

RANGAHAUA WHANUI DISTRICT 13
THE NORTHERN SOUTH ISLAND
DR G A PHILLIPSON

JUNE 1995

WORKING PAPER : FIRST RELEASE

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THE AUTHOR

My name is Grant Phillipson and I completed a B.A. Hons. in history at the University of Otago in 1986. As part of my degree, I wrote a short thesis on the missionary career of William Colenso. I completed a Ph. D. in New Zealand History in February 1992. My thesis explored issues about early Anglicanism in nineteenth-century New Zealand. This research included aspects of race relations history, and in particular of the politics of Maori affairs from 1840-1870, which I expanded as a Research Fellow at the Macmillan Brown Centre for Pacific Studies in 1992.

In 1993 I worked as an historical researcher for the Crown Congress Joint Working Party, an organisation set up by an agreement between National Maori Congress and the Crown. Its purpose was to establish whether a prima facie case of Treaty breach could be demonstrated for iwi with an interest in particular Railcorp properties, and to negotiate settlements clearing those properties for sale to the public. I prepared draft reports on iwi occupation of Marlborough, and on the operations of the Native Land Court system in the rohe of Ngati Kahungunu.

I became a commissioned researcher for the Waitangi Tribunal in July 1993, and worked fulltime on the Rangahaua Whanui report for District 13 from July to December. In January 1994 I joined the permanent staff of the Waitangi Tribunal Division. Since that time I have worked part-time on District 13, but more extensively on research and claims management for the Chatham Islands claims. I have written two research reports for the Tribunal on the Chathams claims (Wai 64 A-16 & F-5) and contributed to another (Wai 64 C-6). I have also prepared a short document bank on specific issues with regard to the Crown's attitude to slavery (Wai 64 C-38).

I have presented papers at four academic conferences, including one derived from my Rangahaua Whanui research, entitled 'Crown, Court, and Customary Tenure in the Northern South Island', which I presented at the New Zealand History Conference in August 1994.

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I would also like to thank Dean Cowie for his valuable research assistance. Mr. Cowie carried out a great deal of primary research on reserves for this report, and has also read and commented on some of the draft chapters. The research team at the Tribunal Division has been another source of assistance and stimulation, sharing information and insights during the course of their research for the Rangahaua Whanui project. Special thanks are due to Dr. Robyn Anderson, researcher for District 12, who has been an unfailing source of information, ideas, and support.

I would like to acknowledge the technical assistance of members of the Division staff. I have received assistance from Noel Harris, who drew many of the maps in this report, Mark Larsen, who has assisted with formatting and data entry, and Dominic Hurley, who has given editorial advice.

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DIRECTOR'S PREFACE

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 wish, comment on them, and add further information and insights into them. The publication of the report is also an invitation to claimants and other 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 not those of the Waitangi Tribunal, which will receive the final version as evidence in its hearing of claims.

Other district reports have been, or will be, published in this series which, when complete, will provide a national picture of Maori loss of land and other resources 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 ETJ Durie in September 1993. The text of that Practice Note is included as an appendix to this report.

I must emphasise that Rangahaua Whanui district surveys are intended to be one contribution only to the local and national issues that 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 that are 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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Buddy Mikaere
Director, *Waitangi Tribunal Division*
25 June 1995

LIST OF ABBREVIATIONS

AJHR	Appendices to the Journals of the House of Representatives
GBPP	British Parliamentary Papers, IUP series
JPS	Journal of the Polynesian Society
NMB	Nelson Minute Book
NZDB	New Zealand Dictionary of Biography
NZJH	New Zealand Journal of History
NA	National Archives
OLC	Old Land Claims files, National Archives
W:Tu	Alexander Turnbull Library

CHAPTER 1

INTRODUCTION

I THE RANGAHAUA WHANUI PROJECT

On 23 September 1993 the Chairperson of the Waitangi Tribunal formally launched the Rangahaua Whanui project, with a Practice Note which set out some of the aims and parameters of a new research initiative.¹ This was supplemented by a Research Manual, which was issued in its most current form on 7 March 1994. The manual proposed a methodology for the writing of district reports, which were designed to form part of a national overview of Maori land loss and Treaty grievances. The more detailed objectives of the project may be ascertained by a close reading of both the Practice Note and the Research Manual:

The Tribunal Practice Note defined the overall purpose of the project:

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.

¹See Appendix 1 for the full text of the Practice Note

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The research manual offered a further perspective on the need for a national overview of Treaty claims:

It is apparent that Tribunal recommendations (and Claimant/Crown negotiations) lack the background of a national survey of claims and of effects upon Maori generally, of Treaty breaches. In these circumstances for example, how can one claim be fully appraised without knowing of the circumstances of other Maori groups which might be comparable? Some thought also needs to be given to the question of comparative equity. In framing recommendations the Tribunal might wish to know the proportionate degrees of loss by various hapu and iwi, as well as specific matters of claim. Are claimants themselves, or Maori generally, aware of the total picture in which their concerns are situated?

The Tribunal set up a Mentor Group consisting of Tribunal members with relevant expertise and a group of external historians, which undertook ultimate responsibility for the conduct of the project. The more immediate supervision of research and commissioning of work has been carried out by the Rangahaua Whanui Advisory Group, which has had a fluctuating membership but currently consists of two Tribunal Division staff members (the Director and Project Manager) and three historians (Professor Alan Ward, Dr. Michael Belgrave, and Dr. Bill Renwick).

The Mentor Group and the Advisory Group have developed a project involving three major sub-projects. The first of these is a series of reports which describe, district by district, the historical background to: the main causes of Maori grievances; the extent of resource loss; the impact of that loss; and any further historical issues requiring the consideration of the Tribunal. It was hoped that a common methodology would enable the district reports to provide comparative information for the third and final part of the project, a national overview setting Maori land loss and grievances in context for the purposes outlined in the Practice Note. To further assist the writing of a national overview report, the district reports were to include information about the modern economic and population statistics of iwi, and (where practicable) the possible connections between these modern statistics and the historical process of colonisation and resource loss. The Mentor Group decided at an early part of the process, however, that the district reports would have to concentrate largely on land loss to the exclusion of other types of resource loss. Other resources would be covered in the second part of the project, which involved a series of national studies of certain key themes which arose as part of the claims process. The rating of Maori Land, for example, and the operations of the Maori Land Court, required separate reports of their own, focusing primarily on policy at a national level and only secondly on practice at a more local level.

The district reports were designed to inform the national theme studies, and both were intended to shape the final national overview report.

II DISTRICT REPORT METHODOLOGY

The Mentor Group divided New Zealand into fifteen districts, largely on the basis of local government boundaries, with the proviso that those boundaries would be amended where necessary to encompass iwi movements and overlapping areas of interest.² The Tribunal commissioned researchers to write district overview reports. The Advisory Group suggested that overviews should be as comprehensive as possible within the time available. Further research would be necessary in the future on issues which had to be left out of the report, and to flesh out the details of those issues covered by overview reports. The Group instructed researchers to base their reports mainly on secondary sources, claims research, and published primary sources (especially the Appendices to the Journals of the House of Representatives). Recourse to unpublished manuscript sources would only be necessary if there were no significant secondary sources, or to provide more detailed, specific examples for the report. Thus the district reports were to provide general overviews of particular regions, based wherever possible on published material.

In order to provide comparable data about the varied districts, the Advisory Group recommended a 'normal' structure for each report. They specified that the reports must include:

- a description of the project, and of the methodology used by the researcher;
- a brief geographical description of the district, an explanation of the boundaries, and a very brief history of early contact between Maori and Pakeha;
- a brief description of Maori occupation of the region, in order to show which groups were present in 1840, and some indication of the relationship between them;
- a compilation and discussion of the available historical data on the Maori population of the district at 1840;
- a survey (as thorough and detailed as possible) of the major causes of land loss from 1840 to the present day, including Old Land Claims where appropriate, and a summary of changes

² See Figure 1.

of land in Maori control since 1840;

● a brief description of the district and Maori inhabitants today, including a survey of population changes from 1840 to the present, any census data on iwi identification, amounts of Maori freehold and other land, and the current socio-economic status of Maori in the district;

● an identification of issues of national significance requiring a separate "national theme" report;

● a list and brief description of ancillary claims;

● a conclusion highlighting the major causes of land loss, the involvement of the Crown in that process, the consequences for Maori, and changes in population.

The Rangahaua Whanui manual emphasized that the survey of land loss would form the major part of the report. Apart from this caveat, however, the initial conception required all district reports to include a wide range of matters and to cover a very long time period. The Advisory Group accepted that a uniform methodology for addressing these matters would in fact be difficult to obtain. There were plentiful published sources for some areas, supplemented by extensive university and claims research, whereas other areas lacked almost any secondary analysis, requiring extensive primary research to provide the information required for the district reports. There is also a related problem with regard to whether research should be pitched at a secondary or a primary level, and the value of covering issues in depth as opposed to in breadth. The project involved a risk that the district reports might be *too* general, or even too much a summary of existing and easily accessible secondary material, to actually advance the historiographical purpose of the project, which is to create an historical context for the evaluation and interpretation of Crown actions towards Maori in any particular claim.

Furthermore, there is a problem of comparability of subject matter, and of applying a uniform methodology to the very different histories of various districts and iwi. Regions were often affected by different and sometimes unique types of resource loss, and have suffered losses more at some periods than at others. Old land Claims, for example, are a major issue for Districts 1 and 2 (Auckland and Hauraki), but an extensive analysis of pre-Treaty purchases and the Land Claims Commission (and of the pre-Treaty time period) is not necessary for most other districts. Similarly, a focus on Crown purchases in the McLean era involves an analysis of issues particular to a time and place, and which has little relevance

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to the very different circumstances of land alienation in the Rohe Potae or the Urewera. Even so, the McLean purchases did affect several districts and invite instructive comparisons, enabling useful generalisations about this particular avenue of land loss and Crown interaction with iwi. Some districts can be compared with regard to some issues but not others. The Maori Land Court played a crucial part in the alienation of land in District 11, but almost no part in the major land alienations for Districts 13 and 14. All three districts, however, share a significant component of pre-1865 Crown purchases. The subject matter of the reports, therefore, had of necessity to focus sometimes on different issues and different time periods. How comparable, therefore, would such reports be? Some types of land loss simply have no basis for comparative analysis. How does one, for example, compare the practice and impact of Crown purchases of the 1850s in Districts 13 and 14 with the Europeanisation of Maori land under the Maori Affairs Act in the 1960s, which is an important issue for District 15? It soon became apparent, therefore, that a uniform methodology could not and would not be applied rigidly to all districts. Comparability in historical terms requires a certain degree of similarity, as well as the use of common measures.

The coverage of issues in breadth has also raised methodological problems which have been the subject of lively debate among researchers and the Advisory Group. How does a researcher cover the alienation of Maori land in a huge district from 1840 to the present day? And how does one present the information with sufficient depth to address issues of relevant to specific claims before the Tribunal? Such a project could take years of research, but various approaches were suggested to enable an overview to be made within a short time. The Advisory Group suggested that AJHR records provide a "snapshot" recording of information, in which the researcher would be able to show the land still in Maori hands at twenty-year intervals. There are problems with this approach as a universal one, however, as some areas were not included in the annual AJHR returns (including the entire South Island). Also, the AJHR districts, the Maori Land Court districts, and the Rangahaua Whanui districts, do not necessarily coincide. This is also a problem for the use of census and population data in the district reports. To inform the snapshot data with in-depth research of the historical process of land alienation, the Advisory Group has recommended sampling of block histories to provide representative examples of the process for each period. This has been a useful approach for District 7, where land alienation took place over a long period of time, and largely after the AJHR began to record relatively regular statistics on this

matter.

With regard to the specific methodology of District 13, it was soon apparent that the vast majority of Maori land had been alienated within sixteen years of the signing of the Treaty. The two significantly large pieces of land reserved from the land sales of 1840-1856 had also passed out of Maori control by the end of the nineteenth century. The really large questions of resource loss, therefore, were confined to the nineteenth century, and more specifically to the period 1839-1856. The evaluation of the impact of land loss on iwi seemed also to be in the first instance a nineteenth-century issue, and to focus on the question of whether Maori retained sufficient resources for the continuation of traditional resource-use alongside the development of a modern economic base. In these respects, the Tribunal's *Ngai Tahu Report* seemed to offer an alternative model for an overview of the specific issues relevant to the Northern South Island. The process of land alienation and its impact on Maori were very similar in Districts 13 and 14, and this seemed to offer the most useful basis of comparison of District 13 at a national level with Districts 11-14.

As a result, the Advisory Group approved a research plan which focused on the nineteenth century, and which omitted some of the elements required for the other districts. This process has not been unique to District 13. In most cases the Advisory Group and researchers have adapted the methodology to enable the most effective analysis of the issues and processes specific to each region. There are also plans to remove some parts of the district report structure altogether, such as the survey of modern socio-economic circumstances, which might be addressed more usefully through a national theme study. As a result, some district reports will bear little resemblance to the official methodology of the project, while still carefully designed to provide regional overviews and to answer similar questions about the relationship between Crown and Maori in the historical process of resource loss.

The first step in developing a methodology for each region was an initial scoping exercise to assess the secondary material available, the extent to which it actually helped to answer the questions relevant to Rangahaua Whanui, and the availability of accessible primary sources to supplement the gaps in the published record. It soon became apparent for District 13 that there was a scarcity of secondary sources which provided information on the process of Maori land loss in the nineteenth century. The most useful of the secondary sources is the research of H. and M.J. Mitchell, which has been done for the Wai 102

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umbrella claim to the Waitangi Tribunal, on behalf of Te Runanga o Te Tau Ihu o Te Waka a Maui. The Mitchell research, however, largely addresses issues which are outside the ambit of the Rangahaua Whanui project. Their reports provided invaluable information about Maori occupation of the area in 1840, iwi identification and history, and on the processes of first contact. In terms of resource loss, the Mitchell research has largely focused on the history of the Nelson Tenth, and Maori grievances associated with those New Zealand Company reserves. I have drawn heavily on their work for Chapters One and Five of my report, and have also used their material in other chapters. In terms of the New Zealand Company purchases, the Spain Commission, and especially the Crown purchases of 1847-56, however, I found that I had to pose and answer questions not addressed by the Mitchell research.

Apart from the Wai 102 research, there is little relevant secondary material available for District 13. Most local histories do not address Maori issues or the process by which the New Zealand Company and the Crown obtained land for settlers. The principal exception to this rule is Ruth Allan's history of the Nelson settlement, which examined Maori land issues of the 1840s with sensitivity and insight. Apart from this useful book, I have also consulted Rosemary Tonks' thesis on the Spain Commission, Patricia Burns' highly useful biography of Te Rauparaha, J.H. Barne's unpublished report on the Taitapu Block, Olive Baldwin's local history of D'Urville Island, and the Waitangi Tribunal's *Ngai Tahu Report* (and research reports in its Record of Documents). These have been the most useful secondary sources, and each one has made an important contribution to particular chapters.

In the end, however, it proved necessary to go beyond secondary sources and to do as much primary research as was possible within the time available for the project. Fortunately, District 13 is well served with published primary sources. The most useful of these is Alexander Mackay's *Compendium* of official documents relating to South Island Maori. Mackay was a government official (and later Maori Land Court judge) who was intimately involved in the Maori affairs of the northern South Island. His collection of official papers terminated in 1872, but provided an extremely useful series of documents for the period 1840-1856, which is the crucial period of land alienation, and also for the period 1857-1870, which proved a sufficient duration of time to establish whether Maori would be well served by the reserves set aside for them in the earlier period. The *Compendium* may be supplemented by the official material published in the British Parliamentary Papers, which includes a lot of important documents for the period 1840-60, and the Appendices to the

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Journals of the House of Representatives (AJHR) and Legislative Council (AJLC), which are the major published source of official documents for the period after 1860. The *New Zealand Gazette*, the statute books, and the *New Zealand Parliamentary Debates* proved occasionally helpful sources of information. I also consulted publications of unofficial primary material, such as Elvy and Peart's efforts to record (and inevitably to filter) the traditions of northern South Island iwi, as told to them by kaumatua in the early and middle years of the twentieth century.

The published documents were seldom sufficient on their own for in-depth historical research. Some useful archival material has been photocopied and included in the Wai 27 and Wai 102 document banks. Usually, however, it was necessary to consult manuscript sources at National Archives and the Alexander Turnbull Library. The principal manuscript sources consulted were:

- Maori Land Court Minute Books;
- Old Land Claims files;
- Spain Commission minutes;
- selected reels of the Colonial Office files (CO209);
- selected reels of the New Zealand Company papers (CO208);
- personal papers of relevant settlers and officials, including missionaries (CMS and WMS), Donald McLean's papers, and others;
- the Turnbull cartographic collection;
- a large variety of files from the Maori Affairs series at National Archives.

After consulting the secondary and primary records in as much detail as possible, given the time constraints on Rangahaua Whanui research, I have completed ten chapters as a 'First Working Release' for the Tribunal and parties, with the object of receiving comments and revising the report for final release at a later date. Four subsequent chapters will be completed and released for comment as soon as possible. The ten current chapters cover the following subjects:

- Maori occupation of the district as at 1840;
- the New Zealand Company purchase and the Nelson settlement;
- the actions (and aftermath) of the Spain Commission;
- the Nelson Tenths;
- the massive Crown purchases of 1847-1856;

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- the Ngai Tahu purchases and the overlap between these and the interests of the northern iwi;
- the eventual alienation of the two large blocks excepted from the earlier sales (Taitapu and D'Urville Island) by the end of the nineteenth century.

The forthcoming chapters will address the following issues:

- a survey of Maori population from 1840 to the present day;
- a preliminary assessment of the adequacy of the reserves set aside in the period 1840-1856, with reference to the local Maori population's size and patterns of resource-use at the time and since ('present and future needs');
- the role of the Maori Land Court in the allocation of (and loss of) Maori land rights in the district, subsequent to the pre-1865 purchases and the creation of reserves;
- the need for and creation of the Landless Native Reserves in the northern South Island towards the end of the nineteenth century.

I hope that the final fourteen chapters will provide a useful overview of Maori land loss in the northern South Island, and an assessment of the main historical issues involved in this process. I have worked on this district report full-time from July to December 1993, and part-time from January 1994 to May 1995. Unfortunately there has not been a lot of time available in the past year, although I did have the benefit of a research assistant for two months in 1994, who was able to do a considerable amount of research on reserves in the MA files at National Archives. As a result of the relatively small amount of time which I have been able to devote to the project, and the nature of its goal to provide an overview based wherever possible on published sources, it must be noted that the findings of this report are often preliminary in nature. Further research would be necessary before the Waitangi Tribunal could proceed to the seriatim hearing of claims from the northern South Island.

CHAPTER 2

MAORI OCCUPATION OF TE TAU IHU O TE WAKA A MAUI

The following account of Maori history in the Te Tau Ihu o te waka a Maui (the prow of the canoe of Maui) district, is mainly drawn from the work of nineteenth and twentieth-century writers who have recorded Maori oral traditions from Te Tau Ihu and neighbouring districts. These published works have been supplemented by evidence presented to the Waitangi Tribunal, and a number of unpublished primary documents, especially Native Land Court minute books. The minute books offer a rare and sometimes comprehensive account of what nineteenth-century kaumatua had to say (to the judge but in the presence of their people and a kaumatua assessor from another district) about their traditions and the actual practice of custom law. Nineteenth-century Pakeha authorities, who wrote down and interpreted oral traditions, included Alexander Mackay, Percy Smith and Elsdon Best. These men were acknowledged experts of their day and their material still furnishes a great deal of useful information. Twentieth-century authors included J.D. Peart and W. Elvy, who gathered Maori traditions in the first half of the present century. Their work has been reinterpreted by a handful of scholars, who have presented evidence to the Maori Appellate Court and Waitangi Tribunal in recent years. The most important of these scholars are H. and M.J. Mitchell, who have written a thorough and very useful synthesis of traditional history for the Wai 102 claim. Different perspectives have been presented to the Tribunal by other claimants, such as Ngai Tahu and Ngati Toa ki Porirua, and their work has also been taken into consideration.

The following account does not pretend to be a comprehensive one, nor does it attempt to judge between different take (grounds for establishing mana whenua). Its intention is to introduce all the iwi who had an interest in the district in 1840, and to describe their patterns of occupation and the claims which they have put forward to be right-holders at the time of the signing of the Treaty. This information is vital for any assessment of the Crown's purchase of land in the nineteenth century and its conversion of customary right-holding into

individual Crown titles. It is also important to the modern question facing the Waitangi Tribunal regarding the entitlement of iwi under the so-called 1840 Rule. In providing information, however, without which the Crown's actions could not be interpreted, I have not attempted to narrate the histories and traditions of iwi per se; that task belongs to the claimants themselves.

I MAORI OCCUPATION BEFORE 1824

The published and manuscript sources contain discrepancies which make it difficult to identify the sequence and extent of each tribe's occupation in Te Tau Ihu. The most important differences for the pre-1824 period involve two main issues: the history of Ngai Tara Pounamu, the South Island branch of Ngai Tara/Ngati Ira; and the fundamental character, distribution, and tribal distinctions of the 'Kurahaupo Alliance' or 'Rangitane tribes'. The modern takiwa of Ngati Apa, Ngati Kuia, and Rangitane ki Wairau were supposed to have been established by 1827, when the Tainui conquest of Te Tau Ihu began, but there may be some doubt about whether those iwi were distinct groups with distinct takiwa. They may in fact have existed as an interrelated whole with joint rights in the Marlborough Sounds and Tasman Bay districts. This question must be kept in mind when reviewing the pre-1824 period, as it influenced the location and take of Kurahaupo survivors after the Tainui conquest. Ngati Apa turned up unexpectedly in Port Gore, for example, a long way away from what might have been considered as their traditional takiwa.¹

All authorities agree in tracing the first historical occupation of the Wairau and Kaikoura districts to the Waitaha tribe, descended from Rakaihatu of Te Uruao waka. Their neighbours in Queen Charlotte Sound during the fifteenth and sixteenth centuries were Ngai Tara Pounamu. According to O'Regan, Ngai Tara Pounamu migrated to the South Island from the district of Whanganui-a-Tara (modern Wellington) as a result of political divisions within Ngai Tara. Those who were dissatisfied with the marriage of Moeteao, daughter of Tuteremoana, to Whakahirangi, and Ngai Tara's subsequent amalgamation with Ngati Ira, moved across the Straits and retained their traditional name with the addition of the word

¹A. Mackay, *A Compendium of Official Documents, relative to Native Affairs in the South Island*, Wellington, 1873, vol. 1, p. 300.

'pounamu'.² It is not clear whether Ngai Tara had established a very strong presence in Queen Charlotte Sound by 1500, but there were certainly small Tara communities in both major Sounds (Totaranui and Hoiere) as well as around the coast in Tasman Bay.³

A tribe with an identical name but very different antecedents occupied Rangitoto (D'Urville Island) at this date. This iwi drew its name from a Tainui canoe chief called Tara-pounamu, whose followers were caught in a storm off the coast of Taranaki some time in the fourteenth century, and ended up in Rangitoto. They liked the island and its resources so much that they returned to take up permanent residence. Accounts differ as to whether this migration was led by Tara-pounamu or took place a few generations after his death. This group of Ngai Tara-pounamu were all drowned by a tidal wave in the sixteenth century and left no remnants on Rangitoto.⁴

H. and M.J. Mitchell suggest that Ngati Kuia were already in residence at Te Hoiere (Pelorus Sound) at the time of Ngai Tara-pounamu's arrival on D'Urville Island. Although this contradicts the views of S. O'Regan and their own earlier evidence, it fits with Elvy's claim that Kuia were the oldest surviving iwi in the region. The Mitchells argue that the Ngati Kuia ancestors, Wainui-a-ono and her husband, Konga-uma, were Kurahaupo Waka chiefs who landed from that canoe at Te Tai Tapu and moved across the island to settle in Pelorus Sound some time in the thirteenth or fourteenth centuries. Ngati Kuia shared Pelorus Sound, therefore, with small groups of Ngai Tara at the beginning of the sixteenth century.⁵

Their neighbours in Tasman Bay were further Ngai Tara outposts centred on pa at Waimea, which became larger and more populous during the course of the century. Archaeology suggests that this region had already been occupied for a long time by the sixteenth century, and these earlier occupants may have been Waitaha or Rapuwai, with a continuing presence in the 1500s. The fate of the Tasman Bay Waitaha is obscure. Mitchell records that no Tasman Bay iwi has Waitaha ancestors in its whakapapa, whereas the relationship between the Wairau Waitaha, Ngati Mamoe, and Ngai Tahu may be more easily traced.⁶ Recorded traditions also mention a brief occupation of the Nelson district by Ngati

²S. O'Regan, 'Queen Charlotte Sound: Aspects of Maori Traditional History'. in *Queen Charlotte Sound, New Zealand: the Traditional and European Records, 1820*, ed. G. Barratt, Ontario, 1987, p. 147.

³For maps of these and other Maori traditional place-names, refer to Figures 2, 2A, & 3.

⁴H. & M.J. Mitchell, Evidence presented to Waitangi Tribunal on behalf of claimants, Wai 102 A-16(a), Chapter 2, pp. 30-31; cf. J.D. Peart, *Old Tasman Bay*, Nelson, 1937, pp. 4-5.

⁵Wai 102 A-16(a), Chapter 2, pp. 23, 30-34.

⁶Wai 102 A-3, p. 19.

Pohea, a Whanganui group descended from Turi of the Aotea canoe, but these people do not seem to have remained in the area.⁷

Beyond Separation Point the district now known as Golden Bay (Mohua and Te Tai Tapu) was occupied by Ngati Wairangi. Their time of arrival in the district is not known, but they were certainly in occupation of Golden Bay and the West Coast when Ngati Tumatakokiri invaded those districts at the beginning of the seventeenth century. According to Alexander Mackay, Ngati Wairangi were a hapu of the Whanganui tribe Ngati Hau, and migrated directly to Western Te Tau Ihu from the Whanganui district.⁸

Thus the Wairau and Kaikoura coasts were occupied by Waitaha in 1500, with Ngai Tara in control of Queen Charlotte Sound. Ngati Kuia shared the Pelorus with a small number of Ngai Tara, while Rangitoto was occupied by the Tainui iwi Ngai Tara-pounamu, and possibly by remnants of Waitaha, and even a few Ngati Kuia. Tasman Bay had several small communities of Ngai Tara, and possibly remnants of an early Waitaha/Rapuwai occupation. Golden Bay and the West Coast formed the takiwa of Ngati Wairangi, a tribe which had migrated there from the Whanganui district.

This pattern of occupation was altered significantly in the sixteenth century by more intensive Ngai Tara settlement, and by the arrival of two new North Island iwi: Ngati Mamoe and Ngati Tumatakokiri. There may also have always been small communities of other northern Cook Strait iwi living on the coasts of Te Tau Ihu, present for trade or because they were tolerated by larger, closely related iwi. These would include forerunners of iwi who later settled in greater strength, such as Ngai Tahu and Rangitane.⁹ The presence of small 'advance guard' settlements is a problem when trying to establish sequences of occupation or political dominance, for example in the cases of early Ngai Tara in Tasman Bay or Rangitane (via Te Huataki hapu) in Totaranui.

Some time before or around the initial Ngai Tara migration, a group of Ngati Mamoe from Hawkes Bay who had briefly settled on the northern shores of Cook Strait, decided to migrate to the rich Wairau district. They felt under threat in the Wellington region and a gift of food from the Waitaha people inspired a desire to move to a more secure area with obviously rich food resources. Ngati Mamoe invaded the Wairau, possibly in the mid-sixteenth

⁷Wai 102 A-16(a), Chapter 2, pp. 39-40.

⁸Mackay, vol. 1, p. 39.

⁹eg. W.J. Elvy, *Kei Puta te Wairau: a History of Marlborough in Maori Times*, Christchurch, 1957, p. 60; O'Regan, p. 155.

century, where they conquered and absorbed the Waitaha. Some may also have settled in Queen Charlotte Sound in union with Ngai Tara, although a Ngai Tahu source consulted by O'Regan suggested that Ngati Mamoe and Ngai Tara remained quite separate. They shared common origins in Hawkes Bay and a common descent from the Kurahaupo canoe, as did so many subsequent settlers in the region.¹⁰

Ngati Mamoe remained in occupation of the Wairau for around a century, but the fate of their Ngai Tara neighbours is more obscure. The powerful tribe Ngati Tumatakokiri from Taupo crossed the straits in the sixteenth century and occupied Arapaoa Island in Queen Charlotte Sound. According to Elvy, Tumatakokiri's occupation of the Sounds pre-dated the arrival of Ngai Tara, to whom he ascribes the feat of pushing Tumatakokiri out of the region.¹¹ Mitchell and O'Regan argue that Tumatakokiri came after Ngai Tara, but imply that their passage through the area did not disturb Ngai Tara's occupation.¹² By the late sixteenth century, therefore, Wairau and Cloudy Bay were still in the possession of Ngati Mamoe, while Ngai Tara occupied Queen Charlotte Sound, possibly in conjunction with Ngati Mamoe.

At the end of the 1500s Ngati Tumatakokiri, who had briefly settled at Arapaoa, abandoned the Sounds and moved west into Tasman and Golden Bays. Mitchell records that the rangatira Tumatakokiri may have been a son of Whatonga and Hotuwaipara (and therefore a full brother of Tara). His people were a Kurahaupo iwi who had settled in the Taupo district.¹³ At the end of the sixteenth century they migrated down the Whanganui River to the West Coast of the North Island, and moved from there to Arapaoa and on to Tasman Bay. It is not clear what effect their arrival in the area had on Ngai Tara resident in Tasman Bay. These Ngai Tara had been reinforced by a significant migration from Hataitai, but the traditions claim that a violation of the tapu of Tu Ahuriri, a visiting Ngai Tara/Ngai Tahu chief, resulted in a plague at Waimea which devastated the Ngai Tara and eclipsed their power. This tradition is recorded by both Mitchell and Peart, and Mitchell uses whakapapa to date this disaster to around the time that Tumatakokiri arrived in the district.¹⁴ We have no information as to whether Tumatakokiri conquered Ngai Tara or arranged a peaceful joint occupation. This question is complicated by the problems of dating the expulsion of Ngai Tara

¹⁰O'Regan, pp. 146–147.

¹¹Elvy, pp. 27–29.

¹²Wai 102 A-3, pp. 26–28; O'Regan, p. 147.

¹³Wai 102 A-16(a), Chapter 2, pp. 44–45.

¹⁴ibid., pp. 44–50; Peart, pp. 8–11.

from Te Hoiere by Ngati Kuia, which the Mitchells claim took place *after* Tumatakokiri's settlement in Tasman Bay. If the Mitchells are correct then Ngai Tara at Waimea and elsewhere in the Bay probably received a large reinforcement from Pelorus Sound in the seventeenth century. The recorded traditions are silent as to the eventual fate of these Ngai Tara people after their arrival in Tasman Bay.¹⁵

We are on firmer ground in Golden Bay and Te Tai Poutini, however, where Ngati Tumatakokiri probably expelled Ngati Wairangi altogether from these districts. Mitchell suggests that Poutini Ngai Tahu whakapapa show that they absorbed Wairangi in Te Tai Poutini, but that there is no similar evidence for absorption in northern Te Tau Ihu.¹⁶ The southern boundary between Tumatakokiri and Wairangi was at Karamea according to Peart, but the Mitchells suggested that Tumatakokiri occupied as far south as the Mawhera valley.¹⁷ They were fully established in Golden Bay by 1642, when their presence was discovered by Abel Tasman, and the name of Murderer's or Massacre Bay was given to the area after a violent incident between Maori and these very first Pakeha.

The second half of the seventeenth century saw further disruptions in the Marlborough area, while the Nelson district remained quiet under Tumatakokiri occupation. Some time in this century Ngati Kuia pushed Ngai Tara out of Te Hoiere altogether, and moved west to take Rangitoto from Tumatakokiri. This may have been the result of alliances with other Kurahaupo groups who had arrived in the region, acting under the generic name of 'Rangitane'. It is very difficult to establish when, and in what order, these seventeenth-century Kurahaupo migrants arrived in Te Tau Ihu. According to O'Regan, Ngai Tara and Ngati Mamoe were alone in the region when the Ngati Kuri hapu of Ngai Tahu migrated to Queen Charlotte Sound around 1650.¹⁸ J. McEwen also dates the main Rangitane migration, under Te Rerewa and Tukanae, to a later period (around 1675).¹⁹ O'Regan argues for an even later date, placing Rangitane's arrival in the eighteenth century.²⁰ According to Elvy and Mitchell, however, a number of new Kurahaupo groups were already present in the area before the Ngati Kuri/Ngai Tahu invasion. One contributing factor may have been the early accidental

¹⁵Wai 102 A-16(a), Chapter 2, pp. 44-51, 73-74.

¹⁶ibid., A-3, pp. 19, 28.

¹⁷ibid., pp. 27-28; cf. Peart, pp. 12-13. See also Figure 3.

¹⁸O'Regan, pp. 152-153.

¹⁹J. McEwen, *Rangitane: a Tribal History*, Auckland, 1986, pp. 74-77.

²⁰O'Regan, p. 148.

migration of Ngati Huataki, a hapu of Rangitane, who settled in Port Gore after a storm and remained there until the main Rangitane body had arrived and moved into the Wairau.²¹

According to one model of Kurahaupo settlement, there was a sharp division between a Ngati Kuia-Ngati Apa alliance, (who lived on the West Coast of the North Island in long separation from the others) and the rest of the Kurahaupo tribes. These other Kurahaupo groups were supposed to have drawn their coherence from shared East Coast developments. In accordance with this argument, the settlement of Ngati Kuia and Ngati Apa is sometimes traced as a movement along a westerly route, ignoring Queen Charlotte Sound in the east altogether and moving directly into the Pelorus Sound and Nelson Province.²² This challenges the Mitchell view that Ngati Kuia have always lived in Pelorus Sound since the arrival of the Kurahaupo in New Zealand. According to a very different theory, Ngati Apa, Ngati Kuia, and Rangitane all formed a very closely related unit which moved together into *Queen Charlotte Sound* around the end of the sixteenth century. According to this model, they lived together in Queen Charlotte Sound for roughly two hundred years, until the end of the eighteenth century.²³ Support from the traditional evidence may be found for these and other theories.

I would like to present the model which in my view most closely fits the evidence, based mainly on the excellent synthesis submitted to the Waitangi Tribunal by H. and M.J. Mitchell in 1993 (which differs markedly from their earlier submissions in several significant particulars).²⁴ Ngati Kuia were most likely long-term residents of Te Hoiere when the later Kurahaupo migrants arrived, but there does seem to have been a very close relationship between Kuia and the Ngati Apa of Rangitikei, and between these groups and the Rangitane from Wairarapa. If it was not already based on intermarriage and the residence of small groups in each other's districts, it soon became so in the seventeenth and eighteenth centuries. Neither Ngai Tara nor Tumatakokiri were included in this alliance, although Rangitane and Ngai Tara were very closely related and may have amalgamated in Totaranui.

Ngai Tara pushed Ngati Kuri out of Queen Charlotte Sound soon after the latter's arrival in the 1650s, possibly with the help of Rangitane. Ngati Kuri moved into the Wairau,

²¹For Ngati Huataki, see Elvy, p. 33.

²²O'Regan, pp. 147-148; O. Baldwin, *Story of New Zealand's French Pass and d'Urville Island*, vol. 1, 1979, pp. 20, 22.

²³Wai 102 A-3, pp. 27-32.

²⁴Wai 102 A-16(a), Chapters 2 & 3; cf. A-3.

where they entered into a very complex relationship with Ngati Mamoe, who were sometimes their enemies and sometimes their allies. Rangitane followed Ngati Kuri into the Wairau and entered into a generation of battles and shifting alliances which eventually pushed Ngati Kuri past the Waiau-toa (Clarence) River. According to Rangitane, this river became the boundary between Ngai Tahu and themselves for the duration of Rangitane mana in the Wairau. Later migrations of Ngai Tahu joined Ngati Kuri beyond the Waiau-toa.²⁵

By 1700, therefore, Rangitane had claimed the whole of Queen Charlotte Sound and the Wairau. Each group who preceded them or accompanied them, however, had left small pockets of settlement in one or other of Totaranui's bays. Elvy and O'Regan agreed that by the time of first Pakeha contact with the area, there were small groups of Ngati Apa, Ngati Kuia, Ngai Tara, and even Ngai Tahu, scattered throughout the region and sometimes fighting over the use of its resources.²⁶ In terms of whakapapa, E. Pakauwera of Ngati Kuia told S. Percy Smith 'We are really one people'.²⁷ Most historians of the region agree that distinctions between these iwi are hard to specify for the nineteenth-century period. Tutepourangi, for example, was described by Baldwin as a Ngati Kuia chief and paramount chief of 'Rangitane'.²⁸ A Ngati Kuia witness to the Native Land Court suggested that Rangitane and Ngati Apa were in fact 'sub-hapus of Ngati Kuia'.²⁹ Mitchell points out that Tutepourangi of Kuia had a full brother and full sister who were considered to belong to Ngati Apa.³⁰ Little wonder, therefore, that Peart recorded that Maori kaumatua in the 1930s 'find it difficult to disassociate one from the other, and speak of the Ngatiapa as the Ngatikuia'.³¹ Tamairangi of Ngati Kuia lived with her people on Arapaoa Island in the middle of the Rangitane takiwa, while the original Rangitane leader Te Rerewa should (according to O'Regan) be identified as Ngai Tara.³² As a result of such points, Mitchell suggested that 'the tribal distinctions in current use' might not be of much relevance, and found it easier to talk of a 'Kurahaupo Alliance' or 'confederation'.³³ A detailed assessment of whakapapa by claimants may be necessary for them to determine the degree of separation

²⁵Wai 102 A-16(a), Chapter 2, pp. 52-70.

²⁶Elvy, p. 60; O'Regan, p. 155.

²⁷O'Regan, p. 142.

²⁸Baldwin, p. 33.

²⁹Native Land Court, Nelson Minute Book 2, f. 307. See also ff. 253-254 for Tutepourangi.

³⁰Wai 102 A-3, p. 36.

³¹Peart, p. 18.

³²O'Regan, pp. 141-142, 153-154; NZDB, p. 422.

³³Wai 102 A-3, p. 36.

(whether geographical or genealogical) which actually distinguished these iwi.

The Kurahaupo Alliance of Apa, Kuia, and Rangitane was built up in the first fifty years of the eighteenth century, when small groups of Ngati Apa from Rangitikei raided the Tumatakokiri and settled with Kuia and Rangitane in the Marlborough Sounds.³⁴ Tumatakokiri was not seriously threatened until the second half of the century, however, when Poutini Ngai Tahu had conquered Ngati Wairangi and were adding further pressure from the south. Ngati Apa carried out a major raid from Rangitikei around the 1750s which caused Tumatakokiri serious damage. When the South Island iwi tried to retaliate up the Kapiti coast, however, its fleet was wrecked by a storm and many more warriors lost their lives. By the late 1700s Tumatakokiri was losing ground to concurrent attacks by Ngai Tahu of both coasts, by Kuia, Apa and Rangitane from the Sounds, and by Ngati Apa parties from the Rangitikei.³⁵ The conquest of Ngati Tumatakokiri was fairly complete by 1810, although Peart suggests that some communities survived in Tasman Bay with relative independence.³⁶ Other survivors had fled to the interior and led a nomadic and insecure existence. Ngati Apa occupied Golden Bay and Tasman Bay as far east as Whakatu (Nelson), but from Whakatu across to Te Aumiti (French Pass) Ngati Kuia may have held primary sway. Kaumatua of Peart's time (the 1930s) did not distinguish between Ngati Apa and Ngati Kuia in Tasman Bay.³⁷ Although Tumatakokiri survivors lived into colonial times as identifiable individuals, Peart and the Mitchells suggested that their tribal structures and almost all of their culture and traditions had disappeared, perhaps because the second (Tainui) conquest followed the first so quickly, with the flight of fresh, more numerous Apa, Kuia, and Rangitane refugees to Tumatakokiri's hinterland hiding places.³⁸

By 1820, therefore, Ngati Apa had established a primary position in Golden Bay and Te Tai Poutini, possibly as far south as the Mawhera Valley. Ngati Kuia controlled Rangitoto and Te Hoiere, and shared the eastern half of Tasman Bay with Ngati Apa. Rangitane were pre-eminent in Totaranui, the Wairau, and the Kaikoura coast, possibly as far south as the Waiiau-toa. All of these districts included small communities of Kurahaupo relatives, and in the Western districts a varying number of Tumatakokiri survivors, some as vassal communities

³⁴Wai 102 A-16(a), Chapter 2, pp. 57-59; Peart, pp. 17-18, 34.

³⁵Mackay, vol. 1, p. 45.

³⁶Peart, pp. 15-16.

³⁷ibid., p. 18.

³⁸ibid., p. 16; Wai 102 A-16(a), Chapter 2, p. 90.

and some as free refugees in the remote hinterland districts.

II CONQUEST OF TE TAU IHU, 1823-1832

By the early years of the nineteenth century, a cycle of raids and counter-raids had become a full-scale war between the inland Tainui iwi of Waikato and Maniapoto, and the coastal Tainui iwi of Ngati Toa, Ngati Rarua and Ngati Koata. Although Koata and Rarua are described in Land Court records as 'sub-tribes' of Ngati Toa, they were perhaps allies rather than under the direct control of their Toa relatives. These three closely related groups were descended from Hoturoa, commander of the Tainui canoe, and had occupied the Kawhia district for a long period of time. Ngati Rarua were centred on a coastal pa called Waikawau, located just below Ngati Toa territory. Ngati Rarua were also divided into two main hapu, Ngati Turangapeke (more closely related to Ngati Toa), and Ngatipare te Ata (more closely related to Te Atiawa). These Kawhia tribes were allied to the Northern Taranaki iwi, although the alliance was not without its own tensions and feuds. Basically, however, the Kawhia peoples were ranged with Ngati Tama, Ngati Mutunga, and the various hapu of Te Atiawa, against the Waikato Tainui federation.

After an exploratory foray to Cook Strait by Te Rauparaha with a Nga Puhi taua in 1819-1820, the Kawhia people faced a major Waikato invasion. Its object was to exterminate them or to evict them from Kawhia altogether. Ngati Toa, Koata, and Rarua survivors escaped to Taranaki, and sought refuge with Te Atiawa until 1822, when they helped their Taranaki allies defeat a second Waikato invasion. Te Rauparaha saw no alternative but permanent emigration from Kawhia, and in 1822 he led Ngati Toa, Koata, and Rarua, Ngati Tama, and Te Atiawa groups to the rich lands of Raukawa Moana. They did not cross to Te Wai Pounamu at this point, but Te Rauparaha's ambitions to control both the pounamu and the Pakeha musket trades, and to make himself what his son called the great lord who settled many peoples in many lands, meant that some sort of attack was inevitable.³⁹

In 1824 the Kurahaupo iwi of Te Tau Ihu joined a massive attack by their northern neighbours on the Kawhia/Taranaki allies, now living on Kapiti Island. According to some accounts, over 2000 people participated in this invasion of Kapiti. The South Island

³⁹Tamihana Te Rauparaha, 'Life and Times of Te Rauparaha', trans. G. Graham; WTU., p. 8.

contingents were led by the brothers Te Rato (also Te Kotuku) and Tutepourangi of Kuia/Apa. Te Rauparaha's forces won the Battle of Waiorua and the Kurahaupo allies retreated to the South Island in disarray. Ngati Kuia had captured Tawhi during their retreat, a prominent boy of Toa/Koata lineage, while Ngati Koata had seized Tutepourangi of Rangitoto, the paramount chief of Ngati Kuia. A mixed Toa/Koata taua followed Tawhi's trail to Rangitoto and secured his return, in exchange for the release of Tutepourangi. Ngati Toa returned to Kapiti at this point, but Ngati Koata struck a bargain with Tutepourangi in which he made a tuku of all Kuia's lands to Koata in return for his release and (so later generations maintained) for Koata protection in a substantially equal relationship of joint occupation. The tuku extended from Rangitoto and Te Hoiere eastward to Whakatu and the shadowy boundary between Kuia and Apa. Tutepourangi settled at Wakapuaka with both Kuia and Koata, and intermarriage began at once between the iwi.⁴⁰

The next Kawhia incursion to Te Tau Ihu was not a peaceful one. Te Rauparaha had captured sufficient canoes at the Battle of Waiorua to enable a large-scale invasion of the South Island. An insult delivered by a prominent Rangitane chief, Ruateoneone, made Rangitane and the Wairau the particular objects of Te Rauparaha's interest and retaliation. Around 1827 he led a large taua to Totaranui, which attacked the Rangitane there but may not have completely defeated them at this point. Te Rauparaha's real object was the Wairau/Karauripe district, which he conquered completely and either killed or enslaved the majority of its Rangitane inhabitants.⁴¹ Ngati Rarua played a crucial role in the conquest of the Wairau, an important point for their later claim in that district.⁴²

The following year a second taua invaded the Sounds, and at this point Te Atiawa are said to have played the major role in the elimination of Rangitane from the Totaranui/Arapaoa district.⁴³ Ngati Toa concentrated on the conquest of Te Hoiere (Pelorus Sound) and the Ngati Kuia people of the Sounds, possibly against the mild opposition of Kuia's Koata mentors. Te Rauparaha may have also raided Wakapuaka and Eastern Tasman Bay at this point but the evidence is contradictory.⁴⁴ After the conquest of the Sounds, Te Rauparaha led his allies down the Kaikoura coast to attack the Ngai Tahu. Te Pehi Kupe and other Ngati

⁴⁰Nelson Minute Book 2, ff. 253–256 & passim.

⁴¹T. Te Rauparaha, p. 43.

⁴²A. McIntosh, ed., *Marlborough: a Provincial History*, Blenheim, 1940, p. 395.

⁴³Elvy, pp. 60–62.

⁴⁴Peart, pp. 35–36.

Toa chiefs were killed at Kaiapoi by Tamaiharanui during this campaign. There was no settlement in the conquered areas at this time, although the majority of Rangitane survivors were taken to Kapiti as slaves, or left in the Wairau as 'vassal' communities living under their own traditional rangatira.⁴⁵

According to some authorities, another party of Kawhia/Taranaki allies conquered the Western parts of Te Tau Ihu while Te Rauparaha was engaged in this assault on the Kaikoura Ngai Tahu. Others date the invasion of Tasman and Golden Bays to 1831-32, after Tuhawaiki's visit to Wakapuaka with the bones of Te Pehi Kupe.⁴⁶ This question is crucial because of the speed with which newly settled conquerors could evolve rights by taking up residence in a new district. Taranaki groups who had participated in the initial conquest but had not settled immediately because of continuing North Island commitments, were sometimes portrayed by earlier settlers as latecomers who squatted on the land by sufferance of the earlier parties. Since Te Atiawa and Ngati Tama's Taranaki commitments had been severely cut by 1833, and Angela Ballara argued that only three years were necessary for new settlers to evolve rights to the land, it becomes important to discover whether the conquest took place in 1827-28 or 1831-32.⁴⁷

It is not possible to answer this question with any certainty. According to D. Loveridge, most authorities now agree that the conquest took place in 1831-32.⁴⁸ The internal evidence is contradictory, since chiefs who fought at Pukerangiora in 1831, for example, were said to have taken part in the conquest of Tasman and Golden Bays, but any earlier date cannot be reconciled with the story of Tutepourangi's insult to the bones of Te Pehi Kupe.⁴⁹ There may in fact have been two campaigns of conquest, but settlement probably followed the second assault of 1831-32. According to most Native Land Court evidence, the main iwi involved in the conquest of Tasman and Golden Bays were Ngati Rarua, Ngati Tama, and Te Atiawa. Ngati Koata later claimed to have remained neutral in deference to their agreement with Ngati Kuia.⁵⁰ It seems that the Koata living at Wakapuaka with Tutepourangi were lucky to escape with their lives, and there may have been some

⁴⁵T. Te Rauparaha, p. 43.

⁴⁶Wai 102 A-16(a), Chapter 3, pp. 30-31.

⁴⁷Cited in R. Anderson et al., CCJWP Report on Wellington Tenth, pp. 10, 15-16.

⁴⁸D. Loveridge, Evidence presented to Waitangi Tribunal on behalf of the Crown, Wai 27 N-2, p. 5.

⁴⁹eg. Henare Te Keha. See Wai 102 A-16(a), Chapter 3, pp. 37, 53-54.

⁵⁰eg. NMB 2, ff. 307-316.

resentment at Ngati Koata's attitude, especially as the theoretical take for the campaign was to avenge Tutepourangi's insult to the bones of the Ngati Toa ariki (and possibly their own) Te Pehi Kupe. Tuhawaiki had brought these remains to Wakapuaka as fish hooks to show Tutepourangi and the Ngati Kuia.⁵¹

Te Rauparaha may have presided over the initial assault on Wakapuaka, but after launching the western campaign from Rangitoto he moved east with large numbers of Kawhia and Taranaki allies. In 1830 he had chartered the Brig Elizabeth to capture the Ngai Tahu ariki, Tamaiharanui, who was later murdered at Kapiti. Te Rauparaha now followed up this coup with the sacking of pa at Kaiapoi and as far south as Akaroa. On the way back up the Kaikoura coast, the first Tainui settlement in Marlborough began when a group of Ngati Toa and Ngati Rarua settled in Karauripe (Cloudy Bay) in order to exploit the whaling trade. This mixed Toa/Rarua community settled initially at a place called Whanganui on the Kaikoura coast, before removing to Karauripe. The Kaikoura coast was basically empty by 1833, with Ngai Tahu driven south to Canterbury and the newcomers settling further north in Cloudy Bay.⁵²

During this second campaign against Ngai Tahu in the east, Te Puoho led Rarua, Tama, and Atiawa contingents in the conquest of Western Te Tau Ihu. Te Puoho was the ariki of Ngati Tama. Other prominent rangatira included Niho (Rarua), Takerei (Tama), and Te Manu Toheroa (Atiawa). Wakapuaka was the first major pa to fall to this taua, and Paremata of Ngati Tama killed Tutepourangi during the assault on this pa. The death of such a high ranking chief was a major consideration in any assumption of mana whenua, and may have strengthened Ngati Tama's later claim to the Wakapuaka district. The taua moved on around the coast of Tasman Bay sacking pa at Waimea and Motueka, some of which may have been pa of Tumatakokiri survivors.⁵³

The Ngati Apa of Golden Bay and Te Tai Tapu fell next to the invaders, and the paramount Apa chief Te Rato was killed at Te Tai Tapu. The taua split in two after the conquest of Golden Bay, and the rangatira Niho and Takerei led closely related contingents of Rarua and Tama down the West Coast to attack Poutini Ngai Tahu. They defeated and captured the principal chief of the district, Tuhuru, and carried their conquest south to

⁵¹Wai 102 A-16(a), Chapter 3, pp. 35-37.

⁵²Ngati Toa chiefs to G. Grey, 11 December 1851, cited in Wai 102 A-3, Ms. 8.3.10e; T. Te Rauparaha, p. 77.

⁵³Wai 102 A-16(a), Chapter 3, pp. 37-43; Peart, pp. 38-53.

Hokitika and southern Westland. Tuhuru was forced to make some sort of submission to Te Rauparaha at Rangitoto. He was later released as a 'vassal' chief after giving over a mere pounamu and accepting a marriage alliance between his daughter and the Rarua rangatira Niho.⁵⁴ By 1832, therefore, the Kawhia/Taranaki allies claim to have conquered Te Tau Ihu and a large part of the Kaikoura and Te Tai Poutini coasts.

III CONQUEST AND OCCUPATION (TAKE RAUPATU AND TAKE AHI KAA)

3.1 TE TAI POUTINI

Niho and Takerei built pa at Mawhera (Greymouth), Taramakau and Hokitika, and claimed the West Coast from these districts as far north as West Whanganui. Their main residence seems to have been at Paturau, just south of West Whanganui, but they made periodic visits to their southern pa to obtain pounamu and other 'tribute' from Tuhuru's Poutini Ngai Tahu. The exact relationship between Rarua/Tama and Ngai Tahu is unclear. It certainly involved some intermarriage, and after the initial impact of the Kawhia invasions passed, the military balance of power was probably fairly equal between 'conquerors' and 'conquered'. This balance was upset in 1836, however, when Te Puoho led a taua of Ngati Tama to invade Murihiku. Niho and Takerei prevented this taua from attacking Poutini Ngai Tahu, honouring their obligations to give protection under the complicated arrangement created when Tuhuru surrendered his mere pounamu to them and created a series of reciprocal obligations.⁵⁵

The defeat of Te Puoho was followed by a resurgence of Ngai Tahu military power, and a series of raids against the Kawhia iwi on the east coast. At the same time, some of the Rarua and Tama warriors from the West Coast had accompanied Te Puoho and shared his fate. Rarua's position was weakened further by Ngai Tahu raids on the east coast, which meant that their allies might not be able to help in the event of a Poutini Ngai Tahu 'revolt'. The Kawhia/Taranaki iwi were dangerously over-extended by 1837, and Niho and Takerei decided to abandon Te Tai Poutini for the meantime, probably with the intention of returning if the military situation improved in their favour. Some of their Rarua relatives stayed behind

⁵⁴Wai 102 A-16(a), Chapter 3, pp. 38-43.

⁵⁵D. Loveridge, Evidence to the Waitangi Tribunal on behalf of the Crown, Wai 27 N-2, pp. 4-8.

in Arahura and Karoroa (just north of Mawhera), and although these people may have intermarried with Ngai Tahu, they maintained their links with Golden Bay. The Karoroa Rarua returned to Te Tau Ihu in the mid-1840s.⁵⁶

Tuhuru and the Poutini Ngai Tahu regained their independence by the late 1830s, but their effective recovery does not seem to have extended far north of Mawhera by 1840. The districts between Mawhera and West Whanganui had always been disputed between Ngai Tahu and Tumatakokiri. It is not clear how much of this territory Ngai Tahu obtained after the conquest of Tumatakokiri, but the boundary between Ngai Tahu and Ngati Apa may have been south of the Kawatiri (Buller) district. D. Loveridge's evidence to the Tribunal suggests that Ngati Apa's claim to this district dated back to their conquest and occupation in the late eighteenth century.⁵⁷ Ngai Tahu claimed that they permitted Ngati Apa to *move into* this area after the Kawhia conquest 'on sufferance', and the Maori Appellate Court concluded that this conferred no rights on Ngati Apa.⁵⁸ Loveridge's evidence suggests, however, that Ngati Apa retreated to what was part of their traditional rohe, and that this was recognised by Ngai Tahu and Te Tau Ihu chiefs in the Arahura Purchase of 1860.⁵⁹ Whether or not this claim is accepted, the reports of Brunner and Heaphy suggest that the Kawatiri district was occupied by neither Rarua/Tama nor Ngai Tahu in 1840, and that Ngai Tahu did not take up residence there until 1846.⁶⁰

3.2 GOLDEN BAY

For the purpose of this report, the district of Golden Bay may be divided into two geographical regions: Te Tai Tapu, or the West Coast from West Whanganui to Cape Farewell; and the Bay coast, encompassing the Aorere and Takaka/Motupipi districts. The region raises the central issues of post-conquest settlement in Te Tau Ihu:

- the question of whether boundaries can be established between recently settled groups with fluid rights, who ranged widely in each other's districts in search of natural resources;
- the question of tribal right and the rights of rangatira, which involved the rights of people

⁵⁶ibid.

⁵⁷ibid.

⁵⁸Judge Hingston, Decision in Maori Appellate Court, 15 November 1990, Wai 102 A-11, pp. 20-24.

⁵⁹Wai 27 N-2, pp. 4-5.

⁶⁰ibid., p. 9.

from one district to go and live in the districts of near-relatives and use their resources, and of rangatira to settle anywhere that their iwi or hapu happened to have an outpost;

- the related right of North Island relatives to take up residence or use resources in areas where they had never lived but where relatives belonging to their hapu or whanau were living;
- the question of 'squatters' rights', where iwi and rangatira participated in the conquest but did not try to settle until a few years later, by which time the earlier settlers had evolved what they considered to be exclusive claims to wide territories.

All these issues must be kept in mind during the discussion of post-conquest settlement in Te Tau Ihu.

Te Tai Tapu was conquered by a taua of Ngati Rarua, Ngati Tama and Te Atiawa. Both Tama and Atiawa, however, had North Island commitments in the Cook Strait and Taranaki districts, and they did not follow up the conquest with immediate settlement. The main settlers in Te Tai Tapu district, therefore, were Ngati Rarua under Niho and Te Tai Poutini chiefs, and a few Ngati Tama under Takerei. At some point (unknown) Ngati Tama at Wakapuaka agreed to exchange their interest at Te Tai Tapu for Rarua's rights at Wakapuaka. The communities of both of these iwi in Tasman and Golden Bay had shared rights throughout the entire region, and the status of Ngati Tama actually living in Te Tai Tapu (and very closely related to Rarua) may not have been affected. Some time in the mid-1830s there was a large influx of Te Atiawa into Golden and Tasman Bays as a result of a more permanent removal from Taranaki. Some of these Atiawa tried to settle in Te Tai Tapu and were seen as intruders by the resident Rarua, but they nevertheless included conquest chiefs among their number and could not be denied altogether from residing and cultivating in Te Tai Tapu.⁶¹

The main Atiawa interest in Golden Bay focused on the Bay coastal district, however, where Rarua, Tama, and Atiawa all pressed claims to the Aorere, Takaka, Motupipi, and Wainui districts. According to D. Sinclair's census in 1847, there were 76 Te Atiawa (mainly of Mitiwai hapu), 45 Ngati Rarua, and 120 Ngati Tama living scattered throughout these districts of Golden Bay.⁶² Ngati Rarua had settled soon after the initial conquest and Ngati Tama were also fairly early residents, although Te Puoho's interest was mainly focused on the North Island and the Parapara settlement may have been a rather token affair. The Ngati

⁶¹NMB 1, ff. 5–11; Mackay, vol. 1, pp. 290–291, 321–325.

⁶²Mackay, vol. 2, pp. 271–272.

Tama at Takaka in fact claimed their rights through a tuku from Te Iti, a Rarua chief at Motueka, to whom they gave canoes and other presents in exchange for a gift of land.⁶³ The Te Atiawa under Henare Te Keha and Wiremu Kingi Te Koihua were also seen as relative latecomers to the district, even though these men were conquest chiefs.⁶⁴

The situation was in reality very fluid in the 1830s and 1840s. According to Angela Ballara, new settlers could evolve rights to a district after three years of residence, unless they were driven off or some act of overlordship was exercised to demonstrate that they were only there on sufferance.⁶⁵ Most Atiawa groups were numerous enough to follow up on their rights as conquerors after a lapse of a few years, especially if a token number had already settled in an area, and to obtain rights of occupation in the mid-1830s. If a group was too small, however, such as Rawiri's handful of Atiawa at Motupipi, or if their rangatira had not participated in the initial conquest, then they might not obtain independent rights: 'Rawiri and his people are entirely without land of their own; they are merely squatting upon sufferance on other Native land, and unless the Government takes care that other land is provided for them, they must soon emigrate to Taranaki to which place they belong'.⁶⁶

Thus, three iwi shared rights to wide ranging coastal areas in Te Tai Tapu and Golden Bay when the Treaty was signed in 1840. It is not clear whether they inhabited discrete districts or whether they itinerated throughout each other's rohe. Mitiwai and Ngati Tama shared the Aorere district for example, and Ngati Rarua and Ngati Tama both lived in the Takaka area, and according to James Mackay these two iwi sometimes cultivated in common at Te Tai Tapu.⁶⁷ Iwi also seem to have formed a community of right-holders which encompassed both Tasman and Golden Bays. The same Ngati Rarua families lived at Aorere, Te Tai Tapu, and Motueka at different times of the year, although some whanau became more particularly associated with just one district. Furthermore, an important rangatira such as Rore Pukekohatu from even further afield at the Wairau, who had never lived in Te Tai Tapu, had interests there which were recognised and accepted by the local inhabitants.⁶⁸ Thus a mobile community of Atiawa, Rarua, and Tama from all over Te Tau Ihu had interests and rights in

⁶³ibid., vol. 1, p. 295.

⁶⁴ibid., pp. 297, 305.

⁶⁵A. Ballara, 'The Origins of Ngati Kahungunu', Ph.D thesis, Victoria University, 1991, pp. 366–369.

⁶⁶Mackay, vol. 1, p. 296.

⁶⁷ibid., p. 325; vol. 2, pp. 271–272.

⁶⁸ibid., vol. 1, pp. 290, 295, 321–325; vol. 2, p. 271; NMB 1, ff. 5–11; NMB 2, f. 15.

the Golden Bay region.

3.3 TASMAN BAY

The same situation of mobility, fluid and evolving rights, and an inter-regional community based on tribal or hapu identity, existed to the east of Separation Point. There were always limitations on common rights of course, and an example may be found in the separation between Ngati Rarua of Motueka and their relatives in the Wairau, but this will be considered in more detail below. The evolution of rights in Tasman Bay was extremely complex, involving patterns of customary interaction which would require further study to permit more than tentative conclusions about right-holding in the area. These patterns of interaction included the pre-emption of settlement by placing districts under tapu, the regulation of settlement by countless tuku, giving rise to lengthy debate about the rights of givers and recipients, and complex political manoeuvres for power within hapu and whanau groups which led to strange alliances and unexpected migrations. Land rights were just one element in the endless struggle for mana.

The earliest Kawhia settlers in the Bay were Ngati Koata, who spread at least as far as Whakatu (Nelson) after receiving a tuku of land from Tutepourangi of Ngati Kuia. This arrangement was overturned by the later invasion, however, in which Ngati Koata played an uncertain role and appear to have been in some ways the victims instead of the victors of this campaign.⁶⁹ Their main settlement had been concentrated further east anyway, and they probably withdrew from Wakapuaka after the Kawhia allies sacked it in 1828-29 or 1831-32. They had buried their dead there, however, and some Koata probably returned on a periodic basis to collect food resources from Wakapuaka, even after Ngati Tama occupation of the district.⁷⁰ The same is true for Whakatu, where Koata maintained rights of resource use independent of permanent occupation.⁷¹

The Ngati Koata/Kuia occupation of eastern Tasman Bay seems to have been replaced initially by a combined Rarua/Tama settlement, although at some point Ngati Rarua withdrew from Wakapuaka in return for the Tasman Bay Tama giving up their rights at Te Tai Tapu.⁷²

⁶⁹NMB 2, *passim*.

⁷⁰AJHR 1936, G-6B, p. 12.

⁷¹Wai 102 A-16(b), Chapter 8, pp. 29-30.

⁷²Mackay, vol. 1, pp. 321-322.

