the Kaweka region) in 1859, as well as commence negotiations for 50,000 acres in the same area (see sec 5.3). Inroads were made into the Tamaki area with the Omarutaiari or Takapau block(s), with seven people paid in a series of deeds between 1858 and 1859. The purchase of Takapu was immediately contested by others, and Cooper was still negotiating with some of the owners in 1867.[148] The reason for the complaints lay with the adoption of 'The Whata of Te Herunga' policy following the Pakiaka war. Indeed, virtually all of the 1858 and 1859 sales were subject to contemporaneous calls for repudiation.

These calls were made by the Hawke's Bay runanga, who were determined to halt all further land sales, and exercise control over their land. In April 1859 a huge hui was held at Pa Whakairo to discuss the Hawke's Bay support for the King movement and the establishment of runanga. The result saw significant support for the Maori King, and almost unanimous Hawke's Bay support for the establishment of runanga. Cooper reported that Te Moananui, having already committed himself to the King, gained support from Te Hapuku's old support base of Patangata, Te Aute, Te Tamumu, Waipukurau and Pourere, while Karaitiana and Renata, who had gained most from the victory over Te Hapuku, chose to support the establishment of runanga, rather than commit themselves fully to the King. They received support from the Mohaka, part of Ngati Hineuru, and Wairoa iwi.[149] Ballara and Scott believe that Cooper's split between the two groups was exaggerated, and that Renata supported Tawhiao, but only as the mentor of the runanga system.[150] Cooper referred to Karaitiana and Renata's group as 'republicans', as they sought to maintain 'a pretty close imitation of local government'.[151] The cornerstone of this local government was the continued ownership of their remaining lands. Buoyed by the successful Pa Whakairo hui, the newly elected runanga immediately tried to repudiate the Arapaoanui purchase, asking that the money Cooper had paid the previous month be returned.[152]

The runanga, therefore, showed that it was not about to tolerate further land selling in the Hawke's Bay area. This objective, with the exceptions alluded to above, was largely achieved. The runanga also stamped its authority on the province by demanding that settlers pay market rents for their illegal runs on Maori land. Settlers who allowed their cattle and sheep to periodically graze on Maori land were also targeted by the runanga, and made to pay grass money, or face the prospect of having their beasts impounded. Not all the runanga's activities involved European

146. Ballara and Scott, Moeangiangi block, pp 3–5
147. Ibid, p 6
148. Ballara and Scott, Omarutaiari block file, vol II, pp 7–8
149. Cooper to McLean, 9 May 1859, AJHR 1862, C–No 1, No 50, p 342
150. Ballara and Scott, Introduction, p 116
151. Cooper to McLean, 9 May 1859, AJHR 1862, C–No 1, No 50, p 342
152. Cooper to McLean, 10 May 1859, AJHR 1862, C–No 1, No 51, p 343

settlers. Maori farming, husbandry, and other industry intensified. New modern towns were planned, and overall trade increased. As Ballara and Scott concluded, 'Maori in Hawke's Bay were poised . . . to lay the foundations for a relatively prosperous future for their remaining people'.[153] Unfortunately for the runanga, three Crown objectives stood firmly in their way. Firstly, McLean wished to purchase a further 500,000 to 600,000 acres in Hawke's Bay,[154] including the Ngatarawa, Kaokaoroa and Heretaunga (Ahuriri) Plains, the Tamaki area, and the best land in the Waikare region; secondly, the Crown was not prepared to tolerate Maori negotiating leases directly with pastoralists, or letting the runanga officiate over them; and thirdly, the Crown was not prepared to tolerate either Maori support for the King movement, or non-allegiance to Queen Victoria.

An uneasy tension existed throughout 1860 as the runanga consolidated its support. Cooper became shut out of proceedings, and was unable to continue any new or major purchase negotiations. Calls for about 100 000 acres of the inland portion of the Ahuriri block to be re-occupied, and the settlers with runs on it to pay rents or be pushed off, filtered through to Cooper.[155] On 20 June 1861 Cooper admitted defeat, and informed McLean that, given the rumours circulating that the Crown was preparing to 'obtain forcible possession of their lands', it would be advisable to 'suspend all operations of the Native Land Purchase Department'. If they were ever to resume, Cooper noted, deals would have to be negotiated in public, with published prior warning, and involving a commissioner who, along with a few chiefs, would enquire into the customary ownership of the block.[156] This was an important recognition of the Crown's failure to adequately investigate the customary ownership of the blocks it had purchased.

3.8 RESERVES

3.8.1 Definition

The history of the reserves resulting from the Crown purchasing in the 1850s require separate comment. As the Crown acquired 1,500,000 acres of Hawke's Bay during this period, the land Maori identified for exclusion from sale became vitally important. There appear to be four main reasons for reserves being made. All of them originated from Maori wants and needs, not the Crown's. The first category were the lands excluded from the large block purchase because they were the sites of existing pa or kainga.The second category were lands excluded from sale because they were important resources; either traditional, such as bush areas and lagoons; modern, such as whaling stations or pastoral grazing land; or simply practical, such as a canoe landing area. The third category were lands reserved because of their historical and spiritual significance, the wahi tapu, urupa, and old battle sites. Obviously some could be all three. The fourth category were Crown grants of land,

153. Ballara and Scott, Introduction, vol I, p 113
154. McLean to T H Smith, 29 June 1859, AJHR 1862, C–No 1, No 56, p 345
155. Cooper to McLean, 8 March 1860, AJHR 1862, C–No 1, No 65, p 349
156. Cooper to McLean, 20 June 1861, AJHR 1862, C–No 1, No 74, pp 353–355

gifted back, in a sense, to the chiefs who had signed particular deeds. The issues relating to reserves centre around whether the Crown reserved all the land that Maori wanted reserved, whether there was any obligation on the part of the Crown to regulate and assess the adequacy of the reserves in every block, and whether there was a further obligation for the Crown to ensure that these reserves were not subject to alienation. A related issue is whether at the time of the purchase negotiations the Crown sufficiently explained to Maori the full implications of Crown title over a large area, in terms of control of natural resources such as rivers and lakes, and coastal fishing rights. I will not attempt to elaborate on this related issue, as it has been covered in both the Tribunal's Mohaka River and Te Whanganui-a-Orotu reports, and is not so much an issue concerning reserves, but touches on fundamental questions of what role Maori were to take in controlling, managing, and utilising natural resources. I will discuss the first three issues in turn, using examples from each of the categories.

3.8.2 Were all reserves made?

Maori had invited the Crown to purchase land in Hawke's Bay. On the whole it was Maori who identified the land to be sold. It was also Maori who were identifying the lands they wished to have reserved. Maori, then, it could be assumed, should have been controlling the proceedings. If Maori wanted to exclude various pieces of land from a wider block that they were offering for sale, then, theoretically, the Crown had no grounds on which to refuse. On the face of it, these appear plausible assumptions. However, the purchase of Maori land was cloaked in a process of negotiation. McLean, as the Crown's appointed negotiator, was well within his rights to negotiate the cession of particular peices of land which Maori at first said they wished to keep, if, for example, their exclusion would have ruined the utility of parts of the block. When examining the question of whether reserves were all made, it is important not to confuse Maori determination not to sell, with the negotiation over which parts of an area should be sold. It is the negotiation process itself that requires close strutiny. Also, the negotiations over reserves need to be viewed within the conceptual framework of the competing desires and obligations of the Crown and Hawke's Bay Maori.

Two further issues are important when assessing whether all reserves were made. One is misunderstandings, and the other concerns promises made, but not honoured. Often the difference between the two is fudged, and relies, essentially, on how readily one wishes to offer one party the benefit of the doubt, and how effectively historical sources can reveal what one party did not know, or did not understand. By way of illustrating the first issue, the Tribunal has already found that Maori meant to exclude the lagoon Te Whanganui-a-Orotu from the land being sold, but that McLean assumed otherwise.[157]

Two accusations of the Crown not honouring promises made during negotiations for the Ahuriri block in 1851 have emerged from the oral record. Maori believed that an assurance was given by McLean that a reserve would be made at Kaiarero. The

157. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, in particular see pp 72–75

reserve did not appear on the deed.[158] Ngati Tu oral traditions maintained that they had negotiated a 500 acre reserve in their important bird-snaring territory at Te Pohue. When the Puketitiri Reserve had its customary title determined in 1921, two Ngati Tu kaumatua appeared under the mistaken impression that this was the reserve that had been made for their hapu in 1851.[159] The Waipukurau purchase negotiations also apparently included the reservation of Lake Whatuma, but this was not reflected in the deed, and it was not until the 1890s that Maori, having continually exercised fishing rights, were denied access.[160]

There is evidence that reserves that were agreed to during oral negotiations had their boundaries altered when they were later surveyed. In a frank private letter, concerning the Ruahine–Ruataniwha purchase, Cooper wrote to McLean saying:

> I got Fitzgerald [surveyor] to mark off the 1150 acres for Ngati Kahungunu up the Waipawa River, inland of Tikokino. They do not know this yet, as I determined not to tell them till it was done because they have an idea that they will get the pick of the Kakarikihutia plain. There will be an awful row when I tell them where their sections are but that matters very little.[161]

While it may have meant very little to Cooper, it mattered a great deal to the hapu who were deprived of the land they wanted to reserve from the sale. There were numerous other disputes concerning the boundaries and size of land reserved from Crown purchases. The discrepancies arose because of inadequate negotiations, the importance Maori placed on the oral arrangements at the time rather than the written deed, and the Crown's inadequate surveys. The Oero reserve was listed as 308 acres in the deed, yet claimed by Maori as being over 2000 acres in size. McLean conceded their point, but, instead of surveying out the extra land, purchased all but 308 acres in August 1859. A further surveying error, admitted to by the Crown, led to the reduction of the reserve to 257 acres, but no compensation appears to have been made. Chapter 6 contains further examples.[162]

3.8.3 Obligation on the Crown to make adequate reserves within each block

In addition to the issue of broken promises, Ballara and Scott argue that there was a fiduciary obligation on the part of the Crown to provide adequate reserves from each block purchased. What this process should have included in terms of the number of acres required and the type of land to be reserved, will be left for others to argue. Hawke's Bay Maori generally did not own land in just one block that was sold. Therefore, whether the Crown was required to reserve a set proportion of each block, along the lines of tenths reserves, is problematic, as the vendors probably held rights to other areas as well. Nevertheless, hapu such as Ngati Hinepare, in the Ahuriri block, did cede a large amount of their tribal estate. The issue of Maori

158. Among others, see Ballara and Scott, Ahuriri block file, vol I, pp 49–50
159. P Parsons, 'Maori Customary Rights in the Te Pohue district', 1994, pp 4, 53
160. Ballara and Scott, Waipukurau block file, vol II, p 34
161. Cooper to McLean, 11 December 1859, private, McLean Papers, ATL, folder 227, cited from Ballara and Scott, Ruahine–Ruataniwha block file, vol II, p 17
162. Ballara and Scott, Waipukurau block file, vol II, pp 30–33

agency complicates the matter also. How does one balance the fiduciary obligations of the Crown admidst the actions of autonomous Maori?

As the Crown resident magistrate in the mid and late 1860s, Samuel Locke, would comment on whether Maori appearing in the Native Land Court had sufficient other lands, and it was in 1870 that the Crown started to be concerned with how much Maori had left; the fiduciary obligation argument, in respect of adequacy of reserves, is perhaps best left for that period. McLean mentioned in 1861 that Hawke's Bay Maori required only 200,000 to 300,000 acres for their 'present and future wants',[163] which is sufficiently vague to cause one to ponder on how seriously McLean addressed this issue. Perhaps one statistic will aid further discussion of this issue. Of the approximately 1,500,000 acres purchased by the Crown in the 1850s, about 21,000 acres were reserved from the parent blocks, which as a proportion of the total land sold, is 1.5 percent. Subsequent Crown purchasing of reserves lessened the amount reserved even further.

3.8.4 Obligation on the Crown to ensure that reserves were not alienated

Given the minuscule amount of land that was excluded from large block purchases, and that they were important areas for Maori, either spiritually or economically, or both, some onus must have rested on the Crown to secure the reserves from alienation, since it had insisted on setting up, controlling, and regulating the land title system. During the Crown purchasing period, however, few attempts were made to make reserves inalienable. Instead, the Crown actively engaged in purchasing some of them. Having been denied the chance of making further large purchases by the runanga, Cooper, with McLean's blessing, went after the land reserved from previous Crown purchases. Tukuwaru reserve was purchased from Te Hapuku, Hori Niania, and Te Haurangi in August 1859, and parts of Haowhenua and Pourerere were purchased in 1861–62.[164] Both the Haowhenua and Pourerere purchases were leased to the Europeans already squatting there, and were therefore a continuation of the Crown's policy of purchasing the management and control of Hawke's Bay pastoralists. Part of the largest reserve from the Porangahau block, Eparaima, was purchased by the Crown in May 1859, just a year after the parent block had been purchased.[165] The only reserve excluded from the 1851 Mohaka purchase, Te Heru o Tureia, was purchased in 1859 in order to stop the 'problem' of European stock grazing on the reserve. Maori were in occupation of the block when it was sold, though it is not clear whether those Maori residing on the land were party to the block's sale.[166]

Karanema's reserve, although seemingly excluded from the Te Mata purchase due to the sellers not having the right to sell it, rather than any desire to exclude it from sale altogether, was later sold by those same non-rightholders. The reserve, which in the second Te Mata deed was described as being reserved for Te Heipora's

163. McLean to Smith, 29 June 1859, AJHR 1862, C–No 1, No 56, p 345
164. Ballara and Scott, Waipukurau block purchase, vol II, pp 19–20, 26, 28
165. Ballara and Scott, Porangahau block file, vol II, p 56
166. Huata, A14, p 49

descendants forever, appeared to be caught up in the competitive selling by the Ngati Kahungunu hapu, and Te Hapuku's Ngati Te Whatuiapiti hapu.[167] One example of the Crown purchasing a reserve, in order to keep it as a reserve, appears to have occurred. The Manukaroa Reserve, excluded from the Porangahau purchase, was obtained by McLean in January 1865, but remained listed as a Maori reserve.[168] A significant number of the reserves recorded in deeds were later granted to Maori in the form of Crown grants, given to individuals and groups. However, there were delays in the Crown acting on some of these promises. In 1877 the Special Contracts Confirmation Act (Local) 1877 provided for the Crown to honour promises made and grants to be issued to Tareha (Gough Island), Karaitiana (Napier), and Reihana Ikatahi and 8 others (Tikokino).[169] Of these, the 2150 acres of Ruahine–Ruataniwha Crown grants, at Tikokino, were issued with the caveat that they were inalienable except by lease for a period of no longer than 21 years. The governor's consent was required before any alienation could occur, or longer leases be negotiated.[170] Why this practice was not adopted earlier, or with any consistency, is not explained by the Crown. It is hard to avoid concluding that, for the Crown purchasing period of the 1850s, the Crown's policy toward land reserved from purchased blocks never rose above being ill-defined, haphazard, and inconsistent.

3.9 STATISTICAL OVERVIEW

The table on pages 57 to 59 does not pretend to be an exhaustive list of the Crown purchases 1851–62. Its purpose is to act as a guide when reading this chapter, and to show the patterns of Crown purchasing. While comprehensive, land data sources occasionally defy simple presentation. In some cases, deeds were signed prior to even the most general survey being undertaken. From 1854, deeds were often signed with one group, with new deeds for the same land or revised boundaries being signed with different people many years later. The same land could be purchased initially, then re-purchased later under a different name, or from different people. Details about reserves were not recorded with any diligence, with resulting confusion over location, size, and the reason for the initial reservation. The Crown compounded the uncertainty over reserves by purchasing some of them, on occasion, only a couple of years after the parent block had been alienated.

Given the paucity of even the most basic information on some of the blocks, the Crown would be hard pressed to prove original legal ownership. The Department of Survey and Land Information (DOSLI) in 1991, using Turton's published deeds, were still uncomfortable with prescribing definite boundaries, and did not record

167. Ballara and Scott, Te Mata block file, vol II, p 4; a claim, wai 574, has been lodged with the Tribunal by the descendants of Te Heipora, questioning how a reserve specifically stated for their future use was purchased by the Crown.
168. Ballara and Scott, Porangahau block file, vol II, p 43
169. A further Special Contracts Confirmation Act (Local) in 1886 defined the boundaries of some of the Tikokino grants. It is possible that some of the grants were to be issued even though the land in question had already been alienated by Maori.
170. Ballara and Scott, Ruahine–Ruataniwha block file, vol II, p 27

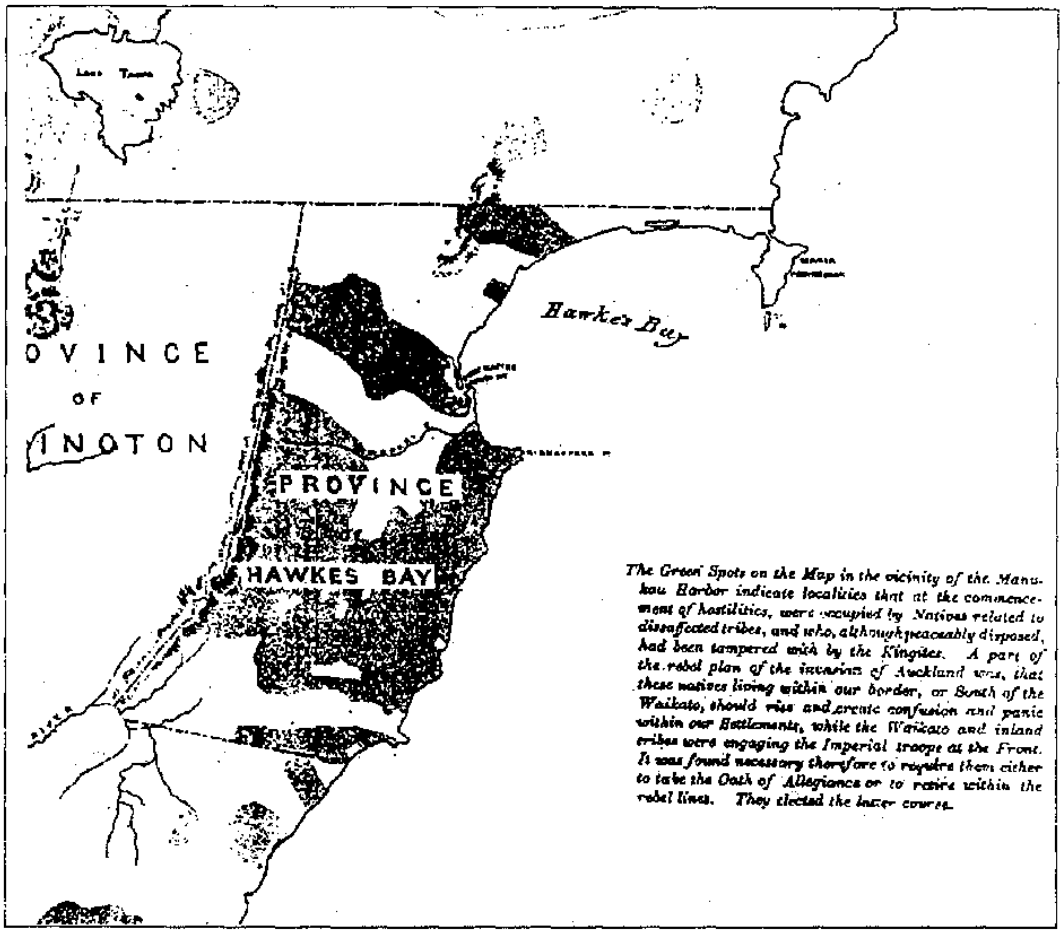

Figure 6: Heaphy's 1864 map (detail). The map has been slightly retouched in the interests of clarity.

some purchases, as they do not appear in Turton.[171] The information in this table is drawn from Ballara and Scotts' block files, and a 'Schedule of Blocks Sold in the Hawke's Bay District, 1851–1865', compiled from deeds held at Heaphy House, DOSLI, Wellington.[172] The sale of reserves is shown in the table by putting the block name in bold type. Data concerning the price per acre is not included as this is covered adequately elsewhere.[173] Also, the table has been limited to include only what appear to be the deeds which established Crown title, and estinguished the aboriginal title, in cases where more than one deed was signed. It is not, however, always possible to easily identify what deed or deeds the Crown was basing its ownership on. Therefore, it has not been deemed necessary to include all the Ruahine–Ruataniwha area, and Kaweka area deeds.

The pattern of Crown purchasing during the 1850s reveals how the initial huge purchases, with more reserves and signatories, contrast with the later purchases. In

171. This series of maps is held at the Waitangi Tribunal Library
172. This document was compiled by a Tribunal researcher, and includes some additional notes, see document A34, claim Wai 201 ROD
173. Ballara and Scott, Introduction, vol I, pp 189–191

Block name	Acreage	Date	Signatures	Price (£)	Reserves
Waipukurau	279,000	4/11/51	376	4800	Waipukurau 213 Tarewa 2135 Haowhenua 159 Tukuwaru 71 Te Tamumu 824 Oero 308 Tapu o Hinemahanga 220 Pourerere 448¾
Ahuriri	265,000	17/11/51	300	1500	Te Roro o Kuri 70 Wharerangi 1845 Puketitiri 500 Waka landing
Mohaka	85,700	5/12/51	240	800	Te Heru o Tureia 100 Burial site of Te Kahu o Te Rangi
Tautane (1st)		3/1/54	32*	1000	Tautane (and forest) Waimata, Tutaki 5 percent included
(2nd)	70,000	11/3/58	90	500	5 percent excluded Te Wainui 1000 Burial site 50
(3rd)		26/1/63	Karaitiana	150	
Okawa	16,000	17/1/54 7/6/59	4 2	800 50	
Kahuranaki	22,000	9/1/54	4	1100	
Te Umuopa		6/1/54	5	300	
Waimarama†		10/2/55	Tamihi-koia		
Ngaruroro‡	5000	14/2/55	6	200	
Matau a Maui§	29,000	28/3/55 24/2/57	33 11	2000 1000	Rangaika 300

* Ballara and Scott argue that some of the names on the deed not closely related to Te Hapuku and Hori Niania are possibly forged: Tautane block file, vol II, p 5.

† This deed was not published in Turton, but is held at DOSLI in Wellington. It appears to be the purchase of Tamahikoia's interests in Waimarama and Ahuriri. Its relevance to Cooper's negotiations for the block is unclear: see A34, p 6.

‡ This block was re-purchased as part of other Kaweka deeds.

§ The second payment was the final instalment of the original £2000.

Block name	Acreage	Date	Signatures	Price (£)	Reserves
Tutaekuri	1000	11/4/55 13/11/56	Tareha 3	100 200	Tareha's reserve 10
Mataruahou (land adjourning)		11/4/55 13/11/56	Tareha 3	25 25	Tareha's two town sections 178–179 Carlyle Street
Te Mata	16,000	13/4/55 13/11/56	12 10	500 500	Karanema's 4000 Kohinerakau 1200 Heipora whanau
Waipureku	200	13/4/55 15/5/55	2 2	100 30	
Otapahi	6400	13/8/55	4	200	
Ruahine–Ruataniwha north*	130,000	1855 to 1859		10,500	12 Crown grants 1150 4 Crown grants 1050 Tikokino 900
Te Totara	26,000	28/8/55	3	1300	
Ruataniwha south	21,000	1855 22/3/56	3 90	 1200	
Aorangi	38,000	22/3/56	88	2000	Not named 803
Maraekakaho	30,000	20/11/56 4/7/57	18 16	1000	
Manga o Rangipeke	10,000	3/1/57 29/6/57	3 19	150 500	
Ruahine bush	100,000	13/7/57	128	3000	
Te Aute College	1745 816	31/3/57 31/3/57	45 45		
Otaranga	50,000	15/3/57	27	1000	
Puahanui	12,000	3/8/57	32	1200	

* There is no easy way to present the information relating to the purchase of these blocks in a simple table; there are 14 separate receipts for payment for the area: Ballara and Scott, Ruahine–Ruataniwha block file, passim, p 8.

Block name	Acreage	Date	Signatures	Price (£)	Reserves
PorangaHau*	145,000	10/3/58	83	3000	Eparaima 1 Eparaima 2 Pakowhai 200 Makahua 15 Oerowaia 25 Manukaroa 38
Omarutaiari (Takapau)	11,700	1858 16/7/59 12/8/59	Uru Peni 2 4	100 50 400	Not named 1000
Karanema's reserve	4000	5/3/58 29/9/58	8 6	400 400	
Middle south Porangahau	16,000	18/7/59	2	400	Crown grants 1300
Aropaoanui	2000	19/4/59 20/6/59	12 5	150 240	
Ranga a Tawhao	5000	28/4/59	5	350	
Kaweka	50,000	1859 to 1875		430	
Moeangiangi	12,000	7/7/59	15	310	Moeangiangi† 200
Kereru	5000	15/8/59	12	600	
Tukuwaru reserve	71	15/8/59	3	40	
Pourerere and **Tuingarara**	‡	10/8/59 15/5/62 15/5/62	Morena Morena Te Hapu	25 100 280	(82 acres remained)
Te Heru o Tureia		5/7/59	11		
Eparaima bush	500	26/5/59	5	150	

* 'Return of Native Reserves', compiled by Andrew Sinclair, surveyor for the Land Purchase Department, 23 January 1862, recorded Eparaima as 1300 acres and Ahirara as 1000 acres and tabled two other reserves, Waikaraka 1400 acres and Purimu 3510 acres: AJHR, 1862, E–10, p 9.

† Sinclair records the Moeangiangi reserve with the greater acreage of 670: AJHR, 1862, E–10, p 9.

‡ Ascertaining the acreage of the parts of these reserves is fraught with difficulty; the reserves became merged with 'Northwoods Homestead', which was afforded an acreage of 11,000.

crude terms, it appears that Maori were able to negotiate a higher price per acre in the later 1850s. The Waipukurau, Ahuriri, and Mohaka block purchases netted the Crown at least 629,000 acres (647,000 acres if the extra Aorangi block is added), for just over £7000. The purchases commenced in 1854 netted another 108,000 acres, for £3900. The purchases commenced in 1855, but most of which were finalised between 1857 and 1859, realised another 266,600 acres for the Crown, and cost £16,880. The rest of the purchases, commenced in 1856, and finalised as late as 1875, totalled about 450,000 acres, with an estimated price of £11,730. Overall, the Crown claimed to have purchased approximately 1,500,000 acres, which cost just under £40,000.

One official version of where these Crown purchases were situated has been reproduced in this report (fig 6). It represents the Hawke's Bay section of a map drawn by Native Reserves Commissioner Major Heaphy in 1864. His purpose for drawing the map was to show that land sales were not a causal factor in the outbreak of war in the North Island of New Zealand. The map is interesting as it shows how much of Hawke's Bay had been purchased, and what areas were left. The area between the Ahuriri and Mohaka block purchases was to be confiscated three years after the map was drawn. Six years later, most of the Ahuriri–Heretaunga Plains, which are clearly identifiable south of Napier and the Ahuriri block purchase, had been alienated. And in 1871, a large portion of the Tamaki area, situated south of the Ruahine–Ruataniwha Plains, and inland from the Tautane purchase, was also alienated. These events are detailed in chapters 4 and 5.

CHAPTER 4

LAND ALIENATIONS VIA THE NATIVE LAND COURT FROM 1866 TO 1873

4.1 INTRODUCTION

This chapter should be read in conjunction with Dr Grant Phillipson's chapter appended to this report (app II). Dr Phillipson's chapter, written for the Crown Congress Joint Working Party in 1993, outlines the various ways in which Hawke's Bay Maori were disadvantaged by the Native Lands Act 1865 (and amendments), examines the operation of the Native Land Court, and the roles played by storekeepers, interpreters, lessees and purchasers between 1865 and 1873. To complement his chapter, examples of land that passed through the Native Land Court and were purchased a short time later will be provided. As well as detailing these examples, other determinants which increased the pressures on Maori using the court during this period, and which led to further alienation of Maori land, will also be assessed.

The examples chosen reflect the different localities within the Hawke's Bay area, provide examples of particular failings in the court system, and provide on the ground examples of the actions of those who facilitated the alienation of land from Maori, either against their will, or without their knowledge. Reserves made during the Crown purchasing activities for the 14 years prior to the introduction of the Native Land Act 1865 are well represented, since the Tribunal has received many claims relating to the loss of these reserves, and because in most cases the Crown purchases included huge areas with very few reserves – making their alienation particularly hard felt. Large areas are not represented for various reasons. Land north of the Mohaka River which passed through the Native Land Court between 1866 and 1873 did not suffer immediate alienation. The same applies for other areas such as Waimarama. I will examine more closely those areas in later chapters. For this period, it is necessary to remain mostly focused on the Ahuriri plains, the area most affected by alienation via the Native Land Court.

Studying the operation of the Native Land Court is fraught with difficulty. Despite the chorus of condemnation the operation of the Native Lands Act 1865 (and amendments) has received from both commentators at the time and subsequently, assessing its inadequacies and its impact on Maori in Hawke's Bay is an appreciably harder task. The most obvious complexity is that land passing through the court was not necessarily alienated, and that which was alienated may not have been alienated against the wishes of Maori, or in an unfair manner. Official sources did not record

the subsequent alienation of land which passed through the court in any systematic fashion. Quantitative comprehensiveness could only be gleaned from labouriously sifting backwards through block files and title deeds, a task for which the Rangahaua Whanui format does not allow. Fortunately, the spotlight of officialdom shone brightly on Hawke's Bay in 1873 in the form of the Hawke's Bay Native Lands Alienation Commission, and consequently most of the source material for this chapter derives from this collection of grievances, reports and personal evidence.

4.2 BACKGROUND

Despite having enormous success in purchasing large areas of Hawke's Bay in the 1850s, Crown negotiations for further land purchases in the 1860s struggled as Maori took stock of the amount of land they had alienated, and the process by which the Crown acquired land. Hawke's Bay runanga called for a halt to further sales of land to the Crown. On 2 March 1860 the newly appointed Crown surveyor Samuel Locke informed McLean that his services might not be required much longer as Maori were not 'willing to sell', and that this had been confirmed at a Runanga held at Pa Whakairo.[1] In May Locke wrote that Crown purchases at Porangahau, Ahuriri, Kaweka, Ranga-a-Tawhao, Puketitiri (a Crown purchase reserve) and Moeangiangi were all 'in dispute' to some degree.[2] While the Crown was able to continue negotiating some purchases, most notably Tamaki (Seventy/Forty Mile Bush) and Kaweka, the land involved was not that most desired by the settlers of Napier. Their eyes were transfixed on 'the plains', or 'lower Ahuriri plains' which lay just outside the boundaries of Napier township.[3]

The competition between the general and provincial government, and the settlers for this land intensified in the lead-up to the introduction of the Native Land Court. Maori were willing to enter into direct land transactions with settlers, and 'illegal' leases were arranged with pastoralists seeking large sheep and cattle runs. In October 1860 Te Waka Koura told Locke that Maori were talking about ways of regulating the 'letting of the plains' on land around Napier.[4] This preference by Maori for direct 14- or 21-year leases rather than sales to the general or provincial government created a tension which impacted directly on the operation of the Native Land Court from 1866 to 1873.

In mid-1861, Locke reported that it was not uncommon for pastoralists desperate to find suitable and accessible grazing land for their thousands of sheep to enter a bidding war for the most prized land Maori were willing to lease. Locke was concerned at the lack of Government regulation of 'the Grass question', complaining that Maori were taking advantage of this, accepting advances from up to three

1. Samuel Locke to McLean, 2 March 1860, folder 393, McLean papers, copy, micro 0535-067, ATL
2. Locke to McLean, 7 May 1860, folder 393, McLean papers, copy, ATL
3. As far as I can ascertain this land was south of Te Whanganui-a-Orotu and Te Whare-o-Maraenui, including Meanee, Pakowhai, Hikutoto, Whakatu and present day Hastings, then known as Heretaunga. It came to refer to any prime land south of Napier (see fig 5).
4. Locke to McLean, 31 May 1861, folder 393, copy, ATL

different pastoralists in a week.[5] The land was obviously considered valuable enough for pastoralists to take risks by negotiating leases, as the security of tenure remained weak – any agreements entered into with Maori were illegal under the Native Land Purchase Ordinance 1846. The Crown's response to this situation in 1861 was to commence selected prosecutions of squatters, but they achieved little.[6]

Antagonism between squatters and those who paid more in rent for general and provincial government runs intensified in 1864, and spilled over into the Hawke's Bay Provincial Council. A select committee chaired by H S Tiffen (former Hawke's Bay Crown Lands Commissioner) reported that the 'Ahuriri Plains' contained approximately 80,000 acres, and were being leased to about 15 'early settlers'. The committee noted that this land was the best available close to Napier for agricultural tillage, and were concerned that the province would not prosper unless this land was worked more intensively.[7] Squatters, on the other hand, were not prepared to invest capital into land which they did not own, and for which no Crown grant existed, and therefore did no more than run sheep and cattle on the still mostly unfenced native grassed plains.

The power associated with owning lands considered important to the European expansion of Napier and Hawke's Bay became an issue. On 28 January 1864 McLean, then Superintendent of Hawke's Bay Province, wrote to the general government telling William Fox, who at the time was both Colonial Secretary and Native Minister, that chiefs of the 'lower Ahuriri Plains' were 'at present indisposed to sell any of these lands' because they did not want to lose 'authority and control' over them. McLean also wrote that these chiefs were acquiring their own increasing stocks of sheep and cattle and that consequently they considered leasing a preferable option.[8] Given this feeling McLean proposed to have himself, on behalf of the provincial council, negotiate leases for the whole area, which presumably would replace those illegal leases already operating. The council would then sub-let small farms to settlers, who would be expected to plough at least 10 percent of their lease in their first year of ownership. McLean saw this measure as temporary, and merely the first stage towards ultimate acquisition of the freehold. There was no need to 'lead the natives to suspect that the Government is too eager for the acquisition of land', McLean wrote, adding that he had absteined from using his 'usual efforts' (no doubt a reference to his 1850s purchases) to acquire the freehold of this land.[9] The

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5. Locke to McLean, 31 May 1861, folder 393, copy, ATL
6. J G Wilson, *The History of Hawke's Bay,* pp 212–213; William Colenso's evidence to 'Select Committee on Court of Civil Commissioner at Napier', Civil Commissioner Committee Book, LE 1/1862/3, NA, Wellington; see also Alan Ward, *A Show of Justice*, 1974, Australian National University Press, this edition 1983, Auckland University Press, pp 134–135. I searched the Resident Magistrates 'Minutebook of Cases 1860–1883', AAOW, Acc W3244, 48, NA, but was unable to find any cases. In Sydney Grant's *Waimarama*, 1977, Dunmore Press, Palmerston North, p 32, Grant records that John Morrison, illegal lessee, was prosecuted on 4 January 1861 and fined £50, but appealed to the Supreme Court.
7. Report of Select Committee on Ahuriri Plains, Council Paper 1964, *Hawke's Bay Votes and Proceedings 1864*
8. Superintendent of Hawke's Bay, D McLean to Colonial Secretary, Auckland, 28 January 1864, in 'Correspondence having reference to the Illegal Occupation of the Ahuriri Plains, the Leasing of the same by Government & c', ordered to be printed in session ix, Friday 16 June 1865, *Votes and Proceedings of the Provincial Council of Hawke's Bay 1865*
9. Ibid

following month McLean informed the general government that he had indeed secured leases of the 'lower Ahuriri plains' for terms of 15 and 21 years. He added that the 'ultimate purchase would not be prejudiced but rather facilitated by the [leasing]'.[10] In preparedness for the bounty McLean had secured for the council, 'Proposed Regulations for the Disposal of Lands on the Ahuriri Plains' were drawn up in 1865.[11] The rent paid by the sub-lessees was to be at least 25 percent above what the council were paying Maori, and they were to pay a further 10 percent tax to fund drainage and roads. The regulations included offering sub-lessees a pre-emptive right of purchase if the block being farmed was subsequently purchased from Maori, and, by stipulating conditions on the lease such as compulsory fencing and cultivation, the council were more or less assuming that the blocks would eventually be purchased.

The general government, however, were not prepared to sanction the council's leases. William Fox replied to McLean on 20 April 1864, stating that the Government believed the proposal 'to be fatal to the prospects of sales', and would 'complicate the unsatisfactory position of the Government towards the holders of illegal leases'.[12] Instead, Fox suggested that if Maori acquiesced, the recent Native Lands Act 1862 authorising sales of Maori land to private individuals might be introduced, and, in October 1864 McLean was granted a warrant to prosecute illegal squatters for breaching the Native Land Purchase Ordinance 1846.[13]

Despite the go-ahead to commence prosecutions of squatters the council appeared divided about whether to proceed. In June 1865 Buchanan accused the squatters of paying large rents to 'rebel' tribes, and wanted them prosecuted immediately. In the same session James M Stuart moved that notices be published warning all illegal lessees that they were liable for prosecution, and that if the Crown subsequently purchased their runs, they would not receive any compensation for improvements made. Stuart's motion was lost, and instead McLean's substantially more moderate motion, that the council support the new Native Lands Act (1865), was passed by a slim majority.[14] It was well known in Hawke's Bay that McLean sympathised with the squatters, who included his political cohort, J D Ormond.

The squatters were not the only reason the general and provincial governments wished to halt Maori from leasing their land. In August 1864 Locke reported that Maori were planning to repudiate their leases and negotiate new ones, usually involving a rent hike, when conditions changed, such as when squatters increased their flocks of sheep. Locke gave the example of Waimarama Maori, who intended to raise the rent of Bell's lease from £120 to £400, because he was not the original lessee, but had bought the lease from someone else.[15] In the same letter Locke wrote

10. Superintendent of Hawke's Bay, D McLean to Colonial Secretary, 16 February 1864, *Hawke's Bay Votes and Proceedings 1865*
11. 'Proposed Regulations for the Disposal of Lands on the Ahuriri Plains', Council Paper 1865, Provincial Council of Hawke's Bay, *Hawke's Bay Votes and Proceedings 1865*
12. Fox to McLean, 20 April 1864, *Hawke's Bay Votes and Proceedings 1865*
13. Fox to McLean, 4 October 1864, *Hawke's Bay Votes and Proceedings 1865*
14. See debates, motions and voting for 16 June 1865, session ix, *Votes and Proceedings of the Hawke's Bay Provincial Council 1865*, pp 10–13
15. Locke to McLean, 9 August 1864, folder 393, copy micro 0535–067, ATL

that Karaitiana was using runanga meetings set down to settle boundary disputes to instead find excuses to raise rents.

In principle, the Native Lands Act 1865, which created the Native Land Court, should have worked to the benefit of Maori. They would be able to obtain a solid legal title to their lands, and then to negotiate legal leases. The court could have been a stepping stone for Maori to greater participation in the pastoral and arable development of Hawke's Bay (if that was what they so desired). The general and provincial governments, however, hoped that it would act as a facilitator of Maori land alienation.

To test whether the Native Land Court was indeed used to facilitate the alienation of the 'lower Ahuriri plains' is problematic. However, by identifying the blocks that came before the court in 1866, its first year of operation in Hawke's Bay, and noting which blocks were alienated by 1873, some impressions can be formed. Without requiring an exhaustive study identifying the exact location of every block, or whether every block was alienated soon after, there is enough evidence to conclude that a significant proportion of the 'lower Ahuriri plains' were alienated as a result of their passing through the Native Land Court in 1866. Blocks such as Papakura, Hikutoto, Omarunui 1 and 2, Heretaunga, Mangateretere East and West, Pakowhai, Tutae-o-Mahu, Kakiraawa, Te Awa o te Atua, and Ohikakarewa can be loosely identified as part of the lower Ahuriri plains. All were alienated to some degree. The provincial council are known to have first leased Papakura and Hikutoto, ultimately purchasing them, plus Te Upoko (on the Meanee Spit) and Tutae-o-Mahu — in all 5139 acres of land.

Through analysis of the court minutes, the 1873 commission, and other sources, a preliminary calculation has identifed that of the 52 blocks that had certificates of title awarded in 1866, half were known to have been sold by 1873. This must remain preliminary as the sources sometimes did not explain if all the block, or just a sub-division or certain shares were alienated. On occasions, the use of the word alienation was confusing. Wilson, for example, when compiling a table based on A Koch's 1874 map, lumped sales, mortgages and leases under the word, alienation.[16] The Raukawa East and West blocks, Te Mahanga blocks I and 2, and Pekapeka blocks 1 and 2 were awarded to various grantees in 1866 but the acreage was not recorded; consequently, they do not appear in the table. All six blocks, however, were the focus of numerous complaints to the Hawke's Bay Native Land Alienation Commission, rejecting their 'alleged alienation'. The calculation that half were known to be alienated in 1873, is most likely conservative – other blocks were almost certainly alienated. As well, blocks such as Wharerangi were not alienated, but the grantees were so heavily in debt to their lessee, J G Kinross, that they effectively received no income from the lease. Wilson's list shows how sought after these blocks were, nearly every block that passed through the court in 1866 was being leased to Europeans.

Blocks that appear in the table in bold type are reserves negotiated during various Crown purchases. Blocks with an asterisk had restrictions on their alienability.

16. Wilson, pp 213–215

Block name	Acreage	Number of grantees awarded title	Leased prior to hearing?	Sold prior to 1873?
Papakura	3363	2	Yes	Sold to provincial government
Hikutoto	1420	3	Yes	Sold to provincial government
Moturoa	197	1	Not known	Sold
Waipukurau	213	4	Yes	Sold
Te Tamumu	824	5	Yes	Sold
Whareraugi	1845	8	Yes	Mortgaged
Omarunui	3573	2	Yes	Sold
Omarunui 2	225	3	Yes	Sold
Heretaunga	19,385	10	Yes	Sold
Te Mangaroa	11,720	10	Yes	Some shares sold
Matapiro	22,700	10	Not known	Some shares sold
Te Pahou (including **Roro o Kuri**)	694	10	Yes	Sold
Te Awa o te Atua	5070	10	Yes	Sold
Mangateretere West	1253	8	Yes	Some shares sold
Mangateretere East	2047	8	Yes	Some shares sold
Kakiraawa	3043	8	Yes	Sold
Kohuarakau (Kohinarakau)	613	5	Not known	Not known
Te Wharau	2457	9	Not known	Sold
Rangaika	328	1	Yes	Sold
Whenuakura*	367	10	Not known	Not known
Te Upoko	216	1	Not known	Sold to provincial government
Pukehou	7343	10	Not known	Not known
Waikahu	764	8	Not known	Sold
Petane	10,000	10	Yes	8 shares sold
Eparaima	4849	8	Yes	Not sold

Block name	Acreage	Number of grantees awarded title	Leased prior to hearing?	Sold prior to 1873?
Purimu	783	10	Not known	Not sold
Porangahau (Waipawa)	72	1	Not known	Not known
Oero	257	7	Yes	Sold
Pakowhai	224	4	No	Not sold
Haowhenua	171	7	Not known	Sold
Kaokaoroa	4132	10	Yes	Sold
Tukuia (Tekura)	1386	5	Not known	Not known
Ohikakarewa	1520	10	Yes	8 shares sold
Moeangiangi	1092	3	Yes	Sold
Pakowhai	1242	1	Yes	Parts sold
Kahumoko	220	8	Not known	Not known
Ngatarawa 1–5	19,243	6, 9, 7, 7, 10	Not known	Parts sold to Donald McLean
Hikutoto 2	146	5	Not known	Not known
Tutae-o-Mahu	140	1	Not known	Sold to provincial government
Rahuiru(a)	1330	4	Not known	Not known
Waima	71	2	Not known	Not known
Whataanganga	303	3	Yes	Not known
Otawhauri (Otamauri)	24,315	6	Not known	Not known
Korokipo	137	4	Yes	Sold
Tautitaha	3496	10	Not known	Sold

4.3 HERETAUNGA

4.3.1 Introduction

The purchase of the Heretaunga block, completed in 1870, remains the cause celebre of lands alienated chiefly because of the inadequacies of the Native Lands Acts. The passing of this block into the ownership of the '12 apostles' was the catalyst and progenitor of outrage against the Native Lands Acts as they then stood, leading to numerous reports, petitions, a commission, and the establishment of the Hawke's Bay repudiation movement.

The saga of Heretaunga commenced with the negotiation of a lease (illegal under the Native Land Purchase Ordinance 1846) in 1864. According to Thomas Tanner, the principal lessee and purchaser of the block, a chance meeting with Henare Tomoana and other Maori living at Pakowhai and Karamu, led to the offer of the lease of Heretaunga block.[17] The lease, for £600 per annum, was apparently signed by a number of Maori, and witnessed by the Reverend Samuel Williams. Karaitiana Takamoana and his half-brother Henare Tomoana received and distributed the rent to the other interested customary owners. A reserve at Karamu was surveyed and fenced off. With Tanner conspicuously hovering in the wings, Karaitiana brought the block before the Native Land Court in 1866. It took two hearings and protracted discussions both in and outside the court, before an award was made to 10 representatives of eleven hapu.[18] The Crown grant was issued on 1 April 1867. Twenty-four days later Tanner and the apostles obtained their legal lease. The rent of the new lease was set at £1250 for the first 10 years, rising to £1750 for the remaining eleven. If Maori decided not to renew the lease they were to pay the lessees the cost of improvements made. In 1868, despite Karaitiana gaining an assurance in court from Judge Munro that individual grantees would not be able to sell their shares without the consent of all 10, a butcher, H Parker, announced to Tanner that he had control of Te Waka Kawatini's share. Soon after, Tareha Te Moananui's share was purchased, and Tanner embarked on an intensive purchase campaign. While Karaitiana was trying to secure support from the general government to stay the sale of Heretaunga, Tanner bought Arihi, Paramena, Pahora, Noa and Henare's shares. In 1870 all the grantees had, in some form, consented to the sale of the block to Tanner and the apostles, and the sale was completed with a final signing and distribution of money at Napier.

4.3.2 Reports of the commissioners

The investigation into this case by the Hawke's Bay Native Lands Alienation Commission in 1873 is covered by 100 small font pages of reports, evidence and appendices in G–7, AJHR 1873. There were 10 separate complaints made to the commission concerning Heretaunga. They ranged from Te Waka Kawatini's vague broadside: 'Taken my land from me', aimed at Parker, Tanner, J N Williams (an apostle), J N Wilson, G E Lee and J Cuff (all solicitors); to Henare, Manaena, and others' accusations of money unpaid and deals not met; to Karaitiana's comprehensive complaint penned by his counsel J Sheehan; and a number of complaints from 'tangata o waho' or 'outsiders' – those not included in the grant, not consulted about the sale, and who did not receive any of the purchase money.[19] All the main participants in the block's alienation were called and cross-examined by counsel, and by each other. The report of C W Richmond, the commission's

17. Evidence of Thomas Tanner, Case xiii Heretaunga, Hawke's Bay Native Lands Alienation Commission, G–7, AJHR 1873, evidence p 83; Tanner said that J D Ormond was already informally running some sheep on part of the block prior to the offer.
18. Native Land Court Minutebook, Napier 1, copy micro, reel 1, ATL, pp 203–207
19. See complaints no's 17, 79, 96, 129, 133, 134, 150, 154, 158, and 180, list of complaints, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, pp 2–17

chairman, favoured the evidence of Tanner and the apostles, finding that there was only minimal foul play by the European participants. Instead he reserved his condemnation for the '10-owner rule' of the court, and the provisions of the Native Lands Acts themselves. Although Richmond wrote that he understood and sympathised with the reasons as to why the Maori grantees became laden with debt, and that they 'have not as yet fully realised what pecuniary responsibility is' he still put much of the blame on their 'thoughtless extravagance'.[20] The other European commissioner, Native Land Court judge F E Maning, was even harsher on the Maori grantees, writing that although they obviously were not willing to sell, they were not 'unwilling to go into debt', and therefore deserved to lose their land, as their creditors deserved payment in reasonable time.[21] Both commissioners felt the price paid was adequate, and that the 10 grantees represented all interested owners.

Not surprisingly, Wi Hikairo, one of the two Maori commissioners, took an almost completely opposite view. He felt that many hapu and individuals were denied recognition, that the 10 grantees were trustees of all and were not to sell, and that, disastrously, Maori did not know the 'meaning and effect' of the Crown grant. He felt that Tanner wanted the land from the first lease, and that Tanner and the purchasers had worked with the storekeepers, the interpreters had worked for them both – and no one had worked for Maori. He believed that the grantees should not have been approached and pressured to sell separately, and that the price for the land was 'poor'. Although criticising Karaitiana, Henare, and Manaena for not acting fairly by their fellow grantees, he concluded boldly:

> Na ki taku whakaaro ehara tenei tu hoko whenua I te hoko tika.
>
> I do not think this was a proper way of making a sale of land.[22]

4.3.3 Determination of customary ownership

An application to have the court determine customary title to Heretaunga was made in time for the court's first sitting in Napier, in March 1866. Although Karaitiana brought the application he was reluctant to do so. It was at Tanner's insistence, fed by his desire to acquire a legal lease, that the application was made. Tanner told the 1873 commission that he could speak Maori, and that he 'took a friendly interest in putting the land through the Court'.[23] This statement adds weight to the argument that although called the 'Native' land court, its purpose was primarily suited to the needs of Europeans. Indeed, Tanner was present at all the hearings, and made requests as to who should be made grantees. An argument was made during the

20. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 26, pp 17–29
21. Commissioner Maning's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 49, pp 46–50
22. Commissioner Hikairo's report, p 64, pp 63–64
23. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 90

commission hearings that Tanner had wanted Tareha as a grantee because Tareha was likely to sell.[24]

Despite the Native Land Court's ruling that only 10 names could appear on a certificate of title, and become grantees, the hearings into the Heretaunga case reveal much about who were the *customary* owners of the 19,000-acre block. Karaitiana imposed his authority on proceedings from 15 March 1866, the first day of hearing, reciting his defeat of Te Hapuku in 1857, assuming any Hauhau rights for himself, and asking the court to appoint just himself and Henare as grantees.[25] Others in the court supported his proposal while some witnesses requested that their hapu's interests be partitioned out of the main block. Judge Smith adjourned proceedings on 20 March to enable all the claimants to come to some agreement. Three days later Karaitiana handed the court a document asking that he, Henare, Wi Manaia, and Arihi act as grantees. Tareha rejected the plan and hearings were adjourned indefinitely.[26]

The Heretaunga application resumed on Christmas Eve 1866, with Judge Munro presiding. After discussion of various people as possible grantees, Te Waka Kawatini named the 11 hapu he believed had interests in the block, and their representatives:

Ngati Ngarara	Henare, Pene Te Ua, Nepia
Ngati Kaiota	Manaki, Poito, Arihi
Ngai Taraia	Reihana, Manaena
Ngati Uwaha [Naha?]	Te Meihana a Pouourei, Wi Manaia
Ngati Kohuroa	Te Mataroa, Matiaha Kuhukuhu
Ngati Rua	Paramena Oneone, Marunia
Ngati Papatuamaro	Mangaomuku, Pera Pahora
Ngati Tukuoterangi	Karaitiana, Paora Torotoro, Puhuare
Ngati Hinemoa	Te Waka Kawatini, Tamehana Pekapeka
Ngati Hinemanu	Noa Huke, Renata Kawepo
Ngati Takoro	Tareha, Karauria.[27]

Prior to the court adjourning so that the hundred or so claimants could finalise the grantees, Tareha raised the issue of future sub-divisions, so that further Crown grants could be issued to more people at a later date, a proposal to which Karaitiana and others agreed. It is unclear why the sub-divisions of interests could not occur at this hearing, as Judge Munro had allowed it to occur previously, most notably in the similarly sized Ngatarawa block, which was split into five sections, allowing better definition of hapu interests and giving 39 people grantee status, rather than 10. Nevertheless, 10 grantees were selected to represent the customary owners of Heretaunga. Henare, however, listed the grantees' hapu affiliations a little differently:

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24. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 24
25. Native Land Court Minutebook, Napier 1, copy micro, reel 1, ATL
26. Ibid
27. Ibid, p 204. I apologise for any errors made in transcribing the hand-written minutes of the court. Where possible I have amended names to those in common use at the time. For example, Pani becomes Pene.

Henare	Ngati Mihiroa, Ngati Ngarara, Ngati Kaiota
Arihi	Ngai Terehunga, Ngati Mihiroa
Tareha	Ngai Tuku a te Rangi
Kariatiana	Ngati Hori
Te Waka Kawatini	Ngati Hinemoa
Manaena	Ngati Naha, Ngati Kaiwai, Ngai Taraia
Paramena	Ngati Rua
Paho[r]a	Ngati Papatuamaro
Noa Huke	Ngati Hinemanu, Ngati Te Upokoiri
Matiaha	Ngati Kohuru.[28]

Apparently Karaitiana, after gaining an assurance from the judge that the 10 grantees were to act as trustees for the hapu, and would not have the power of alienation, did not re-enter the court to hear the names read out.[29] This exchange was not recorded in the court minutes. As it transpired, the concept of grantees as trustees was widely held in 1866 – it was not until 1868 that Tanner, the Reverend S Williams and J N Wilson, a solicitor acting for Maori, and others, said that they realised there was no legal reason a grantee could not sell their share individually, and without consultation with the other grantees. Obviously, this legal power of alienation that individuals obtained from their Crown grant was at complete variance with the negotiations made between the 100 claimants on Christmas Eve 1866. This individualization of title was a major determinant in the alienation of Heretaunga.

4.3.4 The apostles' methods of purchase

In early 1869, the race for the purchase of Heretaunga was 'quite a matter of town talk'.[30] Tanner would only ever admit to 'contemplating the probability' of purchasing Heretaunga at a future date and that he and the apostles only reluctantly purchased, due to pressure from other buyers entering the market.[31] His evidence, however, was contradictory. During questioning from Commissioner Maning, he admitted that he and Wilson, who was involved in the administration of Arihi's share which had been placed in a trust, had devised a plan prior to any individual alienating their share, by which a purchase could be made. Interestingly, the plan involved gaining the consent of all 100 claimants to the block.[32] A more damning indictment that Tanner never contemplated ever having to hand back his share of the lease is found in his own development scheme. In 1867, immediately after obtaining a legal lease, he advertised for settlers to purchase small sections of his lease, 'with

28. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission, G–7, AJHR, evidence, pp 24–25. The transcript of evidence is riddled with spelling and typographical errors, which explains a couple of changes in hapu from Te Waka's list, but, obviously not all. Again I have made obvious amendments, such as Hori, for Huri.
29. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission, G–7, AJHR, evidence, p 18, and evidence of Thomas Tanner, ibid, p 83
30. Evidence of Frederick Sutton, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 53
31. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 92
32. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 100

an agreement that if I bought the freehold, they were to have the benefit of my purchase at cost price'.[33] It is hard not to see how the sequence of events favoured Tanner's enterprise. Obtaining a legal lease was crucial to his development plans. Once he embarked on purchasing all the shares, money was advanced, seemingly, at will from James Watt; and immediately after the purchase Tanner was able to negotiate a loan of £12,000 solely on the security of his shares in the Heretaunga block.[34]

(1) *Te Waka Kawatini's share*

Prior to the sale Te Waka was receiving £100 per annum in rent from Heretaunga, which he distributed among his hapu. His was the first share to fall prey to a private creditor. In mid-1868 Parker, citing a conveyance transferring Te Waka's share in Heretaunga and other blocks to him for debts incurred, demanded that Tanner commence paying Te Waka's share of the rent to him. The Reverend S Williams engaged J N Wilson to act on behalf of Te Waka's interests, and Wilson filed a suit in the Supreme Court to have the conveyance declared void. Wilson said that Tanner professed 'great interest, as he had great objection to Heretaunga getting into Parker's hands'.[35] Tanner, meanwhile, had negotiated a deal with Parker and Te Waka, whereby Tanner would settle all Te Waka's debts in exchange for his share in Heretaunga. Wilson refused to play along, however, and continued the suit as he felt 'Waka is not fit to transact business . . . He was often in liquor when he came to my office'. When questioned by Tanner at the commission hearings, Wilson denied any political motivation for continuing. He continued, he said, because Te Waka had been 'cruelly wronged'. Wilson said that he wrote to the general government but they refused to help.[36]

Te Waka's own evidence could not have provided much comfort for his disinherited hapu, Ngati Hinemoa. He could not recall any details about the legal action and deals between he, Parker, Wilson, Tanner, and the apostles' solicitors Cuff and Lee; and, when asked by Sheehan if he knew how much purchase money he was to receive, replied: 'No . . . I was supplied with rum; how could I see?'. Asked about the quality of the legal service he received, Te Waka replied: 'I do not know about these people the lawyers; they are strangers to us'.[37] In December 1869 the deal was completed. Ngati Hinemoa's purchase money of £1000 was swallowed up by creditors Parker, Maney, Robinson, Holder and Sutton. Te Waka was left with £15.

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33. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 100
34. Evidence of James Watt, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37; see also evidence of Thomas Tanner, ibid, p 100. I will return to this subject in a further section covering credit, debt, and finances.
35. Evidence of J N Wilson, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 36
36. Evidence of J N Wilson, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, pp 37–38
37. Evidence of Te Waka Kawatini, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 36

(2) *Tareha Te Moananui's share*

Tareha was receiving £100 rent a year for his interests in Heretaunga, which he distributed among his hapu at Waiohiki. His share, the first to be alienated, was purchased when he was away in Wellington, representing Eastern Maori in the House of Representatives. Meanee Spit merchant and money-lender, R D Maney, an operator with the dubious distinction of being named in 31 of the complaints made to the 1873 commission, along with another merchant, H S Peacock, set after Tareha with the express purpose of threatening him with summonses for outstanding debts until he signed over his share in Heretaunga.[38] Maney was operating under orders of James M Stuart, an anti-squatter member of the provincial council and a foe of the apostles, who wished to purchase all the Heretaunga shares. F E Hamlin accompanied Maney and Peacock as interpreter, and admitted to the commission that he and his brother Henry Martyn Hamlin were to receive a bonus of £300 if all the Heretaunga shares could be purchased.[39] Tanner caught wind of Stuart's plans, including the planned rout of Tareha, and followed Maney and Peacock to Wellington. There he struck a deal with Maney, who, when asked about the sudden switch of purchase allegiance, replied that he felt it was a betrayal to buy Maori land from under the feet of a leaseholder, but obviously did not develop such scruples until Tanner made a better offer.

Tareha's evidence tells of a harrowing two days in Wellington during which Maney and Hamlin did not let up until he consented to sell his share. 'Why did you come down here to murder me; why did you not wait till I came back to my own place' Tareha implored at the time.[40] The fairness of Tareha being hounded so far from his hapu and marae at Waiohiki was discussed by numerous people who appeared before the commission. Richmond felt that Maney and Peacock's 'scheme of dealing with Tareha off his own ground was . . . one of those pieces of *finesse* which so often throw a shade upon transactions with Natives'. Had he been at Waiohiki, Richmond wrote, 'Tareha would no doubt have summoned his *runanga* of native advisors, and . . . might have been strong enough to hold on to Heretaunga'.[41] The Reverend S Williams said J D Ormond had told Tanner that Tareha 'should be allowed to return to his own people before he signed', and that Tanner was told to ask McLean to use his influence to prevent a sale occurring in Wellington.[42] However, it is unclear whether Ormond was motivated on Tareha's behalf, or by attempting to prevent Stuart purchasing the share. Tanner admitted that the apostles did not want Stuart involved as a 'European speculator could make us

38. Richmond noted that Maney had pursued Tareha in similar fashion the previous year, gaining his share of Waipiropiro block, reports, p 21
39. Evidence of F E Hamlin, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 80
40. Evidence of Tareha te Moananui, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 45
41. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 21, his emphasis
42. Evidence of the Reverend Samuel Williams, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, pp 50–51

pay far more than its [the share's] value'.[43] Tareha asked Tanner for £2000 for his share but instead was offered £1500, which was the top price Stuart was offering. Tareha believed £300 was left after Maney and Peacock were paid, and he intended to have this amount shared among his hapu, but claimed he never received it, and this formed the basis of his complaint to the commission.[44] Maney, however, insisted that he and Peacock received all the money, and that part of this was used to purchase Tareha a carriage in Wellington. Tareha did not deny that he received the gig and £40 in cash from Maney. The hapu at Waiohiki apparently received nothing.

(3) *Paramena Oneone and Apera Pahora's shares*

Paramena and Pahora received £100 between them to divide among their hapu from Karaitiana and Henare prior to the purchase. In early 1869 a rumour spread through Napier that Pahora's share could be purchased, and Stuart followed it up. Interpreter James Grindell, working for Stuart, offered £1100 but Pahora refused; wisely, it appears, as he was summoned before Henare and told that 'any one who sold would be shot'.[45] Tanner was present with Henare when the warning was issued. Grindell's method of purchase involved taking Pahora to a public house and plying him with alcohol, or as Richmond described it: 'to get so drunk as to be unable to transact any business';[46] although Pahora maintained that he was 'not quite intoxicated' when the offer was made, and remembered refusing it.