The Ngati Tama occupation of the Wakapuaka district has been the subject of a long controversy in the Native Land Court, focusing on the issue of residual Koata rights, the rights of Ngati Tama as an iwi, and the rights of a particular whanau group who held political control of the region. Te Puoho seems to have made the area one of his South Island residences, although his main centre was probably at Te Horo in the Otaki/Waikanae district, and Ngati Tama occupation predated the tuku by Ngati Koata to his widow Kauhoe.⁷³

The most likely explanation for this tuku is a political one. There had been trouble between Te Puoho and some of his people at Parapara about respective rights to land, and this dissension was transferred to Wakapuaka and the heirs of Te Puoho's power and rights within the tribe.⁷⁴ In addition, the ariki's closest supporters (and much of Tama's military power) had perished in the south. This left Te Puoho's widow and son (Kauhoe and Wi Katene) in a vulnerable position vis-a-vis the rest of Ngati Tama, and other iwi who might wish to move in and stake a claim to Tama lands. As a result, Kauhoe strengthened her position and that of her son by obtaining Ngati Koata's recognition of their rights to Wakapuaka, where they were already in occupation. By doing so, however, she may have recognised some rights on the part of Koata, and the issue of their respective rights, and of the rest of Tama's rights after the tuku, have remained a bone of contention ever since.

The western coast of Tasman Bay was settled by Ngati Rarua in the aftermath of the conquest, with their main base in the Motueka and Riwaka River districts. The boundary between the west and east coasts of the Bay, and especially the rich Waimea River and valley, was disputed between Tama of Wakapuaka and Rarua of Motueka. Te Puoho placed a tapu on the Waimea district before his departure for the south, and this tapu seem to have been respected by both sides.⁷⁵ Whakatu (Nelson) was also placed under a tapu by Te Rauparaha but this seems to have been ignored, and the Whakatu district resources were used by all the iwi in the Bay but without any permanent settlement in this disputed border region.⁷⁶

Peart suggests that Te Atiawa of Ngati Komako hapu, under the chief Horoatua, settled in the Riwaka district at the same time as the earliest Ngati Rarua, and that they had independent rights in the region. These Atiawa (possibly around seventy) were later reinforced

⁷³AJHR 1936, G-6B, pp. 7-12.

⁷⁴Peart, p. 75.

⁷⁵ibid., pp. 48-49, 58; G. McMurtry, *A Versatile Community: the History of the Settlers of Central Moutere*, Nelson, 1992, p. 7.

⁷⁶Peart, pp. 55-58; NMB 2, passim.

in the mid-1830s by an influx of relatives after the fall of Pukerangiora and the resultant migrations from Taranaki.⁷⁷ This influx involved a complex series of tuku in which the Ngati Rarua rangatira manoeuvred for power against each other. Te Poa Karora, for example, made a tuku of land to Te Manu Toheroa of Puketapu because the land was disputed between himself and Te Tana Pukekohatu. The latter was furious and serious insults were exchanged. Splits within Rarua may have been partly along the lines of degree to which their rangatira were related to Te Atiawa. Pamariki Paaka claimed that there were two distinct descent groups within Ngati Rarua, the 'Ngatirarua-Ngatitua' and the 'Ngatirarua-Ngatiawa'.⁷⁸ This split was accentuated as tension and conflict developed between Atiawa and the Ngati Toa/Ngati Raukawa allies in the North Island. By the late 1830s the situation had resulted in Te Atiawa settlement under several tuku, a halt to further settlement south of Motueka (because Te Tana Pukekohatu had placed a tapu on the river), and the permanent migration of Pukekohatu and his 'Ngatirarua-Ngatitua' to the Wairau. He was later persuaded to lift the tapu and settlement progressed on the south side of the river.⁷⁹

By 1840, therefore, Ngati Koata no longer had permanent residences in the district but may have continued to gather food at places like Whakatu and Wakapuaka. Ngati Tama controlled eastern Tasman Bay and were based in the Wakapuaka district. Ngati Rarua and Te Atiawa both lived in the Riwaka and Motueka districts and controlled western Tasman Bay, with a border region between them and Ngati Tama at Whakatu and the Waimea district.

3.4 RANGITOTO AND TE HOIERE

Tutepourangi's tuku of land to Ngati Koata was not disturbed at Rangitoto (D'Urville Island) and the coast opposite that island. Ngati Koata occupied this coast as far west as Whangamoia Bay, where the river became a disputed boundary with Ngati Tama territory to the west.⁸⁰ Thus, Ngati Koata occupied Croisilles Harbour (Whangarae) and French Pass (Te Aumiti). There is some doubt as to the location of their boundary to the east, where Koata interests intersected Ngati Toa rights in Te Hoiera (Pelorus Sound). There may have been some occupation of Te Hoiera by Ngati Koata, but tribal ascription is difficult because of the

⁷⁷Peart, pp. 58–59.

⁷⁸NMB 2, f. 223.

⁷⁹ibid., ff. 189, 191, 216–218, 223, 226, 271–272, 278, 292–294; Peart, pp. 60–62.

⁸⁰Mackay, vol. 1, p. 333.

unreliability of colonial commentators, and the close relationship between Koata and Toa. According to J. Tinline, for example, a Ngati Koata chief named 'Matthew' was living with his people in Pelorus Sound.⁸¹ Te Rauparaha had staked this territory out for Ngati Toa, however, but it is not clear whether there was a permanent Toa population in the Sound or the Kaituna Valley. W. Jenkins reported that an important Toa chief from the North Island had a residence at Te Hoiere, and his census in 1854 showed nineteen Ngati Toa living in the area.⁸² These may have been itinerants who spent part of each year in the Sounds. In the same year McLean declared that Wiremu Te Kanae, Ngati Toa rangatira of the Wairau, controlled Kaituna and Te Hoiere.⁸³ Ngati Toa certainly claimed these districts, and Herewine Ngapiko told the Native Land Court that they occupied by virtue of Te Rauparaha's allotment of the district to them in the early 1830s.⁸⁴

3.5 TOTARANUI

Te Atiawa claimed the whole of Totaranui (Queen Charlotte Sound) as its primary conquerors, and by right of continuous occupation by representatives of their hapu from 1832 to the present day. After the campaign against the Kaiapoi Ngai Tahu in 1831-32, Te Rauparaha and his allies stopped at Te Awaiti (Tory Channel) for a major hui at which Te Rauparaha divided the eastern Te Tau Ihu lands among his followers. This action was sometimes called a 'tuku' and at others a 'rohewhetanga', or laying out of boundaries, and it allotted territory as far west as Wakapuaka. The Sounds were divided between Ngati Toa and Te Atiawa, with Ngati Toa receiving Te Hoiere and Atiawa obtaining Totaranui and Arapaoa. According to Herewine Ngapiko, the beneficiaries of the tuku to Te Atiawa were Te Manu Toheroa (Puketapu), Reretawhangawhanga (Manu Korihi), Tamati Ngarewa (Hinetuhi), and Huriwhenua (Rahiri).⁸⁵

Some Te Atiawa settled at once, such as Ropoama Te One at Waikawa and Waitohi, but the majority probably settled later after the fall of Pukerangiora and the outbreak of the

⁸¹J. Tinline to M. Richmond, Nelson, 26 April 1851, J. Tinline Papers, 1844-1903, Micro MS. 790, WTU.

⁸²Mackay, vol. 1, pp. 297, 300.

⁸³ibid., p. 304.

⁸⁴NMB 2, f. 174.

⁸⁵NMB 2, ff. 173-174, 229, 300.

Haowhenua and Kuititanga wars. In 1856 the Crown identified 51 hapu and whanau groups in Queen Charlotte Sound, but the two largest hapu (accounting for about one-third of the population each) were Ngati Rahiri and Puketapu. Port Gore was considered separately and was mainly occupied by Ngati Hinetuhi.⁸⁶ Many of the hapu were so intermingled that it was impossible to allot distinct territories, and important chiefs such as Witikau were considered to have rights extending throughout the Sound. It was easier to identify prominent chiefs and their followers than to trace descent groups, and in its one purchase of a small block the Crown dealt with the inhabitants (regular users of its resources) and any other chiefs who felt that they had a right across all the Te Atiawa lands. The Atiawa population in the Sound seems to have been very mobile, and possibly no particular hapu could claim exclusive rights in any of the small bays scattered around its shores.⁸⁷

This mobility and fluidity of rights extended to North Island Atiawa in 1840. The take of those members of the tribe living on the land was often identical to those living elsewhere - and in some cases was inferior. Wiremu Kingi Te Rangitake, for example, had never lived in the Sound but was considered by Waitohi Atiawa to have the final say in any land sale.⁸⁸ H. and M.J. Mitchell, however, considered that this was a mistake.⁸⁹ Nevertheless, relatives living at Waikanae might suddenly arrive and expect to live in the Sound, or people living in both places might decide to leave for Taranaki and never return. The migratory habits of Te Atiawa were not close to settling down by 1840, and were considered just as volatile in the late 1850s.⁹⁰ Removal to Taranaki, however, seems to have been considered as an extinction of rights. Te Atiawa within the Raukawa Moana region might move around between Waikanae and Totaranui as they pleased, but a resumption of the ancestral lands in Taranaki was a more far-reaching break with the district.⁹¹ After the 1860s the Te Atiawa migrations had largely ceased and distinct takiwa evolved, but in 1840 Atiawa on both sides of Raukawa Moana could assert claims in Totaranui.

Ngati Toa also asserted claims in Queen Charlotte Sound in 1840. The main area of

⁸⁶Mackay, vol. 1, p. 300.

⁸⁷This impression of the nature of Te Atiawa occupation of Queen Charlotte Sound comes from a number of sources, including Mackay, Native Land Court minutes, and various government correspondence, but there is no single reference which explicitly states it.

⁸⁸W. Fox to W. Wakefield, Nelson, 19 January 1848, CO208/88.

⁸⁹Wai 102 A-16(b), Chapter 8, p. 106.

⁹⁰J. Mackay Jr. to McLean, Picton, 24 October 1859, McLean Papers, MS Copy Micro 535.

⁹¹eg. NMB 2, ff. 191, 202.

shared occupation was Te Awaiti (Tory Channel), near to an important Toa settlement at Port Underwood. Both groups were interested in Te Awaiti as a centre of the whaling trade. Nohorua, for example, the principal rangatira of the local Toa, gave land in Tory Channel to his son-in-law, Joseph Toms.⁹² By the late 1830s, however, the decline of the Cloudy Bay whaling industry reduced Ngati Toa interest in Te Awaiti. The two brothers-in-law, Nohorua of Ngati Toa and Huriwhenua of Ngati Rahiri, had been very close and shared the Channel in amity, but Nohorua died in 1843 and Ngati Toa withdrew temporarily from Te Tau Ihu in the same year, as a result of the collision at Wairau. Many Ngati Toa residents did not return to the South Island after this withdrawal, and the smaller number who did return seem to have abandoned interest in Te Awaiti. By the mid-1850s Ngati Rahiri were claiming exclusive rights over land gifted by Nohorua to Joseph Toms without any objection on the part of Ngati Toa.⁹³

3.6 WAIRAU, CLOUDY BAY AND KAIKOURA COAST

Ngati Toa were the main conquerors of the Wairau/Karauripe district, and took up occupation there in 1832. They tended to centre more around Cloudy Bay than the Wairau until the 1850s, mainly because the whaling trade had encouraged an initial concentration in this area. The only break in occupation came in 1843, when almost the entire Ngati Toa and Ngati Rarua populations withdrew from Marlborough to Kapiti and Porirua. Toa mana remained over the land, however, with Te Rauparaha's tapu on the Wairau after the so-called 'massacre'. This tapu was not lifted until 1847, when Ngati Toa resumed cultivation in the Wairau.⁹⁴

Before 1843 various Toa chiefs and people centred on the North Island were in seasonal occupation of the Wairau and Cloudy Bay. Led by Te Rauparaha and Te Rangihaeata, these Kapiti Toa came over to cultivate food for various war expeditions and for trade with the Port Underwood whalers. Te Rauparaha had a usual residence in Robin Hood's Bay, and Samuel Ironside reported that he came over four times a year to stay with his southern relatives.⁹⁵ His visits were shorter after the decline of whaling in the late 1830s, and

⁹²OLC 988, J. Toms, Old Land Claims files, National Archives.

⁹³Mackay, vol. 1, p. 299.

⁹⁴Mackay, vol. 1, p. 203.

⁹⁵GBPP 1844, vol. 2, App. 2, pp. 153, 156.

ceased altogether after the 1843 'Wairau massacre'. Problems with the Pakeha and the decline of the whaling trade led to a much smaller Toa settlement after 1843, and to a hardening of occupational boundaries between the North Island and South Island groups.⁹⁶ Nevertheless, Commissioner Spain judged that conquest and occupation had given the whole iwi of Ngati Toa the 'bona fide possession' of the Wairau and Cloudy Bay.⁹⁷

The southern boundary of this takiwa was under dispute at the time, leading both Toa and Ngai Tahu to claim the coast between Blenheim and Kaikoura. According to the government, Spain's judgement had awarded 100 miles of coastline to Ngati Toa, but this was a deliberate misinterpretation of the Commissioner's decision.⁹⁸ In fact Walter Mantell argued that the Kaikoura coast was 'waste, unoccupied; and belonged neither to the tribes who, in an expedition for revenge and pounamu (not land) abandoned it after destroying the inhabitants; nor to the small and scattered remnants of those inhabitants who, but for the arrival of Europeans would not for many generations have had land, or been able to occupy it'.⁹⁹ Although neither Ngai Tahu nor Ngati Toa were in effective occupation of the Kaikoura coast in 1840, Ngai Tahu had certainly regained the initiative on the military front by the late 1830s. They carried out a few successful raids on Wairau and Queen Charlotte Sound, while the northern iwi failed to avenge the defeat of Te Puoho in Murihiku. Ngai Tahu had not recovered sufficiently to risk the exposure of actual resettlement, however, and they did not resume occupation of their old sites at the mouth of the Kaikoura until the late 1850s.¹⁰⁰ The coast between Kaikoura and the White Bluffs remained unoccupied at this time. The main issue between these iwi today, is whether the boundary between Ngai Tahu and Te Tau Ihu should be the old Rangitane boundary at the Waiiau-Toa, or the newer boundary affixed by the Crown at Parinui o Whiti in the late 1850s.¹⁰¹

Ngati Toa shared occupation of the Wairau and Karauripe districts with Ngati Rarua, but the exact relationship of Rarua rights in connection with Ngati Toa is unclear. Various Rarua chiefs and people settled in the general district for about two years, during the first

⁹⁶T. Te Rauparaha, *passim*.

⁹⁷Mackay, vol. 1, p. 59.

⁹⁸*ibid.*, p. 201.

⁹⁹W. Mantell, Report, 18 November 1850, in Mackay, vol. 2, p. 7.

¹⁰⁰Mackay, vol. 2, pp. 9, 16-17.

¹⁰¹*ibid.*, cf. Wai 102 A-11, pp. 3-19.

Tainui occupation of the Kaikoura coast/Cloudy Bay district.¹⁰² Although they subsequently settled for two or three years with their relatives at Motueka, the Wairau Rarua led by Tana Pukekohatu may have considered this as a temporary withdrawal. They returned to the Wairau and settled with their Toa relatives again in 1837, and remained in occupation until the withdrawal of 1843. It is not clear whether this settlement involved a formal *tuku* of land by local Ngati Toa, or whether Rarua were considered sufficiently close relatives to share implicitly in Toa's rights.

Tension within Rarua and between Pukekohatu and Te Atiawa had led to the migration of 1837. Pukekohatu tried to lead the whole of the Motueka Rarua on an expedition to avenge Te Puoho and to settle at a port close to Pakeha shipping and trade, preferably the Ngai Tahu port at Akaroa. A large number of the Motueka community followed him as far as the Wairau, but the *taua* was halted here by the news that Te Rauparaha had returned to Kapiti rather than continuing south to avenge Te Puoho, ostensibly because of a feud with some of the Queen Charlotte Sound Te Atiawa. The local Ngati Toa under Nohorua persuaded the Rarua *taua* to abandon its mission. After this debacle a number of chiefs returned to Motueka and settled down peacefully with Te Atiawa and the 'Ngatirarua-Ngatiawa', while Pukekohatu and his followers remained with their Toa relatives close to the Port Underwood whaling trade.¹⁰³

This group was probably made up of the Ngati Rarua most closely related to Ngati Toa. All the major Rarua and Toa leaders traced their descent from the marriage of Te Hamupaku and Kahumoana, five generations before Te Pehi Kupe and Pukekohatu.¹⁰⁴ At least two Rarua chiefs, Pukekohatu and Te Wawharua, were described to C.W. Ligar as Toa chiefs by Port Underwood Maori in 1847.¹⁰⁵ The Ngati Toa leaders themselves described Pukekohatu, Pikiwhara, and Te Whare-aitu (also Ngati Tama) as Toa chiefs in their letter to the Governor in 1851.¹⁰⁶ Nevertheless, the two communities lived separately at the Wairau. This strong genealogical identification between Ngati Toa and the group of Ngati Rarua who settled in Cloudy Bay may explain the latter's source of title. Evidence to the Native Land

¹⁰²Ngati Toa chiefs to G. Grey, 11 December 1851, cited in Wai 102 A-3, Ms. 8.3.10e; T. Te Rauparaha, p. 77.

¹⁰³NMB 2, ff. 189, 191, 216-218, 226, 271-272, 278, 292-294.

¹⁰⁴Maori Notebook: contains an account of Ngatimutunga's connection with Ngati-Kura. . .', 1909, qMS-1320, WTU.

¹⁰⁵Mackay, vol. 1, p. 203.

¹⁰⁶Wai 102 A-3, MS. 8.3.10e, p. 274.

Court in the 1880s and 1890s hints that Rarua were initially there on sufferance, but there is no suggestion that they required a formal *tuku* of land before they could take up residence.

According to the evidence of Pitt, 'Ngatirarua had no right to the land at the Wairau. They got land through Te Makarini (Mr McLean) in after years'.¹⁰⁷ The formalisation of Rarua rights accorded by Crown recognition, however, amounted to no more than an acceptance of the existing situation. Ngati Rarua had been living on the land for nineteen years, and long occupation had strengthened their position. According to some witnesses, such a long occupation in conjunction with close relatives gave later settlers equal rights with earlier groups.¹⁰⁸ According to one Ngati Toa witness, Rarua were the first group to re-settle the Wairau after the temporary withdrawal of 1843.¹⁰⁹ The numbers of Ngati Toa were greatly reduced after this re-settlement, and from this time (if not before) Pukekohatu ranked as co-equal with Wiremu Te Kanae, the principal Toa chief of the Wairau, and Rarua outnumbered Toa in the district.¹¹⁰ Local rights were not shared with the Motueka Rarua, who remained distinct from the Wairau brethren, although a handful of Wairau migrants retained some rights and interests in their old homes in the Motueka and Tai Tapu districts.¹¹¹

The most likely explanation for Rarua's acquisition of rights, which a witness as knowledgeable as Hohepa Horomona could not explain, lay in the exposed military position of local Toa in 1837. Te Rauparaha had just withdrawn with his *taua*, leaving Nohorua's small community vulnerable to resurgent Ngai Tahu forces in the south, and aggrieved Atiawa forces in the north. Hence the arrival of close Rarua relatives with a grievance against both Te Atiawa and Ngai Tahu was greeted with relief. The local Toa community persuaded Pukekohatu not to venture further south but to remain with them in mutual alliance.¹¹² As close relatives and as equals, the two groups shared land and resources, remaining distinct but evolving identical rights.

IV NGATI TOA RANGATIRA

¹⁰⁷NMB 2, f. 202.

¹⁰⁸*ibid.*, f. 192.

¹⁰⁹NMB 3, f. 202.

¹¹⁰e.g. Mackay, vol. 1, p. 306.

¹¹¹NMB 2, ff. 1, 14–15, 178–179, 191, 223.

¹¹²*ibid.*, ff. 189, 191, 216–218, 226, 271–272, 278, 292–294.

Maori Occupation of Te Tau Ihu

The question of Ngati Toa Rangatira's status as right-holders in Te Tau Ihu is a thorny problem, currently at issue between claimant groups before the Waitangi Tribunal. One of the first questions which must be raised is whether occupation was necessary to confer rights. In 1936 the Maori Land Court declared that take:

may be under ancestry or conquest or a gift, but in any case it must be coupled with permanent occupation under the enabling right. Mere ancestry, conquest, or gift, without occupation, confers no title. This is Native custom as recognized by the Courts for close upon a century.¹¹³

This doctrine arose partly from the judgements of Commissioner Spain in the 1840s, but it did not necessarily reflect the opinion of other government officials in this crucial early decade. The Crown accepted in the 1840s that the possession of politico-military power gave non-resident chiefs and iwi some kind of right over the land, its people, and its non-human resources. Governor Hobson, for example, purchased Te Wherowhero's rights in Taranaki, and McLean gave similar recognition to Ngati Toa rights in Nelson and Marlborough Provinces.¹¹⁴ H. and M.J. Mitchell noted that most witnesses to the Native Land Court in the 1890s, long after Ngati Toa's military and political leadership had passed away, still agreed that 'Te Rauparaha, Te Rangihaeata and the other senior Ngati Toa chiefs had an interest in the districts of Nelson which they were entitled to sell'.¹¹⁵ Not all witnesses supported this contention, however, and there was certainly no agreement over the ranking of Ngati Toa's interests against those of resident iwi or their particular North Island relatives.

The Mitchells' evidence contends that Ngati Toa had some sort of nebulous right, but that their interest west of Marlborough was ephemeral, and easily extinguished by sale to the New Zealand Company.¹¹⁶ G. and S. Butterworth, on behalf of Ngati Toa, argue that the rights of Te Rauparaha and other Toa chiefs were much more robust and far-reaching, amounting to an early form of 'kingship' akin to that of Anglo-Saxon England.¹¹⁷ Commissioner Spain adopted a fairly Eurocentric view of what could be considered 'equitable' property rights, and argued that 'some imaginary rights of territorial sovereignty'

¹¹³AJHR 1936, G-6B, p. 13.

¹¹⁴Mackay, vol. 1, p. 301.

¹¹⁵Wai 102 A-16(b), Chapter 8, pp. 128-129.

¹¹⁶ibid., pp. 57, 70-73.

¹¹⁷G. & S. Butterworth, Review of Mitchell Research, Wai 102 A-15, pp. 34-43, 71-73.

could not be upheld against the rights of occupation.¹¹⁸ Modern historians disagree about this question, and the relationship between Ngati Toa and the other members of the Kawhia/Taranaki 'confederation'. Buick and Wards inclined to a right of 'suzerainty' on the part of Ngati Toa, while S. Oliver argued that none of the migrant iwi accepted Te Rauparaha's authority over them.¹¹⁹ Tamihana Te Rauparaha maintained that the Cook Strait iwi paid tribute to his father, and implied that Te Puoho left for Murihiku to escape the restrictions of living under Te Rauparaha's overlordship.¹²⁰ I have not found any evidence that South Island iwi paid tribute to Te Rauparaha, but oral sources may provide further information on this point. The only documented instance that I have found is the gift of the Te Awatea waka to Te Hiko, son of Te Pehi Kupe, by Ngati Koata of Rangitoto. Ngati Toa claimed that this was tribute from a junior hapu, and Ngati Koata considered it to be a free gift in honour of the Ngati Toa ariki.¹²¹

The relationship between Ngati Toa and their supposed 'junior' hapu, Rarua and Koata, is particularly important in this respect. The available evidence does not allow of any firm conclusions. Te Rauparaha visited Rangitoto in the early 1830s and ordered that about 300 Ngati Kuia, who had been living alongside their Koata mentors, be sent off to Kapiti as his mokai.¹²² This command was obeyed, and the waka Te Awatea was also given to Te Hiko, hereditary ariki of Ngati Toa. On the other hand, Koata's role in the Tuhawaiki incident is curious, since they took no action to punish either the visiting Ngai Tahu or their Kuia hosts, for the desecration of Te Pehi Kupe's remains. They also remained neutral in the subsequent war to avenge this insult to a man whom they were supposed to consider as their own ariki. One Koata rangatira forbade Te Rauparaha's passage through French Pass and threw him into the water.¹²³ It is difficult to ascertain whether there was in fact, as the Butterworths suggested, a particularly close and authoritative political relationship between Ngati Toa and Ngati Koata.¹²⁴

Although the political authority of Te Rauparaha was of uncertain nature and extent, there can be no doubt of his paramount position as leader in times of war, and as primary

¹¹⁸Mackay, vol. 1, pp. 55–59.

¹¹⁹R. Anderson et al., pp. 10, 15–16.

¹²⁰T. Te Rauparaha, p. 111; A. Anderson, *Te Puoho's Last Raid*, Dunedin, 1986, p. 76.

¹²¹Wai 102 A–16(a), Chapter 3, pp. 39–40.

¹²²P. Burns, *Te Rauparaha: a New Perspective*, Wellington, 1980, pp. 161–162.

¹²³See above, pp. 21–23.

¹²⁴Wai 102 A–15, pp. 57–58.

conqueror of the eastern districts of Te Tau Ihu. This conquest was followed by a Ngati Toa allotment of the land at Te Awaiti in 1831 or 1832. Some witnesses to the Native Land Court called this allotment a 'tuku', implying a gift of land in which the ultimate ownership lies with the giver, who retains certain rights (usually operative, however, only if the recipient leaves the area).¹²⁵ Others called it a 'rohewhetanga', or establishing the boundaries of where the people were to live, and this may not carry the same implication of ultimate ownership.¹²⁶ Conquest and occupation in this part of Te Tau Ihu, therefore, took place under the mana of Te Rauparaha. The role of the Ngati Toa war leader was a nominal one, however, in the conquest of the western districts of Te Tau Ihu, although Ngati Toa chiefs continued to claim that they had authorised and masterminded the attack on Tasman and Golden Bays.¹²⁷ Evidence to the Native Land Court suggests that Te Rauparaha's tuku did not allot land west of Wakapuaka, where the conquest had taken place largely independently of Toa leadership and participation.¹²⁸

Nor did Te Rauparaha's allies who were affected by his tuku as war leader and primary conqueror, agree that it represented a gift over which he retained authority and rights. Te Atiawa of Totaranui, for example, felt that as part of a group of conquerors they had an independent right to occupy some part of the conquered land, even if the choice of which part was delegated to the expedition's overall leader. The evidence of Hohepa Horomona to the Native Land Court suggests that Te Rauparaha was recognised voluntarily as a leader by Te Atiawa rather than exercising authority over them by hereditary right or by any power as overlord. Under this interpretation, each iwi was entitled to land 'as a reward for their bravery', and the arbitration which allotted the land devolved upon Te Rauparaha as an 'elected leader'.¹²⁹ Pamariki Paaka also asserted that Te Atiawa received land as 'payment for the assistance rendered in conquering the district'.¹³⁰ The difference in interpretation lies in whether the tuku was a gift representing Toa's ultimate authority, on the part of a rangatira to his loyal followers who owed him something in return, or a payment to which Te Atiawa

¹²⁵MB 2, ff. 173–174, 177–178, 300. For the current debate on customary tuku, see the evidence of M. Mutu, Wai 45 F–12, and F. Sinclair, Wai 45 I–3.

¹²⁶NMB 2, f. 229.

¹²⁷Ngati Toa chiefs to G. Grey, 11 December 1851, cited in Wai 102 A–3, Ms. 8.3.10e; T. Te Rauparaha, p. 65.

¹²⁸NMB 2, ff. 178, 184, 195.

¹²⁹*ibid.*, f. 177.

¹³⁰*ibid.*, f. 184.

were entitled as allies and to which no strings could be attached. According to Ngati Toa, Te Rauparaha's powers were much more than mere leadership arising just 'because he was the person who was instrumental in forming the expedition to Kapiti'.¹³¹

Te Atiawa's second line of defence involved an incident of uncertain nature and date, at which Te Manu Toheroa saved Te Rauparaha's life during a Ngai Tahu assault at Opuia in Queen Charlotte Sound. If a *tuku* was made, therefore, it was as a reward for saving the *ariki*'s life, and under Maori custom this removed any powers of overlordship. As Pamariki Paaka put it: 'If you had saved my life I should not be paramount over you'.¹³² Although the Ngai Tahu attack at Opuia must be dated to several years after the initial *tuku*, several claimants made it the basis for Te Rauparaha's allotment of Arapaoa (usually meaning the whole Sound) to Te Manu Toheroa and other Te Atiawa chiefs.¹³³ In making this argument they recognised that a case may have existed for Toa overlordship which they needed to answer.

Quite apart from this issue of Toa overlordship, Angela Ballara and Neville Gilmore argued that a very specific point of customary practice governed Te Rauparaha's *tuku*; that it established his *mana* over territory for only three years, after which his allies obtained full and independent rights over their respective districts.¹³⁴ Most witnesses to the Land Court agreed that the *tuku* had taken place, but since it can be reliably dated to 1832 we must conclude that under the Ballara/Gilmore interpretation of customary rights, Te Atiawa were in full and independent possession of most of Queen Charlotte Sound in 1840. The Crown negotiated for three years with local Te Atiawa for the purchase of Waitohi in the late 1840s, and Ngati Toa never attempted to interfere or challenge Te Atiawa's right. In the mid-1850s Rawiri Puaha assured Te Atiawa chief Witekau that he had not claimed to sell Tory Channel in 1853 and that Witekau was 'at liberty' to deal with the Crown as he saw fit.¹³⁵ Although this might be interpreted as permission, it is quite clear that Te Atiawa acted independently of Ngati Toa in the 1840s and 1850s. Toa rights in the district, therefore, depend on one's interpretation of the rights of conquest, of Te Rauparaha's ultimate right as war leader to dispose of the conquered territory, and of the political relationship between Ngati Toa and

¹³¹*ibid.* f. 177.

¹³²*ibid.* f. 186. Te Rauparaha was described as 'Ariki o nga Tangata', in reference to Te Atiawa.

¹³³*ibid.*, ff. 184, 186, 300.

¹³⁴R. Anderson et al., pp. 10, 15-16.

¹³⁵Mackay, vol. 1, p. 298.

their confederation of allied iwi.

V KURAHAUPO IWI

The case of the ‘conquered’ Kurahaupo iwi raises a question diametrically opposed to that of the Ngati Toa issue of rights without occupation. This is the question of whether occupation could occur *without* conferring rights. The issue is complicated by the fact that the relative status of the iwi was never static in the 1830s and 1840s, and had altered dramatically by the time the Crown came to purchase territory in Te Tau Ihu in the late 1840s.¹³⁶ In 1827-32 the majority of the Kurahaupo population was either killed or enslaved, but occupation of their own takiwa continued without a break. A few Rangitane survivors, for example, maintained a fugitive existence deep in the Wairau gorge and other inaccessible places.¹³⁷ They were never enslaved, although their numbers were further reduced by Ngai Tahu in the late 1830s, and in 1841 they finally ‘came in’ and joined their relatives who were living under Ngati Toa mana. In 1840, however, they were still independent and as Elvy pointed out, ‘kept their fires burning’ in the district.¹³⁸ The Kawhia/Taranaki ‘conquest’ was incomplete, therefore, and Ngati Kuia survivors under Pakauwera continued the fight and challenged Ngati Toa’s freedom of movement in the Pelorus district.¹³⁹ On the West Coast Ngati Apa fugitives also maintained their independence until it was safe to emerge from the interior, and one such escapee proudly informed the Native Land Court: ‘My father was never captured & made a slave, nor I’.¹⁴⁰

The rest of the Kurahaupo populations were either removed to Kapiti and other North Island centres as personal slaves, or left in subject communities in districts such as the Wairau and Kaituna valleys. In the 1880s the Crown drew a distinction between those who had been taken out of the area and those who remained as tributaries, refusing to permit ex-slaves from Kapiti a right as owners of the Wairau reserves.¹⁴¹ Nevertheless, the Crown acknowledged the survival of some degree of mana whenua on the part of the Kurahaupo iwi. In 1856, for

¹³⁶For further discussion of Kurahaupo rights, see Wai 102 A-16 (b), Chapter 8, pp. 139-142.

¹³⁷*ibid.*, p. 202.

¹³⁸Elvy, pp. 74, 80.

¹³⁹E.J. Wakefield, *Adventure in New Zealand*, vol. 1, p. 59; Wai 102 A-16(a), Chapter 3, p. 50.

¹⁴⁰NMB 1, f. 7.

¹⁴¹*ibid.*, ff. 242f.

example, it purchased Rangitane's rights in Marlborough and allotted them a share in the Wairau Reserves. The Native Land Court later confirmed Rangitane as part-owners of the reserves. Rangitane themselves advanced this Crown recognition as part of their take.¹⁴² Nor was this recognition confined to the Crown. Ropoama Te One paid Ngati Apa chiefs part of the purchase price for Port Gore in the 1850s, while on the opposite coast Te Tau Ihu 'conquerors' witnessed the deed which recognised the rights of Ngai Tahu and Ngati Apa to parts of Te Tai Poutini.¹⁴³

The government found itself obliged to recognise iwi such as Rangitane because they had regained some of their independence by the late 1840s, and were able to push their rights of occupation against Kawhia/Taranaki rights of overlordship. Their status and position under customary law was unclear. Ihaka Tekateka, a frequent Ngati Kuia/Koata visitor to the Wairau in the 1860s and 1870s, declared: 'I can't say that Rangitane had mana on the part they cultivated./I don't know that Rangitane were under Ngatitooa./I can't explain whether they had mana over the land or not'.¹⁴⁴ The evidence of Tuiti Makitanara suggested that Rangitane were living completely separate from Ngati Toa in 1853, and that they were largely independent of any effective overlordship.¹⁴⁵ Irihapeti Rare maintained that Rangitane were still slaves but agreed that Ngati Toa did not meddle with them, and that they grew food for themselves but not their Toa neighbours.¹⁴⁶ In 1850 J. Tinline discovered that Ngati Toa (because of their loss of military power) could no longer control Rangitane, who hesitated to openly defy their former masters but were capable of maintaining an independent position. He suggested that the Crown would have to recognise Rangitane rights, and time proved him correct.¹⁴⁷ The Native Land Court reversed this recognition in the Nelson Tenths Case, on the grounds that conquered Kurahaupo iwi had no rights. Rangitane, Ngati Kuia, and Ngati Apa vigorously denied this contention.¹⁴⁸

In addition to the survival of free fugitives and piecemeal recognition by Crown and conquerors, Kurahaupo iwi maintained that their claim was valid under Maori custom because

¹⁴²NMB 3, f. 360.

¹⁴³For Port Gore see NMB 1, hearing on Omamahanga block; for the Arahura purchase, see Wai 102 A-16(b), Chapter 8, pp. 76, 113-118.

¹⁴⁴NMB 3, f. 364.

¹⁴⁵ibid., ff. 368-371.

¹⁴⁶NMB 4, ff. 85-90.

¹⁴⁷J. Tinline to M. Richmond, 18 February 1850, J. Tinline Papers, Micro MS. 790, WTU.

¹⁴⁸Wai 102 A-3, documents, and Wai 102 A-5, p. 123.

it rested on take tupuna in conjunction with continuous occupation. Ngati Kuia declared at a Toa/Kuia hui in 1854: 'Although we were once conquered by Ngatitua and Ngatiawa, we have never been driven from the land of our fathers. We consider that we are yet a people, a living people, and have a right to speak when our land is being sold without our consent, and no payment is received by us'.¹⁴⁹ Hohepa Horomona declared: 'I don't know the extent of the Rangatiratanga that was left to me after the land became possessed by the Northern tribes'.¹⁵⁰ Nevertheless, the Kurahaupo iwi retained their separate kainga and community structures, and survived as a 'living people' with their own rangatira. Some Kurahaupo leaders even assumed prominence in the wider community. Hakaraia Kaikoura signed the Treaty of Waitangi in 1840, at which time he was an important leader of all the local iwi in Cloudy Bay.¹⁵¹

Some European commentators maintained that any type of slavery involved 'loss of caste', which meant loss of all rights.¹⁵² Maori witnesses to the Native Land Court sometimes agreed with this assessment.¹⁵³ Others followed different precedents, such as Governor FitzRoy's recognition of Te Atiawa's return to Taranaki, which Ngai Tahu cited as justification for their reclaiming the Kaikoura coast.¹⁵⁴ Spain adopted an intermediate position on the Wairau, arguing that captives who were permitted to reoccupy 'on sufferance' were still residents and therefore had the power of alienating land. He dismissed Rangitane rights, however, because he mistakenly believed that there were only a few fugitives in danger of immediate extermination.¹⁵⁵ He was unaware of the existence of settled tributary communities, and that Ngati Toa by no means felt in secure possession of the interior if Kurahaupo fugitives were in the area.

Ngati Kuia advanced a further claim that the Kurahaupo peoples were automatically freed from slavery when they became British subjects in 1840.¹⁵⁶ It is not clear, however, whether Britain's anti-slavery laws applied to the Maori system of mokai and tributary communities. The case of Ngati Kuia was in itself exceptional, because of the tuku of

¹⁴⁹Mackay, vol. 1, p. 297. For the failure of conquest to eliminate the rights of the 'conquered', see also Ballara, pp. 364–366, & passim.

¹⁵⁰NMB 2, f. 315.

¹⁵¹Mackay, vol. 1, p. 203.

¹⁵²E.J. Wakefield, vol. 1, pp. 168–169, 385.

¹⁵³eg. NMB 2, f. 315.

¹⁵⁴Mackay, vol. 2, p. 7.

¹⁵⁵Mackay, vol. 1, pp. 55–59.

¹⁵⁶ibid., p. 297.

Tutepourangi to Ngati Koata and the peaceful integration and intermarriage of the two iwi on Rangitoto and environs. In the Kaituna valley, however, Ngati Kuia continued to maintain a separate existence and formed the majority of the population in the area.¹⁵⁷ It is not clear how much intermarriage took place among other groups, and a detailed assessment of whakapapa by claimants would be necessary to clarify this point. The Wairau iwi, for example, continued to live and cultivate separately even on very small reserves.¹⁵⁸ It is important to establish the degree of intermarriage between 'conquerors' and 'conquered', because A. Ballara argued that it was only through such intermarriage that invading iwi obtained a secure title to the land.¹⁵⁹

One final point, which might tend to make the entire question of slavery and continued occupation academic, was established by the Maori Appellate Court in 1990. Judge Hingston ruled that a perpetuation of whakapapa and tribal history might be sufficient to retain a connection with a district, even if occupation ended in the wake of conquest. This is a fairly radical thrust in the direction of establishing a take, and if admitted would enable the Kurahaupo iwi to recite their whakapapa and oral traditions as a form of maintaining 'ahi kaa' over the entirety of Te Tau Ihu.

¹⁵⁷ibid., p. 302.

¹⁵⁸NMB 2, f. 4.

¹⁵⁹Ballara, pp. 364–366, 414, & passim.

CHAPTER 3

A 'JUST BARGAIN'? NEW ZEALAND COMPANY PURCHASES, 1839-1843

I Colonel Wakefield, 1839

The first major alienation of Maori land in the Te Tau Ihu district took place in 1839, before the signing of the Treaty of Waitangi. Ngati Toa chiefs signed a deed of sale on Kapiti in that year, which purported to sell land by districts and degrees of latitude, including the entire northern South Island. Te Atiawa chiefs signed an almost identical deed at Totaranui in the same year. The other party to these deeds was the New Zealand Company, which had been set up by English investors to colonise New Zealand. Although the validity of these sales was called into question at the time, they were made the basis of further transactions in Tasman and Golden Bays in the early 1840s, the Spain Award of 1844, and still further purchases by the Crown in the late 1840s. Before the name of the Nelson settlement had even been mentioned in Cook Strait, Te Rauparaha and other leading chiefs took this first step in a spiralling number of alienations, designed to fulfil the original requirements of the Company's Nelson scheme. These transactions raised many questions about the nature and validity of the engagements entered into between Company officials and Maori, including the adequacy of price, the deliberate consent of the vendors to the many different parts of the bargain, and the fulfilment of their engagements by both Maori and the Company (and the Company's legal successor, the Crown).

The New Zealand Company purchases of 1839, 1841, and 1842, may be measured against the express intentions of its Court of Directors. They formulated a policy designed to answer missionary criticism and Colonial Office suspicions, embodied in the form of explicit commands to their Principal Agent, but they also gave him free rein to adapt their instructions to local conditions. The directors argued that if Maori interests were the primary concern, then it was probably better for them to remain untouched by European settlement. The expansion of an unofficial frontier in New Zealand, however, had made some form of white settlement

inevitable. In this situation, settlement would be better for Maori if it was controlled by a benevolent Company, which purchased land in a scrupulously honest manner, and according to a plan that would safeguard Maori social and economic interests. Colonel Wakefield was instructed to implement such a plan based on three fundamental ideas. Firstly, the directors ordered him to identify all the customary owners of a piece of land, to obtain their deliberate consent to a sale, and to ensure that all owners received a share of the payment. In order to obtain a meaningful consent, Wakefield was supposed to ensure that owners understood not only the general nature of the transaction, but also its detailed features, and the consequences that would follow from the arrival of a large number of settlers.¹

The directors suggested that the relatively inexperienced Maori might still not understand every aspect of the sale, and acknowledged a duty to 'guard them against the evils which, after all, they may not be capable of anticipating'. In prophetic words, the Company feared that the 'danger to which they are exposed, and which they cannot well foresee, is that of finding themselves entirely without landed property, and therefore without consideration, in the midst of a society where, through immigration and settlement, land has become a valuable property'. To guard against such an eventuality, the directors developed a new form of payment for land. The first payment would consist of goods sufficient to be of real use to 'all the owners of the land', and 'less inadequate, according to English notions of the value of land, than has generally been the case'. The Company felt that the 'utter inadequacy' of their purchase money was justified by the low value of unimproved waste land, which would only obtain financial value after capital investment and settlement. The real payment for land, therefore, would be the reservation for Maori of one-tenth of the total sold to the New Zealand Company, scattered at random among the European sections and therefore participating in the value accruing from settlement and Pakeha economic development. The tenths would be far more valuable than 'anything which you will pay in the shape of purchase money', because they would enable Maori to maintain their wealth and social position as landowners amid the rising tide of European settlement.² These various features of the Company's land transactions were meant to achieve what E.J. Wakefield called 'just bargains', fair in execution and adequate in price.³

¹Instructions to Col. Wakefield, May 1839, in Mackay I, p. 51.

²*ibid.*, pp. 51–53.

³E.J. Wakefield, *Adventure in New Zealand*, vol. 1, p. 143.

Colonel William Wakefield was responsible for carrying out the directors' instructions, with a tiny staff and only a brief period of time before the first shiploads of emigrants were expected to arrive. Before assessing his activities in terms of the above instructions, it is necessary to give a brief summary of his actions. More extensive accounts of his 1839 negotiations may be found in a number of works, especially those of P. Burns, R. Allan, and the Mitchells, as well as the minutes of the Spain Commission and the Commissioner's published reports.⁴ The colonel made brief visits to Queen Charlotte Sound and Cloudy Bay, enlisted the aid of local Maori-speaking Europeans, especially the whaler Dickie Barrett and the sawyer J. Brook, and then sailed to Port Nicholson. His instructions gave this harbour top priority, as the directors considered it the most potentially valuable harbour in New Zealand.⁵ After about a week of negotiations, some of the local Te Atiawa chiefs signed a deed which covered the Whanganui a Tara district, with at least a partial description of boundaries.

After obtaining consent to this deed, the colonel sailed to Kapiti to treat with the most powerful Cook Strait chiefs, Te Rauparaha and his immediate followers. Wakefield spent nine days in negotiation at Kapiti, with J. Brook as the main interpreter, before obtaining the signatures of Te Rauparaha, Te Rangihaeata, Te Hiko, and eight other chiefs to a deed which purported to sell twenty million acres of land in the Cook Strait area, including the whole of the future Nelson and Marlborough Provinces. The boundaries were described in terms of degrees of latitude, and the deed included a long list of the districts being sold in both islands. According to European testimony, these districts were also pointed out to Maori on a map, and the chiefs proved their ability to understand such a map by drawing a chalk chart on the cabin table.⁶ The chiefs later denied that they had been shown a map or had agreed to sell all the districts enumerated in the deed.⁷ This Kapiti deed was made the main basis of New Zealand Company claims in the South Island, especially because the main Toa chiefs consistently stated that they had actually agreed to alienate their interests in Tasman and Golden Bays.⁸

⁴See P. Burns, *Fatal Success*, Auckland, 1989; R. Allan, *Nelson: A History of Early Settlement*, Wellington, 1965; Wai 102 A-16(a & b), Chapters 7 & 8. The minutes of the Spain Commission are held at National Archives, OLC 1/46, 907. The published reports of the Commission are in GBPP, and the Nelson Report is also in Mackay, vol. 1.

⁵Instructions to Col. Wakefield, May 1839, in Mackay I, p. 50.

⁶Evidence of Col. Wakefield, 9 June 1842, & J. Brook, 11 June 1842, OLC 1/46, 907, National Archives.

⁷*ibid.*, Te Hiko, 1 May 1843.

⁸*ibid.*, Te Rauparaha & Te Rangihaeata, 26 April 1843; cf. E.J. Wakefield, vol. -I, pp. 142-143.

After obtaining the Port Nicholson and Kapiti deeds, Colonel Wakefield attempted to treat with the Te Atiawa of Waikanae but was foiled by the conflict between Atiawa and Ngati Raukawa. A few of the younger chiefs, under Wiremu Kingi Te Rangitake, were deputed to accompany the Wakefields to Queen Charlotte Sound. After several days of negotiation with most of the resident Atiawa of the Sounds, a third deed was signed which conveyed virtually the same districts to the Company as the Kapiti deed had claimed to do. This proved to be Colonel Wakefield's final purchase in the Cook Strait region for 1839, because the Waikanae people were too involved in hostilities to negotiate a sale, and the colonel thought it was more pressing to move north than to obtain the consent of the inhabitants of Golden, Tasman, and Cloudy Bays.⁹ He paid a sum total of £9000 worth of goods, including the usual guns, powder, blankets, pipes, and axes, to a series of groups manifestly obsessed with the threat of major war between the 'Kawhia' and 'Taranaki' peoples of the region. Tension between hapu of Te Atiawa and various sections of the 'Kawhia' people ran high in both islands, and several times resulted in armed clashes between the various factions. Nobody was ever entirely sure who would join the battles or on which side, but an escalation of hostilities was clearly feared in 1839. This hindered the Company's efforts at Waikanae, but on the whole facilitated their negotiations elsewhere, as some Maori may have seen little further than the guns and powder which the various speculators were offering in return for signatures to a deed.¹⁰

The Kapiti and Queen Charlotte Sound deeds formed the basis for the New Zealand Company's claim to have purchased the whole of Te Tau Ihu o te Waka a Maui. The first question which must be asked about these deeds is: did Colonel Wakefield identify all (or any) of the correct right-holders, and make his purchase from them? This has been a matter of considerable debate among claimants, and the evidence of H. and M.J. Mitchell suggests that the Ngati Toa signatories to the Kapiti deed were not the main right-holders in Tasman and Golden Bays, although they could claim the status of active rangatira in the Wairau and Cloudy Bay districts.¹¹ Local residents maintained that these chiefs could not alienate Tasman and Golden Bays without their consent. The Spain Commission clearly established that Te Rauparaha made no attempt to consult these chiefs, and did not pay them any part of

⁹Wai 102 A-16(a), Chapter 7, pp. 37-40.

¹⁰ibid., Chapter 7, passim.

¹¹eg. Wai 102 A-16(b), Chapter 8, pp. 57, 70-73.

the purchase price for their land.¹² Nevertheless, later evidence to the Native Land Court agreed that the senior Ngati Toa chiefs had some kind of alienable interest in the whole region, and Colonel Wakefield was probably correct in assuming that no transaction could be made in the political and military situation of 1839, without the express consent of Te Rauparaha.¹³

Wakefield seems to have thought that there were two main groups of Maori in Cook Strait: a fairly centralised polity of 'Kawhia' Maori under the Kapiti chiefs; and their 'Taranaki' allies-cum-enemies, who were less centralised but went under the generic name of 'Ngatiawa'. The presence of Te Whetu of D'Urville Island and Tamaihengia of the Wairau Ngati Toa at the Kapiti signing may have encouraged him to believe that the separate consent of Ngati Rarua, Ngati Koata, Ngati Tama, and Nohorua's Ngati Toa, was not necessary after Te Rauparaha had given *his* word. Neither Te Whetu nor Tamaihengia, however, had the degree of mana necessary to bind their own hapu single-handedly, let alone the other inhabitants of their districts.¹⁴ Wakefield clearly believed that Te Atiawa, on the other hand, were independent of the Kapiti chiefs, but lacked a leader of the stature of Te Rauparaha who seemed capable of committing the whole tribe, hence his more particularised negotiations with three different Atiawa communities.

Nevertheless, the colonel knew of the existence of other, numerous right-holders throughout the vast district he claimed to have purchased, whose consent was necessary for the validity of the transaction. The Totaranui people, for example, told him that they could not speak for their relatives in Te Tai Tapu, whose consent he would have to obtain separately, but Wakefield made a deliberate decision not to visit this district because of time constraints.¹⁵ He failed to enter into any form of transaction, therefore, with the resident right-holders of Tasman, Golden, and Cloudy Bays. He thereby failed to carry out his instructions and obtain the consent of all owners to his deeds.

It is also necessary to assess whether the Company's negotiations and deeds were carried out in such a way as to satisfy its own requirement of scrupulous honesty. The directors demanded that the nature and details of the transaction should be adequately

¹²J. Brook, 13 June 1842, & E.J. Wakefield, 14 June 1842, OLC 1/46, 907.

¹³*ibid.*, Col. Wakefield, 9 June 1842. See also above, p. 37.

¹⁴Te Whetu was a senior Ngati Koata chief from Rangitoto, but his son Te Maaka was considered more powerful; Tamaihengia was a nephew of Nohorua and a younger brother of Te Kanae and Rawiri Puaha, all of whom were more senior resident chiefs at Cloudy Bay.

¹⁵R. Allan, *Nelson: A History of Early Settlement*, pp. 43–44.

explained to the Maori, so that their assent would be a deliberate act based on understanding, thus forming a valid contract between the Company and the owners. They suggested that Maori would have observed similar transactions in the Bay of Islands and other areas with a high rate of land sales, and that they could be made to conceive of their future fate through the illustration of a Sydney or Port Jackson being established in their neighbourhood.¹⁶ There is certainly evidence that some chiefs had participated in land sales before 1839, but it is not clear how far they understood these transactions in terms of a European alienation of all rights in return for a single payment. Many of the pre-Treaty transactions involved the settlement of local whalers, who may have written out a deed but who also married into the local community and shared land with their wives' relatives.¹⁷ Other transactions suggested that Maori could safely ignore the contents of a deed if it failed to agree with their own understanding of a transaction. Captain Blenkinsopp, for example, traded an unusable canon for the right to stop over in the Wairau and collect wood and water. The deed for this transaction, however, was actually a sale of the whole district to Blenkinsopp and his heirs. Te Rauparaha tore up his copy of the deed when he discovered what was actually written in it, and may also have driven Blenkinsopp's Maori widow out of the region.¹⁸ This experience of written deeds did not bode well for Colonel Wakefield in 1839.

There is also a great deal of doubt as to whether the actual contents of the deed were properly explained to the vendors. Maori witnesses to the Spain Commission were very consistent in claiming that the long list of districts had been an enumeration of the areas conquered by Te Rauparaha and Ngati Toa. Tutahanga told Spain that this information was supplied to Wakefield in order to prevent the Company from dealing with other claimants, as they had at Port Nicholson. According to Te Hiko and others, they never realised that the list of districts read out to them was supposed to be the places that they were selling.¹⁹

There was no unanimity, however, on the question of what they *had* agreed to 'sell', either in terms of which districts or of what a sale actually meant. In terms of districts, most Maori witnesses agreed that Tasman and/or Golden Bays were involved, under generic terms such as 'the Taitap' or Whakatu. Intervening events, such as the unexpected prominence of

¹⁶Instructions to Col. Wakefield, May 1839, in Mackay I, pp. 51–53.

¹⁷eg. J. Toms, OLC 988.

¹⁸Wai 102 A–16(a), Chapter 7, pp. 28–29, 44.

¹⁹Te Rauparaha & Te Rangihaeata, 26 April 1843; & Te Hiko & Tutahanga, 1 May 1843, OLC 1/46, 907.

Whakatu after the Nelson town site was founded there, may have influenced the names used by witnesses to describe the districts which they had actually ceded. Many of them also maintained that the agreement applied to land in the South Island only, although witnesses such as Tutahanga abandoned this position under cross-examination. But nobody included the Wairau as an area to which they had relinquished exclusive rights.²⁰

On the issue of what was actually being sold within the conceded districts, the Spain Commission evidence suggests that the Kapiti Maori may have understood the agreement as granting a right of occupancy in those areas, presumably alongside their resident relatives, and not as an absolute alienation. This may also be inferred from the evidence of Colonel Wakefield himself, who differed markedly from the Ngati Toa view of which districts were included, but described the transaction as one for land which nobody was using, and which the chiefs agreed that he could use if (for some reason that they did not understand) he really needed it. At the final meeting, he said that Te Rauparaha and Te Hiko

enumerated the places possessed or claimed by them, they excepted of their own act the Islands of Kapiti and Mana, as places where they or some of their tribe resided; and which had been the subjects of previous Bargains with the white People, they assured me that they had never parted with any other portion of their lands that the principal part of them were entirely uninhabited, and they were not sorry to get rid of them, as they were of no use to them, and they did not know of what use they could be to me.²¹

One factor in all this confusion was the role of interpreters, whose command of the Maori language may have been inadequate. According to Spain and Octavius Hadfield, neither Brook nor Barrett was capable of translating the complex concepts of the deeds into Maori.²² While there may have been some deliberate concealment of elements of the transaction, such as which districts were involved, there were also inherent linguistic and cultural problems in trying to convey concepts such as 'tenths reserves' to Maori vendors. Te Iti of Motueka admitted that it took several years before he understood what the Company meant by tenths.²³ Dicky Barrett's translation to Te Atiawa may explain why, since his conveyance of the idea of tenths amounted to: 'our [Pakeha] Side or part of this Land as a Seat for

²⁰ibid.

²¹Col. Wakefield, 9 June 1842; cf. Te Rauparaha & Te Rangihaeata, 26 April 1843; & Te Hiko & Tutahanga, 1 May 1843, OLC 1/46, 907.

²²O. Hadfield, Evidence at the Bar of the House, AJHR 1860, E-4, p. 13; P. Burns, *Te Rauparaha*, pp. 203-204.

²³Te Iti, 21 August 1844, OLC 1/46, 907.

yourself, and all your Children, there is land enough for the whole of you and the White People'.²⁴

Translation remained a problem for all the early Company transactions, including the Motueka and Golden Bay agreements, and it was bound up with the problem of conveying ideas to Maori which were outside their own experiences. According to the Company, for example, Maori were giving up their own rights to live on the land, except for the areas designated as tenths by the Company's wheel and a Pakeha selector of sections. Maori vendors did not take this meaning out of the 1839 agreements and nor did they understand the nature of the settlement that would follow the deed. Te Wharepouri of Port Nicholson openly avowed that he did not believe the colonel's assertion that large numbers of settlers would come, and the Ngati Toa chiefs were equally confused about why the colonel wanted a right to use parts of the land which they were not using themselves.²⁵ The colonel admitted that he thought the vendors did not understand the purpose for which their land was purchased.²⁶ They certainly had no idea that they would have to give up land under cultivation, let alone their traditional itineration to use resources scattered throughout bush and countryside.²⁷

Against this testimony must be balanced the experience and probable motivation of Te Rauparaha, who had visited Sydney and who proved surprisingly eager to sign deeds after his experience with Captain Blenkinsopp. One explanation of his actions may be that he guessed that the settlers would prove both numerous and troublesome, and that he therefore directed them to the most distant territory in which he had an interest (and which would be no loss to *him*), Tai Tapu in Golden Bay. It was certainly surprising that a chief who had spent the last few years trying to maintain a monopoly over the Cook Strait trade with Pakeha, and especially to exclude Te Atiawa from that trade, should suddenly direct a new source of the lucrative commerce to a distant area outside his direct control, and moreover for the exploitation of other iwi who had felt the pinch of his earlier monopoly. It is unlikely that he was swayed by undue consideration for the deed or the transaction as a whole, since his past experience suggested that he could repudiate inconvenient or false bargains whenever he chose. He certainly could not have predicted the rapid eclipse of his military and

²⁴R. Barrett, 10 February 1843, f. 78, OLC 1/46, 908.

²⁵E.J. Wakefield, vol. 1, p. 202.

²⁶Col. Wakefield, 9 June 1842, OLC 1/46, 907.

²⁷P. Burns, *Fatal Success*, p. 120.

political power in the 1840s, or the advent of British law and the Spain Commission to keep him to a hastily conceived bargain, entered into to obtain trade goods and especially weapons for use against Te Atiawa.

The understanding of signatories to the 1839 Kapiti deed, therefore, did not come close to fulfilling the strict instructions of the Company's directors. The Queen Charlotte Sound sale was less important, because the Company never really used the deed to pursue its claims in the South Island. Nevertheless, it may be useful to report A. Parsonson's conclusion in respect of this deed: 'Clearly it never occurred to him [W.K. Te Rangitake] or to the other chiefs that these pieces of paper might make them guests on their own lands, for such written transactions, involving vast tracts, were quite outside their experience'.²⁸ Rev. J. Whiteley was especially scathing in his assessment of the New Zealand Company's efforts at communication in Cook Strait:

The plan of native reserves has been greatly lauded; and it has been asserted that the natives made it the principal consideration in the disposal of their lands. I venture to say that they could not possibly understand the plan. They might get hold of the idea that they were to Noho tahi, "Sit or live together with the Pakehas;" and this would please them, because they would never dream of losing their authority and chieftainship, but would satisfy themselves with the vague notion of all things common, and themselves (as the original proprietors of the soil) lords and chiefs of all.²⁹

If the right-holders involved in the 1839 transactions, which were essentially upheld and extended by the Crown, did not understand them in the same way that Colonel Wakefield did, were they nevertheless paid a fair price for their land? Te Rauparaha did not think so in 1843, and claimed that Wakefield had said to him: 'give me a small piece of Ground equal to the property that I have given you'.³⁰ William Spain, on the other hand, felt that the payment was generous when compared to other transactions at the time, but only after the twenty million acres had been drastically reduced by the Pennington Award of 1840.³¹ The goods were only a form of down payment anyway, since the potentially valuable tenths were conceived as the real, lasting payment for the land.

²⁸*NZDB*, vol. 1, p. 499.

²⁹J. Whiteley, Kawhia, 20 July 1843, in *GBPP* 1844, Appendix 4, p. 182.

³⁰Te Rauparaha, 26 April 1843, OLC 1/46, 907.

³¹Minutes of Proceedings, Nelson, 24 August 1844, in Mackay I, p. 61.

The Company's fulfilment of its promises with regard to the tenths will be discussed in detail in a subsequent chapter, but it may be useful to summarise the extent to which Maori in Te Tau Ihu received the promised tenths. Firstly, the Nelson scheme reserved one-eleventh rather than the one-tenth promised in the Kapiti deed, and by Captain Wakefield at subsequent negotiations. Secondly, the town and suburban tenths were drastically cut to reflect the number of acres available to the settlement in the mid-1840s, and were not restored to their original extent when the settlement obtained its full acreage in the late 1840s. Thirdly, the rural tenths (which should have been 15,000 acres) were never created. Fourthly, the Marlborough iwi became part of the Nelson settlement when Wairau and Waitohi were purchased to provide rural sections for the original Nelson scheme, but these iwi were not made beneficiaries of the tenths. Fifthly, a quarter-acre section of Waitohi was added to every 201-acre section of the original scheme, with the exception of the Native Reserves. Quite apart from issues of reserve management and the question of how much benefit Maori received from Pakeha trusts, therefore, Te Tau Ihu Maori never received close to the full number of tenths reserves promised to them by Colonel Wakefield, and later by Captain Wakefield in the 1841 and 1842 agreements.³²

II Captain Wakefield, 1841-1842

In November 1840 the New Zealand Company finally reached an agreement with the Crown, under which it would receive a Crown Grant of four acres for every pound spent on colonisation. The government appointed an accountant, James Pennington, to examine the Company's receipts and estimate the acreage of land to which they were entitled under this agreement. Pennington eventually decided that Company expenditure entitled it to almost a million acres of land, which it could either choose from among the twenty million acres supposedly purchased by Colonel Wakefield in 1839, or could purchase as new blocks from the Crown at a discount rate. This award was not dependent on the Company proving that its pre-Treaty purchases were valid, because (as P. Burns suggested) the Colonial Office had no reason in 1840 to doubt the validity of Wakefield's titles.³³

³²See below, Chapter 7.

³³P. Burns, *Fatal Success*, pp. 165-173.

The Pennington Award enabled the Company to plan a new settlement, which was to consist of 1,100 sections of 201 acres each, amounting to a total of 221,100 acres. Company officials in New Zealand decided that the Award entitled them to reinterpret Colonel Wakefield's vast purchase as an option taken out on Maori land. Although they could no longer claim the whole, they felt that the original vendors could neither oppose their selection of the award in any district which happened to suit them, nor sell any of this vast land reservoir to other buyers. Some districts, such as Totaranui and Rangitoto, were left uncontested in Maori hands as less suitable for colonisation, while others like West Whanganui were left conditionally in Maori occupation, to be taken up at the Company's convenience.³⁴ If the Company proved a valid title to its huge claims, then millions of acres would be adjudged to belong to it which the Pennington Award would not allow it to possess. Under the Land Claims Ordinances, such surplus land was supposed to revert to the Crown rather than to the vendors. The Company itself, however, knew of the Maori belief that land which was not taken up by the purchaser reverted to those who made the transaction, a belief which they had instructed Colonel Wakefield to act upon in 1839:

We have reason to believe that you may rely on the good faith of the Natives in any transactions for the purchase of land. The known instances are numerous in which contracts of this sort have been strictly observed, and very few in which they have been questioned. It appears, however, that the Natives expect the land to be used by its European purchasers. The tribe from which some land was purchased in 1826, on the Hokianga River, by a London Company (which despatched an expedition under the sanction of Government similar to that which you will command), sent a message to the Directors of the Company to the effect that unless they took actual possession of the land which they had purchased, it would be resumed by its Native owners.³⁵

In 1841 the Nelson preliminary expedition arrived in New Zealand, headed by Captain Arthur Wakefield, younger brother of Edward Gibbon and Colonel William Wakefield. This expedition had to find 221,100 acres of land for the new Nelson settlement, either from within the 1839 purchases or elsewhere within the Crown's demesne lands. Local officials had become enamoured of Port Cooper (later Lyttelton) and the Canterbury district, but Governor Hobson opposed this choice on a number of grounds. This district

³⁴A. Wakefield to W. Wakefield, Nelson, 14 May 1842; cf. *ibid.*, 2 August, 1842, qMS 2099.

³⁵Instructions to Col. Wakefield, May 1839, in Mackay I, p. 52.

was encumbered with the Nanto-Bordelaise Company claim, and the Governor had no troops with which to protect settlements so distant from his capital at Auckland. He urged the Company to found Nelson in the Auckland region, and flatly refused to buy Port Cooper or permit the Company to do so. Colonel Wakefield felt that a Company settlement in the vicinity of Auckland could never prosper, and fell back on the territory purchased by the Kapiti and Queen Charlotte Sound deeds in 1839.³⁶

Tasman Bay seemed a convenient location for the Australian trade, although an earlier investigation had rejected it in favour of the more extensive agricultural lands of the New Plymouth/Taranaki settlement. Captain Wakefield examined the bay in October 1841 and decided to locate the Nelson settlement in Tasman and Golden Bays. It was unlikely that the full 221,100 acres of suitable land could be found in this district, but Wakefield felt that he had little choice in the matter, and that more land could probably be taken up to the east as soon as suitable routes were established for quick communication with the Wairau (called 'Wairoa' in the deeds). There were also rumours of vast inland plains, which the Company's surveyors and explorers were sent out to find and assess for agricultural use.³⁷

The Ngati Rarua and Te Atiawa of Motueka/Riwaka in Tasman Bay welcomed the arrival of Captain Wakefield, and proved anxious to have the settlement in their district. They urged him to establish the town at Kaiteretera, a harbour in their immediate neighbourhood. E.J. Wakefield considered that the immediate payment and the increased market for pigs, potatoes, fire wood, and services, were the universal motives for such eagerness to have settlers. Some chiefs, such as Rawiri Puaha of Ngati Toa, believed the assurances of the Wakefields that Maori would receive other advantages from having a 'civilised' town in their neighbourhood.³⁸ Maori politics were also important, if less obvious to Company observers. Pamariki Paaka, for example, told the Native Land Court that Ngapiko of Ngati Rarua invited European settlement in order to strengthen Rarua's position in the region against that of Te Atiawa.³⁹ Furthermore, the Motueka Maori as a whole competed with Ngati Tama from the other side of the Bay to obtain the settlement in their district. According to some accounts, the Motueka Maori tried to conceal the

³⁶R. Allan, pp. 63–66.

³⁷A. Wakefield to W. Wakefield, *passim*, qMS 2099.

³⁸E.J. Wakefield, vol. 1, pp. 105–106.

³⁹Nelson Minute Book 2, f. 219.

existence of a better harbour at Whakatu, until the Ngati Tama of Wakapuaka realised what they were doing and revealed its location to Captain Wakefield, because it was closer to their own side of the Bay.⁴⁰ It proved a happy choice, however, because unlike Port Nicholson it was not a permanent Maori occupation site and did not involve immediate conflict over pa and cultivations within the town acres. Both the Motueka and Wakapuaka groups felt that they would be able to exploit the Pakeha trade at Whakatu, and Captain Wakefield gave them no reason to believe that they could not camp wherever they chose in the area. He probably felt that this would be on the basis of 'squatting' like the labourers until sections were properly surveyed and allocated, after which they would have to use the town tenths.⁴¹ These were in fact judiciously chosen, with their existing temporary residences in mind, such as Matangi Awhea.⁴²

Tasman Bay Maori were anxious to have settlers, therefore, and negotiated agreements with Captain Wakefield in October and November 1841. The captain's hands were tied, however, in such a way as to deprive these agreements of the form and trappings of legal Pakeha sales. Maori understandings of the agreements are hard to ascertain, because the Spain Commission examined only one chief from Tasman Bay (and none from Golden Bay), but they may be tentatively reconstructed from the evidence of Te Iti, and from the likely customary implications of the recorded Pakeha explanations. Captain Wakefield could not conduct land purchases from Maori *per se*, because only the Crown could buy land after February 1840. Nor could he ignore the fact, however, that Colonel Wakefield had never visited Tasman or Golden Bays, and that the iwi resident in those places had neither consented to the sale of their lands, nor received any of the payment given to Kapiti Ngati Toa and Totaranui Te Atiawa.⁴³ In effect, he had to obtain the consent of resident chiefs and pay them for their land, without actually conducting a formal land purchase. There could be no deeds, no specification of boundaries, no formal agreement on the part of the inhabitants to relinquish their rights over specified pieces of land, and no formal definition of alienation as a permanent act on behalf of their children and children's children, 'ake, ake, ake'.

Instead, Captain Wakefield clung to the legitimacy of the 1839 deeds and insisted

⁴⁰R. Allan, pp. 68–69. See also A. Wakefield, Diary, 5 & 10 November 1841, qMS 2095.

⁴¹A. Wakefield, Diary, 10 & 27 November, 8–16 December 1841, qMS 2095 & 2096.

⁴²Wai 102 A–16(b), Chapter 7, pp. 30–31.

⁴³E.J. Wakefield, 14 June 1842, OLC 1/46, 907.

that he was not purchasing land but giving presents to resident Maori 'upon settling'.⁴⁴ Both Motueka and Wakapuaka Maori contested the right of Te Rauparaha to sell their land. They sometimes admitted his right to sell his own, undefined interest as a conqueror, but insisted that he could not dispose of their rights without consulting them, or paying them part of the purchase money. Wakefield smoothed over this dispute by proclaiming that his presents were the equivalent of what they should have received from Te Rauparaha, and the debate usually passed on from this point.⁴⁵ Pakeha witnesses later claimed that the Maori made a definite acknowledgement of Te Rauparaha's sale as a valid sale of their land, before receipt of their goods.⁴⁶ Captain Wakefield's contemporary account of the transaction is much less definite on this point, and it seems that both sides stated their position and then tacitly let the matter drop.⁴⁷ This was a serious deficiency in Wakefield's proceedings, because a clear acknowledgement of Te Rauparaha's initial sale was necessary to support the captain's interpretation of his gift-giving.

Rev. C.L. Reay described Maori understanding of land sales in his region, as he had learnt it after his arrival in Nelson in 1842. He declared: 'it is not consistent with their practice to alienate their lands in perpetuo; but only during the life-time or during the convenience or occupancy of the party to whom it may be conveyed'. He felt that it was impossible for Maori to have 'ceded absolutely and without reservation' their rights to possession of the land.⁴⁸ If the local Maori denied the 1839 sale, therefore, and accepted Captain Wakefield's insistence that he was not purchasing land but giving presents 'upon settling', it is hard to see how they could have understood the 1841 transactions as a permanent alienation of blocks of land.

Te Iti certainly maintained that he was ceding a right to settle:

Q. Did you consent on that occasion on receiving those goods to allow the occupation of the land by the settlers when they arrived?

A. Yes - on that occasion I did consent for the Europeans to settle but not to take all the land.⁴⁹

⁴⁴A. Wakefield, Diary, 29–30 October 1841, qMS 2095.

⁴⁵ibid., & 11 November 1841.

⁴⁶eg. A. Macshane & J. Tytler, 20 August 1844, OLC 1/46, 907.

⁴⁷A. Wakefield, Diary, 29 October & 11 November 1841, qMS2095.

⁴⁸C.L. Reay to CMS, Nelson, Feast of St. Michael, 1845, CN/073, Micro MS Coll 4/58.

⁴⁹Te Iti, 21 August 1844, OLC 1/46, 907.

Wakefield himself called this a 'wai [mai] no mai', by which he presumably meant a 'homai no homai', thus casting the transaction as a Maori customary one in which gifts were exchanged of equivalent value.⁵⁰ The Maori gift in this exchange was a cession of the right to occupy, which was sometimes marked in Maori tradition by the host group leaving the area, and also by a series of presents over a period of time. When Te Iti remarked that Captain Wakefield had told him 'don't be afraid this will not be the last payment you will have from me', this more likely reflected Te Iti's expectation of what should follow than an actual undertaking by the Company's agent.⁵¹ Due to very sketchy recording of the agreement, it is not clear whether districts were specified in which Maori would cease to have occupational rights, always excepting their new tenths, which would be allocated and selected by the Company. J. Tytler was asked whether the Maori mentioned 'the extent of land or the Boundaries of the Districts they were giving up', to which he at first replied that 'there were no Districts mentioned', but later amended his answer to read: 'No it was generally understood to be the whole District'.⁵² Pakeha witnesses testified that Maori specified that settlers were not to interfere with their cultivations, and that the whole of the 'Big Wood' at Motueka was to remain exclusively in Maori hands.⁵³ Some of the repercussions of settlement at Port Nicholson had clearly been heard in Tasman Bay by 1841. Nevertheless, Te Iti maintained that he only gave permission for settlement in one or two restricted areas, and that he had never consented, for example, to Pakeha occupation of the rich Waimea district.⁵⁴

Maori and Pakeha disagreed, therefore, about the nature and details of the transaction. According to Te Iti, the tenths were explained as a vague system under which settlers and Maori would share the land.⁵⁵ This further confused the notion of a sale, and the renewed promise of tenths as part of the purchase payment was not clearly understood by either Company officials or the Motueka chiefs. One of the Company's surveyors, for example, assured Te Poa Karoro that the tenths would be surveyed in the district as extra land for Maori, over and above their places of occupation and cultivation, but this promise

⁵⁰A. Wakefield to W. Wakefield, Nelson, 1 August 1842, qMS 2099.

⁵¹Te Iti, 21 August 1844, OLC 1/46, 907.

⁵²J. Tytler, 20 August 1844, OLC 1/46, 907.

⁵³ibid., & A. Macshane, 20 August 1844.

⁵⁴ibid., Te Iti, 21 August 1844.

⁵⁵ibid.

was not upheld by his superiors.⁵⁶ Furthermore, J. Tytler suggested in a tentative way that Maori *might* have understood that only current cultivations, not 'old, deserted ones' would be left undisturbed.⁵⁷ Maori did not see it that way, and there were many similar sources of confusion and dispute about the inadequately recorded transactions of October (Motueka) and November (Wakapuaka) 1841.

Captain Wakefield seems to have made a reasonable effort to satisfy the main right-holders in Tasman Bay, and most of the principal Ngati Rarua and Ngati Tama chiefs received goods for distribution to their people. Wakefield even made presents to Cloudy Bay Maori for their (undefined) rights in Tasman Bay, although he paid nothing to Ngati Koata.⁵⁸ The Ngati Tama of Wakapuaka received much less compensation than their Motueka neighbours, but this was because Wakefield had no intention of "taking up the Company's option" on the Wakapuaka district itself. The reason for this is not clear - he may have believed that there was insufficient cultivable land to justify allocating sections to settlers,⁵⁹ or the Wakapuaka Maori may have specified that they would not allow settlers in their neighbourhood.⁶⁰ The former seems more likely, since Ngati Tama appeared as eager for settlers as Ngati Rarua in 1841.

Ngati Tama received presents, therefore, for ceding a right of occupation in Whakatu and other places outside their immediate home territory. As a result, there was no occasion for disputes between them and settlers in 1842-1843. Both groups continued to visit Whakatu for trade, and it was not until the surveying of the suburban sections in the Motueka district that disputes developed between Rarua/Atiawa and the settlers. There were a few minor clashes between the two, because the Company failed to keep its promise to except the Big Wood from survey and allocation to settlers.⁶¹

After reaching agreement with the Tasman Bay Maori, Wakefield sent a party of surveyors to examine Golden Bay and assess its widely known coal deposits. He later sent a small party to begin mining the coal before he began negotiations with the local residents, assuming ownership on the basis of the 1839 Kapiti deed. Although he knew that the inhabitants were 'anxious to make a fresh bargain', he felt able to delay settlement of their

⁵⁶Wai 102 A-16(b), Chapter 8, p. 33.

⁵⁷J. Tytler, 20 August 1844, OLC 1/46, 907.

⁵⁸A. Wakefield, Diary, 1841, *passim*. See also Wai 102 A-16(b), Chapter 8, pp. 25-26.

⁵⁹A. Wakefield, Diary, 26 October 1841.

⁶⁰Wai 102 A-16(b), Chapter 8, p. 26.

⁶¹*ibid.*, pp. 34, 42-44.

claims because 'their numbers are insignificant, not amounting to more than 120, and two thirds are anxious for our settling'.⁶² Difficulties in obtaining an interpreter and a ship forced Wakefield to delay his negotiations until September 1842, by when he was less sanguine about the situation in Golden Bay after various obstructions offered to both coal miners and sawyers in the area. Lime kilns and saw pits were damaged, and the Motupipi Maori offered vigorous opposition to the exploitation of resources in their area.⁶³

Wakefield's expedition proved to be the first of three initiatives, in all of which goods were distributed to different chiefs of the Motupipi, Takaka, and Aorere districts, and even still there were complaints that some right-holders had not received any of the purchase price. Wakefield again stressed that Te Rauparaha had sold the land, and that what he offered 'was as presents and not as further payment'.⁶⁴ According to A. MacDonald, who did not speak Maori, the Golden Bay chiefs agreed to give up the land as 'the property of the white men, it was stated that the whole District was to be given up', and that they would 'not obstruct the Europeans in taking coal'. They did not, however, relinquish their own rights to the coal, and received assurances that their pa and cultivations would 'not be interfered with'.⁶⁵ They were also promised the reservation of a tenth of their district, and the opportunity to benefit from the town tenths at Whakatu/Nelson.⁶⁶

After three separate initiatives and the payment of about £500 worth of goods, Wakefield had mainly succeeded in satisfying the Aorere chiefs but not the people of Motupipi, who continued to resist the Company's claims until 1846. He did not attempt to make presents in return for the right to settle at West Whanganui, but marked this district down (the Tai Tapu block) for future action.⁶⁷ The Golden Bay Maori understanding of the 1842 agreements is difficult to uncover, especially since none of their chiefs were examined by the Spain Commission. In the absence of deeds or other written records which set forth the details of the hui and agreements, we are dependent on the hostile testimony of Company witnesses and brief mentions in the journals and letters of Company officials. Golden Bay Maori probably understood the transaction in a similar light to those of Tasman Bay, but seem to have been less acquiescent in the demands of the

⁶²A. Wakefield to W. Wakefield, Nelson, 8 April 1842, qMS 2099.

⁶³ibid., 4 April, 1 August 1842; J. Tytler, 20 August 1844, OLC 1/46, 907.

⁶⁴A. MacDonald, 20 August 1844, OLC 1/46, 907.

⁶⁵ibid.

⁶⁶ibid., T. Duffey, 20 August 1844, OLC 1/46, 907.

⁶⁷A. Wakefield to W. Wakefield, Nelson, 14 May 1842, qMS 2099.

Company. The Crown had to make further purchases to secure the Golden Bay districts,⁶⁸ and there were the usual confusions about tenths, boundaries, present or past cultivations, and the question of rights of occupation versus total alienation.

Captain Wakefield made a total of £980 worth of presents, by the Company's reckoning, which consisted of the usual guns, powder, blankets, pipes, and other trade goods.⁶⁹ In return for these presents (and a further payment of £800 in 1844), the Company eventually received title to 151,000 acres in Tasman and Golden Bays, making a total Company payment (in perishable goods) of less than 3d. per acre. The reservation of a tenth of the land in all districts, which Wakefield had promised in 1841 and 1842, entitled the Maori to 15,100 acres of the Company's grant, and to more if the Company sections were eventually expanded to meet the original stipulations of the Nelson scheme.

III The Wairau 'Purchase', 1843

By the end of 1842, Captain Wakefield faced enormous problems in completing the Nelson scheme. He had found sufficient land for the town and suburban sections, but was unable to provide 1,100 rural sections of 150 acres per section. He briefly considered the possibility of acquiring the Tai Tapu block, but was not overly impressed with the quality of land in Golden Bay.⁷⁰ In December 1842, however, the Company surveyor Cotterell discovered the rich grassy plains of the Wairau valley, barely a week's journey from Nelson. Further exploration revealed the adjoining Kaipara-te-hau district which, together with the Wairau, was estimated at about 200,000 acres of prime agricultural and pastoral land.⁷¹ Wakefield was relieved at the prospect of allocating the rural sections at last, and work was delayed in Golden Bay while Company employees turned their attention to the Wairau.

The early months of 1843 saw a growing tension and conflict between three groups, the resident Ngati Toa and Ngati Rarua of Cloudy Bay, the Ngati Toa more directly under Te Rauparaha in the North Island, and the Company's Nelson Agent and surveyors. Wakefield expected to override opposition through the methods which seemed to have

⁶⁸See Mackay, vol. 1, for further Crown purchases to complete the Company's title.

⁶⁹Schedule of Presents made by Capt. Wakefield, in Mackay I, pp. 62-63.

⁷⁰A. Wakefield to W. Wakefield, Nelson, 14 May 1842, qMS 2099.

⁷¹*ibid.*, 12 & 13 December 1842, & 7 June 1843. See also Wai 102 A-16 (b), Chapter 8, pp. 46-48.

worked in Golden Bay, where Motupipi Maori had interfered with the survey and efforts to exploit the coal and lime. Through a combination of timely gift-giving to major chiefs at regular intervals, and the use of magistrates and special constables to overawe the relatively small Maori population if opposition became too active, Wakefield was able to cow the main dissidents in Golden Bay and continue the survey and mining activities.⁷² He planned to use the same methods in Cloudy Bay, where the population was larger and regularly reinforced from across the Strait. The agent seems to have rejected the idea of giving large presents to Te Rauparaha and the Kapiti-based chiefs, however, partly because he did not want to cast doubt on the completeness of his brother's 1839 purchase from them. Instead, he decided to give them the odd gun or two, which Te Rangihaeata refused to accept lest, as he angrily pointed out, it be thrown up in his face at a later date as the purchase price of the Wairau.⁷³

Wakefield's major initiative was directed at the more long-term residents of the Wairau, especially Rawiri Kingi Puaha, a powerful Ngati Toa rangatira who had become a Christian and seemed favourable to settlement. The captain's proposed gifts consisted of ten blankets, one gun, a hundredweight of tobacco, a keg of powder, two axes, a bag of flour, and a bag of sugar, for each of about twenty principal owners as identified by Puaha.⁷⁴ This was hardly a generous offer for 200,000 acres of prime land, and was unlikely to be acceptable to a 'wideawake' iwi like Ngati Toa in 1843. J. Whiteley pointed out that the Maori had become familiar with the 'enormous prices' paid for small sections at sales between Europeans, and 'they contrast these prices with what they themselves received for the same land, and they cannot understand how this can accord with justice. They therefore consider that they have been duped, and resolve to sell no more'.⁷⁵

Not only was the price unacceptable, but the Cloudy Bay iwi and their North Island relatives were by now more aware of the unattractive aspects of having settlers as neighbours. Ironside reported that the chiefs expressed their disgust at the treatment of pa and cultivations at Port Nicholson, and were determined to have no such neighbours in the Wairau.

⁷²A. Wakefield to W. Wakefield, Nelson, 1 August, 14 September, 18 October, 14 & 18 November, 13 December 1842, qMS 2099.

⁷³ibid., 1 August 1842, 17 March & 24 May 1843; cf. G. Clarke to G. Clarke Senior, Wellington, 8 August 1843.

⁷⁴A. Wakefield to W. Wakefield, Nelson, 7 June 1843, qMS 2099.

⁷⁵J. Whiteley, Remarks on the Conflict at Wairau, 20 July 1843, in GBPP 1844; App. 4, p. 182.

They therefore wish to keep this valley for themselves, and their children, and also as a spot of refuge for other natives who may be driven from their homes by the encroachments of the white population. They stated these things to Captain Wakefield and to the Surveyor-general once indeed in my hearing, and they positively said, "We will not part with the land."⁷⁶

As a result of such sentiments, the principal chief of the Wairau district, Te Rauparaha's half-brother Nohorua, visited Nelson in January 1843 and informed the Company's agent that he could not have the Wairau. This was followed by visits from Te Rauparaha, Te Rangihaeata, and Te Hiko in March, and by the younger generation of resident chiefs, including Rawiri Puaha and Wiremu Te Kanae, a couple of weeks later. They all proclaimed the same message: the Wairau had not been sold to the Company, that it would never be sold to the Company, and that any survey would be prevented. Wakefield suspected that determined opposition from Maori had only one object, to push up the price for an eventual sale. He was reinforced in this view by the ambivalence of Te Rauparaha, who had said that he would accept a cask of gold for the Wairau, and by Te Hiko's advice that the opposition was all 'bounce'.⁷⁷ Wakefield was not prepared to test Te Rauparaha's motives, however, because he felt that he could only deal with the resident chiefs. According to Samuel Ironside, the local population were genuinely determined not to sell the land.⁷⁸ They obstructed Wakefield's surveyors and refused to negotiate for the payment of presents, with Puaha refusing to identify the chiefs who should be compensated.

The Kapiti party, who were not prepared to see their South Island relatives treated as the main or even sole owners, appealed to Commissioner Spain to adjudicate on the Wairau case. They told him that they had never sold the land, and asked him to stop the survey and cross over to Nelson at once for a special hearing. Spain refused to forbid the survey on the grounds that this might prejudice the issue, and he asked the chiefs to stay out of the area until he could wind up his Wellington hearings.⁷⁹ He probably feared to expose his authority to contempt if he ordered the Company to halt its survey, given the history of non-cooperation between the Company and his Commission. Te Rauparaha and

⁷⁶S. Ironside, extract from a letter, 5 July 1843, in GBPP 1844, App. 4, p. 179.

⁷⁷A. Wakefield to W. Wakefield, Nelson, 17 March 1843, qMS 2099.

⁷⁸S. Ironside, extract from a letter, 5 July 1843, in GBPP 1844, App. 4, pp. 179-181.

⁷⁹G. Clarke to G. Clarke Senior, Wellington, 8 August 1843.

Te Rangihaeata felt that they could not wait for four weeks, and crossed over to Cloudy Bay with a large party of followers, in order to strengthen their claim by taking up residence in the Wairau. Te Rauparaha usually lived in the area for part of each year in any case, but he probably felt that some demonstration of ownership through actual cultivation was necessary, because of the tendency in Spain's inquiry to favour resident cultivators over other claimants.⁸⁰ He was joined at his new settlement by the leading local chiefs, including Rawiri Puaha, and Tana Pukekohatu of Ngati Rarua.

This reinforced body expelled the surveyors, burning their temporary huts in the process. This gave Captain Wakefield an opportunity to try his alternative strategy, which had worked so well in Golden Bay, of over-awing his opponents through a show of force. He obtained a warrant for Te Rauparaha's arrest on a charge of arson, enlisted the support of the Police Magistrate, and swore in a party of special constables. The outcome was the well known 'Wairau Massacre', a full account of which may be found in R. Allan's history of Nelson, or the evidence of H. and M.J. Mitchell to the Waitangi Tribunal.⁸¹

The Wairau affair forced the government to issue a tardy proclamation, forbidding settlers to exercise acts of ownership on any land which had not been investigated by the Land Commission. Spain was held in some respect by chiefs like Te Rauparaha, and the Acting Governor hoped to remove all conflict from the battleground to the court-room, where compromise in the interests of both races seemed a more likely outcome. In the meantime, the entire population of Ngati Toa and Wairau Ngati Rarua evacuated the South Island, and some Te Atiawa of Queen Charlotte Sound also felt impelled to leave the area. Many of these people did not return, and the population of Marlborough was permanently reduced. Although the government did not demand the expected utu in the months that followed, there was a new bitterness in race relations in the South Island. Settlers feared that Maori would now feel free to make exorbitant demands of a weak government, abandoning deals from which they had already profited in the hope of further gain. Some Maori felt that they were about to become, as A. Parsonson put it, 'guests on their own lands', and unwelcome guests at that.⁸² Others remained sanguine that the settlers and their trade were a good thing, so long as the reserves were improved, the boundaries

⁸⁰For Te Rauparaha's seasonal residence in Cloudy Bay, see above, pp. 33-34.

⁸¹See R. Allan, pp. 241-275; Wai 102 A-16 (b), Chapter 8, pp. 46-54.

⁸²NZDB, vol. 1, p. 499.

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between Maori and Pakeha land arranged to the former's satisfaction, and further payment was made in keeping with the current value of the land.⁸³ Both races waited for the arrival of the Spain Commission, to see whether it could sort these matters out, and whether it would confirm or deny the Company's title to land in Tasman, Golden, and Cloudy Bays.

⁸³See below, pp. 79-80.

CHAPTER 4
THE SPAIN COMMISSION

I The Political Dimension of the Spain Commission

The November 1840 Agreement between the New Zealand Company and the British Government gave the Company title to almost a million acres of New Zealand land. In December the Colonial Office appointed William Spain as a Commissioner to investigate the validity of pre-Treaty purchases of Maori land, with a brief that included the New Zealand Company transactions. Both the Colonial Office and the Company believed that the latter's 1839 titles were sound, while it seemed to Spain that Colonel Wakefield expected the investigation to be 'carried on as a mere form'.¹ In this Wakefield was mistaken. Commissioner Spain did not plan to rescue the Company and get it as much land as possible - this approach was left to the government itself under Governor Grey in the mid-1840s. But nor did the Commissioner really attempt an inquiry whose sole object was to investigate the validity of transactions and to overturn invalid ones. From the beginning his was also a political mission, driven by considerations of policy and of 'quieting' titles to land, dominated by the weighting of settler and Maori strength in any particular district, and determined to achieve an 'amicable adjustment' rather than to invalidate unfair or faulty contracts.² Spain came to believe that such an approach was in the interests of both Maori and settlers. The following discussion of the Commission's political background is drawn largely from information in Rosemary Tonks's thesis on the Old Land Claims Commissions, the British Parliamentary Papers, and a small selection of Colonial Office files from CO209.³

The judicial duties of the Land Commissioners were prescribed by legislation. Governor Gipps of New South Wales was the first official to give the Crown legislative authority to examine the validity of pre-Treaty land transactions in New Zealand, which later

¹Report of Commissioner Spain, 12 September 1843, GBPP 1844, vol. 2, Appendix 9, p. 291.

²*ibid.*, p. 299.

³R. Tonks, 'The First New Zealand Land Commissions, 1840-1845', M.A. Thesis, University of Canterbury, 1986.

became known as the Old Land Claims. He introduced a bill to his Legislative Council in 1840 which authorised him to appoint a Commission to investigate these transactions. The Act declared the Crown's intention to 'recognise claims to land which may have been obtained on equitable terms from the said chiefs or aboriginal inhabitants' of New Zealand, so long as such recognition did not disadvantage other settlers. The Commissioners were instructed to hold a 'strict inquiry. . .into the mode in which such lands have been acquired, and also into the extent and situation of the same, and also to ascertain all the circumstances upon which such claims may be founded'. They were also instructed to 'be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities', and to inquire into the price paid for the land, the 'time and manner of payment, and the circumstances under which such payment was made'. In investigating the price, however, the Act restricted the Commissioners from taking into account the amount paid for the land if it had since been on-sold, presumably in order to prevent later, higher land values from invalidating earlier purchases. If the Commissioners were satisfied that a valid transaction had taken place, then they were empowered to recommend the Governor to make Grants of up to 2,560 acres per claim. The judicial scope of the Commission, therefore, fell short of making actual awards of land.⁴

These provisions were not altered when the Act was repealed by a new Land Claims Ordinance passed by the Legislative Council of New Zealand in June 1841.⁵ The new Ordinance, however, was further amended in February 1842 to extend the Commission's jurisdiction over the New Zealand Company claims. The amended Ordinance repealed one of the previous schedules, which had set down the amount of money (or its equivalent in goods) which ought to have been paid to Maori by the Old Land Claimants. Whereas the original schedule specified that between four and eight shillings per acre was an equitable price in 1839, for example, the new ordinance accepted the London Agreement between Crown and Company, under which the Company was entitled to four acres for every pound spent on colonisation (regardless of what they had actually paid to Maori). Nevertheless, the original stipulations remained in force that the transaction be a valid one, and that it be investigated with regard to the fairness of the price and the 'real justice and good conscience' of the case.⁶

⁴A bill to empower the Governor of New South Wales to appoint Commissioners etc., GBPP 1835-42, vol. 3, pp. 175-179.

⁵Land Claims Ordinance 1841, GBPP 1835-42, vol. 3, pp. 275-281.

⁶Land Claims Ordinance 1842, GBPP 1843-45, vol. 4, pp. 124-126. See also Table 1.

TABLE 1 Prices which should have been paid to Maori					
Time when purchase made	Price per acre				
	s	d	to	s	d
1815 to 1824	-	6		-	-
1825 to 1829	-	6		-	8
1830 to 1834	-	8		1	-
1835 to 1836	1	-		2	-
1837 to 1838	2	-		4	-
1839	4	-		8	-

Plus 50 % for non-resident purchasers, without a resident agent on the spot
 Value of goods to be estimated at three times their selling price in Sydney at the time

SOURCE: Schedule B of the Land Claims Ordinance, 1841

The Colonial Office informed Gipps that it planned to disallow the New South Wales Act (but Commissioners were nevertheless appointed under it), in order to retain authority for themselves to appoint a Commissioner. They told him that they wanted to appoint someone 'wholly unconnected with local interests', and the result of this intention was the commissioning of William Spain.⁷ The Colonial Office officials took the somewhat contradictory view, however, that their Commissioner would not receive instructions or legislative authority from London, but would merely act under the New South Wales Act, until it was replaced by a New Zealand law under that colony's new and separate legislature.

These views were clarified in early 1841, when the new Commissioner approached the Colonial Office about the prospects of future employment. Spain was fully aware of the delicacy of his judicial independence, but he made it clear that he was nevertheless anxious to please his political masters:

I beg also to ask whether if I conduct the duties of my office to your

⁷ Russell to Gipps, 31 December 1840, GBPP 1835-42, vol. 3, p. 175.

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Lordship's satisfaction I may not expect that I have a fair claim to be appointed to any other office that may become vacant . . . I would suggest whether the Governor should not be instructed in the event of any Vacancy happening before my Commission has ceased to reserve the same for myself . . . it will be my constant endeavour to perform it [the Commission] with impartiality judgment and firmness, and it is with the utmost reluctance that I am induced to make the present appeal to your Lordship...⁸

The significance of this letter lay in the fact that his judicial independence involved the Crown directly, because (as Vernon Smith put it) he was to 'act as Arbiter between the Crown and HM's Subjects on various questions of property'.⁹ Spain was anxious to please the government but had been given no specific instructions as to what the government wanted, except that he was to confer with the new Chief Justice of New Zealand, Sir William Martin. The Chief Justice wrote to the Colonial Office asking them to provide Spain with instructions.¹⁰ The Permanent Under Secretary, James Stephen, advised his superiors that there was 'a positive law prescribing his duties, and these are entirely of a judicial nature', therefore the Executive could not give him any instructions other than to carry out the Act. They could, however, alter Spain's task by ordering the Governor to change the law, but Stephen did not feel that such interference was necessary: 'I doubt whether it will be possible to frame a better law; and according to my conception it will be found to solve all the difficulties which are now stated so far as the solution of them could be safely undertaken by the Executive Government'.¹¹

The Secretary of State, however, wanted to give Spain a very clear signal of the way in which the Crown expected him to interpret the law. He instructed: 'It is only necessary to tell the Governor that Mr Spain must be instructed to execute the Law with a view rather to prevent future mischief than with the expectation of being able to redress satisfactorily past wrongs'.¹² The first draft of a letter to this effect included the phrase: 'that the redress of past injustice to the Natives is less the object of this Commission than the prevention of future wrongs'.¹³ This was altered in the final version to read: 'Mr Spain will be called upon to execute the Law rather with a view to prevent future injustice than with the expectation of

⁸ Spain to Russell, 22 January 1841, CO209/13 f. 264.

⁹ Vernon Smith to Martin, 24 March 1841, CO406/1 ff. 192-193.

¹⁰ W. Martin to Lord Howard, 10 March 1841, CO209/13 ff. 186-188.

¹¹ J. Stephen, minute, 12 March 1841, CO209/13 f. 367.

¹² Lord J. Russell, minute, 12 March 1841, CO209/13 f. 367.

¹³ Draft letter to W. Martin, 24 March 1841, CO209/13 ff. 189-191.

being able to redress satisfactorily past wrongs'.¹⁴ This change removed the explicit reference to Maori, with the implication that the Commissioner was to concern himself with future wrongs to both vendors and purchasers, rather than past injustices to either or both groups.

The final version of the Colonial Office's response to Martin's inquiry was sent to the Chief Justice on 24 March 1841, and to the New Zealand Government a day later. It is worth quoting at length to demonstrate the Colonial Office's bifurcation, which led it to assert Spain's judicial independence and at the same time to instruct him to take a view of his empowering Ordinance which was not implied in its text, and which drastically altered the nature of his Commission. This was the result of an attempt to combine administrative advice (Stephen's) with political imperative (Russell's) in the same letter:

I am directed by Lord J Russell to acknowledge the receipt of your letter of the 10th inst. to Lord E Howard, enclosing various suggestions as to points on wh[ich] it would in your judgement be desirable that full & clear instructions should be furnished to Mr. Spain, before his departure from this Country. Lord J. Russell is much obliged to you for the trouble you have taken in his assistance. But as Mr Spain is about to execute a Judicial Commission & to act as Arbiter between the Crown & H.M. Subjects on various questions of property, it appears to his Lordship that the only instruction which he could, with propriety, give to Mr Spain must be confined to a simple direction to carry into effect the Local Enactment, under the authority of which his app[ointmen]t is made, or any other Local Act which may be passed in substitution for it, or in amendment for it. Lord John Russell wishes me to remark that Mr Spain will be called upon to execute the Law rather with a view to prevent future injustice than with the expectation of being able to redress satisfactorily past wrongs.¹⁵

Commissioner Spain's judicial task under the Ordinance was to investigate the validity of land purchases. In practical terms, this meant that he had to inquire into the title of the vendors, to determine whether the land had in fact been sold by the correct people, and to assess the details of the purchase in order to discover whether the Maori understood the contents of a deed, and what (if any) land they had actually intended to sell. Spain's published reports show that he had three main concerns in mind: did resident Maori give initially, and later maintain, consent to a clearly defined sale of the land on which they were living; were the residents willing to give that consent now, in return for compensation; and were the Native Reserves a viable alternative to existing pa and cultivations?¹⁶ The latter two concerns

¹⁴ Vernon Smith to Martin, 24 March 1841, CO406/1 ff. 192–193.

¹⁵ *ibid.*

¹⁶ see Spain's reports in GBPP, especially vol. 2, appendix 9, pp. 291–307, & vol. 5, pp. 11–153.

indicate the evolution from investigation to arbitration and compensation, which Tonks attributed to the course of Spain's first case, the Port Nicholson claim. This case demonstrated that Spain and his assistant, Protector George Clarke Junior, would not bow to a campaign of public pressure in the short-term, but that they were willing to entertain a political solution so long as it favoured the interests of both Maori and settlers.¹⁷ The Commissioner acknowledged that his reasons for doing so were 'not perhaps within the strict line of my duty as Commissioner of Land Claims', but felt that he must nonetheless act on them.¹⁸

Spain and Governors Hobson and FitzRoy believed that neither race would benefit from an invalidation of Company purchases. Spain, for example, looked forward to a time when Maori would be 'sufficiently enlightened to be convinced that they are as much interested in the improvement of Wellington as the Europeans'.¹⁹ The Port Nicholson Maori seemed to agree with this point of view, to the extent that those 'who denied the sale seemed to be more anxious to obtain payment for their land than to dispossess the settlers then in the occupation of it'.²⁰ Spain came to believe that this was the view of Maori with regard to all town settlements, since they stood to lose both trade and the added value given to their remaining land by the presence of settlers, if the latter withdrew from the district.²¹ In addition to his conception of Maori interests, the Commissioner faced a strong dilemma. The invalidation of an entire purchase seemed practically impossible because there had always been some kind of exchange recognised by both parties to the bargain. This was a genuine problem, even though the Maori who made the bargain may not have been those who had the best or an exclusive right to do so. As a result, the Commissioner tended to think of titles as incomplete rather than invalid, resting on what he called a 'partial purchase'.²² His solution to this situation was the compensation of Maori who were not consulted or paid in the original sale, or who had not understood the terms of the transaction.²³

The addition of arbitration and compensation to the Commission's functions was first suggested by Colonel Wakefield in mid-1842. Governor Hobson agreed that Wakefield should be able to 'satisfy by futher payments those natives who, not having been parties to his

¹⁷R. Tonks, pp. 154–159, 171–179.

¹⁸Report of Commissioner Spain, GBPP 1844, vol. 2, Appendix 9, p. 296.

¹⁹*ibid.*

²⁰*ibid.*, p. 295.

²¹*ibid.*, p. 306.

²²Report of Commissioner on Port Nicholson, 31 March 1845, GBPP 1845–47, vol. 5, p. 12.

²³*ibid.*, pp. 12–13, & *passim*.

purchase, might refuse to vacate their lands'.²⁴ Spain took this proposal up with enthusiasm in August 1842, and aided Wakefield in persuading the government to accept it.²⁵ Acting Governor Shortland gave Spain and Protector Clarke written instructions on the matter in early 1843, but he did not change the legislation which prescribed the purpose and functions of the Commission. He ordered that the Commission's investigations should be carried out in conjunction with an assessment of compensation by referees. He appointed Wakefield and Clarke to act in this capacity, with instructions to decide on an equitable compensation, and to report their findings to Spain.²⁶ The Commissioner was to decide which cases ought to be settled by compensation, and to act as umpire if the referees could not agree on a figure. Shortland also ordered Clarke to consult Spain and to take his advice. In situations where the Company had already sold land to settlers, which would have included Nelson, the Commissioner was ordered to keep cases open for 'future adjustment' if Maori would not accept compensation, rather than proceeding to a verdict on the validity of the sale.

In order to afford the agent of the New Zealand Company every facility in carrying out the arrangements already made by the Company, in regard to the purchasers of land from that body, his Excellency has consented, in the event of a difficulty occurring in the negotiation with the natives for the sale of such of their cultivations as are within the limits already alienated by the Company, to permit such cases to remain open for the present, with a view to some future adjustment of the native claim.²⁷

Spain felt that the compensation strategy was the 'only method likely to effect an amicable and speedy settlement of the question with advantage and justice to both races, and to enable the Government and the Company to carry into effect the agreement of November 1840'.²⁸ At first, however, he may not have been comfortable with Shortland's instruction to delay findings in cases where the Company had already sold land to settlers:

It will happen, in some cases, that the majority have not agreed to the sale of a district, and in others that no sale whatever has been made by the proprietors of it, although such a district has been included in the Company's deed, surveyed and sold to the public. In such cases, it would be manifest injustice to compel the natives to receive compensation; every effort should be made to persuade them to do so voluntarily, but if this cannot be effected, such blocks

²⁴Shortland to Stanley, 17 April 1843, GBPP 1844, vol. 2, Appendix 2, p. 53.

²⁵ Report of Commissioner Spain, GBPP 1844, vol. 2, Appendix 9, p. 300.

²⁶J.S. Freeman to Spain, 16 January 1843; Freeman to Clarke, 27 January 1843, GBPP 1844 vol. 2, Appendix 2, pp. 60–61.

²⁷*ibid.*

²⁸Report of Commissioner Spain, GBPP 1844, vol. 2, Appendix 9, p. 306.

of land must be excluded from the Crown grants to the New Zealand Company.²⁹

The Commissioner and the Protector, George Clarke, actively persuaded their Maori appellants to accept compensation, and also decided that its level should be set on their behalf by the Protector. Clarke was expected to set a low, pre-1840 price for the compensation of the vendors, since Spain felt that it was unfair for Maori to profit from the increased value given to land by the presence of settlers:

It appeared to me also, that any further delay was likely to have the effect of creating a disinclination on the part of the natives to cede to the Europeans any more land in the neighbourhood of Port Nicholson, arising from the knowledge they are daily acquiring in their intercourse with the settlers of the value of the land at that time, as selling in the market, as well as of the enormous rents paid for that let; which would naturally lead them to the conclusion, that it would be better for them not to sell but to let their land to the white people, which would have enabled them to live upon the rents without working, of which they are not over fond.

Every day increased the difficulty of making them understand that it was the capital and labour brought by the white man from Europe which had made their land of the then value, and that as they had not of themselves contributed to raise the price of it, they were not then entitled to a remuneration equal to its then market value.

I could not, however, agree to their paha, cultivations and burying-grounds being taken from them without their own free consent, because it appeared clear, from the evidence, that they had never alienated them.³⁰

Although he spoke of 'free consent', Spain's position did much to deprive Maori of any bargaining power, since the Protector was not supposed to be their agent in the affair, but to set a sum which seemed appropriate to himself, Spain, and the Company's representative, Colonel Wakefield. The actual compensation negotiations showed how high-handed Spain and Clarke were prepared to be. They told Maori that any money which they refused to accept would be banked and spent on their behalf anyway.³¹ Maori had neither the opportunity to retain or resell the disputed land, nor to bargain for a higher price from the original 'purchasers'. It soon became clear that only in situations where settlement had been slow to start, and where there were chiefs powerful enough to pose a real military threat, *and* where these chiefs had shown a long and determined opposition to having settlers, was Spain

²⁹ibid.

³⁰ibid., p. 296.

³¹Tonks, pp. 230-237.

prepared to give up his compensation approach and declare a sale invalid. This seems to have been the main difference between his Porirua and Port Nicholson decisions, and not any qualitative difference between the validity of the two transactions.³² As his reference to the Wairau tragedy shows, the Commissioner had earlier hoped to have ‘prevailed upon them [Te Rauparaha and Te Rangihaeata] to take payment for the Wairau’, but was willing to relinquish this intention in the face of overwhelming odds.³³

At first Colonel Wakefield was not co-operative with the Commission’s compensation strategy, even though he had made the original proposal, because he hoped that the Court of Directors would work things out in London on terms more favourable to the Company. He obstructed Spain’s proceedings in Port Nicholson and up the coast as far as Whanganui. The colonel believed that the government was obliged to carry out the London Agreement, no matter what the state of the Company’s titles, and he stalled for time in anticipation of receiving news from home of a fresh bargain between the directors and the Colonial Office. He refused to complete the Port Nicholson negotiations for compensation, therefore, and forced Spain to hold one-sided hearings without presenting a Company case in the Kapiti Coast and Manawatu hearings. By June 1843 Spain had accomplished nothing as he prepared to wind up the Wellington hearings and cross to Nelson. The collision at Wairau forced both sides to change their plans, however, and Spain decided to postpone hearing the Nelson cases until the new Governor had arrived and pronounced judgement on the loss of life at Wairau. FitzRoy did not arrive until December, and in the meantime Colonel Wakefield realised that further delay might provoke another Wairau-type incident, while still bringing no good news from London. He decided that compensation was now inevitable, and adopted a more conciliatory attitude towards Spain. The Commissioner refused to accept this change of heart, however, until the new Governor had arrived in the country. Spain felt that the colonel might not be in earnest, and that further unsuccessful negotiations would lead to intense disappointment and probably further armed clashes. He hoped that FitzRoy might be able to take a firmer line with the Company’s Principal Agent than an Acting Governor had been able to do. In fact the Commissioner wanted the government to go ahead and pay the compensation, and then reimburse itself from the Company’s coffers.³⁴

³²ibid., p. 202. See also Spain’s reports on these cases, GBPP 1846–47, vol. 5, pp. 12–43, 101–106.

³³Report of Commissioner Spain, GBPP 1844, vol. 2, Appendix 9, p. 301.

³⁴Tonks, pp. 188–200, 219–224, 285–291.

In January 1844 Governor FitzRoy held a conference with Wakefield and Spain, and set the parameters of future Crown Grants to the Company. These grants would exclude pa, cultivations, and burial grounds, Maori would receive one-tenth of the Company's land as Reserves in addition to these habitations, the Company would compensate settlers hurt by these arrangements, and further compensation would be paid to Maori at a level set by Clarke and Wakefield.³⁵ The colonel accepted these terms, and the Nelson hearings were again postponed to enable the settlement of existing cases. According to P. Burns, Wakefield's flattery had won Spain over as an ally by the time that they reached New Plymouth in May 1844; they 'appeared for the first time to be working on the same side'.³⁶ The Commissioner was in fact continuing his original policy of arranging compensation in places where settlement had already commenced. It was not Spain who had altered his policies, but Colonel Wakefield. The two men travelled from New Plymouth to Otakou to inspect the government's attempt to purchase land there for the New Edinburgh settlement, and then sailed at last to Nelson for the Commission's final inquiry, after a delay of more than a year.

II The Nelson Hearing

The Nelson hearing was preceded by two preliminary investigations: firstly, by incidental questions at other hearings involving Ngati Toa and Te Atiawa chiefs, during Spain's inquiries into the Kapiti and Queen Charlotte Sound deeds; and secondly a preliminary inquiry by Spain's interpreter, Edward Meurant, who visited Motueka before the hearing to find out details on an informal basis, and present an early interpretation to the Commissioner when he arrived in August 1844. The former inquiries cast grave doubts on the validity of the Kapiti and Queen Charlotte Sound deeds per se, but stressed the claim of the North Island chiefs to have sold land in the South Island. The Ngati Toa chiefs assured Spain that they had sold Tasman Bay and/or Golden Bay, but there may be some doubt about applying the names 'Taitapu' and 'Whakatu' to these larger districts. When pressed on the matter, Te Rauparaha argued that he had meant a small strip of land at West Whanganui when he used the name Tai Tapu, but the prevailing interpretation was in favour of the larger

³⁵Minutes of Conference, 29 January 1844, GBPP 1846-47, vol. 5, pp. 26-28.

³⁶P. Burns, *Fatal Success*, Wellington, 1989, p. 272.

districts.³⁷ After all, Te Rauparaha had told Captain Wakefield that Tasman and Golden Bays were sold, and he could shoot any Maori who opposed his selections in those areas.³⁸ The Te Atiawa chiefs of Waikanae admitted an intention to sell Arapaoa, which could have meant the island of that name in Queen Charlotte Sound but more likely was used to signify the entire Sound, but denied that they had planned to sell their own immediate district in the North Island.³⁹ The deeds were faulty, therefore, and the translation had conveyed little of the official meaning of the transactions to the Maori vendors, but the North Island chiefs were now prepared to admit to a 'sale' of South Island land to the Company in the hope of preserving their more immediate home lands. The exception was the Wairau/Cloudy Bay district, in which Ngati Toa retained a pressing interest, and the sale of which they strenuously denied at the North Island hearings.⁴⁰ These chiefs did not attend the Nelson sessions, and no further evidence was sought from them on the South Island purchases.

The other preliminary inquiries were carried out by Edward Meurant, who visited Tasman Bay and discussed Captain Wakefield's gift-giving with the Motueka and Wakapuaka Maori. He did not visit Golden Bay, however, and there is no mention of any meeting with Golden Bay chiefs in his diary.⁴¹ When Spain, Clarke, and Wakefield arrived in Nelson in late August 1844, the interpreter reported that Maori from *both* bays were willing to acknowledge that they had sold their lands, in return for further payment from the Company.⁴²

Spain was delighted with this progress, and opened his court on 20 August 1844. He heard several Company witnesses on the first two days, and the evidence of the leading resident chief of Motueka, Te Iti. Clarke interrupted proceedings after Te Iti's evidence, suggesting that the chief was not telling the truth, and Spain agreed to an adjournment in order for the Protector to discuss matters further with the chiefs. According to Meurant, the rest of the chiefs gave evidence under a hui format, without questions and answers or a verbatim recording, with Clarke and the interpreter as their audience.⁴³ On the following day,

³⁷Te Rauparaha's evidence, 26 April 1843, OLC 1/46, 907, National Archives.

³⁸A. Wakefield to W. Wakefield, Nelson, 17 March 1843, qMS 2099, WTu.

³⁹Reretawhangawhanga & Ngapuki, 29 April 1843, OLC 1/46, 907.

⁴⁰Te Rauparaha & Te Rangihaeata, 26 April 1843, OLC 1/46, 907.

⁴¹E. Meurant, Diary, 4 July–19 August 1844, Meurant MS-1635, WTu.

⁴²W. Spain, Report on the New Zealand Company's Claim to Nelson District, 31 March 1845, in Mackay I, p. 55.

⁴³E. Meurant, Diary, 21 August 1844.

Colonel Wakefield offered to pay compensation if Spain would suspend the hearings. The Commissioner agreed to this request and no further Maori or Pakeha evidence was taken. On the basis of a two-day hearing, therefore, Spain came to a decision which he announced on 24 August, that the Company had made a legitimate purchase of the districts from both the Kapiti and resident chiefs, and that any further payment would be a good will offering on the part of the Company.⁴⁴

Tonks concluded that this decision was hasty and ill-considered, and that it ignored the complexities of the Nelson case.⁴⁵ By glossing over the complexities, however, Spain involved himself in considerable difficulties in his report. He tried, for example, to both accept and reject the 1839 Kapiti purchase. He told Maori and Company officials that it had been legitimate, and later explained that there were varying types of 'interests' in the land and that he had accepted the Kapiti deed as selling 'whatever Interests they [Ngati Toa] possessed' in the Nelson area.⁴⁶ In his report, however, he claimed to consider that Ngati Toa had no rights where they did not occupy or cultivate, and that the land had been purchased from the residents only.⁴⁷ His reason for glossing over this distinction seems to have been that the 'purchase' from residents had involved, as Protector Clarke put it, 'some informality or irregularity'. Clarke reported to his father that this 'irregularity' required the payment of additional compensation, accompanied by regular deeds.⁴⁸ At the time of the hearing and negotiations with Maori, however, both Spain and Clarke ignored the details of the 1841 and 1842 agreements. Spain raised none of the questions about Maori understanding, interpreters, and other 'irregularities' brought up in North Island cases. He even ignored the problem of identifying the specific blocks of land (or possibly occupation rights) which Maori had actually agreed to alienate to Captain Wakefield. These were just as disputed and controversial in the case of a sale without deeds as they had been in the Kapiti purchase with its English-language deed, purporting to convey a third of the land mass of New Zealand to the Company. There were strong discrepancies between the testimony of Te Iti and the settlers on the question of what was conveyed to the Company in 1841, but Spain dismissed these

⁴⁴Minutes of Proceedings, Nelson, 24 August 1844, in Mackay I, p. 61.

⁴⁵R. Tonks, p. 296.

⁴⁶Minutes of Proceedings, Nelson, 24 August 1844, in Mackay I, p. 61.
Spain to Colonial Secretary, Sydney, 28 September 1846, CO208/88.

⁴⁷W. Spain, Report on the Nelson District, in Mackay I, pp. 55-60.

⁴⁸G. Clarke to G. Clarke Senior, Wellington, 15 October 1844.

discrepancies as unimportant.⁴⁹

The Commissioner made a blanket charge that Te Iti was untruthful, but his only specific charge was that Te Iti denied receiving goods from Captain Wakefield, a point on which Te Iti changed his evidence anyway.⁵⁰ Spain's main concern was on this head; so long as the Maori admitted receiving presents, the Commissioner was prepared to consider this as marking their agreement to the alienation of all their property rights over the whole of Tasman Bay (save for specified reservations). He had two main grounds for saying that 'the Natives had always looked upon the transaction with Captain Wakefield as an alienation of their rights and interests in the lands treated of': firstly, Maori had 'at the time stipulated for the retention of a certain portion of a large wood at Motueka, as well as the retention of their pas and cultivations', and this had largely been complied with by the Company; and secondly, there had never been any opposition to surveys or settlement in Tasman and Golden Bays.⁵¹ The former point was a simplification, ignoring questions of boundaries, districts, and the nature of rights being *conferred upon the settlers*, and not necessarily given up by Maori. The second point was untrue, as Spain should have known from the evidence of J. Tytler, one of the Company's own witnesses. A. Macshane testified that there had been no opposition in Golden Bay but this was contradicted by Tytler's evidence on the same day.⁵²

There was a clear need for further investigation of the gift-giving 'purchases', but Spain and Wakefield were determined on a speedy settlement. The colonel declared himself ready to pay compensation after the evidence of only one Maori witness, but the decisive factor was the acquiescence of local Maori in such a solution. They did not want the settlers to leave and were prepared to validate the sale at this late date so long as their own wishes were met. They were unhappy with the reserves, claiming that they were almost all 'swamp or barren sand', they wanted settlers excluded from the Big Wood, and they wanted payment commensurate with land values in 1844.⁵³ They had in fact been treating the so-called sale as if it had not happened, usually respecting occupied sections but taking firewood and other resources from the sections of absentees, even in the town.⁵⁴ The Commissioner now required them to sign a regular deed, explained by Clarke, which made a 'relinquishment of

⁴⁹See evidence of Te Iti & others, 20–21 August 1844, OLC 1/46, 907.

⁵⁰W. Spain, Report on the Nelson District, in Mackay I, p. 56.

⁵¹*ibid.*, pp. 56–57, 59.

⁵²A. Macshane & J. Tytler, 20 August 1844, OLC 1/46, 907.

⁵³E. Meurant, Diary, 8 & 22–24 August 1844.

⁵⁴*ibid.*, 8 August 1844.

all our claims', translated 'he wakamahuetanga rawatanga', to land at Whakatu, Moutere, Motueka, Riwaka, and Golden Bay.⁵⁵ Clarke also arranged an exchange of sections to increase the number of reserves in the Big Wood area, although there were no wholesale exchanges of reserves to satisfy Maori objections about the quality of their other reserves. The deeds excepted pa, cultivations, wahi tapu (burial grounds), and 'nga Wahi rongoa', the meaning of which is no longer known.⁵⁶

Tasman Bay Maori also received £510: £200 to Ngati Rarua; £200 to Ngati Tama of Wakapuaka; £100 to Te Atiawa of Motueka; and £10 to the chief Nga Piko for his services in persuading the other chiefs to accept the deal.⁵⁷ The Tasman Bay Maori were reluctant to accept Clarke's initial offer, which they considered far too low, but were persuaded by the Protector and Nga Piko that Spain was not prepared to compromise on this point.⁵⁸ In addition to setting compensation at pre-Treaty levels, the Commission made no stipulations to ensure that the payment was of lasting benefit to the vendors. Edward Meurant, for example, lamented the fact that the money was all wasted on short-term consumption, rather than invested in cattle and other means of economic development.⁵⁹

Golden Bay Maori did not participate in this sitting of the Commission, nor in the negotiations for compensation which followed it. Nevertheless, the hearings had a vital impact on their interests because Spain made up his mind about the Golden Bay transactions from the evidence of two Company witnesses, and they were allotted the residue of £290 from the £800 initially offered by Colonel Wakefield as compensation.⁶⁰ Clarke and Meurant assumed the task of selling this compromise to the Golden Bay iwi, and they visited Motupipi and Aorere in September 1844. The Motupipi people refused to accept either the verdict or the compensation, although they made what Spain considered the key admission that they had accepted goods from Captain Wakefield. They flatly asserted that they had not been aware of the full value of their coal in 1842, and that they would not consent to sign a deed unless they were paid a much higher price.⁶¹ The Aorere people were more accommodating and agreed

⁵⁵Deeds of Motueka, Wakapuaka, & Te Atiawa chiefs, relinquishing their claims to land to the New Zealand Company, 24 August 1844, in Mackay I, pp. 67–68.

⁵⁶*ibid.*

⁵⁷E. Meurant, Diary, 23–24 August 1844; cf. Mackay I, pp. 57, 68.

⁵⁸*Nelson Examiner*, 24 August 1844; cf. E. Meurant, Diary, 22–24 August 1844.

⁵⁹E. Meurant, Diary, 26–27 August 1844.

⁶⁰See evidence of T. Duffey & A. MacDonald, 20 August 1844, OLC 1/46, 907.

⁶¹W. Spain, Report on the Nelson District, in Mackay I, p. 57.

to accept Spain's version of the 1842 gift-giving, in the mistaken assumption that the full £290 was for their own whanau or 'family'. Afterwards, Clarke explained that they would only receive part of the payment, and that the rest was intended for the people of Motupipi. The chief Marino objected that to receive the money on these terms would 'involve him with his relations', and he returned home to Aorere instead of carrying on to Nelson.⁶²

Clarke was not deterred by these rebuffs, and assured the Commissioner that he would not contest the Company's case if the hearings were reopened in Golden Bay. Unfortunately the Protector has not left an explanation of his views on the case, but like Spain he seems to have thought that the acceptance of Wakefield's presents was accompanied by a full alienation of entire (though unspecified at the time) districts.⁶³ As a result, the opposition of Golden Bay iwi was ignored, the money invested on their behalf in a local bank, and Spain recommended the full award of its claims to the New Zealand Company. This consisted of 11,000 acres at Whakatu; 38,000 acres at Waimea; 15,000 acres at Moutere; 42,000 acres at Motueka; and 45,000 acres at Golden Bay; amounting to a total of 151,000 acres. This award included the tenths reserves, but an unspecified acreage was excepted for the pa, cultivations, and wahi tapu. Governor FitzRoy accepted Spain's recommendations and executed a Crown Grant for 151,000 acres on 29 July 1845.⁶⁴ This grant left the Company short of 70,000 acres for its initial Nelson scheme of 221,100 acres.

The Company had originally looked to the Wairau for these missing acres, but the affray of June 1843 had halted all surveying activities in Cloudy Bay. Commissioner Spain was unwilling to investigate the Company's title to this district because it would involve a great deal of unpleasantness, and possibly a renewal of conflict between the Commission and the Company. He was relieved, therefore, when Colonel Wakefield made no effort to present a claim to the Wairau district, and made it clear that the offer of £800 compensation did not include the Wairau.⁶⁵ Spain felt free to make another political decision on this case, akin to the Porirua rather than his Port Nicholson or Golden Bay decisions. The Company claimed that Spain failed to hear evidence on the Wairau because of the absence of its leading chiefs, but maintained that after recognising the validity of the Kapiti deed for the Tasman and

⁶²E. Meurant, *Diary*, 3–5 September, 1844.

⁶³G. Clarke to Spain, Nelson, 7 September 1844, in Mackay I, p. 63.

⁶⁴Mackay I, pp. 60, 68–69. See Figure 4 for a sketch map of the Spain Award, and Figure 5 for Governor Grey's eventual Nelson Crown Grant.

⁶⁵*ibid.*, pp. 55, 58.

Golden Bay sales, he would have to do so for the Wairau as well.⁶⁶ Spain argued that he held no inquiry because the Company did not bring the case forward, and maintained that he already had sufficient evidence to establish that the Kapiti chiefs had never intended to sell the Wairau. He obtained this impression from his Otaki hearings, and the magistrates' inquiry after the June 'massacre'.⁶⁷ It was quite clear from these sources that the senior Ngati Toa leaders had consistently denied a sale, and that Company officials had never made presents to local residents as a purchase of their interests. Spain concluded that a sale 'had never been effected'.⁶⁸

The Commissioner did not stop, however, at assessing the validity of the purchase. He went on to award title for the district to the entire 'Ngatitua Tribe' on both sides of the Strait. Spain had never held an inquiry into the customary title of the Wairau, and failed to identify the other right-holders in Cloudy Bay. He was not aware of the presence of Ngati Rarua in the district, which he could have discovered through questioning Tana Pukekohatu, who arrived in Nelson on 22 August.⁶⁹ He was also misled as to the status of Rangitane, whom he understood to be a tiny group of fugitives, on the run from Ngati Toa and under threat of extermination. According to his own doctrine of the rights of residents, even when these were conquered people permitted to occupy by the 'sufferance' of their conquerors, the Rangitane of Cloudy Bay were entitled to recognition as part-owners with Ngati Toa and Ngati Rarua.⁷⁰ Spain was unaware of the existence of settled communities of Ngati Rarua and Rangitane in the district and awarded title to Ngati Toa, thus laying the groundwork for future Crown purchases from North Island Toa chiefs. After Spain's Award and Report were accepted by Governor FitzRoy, the Crown was left with the task of completing the Company's Nelson titles, which involved it in further negotiations and purchases in the Golden Bay and Wairau districts.

⁶⁶W. Fox to New Zealand Company Secretary, Nelson, 30 August 1844, CO208/86.

⁶⁷See Otaki hearings, OLC 1/46, 907; & various magistrates' papers in GBPP 1844, Appendix 4.

⁶⁸W. Spain, Report on the Nelson District, in Mackay I, p. 59.

⁶⁹E. Meurant, Diary, 22 August 1844.

⁷⁰W. Spain, Report on the Nelson District, in Mackay I, pp. 58–59.

CHAPTER 5

CROWN PURCHASES TO COMPLETE THE NELSON SETTLEMENT, 1846-1850

I The Wairau Purchase, 1846-1847

In March 1847 Governor Grey conducted a purchase of the Wairau, Kaiparategau, and Kaikoura districts from three Ngati Toa rangatira, Rawiri Kingi Puaha, Tamihana Te Rauparaha, and Matene Te Whiwhi. This purchase was the culmination of a series of events which followed the New Zealand Company transaction of 1839, including the 'massacre' of 1843, the Spain Award of 1844, and the appointment of a new Governor with fresh instructions in 1845. According to Ian Wards, the Colonial Office had a new attitude towards the New Zealand Company by 1845, and this attitude was reflected in Lord Stanley's instructions to the new Governor, Captain George Grey. This change in Colonial Office policy had come about largely through a House of Commons Committee in 1844, which had recommended the vigorous colonisation of New Zealand, the redress of settler grievances, and the Crown assumption of 'unoccupied' or 'waste' land as a Crown demesne.¹

Lord Stanley drafted Grey's instructions in May 1845, and his despatches of the same year included a series of instructions about the New Zealand Company settlements. Unaware of FitzRoy's Crown Grant to the Company, the Colonial Secretary ordered the new Governor to put the Company in immediate possession of the lands awarded by Spain, and to give the Company whatever help was necessary to resolve its incomplete purchases of land outside the awards.² He ordered Grey to bring the investigations of Company title to a 'final, and, if possible, a satisfactory conclusion', and not to 'reopen questions of strict right, or to carry on an unprofitable controversy'. His instructions also made it clear that the Government expected Grey to obtain the so-called 'waste lands' for the Crown, by any relatively cheap stratagem

¹I. Wards, *The Shadow of the Land*, Wellington, 1968, pp. 167-179.

²J. Rutherford, *Sir George Grey: A Study in Colonial Government*, p. 164.

that presented itself. Stanley suggested a registration of Maori claims to unoccupied land, followed by an assumption of the remainder as demesne land, or else a tax of 2d. per annum on 'unoccupied' land, to be paid by forfeiture of the land concerned if the claimants could not come up with the cash.³ This type of scheme indicated that the government was determined to colonise New Zealand, and that the Governor was not just expected to complete the New Zealand Company settlements but to acquire as much land as possible in anticipation of further settlement. These considerations inspired the new Governor in a policy of buying 'waste lands' as rapidly as possible, long before they were needed for actual colonisation. This kept the purchase price low and obtained profits for the Crown, from the leasing of pastoral lands and the resale of agricultural blocks.⁴

The Company became aware of the possibility of a new Wairau policy in March 1846, when Grey paid his first visit to Nelson. He reappointed the magistrates who had signed the warrant for Te Rauparaha's arrest in 1843, and who had resigned or been dismissed in the wake of FitzRoy's pronouncement of their culpability. According to Colonel Wakefield, Grey's reappointment of these men was accompanied by assurances that 'he took a different view of the question to his predecessor'.⁵ Te Rangihaeata refused to meet the Governor in the same month, because of rumours that Grey intended to reopen the Wairau inquiry and punish him for his part in the 'massacre'.⁶

The Company's agents opened a new campaign of pressure, therefore, to obtain government assistance in the acquisition of the Wairau. Wakefield and Fox complained about Spain's failure to investigate the Wairau during (or after) his Nelson hearing. They claimed that he had promised to investigate it in Wellington, but then made an 'ex parte' judgement against the Company. They argued that he had no right to do this and that the Company had been unjustly deprived of the Wairau. The government ought to help them undo the damage caused by its Commissioner by sending an official to help the Nelson Agent to buy the Wairau from its resident Maori.⁷ In effect, Wakefield took a middle ground and argued that the Wairau should be subject to the same criteria as the Tasman and Golden Bay purchases. This meant that he thought he could still make a payment to the actual residents and thereby

³Wards, pp. 171–173.