Concerned at their vulnerability, the Reverend Samuel Williams, his cousin James Williams, and Martyn Hamlin convinced Pahora and Paramena to sign a trust to prevent them selling to anyone but the apostles. The two shareholders were under the mistaken impression that 'we were to sign our names and those of the hapu; one of us could not sell, the hapu having signed', and so were surprised when Tanner and M Hamlin showed up a short time later to induce them to sign a deed selling their shares. Paramena said to them at the time 'What is this writing? We have already signed to prevent it being sold, now you are come to ask us to sign a document for selling'.[47] Yet sign they did, and did so again in the presence of Henare, Karaitiana and other shareholders at the final signing meeting in Napier. Their purchase money was used to settle personal debts, some was given to a man named Harrison in order for him to purchase a flax threshing machine, and a further amount of £700 was given by Tanner to shop-keeper and creditor, Fred Sutton, who refused to reimburse it as cash. Instead, Pahora was encouraged to use it as credit for goods.[48] The hapu

43. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 93
44. Evidence of Tareha Te Moananui, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 45
45. Evidence of Apera Pahora, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 40. The evidence did not indicate whether Henare was invoking the 'Whata of Te Herenga'.
46. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 20
47. Evidence of Paramena Oneone, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 38
48. Evidence of Apera Pahora, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873,, evidence, p 41

of Paramena and Pahora gained the benefit of a flax machine, and possibly some goods in settlement of their interests in the Heretaunga block.

(4) *Manaena Tini's share*

When Karaitiana was in Auckland in December 1869, Manaena Tinikirunga was having to run 'quickly into a willow tree' to escape the company of Tanner and M Hamlin, who were hounding him for his share in Heretaunga.[49] After three successful evasions of the persistent purchasers, once taking refuge in the 'Maori Minister's house' whereupon the Minister lied to keep Manaena's cover, Manaena 'tired of being hunted'. Tanner, Hamlin, and Sutton, he told the commission, 'were like bush dogs hunting bush pigs'.[50] He accepted a cheque of £100 from Tanner, and a few days later signed a deed in Sutton's presence. Tanner later took the cheque from Manaena and tore it up, instead giving him £50 cash, the first of 10 annual payments, which were to come out of his £1000 share. During the commission hearings Tanner questioned Manaena at length about the method of purchase, arguing that Manaena was simply holding out for better conditions. Tanner's cross-examination techniques convinced Richmond, who concluded:

> Perhaps Manaena . . . thought that by making a little difficulty he could secure himself better terms. He gave us the narrative of his adventures with a full sense of the humourous [sic] side of the affair, and no small power of satire. Once . . . he took refuge in the branches of a willow tree [where] . . . he remained concealed perhaps two hours, looking down on his pursuers. As he must weigh fully twenty stone, such a feat of agility would seem to indicate the pressure of some motive of extraordinary power.[51]

Manaena maintained that he had hid from Tanner because he was 'unwilling to sell'. At the final signing meeting in Napier Manaena asked for his money in cash so that he could settle his debts to Sutton, Maney, Robinson and Newton himself but Tanner refused. Apart from his £50 annuity, which he was receiving, Manaena, and presumably his hapu, received no purchase money as it was used to settle his personal debts.[52]

(5) *Arihi's share*

Arihi, who lived at Waipukurau, had her share placed in trust, the trustees being Wilson and Purvis Russell. Wilson said it was entrusted through fear that Henare would alienate it against the interests of Arihi and her hapu. Wilson and Russell agreed to sell because they did not think it was in her interests to hold to an

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49. Evidence of Manaena Tini, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 33
50. Evidence of Manaena Tini, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 35
51. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 24
52. Evidence of Manaena Tini, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 35

undivided share, when all other shares were to be purchased.[53] Tanner, with F E Hamlin, were unsuccessful at purchasing the share, as they would not agree to the firm asking price of £2500. Eventually James Watt agreed to pay the full amount and the share was purchased while Karaitiana was in Auckland, in January 1870. Although Arihi lost her share, she appears to have benefited from having it entrusted with the European men as they insisted on, and obtained, a higher price than any of the other shareholders, except Henare and Karaitiana. Wilson believed that £2500 was a fair price for what they considered to be a tenth of the total block value.[54] What happened to the purchase money is not recorded.

Wilson's decision to sell Arihi's share, based on the premise that it made no economic sense to hold an undivided share, raises an interseting issue. In early 1870, the concept of partitioning out an unsold share did not appear to feature as a viable option. Arihi, judging by her later action regarding Karamu (see 6.4.2), would have favoured this action, had it been available. Stressing the uselessness of an undivided share, when all others were sold, was an often used purchasing tactic of Tanner, Maney, Sutton, and others.

(6) *Noa Huke's share*

Karaitiana usually paid Noa £150 per annum rent which was distributed among Renata and his people, but occasionly only £100 was received. Noa Huke represented Renata Kawepo and their iwi Ngati Te Upokoiri in the Heretaunga block. Peacock, Maney and Martyn Hamlin visited him at Owhiti, concerning his and Renata's debts, which were £300 and £700 respectively. Edward Hamlin later obtained his signature, but Noa was vague on the details of this transaction, as this exchange between he and Sheehan shows:

> Do you recollect Edward Hamlin coming to you?
> Yes; he said, I have come to get you to sign, all the people have agreed to sign the document—that is my signature (Deed of Conveyance produced).
>
> For what purpose did you sign?
> I did not know.
>
> Was it read over?
> I do not know; perhaps it was.[55]

At the final signing meeting Noa learned of Arihi's settlement, and of Karaitiana, Henare and Manaena's annuities. He recalled being told that he had a balance of £100 from his £1000, but did not collect it as he was 'vexed and angry'; instead, leaving it for Renata. The £100 was never paid, as Tanner maintained that Noa and

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53. Evidence of J N Wilson, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37
54. Evidence of J N Wilson, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37
55. Evidence of Noa Huke, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 43. Noa's vagueness is hard to understand. As a former Native Teacher at Colenso's mission station, his literacy skills should not have hindered his understanding. An expert in mid-nineteenth century Maori culture may be able to shed further light on Noa's actions.

Renata's debts amounted to £1000, Noa's total share of the purchase money. Noa did not complain of having the money used to pay Renata's debts, as 'he was a cousin of mine; we were the same'. After the final signing meeting Noa told Renata and their people 'The money is all gone'.[56]

(7) *Henare Tomoana's share*

Henare kept £100 for himself from the lease rent, and distributed £100 to his hapu. He maintained to the commission that he did not want to sell Heretaunga, yet he resigned himself to losing some land, because of his huge debts. He offered his shares in the Kakiraawa, Mangateretere, Kaokaoroa and Te Mahanga blocks instead (see table), but Tanner insisted on acquiring Heretaunga. The relationship between Tanner and Henare appeared to be geared towards Tanner's desire to obtain the freehold of Heretaunga. When the rumours of Stuart's purchase were circulating, Henare agreed to Tanner's request that he apply pressure on Pahora; and, that he was only ever to sell to the apostles.[57] After Sutton served a writ on Henare, Tanner appeared to take over management of all Henare's debts, informing him that he was holding back other summonses. Henare, Manaena and Karaitiana could put goods or withdraw cash on Tanner's accounts at various stores. Henare accused Tanner of encouraging his decline into debt, as this exchange between the two at the commission hearings reveals. Tanner asked:

> Did you not drag me into these shops against my will to give you credit?
> When I asked you for money, you said 'Get goods'.
>
> Did I not constantly curtail your demands?
> I am not aware of your doing so.
>
> Did I not tell you you were drawing too largely for me to meet?
> No; you continually said if we wanted anything to come to you for money or credit.[58]

Tanner timed his pursuit of Henare's signature to take maximum advantage of the Government-sponsored Ngati Kahungunu campaigns against Te Kooti's forces. Indeed the wars of the late 1860s provided an ominous and ironic backdrop to the loss of Heretaunga. Fear of Te Kooti peaked during 1869 and 1870; more so following his attack on Ngati Pahauwera at Mohaka in April 1869. Commissioner Hikairo asked apostle James Williams whether there was 'a good deal of trouble among the Natives when you purchased?' Williams replied: 'Yes. About the Hauhaus'; and described how land values had plummeted because settlers were too frightened to venture into Hawke's Bay province.[59] In August 1869 Henare left Hawke's Bay for Lake Taupo, in charge of a Ngati Kahungunu force of 120

56. Evidence of Noa Huke, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 44
57. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 29
58. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 32
59. Evidence of James Williams, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 65

mounted men. According to Henare, the Government had requested that he take part. Just prior to leaving, however, Sutton, obviously 'a public-spirited individual' as Sheehan sarcastically referred to him, served Henare a writ of £1000.[60] F E Hamlin said Henare complained to Ormond, the general government agent in Hawke's Bay, saying that Henare 'did not like the idea of being served with a writ just as he was about starting on the government service'. Ormond sent Hamlin to try to persuade Sutton to delay the summons until after Henare returned. Hamlin found Sutton 'rather saucy' about the matter, and told the commission that Sutton wanted money or security for the debt. 'If he goes into battle and gets shot', Sutton reasoned, 'where would my money be?'.[61] Sutton's scruples were obviously on a par with his fellow merchant and money-lender Richard Maney. Hamlin failed to sway him with any 'public benefit' argument; and, since Ormond was not prepared to offer any security, financial or other, the writ was served.

The unfortunate irony of this situation is that the debt to Sutton was largely due to the provisions required for Henare's Lake Taupo campaign. As Henare told the commission: 'A greater portion of my debts was incurred on going to Taupo; I gave authority to the storekeepers, and the debts of others were placed to my name'. Times of war were not the occasion to address financial house-keeping, as Henare explained: 'just as we were leaving some of the people got things'. Apparently, some of the outstanding debts had been incurred from the earlier Wairoa campaign.[62] Although he received financial assistance, it was not enough, and Henare petitioned first Ormond, and then Parliament for more. At the time of the sale of Heretaunga Henare did not know if his petition was successful; as it happens, it was rejected.

Henare continued to feel aggrieved at his subsequent treatment by the Crown regarding his military service. He and Renata Kawepo[63] sent another petition in 1877, which asked for additional compensation for military service. Ormond and Cooper gave evidence to the Native Affairs Committee, rejecting the figures supplied by Henare and Renata in the petition. As a result, the petition was rejected.[64] The grievance did not go away, however, and resurfaced in relation to the Pakuratahi lands, which were awarded to, among others, Henare, for his services in Wairoa. In evidence before an inquiry into these lands, Henare told of his enduring disquiet. The Government, he stated, 'did not do us justice'. The Ngati Kahungunu troops, Henare told the inquiry, were paid £3 each for 64 days' service.[65]

Henare's troops left Napier on 1 August 1869. They quickly engaged in battle with Te Kooti's forces at Tauranga, on the shores of Lake Taupo, where,

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60. Evidence of J D Ormond, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 71
61. Evidence of F E Hamlin, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 78
62. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 32
63. Renata lost an eye during this campaign. It should be remembered that Noa Huke's share was used to pay Renata's debts. According to Ballara and Parsons, these were occured as a result of the Taupo campaign, see Ballara and Parsons, 'Kawepo, Renata Tama-ki-Hikurangi', DNZB, vol I, pp 26–28
64. See petition by Renata Kawepo and Henare Tomoana, AJHR 1877, I–3, p 45
65. 'Pakutahi land claims', court of inquiry, 24 October 1882, AJHR 1884, G–4, p 10

outnumbered, Ngati Kahungunu lost all their supplies and horses to Te Kooti.[66] Henare later said that other Government forces, under Colonel Herrick, had refused to come to his aid when he was attacked. Although repulsed, Te Kooti regrouped and on 25 September attacked Tokaanu, but 'was driven back into the ranges by Henare Tomoana'.[67] In October, Henare again led his force as part of a large ensemble of Te Arawa, Tuwharetoa, Whanganui and Government militia under Lieutenant-Colonel McDonnell against Te Kooti, at Te Porere. Again routed, Te Kooti retreated into the Rohe Potae, leaving behind his last chance of gaining the fighting services of Horonuku Te Heuheu and Rewi Maniapoto.[68] Henare returned to Hawke's Bay in early November 1869, his mana no doubt enhanced by his role in the defeats inflicted upon Te Kooti. Yet in strict financial terms he was worse off than when he left. Not only were his debts still waiting for him, so were Tanner and the apostles, anxious for him to finally submit to their pressure and sign away his share of Heretaunga.

Henare's consent was obtained at a three day meeting at Pakowhai in the first week of December. Both he and Karaitiana, after gaining guarantees of annuities, signed a contract on 6 December 1869. However, signatures from both were, apparently, still required on the actual conveyance. Karaitiana believed that he had one last chance in order to save Heretaunga, and travelled to Auckland to seek official help. When he was in Auckland Tanner stepped up the pressure on Henare to sign the conveyance, under the threat that if he did not settle his debts he might be sentenced to a term of imprisonment. Henare finally signed at the house of Joshua Cuff, the apostles' solicitor, in December 1869.

The several versions of events that transpired at this meeting are completely at variance. Henare maintains that he was deceived into going to Cuff's house, as he had been offered an opportunity to discuss ways of getting out of his debts, not knowing that that meant consenting to sell Heretaunga. He tried to leave but Tanner, M Hamlin and Cuff locked the door, and blocked the other exits. Henare told the commission he was made a prisoner in Cuff's house, and was virtually forced to sign.

Joshua Cuff, on the other hand, told the commission that Henare's evidence was 'wholly false', and that the signing at his house: 'Was a very friendly meeting'. Henare did not accept his evidence and proved that he could cross-examine with the best of them:

> did I not say you had deceived me?
> You never said so.
>
> Did I not run to the door?
> No.
>
> Did not Hamlin hold the door? . . . Did you not clap me on the shoulder and say Sit down?

66. Judith Binney, *Redemption Songs. A life of Te Kooti Arikirangi Te Turuki*, Auckland University Press and Bridget Williams Books, Auckland, 1995, p 182
67. Binney, p 104
68. Binney, pp 187–190

No, there was no cause for it.

Did you not ask me to have a glass of wine?
I may have.

. . . Have you told the whole truth?
As far as I can recollect . . .[69]

Sheehan kept up the pressure on Cuff, and revealed some of the core pre-conceptions Cuff held about Maori, and of purchasing land from them:

You were present the whole of the time?
I will not swear I was, but I think I was.

Was it not apparent to you that Henare was unwilling to sign the deed?
A Maori is always unwilling to part with his land though he is agreeable . . . I may say he was not unwilling. A Maori, though he has sold a piece of land, is unwilling to sign a conveyance of it as a rule. When they sign a deed they say they are dead, they are killed; that is, gone. . . . I cannot say he had a desire to part with his land, but he had to pay his debts.[70]

Irrespective of whether Henare's signature was obtained under duress, the important point that both versions agree upon is that he was unwilling to part with Heretaunga. Whether it was fair for Henare, (and consequently the other customary owners) to have to lose Heretaunga in order to repay his debts remains the most important consideration. This issue will be discussed in a later section.

At the final signing of the conveyance in Napier Henare agreed to over £3000 of the purchase money being used to settle his debts. He continued to receive his extra £1500 in 10 annual instalments. It is unknown whether his hapu received anything.

(8) *Karaitiana's and Matiaha's shares*

Karaitiana claimed the responsibility of negotiating the lease of Heretaunga. Tanner, the apostles, and other Europeans involved in the purchase all appeared to agree that Karaitiana, with Henare's support, was the principal chief over Heretaunga. Karaitiana was always consistently opposed to the sale of Heretaunga. He did have personal debts, but they were far smaller than Henare's. Nevertheless, that did not dissuade creditors Sutton and Knowles from apparently serving him with summonses in November 1869, just prior to his boarding a ship bound for Auckland to seek official help.[71] Karaitiana postponed his journey, instead ending up consenting to a sale on the third day of meetings at Pakowhai. With Karaitiana at the time was Ngati Tuwharetoa chief Horonuku Te Heuheu, who had recently

69. Evidence of Joshua Cuff, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 57
70. Evidence of Joshua Cuff, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 57
71. In fact records show that only Sutton actually brought a writ against Karaitiana, and that was on 11 December 1869, and then only for the trifling amount of £103, Writ of Summons Book, Supreme Court of Hawke's Bay, vol 1, 1861–1883, AAOW, W3244, 69, NA, p 30. It appears that Sutton may have added serving fraudulent documents to his list of achievements during the Heretaunga purchase.

surrendered to McDonnell's and Henare's force at Tokaanu. No doubt Karaitiana's embarrassing situation served as a cool lesson to Horonuku that being a staunch supporter of the Government, such as Karaitiana was, did not guarantee one's lands protection from men such as Sutton and Tanner.

Karaitiana maintained it was to protect Henare from being 'put in gaol if he did not sign', that finally forced his hand at Pakowhai on 6 December 1869.[72] Another argument used by Tanner was that it was more or less a fait accompli, as Te Waka, Tareha and Arihi's shares had been purchased. Again, the 'undivided share' argument was used to apply pressure. Although Henare had talked almost continually with Tanner and Hamlin about the division of the purchase money, Karaitiana did not take part, as he was 'very strong in opposition to selling'.[73] An interesting incident occurred when it came time for Karaitiana to actually sign his name. Standing over the document, pen in hand, Karaitiana paused, then 'jumped up with every appearance of anger' and abruptly and violently threw the pen at the document, storming out. Tanner interpreted this as a theatrical display designed to wring more money from him.[74] No doubt Karaitiana was aware of the more grave implications of what he was agreeing to, and showed his final frustration.[75] Nevertheless, Tanner appeared to be partly right. Like Henare, Karaitiana also gained an annuity, this time of £100 per annum for 10 years.

Following advice that the deal was possibly not complete until a conveyance was signed, Karaitiana carried out his original plan of seeking help in Auckland. He left soon after the consent deed was signed at Pakowhai, and met with Chief Judge Fenton of the Native Land Court, Major Charles Heaphy, Commissioner of Native Reserves, and Native Minister Donald McLean. This visit built on Karaitiana's earlier address which was published in the appendices to the journals of the House of Representatives, and which impressed, among others, Sir William Martin, who set about drafting an improved Maori lands bill.[76] McLean declined Karaitiana's request for the general government to buy the block, and advance £3000 to repay Henare's debts. Why Karaitiana thought it better for the Government to buy the land rather than the apostles is puzzling, but perhaps can be explained by further evidence Karaitiana gave when questioned by Ormond. It appears that Karaitiana actually asked McLean to 'pay the debts', and that the Government would be 'repaid out of the rents'; meaning, that Karaitiana would sell his interest in the lease (not the Crown grant), in order to pay the debts of those who had already sold.[77]

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72. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 19
73. Evidence of Henare Tomoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 26
74. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 87
75. Karaitiana told Richmond that he had thrown the pen down *after* he had signed. Either way it was a sign of real frustration with having to sign at all; see evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 20
76. 'Memorial Relative to Working of Native Lands Court', from Karaitiana Takamoana, 29 July 1869, AJHR 1869, A–No 22; and 'Memorandum by Sir William Martin on the Operation of the Native Lands Court', AJHR, 1871, A–No 2
77. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, pp 23–24

Instead of complying with Karaitiana's request, McLean wrote to Heaphy, asking that he investigate the situation in Hawke's Bay, and convey those estates 'endangered' in trust, to ensure their 'inalienability'. McLean told Heaphy that there appeared cases, due to the 'partial individualization of title', whereby minority owners, due to temporary money problems, would sell their shares, and eventually cause the remaining owners to sell as well; and, that this increased the 'danger' for Maori to 'empauperise themselves in the future'.[78] Heaphy did convince Hawke's Bay Maori to place 31,000 acres in trust with restrictions on alienability, but, Karaitiana told the commission, refused to touch Heretaunga, as it had a mortgage on it.[79]

Disillusioned and disheartened on his return from Auckland, Karaitiana retreated indoors at Pakowhai, refusing to receive visitors, adopting a melancholic state 'which the natives call "pouri" and the settlers call "sulky"'.[80] Ormond visited him, explaining that McLean did not have the money to give for Henare. Karaitiana asked Ormond for the money instead, but was refused again.[81] While he was still resisting signing the final conveyance, Karaitiana said a letter arrived which threatened that his residence 'and all the houses at Pakowhai would be taken' if he did not come into Napier and sign the conveyance. Although having Ormond's name beneath it, Karaitiana maintains it was written by Martyn Hamlin. The letter provided a choice: either sign away Heretaunga, or lose Pakowhai.[82] Richmond believed that this letter was in fact a Supreme Court writ, naming Ormond as one of the plaintiffs, which was taken out by Tanner to force Karaitiana into honouring the deed of consent he had signed at Pakowhai on 6 December 1869.[83] As Karaitiana failed to produce the offensive letter, Richmond's explanation is the more likely. Agreeing to sign, Karaitiana called in Noa, Paramena, Pahora, Manaena and Henare to Cuff's office in Napier in order to complete the sale and divide the purchase money.[84] After considerable time was spent going through the various grantees' accounts, the conveyance was signed. Tanner described the following moment:

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78. McLean to Major Heaphy, 18 February 1870, AJHR 1870, D–No 16, p 5
79. 'Report on the Native Reserves in the Province of Hawke's Bay', encl in Heaphy to Native Minister, 29 May 1870, AJHR 1870, no 9, D–no 16; and evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 19. The mortgage, with a Mr Neal, was for £1500, and was used to buy £250 worth of fencing, ploughs, horses, clothes, tea, sugar, and tobacco and the remaining £400 was used to build the 'Maori Clubhouse' in Napier, where Henare, Karaitiana and others stayed when in Napier.
80. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 24
81. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 21
82. Pakowhai became one of the properties Heaphy recommended to become inalienable.
83. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 24. A writ was taken out against Karaitiana for 'specific performance' (or lack of), the plaintiffs being all the apostles, on 12 March 1870, Writ of Summons Book, Supreme Court of Hawke's Bay, vol 1, 1861-1883, AAOW, W3244, 69, NA
84. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 20

> After the deed was signed there was a pause – dead silence for a minute or two; and then Karaitiana told the natives that their debts had absorbed their shares, and that he should take the balance, and pay what few debts he owed.[85]

Karaitiana picked up the cheque containing the balance of the purchase money of £2387 7s 3d. It was not recorded what Karaitiana did with the money, other than that he did not share it with the other grantees. Obviously some was used to settle debts.

Matiaha had died soon after the court hearing, and his share of £1000, the amount decided by Henare during the three day meeting at Pakowhai, was eventually paid to his successor Rata te Houi. Karaitiana, apparently, and with Rata's consent, pocketed half of the money.

(9) *The tangata o waho*

It is important not to lose sight of the tangata o waho, or 'outsiders', who included those 100 or so people who had assembled outside the court the day the Heretaunga block grantees were chosen. The 10 grantees's shares were, Maori understood, to be held in trust for the hapu represented by the individual grantees. Six separate complaints were made by members of the tangata o waho to the 1873 commission. The complaint of Renata Tauihu and two others was summarised in the complaints list to read: 'Land leased, mortgaged and sold without consulting outsiders on division of money'. Hohepa Te Ringanoho and eight others' complaint was recorded as 'Land sold without consulting others. Beg land be returned'. The complaints of Rawenata, and Riperata Kanewhai and thirteen others were similar: 'Sale. Complainants received no money.' Otene Te Meihana had a more detailed complaint recorded. Although he and his hapu had received rents from Heretaunga, they were not consulted about a sale, nor did they receive any of the sale money. They asked that the commission fully investigate all the circumstances, 'and that the grantees and present alleged owners be required to do justice to the hapu whom they represent in the grant'.[86] A person named as Te Meihana a Pouourei was included as a grantee in Te Waka Kawatini's proposed list, but did not make it on to Henare's list, which might have provided sufficient cause, if this is the same person, to bring complaints against the grantees. Interestingly, all the tangata o waho's complaints were levelled primarily at the grantees, rather than the Crown, the apostles, interpreters, or shopkeepers. This probably reflected their understanding of the role the grantees were to play in protecting their customary rights to Heretaunga. A further reason is that the grantees had not received the consent of the tangata o waho, or at least those represented by these six complaints, to alienate Heretaunga. The Ngati Hori hapu retained the Karamu Reserve, the other hapu were left without the benefit of Heretaunga rents, or it appears, the proceeds of the sale.

Commissioner Maning, who was, of course, a judge of the Native Land Court, answered each complaint in a systematic way. He dismissed the complaints of Te

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85. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 89
86. AJHR 1873, G–7, complaints 133, 134, 150, 154, 158, and 180, pp 7–9 . There are two almost identical complaints made by Te Meihana, and by Otene Te Meihana. I am unsure if this is the same person.

Meihana and the tangata o waho on the basis that they had not had their interests recongised by the court, and therefore they did not have rights.[87] Commissioner Hikairo blamed the Native Lands Act 1865 for denying the many people with interests in Heretaunga, as defined by Maori custom, the ability to exercise their rights. If the legislation had been drafted to reflect Maori custom, he stated, then the tangata o waho 'would not have suffered for no fault of their own'.[88] Richmond did not specifically address the complaints of the tangata o waho in his report, other than in his general comments concerning the trustee status of the grantees, and the ability of shareholders to incur personal liabilities.

It should be remembered, of course, that debts of chiefs were quite often *tribal* debts. It was not entirely fair for Richmond to set up a scenario where Heretaunga was sold to pay the *personal* debts of individual chiefs. There are, of course, well documented cases of chiefs spending frivolously. Tareha and Paora Torotoro certainly fall into this category on occasion. Yet there is strong evidence to suggest that the debts were more often tribal ones. The Heretaunga mortgage money, for instance, was used for general commoditites such as flour and sugar, and also for fencing – supplies that would have benefited the hapu as a whole. Storekeepers would not have wanted to open accounts with every Maori, therefore chiefs tended to have accounts to which others could charge goods. Henare and Renata's war supplies debts, in that regard, can be seen as tribal debts. It is perhaps worth noting that although the tangata o waho directed their complaints at various grantees, they did not, on the evidence recorded in the commission's lists, accuse the chiefs of improvidence, only that the grantees did not gain their consent, or distribute the proceeds of the sale.

(10) *Final remarks on methods of purchase*

It is almost redundant to remark that, regarding methods of purchase, commissioner Hikairo's conclusion that the sale of Heretaunga was not fair, is completely justified by the experience of the grantees, as told to the commission of inquiry in 1873. It is clear that Tanner always anticipated having the opportunity of purchasing the block, that he worked in tandem with the creditors to whom grantees owed money, and that consistent threats and sustained pressure was brought to bear on grantees who were unwilling to sell their shares. Tanner's dogged perseverance, paired with Maney and Sutton and ably supported by the Hamlin brothers, proved too strong for the individual Maori grantees. The whole town of Napier expected the apostles to succeed, and, like commissioners Richmond and Maning, they blamed the loss of Heretaunga on the improvidence of the Maori grantees. Aspects of the grantees' debts and their ability to transact financially, will be discussed in the next section.

87. Commissioner Maning's report, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, reports, p 49
88. Coomissioners Hikairo and Te Wheoro's report, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, reports, p 63

4.3.5 Money, credit, debt and development

Perhaps the most startling thing to emerge from evidence given by Maori to the 1873 commission is that, unwittingly, land was swapped for goods designed for immediate disposal – basic food items such as sugar, tea, flour, alcohol and the like – rather than money. In fact, the leading chiefs of Heretaunga seemed to have an alarming lack of understanding about money, finances, credit, and debt. Too often they left it in the hands of the merchants and money-lenders, simply taking what goods they wanted without checking the prices or accounts, and relying on credit as a matter of course. Never in the commission hearings was there any suggestion that the grantees had negotiated with the merchants how much credit they would be allowed, at what rate of interest, and over how long repayments could be made. Most importantly, the grantees did not set down what security was being used for the credit.[89] Situation can, in some cases, excuse this irresponsibility, such as Henare allowing his men to obtain the goods they acquired before war, but on other occasions it seemed the grantees simply did not comprehend their own vulnerability.

Te Waka, Noa and others disputed their accounts, but were powerless to build a case against Maney, Sutton, Kinross and others. Even if they had brought a case, and Maori generally did not,[90] they had no receipts or other paperwork that the new European courts required in order to judge a wrong. Their own words – and the authority to back them up, adequate in Maori oral society, were no longer acceptable weapons against the sharp practice of a European, no matter how disreputable.

It has been mentioned previously how vague most of the grantees were when questioned about their debts and the purchase money they were to receive. It appears that none of them had the fiscal knowledge and/or experience necessary to deal with the complex mire of mortgages, shares, trusts, interest, credit, debts, or even actual amounts of money that the merchants bombarded them with. Te Waka was perhaps the worst. He once had a discussion with Tanner about purchase money in which the terms of measurement involved description of a pile of money two feet high.[91] Commissioner Richmond wrote that Te Waka, as well as being 'seldom sober' was also 'far inferior . . . in knowledge of pakeha ways of business to Karaitiana, Henare, Manaena'.[92] Yet in the three day meeting Karaitiana refused to even discuss the division of money and purchase amount: 'all I had to do was sign', he said.[93] Henare, who did practically all of the negotiations about money, did not understand the concept of an annuity until F E Hamlin patiently wrote down the amount £150,

89. There may well have been such proposals and regulations discussed at Runanga meetings. Examination of such Maori sources could reveal this type of information.
90. There were no obvious Maori plaintiffs taking out writs against the Hawke's Bay merchants in 1861–1871, Hawke's Bay Supreme Court Summons Book, vol 1, 1861–1883, AAOW, Acc W3244, 69, NA
91. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 95
92. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 19
93. Evidence of Karaitiana Takamoana, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 23

10 times on a page.[94] Paramena and Pahora signed without even discussing how much money they were to get. Noa's evidence concerning his understanding of the debts being paid from his share was contradictory:

> [*Lascelles*] When you signed those orders, was it not read over to you—the amounts?
> Yes.
>
> Did you agree to the amounts being paid out of the Heretaunga money?
> Yes.
>
> [*Sheehan*] Did you and Renata agree that you owed Maney £345?
> No.
>
> Did you agree you owed this money to Peacock?
> No.
>
> Did you know how much money was owed by Renata?
> No.
>
> Were you told how much it was?
> No.[95]

It seems clear that the grantees were not fully cognizant with the financial maze associated with Heretaunga, that there was an element of irresponsibility in their behaviour, and that they were perhaps not competent or capable to act as trustees of large estates on behalf of large numbers of people. Nevertheless, it is entirely understandable that this was the case; it would have been virtually impossible for the grantees to have been well versed enough for them to be considered, in a European legal sense, as fully competent trustees.

The grantees came from a generation which pre-dated intricate financial transactions, and had, for most of their life, lived in a medium-less society. They had experience with collecting rents, but were, until 1866, relatively unschooled in the art of having legal responsibility for property. There were no courses in budgeting, banking or borrowing designed for chiefs in Hawke's Bay in the 1860s. The merchants and money-lenders preyed on the paucity of the grantees' knowledge. Although some of the grantees had worked out that it was better to spread credit thinly among a number of money-lenders, the wiley merchants soon realised, and began to purchase debts off other creditors, in order to build up leverage against an individual.[96]

Another reason to excuse the grantees from being expected to act with the necessary fiscal wisdom is that even the Europeans at the time were not always fully aware of the financial situation. Cuff, the apostle's solicitor and a leading purchase

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94. Evidence of F E Hamlin, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 79
95. Evidence of Noa Huke, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, p 45
96. See payments made by Sutton on Paora Torotoro's account, appendix 6, Omarunui block case, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, pp 165–167. Paora bought £269 worth of clothes, £262 worth of alcohol, £963 worth of food, tobacco and sundries including £100 on a trap, and £100 on interest and deeds. The largest amount was the £1284 paid to Europeans, most of whom can be recognised as other merchants.

negotiator, said that at the final signing 'There were a lot of vouchers, receipts and orders – voluminous . . . it was very complicated . . . I paid no attention to the money part'.[97] Tanner, when he finally came to tally up what was expended on the grantees debts, and what he had proposed to pay for the block, arrived at a balance of £2387. Checking his figures, Richmond calculated that Tanner had overpaid the grantees by £1632, the correct balance being £754 16s 9d.[98] Tanner was unable to explain the discrepancy, nor was he able to explain the wildly variant figures quoted by himself and the apostles' financier, James Watt. Tanner said that he had expended a total of £22,926, which accounted for all costs associated with the purchase of Heretaunga (£19,920 of which was paid to or on behalf of the grantees), yet could not explain the total figure of £29,000 quoted by James Watt.[99]

Europeans were not immune to debt either. Frustratingly, Sheehan was denied the opportunity of questioning Tanner about his own 'pecuniary position' at the time of the sale.[100] Sutton was 'indebted to some extent' to Watt's firm at the time of the purchase, though Watt insisted that they were not 'pressing' him in any way.[101] Te Waka's butcher turned creditor and land dealer, H Parker, and the Hawke's Bay Government interpreter F E Hamlin, competed at being named most often as defendant in summonses for debts.[102]

Analysis of the purchase of Heretaunga reveals that Maori were being discriminated against in regard to negotiations for a final purchase price, and finances in general. Arihi's trustees, Russell and Wilson, were able to insist on an asking price of £2500, yet the other grantees were persistently told what their share would be, and that it could not be higher. When Paramena and Pahora complained about not receiving their fair share, Sutton was able to claim an extra £700, though admittedly, this money remained with Sutton, and was fed in dribs and drabs to the two chiefs.

Even more conclusive evidence of discrimination is found in the amounts of money that could be raised by using Heretaunga as collateral. Despite being in apparent dire financial straits, the grantees raised only one mortgage of £1500, yet Tanner was able to raise £12,000 on the basis of his quarter of the Heretaunga block alone. This mortgage was arranged immediately after the purchase was completed, and was more than the actual debts paid on behalf of the grantees from the purchase money! Why were Maori not given the opportunity to raise such sums themselves, using their ownership of Heretaunga as collateral, and thus pay off their debts? Such amounts of money were obviously available for some – Watt was able to bankroll

97. Evidence of Joshua Cuff, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 57
98. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 24
99. Evidence of James Watt, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37; although £2000 of this was James Watts' bonus for securing the money.
100. Evidence of Thomas Tanner, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 99
101. Evidence of James Watt, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37
102. Hawke's Bay Supreme Court Writ of Summons Book, vol 1, 1861–1883, AAOW, Acc W 3244, 69, NA; though I hasten to add that being named as defendant does not necessarily guarantee one's guilt.

the apostles to the tune of £29,000, based only on the 'personal security' of the apostles, with no 'registered security' required.[103] Tanner used £9000 of his mortgage to pay off his share to Watt, meaning that there were other financial institutions willing to invest in the future of Heretaunga. They were not, however, obviously willing to invest in a *Maori*-owned Heretaunga, because Maori-owned land, even with a Crown grant, was still treated as different. Richmond admitted as much in his report:

> it is generally felt and believed that a title taken directly from natives is a precarious one, liable to all sorts of dangers, doubts, and questions, from which a purchaser through the Crown is secure. The proceedings before the present commission are a practical proof that this notion is not wholly without foundation. No doubt it seriously affects all Native lands.[104]

It appears from Richmond's quote that despite gaining a bona-fide legal Crown grant to their land, and the legal responsibility that that entailed, their land was still worth something less than European land, because they were Maori, and because, on occasion, they dared to protest the circumstances in which alienations occured.

Tanner was able to raise his mortgage based on the development scheme he was offering to small farmers. They received one acre for every three that they ploughed for Tanner, with the option of purchasing the freehold once they had the capital (and once Tanner had purchased the block). This option to buy was also offered by the provincial government leases in the Hikutoto and Papakura blocks (which they purchased in 1867 and 1868). Why did Maori not develop in a similar fashion? Part of the reason is the discrimination detailed above, and, perhaps, the well known intention of Maori holding onto the freehold as long as possible, which may have frightened off potential settlers.

This issue of Maori being shut out of the horticultural and agricultural development of Hawke's Bay requires further analysis, in particular of any available Maori sources. Nevertheless, the fact that Maori did not raise the money necessary to continue their interest in Heretaunga, and retain the option of further developing it; and instead ended up consenting to sell, despite repeated protestations that they did not want to, remains at the core of the grievance relating to this case. So if Maori were 'unwilling to sell', as everyone of the grantees appeared to be, yet ended up selling anyway, was this fair? The short and crude answer must be: no. The debts of the grantees were not sufficient to warrant them having to surrender their ownership of Heretaunga. By working from the payments to grantees calculations that Tanner supplied to the commission (£19,920), and subtracting all the payments that were not used to pay off debts, the least amount of debts paid from the Heretaunga purchase money is £8705.[105] This figure only counts the debts paid to Maney,

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103. Evidence of James Watt, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 37
104. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 28
105. 'Statement of Monies paid on Account of Purchase, as per Vouchers', 4 March 1873, appendix 8, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, p 168

Sutton, Peacock and the like, and excludes any cash payments, as they were possibly gratuities forwarded during purchase negotiations. Even allowing Tanner the benefit of the doubt, and including his cash amounts, the figure still comes under £10,000. Such figures are obviously not exact, as it is not known what happened with Karaitiana's purchase money balance of £2387, and Tanner's calculations were proved suspect by Richmond. Nevertheless, the debts were never as insurmountable as the apostles and others made out, and continually pressured the grantees with. The Heretaunga block should have been sufficient security for the grantees, and Henare in particular, to enable them to refinance their debts. At worst, the grantees should have perhaps lost the rent from their lease for a number of years, in order to finance a loan to satisfy their creditors. Given that they were not told of, or afforded the same opportunities in the market-place that the apostles received, discrimination existed.

4.3.6 Role of the Government(s)

At no point during the entire Heretaunga saga did the Government attempt to take a pro-active and protective role on behalf of Maori. Writing privately to McLean, the Superintendant of Hawke's Bay Province, J D Ormond, was frank about his role in the purchase of Heretaunga. Referring to having 'trouble in regard to Karaitiana's getting away [to Auckland] – he owes money & Henare owes more & and their debts are being pressed for', he reported that 'Karaitiana has jibbed at the last moment'.[106] Although he mentioned having 'a good deal of trouble lately to keep people [creditors] off him [Karaitiana] & Henare', he also stated that he thought Henare might be in 'Gaol before Karaitiana gets back', adding that it would be 'a great pity to have Henare lowered by being put in Gaol'.[107] It is not clear whether it would be a pity for Henare personally, or for the Government(s), as Henare was so closely associated with them.

The only occasion on which Ormond seized the initiative and spoke to Karaitiana directly was when the grantee was making his final defiant attempt to refuse consent to the sale. On that occasion, Ormond told him that neither government (Ormond was also 'General Government Agent' at the time) had the money or the inclination to purchase parts of Heretaunga, or bail Henare and himself out of their debts; instead, he told Karaitiana 'that he must not take the pressure used by particular people against him as a grievance against the Europeans of Napier generally'.[108] Ormond put his case clearly to McLean, asking for Karaitiana to be 'sent back here at once after you have had a korero with him & that if you like him to come to you again he can do so after he has returned and squared his accounts'. Although professing to 'have kept right out of the management' of the purchase, he admitted to being 'anxious to get it settled'.[109]

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106. Ormond to McLean, 11 December 1869, McLean Papers, folder 483, p 18, cited from Ballara and Scott documents, vol 4, section 106
107. Ibid, pp 18–19
108. Evidence of John Davies Ormond, evidence, p 71
109. Ibid, pp 19–22

Ormond's position was clear: the Government would not involve itself in private transactions occuring in the public market-place. Sheehan asked Ormond: 'Was it not part of your duty as Government Agent to protect the Natives from being unfairly dealt with by Europeans'. Ormond replied unequivocally: 'Certainly not. I should not have consented to act had I understood it to be my duty to interfere in their transactions with Europeans'.[110] This approach by Ormond was presumably backed by his conviction, which was shared by Europeans in Hawke's Bay generally and Richmond and Maning, that Maori were to learn to stand on their own, and, possibly, fall on their own. The grantees were left with the authority to manage their own affairs, but did not possess the necessary knowledge, or level playing field, in which to interact on an equal basis. The added frustration for the Maori owners of Heretaunga was that Ormond was himself an original lessee of the block, and stood to benefit personally from the sale. No wonder then that the grantees, through their counsel, accused him of a grave conflict of interest.

Another instance of a Government employee's involvement in the purchase of Heretaunga was that of F E Hamlin, the Government interpreter, who was able to assume a private capacity. Whether Maori were appraised of the distinction is unlikely, as on several occasions witnesses could not tell the three Hamlin brothers (Francis Edward, Henry Martyn and Josiah Pratt) who all took some role in the purchase, apart. It has been noted above that F E Hamlin was possibly in debt himself, and that he and his brother Martyn received a bonus for their part in the 'successful' purchase of Heretaunga. Sheehan harried Ormond on the role played by F E Hamlin, asking Ormond how it was that the Government interpreter could afford to spend three consecutive days (the December Pakowhai meeting), solely on private business.[111] Ormond was stumped, and had to reply that had he been present it would not have happened; he did not, however, mention whether Hamlin would receive censure for the desertion of his official post.

The role that McLean[112] played in the alienation of Heretaunga is, perhaps, the most important to consider. Karaitiana appealed directly to him, asking for assistance as he and the grantees did not want to alienate Heretaunga. McLean refused direct help, and instead despatched Major Heaphy to ensure that Maori had enough land to reside on, by recommending that restrictions on alienation be put on various titles. Heaphy did not extend that to include Heretaunga. At no time did McLean or Heaphy consider putting restrictions on land which Maori said they did not want to alienate, or wanted to develop themselves (although the court was supoosed to do this, usually on the advice of the Crown representative). Government policy was still to have Maori alienate their land and settlers develop it. Denied the opportunity to buy land on behalf of the general government, McLean was content

110. Evidence of John Davies Ormond, evidence, p 71
111. Evidence of J D Ormond, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 72
112. McLean was Superintendent of the Province of Hawke's Bay (though he relinquished this when he entered Parliament) and general government agent for the East Coast from 1863. He was the Member of the House of Representatives for Napier, and, in 1869, became both Native Minister and War Minister, positions he held when Heretaunga was purchased. He was Native Minister (apart from a matter of months in 1874) until 1876. See Alan Ward, 'McLean, Donald', DNZB, vol I, pp 255–258

to have private individuals complete the task the Government could not. Indeed, McLean himself was involved in his own private purchase activities, and was the subject of numerous complaints to the 1873 commission, relating to the Ngatarawa blocks. Regrettably, the commision did not investigate those complaints. Given that McLean was 'heavily mortgaged' himself to financier Algernon Tollemache, it is indeed a pity that Maori were denied the opportunity of having McLean's finances subject to the same scrutiny as their own.[113]

It seems galling that the the Government was expecting and asking that Hawke's Bay chiefs help fight in campaigns against Te Kooti, and attend civil functions such as the visit of a member of the British royal family, yet were not prepared to assist in any way to aid Maori retain land that they did not want to alienate. The Government even received £1560 in duty from the sale. Everyone except Maori profited from the alienation of Heretaunga.

4.3.7 Further research

This case study has not touched on a number of issues relating to the purchase of Heretaunga, such as whether the purchase price was adequate, and the valuation fair; the negotiation for and the boundaries of the Karamu reserve; and the complaints raised concerning the acceptance that Karaitiana and Henare had the 'mana' to negotiate a sale, and decide upon the purchase money. Noa, Paramena and Pahora, for example, consistently maintained that Henare and Karaitiana only had the mandate to look after the lease, not to negotiate alienation. Also, it has been indicated in the text where further research may be useful, such as the issue of Maori understanding and knowledge of finances at the time, Maori knowledge of the potential development of their land, and Maori understanding of the improvement clause in the leases they signed. No doubt claimants will want to analyse carefully the thirteen hapu named as having an interest in the block, and perhaps investigate whether others were left out, or how well their grantee represented them.

4.4 MOEANGIANGI

The Moeangiangi block, situated roughly half-way between Tangoio and Mohaka on the Hawke's Bay coast, was purchased by McLean, on behalf of the Crown, on 7 July 1859.[114] A '200 acre' (Maori maintained it was 1000 acres, to which the Native Land Court agreed), section near the mouth of the Moeangiangi River was reserved as a 'dwelling' place. On 9 June 1866 Crown land purchaser officer, S Locke, with Government translator F E Hamlin, negotiated a purchase of the reserve, now appearing on the attached plan as 1000 acres, from Winiata Te Awapuni and Pitiera Kopu. To complete the purchase the two sellers were to gain a Crown grant from the Native Land Court, which would then be transferred to the

113. Ward, 'McLean, Donald', p 257; see also B Parr, 'The McLean estate, a study of pastoral finance and estate management in New Zealand, 1853–1891', MA thesis, Auckland, 1970.
114. Ballara and Scott, 'Moeangiangi' block file, vol 1, p 4

general government. Neither man was living on the reserve at that time, although a number of Ngati Kurumokihi and Ngati Moe were.[115]

Winiata and Kopu lived at Mohaka, and travelled through Moeangiangi on their way to the court hearing, but apparently did not divulge the details of the purpose of their visit to Napier. Consequently none of the occupants appeared at the court hearing. Unfortunately for Winiata, Pitiera, and the general government, Te Retimana Ngarangipai, of Ngati Kurumokihi and Ngati Moe, was by chance at Napier at the time and consequently gave evidence on the occupants' behalf. He tried to have the hearing adjourned, but was unsuccessful. He, did, however, get himself put on the Certificate of Title as a grantee alongside Winiata and Pitiera.[116] Judge Munro authorised that a small fishing access reserve of 10 acres be pegged out, yet failed to place any restriction on the alienation of the whole block, which appeared to be an error on his part. The Moeangiangi block title investigation was conducted by Munro on 19 December 1866.[117] Section 5 of the Native Lands Act 1866, which received the royal assent on 8 October 1866, and was to commence on 1 December 1866, stated explicitly that 'reserves' were to have restrictions placed on their alienability. Included in the Act's definitions of reserves, were lands reserved in deeds of sale to the Crown. Moeangiangi was such a reserve.

Paora Hira, on behalf of the occupants of Moeangiangi, complained to the 1873 commission. Richmond fitted in their hearing between the continuing Heretaunga evidence, as the 17 complainants 'seemed poor people', who had 'travelled more than a considerable distance'.[118] Paora Hira expressed the exasperation of being disinherited, and of having his land sold secretly from beneath his feet. He accused all three grantees of taking 'the whole of the money to themselves; they sold secretly', obviously not aware that Te Retimana was not a party to the Government purchase.[119] He told of having been evicted from the reserve, and that they were living at Arapaoanui; Te Retimana, residing at Tangoio. Te Retimana claimed that Winiata and Kopu's claim to the block was not as large as the occupants', arguing that he and those living on the area were not aware of the court hearing, and so did not appear before it. By 1873 Pitiera Kopu had died, and Winiata Te Awapuni did not give evidence. Te Retimana still held his undivided share in the reserve.

Richmond was sympathetic towards the complainants, and criticised the Government for its actions in the case. Richmond accepted that the occupants 'might easily fail to see the public notices of cases to be heard', and criticised the practice of the court whereby it only considered the evidence before it. Illustrating that point, Richmond reasoned that a reserve resulting from a large Crown purchase would presumably have a number of Maori with rights in it, and therefore, 'certainly should

115. Ballara and Scott, 'Moeangiangi' block file, vol 1, p 6
116. Evidence of Te Retimana Ngarangipai, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 14
117. Native Land Court, MB, Napier 1, p 178
118. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 16
119. Evidence of Paora Hira, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 14

not be left to the chance of such a procedure'.[120] Alarmed that the Crown was carrying out such dubious and secret purchases in 1866, Richmond warned that: 'It is in the common interest of both races that the alienation of lands in this position should be watched over . . . with particular vigilance – not to say jealousy'.

The issue of whether Judge Munro should have placed a restriction on alienability did not arise during the commission's hearing. This is probably explained by the brief time given to the case, and that no Crown witnesses appeared. However, given that one of Richmond's recommendations was that the Crown should watch over the alienation of reserves with 'particular vigilance', it would appear that he was not aware of the amendments made to the Native Land Act to protect reserves. The same lack of knowledge probably applies to Paora Hira, and the other complainants.

Maning was equally anxious at the political ramifications of the complaints concerning the block. He wrote that one of the witnesses suggested that the European now in occupation (the Crown obviously purchased on his behalf) might be expelled by force. Nevertheless, Maning supported the decision of the court, and refused to accept that any other person had an interest in the block, because the court had not so ruled. He did, however, acknowledge that Te Retimana 'has a right to compensation, or to part of the land', since he had not been a party to the Crown purchase.[121] Maning's advice was apparently taken as Te Retimana received £80 for his share in the block in 1873.[122] Hikairo's report admitted that 'perhaps it was correct that they [Paora Hira and others] had a claim to that land by Maori custom', but criticised them for not prosecuting their claim in the Native Land Court.[123]

The purchase of the Moeangiangi block reveals three of the most alarming aspects of alienations via the Native Land Court in 1866 to 1873. The first is that two non-occupants of a block were able to make application to the court; the second, that the court did not adjourn hearings until the actual occupants' evidence could be heard; and third, that the Crown used the court as an agent of alienation, rather than seeking a full judicial determination of customary title. As well, the presiding judge appeared to prove himself incapable of following legislation specifically designed to prevent this very alienation from occuring. However, Munro might not have had to take notice of the 1866 Amendment, if the application date for the hearing was lodged prior to its coming into effect. Counsel for claimants and the Crown should examine this point of law carefully.

The Crown's role in the purchase deserves wholesale comdemnation. Not only did they negotiate a purchase of an area that had been specifically exempted from a larger sale only seven years before, and negotiated this second puchase with two men who did not sign the original purchase and reserve agreement,[124] but it had also

120. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 16
121. Commissioner Maning's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 45
122. Ballara and Scott, 'Moeangiangi' block file, vol 1, p 11
123. Commissioner Hikairo's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 61
124. Ballara and Scott, 'Moeangiangi' block file, vol 1, p 4. Te Retimana was not a signatory to the original purchase either.

usurped the court's function of being the determinant of Maori customary ownership, by selecting who the owners were and telling them to front up in court and say so. That Te Retimana managed to be in court and argue for the rights of Ngati Kurumokihi and Ngati Moe, saying that their ancestor Mutu had invited Winiata's ancestor, Tataramoa, to Moeangiangi, a history to which Winiata agreed, was a fluke occurance. That the Crown did this within an uncertain political climate, and growing support for resistance to the Government in the area, is even more unbelievable. All the area surrounding the Moeangiangi block, including Arapaoanui, where the evicted Moeangiangi residents had gone, was confiscated in 1867.

4.5 TE PAHOU

The Te Pahou block, situated at Petane, to the north of Napier, and containing the islands of Te Roro o Kuri, Te Ihu o te Rei and Parapara, which were in Te Whanganui-a-Orotu lagoon, was first brought before the Native Land Court on 22 March 1866, but was adjourned as there was no completed survey. Te Roro o Kuri, containing 70 acres, was reserved from the Ahuriri purchase of 1851, as it contained numerous wahi tapu, pa sites, and shellfish beds.[125] The court hearing on 16 August 1866 was brief. A list of proposed grantees was supplied by Paora Torotoro, and agreed to by Te Waka Kawatini. The list was accepted by the court, although Bousfield, the surveyor, complained that he had not been paid, and the court ruled that he should hold the Crown grant till his bill was satisfied.[126] Utiku Te Paeata, from Petane, told the 1873 commission that he was not a grantee, but represented 40 to 50 people with an interest in the block. He said that the Native Land Court had refused his application to be included as it would only allow 10 names, and that after the hearing the people had an assurance that the grantees would act as 'guardians' of the block for the 'whole hapu'. All the people were to share in the proceeds if the block was sold.[127] Tareha was not included as one of the grantees, as he had quarrelled with Paora and Te Waka over whether the block should pass through the court, and therefore did not attend. Three of the grantees were of his hapu from Waiohiki.[128]

Prior to the court hearing, land had been leased to a pastoralist called Thomas Richardson, who described the block as containing mostly sea beach and shingle bed, and said he had only been able to fence off 120 acres, but hoped to claim up to 220. He said that he did not know that Te Roro o Kuri had been reserved in 1851. Sometime after the 10 grantees obtained their shares on the Crown grant, Richardson struck a deal with the Meanee Spit merchant and money-lender Richard

125. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, Brooker's Ltd, Wellington, 1995, pp 86–88
126. Native Land Court Minutebook, Napier 1, reel 1, ATL, pp 140–141
127. Evidence of Utiku Te Paeata, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 5
128. Evidence of Tareha Te Moananui, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 5

Maney. Richardson was to pay Maney £400 in instalments for Te Pahou, leaving Maney to negotiate the purchase.[129]

Paora Torotoro told the commission that Richardson had asked him for the freehold of Te Pahou, offering £400. Paora in return said he wanted £1400, whereupon 'conversation ceased'.[130] Nevertheless, in yet another example of Hawke's Bay chiefs' poor experience in handling money, Paora's asking price soon came down to £100 for himself. Maney had promised him cash, and Paora said he went twice to receive it, but instead was persuaded by Maney to take sugar, alcohol and other goods. Paora's consent was eventually gained at Maney's Meanee drinking establishment.[131]

The translator hired by Maney, Henry Martyn Hamlin, told the commission that all 10 grantees, as well as a number of the 'outsiders', had signed the deed, and that they understood that by signing, the 'land went from them'.[132] This was disputed by the Waiohiki grantees. Hoera Paretutu said 'I was asked to take money and goods by Maney but I refused; I never took any . . . I did not put my mark to this deed.'[133] Matiu Tamanuwhiri expressed similar sentiments, but, when asked by counsel, Mr Lee, was more forthcoming as to how his name appeared on the deed:

> Do you not remember putting your mark in Hamlin's presence?
> It is he who made the mark. I remember Hamlin's coming to Waiohiki to speak about the sale of Pahou. I was not near, I did not sign.[134]

Turuhira Te Heitoroa said that Maney showed him the document to sign, but he refused. Maney then followed him into the fields where he and others were working, where 'the back of my hand was touched by the pen merely'. He explained this further under cross-examination: 'Is that your mark? It was me, and it was not me; I cannot see, I am blind. I did not hold the pen or made any mark'.[135] Another grantee, Morehu Wherowhero, also denied signing the deed. He also said a number of the owners were still occupying the block.[136] All four who denied signing did not have accounts with Maney, and they all referred to their refusing to sign away the 'mortgage', rather than the conveyance or sale deed. This reveals again the sometimes hazy notions Maori (and probably Europeans as well) had of such financial transactions (or that something was being lost in the translations).

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129. Evidence of Thomas Richardson, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, evidence, p 6
130. Evidence of Paora Torotoro, evidence, pp 3–4
131. Evidence of Paora Torotoro, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence pp 3–4
132. Evidence of Henry Martyn Hamlin, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 6
133. Evidence of Hoera Paretutu, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, pp 4–5
134. Evidence of Matiu Tamanuwhiri, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 5
135. Evidence of Turuhira Te Heitoroa, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 5
136. Evidence of Morehu Wherowhero, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 3

Tareha did sign, as 'a witness to the signing by the Pakehas. I was Mr Maney's friend, and I saw the writing', but did not distribute the goods or money (£60), as he was not 'kai-mokete (mortgagee) of the land'.[137] Maney also secured the signiture of another non-grantee, Paraone Kuare (Brown), who lived at Waiohiki, and apparently acted as Tareha's 'secretary'. Paraone received a four-wheeled trap as payment.[138] It is possible that Tareha and Paraone were the 'outsiders' Hamlin spoke of, rather than those right-holders who were excluded from the Crown grant, although Richmond did report that there were 'several' other names. The conveyance of sale to Richardson was dated 28 January 1870.[139]

Neither of the two comissioners who reported on this case commented on the conflicting evidence of Hamlin and the Maori grantees. Commissioner Hikairo concentrated on Maney's purchase methods, writing that he was 'in the habit of holding back money, so as to compel Maori to go to him in order to get goods on credit', and concluded that the purchase 'was not quite fair'.[140] Richmond's report, concurred in by Maning, accepted the transaction as legitimate, offering only one concession, that the three grantees who had received none of the purchase money were 'possibly inequitably dealt with'. Despite this reservation Richmond believed that, as their chief Tareha had consented, then they had no grievance concerning consent.[141]

Maney's effort to secure the signature of Tareha can be viewed in two very different ways. Either Maney could be congratulated for recognising that although not on the Crown grant, Tareha was the chief of the area, and had interests in the area, and therefore sought him out and asked for his consent to the sale; or, he knew he could manipulate Tareha as he had done before, and that it was easier to gain his signature rather than that of the actual grantees. Given some of the grantees' opposition to receiving goods from Maney, the latter explanation is probably closer to what occured. As well, even without the four non-account holders, Maney had managed to spend Richardson's £400, and a further £46.[142] Tareha's non-inclusion on the list of grantees allowed him to excuse himself from any responsibility towards his people at Waiohiki, (which is the kind of strange twist on the usual chief/people relationship that the Native Land Court era facilitated). Meanwhile Maney probably realised that if investigated, Tareha's consent would be crucial to avoiding a repudiation of the deed, given that some of the signatures on it were probably fraudulent. If so, it worked, as Richmond placed the importance of Tareha's consent above that of any concerns about the grantees' individual

137. Evidence of Tareha Te Moananui, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 6
138. Evidence of Paraone Kuare, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 6
139. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 10
140. Commissioner Hikairo's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, p 56
141. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission 1873, G–7, AJHR 1873, reports, pp 10–11
142. Commmissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 11

signatures. Richmond also said that part of the purchase negotiation with some of the sellers was that they should retain access to the beaches and fishing grounds of Te Pahou and Ruahoro, and should be able erect whares 'for their residence while so employed'. Noting that the deed of conveyance did not stipulate this, Richmond recommended that the reserve be defined and put upon a 'proper legal basis'.[143] It is unclear whether this was done. A Te Pahou file held at the Hastings Maori Land Court, which includes, incidentally, the original certificate of title and conveyance to Richardson, identifies 40 acres of the block still in Maori ownership.[144] A closer examination of this file and other material may shed further light on whether this is the reserve.

4.6 RANGAIKA

Rangaika was the site of the original Cape Kidnappers, or Te Matau-a-Maui whaling station in the mid 1840s. The surrounding 30,000 acre Te Matau-a-Maui block was sold in 1855 to the Government. Three hundred or so acres including the former whaling station was reserved.[145] J G Gordon had established himself as lessee in the early 1860s.[146] By 1865, it appears that Gordon wanted to obtain the freehold. The chief Karauria provided a willing avenue, making application to the Native Land Court in 1866, and obtaining from Judges Munro and Smith a Crown grant for the reserve, with himself as sole grantee. The certificate of title was dated 3 October 1866, and thus fell short of coming under the provision of the 1866 Act which forced judges to place restrictions on the alienability of reserves. By 4 July 1867, the Crown grant was made over to Gordon for £100. Karauria apparently used the money to pay debts. The general government district officer at the time, G S Cooper, wrote to J C Richmond, explaining in somewhat dramatic terms how he thought the alienation of such reserves, themselves remnants of huge alienations, occurred:

> [a chief] who, perhaps, has sold nearly every acre he possssed, and sometimes a bit of his neighbour's as well, is easily tempted to let his valuable reserve go at a price far beyond his wildest dreams of ten years ago, which will nevertheless not only leave him a pauper . . . but will turn his offspring into a race of thieves and vagabonds on the face of the earth[147]

Eureti Ngamu made a complaint to the 1873 commission, against Karauria's actions, but it was not heard.[148] Ballara and Scott believe that Karauria's deal with Gordon resulted in the actual occupants and beneficiaries of the reserve being unfairly disadvantaged. The claimants for Wai 69 (Rangaika) state that despite the sale by Karauria they made continuous use of the reserve for traditional purposes. This use,

143. Commissioner Richmond's report, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, reports, p 11
144. Te Pahou file, NA 202, Maori Land Court, Hastings
145. Ballara and Scott, 'Matau a Maui' block file, vol 1, pp 2–13
146. Whitmore, 'Return of all persons squatting . . . etc', AJHR 1864, E–10, p 5
147. G S Cooper to J C Richmond, 26 August 1867, AJHR 1867, A–No 15A, pp 3–4
148. Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, complaint 108, p 6

however, had been subject to the good faith of successive European owners. Access had since been denied.[149]

4.7 QUANTITIES OF LAND ALIENATED VIA THE NATIVE LAND COURT, 1866 TO 1873

As has been noted above, there was no systematic recording of alienations via the Native Land Court in official sources. Nevertheless, on a couple of occasions Government officials did attempt to supply quantum figures. These were, however, based on incomplete evidence, and contain other errors. For the attempt to be made however, suggests that there was some record made of Crown grants that passed from Maori ownership to private (or Government) ownership. This source has not been located, and therefore this section remains at the mercy of the two available estimates. As part of the 1873 commission, Samuel Locke was asked by Richmond to quantify the amount of land alienated in Hawke's Bay. To do so, Locke divided the province into north and south with a line going north of the Petane River (the Waiohinganga or Esk River) and Taupo Road to the Mohaka Crossing. He added a strong disclaimer however: 'I wish it to be plainly understood, that in getting up a return of this complicated nature, with the scanty information obtainable on so short a notice, the numbers can only be considered as approximate'.[150] Unfortunately for the purposes of this chapter Locke was unable to provide figures for private purchases of Maori (Crown grant) land.