⁴G. Grey to Earl Grey, 26 March & 7 April 1847, GBPP 1847–48, IUP vol. 6, pp. 8, 16–17.

⁵W. Wakefield to New Zealand Company, Wellington, 25 March 1847, NZC 3/7, National Archives.

⁶Wards, p. 248.

⁷W. Wakefield to G. Grey, 4 June 1846, CO208/87.

complete the title 'acquired' from Ngati Toa in 1839.

The Wairau question was complicated, however, by the Hutt crisis of 1846. Grey believed that Ngati Toa were basically responsible for the refusal of Ngati Rangatahi and Ngati Tama to withdraw from the Hutt Valley, and he did not believe that Te Rauparaha was genuinely neutral in the growing conflict between Te Rangihaeata and the Crown. As a result, Grey determined on a decisive solution to the suspected disloyalty of Ngati Toa, the most powerful tribe in the Cook Strait region.⁸ He decided to seize the entire Ngati Toa leadership, apart from those elements which had proven willing to follow an independent line from Te Rangihaeata's opposition and Te Rauparaha's guarded neutrality. He made a secret raid on Taupo pa in July 1846, seizing Te Rauparaha, Wiremu Te Kanae, Hohepa Tamaihengia, and two other chiefs.⁹ He also sent instructions to Bishop Selwyn in Auckland to keep Tamihana Te Rauparaha and Matene Te Whiwhi in custody at St. John's College until the Governor brought his other prisoners to Auckland.¹⁰ Of Te Rauparaha's influential relatives, only Rawiri Puaha remained free because of his ability and willingness to lead Ngati Toa in a direction more agreeable to the Governor. Puaha had sufficient mana and followers to oppose Te Rauparaha and Te Rangihaeata at the Wairau affray in 1843. He also took an independent line over the military road to Porirua, profiting from the wages offered for assistance in its construction, and he promised to actively help the government against the fugitive Te Rangihaeata. Puaha's intentions were complicated, however, and it seemed to many at the time that he was playing a risky double game with the Governor, profiting from government largesse but giving secret aid to Te Rangihaeata.¹¹

Whether or not this is true, Puaha's leadership did not go unchallenged after Bishop Selwyn persuaded the Governor to change his mind and allow the return of Tamihana and Te Whiwhi to Otaki.¹² These chiefs visited Te Rauparaha and used his mana to keep both Toa and Raukawa to a risky stance of neutrality, abandoning the more active pursuit of Te Rangihaeata favoured by Puaha.¹³ The decisive hui at Otaki took a line to which the government could not ascribe active treason, since the chiefs argued that the comforts of Otaki should be preferred to the privations of a bush campaign. The Army observers who wanted

⁸Wards, pp. 270, 276–286.

⁹*ibid.*

¹⁰W. Cotton to P. Cotton, Auckland, 21 November 1846, Micro 297/3.

¹¹Wards, pp. 284–287, cf. P. Burns, *Te Rauparaha: a New Perspective*, Wellington, 1980, p. 280.

¹²W. Cotton to P. Cotton, Auckland, 21 November 1846, Micro 297/3.

¹³T. Te Rauparaha, 'Life and Times of Te Rauparaha by his son Tamihana Te Rauparaha', ff. 124–125.

active assistance found their aspirations smothered in a 'titanic heap of comestibles'.¹⁴

By the end of 1846, therefore, Ngati Toa was walking a dangerous tightrope of neutrality, poised between active support and active opposition to the government. Te Rangihaeata had retreated to the Manawatu, while Te Rauparaha and other warlike chiefs were in custody but without formal charges or any move towards a trial. The leadership of Ngati Toa had devolved upon three Christian chiefs with Europeanising tendencies: Rawiri Puaha; Tamihana Te Rauparaha; and Matene Te Whiwhi. In February 1847 the Governor decided to take advantage of this situation as part of his general policy to 'complete' New Zealand Company purchases in the region, including the Wairau, Porirua, Manawatu, and Wairarapa districts. He met Colonel Wakefield on 17 February and explained that he would make arrangements for the Company to fulfil its engagements with its settlers.¹⁵ As he explained to Earl Grey, the Company had already sold Wairau sections to its land purchasers, and it was now up to the Crown to obtain the requisite land for settlement.¹⁶ If this meant going beyond the boundaries of the Spain Awards, then he 'would be glad to facilitate by every means, short of direct dictation to the natives, the accomplishment of the Company's views'.¹⁷

There was some dispute, however, over which party ought to pay for the land in the first instance, and Grey decided to undertake personally the negotiations for purchase of the Porirua and Wairau districts. Colonel Wakefield had strong views on the Wairau question, and he suggested that the Company was entitled to the district without further payment. If payment had to be made, however, then he was not prepared to admit the claims of the Porirua chiefs to a share.¹⁸ The Governor, on the other hand, had a definite political interest in the payment of pacification money to the senior chiefs of Ngati Toa. He compromised with Wakefield in February by sending the Surveyor-General to the Wairau to identify the geographical extent of the district, the iwi and chiefs in occupation, their numbers and cultivations, and their willingness to enter into a sale.¹⁹ This reopened the question of title, which had theoretically been settled in 1844 when Spain awarded 'bona fide possession' to

¹⁴Wards, p. 287.

¹⁵W. Wakefield to Secretary of NZC, Wellington, 23 February 1847, NZC 3/7.

¹⁶G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 201.

¹⁷W. Wakefield to Secretary of NZC, Wellington, 23 February 1847, NZC 3/7.

¹⁸W. Wakefield to New Zealand Company, Wellington, 25 March 1847; W. Wakefield to Richmond, 25 March 1847, NZC 3/7.

¹⁹W. Wakefield to Secretary of NZC, Wellington, 23 February 1847, NZC 3/7.

Te Rauparaha and the entire iwi of Ngati Toa, without actually investigating the case.²⁰

The Surveyor-General, C.W. Ligar, and the Company's Nelson Agent, W. Fox, toured the Wairau and Kaiparatahau districts in February and early March. According to Ligar's report, ultimate authority over the region had passed to Puaha in the absence of Te Rauparaha, as he was the only Ngati Toa chief of sufficient mana to lift the latter's tapu on the district. Once Puaha had agreed to suspend the tapu, partly because the Company was making moves into the district again, a mixed group of local Toa and Rangitane returned to the Wairau and resumed cultivation.²¹ Many of Cloudy Bay's former residents, including Puaha himself, had settled permanently at Porirua after the 'massacre' and had not returned to the Wairau.²² The principal resident chiefs were now Wiremu Te Kanae of Ngati Toa, Tana Pukekohatu of Ngati Rarua, and Hikaraia Kaikoura of Rangitane.²³ Ligar did not distinguish, however, between Ngati Toa and their close Rarua relatives in the district. He met about 50 of these local residents, and compiled a 'list of the owners of the district' according to their information. He reported:

They have no particular portion set apart for each, but have a joint interest in the whole:- The consent required of Puka, Nohoroa, Martin [Matene Te Whiwhi], Thompson [Tamihana Te Rauparaha], Puaha, Rauparaha, Nohoroa (Waterhouse), Te Kanae, Rangihaeata, Pukeko, Pukekowhatu, and Pikiwau (or Te Whawhanua, a rebel). [spelling of these names is Ligar's]

In addition to the above list there are many who have claims, but these are the chief.²⁴

Although two Rarua chiefs were included in this list, there were no Rangitane names submitted to the government as 'owners' at this time.

Grey received Ligar's report at Nelson in mid-March, and was no doubt delighted at the news that there were 80,000 acres of level land available for cropping, 48,000 acres of level land for pasture, and a further 240,000 acres of hilly ground suitable for pastoral farming.²⁵ This was more than enough to satisfy the requirements of the New Zealand

²⁰See above, p. 82.

²¹C.W. Ligar, Report to G. Grey, 8 March 1847, in Mackay I, p. 202.

²²W. Fox, Statistics & Report, July 1848, CO208/88.

²³Wiremu Te Kanae was certainly the principal resident Toa chief at Wairau after 1847, and probably was at this date also.

²⁴C.W. Ligar, Report to G. Grey, 8 March 1847, in Mackay I, p. 203.

²⁵ibid., cf. G. Grey to Earl Grey, 26 March 1847, p. 201.

Company and any subsequent settlers for the foreseeable future, but Grey also looked further south towards the Kaikoura district. This coastal strip was estimated at one hundred miles in length, containing approximately three million acres of land. It was largely uninhabited after the Kawhia-Ngai Tahu wars of the 1820s and 1830s. In order to obtain a title to this vast district, the Governor fell back on the Spain Report and its decision that possession of the Wairau lay with Ngati Toa. He argued that 'their claim to the whole of this territory [the Kaikoura coast] is identical with their claim to the valley of the Wairau', ignoring Spain's criteria of residence and cultivation, which Ngati Toa did not meet south of Kaiparatahau. This was, as Grey reported to the new Colonial Secretary, Earl Grey, 'a very extensive block of country to meet the probable requirements of the Government and the settlers'.²⁶

The Governor negotiated with senior Ngati Toa chiefs at Wellington for the purchase of these districts in late March. He had already purchased Porirua from them, but it is not clear how many chiefs participated in the Wairau negotiations. Although eight rangatira signed the Porirua deed, only Rawiri Puaha, Tamihana Te Rauparaha, and Matene Te Whiwhi signed the Wairau deed. Colonel Wakefield reported that the chiefs were extremely reluctant to sell:

Great disinclination was at first shown by the natives to part with the district and it was only by means of a large payment in money and a reservation of land to the West of the Wairau river and of all the Kaituna Valley that the purchase of it was effected.²⁷

The payment which Wakefield called 'large' was in fact a sum of £3,000 to be paid in annual instalments of £600. The chiefs asked for £5,000 but Grey consulted Colonel McCleverty, whom the Colonial Office had authorised to 'decide upon the reasonableness of the price paid to the Natives for land'. McCleverty cut the Maori figure down to £3,000, which the three Ngati Toa chiefs agreed to accept.²⁸ The Governor himself admitted that the district was 'so large that, in reference to its quantity and value, the payment made for it cannot but be regarded as small'.²⁹ He gave no reason for imposing this low price, apart from considerations of policy. The government had to buy land at once, 'as the Natives are now generally very willing to sell to the Government their waste lands at a price which,

²⁶ibid., p. 202.

²⁷W. Wakefield to W. Fox, Wellington, 26 March 1847, CO208/87.

²⁸G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 202.

²⁹G. Grey to Earl Grey, 7 April 1847, in GBPP 1847-48, p. 17.

whilst it bears no proportion to the amount for which the Government can resell the land, affords the natives (if paid under a judicious system) the means of rendering their position permanently far more comfortable than it was previously, when they had the use of their waste lands'.³⁰

Grey's 'judicious system' amounted to nothing more than a payment over five years, in the hope that 'the experience of each year will render it probable that every successive annual payment will be more judiciously expended'.³¹ No effort was made to provide advice or technical assistance to ensure that the money was spent wisely on the tools and agricultural development which Grey saw as a dire necessity, if Maori were to survive on their reserves.³² There was also a second reason for dividing the payment over five years, which revealed the political dimension of the Wairau purchase. He argued that the payment in instalments would 'give us an almost unlimited influence over a powerful and hitherto a very treacherous and dangerous tribe'.³³

Although the payment was tiny in consideration of the quantity of land alienated, the chiefs were able to carry one point. Richmond declared that 'Ample Reserves [were] made by the Government at the "Wairau" and in the "Porirua" district for the natives, - as they were only willing upon these terms to alienate their lands'.³⁴ Two blocks of land were reserved, running across from the Kaituna Valley to Cloudy Bay, but excluding the Tua Marina district where the Wairau 'massacre' took place. These reserves consisted of 117,248 acres, in addition to which the Pelorus and Queen Charlotte Sounds were not made part of the purchase.³⁵ Grey felt called upon to justify these large reserves, as they contrasted with the tiny reserves allotted in other areas, such as Golden Bay. He informed Earl Grey that Maori needed more than just land for cultivation, including habitats for fernroot, fishing, eels, birds, and 'extensive runs' for wild pigs, and that they could not be confined to small pieces of land for cropping until their economy and farming practices had undergone further change.³⁶ Nevertheless, Ngati Toa lost these large reserves six years later when they were included in the 1853 Waipounamu Purchase.

³⁰*ibid.*

³¹G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 202.

³²G. Grey to Earl Grey, 7 April 1847, in GBPP 1847-48, p. 16.

³³G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 202.

³⁴Richmond to W. Wakefield, Wellington, 23 March 1847, NZC 3/7.

³⁵See AJHR 1874, G-6.

³⁶G. Grey to Earl Grey, 7 April 1847, in GBPP 1847-48, p. 16.

In addition to the questions of price and reserves, we must consider the issue of whether or not the government purchased the district from all (or any) of the correct right-holders. According to Ligar's report, the three chiefs who signed the deed were considered 'owners' by the local inhabitants. The nine other chiefs listed as 'owners' by Ligar were not consulted, however, and nor were the local residents or the 'many [others] who have claims'.³⁷ Nor were the claims of pre-conquest iwi considered, including Rangitane in the Wairau and Ngai Tahu in the Kaikoura district. Furthermore, only one of the five most important chiefs with direct interests in the Wairau (Te Rauparaha, Te Rangihacata, Te Kanae, Pukekohatu, and Puaha) signed the deed of sale. Grey seems to have taken the view that Spain's award should be upheld, and Ligar's investigation ignored, and furthermore that Puaha, Tamihana, and Te Whiwhi spoke for the whole of Ngati Toa.³⁸

In some purchases the 'sellers' later paid part of the purchase money to other right-holders who had not been consenting parties to the sale, but even this may not have happened in the Wairau Purchase. Bishop Selwyn gave evidence in 1856 that the money was 'retained by the principal chiefs in large sums, who appropriated them to their own use, and part of the money was lodged in the bank by one of the young chiefs for his sole benefit'.³⁹ We have an independent corroboration of Selwyn's evidence for at least the first instalment of the purchase money. W.G. Servantes informed the government in March 1848 that Te Whiwhi and Tamihana had paid none of their relatives, and that there were other unsatisfied claimants.⁴⁰ Nevertheless, the government continued to pay the instalments to the three signatories, even though it was the local rangatira Te Kanae and Kaikoura who were called upon to certify the boundaries of the Reserve.⁴¹ The payments may have been more widely distributed among the senior Ngati Toa chiefs after 1848, but Selwyn was quite sure that this was not like other sales, where the money was paid out to the 'whole body of native owners in very small sums'.⁴² As a result, the majority of right-holders were neither consulted nor paid for their interests in the Wairau, Kaiparatchau, and Kaikoura districts. In February 1850, three years after the sale, the local Toa, Rarua, and Rangitane inhabitants were still refusing to abandon their cultivations on the south side of the river, unless the government paid them

³⁷C.W. Ligar, Report to G. Grey, 8 March 1847, in Mackay I, p. 203.

³⁸G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 201.

³⁹G.A. Selwyn, Evidence to Board of Inquiry, 1856, in GBPP 1860, p. 546.

⁴⁰W. Servantes to Domett, Porirua, 27 March 1848, in AJHR 1861 C-1, p. 1.

⁴¹Mackay I, pp. 204-205.

⁴²G.A. Selwyn, Evidence to Board of Inquiry, 1856, in GBPP 1860, p. 546.

for their interests in the land.⁴³ In May 1856, nine years after the sale, the Ngai Tahu of Kaiapoi were threatening to obstruct a resolution of claims at Banks Peninsula unless the government paid them for their interests north of Kaiapoi.⁴⁴

In addition to the fact that Grey purchased the land from only three right-holders, there have been suggestions that the chiefs who *were* party to the sale were coerced by undue pressure and threats. George Clarke, for example, claimed that the Wairau was 'wrung and wrested' from Ngati Toa.⁴⁵ According to Wiremu Te Kanae, Grey ignored his predecessor's solemn judgement that Ngati Toa were not at fault in the Wairau 'massacre'. Colonel Wakefield and others also considered that Grey took such a stance.⁴⁶ Te Kanae claimed that Grey asked Puaha to 'give over Wairau, the place where Wakefield and his comrades died, to the queen in compensation for her dead'. Te Kanae also suggested that the Governor paid no money for the Wairau - 'the money which paid for it was the death of Wairawke (Wakefield)'.⁴⁷ He may have meant that the Tua Marina district was given up as *utu*, and the purchase money was for the remainder of the Wairau and Kaiparatahau districts. This might explain the sale of a mile-wide strip of land (Tua Marina) running up through the middle of the large reserve on the north bank of the river, and the fact that the sites of the conflict and the 'massacre' are marked on the purchase map which accompanied the deed, a curious fact which is otherwise difficult to explain.⁴⁸ Grey himself admitted to the Smith-Nairn Commission that the 'massacre' was discussed, but he claimed that it was the Christian chiefs who wanted to make a voluntary atonement for the Wairau killings. He also commented: 'I regarded it more as a giving up of the land for the good of both races than as a purchasing of it'.⁴⁹

In addition to this factor, the captivity of Te Rauparaha, Te Kanae, and Tamaihengia must be taken into account, and also the absence in hiding of Te Rangihaeata. Firstly, the absence of the two great fighting chiefs of Ngati Toa may have weakened the other leaders' ability to resist the Governor's offers. As one group of Ngati Toa put it in 1843:

⁴³J. Tinline to Richmond, Nelson, 18 February 1850, J. Tinline Papers 1844-1903, Micro MS 790, WTu.

⁴⁴J. Johnson to McLean, Lyttelton, 11 May 1856, in Mackay II, p. 9. See also pp. 7, 16, 20-22.

⁴⁵Cited in P. Burns, p. 284.

⁴⁶eg. R. Allan, *Nelson: a History of Early Settlement*, p. 305.

⁴⁷W. Te Kanae, 'The History of the Tribes Ngati Toa Rangatira. . .', pp. 17-18.

⁴⁸See Figure 6, taken from the map accompanying Grey's despatch, GBPP 1847-48, pp. 7-8.

⁴⁹Wai 102 A-11, pp. 16-17.

These old chieftains [Te Rauparaha and Te Rangihaeata] are our house; if our house is taken down, where shall we find shelter? They are our mountain, the stay and prop of our nation; if they are taken away we shall be scattered and helpless; there would be none to defend us against the aggression of the European; we should have no name; we should cease to be.⁵⁰

Without these two chiefs, therefore, Ngati Toa felt bereft of its strongest leaders. R. Allan suggested that had they been present, Te Rauparaha might possibly have agreed to the sale if the price was right, but that Te Rangihaeata almost certainly would not have done so. According to George Clarke, whose son was interpreter at the sale, the chiefs pointed out to the Governor that 'the bargain was incomplete without the consent of Rangihaeata' but 'the Govr. said he was a rebel and would not treat with him'.⁵¹

Furthermore, Clarke suggested that the imprisonment of Te Rauparaha and the others was used as a leverage against Puaha, Tamihana, and Te Whiwhi. Tamihana 'remonstrated against the proceedings but by threats to retain Rauparaha withdrew his remonstrance'.⁵² Rutherford commented that if Clarke's version was correct, the purchase

partakes of the character of an act of confiscation in punishment for the 1843 massacre and the 1846 rebellion. The penal aspect of the matter, however, was not disclosed in the despatches, which represented the sale as a symptom of the tribe's pacification and goodwill.⁵³

R. Anderson pointed out that at least two Ngati Toa chiefs repeated a similar story to Clarke's before the Maori Land Court.⁵⁴ P. Burns found the argument for coercion convincing, and the Wai 102 claimants have argued on the basis of her findings that the Wairau Purchase was a 'ransom' for Te Rauparaha.⁵⁵ The great chief was not in fact released as a condition of the sale, but Colonel Wakefield noted on 25 March (a week after the sale) that the release of

⁵⁰Cited in S. Ironside to ?, Cloudy Bay, 5 July 1843, GBPP 1844, Appendix 4, p. 181.

⁵¹G. Clarke, 3 October 1848, Williams MS, cited in Rutherford, pp. 165-166.

⁵²ibid.

⁵³ibid., p. 166.

⁵⁴Karanama Kupukai & Wi Parata, cited in R. Anderson, 'Historical Overview of Wellington Region', CCJWP, 1993, p. 50.

⁵⁵Wai 102 A-5, pp. 66-68.

Puaha's brother, Te Kanae, and the other chiefs was imminent.⁵⁶ Unfortunately I have not been able to pin-point the exact date of their release in 1847, but it was certainly long before that of Te Rauparaha in the following year.

Thus, there appear to have been a number of irregular features in the conduct of the Wairau Purchase. Grey appointed an officer to investigate customary title in the Wairau and then completely ignored his findings, preferring to rely on the award of Commissioner Spain, who had not investigated the question. As a result, he purchased the Wairau from three important chiefs, who did not fully represent all the Ngati Toa right-holders, let alone the Ngati Rarua and Rangitane claimants. The three signatories may also have kept at least two instalments of the purchase money for themselves, failing to distribute it among the other right-holders. The government continued to make its payments to the three signatories alone. Also, the Governor himself said that the purchase price was very low, although a substantial reservation was made of 117,248 acres in the Kaituna Valley and Port Underwood districts. This reserve, however, was later included in a purchase from more North Island chiefs, only six years after it was made a reserve.

The above aspects of the Wairau Purchase may be evidenced from government sources, but there are further hints of 'coercion' which the official sources do not document. According to Clarke, two witnesses to the Maori Land Court, and the memoirs of Wiremu Te Kanae, the Governor used unfair pressure tactics to 'wring and wrest' the Wairau from the beleaguered Ngati Toa leaders. According to Rutherford, it is possible that the purchase was really an 'act of confiscation in punishment for the 1843 massacre and the 1846 rebellion'.⁵⁷ The claimants also argue that Te Rauparaha's imprisonment was used as a lever to force agreement to the sale.

II The Waitohi Purchase, 1847-1850.

After the Wairau Purchase in February 1847, Grey believed that he had made sufficient land available for the New Zealand Company to meet all of its commitments to its Nelson settlers. The settlers convinced the local Company Agent, however, that the Nelson

⁵⁶W. Wakefield to New Zealand Company, Wellington, 25 March 1847; W. Wakefield to Richmond, 25 March 1847, NZC 3/7.

⁵⁷Rutherford, p. 166.

scheme could not be wound up until the Wairau was provided with a suitable harbour as an outlet for its farm produce. The Company needed a port, therefore, and sent a deputation to examine likely sites at the end of 1847. This party chose Waitohi, a large and fertile harbour at the bottom of Queen Charlotte Sound, as the closest convenient port.⁵⁸ A large party of Te Atiawa had residences and cultivations at Waitohi, with as much as 95 acres in production at any one time. As far as we can tell from the reports of Company and government agents, these Atiawa were very keen to have a large settlement on their borders. They wanted to obtain the purchase money, a new trading outlet for their agricultural products, and the added prospect of income from occasional labour clearing land, building roads, and providing other services.⁵⁹ The economic benefits seemed clear to both parties, especially since Nelson was declining as a market for Maori produce and Wellington was the only other 'close' avenue for trade.⁶⁰

In December 1847 the Company's Nelson Agent, William Fox, visited Waitohi and sounded out its inhabitants. He found a large and migratory population, anxious to have settlers and prepared to move out of the area to nearby bays in the Sound. Fox claimed that the locals told him he would have to obtain the consent of Wiremu Kingi Te Rangitake at Waikanae, but M.J. Mitchell suggested that this may have been a mistake.⁶¹ Fox approached the Governor for aid in February 1848, but Grey refused to take personal action on the matter. Instead, he sent Kemp to assist Fox and promised to confirm any arrangements made by the two agents. The principal resident chief ('Roberts') had died in the meantime, however, and he had been the leading proponent of the sale. About two-thirds of the Waitohi Atiawa decided to accompany Wiremu Kingi back to Taranaki after 'Roberts' died, leaving a population of about 50 who were less in favour of the sale.⁶² Fox may have underestimated the remaining Atiawa population, however, because an 1849 census put their number at 89.⁶³ These people were led by Ropoama Te One, a prominent conquest chief, who offered to sell the smaller harbour of Waikawa for £200. Fox decided not to accept this offer but to hold out

⁵⁸W. Fox to W. Wakefield, Nelson, 19 January 1848, CO208/88.

⁵⁹*ibid.*, 10 May 1848; see also Bell to Secretary of New Zealand Company, Wellington, 6 January 1849, CO208/89.

⁶⁰W. Fox to W. Wakefield, Nelson, 7 February 1848, CO208/88.

⁶¹W. Fox to W. Wakefield, Nelson, 19 January 1848, CO208/88, cf. Wai 102 A-16(b), Chapter 8, p. 106.

⁶²Fox to Wakefield, Nelson, 10 May 1848, CO208/88.

⁶³Mackay I, p. 266.

for the Waitohi, in the hope that Ropoama's people would want settlers badly enough to give in, or else would abandon the area and return to Taranaki.⁶⁴

In late 1848 Fox appealed to Grey for aid to settle the purchase. The Governor avowed that the Colonial Office had instructed him to make arrangements for the Company to complete its engagements with the Nelson settlers.⁶⁵ He also declared that Maori interests did not 'in any way require that they should retain the Waitohi', without offering a reason for this opinion. He moved on to argue that since they did not need Waitohi, it was actually 'adverse to their own interests' to keep it and that the government should set about 'inducing them, if practicable, to complete an arrangement which promised to be so advantageous to both parties'.⁶⁶ Acting on these principles, the Governor held a conference with the Waitohi chiefs when they visited Wellington for trade in November 1848. He proposed that they establish themselves in a 'native town' at Waikawa, modelled on the Otaki township, which would be surveyed for them and the ground ploughed ready for cultivation. The chiefs refused this offer but seemed to waver at a second meeting in December, so the Company's new Nelson agent (Dillon Bell) asked the Governor to visit Waitohi and obtain their agreement.⁶⁷

Grey and Bell reached a formal settlement with the Waitohi Maori on 30 December 1848, which promised the survey and allotment of town and rural sections at Waikawa, and payment for the ploughing of as many acres as were in cultivation at Waitohi. The government would also build a wooden house for use as a chapel, and pay £100 in cash. Informally, the Governor promised to pay Te Atiawa to clear land at Waitohi for the settlers' town, and to work on making a road to the Wairau. The Governor also toured other parts of the Sound and found a general agreement that Waitohi should be sold.⁶⁸

F. Jollie and Major Richmond visited Waitohi in February 1849 to commence work on the execution of the December Agreement. Jollie surveyed Waikawa as a reserve, laid out the 'native town', and also saw that work was started on the church. He gave the first hint of problems over Waikawa as a suitable substitute for Waitohi, however, when he pointed out that half of the land was unsuitable for agriculture.⁶⁹ By the end of the year, Bell was ready to finalise the arrangements by paying over the purchase money and obtaining signatures to

⁶⁴Fox to Wakefield, Nelson, 10 May 1848, CO208/88.

⁶⁵G. Grey to Earl Grey, 7 April 1849, in Mackay I, p. 264.

⁶⁶*ibid.*, 1 February 1849, p. 263.

⁶⁷F.D. Bell to Secretary of New Zealand Company, Wellington, 6 January 1849, CO208/89.

⁶⁸*ibid.*

⁶⁹F. Jollie to Fox, Nelson, 24 March 1849, CO208/89.

a deed. Te Atiawa asked for more money, arguing convincingly that there had never been a sale of land in which the initial price had proved the final amount, or for which there had not been a number of payments. Bell resolved this crisis by acknowledging that Waikawa could never have been used for Maori agriculture, so that the government could neither plough the land nor pay for its ploughing. He offered an extra £200 in cash as a substitute for this part of the agreement.⁷⁰ Nineteen people came forward and signed the deed, including local residents and chiefs who lived elsewhere but had 'a share in the Waitohi', such as Ropata Witikau.⁷¹ There were no dissentient voices or efforts to repudiate the agreement after the deed was signed on 4 March 1850.

The details of this purchase reveal that it was very different from the February 1847 sale of the Wairau, Kaiparategau, and Kaikoura districts. It seems clear that the great majority of local right-holders, both Waitohi residents and interested parties from elsewhere in Queen Charlotte Sound, were consulted and gave their consent to the sale.⁷² There were two other groups of possible right-holders who may have had a saleable interest in the Waitohi. Wiremu Kingi and the Te Atiawa of Waikanae may have had an interest, although this is disputed by the Wai 102 researchers, H. and M.J. Mitchell.⁷³ There was also the group of Waitohi residents who decided to migrate to Taranaki in 1848. Fox believed that this decision cancelled their rights even before they had departed, and that the remaining residents were the only right-holders.⁷⁴ Donald McLean, however, later dealt with Taranaki residents for their interests in Queen Charlotte Sound.

Apart from these two groups of right-holders, it seems likely that payment was fairly distributed among the Queen Charlotte Sound claimants. Many people signed the deed and participated in the payment, and the evidence of later sales suggest that it was the practice of Queen Charlotte Sound Atiawa to distribute purchase money very widely among the people.⁷⁵ The price itself was low in terms of cash, but Bell envisaged a situation similar to the early New Zealand Company purchases, in which non-monetary considerations took priority over the payment of money or goods. He argued that the survey of a European-style town was in itself an enormous advantage, enabling the conversion of Maori economic and

⁷⁰Bell to Fox, Nelson, 2 December 1849, CO208/89.

⁷¹ibid. See also Mackay I, pp. 266–267, & accompanying map, reproduced as Figure 7.

⁷²F.D. Bell to Secretary of New Zealand Company, Wellington, 6 January 1849, CO208/89.

⁷³Wai 102 A–16(b), Chapter 8, p. 106.

⁷⁴Fox to Wakefield, Nelson, 10 May 1848, CO208/88.

⁷⁵Mackay I, p. 315.

social habits from communal living and farming to individualised allotments in both town and countryside.⁷⁶ This new scheme for social ‘improvement’ replaced the old Company scheme of tenths, and the Native Reserves were the only Nelson section-owners not to receive an automatic quarter-acre section in the town of Picton. Te Atiawa objected to their exclusion from ‘the White man’s town’ but finally accepted their relegation to a separate town at Waikawa.⁷⁷

The Waikawa Reserve failed to serve the purposes for which it was originally designed in the Waitohi Purchase. The government and Company agents saw it partly as a traditional reserve, a small block excepted from the sale of a larger block which would cater for the original purpose and functions of the larger block. Waikawa was unsuitable for cultivation, however, and its new European-style town could not hope to serve as an agricultural village on the model intended by Bell. Te Atiawa planned to use it as a central meeting place where they had houses in which to live whilst attending church and selling produce in the Pakeha town, while ‘a great many’ actually lived and cultivated in other parts of the Sound.⁷⁸ The government’s intention to create a reserve that would substitute for the agricultural utility of Waitohi was not fulfilled, but this did not concern Atiawa at the time, as they had the bays of the wider Sound to move around in and cultivate at their pleasure. The neighbouring town at Waitohi, however, was also something of a disappointment as far as economic opportunity for Maori was concerned. They were excluded from its original sections, took no part in its rise in land values, but also found its slow and lack-lustre growth offered far fewer trading opportunities than they had expected from the example of a more successful town like Nelson.⁷⁹

Nevertheless, the Waitohi Purchase had evolved over two years of discussion and negotiation, which enabled Te Atiawa to understand the purport of the deed which they signed in 1850. The boundaries of the reserve were fairly well defined, but the boundaries of the Waitohi block itself were not even mentioned in the deed.⁸⁰ Presumably, Te Atiawa were told that they were selling everything between Waikawa and the northern boundary of the Wairau Purchase. They were very familiar with the practices of sellers and purchasers by

⁷⁶F.D. Bell to Secretary of New Zealand Company, Wellington, 6 January 1849, CO208/89.

⁷⁷F. Jollie to Fox, Nelson, 24 March 1849, CO208/89.

⁷⁸Bell to Fox, Nelson, 2 December 1849, CO208/89.

⁷⁹See H.D. Kelly, *As High as the Hills: the Centennial History of Picton*, Whatamongo Bay, 1976, *passim*.

⁸⁰Mackay I, pp. 266–267. See Figure 7 for the deed map of the Waitohi Purchase.

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March 1850, aware that they were giving up their own right to live on the land outside of their Waikawa Reserve, but also aware that they could expect to improve on the terms of any bargain before the completion of a purchase.⁸¹ During the year 1849 they demonstrated a 'perfect understanding that the land is no longer theirs'. They knew the detailed history of other purchases and made no attempt to plant new crops in 1849 or exercise other acts of ownership, as they awaited the finalising of the deal and the payment of the purchase money. Bell concluded that Te Atiawa understood the full meaning of the sale and were prepared to honour their part of the December 1848 Agreement.⁸²

⁸¹Bell to Fox, Nelson, 2 December 1849, CO208/89.

⁸²*ibid.*

CHAPTER 6

THE AFTERMATH OF THE SPAIN AWARD, 1844-1853

I COMPLETING THE COMPANY PURCHASES: GOLDEN BAY

While Governor Grey was buying Nelson's rural lands on the east coast, the original Company purchases continued to cause problems in the west. The Maori communities of Golden Bay had refused to accept Spain's compensation award in 1844, or to sign a new deed of sale. The people of Motupipi regarded the level of compensation offered by Spain and Clarke as far too low, considering the prices which could be obtained for land and minerals among the nearby settler communities. The chiefs of Aorere were initially prepared to accept the £290, in the mistaken belief that it was all for themselves. Upon discovering that Clarke intended to divide the money amongst all the Rarua, Tama, and Atiawa communities who lived in the region, Tamati Pirimona Marino returned to Aorere in high dudgeon. Clarke told Spain that he saw no reason to investigate the Golden Bay purchase further, and the Commissioner remained firm that he would not negotiate over the level of compensation. As a result, the government kept the money until the people of Golden Bay should change their minds, and Spain proceeded to award title for the district to the New Zealand Company.¹

In July 1845 Governor FitzRoy executed a Crown Grant for the Nelson settlement, although the inhabitants of Golden Bay had neither accepted the compensation nor executed a deed. At this point they must have seen the writing on the wall, and they gave in to the combined persuasions of the Police Magistrate, Donald Sinclair, and the Anglican and Wesleyan missionaries, C. Reay and J. Aldred.² The leading chiefs visited Nelson in October

¹ See above, pp. 80-81.

² A. Mackay, Land Purchases, Middle Island, 1 October 1873, AJHR 1874 G-6, p. 1.

1845 and signed an agreement to accept the £290 of compensation money. The government did not release the money until the following March, however, at which time the principal Ngati Rarua chief of Motupipi, Matenga Te Aupouri, was absent at Porirua for Te Hiko's hahunga. Sinclair hesitated to act without Te Aupouri's presence, and waited until the Ngati Rarua party had returned to Motupipi from the North Island.³

Fox, Tinline and the two missionaries went to Motupipi in May 1846 to settle the question. Unfortunately, they found that many important chiefs were absent, including the principal Ngati Tama chief of Takaka, Te Meihana. They decided to proceed with the payment, making the £290 over to Te Aupouri of Motupipi and Tamati Pirimona Marino of Aorere. Fox commented: 'It would have been desirable to have had all present, but after two months ineffectual attempts to get them together, it was considered safe to pay it to two who are acknowledged by all to be the principal chiefs'.⁴ Reay and Aldred endorsed this decision, partly on the grounds that Spain and Clarke had paid the 'superior' chiefs of Motueka and Wakapuaka in the same way. They felt that Te Aupouri and Marino could be trusted to pay the 'numerous' other claimants.⁵ The chiefs proceeded to sign Sinclair's deed of sale, adding the names of eight other chiefs on their behalf, including Te Meihana of Takaka. Several other chiefs from Motupipi and Aorere also signed the deed. In accordance with the Spain Award, the deed guaranteed that when 'the Lands are chosen by the white people there shall be left to the Maories, the pahs, the burial places and the cultivations as awarded by Mr Spain. There shall be also chosen for the Maories certain reserves from the lands surveyed by the Europeans'.⁶

Fox gave £100 of the compensation money to the Aorere chiefs Tamati Pirimona and Hori, for distribution amongst their fellow chiefs and people. The remaining sum was entrusted to Te Aupouri, for payment amongst his own people and the Ngati Tama of Takaka. In 1847 the Takaka chiefs complained to Sinclair and Tinline that they had not been paid. The magistrate held a hui of Motupipi and Takaka people to investigate the matter, and Te Aupouri admitted that he had not given Ngati Tama a penny. Te Meihana's people claimed rights to the Takaka district through a conquest chief, Te Iti of Ngati Rarua, who was now settled at Motueka. Te Iti had made a tuku of land to Ngati Tama in return for canoes and

³ J. Tinline, memorandum, n.d. (1846), Tinline MS Papers 26/1. W:Tu.

⁴ W. Fox to W. Wakefield, Nelson, 2 June 1846, CO208/87.

⁵ *ibid.*

⁶ J. Tinline, memorandum, n.d. (1846), Tinline MS Papers 26/1. W:Tu.

other presents. Te Aupouri refused to recognise anyone's rights except for Te Iti's, to whom he paid £30. He told the Ngati Tama to ask Te Iti for a share of that small sum of money. The government officials decided not to interfere but to leave the issue for Maori to settle amongst themselves. Ngati Tama were unhappy with Sinclair's decision and continued to appeal to the government for their share of the compensation money.⁷

Some of the Ngati Tama chiefs of Aorere also felt aggrieved, and claimed that Marino had not paid a share of the £100 to themselves or their relatives. A rising generation of Tama people, led by Henare Te Ranga, decided to leave Aorere and resume 'ownership' of their former lands at Te Parapara and Tukurū, since they had received no payment for these lands.⁸ The problems with compensation payments were further embittered by the government's failure to reserve all the pa and cultivations which the people of Golden Bay had been guaranteed in the deed of 1846. Sometimes this was the result of carelessness, such as Heaphy's failure to remember that the Takaka pa and cultivations were on Section 13, which Sinclair had agreed to reserve in 1847. The Ngati Tama found that their old cultivations had not been reserved at places like Tukurū, and that the Company would not respect these mahinga kai even if they were reoccupied by Maori before sections were allotted to settlers. Similarly, the Te Atiawa at Pariwakaoho found that one of their pa and areas of cultivation had not been reserved, despite the personal intervention of McLean. The result was a series of disputes between settlers and Maori in Golden Bay, and a growing feeling amongst Maori that the terms of the 1846 deed had not been fulfilled.⁹

When Sinclair and Tinline set out to plot the reserves in 1847 they found a further problem in the Wainui/Separation Point district, which was inhabited by another community of Ngati Tama, but where the Ngati Rarua of Motupipi also had interests. The fairly large Wainui community (64 people) had residences and cultivations in at least four places in the Separation Point district, but they had never received any of the 'presents' distributed by Captain Wakefield, or the compensation money awarded by Spain. Nevertheless, the whole of the Separation Point district (estimated at more than 20,000 acres) had been included in the map attached to the Spain Award, although the Company had not surveyed any of the district. Sinclair ignored the claims of local Maori that they had not sold this region between Porahau

⁷ J. Tinline to Richmond, Nelson, 18 December 1855, in Mackay I, p. 295.

⁸ *ibid.*, pp. 296–297.

⁹ *ibid.*

beach and Astrolabe Roads, even though it was not certain that the Company even wanted the district. He thought that the land was useless beyond the Wainui Valley and that the Company ought to confine itself to its surveyed portion of Golden Bay, but he proceeded to mark off reserves in the area (of 476 acres) 'in the event of the New Zealand Company desiring to have that district'. Ngati Tama of Wainui informed Sinclair that they would not permit the Company to survey their land unless they received payment for it.¹⁰

By the early 1850s, therefore, a number of problems had arisen with the Company purchase of Golden Bay. Ngati Tama from Takaka and Aorere claimed that they had not received their share of the Spain compensation money, an award which they had only unwillingly accepted in the first place. There was widespread dissatisfaction with the reserves, and especially with the government's failure to include all the existing pa and cultivations, as promised in the deed of 1846. And finally, there was a large district running from the north-east of Motupipi, all the way across to Sandy Bay, which the Ngati Tama inhabitants claimed they had never sold to the Company. Although they had received no payment and the district had not been surveyed by the Company, the Separation Point block was still included in the map attached to the Spain Award in 1844, and was therefore regarded as part of the Crown Grants of 1845 and 1848. These problems were not addressed by the government until 1855, when they became part of the negotiations for the Waipounamu Purchase.

II TIDYING UP THE COMPANY PURCHASES: TASMAN BAY

The people of Motueka had accepted the Spain Award without protest, partly because it offered redress for their grievance about pa and cultivations, especially at Te Maatu (the Big Wood). The failure of the Company and government to act upon this part of the Spain Award will be discussed below in the section of this report dealing with the Nelson Tenthhs.¹¹ At this point it is sufficient to note that the Motueka community continued to protest about their loss of sites and resources, and the Commissioners of Native Reserves tried to rectify the matter in 1848. Although the Motueka people obtained eight more suburban sections at Te Maatu as a result of the Commissioners' efforts, this did not secure all their resource areas at the Big

¹⁰ Sinclair to Colonial Secretary, 19 October 1847, in Mackay II, pp. 271–272. See also Figure 9 for the Separation Point Block.

¹¹ See below, Chapter 7.

Wood, let alone elsewhere in the district.¹²

There was also some trouble with the Ngati Tama of Wakapuaka on the other side of the bay. The New Zealand Company had not chosen to follow up their giving of gifts to Ngati Tama by claiming a purchase in this part of Tasman Bay. Captain Wakefield may have believed that the land at Wakapuaka was of little use to settlers, and although Ngati Tama were keen to have settlers at first, they had changed their minds by 1844 when some of the disadvantages had become clear to them.¹³ As a result, it was necessary to establish a boundary between the Nelson settlement and the Wakapuaka block. Spain included the Happy Valley and Horoirangi (the Glen) in his Award, because these districts had been surveyed and claimed by the Company. Te Wahapiro of Wakapuaka claimed that Wakefield's purchase only extended about four miles north of Nelson as far as the Wells farm, and that everything north of that farm still belonged to Wakapuaka. The Company Agent, William Fox, summoned a force of armed settlers and proceeded to cut the boundary line on the northern side of Happy Valley. Te Wahapiro submitted to this show of force and the boundary was fixed several miles further north than 'the boundary of the land the Natives admitted that they had sold to the Company'.¹⁴ According to Alexander Mackay, Wi Katene Te Manu and the other Ngati Tama were furious at this loss of land which they claimed they had not sold, and retained a grudge against both the Company and Te Wahapiro, whom they felt had mishandled the situation.¹⁵ Wi Katene successfully resisted attempts to move the boundary further north in 1848, when Thomas Brunner cut a boundary for the Mackay farm at Horoirangi.¹⁶

III EXTENDING THE COMPANY PURCHASES: PAKAWAU AND THE WEST COAST

After the Wairau Purchase of 1847 and the Kemp Purchase of 1848, Governor Grey felt that he had acquired title to most of the land in the South Island. The West Coast remained a doubtful part of the Kemp Purchase, however, because neither Kemp nor Mantell were able to arrange payment or reserves for the Poutini Ngai Tahu.¹⁷ In addition to the

¹² *ibid.*

¹³ See above, p. 60.

¹⁴ AJHR 1936, G-3B, pp. 20, 34-35, 47-48. See also Wai 102 A-16(b), Chapter 8, pp. 57, 74-77.

¹⁵ AJHR 1936, G-6B, p. 20.

¹⁶ *ibid.*, p. 48.

¹⁷ *Ngai Tahu Report 1991*, vol. 1, pp. 62-65.

claims of this branch of Ngai Tahu, there were iwi in Golden and Tasman Bays which claimed rights over Te Tai Poutini, and there was also a substantial part of the West Coast below Milford Sound which had been excluded from the Kemp Purchase. Grey continued to press his officials for a more thorough purchase of the West Coast, therefore, and instructed Major Richmond to extinguish the rights of Maori living in the Nelson Province.¹⁸

Grey also wanted to 'complete the Nelson Block' by buying the part of Golden Bay north of Aorere, which had been excluded from the New Zealand Company Purchase.¹⁹ His main interest in this block was its rich coal resources, which had aroused his interest during a visit to Nelson.²⁰ He ordered the Superintendent of Nelson, Major Richmond, to examine the land north of Aorere (which became known as the Pakawau block) and to buy it for the Crown. Since Grey was probably unaware that Maori still claimed parts of the Spain Award blocks, he believed that the Pakawau Purchase would extinguish the last of original Maori title in Golden Bay.²¹

Richmond carried out an inspection of the coal and other mineral resources at Pakawau in late 1851. He discovered that the coal was both rich and accessible, although the quality of land was disappointing for agricultural purposes. The mineral wealth of the area convinced Richmond that he should lose no time in purchasing it, and he entered into negotiations with local Te Atiawa under Wiremu Kingi Te Koihua. The Pakawau Atiawa asked for £1,000 but Richmond rejected this price on the grounds that the land was poor and not very useful. He offered £500 for the whole district, including the harbour of West Whanganui, with the stipulation that Te Koihua must use the money to 'settle with other claimants connected with the district'.²²

Richmond was in fact anxious to settle the sale as soon as possible:

With the prospect of such abundance of good coal and other valuable minerals in the district, I was the more anxious to acquire it for the Government at once, as the longer the purchase was delayed (it appears to me) the more difficult it would be of accomplishment, for I found the cupidity of the Natives had already been aroused by the reported value of the minerals upon their land,

¹⁸ Richmond to Colonial Secretary, 5 January 1852, in Mackay I, p. 290.

¹⁹ *ibid.*, p. 289. See also Figure 9 for the location of this area, which came to be called the Pakawau Block.

²⁰ *ibid.* Richmond to Colonial Secretary, 5 January 1852, in Mackay I, p. 289. See also GBPP 1854, vol. 9, 1779: p. 114.

²¹ Grey to Earl Grey, 14 July 1852, GBPP 1854, vol. 9, 1779: p. 114.

²² Richmond to Colonial Secretary, 5 January 1853, in Mackay I, pp. 289–290.

and if they were advised that it would be more to their interest to retain the ownership, the present opportunity might be lost of acquiring it.²³

In the Ngai Tahu claim, the Waitangi Tribunal condemned similar actions on the part of James Mackay, and suggested: 'In offering to pay no more than a nominal price for land which had the potential for a very early substantial rise in value, the tribunal concluded that the Crown failed to act with the degree of good faith required of one Treaty partner to the other'.²⁴

Richmond's anxiety did not betray him into haste, however, and he took the time to visit other groups in Golden and Tasman Bays. Although his primary concern in doing so was to negotiate a West Coast purchase, he encountered sufficient opposition to the Pakawau deal that he had made with Te Koihua, to cause him to revise his initial agreement. He found that 'William King's influence was not sufficiently recognised over a portion of the district', and that other interested parties in Golden Bay objected to the low price of £500.²⁵ The Superintendent felt that with an extra £100, however, he could negotiate a new deal with the wider community of right-holders in Golden Bay.²⁶ At this point, Ngati Toa ki Porirua learnt of the proposed sale and appealed to the Governor, claiming pre-eminent rights over Golden Bay and the West Coast. They did not object to the payment of others so long as their own rights were recognised and extinguished through purchase.²⁷ Grey sent fresh instructions to Richmond that he should satisfy every claimant, which led to a fairly indiscriminate purchase from all the iwi in the area. Richmond reported that he had executed Grey's instructions, and completed the purchase 'to the satisfaction of the Natives residing in the district, as well as all others who we could learn had any interest in the land; indeed, the greatest pains have been taken, and every information sought, in order that no claimant, however small his interest, should be left out'.²⁸

The Pakawau purchase was finalised at a general meeting in Nelson in May 1852, which Richmond had called to discuss this deal and the sale of the West Coast. Like the Waitohi Purchase of 1848-50, the Pakawau Purchase had been well canvassed among the local

²³ *ibid.*

²⁴ *Ngai Tahu Report 1991*, vol. 1, p. 125.

²⁵ Richmond to Colonial Secretary, 5 January 1853, in Mackay I, p. 290.

²⁶ *ibid.*

²⁷ Ngati Toa chiefs at Porirua to G. Grey, 11 December 1851, JPS, vol. 68, p. 276.

²⁸ Richmond to Colonial Secretary, 21 May 1852, in Mackay I, p. 290.

right-holders, and their initial agreement had been secured. Major Richmond now proceeded to offer £550 for an area estimated at 96,000 acres, although the actual area and the details of the negotiations were somewhat obscure.²⁹ Four years later the Chief Land Purchase Officer complained that he did not 'know the estimated extent of this purchase'.³⁰ In return for selling this huge district, which the Governor commented would be very valuable because of its mineral wealth, Richmond gave the local Te Atiawa 230 acres of reserves.³¹ The deed was a fairly tight agreement which listed the various districts at some length, but which obscured part of the southern boundary at West Whanganui. The Superintendent had planned to purchase the whole of the harbour, and he ordered a small reserve of ten acres for its resident chief, but the map submitted to the government by A. Mackay in 1874 does not include the whole of the harbour.³² Furthermore, there may have been oral promises which failed to make their way into the written record. Wiremu Te Kohua, for example, claimed that he was promised a town reserve if one was built at the site of his pa.³³ Nevertheless, the assembled chiefs agreed to accept payment of £550, and the very small reservation of 230 acres. There is no record of how the purchase money was divided among the various claimants.

The signatories included three major Ngati Toa rangatira, Rawiri Puaha, Hohepa Tamaihengia, and Wiremu Te Kanae, as well as the principal chief of Ngati Koata, Maka Tarapiko. In addition to the local Atiawa rangatira, Wiremu Te Kohua, the leading chiefs of Tasman and Golden Bays were also represented. These included Tamati Pirimona of Aorere, Wi Katene Te Manu of Wakapuaka, Te Iti and Ngapiko of Motueka, Pukekohatu from the Wairau, Riwai Turangapeke of Tai Tapu (among other places), and Henare Te Keha of Pariwakaoho. With the signatures of 22 other chiefs as well, this represented a fairly wide smattering of chiefs from most communities in Tasman and Golden Bays, as well as the senior Ngati Toa chiefs of the time.³⁴

These powerful and widely scattered chiefs had not assembled merely to obtain recognition of their rights in the Pakawau district. Their main object was to sell the West Coast, possibly as far south as Ruapuke at the bottom of Te Wai Pounamu, for as much

²⁹ Grey to Earl Grey, 14 July 1852, GBPP 1854, vol. 9, 1779: p. 114.

³⁰ A. Mackay, Land Purchases, Middle Island, 1 October 1873, AJHR 1874 G-6, p. 1.

³¹ *ibid.*, p. 2.

³² *ibid.*, map attached to G-6. See Figure 21.

³³ J. Mackay Jnr, Memorandum, 16 September 1864, in Mackay I, p. 292.

³⁴ Deed of sale, 15 May 1852, in Mackay II, p. 378.

money as they could obtain from Major Richmond. According to H. and M.J. Mitchell, the details of the later Arahura Purchase and reserves suggest that some of the Golden Bay chiefs and people were still making use of resources in the Kawatiri and Mawhera districts.³⁵ Most of the assembled chiefs, however, no longer had direct interests south of Tai Tapu, and certainly had never possessed any south of Milford Sound. Their object was to sell whatever rights they still possessed on the coast, assuring Richmond that they would compensate Poutini Ngai Tahu from any sum that was paid to them.³⁶

Richmond had already sounded the chiefs in 1851 about a sale of coastal interests, from West Whanganui to Ruapuke. Most communities asked for sums ranging from ten to forty thousand pounds, 'and obstinately adhere to these terms'. Only the Ngati Rarua of Motupipi seemed even slightly reasonable to Richmond, when they offered to sell their interests (and those of their neighbours) for £2,000. The people of Tasman Bay rejected this idea out of hand, and the Superintendent consulted the Governor.³⁷ Grey advised him that even £2,000 was 'exorbitant', so Richmond re-opened negotiations at Nelson in May 1852 in the knowledge that he must push for a lower price.³⁸

He found that the chiefs were 'urgent' to make a deal and would now agree to £2,000 'for the coast line', but that Ngati Rarua of Motueka wanted a further £1,500 for what Richmond called 'the interior of the country, from the Rotoroa proceeding southward'.³⁹ It is unfortunate that he does not detail his description of the 'interior', as this remark assumes some significance for the later claim by Ngati Rarua and others that there was a 'hole in the middle' of the Waipounamu Purchase.⁴⁰ The chiefs tried to persuade Richmond to accept their offer by promising to pay Ngai Tahu out of the purchase money. The Superintendent believed that he could have beaten them down to £2,000 in total, but Grey's instructions refused to allow him to accept this price.⁴¹ The subject of the West Coast was allowed to lapse, therefore, until it was taken up later as part of the Waipounamu Purchase.

By 1852, therefore, the Crown had acquired the large Pakawau district from Ngati Toa and various iwi resident in Golden and Tasman Bays. The government had also settled the

³⁵ Wai 102 A-6(c), pp. 49-51.

³⁶ Richmond to Colonial Secretary, 31 May 1852, in Mackay I, p. 291.

³⁷ Richmond to Colonial Secretary, 5 January 1852, in Mackay I, p. 290.

³⁸ Richmond to Colonial Secretary, 31 May 1852, in Mackay I, p. 291.

³⁹ *ibid.*, p. 290.

⁴⁰ See below, pp. 168-173.

⁴¹ Richmond to Colonial Secretary, 31 May 1852, in Mackay I, p. 291.

boundary between the Company Purchase and the Wakapuaka block in Tasman Bay. Several other questions arising from the New Zealand Company purchases, however, remained unsettled. Maori in Golden Bay and Motueka were dissatisfied with their reserves and the failure to reserve all their pa and cultivations, as promised in the deeds of release signed after the Spain Award. Furthermore, many right-holders claimed that they had missed out on Spain's compensation money, especially at Aorere and Takaka, and that the sale of their lands was therefore incomplete. Even more seriously, the inhabitants of Wainui claimed that they had never been paid for any part of the large Separation Point district, which Spain had included in his Award to the Company. These questions were later included in the general negotiations of the Waipounamu Purchase in the mid-1850s.

CHAPTER 7

THE NELSON TENTHS

The Nelson Tenthhs were a series of reserves created under the provisions of the New Zealand Company Nelson scheme. The Company announced that it would reserve one-tenth of all land purchased for the settlement of Nelson as a perpetual endowment for the Maori people. This trust estate would be inalienable and grow in value as the surrounding settler lands became part of a vigorous new economy. Its eventual 'incalculable' worth would form the real payment for the other nine-tenths of Maori land sold to the Company. The Wai 102 claimants argue, however, that the reserves were not all created and that a large deficit existed by the end of 1853, which resulted in permanent economic and social loss for the Nelson iwi. According to the claimant researchers, H. and M.J. Mitchell, this deficit represents the 'major grievance of the four manawhenua tribes of Nelson Province [Ngati Rarua, Ngati Tama, Te Atiawa, and Ngati Koata]'.¹ The administration of the reserves which *were* created will be examined in a later chapter. This section of the report will examine the 'major grievance' that the Nelson Tenthhs were not fully allocated to Maori who sold land for the Nelson settlement.

The concept of the Tenthhs has been outlined many times but it is necessary to repeat the main points here, as they underlie most of the discussion which follows. More detailed accounts may be found in R. Jellicoe's history of the Tenthhs, Alexander Mackay's reports for government, and the contemporary New Zealand Company records.² The Tenthhs system was the brainchild of E.G. Wakefield, who explained his intentions in many of his letters and writings, as well as in evidence to parliamentary committees, such as the Select Committee of 1840.³ In terms of formal obligations, the Company committed itself to Wakefield's plans in its own Articles, its instructions to Colonel Wakefield, and (in modified form) the 1841 Nelson Prospectus. Wakefield argued that colonisation must take place in such a way as to

¹ Wai 102 A-7, p. 9.

² See especially R. Jellicoe, *The New Zealand Company's Native Reserves*, Wellington, 1930; & A. Mackay, Memorandum on the Origin of the Company Reserves, 28 July 1873, AJHR 1873, G-2B.

³ Jellicoe, pp. 8-11, 26-28.

prevent the usual destruction of indigenous populations. More than this it must positively improve their social and material conditions. He proposed to achieve this by reserving one-tenth of the Company's land as an inalienable estate for the chiefly families, and through them for their 'followers'.⁴ These reserves would be scattered among the settler allotments on a random basis, selected by Company officials in the same lottery which disposed of the settler lands. The Maori allotments would consist of an equal number of town, suburban, and rural sections, again on the same basis as each settler allotment.⁵

The inspiration for this policy of 'pepper potting' came from the example of American Indians, whom Wakefield believed had suffered in social and economic terms from relegation to large but distant reserves, which became backwaters of 'barbarism' outside the mainstream of the new settler society. The inalienable Tenths were meant to 'civilise' the Maori through close and immediate participation in new ways of life and all the social amenities of the new community. Furthermore, the Tenths would 'ultimately prove of incalculable value' if they became part of the economic growth all around them. Their value would 'continually and immensely increase', held in trust by wise Company administrators, and this service by the Company would form the real payment for the land.⁶

There was already some confusion in these initial concepts, however, as to the specific nature and function of the Tenths Reserves. Wakefield's plan of pepper potting suggested that Maori were supposed to live on the reserves, whereas some Company and government officials preferred the idea of leasing the Tenths for a rental income, to provide for the maintenance of Maori or for measures of social 'improvement', such as schools, hospitals, and churches.⁷ This basic confusion persisted well into the 1840s and prevented the establishment of the Tenths on a sound basis for the performance of either of these functions. The Wai 102 claimants do not take issue with the concept of leasing Tenths for an income. They argue that a permanent endowment to pay for social amenities 'and other needs' was a good idea, but that it should have been completely separate from the actual residences and cultivations of the

⁴ 'In managing the reserves you [Halswell] are to take into consideration the existing wants of the Native race, and to point out those objects to which in your judgement the revenues of the reserves may be most fitly appropriated to the end of promoting the moral and physical well-being of the Native chiefs, their families and followers. . . ' Instructions to E. Halswell, 13 October 1840, cited in Jellicoe, p. 28.

⁵ A. Mackay, Memorandum on South Island Native Reserves, 15 May 1871, in Mackay II, p. 263.

⁶ *ibid.*

⁷ See Jellicoe, *passim*.

people living on the land.⁸ It certainly became clear that the Nelson Tenth as they were created and administered in the 1840s, could not perform both of these functions for the Maori inhabitants of Tasman and Golden Bays.

This confusion of function led to a further confusion in the nature of 'ownership' of such reserves. Although ultimately intended for the chiefs and their families and followers, the Company acted as trustee of the Tenth until 1842 when it resigned this task to the government. Clearly the Crown could not administer reserves for occupation and reserves for leasing (to provide a trust income) in the same manner, but a series of legal and political impediments prevented the government from assuming effective control at all until the late 1840s. There was an effective hiatus in policy-making and administration, therefore, during the crucial early years of the Tenth estate.⁹ In the meantime the conflict between direct and beneficial use (or ownership) was left unresolved. On the whole, officials in the 1840s seemed to favour Maori control of reserves on which they lived and farmed directly, but preferred a trustee to lease other reserves and allocate funds designed for 'social improvement'. When Maori took matters into their own hands and either sold or leased parts of their own reserves, this was followed up by a strict policy of resumption of control when the government appointed active trustees in 1848.¹⁰

The resolution of such questions, however, lay in the late 1840s and early 1850s. In the meantime, it is difficult to say how much of Wakefield's original intentions (and their confusion about function and ownership) were communicated to Maori in the early negotiations for land. Colonel Wakefield told the Kapiti deed signatories that 'a tenth portion of the Land purchased was to be reserved for the use and benefit of the Native Chiefs & their families'.¹¹ The interpreter Brook told Te Hiko that the Tenth were not just for chiefs but for the whole of the people. He tried to explain that the Tenth 'would be of more value to them hereafter than what the whole of their Lands that they had sold was at the present time'. His practice was to mark out a chequer board to show how one square in ten could be anywhere among the other nine, explaining that 'nine portions of them would be occupied by the Europeans, and the tenth would be for themselves'.¹² Brook was considered, however,

⁸ Wai 102 A-5, p. 84.

⁹ Jellicoe, pp. 29-32, 46-47, 73.

¹⁰ eg. M. Richmond to Colonial Secretary, 23 April 1849, in Mackay II, p. 281.

¹¹ W. Wakefield, Evidence to Spain Commission, Wellington, 9 June 1842. OLC 1/46, 907, National Archives.

¹² *ibid.*, J. Brook, 11 & 13 June 1842.

to be a particularly inept translator.¹³

Captain Wakefield also promised to reserve a tenth in his 1841-42 negotiations with Nelson Maori. He commented about the Wakapuaka people: 'After some trouble I think they understood the principle of the Cos. native reserves & pronounced it good'.¹⁴ The only Nelson chief to testify before the Spain Commission, Te Iti of Ngati Rarua, said that he did not in fact understand Brook's explanation of the Tenths.¹⁵ His near neighbours in Golden Bay were promised that their pa and cultivations would not be disturbed and that a tenth of their district would be reserved. Henry Thompson, the Trust's agent at Nelson, mentioned its beneficial side in these 1842 negotiations at Golden Bay. He said that he was 'building Houses for them to lodge in the Town - out of the proceeds of the land'.¹⁶ The documentary evidence is not sufficient to determine whether Maori were told that their pa and cultivations were included in the one-tenth, or how far the beneficial side of the Trust and their own lack of input and control was explained to them. Company officials probably avoided the specifics as they were not always sure themselves of how it would all work in practice. Nor did they agree on the details - Samuel Stephens told Motueka Maori that they would have tenths *in addition to* their farm land in the Big Wood, but this area was later divided between the Tenths and settler allotments.¹⁷ Furthermore, each district had different population sizes, patterns of land use, and different roles in the Company's scheme of town, suburban, and rural lands. It was unlikely that the 100 town sections at Nelson, for example, would all be required for seasonal occupation of that area, so most of them could come under the beneficial side of the Trust. We can only catch glimpses, therefore, of the promises and explanations made to Maori about Tenths in the initial negotiations for their land.

The first actual modification of the amount of land due to Maori under the Tenths system came in 1840, when the Company tried to redefine its tenths as elevenths. Earlier statements had been unequivocal that the Company intended to reserve one-tenth of all land purchased from Maori. In October 1840, however, Edmund Halswell was sent out to administer the Wellington reserves with fresh instructions about the manner of their allocation. As the Company surveyed and assigned land to settlers, Halswell was instructed to set aside

¹³ See above, pp. 51-52.

¹⁴ A. Wakefield, Diary, 11 November 1841.

¹⁵ Te Iti's evidence, Nelson, 20 August 1844. OLC 1/46, 907.

¹⁶ *ibid.*, T. Duffy, 20 August 1844.

¹⁷ Wai 102 A-7, pp. 21-24.

pieces of land equivalent to one-tenth of each district transferred to settlers, and not an actual tenth of the land thus distributed. Eventually, therefore, the Native Reserves would form one-eleventh of the total estate purchased from Maori. The directors were specific that Halswell was to 'select an eleventh' as Native Tenth's. They made no effort to explain or to reconcile the discrepancy between these instructions and earlier statements.¹⁸

This redefinition of the Tenth's was carried over to the Nelson Prospectus of February 1841, which outlined the official scheme of the Nelson settlement. The Company planned to purchase 201,000 acres for sale to settlers in 1,000 allotments. Each allotment would include a town section of one acre, a suburban section of 50 acres, and a rural section of 150 acres. The prospectus stated that one-tenth of this total, 20,100 acres, would be purchased *in addition to* the 1,000 allotments, to provide reserves of one-eleventh of the new total of 221,100 acres. The 'tenth's' would consist of 100 allotments of urban, suburban, and rural land, allocated under the same system as the settler sections. Unlike in the Wellington settlement, therefore, the Nelson Maori would be entitled to 100 instead of 110 allotments.¹⁹ According to the documentary evidence, however, Captain Wakefield and Henry Thompson promised Nelson Maori reserves of 'one-tenth' of the land that they sold to the Company.²⁰ We have no way of knowing whether Wakefield or Thompson tried to explain through the interpreter Brook that the one-tenth would actually be one-eleventh, but it seems unlikely that they would introduce this additional complication; it is certainly not mentioned in the sources. The Wai 102 claimants suggest that the redefinition of tenth's as eleventh's was a 'misleading (and fraudulent) interpretation by the Company of its own guidelines and espoused principles'. They argue that the Company deprived them of the opportunity of ten acres of prime town land, as well as 500 acres of suburban and 1,500 acres of country land, by its decision to turn the Tenth's Reserves into eleventh's.²¹

The actual implementation of the eleventh's scheme was entrusted to the Police Magistrate, Henry Thompson, whom Bishop Selwyn had appointed as Agent of the Native Trust at Nelson. This Trust was not a formal incorporation under legislative authority, but an unofficial creation of Governor Hobson's in anticipation of legislation. He appointed Selwyn, Chief Justice Martin, and Chief Protector Clarke as trustees of the Company's Native

¹⁸ Instructions to E. Halswell, 13 October 1840, cited in Jellicoe, p. 28.

¹⁹ Wai 102 A-7, pp. 15-17.

²⁰ See above, pp. 113-114.

²¹ Wai 102 A-7, pp. 18-19.

Reserves, and Selwyn (the only active trustee) authorised Thompson to select and lease the Tenth. In 1842 the 1,100 town sections were selected by Thompson, the settlers, and Company agents, on the basis of a lottery of priority held in London. Thompson provided for Maori occupation fairly easily by selecting the site of Matangi Awhea pa as five contiguous sections. The other town reserves were available for lease, with the possibility of Maori using them for firewood and other resources in the meantime.²²

The selection of suburban reserves proved more contentious, as these had to support a large resident Maori population in Tasman and Golden Bays. Thompson selected nineteen sections in the Moutere district, and the other 81 in the Motueka/Riwaka district. He made no suburban tenths in Golden Bay, although he did tell the inhabitants of that district that they would participate in the urban tenths.²³ Some suburban tenths were selected with a view to including existing pa and cultivations, but others were distant from areas of Maori occupation (and from each other). The lottery had already set the order of selection, so that if settlers chose a Maori-occupied section before Thompson could get to it, then the Company could do nothing but validate that selection. As a result of the lottery and the pepper potting system, many areas of interest and use to Maori were left out of the tenths and became available for selection by settlers. It was by no means certain, however, that Motueka Maori were willing to move onto the tenths from their present homes. Many of the tenths were distant, inconvenient, and quite often, as they complained to the Land Commission, completely worthless.²⁴ The lottery created similar problems for settlers as well and in 1847 they insisted on a complete revision of the selection process.

The problem of occupation and the question of where Maori would live in the new order was a double-sided one. The Tasman Bay Maori faced the problem that many of their cultivations and traditional resource areas had been left outside the Tenth. These were judged to be the property of the Company and available for selection, despite the promises made by Captain Wakefield that pa and cultivations would not be disturbed.²⁵ The Motueka Maori were particularly angry about Te Maatu, the Big Wood, where less than a third of the relevant sections had been reserved for their use. At the same time, the Tenth were now the property

²² A. Mackay, Memorandum on South Island Native Reserves, 15 May 1871, in Mackay II, p. 264.

²³ *ibid.*, & Jellicoe, pp. 36–38; T. Duffey, 20 August 1844, OLC 1/46,907.

²⁴ E. Meurant, Diary, 8 August 1844, Meurant MS-1635, W:Tu.

²⁵ See above, pp. 59-61.

of all those Maori who had sold land to the Nelson settlement, which included the iwi of Golden Bay and Wakapuaka. These people would receive no income from those Motueka tenths which were intended for occupation rather than lease. The unsettled nature of the Trust, however, and the impetus to move the Tenths into beneficial ownership, meant on the other hand that the Motueka Maori might lose the direct use of their reserves in order to provide just such an income. Either way, the selection of all the suburban tenths from the land of only one community meant that somebody was going to miss out.²⁶

By 1843 the town and suburban tenths had been allocated but the Company could not find sufficient country land to create its rural sections. The abortive attempt to obtain the Wairau left the Company in an impossible position, without enough rural land to complete its arrangements with either settlers or Maori. This problem was still unresolved when Commissioner Spain arrived to investigate the Nelson purchases and to advise the Governor on a Crown Grant for the Company. The Maori claimants soon made Spain and Clarke aware of the early problems into which the Tenths had run, and the 1844 Spain Award was partly designed to rectify these problems. In doing so, and in attempting to meet Maori grievances over Te Maatu, Spain created new difficulties as well as easing old ones.

Commissioner Spain's first task was to solve the problem of dual functions by separating reserves for use and occupation from reserves for lease and beneficial ownership. His investigations suggested that, whatever else Maori might have thought they were selling, they had never intended to sell their pa and cultivations. FitzRoy held a conference with Spain and Wakefield in 1844 which reached agreement that all residences and cultivations should be reserved, regardless of their location or any previous allocation to settlers, unless the Maori claimants would accept alternative compensation.²⁷ Spain translated this agreement into the Nelson Award of March 1845, which created occupation reserves of all pa, cultivations, and burial grounds within the limits of the Nelson settlement. *In addition to* these occupation reserves, Spain awarded one-tenth of the Company's 151,000 acres to the Maori, restoring the eleventh to a true tenth. Governor FitzRoy embodied Spain's Award in a Crown Grant later that year, although Colonel Wakefield refused to accept it because it reserved an unspecified acreage of occupation sites in unknown districts. Under this Award, therefore, the Nelson

²⁶ Wai 102 A-7, pp. 12-14, 21-30.

²⁷ See above, p. 76.

Tenths were now set at 15,100 acres.²⁸

The government instructed Donald Sinclair to survey the new occupation reserves in Golden Bay. Although there was no provision for tenths in that district, Major Richmond authorised the allotment of about 2,000 acres for present and future needs.²⁹ This total was much 'less than the whole 4500 acres specified in Mr Spain's Report' as one-tenth of the Company's 45,000 acres in Golden Bay.³⁰ In any case, this tenth of 4500 acres should have been in addition to the occupation reserves under the terms of the Spain Award. The Commissioner's attempt to end the basic confusion in the tenths was not successful, because the government did not actually try to create both new occupation reserves and a complete series of tenths. Sinclair eventually surveyed 3,565 acres of occupation reserves from Golden Bay to Marahau.³¹

The Wai 102 claimants suggest that the government failed to implement the Spain Award properly in Nelson and Motueka as well, where the old Tenths had already been created. The Mitchells maintain that the government should have surveyed occupation sites in Tasman Bay, removed them from the Tenths or from settler sections, and replaced the defunct Tenths with new ones in the same or alternative districts.³² This was not carried out for either the urban or suburban Tenths. The urban Tenths were not reallocated despite the fact that seven of them covered sites of occupation and use. The claimants argue that these sections should have become occupation reserves with seven new Tenths to replace them. Furthermore, they claim that the town and suburban tenths should have been increased from 100 to 110, in line with Spain's Award of a true tenth. His 'one-tenth' should not have been interpreted as just an overall acreage, but should have been implemented through the machinery of the Nelson Scheme as 'one-tenth' each of the urban, suburban, and rural sections, in accordance with Wakefield's original vision.³³

The government did not attempt to track down and reserve occupation sites in Tasman Bay which had been included in settler sections. Nor did they remove occupation reserves from the Tenths and create a whole new series of beneficial Tenths. Instead there were a

²⁸ Mackay I, pp. 54–60, 68–71.

²⁹ W. Fox to W. Wakefield, Nelson, 22 July 1847; W. Wakefield to N.Z. Company, 4 October 1847, CO208/88.

³⁰ W. Fox to W. Wakefield, Nelson, 22 July 1847, CO208/88.

³¹ Wai 102 A–5, pp. 56–57.

³² Wai 102 A–7, pp. 41–68.

³³ *ibid.*, pp. 44–48.

series of ad hoc exchanges from time to time, in which tenths which did not cover pa and cultivations were exchanged for settler sections which did so, although this did not obtain all the occupation sites in Tasman Bay. This problem may be illustrated by the example of the Big Wood, which gave rise to one of the most enduring grievances of the Motueka Maori. The Wai 102 claimants argue that the Big Wood had always been excluded from the deal with Captain Wakefield in 1841, and that it should have been judged as unsold land and still under original Maori title, like the Wakapuaka and Tai Tapu blocks.³⁴ Thomas Brunner reached a similar conclusion in 1870, when he told a government commission that the Big Wood should never have been surveyed and included among the suburban sections. If the tenths were part of the payment for Maori land, he argued, then the making of tenths in the Big Wood amounted to seizing unsold land and calling it payment for land that had been sold.³⁵ The Company surveyor, S. Stephens, told Maori objectors at the time that they would be able to keep their cultivated land at Te Maatu and have one-tenth of the rest as well, but the Company made the whole of the Big Wood into suburban sections and failed to honour Stephens' promise.³⁶ Thompson selected eight of the relevant 29 sections as Tenth Reserves, and George Clarke adjusted this in 1844 by exchanging eight Riwaka Tenths for eight settler sections in the Wood. This did not include all the cultivations or even all the pa at Te Maatu, and in 1849 a further six Tenths were exchanged to bring the total up to 22 of the original 29 sections. These reserves were renamed occupation reserves, but no new tenths were selected to replace the 22 thus lost from the Tenths estate, resulting in a significant loss for iwi elsewhere who had no tenths in their own districts.³⁷

This proved to be a common theme in the post-Spain adjustment of reserves. Areas of occupation were either left unreserved or were exchanged for tenths sections which were not replaced. The Wai 102 claimants have identified 30 suburban tenths outside the Big Wood, which had either kainga or cultivations at the time and should have been redesignated as occupation reserves. Some were in fact redesignated as desired, but no new Tenths were made to replace them.³⁸ In 1848 the Company even insisted that two such occupation reserves be restored to the Tenths, and a further two tenths given up to the settlers in their

³⁴ *ibid.*, p. 42.

³⁵ T. Brunner, evidence to Religious, Charitable, and Educational Trusts Commission, 3 January 1870, in Mackay II, p. 304.

³⁶ Wai 102 A-7, pp. 21-24.

³⁷ See Mackay II, pp. 263-267, 280-283; & Wai 102 A-7, pp. 41-44, 58-59. See also Figure 10.

³⁸ Wai 102 A-7, pp. 61-65. See also Figure 11.

place. This resulted in an absolute as well as relative loss for the Maori owners of 100 acres. As a result of all these activities, the claimants argue that they failed to receive 1,500 acres of suburban land, to which they were entitled under the Spain Award. In addition, they claim that one rural and fifteen suburban sections at or near the Big Wood were granted to settlers when they should have been part of the unsold Te Maatu estate, or at the very least have become occupation reserves. This represented a further absolute loss of 900 acres. Another 918 acres were removed from the Tenthhs and occupation reserves in 1853, when Governor Grey used them to endow the Motueka industrial school.³⁹ The result of all these adjustments, exchanges, and alienations, was that the Maori people of Tasman and Golden Bays did not receive the full number of occupation and Tenthhs reserves to which they were entitled under the Spain Award.

The rural reserves were also affected by the Spain Award. Under the original Nelson Prospectus, the Maori were entitled to 15,000 acres of rural Tenthhs, as one-eleventh of 165,000 acres. The Wai 102 claimants suggest that they should have received a true tenth, or 16,500 acres, as soon as the full Nelson scheme was implemented.⁴⁰ The Spain Award confined the whole Nelson settlement, however, to 151,000 acres in Tasman and Golden Bays. Since 5,100 acres of town and suburban Tenthhs had already been created, this left the Nelson iwi 10,000 acres for their rural reserves (which amounted to about 66 150-acre sections). The Company hesitated to create any rural sections at all, however, until it was able to meet all its commitments to land purchasers. It was not in a position to do so until 1847, when Governor Grey bought the Wairau and Kaikoura districts. He offered the Company a free hand in the selection of its rural land.⁴¹ The Wairau Purchase raised further questions for the Tenthhs, including the number of rural reserves to which 'the Maori' were entitled, who the recipients of those rural tenths should be, and the place of the Wairau iwi in the Nelson scheme.

Governor Grey visited Nelson early in 1847 and informed William Fox, Nelson Agent of the New Zealand Company, that he could select enough land to meet the Company's obligations from within the area of the Wairau Purchase. This enabled the Company to create and allocate its rural sections in 1848, when the settler purchasers also received £108 per head

³⁹ *ibid.*, pp. 43, 66–68. This was the Whakarewa Grant, made to Bishop Selwyn for an Anglican school.

⁴⁰ Wai 102 A–5, pp. 70–71.

⁴¹ W. Fox to W. Wakefield, Nelson, 5 April 1847, CO208/88.

as compensation for the long delay in obtaining their rural lands.⁴² Fox acknowledged that the Company was now in a position to allocate the full 15,000 acres (one-eleventh) to which the Maori were 'entitled under the Nelson scheme' as rural Tenth's.⁴³ This compared favourably with the 10,000 acres to which the Tasman and Golden Bay iwi were still entitled under the Spain Award.

In March 1847, however, Major Richmond informed the Company that the government had made ample reserves in the Wairau and Porirua districts, and 'do not think it is necessary to request the New Zealand Company to make any further Reserves in either district'.⁴⁴ Fox argued that this released him from the obligation to provide rural tenths, although he was not certain that the government's release extended to Golden Bay if the Company made rural sections in that district. He decided that 'in fairness the natives having got their full quantity in the Wairau [they] should have none elsewhere'. He comforted himself that Golden Bay Maori 'are I believe of the *same tribe* [Fox's emphasis] as those for whom the reserves are made in the Wairau'.⁴⁵ He must have meant Ngati Rarua by this observation, although the two Rarua communities were largely distinct as far as exercising acts of occupation went in their respective districts. He failed to mention the presence of Ngati Tama and Te Atiawa in Golden Bay, and of Ngati Toa and Rangitane in the Wairau.

Governor Grey may have provided further clarification of his instructions because in June 1847 the Nelson Committee of settlers and Company agents avowed that: 'With respect to the rural sections, it is understood that the Governor, in making the large reserves that he has for the natives at the Wairau, has released the Company from laying out and choosing the 100 rural sections according to the original scheme'.⁴⁶ Grey intended the Wairau Reserves as an equivalent to the Tenth's and not as part of the Tenth's. They were excepted from sale by the Ngati Toa chiefs who sold the Wairau, as reserves for the resident Ngati Toa, Ngati Rarua, and Rangitane.⁴⁷ There was no thought of bringing them into beneficial ownership under the Native Trust.

Furthermore, these reserves were sold anyway as part of the Waipounamu Purchase

⁴² R. Allan, *Nelson: A History of Early Settlement*, pp. 383–384.

⁴³ W. Fox to W. Wakefield, Nelson, 5 April 1847, CO208/88.

⁴⁴ M. Richmond to W. Wakefield, Wellington, 23 March 1847, NZC 3/7, National Archives.

⁴⁵ W. Fox to W. Wakefield, Nelson, 5 April 1847, CO208/88.

⁴⁶ Cited in A. Mackay, Memorandum on the South Island Reserves, 15 May 1871, in Mackay II, p. 265.

⁴⁷ See above, pp. 91–92.

of 1853, which left much smaller reserves in the Wairau of an area far less than that necessary to provide the rural tenths. The government acted unwisely in permitting this sale, according to Alexander Mackay, 'without any precaution being taken to set apart a sufficiency of land in satisfaction of the quantity the Trust was entitled to under the original scheme as rural land'.⁴⁸ Mackay believed that this was an oversight rather than a deliberate omission, and suggested that the government should have set apart a new reserve as the equivalent of the 100 rural sections. He claimed that the lost rural lands would have been providing the Trust with at least £1,500 p.a. by 1877.⁴⁹

As a result of Grey's actions, no rural tenths were ever made under the Nelson Scheme. This begged the question of which iwi were entitled to the rural tenths, and of the entitlement of the Wairau iwi to the urban and suburban tenths once they had sold land for the Nelson settlement. This question must be examined briefly as it will cease to be an academic one if the Tribunal accepts the Wai 102 claim, that the Nelson iwi were unjustly deprived of their rural tenths. Under the original New Zealand Company plan, the 'natives' were an undifferentiated mass who were entitled to a reservation of one-tenth of all land sold for the Nelson settlement. The only equitable way to achieve this on the ground would have been to reserve one-tenth of each district in which different iwi or hapu dwelt, or to make the tenths entirely beneficial in nature. The town tenths were fairly successful in this respect, as they were overwhelmingly available for lease to provide an income for all the iwi. The suburban tenths were less clearly available for all, however, because they were mainly needed for the direct use of just one community, the Ngati Rarua and Te Atiawa of Motueka. This discrepancy might have been eased if rural tenths had been created in Golden Bay, but Governor Grey intervened and no tenths were ever created in that district. Nevertheless, the iwi of Tasman and Golden Bays were entitled to 10,000 acres of rural tenths under the Spain Award. No matter where the government provided the Company with rural lands, it did not affect this obligation to provide 10,000 acres out of the 151,000 acre block already granted.

The question became more complex when the Company obtained its rural land at the Wairau. Although the land was not sold directly to Company officials, it was understood that the government was acting at least partly on their behalf.⁵⁰ The Nelson Agent later acted

⁴⁸ A. Mackay, Memorandum, 15 May 1871, in Mackay II, p. 265.

⁴⁹ A. Mackay, Report on Nelson & Greymouth Native Reserves, 6 August 1877, AJHR 1877, G-3A, p. 1.

⁵⁰ G. Grey, Minute, 24 April 1849; W. Fox to Civil Secretary, 25 April 1849, OLC 1/46, 907.

directly in the purchase of Waitohi as the Wairau's port. Wairau land became part of the Nelson Scheme of 1,100 allotments, and this raised the question of whether or not the Wairau iwi were entitled to a share in the tenths. Grey must have thought so, since his actions in 1847 only make sense if he believed that the rural reserves should be for those who sold the rural land. He did not create actual tenths in the Wairau, however, partly because he 'found this system gave rise to such frequent disputes as to trespass, that I went upon the plan of keeping very large reserves for them'.⁵¹ This meant that no enduring tradition of connection with the Company and its reserves was in fact created. As a result, Rangitane was the only Marlborough iwi to challenge the status-quo when ownership of the urban and suburban tenths came before the Native Land Court in 1892.⁵² H. and M.J. Mitchell claim that the Nelson iwi - Ngati Rarua, Ngati Koata, Ngati Tama, and Te Atiawa - were the group entitled to the rural reserves under the Nelson scheme and unjustly deprived of those reserves.⁵³ This question may need detailed research to consider all its historical and legal ramifications. It seems clear, however, that *somebody* was entitled to inalienable rural tenths, and that these were never created.

In addition to the Wairau Purchase and Grey's decision on the rural tenths, the year 1847 saw further restructuring of the Nelson settlement and its Native Reserves. At first it had seemed that shortage of land would force a complete revision of the 1,100 allotments, in order to fit a scheme designed for 221,100 acres into Spain's Award of 151,000 acres. Grey's purchase of the Wairau provided more than enough land, however, and eventually a new town (Waitohi) from which each allotment of one Nelson acre, 50 suburban acres, and 150 rural acres, would receive a quarter-acre section. The acquisition of the country land did not solve the problems of the town and suburban sections. The Company had sold less than half of its allotments by 1847, which meant that the 100 Company sections and about 400 unsold sections were scattered amongst the purchased town and suburban lands. The large number of absentee purchasers meant that even the majority of sold land was unavailable for use by the small number of resident proprietors. Despite all this unused land lying around, the lottery had forced selection in widely different localities and too often of poor quality land, making it impossible for resident settlers to concentrate their holdings, live near to town, friends, and

⁵¹ G. Grey, Evidence to Smith-Nairn Commission, 5 December 1879, MA 67/4, f. 636, National Archives.

⁵² See Nelson Native Land Court Minute Books 2 & 3.

⁵³ Wai 102 A-5, p. 71.

other amenities, or even to ensure a good quantity of usable land in a single farm.⁵⁴

By 1847 it was clear that settler demands for a revision of the whole system could no longer be denied. They appointed a committee in June 1847 which examined the problem and proposed a series of resolutions for the consent of the Court of Directors. These included: the surrender of town and suburban sections for reselection; the removal of unsold allotments from the lottery of selection; the reclassification of poor-quality suburban land as rural sections to enable the selection of suburban land in the Wairau; and the cancellation of unsold sections to make them available for direct sale to settlers. These and other measures gave allotment-holders the opportunity to concentrate and rationalise their land holdings, and to obtain better quality land.⁵⁵ To widen the choice of available land for re-selection or purchase, the Committee suggested that the tenths should be reduced to one-tenth of land actually sold to settlers, rather than one-tenth of land purchased from Maori. This would involve the surrender of almost half of the existing tenths (47 allotments).⁵⁶

The Committee recognised that it had no right to touch the Native Reserves, and asked the government's consent to its proposed revisions. The committee argued that as the Nelson settlement would henceforth consist of about 530 allotments, made up of the Company's own reserves and the allotments sold to settlers, the rest of the land would be thrown on the open market and would never be made into the old-style allotments. They argued that the Native Reserves should therefore be made into one-eleventh of the only allotments that would ever actually exist. The government accepted this reasoning and consented to the reduction of the town reserves, on the grounds that settler and Maori sections should be subject to the 'same conditions'.⁵⁷ The Company reserves were not reduced, however, and neither the resident nor absentee European proprietors lost a single acre by the restructuring. Maori Tenths were in fact treated under the 'same conditions' as unsold land, as though they had no owners or occupiers to be considered. Furthermore, the tenths were not considered eligible for the quarter-acre sections awarded at Waitohi (Picton) to all the other Nelson allotment-holders.⁵⁸

Lieutenant-Governor Eyre's consent to the reductions was ambiguous, however, as he referred only to the 'township' in his reply to the committee's memorial. Fox wrote to inquire

⁵⁴ R. Allan, pp. 229–235.

⁵⁵ *ibid.*, pp. 377–381.

⁵⁶ A. Mackay, Memorandum, 15 May 1871, in Mackay II, pp. 264–265.

⁵⁷ Jellicoe, pp. 57–58.

⁵⁸ Allan, pp. 380–383.

whether the government understood that the reduction applied to 47 suburban sections as well. Mackay's *Compendium* has no answer to this letter but the suburban reserves were not included in the surrender of tenths, although many of them had already gone by reclassification as occupation reserves.⁵⁹ Fox implied that the suburban tenths were in much greater direct use than the town ones, and 'if it is likely to create any misunderstanding with the Natives, it had perhaps better not be done'.⁶⁰ The question was allowed to lapse, therefore, while the Native Trust surrendered 47 of its 100 town sections for reselection by, or sale to, settlers.

The Wai 102 claimants point out that this was done at a time when no government official was actually looking after the Trust or supervising its concerns, and without any consultation with the Maori 'owners'. Just as there was no consultation over the actual selection of town Tenth's in the first place, there is no record that the Committee or government asked the consent of Maori owners to this mass alienation, or that government consulted Maori over which reserves should be given up.⁶¹ Alexander Mackay, later Commissioner of Native Reserves, estimated that the surrender of 47 town Tenth's, the removal of suburban Tenth's as occupation reserves, and alienations such as the Whakarewa grant to Bishop Selwyn, must have more than halved the potential income of the Tenth's Trust.⁶²

In terms of actual loss of land to the Trust, the Wai 102 grievances may be summarised as follow:

- The New Zealand Company turned its tenths into elevenths, in contravention of its own Articles and its promises to Maori.
- The Spain Commission awarded occupation reserves to Maori, in addition to a true tenth (15,100 of 151,000 acres). Although the Spain Award held good for settlers, who eventually obtained a legal title to their sections by Crown Grant⁶³, separate occupation reserves and an additional tenth were never created for Maori. Instead the Tenth's were reduced in order to create occupation reserves. Furthermore, some areas of occupation and use were never reserved at all. These grievances cover town as well as suburban sections. The government

⁵⁹ Jellicoe, pp. 58–59.

⁶⁰ W. Fox to Richmond, 5 February 1848, in Mackay II, p. 273.

⁶¹ Wai 102 A-7, pp. 55–56. See also Mackay II, p. 274.

⁶² A. Mackay, Report on Nelson & Greymouth Reserves, AJHR 1877, G-3A, p. 1.

⁶³ Tinline to Richmond, 18 December 1855, in Mackay I, p. 295.

continued to uphold the legitimacy of the Spain Award when it suited them, 'as it at least holds good against those [Maori] parties who received money under it'.⁶⁴

- The Motueka Maori feel a particular grievance about Te Maatu, the Big Wood, which they argue should have been judged as unsold land, or at the very least reserved for occupation in its entirety.
- Not only were there relative losses to the Tenths Estate through the failure to replace occupation reserves with new tenths, but various alienations such as the Whakarewa Grant saw absolute losses to the initial 5,100 acres as well.
- The most far-reaching of these alienations was the surrender of 47 town sections in 1847, as part of the restructuring of the Nelson settlement.
- No rural tenths were ever created by either the Company or the government. Governor Grey claimed that reserves made in the country area under his Wairau Purchase were an effective replacement of the rural tenths, but these reserves were sold to the Crown in 1853.
- There was no attempt to ensure that all iwi who sold land to the Nelson settlement obtained a proportionate share of the tenths, nor any investigation or consultation to determine what that proportionate share might be. This problem affected the creation of the suburban reserves, which were all selected in the Motueka and Moutere districts, and the rural tenths, which were effectively pre-empted by land set aside in the Wairau district alone.

According to the analysis of Alexander Mackay, Commissioner of Native Reserves, the various pre-1854 alienations had cost the Tenths Estate at least £3,000 p.a. by 1877 rental rates. He suggested that the government was responsible for this situation, and should make up the shortfall in the Trust's income. His pleas fell on deaf ears.⁶⁵

⁶⁴ *ibid.*

⁶⁵ A. Mackay, Report on Nelson & Greymouth Reserves, AJHR 1877, G-3A, pp. 1-2.

CHAPTER 8

THE WAIPOUNAMU PURCHASE AND NGATI TOA

In August 1853 the government set in motion its final large land purchase in Te Tau Ihu o te Waka a Maui. Governor Grey planned to extinguish all Maori rights over the top quarter of the South Island, running down the West Coast to at least as far as Arahura. He intended to limit Maori land ownership to official reserves, consisting of small blocks of arable land for growing potatoes and other vegetable crops. On 10 August the North Island chiefs of Ngati Toa signed a deed on behalf of themselves and their 'relatives', to 'entirely and forever transfer our land at the Waipounamu' to the Queen. No districts or boundaries were specified in this blanket 'sale of all our lands on the said Island', although associated assets were listed in detail: 'its trees, lakes, waters, stones, and all and everything either under or above the said land and all and everything connected with the said land'.¹

The Crown agreed to reserve 'certain places' for Ngati Toa's relations, who were actually 'residing on the said land, which has been sold by us', but the power to choose the 'extent and position' of reserves was vested in the Governor. The deed also mentioned 'certain other portions of land . . . to be granted to some of our chiefs', an oblique reference to McLean's deal with leading Toa chiefs for individual grants of scrip and 200-acre blocks. In return for selling an area estimated by McLean at eight million acres, Ngati Toa received a direct payment of £2,000, and the promise of a further £3,000 to be divided between themselves and Te Atiawa, Ngati Koata, Ngati Rarua, Rangitane, and Ngai Tahu, 'who, conjointly with ourselves, claim the land'.² The cumulative series of agreements which followed this initial Ngati Toa sale in 1853, became known as the Waipounamu Purchase.

The Waipounamu Purchase was designed to extinguish all Maori title in the top of the South Island, apart from a few small reserves. The Crown believed that everything north and west of the Kemp Purchase, which had not already been sold in the Company and Wairau

¹ Mackay I, p. 308.

² *ibid.*, & p. 304.

Purchases, was now included in the Waipounamu 'block'.³ This did not involve a piece by piece sale of blocks or districts, with a clear definition of boundaries and the making of reserves in each block, but a blanket cession of all the rights of an iwi over any and all land in the South Island.⁴ The origins of this type of purchase lay in the shifting Crown policies of the late 1840s and early 1850s. Governor Grey first mentioned a blanket cession of all rights in connection with the Wairau Purchase of 1847. He saw Ngati Toa as a North Island-based iwi which neither used nor needed the extensive lands available on the Kaikoura Coast. He 'thought it advisable not only to purchase this district [Wairau] . . . but also to endeavour to purchase the whole tract of country claimed by the Ngatitoa Tribe'.⁵ His impression in 1879 was 'that I was buying the entire interest of the North Island natives who had conquered the tribes of the Middle Island, and by native custom become the owners of certain lands there'.⁶ Although Grey's attention at the time was focused exclusively on Marlborough, he told the Smith-Nairn Commission that he thought he was buying 'all they had a right to' rather than 'land within certain defined limits'.⁷

W. Fox confirmed at the time that Grey believed he had extinguished Ngati Toa's rights 'to all land in this island', with the exception of the Wairau Reserves and land previously purchased by the New Zealand Company. Fox pointed out that this was in fact a larger area than that covered by the map which accompanied the Wairau Purchase.⁸ As a result, Grey had to make a second attempt to extinguish the whole of Ngati Toa's South Island claims in 1853.

In the meantime, Earl Grey had sent fresh instructions about the purchase of Maori land. Lord Normanby had been comparatively generous in his instructions to Captain Hobson:

You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.⁹

³ AJHR 1881, G-2, Encl. 4 & 5, pp. 12-13. For maps of the Waipounamu 'block', see Figures 12, 20, & 21.

⁴ Mackay I, pp. 308-319.

⁵ G. Grey to Earl Grey, 26 March 1847, in Mackay I, p. 202.

⁶ G. Grey, evidence to Smith-Nairn Commission, 5 December 1879, MA 67/4, National Archives.

⁷ *ibid.*

⁸ W. Fox to W. Wakefield, 5 April 1847, CO208/88.

⁹ Normanby to Hobson, 14 August 1839, in GBPP 1840, vol. 3, p. 87.

This policy was viewed as a protective one and entrusted to the official Protectors of Aborigines. As early as 1844, however, a House of Commons Committee had advocated the assumption of 'waste [uncultivated] lands' by the Crown as an attribute of sovereignty. This Committee was chaired by Lord Howick, and he prosecuted its views when he became Colonial Secretary as Earl Grey in 1846. Even Lord Stanley, however, had adopted a harder line after the 1844 Committee, recommending the Governor to obtain the unused waste lands by taxing them. Maori would be forced to sell the land to pay the tax, or could forfeit it as a direct payment.¹⁰ Grey did not act on this type of instruction until Earl Grey sent further orders about the seizure of waste lands.

Earl Grey adopted Thomas Arnold's definition of 'waste' land, as all land which had not been 'improved' by the labour of growing crops. He ruled out the idea that a right of property could exist in land used for hunting, or coasts and rivers used for fishing, or even in grassland used as pasture for herds.¹¹ At the time his definition of property rights coincided with some of the restrictions on settlers, as their farms were limited to 2,560 acres. The concerns of the Colonial Office remained fixated on small-scale, agrarian farming after Earl Grey's departure from office. The Duke of Newcastle welcomed the Waipounamu Purchase so long as 'the great facility thus afforded to those settlers of acquiring land, at the present low price, does not lead to that speculative eagerness for the acquisition of large tracts by parties not intending to cultivate them, which has so frequently produced injurious effects in new colonies, and from which that under your [Grey's] government has, on former occasions, not been exempt'.¹² Large runs for pastoral farming had to be leased from the Crown, as the ultimate feudal owner of all land in New Zealand.

The Colonial Office wanted to obtain the 'waste' lands for sale or leasing to settlers, therefore, and to confine Maori to small arable blocks suitable for growing crops. The only concession to Maori agricultural practices as they actually operated on the ground, was to allow for some mobility to compensate for quick exhaustion of the soil. Maori farmers did not use manures and hence found it necessary to move their cultivations regularly. Earl Grey commented: 'so to have occupied the territory as not to leave them ample space to shifting,

¹⁰ I Wards, *The Shadow of the Land*, Wellington, 1968, pp. 167-169. See Stanley to FitzRoy, 13 August 1844, GBPP 1843-45, vol. 4, pp.147, 150, cf. Stanley to Grey, 27 June 1845, GBPP 1846-47, vol. 5, p. 245.

¹¹ Earl Grey to G. Grey, 23 December 1846, in GBPP, 1846-47, vol. 5, p. 524.

¹² Newcastle to G. Grey, 7 January 1854, GBPP 1854, vol. 9, 1779: p. 408.

as was their habit, their cultivation from one spot to another, would have been in the highest degree unjust'.¹³

Earl Grey's instructions aroused a storm of protest in New Zealand, based on the Treaty rights of property and the injustice of seizing land which was 'in use' in some way or other.¹⁴ The Governor found it necessary to implement the spirit of those instructions, which was to obtain the 'waste' lands for the Crown, without actually violating any controversial property rights. He discovered 'a nearly allied principle' in the Crown's right of pre-emption, which could be used to obtain the waste lands at a fraction of the cost of enforcing confiscation, and well in advance of the practical needs of colonisation. The Maori would resist any attempt to introduce Thomas Arnold's theory by force, but the same end could be met by purchasing 'those lands which they do not actually require for their own subsistence'. So long as Crown purchase was conducted sufficiently in advance of actual settlement, it could be done for a 'nominal consideration', before actual demand created market pressures and increased the price of land in any given area.¹⁵

By the time of the Waipounamu Purchase, therefore, Crown policy had moved towards the extinction of Maori title over all 'waste' lands, and the confinement of Maori to small, arable reserves. This resulted in Grey's policy of demanding blanket cession of rights over enormous tracts of land, with the proviso that the Crown would make suitable reserves for Maori agriculture. Although the Governor himself asserted that Maori had resisted settler occupation in cases where 'the boundaries were undefined, or unsettled', he commenced to purchase undefined rights over 'all our land' in the South Island.¹⁶ This type of purchase has drawn criticism from historians, such as Alan Ward and Angela Ballara. Dr. Ballara argued that the information available to government in the 1850s, from Spain Commission archives and Protectorate files, made it clear that valid purchases of land required a definition of exact boundaries, delineated on the ground and in a public manner.¹⁷

A. Ward argued that even if 'rights' rather than discrete blocks of land were being sold, they still required very specific definition in the deeds of alienation. His views on the Kemp Purchase of 1848 shed light on the Waipounamu Purchase of 1853-56:

¹³ *ibid.*

¹⁴ eg. GBPP 1847-49, vol. 6, 892: pp. 81-84; 1002: pp. 8-10, 15-16, 79; 1120: pp. 22, 34-38.

¹⁵ G. Grey to Earl Grey, 15 May 1848, in GBPP 1847-48, vol. 6, 1120: pp. 23-25. For its application to the Waipounamu Purchase, see AJHR 1881, G-2, Encl. 4 & 5, pp. 12-13.

¹⁶ G. Grey to Earl Grey, 15 May 1848, in GBPP 1847-48, 1120: p. 24.

¹⁷ A. Ballara & G. Scott, Draft Report on behalf of Claimants for Wai 201, 1993, pp. 27-32.

Because he [Kemp] believed that the tribe was willing to sell all of its rights, he saw no need to define the rights of either the iwi as a whole, or of its constituent parts. The problem was that this sort of indiscriminate catch-all purchase was virtually incomprehensible to Ngai Tahu in 1848. Ngai Tahu understood their rights in terms of specific individual or group relationships, current and historic, with collections of places, not as an undifferentiated collective property right over the whole block. Kemp [was] operating within a framework of official attitudes which was sceptical about the Ngai Tahu claims to the interior. This combined with his decision not to precisely define the tribe's rights would have allowed him to proceed with a purchase without fully discussing the future disposition of interests in the block with Ngai Tahu. Because agreement on detail, especially oral agreement, was so important to the Maori world, failure to discuss and specify that distributions of interest in any part of the purchase amounted to a failure to complete the purchase of it. It is important to have regard to the complex of interests and a blanket agreement without specificity would not be a completed agreement in Maori eyes.¹⁸

In carrying out this type of purchase, the government's object was to restrict Maori rights of property to their official reserves. The Arnoldian doctrine would be implemented through purchase rather than confiscation, but the effect would be the same; Maori would be confined to land which they had improved by planting, and the Crown would own the waste lands. The Governor assured Earl Grey that Maori would cheerfully sell all their lands, and be satisfied if 'small portions of land, for the purposes of cultivation, shall be reserved for each tribe'.¹⁹ He had many sources of information, however, which challenged this contention. The missionary Robert Maunsell, for example, wrote to the government in 1847:

England has her unoccupied territories, and no doubt Earl Grey has his unsubdued lands, ranged over by nothing else than the deer or the pheasant. So also has the New Zealander his bird preserves, his "runs" (the grand sources of supply to our colonial markets), his useful timbers, his valuable plants, his fisheries, and localities sacred in his regards as having been the abodes of his forefathers, the scenes of their triumphs, and the resting places of their bones.²⁰

Grey himself knew the truth of Maunsell's protests. His early reserve policy planned

¹⁸ A. Ward, cited in *Ngai Tahu Report 1991*, vol. 2, p. 455.

¹⁹ G. Grey to Earl Grey, 15 May 1848, in GBPP 1847-48, 1120: p. 24.

²⁰ R. Maunsell to G. Grey, Waikato, 18 October 1847, in GBPP 1847-48, vol. 6, 1002: p. 10.

to create arable reserves but also larger blocks for *leasing* as sheep and cattle runs.²¹ His later testimony to the Smith-Nairn Commission stipulated that he had wanted chiefs to have gentry-style estates, and every 'native farmer should have a farm kept for him with sufficient land to run their stock on besides'.²² Colonel McLeverty advised him that reserves would also have to be large enough to permit relocation of planting every three or four years.²³ In April 1847 the Governor advised Earl Grey that reserves would need to include more than just land for cultivation, since Maori supported themselves by harvesting fern root, fishing, maintaining eel and duck ponds, and using 'extensive runs' for wild pigs. He argued:

to limit them to lands for the purpose of cultivation, is in fact, to cut off from them some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people. Such an attempt would be unjust, and it must, for the present, fail, because the natives would not submit to it: indeed they could not do so . . .²⁴

Donald McLean was equally aware that Maori drew emotional, spiritual, and physical sustenance from the land in a variety of ways. He understood how 'past associations' could make the land precious, and that reserves needed to include sacred sites, burial grounds, fresh and salt water fishing sites, and other sites of economic or cultural importance.²⁵ The impetus to restrict Maori to reserves for cultivation, therefore, which Earl Grey pressed and the local government often accepted in practice during the Waipounamu Purchase, must be measured against this awareness of Maori's more complex requirements from the land.

The Crown's intention in opening negotiations with Ngati Toa was to satisfy the settler requirement for land, as well as the Crown's need for revenue to promote colonisation. Many South Island settlers viewed their Maori neighbours as 'dogs in the manger', who tied up valuable lands without having the numbers or intention to use them properly.²⁶ Grey wanted to secure for Nelson and Canterbury Provinces 'the immediate and unrestricted use of the natural advantages of the important lands, harbours, and mines comprised within the entire

²¹ W. Wakefield to N.Z. Company, 23 February 1847, NZC 3/7.

²² G. Grey, evidence to Smith—Nairn Commission, 5 December 1879, MA 67/4, N.A.

²³ Col. McLeverty to G. Grey, 8 April 1847, GBPP 1847–48, vol. 6, 892: p. 40.

²⁴ *ibid.*, G. Grey to Earl Grey, 7 April 1847, p. 16.

²⁵ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302. See also p. 306.

²⁶ *Nelson Examiner*, 27 May 1848.

limits of those provinces'.²⁷ According to McLean, the Crown wanted to buy a quarter of the South Island, perhaps amounting to eight million acres, consisting of enormous grazing territories and 'districts abounding in mineral wealth'.²⁸ Grey argued that 'a large amount of prosperity must speedily accrue' to these provinces, and made it clear that he wanted to ease the teething problems of provincial governments by providing them with as much Maori land as possible.²⁹ McLean added that the swift and early purchase of such a large territory was partly designed to forestall Maori awareness that they could obtain a much higher price, 'which would of course increase with their knowledge of the mineral wealth abounding in some of the land they have sold'.³⁰ The land thus purchased included Pelorus and Queen Charlotte Sounds, the large Wairau Reserves of 1847, the whole of Tasman and Golden Bays (except for the Company lands), and an unspecified part of the West Coast, stretching at least as far as Arahura.³¹

The Crown turned to North Island Ngati Toa for the purchase of this vast territory. The claims of this iwi to South Island territory have been discussed above.³² In 1847 Governor Grey had purchased the Wairau and Kaikoura districts as far south as Kaiapoi, from just three Ngati Toa chiefs. The branch of Ngati Toa more permanently settled in the North Island continued to press their Wai Pounamu claims upon the government after 1847. In 1851, for example, a large hui of Toa chiefs sent a letter to the Governor which claimed authority over the whole of Te Tau Ihu:

According to our customs of old the authority over the lands on that side and this side is with us . . . Consider our giving up lands to you. No tribe came forward to disagree with us, because it was correct. Moreover, if we give up to you the parts which remain even unto Ara-hura.[sic] there is no one to disagree. Not one.³³

In this instance the Toa chiefs seemed to offer a blanket sale of rights to the government, but in fact the letter makes it clear that their real concern was the West Coast, from Golden Bay to Arahura. Their 'rights' in this district were not based on use, occupation,

²⁷ Grey to Newcastle, 13 August 1853, in AJHR 1881, G-2, p. 12.

²⁸ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

²⁹ Grey to Newcastle, 13 August 1853, in AJHR 1881, G-2, p. 12.

³⁰ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, pp. 12-13.

³¹ *ibid.*, p. 12. McLean said that the purchase included 'the Arahura or West Coast'.

³² See above, Chapters 2-5.

³³ Ngati Toa chiefs at Porirua to G. Grey, 11 December 1851, JPS vol. 68, p. 274.

or any indirect benefit from pieces of land. They claimed authority over land sales as the earliest and leading conquerors, arguing that the only military challenge to their rights (by Te Atiawa) had been suppressed. 'Then ended the argument over the lands and the authority was taken up by us'.³⁴

The government accepted Ngati Toa's claims at face value. McLean stated:

the Ngati Toa Tribe of Porirua (with whom the first treaty [deed] was concluded) had unquestionably, as the earliest invaders, a prior right to the disposal of the district. This they never had relinquished; although, after the conquest, their leading chiefs partitioned out to the subordinate branches of their own tribe, as well as to the Ngatiawa, a few of whom took part with them in the conquest, the lands which these now occupy in the Nelson Province.³⁵

McLean reached this conclusion without any formal inquiry into the rights of the respective iwi. Arguments could be offered for and against his interpretation of customary tenure, but it is important to note that a royal Commissioner had held a formal investigation in the 1840s and came to the conclusion that Ngati Toa had no rights outside their immediate areas of occupation. Spain had modified this view to accept that Toa might possess some sort of extra right, but he definitely ruled that this was subordinate to the rights of actual 'occupants' in the Arnoldian sense.³⁶ McLean overturned Spain's Nelson findings without admitting that he was doing so, or offering an argument to refute the Commissioner's judgement.

Octavius Hadfield condemned McLean's approach to ascertaining title in the 1850s as opportunistic. He claimed that McLean 'was guided by no fixed principles in acquiring the land; that sometimes he dealt with the conquerors, when they were inclined to sell, at other times with the conquered, sometimes with the leading chief, at others with an inferior one; that I had heard of instances in which an inferior member of the tribe had been treated with'.³⁷ McLean's activities partly reflected the complexity of Maori tenure, but it was clear that he sometimes ascribed primary rights to a group whose main entitlement was their willingness to sell.

³⁴ *ibid.*, & pp. 268, 272, 276.

³⁵ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

³⁶ See above, pp. 81-82.

³⁷ O. Hadfield, evidence at the Bar of the House, AJHR 1860 E-4, p. 11.

The North Island chiefs of Ngati Toa were eager to obtain a profit from land which they could neither occupy nor use, and they had the additional bonus for McLean of forming the only group which could claim rights (however secondary) over all the vast territories which the Crown wished to buy. Earlier efforts at land purchase in Nelson and Marlborough had run into serious problems 'owing to the numerous conflicting interests of different tribes inhabiting the bays and outlets at Queen Charlotte Sound, Cloudy Bay, the Pelorus, Wakapuaka, and other places'.³⁸ As a result, the Crown had found it necessary to 'repurchase' land in Golden Bay which had been included in the Spain Award.³⁹ McLean now decided to cut the Gordian knot by approaching the Porirua chiefs, 'who are acknowledged by the Natives generally to have the principal claim to those districts'.⁴⁰ These chiefs proved very willing to dispose of the West Coast and Golden Bay, but less willing to sell Marlborough lands, where they themselves (and their relatives) had direct interests or rights of occupation. McLean found it necessary to offer individual incentives to the chiefs before they would agree (perhaps conditionally) to sell Te Hoiere (Pelorus Sound).⁴¹

The Land Purchase Commissioner found it easier, therefore, to begin the purchase by approaching non-residents. He acquired Toa's 'principal' right in 1853, and then proceeded to Taranaki to purchase the interests of those Te Atiawa who had departed the Sounds for good. After a year of buying up the rights of non-residents, his only approach to the communities in occupation had been to send surveyors to make reserves.⁴² Not only did these non-resident sellers have less of a stake in keeping the land, but McLean hoped that they retained sufficient political and military clout to compel South Island residents to accept the sale. The government argued that the 1853 transaction was a sale of all the land, regardless of whether chiefs and iwi in residence had been parties to the deed. These other groups were entitled to 'compensation' and reserves, but were not entitled to repudiate the sale.⁴³ McLean stressed several times that it was not the government but the Ngati Toa chiefs who would enforce the sale, and he refused to cross to Te Wai Pounamu to arrange compensation for the other right-holders until all the senior Toa chiefs would accompany him.⁴⁴ Thus, Ngati Toa

³⁸ McLean to Civil Secretary, 11 August 1853, AJHR 1881 G-2, p. 12.

³⁹ See Mackay I, pp. 289-293; Mackay II, pp. 304-308; & AJHR 1874 G-6, p. 3.

⁴⁰ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁴¹ *ibid.*

⁴² See Mackay I, pp. 293-311.

⁴³ *ibid.*, pp. 298, 302-303.

⁴⁴ *ibid.*, pp. 301, 303-304.

undertook not only to sell the interests of South Island iwi on their behalf, but to use their 'influence in settling with the Natives of their own and other tribes resident there'. McLean placed confidence in the 'great influence possessed by Te Rangihaeata and the other Ngatitōa chiefs, not only over their own followers, but extending to the other tribes inhabiting the Middle Island'.⁴⁵

Furthermore, McLean took pains to emphasize that there were a few South Island chiefs present at the signing of the Ngati Toa deed in 1853, and its unauthorised successor in December 1854. He made it clear that the bargain was with the 'principal chiefs and people' of Ngati Toa, but added that 'several other influential chiefs from the Ngatirarua, Ngatitama, Rangitane, and Ngatiawa tribes were present', and participated in the negotiations.⁴⁶ As far as I have been able to ascertain from the deeds and other sources, McLean exaggerated the representativeness of signatories to the 1853 and 1854 agreements. The major rangatira of Golden Bay (Rarua, Tama, and Atiawa), Tasman Bay (Rarua and Atiawa), Wairau (Rarua and Toa), the Kurahaupo iwi (Apa, Kuia, and Rangitane), and Ngai Tahu, were not present at the negotiations or parties to the 1853 deed.⁴⁷ One Ngati Tama chief from Wakapuaka and a few minor Atiawa chiefs from Queen Charlotte Sound participated in the 1853 agreement. One Koata chief from Rangitoto was probably present, and a few Ngati Toa from Pelorus Sound, who did not dispute the sale of their district in 1854.⁴⁸ Apart from these exceptions, the majority of signatories were Ngati Toa chiefs who mainly resided in the North Island.

These Ngati Toa chiefs had some form of alienable right, and they certainly included most of the major right-holders at the Wairau, as identified by name in C.W. Ligar's report of 1847. As far as the large Wairau Reserves were concerned, Matene Te Whiwhi, Tamihana Te Rauparaha, Rawiri Puaha, Hohepa Tamaihengia, Pukeko, and the (North Island) Rarua chief Te Whawharua, were principal right-holders who signed the 1853 deed.⁴⁹ Ngati Toa of Te Hoiere also recognised a legitimate right of alienation in these chiefs.⁵⁰

The three Atiawa chiefs who signed the deed were, in comparison, much less important in Totaranui as a whole, although their hapu had clear rights in certain parts of it.

⁴⁵ *ibid.*, p. 303.

⁴⁶ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁴⁷ See Mackay I *passim*, & especially p. 307.

⁴⁸ T. Brunner to Richmond, 11 January 1855, in Mackay I, p. 294; W. Jenkins, Report on Journey, 1854-55, in Mackay I, p. 297.

⁴⁹ Mackay I, pp. 203, 307, 311.

⁵⁰ W. Jenkins, Report on Journey, 1854-55, in Mackay I, p. 297.

Their presence at the sale poses certain problems about documentation, however, as the names of Hoani Tuwhata, Heremaia Te Matenga, and Aminarapa do not appear on Mackay's version of the deed. These chiefs admitted to the interpreter Jenkins, however, that they had been present and signed the deed.⁵¹ The names recorded on the deeds are sometimes insufficient for identification, and the possible use of one of two baptismal names or one of two (or more) Maori names, makes precision difficult. A 'Hone', an 'Epiha', and a 'Pita' signed the 1853 deed, for example.⁵² It may be necessary for claimants to identify obscure signatories from whakapapa sources. It is also possible that Mackay's version of the deed does not record all the names, or that a few people were present and consented without physically signing the deed.

It is possible to use negative evidence, however, to assess the representativeness of the 1853 and 1854 agreements. Only the Ngati Toa and Ngati Rarua of Wairau were sufficiently represented and paid, not to require a further deed and payment of their own when McLean finally arrived to 'compensate' South Island right-holders.⁵³ Although Te Wahapiro (Paremata) and Rene Te Ouenuku of Ngati Tama and Ngati Koata respectively, were present and signed the 1853 deed, their home communities insisted that this did not equate to their own deliberate consent. These chiefs were away from their homeground and it is not possible to determine how many people accompanied them and whether or not they were consulted. Te Wahapiro had quarrelled with his more senior half-brother (Wi Katene Te Manu) and may have already been living permanently at Waikanae at this point.⁵⁴ In any case, Ngati Tama of Wakapuaka repudiated the agreement altogether, while Ngati Koata insisted on a further deed and payment.⁵⁵ According to A. Ballara, the consent of these wider communities was known to be essential to legitimate a purchase in the 1850s.⁵⁶

The second Ngati Toa deed of 1854 was more representative than the previous one. The 1853 meeting had decided that a second hui should be held at Nelson in January 1854, to apportion the remaining money as annual payments and to decide on the boundaries of

⁵¹ *ibid.*, p. 298, cf. p. 307.

⁵² *ibid.*

⁵³ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

⁵⁴ J. Mackay Jnr. to McLean, Nelson, 31 December 1858, McLean Papers MS Copy-Micro 0535, mentions Paremata as a resident of Waikanae.

⁵⁵ *ibid.*; see also p. 297.

⁵⁶ Ballara & Scott, pp. 27-32.

reserves.⁵⁷ McLean was unable to convene this hui, however, and instead he sent out surveyors to decide on reserves and went to Taranaki to (among other things) purchase the South Island interests of Atiawa returnees. He was back in Wellington by December 1854, where he found a large group of Ngati Toa assembled for a tangi. The principal right-holders from the Wairau communities were present, including Wiremu Te Kanae (Ngati Toa) and Tana Pukekohatu (Ngati Rarua). McLean claimed that there were leaders from other iwi present as well, but he mentioned only Taiaroa of Ngai Tahu by name. Taiaroa was described as 'the chief of the aboriginal tribes in the Middle Island', but he was not a chief of the Poutini Ngai Tahu and he does not seem to have signed the new deed. According to McLean, these chiefs (mainly Toa from both Islands) importuned him not to hold a hui at Nelson, or to pay the remaining sum in annual instalments, but to pay £2,000 to the present assembly before the senior conquest chiefs died of illness or old age. McLean agreed, arguing that 'the presence of the principal chiefs of so many different tribes (including those of the conquerors as well as those of the remnants of the conquered and original possessors of the soil), might not again occur'.⁵⁸ The names on the deed suggest that McLean was stretching the truth, compared to the names attached to later deeds by the principal right-holders resident in the South Island.⁵⁹

McLean made the most of what he had, however, and tried to make Pukekohatu a legitimate spokesperson for the Motueka and Golden Bay Rarua, as well as his own more immediate people at the Wairau. Pukekohatu had participated in the New Zealand Company purchase of 1841 and did have acknowledged rights at Motueka, but his connection was grounded in his status in the whole tribe (which was very high), and did not take into account his permanent departure from Motueka and his disagreements with the Rarua chiefs who stayed behind.⁶⁰ To describe him as coming 'from Motueka', and to make him responsible for paying 'his tribe' £400 (meaning Ngati Rarua at Wairau, Tasman Bay, and Golden Bay) may have been stretching the real nature of Pukekohatu's position and rights in Te Wai Pounamu.⁶¹ McLean also made Pukekohatu responsible for paying £100 to Ngati Tama of Wakapuaka, which was even less appropriate since he could not be considered a representative

⁵⁷ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁵⁸ McLean to Colonial Secretary, 15 December 1854, in Mackay I, p. 304.

⁵⁹ Mackay I, p. 311, cf. pp. 310, 312-319.

⁶⁰ See Nelson Native Land Court Minute Book 2, ff. 189, 191, 216-218, 223, 226, 271-272, 278, 292-294.

⁶¹ McLean to Richmond, 15 December 1854, in Mackay I, p. 304.

of that community. Ngati Tama had already complained about a similar attempt in Golden Bay, where a Rarua chief had failed to pay over their share of a previous compensation payment.⁶²

In addition to the question of who was a party to the agreements and the representativeness of their consent, there is also some mystery as to what became of the £4,000 which McLean paid over in 1853 and 1854. Ngati Toa and Ngati Rarua of Wairau and the Pelorus were held to have been adequately compensated, and did not press for further payments.⁶³ There is no evidence about the £400 for the rest of Ngati Rarua or the £100 for Ngati Tama, as to whether these were paid to Pukekohatu, since their supposed beneficiaries did not receive them. Occasional details are given, such as payments of £200 each to Te Rangihaeata and Pukekohatu, but the actual allocation and payment of money was largely unrecorded.⁶⁴ It seems probable that most of the money was paid to Ngati Toa chiefs and their followers.

The remaining £1,000 of the agreed purchase price was paid to Te Atiawa: £700 to Atiawa chiefs at Taranaki (including Wiremu Kingi); £200 to Atiawa chiefs at Waikanae; and £100 to a Ngati Hinetuhi chief of Port Gore. Only £100 of this left over sum, therefore, was paid to a chief habitually resident in the South Island.⁶⁵ In addition to the purchase price, fifteen 'principal chiefs of the Ngatitoo' received scrip worth £50 each, to buy Crown land anywhere in New Zealand. These were mainly North Island chiefs with an interest in the Pelorus, although Rene Te Ouenuku of Ngati Koata was included.⁶⁶ McLean also offered 200-acre blocks as individual grants to 26 chiefs, again mainly from Ngati Toa, although Paremata Te Wahapiro, Riwai Te Ahu, and Rene Te Ouenuku benefitted from this payment.⁶⁷ On the whole, the payment of £5,000 was largely absorbed by North Island chiefs, and these were mainly of Ngati Toa ki Porirua.

Despite McLean's efforts to exaggerate the representativeness of the 1853 and 1854 deeds, he took his main stand on the 'general right of alienation vested in the Ngatitoo chiefs of the Northern Island', and their promise to assist compensation and reserve arrangements

⁶² Tinline to Richmond, 18 December 1855, in Mackay I, p. 295.

⁶³ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

⁶⁴ *ibid.*

⁶⁵ *ibid.*, p. 301; see also pp. 308–310.

⁶⁶ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12; & A. Mackay, Memorandum on Land Purchases, 1 October 1873, AJHR 1874 G-6, p. 3.

⁶⁷ AJHR 1881 G-2, pp. 11–13.

with their relatives and allies in the South Island.⁶⁸ It remains to be considered, therefore, what *Ngati Toa* thought they were doing in the 1853 agreement, especially as this deed became the cornerstone of the Waipounamu Purchase. According to Governor Grey, the assembly of *Ngati Toa* at Wellington in August 1853 met to say farewell to their departing Governor. They were unwilling to discuss land sales, except perhaps for a 'portion of their less valuable land on the West Coast'. Grey informed Earl Grey that he persuaded the chiefs to cede all their unsold land as a gesture of homage and respect to their beloved Governor.⁶⁹ McLean agreed that they would not otherwise have consented to such an enormous sale, 'not even if they were hereafter offered a much higher remuneration'.⁷⁰ What is the significance of these statements? Did Grey and McLean manipulate Maori custom in order to obtain this grand 'gesture'? Clearly some form of mutual recognition, or exercise in *mana*, was involved, but the details are not clear.

The deed defined the sale as a cession of 'all our lands' in the South Island, except for Rangitoto (D'Urville Island) and reserves necessary for the subsistence of the South Island's inhabitants. According to the deed, the Governor would choose the site and size of these reserves.⁷¹ As noted above, Alan Ward and Angela Ballara suggested that a sale defined merely as 'all our lands' might be inherently flawed.⁷² It is possible to make some tentative remarks about how *Ngati Toa* understood such a sale, from piecing together small (and often oblique) references in the documentary evidence. Wiremu Te Kanae's brief history of *Ngati Toa* is a useful source in this respect, although it is somewhat confused about dates and sums of money. According to Te Kanae, the *Ngati Tama* chief Te Wahapiro suggested selling the whole of the West Coast as far south as Tukurau, the site of his step-father/uncle Te Puoho's death in the late 1830s. Just as Grey had asked for Wairau as 'payment for his dead', Te Wahapiro sought payment for *his* dead from the *Ngai Tahu* whose territory he thus proposed to sell to the government. The chiefs and people of *Ngati Toa* agreed to this proposal, hence the offer of the West Coast to Grey in 1853.⁷³

⁶⁸ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

⁶⁹ *ibid.*, p. 300; & G. Grey to Earl Grey, 13 August 1853, AJHR 1881 G-2, p. 12.

⁷⁰ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁷¹ Mackay I pp. 301-308.

⁷² See above, pp. 130-131.

⁷³ W.N. Te Kanae, 'A History of the Tribes *Ngati Toa Rangatira . . .*', p. 18. See also Mackay I, p. 300: 'After repeated discussions with the *Ngatitua* and *Ngatitama* [ie. *Te Wahapiro*] Tribes, who at first intended only to cede a portion of their less valuable land on the West Coast . . .'

A Ngati Toa chief, Ropata Hurumutu, proposed a further sale of Te Hoiere (Pelorus Sound) as utu for the adultery of his wife with a local Pelorus man. According to Te Kanae, the chiefs agreed to this sale and received £2,000 from McLean.⁷⁴ The Land Commissioner himself makes it clear that there was strong opposition to the sale of Hoiere, hence his incentive payments of scrip to 'those chiefs, fifteen in number, more particularly interested in the sale of the Pelorus or Hoiere'.⁷⁵ By mentioning that the Pelorus was 'a district they had great reluctance in ceding', and that he made special payments as a result, McLean made it clear that individual districts must have been discussed and treated for, despite the supposed blanket cession contained in the final deed.⁷⁶ Ngati Toa could not have understood the arrangement in the simplistic terms of the deed, therefore, despite the subsequent assurances of the government that a general sale of all land interests had taken place.⁷⁷

There was also room for divergent views over the vague reserves clause, which stated:

Now, certain places are agreed to by the Queen of England to be reserves for our relations, residing on the said land, which has been sold to us, but the Governor of New Zealand reserves to himself the right of deciding on the extent and position of the lands to be so reserved. . .⁷⁸

McLean described this as a reservation of 'such other places as may be actually required by the Natives, within the limits of the purchase, as reserves, for their own use and occupation'.⁷⁹ In a later letter, he called the reserves the '[existing] cultivations and lands required for the subsistence of the Natives resident in the district'.⁸⁰ This implied that the Governor could not have a completely free hand in selecting pieces of land, but the actual agreement between Grey and Ngati Toa circumscribed the Governor's power in a much more drastic manner. The Governor and chiefs agreed that a general meeting of all interested iwi would take place at Nelson in January 1854, at which 'the boundaries of the reserves to be set apart for the respective tribes should be decided upon'.⁸¹ McLean failed to hold this meeting, and sent out government agents to make a unilateral selection of reserves. His

⁷⁴ Te Kanae, p. 18.

⁷⁵ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁷⁶ *ibid.*

⁷⁷ *ibid.* See also Encl. 4.

⁷⁸ Mackay I, p. 308.

⁷⁹ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁸⁰ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 300.

⁸¹ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

strategy failed for two reasons: local Maori refused to accept any kind of reserves until they had received payment for their land; and after the Nelson meeting failed to take place, Rawiri Puaha toured the Wairau and the Sounds to inform the locals of what he considered had been excepted and reserved from the sale.⁸²

Puaha clearly upheld the sale of Te Hoiere but told the Ngati Toa residents that he had 'not included the districts called Kenepuru and Mahakipawa in the sale of these lands, but intended to keep them for their own use'.⁸³ The Interpreter, W. Jenkins, 'distinctly told them that the whole of the land was sold by Rawiri, and that as those places were some of the best in the district, we could not think of reserving them for their use'.⁸⁴ The government agents were even more dismayed at the Wairau, where Puaha told the residents that he had not sold the huge Wairau Reserves nor any of the bays in Port Underwood. In what may have been a direct response to government views about waste land and cultivation, 'Rawiri also said to them that he intended to settle at Wairau shortly, and he should require all the land [over 100,000 acres] for cultivation'.⁸⁵

The principal Te Atiawa chief at Te Awaiti (Tory Channel), Ropata Whitikau, told the same story:

he replied that Rawiri had been with him a few months back, and told him that he had not sold it - that Tory Channel was not in the block sold by him; that if the Government wanted it, he (Ngawheua) [Whitikau] of course was at liberty to make his own bargain.⁸⁶

This was not the first instance in which Rawiri Puaha felt compelled to play a "double game". As the leading chief in a new generation of Ngati Toa rangatira, he had walked a careful tightrope of duplicity in the late 1840s, giving Te Rangihaeata secret aid while profiting from government attempts to suppress Rangihaeata's 'rebellion'.⁸⁷ His actions in 1854 may have been the result of a similar scheme to outwit the government and profit from an ostensible agreement, without actually selling out his relatives and allies in the South Island. At the same time, it may reflect a genuine disagreement over what had been sold,

⁸² McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

⁸³ W. Jenkins, Report of Visit to Kaiua etc., 1854-55, in Mackay I, p. 297. See also Figures 2 & 19.