Locke records that, of the 2,100,000 acres in the southern area, 1,340,000 had been purchased by the Crown prior to 1865. Of the 760,000 acres left of this area, the 'government' (Locke does not state whether this was the provincial, general, or both) purchased a further 236,894 acres prior to 1873. Locke does not say whether these were the Crown purchases that were ongoing at 1865, or whether they were purchases of land for which Maori had received Crown grants from the Native Land Court.[151] The Tamaki deed of 1871 with its total of 231,431 acres, for instance, would appear to account for most of this amount [see 5.4].

The Native Land Court had awarded certificates of title for 623,433 acres by 1873. The average acreage of a block was 3850 acres, the number of Crown grants issued was 162, on which a total of 344 grantees' names appeared. Fifty of these grants were marked inalienable, which represented 132,483 acres, leaving 490,950 available for alienation. A further 4668 acres were reserved under provisions of the Native Reserves Act 1856.

Locke estimated that 136,567 acres were left in the possession of Maori as customary land, not having been brought before the Native Land Court. Of this amount Locke thought that about 50,000 acres were at Waimanawa, 28,831 acres at Porangahau, 41,000 at Tamaki, and the remaining 13,000 or so acres pocketed

149. Wai 69/0 masterfile, Waitangi Tribunal offices, Wellington
150. S Locke to Justice Richmond, 14 April 1873, appendix no 1, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, p 156
151. Tabular Statement showing population, acreage, etc, appendix 2, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, p 157

throughout the rest of Hawke's Bay. Sources indicate that the only alienations via the Native Land Court to occur north of the Waiohinganga River were Petane, and the Moeangiangi Reserve, hence, it is not necessary to analyse figures for this area any further.

The other source that provides figures of land alienation in Hawke's Bay is a return of Native and Crown lands compiled by Major Charles Heaphy, dated 11 July 1873.[152] It obviously was drawn (or vice versa) from Locke's figures, as it lists pre-1865 Crown purchases at 1.5 million acres (which equals Locke's north and south figures), with a further 244,318 (which equals Locke's north and south figures) purchased between 1865 and 1873. However, it goes further and calculates the amount of land, 401,569 acres, which had been alienated after passing through the Native Land Court.[153] Heaphy records that of this amount, 145,233 acres were sold in private sales, and cost £101,334 15s 4d. Heaphy calculated this to average 13 shillings, and 11¼ pence an acre. If his figure is correct, then the remainder of the alienable land that had passed through the court would have had to have been purchased by the Crown. Adding together the supposed Crown (244,318 acres), and private sales (145,233 acres), gives a figure of 389,551 acres. Subtracted from Heaphy's total alienation figure of 401,569 leaves a balance of 12,018 acres, which Heaphy does not explain.

Locke also supplied useful figures about the fate of the reserves made during Crown purchasing negotiations. In his southern district 21 reserves were made, totalling 17,573 acres. Of these, seven had been sold, seven were under long leases, and seven remained in Maori hands. This does not quite tally with Cooper's 1867 estimates. He said that the reserves made 'from but a small percentage of the area sold', and that those that had not been sold either to the Crown or to private interests were all 'without exception' leased to Europeans.[154] Later chapters return to the fate of the reserves from Crown purchases.

4.8 CONCLUSION

Hawke's Bay Maori had already alienated (or a few had) over half of their land to the Crown prior to the introduction of the Native Land Court in 1866. Prior to the introduction of the court hapu were living on and cultivating portions of the best land they had retained, and had negotiated leases with pastoralists for land which they did not immediately require. These leases were controlled, on the whole, by the principal customary owners, and occasionly regulated by Maori Runanga.

The Crown and provincial governments were determined to facilitate the alienation of the very best land Maori still retained, and destroy the 'illegal' Maori–settler negotiated leases. This they largely achieved by 1873, the Native Land

152. 'Returns of Native and Crown Lands', 11 July 1873, C Heaphy, McLean papers, folder 132 miscellaneous, micro copy, ATL, p 106

153. Keith Sinclair, in *Kinds of Peace Maori People After the Wars 1870–1885*, Auckland, 1991, Auckland University Press, p 112, quotes a figure of 400,000 acres alienated to less than 50 individuals prior to 1873, but does not cite a source.

154. Cooper to J C Richmond, 26 August 1867, AJHR 1867, A–No 15A, p 3

Court proving sucessful as a court of Maori land alienation. By unleashing the agents of the free-market upon unprepared and mis-informed chiefs, the Crown pressured those with legal responsibility for their lands to sell, despite being, on the whole, unwilling to do so. Both governments did little to elevate Maori to a higher level of fiscal understanding, or to act against the worst practices of the land purchasers, merchants and money-lenders. As Dr Phillipson has noted, the legislative amendments to the Native Lands Act came too late for Hawke's Bay Maori, and the changes were not disseminated among Maori using the court (see app II). By mid-1868, Locke was telling McLean that he had never seen 'the natives so cool before about the Land Court. Renata and others would not come at all. It was difficult to get any of them to come. All interest in it is gone.' Locke gave his reasons for this decline in popularity to Judge Munro, writing that the 10-owner rule, combined with the impression that the court worked to the advantage of Europeans, rather than Maori, were the principal causes.[155] It appears that most of the damage to customary title was done by 1868, and that Maori realised soon after that the court had not been of benefit to them, but had facilitated the loss of their land against their will. Because of this, calls for repudiation of land sales increased in volume in the early 1870s.

155. Locke to McLean, 25 August 1868, McLean papers, folder 393, micro copy 0535–067, ATL

CHAPTER 5

RAUPATU AND FURTHER CROWN PURCHASING, 1862–75

5.1 INTRODUCTION

By 1862, the Hawke's Bay runanga had largely thwarted the attempts of the Crown to continue its land purchasing programme. As chapter 4 has detailed, attention then shifted to the Ahuriri Plains and the direct purchasing of Maori land via the Native Land Court. The Crown continued to purchase land, concentrating in those areas for which negotiations had already begun. The most significant purchase after 1862 occurred in the Tamaki-Nui-a-Rua, or Seventy Mile Bush area. Ballara and Scott's block file, while not exhaustive, does cover the basic issues to a degree sufficient to make further research unnecessary for the purposes of this report. The other area in which Crown purchasing was concentrated in this period was in the Kaweka ranges. For reasons of consistency, this chapter will include short summaries of the alienation history of these two areas.

The reasons for the Crown's purchase of Tamaki are quite clear. As well as containing valuable timber and potential pastoral lands, it provided a gateway to Manawatu, Wairarapa, and Wellington. The Kaweka ranges appeared to be purchased for their strategic importance. Ngati Tuwharetoa interests in the area were strong, and it made sense to purchase land linking Hawke's Bay with the Volcanic Plateau. Up until 1870, the plateau was operating beyond the limits of British sovereignty, and therefore remained a threat to Hawke's Bay.

The period 1862 to 1875 is characterised by the New Zealand Wars. This chapter will discuss the context provided by the wars which led to a supposed rebellion in Hawke's Bay by Pai Marire supporters. This rebellion was then used by the Crown to justify its confiscation of 270,000 acres in the Mohaka–Waikare district. It seems clear that the Crown used the policy of raupatu to gain two things. One was to secure an important strategic route from Napier to Taupo. The other was to obtain land in Mohaka–Waikare, as the Crown's efforts to purchase had became particularly complicated and frustrating for Donald McLean, the omniscient Crown presence in Hawke's Bay during this period. While most of the raupatu land was 'returned', significant portions were not; as well, the owners of the returned blocks did not appear to represent all of the customary owners, and were beset with complications brought about by delays in surveys and the issuing of Crown grants.

A third function of this chapter will be to attempt to summarise aspects of Maori social and economic status up until 1875. This section will comment on changing

Maori responses to Crown purchasing activity, and changes in political alliances. Its purpose is to provide, from mostly official sources, a methodological framework within which further more detailed research could take place. To that end, it will comment on Maori employment, income, education, population, and position within the growing development of Hawke's Bay.

5.2 THE CONFISCATION OF MOHAKA–WAIKARE

5.2.1 Introduction

For the purposes of this report, the history of the confiscation of the Mohaka–Waikare district has been divided into two parts. The first includes an analysis of the Crown's desire to obtain land in the region, the political relations between different Hawke's Bay hapu, the supposed rebellion of at least one of those hapu, and the consequent proclamation by the Crown confiscating 270,000 acres of Mohaka–Waikare land. It will also comment on the Crown's attempts to secure Maori support for the confiscation, by returning some of the area to certain Maori, and paying for the cession of ownership rights to other areas. Part two of the Mohaka–Waikare story, which will be covered in chapter 6, concerns the Crown's purchasing of the blocks returned to Maori following the confiscation. All of these purchases took place in the early decades of the twentieth century.

5.2.2 Background

The Crown were interested in buying the Mohaka–Waikare district in 1851. Portions of the coastal land were offered to Donald McLean in April of that year, but McLean took advice from Te Hapuku, who told him to hold out for all of the land between the Ahuriri and Mohaka blocks. Resistance to a large sale by Maori occupants of the area meant that purchasing plans were put on hold through the 1850s. Two blocks, Arapaoanui and Moeangiangi, were purchased in 1859, yet the Moeangiangi sale, in particular, was contested by the powerful Hawke's Bay runanga. Calls for the repudiation of the Moeangiangi purchase resulted in the Crown's land purchaser, Samuel Locke, refraining from further purchasing activity in the area, and not attempting to survey the two blocks that had been purchased. In 1860, then, the runanga's opposition to further Crown purchasing and their support for the King movement's objectives reached its zenith. Events in Taranaki were viewed by the runanga with some alarm, and rumours abounded among Maori that the Crown was actively considering seizing land by force.

Joy Hippolite indicated that a shift in the runanga's attitude occured in late 1861. This was noted by Cooper, the Crown's district officer for the Native Department. Possible reasons for what became a softening in attitude towards the Crown, were the return of Governor Grey, the end of fighting in Taranaki, and a change in government to the Fox ministry. Hippolite has argued that the Fox Government worked hard to force a split in Ngati Kahungunu from the King movement.[1] While

1. Joy Hippolite, 'Raupatu in Hawke's Bay', 1993, of Wai 201 ROD, document I17 pp 9–10

some of the coolness between the runanga and the Government had dissipated, as a result of Fox's efforts, Hippolite still believed that significant sympathy for the King movement remained, and that Hawke's Bay Maori were pursuing a separate policy, designed to protect their specific interests.

5.2.3 Events leading to the battles of 1866

When the Waikato was invaded by Governor Grey in 1863, no Hawke's Bay men went to war, but some supplies and money may have been forwarded to those fighting.[2] Rumours continued to circulate among Europeans that Hawke's Bay could suffer an attack from some Hawke's Bay hapu who were actively supporting the Kingites. G S Whitmore, Napier civil commissioner, wrote to the colonial secretary in January 1864, warning that Te Rangihiroa of Ngati Hineuru had been 'making inflammatory speeches'. He did feel confident, however, that it was:

> quite possible to keep the whole Ngatikahungunu tribe on the best terms with Europeans, partly through their run leases, partly through their old feuds with the Waikatos, and partly by fear of losing their lands.[3]

It appears that Renata Kawepo and Karaitiana Takamoana, leaders of the runanga, were not pleased at Te Rangihiroa's words either. Whitmore recorded that Renata 'threatened to kill him [Te Rangihiroa]', and that Renata and Karaitiana would 'fight on our side'. Perhaps because of the reasons outlined by Whitmore, Karaitiana and Renata had decided at some point that fighting the Government was not in their best interest. Belich has argued that the coastal Ngati Kahungunu chiefs would have fought anyone who threatened their economic interests at Napier.[4] Whitmore's compilation of a list of Europeans who were currently squatting on Maori land revealed that the coastal chiefs had much to lose, as not less than £12,000 a year was being received in rents.[5] McLean repeated Whitmore's fears of impending conflict later in 1864, warning the colonial secretary of Te Rangihiroa's intentions to attack Napier, perhaps aided by 'the Uriweras [sic]' people.[6] Later in 1864 the new Maori religion Pai Marire gained converts from within Ngati Hineuru, and possibly from other hapu. The Hawke's Bay settlers and the Government directed their fears at the 'Hauhaus'.

In February 1865 Te Hapuku invited a group of Waikato Pai Marire to Te Hauke. The group stayed for two days at Petane, Cooper noting that this was sufficient time to 'convert the inhabitants of that village', adding that Petane had always been

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2. Hippolite, I17, pp 11–17. Twenty men from Wairoa fought at Orakau.
3. Civil commissioner, Napier, G S Whitmore, to the Colonial Secretary, AJHR 1864, E–No 3, enclosure 2 in No 17, p 15; see also Hippolite, I17, p 17
4. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland University Press, 1986, Penguin Books, p 212
5. Whitmore, 'Return of all persons squatting on, or in anyway occupying Maori Lands over which the native title has not been extinguished, with the fullest particulars that can be obtained as to the character of the tenancy, etc', AJHR 1864, E–No 10, p 4
6. Superintendent of Hawke's Bay, D McLean, to the Colonial Secretary, 11 May 1864, AJHR 1864, E–No 2, p 66

'notorious as the hot-bed of sedition'.[7] Accompanied by the former native teacher of Petane, Paora Toki, the group visited Renata's village, Omahu. Renata 'refused to hold any communication with them . . . but did not attempt to hinder their progress'. Te Hapuku, though accused of doing so, denied joining Pai Marire. He said that some people had, but explained that:

> Ko nga tangata ano hoki I mohio ki tera karakia ki te Mitingare, no reira ratou ka karakia, ko au hoki kaore I mohio ki te karakia no reira ahau noho tonu atu.
>
> All those who knew that religion preached by the missionaries remained steady and worshipped. I myself know no religion, and therefore remain so.[8]

Hippolite suggested that Te Hapuku's purpose in having the Pai Marire visit was to off-set his younger counterparts, Renata and Karaitiana, and that the group soon left for the Wairarapa, reluctant to play pawns in Te Hapuku's political strategising.[9] Renata wrote in April 1865 that:

> Kua mahea tera kohu te Kingi, a kua puta maiano ko tenei kohu, tona ingoa he Hau hau, he kai tangata.
>
> The King movement has vanished away, and this another mist has made its appearance; its name is Hauhau; its consequences are man-eating . . .[10]

This seems to suggest that by 1865, any surviving support for the King movement on the part of coastal Ngati Kahungunu was seriously eroded. Based on information printed in the Government sponsered *Te Waka o Ahuriri* newspaper, at a hui held at Pakowhai in late April 1865, many Maori felt that Pai Marire represented a 'threat to the order and tranquility of the province'.[11] In May 1865, Cooper reported that the threat of having their lands confiscated for military settlement was also helping Ngati Kahungunu decide their position regarding Pai Marire.[12]

McLean was appointed general government agent for the whole East Coast in March 1865. At the time he was also the Napier member for the House of Representatives, and the Superintendent of the Province of Hawke's Bay. His instructions as general government agent included powers 'to make arrangements as you may think most advisable with the friendly Chiefs of the District', and also to 'supply arms and ammunition to loyal Natives'. In what came to be a large factor in the battles between Maori over the names listed in block schedules in the Mohaka–Waikare agreement, McLean was also instructed to 'offer substantial rewards for services rendered'.[13]

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7. G S Cooper, acting civil commissioner, Napier, to Hon Native Minister, 25 February 1865, AJHR 1865 E–No 4, No 20, p 19
8. Te Hapuku to Cooper, 25 February 1865, AJHR 1865, E–No 4, enclosure 6 of No 20, with translation, p 23
9. Hippolite, I17, p 25
10. Renata to Taare and Teone, 12 April 1865, AJHR 1865, E–No 4, No 24, with translation, pp 25–26
11. Richard Boast, 'Report on the Mohaka–Waikare confiscation', vol I, February 1994, document J1, Wai 201 ROD, p 40
12. Hippolite, I17, p 25
13. Weld to McLean, 15 March 1865, AGG–HB 1/1, NA, Wellington, cited in Boast, vol I, p 41

Hawke's Bay Maori watched with interest the fighting between a Pai Marire faction and another group of Ngati Porou between June and October 1865. Once supported by colonial troops, arms, and supplies, the latter faction proved victorious. The same occurred when different factions of Wairoa Ngati Kahungunu fought between December 1865 and January 1866, the faction with Government support emerging as dominant.[14] Some Napier Maori fought in the Wairoa civil war, and Napier settler militia were also involved in the fighting amongst Te Waru Tamatea's Ngati Hinemanuhiri (Pai Marire), and Ihaka Whaanga's Rongomaiwahine.[15] The results of these engagements were readily apparent at Napier. In mid-1866 the stony foreshore of Mataruahou provided the last resting place for Maori (including Te Kooti) taken prisoner during the first East Coast fighting, before they were transported to the Chatham Islands.[16]

There was apparently a Pai Marire pa at Titiokura, or Te Pohue, from 1865, to which many refugees from the battle of Waerenga-a-Hika pa fled in 1866. It was from there that a party described as Pai Marire adherents travelled to Petane in early October 1866. Ballara and Scott state that McLean sent a 'special written summons' to ask the group to Petane. McLean wanted to give them a chance to 'disarm and surrender'.[17] It appears that this invitation was sent at the same time as an influential coastal chief, Karauria, made a personal attempt to negotiate the surrender of Ngati Hineuru, while they were camped at Te Pohue. Once at Petane, talks continued with Tareha and Karauria; some of the Ngati Hineuru swearing allegiance to the Government, and receiving firearms for taking an oath of loyalty.[18] A group of up to 100 Pai Marire, under the leadership of a principal Pai Marire prophet, Panapa, then travelled to Omarunui. They camped on land where Paora Kaiwhata's section of Ngati Hinepare were residing at the time, though the block appeared to be controlled by Paora Torotoro.[19] Why this site might have been chosen is explained in section 5.2.5 below. Apparently the Ngati Hinepare occupants moved to Waiohiki when the Pai Marire arrived. After complaints that the group were raiding local cattle and potatoes, their presence was perceived as hostile, and a large force of coastal Ngati Kahungunu and colonial militia 'attacked and crushed' them on 12 October 1866.[20]

The same occurred to the smaller group of Pai Marire still at Petane. Te Rangihiroa, among others, was killed when a larger force of militia and Maori engaged the party, chasing them back to Te Pohue, where further prisoners were

14. Belich, p 210
15. Hippolite, I17, p 27; see also Binney, map on pp 152–3
16. See photograph 118691 1/2, ATL, in Judith Binney, *Redemption Songs*, Auckland University Press and Bridget Williams Books, Auckland, 1995, p 62
17. Ballara and Scott, Mohaka–Waikare block file, pp 29–30
18. Evidence of Te Waha Pango to the Native Land Court, Napier Minutebook no 72, 1924, pp 185–186, cited in Boast, vol I, J1, pp 44–45
19. Claimant research may be able to uncover motives for the Pai Marire group's decision to camp at Omarunui. Paora Kaiwhata had fought against the Pai Marire at Wairoa.
20. Belich, p 210

taken. A small group, estimated at 14 people,[21] escaped to Taupo.[22] Among those to escape were the former Native Teachers Paora Toki, of Petane, and Anaru Matete, from Rongowhakaata, Turanganui. The militia, under Colonel Whitmore, was accompanied by the recently reconciled chiefs Tareha, Te Hapuku, Renata and Karaitiana. They did not proceed beyond the Hawke's Bay provincial boundary, stopping near Tarawera. Whitmore posted a warning notice which accused 'the Hauhaus' of having 'invaded the peaceful territory of the sovereign Queen to create a disturbance therein'. This notice was an important gesture. Operating much like boundary pou, which were placed to show the rohe of a chief's mana, the notice served to define the boundary between that of the Queen and Maori King, and that of Ngati Kahungunu and Ngati Tuwharetoa.

Meanwhile, the coastal Maori exercised the practice of muru, rounding up 200 horses, of which Whitmore claimed one-fifth, as the militia's 'fair share of the booty'.[23] Approximately fifty prisoners, including eight women, were transported to the Chatham Islands on 25 October 1866. Another 20 prisoners, again including some women, and children, were brought in to Napier in December 1866, and were transported as well.[24]

5.2.4 Rebellion?

Land in the Mohaka Waikare district was confiscated by virtue of the Crown arguing that Maori within the district had rebelled against the Government. Most of the rebels were identified as Ngati Hineuru. Before proceeding to summarise argument relating to the supposed rebellion, some background information is required. Chapter 3 has already discussed some aspects of the relations between Ngati Hineuru and the coastal Ngati Kahungunu hapu. In 1851 Ngati Hineuru, or to better define the group, those under the leadership of Te Rangihiroa, had camped at Tangoio in order to express their concern over the sale of the inland Ahuriri block. Some of the coastal Ngati Kahungunu hapu had perceived this visit as an act of aggression, and prepared themselves for war. The similarity between this event and those at Petane and Omarunui in 1866, cannot be ignored. Indeed it helps to keep the events of 1851 in mind when assessing the supposed rebellion and invasion of Ngati Hineuru in 1866. Ballara and Scott believed that Ngati Hineuru were still smarting at their rights being ignored in 1851, and that they essentially had two enemies in 1866: the Crown, and the coastal Ngati Kahungunu chiefs.[25] The explanation has merit, and is discussed in further detail in the next section.

Both the Ballara–Scott and Boast reports have argued that the fighting in Hawke's Bay did not warrant the tag 'rebellion', or justify the Crown's subsequent confiscation. Comparing Hawke's Bay with other districts where the New Zealand Settlements Act was used to confiscate land, Boast noted that 'this confiscation

21. Cooper to Native Minister, 29 October 1866, enclosure 8 in no 8, AJHR 1867, A–1A, pp 11–12
22. Boast, vol I, J1, pp 46–51; see also Peter Gordon, entry on 'Matete, Anaru', DNZB, vol II, 1993, Bridget Williams Books and Department of Internal Affairs, Wellington, pp 319–320
23. Boast, vol I, J1, p 51
24. Ibid, pp 50–52
25. Ballara and Scott, 'Mohaka–Waikare block file', document I1, claim wai 201 ROD, pp 21–22

occurred in what was basically a kupapa district', by which he presumably meant that the majority of chiefs and hapu were neutral, or fought with the colonial militia.[26] Boast argues that the battle of Omarunui 'seems in retrospect to have been a small-scale affair which was easily suppressed with Maori assistance', 'hardly comparing', he writes, 'with the set-piece battles in Taranaki, in the Waikato, and at Tauranga'. Adding that the attack on the Pai Marire group at Omarunui was possibly 'an unnecessary over-reaction', Boast concluded with the statement: 'It really is difficult to find any justification for the Mohaka–Waikare confiscation'.[27]

Ballara and Scott also argued that the threat of an attack on Napier may have been manufactured. Their report details Rev Samuel Williams's mission to convince McLean, Karaitiana and Renata of the danger posed by having the Pai Marire group so close to the town. Apparently anxious to vindicate his suspicions after the battles, Williams produced a confession from Te Rangihiroa's son, who was captured at Omarunui, which told of a plan to attack Napier.[28] Ballara and Scott are dubious about how much information was gleaned from the confession, and how much was interpolated by Williams's over-active mind. They have also pointed out how much the Government 'was forced to rest on a story put together and documented *after* the fight rather than on primary evidence from before it' (emphasis in original).[29]

So, did the predominantly Ngati Hineuru Pai Marire intend to attack Napier? Boast thinks that if they did, they went about it in a 'quite bizarre' way.[30] Ballara and Scott, through analysis of the admittedly vague letters sent by the group, believed that 'far from contemplating rebellion, Ngati Hineuru were hoping for McLean to mediate between themselves and what they saw as the belligerent Ngati Kahungunu chiefs'.[31] These historians contend that the attack on Omarunui was in fact partly motivated by a desire to punish Ngati Hineuru for their supposed sheep-stealing from Major Whitmore's Rissington pastoral estate. The Rissington run was located in the Ngati Hineuru contested portion of the inland Ahuriri block.[32] 'The battle of Omarunui, and the skirmish at Petane, were less a rebellion than a mistake', Ballara and Scott have concluded.[33]

Joy Hippolite has taken a different approach, arguing that the events of 1866 should be seen within the context of Hawke's Bay Maori politics of the time; that, in effect, the battles of Omarunui and Petane were a civil war between different factions of Hawke's Bay Maori.[34] She has argued that it is pointless differentiating between 'loyal' and 'rebel', and that the Crown exploited Maori factionalism in order to secure land, and control a region. The fact that the 1867 confiscation was indifferent to the boundaries of 'rebel' and others would appear to support Hippolite's emphasis. The next section of this chapter will hopefully demonstrate

26. Boast, vol I, J1, p 65
27. Ibid, p 66
28. Ballara and Scott, Mohaka Waikare block file, vol I, pp 24–29
29. Ibid, p 29
30. Boast, vol I, J1, p 45
31. Ballara and Scott, Mohaka Waikare block file, vol I, p 30
32. Ballara and Scott, p 32
33. Ibid, p 33
34. Joy Hippolite, 'Raupatu in Hawke's Bay', 1993, claim Wai 201 ROD, doc I17, p 50

that the Crown was indeed interested in acquiring all the land between the Ahuriri and Mohaka blocks, and will posit a tentative hypothesis that Ngati Hineuru perceived threats to the continued ownership of their land and that it was this which caused their their arrival in Hawke's Bay in October 1866.

5.2.5 The Crown's acquisition of the Mohaka–Waikare district

The Crown resumed purchasing in this district sometime in 1864 or 1865. An official list of lands for which negotiations had commenced named three blocks within the Mohaka–Waikare district. Tangoio was listed as a block of 100,000 acres, for which an undefined amount had been paid, the balance to be settled after survey. Ten thousand acres at Tarawera had a deposit of £50 placed on it, the balance again to be settled after survey. Both of these blocks had European squatters on part of them; indeed, G S Cooper reputedly had a 1200-acre sheep run at Tarawera in 1864.[35] Maungaharuru, described as containing 8000 acres, had a deposit of £100 against its name.[36] Its appearance in this list has seen it defined as a Crown purchase, rather than one of the blocks within the confiscation boundary, which were either retained by the Crown, or returned to certain Maori owners. No deed for Maungaharuru remains, however, to confirm exactly what arrangements were made in 1865. Nor do deeds appear to exist for the Tangoio and Tarawera payments.

Explanation for the Crown's advances may be found in evidence relating to the Native Land Court. Once the court started hearings in Hawke's Bay, the Crown's policy, it appears, was to pay certain Maori an advance, which was conditional on them then using the court to gain legal title. The Crown would then purchase the block. This is what occured with the Moeangiangi Reserve, detailed in chapter 4.4. Although no documents explicitly detailing this policy appear to exist in official records, no better explanation for the sequence of advances, court hearings, and final deeds, has yet been advanced.

Paora Torotoro applied to have the court determine title for four blocks in 1866, Mohaka, Maungaharuru, and Tarawera 1 and 2. The applications were advertised in June,[37] and came before the court in August 1866.[38] None of the applications were heard in August, as surveys had not been completed. Paora Torotoro denied that he had made the application for the Tarawera blocks, and said that he did not want to pursue investigation into them. He maintained that Te Waka Kawatini had made the application, and that the blocks had not been surveyed due to the land being in 'Hauhau country'.[39] This statement appears crucial to understanding the possible motivations for Ngati Hineuru's actions in October 1866. If they were aware of Te Waka Kawatini and Paora Torotoro's efforts to survey and sell their land from under

35. Whitmore, 'Return of all persons squatting on, or in anyway occupying Maori Lands over which the native title has not been extinguished, with the fullest particulars that can be obtained as to the character of the tenancy, etc', AJHR 1864, E–No 10
36. 'Return of Native Lands for which negotiations had been commenced', AJHR 1865, C–No 2, 23 August 1865, p 4
37. Boast, vol I, J1, p 58
38. Native Land Court Napier Minutebook 1, micro copy, reel 1, ATL, pp 96–106
39. Ibid, p 106

their feet, might that not have provided enough cause for them to protest this action? Such a display would be consistent with their actions in 1851, when they were threatened by the inland Ahuriri block boundaries. If the grudge was against Paora Torotoro, then choosing to camp at Omarunui made sense, as he was the principal grantee of the two Omarunui blocks. If Ngati Hineuru were fearful that certain coastal Ngati Kahungunu chiefs were intent on alienating their land, then their fears appear to have been well founded.

Further applications were made to the court following the fighting of October 1866. Applications for five blocks in the Mohaka–Waikare district, Purahotangihia, Tangoio, Moeangiangi, Te Kuta and Tutira blocks were made on 8 November 1866.[40] Of these, only the Moeangiangi reserve was awarded title by the court (see ch 4). Land purchase officer Locke had completed, via sub-contractors, the surveying of some of these blocks in the winter and spring of 1866. Yet Boast writes that when the cases were heard in December 1866, these surveys, on the instructions of McLean, were not made available to the court. Writing in the following years, Locke said that the surveys were withheld so as 'to facilitate the confiscation of the . . . blocks by the Colonial Government',[41] and that he had managed to persuade the applicants to withdraw in order 'to avoid any further complication'.[42] It is not hard to imagine that by December 1866, McLean felt that using the Native Land Court as part of the purchasing method in Mohaka–Waikare was becoming complicated. Therefore, to overcome any further impediments, he decided to use the New Zealand Settlements Act 1863.

Just one month prior to the confiscation proclamation, however, one further purchase in the Mohaka–Waikare district was completed. Seven Maori – Ihaka Te Waro, Korari, Paora Hira, Te Teira Te Paea, Tanihana Te Tirea, Mere Kingi, and Wi Maiai Tekaunu – signed a first deed for the Otumatai (Otumatahi) block, situated north east of the Moeangiangi block, in January 1866. This purchase also appears to have been conducted under the Crown's lay-by approach to purchasing. The seven signatories were paid £20, probably in order to secure their agreement to confirm the sale after the block had been passed through the Native Land Court.[43] Another deed was signed on 11 December 1866, paying out £400 for 4470 acres. The signatories were different: this time Tieme Puna, Mohi Tapuhi, Watene Tiwaewae, Paora Rerepu, Toha, Pitiera Kopu, Hohepa, and Whatane Kaharunga Moihi Tarapuhi signed. Ballara and Scott have stated that this second deed concluded the sale 'after Otumatahi had passed the Land Court'. Yet they do not provide a minute book reference. A hearing concerning this block has not been located in the 1866 Native Land Court minutes. Perhaps it was to be considered as part of one of the other five blocks from the coastal area of Mohaka–Waikare that came before the court in November. Why the Crown decided to pay £400 for this block, just weeks before the confiscation of the Mohaka–Waikare block is puzzling, as is the absence of a

40. Boast, vol I, J1, p 59
41. Locke to Cooper, 27 June 1868, in McLean Papers, folder 25, ATL, cited in Boast, vol I, J1, p 59
42. Locke to McLean, 6 June 1867, AGG-HB 1/1, NA Wellington, cited in Boast, vol I, J1, p 60; further research is required to unravel the confusion over the purchases made in the 1860s prior to the confiscation, and the blocks brought before the Native Land Court in 1866.
43. Ballara and Scott, Otumatahi block file, vol II, p 3

Native Land Court hearing. Further explanation of why this block was 'purchased' rather than confiscated, is discussed, along with the Maungahaururu block, below.

On 8 January 1867 McLean forwarded his request to the Governor and executive council that the area be confiscated. McLean described the area between the Waikare and Petane (Waiohinganga) Rivers, and inland to the Hawke's Bay provincial boundary, as half being owned by about sixty occupants, the other half owned by 'Natives who were taken in arms at Omaranui'. He cited support from Maori that the land owned by those taken in arms should be confiscated. Although describing the area as 'of very little value', McLean still noted that the district was bringing in £1300 per annum in rents.[44] Boast believed that as well as the punitive function confiscation provided, McLean probably had strategic purposes in mind; in particular, the construction of a military road along the track from Napier to Taupo.[45] Not only was the road designed to provide easy access to Taupo, the perceived haven for 'refugees', but McLean was also keen to see those loyal Maori 'in such distressed circumstances' be afforded the opportunity of earning money from construction employment.

The order in council proclaiming the confiscation of 270,000 acres was dated 12 January 1867. The proclamation specifically noted that 'loyal' occupants of the area would not have their land retained by the Government, yet the 'rebels' were afforded no such guarantee. Instead, they were to receive a 'sufficient quantity' of land for their needs, though this was dependant on them submitting to the authority of the Queen. As Boast has pointed out, the Crown, then, was presumably to retain any land in the rohe of the rebels, which the rebels did not require for their maintenance.[46]

At first McLean and the Government proceeded as if the Mohaka–Waikare district would be investigated by the Compensation Court.[47] Delays in getting a hearing, however, appear to have prompted a different course of action. McLean told the Government he would negotiate the division of rebel and loyalist land himself, admitting that part of his motivation was concern over the lessees and their annual £1300 payment in rents. The result of McLean's efforts, the Mohaka–Waikare No 1 Deed, became known as the 1868 Agreement. It was signed by Manena Tinikirunga and 49 others. Tareha did not sign, and Karaitiana signed as a witness only. In the Agreement, the Crown relinquished any claims it had to the coastal half of the confiscation district, excluding a 8500-acre area called Tangoio, as well as the blocks it claimed to already own, through previous purchases: Otumatahi, Maungaharuru, Moeangiangi and Arapaoanui.[48] The signatories were paid £150 to relinquish their claims to the inland half of the district, an area which the Crown was to retain. The 1868 Agreement probably reflects McLean's strategic concerns at the time. In 1868 the Ngati Tuwharetoa-controlled central plateau area was perceived as representing a threat to Napier. By keeping the inland half of Mohaka–Waikare

44. McLean to colonial secretary, 11 February 1867, IA 1/1867/566, cited in Boast, vol I, J1, p 56
45. McLean, undated memorandum, in McLean papers, folder 129, ATL, cited in Boast, vol I, J1, p 57–58
46. Boast, vol I, J1, p 61
47. Boast, p 71
48. Turton, p 557

for the Crown, McLean may have been using this land as a buffer between Napier and Taupo.

The 1868 Agreement did not settle matters in Mohaka–Waikare, and further efforts were made to tidy up loose ends. Perhaps nervous about the validity of its title to Maungaharuru, the Crown expended further money. Ballara and Scott have located a deed signed on 1 June 1868 by Locke, Toha, Tareha and Tiemipuna, which recorded payment of a further £85 for the extinguishment of Maungaharuru's title. This was obviously an exercise in retrospective validation. The 1868 Agreement had stated that Maungaharuru was already 'the property of the Crown'.[49] The Crown's supposed purchasing of the Maungaharuru block, and Otumatahi, prior to the confiscation of the district added further peices to the growing puzzle of Mohaka–Waikare lands. In attempting to understand the difference between Maungaharuru and Otumatahi, and the blokes confiscated outright by the Crown, it makes sense to follow the lead of the Waitangi Tribunal in its Taranaki report, which criticised purchases that were 'acquired in a climate of tension and hostility'.[50] It appears justified to view Maungaharuru and Otamatahi in the same light as the other confiscated blocks retained by the Crown.

Trying to unravel further the motives and reasoning behind clauses of the 1868 Agreement is unnecessary, as two years later a new agreemeent was signed. Boast contends that the 1868 Agreement lapsed because of the renewal of war on the East Coast.[51] Two months after the 1868 Agreement was signed Te Kooti, accompanied by some of the Ngati Hineuru taken prisoner in 1866, had escaped from the Chathams and landed at Whareongaonga.[52]

A party of Napier Ngati Kahungunu, led by Tareha, were involved in the pursuit of Te Kooti in late 1868.[53] One of Te Kooti's party, Nikora Te Whakaunua, a Ngati Hineuru chief, was executed following the siege of Ngatapa.[54] In April 1869 Te Kooti attacked Mohaka. Sixty-one Mohaka men, women and children were killed in the fighting, as well as seven Europeans.[55] Te Kooti made pilgrimage to Tauranga, Lake Taupo, in August 1869. A party of Ngati Kahungunu from Napier, engaged him in September, and, with other forces, again in November.[56] The decision to fight Te Kooti was an extension of the earlier decision made by the coastal Ngati Kahungunu to protect their interests by remaining close to McLean and the Government. As Henare Tomoana later said, he had been requested, presumably by McLean, to gather together an army. As chapter 4 has described, it was during the late 1869 campaign against Te Kooti and immediately after that the important Heretaunga block was sold.

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49. 'Mohaka–Waikare Block No. 1', in *Maori Deeds of Land Purchases in the North Island of New Zealand*, vol II, pp 556–558, copied in Ballara and Scott, document bank, sec 107
50. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 15
51. Boast, 'Report on Crown Purchasing of Mohaka–Waikare blocks', June 1994, document J3 of claim Wai 201 ROD, p 10
52. Binney, p 87
53. Binney, p 136
54. Binney, p 145
55. Binney, pp 160–161
56. Binney, pp 182–183

It was within the context provided by the Native Land Court facilitated alienations in the coastal Ngati Kahungunu hapu's heartland, the Ahuriri Plains, that McLean instructed Locke, by 1869 the resident magistrate for Taupo, Waiapu–Poverty Bay, and Wairoa, to negotiate another settlement of the Mohaka–Waikare district confiscated lands. Although Ormond stated in 1888 that Maori were widely consulted about the second deed, saying that there were 'lots of meetings; lots of travelling', Boast argues that Locke was over-committed, and was probably unable to maintain an adequate level of consultation.[57] It is important to recognise the change in strategic relations brought about by the last 1869 campaign, particularly the surrender of Te Heuheu. McLean chose not to confiscate any Ngati Tuwharetoa lands to ensure their neutrality. Te Kooti, of course, was still a potential, if lessening, threat. It is possible that McLean felt that to continue holding the Ngati Hineuru lands would have breached the good faith of Te Heuheu's surrender. Whether or not that was the case, the threat provided by Te Heuheu, if not Te Kooti, had passed when the second Mohaka–Waikare deed was negotiated.

The Mohaka Waikare No 2 deed was signed on 13 June 1870. As instructed by McLean, Locke had made provision for Tareha due to his recently 'becoming dispossessed of most of his landed property'.[58] The 1870 deed also may have reflected McLean's new attitude towards confiscation, as exemplified by his letter to Ormond, in which he stated:

> I believe that the Members of Cabinet are agreed that the confiscation policy as a whole has been an expensive mistake. . .[59]

Boast leans toward the view that McLean lost faith in confiscation generally, rather than just in Hawke's Bay. Either way, McLean was dissatisfied with the original confiscation, and the 1868 Agreement, and wished to make other arrangements. The 1870 deed, therefore, can be seen as an attempt to settle the 'mistake' of 1867. In the deed the Crown retained a coastal Tangoio block (9050 acres), the inland Waitara block (40,000 acres), and the strategic redoubt sites at Te Haroto (1000 acres) and Tarawera (2000 acres). As well as containing prime land, the Crown's acquisition of the Tangoio block probably served as a reminder to the community at Tangoio, not to contemplate joining Te Kooti. The Waitara block, again, was a valuable pastoral run, as well as providing land for the Napier Taupo road, and a corridor of land between the Ahuriri and Mohaka Crown purchases. The redoubt sites also provided protection for the road. The 1870 Agreement allowed the Crown an easy means of acquiring useful public reserves. A further 10 acres was taken for a public landing at Whakaari (site of a former whaling operation), and fifty acres was taken for a ferry landing site on the Mohaka River: a total of just over 50,000 acres in all.[60] The Crown also retained the blocks it considered it had already purchased:

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57. Boast, vol I, J1, pp 82–83
58. McLean to Locke, 18 November 1869, MA 1/5/13/132, Tarawera–Tataraakina block, Mohaka and Waikare districts, Part 1, RDB vol 60, p 22949, cited in Boast, vol I, J1, pp 83
59. McLean to Ormond, no date supplied, AGG-HB 1/1, NA Wellington, cited from Boast, vol I, J1, p 85
60. Boast, vol I, J1, p 93. Actual figures of what the Crown retained remained estimates since surveys were not completed till later in the 1870s.

Moeangiangi, the Moeangiangi reserve, Arapaoanui, Otumatahi, and Maungaharuru. A payment of £400 was made to Tareha and 28 others in 'full and final settlement' for Mohaka–Waikare. Of the three chiefs who did not sign the deed receipt, but did sign the deed, two were Paora Torotoro and Rewi Haukore, the grantees of the Omarunui block.[61] Ballara and Scott suggest that the £400 payment might have been to pacify Tareha's demands that *all* the loyalist land in Mohaka–Waikare was to be returned following the confiscation. Tareha's understanding had originated from the 1868 Agreement. If this payment represented, in effect, a final instalment for the down-payment made on the Tangoio area in 1865, it was not made to the customary owners and occupiers of the area.[62]

The rest of the confiscation area was divided into twelve blocks (see fig 7). Various names of 'loyal' Maori were placed under each block name in the schedule attached to the 1870 deed. The number of names on the blocks' schedules averaged 30. These 'owners' were to receive certificates of title for their respective blocks. This was a better deal than that afforded by the Native Land Court at the time, which was still observing the 10-owner rule. Of added significance was the inclusion in the deed of the clause:

> That the whole of the land [to be retained by Maori] shall be made inalienable both as to the sale and mortgage, and held *in trust* in the manner provided, or hereinafter to be provided by the General Assembly for Native Lands held *under trust*.[63] [Emphasis added.]

Having purchased or seized for its own purposes a large proportion of the best land in the confiscation area, the Crown was acknowledging with this deed that Hawke's Bay Maori wished to secure for themselves their remaining lands in perpetuity. Whether the Crown ensured that it remained committed to honouring this desire will be dealt with in chapter 6, as will the meaning of the words 'in trust', and 'under trust'. As well, queries and protests over the names in the lists, and the delays in surveying and issuing of Crown grants, will also be discussed in chapter 6.

The 1870 deed was validated by legislation the same year. The Mohaka Waikare District Act 1870 stated that Crown grants would be issued to those named in the 1870 deed, and that the returned blocks could not be alienated except by 21-year lease or by the 'compulsory taking of land for roads railways or other public works'. The Native Land Court was to determine succession of those issued with Crown grants. As Boast has pointed out, the returned blocks were in an unusual tenurial position. As a result of the confiscation, all the land had become Crown land. The investigation into and identification of customary owners was carried out in largely unreported hui, and by deed. The succession investigations were to be carried out by the Native Land Court, despite the fact that the court was not involved in the original

61. Turton, pp 560–562
62. Ballara and Scott, Mohaka–Waikare block, p 41
63. 'Mohaka–Waikare Block No 2' Deed, 13 June 1870, in Turton, p 559, copied in Ballara and Scott, document bank, section 108.

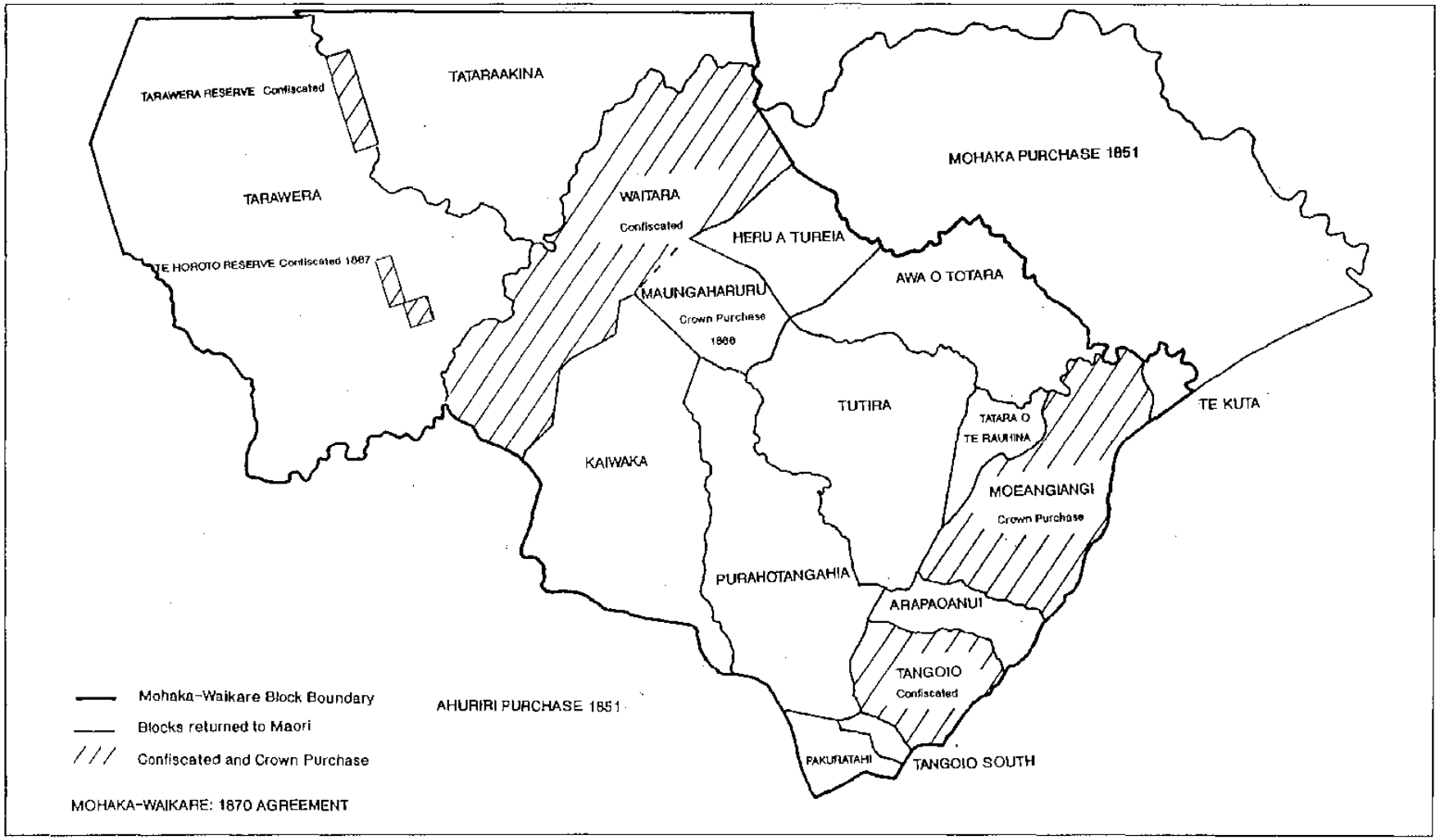

Figure 7: Mohaka–Waikare 1870 agreement map

awarding of title.[64] The last point in particular was to prove the most enduring complication.

5.2.6 The situation of the confiscated lands as at 1875

The signing of the 1870 deed and passing of its empowering legislation appeared to settle matters concerning the Mohaka–Waikare lands for a short period at least. By 1875 Maori on the block schedules were waiting patiently for their Crown grants to be issued. The hold-up included arguments over the acceptability of surveys completed by Locke in 1866, who would pay for these completed surveys, and who would pay for any further surveying still required. The Crown went ahead and surveyed its blocks in 1873.[65] Construction of the Napier-Taupo road continued, with some Maori gaining employment. Rents were still being paid by Europeans with leases on the blocks returned to Maori, yet Maori naturally lost the rents paid on the Waitara and Tangoio blocks confiscated by the Crown. By 1872, the political attention of Hawke's Bay Maori had shifted from confiscation to the operations of the Native Land Court and the repudiation movement.

5.3 CROWN PURCHASING IN THE KAWEKA AREA

5.3.1 Introduction

Despite the rugged inclines and high altitude, including some places almost impregnable by foot, the relatively inhospitable Kaweka ranges were a rich food source for Maori. Kiore, eels, root tubers and all manner of avifauna were reason enough for many different hapu to frequent the area at particular times of the year.[66] The lower ranges also afforded some promise as pastoral runs, and it was for that reason that the area first came before the notice of the Crown land purchasers.

The 1851 Ahuriri block deed extended its eastern boundary to 'along the ridge of Te Kaweka (ka waiho tonu te rohe kei runga i te tihi o te Kaweka)'.[67] Ballara and Scott doubt whether this was the boundary agreed to by the customary owners (see ch 3). The Kaweka area did not escape the attention of the group of chiefs who visited Wellington in early 1854, selling land in 'secret deals', without the consent of all the customary owners. The Ngaruroro block of 5000 acres, which covered the later blocks known as Timahanga, Omahaki, Ohauko and Kuripapango, is recorded in the form of a deed receipt.[68] Two hundred pounds was given to the six signatories as a down payment on the land. No further payment was made and it appears that the block was divided up within other, later purchases.

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64. Boast, vol I, J1, p 99
65. Horace Baker, Chief Surveyor, to surveyor general, telegraph, 1872 or 1873 (date unclear), MA 1/5/13/132, NA Wellington, cited in Boast, vol I, J1, p 101
66. Ballara and Scott, Kaweka block file, pp 1–4
67. Turton, 'Ahuriri' deed, 17 November 1851, pp 491, 488, in Ballara and Scott, document bank, section 108
68. Turton, Ngaruroro block deed receipt, 14 February 1855, p 578, in Ballara and Scott, document bank, section 108

5.3.2 Crown purchasing in the late 1850s

On 4 July 1855, Cooper wrote to McLean stating that he had agreed to pay £1000 for 50,000 acres for 'block no 5', which Ballara and Scott believe referred to what became known as the Kaweka block.[69] No record of further purchasing appears in the official records, however, until 1859. Most probably, attention was focused by Cooper and McLean on the more valuable blocks on the plains, and by the resulting conflict over these sales in 1857. Purchasing in the Kaweka area resumed in 1859. It was characterised by ill-defined block areas, a lack of even rudimentary surveys, and very little investigation into the identity of the customary owners. The Ranga a Tawhao block, situated to the west of the inland Ahuriri block border, was apparently sold by the Ngati Kahungunu chiefs Te Waka Kawatini, Karaitiana, Tareha, Paora Torotoro and two others. No deed appears in Turton's *Deeds*, however, though a deed receipt dated 28 June 1859 exists, whereby the above chiefs were paid £350; the balance was to be paid following survey.[70]

A month later Te Waka Takahari was paid £30 'for his lands' at Ranga a Tawhao. Twenty days later Te Moananui and others were paid £100 for 'the whole of the Kaweka, from the eastern to the western side'. In both cases the exact acreage and 'balance of the price' were to be determined following survey.[71] Locke, however, found that he was prevented by Maori from completing surveys of Ranga a Tawhao and Kaweka in early 1860. Cooper preferred to tell McLean that 'preposterous demands' for 'land of the worst possible description', and the cost of surveying land 'quite useless for sheep-runs', were the reasons for the non-completion of the purchases.[72]

5.3.3 Completion of the purchase of Kaweka

Ballara and Scott have located what they believe to be the final deed for the Kaweka block proper, signed on 15 June 1864. Handwritten, and not published in Turton's *Deeds*, the described boundaries, and signatories were similar to those detailed in the 1859 deeds. Although paid £300, presumably for the final extinguishment of the signatories' claims to the area, a survey had still not been completed. Instead, a sketch map appeared in the margins of the deed.[73] Research is required to accurately ascertain the amount of land that was finally included in the surveyed block, and whether it fairly equated with the estimations at the time of sale. Without this most basic information, it is difficult to come to any preliminary conclusions about the Crown's purchasing activity in this area. Claimant research should ascertain whether all the customary owners were identified and consulted by the Crown when deeds were negotiated. It appears possible that chiefs such as Tareha, Te Waka Kawatini and Karaitiana, whose claims to land were strongest closer to the coast and in the Heretaunga Plains, were willing to sell lands of marginal use to them. There appears

69. Ballara and Scott, Kaweka block file, p 7
70. Turton, Ranga-a-Tawhao deed receipt, p 590, in Ballara and Scott, document bank, section 108
71. Turton, Kaweka deed receipts, 7 July and 20 July 1859, pp 591–594 in Ballara and Scott, document bank, section 108
72. Ballara and Scott, Kaweka block file, pp 9–10
73. Ballara and Scott, Kaweka block file, pp 10–11

to be no other explanation for someone like Karaitiana's willingness to sell at a time when he was vigorously opposing sales of the Ahuriri–Heretaunga Plains. Another possible reason for the Crown's interest in purchasing the area was the strategic buffer zone it provided between Hawes Bay and the Volcanic Plateau. A further explanation is that Locke was attempting to make significant purchases in the volcanic plateau in the early and mid-1870s, and that the Kaweka region provided a stepping stone to this end.[74]

The Crown's tactic of purchasing various people's rights in a piecemeal fashion over a couple of decades, as it relates to the Kaweka ranges, is also something that requires further research. Given that surveys were not completed until decades later, and that the first pastoralists and their sheep who braved the rugged terrain did not do so in any numbers until the 1870s,[75] it is likely that various Maori users of the resources of Kaweka would have remained oblivious to the acquisition of the land by the Crown in 1864. Indeed, a further deed, for land called Mangatainoko–Mohaka, but which lay 'entirely within the 50,000 acres of the original Kaweka block', was signed on 3 May 1875 by 43 Maori apparently representing Ngati Kurapoto. Among the recipients of the £540 were Tareha, Toha, and Te Heuheu.[76] Overall the Crown spent just under £1000 for approximately 50,000 acres over a period of 20 years. No reserves were made in any of the sale deeds. Having expended that money, however, the Crown proceeded to neglect its acquisition. Wild dogs plagued the area in the later 1860s, and wild pigs roamed in large numbers, uprooting vegetation and causing erosion.[77] It is the Crown's lack of respect for the environs that it had purchased, that may well form a substantial part of the claims over the Kaweka area.

5.4 THE PURCHASE OF TAMAKI-NUI-A-RUA

5.4.1 Background

In 1870, Tamaki-nui-a-Rua (known by Europeans at the time as the Seventy Mile Bush, Forty Mile Bush, Tamaki Bush or The Bush) remained the largest area of land in Hawke's Bay left in Maori ownership. Because of this, and due to its good soil, large stocks of totara and matai, and most importantly its strategic position straddling Manawatu and Wairarapa, it attracted the attention of those in government wishing to promote the Immigration and Public Works Act 1870. J D Ormond, the Superintendent of the Province of Hawke's Bay, and his political ally, the Native Minister Donald McLean, were both keen to open up the bush lands in the interests of the province's progress and growth.

Some customary owners of the 300,000-acre territory had made their intentions to hold onto their land very clear to Cooper in 1857. Writing privately to McLean

74. B Bargh, *The Volcanic Plateau*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), November 1995, p 47–48
75. Matthew Wright, 'A History of the Eastern Kaweka Ranges', unpublished, New Zealand Forest Service, Napier, 1984, p 6
76. Ballara and Scott, Kaweka block file, pp 12–13
77. Wright, 'A History of the Eastern Kaweka Ranges', pp 2–14

in February of that year, Cooper explained that 'the Tamaki Bush will not be sold at present. I have always thought so and said so from the first, and all I hear confirms me in the opinion'.[78] Nevertheless, cash advances were made in the late 1850s by McLean and Cooper. This brought some success on 7 October 1859 with the signing of a deed for a block of land called Makuri. Payments made, and dating as far back as 1855, totalled £350. This block, according to Ballara and Scott, was repurchased as part of the Puketoi blocks in 1871.[79] The Omarutaiari or Takapau block was also purchased in 1859, but not without protest from other owners.[80] Small cash advances continued to be paid in the 1860s to chiefs likely to sell land in this area. Private opportunists saw advantage in the area as well; at least two pastoralists were illegally occupying 13,000 acres between them by 1864.[81]

5.4.2 Intensive purchasing, 'groundbait', and the Native Land Court 1870–71

In April 1870 Ormond telegraphed the colonial secretary, W Gisborne, asking for £150 to be forwarded to him to aid purchase proceedings. Ormond wanted the cash in order to pay £10 or £20 advances to certain 'upper-Manawatu' chiefs to enable them 'to live here [in Napier] whilst negotiations go on'.[82] This telegraph indicates that Maori incurred debts while in land purchase negotiations away from their own settlement. It is also worthwhile to note whether such advances were to be deducted from the final purchase figure. As well as making nominal and informal payments, the Crown also gave money with conditions attached. This has been described earlier in this chapter as being part of a lay-by approach to Crown purchasing. On 29 April 1870 preliminary deeds were signed for three blocks: Maharahara, Te Ahuaturanga and Puketoi. A nominal sum of £50 per block was paid, the bulk of the purchase money to be finalised following the passage of the blocks through the Native Land Court. The lay-by approach may not have been explicit policy, but it was certainly evident in practice. By August 1870, however, Locke indicated that Porangahau Ngati Kahungunu,[83] led by Henare Matua, Nopera, Paora Hakara, Aperahama and others, were opposed to the proposed sale. Locke, though, believed that the 'Rangitane whanui' were the principal owners and supported sales of the area.[84] Perhaps as a sop to some of the disgruntled owners, the Native Reserves Commissioner, Charles Heaphy, had reserved the 12,000-acre Oringi Waiaruhe block, which was situated in the Tamaki Bush, in May 1870.[85] This was one of

78. Cooper to McLean, 24 February 1857, McLean Papers, folder 227, ATL, cited in Ballara and Scott, Tamaki block file, p 13
79. Ballara and Scott, Tamaki block file, p 15
80. Ballara and Scott, Omarutaiari block file, p 6
81. G S Whitmore, civil commissioner, 'Return of all persons squatting on, or in any way occupying Maori lands over which the Native title has not been extinguished . . .' AJHR 1864, E–No 10, p 6
82. Ormond to Gisborne, 4 April 1870, telegraph, MA 13/8/b, NA Wellington, cited in Ballara and Scott, Tamaki block file, p 18
83. Though some of them sometimes claimed Rangitane status as well.
84. Locke to Ormond, telegraph, 3 August 1870, AGG-HB 3/18, NA Wellington, cited in Ballara and Scott, Tamaki block file, p 21
85. 'Report on the Native Reserves in the Province of Hawke's Bay', AJHR 1870, D–No 16, enclosure in No 9 Heaphy to Native Minister, 29 May 1870, p 14

Heaphy's trust deeds. J D Ormond, who was already leasing the block, continued to do so.

Locke worked hard in the period leading up to the first court hearings in September 1870. This was largely due to the growing opposition to the sale of Tamaki, coming in particular from Henare Matua, and H R Russell, Ormond and McLean's political foe. This anti-selling sentiment evolved into the repudiation movement. One of Locke's tactics was later described by interpreter James Grindell:

> Negotiations have been going on for more than a year with the view to purchasing the 70 mile Bush. In the course thereof, money has occasionally been advanced as 'groundbait', for surveys to enable the lands to be passed through the Court.[86]

The first hearing was held on 8 September. The 110,000-acre Puketoi block application was brought by Huru Te Hiaro, who claimed that the land belonged to Rangitane only, and that his intention was to gain unrestricted alienability as he favoured selling the land. He also submitted to the court that other Rangitane were not disposed to sell.[87] The court split the block into five, one of which was identified by Locke as the former Makuri block, and consequently exempted from court proceedings. The other four were granted to ten owners each, despite Huru Te Hiaro producing a list of 47 owners. Section 17 of the Native Lands Amendment Act 1867 provided for a list of owners to be recorded on the certificate of title, yet, for reasons not recorded in minutes, the court did not utilise this option. (see app II).

Other blocks were heard on the same day. In awarding shares for the Te Ahuaturanga block, the court rejected all claims other than those of Rangitane. Again, despite the Rangitane applicant, Hohepa Paewai, submitting a list of 66 people, the block was granted to just seven people.[88] The Maharahara block proceeded through the court in a similar fashion. Hohepa Paewai named 73 individuals, claims other than that of Rangitane were dismissed, and only seven names appeared on the certificate of title. Ballara and Scott criticised this practice of the court, for the reason that it 'disempowered many Rangitane people'.[89]

Two blocks, Tamaki and Piripiri, of 27,000 and 17,000 acres respectively, had their alienability restricted to provide for 21-year leases only. A further nine blocks were also heard (Manawatu 1–4, 4A, 4B, 5–7), and awarded to ten owners or less over a three day period. This haste led Ballara and Scott to conclude that the hearings 'were hardly adequate investigations of the Maori ownership and occupation of the Seventy Mile Bush'.[90] Locke submitted in 1873 that the hearings were held over ten days, and that 304,000 acres were divided into 17 different blocks, with 60,870 acres either reserved or with restricted alienability.[91]

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86. James Grindell, note on MA 13/82b, NA Wellington, undated, but Ballara and Scott believe it to be about June 1871, cited from Ballara and Scott, Tamaki block file, pp 34–35
87. Ballara and Scott, Tamaki block file, p 24
88. Ballara and Scott, Tamaki block file, p 26
89. Ballara and Scott, Tamaki block file, p 30
90. Ibid
91. Locke, memorandum for commissioners re Tamaki, 28 February 1873, appendix no 10, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, p 170

Despite the rejection of the claims of most of the anti-selling faction, Locke was still displeased at the outcome of the hearings. He wanted the large blocks to remain intact, the inference being that smaller blocks and more owners would lead to more difficult purchases. Nevertheless, Locke's purchasing proceeded on a comprehensive scale. In April 1871 Ormond reported that the Crown offer of £14,000 for about 230,000 acres had been rejected, as the owners were holding out for £20,000.[92] In fact many who were willing to sell were actually asking up to £30,000 for all the blocks, less any reserves they named. Karaitiana Takamoana, who was Rangitane through his father, led a group who were willing to sell for a lower price. In April 1871 it was calculated that Locke had made advances up to of £1300 to Karaitiana and 23 others. The laying of 'groundbait' proved effective. On 1 June 1871, twelve grantees (many of whom featured in a number of the blocks), signed an agreement to sell the twelve blocks the Crown wished to purchase. The total amount agreed to was £16,000, of which £600 was paid immediately.[93] Ormond complained to McLean that the amount was likely to rise to £18,000 once survey costs and bonuses to chiefs had been factored in to the price. He blamed 'interested Europeans' who had 'put an undue value on the land' by telling Maori of the importance of having 'these lands for purposes connected with the colonizing scheme of the government.'[94] Two further months of negotiations with other share-holders ensued. On 16 August £12,000 was paid to the 69 signatories of the Seventy Mile Bush Deed (though 23 appeared not to have signed until up to a month later).[95]

Final completion of the purchase, however, rested on gaining the signatures of those grantees not party to the agreement and August deed. Ormond and Locke's tactics to achieve this have been criticised by Ballara and Scott. In their report they point to a letter in which Locke refers to 'the question' of the 'amount of money to be kept back'.[96] Ballara and Scott believe that this money was kept back from the agreed £16,000 price in order to buy out remaining shareholders at a later date:

> By this method the Government held onto a share of the agreed price with the intention of later inducing the non-sellers to relinquish their rights. This tactic meant they could force the price down on the basis that the Government was not getting immediate title to the whole of the block . . . the net result was a price far lower than the £30,000 or even £20,000 that was demanded as fair compensation for the Bush.[97]

The Maori who were unwilling to sell employed their own tactics. They threatened to Locke that they would partition their interests and lease them privately (which they were well entitled to do). Locke continued to hold money back. The interpreter

92. Ormond to Premier Fox, 6 April 1871, MA 13/82b, NA Wellington, cited in Ballara and Scott, Tamaki block file, p 33
93. Ballara and Scott, Tamaki block file, p 36
94. Ormond to McLean, 17 June 1871, AJHR 1871, D–7, No 5, cited from Ballara and Scott, Tamaki block file, pp 36–37
95. Turton, 'Seventy Mile Bush (Tamaki)' deed, 16 August 1871, pp 562–569, in Ballara and Scott document bank, section 108
96. Locke to Ormond, 8 August 1871, AGG-HB 3/18, NA Wellington, cited in Ballara and Scott, Tamaki Block file, p 38
97. Ballara and Scott, Tamaki block file, p 38

James Grindell was dispatched to obtain some of those signatures at Tahoraiti, and although successful in this appointed task, he found dissatisfaction and discontent:

> Wirihana Kaimokopuna was the last man who signed, and he did so with great hesitation, resting his head upon one hand and holding the pen in the other for a considerable time before affixing his signature.[98]

Locke failed outright to obtain Aperahama's wife's share, as her husband, he explained, 'became quite excited and ordered me to go away'. Grindell qualified his failure with the comment that: 'Her share of the money is in Hohepa's keeping and will be ready for her whenever she may feel inclined to sign . . '.[99] So the situation rested for some months, with the Crown holding the bulk of the shares to the twelve blocks included in the £16,000 purchase. In mid-1872 some Rangitane voiced complaint at the distribution of the purchase money: 'You have given all the money for Tamaki to Karaitiana and have not borne us in mind', Peeti Te Awe Awe told Ormond.[100] McLean became aware of the complaint and paid Manawatu Rangitane £500. Further costs were borne by the Crown in the form of gifts of gold watches and swords to chiefs who were described as having taken an 'honourable part' in the Tamaki purchase. Due to mounting pressure from the repudiation movement, Locke was unable to make any in-roads into the remaining shares; instead, he was forced to admit that the Porangahau Maori were instructed to look on him as 'Satan'.[101] Locke's attempt to survey and partition out the non-sellers's shares was rejected: complete repudiation of the sale was being sought by shareholders influenced by Henare Matua's repudiation committee.

5.4.3 Complaints regarding the purchase in 1873

Henare Matua provided the 1873 commission with the most damning attacks on Crown purchasing methods and the role of the Native Land Court. He cited the fact that some owners could start a survey without the consent of all. He accused the Native Land Court of rejecting the legitimate claims of Aperahama's people, because he and his people were opposed to Crown purchasing. Henare Matua also accused the Government of not acting on Chief Judge Fenton's recommendations that new surveys be carried out, or a re-hearing be held; and finally of advancing their purchasing in the face of consistent opposition.[102] Locke was asked by the commissioners to respond to Henare Matua's complaints. His memorandum supported the court, stating that the 'claims of the present petitioners were fully inquired into'. Although at the time unhappy at the number of sub-divisions made

98. Grindell to Ormond, 24 August 1871, AGG-HB 1/3, NA Wellington, cited in Ballara and Scott, Tamaki block file, pp 41–42
99. Ibid, p 42
100. Peeti Te Awe Awe to Ormond, 8 June 1872, MA 13/82b, NA Wellington, cited in Ballara and Scott, Tamaki block file, p 43
101. Locke to McLean, 10 July 1872, McLean Papers, folder 394, ATL, cited from Ballara and Scott, Tamaki block file, p 44
102. Evidence of Henare Matua, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, evidence, pp 135–137

by the Court, Locke now heralded this fragmentation as necessary to enable 'all sections of the claimants to be fairly represented in the grants'.[103] Pointing to the three blocks not being purchased by the Crown because of the majority of shareholders in those blocks being opposed to their purchase; noting that of the 86 grantees the Crown hoped to purchase from, 76 had signed the deed of sale; and arguing that the Crown had consulted Maori who were not grantees but were likely to have an interest; Locke put a convincing case to the commission.[104] Henare Matua's response to Locke's memorandum rejected the Crown's tactic of holding back £4000 for those shareholders yet to sell:

> Who said the people were waiting for £4000? The only thing for the people of Tamaki is the land, but the money must be given to those who require it for their maintenance.[105]

Henare's further criticism was of a general nature, attacking the Governor for allowing women and children to be tempted into selling by Government officers 'showing them money'. He concluded with the argument that if Tamaki had been 'a real selling', then 'no trouble would have arisen on that land'.[106]

The commission chairperson, C W Richmond, dismissed Henare Matua's complaints, as they were, in Richmond's opinion, complaints against the Native Land Court for being a 'mere instrument of the Executive'; an assertion Richmond rejected. Identifying Henare's object as 'denying the authority of the Lands Court to determine conclusively upon Native title'; and instead arguing for 'the whole matter of the division of his [Henare's] district to what he calls his runanga', Richmond noted that compliance with such demands was 'evidently impossible'.[107] Failing to provide necessary specifics, Henare's complaints regarding Tamaki were rejected. Even the Maori commissioners, Wiremu Hikairo and Wiremu Te Wheoro, dismissed the bulk of his complaint, agreeing with Richmond that the 'Native Land Court acts on its own responsibility, and not by direction of the Government'.[108] Ballara and Scott point to a further nine complaints about Tamaki made to the commission but not heard in evidence (except that of Hamana Tiakiwai, which was rejected), arguing that these complaints, all relating to non-inclusion in certificates of title, tend to 'substantiate Henare Matua's claim that some people with rights in the blocks had not been consulted, that the Crown had dealt only with willing sellers, and that those who complained were left out of titles'.[109]

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103. Locke, memorandum for commissioners re Tamaki, 28 February 1873, appendix no 10, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, pp 170–171
104. Locke, memorandum for commissioners re Tamaki, 28 February 1873, appendix no 10, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, pp 170–171
105. Henare Matua to commissioners, 8 April 1873, appendix no 11, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, pp 171–172
106. Ibid, p 171
107. Report of commissioner Richmond, case no XXV, Tamaki, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, reports, p 36
108. Report of commissioners Hikairo and Te Wheoro, case no XXV, Tamaki, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, reports, p 78
109. Ballara and Scott, Tamaki block file, p 51

5.4.4 Conclusion

On 25 December 1873 the final £4000 was paid over to about 65 signatories, most of whom appear to be those who signed the 16 August 1871 deed. Ballara and Scott's argument – that remaining shareholders were disadvantaged because they were unable to secure higher prices, due to the pre-determined amount of money set aside for them – loses strength from this point on. The signatories to the final payment did not represent all of the shareholders in the Crown-purchased blocks, consequently, the first Crown-purchased Tamaki blocks were not gazetted until 1877. The Crown, therefore, continued to pick away at the remaining shareholders throughout the rest of the 1870s. In 1878, five blocks had been gazetted; three blocks required one signature to obtain.[110] Aided by Henare Matua and the repudiation movement's counsel, J Sheehan, those still with shares demanded reserves as part payment for their Crown grants. The pursuit of the remaining shares proved costly for the Crown: interpreter James Grindell, the expert on laying 'groundbait', was employed at the rate of £1 per day, with a £10 bonus payable for each signature secured.[111] In August 1880, interpreter Josiah Hamlin was offered £200, plus expenses, to gain the last seven outstanding signatures. He failed. In 1882 the Government admitted defeat and sought to have the non-sellers' shares identified by the Native Land Court and partitioned out from the general Crown land.

Under constant pressure to alienate, those Maori shareholders unwilling to sell appeared able to force concessions from the Government. By 1882, having obtained rights to various partitions of Tamaki, and still holding shares in the reserved and inalienable blocks, these Maori appeared to have negotiated a better deal than that gained by other Hawke's Bay Maori, most notably in the case of Heretaunga (see ch 4) or by those who sold their Tamaki shares earlier in the 1870s.

5.5 THE SITUATION AS AT 1875

As indicated in the introduction to this chapter, this section serves the rather ambitious purpose of providing a summary of Maori social and economic development for the first 25 years of interaction between Maori and the Crown, concentrating on the position as at 1875. It is important to make some attempt at presenting an overview of the social and economic status of Hawke's Bay Maori. This is because the Crown land purchaser in 1850, Donald McLean, when negotiating the prices for the Waipukurau, Ahuriri, and Mohaka blocks, made oral promises of general prosperity to Hawke's Bay Maori. The purchase gold alone would not be the full payment to Maori, he intimated, as other benefits resulting from an influx of European settlers to the area, would follow. The promises of prosperity were one of the factors which made Maori eager to sell land in the 1850s. Whether this prosperity occured, then, is an important question to ask, though almost impossible to calculate accurately. Impressions only can be obtained. Perhaps even harder is identifying what responsibility the Crown had, if any, in ensuring that the

110. AJHR, 1878, G–4
111. Ballara and Scott, Tamaki block file, p 58

promises were kept. If Hawke's Bay Maori were being shut out of the development of their own tribal rohe, should the Crown have intervened? Should the onus for ensuring prosperity have fallen completely on the shoulders of Maori? What influence did other circumstantial factors have? These are some of the questions that should direct further historical research of the social and economic position and development, of Hawke's Bay Maori.

Ballara has argued that from the 1850s debts of Maori were one determinant in their decisions to sell land.[112] Both chapters 3 and 4 have discussed the issue of Maori debt, and the desire by Maori to take part in the expanding development of Hawke's Bay, by providing goods for market, labour, and leasing their lands for rent. In 1870, a rosy picture of Hawke's Bay Maori was painted by one Government official. Charles Heaphy reported that Hawke's Bay Maori possessed 'the greatest amount of material wealth of any tribe in New Zealand'. They had, Heaphy continued, wisely 'parted with the hilly pasturage country, and much good cultivatable land, but kept large areas of the rich plain [Ahuriri–Heretaunga] where their cultivations lay, and a sufficiency of grass country to afford them a large income from rents'. However, Heaphy noted that Maori had accrued large debts, and as a result had lost a considerable portion of the valuable Ahuriri–Heretaunga Plains land.[113] As chapter 4 and the preceding sections of this chapter have indicated, Heaphy's warning about the levels of debt and land loss suffered by Maori became even more acute in 1875, following renewed Crown purchasing and the policy of confiscation.

By 1875, then, most Maori land in Hawke's Bay had been alienated to Crown or private purchasers. That which remained in their ownership was either leased to Europeans, heavily mortgaged, or suffered from a lack of capital development. The growing town of Napier, the metropolis promised to Hawke's Bay Maori by McLean in 1851, was providing a market for those Maori able to produce a surplus, yet on the whole the town was growing without them. Indeed, Maori control of their own resources and destiny was beginning to wane.

Perhaps the most useful initial focus should be on the land itself. Chapter 3 described how the Crown claimed to have purchased 1,500,000 acres in Hawke's Bay by 1862. Chapter 4 explained how 150,000 acres was alienated from the Ahuriri Plains. Previous sections of this chapter have recorded the further alienation of the Kaweka and Tamaki blocks, and the area retained as confiscated by the Crown in Mohaka–Waikare: in all 350,000 acres. The bulk of the 600,000 acres remaining in Maori ownership in 1875 was either mortgaged, or leased to European occupiers. Government surveyor A Koch drew up a map of the Province of Hawke's Bay in April 1874.[114] On the map is a list of blocks that had passed through the Native Land Court, with a corresponding list of who occupied the blocks as at April 1874. While

112. Ballara, 'The Pursuit of Mana? A re-evaluation of the Process of Land Alienation by Maori 1840–1890', pp 520–530
113. Heaphy to McLean, 29 May 1870, AJHR 1870, D–16, pp 11–12
114. 'Map of the Province of Hawke's Bay', compiled and drawn from official sources by A Koch, Wellington, April 1874, AAFV 997/H22, NA Wellington, copied by Ballara and Scott, laminated copy held at Waitangi Tribunal Library, Wellington

not complete,[115] the list does demonstrate in general terms how little Maori were in direct control or occupation of Hawke's Bay land. Excluding the blocks that were part of the Wairoa court sittings, only 13,500 acres appear to have still been in Maori occupation. Obviously Maori were still receiving rents, estimated in 1868 as £20,000 a year by Cooper,[116] from numerous other blocks leased and occupied by Europeans, but as chapter 4 suggested, most of those lessees later bought out their Maori lessors' Crown grants.

Koch's map serves one other useful purpose. He has identified, (where, presumably, space has allowed), the name of the settler who was occupying pastoral runs on both Maori-owned land and that purchased by the Crown. It is interesting how few settlers were actually occupying the land. For instance, the 87,000 Mohaka block appears to have had only seven European occupiers: F Bee, J Anderson, P Dolbel, E Fannin, A Cox, D P Balfour, and J G Kinross. Some of these men would have owned their runs freehold; others required only the Crown depasturing licence with which to set up their huge estates. Most probably employed managers, rather than lived there themselves. The frequent recurrence of some of the names – Rhodes, McLean, Kinross, Ormond – suggests that but a bare few were profiting from Hawke's Bay farming. These were the so-called 'shepherd kings' of Hawke's Bay.[117]

Some land on the Ahuriri–Heretaunga Plains had been developed into smaller sections to encourage more agricultural and horticultural use. J D Ormond noted, however, in evidence given to the Hawke's Bay Native Lands Alienation Commission in the Heretaunga case, that even the smaller blocks of under a hundred acres were being used as grazing lands by their owners or lessees, and that Maori only were ploughing land on a large scale.[118] The full extent to which Maori were producing surplus crops for market is not known. In 1868 Cooper estimated that Maori were making about £5000 from sales of timber , surplus produce and waged labour. [119] Locke believed that one group of Maori at least were taking advantage of European trade opportunities. In May 1874 he said that up to 2000 bushels of wheat, 200 tons of potatoes, plus sizable quantities of maize and other foodstuffs were being harvested yearly by Maori on the 'Ahuriri plains'.[120] Judging by later reports, it is probable that the bulk of Maori cultivation was being carried out on land that was still in customary ownership, rather than having passed through the court. Maori earned money in a variety of ways. Transporting a Maori operated canoe full of wool from the large Rissington station, for example, could cost pastoralists up to £6 a

115. For instance although the Mohaka, Whareraurakau, and Waihua 1 and 2 blocks appear on the actual map, they do not appear in this list. Also, in the list Pakaututu is listed as being in occupation of Maori, yet on the map an E Carswell is shown as occupying the block.
116. AJHR 1864, A–4
117. Keith Sinclair, *Maori People after the Wars 1870–1885*, Auckland University Press, Auckland, 1991, p 112
118. Evidence of J D Ormond, Hawke's Bay Native Lands Alienation Commission, AJHR 1873, G–7, evidence, p 68
119. AJHR 1868, A–4
120. S Locke to Native Minister, 30 May 1874, AJHR 1874, G–2, p 18

load.[121] Maori worked as shearers and farm hands, helped construct roads, and, later, railways. They owned flour mills and coastal trading ships.

Sharing the remaining Maori land in Hawke's Bay (excluding Wairarapa and Wairoa) at 1874 were a total population of just under 3,000 Maori.[122] The 1874 census identified about 800 Ngati Pahauwera living at Mohaka. The Mohaka inhabitants lived on the north side of the Mohaka River, on blocks which had been brought before the Native Land Court in the late 1860s.[123] The census recorded a further 200 people living in the Waikare (Ngati Tauhere) and Arapaoanui (Ngati Moe) districts. Unfortunately, the census figures for Hawke's Bay land south of the Waiohinganga River do not give specific hapu populations. Instead, 71 hapu are listed, and a total population of 1870 people is given. At this stage Locke, for one, was not concerned at Maori not having sufficient lands for their needs:

> Although a large extent of the land in the district has passed from their hands, there still remains much more than the Maori population are likely to require, care only being taken that certain reserves actually aquired for Native occupation, be restricted from lease, sale or mortgage.[124]

Locke's comment requires further analysis. He appears to believe that Maori should only require and retain ownership of land 'actually aquired for . . . occupation'. Taken at face value, Locke would apparently not have intervened to halt the alienation of any land that Maori were not immediately occupying. Presumably, then, Locke's future for Hawke's Bay Maori did not necessarily include them having sufficient property to maintain a tribal economic base. This attitude contradicts that expressed by other Crown agents in 1870, who were concerned at the state of Tareha's landlessness, and, as a response, had his name inserted on many of the Mohaka–Waikare block schedules, including sole responsibility for the large Kaiwaka block.[125] At the same time Native Reserves Commissioner, Charles Heaphy, saw fit to vest 31,000 acres of Maori land in trust for their future benefit. This was in addition to the 100,000 acres of Maori land at the time deemed inalienable except by leases not longer than 21 years. Heaphy was careful to include portions of the best fertile land (such as Pakowhai village), and land for pastoral sheep runs.[126] Reserved blocks such as Oringi Waiaruhe, in Tamaki-Nui-a-Rua, were not just for occupation purposes, but were expected to provide cash from lease rentals. In 1875 J D Ormond was leasing the reserve.[127] Chapter 6 will show that land Heaphy wished to have reserved in trust was not in fact always reserved, and will further examine how well the Crown responded to the issue of Maori retaining

121. M Wright, 'A History of the Eastern Kaweka Ranges', p 27; see also Waitangi Tribunal, *Mohaka River Report 1992*, Brooker and Friend Ltd, Wellington, 1992, pp 52–53
122. Census in AJHR 1874, G–7, pp 11–12. This figure is only an estimate, and although 77 hapu are listed, there are notable omissions. Ngati Hineuru, for example, do not appear in either of the Hawke's bay tables, nor in the Taupo.
123. Waitangi Tribunal, *Mohaka River Report 1992*, p 42–47
124. Locke to Native Minister, 30 May 1874, AJHR 1874, G–2, p 18
125. Boast, vol I, J1, p 94
126. 'Report on the Native Reserves in the Province of Hawke's Bay', enclosure in No 9, D–No 16, AJHR 1870
127. See Koch's 1874 map

land. The alienation of land facilitated by the operation of the Native Land Court had led to Maori being dispossessed of prime land on the Ahuriri–Heretaunga Plains. It was this land which they had wanted to use as an economic base by which the runanga would be funded. Therefore, with the loss of this revenue, other political strategies were employed.

Following the cessation of armed warfare in 1870, Hawke's Bay Maori participated in the politics of repudiation. Spurred by the loss of Heretaunga and other blocks on the plains, and funded by McLean and Ormond's political foe, H R Russell, the repudiation movement gained widespread support in the early 1870s.[128] The tactics employed by the repudiationists had changed from the use of traditional control mechanisms such as the Whata of Te Herenga, the policy enforced by the runanga to punish chiefs who sold the land secretly. Now the New Zealand Government was seen as a legitimate body with which to register protest, and to have grievances heard and adjudicated upon. Indeed, the tradition of petitioning had its genesis in the repudiation movement. Two petitions signed by upwards of 500 Maori were forwarded to Parliament in 1872. They led to the appointment of the 1873 commission,[129] the evidence for which forms the bulk of material for discussion in chapter 4. The first response following the report of the 1873 commission was for 300 Maori to petition parliament again, asking for another commission to hear the claims not investigated. It was hoped that this further commission would be vested with greater powers than the first, in order to conclusively resolve the complaints at the time of hearing by immediate judicial action.[130]

At 1875 the leading Hawke's Bay chiefs, Karaitiana, Henare Tomoana, Renata Kawepo, Paora Kaiwhata and Henare Matua, were closely allied, despite Karaitiana's involvement in the Crown's purchase of Tamaki. Henare Matua seconded Karaitiana's nomination for the Eastern Maori seat in 1875. Calls for effective political autonomy and a halt to all land sales continued to occupy the bulk of the komiti/runanga's meeting agenda. The repudiationists' Napier journal, *Te Wananga*, drew on the runanga's earlier responses to land alienation. In 1875, it was still promoting the advice given by 1860: lease lands, do not sell.[131]

The repudiationists turned from parliament to the pursuit of justice in the courts. Notorious merchant, money-lender and Maori land purchaser, Fred Sutton, found himself on the receiving end of a Court of Appeal decision regarding his purchase of part of the Mangateretere block.[132] Sutton fought back by petitioning the Native Affairs Committee, asking that Crown grants issued to Maori be used for the recovery of costs awarded to him in civil action. The committee declined his request, on the grounds that moves in that direction 'would be productive of unfortunate results'.[133] One of the Heretaunga apostles, James Williams, also found himself

128. Keith Sinclair, pp 113–115
129. *Reports of the Select Committee on Native Affairs*, Wellington, 1872, pp 3–4
130. 'Petition of 300 Maoris of Hawke's Bay, Wairoa, Turanga, and Taupo', in *Reports of the Select Committee on Native Affairs*, Wellington, 1872
131. Cited in Sinclair, p 119
132. Sinclair, p 119
133. 'Report on the Petition of Frederick Sutton', 15 August 1876, AJHR 1876, I–4, pp 4–5

threatened with legal action by one of the leading repudiationists, Pene Te Ua. Acting as agent for the Nelson brothers, who had leased Mangateretere East in 1867, Williams complained in a petition to the Native Affairs Committee that Pene Te Ua, as successor to a share-holder in the block, was refusing to allow the continuation of the lease on his share.[134]

As well as certain European Hawke's Bay settlers using the Native Affairs committee to air their grievances, Maori also sent a number of petitions in 1876. Nireaha Tamaki complained of land near Woodville being alienated by owners with no just claim to the area. The committee noted that Nireaha's petition was, in effect, an application for a re-hearing of a Native Land Court decision, and asked the house to consider the constitution of a higher court to hear such appeals, since it received so many of them.[135] Henare Tomoana and 33 others complained that the resident magistrate refused to visit Maori at Hastings to witness signatures. For fear of being 'led astray by drink', the petitioners preferred not to visit Napier. Without admonishing any particular person, the committee, nevertheless, took notice of the complaint.[136]

The expressed fear of visiting Napier confirms that Maori were being excluded from the growth of their town. The Maori clubhouse operated by Henare Tomoana, Karaitiana and others appeared to be the only place Maori could use when visiting Napier for business, and it was too small to cater for large groups. The other reason for visiting Napier, to collect kai moana from Te Whanganui-a-Orotu, went on unhindered. Yet, although not known to Maori at the time, the Napier Harbour Board Act 1875 vested Te Whanganui-a-Orotu in the Napier Harbour Board. This bill was passed despite evidence given to the Native Affairs committee by Henare Tomoana, Karaitiana Takamoana and others which rejected McLean's understanding that he had purchased the lagoon as part of the Ahuriri block purchase in 1851.[137] The realisation that they were not fully in control of their own destiny may have begun to dawn on Maori in 1875. As Locke wrote in May 1874, Maori were finding that 'the balance of power [has] turned in favour of the European'. The Te Whanganui-a-Orotu Tribunal have written that 'Maori were unrepresented in and virtually excluded from the provincial system of government'.[138]

If they were not now in control, were they receiving the benefits promised by Crown purchasing officers? Part of McLean's purchasing method had been to convince Maori that the actual sale price was only one benefit they would receive from selling their lands (see sec 3.2). Included in McLean's general promises of prosperity, was the opportunity for Maori children to learn English in European-style schools. In 1873 A H Russell, the Inspector of schools (and former Napier civil commissioner), reported on the progress of Hawke's Bay schools. Pakowhai village school, he believed, suffered from its principal Maori sponsors being involved in the Hawke's Bay Native Lands Alienation Commission.[139] Finance was clearly an issue.

134. 'Report on the Petition of James Nelson Williams', AJHR 1876, I–4, p 14
135. 'Report on the Petition of Nireaha Tamaki and one other', AJHR 1876, I–4, p 11
136. 'Report on the Petition of Henare Tomoana and 33 others', AJHR 1876, I–4, p 25
137. Tony Walzl, 'The Ahuriri Purchase', Wai 201 ROD, document F9, p 1
138. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, p 79
139. Russell to Native Minister, 4 July 1873, AJHR 1873, G–4A, p 1

As well as having gifted the two and a half acres for the school, Maori had also contributed over £200 for its maintenance. A third of the school master's salary was paid by Maori. The Omahu village school was similarly run and funded, with one notable exception. Ngati Te Upokoiri chief Renata Kawepo had arranged to gift 60,000 acres at Owhaoko. The land was to be administered by a trust who would lease the land, using the rentals for the school's maintenance.[140] As it happened, the trust was besiged with problems, relating to the Native Land Court's initial award, and Renata's right to the title of the land gifted.[141] The Omahu school, as well as catering for 40 Maori students, had six Europeans who boarded with the master, their fees supplementing the master's income. Renata complained that Maori should also be allowed to board but the master refused. Renata's concern centred on the loss of students to Te Aute school, which had boarding facilities. Russell noted that Te Aute school was self-funding, using the large estate of lands acquired from Maori in the 1850s for its maintenance funds. St Joseph's girls' boarding school, according to Russell, provided a much better standard of English language education than that of the village schools, but had suffered three student deaths from consumption. Overall, Russell's assessment of the state of schooling in Hawke's Bay was that the quality of education was poor, particularly at the village schools. Yet Maori raised £572 in one year to help finance the Omahu and Pakowhai schools, as well as providing the school sites, and, in the case of Omahu, a large land endowment. The extent to which Maori chiefs such as Karaitiana were in debt must have been affected by these additional financial responsibilities. Karaitiana himself donated £100 in 1872.[142] Whether Maori should have been paying anything at all is a question the Tribunal may well consider.

5.6 CONCLUSION

A wealth of archival and secondary material exists from which comprehensive research on the historicaleconomic and social position of Hawke's Bay Maori could be evaluated. The section above introduces some of the ways in which it could be measured, and asks some of the questions which could direct further research. Perhaps the most useful question to ask is how well Maori participated in and benefited from the development of Hawke's Bay during this period. By looking at the loss of revenue due to land alienation, and the extent of debt suffered by Maori (itself one determinant of land loss), a picture emerges of Maori failing to maintain the economic and social position that they desired. The cause of the failure can be found, to some extent, in the Crown's tactics of acquiring land, in its efforts to limit Maori land holdings, and its failure to provide adequate access for Maori to the skills required to fairly compete in the development of Hawke's Bay. The insufficient

140. Note by Locke, enclosure 2 of Russell to Native Minister, 4 July 1873, G–4A, p 3
141. The whole issue of Owhaoko–Oruamatua and Kaimanawa lands received a great deal of attention in the late 1880s, see Premier Stout's blistering attack on the Native Land Court in G–9, AJHR 1886, and minutes of a Native Lands Committee inquiry regarding the allegations made by him, in I–8
142. Russell to Native Minister, 4 July 1873, AJHR 1873, G–4A, p 1; Locke to Native Minister, 13 July 1874, AJHR 1874, G–8, No 14, p 22

provision of education is one example of this. Other examples, such as access to development credit, and the lack of chiefs' preparedness to participate in complex financial processes, are detailed in chapters 3 and 4.

Other possible causes for Maori failing to maintain the position they desired could exist, however, and should be explored further. Crown historian, Fergus Sinclair, for example, has suggested that Ngati Pahauwera 'laboured under the twin handicaps of isolation from markets and other centres of population, and the rugged infertile nature of its hinterland'. These economic and geographical disadvantages provided some reasons, according to Sinclair, as to why Ngati Pahauwera did not see all the benefits of entering the cash economy materalise to their favour.[143] Regional variations within Hawke's Bay, then, will always strongly influence the outcome of more detailed social and economic research.

This chapter has concentrated on land alienation in three different regions. Although each is unique, similar themes have emerged. At Mohaka–Waikare the Crown attempted to purchase land with a lay-by approach, which involved choosing the owners, paying them an advance which was conditional on the receivers of the cash gaining title in court, and then completing the deal with a final payment. Opposition to this method, and other factors, led to the Crown abandoning this approach in favour of the simpler raupatu option. Exactly how much land was confiscated by the Crown is confused. The proclamation said 270,000 acres, but surveys of the blocks returned to Maori were not completed until the early twentieth century. Part of the Pakaututu and Te Matai lands claim to the Tribunal concerns confusion over the boundaries of the confiscation.[144] The Crown admitted to taking about 50,000 acres as confiscated, but it seems more accurate to add another 12,000, to include lands which were purchased either months before or months after the confiscation.

The lay-by method was also used in Tamaki. There the Crown laid 'groundbait', in the form of small cash advances to customary owners, in an attempt to get them to take blocks into the court. It worked, and the Crown then gained the consent of a majority of shareholders to sell 230,000 acres of the 300,000-acre Hawke's Bay part of the Tamaki Bush. The shareholders unwilling to sell suffered relentless attempts by the Crown to obtain their signatures. This situation dragged on into the late 1870s, with a few Maori winning some concession from the Crown by virtue of their ongoing refusal to sell.

The purchase of the Kaweka area also had a long history. The first deed was signed in 1855, the last in 1875. In between the Crown never once surveyed its acquisitions, it simply re-purchased the same area, from different people at different times. In the end, the Crown's neglect of the area must have made the actual occupants and users of the ranges' resources wonder if if had been purchased at all.

Chapter 6 will continue to focus on regional land alienations, and continue the research into the social and economic status of Maori.

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143. F Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860–1903', evidence prepared for the Crown Law Office, undated, Wai 201 ROD, document C5, pp 2–4
144. Claim Wai 216, brought by the Te Matai 1 and 2 Blocks Trust. Reserach for this claim has been commissioned by the Tribunal.

CHAPTER 6

CONTINUING LAND ALIENATION AND OTHER ISSUES, 1875–1930

6.1 INTRODUCTION

This chapter will provide overviews of four subjects: population trends; general land alienation and associated issues; the fate of Maori reserved land; and evidence of continuing Maori protest about land legislation, and about a whole host of other issues. It will comment also on ways in which the social and economic status of Hawke's Bay Maori might be evaluated, and offer some examples of such an evaluation. It is important that further research on social and economic status occur, because, as Richard Boast has postulated: land alienation caused poverty, and poverty caused further land alienation.[1]

Covering such a lengthy time span has proved difficult. Yet it was essential to continue the narrative until 1930, in order to cover a further period of intensive Crown purchasing. From 1930 land titles were consolidated, and development schemes initiated. Both these land issues have been researched separately on a national level; and, due to the huge quantity and complex nature of the sources, this chapter has avoided addressing them specifically. This should not be seen to devalue grievances relating to consolidation and the development schemes.[2]

This chapter provides first a brief overview of the Maori population of Hawke's Bay. Various selected issues relating to land for the period 1875 to 1891 follow. These include commenting on the Maori land legislation, an attempt to discover the fate of Maori reserved land, to 1891, and provide an overview of protest made by Maori. A section commenting on Maori social and economic status follows. Finally, land issues are taken up again for the period 1891 to 1930. This final section provides a summary of the Crown purchasing in the Tamaki, Waimarama, Mohaka–Waikare, and Mohaka areas.

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1. R P Boast, 'The Mohaka–Waikare confiscation and its aftermath: social and economic issues', May 1995, Wai 201 ROD, document J4, p 20
2. Notably, claim Wai 430, brought by the late Charles Te Kahika Hirini, Ngati Pahauwera kaumatua, concerning the consolidation and development scheme of the Mohaka area.

6.2 POPULATION

Chapter 5 recorded that just under 3000 Maori were said to be occupying lands in Hawke's Bay in 1874, 800 of whom lived north of the Waiohinganga River. The next census, taken in 1878, recorded that this overall figure had dropped to 2025 people, 235 of whom lived north of the Waiohinganga River. Too much can be read into this disparity. Boast believes that the 1874 census figures were exaggerated, and that making sense of the discrepancy between 1874 and 1878 is not possible.[3] Poor delineation of hapu and Maori communities, inconsistent boundaries, Maori mobility; and, perhaps most importantly, Maori resistance to being counted, led to vague quantifications forming the basis of census figures. Nevertheless, although a decline by a third (in fact, the decline was by three-quarters, north of the Waiohinganga River) appears exaggerated, some decline in population may have occurred.

The 1881 census figures record an increase of Maori living north of the Waiohinganga: 455 as opposed to 1878's 235. The 1881 census at last started to give hapu and community specific figures, enabling a closer look at where people were living. Of the 455 Maori living north of the Waiohinganga, 274 were at Mohaka and Waikare. The Taupo census return records that 36 Ngati Hineuru lived at Te Haroto.[4] The Hawke's Bay return listed 24 Ngati Tohumare living at Arapaoanui, and 91 Ngati Kurumokihi at Tangoio and Petane. Thirty Ngati Matepu also lived at Petane.[5] A further 132 Ngati Matepu were recorded as living at Waiohiki. Ninety-two Ngati Mahu lived at Moteo, 82 Ngati Taha at Pakowhai, 50 Ngati Hori at Waipatu, and 45 Ngati Kahutapere at Kohupatiki. Completing the number of people living on or about the Ahuriri Plains were 101 Ngati Te Upokoiri living at Omahu and Ngahape, 52 Ngati Hinemanu living at Owhiti and 21 Ngati Whakao at Matahiwi; in all, 407 people.[6]

Further south, 122 Ngati Rua and Ngati Kurapare lived at Te Pakipaki, 21 Ngati Poroporo lived at Ngatarawa, and 131 Te Rangikoiaanake lived at Te Hauke, Patangata and Te Aute. The Wairarapa enumerator, however, recorded that 133 Ngati Papamaro from Pakipaki and Omahu were visiting the camp of prophet Paora Potangaroa, in the Wairarapa. 58 Ngati Hinekiri lived at Waipaoa (Waipawa?), 22 Ngai Toroiwaho lived at Mataweka, and 57 Ngati Parakiore lived at Porangahau (a further 42 Ngati Pahoro were recorded as normally residing at Porangahau, but were visiting Paora Potangaroa when the census was taken). 72 Whakaiti and 59 Ngati Putanoa lived at Waimarama – a further 60 Ngati Kurukuru, of Waimarama, were visiting Paora Potangaroa. 43 Ngati Hikatoa lived at Pourerere and Kairakau, 80 Ngai Tahu at Takapau, 81 Ngati Mutuahi at Tohoraite and Tawheroa, and 55 Ngati Kuha at Te Tarata, Pukehou and Tikokino. Adding the remaining 96 Hawke's Bay Maori said to be visiting Paora Potangaroa, gives a total population for the rest of Hawke's Bay of 1132.

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3. Boast, J4, p 27
4. AJHR 1881, G–3, p 24
5. AJHR 1881, G–3, p 23
6. This included 22 Te Ruati at Tokohomea, which I am unable to locate.

Adding together the adjusted figures from the Wairoa, Taupo, Hawke's Bay and Wairarapa censuses, 455 Maori were counted as living in Northern Hawke's Bay, or north of the Waiohinganga River and south of the Waihua River. A further 407 people lived on the outskirts of Napier, or about the Ahuriri Plains, but, notably, only those few children boarding at Hukarere or St Josephs schools, (of which one was Ngati Hinepare), were recorded as living in Napier itself. As mentioned above, 1132 Maori lived in Waimarama, Ngatarawa, and southern Hawke's Bay which included Pourerere, Porangahau, Tikokino, Takapau and locations in the Tamaki Bush. The total for Hawke's Bay in 1881, then, was 1994 people, still a thousand less than the figure of 1874, but within 30 of the 1878 census result.

Detailed analysis of further census figures is not necessary. This is because figures for Hawke's Bay, from 1886 through to 1926, maintained an average of approximately 2000 people.[7] Researchers concentrating on particular hapu claims will undoubtedly profit from closer examination of local variations during those years. Indeed, Boast has posited that population in the Mohaka–Waikare confiscation area declined between 1874 and 1886, recovered slightly between 1886 and 1891, declined again between 1891 and 1896, and finally, showed constant accretion from 1896 onwards.[8] He describes the population of Mohaka–Waikare Maori in the 1880s as 'appallingly low'. Given that the overall population figures for Hawke's Bay appeared consistent from 1878, the variations in Mohaka–Waikare may well be matched by variations in other areas.

6.3 LAND ISSUES, 1875–91

6.3.1 Introduction

For the last quarter of the nineteenth-century Crown purchasing in Hawke's Bay was concentrated in Tamaki. Chapter 5 described the Crown's ongoing pursuit of the remaining shares in those Tamaki blocks which had been included in the deed of 1871. From the mid-1880s this purchasing was extended to include other blocks in the Southern Hawke's Bay area: Waikopiro, Tiratu (Manawatu 4), Piripiri (Manawatu 2), Part Umutaoroa (Manawatu 1), and Manawakitoe. In 1888, Resident Magistrate Preece made a down-payment of £122 for Waikopiro, estimated at containing 26,400 acres. The same year he advanced £100 for the 58,000-acre Manawakitoe block. Taupo land purchase officer, W H Grace, made an initial payment of £225 for 254 acres called Te Matai block no 1, located in the Kaweka area.[9] In 1890 the restriction on the alienability of the reserve Part Umutaoroa was removed, leaving it available for sale.[10] By 1891, Tiratu had a £6 deposit on it, and Piripiri, £1013. The purchase of Piripiri would appear to herald the failure of the Crown to protect the inalienabe status of this block, awarded in 1870.[11] Section

7. Nancy G Pearce, 'The Size and Location of the Maori Population 1857–96 — A Statistical Study', MA thesis, Victoria University of Wellington, 1952
8. Boast, J., pp 50–51
9. Lands Purchased and Leased From Natives in North Island', AJHR 1888, G–2A, pp 6–7
10. AJHR 1890, G–3, p 4
11. Ballara and Scott, Tamaki block file, p 72

6.5.2, which resumes the narrative at 1891, returns to the Crown purchasing of these blocks.

In 1891 official figures stated that Hawke's Bay Maori still held just under 100,000 acres of customary land, which had not passed through the Native Land Court. Government officials believed that about 20,000 acres of this land was being used for pastoral and agricultural purposes by Maori, with the other 70,000 acres 'lying unproductive'.[12] Two blocks with undefined acreage, both in the Tamaki area, were informally leased to Europeans. Of the approximately 460,000 acres of land for which title had been awarded, and had not been alienated, practically all was leased to Europeans; 10,000 acres only were identified as being used directly by Maori. Interestingly, I could not locate any land in the Hawke's Bay Rangahaua Whanui district listed as having passed through the court, but still 'lying unproductive'.[13] These figures, however, should be treated with caution for two reasons. Firstly, the Hawke's Bay district in 1891 included the Wairoa and Gisborne districts. Accordingly, I have attempted to include in calculations only those blocks that I can identify as being in the Rangahaua Whanui district (Hawke's Bay, 11B). Secondly, statistics are inaccurate. The Tutira block, for instance, does not appear in the list, yet all the other Mohaka–Waikare blocks do. Also, the lack of surveys for Mohaka–Waikare, and other areas, casts doubt on the accuracy of the figures.

Despite obvious reservations, some important patterns do emerge from the statistics. For instance, it appears, that, generally, once land passed through the court, Maori tended to lease it to Europeans. Gaining title in the Native Land Court during this period, therefore, led to land being partially alienated, rather than being developed by Maori themselves. The cost of court proceedings, no doubt, played a significant part in this transfer of economic development. Therefore, although Maori were still in direct control of about 30,000 acres of land used for pastoral and agricultural purposes, two-thirds of this land was held under customary title.

Without the complication of individual land tenure, it appears, communal farming thrived. The figures show also that, despite the complications caused by the Maori land legislation, some land was still providing Maori with considerable annual rents. Notably, Waimarama (£1800), Porangahau–Mangamarie (£1600), and Pakowhai, where 407 acres was bringing in a rental of over £500. Pockets only of the sought after valuable Ahuriri–Heretaunga Plains, however, remained in Maori hands. Overall, in 1891, Hawke's Bay Maori were receiving rents of approximately £12,500. In 1868, this had approached £20,000. Despite a general accretion in Hawke's Bay land values the total amount of rents received by Maori had fallen. Most of the land reserved from Crown purchases, and still owned by Maori, which comprised 18,674 acres, was being leased to Europeans. The tenurial relationship between Maori landlords and their lessees on these reserves, was sometimes fudged. H R Russell, for instance, although leasing the whole Tapairu Reserve, also had an agreement whereby Maori would occupy a portion of it. Wharerangi was the same; people continued to live at the marae, while the lessee continued to legally lease the

12. AJHR 1891, G–10, p 4
13. AJHR 1891, G–10, pp 14–23, 49–51

whole block. Exactly what Maori understood leases of reserves to entail, requires further research.

6.3.2 Legislation issues

The period 1875 to 1891 saw few purchases of Maori land. Rather than being indicative of a reduced effort by the Crown and private Europeans to purchase Maori land, however, the lack of purchases can instead be traced to the chaotic operations of the period's Maori land legislation. If, by default, the land legislation acted beneficially for Maori, by allowing them to hold on to remaining lands, any benefits that accrued were outweighed by the hindrance caused to leases of Maori land to Europeans.

Hawke's Bay Maori, although maintaining a sizable surplus of wheat, oats, barley, corn, potatoes, and other produce for sale to Europeans, were still largely dependant on the rents they received from land leased to Europeans.[14] There are a number of issues relating to Maori land leased to Europeans that require comment. Evidence given to the 1891 commission of inquiry (the commission consisted principally of William Rees and James Carroll), into the operation of the Maori land legislation since 1865, showed clearly that Europeans and Maori alike were dissatisfied.

European witnesses complained that leases were exceedingly hard to obtain, were proportionate more costly to obtain than Crown land leases, and did not allow for adequate capital development. To illustrate the first point, Francis Logan, a Napier solicitor, told the commission that the cost in completing titles was 'very much more than that entailed . . . in negotiating sales and leases of property held by Europeans under Crown grant'.[15] Josiah Hamlin, a Hawke's Bay interpreter, stated that the Native Land Act 1873, which had ended the Native Land Court's 10-owner rule and replaced it with a requirement that all owners be recorded on a memorial of ownership, had virtually halted Maori land alienation in Hawke's Bay.[16] This was because prospective lessees had to obtain the signature of every Maori recorded on the memorial. This could involve finding, literally, hundreds of people. Further complications involved finding the successors of deceased owners. To gain succession, Maori had to apply to the Native Land Court for each block the deceased had shares in.[17] Owners who were minors had to have trustees appointed by the court, involving further expense; either for the Maori seeking succession, or for the lessee, who paid for the court expenses on their landlords' behalf. If the European lessee paid for the succession, lower rents to Maori were the usual result.

Consequently, European lessees were often able to obtain only a proportion of the owners' signatures. This was the case for the Tutira block, where the lessee, Herbert Guthrie-Smith, never had all the 36 owners (or sucessors) sign his lease. He only ever held, therefore, an incomplete 'holding title', and farmed with the possibility

14. Captain Preece, Resident Magistrate, Napier, to under-secretary, Department of Native Affairs, 2 July 1883, AJHR 1883, G–1A, p 8
15. Evidence of Francis Logan, AJHR 1891, G–1, p 120
16. Evidence of Josiah Pratt Hamlin, AJHR 1891, G–1, pp 122–123. 'Alienation', in this case, meaning both by sale, mortgage or lease.
17. Evidence of Rora Poneke (Nonoi), AJHR 1879, I–2, p 11

that at any time, those non-signatories could have a portion of his lease partitioned out for themselves.[18] A further fear expressed by Guthrie-Smith was that the threat of partitions might be used as blackmail, forcing the lessee to make ex gratia payments and higher rents. His Tutira 'landlords', Guthrie-Smith noted, did not employ such tactics.[19] The Meinertzhagen family, lessees at Waimarama, however, were made to pay, on one instance, a one-off £10,000 'golden handshake' to secure a further lease.[20]

This insecurity of title posed other problems. Matthew Millar, Napier estate agent and auctioneer, told the 1891 commission that this situation not only led to an 'almost complete cessation of transactions', but resulted also in the lessees' inability to develop the land. This was due to the reluctance of banks and lending institutions to finance anything to do with Maori individualised title. The end result, Millar stated, was that potential developers were scared off, and land which could have fetched reasonable returns, remained idle and unproductive.[21] The Waimarama lessees wrote that it was impossible to borrow money for capital development, using their lease as security. They eventually secured £5000 from England.[22] Part of the rationale behind the Crown's introduction of the Native Land Court was to enable Maori to gain title to their land on an equal footing with Europeans. Yet Maori title, even with Crown grants, was still regarded as something more complicated and difficult to deal with than that held by Europeans.

Europeans witnesses to the commission cited one more deterrent to entering into leases with Maori land owners. James Carlile, Napier solicitor, pointed to the 10 percent stamp duty, or land transaction tax, as a major impediment. Stating that this tax was calculated on the total amount of rent to be paid over the term of the lease, and had to be paid to the Government at the commencement of the lease, Carlile admitted that lessees passed on the cost to Maori. This had the effect, he stated, of preventing 'the Natives from getting a fair rent for their land'.[23]

The Europeans cited above gave their evidence to impress upon the 1891 commission how the land legislation was discouraging the economic development of Hawke's Bay. Unlike this report, they were not concerned with how the legislation was harming the development of Hawke's Bay Maori. Yet if Maori were dependent on rents for their economic survival, as Preece stated in 1883, any barriers to them obtaining fair rentals warrant close examination. Preece had his own opinion on how the land legislation could be amended, in order to enable Europeans greater ease of access to Maori 'un-occupied' land. He argued for the return of Crown pre-emption, stating that although Maori would receive less money than if leases were negotiated in the open market, this imbalance would even out due to lower costs and consistent management. As it stood, he argued, any extra rent money was quickly

18. H Guthrie Smith, *Tutira The Story of a New Zealand Sheep-station*',1921, this edition, 1969, AH & AW Reed, Wellington, pp 222–223
19. Ibid, p 223
20. S Grant, *Waimarama*, 1977, Dunmore Press, Palmerston North, p 55. I will return to the unique story of Waimarama in a later section.
21. Evidence of Matthew Robertson Miller, AJHR 1891, G–1, pp 126–127
22. Grant, *Waimarama*, p 43
23. Evidence of James Wren Carlile, AJHR 1891, G–1, pp 129–130

consumed by court costs, solicitor's fees, and the 10 percent land tax anyway. Preece felt also that if the Crown were managing leases on behalf of Maori, it could distribute rents in a more appropriate manner, rather than the existing one, when rents were doled out to Maori while they were attending court hearings, swiftly to be swallowed by immediate expenses.[24] That rents were lost in this fashion appears to have been a widespread occurrence. Guthrie-Smith recorded that every shopkeeper in the district knew when the Tutira rents were due, and that the money was promptly 'snapped up by creditors'.[25] The wider issue of Maori finances will be discussed further in another section of this chapter.

Maori evidence to the 1891 commission, held, not surprisingly, contrary views to Preece, in regard to the management of their land. Rather than have the Crown in control, Maori witnesses made a strong and unified bid to have complete control of Maori land returned to them. Henare Matua demanded that the native committees should, in effect, replace the Native Land Court, and rule on title, partitions, successions and the like.[26] Henare Tomoana, former member of the House of Representatives and later, Legislative Council member, agreed, stating that Maori needed to be 'allowed to make . . . [their] own laws'.[27] Although some witnesses felt there was still a use for the Native Land Court, its investigatory role was to be limited to giving legal effect to the findings of a 'strong committee'.[28] Still smarting from the losses sustained as a result of the Native Land Court's awards made between 1866 and 1870, and frustrated at the Crown's continued purchasing of blocks in the Tamaki area, Hawke's Bay Maori had had enough of the Native Land Court's high costs and poor decisions. They wanted to regain control of their land and their destiny. As the later section on land issues in the period 1891 to 1930 shows, however, the Crown favoured Preece's advice – and Maori control was diminished further. Before proceeding to that time period, however, it is necessary to provide an overview of recorded forms of Maori protest, illustrated with a few case studies.

6.3.3 Overview of Maori protest

As described in chapter 5, the repudiation movement had managed to focus enormous attention on Hawke's Bay land transactions. There are a number of published and unpublished histories which include sections describing this movement, to which I refer interested readers.[29] Large hui-a-iwi were held, petitions were signed and sent to Parliament; a newspaper, *Te Wananga*, was established to

24. Preece to under-secretary, 2 July 1883, AJHR 1883, G–1, pp 9–10
25. Guthrie-Smith, p 234
26. Evidence of Henare Matua, AJHR 1891, G–1, p 45
27. Evidence of Henare Tomoana, AJHR 1891, G–1, p 45
28. See, for example, evidence of Aperahama Te Kume, AJHR 1891, G–1, p 50, and evidence of Hori Niania, p 49
29. In no particular order, K Sinclair, *Kinds of Peace. Maori People after the Wars 1870–85*, M Boyd, *City of the Plains*, M Wright, *Hawke's Bay. The History of a Province*, and S Cole, 'The Repudiation Movement. A Study of the Maori Land Protest Movement in Hawke's Bay in the 1870s', MA thesis, Massey University, 1977; H A Ballara, various entries on Hawke's Bay Maori political leaders, in particular see entries on Henare Matua and Henare Tomoana, *DNZB*, vol III.

counter the Government-sponsored *Te Waka o Ahuriri*. A petition from Renata Kawepo and 790 others, sent in 1877, described the principal goals of the repudiationists, as formulated at a meeting in May of that year, at Pakowhai. Complaints were made about the lack of Maori representation in Parliament, about the land laws generally, and concerns were raised at the purchase methods used by Crown officials. In a nutshell, the petitioners desired control of their land and their destiny.[30]

Other petitions sent in late 1877 were more direct in their political lobbying. Renata and a thousand others attacked the proposed Native Land Bill before the house; another petition concerned the Native Land Sales Suspension Bill; yet another, sent by Renata and Henare Tomoana, asked for compensation they believed was due from their involvement in the war against Te Kooti.[31] A regular flow of petitions continued throughout the late 1870s. In 1879, Tareha asked Parliament to act on its promise to issue Crown grants for the blocks returned to Maori in the Mohaka–Waikare area. The Native Affairs Committee supported Tareha's request;[32] yet, no grants were issued until 1894.[33] Paramene Oneone petitioned Parliament also in 1879, complaining that J G Kinross had induced him to sign mortgages and conveyances for the Raukawa West block, after having 'supplied [him] with drink'.[34] This sort of complaint was a hangover from the effects of the Native Land Court private purchasing period of 1866–73 (see ch 4). There were many other similar complaints which continued to be the focus of the repudiationists, and which dominated Hawke's Bay politics in the late 1870s and early 1880s. Two of the most notorious cases concerned the Omaranui block, and the Te Awa o te Atua block. I shall summarise the events and issues of each, in turn, below.

(1) *'Not legally there': the case of Omaranui*

Omaranui, a block of mostly first class land,[35] situated on the southern bank of the Tutaekuri River, and comprising 3573 acres, was surveyed and brought before the Native Land Court by Paora Torotoro in March 1866.[36] Although it contained the well known kainga of Paora Kaiwhata's section of Ngati Hinepare and Ngati Mahu,[37] only two Ngati Hinepare chiefs were awarded title: Paora Torotoro and Rewi Haukore. Four years prior to having its title investigated by the court, the Omaranui block had been leased to a European settler, E Braithwaite. This lease

30. Petition of Renata Kawepo and 790 others, AJHR 1877, I–1, p 14
31. Reports of the Native Affairs Committee on various petitions, in AJHR, I–3, pp 24, 45. The committee turned down the request for military compensation. This was an ongoing grievance, which was never settled to the satisfaction of Henare Tomoana.
32. Report of the Native Affairs Committee on the petition of Tareha Te Moananui, AJHR 1879, I–2, p 18
33. Boast, J1, p 129
34. Report of the Native Affairs Committee on the petition of Paramene Oneone, AJHR 1879, I–2, p 26
35. Land in Hawke's Bay was sub-catergorised into first class (meaning fenced, well-drained, non-stumped, fertile, arable) to fourth class land (barren, mountainous, prone to drought or flooding etc). Some blocks, like Tutira, could contain all four.
36. Native Land Court MB, Napier 1, micro copy, ATL, Wellington
37. See Patrick Parsons entry on Paora Kaiwhata, *The Turbulent Years. The Maori Biographies from The Dictionary of New Zealand Biography, Vol II*, Wellington, Bridget Williams Books, 1994, p 42

excluded the 163-acre kainga, known as Ngatihira.[38] Notorious merchant and money-lender Fred Sutton, however, because of debts incurred by Paora Torotoro, gained a mortgage on the whole block, including the Ngatihira kainga, sometime in the late 1860s. Although the survey plan given to the court had included the whole area, it had also, apparently, shown a line dividing the two areas. The court, though, did not treat the two areas separately. This error lay at the heart of the ensuing grievance.

Sutton purchased the block outright in 1870 for £2500. Immediately after concluding the sale, Sutton on-sold to Braithwaite the 3410 acres that the latter was already leasing.[39] Braithwaite had to pay £3000 for his leased area, and, although Sutton later denied the allegation, it appears likely that Braithwaite had engaged Sutton to help him secure the freehold to the block.[40] Sutton's commission for doing so would appear to have been £500, and the title to the 163-acre Ngatihira kainga. Stopping Sutton from taking possession, however, was the presence of a small group of Ngati Hinepare–Ngati Mahu, who had had nothing to do with any of the transactions. The occupants had about half of the area in cultivation, growing oats, wheat, barley, corn and potatoes for their own use, and for supply to the Napier market.

Although this block came before the 1873 Hawke's Bay Native Lands Alienation Commission, the conveyance was only contested on the grounds of Sutton's payment of money to Paora Torotoro and Rewi Haukore. The Ngatihira block was not mentioned by either side. This can be explained in two possible ways. Firstly, an almost identical case was being heard by the commission for another block called Omarunui (No 2). This case concerned the same issue, that Maori had intended that a piece of land, called Kopuaroa, be retained for the use of Paora Kaiwhata and hapu, but it had been included in a conveyance to Fred Sutton. The grantees, who included Paora Torotoro, maintained that they did not know Kopuroa had been included in the conveyance. Paora Kaiwhata eventually left the land, after being paid for the improvements he had made. It seems likely he moved to Ngatihira, as he stated that he had moved to the adjoining paddock. The Maori commissioners, Wi Hikairo and Wiremu Te Wheoro, agreed with the complainants, and recommended that Kopuroa be returned. Chairman Richmond, however, favoured the evidence of interpreter James Grindell, and found that the grantees did know that they were alienating Kopuroa.[41]

The second possible reason could be that as Sutton had not begun to enforce his rights to the block, it had not become an issue. In evidence before the 1873 commission, Sutton said that he had never seen the land 'to this day'.[42] He had,

38. Evidence of John Bryce, to Native Affairs Committee, re: petition of Paora Kaiwhata and six others, AJHR 1881, I–2B , p 4
39. Evidence of Fred Sutton, to Native Affairs Committee, AJHR 1881, I–2B, p 14
40. Commissioner Hikairo, reporting on evidence heard as part of the Hawke's Bay Native Lands Alienation Commission, believed that Sutton had acted as Braithwaite's 'agent', AJHR 1873, G–7, reports, p 71
41. Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, see evidence at pp 112–113, Hikairo and Te Wheoro's report at p 69, and Richmond's report at p 30
42. Evidence of Fred Sutton, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7, evidence, p 121

however, seen the main block called Moteo. The case of Omaranui No 1, or, Moteo, heard by the 1873 commission, revealed all the classic features of a Fred Sutton alienation. The two grantees, Paora Torotoro and Rewi Haukore, had an account at his store. Paora, who appeared to control Rewi's activities, ran up a bill of over £1300, building a house, buying a buggy, purchasing alcohol, and generally using his account at Sutton's to pay any other debts. Within a year, on 5 October 1868, Paora's spending spree saw Sutton gain a mortgage over the block, and the following year, in April 1869, a conveyance was signed. Richmond blamed Paora's extravagent lifestyle for the loss of Omaranui; Hikairo, however, criticised Sutton's encouragement of spending by making endless credit available. He criticised interpreter Martyn Hamlin's bias in favour of Sutton, and concluded that the complainants had sufficient grounds for compliant.[43] Perhaps Sutton felt more confident following Richmond's findings, as he started pushing his claim to Ngatihira the following year.

Sutton commenced legal activity in 1874, obtaining from the Napier Supreme Court a writ for removal of the 'trespassers'. The court sheriff, however, refused to act on the court order, as he feared that if a confrontation erupted, he would not have the support necessary to defend himself. Sutton dismissed this excuse, saying that the rumours of possible conflict were trumped up by Donald McLean, and that McLean had interfered with the process of law, by telling the sheriff not to issue the writ. J D Ormond admitted that McLean had told the sheriff not to proceed, and had sent himself to try and negotiate a settlement. Ormond's attempt is a telling example of his and McLean's lack of understanding of how Maori customary title worked in Hawke's Bay. Ormond approached the Ngati Tukuaterangi chief Tareha, who although recognised as the leading Ahuriri chief, did not have the power to decide the fate of land owned by Ngati Hinepare–Ngati Mahu, who were led by Paora Kaiwhata. Ormond's initial discussions proved fruitless. Rather than taking up arms, the occupants employed the usual repudiationist tactic of getting their counsel, John Sheehan, to take their case to the Supreme Court.

Rewi v Sutton was heard in Napier. The plaintiffs argued that Sutton had known that Rewi did not know that he was alienating Ngatihira, as well as Omaranui itself, and that therefore Sutton had committed fraud when he obtained Rewi's signature to the whole block.[44] The jury found that Rewi had not consented to alienate Ngatihira, and therefore felt that Rewi's interest in the kainga 'should not be affected' by the conveyance held by Sutton. The judge, however, after citing many examples of case law, believed that he could not order Sutton's grant to be upset in any way. Included in his reasoning was the expressed concern that the bulk of the land had already been sold to a third party. As well, since the jury had not found that Sutton knew that Rewi did not know that he was consenting to alienate, the plaintiffs' accusation of fraud remained unproved. Accordingly, the judge awarded costs to Sutton.[45] Despite his legal victory, Sutton was no better off. The occupants,

43. Report of Richmond, p 31, Report of Hikairo, p 71, Hawke's Bay Native Lands Alienation Commission 1873, AJHR 1873, G–7
44. Rewi v Sutton, Supreme Court Napier, appendix 1, AJHR 1881, I–2B, p 24
45. Rewi v Sutton, AJHR 1881, I–2B, p 26

delighted by what they saw as the jury's verification of their case, and supported by large numbers of other Hawke's Bay Maori,[46] continued to defy the writ to have them removed from Ngatihira. Sutton, who had been elected to the Napier seat in the House of Representatives following the death of McLean in late 1876,[47] petitioned parliament himself in 1877. He demanded that as the holder of the Crown grant to the Ngatihira land he was entitled to have the Government's support in carrying out the writ of removal. Sutton wanted also to have his court costs paid.[48]

The Native Affairs Committee reported on the petition the following year. They admitted that as holder of the Crown grant, Sutton appeared 'to have a legal title to the estate'. However, the committee also found that by issuing the Crown grant, it was 'probable' that a 'wrong' had been committed against the Maori occupants. The committee asked that the Government look into the case.[49] This resulted in John Bryce, the Minister of Native Affairs, and William Rolleston, the Minister of Justice, visiting the occupants in 1880 to obtain a settlement, as they feared that if left to fester, the dispute 'might produce bloodshed'.[50] Bryce and Rolleston stressed to the occupants that for any settlement of the dispute to occur, both them and Sutton would have to make some concessions. Following this lead, Maori offered to cede 1000 acres of land at Te Kohurau,[51] in exchange for their 163 acres at Ngatihira. Despite the difference in size, the Te Kohurau land was still valued at considerably less than that of Ngatihira. Buoyed by the occupants' willingness to strike a deal, Bryce and Rolleston then approached Sutton, and offered to buy out his interest in Ngatihira for £1500, or just under £10 an acre. Sutton, who valued the land at £28 an acre, and said later that at the time he was receiving offers of up to £4000 for the block, refused to consider the offer.[52] Rolleston understood that the occupants may have been willing to cede the Whareangi Reserve instead, but, having investigated the possiblity, discovered that Whareangi was 'encumbered with liabilities', and that some of the Whareangi grantees opposed the loss of their reserve.[53] Henare Tomoana, sitting on the Native Affairs Committee investigating the petition, questioned Rolleston about the offer of Whareangi, inferring that it was Sutton who wanted the reserve. Sutton admitted later that at one point he did consider exchanging Ngatihira for Whareangi.