⁸⁴ *ibid.*

⁸⁵ *ibid.*, p. 298,

⁸⁶ *ibid.*

⁸⁷ See above, pp. 87-88.

perhaps including an understanding that the details would be filled in later by both parties, rather than by the unilateral action of the Crown. This was certainly true of the reserves, where the Governor and Ngati Toa had agreed on a joint decision-making process which included the resident Maori as well as themselves. The deed actually empowered the Governor alone, but the rest of the agreement had in fact left it up to both parties to make whatever reserves or exceptions they felt necessary and could agree upon.⁸⁸

The second Ngati Toa deed of December 1854 tried to resolve the uncertainties of the previous year. It expanded briefly on the phrase 'our land at the Waipounamu' - 'that is, all our claims to Wairau and Hoiere, and Whakapuaka, and Taitapu, and Arahura, and the Waipounamu, including all our lands which we have not sold in former times'.⁸⁹ There was no map, no definition of boundaries, and presumably a generic use of such names as Taitapu to convey the whole of Golden Bay, and Arahura to mean the whole of the West Coast. Although only slightly more specific, there does seem to have been a more concrete agreement with the Ngati Toa and Ngati Rarua leaders resident in the Wairau and Pelorus regions. Wiremu Te Kanae, principal resident chief of Ngati Toa, promised to help McLean sort out the reserves in the Kaituna and Hoiere districts.⁹⁰ The other signatories agreed to 'satisfy and prevent the demands of all Natives whatsoever who may hereafter claim the land which we have . . . fully given up and made over to the Queen'.⁹¹ Even so, there was a further year's delay when McLean was unable to 'get the Natives of the North Island, from illness, attention to their crops, or other causes, to accompany me'.⁹² Rawiri Puaha, Hohepa Tamaihengia, Matene Te Whiwhi, Tamihana Te Rauparaha, and 'others', lent their presence and support to McLean's Wairau and Queen Charlotte Sound negotiations in January 1856, almost two-and-a-half years after the signing of the first Waipounamu deed. Wiremu Te Kanae and Te Tana Pukekohatu also assisted McLean at the cost of two 50-acre reserves each, in return for their help in overawing the resident Ngati Kuia and Rangitane of the Pelorus and Wairau districts.⁹³

The Ngati Toa chiefs do not seem to have accompanied McLean further west than Te Hoiere. The iwi of Croixelles, Tasman Bay, Golden Bay, and the West Coast, were left to

⁸⁸ McLean to Civil Secretary, 11 August 1853, in AJHR 1881, G-2, p. 12.

⁸⁹ Mackay I, p. 311.

⁹⁰ McLean to Richmond, 15 December 1854, in Mackay I, p. 304.

⁹¹ Mackay I, p. 312.

⁹² McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

⁹³ *ibid.*, p. 302.

arrange their own 'compensation' with McLean. The 1854 agreement arranged a more concrete sale of Te Hoiere and the Wairau, therefore, but not of Queen Charlotte Sound or the rest of Nelson Province. Even in the Wairau and Pelorus, however, the 'conquered' Ngati Kuia and Rangitane remained unconsulted and unpaid in 1854, for interests which McLean had considered as genuine but inferior in his original agreement with Ngati Toa in August 1853.⁹⁴

It took two-and-a-half years, therefore, and a further payment of £2,000, before the Ngati Toa chiefs of the North Island could be brought to accept the Crown's interpretation of the 1853 agreement. This agreement must be examined within its own parameters, apart from these questions of representative consent and interpretation, to determine whether the Crown kept its side of the bargain, and paid a fair price for the 'extensive and valuable district' which it claimed to have purchased. It is extremely difficult to judge fairness of price because of the many factors which affected land values in the 1850s, but some conclusions may be drawn from the Crown officials' own opinions on the adequacy of payment. Grey and McLean both praised the territory of the Waipounamu Purchase as a valuable acquisition with 'important lands, harbours, and mines'. Grey predicted that 'a large amount of prosperity must speedily accrue' to the Provincial Governments, through 'deriving a considerable revenue' from the leasing and sale of Maori land.⁹⁵ McLean believed that without the Governor's personal intervention and influence, 'nothing . . . would have induced them to have ceded the more available and valuable parts of those districts, not even if they were hereafter offered a much higher remuneration, which would of course increase with their knowledge of the mineral wealth abounding in some of the land they have sold'.⁹⁶ Forgotten were the days when Normanby instructed that Maori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves'.⁹⁷ Instead, the government took deliberate advantage of the fact that Maori remained unaware of the potential value of their land and some of its resources, and paid an amount which, 'compared with the advantages of settling such an important question, is very inconsiderable'.⁹⁸ Even with the addition of £2,000 to cover residents' rights, McLean

⁹⁴ Mackay I, pp. 300–304, 308; D. McLean, *Diary & Notes*, draft 'Deed for the Middle Island', August 1853, Box III, MS-1237, W:Tu.

⁹⁵ G. Grey to Newcastle, 13 August 1853, AJHR 1881, G-2, p. 12.

⁹⁶ McLean to Civil Secretary, 11 August 1853, AJHR 1881, G-2, pp. 12–13.

⁹⁷ Normanby to Hobson, 14 August 1839, GBPP 1840, vol. 3, p. 87.

⁹⁸ McLean to Civil Secretary, 11 August 1853, AJHR 1881, G-2, pp. 13.

affirmed that the 'cost, under any circumstances, is not likely to amount to the rate of one farthing per acre'.⁹⁹

Ngati Toa were not happy with their initial payment of £2,000 and pressed for further remuneration. The government entered into several side bargains with individual chiefs and leaders, some of which breached the original conditions of the sale, and others of which were never carried out. In December 1854 McLean agreed to pay a further £2,000 to Ngati Toa, instead of meeting the resident iwi at Nelson and arranging for a proportionate allocation of remaining funds. The deed stipulated that the remaining £3,000 would be paid in annual instalments of £500, and this was meant to be divided on the basis of the Nelson meeting. Ngati Toa feared that 'a sum so small as £500 being divided once a year among such a number of claimants afforded so trifling an amount to each' that they might have to repudiate the sale.¹⁰⁰ McLean was already a year overdue for his Nelson meeting, so he agreed to pay Ngati Toa a further £2,000 if their leading chiefs would promise to accompany him to the South Island and arrange matters with their relatives and allies.¹⁰¹

The resident iwi were furious that they had received so little of the purchase price of £5,000. The three Te Atiawa chiefs who had been present at the 1853 assembly declared that this breach of faith on the part of the government rendered the former deed invalid:

This is all very good, but we now tell you that you and the Government are playing with us. Mr. McLean has broken faith with us, and instead of paying the remaining instalments in Nelson, as agreed upon when we signed the document you refer to, he has actually only a few days since paid into the hands of Ngatitua the sum of £2,000, without asking our consent, or even acquainting us with his intention of doing so.¹⁰²

Everyone was unhappy with the division of the purchase price, even Ngati Toa, who preserved a tradition that some of the money had disappeared altogether 'owing to the adept doings of Te Makarini [McLean]'.¹⁰³ The official payment of £5,000, however, was only one of the engagements entered into by the government, which were designed to supplement the low price and make the purchase worth the while of individual Toa chiefs. One promise

⁹⁹ McLean to Colonial Secretary, 15 December 1854, in Mackay I, p. 304.

¹⁰⁰ *ibid.*, p. 303.

¹⁰¹ *ibid.*

¹⁰² W. Jenkins, Report, 1854–55, in Mackay I, p. 299.

¹⁰³ W. Te Kanae, p. 18.

was supposed to apply to all chiefs and iwi, and make it clear that there were advantages in selling land to the Crown instead of private settlers. The Governor assured Ngati Toa that they would be allowed to repurchase land with a secure Crown title at a flat rate of ten shillings an acre. Although this promise was not written into the deed, Grey understood it to mean that they would be entitled to purchase any land they chose for this pre-set price. When the Governor returned to New Zealand in the 1860s, 'some of the natives came to me and complained that they had applied for portions of land and were not allowed to purchase; and the reason distinctly given was that the Europeans in the neighbourhood did not wish to have natives near them'.¹⁰⁴ J. Mackay Junior reported to the Native Secretary that Provincial Governments refused to honour Grey's obligations, and prevented Maori from repurchasing land at the agreed price, or even at all.¹⁰⁵

In addition to this right of repurchasing, the Governor made two further offers to the Ngati Toa chiefs. McLean reported that: 'In addition to the cash consideration payable to the Natives, which, from the smallness of the sum, they evinced some reluctance to accept', the Governor offered fifteen principal chiefs an individual grant of scrip worth £50 each, to be used in the purchase of Crown land anywhere in New Zealand.¹⁰⁶ The chiefs did actually receive the scrip, which was meant to secure land at the above rate of ten shillings per acre, but in practice they suffered from the same problems in exercising their right.¹⁰⁷ Nevertheless, eight chiefs used their scrip to buy land in the Nelson Province.¹⁰⁸

The Governor's second offer was made to 26 chiefs (mainly from North Island Ngati Toa), of individual grants of 200 acres for each chief, to be selected from land within the Waipounamu Purchase. Alexander Mackay calculated that at 1850s Crown land values, this land was worth £5,200.¹⁰⁹ With the addition of £750 worth of scrip, these two extra offers amounted to more than the entire purchase price of £5,000, initially designed for division between Ngati Toa and the resident right-holders. Twelve of the fifteen chiefs who received scrip, were also promised 200-acre grants of land. According to McLean's account of the agreement, the Governor was to set apart land for this purpose 'at such times as the land

¹⁰⁴ G. Grey, evidence to Smith—Nairn Commission, 5 December 1879, MA 67/4.

¹⁰⁵ J. Mackay Jnr. to Native Secretary, 3 October 1863, in Mackay II, p. 138.

¹⁰⁶ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 300.

¹⁰⁷ J. Mackay Jnr. to Native Secretary, 3 October 1863, in Mackay II, p. 138.

¹⁰⁸ A. Mackay, Land Purchases in the Middle Island, 1 October 1873, AJHR 1874 G-6, p. 3.

¹⁰⁹ A. Mackay to Under-Secretary, 20 August 1875, MA 13/17: 75/4319.

might be required for their use'.¹¹⁰ In April 1856 he reported: 'The Natives have not, as yet, evinced any desire to select this land, which they regard more as a provision for their future wants than as needed for immediate occupation'.¹¹¹ Ngati Toa were still waiting for their land twenty years later, by which time the question had assumed the guise of a major grievance, and had been reinterpreted within the minds of Ngati Toa as a promise made to the whole community rather than a payment to individual chiefs.

By 1880 the failure to allocate 200-acre blocks had become a longstanding grievance, often quoted as a 'special breach of faith'.¹¹² According to Ngati Toa, 'during all these long years we have been trying to find out the Lands reserved for us, and other members of our Tribe, without success'.¹¹³ Alexander Mackay, Commissioner of South Island Native Reserves, began to investigate the question as early as 1868, but no action was taken until 1874.¹¹⁴ Mackay wrote a general report on South Island land purchases in 1873, commenting that the 1853 promise of 200-acre reserves had still not been fulfilled.¹¹⁵ In 1874 the Native Department asked Mackay to draw a sketch map showing where it might now be possible to 'select a sufficiency of fair average land'. Mackay reported to the Department that Provincial Governments would be unhappy if the Crown exercised its power to select the land, and that sizeable blocks could no longer be selected anywhere without holding up settlement in those areas. The Commissioner advised the government to select the land and sell it, creating a trust fund for the 26 chiefs, or to set aside a sum of money equivalent to the 'average value of the description of land that was intended to be given at the time', which Mackay calculated as £5,200.¹¹⁶ He added four years later that the interested parties would prefer a money settlement anyway.¹¹⁷

When the government made noises about settling the claim in the late 1870s, however, Ngai Tahu undertook a vigorous campaign of obstruction through the MP for Southern Maori and a series of petitions. They claimed that Ngati Toa had no right to sell the Waipounamu block, and that an inquiry should be held to determine who were the correct right-holders, and

¹¹⁰ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 300.

¹¹¹ *ibid.*

¹¹² T.W. Lewis, Memorandum, 21 November 1879, MA 13/17: 679/4954, National Archives.

¹¹³ Ngati Toa claimants to Sir A. Gordon, Porirua, 14 January 1881, MA 13/17.

¹¹⁴ A. Mackay to McLean, 28 August 1868, MA 13/17.

¹¹⁵ A. Mackay, Land Purchases, Middle Island, 1 October 1873, AJHR 1874 G-6, p. 3.

¹¹⁶ A. Mackay to Under-Secretary, 20 August 1875, MA 13/17: 75/4319.

¹¹⁷ A. Mackay to Under-Secretary, 13 May 1879, MA 13/17: 79/179.

therefore the correct recipients of any cash settlement. They also feared that the government would favour Ngati Toa, settling the Waipounamu claim and leaving aside the Ngai Tahu claims about fishing and cultivations (*mahinga kai*).¹¹⁸ Under-Secretary T.W. Lewis advised that the Ngai Tahu's ground of complaint 'cannot be admitted for a moment without raising a question as to the Crown title'.¹¹⁹ This was probably the main reason for his determination not to reopen or investigate the title: 'There is little or no doubt that Mr McLean was justified in dealing with the Ngatitua in 1853 as the then owners of the land'.¹²⁰ Parliament went ahead and voted £5,200 in lieu of the 200-acre blocks, calculated by Mackay on the basis of 1850s land values.

In August 1878 the Ngati Toa leaders agreed in principle to accept money instead of land, as proposed to them by the Native Ministry.¹²¹ Parliament voted the money but without specifying its disposition, and it remained for government and Ngati Toa to negotiate on how the money should be spent. A deputation of Ngati Toa leaders met the Native Minister, J. Bryce, on 25 May 1880. Most of the original chiefs had died intestate, some of whose heirs were living scattered in Taranaki and Waikato among other *iwi*, and the deputation wanted to prevent the government from deciding who the successors should be and allocating the funds directly to 'outsiders'. They asked the government to hand over the money to Ngati Toa tribal authorities for them to subdivide and allocate.¹²²

At a second meeting on 31 May, *Nopera te Ngiha* (one of the surviving grantees) argued that under the Minister's scheme,

certain individuals would only get the benefit of it. But if it was paid as the Maoris wanted, it would be divided out amongst them. Otherwise, the tribal feeling would be broken up, and the money would only be paid to individuals.¹²³

The government pointed out that the grant had always been intended for individuals. McLean's policy of making payments in land or scrip to key chiefs had been reinterpreted by

¹¹⁸ See series of memos & Ngai Tahu letters in MA 13/17, especially Tane Teihoka & others to Bryce, Kaiapoi, 16 April 1880.

¹¹⁹ T.W. Lewis, Memorandum, 25 March 1880, MA 13/17: 680/984.

¹²⁰ T.W. Lewis, Memorandum, 21 November 1879, MA 13/17: 679/4954.

¹²¹ Wi Parata to Clarke, Porirua, 9 August 1878, MA 13/17.

¹²² Report of Interview with Ngati Toa deputation, 25 May 1880, MA 13/17: 680/1835.

¹²³ Report of Interview with Ngati Toa Deputation, 31 May 1880, MA 13/17: 680/2037.

Ngati Toa in the intervening years. The heady days of the 1850s were long gone, and Ngati Toa had come up against the physical realities of land loss once the purchase money was all gone. The government's obligation to provide 200-acre blocks took on the appearance of a more general compensation. Nopera Te Ngiha shrugged off the rights of legal grantees:

The Ngatittoa had lost the land, and they were almost landless at that time, to a certain extent, and it was very hard that they having lost their land, should lose the benefit of the money also. About the list of the names of those people who were in the original list, what about them? [In the context, this latter question appears to be a dismissive comment] ¹²⁴

The government remained firm that the money should go into an inalienable trust, to be administered by the Public Trustee, with interest payments going to the original grantees or their legal successors. When Ngati Toa replied that they did not approve of such arrangements and would rather have the land, Bryce told them that he could veto the payment but could not guarantee that Parliament would vote the land. The Minister argued that the government had a two-fold duty: to fulfil the original award; and to make sure that 'the natives had some subsistence for their old age - and for their successors'.¹²⁵ The original land would have been inalienable and the money compensation should be also. When Ngati Toa said that they could throw their own money into the sea if they wanted to, Bryce replied: 'If 20 or 50 years hence, the Government of the day were reproached for allowing the Maoris to act in such a way, it could not be any answer to say that a Maori had offered to take the responsibility off his hands'.¹²⁶

The Minister refused to amend the list of grantees or pay the principal over to Ngati Toa. Wi Parata demanded that 10% interest should be obtained, and the Minister promised that 7% should be possible on good security. The meeting finally acquiesced before Bryce's cajolery and threats to abandon compensation altogether, and agreed to investment of the sum with the Public Trustee.¹²⁷ Although the fund was only invested at 4% interest, the government did try to meet Ngati Toa's concern that it would be too expensive for heirs to

¹²⁴ *ibid.*

¹²⁵ Report of Interview with Ngati Toa deputation, 25 May 1880, MA 13/17: 680/1835.

¹²⁶ *ibid.*

¹²⁷ Report of Interview with Ngati Toa Deputation, 31 May 1880, MA 13/17: 680/2037.

prove their right to interest payments in the law courts.¹²⁸ The Governor appointed Charles Heaphy and Alexander Mackay as a Royal Commission to establish the beneficiaries of the 1879 Parliamentary award.

By the time that the Commission reported back in January 1881, Ngati Toa had already petitioned the Governor for a revision of Bryce's plan. The Minister had refused to pay them the principal or revise the plan of individual grants, to pay interest that should have accrued ever since the original promise in 1853, to substitute land for a trust fund, or to allow the grantees any control over the investment of the money. The petitioners suggested:

we have considered the matter over and have come to the conclusion that the Government has no power to retain our money.

Taking into consideration the Government have had both Land and Money for 27 years without interest, that we have received real injustice at the hands of the Government.¹²⁹

The change of Native Ministers in January 1881 made no difference to department policy, however, and Parliament adopted the report of the 1881 Ngatitooa Commission.¹³⁰ The grievance about non-fulfilment of the 1853 agreement was held to have been settled.

¹²⁸ *ibid.*

¹²⁹ Ngati Toa claimants to Sir A. Gordon, Porirua, 14 January 1881, MA 13/17.

¹³⁰ T.W. Lewis to Native Minister, 12 March 1881, MA 13/17; See also Report of Ngatitooa Royal Commission, 29 January 1881, AJHR 1881 G-2.

CHAPTER 9

COMPLETING THE WAIPOUNAMU PURCHASE

I THE EVENTS OF 1854

On 10 August 1853 the Ngati Toa chiefs signed a deed ceding 'all our lands' in the South Island to the Crown for £5,000, of which £2,000 was paid immediately to the assembled chiefs. The conference between the chiefs and the Governor agreed that the other iwi who 'conjointly with ourselves, claim the land' should meet with McLean and Ngati Toa at Nelson in January 1854. This second assembly would decide on reserves and apportion the remaining £3,000 between the various right-holders. This did not mean that Ngati Toa declined further payments, but that all the interested iwi should have a voice in the allocation of the purchase money.¹ Despite this concession to resident interests, the August deed created widespread alarm among the other right-holders of Te Tau Ihu. The Governor instructed McLean to go to Nelson and join Major Richmond in arranging matters with the residents, but he had still not made it to the South Island by the end of September 1853.²

Richmond reported in September that local Maori were very angry about the Ngati Toa deed: 'at present there is a feeling on their part that they ought to have been consulted before the land was sold and they were doubtful if even they were to be included in the payments'.³ Richmond tried to reassure them that payment would be forthcoming, but the actions of McLean over the following two years encouraged residents in the belief that the Crown viewed the land as already purchased, and that they would be lucky just to get a small payment for it.

Richmond was very alarmed when McLean did not appear at Nelson in January 1854: 'I have had frequent interviews with the Natives from every part of the Province and also a volume of correspondence all expressive of dissatisfaction at the purchase, and I fear we shall

¹ See above, Chapter 8.

² Richmond to McLean, 23 September 1853, McLean Papers MS Papers 32/535, W:Tu.

³ *ibid.*

have some trouble before all the details can be arranged'. Richmond kept promising that McLean would arrive soon, and he appealed to the Chief Land Purchase Commissioner not to prove him a liar. The Maori were 'very impatient and anxious' to meet with McLean. The Major advised him to 'bring Puaha and other influential Chiefs with you for I can assure you you will require to be well supported to get through the business'.⁴

McLean ignored Richmond's appeals and although he made a brief visit to Nelson in January 1854, he made no move to summon the projected hui but instead returned to Wellington, where he began a second round of purchases from non-resident right-holders. At this point the Waipounamu Purchase became bound up with the internal politics of Te Atiawa, and more particularly with the government's problem of land purchase in Taranaki. The connections between Taranaki and Te Tau Ihu remained alive throughout the 1850s, and one of McLean's constant manoeuvres in opening purchases was to begin by satisfying the claims of absentee right-holders. After the FitzRoy judgement in Taranaki in 1844 it became accepted policy that if people had recently made a voluntary migration, and if a few of their relatives remained behind to keep the fires burning, *and* if the land was not overrun by outsiders, then the absentees retained a valid right to return to their previous homes or to sell their interest in the land.⁵ McLean had little choice, therefore, but to buy up the claims of absentees to particular blocks as they were sold, or else there would be a constant stream of people returning and setting up claims in such blocks. Octavius Hadfield suggested, however, that sometimes McLean bypassed residents who were opposed to sales in favour of absentees who had less to lose from a sale of the land.⁶

During the Waipounamu negotiations of August 1853, McLean also opened negotiations with Wellington Te Atiawa for the purchase of Taranaki interests. Unlike the blanket purchase from Ngati Toa, however, these were negotiations for particular blocks already under discussion in Taranaki. Instead of crossing to Nelson to deal with resident right-holders over the Waipounamu Purchase, the Commissioner spent January 1854 in finalising the details of the Hua Purchase in Wellington. He paid some Queen Charlotte Sound Atiawa at Wellington for their rights in the Waiwakaiho and Hua blocks, as well as Te Puni's

⁴ *ibid.*, 17 January 1854.

⁵ O. Hadfield, evidence to the House, 14 August 1860, AJHR 1860 E-4, pp. 1-3. See also AJHR 1861 C-1, pp. 193-194, 197.

⁶ O. Hadfield, evidence to the House, 14 August 1860, AJHR 1860 E-4, pp. 1-3. Hadfield's example is the purchase of Waitara rights from Totaranui people, bypassing both Taranaki and Waikanae right-holders.

Wellington Atiawa. A. Parsonson pointed out, however, that he defined the boundaries of this purchase to include a lot more land than the Taranaki residents under Katatore were willing to part with, thereby using the absentees to obtain a foothold in other blocks of land. This was the result of a policy adopted by Grey and McLean in 1852, to use any means possible to penetrate the Taranaki Atiawa's determined opposition to land sales.⁷

One of the leading opponents of selling land was Wiremu Kingi Te Rangitake, a Puketapu chief and possibly ariki of Te Atiawa.⁸ McLean had to find ways to make land selling more attractive to Wiremu Kingi and his allies and to arouse a widespread cupidity among Te Atiawa right-holders. This involved paying much higher prices than usual and making large reserves, in the hope that (as G.S. Cooper wrote in all seriousness) Te Atiawa would believe that the government was genuinely concerned for their interests and would only buy land which they really did not need.⁹ Cooper's report is worth quoting at length to demonstrate this Taranaki context of McLean's purchases of South Island land from returnees:

General Reasons why such Liberal Reserves were made.

When the purchase of the Waiwakaiho Block was effected, a considerable length of time had elapsed since any land had been obtained from the Natives at Taranaki, and it was looked upon as a matter of great importance to make a commencement in any direction and on almost any terms, in the hopes of its leading to further purchases. The Waiwakaiho Block was never looked upon as being, in itself, of any particular value, and, from its peculiar shape, but a very small portion of it is composed of open and immediately available land, the greater part being, though generally level and rich in soil, so heavily timbered and lying so far inland that its intrinsic value as an additional acquisition of land to the settlement was never thought to be very great. But the fact of making any purchase at all at that time at Taranaki was considered a great point gained, and more particularly so in reference to the Waiwhakaiho Block, because it was looked upon as being (what it afterwards proved to be) the key to the Hua Block, and because many Natives joined in the sale who had previously been obstinate opponents to the sale of land. I may mention Tangutu and Raniera as instances of this. It was also at that time believed that dealing liberally with the Natives in the matter of reserves in this block might operate as an inducement to the Mangaoraka, Waiongana, and Waitara people to sell some of their much-coveted lands, as it was hoped their opposition might become less when they saw that really nothing more was asked for, or sought to be obtained from them, than those lands which were of no use to themselves or their children. These are generally the reasons which led to such

⁷ A. Parsonson, 'Land and Conflict in Taranaki, 1839-59', November 1991, Wai 143 A-1(a), pp. 106-117. See also AJHR 1861 C-1, pp. 197-198, 200, 202.

⁸ C.L. Nugent to Colonial Secretary, 25 January 1855, GBPP 1860, vol. 11, p. 348.

⁹ Parsonson, p. 117,

liberal reserves being made...¹⁰

McLean tried to accustom Wiremu Kingi and others to enjoying the proceeds of land sales, by offering to buy their interests in the 'Waipounamu block', to which they had no intention of returning. He did this during his February/March negotiations in Taranaki for the Hua block. On 3 March McLean paid £3,000 for this block (12-14,000 acres), apologising to the government for such a high price by citing the strength of a 'land league' in opposition to all sales.¹¹ It became important to make any sort of purchase from Atiawa chiefs and at almost any price, so long as the 'land league' could be ruptured and a start made on sales, and on convincing the chiefs that they really did not need all the land to which they had claims.¹²

Thus, the purchase of Taranaki interests seemed more urgent to McLean in 1854 than settling the claims of the local Te Tau Ihu inhabitants. On 2 March 1854 he obtained the signatures of Wiremu Kingi and other Puketapu chiefs at New Plymouth to a deed which sold 'a portion of our land at Queen Charlotte Sound'. Although no map seems to have accompanied this deed, the boundaries of a specific block were described which included the territory of the Waitohi Purchase and Waikawa Reserve, and the Tuamarina district of the Wairau Purchase.¹³ These three blocks were parts of previous purchases and not of the 1853 Waipounamu Purchase, and McLean's purpose seems to have been to extinguish any claim no matter how unlikely, since Te Atiawa would not have claimed the Tuamarina district.¹⁴ In return for resigning these possible claims, the Te Atiawa chiefs received £200.¹⁵

McLean followed this up with a second deed eight days later, which was signed by Rawiri Waiaua, Ihaia, Katatore, Wiremu Kingi, and 42 other Atiawa right-holders, some of whose connections with the South Island were fairly tenuous. This purchase was meant to cover the territory of the Waipounamu deed, and listed 'the lands which we occupied at Wairau, at Whanganui [on the Kaikoura coast], at Te Awaiti, Totaranui, Te Hoiere, Kaihua, Whakapuaka, Whakatu, Waimea, Moutere, Motueka; from thence to Motupipi, to Aorere, to Pakawau, to [West] Whanganui, to Patarau, Te Awaruato, and from thence to Arahura'.

¹⁰Cooper to McLean, 11 August 1855, in H.H. Turton, *An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island*, D, p. 25.

¹¹ *ibid.*, p. 122. See also AJHR 1861 C-1, pp. 197-198.

¹² *ibid.*

¹³ Mackay I, pp. 308-309.

¹⁴ Te Atiawa do not seem to have made any claim south of Waitohi, apart from a brief, abortive attempt to cultivate on the Tuamarina in 1847.

¹⁵ Mackay I, pp. 308-309.

Rather than mentioning places where Te Atiawa had particular rights, McLean seems to have just listed the principal settlements of Te Tau Ihu. In doing so he also included places later excepted from sale by local inhabitants, such as Te Awaruato (part of the Tai Tapu block). McLean paid £500 to these chiefs, described as the 'Ngatiawa Tribe, residing at Taranaki', which added a total of £700 to the sum paid for the Hua block on 3 January, in between the two Te Tau Ihu purchases.¹⁶

The tangled situation in Taranaki reached a major crisis in August 1854, with the murder of Rawiri Waiaua in response to his offer to sell land to the government. This helped to delay McLean's visit to the South Island until November, when he made a brief visit to Nelson.¹⁷ Richmond had continued to appeal for him to come to the South Island throughout the year following the Ngati Toa purchase: 'I fear we shall not only lose the £2,000 which has been paid but the whole value of the land - I am strongly of opinion that the sale will be repudiated by the Natives if the whole of the arrangements are not speedily completed'. He asked McLean to come at once to 'arrange the details of the purchase of the Pelorus, Queen Charlotte Sound, etc. with the resident Natives'.¹⁸

McLean did not respond immediately to Richmond's appeal. He had paid £700 of the £5,000 purchase money to the Taranaki people, an arrangement which had not been contemplated in the Wellington negotiations in 1853. Major Richmond had to subtract this sum from the original amount available to satisfy Ngati Toa and the local right-holders, and he feared that there would not be enough money left to obtain a lasting settlement. The major applied to the government for an extra £1,000 and for permission to speed up the payments by paying larger sums in three (not five) instalments. The Colonial Secretary refused both requests but Richmond could not see how McLean would be able to 'arrange the details of the purchase' without some such changes to the initial plan.¹⁹

McLean finally arrived in Nelson in November 1854, fifteen months after the Ngati Toa deed was signed at Wellington, but he continued to play a waiting game with the resident right-holders of Te Tau Ihu. His visit was a quick one and he only negotiated with one small group of local claimants, the Ngati Hinetuhi people, who were based mainly at Omamahanga

¹⁶ *ibid.*

¹⁷ See GBPP 1860, p. 316.

¹⁸ Richmond to McLean, 26 September 1854, MS Papers 32/535.

¹⁹ *ibid.*

(Port Gore).²⁰ There is no record of these negotiations but two Hinetuhi chiefs, Tamati Wiremu Kingi Ngarewa and Heaira Pikiwata, signed a deed at Nelson on 16 November 1854. McLean gave them £100 as 'part payment for our lands' at Port Gore, Totaranui (Queen Charlotte Sound) and four specific bays of Totaranui: Onehou; Watapu; Tahuahua; and Kaipapa. These bays were described as 'our places', and presumably were areas of Hinetuhi settlement in the Sound. The deed stipulated that there would be a further 'final settlement of all our claims' after the land had been surveyed and the 'reserves for us all marked off'.²¹

After negotiating this one partial settlement, McLean returned to Wellington and entered into yet more negotiations with absentee Atiawa, this time the residents of Waikanae pa. On 24 November five Waikanae chiefs signed a deed 'in payment of all our lands at Te Awaiti - that is, for all the lands which have been entirely given up by Rawiri Puaha and the chiefs of Ngatitooa to the Queen of England, as described in the deed of sale dated the tenth day of August, 1853'. Although Te Awaiti could only be described as Tory Channel, the deed went on to stress that 'this is the final payment to us for all our lands in the other Island, which we have entirely surrendered . . . as a sure possession for the Europeans for ever and ever [hei whenua tuturu mo nga pakeha ake tonu]'. McLean paid £200 over to the five signatories, Herewine Te Tupe, Teone Waiti, Aperahama Putiki, Epiha Tupoki, and Matioro.²²

Thus, McLean had paid £900 to absentee Te Atiawa by the end of 1854, and £100 to one resident Atiawa group. His payments in Taranaki were more likely designed to address land problems in that province than to extinguish rights at Te Tau Ihu, but the fact remains that Te Atiawa with rights in Marlborough and Nelson were a wide and fluid group. This was mainly because of the recent nature of their migrations, mobile use of resources on both sides of Cook Strait, and the maintenance of strong links between Taranaki and Cook Strait. It may not be appropriate to question McLean's settlement with absentee Atiawa right-holders, but the timing of this settlement and its role in his "war of nerves" with the resident right-holders must be stressed. By the end of 1854 the local people of Te Tau Ihu were aware that £2,000 had been paid to Ngati Toa and one or two others, and a further £900 paid to non-resident Atiawa, while sixteen months had gone by and they had received not a single penny, apart

²⁰ T. Brunner to Richmond, 11 January 1855, in Mackay I, p. 294.

²¹ Mackay I, p. 310.

²² *ibid.*

from the £100 paid to Ngati Hinetuhi of Port Gore.

Before considering McLean's next move, it is necessary to examine briefly the *meaning* which was attached to the Atiawa sales of 1854. The government interpreted the deeds as an absolute cession of rights, and probably as an undertaking not to return to the South Island, or to try to maintain a scattered system of resource use and residence rights in such widely separated provinces. McLean's calculation of South Island reserves did not include provision for non-residents should they wish to come and live on land excepted from the sales, and the first Taranaki deed explicitly sold both the area of the Waitohi Purchase and the reserve from that purchase set aside at Waikawa in 1850.²³ Local right-holders held a similar view after a long confinement on reserves that were already too small, and Pamariki Paaka told the Native Land Court that the Taranaki sellers had promised not to return to Queen Charlotte Sound or claim any other rights to land in the South Island.²⁴ He called the Taranaki deeds a hoko, and another witness (Mr. Pitt) also said that Te Atiawa who returned to Taranaki had abandoned their claims in the South Island and had no rights in the reserves.²⁵ In the late 1840s the Waitohi Atiawa seem to have gone further, and relinquished any role in the purchase of their South Island land as soon as they had decided to return to Taranaki, even before they had physically left the Sounds.

Pamariki Paaka does not seem to have viewed the Waikanae deed in the same way, however, and it was still considered possible for Maori at Waikanae to relocate to the South Island reserves in the late 1850s.²⁶ Although people continued to visit Queen Charlotte Sound from Taranaki, they do not seem to have returned in any numbers, even though the right of Totaranui residents to move back to their ancestral lands in Taranaki remained in force. Links remained strong between the scattered Atiawa communities, and were both exploited and feared by governments in the 1850s and 1860s.²⁷

After settling with these various Atiawa groups, McLean took two further steps to finalise the Waipounamu Purchase. These steps had alarming implications for Te Tau Ihu

²³ Mackay I, pp. 301–303, 305–309.

²⁴ Nelson Minute Book 2, f. 191.

²⁵ *ibid.*

²⁶ Pamariki Paaka spoke only of the Taranaki sales (£700). See also J. Mackay to McLean, Nelson, 31 December 1858, MS Papers 32/421.

²⁷ eg. a group of Ngati Rahiri from Anakiwa (QCS) returned to Taranaki in 1859 after receiving appeals for help from Ihaia and Nikorina, and in 1863 Te Patukakariki visited QCS and asked Ropoama Te One to return to Taranaki and assume leadership of Atiawa in the absence of Wiremu Kingi at Waikato.

residents and helped to keep them on the back foot in their dealings with the government. Firstly McLean visited Nelson in November 1854 but instead of summoning a general meeting to discuss allocation of payment and the making of reserves (as agreed upon in August 1853), he instructed Thomas Brunner to proceed to French Pass and the Sounds and lay off whatever reserves he considered necessary for the local inhabitants. McLean clearly planned to proceed with the purchase as a *fait accompli* and to make reserves as a unilateral government action, testing the mettle of the local *iwi* in that part of 'the purchase lately made' where Ngati Toa interests and power were strongest, and the locals might be more easily compelled to acquiesce.²⁸

Brunner and Jenkins set out in late November, therefore, and visited the Ngati Koata living in the Kaiarau/French Pass district. The Koata chiefs were willing to 'part with the whole of the land', according to the interpreter, W. Jenkins, but only if they got a 'fair share of the payment direct from the government'. Brunner agreed to reserve 'the greater part' of two bays, Whangarae and Anakiwa, but refused to set aside Whangamoa Bay as 'we considered they had sufficient without it'.²⁹ Ngati Koata clearly viewed this as a provisional arrangement and waited to see what would happen next, while Brunner and Jenkins continued on to Pelorus Sound (Te Hoiere). The local Ngati Toa there admitted the sale of some of their land but wanted to keep Kenepuru Sound and Mahakipawa, which Brunner considered the best (and almost only) cultivable land between Nelson and Wairau. As a result, he refused to reserve these districts or accept the inhabitants' version of what Rawiri Puaha had or had not agreed to sell.³⁰

The local Ngati Kuia were even more outspoken and demanded 'half of the talking about it [the land], and half of the payment for it'. They promised to prevent any surveys unless the government paid them, but did allow Brunner to cut a line at each end of a large reserve which they wanted to keep for themselves.³¹ The rest of Ngati Kuia in the Kaituna Valley made the same objections, and would consider nothing as final until they had met with McLean and had an opportunity to state their wishes to him and receive a share of the purchase money.

Brunner and Jenkins met the same opposition on the same grounds at the Wairau.

²⁸ Mackay I, pp. 294, 297, 301.

²⁹ Interpreter's Report, November 1854–January 1855, in Mackay I, p. 297.

³⁰ *ibid.*

³¹ *ibid.*, pp. 297–298.

Completing the Waipounamu Purchase

Ngati Toa objected that Rawiri Puaha had visited them and assured them that he had not sold the Wairau Reserves, and that they could do nothing in the absence of their leading chiefs, Te Kanae and Pukekohatu, who were over at Porirua. Rangitane argued that their rights had survived (like Ngati Kuia's) and that they were entitled to be consulted and paid. There was a tacit agreement between Brunner and these groups that McLean would eventually sort things out at a general meeting in Nelson.³²

Brunner and Jenkins had reached Queen Charlotte Sound by January 1855, when news overtook them of McLean's second forward movement to settle the purchase in December 1854.³³ He had taken advantage of a large tangi at Porirua to hold a discussion of the Waipounamu Purchase, which included the leading Ngati Toa chiefs of the South Island (especially Wiremu Te Kanae) and a few other important chiefs, such as Te Tana Pukekohatu, leading Ngati Rarua chief of the Wairau. The main difference between this meeting and the Wellington hui of August 1853 seems to have consisted mainly of this fuller representation of South Island Ngati Toa. McLean made a bargain with these chiefs that he would pay them a further £2,000, abandoning the projected Nelson hui and the instalment system, in return for which they would cross over to Te Tau Ihu with him and lend their support to his imposition of the purchase on their relatives as a *fait accompli*.³⁴

The news of this second agreement with Ngati Toa created havoc in the top of the South Island. Te Atiawa of Queen Charlotte Sound accused the government of a serious breach of faith, and declared their determination to make their own, separate deal with McLean. When Brunner pointed out that one or two chiefs from the Sounds had signed the 1853 deed, the assembled chiefs replied that the government's abandonment of the 1853 agreement permitted them to do the same. It was clear to Brunner that Rawiri Puaha had encouraged Te Atiawa to take an independent line, and that most of the Sounds chiefs had not been represented at the Ngati Toa sale in 1853. Only Ngati Hinetuhi permitted him to make a reserve at Port Gore, because they had already received some payment from the government. Otherwise the government representatives faced a major deadlock.³⁵

Brunner and Jenkins continued to argue that the land had been sold and that all they could do was to make reserves. The various Te Atiawa communities maintained that they

³² *ibid.*

³³ *ibid.*

³⁴ Mackay I, pp. 301, 303. See also above, pp. 137-139, 142-146.

³⁵ Interpreter's Report, in Mackay I, pp. 298-299.

needed a lot of land for their own use, and that they would make their own reserves simply by not selling particular blocks whenever they reached a final agreement with McLean.³⁶ Brunner was obliged to leave without further success, and about 200 Maori from the Sounds and elsewhere followed him to Nelson to complain to Richmond in person. The major warned McLean that they were 'in a great taking about the second payment you have given'. Richmond rebuked them for 'coming before I sent for them' and ordered them home to await McLean's pleasure - 'in the meantime to rely that they would have justice done them'. Richmond feared that their claims were outrageous, demanding £3,000 for the Pelorus and Kaituna for example, and was no doubt painfully aware that McLean had now spent the entire £5,000 of the original purchase money. He was also worried about whether the North Island Ngati Toa could be relied upon to enforce the sale, and urged McLean to confront Puaha 'with these sayings and doings of his before you come over'.³⁷

II "COMPLETING" THE PURCHASE - TASMAN BAY AND GOLDEN BAY

McLean ignored Richmond's appeals and the alarms of Te Tau Ihu inhabitants at the beginning of 1855. According to Richmond the period of waiting and "softening up" might do more harm than good, but McLean considered that matters elsewhere were more pressing. 'Owing to repeated and most unexpected interruptions', he had to go to Wairarapa, Hawkes Bay, Auckland, and especially to troubled Taranaki, in the first half of 1855. Perhaps more significantly, however, Puaha and the other Toa chiefs were still dragging their heels, and McLean was unable 'to get the Natives of the North Island, from illness, attention to their crops, or other causes, to accompany me'.³⁸ The efforts of Jenkins and Brunner had revealed that the resident Maori were determined to deal with McLean and none other, so that he could afford to postpone a final settlement of the Nelson claims until he felt that conditions were more favourable.³⁹ The government had agreed to allow him a further £2,000 since all the original purchase money had been spent, but McLean took no action until the arrival of Governor Gore Browne in New Zealand.⁴⁰

³⁶ *ibid.*

³⁷ Richmond to McLean, Nelson, 27 January 1855, MS Papers 32/535.

³⁸ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

³⁹ Interpreter's Report, in Mackay I, pp. 297-300.

⁴⁰ McLean to Colonial Secretary, & April 1856, in Mackay I, p. 301.

Completing the Waipounamu Purchase

The new Governor was alarmed to find that affairs in New Zealand were not quite as his predecessor had represented them, and one of the most glaring inconsistencies was Grey's report that the South Island had been completely purchased by the Crown, and 'all native questions regarding the lands contained in it are set at rest'.⁴¹ Browne wrote to the Colonial Office in February 1856 that 'many titles, purchases, and other matters disputed by the natives, which were supposed to have been settled or quieted finally by my predecessor, remain undecided at the present moment, and that I am only now engaged in endeavouring to effect the large purchase in the middle island known generally as the "Nelson purchase", supposed to have been concluded long before my appointment as Governor of this colony'.⁴² The impetus towards ending McLean's waiting game seems to have come from the Governor, therefore, who ordered McLean to accompany him to Nelson on 30 October 1855, more than two years after the signing of the Ngati Toa deed in August 1853.⁴³

When he arrived at Nelson in November 1855, McLean held a hui of Tasman and Golden Bay chiefs to discuss the purchase of their unextinguished rights in the 'Waipounamu block'. On 10 and 13 November a group of Ngati Rarua and Ngati Tama chiefs, with a few Atiawa as well, signed a deed of sale in return for £600. As with the Ngati Toa deed of 1853, the chiefs signed on behalf of all absent relatives, an agreement to 'sell and entirely and for ever transfer all our lands in this Island' that had not already been sold to the Queen. The 'great boundaries' of this blanket cession were merely described as Wairau and Arahura, with the Ngai Tahu purchases as a southern boundary. The deed mentioned only one reserve, described as 'the land beyond [West] Whanganui, commencing at Mangamangarakau; thence to the sea side at the westward [possibly an attempted translation of the place name in the Maori deed, Iwituaroa?]; thence inland to the first ridge of the hills which look eastward to the sea'. A sketch map of the area of the purchase and the reserve was specifically mentioned as attached to the deed.⁴⁴

The 1855 deed may be taken to represent the Crown's understanding of the purchase, as it was written by Commissioner McLean, who also drew the accompanying sketch map. There is not much record of the negotiations apart from a few snippets in various sources. According to James Mackay, the hui was held on the grass in front of the New Zealand

⁴¹ Grey to Newcastle, 30 September 1853, GBPP 1860 vol. 10, p. 283.

⁴² Gore Browne to Sir W. Molesworth, 14 February 1856, GBPP 1860 vol. 10, p. 461.

⁴³ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

⁴⁴ Mackay I, pp. 312–313. See also Figure 13.

Company offices at Nelson, an ironic choice of venue given the storm of criticism which now arose over the Company purchases and the Spain Award.⁴⁵ The Golden Bay chiefs had been nursing their grievances since the mid-1840s, and they made it clear to McLean that various blocks of land (especially the Separation Point district) had never been sold, and they challenged him to prove otherwise. This must have produced consternation since the Commissioner probably had no idea of the existence of unextinguished rights in Golden Bay, although these had been brought to the attention of Richmond and the government in the late 1840s. The records of the Company and Crown Lands Commissioner were searched to no avail, and Richmond could 'not trace out any deed or other evidence of this land having been sold by the Natives'.⁴⁶ On 12 November (between the two signings of the deed) McLean instructed John Tinline to go to Golden Bay and investigate the question, to ascertain whether there were still unextinguished rights in that district, and to purchase those rights as soon as possible. Despite the blanket nature of the deed, therefore, it is important to note that McLean and the chiefs actually agreed to deal with land north of West Whanganui as a separate issue.⁴⁷

The West Whanganui or Tai Tapu Block was also hotly debated at the 1855 hui. McLean had never visited the West Coast and had only a vague idea of the physical and economic nature of the area. He could not really judge its value to Maori or potential settlers, and admitted that a 'great portion' of the Waipounamu Block on the West Coast had not been explored by Europeans. The Commissioner sought the advice of young James Mackay, who had visited the West Whanganui area, as to the nature and capabilities of its land. Mackay probably told him the same thing that his cousin Alexander later told the Native Minister - that the Tai Tapu land was 'very indifferent', consisting mainly of high and rocky hills with little potential for farming.⁴⁸ The result was that the leading Ngati Rarua chief of the area, Riwai Turangapeke, 'denied the right of the Wellington tribes to sell the Taitapu Block, and it was finally handed back to him'.⁴⁹

McLean sought to maintain his position that the land itself had been sold and that it was merely necessary to extinguish outstanding rights and make reserves. The area concerned

⁴⁵ AJHR 1936 G-6B, p. 48.

⁴⁶ Richmond & McLean to Private Secretary, 25 June 1856, in Mackay I, p. 305.

⁴⁷ McLean to Tinline, Nelson, 12 November 1855, Tinline MS Papers 26/1, W:Tu. See also Figure 15.

⁴⁸ A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

⁴⁹ AJHR 1936 G-6B, p. 48.

was supposedly everything between Arahura and the Wairau, with no northern boundary, but the Golden Bay lands had been left out privately for settlement at a later date.⁵⁰ Alexander Mackay later described the process as ‘surrendering their claims to the northern portion of the West Coast’, and Riwai Turangapeke wrote of it as the purchase ‘when Arahaura [sic] was sold’.⁵¹ It seems likely that the Rarua and Tama people understood this purchase as a revival of the old West Coast deal entered into by Richmond in 1852, which was stalled because the government would not meet the required price.⁵² Since that time and the Ngati Toa sale of 1853, the Golden and Tasman Bay Maori had become willing to drop their price by a huge amount and accept the £600 offered by McLean, a deal which the Commissioner later described as selling ‘a large extent of land to the Government for a very small amount of purchase money’.⁵³

As usual, the Maori right-holders tended to think in terms of specific places rather than generalities. They no longer gained much benefit from any land south of Kahurangi Point, although they still maintained an interest at Arahura and other places. The principal residents of the Arahura district and the land immediately north of it, the Ngai Tahu and Ngati Apa, were not included in the negotiations for its sale. The only specific place which seems to have been discussed as part of the sale which was not on the West Coast south of Kahurangi, was the unsold block of Ngati Tama land in Tasman Bay.

McLean argued that as the Tama chief Te Wahapiro had signed the 1853 deed, this amounted to Ngati Tama agreement to the inclusion of Wakapuaka in the sale. Furthermore, Wakapuaka had been mentioned by name in the second Porirua deed of 1854, under which Te Wahapiro’s son had also received money. Wiremu Katene Te Manu and the resident Ngati Tama argued that the Wakapuaka Block was not part of the Ngati Toa sale, and that they would never agree to sell it.⁵⁴ Mackay reported that after ‘very lengthy argument Mr. McLean withdrew the Government’s claim to the Whakapuaka Block, and it was reserved’.⁵⁵ There was no mention of this in the deed, however, and the Ngati Tama of Wakapuaka refused to sign the deed or accept any part of the purchase money, lest it be construed later

⁵⁰ See Figure 15

⁵¹ A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310; Riwai Turangapeke to Governor Grey, 29 September 1863, in Mackay I, p. 326.

⁵² See above, pp. 105-109.

⁵³ McLean, Memorandum, 5 December 1863, in Mackay I, p. 327.

⁵⁴ AJHR 1936 G-6B pp. 14-16, 20-21, 30-31, 38, 48.

⁵⁵ AJHR 1936 G-6B, p. 48.

as payment for Wakapuaka.⁵⁶ Although he left it out of the deed, however, McLean did sketch in a reserve at Wakapuaka on his map, which might be considered to have given it an official sanction.⁵⁷ It should also be noted at this point that the Wakapuaka people were not the only important right-holders not to sign the deed. The Te Keha family from Pariwhakaoho, for example, were not among the signatories of the 1855 deed.⁵⁸

The argument between McLean and the Wakapuaka people did not end with the 1855 purchase, and the Commissioner continued his efforts to obtain the block. He visited it in March 1856 on his way from Croixelles to Nelson, and tried to persuade Ngati Tama to sell it for £100 and a one hundred acre reserve. Alexander Mackay reported that only Wi Katene's 'strenuous efforts' enabled him to resist McLean, and that the government would certainly have taken Wakapuaka if he had accepted any payment under the 1855 deed for his rights elsewhere.⁵⁹ McLean finally agreed to reserve the whole block for its inhabitants (almost 18,000 acres) in 1856, but no official deed was signed to this effect and he continued to hope that Wi Katene would eventually come around and accept the £100, which was kept aside for this purpose.⁶⁰

Another piece of land was also treated for separately under the 1855 negotiations, making nonsense of McLean's blanket assertion of 'all our lands in this Island' in the official deed. There seems to have been an unofficial, unrecorded northern boundary at the top of the West Whanganui Reserve, because Riwai Turangapeke held separate negotiations about the 20,000 acre block which lay between the top of this reserve and the boundaries of the Pakawau and Company Purchases.⁶¹ According to Turangapeke, McLean asked him to 'Give some land for the Governor; let this be your love to the Governor', but clearly the Commissioner did not want to undermine his supposed blanket purchase by writing a separate deed for land outside the *Maori* understanding of what was included within the official deed. As a result, he made an oral agreement with the chief in front of the whole hui that 'it would be for the Governor to remember' and to pay him later for this land, which was officially

⁵⁶ *ibid.*, p. 21.

⁵⁷ See Figure 13.

⁵⁸ Henare Te Keha was one of the most important Te Atiawa chiefs in Golden Bay.

⁵⁹ AJHR 1936 G-6B, p. 50.

⁶⁰ McLean, Return of Native Land Purchases, presented to Parliament, 18 June 1856, AJHR 1874 G-6, p. 4.

⁶¹ See Figure 15.

thrown in 'with the Arahura Block'.⁶² McLean either forgot about this promise or deliberately failed to take action, but Riwai Turangapeke complained to the Governor in 1863 that he had still not been paid for this large piece of land. The government took the view that the block was covered by the official deed but McLean admitted that the chief was entitled to a separate payment.⁶³ The Colonial Secretary agreed to give Turangapeke £100 worth of goods in compensation (a cart, plough, pair of oxen, and two cows).⁶⁴

McLean and Gore Browne sailed for Wellington in mid-November, leaving Tinline to deal with the unextinguished rights of Rarua, Tama, and Atiawa in Golden Bay. Despite the signing of a blanket cession deed by some of the principal chiefs concerned, McLean gave Tinline the confusing instruction to make a general arrangement with the West Coast tribes for unextinguished claims to land in the Nelson Province, describing these groups as subdivisions of tribes which had already made such a cession. He went on to mention the Separation Point district by name, however, and ordered Tinline to inform those who had genuinely not sold their rights that 'the Europeans hold a different opinion as Mr Spain awarded the land to the New Zealand Company'. Rather than admitting that an entire district remained unsold, McLean told Tinline to uphold the Spain Award by buying blanket 'claims of a general nature by right of conquest over various portions of this Island'. By a sleight of hand, therefore, Tinline was expected to purchase specific rights without actually appearing to do so. McLean also instructed him to revise the reserve arrangements yet again, and to make grants to individual chiefs.⁶⁵

Thus, the grievances of Golden Bay Maori would be met without disturbing the legitimacy of the Spain Award and the New Zealand Company's title. These grievances, which have already been outlined in a previous chapter, were investigated by Tinline in November and December 1855.⁶⁶ He considered that two complaints were clearly legitimate: the Ngati Tama of Takaka had never been paid their share of the Spain compensation money; and the right-holders of the Separation Point/Wainui district had never been paid any money at all for their rights in that district. He met both of these groups at a hui in Motupipi, and

⁶² Riwai Turangapeke to Grey, 29 September 1863, & Memorandum on this letter by J. Mackay Jr, 9 December 1863, in Mackay I, p. 326.

⁶³ J. Mackay Jr. to Colonial Secretary, 10 December 1863, cf. D. McLean, Memorandum, 5 December 1863, in Mackay I, p. 327.

⁶⁴ W. Fox, Memorandum, 10 December 1863, in Mackay I, p. 327.

⁶⁵ McLean to Tinline, 12 November 1855, Tinline MS Papers 26/1.

⁶⁶ See above, pp. 101-104.

offered them £150 in settlement of all their claims. Tinline's offer was based on levels of compensation set by the Spain Award in 1844, and took no account of Maori awareness of the change of land values over the ensuing eleven years. He argued that this was 'the only way the Government could settle the present claims upon reasonable terms', and avoid provoking those who had been paid under the Spain Award 'who would be inclined to make fresh demands if they saw any large sum of money now paid'. For this reason (and following McLean's instruction) Tinline told the chiefs that the land had already been purchased under the Spain Award but that he could pay those who had missed out in 1844 what they should have received under that Award. The right-holders of Separation Point insisted 'that this is entirely a new sale' and demanded £800 for the district. The Takaka and Wainui people rejected Tinline's offer of a joint £150 and told him that they would appeal to McLean for a higher sum.⁶⁷

After the abrupt and unsuccessful end of negotiations at Motupipi, the surveyor went on to Te Parapara and Tukurua, where another group of Ngati Tama were claiming that their land also remained unsold. Henare Te Ranga and his people maintained that they had received nothing from the Aorere share of the Spain money and had therefore returned to their previous homes to reoccupy them as unsold land. There had been clashes with settlers at Tukurua, and although Tinline felt that this was a trumped up claim, he offered them £100 to extinguish any residual title. Henare Te Ranga and his followers refused to accept this sum and notified him that they also would appeal to McLean for a higher price.⁶⁸ It was hard for subordinates to drive any sort of bargain at this time because the Te Tau Ihu residents 'look up to your [McLean's] judgement in all that relates to land as final'.⁶⁹ Tinline returned to Nelson empty-handed and the Golden Bay chiefs soon followed to complain to Major Richmond and ask for a meeting with McLean to settle the matter. The major sent them away but promised to let them know when to come to Nelson to meet with the Chief Land Purchase Commissioner.⁷⁰

McLean returned to Nelson in March 1856, after a long visit to Wellington and a short tour of Marlborough to deal with the resident iwi at Wairau and the Sounds. Four months after signing the "blanket cession" deed of 1855, McLean signed a fresh series of deeds with

⁶⁷ Tinline to Richmond, Nelson, 18 December 1855, in Mackay I, pp. 294–296.

⁶⁸ *ibid.*, p. 296.

⁶⁹ Richmond to McLean, Nelson, 4 February 1856, MS Papers 32/535.

⁷⁰ *ibid.*

the very same people for the extinction of Golden Bay rights. His negotiations seem to have included private deals with various important chiefs for Crown Granted individual reserves, as well as the adjustment of some unsatisfactory existing reserves in accordance with Tinline's recommendations. Although willing to make some concessions in this area, McLean refused to go much beyond Tinline in the matter of price, since the Governor had only authorised them to spend £300 on the Golden Bay claims.⁷¹ Unlike the hui at Motupipi and Te Parapara, however, a much wider group of chiefs met at Nelson and shared in the proffered purchase money, including Wi Katene and the Wakapuaka people, and the Rarua chief Te Tana Pukekohatu from the Wairau. McLean thus cast his net wider than Tinline had been able to do, and obtained a fairly general acquiescence in his new series of deeds.⁷²

On 7 March this wider group met with McLean and signed two deeds of cession. The first of these was designed to extinguish all Ngati Tama rights in the Aorere/Te Parapara district, where Henare Te Ranga, Pirika and others had claimed not to have received their share of the Spain compensation money. Once again these chiefs agreed to 'give up and finally transfer all our lands in this Island', but this time there was a qualifying phrase; 'that is to say, all the places for which we did not receive payment in any former sale of land', which were specified as Anapu, Aorere, Papakohai, Te Parapara, Tukurua, Anekaka, and Waikaha. Since Wiremu Katene signed this deed, it must have been understood that Wakapuaka was not included as one of 'all the places for which we did not receive payment in any former sale of land'. McLean paid £110 to the eight signatories of this deed, but there is no information as to how it was divided among them.⁷³

The second deed on 7 March was signed by 36 Ngati Rarua and Ngati Tama chiefs. This deed sold the Separation Point district for the sum of £150, and it gave several place names as the key points on the boundaries of this district.⁷⁴ Three days later McLean paid £60 to seventeen Ngati Tama chiefs, in satisfaction of the Spain compensation withheld from the Takaka people by the Ngati Rarua of Motupipi. The deed mentioned the two main settlements at Motupipi and Takaka, but included in generic terms 'all the places that were formerly sold by Te Aupouri', the Motupipi chief who had received and distributed the

⁷¹ Richmond & McLean to Private Secretary, 25 June 1856, in Mackay I, p. 305.

⁷² *ibid.*, & pp. 294–296, cf. pp. 317–319.

⁷³ *ibid.*, p. 318.

⁷⁴ *ibid.*, pp. 318–319.

compensation money in 1846.⁷⁵ This final deed on 10 March 1856 was held to have settled the Golden Bay grievances, although the chiefs most concerned in the business must have received very little money in the hand, and much would depend on how well the reserves were adjusted to meet residents' objections to various problems.

III A HOLE IN THE MIDDLE?

One final aspect of these transactions remains to be considered, however, and that is the claim of Golden Bay and Tasman Bay chiefs in 1873 that the 1855 deed did not in fact cover the interior of the country. A runanga representing Ngati Rarua, Ngati Tama, Mitiwai, and other hapu of Te Atiawa, met to discuss cases which had been 'declared before the Native Land Court' in 1870.⁷⁶ As a result of discussing these cases, the runanga examined their traditions concerning the New Zealand Company and government purchases of the 1840s and 1850s. First explorers and now settlers had begun to penetrate the interior of the country, but the runanga claimed that:

we have now ascertained that the government should not exercise any right to the mountains situated in this Island because when the people first sold the land to the New Zealand Company they pointed out the land as that along the Sea Coast. And in the second sale to the Government [1855] such lands as were situated along the Sea Coast were again pointed out as the lands included in the sale. And those lands that were reserved for the Maoris were likewise pointed out by them.

Accordingly we the Maoris still own the Mountains Rivers and Plains which are lying adjacent to the Mountains.⁷⁷

This type of misunderstanding between vendor and buyer had been of major concern to the government in the mid-1850s. Charles Davis, a clerk and interpreter of the Native Department, had advised the Native Land Purchase Committee in 1854 that all purchases should be preceded by a walking of the boundaries, in which the vendors themselves would set up markers to identify the boundaries. Davis explained: 'On many occasions serious

⁷⁵ *ibid.*, pp. 317–318. See also above, pp. 101–104.

⁷⁶ Pirimona Matenga & others; Tamati Pirimona & others; Henare Te Kaupi & others; Herewine Te Rangi & others; Nohaia & others, to the Speaker, McLean, Wi Parata, & Native Minister, Motupipi, 29 August 1873, MA 13/17, 73/5214, National Archives.

⁷⁷ *ibid.* See map of this "hole in the middle", Figure 16.

differences have arisen between the government and the natives, simply because the parties misunderstood each other as respects the boundaries of lands'. Such misunderstanding could be avoided by the marking of boundaries and the drawing of a sketch map, noting every Maori place name, as the walking party progressed.⁷⁸ In 1856 McLean advised that this was still practicable for very large purchases, commenting that he had the boundaries of a 900,000 acre block surveyed in Hawkes Bay before any money was paid to the Maori owners.⁷⁹ A government inquiry in the same year recommended that the boundaries should be walked and marked in all purchases, that a sketch map 'intelligible as possible to the natives' should be produced, and all reserves set out and surveyed before the completion of a purchase.⁸⁰ ...

It must have seemed impossible to McLean in November 1855 that he could walk the boundaries of the Waipounamu Block. Not only did the purchase cover millions of acres, but most of the West Coast and interior was largely unexplored by Europeans. Nevertheless, he drew a sketch map of the area which marked most of the coastal rivers but left the interior largely blank, except for two lakes of which he knew the Maori names, Rotoroa and Rotoiti.⁸¹ He also marked the boundaries of the Tai Tapu reserve, described as the only reserve in the deed, and also the boundaries of the Wakapuaka reserve, which had no official standing according to the deed.⁸² Certain aspects of this deed and map give rise to grave concerns about how the Maori could have understood the blanket cession of all their rights from coast to coast, or more particularly from Wairau to Arahura.

Firstly we must consider the sketch map attached to this deed, which was described as a 'map of these lands' as ceded and reserved in the deed. Firstly, there is the fact already mentioned that only two place names were given for the interior, the lakes Rotoiti and Rotoroa. Secondly, the Wairau River (supposedly the eastern boundary) was not marked on the map. Thirdly, the Wakapuaka block was sketched as a reserve on the map but excluded as such by the terms of the deed, and furthermore was drawn in completely the wrong place and (as drawn) encompassed part of Nelson city. Fourthly, McLean sketched the Tai Tapu block as only half the size it should have been, and put both the southern and northern

⁷⁸ C.O Davis, paper for Native Land Purchase Committee, November 1854, GBPP 1860, vol. 11, p. 497.

⁷⁹ McLean, evidence to Board of Inquiry, 17 April 1856, GBPP 1860, vol. 11, p. 542.

⁸⁰ Report of Board of Inquiry, 9 July 1856, GBPP 1860, vol. 11, p. 479.

⁸¹ See Figure 13.