Ormond, meanwhile, continued his negotiations with Tareha, a little behind the pace, it seems, as Ormond still expected the Government to honour the original suggestion of a Te Kohurau exchange. Maori may well have understood the exchange of Te Kohurau to have been confirmed by Rolleston and Bryce, and not reliant on Sutton's compliance. This is what Ormond and Tareha believed. Sutton eventually seized the Ngati Hira block in December 1880, finding in occupation, he

46. Petition of Piripi Ropata and 200 others, AJHR 1877, J–1, p 4
47. Suttton's election so outraged Maori repudiationists that they included an angry message in one petition. How could the House allow such a man, who had been 'the means of their suffering such evils' to join them, they argued, AJHR 1877, J–1, p 4
48. Report of the Native Affairs committee re: petition of Fred Sutton, AJHR 1878, I–2, p 23
49. Report of the Native Affairs committee, AJHR 1879, I–2, p 19
50. Evidence of Bryce, re: petition of Paora Kaiwhata, AJHR 1881, I–2B, p 4
51. Te Kohurau was situated on the bank of the upper Tutaekuri River, further inland than Omaranui.
52. Ibid; see also Evidence of Fred Sutton, re: petition of Paora Kaiwhata, AJHR 1881, I–2B, p 12
53. Evidence of Rolleston, AJHR 1881, I–2B, p 6

stated, only one old man and a few women.[54] Ormond stated that Tareha had admonished him for betraying his trust, and for handing Tareha over to his enemy, Sutton: 'I never felt so humiliated in my life', Ormond later told the Native Affairs committee. Tareha died two weeks after the conversation.[55]

This case study highlights three major issues. First, it shows how actual occupants of a kainga could have the land sold from under their feet, without their knowledge, and without their consent. This could even include grantees who signed conveyances; once again, highlighting the havoc wrought by the Native Land Court's inadequate title investigations, and sloppy procedures. Secondly, it showed that using all the available European methods of recognised protest, such as litigation, mediation, petitions – and gaining some favourable results from them – could still not guarantee victory for Maori. This leads to the third issue which this case study illustrates; that being, the failure of the law to provide adequate redress, in a clear case of wrong-doing. In the first place, Sutton should not have been able to gain a mortgage and conveyance over the whole block. In the second place, he should not have been able to have the courts perpetuate and uphold this error. In the third place, a government that had no problem with suspending the rights of Maori at Parihaka, and passing legislation to hold the same as prisoners, without trial, should have been able to intervene in order to amend the error at Omaranui, and save Paora Kaiwhata's hapu from eviction. Even J D Ormond, hardly one to go out of his way to help the repudiationists' cause, was sufficiently outraged to tell the Native Affairs Committee that he felt that in this case, it was proper for the Government to overrule the Supreme Court decision.[56]

Sutton, of course, completely disagreed. To him the occupants were just 'trespassers', who had to be made to observe the law. They were not people about to lose their homes and a valuable piece of real estate; he did not care whether they were treated fairly by the courts or the Omaranui grantees; they were, as he so clinically put it, simply 'not legally there'.[57]

(2) *Te Awa o te Atua*

The case of the Te Awa o te Atua block, which comprised 5070 acres, resembles, in many ways, that of Omaranui. Again, Sutton was the purchaser, this time on behalf of a settler named Coleman, who held the lease of Te Awa o te Atua. Again, the dispute centred around the details of a conveyance signed by a Maori grantee, in this case, Paora Nonoi. And again, the courts failed to protect the interests of Maori, and the Government, while admitting that there was a dispute, was unable to settle it.

The Te Awa o te Atua case came before the Native Land Court on 20 March 1866. Adjourned to clarify boundaries, the block was awarded to 10 grantees in August of that year.[58] Paora Nonoi was one of eight grantees from whom Sutton

54. A claim has been recently received from Angela Harmer, on behalf of the descendants of Rewi Haukore, relating to the Omaranui block. Hopefully, claimant research will shed light on how many people this kainga supported, and what became of the occupants.
55. Evidence of Ormond, AJHR 1881, I–2B, p 8
56. Evidence of Ormond, AJHR 1881. I–2B, p 11
57. Evidence of Sutton, AJHR 1881, I–2B, p 18
58. Native Land Court MB, Napier 1, micro copy, ATu, Wellington, pp 106–107

obtained a signature. Sutton and interpreter George Worgan rode to Bridge Pa on the night of 31 August 1870 with the express purpose of getting Paora Nonoi to sign away his share of Te Awa o te Atua. Unfortunately, the evidence left of this encounter is piecemeal, and, at times, woefully contradictory. Paora's daughter, Rora Nonoi, who later brought civil and criminal action against Sutton, as a result of the meeting that night, told the Native Affairs Committee in 1879, that a bottle of pale brandy was consumed before business started.[59] Details of what occurred next, remain, as Worgan later put it, 'hazy'. Sutton denied the meeting took place at night; Worgan, a tragic witness, at first refused to admit that Sutton was even there. Sutton denied that he ever allowed alcohol at his business meetings – Worgan admitted that he always had a quantity when working at night.[60] Rora stated that her father had consistently refused to sell, but later took legal action only on the issue that a reserve had been promised to Paora, but had not eventuated. George Davie, a publican and storekeeper of Pukahu, described as a 'Pakeha–Maori', and who was the executor of Paora's will, stated that the morning after Worgan and Sutton's visit, Paora believed Sutton had come only to pay him rent.

To complicate the narrative further, Davie said that Paora had handed him a deed written by Sutton, promising Paora a reserve of 350 acres. Nevertheless, a conveyance for Paora's share did exist. It was possibly signed by Paora, and by Rora; yet Rora, on account of the brandy, could not remember whether she had signed or not. Paora, by all accounts an elderly and ill man, died soon after the night in question. George Davie disappeared with the deed promising the reserve. His wife thought him dead, yet he re-appeared some years later, apparently having been living in Australia. While he was away, Rora Nonoi, with William Rees as counsel, took a civil case against Sutton and Worgan, suing them for £7500, the perceived value of the reserve. Sutton won the case, by arguing successfully that Rora Nonoi was not the legal administrator of Paora's estate, only the successor according to Maori customary law; and, that the promise was not in writing.[61] Rees and Rora next made criminal charges against the two men, but the Napier magistrate refused to hear the case. The reason was an unusual one. Worgan was ruled unable to attend because he was sitting in Wanganui gaol, on remand, pending charges of forgery.

Worgan was having an unfortunate run in life. Found guilty of signing false declarations before the 1873 Hawke's Bay Native Lands Alienation Commission, Worgan's interpreter's licence had been suspended for a year.[62] The Wanganui charges were the subject of a royal commission,[63] and, in 1879, he was still serving time for a conviction of forgery. The Native Affairs Committee in 1879 made special efforts to have him escorted to Wellington so that he could give evidence. Once there, however, Worgan, although professing his innocence on the charges that

59. Evidence of Rora Poneke (Nonoi) to the Native Affairs Committee, re: petition of George Davie and others, AJHR 1879, I–2, p 11
60. Evidence of George Worgan, AJHR 1879, I–2A, p 22; evidence of Fred Sutton, AJHR 1879, I–2A, p 38
61. Evidence of W L Rees, AJHR 1879, I–2A, p 1. George Davie had been named in Paora's will as being his executor.
62. Report of Chairman Richmond, Te Kiwi Block case, Hawke's Bay Native Lands Alienation Commission 1873, reports, p 34
63. See Commission of Inquiry into charges made against Mr G Worgan, AJHR 1873, H–29, pp 1–30

saw him languishing in Wanganui gaol, pleaded to the committee that they not allow anything he said to be used to incriminate him. The committee moved that a special indemnity act be rushed through the House, to enable Worgan to talk freely. He then refused to remember much of anything, and contradicted most other witnesses who appeared.[64]

To return to Rora Nonoi's case. Having exhausted both civil and criminal avenues of redress, Rora Nonoi had no choice but to petition Parliament. Because of the earlier ruling that she was not her father's legal administrator, and because George Davie had re-surfaced with the deed promising a reserve, the petition was made in Davie's name. It received enormous attention from the Native Affairs Committee, and became a highly charged political event. Up to 18 members of the House sat on the committee at any one time. Ormond did not want to hear the petition at all, believing that the courts had already ruled in the matter. Rees was refused permission to act as counsel for Davie and Rora, but was allowed to appear as a witness. Defamatory accusations flew in virtually every interview. Rora Nonoi told the committee that on one occasion she was locked in Sutton's solicitor's office for hours, as money was slowly piled up on a table in front of her, all in an attempt to have her drop charges.[65] She was not released, apparently, until her husband, Wi Rangirangi, threatened to break down the door.[66] When describing the 'entrapment' issue, Rees stated boldly that he was willing to say things that implicated solicitors of Napier, and implicated 'gentlemen of this committee'. He must have touched a nerve, as the next recorded comment was that of Ormond, who spat back at him: 'What did you say?'. A point of order was then called by the chair. Sir George Grey later asked if Rees knew of bribes ever being offered to induce Maori to sign documents. Rees's reply could have probably cut glass. 'Yes', he replied, 'and from members of this committee'.[67]

Further insight is gained into European attitudes toward Maori from the committee exchanges. One committee member, a Mr Lundon, asked Rees: 'Are you not aware that Maoris will sign anything by offering them money and grog?'. Unfortunately, Rees affirmed Lundon's prejudice.[68]

Sutton told the committee that he had indeed promised the reserve, but that it was not promised to Paora solely, but to all the Te Awa o te Atua grantees. This reserve had been made, Sutton stated, as part of the final Te Awa o te Atua and Kakiraawa block conveyance, signed in 1877. Sutton was correct, the reserve was made.[69] Coleman had sold Te Awa o te Atua to James and A A Watt, who had paid £17,500 as final settlement of both blocks, the deal including a reservation of 400 acres.[70] Although this was an impressive looking monetary settlement, it remains unclear whether the Maori grantees benefited. Pene Te Uamairangi and three others

64. Extracts from the minutes of proceedings of the Native Affairs Committee, AJHR 1879, I–2A, p viii
65. Evidence of Rora Nonoi, AJHR I–2A, pp 13–14
66. Evidence of Rees, AJHR 1879, I–2A, p 3
67. Evidence of Rees, AJHR 1879, I–2B, p 5
68. Evidence of J P Hamlin, AJHR 1879, I–2B, p 38
69. Te Awa o Te Atua file, NA 21, vol 1, Maori Land Court, Hastings
70. Evidence of Sutton, AJHR 1879, I–2B, p 38; see also Te Awa o Te Atua file, NA 21, vol 1, Maori Land Court, Hastings

petitioned Parliament in 1880, claiming that the grantees did not recover any of the £17,500. Instead, the petitioners claimed that Russell and Sheehan, their repudiation sponsor and lawyer respectively, had used the money to cover legal costs and expenses.[71]

The Native Affairs Committee's minutes of proceedings show that the Te Awa o te Atua case had outgrown its immediate cause, and had mushroomed into a major political contest. Sir George Grey led those members who wanted to see Sutton fall, continually proposing motions to affirm the substance of the petitioner's case. Each time his party was narrowly defeated. The committee finally voted to take no action at all. Sutton had won again.

The 400 acre Te Awa o te Atua reserve remained in Maori ownership until 1895, when it was partitioned into 12 blocks, some of which were alienated to George Donnelly, Airini Tonore's husband. An appeal in 1899 saw the block re-partitioned into eight blocks. By 1926, the six sub-divisions left in Maori ownership were being charged survey liens at the rate of 5 percent per annum.[72]

Apart from the repudiationists' attempts to seek redress for grievances resulting from private sales via the Native Land Court, they were still also interested in pursuing grievances that had their origins in the Crown purchasing period of the 1850s. The most notorious example of this concerns the events that occurred at Tapairu, Waipawa. The similarities with the two cases described above will become readily apparent. These included confusion over boundary lines, the use of the courts, and Government admissions that the grievance was well supported.

(3) *Tapairu, Waipawa*

The genesis of this dispute hailed back to the surveying of reserves from the Waipukurau purchase of 1851. The actual dispute arose from a 'blunder', when the Crown grant for Waipukurau block No 14, issued to Hawke's Bay financier, Mr Tollemache, in 1858, included part of what Maori believed to be their reserve. District Officer G S Cooper, who leased block 14 from Tollemache, confirmed to Maori their idea of where the boundary lay. Cooper, after walking over the land, told local Maori that he believed a mistake had been made on the original Crown grant. Nepia Te Apatu stated that he and other Maori had lived on the disputed peice of land with Cooper's knowledge and consent.[73] John Harding, however, who purchased and occupied the run in 1867, believed that there was no dispute as such when Cooper owned the land, because at that time the reserve had not been defined with a fence line. It was when Henry Russell had leased the reserve (sometime in the late 1860s), Harding stated, that the boundary dispute arose.[74]

Nevertheless, from 1851, Nepia Te Apatu, Heta Tika and other Maori, had retained possession, occupied, and erected buildings on the strength of their understanding of where the boundary lay. Pressure over the disputed boundary

71. Report of the Native Affairs Committee on the petition of Pene Te Ua and others, AJHR 1880, I–2, p 15
72. Te Awa o Te Atua 1–8 file, NA 21–22, vol 1, Maori Land Court, Hastings
73. Evidence of Nepia Te Apatu, AJHR 1880, G–9, p 7
74. Evidence of J Harding, AJHR 1880, G–9, p 7

increased through the 1870s. Harding used the courts to give effect to his Crown grant. In 1872 he won cases against the Maori occupiers for trespass and use of timber. He obtained a writ of ejectment from the Napier Supreme Court in the same year. The case came before the 1873 Hawke's Bay Native Lands Alienation Commission, where argument centred around the original survey's boundary line, and provisional traverse lines, which were used to calculate the actual boundary. Richmond's finding that Maori had mistaken a traverse line for the boundary line became, ultimately, a red herring. Yet the flawed explanation persisted in Government minds and contributed greatly to the later friction. The Maori members of the 1873 commission were not taken in, however, and maintained that the Crown grant had erred.[75] In 1875, John Sheehan, supposedly acting as the occupants' counsel, also accepted the traverse line theory, and negotiated a settlement whereby Harding would take possession. The Maori occupants denied being party to this deal.

Events reached a climax in 1878, when Harding commenced erecting a fence, which cut off the occupants' buildings from the rest of their reserve. The Napier Sheriff was told to invoke the court's order of ejectment, and evict the occupiers, but asked instead for advice from the Minister of Justice, as he doubted 'if [the] Natives will give up possession'.[76] When nothing was done, Harding petitioned Parliament in October 1879. The Native Affairs Committee found that the 'Natives have an equitable claim', and recommended that the Government purchase Harding's grant and compensate him for any other costs incurred. In January 1880, J S Master, the local native officer, was told to try to settle the matter. Harding, however, refused to budge. The reasons for his stubbornness can be explained in two ways. Firstly, Harding argued that Maori owned a large reserve, which was at present let to H R Russell. He recommended that the Maori be forced to occupy the uncontested part of the reserve they already owned, instead of occupying a disputed section of it. In this respect, he was willing for Maori to upset the title of Russell's lease, but not to suffer any such intrusion himself. Secondly, given that events at Parihaka were dominating the political climate, that Fred Sutton was facing a similar situation at the same time at Omaranui (see above), and that Russell's support of Maori was widely scorned by other Hawke's Bay Europeans, Harding's refusal to be bought out had implications for the politics of the time. As he saw it, he held a Crown grant, had obtained confirmation of such by due legal process, and wished Maori to 'observe the law of the land'.

F E Hamlin, Government interpreter, was asked to mediate in February 1880, with little success. He telegraphed the Native Department on 24 February 1880 to say that Harding had ignored his request to talk, and had instead recommenced building a fence on the disputed boundary. Repeating earlier defiance, Maori stopped the fencing, and an estimated one hundred of them lined up across Harding's fence-line. Matiu Meke, one of the occupants' leaders, telegraphed Hamlin, detailing the day's events in simple terms: 'Mr Harding is at work at the fence. We are stopping him'.[77]

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75. Ballara and Scott, Waipukurau block file, pp 46–47
76. J T Tylee, Sherrif, to the Minister of Justice, 29 January 1878, telegram, in AJHR 1880, G–9, p 1
77. Matiu Meke to F E Hamlin, 24 February 1880, telegram, in F E Hamlin to Under-Secretary, Native Department, 24 February 1880, telegram, printed in AJHR 1880, G–9, p 3

Harding's telegram to Hamlin, sent 'collect' on the same day, was more provocative: 'will wait no longer, but proceed to get possession at all hazard, and expect police to protect me in getting and keeping possession. Continue fencing today'.[78] The Napier sheriff, now Paul Birch, once again telegrammed the Minister of Justice: 'Considerable feeling still exists. Natives unlikely to yield. Shall I attempt to take possession under writ?'.[79] An escalation to violence was avoided with the calling of a meeting between the parties, which was held on 8 March 1880.

John Bryce, the Native Minister, presided, aided by the member for Eastern Maori, Henare Tomoana. Bryce focused on the misunderstanding created by the 1851 surveyor's traverse line and the boundary line, instead of giving strength to the chorus of Maori witnesses who described to him the boundary they had agreed to in 1851. Some of these witnesses, like Nepia Te Apatu, gave evidence from oral traditions that had passed down; others, like Matiu Meke, were able to provide a first hand account: 'We have simply held the reserve which was made at the time of the sale', Matiu said.[80] Bryce assumed that Pelichet, the surveyor, would have explained the difference between the traverse line and the boundary line itself: 'it must have been explained at the time to the Maoris who were there to mark out the reserve', he noted, refusing to acknowledge the evidence of those who said it was not.[81] Consequently, Bryce found that 'no breach of faith or accidental error . . . [had] been committed by the Government' when it had issued Crown grants. He ordered that the Maori occupants be forced to evacuate the disputed area, but allowed them to take their buildings and crops. To help them accept his decision, Bryce recommended that the Maori occupants be paid £200.[82] The offer was refused on 22 April 1880: 'We, the whole tribe, will remain permanently on the boundary of the whole tribe'.[83] That this case was as much about political power and principles, rather than the land itself, was confirmed in a letter from Ormond to Rolleston. Ormond wrote: 'the wretched peice of land in dispute is valueless, and probably next flood the river will wash it away'.[84] When Harding pushed again to have police assistance in carrying out the order of the court, Bryce refused to intervene. He had his under-secretary, T W Lewis, write to Preece stating that he did not think it was up to the Government to 'execute the writ of the Supreme Court'. He continued: 'The attempt on the part of the government to arrange the matter having failed, the law must be left to take its course'.[85]

The task of executing the writ of ejectment, then, fell back on sheriff Paul Birch. Having no budget to employ help, he asked Harding to pay £5. Harding did so, and raised a small posse of his own to help dismantle the whare and other buildings.

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78. Lohn Hardng to Hamlin, ibid, p 4
79. P A F Birch, Napier Sheriff to Minister of Justice, 26 February 1880, telegram, AJHR 1880, G–9, p 4
80. Evidence of Matiu Meke and Nepia Te Apatu, AJHR 1880, G–9, p 6
81. Bryce, AJHR 1880, G–9, p 8
82. Bryce, memorandum to Preece, 9 March 1880, AJHR 1880, G–9, p 9
83. Matiu Meke, Porikapa, Nepia Te Apatu and others to Preece and Bryce, 22 April 1880, AJHR 1880 G–9, p 10
84. Ormond to Rolleston, 3 May 1880, AJHR 1880, G–9, p 11
85. T W Lewis to Preece, 20 May 1880, AJHR 1880, G–9, p 11

Birch's telegram relaying his uneasiness in carrying out the task, is worth repeating in full:

> Am about taking forcible possession from Natives on Harding's land, as they will not give up peaceable possession. A serious breach of the peace will certainly ensue. Cannot resist, unless instructed immediately to the contrary. Please wire immediately. Harding's men waiting ready to pull down houses, and Natives are there in force.[86]

Birch took possession, but little actually changed, as evidenced in Preece's telegram of the same day: 'Bailiff in possession, and treated well by the Natives, who, however, refuse to leave the ground'.[87] Birch left his bailiff at the pa, and tried again for help, sending another desperate sounding telegram, this time to Rolleston, the Minister of Justice. Rolleston's reply could hardly have encouraged the hapless Birch: 'You are officer of Supreme Court. Full responsibility of a very serious character rests with you. Government cannot instruct'.[88]

Birch still refused to force an eviction. Although officially he cited a lack of 'sufficient assistance', hints of his reluctance to carry out the order emerge: 'Sympathy of people at Waipawa with Natives', he included in his telegram the following day. (His two bailiffs endured a no doubt awkward and uneasy period of time at the pa, having to listen, apparently, to Maori politely discussing the ethics of whether one should feed their enemy or not. Scripture supporting a generous stance was quoted, yet, ultimately, rejected.) Once again, Birch asked the Government for a 'sufficient force to oust the Natives'. And once again, his request was denied.[89] Birch, not willing to pay to feed the bailiffs himself, and finding Harding unwilling to do so either, removed the bailiffs from the pa; effectively, withdrawing.

Meanwhile, Harding gave his version of the day's events, and his opinion on Birch:

> I had men waiting all day to assist the Sheriff, and wished him to allow them to commence fencing and pulling down the whares . . . but he [Birch] would only make them [the Maori] more bounceable[90] by letting them see he was afraid of them. . . . Of course the Natives say . . . they have beaten the Government; and, as a result, to-day they went to one of my tenants, ploughing in a field about half a mile from the pa, and stopped him ploughing.[91]

On 24 July 1880, Harding sent notice that another of his tenants, Mr McNutt, who was farming on part of the disputed land, had had his goods removed, and his house dismantled. McNutt told Harding that the perpetrators threatened him that more

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86. P A F Birch to Native Minister, 19 July 1880, AJHR 1880, G–9, p 11
87. Preece to Native Minister, 19 July 1880, AJHR 1880, g–9, p 11
88. Rolleston to Birch, 19 July 1880, AJHR 1880, G–9, p 12
89. Birch to under-secretary of Justice, 20 July 1880; and R J Fountain, under-secretary Justice Department to Birch, 22 July 1880, AJHR 1880, G–9, p 12
90. 19th century slang for gaining in confidence, assetiveness, arrogance; in 20th century slang, 'getting cocky'.
91. Harding to Minister of Justice, 21 July 1880, AJHR 1880, G–9, p 12

tenants were to be evicted.[92] Harding's stance was escalating towards violence: 'I must arm a force of men for protection of self and tenants', he wrote. Preece was more circumspect. In his opinion, Maori believed that the withdrawal of the bailiffs signalled a change in the Government's position, and now thought that Birch's withdrawal was a tacit acknowledgment of the soundness of their case. By stopping the ploughing, they felt they were asserting their rightful claim to the land.[93] It appears that at this juncture, an impasse was reached, with both sides refusing to budge, but with the Maori occupants holding the upper hand.

Perhaps sensing this mood, the Government relaxed the position which had been spelled out in Bryce's memorandum of 1880, and abandoned the traverse line theory. Instead they adopted Cooper's version, that the Maori understanding of the boundary was correct. Cooper had written to the Government, in March 1881, reminding it that he had always been convinced that the 1858 Crown grant had erred. Interestingly, he qualified this admission by stating that three other reserves from the Waipukurau block – Oero, Pourere, and Pakowhai (Black Head) – had suffered a similar fate.[94] Maori kept up the pressure by petitioning Parliament in May 1881. Further evidence was heard by the Native Affairs Committee, with the resultant report favourable to the Maori case. The committee blamed a 'blunder in the Survey Office' to account 'unquestionably' for five acres of the Tapairu Reserve ending up in Harding's grant. The remaining 15 acres of disputed turf they believed resulted from the original traverse line complication, and recommended that special legislation be passed to return the twenty acres to Maori. Harding was to be compensated for all of his losses.[95] A Bill was drawn up to put the committee's recommendations into effect. However, it was not passed, as Bryce and Rolleston cut a deal in October 1882, whereby Harding would sell just over 10 acres to the Crown for £204. Maori received nine acres of this land when it was included in section 22 of The Special Powers and Contracts Act 1884, one acre having been acquired by the Crown for railway purposes.[96] Maori, for reasons unknown, appeared to comply with this deal, despite losing over half of the land the Native Affairs Committee had recommended that they receive.

Other petitions sent by Hawke's Bay Maori in the 1880s covered a wide range of requests and grievances. Reihana Te Ikatahi believed he had been defrauded of his share in the Raukawa East block.[97] Hori Ropiha and five others complained that timber was being plundered from their land at Rakaiatai and Te Ohu. For this case the committee noted that a policeman had been stationed in the area to prevent this occuring.[98] Henare Tomoana listed burial places that were on lands leased to Europeans, and asked that the Government ensure that they were not misused, or

92. Harding to Native Minister, 24 July 1880
93. Preece to under-secretary, native department, 27 July 1880
94. Cooper to Rolleston, 14 March 1881, MA 13/95, NA Wellington, cited from Ballara and Scott, Waipukurau block file, p 53
95. Report of the Native Affairs Committee on the peition of Nepe Te Apatu and 32 others, AJHR 1881, I–2, p 13
96. Ballara and Scott, Waipukurau block file, pp 56–57. Some of the remaining sections of this land became part of a consolidation scheme in 1950.
97. Report of the Native Affairs Committee on the petition of Reihana Te Ikatahi, AJHR 1880, I–2, p 16
98. Report of the Native Affairs Committee on the petition of Hori Ropiha and others, AJHR 1881, I–2, p 28

destroyed. Although expressing a general view that Maori urupa 'ought to be respected', the Native Affairs Committee absolved the Crown of any protective duty, ruling that the Government had no 'control over any of the lands named'.[99] Frustratingly, the actual petition and other correspondence are not now extant.[100]

Renata Kawepo and others continued to pass comment on current bills before the House, and Henare Tomoana continued to raise that most vexing of issues: whether it was ever expected that Maori individual grantees were to act as trustees for others not named in Crown grants.[101] The committee noted concern for those Maori 'unnamed' in the earliest awarded grants. Government acted on this issue with the Native Equitable Owners Act 1886, which allowed for the Native Land Court to admit other Maori, or their successors, onto certificates of titles. The Act had little effect in Hawke's Bay due to its limited scope (it did not apply to land which had already been sold), and because Maori felt it did not address their demands for adequate redress and control over their remaining land.[102] Hawke's Bay Maori, and others, had opportunity to air their views on land legislation directly to the Premier, John Ballance, when he visited Waipatu in January 1886. Among many notable speakers, all of whom criticised land legislation to some degree, Airini Tonore (Donnelly) made an impact when she argued that Maori customary land should not be subject to rates.[103] On this theme, Honi Matiu, in a petition sent in 1889, questioned the Crown's policy of applying the Stamp Act (land tax) to Maori reserves.[104] Paora Rerepu and 327 Mohaka Maori petitioned Parliament expressing concern at the boundaries of the Mohaka and Waihua blocks, and of problems associated with joint tenancy, and a petition by Toha Rahurahu, continued to keep pressure on the Government to do something about the Mohaka–Waikare block titles.[105]

The Maori leaders of Tamaki, feeling the brunt of continued court hearings and Crown purchasing in that area, petitioned Parliament in 1885, calling for the abolition of the Native Land Court.[106] The Native Affairs Committee made no recommendation. Other Maori, such as Te Teira Tiakitai and Airini Tonore (Donnelly), asked for what would be the third hearing into the Porangahau block, as they were unhappy with the amount of land they were awarded in the first hearing, and distressed at having received nothing at all by Judge Mackay's re-hearing decision. Their request was granted after evidence was taken on the case before the committee. Included in the points of Maori customary law being argued was whether mana alone was enough to establish 'substantial title' to land. Airini Tonore and Te

99. Report of the Native Affairs Committee on the petition of Henare Tomoana and others, AJHR 1882, I–2, p 9
100. Tribunal researcher Georgina Roberts searched relevant MA registers and LE series at National Archives, Wellington, to no avail.
101. Reports of the Native Affairs Committee, AJHR 1883, I–2, pp 14, 27
102. See, for example, evidence of Arapeta Meha, AJHR 1891, G–1, p 48
103. AJHR 1886, G–2, pp 1–20
104. Report of the Native Affairs Committee on the petition of Honi Matiu, AJHR 1889, I–3, p 4
105. For the Mohaka petition see AJHR 1888, I–3, p 13; for Toha Rahurahu's petition, with related evidence, see AJHR 1888, I–3C
106. Report of the Native Affairs Committee on the petition of Huru Te Hiaro, Paora Ropiha and others, AJHR 1885, I–2, p 11

Teira Tiakitai felt it was, and that Judge Mackay was using South Island Maori custom, instead of that practised in Hawke's Bay. Predictably, korero on such an issue turned up references to old grievances relating to the 1850s Tautane and Porangahau Crown purchases.[107]

That the 1850s Crown purchase grievances still occupied a place on the Maori political agenda was made abundantly clear to commission members, Rees and Carroll, when they heard evidence at Waipawa on 5 May 1891. The first speaker, Henare Matua, decided to open his speech by listing eight grievances relating to Crown purchases and associated reserves. Three Waipukurau block reserves, including Waipawa (Taiparu), were mentioned, as well as aspects relating to parts of the Tamaki Bush, Ruataniwha–Ruahine, Porangahau, and Te Matau-a Maui purchases.[108] Henare Matua's evidence is interesting in that it was focused, mostly, on grievances relating to the loss of the reserves from these purchases, rather than the purchases themselves. It is understandable that grievances relating to reserves were at the forefront of the Hawke's Bay Maori political agenda. While Maori might have been able to accept that they had had an active role in selling land, they were not going to accept responsibility for having lost the reserves as well. They believed that the loss of reserves – that is, land Maori had actively sought to retain – represented broken promises by the Crown, which required redress. As the case studies above illustrate, this focus on land specifically reserved from block sales was extended to the land court conveyance grievances as well. The focus in 1891, then, on the eve of the important Kotahitanga movement, was to keep the Crown reminded about the past losses of land Maori had sought to exclude from sale, and of retaining control over the land that remained.

6.3.4 Reserves

Determining the state of Maori reserves at 1891 has proved difficult. Defining what constituted reserved land is a task in itself. For Hawke's Bay, I have deemed reserved land to be that which included land reserved from Crown puchases, which had title determined at the time (as in the promised Tikokino Crown grants), or had title determined later, in the Native Land Court. Reserves included land which was reserved from private sales, and land which had restrictions on alienability placed on it when passed through the court. Endowments, such as Te Aute College land, are the most obvious; harder to locate is the land which Commissioner of Native Reserves, Charles Heaphy, supposedly placed in trust in 1870.

Only when detailed block histories are completed, will accurate figures on Maori reserves be readily available. The published official records were piecemeal, and difficult to analyse. Heaphy's report on reserves in 1876, for example, when addressing Hawke's Bay reserves, mentioned only that a further 39 acres of the Pakowhai Reserve had been sold by Karaitiana to honour a previous agreement with

107. See AJHR 1886, I–2 for the Native Affairs Committee report on the petition of Te Tiera Tiakitai and others; and, AJHR 1886, I–3C, for evidence of Airini Tonore and Judge Mackay.
108. Evidence of Henare Matua, AJHR 1891, G–1, pp 44–45

the tenant McHardy.[109] Reserves Commissioner A Mackay's report in 1883 was only concerned with those reserves brought under the administration of the Native Reserves Act 1856 (and amendments). For Hawke's Bay then, Mackay stated that all such reserves were 'for a specific purpose', and mentioned the Te Aute lands granted to the Bishop of New Zealand for educational purposes, and a reserve at Poukawa, without supplying any further deatils.[110]

So what happened to the trusts created by Heaphy in 1870? The 834 acres at Pakowhai, containing their 'most valuable land', and the 'best Artesian well in the district',[111] had been, by 1891, reduced by half, and the remainder was leased to a European. Mangateretere East and Te Awa o te Atua passed through the hands of the indefatigable Fred Sutton. Waikahu, Ngatarawa No 5, and Raukawa East suffered a similar fate. Of the 36 264 acres for which Heaphy drafted trust deeds, by 1891 only half the acreage remained, most of which was the Oringi Waiaruhe block, which was leased by J D Ormond. The remaining reserves made from 1850s Crown purchases appear to have suffered little further alienation by 1891.[112] The possible exeptions to this rule include Tareha and Te Hapuku's Napier town sections, and Tareha's 10-acre reserve from the Tutaekuri sale. Although they had appeared as general reserves for Maori in the Hawke's Bay district statistics for 1886; by 1891, they were no longer so represented.[113] This meant that they may have been sold, or were no longer listed as reserves.

The other major initiative undertaken by the Crown to ensure Maori retained land for their future needs was to place restrictions on its alienability. Heaphy listed the blocks which had obtained this protection by 1870. It is possible to measure the provision's success. Reports of reserves which had the restrictions on their alienability removed were published regularly. In 1883, for example, Ngatarawa 1 block (1840 acres), the owner listed as Noa Huke, had its restriction removed, upon application by R D D McLean, Donald McLean's son. The marginal comments for this application are intriguing. Judge Munro noted that the block was made inalienable 'for no particular reason except that they [Noa and others?], did not wish to sell it . . . and were afraid they might be tempted to do so'. Clearly, the judge saw no force in these aspirations. This reasoning surfaces again and again in private and official European thinking in the last quarter of the nineteenth century. Maori were obliged, Judge Munro and others thought, to rationalise their reasons for wanting to retain ownership of land. It was not acceptable to some Europeans that Maori retain land 'for no particular reason'. The Tribunal may wish to compare how this attitude fares, when juxtaposed with article two rights gauranteed in the Treaty.[114] If official

109. Report of the Commissioner of Natives Reserves, 31 May 1876, AJHR 1876, G–3, p 1–2
110. A Mackay to the Public Trustee, Native reserves in the Colony, 18 may 1883, p 2; Poukawa reserve was not listed as being owned by Maori in 1891.
111. Heaphy to McLean, AJHR 1870, D–16, p 12. Wai 595 claimants, concerned with control over the Hawke's Bay acquifer, may wish to take note.
112. See AJHR 1891, G–10
113. See AJHR 1886, G–15, p 9. Claims Wai 168 and Wai 400 have indicated interest in claiming compensation as a result of the loss of these reserves.
114. The Tribunal has commissioned a research report, to be written by Jenny Murray, as part of the Rangahaua Whanui project, on the removal of restrictions on alienation. It shonld be available later this year.

figures are to be believed, Noa Huke's Ngatarawa no 1 was the only restriction on alienation removed for the period 1880 to 1885. To measure whether this was indeed the case, I matched Heaphy's 1870 list with the 1891 list of remaining Maori lands. With a couple of small exeptions the official reports fare well under the test. The Crown's provision of restricting alienation appears to have, on the whole, worked well up until 1891. This may have been more by default than rigorous policy, though, if official attitudes such Judge Munro's prevailed. That the removals of restrictions on alienations were scarce occurances in Hawke's Bay is confirmed by figures published in 1890. Only Part Umutaoroa (or Manawatu no 1), comprising 4973 acres, and Waikawau no 2, comprising 73 acres, were included in published lists.[115]

6.4 COMMENTARY ON SOCIAL AND ECONOMIC STATUS

6.4.1 Introduction

Like the last section in chapter 5, this section will attempt to assess the pressures put on Maori as they negotiated their position vis-a-vis an ever-increasing and dominant European population. This section is not intended to answer the question of how well Maori fared, but merely raise and briefly discuss some examples of how the historical social and economic position of Hawke's Bay Maori may be measured. It will be necessary for further research to expand the range and depth of this section, both by regionally focused claimant researchers, and by Crown historians. This section owes a debt to the method used by Richard Boast in his social and economic report for the Mohaka–Waikare area. In that report, Boast looked at Health, Native, Lands and Survey, Forest Service and Education departmental archives held at National Archives, Wellington, in order to provide both general and specific information on Maori social and economic status. This section considers further arguments relating to the provision of education, includes commentaries on particular aspects of the Native Land Court, and investigates possible comparisons between Maori and European levels of debt. The issue of Maori wealth is also discussed.

6.4.2 Court costs

For the last quarter of the nineteenth century one of the major causes of loss of Maori wealth appeared to be the costs involved in the general administration of Maori land, and the litigation undertaken to contest points of law. Seeking redress for grievances was a costly business, and, for a period, Maori were reliant on the sponsorship of repudiation supporter H R Russell. If Russell had not been willing to pay £13,500 in legal fees to the likes of John Sheehan,[116] none of the case studies described above would have occurred. Russell also funded *Te Wananga*, and, judging by his Ledger and Cash Books, he advanced thousands of pounds to

115. AJHR 1890, G–3, pp 4–5
116. Sinclair, *Kinds of Peace*, p 116

Hawke's Bay Maori between 1867 and 1879.[117] Among the largest recipients between 1867 and 1872 was Te Hapuku; in the later years, Karaitiana, Henare Matua and Henare Tomoana – the leaders of the repudiation movement – received the largest amounts. Without further detail as to the nature of the loans, or records of whether they were repaid, it is hard to offer any points of note, other than that, presumably, Maori *required* the money. It is unclear under what conditions Russell's money was given, and what it ended up purchasing. Was it used for political donations, election campaign funds, general repudiation expenses such as meetings, or to pay for personal debts? It may, of course, have been used for immediate needs, such as food and clothing. A search of Russell's private papers may reveal further clues. For the purposes of this chapter, Russell's financial sponsorship shows clearly that Maori were unable to afford to conduct a rigorous campaign seeking redress, solely on their own finances.

From the late 1870s Russell's funds dried up.[118] The tradition of using the courts, however, did not. Contested title determinations, successions, and partitions, all saw litigation proceed to the highest courts, including the Privy Council in London. The hypothesis of this chapter, is that the amount of time spent in court, and the associated costs incurred, contributed to the gradual reduction of the wealth of Hawke's Bay chiefs; and, by association, their people. In so postulating, I am following in well-worn historigraphical tracks, the first being, I believe, Keith Sorrenson's 1955 thesis.[119] While official figures suggest that Maori did not, in the 1870s, use the Native Land Court to the extent to which they had done in the late 1860s, the 1880s saw a resurgence. This time there were not enormous numbers of blocks awarded title in haste, however, but long drawn out investigations of a few hotly contested areas.

J S McMaster also noted in 1879 that there was a growing use of the court for partitions and succession cases.[120] In 1883 Preece, the Resident Magistrate, began his campaign to reform the land legislation, based partly on the costs incurred by Maori at court. That sittings of the Native Land Court may have been the places, according to Preece, most likely to find Maori in order to pay their rents, suggested that they were spending more of their time attending court, than at their home pa.[121] In 1884, Preece noted that several blocks had come before the courts for partitioning. Although he felt this was encouraging, as large blocks were becoming more hapu focused, enabling a more equitable payment of rents, he stated also that this land title conversion involved long and frequent sittings.[122] The important Omahu title hearing, for example, saw the court sitting continuously from July 1889 to February 1890. The expenses incurred, Preece noted, were 'considerable'. It should be remembered, however, that the lengthy hearings were because some Maori gave

117. Cole, App VII, pp 121–126
118. Sinclair, *Kinds of Peace*, pp 119–120
119. M P Keith Sorrenson, 'The Purchase of Maori Lands, 1865–1892', Auckland University College, MA thesis, 1955, pp 126–157
120. J S McMaster, Native Officer, to under-secretary, Native Department, 23 May 1879, AJHR 1879, vol 1, G–9, p 7
121. Preece to under-secretary, 2 July 1883, AJHR 1883, G–1A, pp 9–10
122. Preece to under-secretary, 27 May 1884, AJHR 1884, vol II, G–1, p 18

elongated monologues. Te Meihana Takihi occupied the stand for 18 days during the Omahu hearings.[123] This speech has proved to be invaluable for historians of Hawke's Bay Maori.

Preece provided evidence also that Hawke's Bay Maori had taken to requesting re-hearings in 'nearly all cases' adjudicated upon by the Native Land Court. This, as well as showing a lack of confidence in the decisions of the court, was a further cause of escalating costs. Henare Matua, in evidence before the 1891 commission, highlighted the repeated investigations necessary to settle disputes, and the high costs this incurred, as two of his main grievances against the Native Land Court.[124] Henare Tomoana chimed in by asking the commission to recommend that European lawyers and native agents not be allowed to serve in the court, due to the costs involved.[125] Whata Koari labelled the court an instrument of oppression, citing the Waimarama case as an example of the court's snail-paced investigations. Since the case had gone on for three and a half years, Whata noted, £800 in rents had been denied to sucessors, who were waiting for the final judgement.[126]

Court proceedings were perceived as so dominating Hawke's Bay Maori that the new resident magistrate in 1892, A Turnbull, based his description of them by reference to their court activities. The Omahu re-hearing continued, Turnbull noted, and the court sat 'almost continuously' at Waipawa and Dannevirke (for the Waikopiro, Maungatoro, Rakautatahi, and Ngapaeruru blocks). Turnbull lamented what he saw as Hawke's Bay Maori pursuing interests in title of little monetary value, leading to them disposing of their interests in some blocks, to pay for the costs of pursuing their interests in others.

One celebrated case of prolonged court activity concerned the Karamu Reserve, the land excluded from the Heretaunga purchase. The land had been reserved for the Maori occupants, the hapu, Ngati Hori. One of the original Heretaunga grantees, Arihi Te Nahu, a non-resident, however, applied to the Native Land Court in the 1880s to have her interest defined. The resident grantees and the tangata o waho, those occupants of the land who did not have an original share in the Heretaunga block, resisted Arihi's action. Not surprisingly for owners who lost their land due to insurmountable debt, the costs of both parties were charged against the reserve. A Supreme Court order directed the reserve to be sold. It was advertised on 7 November 1888. T W Lewis, the Under-Secretary of Native Affairs, and J N Williams, one of the apostles who had purchased Heretaunga, summarised the case and out of court settlement in June 1889. The impending sale of the reserve would have, they stated, 'deprive[d] the equitable owners and occupants who were not grantees . . . [and] render[ed] them destitute'.[127] A decision between the two parties and the Government was reached, whereby a proportion of the block was to be sold to pay costs, but any whare, buildings, and gardens, 'so far as practicable', were to remain in Ngati Hori ownership. The Karamu Reserve Act 1889 validated

123. Ballara, 'Origins of Ngati Kahungunu'
124. Evidence of Henare Matua, AJHR 1891, G–1, p 45
125. Evidence of Henare Tomoana, AJHR 1891, G–1, p 46
126. Evidence of Whata Korari, AJHR 1891, G–1, p 46
127. T W Lewis and J N Williams to Native Minister, 4 June 1889, AJHR 1889, G–4, p 1

most of the residue block, 1601 acres, as an inalienable reserve exclusively for the use of Ngati Hori. As a postscript to this case, one rood of this reserve was alienated in 1921 by Mere Kirita. Selling for £220, she noted that she owed 'some money for clothes'.[128]

Other cases were pursued which involved substantial issues and monetary value. The battle between Te Teira Te Paea and Te Roera Tareha over the Kaiwaka block went to the Supreme Court, the Appeal Court, back to the Supreme Court, and finally to the Privy Council in 1901. The essence of the case was whether Tareha Te Moananui, as sole grantee in the Kaiwaka block (appointed by McLean, Ormond and Locke in 1870), was to act as trustee for other interested owners. Te Roera Tareha won the case, and sold large portions of the block to the Crown, apparently to help finance his own people's farming at Waiohiki.[129] Winning cases did not always lead to financial reward, however. In 1906, the Tareha family owed £10,600 to creditors. Te Teira Te Paea, then, probably suffered to an even worse extent.[130]

The battle between Airini Donnelly and Wi Broughton over the estate of Renata Kawepo also went the full round of Supreme Court, Appeal Court, and Privy Council litigation. Renata appointed Wi Broughton as 'kaiwhakahaere' of his Ngati Hinemanu and Ngati Te Upokoiri estate by will a year before his death.[131] However, Airini Donnelly claimed that a few days before Renata died he had made a will in her and her immediate family's favour. Airini, through her whakapapa, was assumed to be Renata's successor up until, it appears, they became estranged over her marriage to an Irishman, George Donnelly, and contests over land title awards. It was in the estranged period that the will naming Wi Broughton, more distantly related to Renata, but closely involved with Ngati Hinemanu and Ngati Te Upokoiri affairs, was made. A reconciliation between Airini and Renata occured just prior to his death. Justice Prendergast, in the Supreme Court, ruled in Airini's favour, based largely on the evidence of former missionary, Samuel Williams. Wi Broughton sucessfully overturned that decision in the Appeal Court, Justice Richmond ruling that conflicting evidence regarding the circumstances of the signing of the will in favour of Airini furthered Wi Broughton's case. Airini took the Appeal Court's decision to the Privy Council, but the Lords concurred in Richmond's finding. Costs were to be paid by Airini, who, with her and George Donnelly's large estates, was well able to pay. Back in New Zealand, though, section 46 of the Native Land Court Act 1894 enabled customary successors (such as Airini was) to apply to the Native Land Court to have part of an estate awarded to them, if land had been willed to someone other than them. If the successor could prove they needed the estate for their support, the court could award them all the lands, effectively overturning the probate of a legal will. Airini made use of this clause, and Wi Broughton, according

128. Mere Kirita to Registrar, Ikaroa Land Court, Hastings, 9 April 1921, Heretaunga 28N Lot 21 file, Hastings Maori Land Court.
129. For discussion on this case see Tania Hopmans, 'The Confiscation of the Mohaka and Waikare District', LLB(Hons) thesis, Victoria University of Wellington, 1991, pp 27–34; and Boast, J1, pp 110–130; and Angela Ballara and Taape Tareha-O'Reilly, entries for Tareha, Kuropo; and Tareha, Te Roera; in *DNZB*, vol III, pp 500–501
130. Boast, J4, pp 39–40
131. Wai 401 statement of claim, masterfile 401/0, Waitangi Tribunal offices, Wellington

to his grandson, Kenneth Broughton, sold ancestral lands to meet legal costs. Driven to the verge of bankruptcy trying to stave off Airini's litigation, Wi Broughton took his own life in 1908.[132]

Complications arising from the conflict between Maori customary succession and bequests (ohaki), and European legal wills, surfaced in numerous court cases. The Native Land Court heard a case involving the issue of whether a whangai (foster child) could succeed to their foster parents' interests, in preference to a blood relative of the parents. Judge Mackay received conflicting evidence from a variety of Maori witnesses on the customary use of ohaki. He ruled that a whangai could not gain automatic succession to their foster-parents' interests, because of the evidence he received that whangai relationships were created for a variety of reasons. They could be made privately, or, at the instruction and with the consent of the hapu. A whangai then, would also require an ohaki (which Maori witnesses described as having to be heard before the whole hapu, not just a couple of people, to be valid), in order to succeed to their foster-parents' interests. This case, among others relating to similar issues, was re-heard by Judges Edgar and Mair in June 1895. The judges were concerned at the implications of continuing the custom of ohaki in times of legal individualised title, and decided to split the parents' interests between the whangai and the next of kin.[133] Such complications were always going to arise, and Maori appealed to European law as often as they sought to invoke customary law, when it suited their particular case. Yet, the Tribunal may wish to decide whether these issues should have been left for European judges to develop case law, or whether a better process for determining such matters could have been devised; where Maori had a determining, rather than just evidential, role. The issue of funding Maori participation in deciding case law, was ever present. All the litigation cost Maori time, energy, and money.

6.4.3 Debt

A consistent flow of civil suits taken out by Europeans against Maori serves as a reminder that problems of debt persisted for a number of Maori after 1873. In 1883, for instance, Preece noted that there were 60 successful suits against Maori in the Napier, Waipawa and Wairoa resident magistrate courts. The amounts, (£758 sought, £381 recovered), were not as huge as those of the late 1860s leading to the Heretaunga sale, suggesting that it was Maori with smaller debts (and therefore, incomes) who were being prosecuted. Only 14 cases of Europeans being sued by Maori were recorded, suggesting an imbalance of wealth existed, or Maori were reluctant to use the courts to recover debts. There were five cases only of Maori suing Maori, suggesting that they negotiated the settlement of debts in other, perhaps, traditional forums; or, that they carried out few financial transactions between themselves.[134]

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132. Wai 401 statement of claim, masterfile 401/0, Waitangi Tribunal offices, Wellington. The Privy Council decsion is also on file.
133. *Re* Karamu Reserve, Judge Mackay presiding, in collection of litigation in AJHR 1907, G–5, pp 9–12
134. Preece to under-secretary, 2 July 1883, AJHR 1883, G–1A, p 8

The figures for the following year, 1884, were even worse for Maori. There were 85 cases of Maori being sued by Europeans and only five occurances of the reverse. More Maori were choosing to use the civil facilities, however: 23 cases of Maori suing Maori were heard.[135] In 1885 the number of cases where Maori were being sued had more than doubled from the two years previous, to 131 cases. The number of Europeans being sued by Maori, and of Maori versus Maori, remained static.[136]

The gap between Maori being sued for debt, and Maori suing Europeans for the same purpose, remained large. In 1886, Europeans sought to recover £1441 from Maori, yet only £4 was recovered, by Maori, from Europeans.[137] In 1888, £1987 was recovered from Maori, £50 only from Europeans.[138] The new decade saw an overall reduction in the number of cases, yet the amounts remained large and disparate. One thousand three hundred and sixty-five pounds were recovered from Maori, £67 from Europeans. There were only three cases of Maori suing Maori.[139] Preece's replacement as resident magistrate, A Turnbull, did not continue to record details of civil cases. However, from the figures provided it seems quite clear that a considerable number of Maori were suffering, in the 1880s at least, from debt associated problems.

Some evidence of Maori retaining wealth does appear in official reports. However, they are too fragmentary to determine acccurately what this meant for Hawke's Bay Maori as a whole. Indeed, the wealth appeared to be localised in a few areas only; and, individualised, in that examples of certain people living opulently are provided, but without explanation as to whether that resulted in a particular hapu also enjoying the benefits of that individual's wealth. Airini Donnelly, for example, with her husband, G P Donnelly, amassed a fortune equal to that of most of the prosperous landed class. Yet, significant portions of her estate were left to her husband when she died in 1909, such as her Waimarama lands, which George sold. Her daughter, Maud Perry, also sold tribal lands. As S Grant has written, although Airini had 'extensive knowledge of tribal lore and history', there was an 'ambivalence in her attitude to her people and their land'.[140] Measuring individuals' wealth, therefore, can be misleading. Even those who should have had a secure future, based on the extent of their land interests, such as the Tareha brothers, Te Roera and Kurupo, may not have been as well off as they appeared. Although they did live in 'some style', owning large houses with private bathrooms, and devoting time to playing golf on the 100-acre Waiohiki Links they helped establish, they were, apparently, also in considerable debt.[141] Analysing official reports, to discover the extent of Hawke's Bay Maori wealth, is, obviously, difficult.

Judging from the official published reports, Maori consistently grew large amounts of grain and other produce. Occasionally mention is made of crops failing, due to drought or other reason, but on the whole it appears that Maori were

135. Preece to under-secretary, 27 May 1884, AJHR 1884, G–1, p 18
136. Preece to under-secretary, 8 June 1885, AJHR 1885, G–2, p 16
137. Preeece to under-secretary, 11 June 1886, AJHR 1886, G–1, p 16
138. Preece to under-secretary, 18 May 1888, AJHR 1888, G–5, p 7
139. Preece to under-secretary, 26 June 1890, AJHR 1890, G–2, p 8
140. S Grant, 'Airini Donnelly', in *The Turbulent Years*, DNZB vol II, pp 15–17
141. DNZB, vol III, pp 500–501; and Boast, J4, pp 39–40

successful arable farmers. The Maori produce, though, did not appear to provide sufficient surpluses to sell at market, and obtain the cash required for other necessary goods. As Preece noted in 1883, several Maori settlements grew 'considerable quantities of wheat'; yet, they remained reliant on rents to survive.[142]

The case appeared to be slightly different for northern Hawke's Bay Maori. Their rents were not sufficient for subsistence living[143], and they did not appear to participate in the production of surplus food, possibly from being isolated from markets, and because of unsuitable land.[144] From the 1870s official reports emphasise their involvement in labouring occupations: splitting timber, collecting firewood, building roads, and, the most prevalent occupation – sheep shearing. This presumably supplemented the rents they received from leased blocks north of the Mohaka River, and in the confiscated area.

By 1885, Preece situated the grain and vegetable producing areas at Waipukurau, and at Napier. He recorded that over 10,000 bushels of wheat were grown that year, as well as 8800 bushels of oats and 1500 tons of potatoes. Maori-owned and operated sheepfarming, however, according to Preece, was not 'very successful'.[145] Maori owned only 40,000 sheep in Hawke's Bay in 1891. Airini Donnelly and her husband, by contrast, owned 40,000 sheep of their own. In addition, R D D McLean was running 68,000 on his Maraekakaho run, J D Ormond owned 49,000, and Thomas Tanner, 43,000.[146] Maori men and women were heavily involved in the wool industry, chiefly employed in shearing. Whether this was lucrative or not, in a relative sense, is hard to establish. In 1879, 12 Maori working for five weeks shearing on the Tutira station were paid a total of £26 10s 6d.[147]

Preece's report in 1886 related that 72,600 bushels of wheat were grown on the Heretaunga Plains, but that the other crops grown by Maori in Hawke's Bay were principally for their own consumption.[148] The census of the same year identified that Maori farmed crops along 'communistic lines'. The 1112 Hawke's Bay county Maori, as counted in the 1886 census, grew 335 acres in potatoes; 3482 acres in wheat; and 334 acres of other crops. The 425 Waipawa Maori had 200 acres in potatoes; 152 in wheat, and 87 acres in other crops. The 132 Patangata Maori had 300 acres in cultivations.[149] In 1888, Preece further defined the surplus food producing areas as Waiohiki, Omahu, and Waipatu. Most Maori though, were engaged in shearing and contract bush-clearing. Preece opined that Maori were so engaged due to the 'dearth in the land selling market'.[150] In 1891, Preece reported that Maori grew the 'largest amount of wheat' and 'a fair quantity of oats and potatoes', in Hawke's Bay, but did not identify exactly where.[151] In 1908, 500 acres

142. Preece to under-secretary, 2 July 1883, AJHR 1883, G–1A, p 8
143. Boast, J4, p 77
144. F Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860–1903', p 4
145. Preece to under-secretary, 8 June 1885, AJHR 1885, G–2, p 17
146. Boast, J4, pp 61–62
147. Guthrie-Smith, p 132
148. Preece to under-secretary, 11 June 1886, AJHR 1886 G–1, p 16
149. AJHR 1886, G–12, p 17
150. Preece to under-secretary, 18 May 1888, G–5, p 6
151. Cited in Boast, J4, p 56

of land at Waiohiki was stocked with 400 cattle; diarying was being carried out on Maori land at Pakowhai.[152]

Owning land was no guarantee of wealth. Wi Matua of Porangahau may have had an estate worth £20,000, but he could not raise the cash necessary to get himself from Waitotara, back to his Hawke's Bay home.[153] While there were mitigating circumstances in this case, it does appear to substantiate evidence that Maori with sizable interests in land, did not have an equivalent flow of cash to show for it. As Rees stated in 1879, 'everyone knows . . . that Natives do not always have money, though they may have lands'.[154] This is borne out particularly in the case of the Maori owners of the Mohaka–Waikare blocks, and in the Ngati Pahauwera blocks further north. The Tutira block tenant, Guthrie-Smith, found himself in the odd position of having his landlords asking for advances on their rent, for a variety of reasons. One owner wrote: 'I am very hard up I got no money and I am not well'. At other times marriages, births, deaths and other events were cited as reasons for requesting advances.[155] Further discussion of the social and economic conditions of the Mohaka–Waikare area can be found in section 6.5.4.

This short section on Hawke's Bay Maori economic status has offered a number of ways in which Maori wealth could be measured historically. It has postulated that Maori use of the courts was a major drain on their wealth. These included the general costs associated with owning Maori land, including partitions, successions, title investigations, and re-hearings, as well as the need to have customary law established within European case law. For example, Hawke's Bay Maori contested cases, among others, involving the rights of whangai, the legal status of ohaki, and, perhaps most importantly, the issue of trusteeship. These cases often went through three courts in New Zealand, and then were contested before the Privy Council in London. All of this litigation cost money.

That a number of Maori suffered difficulties with debt is revealed in the statistics of civil cases heard by the resident magistrate's court. Although the amounts of money involved were small, the number of cases was high. Large debts would suggest money was being spent on capital expenditure for development, but small amounts suggest consumer items such as clothing, food, and general supplies were being purchased. The civil cases and, for example, the evidence of the Tutira landowners, suggest that a number of Maori were periodically in need of a little extra income, and subsequently struggled to pay that debt when it was due. The debts do not appear to have been incurred through significant outlays of capital for, by way of example, threshing machines, ploughs, or fencing material, which did not then justify their purchase cost by generating a sufficiently greater income. The point made at the time, that Maori may have had land, but did not have money, appears to provide further justification for the explanation above. The study of debt has shown that Maori were probably not investing sufficient capital into the development of their lands, largely, because they did not have it.

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152. DNZB, vol III, p 500
153. *Re* Wi Matua probate case, Judge Gudgeon presiding, 21 January 1897, AJHR 1907, G–5, pp 3–4
154. AJHR 1879, I–2A, p 4
155. Guthrie-Smith, p 224

To conclude this section on Maori wealth, it remains to offer two general warnings for researchers of this subject: firstly, to remain wary of reports of Maori individual wealth, because that individual wealth may not have flowed on to others; and secondly, to be cautious of generalising too widely, as each Maori community in Hawke's Bay differed, and deserves to have its own story told.

6.4.4 Education

Chapter 5 described how the two village native schools at Pakowhai and Omahu, were, in 1875, dependent for their survival on the ability of Hawke's Bay Maori to raise necessary maintanence funds. Both schools closed in 1878.[156] Although Manaena Tinikirunga managed to reopen Pakowhai in July 1881, and 'maintained several of the pupils at his own cost', support for the school fell away. The school closed permanently in 1883.[157] There were no further native schools established in Hawke's Bay. Children could go to the European primary schools, which were funded from the proceeds of the 5 percent of Crown wasteland set aside as endowments for education purposes, (Maungaharuru and parts of Waitara in the Mohaka–Waikare confiscation block were set aside for this purpose). Or, they could be accepted into the Catholic or Anglican single-sex boarding schools.

Frustrations over the provision of education in Hawke's Bay came to the fore in 1877. A large meeting of concerned Maori sent a petition complaining about the management of Te Aute College. Evidence taken before the Native Affairs Committee revealed wider concerns about education in the region. Renata Kawepo, Omahu school's leading patron, said that McLean had promised to match every £1 Maori could raise with £2 of Government money. The promise, Renata told the committee, was never kept. The result was the closure of Pakowahi and Omahu schools, due to a lack of funds.[158]

The petition itself attacked Te Aute College on three grounds. Firstly, Maori felt that the rent paid by Samuel Williams in leasing the Te Aute endowment was too little. They suggested that the land be split into smaller partitions, leased to more people, and farmed more intensively. This complaint appeared to be an attack on Williams personally. Experienced sheep farmers, such as George Donnelly, said that Williams' rent was equitable with the market, and that Williams had tripled the value of the land by using innovative drainage techniques. The committee found that there was no case to answer in this regard.

Secondly, the petitioners believed that the land had been provided for Te Aute College, for the exclusive benefit of Hawke's Bay Maori. The admission of European children, and Maori from other parts of New Zealand, rankled. Williams estimated that there were 300 Maori children of educable age in Hawke's Bay, and that he could educate 30 a year; yet, recently, he had received no local applications. Given the climate of animosity against him, this was hardly surprising. Williams

156. Locke to under-secretary, 8 July 1878, G–1, p 3
157. Preece to under-secretary, 10 June 1881, AJHR 1881, G–8, p 14 ; 'Education: Native Schools 31 Mrch 1883 Report', AJHR 1883, E–2, p 2
158. Evidence of Renata Kawepo, AJHR 1877, I–3A, p 14

should, perhaps, have been responsive to the complaints and needs of Hawke's Bay Maori; rather than shopping for pupils elsewhere.

Thirdly, Henare Matua said Maori could not afford the £20 annual fees that Williams charged, and cited the case of some Porangahau parents who wished to send their child to school, but had been refused admission, when they were unable to pay the fees. Williams denied having a policy of charging £20 fees, and of ever turning away pupils for lack of payment.[159] As was the case with most of the repudiation era complaints, the committee hearing became another battle scene for the European politicians. Sheehan, in effect, lost, and as a result, the committee recommended that nothing be done.

Though Te Aute College continued to receive glowing accounts of its success in offical education reports, Hawke's Bay Maori remained concerned. Following further petitions, in 1906, a commission of inquiry into the Te Aute School Trust was held. Recalling the unresolved complaints of 1877, Ihaia Hutana built on the arguments then formulated. The same themes emerged: lack of funds, lack of opportunities, lack of control over the curriculum, and criticism of Williams' management. Ihaia Hutana wanted, as did his predecessors, the school to operate exclusively for Hawke's Bay Maori. He felt that Williams, who still held the lease, should be made to partition the land in order to gain more revenue.[160] The lack of funds for Maori to continue with an academic education was raised in the inquiry. Referring to the school's most famous graduates, Apirana Ngata and Maui Pomare, Ihaia argued that only they succeeded because their parents had money to send them on to finishing school, and that there were others just as bright as Ngata, who, through want of money, had been forced to return to the kainga. Without further funding, opportunities had been lost, and the academic education was largely wasted. As a result of the commission, Ihaia Hutana was appointed to the Te Aute School Trust,[161] the first Maori to be so appointed.

The provision of European-style education was vital if Maori were to assume an equitable role in the growth of Hawke's Bay. Maori were keen to be educated, but they believed that the Government also had a role to play in its provision for Hawke's Bay Maori. Judging by the failure of the native schools at Omahu and Pakowhai, and the frustration over the lack of control and input into the management of Te Aute College, it would appear that the Crown failed to carry out its obligations to Hawke's Bay Maori. The overriding issue was, essentially, financial. Due to reasons outlined earlier in this section regarding Maori debt and losses of wealth, Maori were probably not capable of funding the education of their children themselves. They believed that the Crown had made general promises to contribute to the provision of education, but, ultimately, Maori remained dissatisfied with the level of support shown by the Crown.

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159. Report on the Petition of Te Hapuku and 168 others, together with minutes of evidence, AJHR 1879, I–3A, pp 9–13
160. Evidence of Ihaia Htana, Royal Commission of Inquiry on the Te Aute . . . School Trust, AJHR 1906, G–5, pp 57–58
161. Ibid, p 31

6.5 LAND ISSUES, 1891 TO 1930

6.5.1 Introduction

As a whole, between 1875 and 1891 Hawke's Bay had not suffered significant land alienation. However, the Crown renewed its purchasing efforts from 1891. By 1930, Maori had little land left in their ownership, and that which remained was either of marginal value, sorely under-developed, or leased to Europeans. This section of the chapter will attempt to describe, using only the barest narrative of events, the methods of purchase employed by the Crown during this period, and detail the sequence of sales that occured. This narrative will not be an exhaustive account. Some areas of Hawke's Bay have not been given the same attention as others, due to a lack of available data, or because comprehensive research was already being carried out by claimant researchers.

It has proved too difficult to ascertain the amount of land alienated to private purchasers during this period. This task awaits further research. It has also not been possible, due to time contraints, to provide an accurate account of the fate of the Maori reserves during this period; again, this task awaits further research. This section of the chapter will show, though, the destructive effect this period of Crown purchasing had on Maori.

Although there were circumstances peculiar to each area in Hawke's Bay where the Crown purchased land between 1891 and 1930, the Crown's land purchasing during this period operated from a standardised policy. This policy has been researched in detail elsewhere.[162] Generally, the Crown was content to purchase individual share-holders' grants, until it had acquired enough interests in a block to justify partitioning out its share. Sometimes the Crown held on long enough to pressure all shareholders into selling; on other occasions, pressure for development resulted in immediate partitions being sought. As Boast has pointed out, the Department of Lands and Survey had different goals than the Department of Native Affairs, the former wishing to partition quickly and settle Europeans on land, the latter, more content to wait until most shares were purchased.[163] It appears fair to conclude, from the research conducted, that the Crown held an unfair advantage when negotiating purchases of Hawke's Bay Maori land in this period, and that Maori had to be almost fanatically resilient, in order to hold on to their land.

This section has used reports written by claimant researchers who have traversed the MA/MLP series held with National Archives, which provides a good deal of the historical information recording the efforts of the Crown purchasers during this period. It has also used, when research was not available elsewhere, the Crown's published 'Lands Finally Acquired', and 'Lands Partially Acquired' reports, and other special reports in the Native Affairs section of the *Appendices to the Journals of the House of Representatives*. Although inaccurate at times, these lists and reports provide sufficient information to enable us to form a general impression. Sometimes, the compilers of these lists proved tenacious. In 1905, the 'lands partially acquired'

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162. CFRT-funded twentieth century land project
163. Boast, J3, p 48

still listed Te Matai 1, even though no further payments had been made, following Grace's payment of £225 in 1888.[164]

6.5.2 Crown purchasing in Tamaki

It is necessary, at this point, to continue the narrative of purchases in southern Hawke's Bay, which was started in section 6.2. The Crown, in 1891, was engaged in purchasing the Manawakitoe, Piripiri, Umutaoroa, Waikopiro, and Tiratu blocks. From 1894 land purchase officer A Turnbull, with assistant land purchase officer Kelly, extended this further to include the Ngaepaeruru, Tamaki, and Rakautatahi blocks. An initial payment of £500 was made on the 22,079-acre Tamaki block, which had had restrictions placed on its alienation when it passed through the court.[165] For this period of Crown purchasing, such restrictions appeared to have little effect. Also in 1894, some Ngapaeruru shareholders received £700, a further £400 was expended on Waikopiro, and a further £100 on Rakautatahi blocks 1–5.[166] On 9 July 1896, Waikopiro B (226 acres), was gazetted as finally acquired by the Crown, £113 having been outlayed for its purchase. Other partitions of the Waikopiro block were listed in the 'Lands Partially Acquired' statistics. More shares in the Piripiri, Ngaperuru and Rakautatahi blocks were purchased.[167] A number of partitions of these blocks were gazetteed as finally acquired the following year. Tiratu was purchased at a price of 10 shillings an acre, Ngapaeruru 1–9 at five shillings an acre. Several subdivisions of Rakautatahi (1A, 2A, 3A, 5A) representing 165 acres of land, realised an average 11 shillings per acre, and Waikopiro 1B, section 1, comprising 506 acres, was purchased at 10 shillings and sixpence an acre. The Crown was obviously holding out for all of Piripiri, as another nearly £2000 was paid, at the rate of 10 shillings an acre.[168]

Ballara and Scott have postulated that the prices paid per acre for these blocks were lower than the market value.[169] Their argument was based on circumstantial evidence, however, and does not detail any specific or comprehensive cases of huge differences between the price Maori received, and the price settlers paid to the Crown. To sufficiently address this issue, an analysis of many variables would have to be taken into account, such as the quality of the land; the costs in purchasing, surveying, and sub-dividing; and the provision of public amenities, such as roads, railways, and drains. Further research of Crown land sources, showing the extent, if any, of profit margins when the land was acquired by Europeans, is necessary before any conclusions could be drawn.

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164. The land history of Te Matai appears hopelessly confused. Maori believed the land, with its neighbour, Pakaututu, had been confiscated in 1867. While Pakaututu went before the land court and was alienated, Te Matai, despite the Crown's best attempts, remained in Maori ownership. Unfortunately, today, it is land-locked, and the cnrrent owners of Pakaututu do not allow the owners access, Wai 216 masterfile, 216/0, Waitangi Tribunal, Wellington.
165. AJHR 1886, G–15, p 21
166. Land Partially Acquired, AJHR 1895, G–2, p 11
167. Lands finally Acquired and Lands Partially Acquired, AJHR 1896, G–3, pp 5, 11
168. Lands Finally Acquired and Lands Partially Acquired, AJHR 1897, G–3, pp 5, 12
169. Ballara and Scott, Tamaki block file, pp 72–73

Ngapaeruru 6C (3699 acres) was gazetted as finally acquired on 4 August 1898. Like Tamaki 1 and 2 blocks, which were also gazetted on the same day, it realised 10 shillings per acre. Margin notes stated that there had been no further attempts to gain the outstanding 933 acres from the original 17,970-acre Piripiri block. Further parts of Waikopiro (1B2, 2B, 3B) were partially acquired, as were parts of Ngapaeruru (1B, 2B, 4B, 6B, 7F); both deals being made at the rate of 10 shillings per acre.[170] In 1899, the bulk of Piripiri, less the 933 acres mentioned above, was gazetted – 10 years after the first payment was made. The parts of Ngapaeruru and Waikopiro that the Crown had been seeking through the 1890s, were gazetted also, in July 1899.[171]

The new century saw the Crown land purchase machine continue to acquire the shares of individual shareholders piecemeal in the Tamaki region, partitioning out those who declined to sell their land to the Crown. Payments at the rate of 10 shillings an acre continued to be made between 1900 and 1902 for the Tamaki block. Ngapaeruru 7F2 (617 acres) was gazetted as finally acquired on 24 August 1905.[172] The fate of the Rakautatahi block came before the Stout–Ngata commission in 1906. The commission's report noted that the Crown had purchased 1866 acres, and that 9994 acres were still in Maori ownership. Of that area, half was used as kainga by Maori, and half was farmed by some of the owners. Those farmers, however, held no title for their farms, occupying on the basis of the tacit consent of other owners. After discussion with some of the owners, the commission recommended that 3469 acres be leased by auction, and the 5904 acres of land in Maori occupation be formally leased to the farmers on the ground.[173]

6.5.3 Crown purchasing in Waimarama

The lands at Waimarama represent, in many ways, an example of what might have been for the rest of Hawke's Bay. Though the lands were the focus of a Crown purchase in 1855, with a deed showing that one person 'sold' 32,000 acres, the purchase was not officially recognised. This was because Cooper could not 'complete' the secret deal signed in Wellington. This is odd in itself, for Cooper felt no such need to 'complete' other deeds, which were just as dubious (see ch 3). The Waimarama lands then followed the usual course of valuable Hawke's Bay pastoral lands which contained a sea frontage. Informal and 'illegal' leases were entered into by European entrepreneurs. One of them, John Morrison, was prosecuted in 1861 for contravening the Native Land Purchase Ordinance 1846. Interestingly, the Commissioner of Crown Lands at Napier, F Tiffen, said that the 'deposit' paid by the Crown had been returned.[174] The land passed through the Native Land Court in 1867, and was split into three blocks, Okaihau, Waipuka, and Waimarama proper. In September 1868, the resident Maori entered into what was to become a long term relationship with two pastoralists, F E Meinertzhagen and W L Campbell.

170. Lands Finally Acquired and Lands Partitially Acquired, AJHR 1898, G–3, pp 9, 11
171. Lands Finally Acquired and Lands Partially Acquired, AJHR 1899, G–3, pp 7, 12
172. Lands Finally Acquired and Lands Partially Acquired, AJHR 1900–1905, G–3
173. The Otawhao A and Rakautatahi Native Land Blocks, Hawke's Bay, AJHR 1907, G–1E
174. Grant, p 32

Negotiated principally by Teira Tiakitai, the partners, in a series of leases, farmed 31,000 acres, the rent calculated at a rate of 10 shillings an acre. Unlike Guthrie-Smith's lease, an improvement clause was negotiated as part of this deal. Maori continued to live on one section of the lease. It was at this point that, if the lands were to follow the pattern established on the inland plains, the lessees would have attempted to purchase their run. Certainly, some tension was evident between the tenants and their landlords. Campbell's diary recorded that he prosecuted Matiu and Wi Rangirangi over problems with roving dogs.[175] Maori were employed as domestic servants, and mostly as shearers, but Campbell expressed frustration at his workforce dropping shears to attend a runanga. Another of the problems usually faced by lessees also occured at Waimarama. Development capital was unobtainable, due to the insecurities of native title. This forced the lessees to secure funds overseas. All these factors must have made outright purchase appear a good idea to the Meinertzhagens and Campbell. Nevertheless, a determination on the part of Maori to retain ownership of their lands, appeared to stave off any thought Meinertzhagen and, from 1874, Thomas Moore, had of purchasing the land they farmed.

With the lease due to expire in 1883, the tenants commenced negotiating a new contract in that year. One of the Maori owners, Airini Tonore (Donnelly), forced large concessions. The lease that was eventually signed in 1889 saw the rent increase from £500 to £1000 a year for the first three years, and thereafter £1800. As well, to secure a further 21 years, the lessees made an ex gratia payment of £10,000 to Airini,[176] and allowed her to immediately sub-let half of the 33,000-acre run. The sub-division purportedly included the best of the Waimarama lands.[177] The activities of Airini were not supported by all the Maori owners. Mohi Te Atahikoia led a campaign on behalf of owners who wished to maintain the relationship with the Meinertzhagens, whose daughter Gertrude was by this time managing the family's interests. Cases were heard in the Native Land Court for a number of years in the 1880s and 1890s.[178]

The battle between Arini Donnelly and Gertrude Meinertzhagen intensified when new lease negotiations commenced in 1903. Airini attempted to shut Gertrude out altogether by getting Maori owners to enter partnership deals with her. The partnership, however, was a sham, as Airini intended to own and manage everything herself (with her husband). A new lease was signed with a majority of owners, yet, Meinertzhagen had followed incorrect procedures, allowing Airini to lodge objections to the Ikaroa Maori Land Board.

The Crown land purchase officer manoeuvered between the two women's battles for the signatures of Waimarama shareholders. Using to its advantage the seemingly ceaseless litigation and subsequent inability of Maori to access their rents, due to the

175. Grant, pp 45–46
176. Their ability to raise this amunt of cash suggests that the lessees could have raised the necessary money to purchase the block earlier, if it had been offered. This appears to confirm that it was Maori resistance to selling that precluded a sale taking place.
177. Stout–Ngata commission, Waimarama report, AJHR 1907, G–1, p 1; Grant, p 55
178. Grant, p 58

litigation, the Crown purchased 5414 acres in 1906.[179] The Stout–Ngata commission was critical of the Crown purchasing land in such circumstances; particularly, as the Crown had paid £7 per acre, an extremely high price, which was well above market value, though, this at least, was of some some benefit to Maori. Stout and Ngata were critical also of the Native Land Court awarding to some Maori the 444-acre Paparewa reserve, as it contained wool sheds and other buildings used by both the Donnellys and the Meinertzhagens. The commission made a series of recommendations, guided mainly by legislative requirements prohibiting Meinertzhagen from obtaining a lease of more than 5000 acres.[180]

The complex events and confusion over title experienced by the Maori owners in the 1900s, appeared to contribute to the Crown increasing its purchasing in the area. By 1908, it owned 10,500 acres. Further land loss occured with the death of Arinini in 1908. She bequeathed her landholdings at Waimarama to her husband. He allowed the sale of her 6698 acres in 1911, the bulk of which was purchased by Europeans. Airini's former interests in the Paparewa reserve were partitioned out, and sold to Europeans in 1914.[181] The Maori shareholders of the land in the Meinertzhagen lease were actively pursued by Crown purchasers between 1907 and 1927, when the lease finally expired. It was not renewed, as the Crown decided to sub-divide, and sold leases to six former World War I soldiers. By 1929, over a 25-year period, Maori had sold most of their former 32,000-acre estate.

6.5.4 Crown purchasing in Mohaka–Waikare

The existence of Richard Boast's research on the fate of the Mohaka–Waikare blocks that were 'returned' to Maori in 1870, precludes the necessity of additional research for this section. Boast has detailed the (mostly) Crown purchasing of the individual blocks. He has outlined many of the salient issues arising from the methods used by Crown land purchase officers, and also posited a number of reasons as to why Maori may have sold. Before proceeding to describe the Crown purchasing in this district in the twentieth century, a summary of background events for the period 1875 to 1911 is required.

The 12 'returned' blocks, (Arapaoanui, Awa-o-Totara, Heru-a-Tureia, Kaiwaka, Purahotangihia, Pakuratahi, Tangoio Sth, Tatara-o-te-Rauhuri, Te Kuta, Tutira, Tarawera, and Tataraakina), were, as mentioned in chapter 5, in an unfortunate tenurial position. They were Crown land, as they had been part of a proclamation confiscating the district in 1867. Yet a later deed, the 1870 Mohaka–Waikare No 2 agreement, set out the return of certain blocks to Maori named in attached schedules. For all intents and purposes, the returned blocks were treated as being owned by the Maori listed in the schedules (or their successors). Despite entering into leases, paying property tax, and, generally, acting as 'owners', no Crown grants were issued to Maori for these blocks.

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179. AJHR 1907, G–1, p 5
180. AJHR 1907, G–1, pp 2–5
181. Grant, p 98

Pressure from Maori to have grants issued to them intensified in the late 1870s and early 1880s. Their quest was supported by the Native Affairs Committee in 1879 (see sec 6.3.3). The issue of who should pay for the surveys, which were necessary in order to have the Native Land Court issue certificates of title, was still unresolved. The Crown eventually decided that a sketch map would suffice for the purposes of the hearing, and the question of more detailed surveys was left for later.[182] The Native Land Court, presided over by Judge Brookfield, heard the case in Napier on 6 July 1882. Maori, led by Manaena Tinikirunga, immediately asked the judge if the court was going to make a full inquiry into the customary ownership of the blocks, irrespective of the schedules in the 1870 agreement. Judge Brookfield's reply, that the court would 'not now go behind' the agreement validated by the Crown in legislation, was met with almost unanimous disapproval by the Maori present. They walked out in protest. Confused, the judge telegraphed the Native Minister, John Bryce, for instruction. As detailed in case studies above, Bryce was loathe to have the Government interfere with court proceedings in Hawke's Bay. His reply to the judge was unhelpful. Brookfield was told to make the decision himself as to whether to carry on or not.[183] He did, and a farcical spectacle ensued. In a courtroom mostly devoid of Maori, Preece proceeded to read out the listed names for all the blocks as they appeared in Locke's 'Mohaka–Waikare Book', with the Crown interpreter, Hamlin, matching what was read out with what was recorded in the 'original', (presumably the 1870 deed). However, Locke had names in his book which he had, according to Preece, obviously intended to include in the deed, but, for no apparent reason, were not in the deed's schedules. Nevertheless, Judge Brookfield decided to stick with the names recorded in the deed. This was compounded by court incompetence; although reduced to the strictly administrative task of copying names from one list to another, errors crept in. Some names in the 1870 deed schedules failed to appear in their respective certificates of title.[184]

Crown purchasing in the area commenced with the sale of Kaiwaka. In August 1891 the lessee of Kaiwaka, G P Donnelly, husband of Tareha's principal successor, initiated surveying of Kaiwaka, despite warnings by James Carroll that a 'gross and unpardonable fraud' would be committed, if the title to Kaiwaka was not re-investigated beforehand. Carroll and W L Rees supported Te Teira Te Paea and others in seeking a re-investigation. However, Sir Robert Stout lobbied on behalf of the Tareha family. Airini Tonore, Te Roera, and Kurupo Tareha won, and a Crown grant was issued posthumously to Tareha. Protracted litigation followed. Based on what Boast believed was incomplete evidence, the Privy Council concurred in the judgement of the Appeal Court, namely, that it had not been intended that Tareha act as trustee for other owners. The plaintiffs appealed directly to King Edward VII, to no avail.[185] Te Roera Tareha and others sold 12,030 acres for just over £14,100, in 1911.[186] Airini Donnelly's share (16,915 acres) passed to her daughter Maud, who

182. Boast, J1, p 103
183. Boast, J1, p 106
184. Boast, J1, p 109
185. Boast, J1, p 129
186. Boast, J1, p 134

offered it to the Crown in 1912 for just under £100,000. Before the Crown purchasers could act, however, Maud Perry had the land's status changed to that of general land.

Following the purchase of Kaiwaka, the Crown embarked on a large-scale acquisition policy in the area, seeking to purchase as much land as it possibly could. This complemented similar efforts in Mohaka itself (sec 6.6), and Waimarama (sec 6.5.3). Boast has detailed in tabular form when each block was either offered to the Crown, or the Crown sought to purchase it; when meetings of owners were held, and partitions were made; and, finally, when land was purchased, how much was purchased, and for what price.[187] For further data on particular blocks, reports on each are included also in chapters 4 to14 of Boast's 'Report on Crown purchasing of Mohaka–Waikare blocks'. In total, Boast's table 16 from his social and economic issues report records the Crown as having purchased 102,230 acres of the returned blocks between 1911 and 1931.[188]

The Tarawera and Tataraakina blocks have been afforded separate treatment by Boast, and with good reason. Their history is quite unique. The Crown attempted to purchase the large blocks from 1916. A stay on the proposed purchasing of the 74,546-acre Tarawera block occured in 1918, however, due to the number of calls for re-investigation into the customary ownership of the blocks.[189] By 1922, the block had been divided into 13 partitions, and the following year the Crown placed a proclamation prohibiting any alienations of the area (which included leases), other than to the Crown. Tarawera 2 was purchased in 1923, the following year blocks 10A (owned by the Tareha brothers), and 10B, were purchased, in all 9495 acres.[190]

This remained the extent of the Crown's purchases, as petitioners applying for re-investigation of the block won their day in court. Despite the Solicitor-General, J Salmond, opining in 1913 that the two blocks should not be re-investigated, Judge Gilfedder decided the opposite, based on a 'baffling conclusion' that Tarawera and Tataraakina had *not* been included in the confiscation.[191] He was wrong, and his ruling on this point stands as an example of sheer incompetence. Special legislation was passed, namely, the Native Land Amendment and Native Land Claims Adjustment Act 1924, and the Native Land Amendment and Native Land Claims Adjustment Act 1926, to allow re-investigations to occur, and conseqent re-allocation of shares to be made in the two blocks.[192] While the re-investigations did attempt to include owners (mostly Ngati Hineuru), who had been left out of the poorly drafted 1870 schedules, by doing so, they created a whole host of new grievances. A further re-investigation in 1929, made possible by the Native Land Amendment and Native Land Claims Adjustment Act 1928, re-allocated shares

187. Boast, J3, pp 44–47
188. Boast, J4, p 83
189. Boast, J4, pp 111–112
190. Boast, J4, pp 113–114
191. Boast, J1, p 165; and Boast, J4, p 114
192. Boast, J4, p 115

again.[193] Families like the Baker whanau had their fee simple title, in this instance, to Tarawera 5A, cancelled. The improvements made by the Bakers to their land holdings went uncompensated, and as a result they lost a considerable slice of their economic future. Following persistent petitioning, a Royal Commission, which reported in 1951, inquired into the re-investigations, and recommended that the share allocation be restored as close as possible to the situation prior to 1924.[194] The Bakers regained Tarawera 5A, fully, and after incurring substantial legal costs, in 1970. The Crown have recognised the Baker whanau's grievances, and paid compensation of $375,000 ($20,000 of which had been forwarded earlier to cover research and legal costs) on 20 December 1995. Crown research for this claim (Wai 147), forewarned that:

> other families descended from the Tarawera and Tataraakina grantees under the 1870 Agreement are likely to have similar grievances to those of the Baker whanau . . . Similarly, the descendants of those who suffered under the confiscation, then had their ancestral rights to land in the . . . blocks recognised under the 1924 and 1928 legislation, and who received very little compensation when they again lost their title under the 1952 Act, may well bring a claim for compensation under the Treaty of Waitangi.[195]

Currently, Ngati Hineuru have joined with other hapu (Ngati Tu, Ngati Pahauwera, Ngati Kurumokihi, Ngai Tatara, and Ngati Matepu), in bringing a comprehensive claim on behalf of those who 'suffered' under confiscation (Wai 299). Other whanau-based claims similar to that of the Baker whanau's Wai 147, have been received also.[196]

It remains to summarise the particular methods of purchase employed by the Crown in obtaining the returned blocks. Perhaps the first point to remember is that the policy of purchasing appeared to involve the active pursuit of practically all Maori land in the area. The methods of purchase engaged in by Crown officers reflected this ultimate goal. This resulted in, for example, the wishes of Maori to retain land being substantially overridden. When a meeting of owners was called in 1916 to discuss the Crown's proposed purchase of Heru-a-Tureia, for example, the resolution was rejected unanimously.[197] Unperturbed, the Crown called another meeting the following year, but again it was rejected. Instead of respecting the owners' wishes, the Crown stepped up its efforts to obtain the block, writing to those owners known to favour a sale, imploring them to join in its cause.[198] Sales of individual interests followed, and, as the months dragged on, the remaining owners' likelihood of salvaging anything viable from the block dissapated. This was because

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193. Essentially, the share allocation was being tossed between descendants of Kahutapere II, who were mostly coastal hapu such as Ngati Matepu, Tareha's Ngati Tukuaterangi; and, the residents, Ngati Hineuru. The 1870 schedule had Kahutapere II descendants allocated two thirds, Ngati Hineuru, one third: see P Parsons, 'The Interests of Kahutapere II in the Tarawera block', Wai 299 research.
194. AJHR 1951, G–7, p 24, cited in Treaty of Waitangi Policy Unit's (TOWPU), 'Wai 147 Baker Whanau–Waimakuku Whanu Trust Inc Report', March 1994, Wai 201 ROD, doc J11, p 12
195. TOWPU, 'Wai 147 . . . Report', pp 19–20
196. Currently they are Wai 488, 491, 596, 598, 599, 600, 601, and 602. More are expected to be registered.
197. Boast, J3, p 147
198. Boast, J3, p 151

during the protracted purchasing the block sufferred neglect, and began to be taken over by noxious weeds. By 1917, most shares had been transfered to the Crown. Unable to obtain any rent from the land for over five years, the final resistant share-holders: Hami Tutu, Mere Taiwhanga, Erena Harawira, Ratima Waata and Kingi Waikau, had all sold their shares by 1923.[199]

The reason the owners had been unable to obtain any rents from the block, was because the Crown had placed an alienation restriction over the land; in effect, re-constituting Crown pre-emption, from the point when it first wished to purchase. This provision, only supposed to be a temporary measure, became frequently used by the land purchasers. Heru-a-Tureia, for instance, had its restricted alienation proclamation rolled over from year to year, until all the sellers had been forced to sell to the Crown. With existent leases coming to an end, the owners of Arapaoanui decided to re-let part of their block to the long-term European lessee (Guthrie-Smith, lessee at Tutira, was not the only European to develop relationships with owners), and take over the farming of the rest themselves. Unfortunately for them, the Crown had also noticed that the leases were about to expire, and set about purchasing the block.[200] It first placed a restriction against any new leases, which applied to the Maori owners also. The first shares the Crown purchased were those of the non-resident share-holders, who, reliant on the Arapaoanui rents to top up their income or aid the development of land they lived on, accepted the larger, yet final, payment. Some owners' shares were purchased while they attended court at Napier, in August 1916.[201] The Crown's patient policy soon saw other residents sell, until in August 1917 partitions of the remaining non-sellers' interests occurred. The Crown included in its block a small area of kahikatea trees and an urupa. The remaining owners protested this, as well as arguing that they should have received coastal land where the Waipatiki Stream entered the ocean.[202] In 1929 one of the Maori-owned blocks, Arapaoanui 3, again had a restriction placed on its alienation as the Crown set about purchasing it. Although they did not succeed on this occasion, the prohibition inhibited the owners' opportunity to lease the block for over a year.[203]

Echoes of the 1850s Crown purchasing techniques are evident. Then, a prohibition had been placed on Europeans negotiating leases with Maori, (the Native Land Purchase Ordinance 1846), in order to force Maori into selling to the Crown if they wanted to remain in the new monetary economy. By the 1910s, it seems, little had changed. What proved effective then, remained one of the most successful tools of the Crown purchasers. This would appear to have been a gross abuse of power by the Crown.

A feature of the above methods of Crown purchase was the patience displayed when negotiating sales. Time was on the Crown's side. The Tutira block negotiations, for example, were spread over 15 years, from 1916 to 1931. Yet the Crown, having acquired the shares of those willing to sell, was quite entitled to

199. Boast, J3, p 155
200. Boast, J3, pp 72–88
201. Boast, J3, p 78
202. Boast, J3, p 84
203. Boast, J3, pp 92–93

apply to have its interest partitioned out, at the earliest convenience. However, government officials often chose not to do so. Given their policy of attempting to purchase all Mohaka–Waikare land, this is hardly surprising. The progenitor of prolonged purchases was the Department of Native Affairs. It favoured waiting until everyone but the most resistant non-sellers were left holding shares, thus gaining for the Crown the largest amount of land possible from each block. The Department of Lands and Survey sometimes opposed the Department of Native Affairs, however, as it wished to have settlers and trains on the landscape sooner, rather than later.[204]

Some of the reasons why Maori sold are contained in the description and examples of the Crown's purchase methods detailed above. Boast has posited a few more, including The complicated titles, lack of surveys and delays in issuing Crown grants for the returned blocks are some. Another reason was the lack of available capital for development, itself a by-product of the title confusion. One block, Tangoio South, was compulsorily vested in the Ikaroa land board in 1907, due to uncontrollable blackberry infestation. Tangoio Maori contested the acquisition of the land, but had to wait twenty years before it was returned. In the interim, some Maori owners took up leases in the area, and attacked the blackberry. No capital was supplied by the board, however, and the lessees soon fell foul of the elements, and fell into arrears in their rents. A lack of capital also led to some owners implementing their own version of consolidation. Hami Tutu, for instance, had interests in a number of the blocks, and although a committed non-seller, he eventually sold his shares in Tatara-o-te-Rauhina, in order to set up a farm in the Arapaoanui block for his son, Hauwaho.[205] Some owners in the Awa-o-Totara, Tutira, and Purahotangihia blocks displayed calculated initiative, when they offered to sell to the Crown part of their lands. Their intention was to take advantage of the proposed route of the Napier to Gisborne railway, by keeping lands on the seaward side of the railway, and alienating the rest. Money received from sales, would help develop that remaining. The Crown, however, ignored the owners' initiative, treated the offer as an unconditional one, and proceeded to acquire all of the blocks.[206]

Perhaps the most compelling reason to sell was, in the end, the conditions of poverty which many of the owners suffered. Previous sections have already recorded the state of indebtedness sufferred by Maori. Boast's 'The Mohaka–Waikare confiscation and its aftermath: social and economic issues' report, provides harrowing detail of the deprivation suffered by those living at Te Haroto and Tangoio. Diseases such as scabies, typhoid, pneumonia, and, by far the worst, tuberculosis, combined with poor housing to provide a morbid backdrop of communal poverty, for successful Crown purchasing.[207] Given the conditions faced, it is not hard to understand why Maori chose to sell. As Boast concluded: 'In the circumstances it made highly rational economic sense'.[208] The question to be asked, perhaps, is not why Maori sold, but, why was the Crown purchasing, and could

204. Boast, J3, p 48
205. Boast, J3, p 56
206. Boast, J3, p 53
207. Boast, J4, p 84. I do not intend providing further detail myself, as I feel chapters 4 and 5 have to be read in order to fully appreciate the social and economic circumstances in which purchasing took place.
208. Boast, J3, p 63

alternatives have been arranged? As will be apparent in the next section, the same question must be asked with regard to Crown purchasing in the Mohaka area as well.

6.6 NGATI PAHAUWERA LAND NORTH OF THE MOHAKA RIVER, 1875–1930

As substantial research on these blocks (Rotokakarangu, Maungataniwha, Te Putere, Pihanui, Owhio, Whareraurakau, Mohaka, Waipapa, and Waihua) is currently being undertaken on behalf of the claimants, it is sufficient for this section simply to record, very briefly, the alienation history of the blocks. The Mohaka (22,355 acres), Waipapa (1290 acres) and Whareraurakau (3310 acres) blocks all passed through the Native Land Court in 1868. Unlike most of the blocks that were awarded title in Hawke's Bay prior to 1873, however, these blocks had, as well as their 10 grantees, attached lists of owners or hapu, a provision provided by the Native Land Act Amendment Act 1867.[209] These three blocks were leased to pastoralists and mostly remained in Maori ownership until the twentieth century.

Rotokakarunga (19,792 acres) had title awarded by the court in 1875. By 1877, the Crown had purchased 25 of the 30 shares, and in 1880 took possession of its 16,684-acre partition. The non-sellers' 2805 acres remained in Maori ownership until 1914, when it was sold, piecemeal, to Europeans.[210] The Maungataniwha block had title awarded in 1879, and was sold four years later to a Wellington accountant.[211] The Pihanui and Owhio blocks came before the land court in 1868. Ngati Pahauwera and Ngai Te Kapuamatotoro had apparently reached agreement on boundaries prior to the hearing. Accordingly, Pihanui 1 (6061 acres) represented Ngai Te Kapuamatotoro's interests, and was awarded to 10 grantees. Pihanui 2 (1331 acres) represented Ngati Pahauwera's interests. The division, in the end, proved immaterial, as both blocks were sold to J G Kinross, with George Worgan, an interpreter referred to earlier in section 6.3.3(2), acting as the purchase agent. The Owhio block was included in the sale of Pihanui in December 1869.[212]

Maori resumed occuapation of the Mohaka block in 1893, following the end of its term of lease. Some of the land was stocked with sheep; 10,000 by 1903.[213] Despite years of litigation, attempting to further define the interests of all the owners in this large block, it was not until 1903 that the block was partitioned into 55 sub-divisions. Prior to that ruling sub-divisions had been made in 1884, 1889, and 1896, but all had been annulled in 1901. Once again, actions under the Maori land legislation had proved costly and lengthy. Stout and Ngata reported that the owners also faced high surveying and road costs.[214] Also, the owners faced constant sniping from other farmers in the district, who accused Maori of 'making the country a

209. Waitangi Tribunal, *Mohaka River Report*, p 43
210. Ibid, p 44
211. Thomson, A29, p 71
212. Thomson, A29, p 66–69
213. Thomson, A29, p 89
214. AJHR 1907, G–1, p 10

rotten wilderness, a nursery for rabbits and blackberries'.[215] Threats that land might be compulsorily vested in the district land board were raised intermittently.

Crown purchasing of the Mohaka and Whareraurakau blocks commenced in 1912. For many shareholders, their interests had become an economic liability, as the court costs, rates, blackberry and rabbits ate into any returns. Most of Whareraurakau was purchased by the Crown between 1915 and 1918; one section being sold to a European. Further remaining land was sold to the Crown in 1973.[216] The intent to purchase portions of Mohaka block originated with a proposed 1912 plan to construct a railway route from Napier to Gisborne. To aid this intent, the Crown issued proclamations preventing alienations 'other than . . . [those] in favour of the Crown'.[217] Despite well-documented reluctance by considerable numbers of Maori to sell, Crown purchasing continued throughout the economically tough 1920s. By 1931 the Crown had purchased outright 19 sub-divisions, and shares in 46 others – and owned just under half of the original 22,355 acres.[218] Similar proportions of the Waihua block were acquired by the resident lessees between 1910 and 1930. By 1930, Ngati Pahauwera had only about 30,000 acres left of the more than 200,000 acres in which they had interests.[219]

6.7 CONCLUSION

There were approximately 2000 Maori living in Hawke's Bay from the late 1870s. This figure appeared to maintain a consistency up until 1930. This chapter has shown how, although the Crown purchasing appeared to subside in Hawke's Bay up until 1891, purchases of the Tamaki Bush being the major exception, Maori were still unable to build on and develop a substantial economic base. This was due to earlier alienations, but also, to the complications caused by the legislation under which their land was administered. Land leased to Europeans did not appear to realise the best rents possible, due to a host of problems outlined in section 6.3. Maori made many and varied complaints about these issues and others. The three cases studies provided, were all concerned with small parcels of land, but dealt with big, principal issues. While Maori protest in this era was channelled through traditional European modes, a change from the 1860s, the central issue remained the same. Maori wanted to control and manage their own affairs and destiny. The European-sponsored repudiationists, the Native committees which grew out of the runanga, and the later Kotahitanga movement all agreed on that point. This chapter has tried to identify ways in which this desire was hindered. To this end, an attempt was made to assess Maori social and economic position, by looking at levels of Maori wealth, education, and debt.

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215. Thomson, p 93
216. Thomson, p 102
217. Thomson, A29, p 95
218. Thomson, p 98
219. Don Loveridge, 'When the Freshets reach the Sea': Ngati Pahauwera and their Lands, 1851–1941, August 1996, p 5

The reserves made during Crown purchases, and the blocks awarded title with restrictions on their alienability, appeared to survive relatively intact until 1891. This changed after 1891 however, as was shown by the commencement of the Crown's purchasing of the 22,000-acre Tamaki block in 1894. Indeed, one of the constants throughout the period covered by this chapter was the Crown's continued purchasing of those blocks in the Tamaki Bush which it had been unable to purchase in 1871. Crown purchasing also took place in a comprehensive fashion at Waimarama, the Mohaka–Waikare district, and at Mohaka. The tactics employed by the Crown retained some of the successful features of the 1850s purchasing period. Prohibitions on allowing Maori to sell, or most importantly to lease their lands to anyone but the Crown were used to ensure sales took place. Many other tactics unfair to Maori aided the transfer of substantial amounts of their land to the Crown in the first thirty years of the twentieth century. By 1930, it appears that most Maori land had been alienated, and the largest blocks that remained tended to suffer from particular difficulties. The Tarawera block, for instance, was plagued by a succession of bungled attempts by the Crown to re-investigate the block's title. The Mohaka block provided little if any revenue for its Maori owners. Further research is required to assess the extent of landlessness suffered by 1930.

This chapter has been unable to cover many important issues, which has made it an incomplete account of this period. For instance, the section on Maori protest does not record the mountain of petitions sent by Hawke's Bay Maori in the first thirty years of the twentieth century. The Tribunal's *Mohaka River Report 1992*, and *Te Whanganui-a-Orotu Report 1995,* both provide evidence of this continued Maori protest. The sections on education, debt, and court costs do not proceed, to any degree, into the twentieth century. It is hoped that for those parts of Hawke's Bay yet to be comprehensively researched, reports covering these issues will be written. Detail of land alienation in some areas of Hawke's Bay; notably, Porangahau, Ruahine, Ruataniwha, and Tamaki, has not received as much attention in this report as the more northern areas. This is for two reasons: firstly, the secondary and published official sources studied, which form the base source material for this chapter, did not contain the same amount of information on the south, as they did for central and northern Hawke's Bay; secondly, a lack of time prevented a wider search for unpublished primary source material being made. This imbalance will hopefully be rectified when claimant and Crown research for these areas is completed.

This chapter has not had sufficient time to introduce or discuss many issues of importance, such as the acquisitions for the construction of the Manawatu–Napier and Napier–Gisborne railways. Another omission is the compulsory acquisition of land for a variety of reasons, including roads, quarries, river diversion, suburban development, and water supplies. Many of the claims presented to the Tribunal concern these (mostly) twentieth-century grievances. This chapter has not considered, at any length, the many environmental concerns of Maori during the period, which are evident in claims before the Tribunal. Researchers with specialised skills are required to take up these issues. Finally, this report has not documented the extent of alienation by private purchase in this period. Only detailed block by block research will reveal the true extent of grievances relating to such purchases.

CHAPTER 7

CONCLUSION

7.1 INTRODUCTION

This report's main function has been to provide an overview history of land alienation in Hawke's Bay. While some firm conclusions can be drawn from the available evidence, many others are offered as representing, at this stage, a preliminary view. This report is released as a draft, in the anticipation that many submissions will be made in response to it. These submissions will, hopefully, help to correct any inaccuracies, offer different approaches to the issues discussed, and posit different explanations of events than those recounted in this report. Also, this report has used the research completed by others as its main source material. Therefore, any conclusions made are, in a number of cases, reliant on the research completed by those authors, and are reliant on a correct interpretation of their research having been made. Finally, it is difficult to be conclusive due to the unbalanced nature of the sources. Official records form, for most part, the base source for this report. Explanations of Maori action, therefore, are taken from the opinions of Europeans, often with vested interests of their own to protect. Despite these limitations, a number of strong points can be made about the interaction of Maori and the Crown in Hawke's Bay, and the ways in which Hawke's Bay land was alienated from the former to the latter.

7.2 THE PEOPLE

Chapter 1 of this report was based largely on the research of historians Angela Ballara and Patrick Parsons. Hawke's Bay Maori have usually been labelled as Ngati Kahungunu. While this is a correct assumption in many ways, it does not altogether explain the composition of Hawke's Bay Maori. It appears clear that the iwi and hapu of Hawke's Bay, as they were in 1850, were descended from both ancient and migrant people. While most groups identified a Ngati Kahungunu tipuna as their eponymous ancestor, they also recounted their links to various ancient peoples as well. At 1850, autonomous hapu were the operative groups in Maori society; the population of Hawke's Bay Maori did not identify or act as one iwi. Some groups at 1850, such as Ngati Pahauwera, Ngati Te Whatuiapiti, and Rangitane, contained many associated hapu, who sometimes acted with common purpose. Groups such as Ngati Hineuru could claim descent from the ancestors of neighbouring iwi, in this case, Ngati Tuwharetoa. On the whole, the groups with claims before the Tribunal

today reflect the complex situation of group and sub-group identities as at 1850. Most claims have been brought on behalf of many hapu, but indicate that the represented hapu maintain autonomy from the wider groups. The present-day issue of which groups have a mandate to act autonomously – that is, act in an independent fashion in order to determine their social, economic, and political needs – must draw on the historical interpretation of which groups of Maori in Hawke's Bay have acted autonomously in the past.

7.3 EARLY UNDERSTANDINGS

What Maori understood of European colonisation in 1850 forms part of the focus of chapter 2. From the written evidence available, it appears that Maori wanted the settlement of a large population of Europeans in Hawke's Bay. It was equally clear that Maori made this decision based on a desire to take part in the development of the new social and economic climate the settlers would generate. From chapter 2, some conclusions can be drawn in relation to what Maori understood about land. Although Hawke's Bay Maori did not have as much contact with Europeans as some Maori in other parts of New Zealand, the contact they did have was both vital and varied. Whalers, traders, missionaries and pastoralists all interacted with Hawke's Bay Maori enough to provide them with information about European forms of land ownership and land alienation. Perhaps the most important contact was the missionary William Colenso. Prior to McLean's arrival he cautioned Maori about the dangers of alienating large blocks of land. Instead, he advised them to lease their lands, or, if they had to sell, to retain large reserves for their future benefit. The concept of permanent alienations of land, therefore, had been discussed with Maori prior to McLean's arrival in 1850. European concepts of land alienations, of course, differed from the traditional Maori understanding, as it was practised by them prior to the arrival of Europeans. Nevertheless, Maori had had the opportunity, prior to McLean's arrival, to consider and debate the merits of leasing, selling, or retaining their land.

7.4 THE FIRST PURCHASES

When McLean arrived, however, the option of leasing land was denied. Chapter 3 has explained in some detail how the first three Crown purchases of Maori land were conducted. Discussion in this chapter has focused on the negotiations that took place over boundaries, price, and reserves; and whether the consent of all owners was obtained. Not much deference was paid to Colenso's advice, since the Crown purchased 629,000 acres, but only 10,000 acres was specifically reserved in the deeds of sale. There were three factors which qualified this situation. First, McLean negotiated hard to limit the number and size of reserves for Maori. Secondly, Maori later intimated that not all the reserves promised in oral negotiations ended up in the written deeds, and thirdly, it may have been thought, by both Maori and McLean, that it was not necessary to provide large reserves, because a further 2,000,000 acres

of Hawke's Bay land existed. This view, however, fails to account for those hapu directly affected by the large alienations.

7.5 1850s CROWN PURCHASING

The ways in which the Crown purchased a further 900,000 acres of Hawke's Bay in the 1850s, the first deeds of which were signed in January 1854, require close scrutiny. Despite having sufficient knowledge of how Maori customary ownership worked, and of how public debate was necessary in order to gain the consent of all the owners to alienate land, the Crown purchasers, under the supervision of McLean, chose to enter into secret deals with chiefs. The leading protagonist, Ngati Te Whatuiapiti chief Te Hapuku, had explained the limits of his power to McLean in 1851: 'the land is not entirely mine, it is the property of this man and that man; mine is merely handing it over to Mr McLean'.[1] The secret deals resulted in the alienation of land to which many of the customary owners had not consented, and, because chiefs sold outside their immediate domain, it led to an escalation of inter-hapu rivalry. The Crown manipulated the rivalry in order to secure more land. Some of the initial secret deals were validated with further deeds years later. Yet the Crown argued at the later negotiations that repudiation of the former deed was not an option. This tactic of purchasing the rights of Maori in stages was a constant feature of Crown purchases in Hawke's Bay.

The Crown's actions, however, have to be viewed within a context of competing desires and obligations. The ability of Maori chiefs to determine their own destiny, has to be measured against the Crown's obligations to conduct fair and just purchases. Each purchase, therefore, has to be examined carefully in order to ascertain its particular circumstances. Chapter 3 has found that the secret deals of 1854 and 1855 were improper on a number of levels, but that the circumstances of the purchases of 1856 to 1859 are more complicated, largely because of the eruption of fighting in 1857 between two factions of Hawke's Bay Maori, the Heretaunga Ngati Kahungunu hapu, and those hapu associated with Ngati Te Whatuiapiti. While the Crown's actions undoubtedly played a part in the war, and the Crown was able to benefit from the war as the chiefs of both sides sold contested land, the chiefs also have to be held accountable for their actions.

The question of who was responsible for the adequate provision of reserves requires an answer also. Of the 1,500,000 acres purchased, only an estimated 21,000 acres was stated as reserved in the deeds of sale – about 1.5 percent. Furthermore, by 1862 the Crown had purchased at least 5000 acres from these reserves. Two reasons why the amount was so low have been offered in chapter 3. The first is that the Crown purchasers and Maori, on occasion, misunderstood each other's intentions and obligations during purchase negotiation talks. The result, as illustrated by the examples of Te Whanganui-a-Orotu and the Mohaka River, was that areas were left undefined, with Maori believing they were not included in sales, yet the Crown or other authorities assumed ownership. A more common occurrence, however, was

1. Te Hapuku and others to Governor Grey, 3 May 1851, translation printed in AJHR, 1862, C-1, p 312

that promises made by the Crown were simply not honoured. Hawke's Bay land history is littered with examples of Maori believing that they had reserved land which was not recorded in the deed; as well, even some of those reserves that did make it into the deeds, were not acknowledged as such for decades, if ever. Generally, Maori reserved land so that it could be permanently retained in their possession. The Crown failed to ensure that this happened. As stated above, the Crown played an active part in the alienation of some of the reserves made; at times, against the wishes of other customary owners, and in violation of the provisions of the sale deed.

Other tactics used by the Crown purchasers during this period appeared to have unsavoury aspects. Crown purchaser G S Cooper, for instance, when negotiating purchases of land, manipulated Maori who fell into debt: 'they have no alternative but to continue selling their lands as a means of obtaining supplies which have now become necessary to their existence', he told McLean in November 1856.[2] Writing privately to McLean in March 1857, Cooper was more explicit. He proposed to 'suspend purchases and starve the Natives into compliance'.[3] The Crown's purchases took place under conditions which favoured itself. For example, the Crown maintained a monopoly in the market, and this control extended to preventing Maori from entering into leases with settlers. By 1860, however, Maori were using a traditional form of controlling each other, a policy called the Whata of Te Herenga, to halt land sales. Backed by a powerful runanga, itself influenced by the King movement, Hawke's Bay Maori stopped selling land to the Crown. In defiance at the law prohibiting direct leases between Maori and Europeans, they actively sought to enter such agreements.

7.6 THE NATIVE LAND COURT ERA

Chapter 4 has picked up on this Maori initiative. It shows how Maori intended to fund the runanga from the proceeds of renting lands in the Ahuriri–Heretaunga Plains. Europeans were keen to utilise the land, but preferred, on the whole, to own the land themselves, rather than be subject to Maori landlords. A group of them, backed by the Hawke's Bay Provincial Council, wished to see the plains developed more intensively, and did not expect that to occur if Maori continued to lease lands to a few pastoralists, and on an insecure legal basis. In 1865 the general government's answer to this, and to a number of things, was to constitute the Native Land Court. Charged with the function of investigating into and adjudicating on the customary Maori ownership of land brought before it, the court should have been beneficial to both Maori and the settlers. With secure and legal title to their land, initially Maori entered into legal leases and obtained higher rents, yet they did not take an active and long-term part in the settlers' development of Hawke's Bay. This was due to the many failings of the Native Land Court. Instead of being a

2. Cooper to McLean, 29 November 1856, AJHR, 1862, C–1, p 323
3. Cooper to McLean, 30 March 1857, Private, McLean Papers, folder 227, ATL, cited in Ballara and Scott, Introduction, p 101

responsible body which investigated the customary history of land in a thorough, open, and rigourous fashion, the court became, for Hawke's Bay Maori, an untrustworthy and unfair institution, which failed to carry out its functions to the satisfaction of Maori. The court became an instrument for the permanent alienation of Maori land. Although the amount of land, 150,000 acres, that was alienated in the Ahuriri Plains during this period was considerably lower than that of the 1850s Hawke's Bay Crown purchases, its monetary value and capacity to provide Maori with high annual rental payments, made it extremely important. It is important to remember also, that blocks throughout Hawke's Bay, altogether totalling an estimated 400,000 acres, were alienated between 1866 and 1873. These alienations can be attributed mainly to the failings of the court during this period.

Many of the failings of the Native Land Court have been detailed in chapter 4, and in Dr Phillipson's appendix II. The major problems were:

(a) the court's refusal to award Crown grants to more than ten owners for a block;
(b) the court's refusal to make judgements based on a full investigation of the customary ownership of blocks;
(c) the court's practice of making judgements using only the evidence heard in court, regardless of how insufficient or contestable this was;
(d) the court's failure, at times, to observe legislation that was valid when judgments were delivered;
(e) the court's failure to correctly ascertain that the surveyed boundaries of the land fairly represented the understanding Maori had, prior to delivering judgments;
(f) the court's procedure of allowing just one person's application to force the hearing of a block in court;
(g) that the 10 or fewer grantees were considered joint tenants instead of tenants in common, and/or trustees for the tangata o waho;
(h) the excessive costs of the system;
(i) the lack of an adequate re-hearing and appeal process; and
(j) the court's occasional failure to place restrictions on the alienability of land when asked to do so.

The alienation of the Heretaunga block, detailed in chapter 4, provides an explanation of most of these problems. It, and the other case studies, show how certain Hawke's Bay merchants and settlers allowed and encouraged chiefs to accumulate debts, in order to apply pressure on them to then sell their land. The merchants, aided by interpreters who rarely just interpreted, but instead acted for the merchants, plied the grantees with alcohol, offering them bribes, and issuing them with threats. The merchants applied constant pressure in order to cajole Maori into signing deeds of conveyance, regardless of their willingness or not to part with their shares.

Government officials did very little to aid Maori during this period. In fact McLean, Ormond, and others stood to gain financial advantage from the alienation of Maori land. Although a commission of inquiry, made up of two Maori and two Europeans, did investigate a large number of claims in 1873, the commission did not

investigate all the complaints, and had recommendatory powers only. C W Richmond, the chairman of the commission, found that it was only special circumstances that prevented transactions that normally would have been fraudulent, from actually being so. The Maori commissioners, W Hikairo and W Te Wheoro, were much stronger in their criticism of the Hawke's Bay transactions, identifying numerous instances of fraud and gross unfairness. New legislation did arise from the investigation, but no sales of land were repudiated, nor was any compensation made. No government officials were censured for their involvement in the sales. The Crown simply took its 10 percent cut of each sale, which was collected in the form of a land transaction tax. Despite requesting and expecting Hawke's Bay Maori to help fight in the war against Te Kooti, the Crown refused to help Maori retain land that they did not want to alienate.

The Heretaunga and other cases highlight the misunderstanding of the position of those chiefs who received Crown grants. It was widely understood that they were to act as trustees for their hapu. Instead, however, they became sole legal owners of an undivided share, and their grants became a currency to cover their personal liabilities. This report has concluded that although some Maori did on occasion spend money in a frivolous fashion, on the whole, chiefs' debts were probably tribal ones, rather than individual. Maori indebtedness, then, and the manipulation of such by merchants, settlers, and Crown officials, came to the fore during this period. This report has argued that the Maori grantees could not have been expected to fully understand the intricate financial maze that swamped them once they had legal title to land, and that they were denied an equal opportunity to participate in the economic development of the Heretaunga–Ahuriri Plains.

By 1873, Maori had lost an estimated 400,000 acres (this includes the Tamaki purchase) of mostly prime Hawke's Bay land to private settlers and to the Crown. Although the Crown had been made aware of the unfair situation in Hawke's Bay, the legislative initiatives it took to counter the failings of the court had little effect [see app II]. Maori continued to challenge the legitimacy of the alienations of land via the Native Land Court in other courts, and before parliament.

7.7 THE LAY-BY APPROACH TO PURCHASING AND THE RAUPATU

Chapter 5 covers a similar time period to chapter 4, but focuses on further Crown purchasing, and the Crown's confiscation of 270,000 acres of Mohaka–Waikare land. This chapter explains the Crown's method of purchase it employed in this period, which has been termed the 'lay-by' approach, and which used the failings of the Native Land Court to its advantage. The lay-by method was a refinement of one tactic used in the 1850s. It involved the Crown making an initial payment to selected chiefs, on the condition that they obtained the title for the desired block from the Native Land Court. A final payment was then made to complete the alienation of the block. When purchasing in the Tamaki area, the initial payment was known as laying 'groundbait'. The Crown were not concerned whether the selected chiefs had

the consent of all the customary owners, or were distributing the purchase money equitably. This policy appeared to prejudice the jurisdiction of the Native Land Court, as Crown officials took an active role in pre-determining who were the customary owners of blocks.

The lay-by method of purchase appeared to lead the Crown into trouble in 1866, and goes some way towards explaining the supposed rebellion of a predominantly Ngati Hineuru group of Pai Marire affiliates in October 1866. The Crown used the defeat of this group as justification for confiscating 270,000 acres of land in the Mohaka–Waikare district in January 1867. This report has summarised the current opinion of researchers of the Mohaka–Waikare confiscation. Although the authors differ slightly in emphasis and explanation, all agree that a rebellion as such did not take place, and that the Crown's confiscation of land was unjustified. This report concurs with this general conclusion.

The Crown agreed to return most of the confiscated land to Maori in 1870, retaining approximately 50,000 acres of prime land for itself. This amount, however, could be raised to 60,000 acres if the two blocks that were 'purchased' at the same time, Maungaharuru and Otumatahi, are included. A number of problems were associated with the return of the confiscated blocks, which included delays over surveys and the issuing of grants, and an initial inadequate and confusing identification of owners. These complications cost Maori dearly in the following decades. This report has argued that there is clear documentation of the Crown's desire to purchase the Mohaka–Waikare area, and that this desire represents one reason why land was confiscated there. It has already been argued by the Tribunal that the implementation of the confiscation legislation was unlawful;[5] for Mohaka–Waikare, it was also completely unwarranted, as the justification for the confiscation can not be substantiated from the historical record.

7.8 SOCIAL AND ECONOMIC EVALUATION

Chapter 5 also contains a section which introduces some of the ways in which the social and economic position of Hawke's Bay Maori could be evaluated. From the evidence studied, it appears that Maori, in 1875, were struggling to keep abreast of the development of Hawke's Bay. Most of their land had been alienated; of that left in their ownership, most again was either mortgaged or leased to Europeans. Although they were still producing arable crops on a larger scale than Europeans, it is unclear how profitable this was proving. Maori were not receiving the level of schooling they believed that they required, or that the Crown had promised to them. When evaluating the social and economic status of Maori, the question of how much responsibility the Crown ought to have assumed must also be considered. An associated issue is that of how well the Crown addressed concerns raised by Maori at the time. Politically, Hawke's Bay Maori in the early 1870s had opted to pursue grievances in more traditional European fora, by presenting petitions to Parliament, and pursuing cases in the courts. The Crown responded by appointing a commission

5. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, pp 10–11

to inquire into Maori complaints concerning the Native Land Court, but which also investigated some Crown purchase issues as well. The 1873 Hawke's Bay Native Lands Alienation Commission had recommendatory powers only, however, and the aim of the petitioners, to have various sales repudiated, did not eventuate. While changes to legislation followed the release of the commission's general reports, Maori did not receive any specific compensation from the Crown. They continued to protest through petitions, and, using a European sponsor's money, in the courts.

The tradition of protest gathered momentum throughout the rest of the nineteenth century. Chapter 6 provides an overview of the petitions, litigation, and direct action Maori took to air their grievances. Complaints were again aired about the lack of education in Hawke's Bay. Probably due to the interest shown by particular European politicians, a number of petitions were investigated in some detail by the Native Affairs Committee to which they were referred. Three case studies of this kind are provided, and show that regardless of the attention they received, on the whole, Maori failed to have their grievances redressed to their satisfaction. In a number of petitions, and in evidence given to visiting Crown officials, Maori expressed their concerns about the inadequacies of the Native Land Court and its associated legislation. The court was seen as complicated, unfair, ill-suited to adjudication on Maori customary issues, and above all, costly. They were not alone in their condemnation. Reviewing the court's awards relating to the Owhaoko and Kaimanawa lands, Premier Robert Stout stated in 1886: 'if this case is a sample of what has been done under our Native land Court Administration, I am not surprised that many Natives decline to bring their land before the Courts. A more gross travesty of justice it has never been my fortune to consider'.[6] In 1891, the solution suggested by Maori was to ask that the administration of their land be placed under their control. This did not occur.

In chapter 6 it is argued that the costs associated with general land court issues, of contesting points of law, and of taking cases to higher courts all had a detrimental effect on the overall wealth of Hawke's Bay Maori. A survey of civil cases in the 1880s has shown that large numbers of Maori were being sued for small amounts of money by Europeans, suggesting that Maori did not have a sufficient income to cover basic expenses, let alone to develop their own land – not that they had much land left to develop by 1930.

7.9 FURTHER CROWN PURCHASING

While the period from 1875 to 1891 saw the Crown concentrate its purchasing in Tamaki, by 1930 the Crown had made large in-roads into all the districts where Maori still owned land. Land at Tamaki, Mohaka, Waimarama, and Mohaka-Waikare bore the brunt of a very effective Crown purchasing effort. The Crown purchasers again employed improper and unfair tactics to ensure that the Crown obtained the land it desired. One tactic the Crown used was to place prohibitions on

6. The Honourable Robert Stout, 'Memorandum on Owhaoko and Kaimanawa Native Lands', AJHR, 1886, G–9, p 23

Maori owners leasing land (even to each other), depriving them of rents they required for their survival, and eventually forcing Maori to sell. Purchases by private Europeans continued to occur during this period as well. Compounding the pressure on Maori to sell was their increasing social and economic marginalisation. By 1930 what land Maori did still own was either of marginal quality, or was too little to support the whole community which relied on it.

It appears that the Maori reserves were also being purchased in the early decades of the twentieth century. However, I hope to cover this in a chapter to be written later this year. This future chapter will also cover the issues relating to alienations of Maori land after 1930.

Hawke's Bay Maori were owners of a vast and valuable estate of land in 1850. They wanted to share their land with European settlers, in order to benefit from the growth and development the Europeans could provide. While Hawke's Bay did develop, Maori were left behind. Relieved of more land than they wished to sell, hindered by complex and costly land legislation, and hounded by Crown land purchasers when they were economically and socially marginalised, Hawke's Bay Maori were unable to maintain a viable tribal base from which to develop and prosper. Despite airing their grievances in the specific fora designed by the Europeans, they failed to obtain adequate redress. They continued to protest, however, and the claims to the Waitangi Tribunal are the latest effort in what has become a long tradition.

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

APPENDIX II

THE NATIVE LAND COURT AND DIRECT PRIVATE PURCHASE, 1865–1873

The following extract by Dr Grant Phillipson is taken from the Crown Congress Joint Working Party's 'Historical Report on the Ngati Kahungunu Rohe' (Dr Grant Phillipson, Michael Harman, Helen Walter, Alan Ward, Wellington, June 1993).

1 THE NATIVE LAND ACTS, 1865–1869

The genesis of the Native Land Acts lay in the land crisis of the late 1850s, and particularly in the confrontation at Taranaki in 1859. Crown pre-emption had broken down across the North Island by this time. Pitiful prices, shady deals, and a growing suspicion of ultimate settler and government aims had reduced sales of Maori land to a trickle. The refusal of hapu to sell land gave the appearance of 'land leagues' and resulted in legislation to uudermine the tribal ownership system which had been acknowledged as the basis for negotiations and sales since 1840. In 1858 the settler Assembly passed a law to abolish pre-emption and to declare every Maori adult the owner of his or her immediate dwelling place and cultivations. The Governor and Colonial Office vetoed this legislation as too dangerous to carry out, backed by the opinion of European experts on Maori land tenure. The Governor tried to restore Maori confidence in the Crown and pre-emption with a scheme to place land purchase under a Native Council of humanitarians, officials, and possibly chiefs. At the same time, however, he adopted an alternative policy to individualise (and make alienable) the separate rights of each Maori 'user' of particular blocks of land, by accepting Te Teira's offer to sell land at Waitara. This precipitated a long and bloody war of subjugation to assert the Crown's authority and break the 'land leagues', forcibly opening Maori land to colonisation.

The Native Land Act of 1865 was a direct product of this solution to the Waitara stalemate. Firstly a court was created in answer to the demands of the government's critics, who called for a tribunal to judge the rights of claimants such as Te Teira and Wiremu Kingi according to Maori customary tenure. The same process was designed to continue Gore Browne's policy, however, of buying from individuals or small hapu groups against the wishes of the wider hapu or iwi and of equally-interested neighbours living on the same land. Under the Native Land Act, every Teira across the country would be able to bring a Waitara into court and have his individual interest defined. This could not be done without dissolving the complex web of intersecting rights under customary tenure. The Crown Grants awarded after an order of the Native Land Court extinguished customary tenure and substituted rights of a totally different order – including the right of an individual title-holder to sell his interest to any settler who wished to buy it. This led to a judicial raupatu as devastating as any confiscations in Waikato and Tauranga but directed without distinction against allies and opponents of the government. Senior chiefs were often named

as owners in the new titles, but the law gave them authority to sell their signatures freely without consulting their kin. The reciprocal relationship implied in the tino rangatiratanga guaranteed by the Treaty was destroyed. Neither chiefs nor people were able any longer effectively to check each other. Maori society was fundamentally disrupted and exposed to half a century and more of land-sharking.