⁸² *ibid.*, cf. Mackay I, pp. 312–313: 'One place is excluded from this new sale and reserved for our use. ...'

boundaries in the wrong place. It is not clear how he could have got away with such a mistake, since the claimants insisted on the Iwituaroa Range as the southern boundary, which commenced at Kahurangi Point, and Kahurangi was clearly marked on the map, and Iwituaroa was clearly mentioned in the deed. This suggests that either the Maori could not understand the map or that they were never shown it.⁸³

James Mackay excused McLean in the following terms: 'The description in the deed is very vague, which may be attributed to the fact that, at the time of its execution, the district of Taitapu was comparatively unknown. The same also applies to the plan attached to it, which could not be accurate, as the land had not been surveyed, neither has it to the present time [1862]'.⁸⁴ The fact remains that McLean was speaking of generalities while the Maori were thinking of specifics, and the Commissioner did not know enough of the specifics to ensure that his deed and map covered all the places known to Maori and in which they had an interest. Nor was there any reason for Maori to suspect anything amiss, until the world of settlers began to impinge on their remote South Island districts. The Tai Tapu people, for example, continued to range freely throughout the length of the block unaware of its official boundaries, until a question of mining rights brought the matter to their attention in 1862. It was not until seven years after the purchase, therefore, that they discovered a major difference between McLean's and their own interpretation of boundaries.⁸⁵

The same was true of the boundary between Wakapuaka and the land sold by Ngati Koata in 1856. Although a sketch map accompanied the 1856 deed, Ngati Tama had no idea that Koata had sold land claimed by themselves until 1863, when the Provincial Government was ready to start surveys. Even in a coastal area so close to Nelson, therefore, the boundaries were either inaccurate or non-specific, and did not become an issue until settlers began to prepare for moving into occupation.⁸⁶ The length of time between the sale and the 1873 petition (eighteen years) need not be advanced, therefore, as an objection that Maori were inventing new grievances, until a careful attempt has been made to date the beginning of settlement in the affected areas. Firm evidence would be necessary to show the date at which Maori would have become aware that the Crown was claiming the interior of the island, before the negative evidence of a lack of complaint could be assessed. If the rate of settlement

⁸³ See Figure 14, & Mackay I, pp. 312–313, 323–324.

⁸⁴ J. Mackay Jr. to Native Secretary, Collingwood, 27 September 1862, in Mackay I, p. 324.

⁸⁵ Mackay I, pp. 321–325.

⁸⁶ *ibid.*, p. 333.

could be demonstrated to have significantly predated the 1873 protest, with opportunity for Maori to have protested before that year, then the absence of protest might legitimately be interpreted as a lack of a sense of grievance. Such a project is beyond the scope of the present report.

There are further controversial details about the 1855 purchase. Alexander Mackay described it as 'ceding all their undisposed of claims to land in the Middle Island to Her Majesty for the sum of £600, a final payment for all their claims'.⁸⁷ This was his official verdict when called upon to investigate the runanga's claim that a "hole in the middle" (to use the Ngai Tahu phrase) existed in the 1855 purchase. The only qualification to this sale, according to Mackay's judgement, was the Tai Tapu block of about 44,000 acres, and the 20,000 acre block purchased from Riwai Turangapeke at the same time. Mackay ignored the significance of the fact that McLean dealt separately with the Turangapeke block and promised a separate payment for it, even though the official line was that it was covered by the blanket cession in the 1855 deed.⁸⁸ He also failed to point out that Wakapuaka was treated as a separate case and specifically excluded from this sale, that the unextinguished Golden Bay titles were also dealt with separately from this blanket cession and at the very same hui, and that many right-holders with an interest in the lands failed to sign the deed, such as Henare Te Keha of Te Atiawa, and the chiefs of Ngai Tahu and Ngati Apa.⁸⁹ It is hard to see, therefore, that the signatories could really have understood this deed as a cession of all their rights everywhere, especially since the geographical place names of the interior were omitted from both the deed and the map (as were those of Golden Bay).

In 1852 the coastal iwi had made a definite distinction between the coast and the interior in their projected sale of rights to Major Richmond.⁹⁰ McLean's only mention of the interior in the official reports of 1856, however, seems to be a short comment in his report to Parliament: 'A great portion of this district on the west coast of the Island is as yet unexplored by Europeans, but the Natives report that there is a large extent of grassy and available country inland of the ranges that border the coast'.⁹¹ Without a detailed record of negotiations, however, we have no way of knowing whether or not Maori or McLean

⁸⁷ A. Mackay, Land Purchases, Middle Island, 1 October 1873, AJHR 1874 G-6, p. 2.

⁸⁸ *ibid.* See also J. Mackay Jr. to Colonial Secretary, 10 December 1863, in Mackay I, p. 327.

⁸⁹ AJHR 1874 G-6, pp. 2-3.

⁹⁰ Richmond to Colonial Secretary, Nelson, 31 May 1852, in Mackay I, p. 290.

⁹¹ McLean, Return of Native Land Purchased, 18 June 1856, AJHR 1874 G-6, p. 4.

specifically mentioned and included or excluded these (sometimes mythical) great grassy plains of the interior. What we can be sure of, however, is that if a doubt existed in the minds of either side as to boundaries, neither the deed nor its accompanying map were sufficient to settle the matter, owing to the vagueness of the terms and the fact that so many other places were dealt with separately from the blanket cession of 'all our lands', even at the same time and at the same hui.

It could be argued that if the purchase was to extinguish all customary interests within general boundaries, there was no need for McLean to note all the specific places known to Maori. The important requirements were for Maori to understand the boundaries, the fact that they were relinquishing all their customary interests enclosed by those boundaries, and that the map should have sufficient coastal markers to illustrate external boundaries effectively. If all of these points were met, then there could not have been a 'hole in the middle'. It is my contention, however, that these conditions were unlikely to have been fulfilled, based on the evidence of the Turangapeke, Wainui, Wakapuaka, and other blocks treated separately from the blanket purchase at the same time (although theoretically within its deed boundaries); the vagueness of the deed boundaries when often it was found necessary in deeds to list all the main placenames contained in the ceded area; and the mistakes on the map and the fact that Maori did not seem to understand the pictorial representation sufficiently to point them out to McLean.

The government of the day, however, did not seriously entertain the "hole in the middle" claim of 1873. A Native Department official minuted the Under Secretary: 'This letter appears to me like a feeble attempt at repudiation which ought to be checked at once - The Middle Islanders now say that they did not sell the *Mountains* but only the sea coast'.⁹² The department took a political view of the matter, therefore, and classed it with the Hawke's Bay repudiation movement and other land problems of the time. There was certainly a political dimension to the runanga's claim, since it was in communication with Ngai Tahu at the time, and sent a copy of the letter to Tairaroa on 29 August 1873.⁹³ The northern iwi may well have copied the type of claim made by their southern neighbours, or at least have been influenced by it.⁹⁴ On the other hand, for the reasons stated above, there may have been

⁹² Clarke, Minute for Under Secretary, 22 September 1873, MA 13/17.

⁹³ Pirimona Matenga Te Aupouri et al. to Tairaroa, Motupipi, 29 August 1873, MA 13/17.

⁹⁴For the Ngai Tahu "Hole in the Middle", see the *Ngai Tahu Report*, pp. 420-517, especially pp. 503-517.

a genuine misunderstanding dating from the 1850s. Either way, Maori were clearly unhappy with the results of land alienation by 1873.

The Native Department referred the runanga's appeal to Alexander Mackay for comment. Mackay was Commissioner of South Island Native Reserves at the time, and had been considered the leading authority on South Island race relations since the publication of his compendium of documents in 1871. Mackay's response was a short report of Crown purchase in Te Tau Ihu from the government's point of view, although he was not afraid to support Maori interests when he thought justice required it of him. He did not take the Maori argument seriously, however, that a place was not sold unless 'specifically alluded to at the time of sale'. He placed his faith in McLean's deeds:

The intention of the sellers, nevertheless, is clearly expressed in all the deeds of cession, the words used being to the following purport: - "We hereby agree for ourselves, our relatives and descendants, to sell, and entirely and forever transfer, all our lands in this Island to Victoria the Queen of England, and her successors;" and there can be no doubt but that they fully surrendered all their claims to the Crown.⁹⁵

The government adopted Mackay's report and rejected the runanga's claim, and it has not been reinvestigated (as far as I am aware) since that time. The Te Tau Ihu iwi took the question of "sold" land to the Native Land Court in 1883, but Mackay appeared before the judge and advised him that the land had been purchased by the Crown, or had been reserved in such a way that it was not subject to the Land Court's jurisdiction. The court does not appear to have taken any evidence on the matter. Judge Mair accepted the Commissioner's assertion, and dismissed almost 100 claims of this type.⁹⁶

IV "COMPLETING" THE PURCHASE - WAIRAU AND THE SOUNDS

After conducting the Rarua/Tama purchase of 1855, McLean and the Governor sailed to Wellington in mid-November 1855. The Chief Commissioner later reported that he sent another surveying mission to Queen Charlotte Sound at this point, to make a second attempt at laying off reserves. I have not found any reports of this second surveying mission, but it

⁹⁵ A. Mackay, Land Purchases, Middle Island, 1 October 1873, AJHR 1874 G-6, p. 3.

⁹⁶ Claims 1-37 & 46-95, Nelson Minute Book 1, ff. 1-3, 30-32.

would seem that Te Atiawa's determination to resist the sale was weakening. McLean recorded that the surveyors were able to perform their duty 'without much opposition on the part of the Maoris, and by the 15th January in this year [1856] the reserves were marked off'.⁹⁷ Two years and five months had now gone by since the signing of the first Ngati Toa deed, and this second survey party marked McLean's preliminary gambit before his actual visit to Queen Charlotte Sound. For the second time now he sent surveyors to lay off reserves and make the point that the sale had already taken place, and like it or not the local inhabitants would have to accept the sale and take whatever compensation the government might eventually offer.

The Governor continued to push for the completion of the purchase and McLean sailed to Cloudy Bay on 24 January 1856.⁹⁸ This time he was successful in persuading the Porirua chiefs to accompany him to the South Island, and to support the sale at hui with their Marlborough relatives. Rawiri Puaha had toured the area in mid-1854, advising the various local groups to resist the transfer of certain districts, but had accepted a second payment from the government in December of that year, which included a requirement that he (and others) would support McLean's initiatives in the South Island.⁹⁹ Even so, they avoided accompanying him for as long as they could, and McLean had to make two further cash payments on 22 January 1856, two days before he sailed with the chiefs to Cloudy Bay. He paid £36 to Rawiri Puaha and £11 to Matene Te Whiwhi, presumably in order to bring these chiefs up to scratch.¹⁰⁰

The Commissioner opened negotiations with Puaha's immediate relatives in the Wairau, and this mixed group of Ngati Toa and Ngati Rarua 'fully assented to the sale', having participated in the North Island deeds and payments. As an additional incentive, McLean offered the two leading resident chiefs (Te Kanae and Pukekohatu) Crown Grants for individual reserves of 50 acres each.¹⁰¹ This was a widely accepted strategy for use as a 'means of inducing them to part with their surplus lands'.¹⁰² McLean made Crown Grant reserves for individual chiefs in most of his 1856 deals in the South Island. His reports give

⁹⁷ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

⁹⁸ Gore Browne to Sir W. Molesworth, 14 February 1856, GBPP 1860, vol. 10, p. 461.

⁹⁹ See above, pp. 143-144.

¹⁰⁰ McLean, Return of Land Purchased, 18 June 1856, AJHR 1874 G-6, p. 4.

¹⁰¹ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302; McLean, Journal, 1 February 1856, McLean Diaries & Papers, Box III, W:Tu.

¹⁰² Report of Board of Inquiry, 9 July 1856, GBPP 1860, vol. 11, p. 476.

no information to suggest whether the hapu were happy with some of their land being granted back to individuals, or even whether these grants were calculated over and above the amount of land considered necessary for the wider community's present and future needs.¹⁰³ There was also some secret gift-giving behind the scenes, and McLean's usual practice was to host dinners, make gifts of food and even canoes, as a way of smoothing the path for negotiations and eventual consent.¹⁰⁴

Having satisfied the Ngati Toa and Ngati Rarua, McLean found that the main source of opposition to his arrangements came from Rangitane. He thought that 'Kanae having had his share puts them forward to get what they can', and doubted that Rawiri Puaha was very happy with this scheme.¹⁰⁵ Nevertheless, McLean had always intended to recognise the rights of Rangitane, since he mentioned them as one of the groups entitled to payment in the 1853 Ngati Toa deed. He continued to maintain that the 'Ngatittoa tribe of Porirua . . . had unquestionably, as the earliest invaders, a prior right to the disposal of the district'.¹⁰⁶ He now admitted, however, that:

In fact, their relative rights, through intermarriage, the declining influence of the chiefs, and other causes, had become so entangled, that, without the concurrence both of these occupants and of the remnants of the conquered Rangitane and Ngai Tahu Tribes, no valid title could have been secured.¹⁰⁷

Rangitane had been maintaining a relatively independent position since 1850, and there was a great deal of debate at the time and later about their status as right-holders and the effects of 'conquest' on their position.¹⁰⁸ Nevertheless, McLean found that he could not resolve the situation in 1856 without consulting Rangitane and paying them part of the purchase money. He rejected their demand for £2,000 out of hand, and offered them £100 under the watchful eye of their neighbours and the North Island chiefs. Although this price was very low, the real compensation was that Rangitane would be recognised by the government as owners of 'good large reserves'.¹⁰⁹ The assembly of Rangitane agreed to

¹⁰³ Mackay I, pp. 302–303, 305–306.

¹⁰⁴ Richmond to McLean, Nelson, 5 May 1857, MS Papers 32/535.

¹⁰⁵ McLean, Journal, 29 January 1856, Box III.

¹⁰⁶ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

¹⁰⁷ *ibid.*

¹⁰⁸ eg. Tinline to Richmond, 18 February 1850 & 26 April 1851, Tinline Papers, Micro MS 790, W:Tu.

¹⁰⁹ McLean, Journal, 29 January 1856, Box III.

accept £100 'with good reserves for themselves', and this was probably the origin of a misunderstanding which later led to much conflict and ill-feeling among the Wairau Maori. Rangitane understood McLean to mean that they would be the sole owners of reserves, whereas in fact he meant the reserves for the ownership and occupation of all three iwi.¹¹⁰

An even more fruitful source of later problems was the nature and extent of reserves promised by McLean to the Wairau people in February 1856. According to McLean's diary, he agreed to make a reserve running from the Wairau River to Robin Hood Bay in Port Underwood, including White's Bay (Puketea) as an ideal site for sea fishing, and the Pukaka Stream for eel fishing. He noted that this reserve was 'about 10 miles long by 2 miles wide', with a great deal of swampy land and probably about '4000 acres of good land'. McLean considered this sufficient to support the local population of about 120 people, with 'scope for the increase of their numerous horses and the cattle they may have'. He noted that 'they are the chief cultivators of land here and to stint them in their reserve would not only be unjust but very wrong as a matter either of policy or economy'.¹¹¹ The piece of land described by McLean would have contained about 13,400 acres.¹¹²

When he returned to Nelson, however, McLean recorded that he had only made two small reserves: 770 acres on the bank of the Wairau River; and a fishing reserve at White's Bay, running inland to the Pukaka Stream.¹¹³ This discrepancy between the actual reserves and the sentiments and undertaking expressed above is remarkable. The 1856 Board of Inquiry recommended that all reserves should be properly marked off and surveyed before a purchase was completed, and such a stipulation would have prevented this drastic cut to the Wairau reserves.¹¹⁴ McLean reported to the Colonial Secretary that

I found the limited time at my disposal so fully occupied with the necessary koreros or debates attending it, that I was unable to see some of the surveys completed to my satisfaction. I would gladly have done this myself, in order to prevent any possible questions being raised hereafter about the boundaries. These details, however, can be easily arranged by the Government Surveyor, under the direction of Major Richmond, in whom the Natives place implicit confidence, and to whom, besides the memoranda already furnished, I shall communicate additional information respecting these surveys.

¹¹⁰ *ibid.*, 30 January 1856.

¹¹¹ *ibid.*

¹¹² See Figure 17.

¹¹³ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

¹¹⁴ Report of Board of Inquiry, 9 July 1856, GBPP 1860, vol. 11, p. 479.

In the meantime, even these unfinished details are so fully understood by the Natives, that I am not aware that there can be any objection to the land being now handed over to the Crown Commissioner preparatory to its being disposed of in the usual manner.¹¹⁵

In his memorandum on reserves, McLean added:

If in the hurry of leaving Nelson and the confusion arising from the numbers of Natives who were collected there, and the fact of having no map of the sections in the several districts, any reserve has been omitted or the position of such reserves not clearly specified in this memorandum, I am satisfied that Major Richmond and Mr. Brunner know the position of all the reserves as pointed out and agreed upon by the Crown Commissioner and myself on the maps of the several districts.¹¹⁶

McLean's abrupt departure from Nelson meant that the Wairau reserves were not laid off for another six years, and Major Richmond played no part in the process because the Provincial Government assumed the responsibility as soon as McLean had left the area.¹¹⁷ It was not until 1862 that the Provincial Government asked James Mackay to lay off these reserves, and he had to do so under the vague instructions of McLean's general report of 1856, as his more precise memorandum on reserves had gone missing. As a result Mackay cut even more land out of the White's Bay Reserve, possibly depriving the Wairau Maori of more than half of their smaller intended reserve.¹¹⁸ The question must now be asked as to who was privy to the reserves arrangement, because Alexander Mackay reported that the local Maori were not aware that they had been short-changed until Hohepa Tamaihengia came on a visit from Wellington, and told them that 'the survey was incorrect, as it differed from the agreement between himself and Mr. McLean'.¹¹⁹

Alexander Mackay hunted down the original memorandum about reserves, which his young cousin had never seen, and consulted McLean about the intended boundaries of the Pukatea Reserve. He calculated that the actual amount should have been over 2,000 acres, and McLean replied (over a year later) that this resurvey was correct.¹²⁰ The Provincial

¹¹⁵ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 303.

¹¹⁶ McLean, Memorandum of Instructions, 24 April 1856, in Mackay I, p. 306.

¹¹⁷ Richmond to McLean, Nelson, 10 September 1856, MS Papers 32/535.

¹¹⁸ A. Mackay to McLean, 11 July 1865, in Mackay I, p. 329.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*, & McLean to Mackay, 15 August 1866, p. 330.

Government had already leased the land and found it difficult to believe that a 'reserve of so great a magnitude' as 2,000 acres had been intended for the Maori.¹²¹ Even with this expansion of the reserve, however, the Wairau people had still been deprived of about 10,630 acres from the original reserve agreed upon by themselves and McLean at the hui of 30 January 1856. This type of problem with reserves was not uncommon, and there were boundary disputes over the Tai Tapu, Wakapuaka, and Whangamoia Reserves, none of which were surveyed or had their boundaries marked until long after 1856.¹²²

On 5 February McLean sailed to Tory Channel and met a large assembly of Te Atiawa at the Waikawa reserve on the following day. There were about 300 Maori present from all over the Sound, and McLean was supported by the leading Ngati Toa chiefs, Puaha, Tamaihengia, Tamihana Te Rauparaha and Matene Te Whiwhi. Te Atiawa seemed to take it for granted by now that the land would go and that there was no longer much option about this, and the korero at the hui hinged on the amount of money which could be obtained from the government.¹²³ The price was discussed all day on 7 February, and the principal chief of Tory Channel (Ropata Witikau) asked for £6,600 for the land running from the entrance of Tory Channel through into the main Sound and down to Watiuru, a mile inland from the Rahiri settlement at Anakiwa at the bottom of the Sound. The Puketapu chiefs then asked for £3,800 as their share for the whole of Totaranui (Queen Charlotte Sound), including Port Gore. McLean refused to even discuss these terms, but the Atiawa remained adamant throughout a further day's korero on 8 February.¹²⁴

At this stage McLean 'selected the principal chiefs' on the evening of 8 February and took them indoors for private discussions. He told them that the reserves which had been selected in January were large and included 'some of the best land of a very poor & hilly country', and that the land outside the reserves would have been excluded from the Waipounamu Purchase altogether if he had 'known its quality and extent at an earlier period'. As he had already purchased this worthless land, however, he could not give them more than £500 for their rights to it. The chiefs were very disappointed and retired, complaining that they would not get sixpence each from such a deal. McLean told them that 'they were at liberty either to accept or reject the offer[,] that my mind was fully made up not to give

¹²¹ *ibid.*

¹²² See Mackay I, pp. 321-325, 333-334.

¹²³ McLean, Journal, 6 & 7 February 1856, Box III.

¹²⁴ *ibid.*, 7-8 February. See map, Appendix Four.

more'. Although they tried to change his mind several times during the night, McLean remained firm and threatened to leave if they had not accepted his offer by the end of the weekend.¹²⁵

The chiefs discussed the matter among themselves on 9 February and 'waited upon' the Chief Commissioner, offering to accept £1,000. McLean refused to budge so the chiefs went away for further korero, and finally decided to accept the offer of £500 (which was £400 less than the total paid to absentees at Taranaki and Waikanae). At this point, both parties returned to the 'assembled tribe' and Witikau asked the hui four times if they agreed to sell the land for £500. There seemed to be a general consent to the terms agreed between McLean and the chiefs, so Witikau made a further speech announcing that the land was 'now launched into the sea'.¹²⁶ Ropoama Te One ended the proceedings with a long and impassioned speech, reciting the deep significance of the area for Te Atiawa in recent history, and ended by thrusting a greenstone axe into the ground at McLean's feet as a symbol of the sale. This mere was called Paiwhenua and had been captured from the Ngai Tahu, who had used it to kill Te Pehi Kupe and Pokaitara during the wars of the 1820s. Ropoama proclaimed: 'Money vanishes and disappears, but this greenstone will endure as durable a witness of our act as the land itself, which we have now, under the shining sun of this day, transferred to you for ever'.¹²⁷

McLean then drew up the deed and read it to the assembly, after which it was 'numerously signed by all the principal chiefs and their followers'.¹²⁸ The deed carried the usual formula of transferring 'all our lands on this Island', and went on to describe the boundaries of 'the lands held and claimed by us: Watiura being the inland boundary, to Ngaruahine the seaward; thence to Taunui a Kupe; thence on to the Watiura, the boundary to the south-west of Taunui a Kupe goes to the Uku, and thence it also goes inland to the said Watiura'. Most of these places were not marked on the map, but the reserves were sketched by Henry Lewis, the surveyor who presumably selected those reserves in January 1856. Thirty-six people signed the deed on behalf of 130 others, and it was witnessed by Lewis, William Jenkins, John Guard, and eight Toa/Rarua chiefs.¹²⁹ McLean followed the signing

¹²⁵ *ibid.*, 8 February.

¹²⁶ *ibid.*, 9 February.

¹²⁷ *ibid.*; & McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

¹²⁸ McLean, Journal, 9 February 1856.

¹²⁹ Mackay I, p. 314. See Figure 18.

by expressing the pious hope that the land's 'future possessors' would treat the 'aboriginal remnant' kindly, whose 'power although once a wild courageous race is diminishing almost as fast as the snows of Kaikoura'.¹³⁰

On 11 February McLean read the deed a second time and then handed over the £500 in the presence of Puaha and the other Toa chiefs. This sale is rare because we have an account of how the money was divided among the vendors. McLean supervised the division of payment among 51 chiefs, who each received £9 for an interested hapu or whanau, leaving £49 to divide 'amongst those, such as Witikau and Ropoama, who had omitted to give in a complete list of all their hapus, and would therefore have been excluded from a fair share of the payment'.¹³¹

The Chief Commissioner crossed from Queen Charlotte Sound to the Kaituna Valley after making this payment, and met with Hura Kopapa and the Ngati Kuia people of that district. Although McLean claimed that there were only about 50 Ngati Kuia survivors in the whole of the Pelorus and Kaituna districts, 93 people signed the deed of sale. Unfortunately he made little record of his negotiations for these districts, other than brief comments such as that the reserves were 'pointed out to the Natives, and are generally within natural boundaries'.¹³² The Commissioner made no mention of the Ngati Toa living in the area, although presumably these acquiesced in the sale made by the second Ngati Toa deed of December 1854. Although Puaha had expressed his intention to reserve the valuable farm land of Kenepuru and Mahakipawa Sounds, he does not seem to have accompanied McLean to witness the overturning of his previous engagements with the local inhabitants. Tamihana Te Rauparaha was the only Toa chief to witness the Ngati Kuia deed, but presumably his presence was sufficient to register North Island approval of the deed.¹³³

McLean did agree to reserve 60 acres and two urupa at Mahakipawa, and a further 300 acres in the Kaituna Valley, and about 340 acres scattered in small blocks around the Pelorus River, which represented a major reduction of what the resident iwi had hoped to retain in 1854.¹³⁴ Although the 300 acres at Kaituna formed 'the extent of reserve which I deemed necessary for the Ngati Kaia [sic] Tribe', 50 acres of this were to be Crown Granted to the

¹³⁰ McLean, Journal, 9 February 1856.

¹³¹ Mackay I, p. 315.

¹³² See Mackay I, p. 302–303.

¹³³ *ibid.*, p. 316. See also above, pp. 142–143.

¹³⁴ Mackay I, pp. 302, 306. See Figure 19, & above, p. 142.

principal chief, Hura Kopapa.¹³⁵ Furthermore, these reserves did not cover all the existing pa and cultivations of the inhabitants, who were allowed to use their cultivations on the right bank of the Kaituna River until the land was required for settlers, and their long pa and cultivations at Motueka until this area was required for a township. This would become a general reserve if no town was built, but McLean arranged that Hura Kopapa and Manihera Te Maihi would get individual grants of two town sections each if a town was built, instead of a reserve for the whole community.¹³⁶ Through deals such as these, and by offering Ngati Kuia £100 when they might possibly have been overlooked as ‘conquered’ people, McLean obtained the cession of local rights in the Kaituna and Te Hoiere (Pelorus) districts.

On 16 February 93 people signed the deed of cession. They were described as members of the Ngati Kuia and Rangitane tribes, as McLean was not entirely sure whether there was a difference between these two groups. The signatories agreed to ‘sell and for ever transfer all our lands in this Island, with all the places at the Kaituna, and the Hoiere, and all other places to which we have any right’. This could presumably cover the same blanket area ceded in the Rangitane and Rarua/Tama deeds, where the land was described as between Wairau and Arahura. The signatories received £100 in return for signing the deed ‘under this shining sun, as binding upon us for ever [i tenei ra e whiti nei a ake tonu atu]’.¹³⁷

The Chief Commissioner moved on to Croixelles Harbour to treat with Ngati Koata, but he found that ‘the chief of that place’ had gone to Nelson, so he continued on to Wakapuaka to deal with Ngati Tama. Wi Katene’s people were still determined not to sell Wakapuaka, ‘as they considered it not more than sufficient for their own subsistence’. Having confined the Wairau and Pelorus people to tiny reserves, McLean reported to his superiors that the Wakapuaka block (almost 18,000 acres) ‘is not of much greater extent than they would really require as a revenue’.¹³⁸ He decided to accept their position, therefore, but he signed nothing to this effect and continued to look forward to a change of heart in the near future.¹³⁹

McLean’s final negotiations about these eastern districts took place at Nelson, just before he settled the Golden Bay questions with Ngati Tama, Ngati Rarua, and Te Atiawa.

¹³⁵ McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 302.

¹³⁶ *ibid.*, & p. 306.

¹³⁷ Mackay I, pp. 315–316.

¹³⁸ *ibid.*, p. 302.

¹³⁹ McLean, Return of Land Purchased, 18 June 1856, AJHR 1874 G–6, p. 4.

On 5 March Maka Tarapiko, Rene Te Ouenuku, and twelve other Ngati Koata chiefs, signed a deed to 'entirely and for ever transfer all our lands in this Island' to the Queen.¹⁴⁰ They had already accepted the reserves marked off by Brunner in 1854, but they insisted on a further 100 acres at Whangamoa, and the lake at Kaiaua with 'a small piece of land adjoining'.¹⁴¹ These reserves had not been surveyed, and the Whangamoa Reserve became a bone of contention between Ngati Tama and Ngati Koata when the government tried to survey the land in the early 1860s. Ngati Tama were neither shown the map nor consulted about the boundary during this 1856 purchase.¹⁴²

The deed also reserved Rangitoto from sale, repeating a reservation made in the original Ngati Toa deed, but this did not mean that the government had given up hope of purchasing it. Although McLean did not describe his negotiations with Ngati Koata, Richmond had earlier consulted the Governor about the possibility of purchasing the island and it must have been mentioned in the 1856 korero. Gore Browne told Richmond and McLean that they could not 'go on with the purchase of D'Urville's Island' until he had consulted Parliament, possibly because it had been specifically excluded from the Ngati Toa deed and could not, therefore, be included if the fiction was to be maintained that these deals were not separate purchases.¹⁴³ Nevertheless, Richmond asked McLean to 'sound if the Chiefs are willing to sell and at what price', as it was 'very desirable to secure it for the Province'.¹⁴⁴ The Governor's prohibition had saved Rangitoto for the meantime, however, although the government made approaches to Ngati Koata about it later in the decade.¹⁴⁵

In return for selling all their claims, which were listed as 'the same as those sold by our relatives the Ngatitoto, at the Hoiere, Te Paparoa, Kaiaua, Titirangi, Tawitiniui, Whangarae, Oneta, Okiwi, Anunga, Omakau, Whangamoa, Maunganui, and all other places belonging to us', Ngati Koata received £100.¹⁴⁶ Along with the final extinction of Golden Bay rights a few days later, this represented the last deed and payment of the Waipounamu Purchase. The government had drawn up fourteen deeds over two-and-a-half years, and paid a total of £6,787 to Maori right-holders. McLean had still not extinguished the claims, however, of Ngai

¹⁴⁰ Mackay I, pp. 316–317.

¹⁴¹ *ibid.* See map, Appendix 6.

¹⁴² Mackay I, pp. 333–334.

¹⁴³ Richmond to McLean, Nelson, 4 February 1856, MS Papers 32/535.

¹⁴⁴ *ibid.*

¹⁴⁵ J. Mackay Jr. to McLean, Collingwood, 16 July 1860, MS Papers 32/421.

¹⁴⁶ Mackay I, pp. 316–317.

Completing the Waipounamu Purchase

Tahu on the West and Kaikoura Coasts, or of the remnant of Ngati Apa on the West Coast. Within the territory of the Waipounamu Purchase, three major blocks totalling roughly 146,000 acres (Tai Tapu, Rangitoto, and Wakapuaka) remained unsold under original Maori title. Apart from the other small reserves scattered throughout Nelson and Marlborough, the great bulk of Maori land had passed to the Crown by 1856 as a result of the New Zealand Company, Wairau, and Waipounamu Purchases.

Northern South Island District Report

CHAPTER 10

THE NGAI TAHU PURCHASES

The purchase of Maori land in the Northern South Island was largely completed by the end of 1856. The only remaining unextinguished rights of a general nature were those of Ngai Tahu on the east and west coasts of the South Island, and those of Ngati Apa in Golden Bay and the west coast. The Waitangi Tribunal has already heard the Ngai Tahu claims against the Crown, and delivered its findings on the purchase of Ngai Tahu rights in the northern South Island. The Tribunal referred the cross-claim of the other northern iwi to the Maori Appellate Court to determine the boundaries between the rohe of those iwi and Ngai Tahu. No assessment of Maori land alienation in this district could be complete without a brief description of the Ngai Tahu purchases, the role of the other iwi in those purchases, their ramifications for those iwi, and the nature of the Appellate Court's findings.

I THE KAIKOURA COAST

The Kaikoura coast was first sold to the Crown in 1847 when Tamihana Te Rauparaha, Matene Te Whiwhi, and Rawiri Puaha included it in the Wairau Purchase. According to the interpreter at the sale, W.G. Servantes, the Ngati Toa chiefs were asked to sell the Wairau valley and environs but freely offered to sell the Kaikoura district as well, as far south as Kaiapoi.¹ The Wairau deed defined the purchase as the 'lands...running along to Kaikoura until you come to Kaiapoi'.² There was no further definition of boundaries for this part of the purchase, and it was not included in the map which accompanied the deed.³ The actual territory conveyed to the Crown, therefore, was not really defined until the government drew

¹Servantes to G. Grey, 4 September 1850, cited in *Ngai Tahu Report*, 1991, p. 396. See also Wai 27 L-9, pp. 552-553.

²Mackay I, p. 204.

³See Figure 6.

up the boundaries of the Nelson Crown Grant in 1848. The grant placed 'Kaiapoe' about forty kilometres north of Kaiapoi pa, near to the Hurunui River.⁴ The Kemp Purchase of a few months later (June 1848) referred to Kaiapoi as 'Ko Rohe a Ngatitōa o Whakatu - The boundary line of the land sold by the Ngatitōa and of the Nelson Block'.⁵ The map accompanying this deed located Kaiapoi in a similar position to that in the Crown Grant. In August 1848, however, the government sent Walter Mantell to complete the arrangements of the Kemp Purchase, and he asserted that Kaiapoi pa was the actual boundary of the Ngai Tahu sale, and that everything north of that had already been sold by Ngati Toa in the previous year.⁶

The *Ngai Tahu Report* has outlined the history of Ngai Tahu protest at the government's refusal to recognise their rights north of the Kaiapoi pa.⁷ According to the evidence of a Ngai Tahu rangatira, Wiremu Te Uki, Governor Grey wanted to investigate the respective claims of Ngati Toa and Ngai Tahu in 1848: 'He invited us to go and stand on one side and meet the Ngati Toa, who would stand on the other side, and he would judge between us; and if we were able to show that the land belonged to us, he would recognize it as so; and if the other party showed that the land belonged to them, he would recognize them'.⁸ Although the Governor had already recognised Ngati Toa's claims in the Wairau Purchase, he indicated that he was prepared to entertain the idea that there might be other claims which also required extinguishment, as the government moved towards the blanket purchase policy of the 1850s. The proposed investigation, however, did not take place. Wiremu Te Uki suggested that Ngati Toa's refusal to participate prevented the Governor from holding his inquiry.⁹

According to W. Servantes, the interpreter at the Wairau Purchase, the government had no choice but to recognise the claims of Ngati Toa:

The Natives were in the first place asked to dispose of the Wairau valley only, but they themselves proposed to cede all their lands as far as Kaiapoi to which point they stated that the property to which they had a sole title extended.

⁴*Ngai Tahu Report*, pp. 393–395.

⁵*ibid.*, pp. 419–420.

⁶*ibid.*, pp. 395, 418–427. See Figure 22.

⁷*ibid.*, pp. 652–654.

⁸Wiremu Te Uki, evidence to Smith–Nairn Commission, 3 April 1880, cited in Maori Appellate Court decision, Wai 102 A–11, pp. 17–18.

⁹*ibid.*

Doubts were at the time entertained of the Ngatitōa Tribe having an undisputed title to the land further south than Kaikoura, but at the same time it was known that they had a claim to a certain extent as far as Kaiapoi, the point mentioned by them in consequence of several of their chiefs having been murdered there, and their having in revenge nearly exterminated the original tribe, the few that escaped having sought safety by flying to the Southward. [marginal note: "From Kaikoura To Kaiapoi"]

On this account it was thought advisable to include the land in question in the Deed of Sale in order to extinguish whatever claim the Ngatitōas had to it[,] for if excluded and the boundary fixed at Kaikoura, it was certain that they would dispute the right of any tribe or persons who might afterwards wish to dispose of it, and would moreover if their title was found to be valid, demand as much for the alienation of that portion, as they received for the whole Block including the Wairau.

Although the right of the above named Tribe was considered doubtful, I beg to add that I believe it is very questionable whether according to Native customs the Ngaitahu people have a better one.¹⁰

Walter Mantell argued that the wars between Ngai Tahu and Ngati Toa had prevented either iwi from living in the Kaikoura district, and that neither of them had a valid claim to the land.¹¹ The government did not take this view and decided that Ngai Tahu's rights should be recognised and extinguished for a small sum of money, possibly £50 or £100. Lieutenant-Governor Eyre's decision to this effect was approved by Grey in 1851 but never carried out.¹² Settlers began to occupy large pastoral runs on the Kaikoura coast on the strength of the Wairau Purchase, and Ngai Tahu continued to make regular protests to the government until 1856.¹³

In 1856 McLean's South Island land purchases were in full swing and he was ready to settle with outstanding Ngai Tahu claims on the east coast. The question of the land running from Kaiapoi to the Wairau became bound up with other territories to the south, and McLean decided that he would have to accept Ngai Tahu's position on the northern issues in order to facilitate the Akaroa Purchase. In August he wrote that 'with reference to the unextinguished claims at Kaiapoi, a sum of £150 should be paid to the Natives, conditionally, that they first settle the Akaroa claims'.¹⁴

McLean sent W.J.W. Hamilton to purchase the Akaroa and "North Canterbury"

¹⁰Servantes to G. Grey, 4 September 1850, cited in *Ngai Tahu Report*, p. 396.

¹¹W. Mantell, Report (n.d.), Mackay II, pp. 6–7.

¹²*Ngai Tahu Report*, pp. 651–652.

¹³*ibid.*, pp. 653–659.

¹⁴*ibid.*, pp. 656–658.

districts, and in February 1857 the Kaiapoi-based hapu of Ngai Tahu negotiated with Hamilton for the land between their main pa and the Waiau-ua River. As with the supplementary negotiations of the Waipounamu Purchase, the Kaiapoi Ngai Tahu were disadvantaged by the initial transaction with the Ngati Toa and the perception that the actual transference of the land to the Crown was already a *fait accompli*. Hamilton reported: 'I firmly believe that the delay of six years or more in obtaining a hearing of their case was the real reason why the Maoris accepted so small a sum as £200 instead of insisting on receiving £500; because they grasped at what was within their reach, fearing further delay'.¹⁵ Thus, Ngai Tahu gave up 1,140,000 acres for £200 and without the provision of any reserves for their occupation or use. By 1860 the government had agreed to Hamilton's recommendation and paid a further £300, bringing the total paid for the district between Kaiapoi and the Waiau-ua to £500.¹⁶

The Kaikoura-based hapu of Ngai Tahu also pressed for payment for their interests in land south of the Wairau Valley. Whakatau Kaikoura, their paramount chief, argued that Ngai Tahu were (in Hamilton's words) the 'lawful owners' of the land between Parinui o Whiti (the White Bluffs) and the Waiau-ua River. This claim was not disputed by the Kaiapoi hapu, and Hamilton recommended that the government deal with the Kaikoura people as soon as possible.¹⁷ McLean replied that the New Munster records of the South Island purchases would be examined, and the merits of Whakatau Kaikoura's claim would be assessed from the information in those documents. He expressed regret that there was no government official stationed in the South Island to 'sift' such claims and determine the appropriate 'aboriginal proprietors'. He promised to take action if the Ngai Tahu claims to the Kaikoura district were shown to be valid by the documentary evidence already in the possession of the government.¹⁸

In November 1858 McLean finally instructed a government official, James Mackay Junior, to go to Kaikoura and settle the outstanding claims of its inhabitants. He fixed the price at around £150 and ordered Mackay to provide reserves for the 'maintenance and wants' of the local people, with a sliding scale of ten to one hundred acres per individual or family

¹⁵Hamilton to McLean, Kaiapoi, 5 February 1857, Mackay II, p. 21.

¹⁶*Ngai Tahu Report*, pp. 658–668. See also Figure 23.

¹⁷*ibid.*, pp. 673–674.

¹⁸*ibid.*, p. 674.

head, according to the quality of the land and the rank of the 'owner'.¹⁹ There had been no reserves in the North Canterbury Purchase because the settlers had occupied all of the available land, and the same consideration restricted the amount of land which Kaikoura Ngai Tahu were able to obtain from Mackay. The negotiations took place during February and March 1859, and Ngai Tahu signed a deed on 29 March after much argument with Mackay over price and reserves. The vendors finally agreed to accept £300 instead of £5,000 for 2.5 million acres, after Mackay made 'a false start to Port Lyttelton'. He refused to grant the requested reserve of 100,000 acres and insisted on small occupation reserves of 5,558 acres of land leftover from settler leases and purchases. Mackay had at first feared that 'these fellows are too wideawake for me, as to the value of the land', but he was able to reassure the government that the reserves were all 'useless and worthless'. It would seem that Mackay agreed to the types of reserves which preserved fishing rights and other traditional mahinga kai, but refused to allow Maori to retain pastoral land, insisting that they repurchase that type of land from the Crown.²⁰

The Kaikoura Purchase was the last large-scale alienation of Maori rights on the east coast of the South Island. All three of the major purchases in the area (Wairau, North Canterbury, and Kaikoura) had taken place without any formal investigation of custom and right-holding. The government relied on occasional reports from its officials, who gathered information in a haphazard fashion from particular areas at different times. There was no general inquiry or hui to discuss the matter, nor any detailed and impartial investigation. The government recognised both Ngati Toa and Ngai Tahu as a result of its blanket purchase policy to extinguish all possible rights in all possible places. The rights of Rangitane were not considered separately at the time, as that iwi was not in a position to press a claim with the Crown. Rangitane had already sold 'all our claims on the Island', although the closer definition specified a more northerly area: 'that is, for all the lands of the Rangitane from Wairau to Arahura, running inland as far as the claims of the tribe of the Rangitane extend'.²¹ Rangitane claim that their pre-1830 boundary with Ngai Tahu was the Waiau-toa River, an area considerably further south than the Wairau Valley and Parinui o Whiti.²²

The rohe of the iwi concerned was not investigated by the Native Land Court in the

¹⁹ibid., p. 675.

²⁰ibid., pp. 676–682. See also Figure 24.

²¹Mackay I, p. 313.

²²Appellate Court Decision, Wai 102 A–11, pp. 7–9. See Figure 24.

nineteenth century. The court sat at Kaikoura in July 1890 and awarded title to those Ngai Tahu who had been 'interested...at the time of sale in 1859'.²³ It did not consider whether there were other interests alienated by other sales, presumably because the reserves had been made specifically for the vendors of 1859. Nobody challenged the court's position on this matter.²⁴ The Ngai Tahu claim to the Waitangi Tribunal in 1986, however, led to a cross-claim from the Kurahaupo Waka Trust, which claimed to be a party against whom the Crown had breached the Treaty in the land covered by the Kaikoura and Arahura Purchases. Ngai Tahu denied this claim and the Tribunal referred the matter of iwi boundaries to the Maori Appellate Court in 1989 for a binding decision.²⁵

The Tribunal asked the court to establish which 'tribe or tribes according to customary law principles of "take" and occupation or use, had rights of ownership' in respect of land covered by the Kaikoura and Arahura deeds at the date at which they were signed (1859 and 1860 respectively).²⁶ Drawing partly on Norman Smith's book *Maori Land Law*, the court put forward four customary take: discovery; ancestry; conquest; and gift. The judges argued that these take had to be accompanied by occupation, and that iwi who were driven off by conquerors could legitimately re-occupy their land so long as it was done within three generations.²⁷

The court considered the various relevant deeds of purchase but felt that the government had shown a clear 'desire to extinguish all native claims regardless of their validity'. The overlapping purchases, therefore, meant that the deeds themselves were not proof of legitimate rights.²⁸ The court also suggested that the Crown gave Ngati Toa 'favoured treatment' in purchasing land, because Te Rauparaha's 'close working relationship with the settlers' led to a 'ready acceptance of his having the authority to enter into the Deeds of Sale without making close enquiry'.²⁹ Crown recognition had more to do with convenience, therefore, than with legitimate rights. It must be pointed out, however, that Te Rauparaha was a prisoner of the Governor at the time of the Wairau Purchase and was not

²³Native Land Court, Nelson Minute Book 2, Supporting Papers to the Evidence of D. Alexander, Wai 27 M-13, p. 22.

²⁴ibid., pp. 22-73.

²⁵*Ngai Tahu Report*, pp. 17-18, 23-26.

²⁶Maori Appellate Court decision, 12 November 1990, Wai 102 A-11, p. 1.

²⁷ibid., pp. 3-4.

²⁸ibid., p. 6. See also Figure 20.

²⁹ibid.

involved in either that transaction or the later Waipounamu Purchase. Far from having a close working relationship with the settlers, Ngati Toa were considered a threat in 1847 whose ambivalence towards the Hutt question required a combination of bribery and intimidation to secure their neutrality.³⁰

After considering the deeds and their implications, the court addressed the Ngai Tahu and Rangitane evidence about their respective claims to land between the Wairau and Waiau-Toa Rivers. They concluded that the 'comprehensive' defeat of Rangitane by Ngati Toa in the late 1820s meant that Rangitane were 'in no position to assert customary title to the disputed lands' in 1840.³¹ Ngati Toa presented evidence on the wars of the 1820s and 1830s but the court felt that Toa had not exercised occupation rights south of Parinui o Whiti, and had not established a 'cultural tradition in the area'. Two examples of resource-use beyond the White Bluffs were considered to be 'isolated incidents'.³²

In the absence of 'clear evidence of physical occupation' by any iwi in the aftermath of the Ngati Toa-Ngai Tahu wars, the court concluded that the military resurgence of Ngai Tahu and their eventual re-occupation of the area before the cut-off date in 1859 were the critical factors. The Appellate Court decided that the customary ownership of land sold under the Kaikoura deed had been the sole property of Ngai Tahu in 1859.³³ Nevertheless, the judges were prepared to 'accept the thrust' of Ngati Toa's argument that physical occupation was not an indispensable element of ahi kaa:

It may be that a tribe which has maintained the traditions of the exploits of its tupuna that recalls the battles that were fought, the defeats, the victories, that recites the whakapapa, that recalls the names of the places, the burials of the dead and wahi tapu which relate to its history, have maintained ahi kaa, have not lost their connection with the land in respect of which they claim an interest....My submission [is that] if the Court is to take a view of whether an Iwi has maintained its ahi kaa up to the present day, then this Court is invited to take a view that the maintenance of traditional stories, the maintenance of whakapapa, that the remembrance of wahi tapu, battles won and lost, is evidence of the maintenance of that ahi kaa.³⁴

The court was willing to accept this argument in the case of Ngati Toa, whom it considered

³⁰See above, pp. 87-88, 91, 93-94.

³¹Maori Appellate Court decision, Wai 102 A-11, pp. 7-10.

³²*ibid.*, pp. 10-11.

³³*ibid.*, pp. 1, 15-19. See Figure 24.

³⁴*ibid.*, p. 12.

did not actually meet the required criteria.³⁵ It did not, however, apply the same criteria to the situation of Rangitane, for whom the same argument might have been advanced, but instead applied a very conventional view of "conquest" to Rangitane's position.³⁶

II THE ARAHURA PURCHASE

Crown attempts to purchase the West Coast began in the late 1840s, when parts of it were included in the Kemp Purchase. Maori hastened to make clear to the Governor and McLean, however, that many people who claimed rights in the area had not been either parties to the Kemp Purchase or paid under its provisions. Ngati Toa and other iwi of the northern South Island pressed their claims on Governor Grey, Major Richmond, and McLean in the early 1850s. Richmond attempted to buy the coast and inland territories from Ngati Rarua and others in 1852, but was unable to get them to agree to the maximum price authorised by the Governor.³⁷ The Waipounamu Purchase, however, usually included the West Coast under the generic name of 'Arahura' in the various deeds signed by Ngati Toa, Ngati Rarua, Te Atiawa, Ngati Tama, and Rangitane. The Crown claimed to have extinguished the rights of these iwi to land running from Kahurangi (boundary of the Taitapu Reserve) to Arahura, and indeed to have extinguished their claims to all land everywhere in the South Island with the exception of their reserves.³⁸

In his report to the Governor in 1856, McLean acknowledged that the Waipounamu Purchase had not extinguished the rights of the local Ngai Tahu living on the West Coast. He told Browne that a reserve of 300-400 acres and 'a small amount of compensation' would suffice to extinguish their claims.³⁹ He does not, however, seem to have thought this a matter for urgent action. James Mackay, a local Collingwood settler with aspirations to join the government service, visited the West Coast in early 1857 and discussed the fate of their land with Poutini Ngai Tahu at Mawhera (future Greymouth). They denied that Ngati Toa had any right to sell the West Coast and asked him to pass their demand for payment on to McLean. Mackay forwarded a letter to the Land Purchase Commissioner offering to sell the coast for

³⁵ibid.

³⁶ibid., pp. 9-12.

³⁷see above, pp. 105-109.

³⁸see above, Chapter 9, & Figures 12, 20.

³⁹McLean to Colonial Secretary, 7 April 1856, in Mackay I p. 303.

£2,500, along with the information that there were probably about 37 adult Maori occupying the many miles between West Whanganui and the boundary of Nelson Province in the south.⁴⁰

McLean decided to continue the negotiations at the end of 1858, when he appointed Mackay to purchase the Kaikoura and Poutini Ngai Tahu interests for the sum of £400. He ordered Mackay to pay no more than £150-200 for the West Coast territory and to lay off up to 500 acres of reserves. The government agent found that the Mawhera people, led by the sons of Tuhuru, would not agree to those terms when he visited them in July 1859. They wanted to reserve a whole stretch of coastline from the sale, amounting to about 200,000 acres between the Mawhera, Kotukuwhakaoka and Hokitika Rivers, partly in order to preserve their control of pounamu. They refused his final offer of £200 and 800 acres, and sent him away with the parting shot that they would require at least £400-500.⁴¹

Mackay went to Auckland and consulted Governor Gore Browne and T.H. Smith, McLean's deputy, who gave him fresh instructions in October 1859. These authorised him to pay up to £400 and to make reserves of 12,000 acres: 6,000 acres for occupation; 4,000 acres for endowments; and 2,000 acres to pay for survey costs.⁴² Although the government and Ngai Tahu were both aware that gold had been discovered on the coast, the Crown was still anxious to make what the Tribunal called a 'nominal payment'.⁴³

Armed with these instructions, Mackay returned to Nelson and made his way to the West Coast, accompanied by three northern South Island rangatira: Puaha Te Rangi of Ngati Apa; Tamati Pirimona Marino of Te Atiawa and Ngati Rarua; and Hori Te Karamu of Ngati Tama. These chiefs played an important part in what the Wai 102 claimants argue was the 'last of the major sales of lands over which tribes of Te Tau Ihu had some interest'.⁴⁴ Mackay met Poutini Ngai Tahu at Mawhera and other places along the coast, and negotiated the details of a purchase and reserves from March to May 1860. As a result of these negotiations, the signatories to the deed agreed to sell over seven million acres for £300 and 54 reserves. The reserves consisted of 6,724 acres for individualised occupation, 3,500 acres for religious and educational endowments, and 2,000 acres for survey costs.⁴⁵

⁴⁰*Ngai Tahu Report*, pp. 694–695.

⁴¹*ibid.*, pp. 697–698.

⁴²*ibid.*, p. 699.

⁴³*ibid.*, p. 123.

⁴⁴Wai 102 A–16, Chapter 8, pp. 112–113.

⁴⁵*Ngai Tahu Report*, pp. 700–702.

The signatories to the deed were not all members of Ngai Tahu. Puaha Te Rangi, who was related to Ngai Tahu but identified himself as Ngati Apa, signed the agreement on behalf of the Ngati Apa right-holders of the Buller district. Mackay reported:

Puaha Te Rangi also demanded compensation for the claims of the Ngatihapa [sic] to lands at the Kawatiri or Buller districts, and as Tarapuhi Te Kaukihi, and the majority of Natives admitted the justice of these claims, and pressed me to award compensation for them, it was deemed expedient to permit Puaha Te Rangi on behalf of himself and a few other Ngatihapa Natives to participate in the payment, and it was arranged that some reserves should be allotted to them in the neighbourhood of the River Buller.⁴⁶

Unfortunately there are no more details in Mackay's report about the participation of Ngati Apa in the negotiations. It is not clear, for example, how many of the Ngati Apa right-holders were present and consented to the purchase, how much of the £300 was paid to Ngati Apa, and the degree to which they were able to participate in the negotiation process. These questions need to be investigated if possible, since some of the Tribunal findings with regard to Poutini Ngai Tahu may need to be extended to Ngati Apa, who were also a party to the Arahura Purchase and may have been disadvantaged by its terms. The Tribunal decided, for example, that 'in paying no more than a nominal price for land which had the potential for a very early substantial rise in value', the Crown had in fact breached its obligations under the Treaty.⁴⁷

Mackay laid off 12,224 acres of reserves in April and May, which were not surveyed at the time but were sketched in rough plans with the names of "owners" listed on each plan. He exceeded his quota for occupation reserves by allocating 6,724 acres in this category, of which 424 acres were allotted to Ngati Apa in the Kawatiri district. A further 3,500 acres were set aside for endowments as per Smith's instructions, but I am not sure at this stage whether the Ngati Apa were made beneficiaries of these reserves. In addition, 2,000 acres were reserved and later sold to cover survey costs. As far as Ngai Tahu were concerned, there were two main grievances associated with the reserves. Firstly, Mackay had refused to reserve enough land for them to maintain full control of the Arahura River and its pounamu, and had misled them into believing that the Arahura reserves would extend farther than was actually

⁴⁶J. Mackay to McLean, 21 September 1861, in Mackay II, p. 41. See also Figure 25.

⁴⁷*Ngai Tahu Report*, p. 125.

the case. Secondly, Mackay refused to reserve as much land in general as Ngai Tahu requested, and did not in fact reserve a sufficient estate to enable them to develop pastoral farming and engage fully with the settler economy.⁴⁸

The second of these grievances would probably have applied to Ngati Apa as well, but research is necessary to establish the size of the local Apa population, the extent to which it was regularly supplemented from the north, and the degree to which 424 acres were sufficient in 1860 for its present and future needs. It is important to note at this point that Ngati Apa were never recognised by the Crown in any other purchase. Although the conquered Ngati Kuia and Rangitane were involved in the Waipounamu Purchase and given reserves in Marlborough, there was no similar recognition or making of reserves for Ngati Apa in Golden Bay and Te Taitapu. As a result, Ngati Apa's interests in the north (if they can be shown to have survived conquest) were never extinguished by the Crown. This situation was compounded when the Native Land Court refused to recognise them as an iwi in issuing Crown titles for northern reserves such as Taitapu.⁴⁹ Further research is needed to determine how far Ngati Apa as individuals were allotted shares in the northern South Island reserves.

In addition to the Ngati Apa presence, the Arahura Purchase was witnessed by two northern chiefs, Tamati Pirimona Marino and Hori Te Karamu, who according to Mitchell took steps to ensure that the interests of their relatives still living on the West Coast were protected in the reserves. The Wai 102 claimants argue:

The tribal interests of Tamati Pirimona Marino and Hori Te Karamu could not be given formal recognition in the Arahura Deed, their tribes having alienated their remaining South Island interests in the previous Deeds of Purchase. Nevertheless, these men were able to ensure that the interests of their whanaunga who had been resident on the West Coast since the time of the Niho/Takarei conquests were recognised in the Reserves being set aside. Among the original ownership lists submitted for the 50 Schedule A Reserves, 22 included the names of men and women who were of Ngati Rarua, Ngati Tama or Te Atiawa descent with close connections to families from Te Tau Ihu. In two cases, the Kararoa and Kotukuwhakaoho Reserves the sole original owner was Poharama Hotu, of Te Atiawa from Massacre Bay, and in several others no Ngai Tahu were among the original owners. Were it not for the high-jacking of the Young Commission of Enquiry of 1879 where at least one witness/Assessor repeatedly committed perjury, those reserves would remain in northern ownership today; even so, many descendants of those original

⁴⁸*ibid.*, pp. 700–702, 709–721.

⁴⁹See Nelson Minute Book 1, ff. 3–11.

Rarua/Tama/Atiawa owners continue to draw rents from the Schedule A Reserves of Te Tai Poutini.⁵⁰

The Young Commission complained of by the Wai 102 claimants was a Royal Commission appointed in 1878 to ascertain the names of those entitled to Crown Grants in the West Coast reserves. The Native Minister had promised "conditional" titles to Maori.⁵¹ He appointed a Commissioner to investigate claims as a prelude to issuing titles, rather than employing the Native Land Court to actually grant the titles. Local Maori feared that the government would sell their reserves under pressure from the lessees, and therefore had applied for Crown Grants for the reserves administered by trustees under the 1856 Native Reserves Act. The settlers were lobbying the government to sell them the fee simple, especially of the Mawhera reserve in the town of Greymouth, and Maori were concerned that the government might take no account of their determined opposition to any sales.⁵²

Governor Normanby commissioned Thomas Young in November 1878 to ascertain those 'beneficially entitled' to the reserves and to estimate their relative shares, to advise whether the Reserves should be made legally inalienable, and to report the wishes of the owners on these matters.⁵³ Young held his inquiry at Greymouth in January 1879, and made lists of owners for each reserve 'as near as possible in accordance with the principle it was intended to observe on the setting-apart of these reserves in 1860'.⁵⁴ The proceedings were influenced by Alexander Mackay, Commissioner of Native Reserves, who may also have acted as interpreter since there is no record of an interpreter having been present.⁵⁵ Commissioner Young heard evidence about fifty reserves over ten days and made his final report on 25 February 1879, which included lists of "owners", a recommendation that almost all of the reserves should be made inalienable at the request of those owners, and a note that they wanted to appoint one of their own number to act with Mackay in the administration of the reserves.⁵⁶ Although there will be jurisdictional issues involved in light of the binding nature of the Appellate Court's decision, I believe that research should be done on the actions of the

⁵⁰Wai 102 A-16(a), Chapter 8, p. 119.

⁵¹A. Mackay to Under Secretary, 1 August 1879, AJHR 1879 Session 2, G-3, p. 1.

⁵²A. Mackay, memorandum, July 1877, AJHR 1879 Sess 2, G-3A p. 4. See also G-3, p. 4.

⁵³Normanby to T.E. Young, Commission, 26 November 1878, AJHR 1879 G-3B, pp. 1-2.

⁵⁴Mackay to Under Secretary, 1 August 1879, AJHR 1879 G-3, p. 1.

⁵⁵Minutes of Proceedings, AJHR 1879 G-3B.

⁵⁶T.E. Young, Report, 25 February 1879, AJHR 1879 G-3B, pp. 2-3.

Young Commission and the effect of the Commission on both Ngati Apa and the other people identified by Mitchell as beneficiaries of the original agreement with the Crown.

In 1990 the Appellate Court decided that Ngai Tahu had the 'sole rights of ownership in respect of the lands comprised in' the Arahura Deed of 1860.⁵⁷ Ngai Tahu had argued that Ngati Apa first moved into the Buller district after the Kawhia allied invasion of Golden Bay, and that Tuhuru had allowed them to settle there as 'a few individuals rather than a tribal entity'.⁵⁸ They also claimed Puaha Te Rangi as a Ngai Tahu rangatira as well as a member of Ngati Apa.⁵⁹ The court accepted that Ngati Apa and possibly other northern people were in occupation of land along the Kawatiri, but decided that there was 'no customary take to support something more than a mere right of residence'. Occupation, according to the judges, had been by permission of Ngai Tahu and unsupported by a take, and did not, therefore, alter Ngai Tahu's status as 'sole owners'.⁶⁰ There is evidence to suggest, however, in the view of Dr. Don Loveridge, that the Kawatiri may have been a boundary between Ngai Tahu and Ngati Apa in the period before the Kawhia invasion, and that Ngati Apa may have had a take based on the conquest of Ngati Tumatakokiri and their subsequent occupation of the district.⁶¹

After dismissing the rights of Ngati Apa, the Court considered the claims of Ngati Toa, Ngati Rarua and Ngati Tama. As with the Kaikoura Purchase, the judges felt that the Waipounamu deeds could not in themselves be proof of valid claims. They also decided that the Poutini Ngai Tahu had regained their independence in the 1830s after the defeat of Te Puoho.⁶² The withdrawal of the leading Rarua chief, Niho, to Taitapu ended any rights conferred by conquest and temporary occupation: 'We say this because there is no evidence before us that he left any of his iwi behind to maintain the ahi kaa; as well as Ngai Tahu's evidence that Niho never returned south of Kahurangi Point is uncontradicted'.⁶³ Although the court acknowledged that some non-Ngai Tahu were included in the West Coast reserves, they did not assess the implications of this point, except in the case of Ngati Apa. The judges were also influenced by the point that none of the other iwi demonstrated Ngai Tahu's special

⁵⁷Appellate Court decision, Wai 102 A-11, p. 1. See also Figure 26.

⁵⁸*ibid.*, p. 20.

⁵⁹*ibid.*, p. 24.

⁶⁰*ibid.*, pp. 24-25.

⁶¹Wai 27 N-2, pp. 4-5, 9-10, 13.

⁶²*ibid.*, pp. 20-25.

⁶³*ibid.*, p. 22.

relationship with pounamu, the great taonga of the region, and that James Mackay Junior had found the Ngai Tahu title good (although not necessarily exclusive). The Appellate Court concluded that sole title in the area from Kahurangi to Milford was vested in Ngai Tahu.⁶⁴

The Tribunal, therefore, may have to consider the following issues with regard to Treaty breaches in the northern South Island:

- the jurisdictional issues raised by the Maori Appellate Court decision that Ngai Tahu had ‘sole rights of ownership’ of land covered by the Kaikoura and Arahura deeds;
- the failure of the Crown to hold a deliberate and impartial inquiry into the respective rights of Ngati Toa, Ngai Tahu, and others before conducting the Wairau and Kaikoura Purchases;
- the role of Ngati Apa in the Arahura Purchase, the extent to which they benefitted from or were disadvantaged by its terms, and the degree to which 424 acres was a sufficient reserve for their present and future needs;
- the question of whether the Crown, having recognised Rangitane and Ngati Kuia, should also have recognised and extinguished the rights of Ngati Apa when it purchased Golden Bay in the 1850s;
- the question of whether the subsequent award of reserves by the Native Land Court followed the Crown’s precedent and disadvantaged Ngati Apa;
- the extent to which the Young Commission of 1879 carried out a fair and proper inquiry into reserve titles on the West Coast.

⁶⁴ibid., pp. 20–25. See Figure 26.

CHAPTER 11

FINAL LARGE-SCALE ALIENATIONS

The Arahura and Kaikoura Purchases were the final blanket purchases of Maori land in the northern South Island. The only complex of "all rights everywhere" which had not been extinguished by 1860 were those of Ngati Apa in Golden Bay, but the Crown did not attempt to negotiate a sale with those people. The purchase process had left Maori with small reserves in Marlborough and Nelson, with the exception of two large blocks in Nelson Province. The Waipounamu Purchase of 1853-56 had reserved the whole of Rangitoto, or D'Urville Island, (about 40,000 acres) from sale to the Crown. The 1855 agreement between Ngati Rarua, Ngati Tama, Te Atiawa and the Crown had excepted the Taitapu block (88,000 acres) from sale. These two areas amounted to a total of about 128,000 acres of land which remained in Maori hands.

The fate of these large blocks is worth considering in some detail, as they provided (on the face of it) a landed base for the economic development of Maori in the era of the settler economy. Both estates, however, had been largely lost to Maori by the end of the nineteenth century. Taitapu became caught up in the gold rushes of the 1860s and passed out of Maori control in the period 1862-73, and was finally sold without any reserves in 1884. D'Urville Island was the subject of informal leasing in the same period, and was almost all leased to settlers on a legal basis in the 1890s, after the long battle in the Native Land Court was finally settled as to the island's legitimate owners. The freehold of the island was gradually alienated throughout the twentieth century, leaving Maori with about 5,000 acres (around 12%) in the 1980s. Due to questions of time and resources, I have chosen to concentrate on the larger of these two blocks, and to confine the analysis of Rangitoto to a brief account based on secondary sources, which may be used as a pointer for further research.