1.1 THE ABOLITION OF PRE-EMPTION

The 1865 Native Land Act abolished Crown pre-emption and authorised direct private purchase of Maori land. This amounted to the abolition of Article 2 of the Treaty of Waitangi because: (i) it ended pre-emption; and (ii) it did so without providing an alternative mechanism to enable the Crown to guarantee 'full, exclusive and undisturbed possession' of Maori property 'so long as it is their wish and desire to retain the same in their possession'.[1] According to the nineteenth-century doctrine of parliamentary sovereignty, as interpreted by an 1891 Royal Commission, this action was perfectly legal.[2] Nevertheless, it violated the Crown's Treaty obligations. Those obligations were first set forth in 1839 by Lord Normanby's instructions to Governor Hobson, which authorised him to treat with the chiefs of New Zealand for a cession of sovereignty. The enemies of both Maori and small holding settler interests were identified as the 'mere land-jobbers', whose purchases were to be investigated by the Crown. Normanby instructed the Governor to take over land purchasing on the basis of 'fair and equal contracts' under the oversight of Protectors. Land transactions were to be conducted on 'principles of sincerity, justice and good faith'.

> Nor is this all: they must not be permitted to enter into any contracts in which they might be the unintentional authors of injury to themselves. You will not, for example, purchase from them any territory, the retention of which would be essential, or highly conducive, to their own comfort, safety or subsistence.

Furthermore, the Governor was to consider the interest of *future* as well as present Maori generations in his control of land purchase.[3]

There has been a great deal of debate about Normanby's Instructions. Were they intended as serious commands to be executed in a literal sense, or were they rhetorical statements of no practical value, inserted solely to appease humanitarian sentiment?[4] The argument about Crown intentions and their execution in its actual policies is not strictly relevant, however, to the suspension of pre-emption in 1862 and 1865. The fact is that Crown representatives committed themselves to certain promises to Maori in the Queen's name as a result of Lord Normanby's instructions. Thus, although pre-emption was actually designed to serve contradictory functions by generating revenue to finance colonisation, government officials repeatedly assured Maori chiefs and the British public that it would be used to protect Maori from speculation and excessive loss of land.

Numerous examples of such promises can be found throughout the 1840s. Governor FitzRoy, for example, told Hone Heke that the Queen inserted pre-emption in the Treaty

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1. C Orange, *The Treaty of Waitangi*, Wellington, 1987, p 258
2. AJHR, 1891, G-1, pp xix–xx, xxvii–xxviii
3. Normanby to Hobson, 14 August 1839, GBPP, 1841, vol 3, pp 85–89
4. See A McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958; I Wards, *The Shadow of the Land*, Wellington, 1968; *Report of the Waitangi Tribunal on the Orakei Claim (Wai-9)*, 1987, pp 26,28; A Ward, 'Supplementary Report on Central Auckland', 1992, pp 14–17

because 'she heard that they were selling so much land to Europeans, that in a short time there would not be enough left for themselves, and then they would want food as well as clothing. The demand was for their advantage'.[5] When he waived the Crown's right of pre-emption at the request of certain Maori, he acknowledged that Crown protection must still be extended through alternative machinery, with government Protectors investigating every private purchase. Treaty negotiators held a similar view to that of Governor FitzRoy. Henry Williams and Major Bunbury both explained pre-emption as a protective measure, designed to protect Maori from speculators and prevent them from selling all their lands.[6] Although various humanitarians and officials debated whether the chiefs would in fact sell all their land if such protections were removed, the Crown felt that its duty was to ensure against even the possibility of such a fate. When the Colonial Office became less avowedly humanitarian under Earl Grey, and after the departure of James Stephen, it still maintained its public commitment to pre-emption as the vital protective clause of the Treaty, which defended the Maori from land-jobbers and the land loss experienced by indigenous peoples in other colonies.[7]

Secretaries of State, Governors, Treaty negotiators; all promised that pre-emption was designed to protect Maori economic interests and to maintain a sufficient Maori land base. Through pre-emption the government would protect rights to the use of land, forests, fisheries, and other taonga. Even Governors who used pre-emption against Maori interests, which was usual after 1845, continued to speak of protection in a manner which strongly echoed Normanby's original instructions to Hobson.[8] George Grey used the monopoly power of pre-emption to foster cheap colonisation in the South Island and selected districts of the North Island. James Carroll pointed out in 1891, therefore, that suspension of this system of Crown purchase might not have been against Maori interests.[9] In fact, the Crown would not have breached its fiduciary responsibilities under the Treaty by suspending pre-emption if it had replaced it with genuine and adequate protections designed to serve pre-emption's original ends, as promised to the Maori throughout the 1840s.

Two provisions were necessary for the Crown to have avoided breaking the Treaty by its abolition of pre-emption: (i) it should not have done so unilaterally but ought to have obtained the clear consent of its Treaty partner; (ii) it should have created protective mechanisms to replace pre-emption as the means by which the Maori could be guaranteed 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties . . . so long as it is their wish and desire to retain the same in their possession'. The Crown fulfilled neither of these conditions.

(i) Although there was constant pressure from some Maori to be allowed to deal directly with the settlers, who tantalised them with offers of higher prices than those paid by the Crown, there was even more pressure from many quarters to stop land *selling* altogether. No formal consultative process existed wherein the considered opinion of representative Maori could be taken. No Maori had been admitted to the legislative body which enacted the new law. Previous machinery of consultation (such as the Kohimarama conference, originally planned as an annual event) had been allowed to lapse against the wishes of member chiefs. Thus, one Treaty partner abrogated a major clause unilaterally, and with the intention of weakening the bargaining position of the other Treaty partner. In 1871

5. R FitzRoy to Hone Heke, Auckland, 5 October 1844, GBPP, vol 4, p 417
6. T Bunbury to Hobson, Coromandel, 6 May 1840, GBPP 1841, vol 3, p 222. See also p 225, H Williams to Hobson, Paihia, 11 June 1840, in Turton, *Epitome*, A-1 p 29.
7. H Merivale to J Beecham, 13 April 1848, C0209/64, ff 424–447
8. For example, G Grey to Gladstone, 27 June 1846, C0209/44, ff 275–276
9. AJHR 1891, G-1, pp xxvii–xxviii

Wiremu Te Wheoro complained about this lack of consultation to Colonel Haultain: 'I have always been opposed to the [Native Land] Court from the very commencement. It is a pity that the Maoris were not consulted before the Act was brought into the General Assembly. You are obliged to apply to us now for advice and assistance'.[10]

(ii) In the 1840s Governor FitzRoy waived pre-emption in consultation with Maori chiefs, and he established various checks and procedures to ensure that the correct owners were identified, that the land was not necessary for present or future support, and that Reserves were made (and a reserved fund established to finance schools and hospitals). Although Ann Parsonson has established that these checks did not always work in practice, they recognised the Crown's clear duty to waive pre-emption only in a manner which replaced its protective aspects with viable alternatives.[11] The 1865 Native Land Act created a court to determine the customary owners of any particular block, but instituted no other procedures to watch over land sales and ensure that all owners were dealt with fairly, that chiefs understood the true meaning of deeds, mortgages, and other transactions, or that the law enabled Maori to retain sufficient land as a viable economic base. In short, the protections promised under pre-emption by the Crown were not renewed under the system of private purchase.

In the 1866 and 1867 Land Acts the government moved to remedy part of this situation by requiring the Native Land Court to place Restrictions against alienation on any block considered vital for its Maori owners as it passed through the Court. The judges rather than the Maori were empowered to decide how much land their petitioners required for present or future needs – this involved a Pakeha assessment of what constituted a vital resource, how such a resource should be used, and the value (commercial or otherwise) of a piece of property. The result was judicial decisions that deprived Maori of the freedom to avail themselves of Restrictions as a protection against land loss. The application of Henare Tomoana, for example, to make the large and important Heretaunga block inalienable was flatly refused by the judge. According to Colonel Haultain, it was not a legitimate use of the Court's powers to 'put large tracts forever out of the reach of Europeans which are not necessary for their own wants'.[12] Tomoana complained: 'I was strong with the Court, but the Court told me I had plenty of land outside of this. It would not be well to fasten this up unless this was the only piece I had remaining'.[13] This made nonsense of the Treaty guarantee that Maori could freely retain whatever land they chose for as long as they wanted to do so. Tomoana argued that 'the Judges should invariably reserve lands when the Natives ask for it, and can fix no minimum quantity that should be reserved for each individual; let the Natives decide that themselves'.[14] This seems more consonant with Article 2 of the Treaty than Judge Monro's practice of refusing Restrictions unless the claimants could prove to his satisfaction that they were down to their last handful of acres. Nor was there any guarantee that Restrictions would be maintained after their initial imposition. Although the government usually refused applications for their removal up to 1873, this policy was dependent on the goodwill of a settler Ministry responsible to a settler

10. AJHR 1871, A-2A, p 26
11. A Parsonson, 'Evidence Presented before the Waitangi Tribunal in Respect of the Ngai Tahu Claim, Wai 27, on Behalf of the Claimants', 1989, pp 114–116
12. AJHR 1871, A-2A, p 8
13. AJHR 1873, G-7, Minutes of Evidence, p 2
14. AJHR 1871, A-2A, p 37

Assembly. Many Restrictions were cancelled and supposedly inalienable land was sold in later decades.[15]

After the creation of Restrictions, no further protective mechanisms were put in place until 1870, when the Assembly passed the Native Lands Fraud Prevention Act. This law recognised the Crown's responsibility to ensure 'fair and equal contracts' conducted on 'principles of sincerity, justice and good faith' (in the words of Normanby), but came five years too late to do much good in Hawke's Bay, where hundreds of thousands of acres had already passed out of Maori hands under the 1865 Act without any government scrutiny or readily available means of redress. The Supreme Court was available as a last resort during the period 1865–1870, but it proved too costly, distant, and alien to provide any realistic protection to the Ngati Kahungunu land-sellers. The appeal of Te Waka Kawatini may serve as a useful example of the problem. He sold his interest in all his lands to a Pakeha creditor in 1868, including his tenth share in the Heretaunga block. The Heretaunga lessees and Samuel Williams engaged a lawyer on Waka's behalf, J Wilson, and lodged a suit against the purchaser (a butcher named Parker) in the Supreme Court. The suit alleged that the sale was unfair and fraudulent on a number of grounds, and also challenged the legality of a sale by a single grantee without the consent of the other nine. Parker feared that he would lose the case and sold his interest to the lessees, whereupon the principal lessee persuaded Waka (by combining bribery with pressure about debts) to sack Wilson and withdraw his suit. Wilson tried to continue with the suit, arguing that he had undertaken it on the instructions of another chief as well, Karaitiana, and on behalf of Waka's hapu, and that Waka was incompetent to handle his own affairs. Parker's lawyer (who was now acting for *Waka* via the intervention of the lessees) moved for the dismissal of the case against one of his clients at the behest of the other. The Judge dismissed the case despite Wilson's arguments, and ordered Waka to pay the court costs. Thus, Waka's best interests were stymied at every turn and he got nothing from the Supreme Court but a bill.[16]

In fact, the Court was much more likely to be used against chiefs like Waka for non-payment of debts, by surveyors and creditors with a better knowledge of the law and easier access to lawyers. T Heale concluded that the Supreme Court offered no protection because 'the judicial issue is taken, not upon the equity of the original bargain or the way in which it has been carried out, but simply on the legal effect of an instrument which a Native has been induced to sign'. The result was clear: 'Those who know the fatal facility with which Natives, when eager to gain an immediate object, can be induced to sign documents which they imperfectly understand, and of which the effect is comparatively remote, will see that there is no limit to the extortion which becomes possible'.[17] Hawke's Bay chiefs like Te Waka Kawatini became the victims of speculators intent on such 'extortion' when the protections promised under pre-emption were lifted, with the government failing to create new protective agencies and the courts unable or unwilling to defend them against spoliation.

15. A Ward, *A Show of Justice*, Auckland, 1973, p 256. For the legislative changes leading to removal of Restrictions, often against the wishes of the Maori MPs, see CCJWP, 'Historical Report on Wellington Lands', Part B, pp 14–46.
16. AJHR 1873, G-7, Report of Richmond, pp 19–20; Minutes of Evidence, pp 36–37
17. AJHR, 1871, A-2A, p 20

1.2 INDIVIDUALISATION OF TITLE

The Native Land Act of 1865 established a court to ascertain the correct right-holders for particular blocks of land, according to Maori customary tenure. Its next step was to convert that customary title into Crown Grants issued to each individual, making them absolute owners of their individual interest in the block. Although there were provisions for limited continuation of hapu ownership in Section 24 of the Act, these were in fact disregarded in favour of a uniform issue of Crown Grants to individuals.[18] The main reason for this was supposedly a mixture of policy (to civilise Maori) and law. According to Judge Monro, the communal right 'recognised by the Crown in the Treaty of Waitangi' was 'too much at variance with the habits of a civilized community' to be perpetuated by the law courts. Maori tenure was 'vague and imperfect' and ought to be converted into 'the more definite and fuller proprietary tenure of individual citizens, whether Maori or European, which alone could be recognised by the law of a settled Civil Government'.[19]

The Native Land Acts, therefore, forced individualisation of title upon the Maori on the grounds that it was necessary for their own social improvement, and that it was the only way they could obtain true legal title to their lands under British law. The payoff was declared to be security of tenure: 'I have also not infrequently heard Natives on receiving an order for a certificate of title, remark with great satisfaction that they now felt secure in the possession of their property, as whatever others might do, their land could not be taken or confiscated so long as they themselves behaved as loyal subjects.'[20] The political argument that it was necessary to 'break down those communistic customs which obstructed civilization', and to force Maori off the land and into the labour market, was challenged at the time and is no longer considered valid today.[21] Furthermore, the 1891 Royal Commission suggested that the substitution of individual for communal tenure was not in fact necessary to give Maori a strictly legal title. Quite apart from the status of Maori tenure under common law, there were no legal obstacles to the issue of Crown Grants to corporate bodies, or to trustees on behalf of corporate bodies. The Commission argued that certificates of title should have been issued to hapu because ownership of land and other commercial property by 'corporate bodies, had been practised from time immemorial by civilised nations'.[22] The Assembly did not suggest that the various Churches were uncivilised when it passed laws to recognise their status as corporations and to regulate the appointment of trustees to hold land on behalf of the wider body in the 1850s and 1860s. Nor were the joint lessees and purchasers of Maori blocks such as Heretaunga considered uncivilised! According to one of those lessees (Mr Tanner), Karaitiana pressed to be admitted as a 'joint proprietor' with the Europeans but was turned down. Joint ownership was only uncivilised, therefore, when *Maori* were the joint owners.[23] Thus the argument that communal title was weak in terms of law was not in fact valid in terms of nineteenth-century practice, however much it might conform to the prejudices and political agenda of Assembly members. The argument that Maori ownership could only be effectively guaranteed by Crown Grants to individuals, was thus in opposition to contemporary law as well as to the Treaty.

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18. AJHR, 1891, G-1, p viii
19. Judge Monro to Fenton, 12 May 1871, in AJHR, 1871, A-2A, p 14
20. Judge Maning to Fenton, 27 April 1871, in AJHR, 1871, A-2A, p 17. See also W Martin's Memorandum, 18 January 1871, in AJHR, 1871, A-2, p 4.
21. AJHR, 1871, A-2A, p 3; cf pp 42–43
22. AJHR, 1891, G-1, p vii
23. AJHR, 1873, G-7, Minutes of Evidence, p 22

Nor did the Maori receive the promised benefits of individualised titles. In 1873 Commissioner Richmond justified low prices paid to Crown Grantees on the grounds that their title was 'a precarious one, liable to all sorts of dangers, doubts and questions'. Richmond approved of the opinion of one witness that 'he had himself never yet purchased from the natives because he was afraid of the title'.[24] The promised benefit of a stronger legal title was not only unnecessary in terms of contemporary law, therefore, but a failure in practical terms. The supposed civilising benefits were equally ineffective, since Maori society remained essentially communal in nature, and the proposed subdivisions and partitions to enable better farming practices and land improvements did not in fact take place. It was believed that Maori farmers would not undertake significant improvements if the benefits had to be shared with 'lazy' neighbours, but that individualisation of title would enable partition and economic development.[25] By 1871, however, it was clear to investigators such as Colonel Haultain that subdivisions for partition could not take place unless a European had contracted to buy the land first, because the expense of surveying many small pieces of land was prohibitive.[26] Individual enterprise was not rewarded under the Native Land Act system, and progressive farmers did not receive the promised benefits from individualising their titles. In terms of the arguments put forward by the Crown, therefore, Maori gained little from changing the basis of their title.

The Treaty guaranteed customary title in the term 'rangatiratanga', while the English version recognised a Maori right to retain any property 'which they may *collectively* [my emphasis] or individually possess'. It was argued at the time, however, that Maori *wanted* to change the nature of their title, and were willing participants in the abolition of customary tenure.[27] Some individuals certainly profited from the system, such as the 'Rangatira sharks' identified by Judge Maning, and others who genuinely believed that the promised benefits of secure title and economic improvement would follow.[28] One factor may also have been that, as an Assessor argued, the future drawbacks of the new title (such as rates, road tax, and fencing requirements) were concealed from the claimants. He argued that most Maori had no idea that these liabilities were involved in the new Crown Grants.[29] It is certainly the case that Maori took land to the Court voluntarily to secure Crown Grants, but this cannot be used to support the idea of a general acquiescence in the change of title. Firstly, there were many complaints that only a single individual was required to bring a block before the Court, frequently without the knowledge of (or in opposition to) a majority of the other claimants.[30] These people could not boycott the Court because title would be awarded whether they were present or not, and had no choice but to take their claims before the Court or miss out altogether. Both Colonel Haultain and the 1873 Hawke's Bay Land Alienation Commission recognised this as a major problem, and accepted that many Maori were unwilling participants in the Court process.[31]

Secondly, there are many examples of Maori who declared that they did not wish to change their communal title to individual ownership, and that they had not understood that this would result from a Crown Grant. Evidence was submitted to both Haultain and the 1873 Commission, and to the Assembly in the form of numerous petitions, that the Maori

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24. AJHR, 1873, G-7, Reports of C W Richmond, p 28
25. AJHR, 1871, A-24, pp 16–17. See also speech of T Parata, NZPD, 1886, vol 54, p 304, and that of J Ballance, p 306.
26. Ibid, p 5
27. Ibid, pp 3–4, 16–17, passim
28. Waitangi Tribunal, *The Te Roroa Report (Wai 38)*, Wellington, 1992, p 81
29. Evidence of W Hikairo, 20 April 1871, in AJHR, 1871, A-2A, p 32
30. AJHR, 1871, A-2A, pp 8, 32, passim
31. Ibid and AJHR, 1873, G-7, pp 8–9. See also W Martin's Memorandum, AJHR, 1871, A-2, p 4.

claimants had believed the new Grantees to be trustees constrained to act on behalf of one or more hapu, and that the trustees were tenants-in-common whose unanimous consent was necessary for any transaction.[32] Even chiefs who benefitted from the opposite interpretation, such as Henare Tomoana, admitted that they still believed in the existence of the communal title and would have acted on that belief if their debts and the law had allowed them to do so.[33] The desire to preserve hapu ownership, or at least group ownership in some form or other, continued over many decades of individualisation by the Native Land Court.

The result of this forced change of title, according to the Rees–Carroll Commission of 1891, was massive land loss through fraud and the undermining of the hapu's authority structures. The Commissioners argued that Maori land should have been left in collective title: 'Had this been done the difficulties, the frauds, and the sufferings, with their attendant loss and litigation, which have brought about a state of confusion regarding the titles to land, would never have occurred.'[34] Commissioner Richmond of the 1873 Hawke's Bay Land Alienation Commission also concluded that individualisation of title led *inevitably* to the alienation of at least part of the block concerned, either by lease or by sale.[35] This had always been the hope of the settler Assembly. Colonel Haultain's report makes it clear that beneath the rhetoric of civilisation and benefits for Maori, the Assembly's main intention was that direct purchase and individualisation of title would lead to quicker and much more extensive alienation of Maori land.[36] The Native Land Court judges boasted that they had not disappointed this hope.[37]

1.3 THE TEN OWNER SYSTEM

Individualisation of title operated in practice through the ten-owner system, created by a proviso to Section 23 of the 1865 Native Land Act. This proviso held that no more than ten owners would be named in the certificate of title for any block of 5000 acres or less. The judges of the court used this proviso in a much more sweeping manner, however, and refused to place more than ten names on any certificate of title, no matter what the size of the block. In Hawke's Bay the physical character of its large grassy plains, and the occupation of these by lessees holding enormous blocks as runs, dictated the passage of very large and unsubdivided blocks through the Court. Judge Monro refused to admit more than ten owners as Crown Grantees for these blocks, such as the Heretaunga block of about 18–19,000 acres. The judge openly admitted that the Hawke's Bay hapu believed that the ten owners were 'in reality and equitably, trustees for the benefit of themselves and of their co-proprietors'.[38] The Haultain inquiry in 1871 and the Lands Alienation Commission in 1873 both concluded very firmly that Hawke's Bay hapu understood the issue of Crown Grants to only ten owners as the creation of a trust, and that the grantees would not be able to sell or lease the land without the consent of their hapu, and that the hapu would be entitled to share in rents or purchase money.[39] Furthermore, the Maori believed that the unanimous consent of the grantees was required as a body to any land transaction. The grantees were in effect 'tenants in common', and the Court assured Karaitiana in the

32. For example, AJHR, 1871, A-2A, pp 26, 39–40; AJHR, 1873, G-7, Minutes of Evidence, pp 5–6
33. Ibid, p 2
34. AJHR, 1891, G-1, p vii
35. AJHR, 1873, G-7, Reports of C W Richmond, p 19
36. AJHR, 1871, A-24, pp3–4; cf Waitangi Tribunal, *Orakei Report* (Wai-9), pp 29–33
37. AJHR, 1871, A-2A, p 15
38. Monro to Fenton, 12 May 1871, in AJHR, 1871, A-2A, pp 15–16
39. AJHR, 1871, A-2A, pp 4–6; AJHR, 1873, G-7, Reports of C W Richmond, pp 6–9; Commissioner Hikairo's Report, p 52

Heretaunga case that individual grantees would not be able to act without the consent of their fellow grantees.[40]

Legal opinion soon disputed this interpretation, and declared that the ten grantees were not trustees but absolute owners with full and independent power to alienate one-tenth of the tribal land. Furthermore, the lawyers argued that the grantees were not tenants-in-common but joint tenants. This meant that they could sell or mortgage their individual interest without the consent of the other grantees, and that one-tenth of the tribal land was now liable for the debts of the individual grantee and could be seized in payment of those debts.[41] There was no differentiation between the rights or amount of acres occupied by the grantees and their respective hapu; each grantee was held to be the owner of an equal tenth. The result was that direct purchasers could now deal with individuals and (to a large extent) ignore the hapu, and that the law would now protect the absolute ownership of an individual against rightholders excluded from the grant. Thus the Crown might have dealt with important chiefs in earlier transactions and these might have appropriated the lion's share of the purchase money, but the nature of Maori leadership was such that in most cases they could not sell the land without the consent of their hapu, and without some distribution of goods and money to lesser chiefs and whanau heads. The Native Land Act of 1865 completely altered the basis of Maori land ownership, and vested absolute and irresponsible powers in the hands of individual chiefs. Some of these remained committed to acting with the consent of their communities but most found that they had little choice. Henare Tomoana had wanted to make Heretaunga inalienable but instead found himself an absolute owner of a one-tenth share in the block. He did not want to sell the land but soon discovered that what the new law had given it could also take away, and that Heretaunga and his other grants could be made liable for the payment of his personal debts, and in fact Heretaunga was sold largely to pay Tomoana's debts to storekeepers and publicans.[42]

Hawke's Bay Maori were outraged when they discovered that the ten grantees in the many blocks which had passed through the Court were not trustees but absolute owners, and a stream of petitions found their way to the General Assembly, calling for major alterations to the 1865 Act. Over half a million acres of Hawke's Bay land was granted to individual chiefs between 1865 and 1873 under the ten owner system. The Rees–Carroll Commission calculated that superb Napier grassland belonging to communities of about 4000 individuals was vested in 250 grantees, a system forced on the Maori by the court against their wishes, and usually on the false understanding that the grantees held the land in trust for their hapu. Thus over three and a half thousand people (about three-quarters of the adult population according to C W Richmond) were judicially deprived of their right to land.[43] The Rees–Carroll Commission concluded that this judicial dispossession of Hawke's Bay Maori by the Native Land Court was 'in direct violation of the Treaty of Waitangi', and in violation of the spirit of Clause 23 of the Native Land Act. They declared that had the ten-owner system been tested in the Supreme Court or Privy Council, these courts could never have found in favour of such an obvious breach of the Treaty and of the 1865 Act.[44] A former Chief Justice, Sir William Martin, also argued that the proviso to Section 23 had been used in such a way as to defeat the purpose of the substantive clause.[45] Commissioner Hikairo pointed out, however, that the Maori did not realise that the

40. AJHR, 1873, G-7, Reports of C W Richmond, p 18
41. Ibid, p 19
42. Ibid, Minutes of Evidence, pp 2–3, passim
43. AJHR, 1891, G-1, p vii
44. Ibid
45. Memorandum of Sir W Martin, 18 January 1871, in AJHR, 1871, A-2, p 3

Supreme Court might protect them from the Land Court – its track record in the nineteenth century made its protection doubtful anyway.[46]

Thus, the majority of the population of Hawke's Bay were deprived of their various forms of property. They became the 'tangata o waho', the outsiders. In vain did a chief like Utiku Te Paeata plead before the court for inclusion in the certificate of title. Commissioner Hikairo asked him: 'How did you young men allow yourselves to be left out of the grant?' Te Paeta explained: 'On that occasion the Court said it would not be right to have twelve or twenty people in the grant, but only ten, and Paora also objected; consequently there were only ten names. I objected in Court. I appeared and stood up before the Court and said, I should be one who should be included in that land. Monro and Smith were the Judges – the two European Judges. The Court said it would not do; they had already ten names. I replied that I should also be one. I was exceedingly sad on account of their not consenting, because the land belonging [sic] to the whole of the hapu; hence my sadness'. The block concerned (Pahoa) was later sold, and Te Paeta was neither consulted nor paid any part of the purchase money. The Land Court had deprived him of his rights, in alliance with more important chiefs who sought to exclude the majority from the Crown Grants.[47]

Two types of rightholders were dispossessed of their 'property' under this system. Firstly, the communities actually living on the land, cultivating it, and acting as the primary users of its resources. There was also a second class of users, however, who had ancestral rights to come on to the land and use certain resources during particular seasons. They were not conceived by most Maori as having a right to participate in the decision to sell. By long custom these rightholders were allowed to take timber for houses, to run pigs, and to take shellfish from the beaches. A more extensive use of resources, such as taking timber for sale or to build a canoe, or actual cultivation, would have required permission from the main occupants. Nevertheless, their rights were recognised by custom, were often quite valuable and an essential part of the local economy, and they were recognised by the Treaty of Waitangi. Article 2 assured Maori that they would retain the use of forests and fisheries (as well as land) for as long as they wished; it then became a question of who exercised rangatiratanga (or mana whenua) over these particular resources. The main occupants of a piece of land usually recognised the rights of this class of users by paying them a small part of the purchase money, but under the new system this was as unlikely as the compensation of the main occupants by the ten grantees, so that many complainants to the 1873 Commission were demanding compensation for the loss of such rights from the European purchasers. Judge Maning dismissed these claims and declared that the Land Court acted on the assumption that these people had no rights under Maori custom.[48] What he really meant, however, was that their rights could not be recognised under the Native Land Act, which tried to determine *ownership* (meaning a right to alienate), and to limit that ownership to ten principal chiefs. As a result, the law made no provision for the protection of this class of rightholders, despite the terms of the Treaty of Waitangi, and they lost their rights without their consent or the payment of compensation.

According to the investigation by Colonel Haultain in 1871, the results of this system of separating the rangatira from their communities and investing them with absolute property rights had led to devastating results in the Hawke's Bay. Many chiefs had been impoverished, 'the tribes have been defrauded, and the land has gone without a fair equivalent'.[49] Richmond identified the breaking of the customary link between chiefs and

46. AJHR, 1873, G-7, Report of Commissioner Hikairo, p 53
47. Ibid, Minutes of Evidence, pp 5–6
48. Ibid, Report of Commissioner Maning, pp 43–44
49. AJHR, 1871, A-2A, p 5

people, and between the fellow chiefs of a hapu, as the key element in this equation: 'the pressure of the Court has snapped the faggot-band, and has left the separate sticks to be broken one by one'.[50] Thus thousands of Maori rightholders were deprived of their title by the Native Land Court, and the result was the inevitable sale of their land from under them: 'all claim on the part of the tribe being considered as extinguished by the Crown Grant, and the title of those even who were included in the grant being individualised, it could not be long before a breach was made in the native ownership of the block'.[51] The whole procedure was, as the 1891 Commission noted, in direct violation of the Treaty of Waitangi.[52]

1.4 ATTEMPTED REFORM OF THE TEN OWNER SYSTEM

By 1867 the government was aware that the Native Land Court was interpreting Section 23 of the 1865 Act in an outrageous manner, and the resultant loss of land in Hawke's Bay was already becoming something of a scandal. The Ministry introduced an Amendment Act into the Assembly, which provided in Section 17 that all customary owners would now be listed in a memorial of ownership. The Crown Grant would still list no more than ten owners but would name them as grantees under section 17, which meant that they were trustees for the rest of the hapu as listed in the memorial of ownership. The Act also specified that land titles issued under section 17 would be inalienable except by leases of up to twenty-one years. This meant that the hapu would not sell its land until all the groups concerned were willing to subdivide the tribal estate, whereupon new grants would be issued to individuals as absolute owners of smaller blocks. The implementation of section 17 would have done much to prevent the disinheritance of the majority of rightholders under the old ten owner system.

Unfortunately, Chief Judge Fenton refused to issue grants under section 17. He argued that its effect would be to preserve the 'communal holdings of the Natives', and claimed that this was in direct opposition to the overall tenor and purpose of the 1865 Land Act. He announced that the judges had discretionary powers with regard to the granting of titles, and made it clear that he would not grant titles under section 17 unless compelled to do so by the Supreme Court.[53] The government did not take issue with Fenton by raising the matter in the Supreme Court, and the other judges felt bound to follow Fenton's ruling.[54] As a result, the Hawke's Bay Maori were not informed by the Court of their option to obtain titles under section 17, and Crown Grants continued to be issued under the ten owner system. Colonel Haultain's inquiry discovered that the Napier Maori had never heard of section 17 three years after its enactment, and by 1871 only twelve blocks of 42,000 acres had been granted under that section of the Act in Hawke's Bay.[55] There was more to this, however, than the deliberate concealment by the Court and the refusal of the judges to have much to do with section 17. Haultain concluded that once the Hawke's Bay claimants discovered the existence of this new protection in 1870–1871, they were reluctant to request it in court because of the inalienability clause. By this time the system of selling land to pay debts had become well entrenched in Hawke's Bay, and the claimants could not

50. AJHR, 1873, G-7, Reports of Commissioner Richmond, p 8
51. Ibid, p 19
52. AJHR, 1891, G-1, p vii
53. AJHR, 1871, A-2A, pp 40–41
54. A Ward, *A Show of Justice*, p 255
55. AJHR, 1871, A-2A, p 4

afford to obtain titles that were inalienable under section 17.[56] Thus the rights of the wider hapu were sacrificed by various chiefs who needed to sell the land straight away, and who were unable to pay part of the purchase price to the majority of interested parties. As a result, the Court continued to issue Crown Grants to ten owners as absolute and individual title holders until 1873, and the majority of Hawke's Bay Maori continued to be deprived of their land.

In 1869 the Assembly passed a further amendment to the Native Land Act, to prevent the sale of individual interests without group consent, but it proved to be a cosmetic change. The new provision enacted that the shares of the grantees need no longer be equal but could reflect differing degrees of occupation and use of resources in any particular block. Also, a majority of owners in value was now necessary to conduct any land transaction. In practice, however, it proved very difficult to determine the exact extent of differing shares and all that the amendments prevented was the actual *transfer* of land until a majority of owners had signed away their rights. This had been standard practice anyway, and an alliance of creditors and lessees continued to obtain the shares of grantees one by one, with the final sale and transfer of title coming at the end of the transaction. With only ten owners to identify and satisfy, the 1869 Act did nothing to slow the rapid alienation of Maori land.[57]

It may be noted at this point that the government made a formal acknowledgement of wrong-doing in 1886, when Prime Minister Stout admitted that the ten-owner system had operated with the 'grossest injustice'. He told the House that the 'injustice done to the Native people under the Act of 1865 is one of the greatest disgraces to this colony'.[58] In recognition of this fact, the Assembly passed the Native Equitable Owners Act, to enable Maori excluded from Crown Grants to apply to the Native Land Court for admission to those Grants. Dispossessed owners were to be re-admitted to their Treaty rights, but too late to affect titles which had already passed into the hands of settlers. The Act explicitly declared that it would not form the basis for litigation over land which had been sold, leaving many dispossessed 'tangata o waho' without further means of redress.[59]

1.5 COURT, COMMISSION, OR RUNANGA?

The final issue to be considered with regard to the 1865 Native Land Act and its violation of Treaty rights, lies with the constitution and procedures of the Native Land Court as an institution for ascertaining and awarding Maori title. The issue has been debated at the time and since, of whether the Court was the most appropriate and effective instrument for judging rights under Maori custom. Did the Court make avoidable mistakes and award land to the wrong people, thereby depriving yet more claimants of their legitimate rights; and if so, was this a fault of the system? It is necessary to consider alternatives discussed by the Assembly at the time, and Maori opinion as expressed to Commissions of Inquiry and in petitions to the House of Representatives.

Both contemporary critics and modern historians have pointed out many flaws in the operation of the Native Land Court. One of the main problems was that it allowed unscrupulous claimants to obtain land by false evidence. There were not enough safeguards to prevent the introduction of such evidence, since the court usually sat far from the place

56. Ibid
57. A Ward, *A Show of Justice*, p 251
58. NZPD, 1886, vol 54, p 303
59. Ibid, pp 141–142, 303–306. For an example of the operation of this Act, see *Report of the Waitangi Tribunal on the Waiheke Island Claim (Wai 10)*, Wellington, 1987, p 12.

where title was being debated. This meant that the judges lacked the requisite local knowledge for weighing evidence in court: local elders were often too old or unwell to travel a great distance for hearings; the judges could not see the land and its kainga for themselves; and sometimes the lack of adequate publicity meant that actual occupants had no idea that their land was passing through the Court until its Pakeha purchasers arrived! As a result of these factors, judges lacked the necessary evidence (usually because vital evidence never made its way into court), and the ability to weigh that evidence in the proper manner.[60] This problem was exacerbated by the lack of a settled code of Maori customs to guide judicial decisions and make judges accountable to undisputed precedents.[61] Assessors were available to advise the judges, but many Hawke's Bay witnesses pointed out that the Assessor had no real role or power in court, that the Judges ignored or overruled them, and concluded that they were only there for show.[62] Although many judges, such as Fenton, were in fact well versed in Maori custom, the Assessors should still have been used to provide a much-needed corrective. Thus, vital evidence never found its way into court, local knowledge was not tapped effectively, and the interpretation of Maori customary law was left almost entirely in the hands of Pakeha judges.

Maori complainants to Colonel Haultain and the 1873 Hawke's Bay Commission suggested that this situation was made worse by other procedural flaws. They claimed that the interpreters had a vested interest in the victory of one side over another, and that they prompted the witnesses, advised them to give false evidence, and in several ways violated their position of trust. The hiring of English lawyers who knew nothing about Maori customs and introduced the technicalities of English law into the system, drew the special ire of Maori critics.[63] Most European commentators who were favourable to the procedures of the Native Land Court agreed with the critics on this point, and T Heale feared the Court would become incomprehensible to the claimants if English lawyers were not excluded.[64]

As a result of these problems, many Maori witnesses before the Haultain and Hawke's Bay Commissions wanted to change the court's procedure for interpreting Maori custom and deciding on Maori title. Some called for a runanga of arbitrators made up of local kaumatua, others wanted to keep within the existing law and see a jury of local experts deciding title within the Court (a provision present in the 1865 Act but unknown to Assessors and claimants until the 1870s, and not used by the Court).[65] Everybody wanted to see English lawyers and English legal technicalities kept out of the court, and most were unhappy with the way judges interpreted customary title. Sometimes these critics had an axe to grind – 'conquerors' were never pleased if the rights of the 'conquered' were admitted and vice versa, so that the Court was never going to satisfy everyone.[66] Such difficulties would have plagued any institution for awarding titles, and Fenton used them to support his highly magisterial view of the Court. Maori critics argued that it would be better for such questions to be settled by arbitration, preferably by Maori, if panels of local experts and community leaders could not agree on a verdict or a compromise solution.[67]

The real question is whether acts of injustice took place as a result of flaws in the concept and procedures of the Court. Wiremu Te Wheoro complained:

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60. AJHR, 1871, A-2, pp 4–6; A-2A, pp 7–8, 26–28, passim
61. Ibid, pp 18–19
62. Ibid, pp 26–29, 37
63. Ibid and passim
64. Ibid, p 19
65. Ibid, p 26
66. For example, ibid, p 28
67. Ibid, pp 25–34

> No matter where the land is, it is not inspected, and the land becomes the property of him who has made the most plausible statement; it goes, together with the houses and cultivations which are upon it, to a stranger. In some cases, perhaps, the judge of the Court has seen the cultivations and the houses, but he only pays attention to the statements made by the parties before him, and says that it would not be right for him to speak of what he has seen, but only to take what is stated in the Court.[68]

Harawira Tatere, an Assessor at Hawke's Bay sittings of the Court, gave several examples in which he believed the title had been awarded to false claimants. In the case of the Tamaki (Seventy-Mile Bush) block, Aperahama Te Rautaki 'got his name inserted though he had no claim whatever'. A landless chief named Morena applied for the hearing of the Okairakau block and 'claimed an interest in the land, though in fact he had none at all, and got his name inserted as a grantee'. The same chief got a woman of his tribe made a grantee of the neighbouring Apiti block, 'though she had no claims whatever'. The Court twice refused to grant a rehearing in these cases.[69] More study would be essential before definite conclusions could be drawn from this type of evidence, but the volume of complaints and rehearings in the 1870s and 1880s suggests that there is a prima facie case that the Native Land Court was not a fair and effective institution for judging customary tenure.[70] European defenders of the Court, such as Colonel Haultain, pointed out that the judges dismissed 166 of the 424 claims heard in Hawke's Bay between 1865 and 1870, suggesting that some screening of claims took place.[71] Then (as now) the various investigators were unwilling to look too closely at Court decisions for fear of overturning titles since sold to Pakeha settlers. There were only seven applications for rehearings before 1871, but this number skyrocketed in the 1870s as Hawke's Bay Maori became less willing to accept exclusion from Grants as their other lands went ever more rapidly through the Court.

Nevertheless, some European experts called for serious changes in court constitution and procedures. In 1862 the Assembly had passed a bill creating the Court as a panel of local Maori experts under the presidency of a Resident Magistrate. This shape of a commission to determine title matched the demands of William Martin and other critics of the Waitara purchase, and showed that an alternative type of institution could have been created by the Assembly. The Act was never executed, however, apart from a brief experiment in the north, and Fenton remodelled the commission into an English-style court. William Martin, Edward Shortland and other European experts called for a return to a commission or jury-based system of ascertaining Maori title, operating on the land concerned and more responsive to local knowledge.[72] C W Richmond made a thorough investigation of the Court's proceedings in Hawke's Bay in 1873 and concluded that it was in fact 'unfitted for the investigation of native title'. He argued that it was too late to downgrade the court to a commission, however, and advised the government that new machinery should be created for 'investigating the native title out of court'.[73] Elements of this machinery were incorporated in the 1873 Native Lands Act.

Reform of the court did not go far enough for some Maori, who called for its replacement by runanga of local arbitrators and experts to decide on Maori title, with

68. Ibid, p 29; cf opposite view of Judge Maning, p 23
69. Ibid, p 39
70. AJHR, 1891, G-1, Minutes of Evidence, pp 114–130
71. AJHR, 1871, A-2A, pp 8, 50
72. Ibid, A-2, pp 4–6
73. AJHR, 1873, G-7, pp 8–9

European authorities necessary only to register runanga decisions.[74] European critics of the jury/runanga proposals argued that such bodies would never reach peaceful (or speedy) decisions, especially where land in dispute between hapu was concerned. There is evidence to suggest, however, that runanga or commissions of inquiry would in fact have been better institutions for exposing false claims and false evidence, for interpreting customary tenure, and awarding title to the correct claimants. In 1891 the Rees–Carroll Commission had experience of how runanga had worked in the King Country, and argued: 'Natives who, speaking in their own runangas, will testify with strict and impartial truth, often against their own interests, when speaking in the Native Land Court will not hesitate to swear deliberately to a narrative false and groundless from beginning to end'.[75] Judge Ward of the Hawke's Bay Land Court held a similar view of the feasibility of runanga, and used them informally to arrange subdivisions, partitions, and the definition of individual interests. He also believed that inter-hapu disputes could be teased out and settled by joint committees.[76] Wiremu Hikairo pressed for a similar solution in 1871, arguing that runanga had been used successfully to settle titles in the early 1860s, before the passage of the first Native Land Act.[77] It seems clear, therefore, that in the eyes of many Maori and of several European experts of the time, the Native Land Court was not the best possible institution for investigating Maori title, and that it had made sufficient mistakes to warrant far-reaching reforms.

2 DIRECT PRIVATE PURCHASE IN HAWKE'S BAY, 1865–1873

In 1865 the Native Land Act introduced direct private purchase of Maori land, with licensed interpreters as the only intermediaries and no other legal protections. In Hawke's Bay, one of the first sites of Native Land Court sittings, the result was a rapid loss of land and the impoverishment of various chiefs and hapu. In 1870 the Crown made a belated recognition of its responsibilities to its Maori subjects to protect them from fraud, in special circumstances where the ordinary protection of lawyers and the courts had proved inoperative. The Assembly passed the Native Lands Frauds Prevention Act, and H R Russell expressed the hope that it would prevent 'the scandalous transactions which have made Hawke's Bay so notorious'.[78] The situation in Hawke's Bay led to the appointment of Colonel Haultain to inquire into the workings of the Native Land Acts in 1871, and of a full Royal Commission in 1873 to examine the sale of land in that province. Haultain concluded that 'inequitable transactions' had occurred throughout the province, and that the fate of its land and hapu had become a byword amongst Maori across the whole of the North Island.[79] The 1873 Commission was divided in its findings: Commissioner Richmond and the Maori Commissioners, Wiremu Hikairo and Te Wheoro, agreed on the condemnation of the ten owner system and on the necessity of major reforms to the Native Land Court. Richmond was not willing to accept that most transactions had been fraudulent, however, although he argued that it was only special circumstances which prevented transactions that *normally* would have been fraudulent from actually being so.[80] Hikairo and Te Wheoro found that there had been major frauds and grossly unfair practices

74. AJHR, 1871, A-2A, p 26
75. AJHR, 1891, G-1, Rees–Carroll Report, pp xi, xix
76. Ibid, Minutes of Evidence, pp 131–134
77. AJHR, 1871, A-2A, p 31
78. H R Russell to Fenton, Napier, 26 January 1871, in AJHR, 1871, G-7, p 8
79. AJHR, 1871, A-2A, p 5
80. For example, AJHR, 1873, G-7, Commissioners' Reports, pp 5–6, 19, 21, 27, 28

in the acquisition of Maori land.[81] Commissioner Fenton, a Native Land Court judge, disagreed with all the other Commissioners and declared that his court and its operations were not in need of reform.[82] The Pakeha and Maori Commissioners divided evenly over the question of debt. Richmond and Maning argued that Maori had no-one but themselves to blame for debts, whereas Hikairo and Te Wheoro blamed Pakeha greed and the nature of the system of land purchase for the tragic problem of indebtedness. There is an element of truth, perhaps, in both sides of the argument.[83]

2.1 THE ACQUISITION OF LAND THROUGH DEBT

The operation of the Native Land Court carried with it a series of built-in expenses which led Maori into debt. At the same time it converted an entire species of hapu rights into 'transferable paper', belonging to a single individual with a vested interest in maintaining (or increasing) mana through traditional forms of conspicuous consumption. In this situation an alliance between lessees, storekeepers, publicans, and interpreters, led to a cycle of credit, debts, and threatened imprisonment, which resulted in the sale of at least half of the Ngati Kahungunu land which passed through the Court.[84] Almost every case before the 1873 Commission involved two constants: the land had been sold to pay the debts of grantees; the grantees (and their hapu) had been unwilling to sell but were blackmailed to do so by an unholy alliance of lessees, creditors, and interpreters. For Maori the cycle became inescapable: a grantee's interest in an *undivided* block which passed through the Court without Restrictions became liable to seizure for debt; and no grantee could resist the pressure to run up massive debts. In Hawke's Bay, therefore, hundreds of thousands of acres were sold to pay the debts of individual chiefs, without payment to non-grantee right holders, without fair payments to grantees, and against the wishes of both grantees and the hapu. Maori found themselves in a vicious circle from which only legislative intervention could have rescued them.[85]

The first point made by Commissioners Hikairo and Te Wheoro, and independently confirmed by the findings of Colonel Haultain, was that the ten grantees were usually tricked into running up excessive debts. They argued that lessees and other creditors offered unlimited credit, and deliberately persuaded Maori chiefs to accept that credit without any understanding of what the ultimate consequences would be. Colonel Haultain wrote that 'unscrupulous and dishonest persons have encouraged their extravagance and vices to get them into their debt, have charged exorbitant prices for the goods they have supplied, and have taken advantage of their ignorance or intemperance to secure mortgages over the lands or portions of them; which was but a sure preliminary to transfer on their own terms'.[86] Hikairo believed that there was a conspiracy between lessees and storekeepers in Hawke's Bay, and the evidence is clear that they worked in tandem to encourage Maori chiefs to a level of indebtedness which forced them to sell their lands. Hikairo also argued that the interpreters supported this process, and did not explain the real workings of debt and

81. Ibid, pp 52–53
82. Ibid, pp 43–51
83. Ibid, passim
84. AJHR, 1871, A-2A, pp 9, 50. According to Haultain, Kahungunu had sold 45 percent of land passed through the Court by 1870, but this figure was a provisional one based on land sales between 1 October 1869 and 1 January 1871. It was probably a conservative estimate, and did not take into account the fact that most unrestricted land which remained unsold would have been under lease, encumbered by debt, and going through the inevitable process which forced further sales.
85. Ibid; see also Minutes of Evidence, passim
86. AJHR, 1871, A-2A, pp 4–5

mortgages to the chiefs.[87] Maning and Richmond concluded that if Maori got into debt it was their own fault, but Hikairo suggested that they were deceived and deliberately inveigled into debt – a finding supported by Haultain and much of the evidence presented to the two Commissions.

The grantees certainly felt that they had been the victims of a deliberate plot, and also played upon the fact that many debts had been for alcohol – a point sure to weigh with the Assembly. The law had prohibited sale of liquor to Maori since 1846, and the Native Lands Frauds Prevention Act reinforced this prohibition in 1870. This Act made it illegal for liquor to form part of the 'consideration' for land, which was interpreted to mean both direct payments and the settlement of debts.[88] The 1846 Sale of Spirits Ordinance was a dead letter by 1870, however, and efforts to tighten control by involving Assessors in licensing public houses did not always have the desired effect.[89] Karaitiana Takamoana complained to the Assembly in 1869: 'Another fault of the Crown grant is, the European invites the man to whom the Crown grant belongs to drink spirits, and that Maori then says, "I have no money." Then the European says, "Your money is your Crown grant – your land is your money." I look upon this as being a cruelty to the Maoris (so that they may cease to have any land).'[90] Henare Tomoana complained of a league between the main Heretaunga lessee, T Tanner, and the storekeepers: 'There was only one person who purchased the land, but he caused the shopkeepers and hotelkeepers to make us take goods, in order to make us quickly sell the land'.[91] When Tanner confronted Tomoana, their evidence was diametrically opposed: 'Did I not constantly curtail your demands?/I am not aware of your doing so./Did I not tell you you were drawing too largely for me to meet?/No; you continually said if we wanted anything to come to you for money or credit'.[92] On the basis of such evidence Richmond concluded that the debts were strictly legal but impolitic and the legislature should act to restrain them, while Hikairo identified a very strong injustice in a system which operated to deprive people of their land in a consistent fashion in every land transaction across an entire province.[93] Hikairo and others called for the government to protect Maori by placing a legislative restriction on the amount of credit which storekeepers could give to grantees.

The strong difference in attitude between Pakeha and Maori Commissioners may be partly explained in terms of experience and racial interest. The Maori Commissioners had experienced the system from the inside and were more aware of its structural nature, believing that structures existed which would inevitably lead to the sale of land from the first minute it entered the Court, whereas the Pakeha Commissioners were more concerned with strict legality and a personal level of interpretation, which blamed individuals for their own debts. Drawing on his Pakeha experience, Richmond argued that people who got into debt were extravagant and improvident.[94] Personal expenditure on Maori forms of conspicuous consumption, such as lavish feasts and gift-giving, or on new imitation of Pakeha gentry such as colonial-style house building, did not account for all the debts of Maori rangatira. Some had got into debt fighting on behalf of the government, only to find

87. AJHR, 1873, G-7, Commissioners' Reports, pp 52–53, 63–64
88. AJHR, 1871, G-7, pp 3, 5–6; AJHR, 1873, G-7, Commissioners' Reports, p 3
89. Ibid; see also A Ward, *A Show of Justice*, pp 87, 248–249
90. Karaitiana Takamoana to General Assembly, 29 July 1871, in AJHR, 1871, A-2A, p 40
91. AJHR, 1873, G-7, Minutes of Evidence, p 2
92. Ibid, p 32
93. Ibid, Commissioners' Reports, pp 26, 52–53
94. Ibid, pp 4, 26

the Crown niggardly in repayment of expenses.[95] More found, however, that the expenses of the Native Land Court process created enormous debts and even forced the sale of blocks as soon as the title was granted! Wiremu Te Wheoro complained to McLean in 1871:

> This is the reason it is thought that it would be better if lawyers, agents, and interpreters were disallowed in the Native Land Court, as they make so many expenses, the money goes and so does the land. Behold, there is the survey, one; the Court, two: the lawyers, three; the Native interpreters, four; the Crown grant, five; and the giving of the land to the other side.[96]

The whole system of distant and protracted Court sittings, and of paying for surveys and interpreters, was only possible in Hawke's Bay because of advances by would-be purchasers. The result of the system was quite clear – land could not be put through the Court without selling at least some of it to pay expenses. This was a universal complaint from Maori witnesses, and a principal contributor to the system of debts and mortgages which forced unwilling grantees to sell their hapu's lands. Colonel Haultain and other officials recommended that the government act to remedy the worst abuses of this system, especially the ruinous cost of private surveying, which was marked by drastic overpricing, broken agreements, and shoddy work.[97] Maori complaints were backed by expert testimony, such as that of surveying inspector T Heale, who advised that the government might be wise to profit from this system itself by appointing government surveyors and transferring the indebtedness system from private purchase to Crown purchase. Other officials hoped that government surveyors would actually reduce the crippling costs of private survey, and ensure that the work was performed is a more adequate manner.[98]

Thus, the Native Land Court added to the burden of crippling debt which led to automatic sales of unrestricted land after it had passed through the Court. Furthermore, there was some suggestion that the other class of debts for building, consumption, and economic development, may have been fraudulent and exaggerated in order to force sales on terms more favourable to the purchasers. According to the evidence of Henare Tomoana, for example, his creditors constantly refused to show him their accounts or prove the size of his alleged debts. One creditor failed to give Tomoana a receipt for his payments, and then took him to court for debts that he had paid.[99] In 1871 Haultain concluded that Maori had been cheated through grossly exaggerated prices and fraudulent bookkeeping, and this applied to massive survey charges as well as goods for the purpose of 'riot and debauchery'.[100]

The 1873 Commissioners were more hesitant in their findings. C W Richmond employed an accountant to examine the books of the two most prolific Napier creditors. He claimed that there was no evidence of actual fraud, since the recorded prices were relatively fair and Maori usually (although not always) admitted receiving the listed goods. The Commissioner concluded that the prices and accounting had not been fraudulent, but his actual recommendations indicated that he thought fraud was rife although he could not prove it, and that the Crown was justified in taking legislative action. He suggested that: 'No doubt the temptations to fraud in dealings upon credit with the more ignorant natives are very great'. He argued that legislation to limit the amount of credit given to Maori

95. Ibid, Minutes of Evidence, p 32; cf M Boyd, *City of the Plains: A History of Hastings*, Wellington, 1984, p 11
96. W Te Wheoro to McLean, 8 April 1871, in AJHR, 1871, A-2A, p 27
97. See AJHR, 1871, A-2A, passim
98. Ibid, pp 19–20
99. AJHR, 1873, G-7, Minutes of Evidence, p 28
100. AJHR, 1871, A-2A, p 5

would have been necessary were it not for the 1870 Native Lands Frauds Prevention Act, which provided for an investigation of all accounts before sanctioning a sale.[101] For six years before the passage of this Act, however, the Maori of Hawke's Bay had been without even the technical protection of the Frauds Prevention Act. It seems reasonable to conclude that fraudulent activities took place in at least some of the recording of debts which were used to force sales of Maori land.

The greatest grievance of Ngati Kahungunu in this respect, however, was not so much the fraudulent nature of debts – many were no doubt genuine – but the premeditated use of debt to trap individual grantees over a period of time and then force them to sell their lands. Creditors got grantees on their own and compelled them to sign mortgages and deeds of sale under threat of law suits, imprisonment, and confiscation of land to pay for debt. Neither rangatira nor community had expected any such result when they put their land through the Courts, and many made moving complaints about the persecution and unfair pressure brought to bear on debtors by storekeepers and other agents of the lessees. Most grantees testified that they were unwilling to sell their land, that they sold without consent of the non-grantee right holders, or often that of their fellow grantees, and that they had been cornered and forced to sell by a mixture of bribery, threats, and the cold hard facts about debt.[102] According to Commissioner Hikairo, the consequences of debt had been hitherto skilfully concealed from them. As Tomoana complained, 'The tradesman comes down on our heads like the monkey of a pile driver, which crushes us by its weight and force'.[103] Delaying tactics and outright refusal to sell usually crumbled under the pressure of lessees, creditors, and interpreters. Manaena held out for a while by successfully hiding whenever these Pakeha came to call, but eventually he joined the other Heretaunga grantees in the surrender of his rights. Tomoana also tried to hold out but according to his own testimony was held against his will until he signed – a testimony which Richmond and Fenton did not believe. Tareha was cornered in Wellington and, far from his friends and his runanga, succumbed to the pressure of his creditors and of a Hawke's Bay interpreter brought to Wellington for this purpose. Karaitiana fled to Auckland and sought a loan from the government to pay off Tomoana's debts but McLean put him off with empty promises, while the local government added to the pressure with Ormond (one of the Herataunga lessees) at its head. Since the government refused to step in and the creditors refused to wait, Heretaunga had to be sold to pay the debts of the grantees.[104] Although the community may possibly have participated in the goods obtained under credit, they paid a high price for debts contracted without their consent on the security of land taken from them by the Native Land Court. A related issue is that sales to pay debts allowed the creditors to fix the prices at an unfairly low level, but this problem will be discussed in more detail below.

2.2 THE ACQUISITION OF LAND THROUGH FRAUD

One of the principal supports of the debt system used in Hawke's Bay to acquire Maori land, was the constant use of various forms of fraud to deceive and cheat the grantees. The key role in these fraudulent practices was that of the interpreter, upon whom the only check was an initial licence granted easily by the government and subjected to no further scrutiny or investigation. In many cases the position of interpreter was inherently biased against the

101. AJHR, 1873, G-7, Commissioners' Reports, p 2
102. For example, ibid, Minutes of Evidence, pp 19–47; see especially the testimony of Karaitiana, Tareha, Henare Tomoana, and Manaena
103. AJHR, 1871, A-2A, p 5; see also p 32
104. AJHR, 1873, G-7, Minutes of Evidence, pp 19–47

Maori but this seems to have been exacerbated in Hawke's Bay by careless and even unprincipled behaviour on the part of the main interpreters. Although the Pakeha Commissioners bent over backwards to avoid imputations of personal blame, they constantly had to comment on accusations against the interpreters and even felt impelled to recommend the immediate suspension of one of their number for gross negligence.[105] The Maori Commissioners were not so concerned with the reputations of these prominent men, and roundly condemned them for malpractice and fraud. The evidence available to the Commission and the Haultain inquiry suggested a very strong case in favour of Hikairo and Te Wheoro's findings, and there is a distinct tone of hesitant excuse in Richmond's handling of the interpreter question. It seems clear that the one group of agents charged with honestly explaining the terms of deeds and mortgages *and their probable outcomes*, deceived the chiefs and encouraged the sale of land with every means at their disposal, openly abusing their position of trust to obtain profits and fees from purchasers of Maori land.[106] The government's failure to check the blatant malpractice of interpreters whom it had licensed was one of its gravest breaches of duty during the period of speculator purchase in Hawke's Bay.

From the beginning interpreters were interested parties, promised a 10% commission from surveyors who won contracts from the Maori, leading to constant pressure from interpreters to put land through the Court (which required a survey). They also demanded high fees for court attendance and other duties which were usually charged with the creditors' other debts against Maori land.[107] Furthermore, the interpreters worked 'only for the lessees and storekeepers, and do not assist the Maoris, nor do they assist [other] Europeans who may come to buy land in that Province'.[108] They also received fees (basically bribes) for the successful completion of purchases, such as the promise of £300 to the Hamlin brothers if they could persuade Tareha to sell his share of Heretaunga.[109] The interpreters, therefore, had a vested interest in the expensive survey of Maori land, in the passage of land through the Court, and in its sale to their actual employers, the lessees and creditors who had inveigled the Maori (with their assistance) into debt in the first place. Their alliance with the lessees was often so solid that they blocked efforts from outside the lease to buy the land, reinforcing the lessees' monopoly over land purchase (and the resultant low prices paid to Maori).[110]

This vested interest in the outcome of a sale made nonsense of any claim to neutrality in the interpretation and explanation of deeds. The nearest equivalent at the time would have been if a Pakeha litigant had to rely on the help and disinterested advice of a lawyer working for and paid by his opponent, or had to sell property under contracts drawn up by the buyer's counsel under the pretence that the counsel was in fact his own. This situation inevitably led to deception and fraud. The accusations levelled by Maori complainants were many and varied: that interpreters had knowingly testified to deeds with forged signatures; that they had left reserves and other stipulations by the sellers out of deeds without telling them; that they had encouraged false claimants to bring land before the court so that they could get survey commissions and other fees; and most importantly that it was usual practice for them to lie about the contents of deeds, give twisted interpretations that

105. Ibid, Commissioners' Reports, pp 34, 50
106. Ibid, pp 52–53, 75; see also AJHR, 1871, A-2A, pp 7, 26, 29, 32, 47
107. Ibid
108. AJHR, 1873, G-7, Commissioners' Reports, pp 53, 64
109. Ibid, p 27
110. Ibid, pp 23, 27–28

concealed the truth, or simply fail to explain the more longterm consequences of debts and mortgages to inexperienced Hawke's Bay chiefs.[111]

Evidence was presented to substantiate all these charges, but the latter point is vital to refute the views of Pakeha at the time that Maori could justly be held liable for debts because these were contracted under a sufficient knowledge and understanding of their own actions. Commissioner Hikairo disputed this argument without in any way taking a paternalist stance or arguing that Maori were irresponsible minors who could not be held accountable for their actions. His analysis of the problem is worth quoting in full:

> **Second Mortgages**
>
> I was much surprised at the knowledge displayed by the Natives of Hawke's Bay on this subject; but I am of opinion that it was the Europeans of the Province that taught their Maori friends that work, without explaining to them the bad effects of the mortgaging system. They only showed them the pleasing portions, and that is why the Maori people of Hawke's Bay have been so anxious to deal with their lands in that way. If full explanations of the full force and effect of mortgages had been made to them, they would not so hastily have rushed to destruction.
>
> There were certain old men and women who came before the Commissioners, and stated that they did not know the effect of the mortgage deeds; but the interpreters stated that these witnesses did know very well. I carefully sought for the reason which prompted interpreters to assert that the said witnesses knew the full force and effect of such deeds, which contain many technical legal expressions which are not clear to the majority of Europeans.
>
> I believe that it is true that these witnesses did not know, because many copies of the translations into Maori of such deeds were produced before the Commission; and when I saw them I came to the conclusion that it was not to them that the Maoris gave their assent, but that the interpreters made other statements to induce these people to give their consent.
>
> *Third*, Interpreters being taken from Napier to Wellington for interpreting work by storekeepers and land-buyers, without regard to expense.
>
> I carefully sought to ascertain their motive for this cause, and I consider it was that these interpreters were such adepts in the work of deceiving the people, and it was feared lest other interpreters should give full explanations of the terms of the deeds, for there are plenty of certificated interpreters at Wellington who could easily have interpreted those deeds for a small fee.
>
> I wish also to make a statement with regard to the interpreters of the said Province.
>
> Most of the conveyances, mortgage deeds, or other documents which were produced before the Commission were interpreted by two individuals, who are brothers. Neither of these men would, in my opinion, be afraid of the other, they being brothers, no matter what sort of interpretations each might give.
>
> Then there is the course of action which these interpreters take.
>
> The interpreters act only for the lessees and storekeepers, and do not assist the Maoris, nor do they assist Europeans who may come to buy land in that Province. I think that that is one cause of the trouble which has come upon the Natives of that Province, and it is through the interpreters.[112]

Hikairo's analysis explodes the idea that special legal protections for Maori were paternalistic, which might be advanced by a modern audience. This argument was certainly used at the time by settler politicians and judges, who spoke of the Maori 'coming of age' and declared that special protection was no longer necessary, and that there should only be one law for both races of the Queen's subjects in New Zealand.[113] This rhetoric, however,

111. Ibid, Minutes of Evidence, passim, see especially Case 22
112. Ibid, Commissioners' Reports, p 53
113. Ibid, pp 26, 45; AJHR, 1871, A-2A, p 41

was used to obscure the real issue in Hawke's Bay. This was that most Pakeha, as Hikairo pointed out, did not understand the technicalities and full effects of deeds, mortgages, and other contracts. They had to hire lawyers as professional agents to help them handle, bequeath, and sell their property. The difference was that Pakeha could usually rely on the disinterested help and advice of professionals, who would not actually be working for the *other party* to the contract. The Maori of Hawke's Bay, on the other hand, had to use interpreters (and occasionally lawyers) who were working for the lessees and purchasers, and who had a vested interest in the success of the sale or lease. Richmond pointed out that the absence of legal advice would have been grounds for a successful challenge in the Court of Equity if both parties to the transaction had been 'English'. He argued that Maori could not afford lawyers and distrusted them anyway, without recognising that this forced them to accept interpreters in the niche that lawyers should have filled under the Pakeha system of making contracts and selling land.[114] As a result of the interpreters' initial bias and unprofessional behaviour, fraudulent practices crept into the sale of Maori land on a scale that the Pakeha Commissioners found difficult to believe. Nevertheless, it was clear that the Maori were not in a position to avail themselves of the usual protections available to their Pakeha counterparts when selling land, and in fact became the victims of the very agents who were supposed to ensure the probity of deeds and contracts. In this situation the arguments against special protections broke down, since the system operated in such a way as to remove ordinary protections beyond the reach of one entire race of the Queen's subjects. Quite apart from Treaty guarantees and the promises of protection in land selling offered to Maori in the 1840s, the Assembly recognised a duty of the law to protect subjects from fraud – and gave belated recognition of this fact with the Frauds Prevention Act of 1870.

In addition to the central role of interpreters in the system which forced sales on the Maori, other fraudulent practices were also brought to light by the 1871 and 1873 Commissions. Maori complained about separate negotiations with each grantee, in violation of promises made by the Court that the grantees were tenants in common who would have to make contracts as a group.[115] Grantees were harassed individually 'sometimes on the roads, in some cases in public-houses, in some cases in the bedrooms of the owners, and also when they were sick'.[116] Waka Kawatini claimed that he was so drunk when he signed a deed of sale that he could barely recognise his companions.[117] Tareha Te Moananui was twice trapped by creditors in Wellington and persuaded to sign contracts which Richmond judged that he would never have accepted if at home and supported by his runanga and the other grantees. He called this 'one of those pieces of *finesse* which so often threw a shade upon transactions with natives'.[118]

Furthermore, lessees used the Crown's old trick of obtaining the support of one or two chiefs, and then using their names to force other grantees to sign under the argument that the sale was already made and they could either sign and receive compensation or miss out altogether. Hikairo condemned just such a use of the names of Karaitiana and Henare Tomoana in the Heretaunga case, where the other grantees had not agreed that those two chiefs should act on their behalf.[119] Sometimes grantees received no money (or payment of debts) at all, while non-grantees watched helplessly from the sidelines as their inheritance was sold for a pittance. Part of this use of principal chiefs and exploitation of tensions

114. AJHR, 1873, G-7, Commissioners' Reports, pp 5–6
115. Ibid, pp 18–19
116. Ibid, p 52
117. Ibid, Minutes of Evidence, pp 36, 38
118. Ibid, Commissioners' Reports, p 21
119. Ibid, p 64

between grantees of different hapu involved secret bribes and pensions paid to key grantees. Manaena, Karaitiana, and Tomoana all received secret pensions in return for their forcing through the Heretaunga sale, as well as the more open payment of their debts. Richmond argued again that a Pakeha Court of Equity could not have accepted this practice.[120] Furthermore, bribes were paid to interpreters and storekeepers by the lessee/purchasers to ensure their monopoly of purchase and the successful completion of deals.[121] Also many deals were made on the basis of alcohol: 'Rum, rum has dispossessed us', cried Tareha.[122] Richmond calculated, for example, that 39% of Waka Kawatini's debts were for spirits, and 34% of the debts of Paora Torotoro were also for alcohol.[123] This was condemned by the Assembly at the time, and under the Frauds Prevention act all sales involving alcohol were to be declared invalid. All these practices exacerbated the central problems of the ten owner system, indebtedness, and the malpractice of licensed interpreters. The result was that neither grantees nor the tangata o waho could find any means within the system to prevent indebtedness and the resultant sale of lands. One Hawke's Bay settler predicted alarming results for the government: 'if the present system of direct purchase is carried on the natives will in a few years become paupers or rebels'.[124]

2.3 ADEQUACY OF PRICE

One of the principal complaints before the 1873 Commission was that purchase prices were 'grossly inadequate', a complaint upheld by the Maori Commissioners but denied by Richmond and Maning. In 1870 the Crown had made adequacy of prices a matter for the inspection of the Fraud Commissioners, but the Act was not retrospective and both Parliament and the 1873 Commissioners feared to cast doubt on the legal title of entrenched Pakeha purchasers. As a result Richmond tried to offer justifications for manifestly inadequate prices, just as he had tried to explain away practices that he would have found fraudulent in a transaction between Pakeha. The issue was very important because it involved the question of justice and equitable deals, but also encompassed the promise that Maori would receive higher prices under direct purchase than those paid by the Crown when land was purchased through pre-emption. Many Maori hoped that they would in fact receive higher prices from direct dealing with settlers.

A number of factors combined to lower the prices paid for Maori land under the supposedly free market conditions of private purchase. Firstly, many blocks of land had been leased to Europeans for periods of twenty-one years or more, and the first act of those lessees was to legalise their leases after the land had passed through the Court. Rents were probably low and Maori would have to pay for improvements, but nevertheless they provided a regular income which may have been the principal factor in Richmond's assessment that Hawke's Bay Maori were a good credit risk, who probably would have paid their debts if given sufficient time.[125] In terms of selling the land, however, the leases proved to be incontravenable and therefore devalued the land by 50% if it was sold to anyone other than the lessee. Furthermore, the storekeepers and interpreters allied themselves with the lessees and helped to block outside interests willing to buy the land even with the encumbrance of a lease. The result was a virtual monopoly which enabled

120. Ibid, p 26
121. Ibid, pp 21–23, 26–27
122. AJHR, 1871, A-2A, p 5
123. AJHR, 1873, G-7, Commissioners' Reports, p 3
124. E Tuke to McLean, Napier, 30 August 1870, McLean Papers, M S Copy Micro 535/94
125. AJHR, 1873, G-7, Commissioners' Reports, p 26

lessees to ignore market values and name their own price. This position was strengthened by the problem that purchasers or their agents were *creditors*, which gave them an additional power to control the terms of sale to their own benefit. The purchase price in fact went to creditors (apart from bribes and secret pensions) and grantees frequently received no money at all. Grantees did not receive equal shares and some owners were in the position of getting no money and having none of their debts paid off. The 'outsiders', of course, received no benefit at all from the sale of their land. Thus the Maori protested against the monopolist fixing of prices at artificially low levels, the nature of the payments (directly to creditors), and the distribution of the payment.[126]

The result of this system of purchase by lessees was the sale of Maori land at prices well below market level. The large and valuable Heretaunga block, for example, was valued at £3–£4 per acre by a former Commissioner of Crown Lands and Chief Surveyor, but was sold for £1 6s 8d per acre. Richmond argued that the prices paid under such an obvious system of monopoly would have received very careful attention from a Court of Equity. He justified the low prices, however, by arguing that the Crown had paid much lower prices, and that Crown purchases were still setting the tone of the Maori land market. He cited the sale of the Ahuriri block to the Crown for a miserable 1½ d per acre: 'low prices paid in former times by the Crown have not perhaps ceased to influence opinion, and affect the market'.[127] He also argued that the low prices reflected insecurity of tenure, claiming that Maori title was still a risky and 'precarious one, liable to all sorts of dangers, doubts, and questions'.[128] This meant that benefits promised to Maori, including secure Crown Grant titles and higher prices for land, did not follow from the operations of the Land Court and the abolition of pre-emption. Although private purchasers did pay more than the Crown, they did not pay market value or the same level of prices 'paid to Europeans for land of the same description'. Because of leases, insecure title, and low Crown prices, however, Richmond argued that the prices paid to Maori were not 'grossly inadequate'.[129] Commissioner Hikairo dissented from this view, and reported on Heretaunga that the land 'is good, and the area large, but the price is small', and made this one justification for refusing to recognise the propriety of the Heretaunga purchase.[130]

3 ATTEMPTED REFORMS, 1870–1873

By 1870 the situation in Hawke's Bay had become an open scandal, and the Assembly acted to prevent the worst abuses of the private purchase system by enacting the Native Lands Frauds Prevention Act. It also inquired into the workings of the Native Land Court and Native Land Acts through the Haultain Inquiry in 1871, and investigated the Hawke's Bay land trade through a Royal Commission in 1873. Neither of these commissions was designed to actually redress grievances or overturn purchases, but to ascertain the actual effects of the laws and their administration and to recommend changes to Parliament. Although the limited nature of the inquiry caused massive disappointment among the Ngati Kahungunu of Hawke's Bay, the 1873 Commission made some successful recommendations for reform of the Native Land Acts. Other European experts, such as Sir William Martin and Edward Shortland, submitted memoranda to McLean with suggestions for changing the principles and practice of the Native Land Court. The whole question of

126. Ibid, pp 26–28, and passim
127. Ibid, p 4
128. Ibid, p 28
129. Ibid, pp 4, 28
130. Ibid, p 64

law reform became caught up in local and parliamentary rivalries, as a Hawke's Bay group of politicians sought to undermine McLean's position, and the struggle between McLean and Fenton for control of Maori land legislation continued unabated. The settler lobby also battled measures which appeared to offer real protection to Maori land owners, and succeeded in defeating several bills introduced to break the debt cycle and enable Maori to retain their lands. The most significant reforms came with a new Native Land Act in 1873, which basically controlled the purchase of Maori land until the renewal of pre-emption in the 1890s. It is necessary to examine these various efforts at reform to assess the Crown's performance of its protective duties towards Maori resource rights under Article 2 of the Treaty of Waitangi, and its Article 3 obligation to provide legal protection from fraud.

3.1 THE NATIVE LAND FRAUDS PREVENTION ACT, 1870

In principle the Frauds Prevention Act, which passed through the Assembly in 1870, was designed to check many of the abuses in the system of private purchase. It was meant to create a mechanism to fulfil the role designed for the earlier Protectorate, which had been charged with protecting Maori interests under the original waiver of pre-emption from fraudulent or unfair practices in the purchase of their lands. Like the earlier Protectorate, however, these good intentions were not necessarily translated into effective action.

Under the 1870 Act, purchasers had to bring the signatories of a deed to the district Trusts Commissioner, who would check the conditions of the contract by questioning the Maori grantees (holders of Native Land Court awards). The Commissioner was supposed to ensure that: the correct parties had signed the deed; that they understood its meaning; that they had sufficient other lands for their support; that payment had been properly carried out and had not been 'grossly inadequate'; that liquor or arms had not formed part of the payment; and that the deed did not breach any clear or implied trust in the Crown Grant. The Commissioner was empowered to delay the transaction until minor points had been satisfied, such as an incomplete payment, or to invalidate the transaction altogether if major breaches of the Act had taken place.[131]

The Act introduced many salutary checks on some of the problems outlined in the previous section, although its only attack on the debt system was to make it clear that use of debts for liquor as payment would cause the transaction to be disallowed by the Commissioners. In practice, however, the Act failed to translate its good intentions into positive action in many areas – the sort of failing for which the responsibility lay (as Ballance told East Coast Maori) with the government.[132] The law itself was also at fault because McLean rejected a Legislative Council amendment to make it retrospective. The many complaints arising from purchases in the years 1865–1870, therefore, could not be the basis for a challenge of these purchases (and among them many by McLean himself). A Napier settler, E Tuke, wrote to McLean that the Act was 'too late as concerns this Province. If it had been made retrospective many swindling transactions would have been brought to light. The poor Maori would have recd. his own again'.[133]

Nevertheless, the potential remained for the Act to improve conditions after 1870. The Commissioners were in a weak position from the beginning, however, because they could not supervise the detailed process of land sales but could only give or withhold ratification

131. Select Committee on Paper 97, Appendix, LC 1871, p 162
132. AJHR, 1885, G-1, p 70
133. E Tuke to McLean, Napier, 28 October 1870, MS Copy Micro 535/94

at the end of the process. This made it more difficult for them to take effective action. Furthermore, the Commissioners were few in number and only part-time. As a result their investigations tended to be perfunctory and even sometimes negligent. The assessment of whether Maori had sufficient other lands for their support, for example, seems to have consisted in Hawke's Bay of a verbal assurance on the part of the grantees themselves.[134] The Commissioners' instructions assured them that their 'inquiries need not, in ordinary cases, be too minute'. Instead of a thorough investigation of every purchase, they were ordered to give endorsements as a matter of course, unless good reason was thrust upon them to suspect fraud or illegality.[135] A meeting just after the signing and in the presence of the purchaser proved an unfortunate atmosphere for bringing forward such complaints, and the Hawke's Bay Commissioner (Turton) was surprised to find many of his approved transactions later repudiated by the vendors before the 1873 Commission.[136]

Similarly, the question of a sufficient price received scant attention – indeed H R Russell accused Turton of never investigating it at all![137] The problem with such terms as 'grossly insufficient' lay in their subjectivity, and Turton felt that many matters under the Act were in fact left to the Commissioner's conscience alone. He refused, for example, to carry out the provisions in the Act to invalidate sales involving liquor. This provision might have helped to prevent speculators from getting Maori into debt by advances of alcohol, and a few disallowances by the Commissioner would have sent a clear signal to speculators that they could no longer use this particular means to run up Maori debts. Commissioner Turton, however, and the 1873 Royal Commissioners, felt that Maori ought to be bound by debts for alcohol no matter what the law required.[138] When Turton came across a case in which part of the purchase price had been £20 worth of spirits, he did not invalidate the purchase but merely ordered the purchaser to make up the sum in cash. This was done by a cheque for £20 but when Turton later ran into the chief concerned by chance, he discovered that the purchaser had insisted on getting his cheque back again after leaving the Commissioner's office. Turton insisted that the £20 be paid, but his relatively free approach to interpreting the law and the ad hoc manner of investigations highlighted the flaws in the operation of the Act.[139] Although his instructions did allow considerable leeway for discretion, the government had specifically ordered Trust Commissioners to disallow purchases in which alcohol formed part of the consideration.[140]

Accusations of corruption and political favouritism were also levelled at H Turton, the first Hawke's Bay Commissioner. Newspapers pointed out that he used his powers to shepherd through McLean's purchases and those of government supporters, but rejected those of the Ministry's political opponents.[141] Turton's letters to McLean do in fact provide several instances in which he warned the Minister of flaws in his purchase and used delaying tactics to enable McLean to tidy up various flaws, such as a failure to get the signatures of all grantees, to complete purchases by paying up on promissory notes, and other dubious practices.[142] Turton's successor may not have been corrupt but he was certainly negligent, since he passed sales of land in which the grantees were minors, and

134. See Report of Trust Commissioner for Hawke's Bay, AJHR, 1871, G-7
135. Select Committee on Paper 97, Appendix, LC 1871, p 162
136. Turton to McLean, Napier, 10 April 1873, MS Copy Micro 535/94
137. Select Committee on Paper 97, Appendix, LC 1871, p 146
138. AJHR, 1873, G-7, Commissioners' Reports, p 3
139. Report of Trust Commissioner, AJHR, 1871, G-7, pp 5–6
140. Select Committee on Paper 97, Appendix, LC 1871, p 162
141. *Daily Telegraph*, 25 September 1871, in McLean Papers, MS Papers 32, Folder 30
142. Turton to McLean, Napier, 16 December 1871; 3 February, 4 May, 22 June, 19 July, 17 Augnst, and 22 August, 1872, MS Copy Micro 535/94

even on restricted land that had not had its Restrictions removed.[143] In 1873 Maori made their dissatisfaction clear by taking many transactions approved by Turton to the Lands Alienation Commission. He had thought them satisfactorily settled but now sales 'absolutely agreed to by the Natives at the time they appear before me are in many instances subsequently repudiated by them'.[144]

Nor were the practices of the 1870s Trust Commissioners improved upon by their successors in the 1880s. The Barton Commission of 1885 concluded that 'the system of inquiry before the Frauds Prevention Commissioners is useless for the prevention of fraud' because the whole process had degenerated into a perfunctory check of a few forms.[145] The Native Minister declared in the House: 'It is notorious that the Frauds Commissioners in the past have performed their duties in the most perfunctory manner, and passed transactions when the consideration was a mere bagatelle'.[146] Thus, the Act failed to provide properly for its own execution by the appointment of sufficient full-time staff, and its good intentions were mainly defeated by the manner in which part-time officials carried them out. There was no doubt some improvement in reducing fraud amongst Hawke's Bay land purchases, but on the whole the Act did not provide the protection of Maori interests that the government's public undertakings, or the Act's own Preface, had claimed.

3.2 CONTEMPORARY SUGGESTIONS FOR REFORM, 1870–1873

During the three years following the passage of the Frauds Prevention Act, there was a storm of Maori criticism of the Native Land Court and the abuses of the system of direct purchase. Some prominent Europeans, such as William Martin and Edward Shortland, were determined to see Maori land opened for settlement but on the payment of a fair price, which would enable the vendors to develop their remaining land base for effective participation in the new economy. Others who pressed for reform, such as H R Russell and J Sheehan, had more interested commercial and party political motives. The culpability of the Crown may be partly measured through the recommendations of these Europeans, as they show what could reasonably have been done *at the time* if speculator interests had not won out in the General Assembly. There was a broad basis of agreement in Parliament that it was in the interests of Maori to sell land that they did not 'need' so that both races could participate in the economic development of a settler-controlled economy. The question was whether this process would be done in a manner which would benefit Maori as well as settlers, since there was no doubt in the minds of legislators that the process would (and should) take place. In terms of the rhetoric of the day, the Assembly had a duty to harmonise Maori interests with colonisation, but the more blatant speculators opposed any effort to translate this duty into practical legislation. The fate of Maori land depended partly on whether the reformers (from whatever motive) or the speculators would win the battle in Parliament.

3.2.1 Reform of the Native Land Court

In 1871 Colonel Haultain ignored the volume of Maori protest he received against the operations of the Court, and suggested to the government that they were happy with the

143. AWard, *A Show of Justice*, p 252
144. Turton to McLean, Napier, 10 April 1873, MS Copy Micro 535/94
145. G E Barton, Report, AJHR, 1886, G-11, p 3
146. NZPD, 1886, vol 54, p 463, cited in A Ward, *A Show of Justice*, p 252

court as an institution for ascertaining Maori title.[147] Sir William Martin and Edward Shortland gave very different advice to the Assembly in the same year, based on a long experience of Maori affairs and an extensive acquaintance with the nature of Maori decision-making mechanisms and land tenure. Their recommendations were similar to those made to Haultain by Wiremu Te Wheoro and Wiremu Hikairo, both of whom later served as commissioners on the 1873 inquiry into land transactions in Hawke's Bay.[148]

Martin and Shortland suggested that the Court be remodelled as a Commission, and that questions of title be decided by panels or juries of local kaumatua. This major transformation of the Court would involve many other changes in its operation, including the relocation of its sittings on to the actual blocks affected, and the exclusion of expensive lawyers and agents.[149] Without such a transformation the court would continue to deprive Maori of land by awarding it to the wrong (and in many cases *spurious*) claimants.

C W Richmond took these opinions very seriously when he headed the Hawke's Bay Commission in 1873. As a judge interested in the extension of British law and the court system, however, he felt that it would be a backward step to downgrade the Native Land Court to a Commission, even though it was not an institution to execute British law. He accepted that the Commission/jury system would be more suited to ascertaining customary title and recommended that the court be removed from that immediate task to form the final step of a more thorough system of investigation. He suggested that District Officers should be appointed to make preliminary investigations on the spot, hoping that this would compensate for the court's obvious inability to tap local knowledge in an effective manner. He expected that the District Officers would be the main fact-finders for the court, and that this would result in fewer mistakes in the awarding of title.[150] The Assembly accepted that the court was not doing the best possible job but preferred to adopt Richmond's proposals over Martin's, as more in keeping with the extension of British law.

3.2.2 Reform of the System of Direct Private Purchase

The 1873 Hawke's Bay Commission proved a major disappointment to Ngati Kahungunu. They had expected it to have powers of redress, to order payment of compensation or the return of land acquired through fraud. The Chief Commissioner assured the Kahungunu chiefs that 'nothing will result from the present Enquiry as affecting the past; the advantages to be derived from the labors of the commission being useful as a guide for legislation for the future'.[151] In fact the Commission heard only about one-sixth of the complaints brought before it, and Turton implied that these were mainly 'objected to on the ground of grog' and that the more fraudulent cases were not actually heard.[152] Even so there was sufficient evidence as a result of the Commission to suggest that Ngati Kahungunu had been the victims of injustice and fraud, and that major changes were necessary if the Assembly wanted to put a stop to this situation.

Commissioner Richmond, Sir William Martin, Edward Shortland and others recommended radical changes to the system of direct private purchase. There was a general agreement among these European proponents of reform that something must be done about the crippling nature of court expenses and the cost of surveys, which had deprived Hawke's Bay Maori of the opportunity to enjoy their new title since they could only afford to obtain

147. AJHR, 1871, A-2A, pp 3–4
148. Ibid, evidence of Wi Te Wheoro and Wiremu Hikairo, pp 26, 29, 31–34
149. AJHR, 1871, A-2, pp 3–6
150. AJHR, 1873, G-7, Commissioners' Reports, pp 8–9
151. Turton to McLean, Napier, 10 March 1873, MS Copy Micro 535/94
152. Ibid, 27 February and 10 April 1873

it by entering into prior contracts with would-be purchasers. There were many recommendations that the court should sit closer to the claimants' own homes, and that expensive lawyers and agents should be excluded from the Court. The most important suggestion, however, was that the government should take direct responsibility for surveys and put an end to private surveying.[153] Richmond also suggested that the government should supervise interpreters more closely in order to ensure their probity and impartiality, which was vitally necessary for the prevention of further fraud.[154]

In addition to recommending that the government take a more supervisory role, Richmond tackled the issue of the whole debt system. Although he refused to acknowledge it publicly as a deliberate trap created to deprive Maori of their land, he did suggest that statutory limitations might have been necessary to set a ceiling on debts. Commissioner Hikario also wanted the law to forbid Maori to mortgage their lands.[155] Richmond concluded, however, that the Frauds Prevention Act enabled sufficient inquiry into the validity of debts, and that it would be unwise to restrict Maori freedom of action. In practical terms, however, he suggested that land held jointly by Maori grantees should no longer be liable for the debts of individual grantees, since their position as trustees instead of owners should be made clear until such time as the whole hapu was willing to subdivide and sell individual shares.[156]

William Martin and E Shortland suggested a different method for ending the debt cycle. They suggested that direct private purchase should be replaced by sale at public auctions, which would have made ineffectual all the secret deals and bribery, debt entrapment, negotiations and purchase from individuals. Only the lease would remain as a market force to prevent Maori from selling to non-lessees. The element of genuine risk in a public auction would certainly have deterred many of the worst frauds in the private purchase system. It might also have ensured a better price, as Martin recommended that the Native Land Court should set a minimum price below which the land would not be sold.[157] Debts could still force sales under this system but they could no longer force sales to specific individuals and at artificially low prices, and this would have destroyed much of the *raison d'être* of the whole debt system.

Richmond, Haultain, Martin, and Shortland all agreed that the ten owner system and the compulsory individualisation of title were unjust and should be stopped. Richmond recommended a return to public negotiations with a whole community, with the chiefs as trustees and the hapu holding land as a corporation. Although the tribal title seemed primitive to him as a nineteenth-century judge, he recognised that individual ownership could only be introduced fairly when the Maori wanted it, and that in the meantime hapu ownership must be recognised, and that the underhand practice of breaching the title by buying from individuals one by one should be abolished.[158]

In order to ensure that Maori profited from the sale of their own lands, Richmond and Heaphy recommended that the investigation of how much land remained to sellers should be tightened up, and a standard be introduced to ensure that Maori living on different types of land retained sufficient for their own economic survival.[159] There was some support for a return to the old Crown practice of making reserves in every block of land that was sold. Martin and Shortland also suggested that half of the purchase price be invested

153. For example AJHR, 1871, A-2A, passim
154. AJHR, 1873, G-7, Commissioners' Reports, pp 5, 26–28
155. Ibid, p 2; AJHR, 1871, A-2A, p 32
156. AJHR, 1873, G-7, Commissioners' Reports, pp 8–9
157. AJHR, 1871, A-2, pp 3–6
158. AJHR, 1873, G-7, Commissioners' Reports, pp 8–9
159. AJHR, 1871, F-4, pp 60–61

compulsorily for twenty-one years, to protect the interests of future generations and to allow time for experience and responsibility to accumulate. Some chiefs agreed with this idea in theory but felt that it would be difficult to get Maori acquiescence in practice.[160]

Thus European reformers and Commissioners of Inquiry recommended radical alterations to the concept and practice of the Native Land Court, and the system of direct private purchase. The Crown had already acknowledged responsibility when the Assembly passed the Frauds Prevention Act, and it moved to broaden that responsibility by introducing a new Native Land Act in 1873.

3.3 THE NATIVE LAND ACT OF 1873

At least three efforts were made to reform the system of private purchase in the 1870s, but the only one even partly successful was the Native Land Act of 1873. In 1869 J C Richmond had introduced a bill to limit credit advances to Maori to £5, but the speculator lobby forced its withdrawal.[161] Henare Tomoana renewed calls for such legislation in 1871, but generally neither Maori nor Pakeha were comfortable with such restrictive action on the part of Parliament.[162] A more indirect solution was needed for the problems of debt and forced sales. The other major failure of this period was the bill introduced by Vogel to abolish direct purchase in favour of public dealing through auctions, a move strongly advocated by William Martin and others. Settler opposition discouraged McLean from pressing on, however, and the bill was withdrawn. Frontal attacks on the debt cycle and on direct private purchase, therefore, could not get through the Assembly in the 1870s.[163]

Instead the government passed a new Native Land Act in 1873, in response to some of the reforms advocated by Haultain, Martin, Shortland, and the Hawke's Bay Land Alienation Commission. The Native Land Court was left virtually intact but its operations were to be supplemented by District Officers, following Richmond's compromise suggestion between Maori desire for a runanga or commission and Fenton's determination not to alter the nature of the court. The District Officers were to hold preliminary inquiries into title and to make up a district *Domesday Book* of Maori claims and whakapapa, which would prevent the Court from entertaining spurious claims by increasing its depth of local knowledge. The law directed the judges to take strong notice of the District Officers' preliminary findings. In order to prevent landlessness, the District Officers were also supposed to make sure that no adult or child would have less than 50 acres to their name somewhere within the district, and to make inalienable Reserves to ensure this as blocks passed through the Court.[164]

The 1873 Act also brought a final end to the ten owner system, inaugurated under the 1865 Act and which had survived the attempted reform by section 17 of the 1867 Act. The General Assembly now carried the initial move to individualise Maori title to its ultimate conclusion, by insisting that all owners be named on a Memorial of Ownership and that their consent as individuals was necessary to any land transaction. This did not mean that public meetings with unanimous consent had to be held, but that purchasers had to buy up hundreds of separate interests before any transaction could be completed. This provision was made retrospective to cover any unsold interests held by trustees under Section 17 of

160. Ibid, A-2, pp 3–6; cf A-2A, pp 31–34
161. NZPD, 1869, vol 6, pp 220–221, 608
162. AJHR, 1871, A-2A, p 37
163. NZPD, 1876, vol 21, pp 257–267; vol 22, p 131
164. AJHR, 1891, G-1A, T MacKay, Unfinished Minority Report, June 1891, p 12

the 1867 Native Land Act. Owners listed in memorials under this earlier Act had been beneficiaries of a trust, with the ten grantees on the Certificate of Title as their trustees, but now every person listed in the memorial became an individual owner under the meaning of the 1873 Native Land Act. Only grantees under the ten owner system of 1865 escaped this mass individualisation of title. No new names were added to their grants, but they now became tenants-in-common whose unanimous consent was necessary to sell or lease their joint lands.[165] The new extreme of individualisation was a deliberate reaction against the ten owner system, because McLean held that the chiefs of New Zealand had shown themselves unworthy to act as trustees for their hapu.[166] The result was a move further away from hapu ownership and chiefly authority – after 1873 it was virtually impossible for Maori leaders to maintain complete Maori control of any block in New Zealand. Rangatiratanga was greatly weakened as a consequence.

The 1873 Act also moved to tighten up the laxity of Trust Commissioners appointed under the Frauds Prevention Act. The Assembly instructed the Native Land Court to supplement the Commissioners' activities by holding its own inquiry into the fairness and probity of both sales and leases. The judges had to satisfy themselves that the price or level of rent was fair, that payment had been made properly, that all the owners had signed the deed, and that other particulars were in accordance with British concepts of equity. The Court also assumed a more active role in the supervision of interpreters. Section 85 required licensed interpreters to provide written translations of every deed, which would be signed in the presence of a Native Land Court judge or Resident Magistrate and at least one other adult male. Unless they were Maori speakers themselves, however, this would do little to ensure that signatories understood the true meaning of what they were doing. At least it would help to prevent fraudulent signatures on behalf of absent grantees, although the law was amended in 1878 to provide for any J P or solicitor of the Supreme Court to act as witnesses instead of a judge or magistrate. This made it much easier to ensure that individuals sympathetic to the purchaser could be used to witness the transaction.[167]

The Assembly also made two indirect blows at the debt cycle, but without actually interfering with it too forcefully. Richmond's proposal that tribal land should no longer be answerable for the debts of an individual was incorporated into a provision that *unsubdivided* land could not be held liable for debt. The separate interest of a grantee now had to be subdivided and partitioned before it could be seized by the courts. The 1873 Act moved to tidy up one of the worst abuses under the old system as well, by bringing the survey of Maori lands into the hands of government surveyors, with a provision that Maori could have two years in which to pay the government for the survey. This was meant to reduce the enormous costs involved in putting land though the Court, which had forced additional sales in order to pay debts incurred by obtaining a legal title.[168]

The more far-reaching reforms were not adopted by the Assembly in 1873, therefore, but the new Native Land Act should still have resulted in some restraint of fraudulent acquisition of land under the legislation of the 1860s. It remained to be seen, however, whether the new law would work in practice. Past reforms had proved remarkably ineffective in introducing actual changes to the Native Land Court and the system of direct private purchase.

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165. Ibid, pp 12–13
166. Ibid, G-1, Minutes of Evidence, p 170
167. Ibid, G-1A, pp 12–13
168. Ibid and G-1, Minutes of Meetings, p 61

3.4 CONSEQUENCES OF THE 1873 NATIVE LAND ACT

The Native Land Act of 1873 did not improve the Land Court as an institution for ascertaining Maori title and awarding it to the correct claimants. English lawyers and elements of English legal procedure increased to the point where 'it has gradually lost every characteristic of a Native Court, and has become entirely European – as Hone Peeti said, "only the name remaining"'.[169] This might not have mattered so much if the District Officers had proved to be adequate investigators, capable of setting the evidence of conflicting claimants in its local context of occupation and resource use. Unfortunately the District Officers were appointed as part-time officials with enormous districts. The Hawke's Bay Officer, for example, had to cover the whole of the Poverty Bay area as well as Hawke's Bay itself. Such officers found it hard to obtain the depth of local knowledge necessary to balance claimant evidence, and the judges frequently ignored them anyway. Little progress was made on *Domesday Books* of Maori title. The District Officers proved so ineffective that they quietly disappeared and the 1891 Commission believed that none had ever been appointed![170]

As a result the practice of false claims and false evidence became something of an industry, 'by which the real owners are often driven out, and their land given to clever rogues of their own race'. This led to constant rehearings and changes of title, to the point where the 1891 Commission feared that not a single title issued under the 1873 Act could be upheld.[171] Judge Ward in Hawke's Bay recommended the replacement of his own court by Maori runanga, as the only solution to this growing problem.[172]

Nor did the 1873 reforms improve the problem of massive costs, which were forcing sales of land even as title was granted between 1865 and 1873. Government surveys proved no less expensive than the old private surveys, except that it was now the Crown who profited from Maori debts. At Waipawa a Ngati Kahungunu chief complained that after two years of non-payment for surveys, the government would 'cut off some portion of the land, and thus pay themselves'.[173] According to Whata Korari, another Kahungunu chief, the government might charge as much as £500 for surveying 1000 acres![174] In the same year, the Surveyor General calculated that Maori paid an average of 8d per acre for surveys, which could (and should) have been carried out for 2d per acre.[175] According to Percy Smith's calculations, therefore, surveyors overcharged Maori by an average of 400%. His calculation may be considered a bottom line, but Whata Korari's evidence suggested that Maori could be charged as much as 10s per acre for surveys in the 1880s. This figure may have included interest payments on the original total, but it is clear that Maori were being forced to pay inequitable survey costs.

In addition to surveying expenses, the other costs of the Native Land Court system remained a crippling burden. The sittings took longer because of the ever growing role of lawyers and Native Agents, whose large fees also had to be paid by the claimants. Nor had the government honoured the Maori request that sittings be transferred to the blocks concerned. Longer sittings at distant places entailed 'poverty, demoralisation, concerted perjury, injustice, false claims, uncertainty, and ruinous loss'.[176] And after this disastrous experience it was now usual for claimants to have to go through the whole process at least

169. Ibid, G-1, Rees–Carroll Report, p xi
170. Ibid, pp ix–x; AJLC 1877, no 19, pp 1–6
171. AJHR, 1891, G-1, Rees–Carroll Report, pp xi–xii
172. Ibid, Minutes of Evidence, p 134
173. Ibid, Minutes of Meetings, p 61
174. Ibid, p 47
175. Ibid, Correspondence, S Percy Smith to Native Land Laws Commission, 20 May 1891, p 95
176. Ibid, Rees–Carroll Report, p xii

three times, because of constant adjournments and postponements, followed by rehearing of completed cases. Ngati Kahungunu chiefs complained strongly to the 1891 Commission that the 'enormous expense' of the court system and surveys was forcing them to sell land in exchange for proving its title, an outcome which the Commissioners acknowledged as inherently unjust.[177] Their complaints may be confirmed by reference to the reports of government officers such as Captain Preece, Resident Magistrate at Napier, who informed the Native Department in 1882 that court expenses and surveys were so high that 'by the time the land has passed the Court the expenses in many cases amount to the value of the lands'. Thus, Hawke's Bay Maori received little or nothing from free market sales of their land, and Preece recommended that the government auction the land on their behalf, taking only a 5% commission for expenses. This would enable Maori to receive full market value and the actual profits of selling their lands, rather than the present system where they were forced to sell at low prices and received virtually nothing for themselves.[178]

Although this situation was very unjust, the 1891 Commission was even stronger in its condemnation of forced individualisation of title, which was carried to its ultimate extreme by the Native Land Act of 1873. Commissioners Rees and Carroll argued that more than sufficient expert opinion was submitted to convince Parliament that both individual title and individual sales were contrary to Maori custom and sundered the very basis of Maori social organisation.[179] According to J Curnin, who drafted the Bill for the Native Minister in 1873, McLean's object was to end the ten owner system and the concept of chiefs as trustees for the interests of their hapu. He thought that the Act would see the subdivision and partitioning of hapu interests and later of family interests, after which the individuals of a whanau could agree to sell their family holdings. He was opposed to public negotiations with the whole hapu, and expected that sales would not take place until the land had been subdivided among small whanau of about twenty members each.[180] This did not happen, however, and hundreds of individuals began to sell their interests piecemeal in huge blocks owned by the whole hapu. Rees and Carroll equated the resultant individualisation of title with the Waitara war:

> The first effort made by the Government to establish individual title, as pointed out by Judge Fenton, led to a long and bloody war. The last has given rise to confusion, loss, demoralisation, and litigation without precedent.[181]

The Commissioners went on to condemn the system of private purchase under the 1873 Act as no better than its predecessor. In fact the Act changed the details but not the essential thrust of the previous laws, because it failed to restore public dealings, and hapu negotiations and sales. Purchasers continued to buy up individual interests in secret, with many acts of fraud taking place as a result. It was impossible to maintain a complete hold on any block, because an 'easy entrance into the title of every block could be found for some paltry bribe. The charmed circle once broken, the European gradually pushed the Maori out and took possession. Sometimes the means used were fair, sometimes they were not'.[182]

The freedom of people to choose whether or not to retain their land was circumscribed by the actions of a reckless minority. The alienation of land 'took its very worst form and

177. Ibid, Minutes of Meetings, pp 45–47, 61–63
178. Capt Preece to Under-Secretary, Napier, 26 June 1882, in AJHR, 1882, G-1, p 7
179. AJHR, 1891, G-1, Rees–Carroll Report, pp viii–ix
180. Ibid, Minutes of Evidence, pp 170–171
181. Ibid, Rees–Carroll Report, p x
182. Ibid

its most disastrous tendency' because it rendered Maori helpless to resist the pressures of an inexorable 'system'. The authority of chiefs to prevent sales was undermined: 'The strength which lies in union was taken from them. The authority of their natural rulers was destroyed'. Speculators employed agents to ply the new owners with cash and grog, so that the title was soon breached and one by one the small interests were captured through debt and various forms of fraud. The wider group lost all power to prevent sales under the traditional social structure, and now instead of ten irresponsible grantees there were hundreds, who could not be controlled and who undermined the position of those who wished to retain their lands.[183] Nor could the anti-sellers take comfort in the provision for reserves. The figure of 50 acres per individual was too low for grassy country suitable only for grazing sheep or cattle, but even a higher figure based on the needs of pastoral farming would still have been dependent on forcing Maori to give up their traditional shifting use of various natural resources. Fifty acres would have been better than nothing, however, but the District Officers found themselves powerless to get Maori or the Court to accept their role as the makers of Reserves. As a result no reserves of this type were made by the Hawke's Bay Officer under the 1873 Act, although this was also because the amount of land going through the Court had declined.[184]

The 1891 Commission claimed that their findings showed much deeper problems after the mass individualisation of title in 1873. According to Rees and Carroll, the new memorials of ownership broke through traditional structures of usufruct and resource allocation. This enabled the 'lazy, the careless, and the prodigal' to interfere with the cultivations and runs of their neighbours, stifling Maori efforts to cope with the new economic world.[185] The evidence before the Commissioners suggested, therefore, that the 1873 law was altering the entire nature of Maori society by undermining traditional authorities, damaging Maori economic initiatives, and forcing sales of land. It gave individuals in Maori society a whole new range of powers which they had not enjoyed under customary tenure, and the results were disastrous when combined with the fraudulent practices of some purchasers and the operations of the Native Land Court: 'every step is burdened with unnecessary cost, and offered inducements to many species of fraud; while the whole proceeding tends to demoralise both Natives and Europeans'.[186]

The result of these problems was very mixed in Hawke's Bay in the late 1870s and 1880s. The amount of land passing through the Court declined and completed sales of land ground almost to a standstill. Although tribal authorities could no longer even try to control the alienation of separate interests (which continued), the first *effect* of the new system was to cause a marked decline in actual transfers of land to Pakeha purchasers. They now found it much easier to commence a purchase but the process of getting consent from every owner proved difficult and could only take place over a number of years. Also the Land Court titles were much shakier with the number of rehearings, and much of the pressure for land law reform came from settlers in the 1890s, stymied in their efforts to buy Maori land.[187]

At the same time, the Crown had resumed large-scale purchases of land in Hawke's Bay, which created a whole new series of grievances.[188] This was partly because the Native Land Court was getting Maori more and more heavily into debt, but private purchasers were finding it difficult to wind their way through the labyrinth of Maori title holders. Private purchase grievances from the late 1860s and early 1870s also remained unsettled, and

183. Ibid
184. AJHR, 1871, F-4, p 61; AJLC, 1877, no 19, p 4
185. AJHR, 1891, G-1, Rees–Carroll Report, pp x–xi
186. Ibid, p xiii
187. Ibid, Minutes of Evidence, pp 114–130; AJHR, 1885, G-6
188. For example, AJHR, 1885, G-1, p 69

continued to cause problems well into the 1880s.[189] Although the alienation of Hawke's Bay land was slower after 1873, it did not stop and Ngati Kahungunu did not cease to be the victims of false Court titles, fraud, and forced sales to pay debts, often contracted through the ruinous expenses of the Native Land Court. The responsible members of Maori communities continued to be dragged into the process (as usual) as a result of collusion between irresponsible members and Pakeha purchase agents.

189. Ibid

APPENDIX III

SUMMARY OF CLAIMS IN THE HAWKE'S BAY AND MOHAKA KI AHURIRI DISTRICTS

AS AT 8 AUGUST 1996

HAWKE'S BAY CLAIMS

Wai 69

Claimant:	Eru Smith (deceased)
Hapu/iwi:	Ngati Kahungunu
Date lodged:	2 December 1988; further statement 19 April 1990
Area involved:	Rangaika Maori reserve, block III of the Kidnapper survey district
Claim/issues:	This claim relates specifically to the above block. It is claimed that Acts of Parliament resulted in the loss of title. Principal issues are the possible failure of the Native Land Court to properly investigate customary title, and the Crown's possible negligence in ensuring that the only reserve from a large sale area was alienated, and by a non-occupant. The claim states that the Crown failed to ensure that the land remained as a reserve for their use.

Wai 71

Claimant:	Myrtle Tahiti Rangiihu and Rongonui Tomoana
Hapu/iwi:	Ngati Kahungunu, Ngati Hori, Ngati Hawea, Ngati Tukuoterangi
Date lodged:	10 April 1988
Area involved:	Mangateretere West block, on bank of Ngaruroro River, total about 1253 acres
Claim/issues:	This block was brought before the Native Land Court in 1866, and therefore is subject to the issues facing similar blocks about the adequacy of the court's procedures and the subsequent alienation of this land.

Wai 127

Claimant:	Waipa Te Rito and others
Hapu/iwi:	Ngati Hinemanu
Claim registered:	27 November 1989

Claim/issues: This claim concerns Puketapu Hill, Fernhill, located just out of Hastings. It appears to be within the original boundaries of Native Land Court facilitated Heretaunga block purchase. The claimants contend that this hill is a wahi tapu and should be protected as such, but at present no such protection has been afforded.

Wai 161

Claimant: Don Hutana and others
Hapu/iwi: Ngati Kahungunu
Date lodged: 28 September 1990
Area involved: The Waipukurau block purchased by Donald McLean November 1851, and other Crown purchases made in the 1850s such as Porangahau, and Tautane.
Claim/issues: The claimants' cite as relevant issues the adequacy of the instructions given to McLean, relating to reserves, price, fishing rights and mahinga kai, and wahi tapu. The claimants have identified the subsequent retention or alienation of the reserves as an issue, as well as further purchases made by the Crown, and issues relating to the activities of the Native Land Court pre-1873.

On 26 January 1993, the claimants drew particular attention to Lake Whatuma, which they claim was never sold.

Wai 166

Claimant: The Rangitane Tamaki Nui-a-Rua Incorporated
Hapu/iwi: Rangitane, Ngati te Rangiwhakaeua
Date lodged: 21 September 1990
Area involved: Manawatu blocks 1–7, Tautane blocks, and Mangatoro block southern Hawke's Bay. Claim area from just north of Cape Turnagain south to Mataikona River inland to Ruahine and Tararua Ranges (ie, includes Wairarapa).
Claim/issues: This is an accompanying claim with Rangitane o Wairarapa (Wai 175). Issues include Crown purchases in the 1850s and 1870s, particularly the Tamaki-nui-a-Rua area. The claim cites the instructions to Ormond and McLean, regarding reserves, claimed gross under pricing of land with huge timber resources, damage to eco-systems, fishing rights, wahi tapu; operations of the Native Land Court, including inadequate investigation of customary owners; and public works acquisitions, as further issues. The claim also includes educational, health and social issues.

Wai 171

Claimant: Henare Matua Kani
Hapu/iwi: Ngati Kahungunu ki Heretaunga
Date lodged: 16 November 1990
Area involved: Ruataniwha, Tautane, and Ruahine blocks

Claim/issues: Claimants state that blocks in the above area purchased between 1854 and 1859 were unlawful, because of the actions of Crown purchaser D McLean, particularly if they were contrary to the Declaration of Independence and the Treaty of Waitangi both of which Te Hapuku signed. The claimants raise the issue of the reserves from those blocks, and ask what happened to them. They are also concerned about the price paid, and subsequent management of natural resources in the area.

Wai 263

Claimant: Marei Apatu
Hapu/iwi: Ngati Hinemanu
Date lodged: 21 October 1991
Area involved: The Te Koau Block in the northern Ruahine Ranges and the Ngaruroro River headlands district
Claim/issues: The claimants are concerned with the particular history of the Te Koau block, which was the subject of a royal commission in 1891. They state that in 1906 17,400 acres was vested in owners, and that 7100 acres were compensated for. They raise questions about this, and ask why the land was not returned.

Wai 270

Claimant: James Broughton and others
Hapu/iwi: Ngati Te Whatuiapiti, Ngati Kahungunu
Date lodged: 29 January 1992
Area involved: Kairakau block
Claim/issues: This claim deals with a discrete block of 14 acres, some of which was taken in 1973 for the purposes of water supply. It is claimed that no compensation was awarded for the water supply acquisition, or for land taken for Te Apiti Road. The claimants are concerned at proposed sub-division of the block, and consequent rates issues and adequacy of water issues.

Wai 382

Claimant: Wero Karena and others, on behalf of Ngati Te Upokoiri, Ngati Hinemanu. Claimant also acknowledges Ngati Tuwharetoa, Ngati Maruwahine, Ngati Tamawahine, Ngati Hineuru and Ngati Mahu and Owhaoko C7 Trust Board interest.
Date lodged: 19 July 1993
Claim registered: 10 September 1993
Claim area: Kaweka Forest Park, surrounding land, including Ngaruroro River
Claim/issues: The claimants specifically identify the land purchase programme of 1840 to 1862 as having conducted 'irregular and unauthorised' purchases. They claim ownership of the Ngaruroro River and riverbed. Issues include Crown's involvement and management of land in the area.

Wai 397

Claimant:	Rawiri Eparima Kamau and others on behalf of Ngati Whatuiapiti, Ngati Rangikoinake, Ngati Te Upokoiri, Ngati Hinemanu, Ngati Te Ao and Ngati Kahungunu
Date lodged:	22 November 1993
Claim registered:	17 December 1993
Claim area:	Gwavas Forest Park, including surrounding lands
Claim/issues:	The claim identifies the actions of the Crown land purchase department 1840 to 1865 as a principal grievance. The claim mentions boundary disputes, understanding by Maori of transactions, and whether the Crown adequately established the correct owners of blocks, and obtained all their consent.

Wai 401

Claimant:	Kenneth Renata Broughton, of Ngati Hinemanu, Ngati Te Upokoiri
Date lodged:	12 October 1993
Claim registered:	26 November 1993
Claim area:	Lands within the estate of Renata Kawepo
Claim/issues:	The claimant is the grandson of Wi Broughton, who, according to the claimant, was given charge as representative of Ngati Hinemanu and Ngati Te Upokoiri, on the death of Renata Kawepo. This secession was given legal status by will a year before Renata's death in 1888. Following Renata's death, however, Airini Donnelly, Renata's grand-niece produced a second will made in her favour. The claimant seeks the legal status of Renata's first will to Wi Broughton to be confirmed.

Wai 402

Claimant:	Mare Reiharangi Kupa, of Ngati Te Upokoiri
Date lodged:	21 September 1993
Claim registered:	26 November 1993
Claim area:	A small area called Point Ngaruroro River bed, adjacent to Omahu 2D5B2B2, block X, Heretaunga survey district
Claim/issues:	The claim states that her family lost the land via the Native Land Amendment and Native Land Claims Adjustment Act 1926. The claimant states that the Crown has refused to return the land to her, but instead has leased the land at a five year non-renewable term.

Wai 516

Claimant:	John Ngamoa Gillies, on behalf of Ngati Kurukuru and Ngati Whakaiti
Date lodged:	4 May 1995
Claim registered:	7 June 1995
Claim area:	Waingongoro Stream, Waimarama
Claim/issues:	The claimants are concerned at neglect by the Hawke's Bay Catchment and Rivers Control Board regarding the Waingongoro Stream. They allege that the efforts to control water flow of the stream has now resulted in the absence of water flowing past their marae, and also

allege that nothing has been done despite repeated inquiries to former board and the now responsible authority, the Hastings District Council.

Wai 527

Claimant:	Heke Morris and others
Date lodged:	13 July 1995
Claim registered:	24 July 1995
Claim area:	Pakipaki, south-west of Hastings, former Kakiraawa block
Claim/issues:	The claimants state that land for a school-house was gifted by their tipuna on the condition that it was used for such. Accordingly the three acres of land were taken under the Public Works Act 1905, with no mention of conditions on *Gazette* entry, but Native Land Court Minute Book refers to this intent. The claimants lodged the claim in the belief that the Ministry of Education was planning to sell part of the land.

Wai 536

Claimant:	Ashley K Apatu and others
Date lodged:	21 July 1995
Claim registered:	15 August 1995
Claim area:	Pakowhai, Ngaruroro River
Claim/issues:	This concerns the remnant of land still owned by Maori on the site of the Pakowhai Pa, and the Hawke's Bay Regional Council's apparent plan to use some of this land to construct a stop-bank. The claimants feel this land should not be forfeited for this purpose. They claim that 100 acres of the original 126-acre native reserve was taken by the 'Rivers Authorities'. They state that construction has damaged their farm on the remaining 22 acres.

Wai 574

Claimant:	Mereana Wickliffe and Hannah Black
Date lodged:	2 February 1996
Claim registered:	29 March 1995
Claim area:	Te Mata block, south of Havelock North
Claim/issues:	The claimants are descendants of Te Heipora, one of Te Hapuku's wives and mother of his son, Karanema. A reserve was made during the purchase of Te Mata block in 1855 for the use in perpetuity by Te Heipora's descendants. The reserve was sold to the Crown in 1858. The claimants state that the Crown should not have allowed its sale, and ask that compensation be made for its loss.

Wai 595

Claimant:	Marei Apatu and others
Date lodged:	27 May 1996
Claim registered:	12 July 1996
Claim area:	Heretaunga Acquifer, Hawke's Bay

Claim/issues: This is a claim over ownership and guardianship of the Heretaunga acquifer. The claim states that the acquifer is a taonga over which the claimants have rangatiratanga. They believe they have an obligation to protect this natural resource, which they never sold.

Wai 596

Claimant: Irimana Heemi Totoru Matenga
Date lodged: 16 May 1996
Claim registered: 12 July 1996
Claim area: Ngatarawa blocks, Hawke's Bay
Claim/issues: This claim concerns irregularities in the passage of these blocks through the Native Land Court, and concerns their subsequent purchase.

MOHAKA KI AHURIRI CLAIMS

Wai 55

Claimant: Te Otane Reti and others
Hapu: Ngati Hinepare, Ngati Mahu, Ngati Paarau, Ngati Tu, Ngai Tawhao, Ngai Te Ruruku
Date lodged: 17 February 1988
Claim area: Te Whanganui-a-Orotu, Napier
Claim/issues: The claim concerns the Crown's appropriation of the lagoon, Te Whanganui-a-Orotu. It was reported on by the Tribunal on 13 June 1995. Currently the claimants are seeking recommendations for specific remedies.

Wai 119

Claimant: Ariel Aranui and Ngati Pahauwera Incorporated Society, now managed by Ngati Pahauwera Section 30 Incorporation
Claim received: 6 April 1990
Claim locations: Rohe of Ngati Pahauwera, Hawke's Bay
Claim/issues: The parts relating to the Mohaka River were granted urgency and reported on by the Tribunal in 1992. The claimants have yet to settle the River claims. The rest of the claim relates mostly to Crown purchasing in the Mohaka area.

Wai 147

Claimant: H Baker, Waimakuku Whanau Trust Incorporated
Claim received: 30 May 1990
Claim location: Tarawera 5A block, Tarawera, Hawke's Bay
Claim/issues: This claim concerned the Crown's cancelling of Baker whanau's title to Tarawera 5A. The claimants signed a deed of settlement with the Minister of Treaty Negotiations in December 1995.

Wai 168

Claimant:	A Hadfield and others
Claim registered:	31 August 1990
Claim location:	Waiohiki lands, Hawke's Bay
Claim/issues:	This claim relates to the taking of land for river control, gravel pits, shingle extraction from the Tutaekuri River. Issues include adequate consultation, compensation paid and other associated compulsory acquisition and river issues.

Wai 191

Claimant:	Tamihana Matekino Nuku and others (Te Awahohonu Trust)
Claim received:	17 April 1991
Claim location:	Tarawera block, Hawke's Bay
Claim/issues:	This claim concerns Tarawera C9 block and the Mohaka Waikare confiscation. The issues have been researched on their behalf by the Wai 299 claimants.

Wai 216

Claimant:	Moari Karaitiana, on behalf of the Te Matai 1 and 2 Blocks Trust
Claim received:	20 June 1991
Location:	Te Matai and Pakaututu blocks, Hawke's Bay
Claim/issues:	The claimants contend that this land was incorrectly included in the confiscation district, and that Pakaututu lands were part of a later forced sale. The Te Matai blocks are still in Maori ownership; yet there are current issues of land-locking, destruction of wahi tapu, and environmental concerns.

Wai 299

Claimant:	Bevan Taylor and others
Hapu:	Ngati Tu, Ngati Hineuru, Ngati Pahauwera, Ngai Tatara, Ngati Kurimokihi
Claim received:	29 July 1992
Claim location:	Mohaka Waikare district, Hawke's Bay
Claim/issues:	Concerns the Mohaka Waikare confiscation and associated grievances. These include the operation of the Native Land Court, Crown purchasing in the nineteenth and more especially, in the twentieth century, and environmental issues.

Wai 400

Claimant:	Hoani Hohepa and others on behalf of Ngati Hinepare and Ngati Mahu
Claim received:	26 November 1993
Claim location:	Ahuriri, Hawke's Bay
Claim/issues:	Concerns grievances relating to the Crown's purchase of the Ahuriri block in 1851, and associated issues such as the reserves, and protection of wahi tapu.

Wai 430

Claimant:	Charles Hirini, Hapuku whanau
Claim received:	25 November 1994
Claim location:	Blocks that were part of the Mohaka consolidation and development scheme.
Claim/issues:	This claim concerns the Rawhiti and other blocks at Mohaka. The main issues include the consolidation of land, the Mohaka development scheme, survey liens, and rate arrears.

Wai 432

Claimant:	C Hirini and others on behalf of Ngati Pahauwera
Claim registered:	25 May 1994
Claim area:	Te Whanganui a Orotu
Claim/issues	This claim represents Ngati Pahauwera's claim of tangata whenua status in Te Whanganui a Orotu. The Waitangi Tribunal heard evidence in support of the claim as part of the Wai 55 hearings. In its *Te Whanganui-a-Orotu Report 1995*, the Tribunal, on the evidence before it, rejected the claim. It was not revived at the Wai 55 remedies hearing.

Wai 436

Claimant:	Wi Te Tau Huata, Ngai Tane
Claim received:	27 June 1994
Claim/issues:	Because of representation difficulties this claim is explicitly expressed as a cross-claim to that of Wai 119. It identifies the Mohaka forest as the claim area.

Wai 451

Claimant:	Wi Te Tau Huata, Te Runanganui o Ngati Pahauwera
Claim received:	17 January 1995
Claim/issues:	This claim relates to the non-settlement between Ngati Pahauwera and the Crown following the recommendations of the Mohaka River Tribunal in 1992. It claims that the Crown has neglected its responsibilities in not implementing the recommendations of the Tribunal in its *Mohaka River Report*, published in 1992. It asks to be treated as overlapping to the Wai 119 claimant group.

Wai 488

Claimant:	Terry O'Sullivan, Apiata whanau
Claim received:	3 November 1994
Claim/issues:	This concerns part of Tataraakina C block, which was one of the Mohaka–Waikare blocks confiscated in 1867, and then returned in 1870. The claim appears to be about the present and future management of the block, including issues relating to environmental damage to the top western corner of Tataraakina C block, which the claimant states are significant to the Apirata whanau.

Wai 491

Claimant:	N Baker, Waimakuku Whanau Trust
Claim received:	27 October 1994
Claim location:	Tataraakina block, Hawke's Bay
Claim/issues:	This claim concerns similar issues as Wai 147, this time associated with Tataraakina 2A block.

Wai 598

Claimant:	David Kinita and Matawhero Whanau Trust
Claim lodged:	24 May 1994
Claim location:	Tataraakina block, Hawke's Bay
Claim/issues:	This claim relates to the Crown's cancelling of title to the Tataraakina 7 block in the 1920s. The issues relate to, among others, compensation for loss of title, development.

Wai 599

Claimant:	Tuhiao Kahukiwa and Te Pohe Whanau Trust
Claim lodged:	24 May 1996
Claim lcation:	Tarawera block, Hawke's Bay
Claim/issues:	This claim relates to the Crown's cancelling of title to the Tarawera 7 block in the 1920s. The issues include compensation for loss of title, loss of development.

Wai 600

Claimant:	Te Rina Sullivan and and others
Claim lodged:	24 May 1996
Claim location:	Tarawera block, Hawke's Bay
Claim/issues:	This claim relates to the Crown's cancelling of title to the Tarawera 1F block in the 1920s. Issues include loss of title and loss of development.

Wai 601

Claimant:	Winifred Kupa and others
Claim lodged:	24 May 1994
Claim location:	Tataraakina block, Hawke's Bay
Claim/issues:	This claim relates to the Crown's cancelling of title to the Tataraakina 2 and 5 blocks in the 1920s. Issues include loss of title, loss of development.

Wai 602

Claimant:	Willie Bush and others
Claim lodged:	15 June 1996
Claim location:	Tataraakina block, Hawke's Bay
Claim/issues:	This claim concerns the cancellation of title to the Tataraakina 6 block by the Crown in the 1920s. Issues include loss of title and loss of development.

OTHER CLAIMS

Wai 201

Claimants:	W H Christie, Tuehi Ratapu, Wiki Hapeta, and Charles Cotter on behalf of the Ngati Kahungunu tribe
Claim registered:	14 May 1991
Claim area:	Rohe of Ngati Kahungunu, from Wairoa to Wairarapa, inland to Lake Waikaremoana and the mountain ranges
Claim/issues:	The statement of claim acts as a comprehensive claim on behalf of all Ngati Kahungunu, and covers all issues pertaining to Ngati Kahungunu, and grievances that have occurred within the outlined rohe of the claim. The claim specifies some of those grievances as Crown land purchasing, operation of the Native Land Acts, confiscation, natural resource issues, forestry, loss of wahi tapu, loss of taonga, and lack of economic development. In 1991, the Tribunal anticipated hearing all the claims in the Wairoa ki Wairarapa district in one inquiry. Therefore, all claims were consolidated and grouped for inquiry with Wai 201. The Tribunal has realised that it is unfeasible to hear all these claims in one hearing, and has consequently grouped the claims for inquiry into smaller districts; for example, Mohaka ki Ahuriri.

Wai 473

Claimant:	Tom Hemopo, on behalf of Te Taiwhenua o Whanganui a Orotu
Registered:	28 October 1994
Claim area:	Napier, Hawke's Bay
Claim/issues:	This claim relates to the provision of Health services in the Napier and Hawke's Bay area. In particular, it cites the lack of consultation by Healthcare Hawke's Bay with tangata whenua.

Wai 542

Claimant:	Huriana Lawrence, on behalf of Te Kapuamatotoro
Registered:	31 August 1995
Claim area:	Includes the East Coast and South Island
Claim/issues:	This claim relates to legislation which led to the loss of Te Kapuamatotoro tribal lands south of Gisborne, Hawke's Bay, and in the South Island. It also contains a reference to intellectual property rights.

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