I TAITAPU

In November 1855 the Chief Land Purchase Commissioner, Donald McLean, met with some of the leading representatives of the Nelson Province hapu. He held a large hui in Nelson at which the subject of the Waipounamu Purchase was discussed. At the end of the hui the Commissioner agreed to the reservation of the large Taitapu block from what he considered to be a general cession of all rights in the South Island. McLean was at first reluctant to agree to making such a large reserve, but he agreed to it after consulting James Mackay as to the nature of the land.¹ Mackay had visited the area and probably told McLean that the area was worthless as far as agriculture was concerned, which seems to have been a fairly common European opinion in the nineteenth century. Even J.H. Barne, who wrote a report on the Taitapu Estate for the Forestry Service in 1986, wrote: 'It seems entirely mysterious why the Maori chiefs should have been so anxious to hold onto this particular piece of land, the only large area in the whole northern half of the South Island'.²

McLean's official report to the government argued that Taitapu was, 'together with what they elsewhere possess, of sufficient extent for their present and future requirements, even if they have a considerable increase of cattle and horses'.³ The Commissioner considered it a resource for future development in pastoral farming, but the telling point for him was probably that it was 'as yet remote from European settlers'.⁴ The Wai 102 claimants suggest that the area was (and is) an important mahinga kai and resource area, especially for pingao, kiekie and flax.⁵ It is unlikely that minerals were considered by Maori at the time as a reason to retain this particular piece of land. The known coal resources had already passed to the Crown with the sale of the West Whanganui inlet in the Pakawau Purchase. Although government officials believed that many valuable minerals were available on the West Coast and in Golden Bay, the Waipounamu Purchase pre-dated the actual discovery of significant gold fields in Golden Bay. Riwai Turangapeke probably wanted to keep the area for the use of traditional resources, although his people mainly lived elsewhere in terms of permanent

¹See above, pp. 161-162.

²J.H. Barne, 'History of Taitapu Estate', NZ Forest Service, December 1986, p. 27.

³McLean to Colonial Secretary, 7 April 1856, in Mackay I, p. 301.

⁴ibid.

⁵H. & M.J. Mitchell, evidence presented on behalf of claimants, Wai 102 A-16 (b) Chapter 8, p. 149.

residences. According to Barne, Taitapu was not occupied on a permanent basis by Ngati Rarua at this time. The closest settlement was at West Whanganui inlet where the Crown had made a reserve of about 200 acres in the early 1850s.⁶ In 1865, Alexander Mackay suggested that there were about ten people living on or nearby Taitapu.⁷ The land was not being used to sustain a fulltime occupation, therefore, although its potential remained for pastoral farming, logging, and other forms of economic exploitation, in addition to seasonal visits for the use of mahinga kai.

Commissioner McLean had no real idea of the boundaries of the land and drew a very rough sketch of it on the map accompanying the deed, which did not show the boundaries as described in the deed itself. He did not visit the area to walk the boundaries or send a surveyor to mark off the reserve.⁸ This caused trouble later on, but nobody was aware of the problem in the late 1850s because the Maori use of Taitapu was not interrupted by any agricultural settlement. It was not the purchase of land for settlement in 1855 but the later discovery of gold and other minerals which opened up the West Coast and this part of Golden Bay to the outside world. Aorere was the first part of Golden Bay to experience a "rush", when gold was discovered there in 1856, the year after the reservation of Taitapu. By 1857 there were about 1,300 Europeans and 600 Maori prospecting in the Collingwood, Parapara and Aorere river valleys. Gold-mining in the area was alluvial and therefore relied on labour rather than expensive machinery at this stage, and many Maori were able to participate directly in this form of mining.⁹

This was the model which presented itself to local Maori when they found gold on their own land at Taitapu in 1862. This was very significant in terms of Maori expectations with regard to their own role in the process, their ability to control the use to which their land was put, and the length of time for which their land might be subject to mining operations. According to Barne, the Collingwood fields were already in decline by 1862, and new diggings had opened in Otago, Buller, and Karamea.¹⁰ Maori expectations in 1862 would have revolved around alluvial mining with no great impact on the landscape, short-term annual mining licences, and the prospect of a relatively early return to normal pre-mining

⁶Barne, p. 27.

⁷A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

⁸See above, pp. 161-162, 169-170.

⁹Barne, pp. 27-29; Wai 102 A-16(b), Chapter 10, p. 57.

¹⁰Barne, p. 29.

conditions, with themselves able to resume use of their land for traditional mahinga kai, and perhaps for cattle pasture purposes.

Maori discovered gold at Taitapu in January 1862. They collected four European miners from nearby diggings to assess the value of the find, and these miners made such a favourable report that a "rush" to Taitapu seemed about to take place when the news reached James Mackay, who was responsible for Maori affairs in the Nelson district at the time.¹¹ The Maori had made it clear that they would adopt the system of licences in operation on other gold fields, and that all miners would have to pay them an annual licence fee. Mackay had no direct responsibility for the Taitapu reserve, which had not been brought under the 1856 Native Reserves Act, but he felt impelled to intervene in order to prevent any trouble between the Maori owners and the miners. He was anxious that any licensing system should be fully legal and without potential to cause conflict between the owners and the holders of licences. It was the usual practice for the government to control licences and create a special court to administer justice on the gold fields, which were mainly on Crown land and therefore automatically subject to any regulations which the Crown might wish to make. Mackay put up notices threatening anyone who went to Taitapu with prosecution, and then travelled to West Whanganui to discuss the situation with the Maori owners.¹²

Mackay held talks with Ngati Rarua at West Whanganui in late January 1862. Ngati Rarua were led at the time by Riwai Turangapeke and Pirimona Matenga Te Aupouri. They told him that they wanted miners to come and take the gold, and had already drawn up an agreement for the miners to sign, which included the standard licence fee of £1 per annum. Unfortunately Mackay did not send a copy of the Maori regulations to the government so we are not able to discover the terms, although some of them were (according to Mackay) 'objectionable'. He told them that the government would have to approve their arrangements with the miners. Mackay did not want to wait for a reference to Auckland, however, for fear that a rush might bring Maori and miners into contact before the government had time to approve a mining agreement. As a result, he asked the two principal rangatira concerned, Riwai Turangapeke and Pirimona Matenga Te Aupouri, to accompany him to Collingwood so that they could sign an agreement with *him* if a rush still seemed imminent. Mackay believed that these chiefs could act on behalf of Ngati Rarua, although he may have felt that

¹¹J. Mackay to Native Secretary, Collingwood, 12 February 1862, in Mackay I, pp. 321–322.

¹²*ibid.*

they would be easier to deal with away from their own land and people. They reached Collingwood in February and found that some Europeans were still intent on a rush to the Taitapu district. Mackay negotiated an agreement with the chiefs to enable Europeans and Maori to mine under government supervision, subject to central government approval of its terms. There was no similar reservation for the wider body of people interested in Taitapu, some of whom did not consider themselves Ngati Rarua, to also ratify the agreement.¹³

A deed of agreement between Ngati Rarua and the Queen was signed by the two chiefs and Mackay on 10 February 1862. Riwai Turangapeke and Te Aupouri gave the Crown the power to permit any European or Maori to mine for gold, and also to live on the land and use timber for gold mining purposes. Miners would pay an annual licence fee of £1 to the government, which would pay the money over to the two signatories for division amongst themselves, their relatives, and any other owners of the block. The chiefs promised to protect miners and assist the magistrates to enforce the law. They also agreed that the rules in force on the Aorere Gold Field should apply at Taitapu, and that any future changes to those rules should also apply at Taitapu. The most sweeping part of the agreement was a blanket clause at the end: 'We also consent that the Governor, or those whom he shall appoint in that behalf, shall have power to make other rules or regulations for the "Taitapu Gold Fields," if he or they shall at any future time deem it necessary to bring into operation any such new rules or regulations'.¹⁴ There was no requirement for the government to obtain the consent of the private owners to any new regulations. Although the Wai 102 claimants pinpoint 1868 as the date at which they lost control of Taitapu, the far-reaching nature of the 1862 deed may make it a more appropriate cut-off point in terms of ceding control of the reserve to the Crown.¹⁵

Armed with this deed of agreement, Mackay assumed control of the Taitapu block, which became known as the West Wanganui Gold Field. It was administered in the early 1860s by James Mackay as Assistant Native Secretary. He collected the licence fees and dealt with the trouble over the boundaries of the block and the question of who was entitled to receive the gold field revenues. In March 1862 the government approved of Mackay's February deed of agreement, and sent him a copy of the original 1855 deed of sale and the map which had accompanied it.¹⁶ When Mackay saw the map he realised that McLean had

¹³ibid.

¹⁴Deed of Agreement, 10 February 1862, in Mackay I, pp. 322–323.

¹⁵Wai 102 A–16(b), Chapter 8, pp. 145–146.

¹⁶H. Halse to J. Mackay, Auckland, 5 March 1862, in Mackay I, p. 323.

left out almost half of the reserve as delineated in the deed itself. He wrote to the Native Department to correct the mistake, and sent a sketch map which he had made during a brief visit to the area in 1857.¹⁷ Henry Halse, Acting Native Secretary, replied in February 1863 that the Crown would accept the boundaries as redrawn by Mackay.¹⁸ This did not end the real confusion over the reserve, however, as it was not accompanied by a proper survey and officials remained uncertain of the land's true nature and extent. Alexander Mackay, who became Commissioner of Nelson Native Reserves and took over Taitapu's administration from his cousin James, reported to the government in 1865 that there were about 44,000 acres in the reserve.¹⁹ The national Commissioner of Reserves, Charles Heaphy, adopted Mackay's figure in 1870 and spoke of the reserve as 44,000 acres in extent.²⁰ Eight years later, however, Mackay had more than doubled his estimate to 105,000 acres.²¹ The Native Land Court eventually granted title of a surveyed block in 1883, at which time the reserve was held to contain 88,350 acres.²² There was a fundamental lack, therefore, in the quality of information possessed by the reserve's administrators as to its actual size, boundaries, and presumably its resultant economic and cultural significance.

Nevertheless, James Mackay took on the problem of deciding who was entitled to receive the mining revenue from this inchoate reserve. He had made an agreement with Ngati Rarua which gave the Crown the right to administer Taitapu as a gold field, but the deed specified that the money would be paid to the two signatory chiefs, who would decide how to distribute it among their relatives and other customary right-holders.²³ Mackay was not prepared to honour this agreement, however, as he felt that Riwai and Te Aupouri were 'disposed to act unfairly towards the other claimants to the Taitapu Reserve, especially those of the Ngatitama and Ngatiawa Tribes'.²⁴ There was some dispute as to the correct customary "owners", although Mackay had not taken this into account when he negotiated his agreement with Ngati Rarua alone. Mackay's cousin, Alexander, took the view in 1865 that as Taitapu had been set aside from a general sale by the Nelson hapu, it was 'a reserve set

¹⁷J. Mackay to Halse, 27 September 1862, in Mackay I, pp. 323–324.

¹⁸Halse to J. Mackay, 24 February 1863, in Mackay I, p. 324.

¹⁹A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

²⁰C. Heaphy, Report on Native Reserves in the Province of Nelson, AJHR 1870, D–16, p. 37.

²¹A. Mackay to Under Secretary for Gold Fields, 2 August 1878, AJHR 1878 H–4, p. 25.

²²Barne, p. 49.

²³See Mackay I, pp. 321–323.

²⁴J. Mackay to Native Secretary, 16 April 1863, in Mackay I, p. 324.

aside for all the Natives of the Ngatirarua, Ngatiawa and Ngatitama tribes, residing in Blind and Massacre Bays'.²⁵ James Mackay felt differently during *his* period of power over the block, however, and took the approach that the land belonged to those specific small communities which had cultivated it in the recent past, which included small sub-groups of Ngati Tama and Te Atiawa.²⁶

James Mackay held a hui at Collingwood in September 1862 to discuss the ownership of the reserve. He proposed a detailed plan of how the land and the gold mining revenues should be divided. The Maori groups refused to accept his scheme but Mackay made them feel their lack of power over the gold field as a result of the February Agreement. He told them that he would not pay over any of the money until they had adopted his plan, even though this was a breach of the agreement.²⁷ Local Maori found that they were powerless to force his hand. There were already about 35 miners on their land and these had all paid their fees to Mackay, who was notorious for refusing to change his mind in the face of Maori discontent or pressure. By April 1863 the Assistant Native Secretary reported that they were beginning to waver, and within ten months of his original ultimatum he was able to obtain Maori consent to his plan of subdivision.²⁸

The matter was discussed by the 'whole of the influential men of the Ngatirarua' at a Collingwood hui called for another reason on 3-4 July 1863. Te Atiawa were also 'well represented at the discussion'. There was a further stormy meeting held on 6-7 July, after which all three hapu agreed to Mackay's terms. Ngati Tama and Te Atiawa agreed to give up any claim to gold mining revenue and all claims on the Taitapu block itself, except for small pieces of land which they had used to cultivate in the past. Ngati Tama were recognised as the owners of coastal cultivations from Kaukauawai to Te Wahi Ngaki, and a block stretching inland for a mile from the back boundary of the old cultivations. Two Ngati Tama rangatira, Wi Katene of Wakapuaka and Paramene Haereiti, received an undefined piece of land at Paturau which they had used to cultivate in common with Ngati Rarua. One of the main reasons for Ngati Tama's surrender on the question must have been the earlier agreement that Ngati Rarua would give up any claim on Wakapuaka in return for Tama doing the same at Taitapu. The final agreement negotiated in July 1863 was between Ngati Rarua

²⁵A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

²⁶Mackay I, pp. 324-326.

²⁷J. Mackay to Native Secretary, 16 April 1863, in Mackay I, p. 324.

²⁸J. Mackay to Native Secretary, 9 July 1863, pp. 324-325.

and the Te Atiawa of Pariwhakaoho in Golden Bay. The whanau of Eruera Tatana Te Keha were recognised as the owners of their old coastal cultivations from Turimawivi to Taumaro, with an inland strip running one mile from the back boundary of the cultivations.²⁹

After negotiating these agreements, Ngati Rarua signed deeds to this effect with Ngati Tama and the whanau of Eruera Tatana Te Keha.³⁰ A map was later drawn up to mark the Tama and Atiawa blocks.³¹ It is important to note that these agreements were witnessed by Alexander Mackay, who included them in his *Compendium* but completely ignored them when he gave evidence to the Native Land Court on the Taitapu block in 1883.³² James Mackay did not follow these agreements up by obtaining Crown Grants for the signatories, and they were later overturned (by omission rather than commission) by the Native Land Court. Mackay also compiled a list of 18 people who were admitted by Riwai Turangapeke as 'Members of the Ngatirarua Tribe' and entitled to share in the Taitapu Reserve. It is interesting to note that both of the Tama rangatira singled out for a special land grant, Wiremu Katene Te Puoho and Paramene Haereiti, were included in this list of Ngati Rarua signed by Turangapeke.³³

After negotiating the July 1863 agreements, Mackay paid the licence fees over to Ngati Rarua and continued to administer the gold field until his departure for Auckland in the following year. He was replaced in 1864 by his cousin, Alexander Mackay, who as Commissioner of Native Reserves administered land which came under the Native Reserves Act of 1856. Alexander usually controlled Taitapu for the rest of the 1860s, even though it was never brought under the 1856 Act. He was able to do so because he normally combined the office of Native Reserves Commissioner with that of Warden of the West Wanganui Gold Field.

The new Commissioner did not have a high opinion of the land at Taitapu and reported that its 'character is very indifferent, consisting chiefly of high hills covered with black birch, portions of it being very rocky and precipitous, but a small portion might be made available for a cattle run'.³⁴ Nevertheless, he felt that it had real economic potential

²⁹*ibid.*, & Wai 102 A-16(b), Chapter 8, p. 148. See Figure 27

³⁰See deeds in Mackay I, pp. 325-326.

³¹Map, 28 May 1864, MA 15/1-26a, National Archives. See Figure 27

³²Mackay I, pp. 325-326, cf. Nelson Minute Book 1, ff. 10-11.

³³Mackay I, p. 325.

³⁴A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

if trade continued to grow on the West Coast and use of the West Whanganui harbour grew along with it. Further fields of coal had been found and a company was interested in leasing land to mine coal and was prepared to pay royalties to the Maori owners. Also, the growing population of miners on the West Coast was ready to sustain a local meat market if the land could be developed for beef farming.³⁵ On the whole, therefore, there seemed to be considerable potential for the development of Taitapu in conjunction with the growing Pakeha economy.

We do not have much information about the administration of the gold field for the first phase of government control, which covered the years 1862-1873. Neither Barne's report nor the *AJHR* provide details of the revenue paid to Maori from licence fees, the extent of profit made by miners from alluvial gold, the relationship between the warden and the Maori owners, or the degree to which part of what must have been a very small revenue from licence fees was swallowed up by administration costs. The Wai 102 claimants suggest of this period that their ancestors were able to influence the administration of their reserve until 1868, at which time the Provincial Government assumed control of it, and that this control was tightened to the point of excluding them altogether after 1873.³⁶ Mackay himself wanted to bring the gold field under the Native Reserves Act of 1856, but this was not to tighten government control but to obtain the revenue for his Trust and share it out among the wider Maori communities of Tasman and Golden Bay, in the belief that the reserve had been set aside for all of them in 1855.³⁷

It was not reserves legislation, however, which controlled the fate of Taitapu, but the various gold field laws of the 1860s. Parliament passed the first Gold Fields Act in 1858 and amended it substantially in 1860. It was these two Acts which were in force when James Mackay signed his agreement with Ngati Rarua in 1862. The Acts gave the Governor power to declare any part of the waste lands of the Crown to be a Gold Field and subject to special regulations. These included a system of mining leases, rents, and licences, a special system of justice under a Warden, and the power to grant agricultural leases for the use of up to ten acres per lease for farming purposes. The only form of private property which could be declared a gold field under these Acts was pastoral runs held on a lease from the Crown.

³⁵*ibid.*

³⁶Wai 102 A-16(b), Chapter 8, pp. 145-146.

³⁷A. Mackay to Native Minister, 6 December 1865, in Mackay II, p. 310.

There was no provision for bringing Maori land or any other privately-owned land under the jurisdiction of the Acts.³⁸

A new Gold Fields Act was passed in 1862 and amended in 1863. The amendment partially lifted this earlier restriction of gold field regulations to Crown land. The Amendment Act changed the definition of Crown land to include 'any other Land whatever over which the Governor shall by lease agreement or otherwise have obtained power to authorise Gold Mining thereon'.³⁹ This extended definition would have covered the West Wanganui Gold Field as a result of the 1862 Agreement between Ngati Rarua and the Crown that mining could take place on the Taitapu Reserve. The same definition was adopted by the new Gold Fields Act of 1866, which also increased the Governor's power to grant agricultural leases on the gold fields.⁴⁰ On 26 May 1868 the Superintendent of Nelson province, Oswald Curtis, issued a Proclamation under the Act to include Taitapu in the Golden Bay Gold Fields. The Wai 102 claimants suggested that this was the point at which 'the Maori owners' administration and management of their asset was wrested from them by intervention under other legislation [meaning other than the 1856 Native Reserves Act]'.⁴¹

It is not clear, however, whether this led to a real change in the administration of the Taitapu gold field. The actual loss of Maori control had come as early as 1862, when two of their rangatira signed the February agreement with the Crown. Alexander Mackay criticised the way in which Taitapu was placed under the gold fields legislation, and he seems to have felt that the provisions of the 1866 Act could not actually be executed on the reserve. He reported to the government that alluvial mining had declined because of infrastructural problems by the time that gold bearing reefs were discovered in 1872.⁴² Heavy machinery and large-scale capital investment were necessary to work the reefs, but nobody was prepared to invest the money unless they could be assured of secure leases. According to Mackay, only annual licences could be granted under the existing regime, and it was necessary to have Taitapu declared a gold field under the 1868 Act before leases could be granted and an infrastructure developed for intensive mining of reefs.⁴³ He was not prepared to grant leases

³⁸*Statutes of New Zealand*, 1858 & 1860.

³⁹*Statutes of New Zealand*, 1863, p. 119.

⁴⁰*Statutes of New Zealand*, 1866.

⁴¹Wai 102 A-16(b), Chapter 8, p. 145.

⁴²A. Mackay to Under Secretary for Gold Fields, 2 August 1878, AJHR 1878 H-4, p. 25.

⁴³A. Mackay to Provincial Secretary, 20 November 1872; A. Mackay to Superintendent of Nelson, 22 March 1873, Outward Letters of A. Mackay, 1871-76, MA-MT-N/1/2, National Archives.

under the 1866 Act, under which the Provincial Government had gazetted Taitapu as part of the Golden Bay Goldfields. He declared that the Superintendent had acted 'ultra vires' by his proclamation because 'the property in question had not been ceded to the Crown'.⁴⁴ Mackay's point needs to be assessed by qualified lawyers as it may be that the 1862 deed did suffice in a technical sense (if not a substantive sense) to allow Taitapu to be brought under the Act. He also claimed that there was no provision in the 1866 Act for the 'issue of either miners' rights or mineral leases to meet the special requirements of the case', which was that Taitapu was still privately-owned land.⁴⁵ Once again it may be that the definitions used in the Act could in fact have been applied to Taitapu, but legal opinion would be necessary to clarify this point.

Nevertheless, the Commissioner clearly felt that the gazetting of Taitapu under the 1866 Act was illegal and that the government could not exercise the powers of that Act. Further action was required in order to bring the gold field more completely under his own control. He reported that there were obvious riches waiting to be tapped but that these could not be realised until the government had the power to offer secure leases (as opposed to annual licences), and to create conditions for the development of stores and better roads. He asked the government to proclaim the West Wanganui Gold Field under the 1868 Act so that the new reefs could be developed through capital investment.⁴⁶ There is no mention in Mackay's correspondence that he sought the agreement of the Maori owners to this proclamation, which the Governor made on 14 October 1873. The proclamation was issued under the Gold Fields Act Amendment Act 1868, which gave the Governor specific authority to bring Maori land under the Act in cases where Maori had consented to 'entry on such lands for mining for gold'. A gazette notice was held to be conclusive proof that such consent had been obtained.⁴⁷ The 1873 proclamation claimed that 'the consent of the Native owners of the land described in the Schedule hereto, authorizing entry thereon for the purpose of mining, has been obtained by the Governor as required by the...Act'.⁴⁸ Further research is necessary to determine whether the government sought consent in 1873 from the wider group of owners

⁴⁴A. Mackay to Under Secretary for Gold Fields, 2 August 1878, AJHR 1878 H-4, p. 25.

⁴⁵ibid.

⁴⁶A. Mackay to Provincial Secretary, 20 November 1872; A. Mackay to Superintendent of Nelson, 22 March 1873, Outward Letters of A. Mackay, 1871-76, MA-MT-N/1/2, National Archives.

⁴⁷*Statutes of New Zealand*, 1868.

⁴⁸*New Zealand Gazette*, 1873, p. 572.

as identified by James Mackay in 1863, or whether it relied on the February 1862 deed of agreement. The evidence of Alexander Mackay's letterbook and the *AJHR* suggest that the government simply relied on the old agreement with Riwai Turangapeke and Matenga Te Aupouri. It seems unlikely that these Maori had contemplated the issue of long-term leases over parts of their land when they had signed that agreement in the early 1860s, which had been designed (as far as they were concerned) to institute annual licence fees for alluvial mining.

The gazetting of the West Wanganui Gold Field in 1873 led to a new phase in its exploitation and administration. Alexander Mackay continued to act as Warden of the gold field, and in 1875 he granted a lease of fifteen acres to the Golden Ridge Goldmining Company for £16 per annum. One or two other companies had been formed in 1874 but had not really got off the ground, but the Golden Ridge Company had a starting capital of £11,000 and continued its mining activities throughout the 1870s and 1880s.⁴⁹ There was also a coal mining company in operation but its lease arrangements and royalty payments were not included in the *AJHR* gold field reports. Some alluvial mining continued alongside the new company venture but it did not provide a great deal of money in licence fees and had declined considerably by the end of the 1870s. Mackay's prediction that large-scale investment and the development of roads and other services would follow the proclamation of Taitapu under the Gold Fields Acts was not in fact fulfilled by 1883. West Wanganui produced significantly less revenue than other gold fields in the South Island or Hauraki, but the reasons for its apparent non-profitability need to be carefully researched.⁵⁰

Barne recorded that the Golden Ridge Company had mined about £8,000 worth of gold in its first four years of operations but he does not include a calculation of the costs involved or the amount of actual profit made by the company.⁵¹ The figure for the company's rent in this period was a total of £64 paid over four years. It seems remarkable that gold was selling for £4 per ounce in 1877, a year in which the Taitapu field produced only £36.6.0. for its owners in rents, fees, and other gold-related revenue.⁵² Nor does the available *AJHR* evidence enable us to calculate how much of this revenue was expended by the Warden in administration costs before he paid the remainder to the Maori owners. Further comparative

⁴⁹Barne, pp. 40–54. See also annual gold field reports in *AJHR*.

⁵⁰See gold field reports in *AJHR*, in the H series from 1875–1884, and the C series from 1885–1887.

⁵¹Barne, pp. 45–46.

⁵²See Table 2.

Final Large-Scale Alienations

research should be done to assess the profitability of the gold field, the level of rent charged for its leases as opposed to similarly-circumstanced gold fields on Crown lands, and the degree to which Ngati Rarua were obtaining a fair return from their reserve. The following table suggests that the gold field was producing a very low income from leases and licence fees until the years 1883-1884.

WEST WANGANUI GOLD FIELD REVENUE, 1875-84			
YEAR	£	s	d
1875	32	2	0
1876	53	0	0
1877	36	6	0
1878	24	3	6
1879	31	19	6
1880	29	16	0
1881	27	5	0
1882	37	9	0
1883	71	9	0
1884	91	19	0

Table 2

Source: AJHR 1874-1886

According to the Wai 102 claimants there were further changes associated with the tightening of government control under the Gold Fields legislation. Mitchell suggests that Ngati Rarua had supported the annual licence system but were not favourable to longer-term leases, and that their occupation and use of the block was 'severely curtailed' by the new regime:

From the time of the proclamations Maori ceased to have any further say in the management of Te Tai Tapu. Their continued occupation of the reserves was also severely curtailed since large-scale mining operations were now permitted over large tracts of their land, and leases for coal-mining, logging and farming were granted as well. Effectively the Maori owners had been forced off their land. The pressure on them to quit the block altogether intensified as various

commentators lobbied to rationalise its use and management...⁵³

Coal mining leases were not included in the material published in the *AJHR* on gold fields, but the yearly returns do record agricultural leases on the fields. No such leases were recorded for the West Wanganui gold field, and further research would be necessary to ascertain exactly how much (if any) of the usable land at Taitapu was alienated in this way. There was certainly an increase in the number of gold-mining leases in 1883, with the granting of six leases for a total of 87 acres, which produced £88 in rentals for the year 1884.⁵⁴ This upswing in revenue was accompanied by the sale of the whole reserve and its passage out of the control of the government into the hands of private Pakeha owners.

There had been pressure on the Maori owners to sell the freehold of the reserve since the discovery of rich reefs in 1872. By 1874 the Provincial Government was considering buying the block, and it had been suggested in the Council that the Maori be forcibly removed from the reserve if necessary, and given an equivalent block of land elsewhere. Alexander Mackay opposed these proposals on the grounds that the Maori did not want to sell the land, and that even if they did the price would be too high because they were aware of the value of the gold-mines. He felt that Maori were only entitled to the worth of their land in terms of agricultural value, which he felt was not very high apart from a few hundred acres. He argued that substitution of a block of equal size could not be contemplated for that reason.⁵⁵

The Provincial Government seems to have abandoned the idea of buying the block in the mid-1870s, but the question of whether Ngati Rarua were getting an adequate return from their reserve remained an important one after the heady hopes of 1872-73. The government did not lose sight of the fact that Taitapu might be a desirable purchase at some point in the future. In 1881 the government laid a return of reserves before the House which classified Maori reserves in terms of alienability. According to the official view, all the South Island reserves were inalienable with the single exception of Taitapu, which was still being described as 44,000 acres in size. The government thus singled out the only Maori gold field in the

⁵³Wai 102 A-16(b), Chapter 8, p. 147.

⁵⁴AJHR 1884 H-9, p. 56 & AJHR 1885 C-2, p.55.

⁵⁵A. Mackay to Clarke, memorandum, September 1874, Outward Letters of A. Mackay 1871-76, MA-MT-N/1/2, National Archives.

South Island, and the only really large reserve in terms of area, as available for sale.⁵⁶

The sequel to this government decision was the passage of Taitapu through the Native Land Court in 1883, and its sale to a private concern in the following year. Taitapu was the first block to be heard when Judge Mair brought the Native Land Court to the northern South Island for its inaugural hearing of Te Tau Ihu claims. Dr. Mitchell suggests that the 'rights and wishes of many legitimate owners, especially those of Te Atiawa and Ngati Tama affiliation, were denied or ignored at the Native Land Court sitting'.⁵⁷ He felt that the three Ngati Rarua trustees appointed by the court did not adequately represent all 'interested owners'. He also notes that the Tatana family, who had been recognised as the owners of the Turamawivi Valley by both Ngati Rarua and James Mackay in 1863, were particularly aggrieved by their exclusion from the block in 1883.⁵⁸

The hearing opened with the claim of Wirihana Turangapeke on behalf of a list of fifteen people, on the grounds of conquest and occupation. Twelve of the named owners were held to belong to Ngati Rarua, but the list also included Henare Tatana himself of Te Atiawa, and the two Ngati Tama chiefs who had been the subject of a special deal in 1863, on top of the small block granted at that time to the wider community of Ngati Tama.⁵⁹ These rangatira were Paramena Haereiti and Wiremu Te Katene's daughter and heir, Huria Matenga. There were cross-claims from the Kurahaupo Alliance (Ngati Apa, Rangitane, and Ngati Kuia) and Puketapu of Queen Charlotte Sound. Henare Tatana (of the local Te Atiawa) made a cross-claim after the main hearing.⁶⁰

The Ngati Rarua witnesses argued that they had conquered and taken possession of the land, that they were there when the Company came to Golden Bay, and that they had been the sole receivers of the gold revenues. They also claimed that Te Atiawa had never occupied the land (and this was true of the particular Puketapu claimants), and that Ngati Apa had been conquered and destroyed. The Puketapu claimed to have participated in the conquest but in general admitted that they had not occupied the land. The Ngati Apa witnesses claimed by right of ancestry, and some by continued occupation. One or two witnesses claimed that they

⁵⁶AJHR 1883 G-7B. It should be noted that D'Urville Island does not seem to have been included in the calculation of reserves for the South Island.

⁵⁷Wai 102 A-16(b), Chapter 8, p. 148.

⁵⁸ibid.

⁵⁹see above, pp. 204-206.

⁶⁰Nelson Minute Book 1, ff. 3-11.

had never been enslaved at all, and that the conquest itself was not legitimate because it had not been justified by an adequate customary take.⁶¹ The final witness was Alexander Mackay and the court seems to have relied largely on his testimony. He argued that Ngati Rarua had conquered the block and had been in occupation in 1840 when the Treaty was signed, and were still in possession of the block at the current time. He also pointed out that Ngati Rarua had given permission for mining and had received the resultant rents, although he added that a few Te Atiawa had also been paid money from these rents. He did not mention that a decision had been made to pay the rents to Ngati Rarua in return for Ngati Rarua's recognition of Ngati Tama and Te Atiawa rights in certain small parts of the block.⁶² This may have amounted to suppression of evidence, as Mackay had signed those agreements as a witness and had included them in his *Compendium*.⁶³ It was the verdict (carefully worded) of a later Native Land Court judge that Mackay's involvement in the Maori affairs of the region made him an unreliable and partial witness.⁶⁴

Judge Mair found in favour of Ngati Rarua, on the grounds that the 'land was conquered and the Court has no power to re-instate these latter tribes [Ngati Apa, Rangitane, and Ngati Kuia]'. He also found that Te Atiawa had not occupied the block and therefore could not be admitted as owners. He refused to entertain the late claim of Henare Tatana, whose whanau had in fact occupied part of the block.⁶⁵ This judgement was based on a narrow interpretation of custom, and also on a decision to determine ownership according to custom as at 1840 and the present day. It did not acknowledge the effect of intervening transactions, including the Waipounamu Purchase of 1855 and the three deed agreements of 1863. This was in curious contrast to the later actions of the court in other parts of the northern South Island, where the judges sometimes took the view that their task was to determine who had been made the owners of the reserves at the time at which they were excepted from sale by (and for) certain right-holders and the Crown.⁶⁶ The statutory responsibilities of the judges in this respect, and the adequacy (and appropriateness) of statutory provisions for the hearing of land reserved from sale to the Crown, will have to be

⁶¹ibid.

⁶²ibid., ff. 10–11.

⁶³see above, p. 206.

⁶⁴Judge Harvey re Wakapuaka, AJHR 1936 G–6B, p. 56.

⁶⁵Nelson Minute Book 1, ff. 11, 67.

⁶⁶See below, forthcoming chapter on the Native Land Court.

carefully assessed by the Tribunal.

There were further matters of concern with regard to the Native Land Court hearing of Taitapu. The judge did not ask the claimants whether they had land elsewhere for their support or make any effort to determine whether restrictions should be placed on the title. The successful claimants did not ask for a restriction, and may have already been contemplating a sale of the block.⁶⁷ Again, the statutory obligation of the court needs to be assessed in terms of its performance in this respect. Also, Dr. Mitchell suggests that three Ngati Rarua rangatira, Wirihana Turangapeke, Rore Pukekohatu, and Tapata Harapeka, were made trustees for the list of fifteen owners submitted to the Court by Ngati Rarua.⁶⁸ Research needs to be done to determine whether any constraints were placed on these 'trustees', and to establish whether they consulted other interested parties during subsequent negotiations to sell Taitapu.

The major secondary source for the sale of the block is Barne's report for the Forestry Service. According to Barne, the Collingwood County Council asked the new "owners" (trustees?) to sell Taitapu to the central government, but the government was not interested in buying the block. After this response the Taitapu owners turned to the private sector and had arranged a sale by June 1874, only six months after its passage through the court. A Wellington syndicate paid £10,000 for the reserve in the name of a local solicitor, Alfred Brandon, as an investment for future exploitation. They did not send anyone to look at the block and report on its potential until four years after they had made the purchase. Barne did not include any material about the reason for the sale, the adequacy of the price in terms of the value of gold and other resources, or the extent to which the purchase money was distributed among the right-holders.⁶⁹ It may be that the owners had despaired of ever recovering control of the block from the government, and that they felt it preferable to make an immediate profit rather than receive a pitiful amount of rent from gold-mining leases. It is interesting that the sale took place just as the gold field was starting to bring in a more significant return. The government ceased to publish the details of gold revenue for the West Wanganui field after the sale in 1884, so it is not possible to be certain whether this was a temporary aberration or a permanent improvement.⁷⁰ It is clear, however, that the syndicate

⁶⁷Nelson Minute Book 1, ff. 1-11.

⁶⁸Wai 102 A-16(b), Chapter 8, p. 148.

⁶⁹Barne, pp. 49-50.

⁷⁰See Table 2; AJHR 1884 H-9; & AJHR 1885 C-2.

obtained a much higher price when they resold the land ten years later for £25,000.⁷¹

The sale of Taitapu to private Pakeha interests excluded both the previous owners and the previous administrators from the block. The Native Land Court approved the sale in June 1884 without recommending any reserve for Maori. The entire 88,000 acre endowment, which McLean had characterised as necessary for their present and future needs in 1856, passed conditionally out of Maori hands in 1862 and absolutely in 1884. The Warden lamented that the sale had also removed the field from his control, as the proclamation under the Gold Fields Act Amendment Act of 1868 could only apply to privately-owned Maori land and not to privately-owned Pakeha land. The only powers which the government could still exercise under the Gold Fields Acts applied to the special administration of justice by the Warden's court. Unaware of the irony in his attitude to the previous Maori owners, the warden wrote to the government: 'I cannot conclude my remarks on this part of the district (West Wanganui) without expressing my regret that the fee-simple of this valuable block of mining country should be allowed to pass into the hands of private individuals'.⁷²

II RANGITOTO

Rangitoto (D'Urville Island) was reserved from sale in 1853 by the Ngati Toa chiefs who negotiated the Waipounamu Purchase with Governor Grey. As far as we are aware, Rangitoto was not discussed with Ngati Koata or Ngati Kuia when arrangements were made to purchase their interests on the mainland. The reason for this is unclear, as the Provincial Government clearly wanted to obtain the island at the same time as other Maori claims were extinguished. Governor Gore Browne seems to have stopped Major Richmond's initiatives in this respect, but he did promise to bring the matter before Parliament. Presumably the Governor felt some hesitation about authorising the purchase of a large piece of land which had been made a reserve only three years before. Richmond felt no such scruples and advised McLean to begin preliminary negotiations. Olive Baldwin recorded that there were 'several abortive attempts to sell d'Urville Island when Ngati Koata seemed to be asleep but really were not'.⁷³

⁷¹Barne, p. 54.

⁷²W. Gibbs to Under-Secretary for Gold Fields, Collingwood, 16 April 1883, AJHR 1883 H-5, p. 26.

⁷³Baldwin I, p. 97.

As a result, Rangitoto retained its pre-1853 status long after the Waipounamu Purchase. It was not included in official lists of reserves (the reason for this is uncertain), and the people who stipulated for its reservation were not given Crown Grants.⁷⁴ Rangitoto remained under Maori customary tenure, although the residents soon began to lease parts of the available land to settlers for clearing and farming, and also for mineral prospecting. The Maori community developed land for market-gardening at the southern end of the island in the 1860s and 1870s. It is not clear how much of the remainder of the island was leased to settlers. Leases were not always registered and were made without the authority of the Native Land Court, or any determination by that court as to which right-holders were entitled to make leases.⁷⁵

The main secondary source for the history of D'Urville Island is Olive Baldwin's three-volume study of the area, which includes some information on the Native Land Court hearings and the subsequent leasing arrangements made in the nineteenth and early twentieth centuries. Baldwin did not, however, trace the alienation of Maori freehold in the twentieth century. Intensive study of court minute books and other Native Land Court records will be necessary to explain the twelve-year process by which title to the island was decided, and to illuminate the details of the way in which land was leased and gradually sold with the approval of the court.

In the meantime, however, a general outline may be provided from Baldwin's studies and a brief survey of the court minute books. The Native Land Court held its first sessions in the northern South Island in 1883, when Judge Mair heard the three main blocks excepted from sale in the 1850s. The minutes for the Rangitoto hearing are very scanty, and most of the business was actually settled out of court. A list of 78 names was submitted to the judge in the name of Ngati Koata. Ngati Kuia did not make a counter-claim so the court awarded title for D'Urville Island 'and surrounding Islands (small) to Ngatikoata'.⁷⁶ Some of the people present at court, however, objected that the list of owners was not complete, so the court adjourned to allow the list to be revised. The chief Hapiata handed in a new list on the following day, but after further objections the judge gave it back again and told 'the Natives interested that they must settle the matter outside'. Three days of out-of-court negotiations

⁷⁴AJHR 1870 D-16, pp. 37-45.

⁷⁵Baldwin III, pp. 6-7.

⁷⁶These islands included Takapourewa, or Stephens Island, which was recently the subject of Waitangi Tribunal mediation between the Crown and Ngati Koata.

resulted in the submission of another new list of 60 people, which was read out and approved by the court. Although there were no challenges to the names on the list, some claimants maintained that many people had still been left out. The judge accepted a further list of nineteen names, which was endorsed by the court 'after discussion'.⁷⁷

This discussion was not recorded in the minutes, but any satisfaction with the decision was relatively short-lived. According to Baldwin, some court attenders without any actual rights managed to get their names written down on the list simply because they were on the spot. On the other hand, names had been missed out because a lot of people were either away at the West Coast gold fields or absent in the North Island, and had not been informed of the court sitting.⁷⁸ Karepa Te Whetu petitioned Parliament in 1890 on behalf of himself and twelve others, asking for an Act to insert their names into the list of owners. The Native Affairs Committee recommended that the petitioners should apply for admission to the title under section 13 of the Native Land Court Amendment Act, 1889, which enabled the inclusion of persons who had been 'inadvertently omitted'.⁷⁹

In the meantime, the court had already sat on northern South Island cases in June 1890, and there were no further hearings for Rangitoto until Judge Mackay sat at Porirua in 1895.⁸⁰ The 1890 hearings had concentrated on succession orders, but in 1895 Renata Te Pau applied for a partition order, which meant that the court had to determine the respective shares of the 1883 title-holders. Many of these people were no longer living on D'Urville Island. According to Baldwin, there was a 'great exodus' of people in 1890, most of whom went to the North Island, although a few went to live in the Sounds and at Nelson.⁸¹ One of the court witnesses referred to this relocation in 1895: 'Ngatikoata left Rangitoto and settled at Kaiarau to be nearer to Nelson'.⁸² Baldwin suggested that 'not many' people stayed behind, but more detail on the actual numbers would be helpful, and also the extent to which those who 'left' did so on the basis of returning regularly to use resources. These details are important for assessing the impact on Ngati Koata of gradual land alienation on D'Urville Island. Furthermore, both Baldwin and the Maori Land Court minutes are silent on the subject

⁷⁷Nelson Minute Book 1, ff. 12–13, 28–29.

⁷⁸Baldwin I, p. 96, & Baldwin II, p. 8.

⁷⁹Petition of Karepa Tengi & others, AJHR 1890, I–3, p. 11.

⁸⁰Nelson Minute Book 2, ff. 51–150.

⁸¹Baldwin III, p. 7.

⁸²Nelson Minute Book 3, f. 195.

of Ngati Kuia, numbers of whom were still living on the island, intermarried with Ngati Koata but excluded from the titles as a corporate entity. Further research would be necessary to examine the impact of the Land Court decisions on Ngati Kuia, and the extent to which they accompanied Ngati Koata in the 'exodus' of 1890.

In 1895 Judge Mackay held a sitting of the Native Land Court at Porirua, which heard the application for partition of Rangitoto into individual shares. The court had determined in 1883 that the 80 title-holders had 'unequal shares', but these were not separated and defined until the 1895 session. As with the original determination of owners, most of the details were decided out of court by Ngati Koata themselves, through their runanga and a small komiti of prominent chiefs. They divided Koata into four classes of owners, who were allotted an acreage according to their time of arrival on the island, their relationship to the original heke, and their descent from various categories of right-holders. This process took three days of intensive discussion before the final allocations were approved by what one witness described as 'the runanga' and another witness as a komiti. Hohepa Horomona read the list of owners and their entitlements to the court on 29 June. The list was challenged on two grounds: Renata Te Pau wanted to add the names of people who had been missed out in 1883, while one or two objectors felt that the person from whom they derived their rights had not received a large enough share of the available acres. The judge rejected both types of objection and endorsed the list in its original form.⁸³

According to Baldwin, this hearing of the Native Land Court revised the list of owners in order to include those who had been omitted in 1883.⁸⁴ This does not appear to have been the case, as Judge Mackay maintained that the original decision could not be altered. Karepa Te Whetu, who had been advised by Parliament to apply under Section 13 of the 1889 Act, lodged a claim at this hearing of the court and explained to the judge that a number of people had been overlooked in 1883. Maori opinion was divided about the culpability of the court in this matter. Karepa himself argued that Judge Mair should not have been expected to know that there were significant right-holders missing from court. Hohepa Horomona, however, criticised the court for accepting the Ngati Koata list uncritically when it had the original Koata deed of sale before it in evidence: 'It might be fairly argued that as the Court had the Deed of Sale before it, that it ought to have questioned the people as to who the persons were

⁸³ibid., ff. 159–166, 168, 195, & passim.

⁸⁴Baldwin I, pp. 96–98, & Baldwin III, p. 8.

who were attached to the Deed of Sale and whether they had descendants alive and also whether they had any right to the land'.⁸⁵ Although Judge Mackay could not alter the original list on his own authority, he did inform Karepa that he would report the situation to the Chief Judge.⁸⁶ Karepa's case does not appear to have been reheard by the court in the next few years, but a close study of the *Gazette* would be necessary to determine if the Chief Judge altered the title to include Karepa and his fellow claimants.

Judge Mackay did allow the inclusion of new owners through an alternative mechanism. Hohepa Horomona informed the court that some of the existing owners wanted to allot part of their shares to 'their relatives who were not in the title'. The judge agreed to make Transfer Orders for 2,191 acres, which would be held in trust until the orders could be written and executed. Karepa Te Whetu, however, only received two acres through this process, so it may not have satisfied those excluded by the original Land Court hearing.⁸⁷

After Ngati Koata had decided on the number of acres per person, the Court proceeded to divide Rangitoto into eleven blocks, and to allot shares in the blocks to particular Maori owners. It is not clear whether Ngati Koata had any input into deciding where their shares would be located. No discussion was recorded in the minutes, but it is difficult to see how land could have been allocated in this way without consulting the owners.⁸⁸

After allocating shares within the new blocks, the court placed restrictions on the alienation of land on the island. On 31 July 1895 Judge Mackay ordered that the D'Urville Island blocks and the outlying islands be made inalienable, except by lease for up to twenty-one years.⁸⁹ Although the owners could not sell the freehold, therefore, the court endorsed the status quo on the island in 1895, which was that most of the land had been leased to five Pakeha farmers. It also approved a fresh lease to a new farmer, after inquiring into the sufficiency of land left to the Maori owners.⁹⁰ The process of alienation by lease continued into the twentieth century, alongside the gradual relaxation of restrictions on the sale of the freehold. By 1979 only 5,000 acres remained in Maori ownership, although further study is clearly necessary to determine how far Ngati Koata were willing sellers, and whether they

⁸⁵Nelson Minute Book 3, ff. 203–204.

⁸⁶*ibid.*, & f. 202.

⁸⁷*ibid.*, ff. 212–213.

⁸⁸*ibid.*, ff. 243–249.

⁸⁹*ibid.*, ff. 250, 267.

⁹⁰*ibid.*, ff. 223–224, 251–252.

made significant gains from the leasing and gradual sale of their lands.⁹¹

One part of the D'Urville Island patrimony was permanently alienated in the nineteenth century. The outlying islands were made inalienable in 1895, but Takapourewa (Stephens Island) had just been taken by the government under the Public Works Act of 1894. The government wanted to build a lighthouse there and decided to take the entire island for that purpose. Ngati Koata refused to accept the government's offer of compensation, which had been set at 5s per acre, so the Public Works Department applied to the Maori Land Court to set the compensation under Section 90 of the Act. The Department's witness maintained that the land was worth 5s per acre at the most, but a pastoral farmer appeared on behalf of Ngati Koata and deposed that he would pay 10s an acre for the island on the basis of its grazing land. The farmer, however, was already a lessee on D'Urville Island and was clearly as interested a party as the Department's witness. Nobody engaged an expert valuer or surveyor to look at the land, and the judge noted with some concern that the Department's witness had no expertise in land-use at all.⁹²

Ngati Koata were not concerned with Takapourewa purely for European-style economic reasons. They pointed out that the island was an important source of birds, which they used for food and for trade with other Maori communities. The court did not take account of this traditional resource-use when it decided the level of compensation appropriate for the island. Instead the judge assessed 'value' purely in terms of unimproved land and its suitability for pastoral farming. Furthermore, he asserted that the Act required him to determine the value of the land at the time it was taken, rather than its potential for development. Having made these points, however, Judge Mackay resorted to the simple expedient of setting the value at half-way between the claims of Crown and Maori. He ordered the Department to pay 7s 6d per acre, which amounted to £130 for Koata and £10 for their lawyer.⁹³

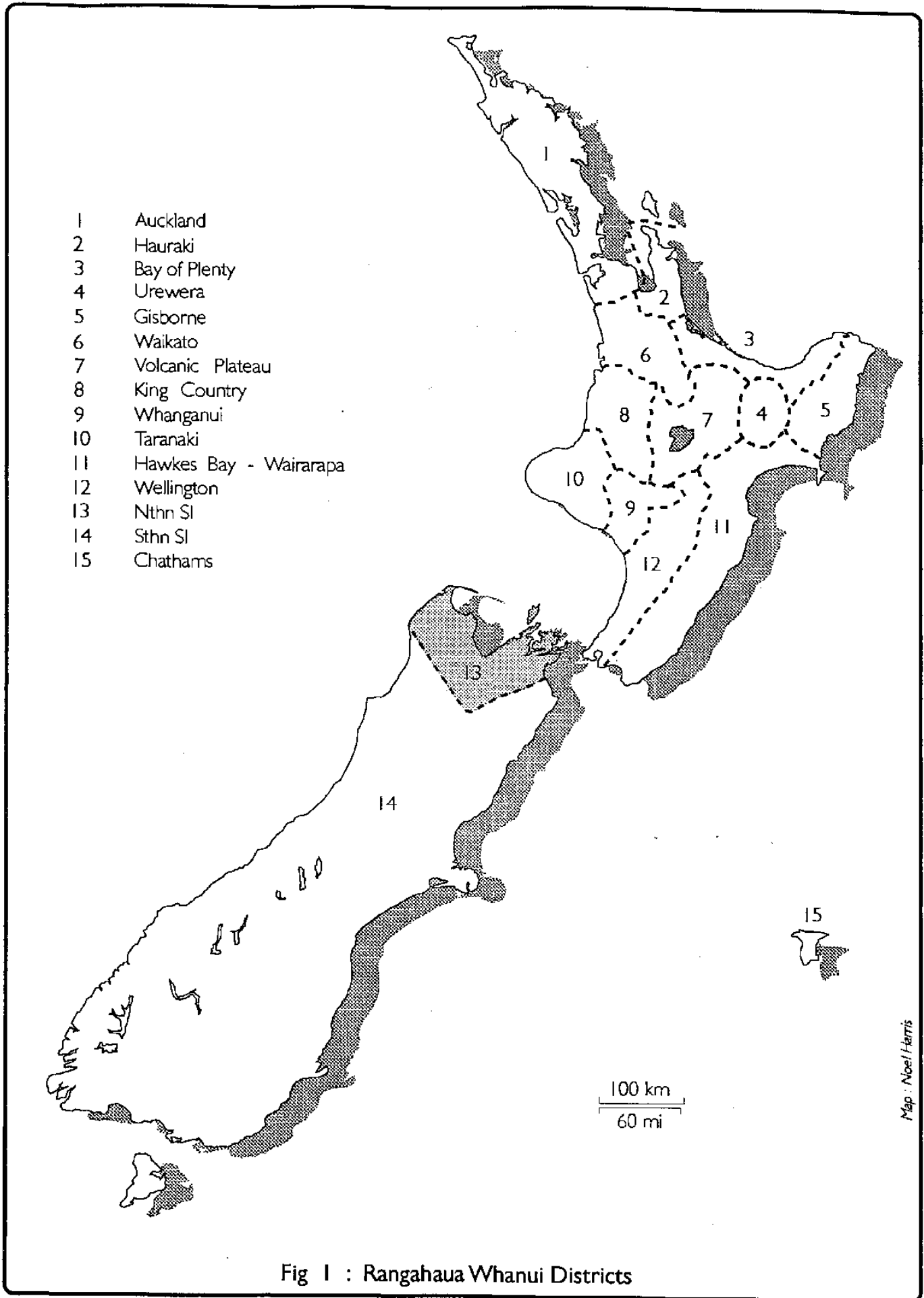
By 1900, therefore, most of D'Urville Island had been leased to Pakeha farmers. Baldwin traces the history of the lessee families in her books, although she does not identify the point at which they acquired the freehold of the land. The only permanent alienation by the end of the century had been the compulsory taking of Takapourewa by the Public Works

⁹¹Baldwin I, p. 100.

⁹²Nelson Minute Book 3, ff. 235–238, 255–266.

⁹³ibid.

Department. There is some uncertainty, however, about the number of Ngati Koata (and Ngati Kuia) who remained on D'Urville Island or who made periodic visits for resource-use. Further research is necessary to trace the details of land alienation in the twentieth century, and the extent of its impact on Ngati Koata and Ngati Kuia.



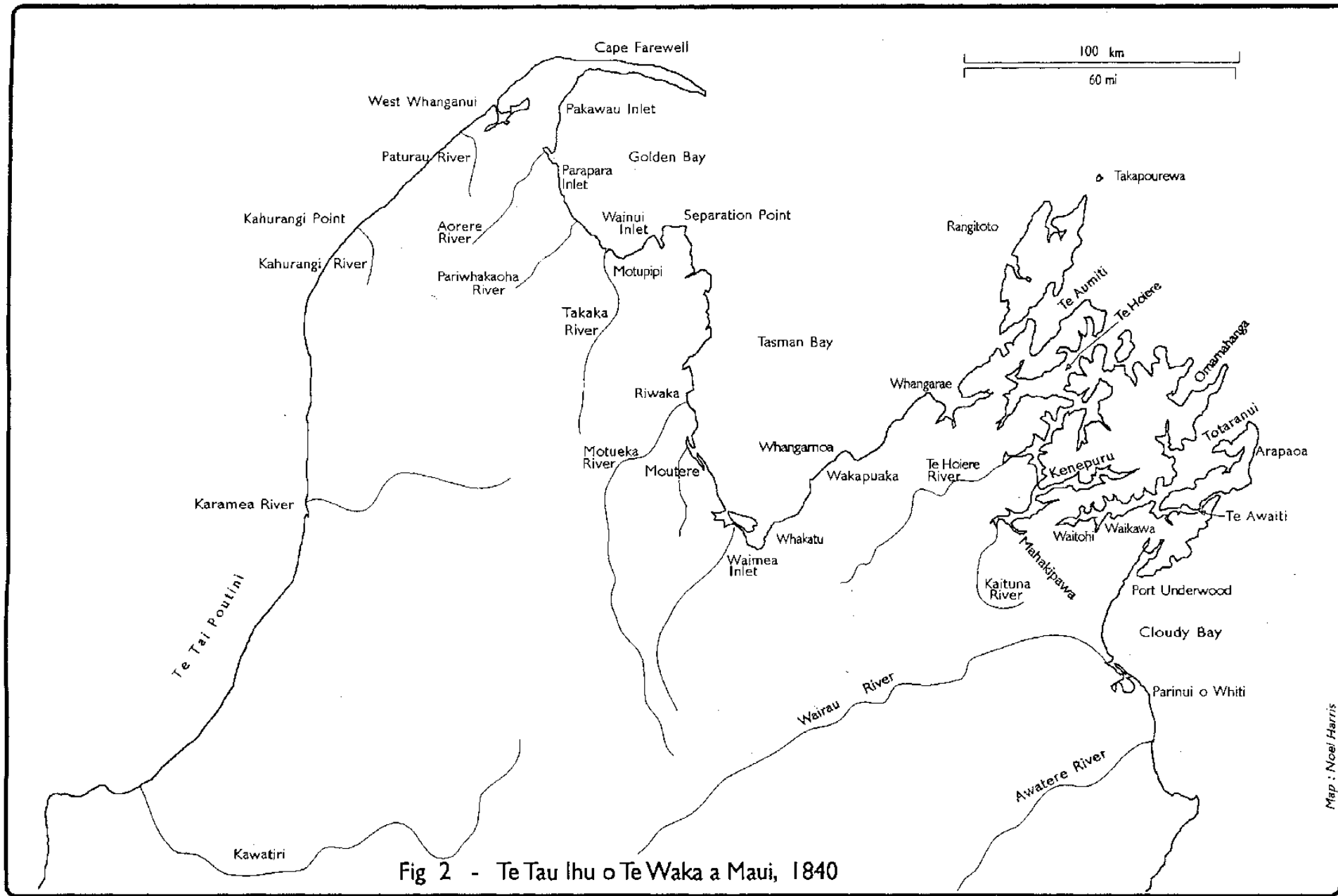
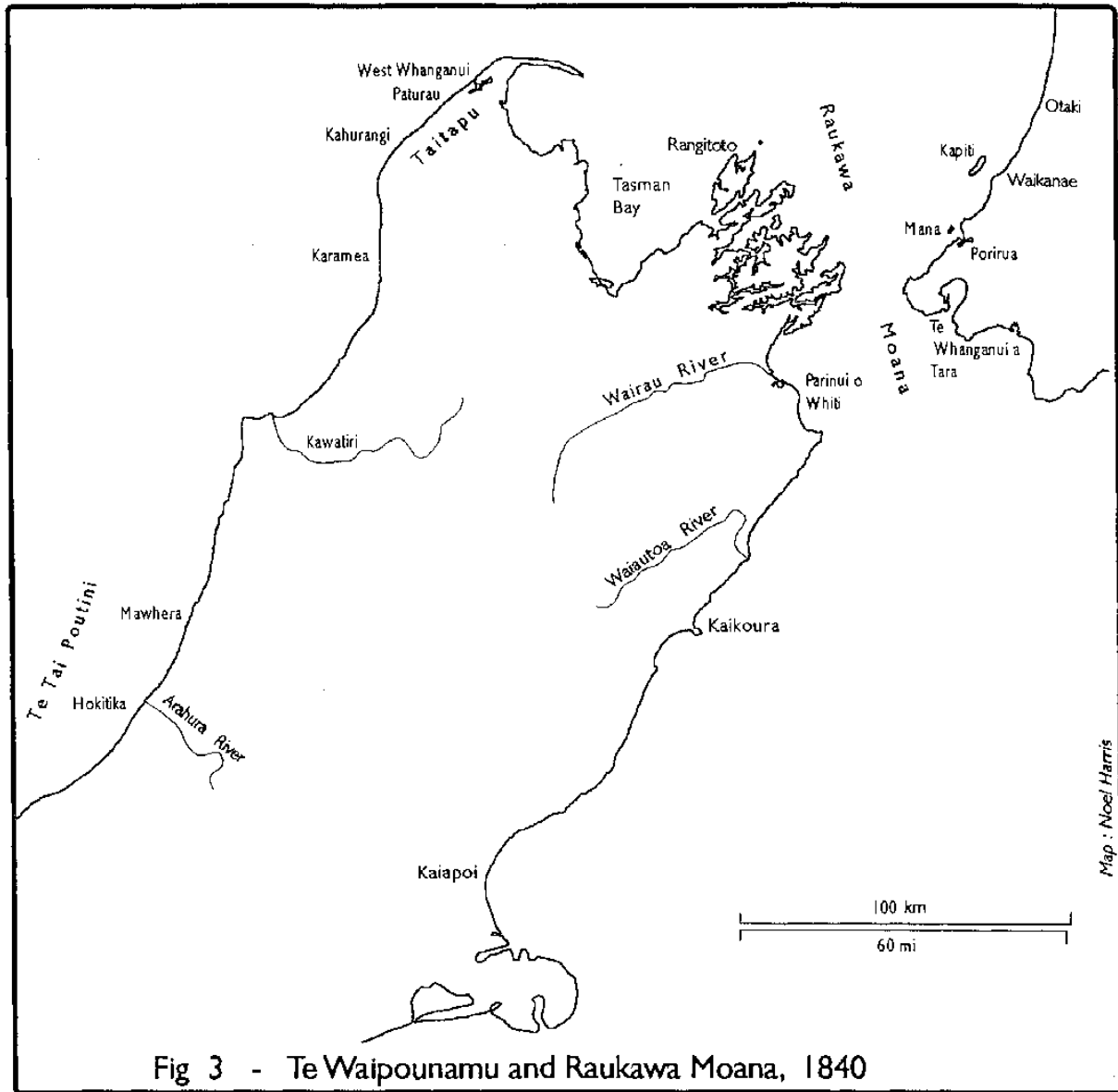
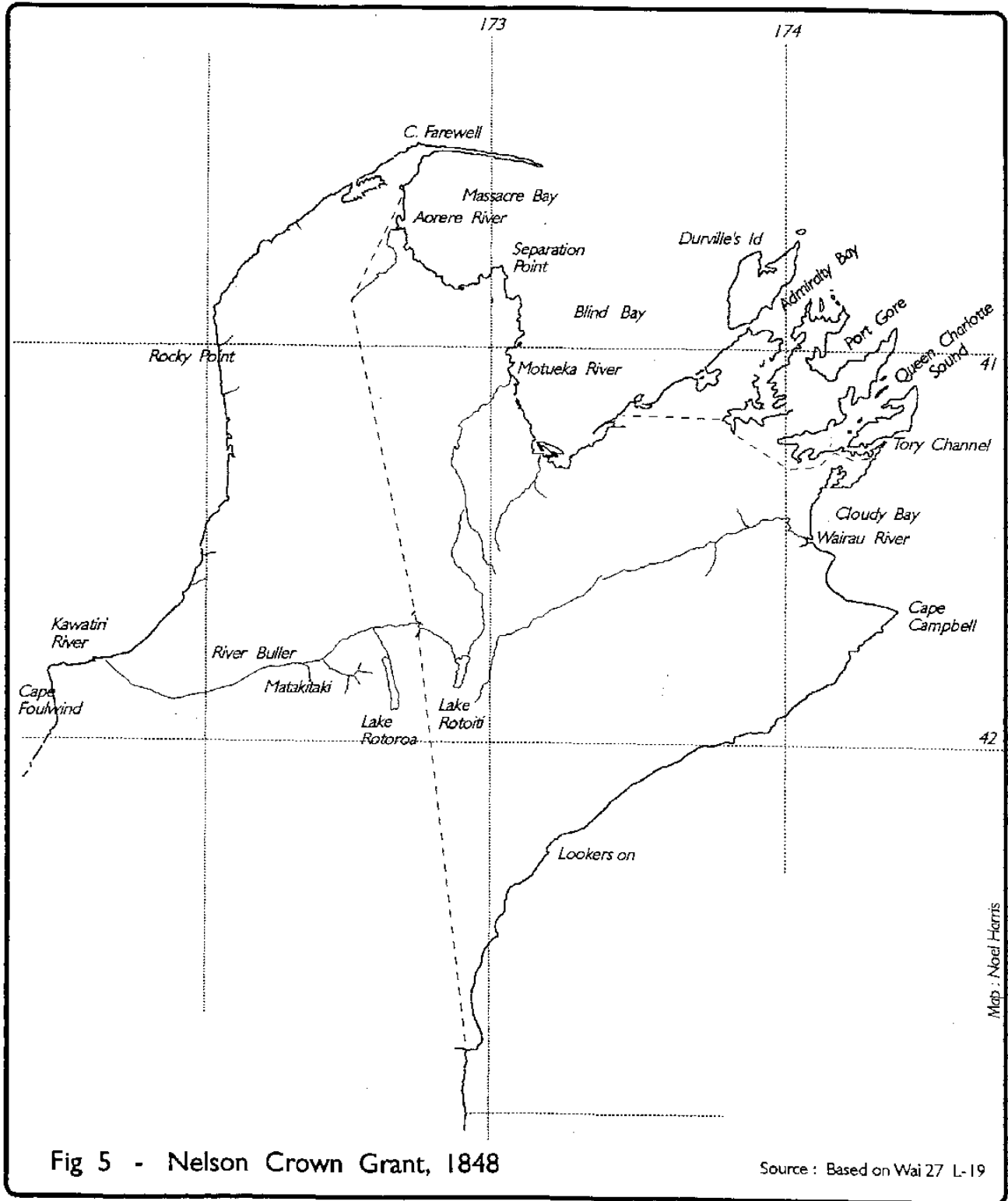


Fig 2 - Te Tau Ihu o Te Waka a Maui, 1840





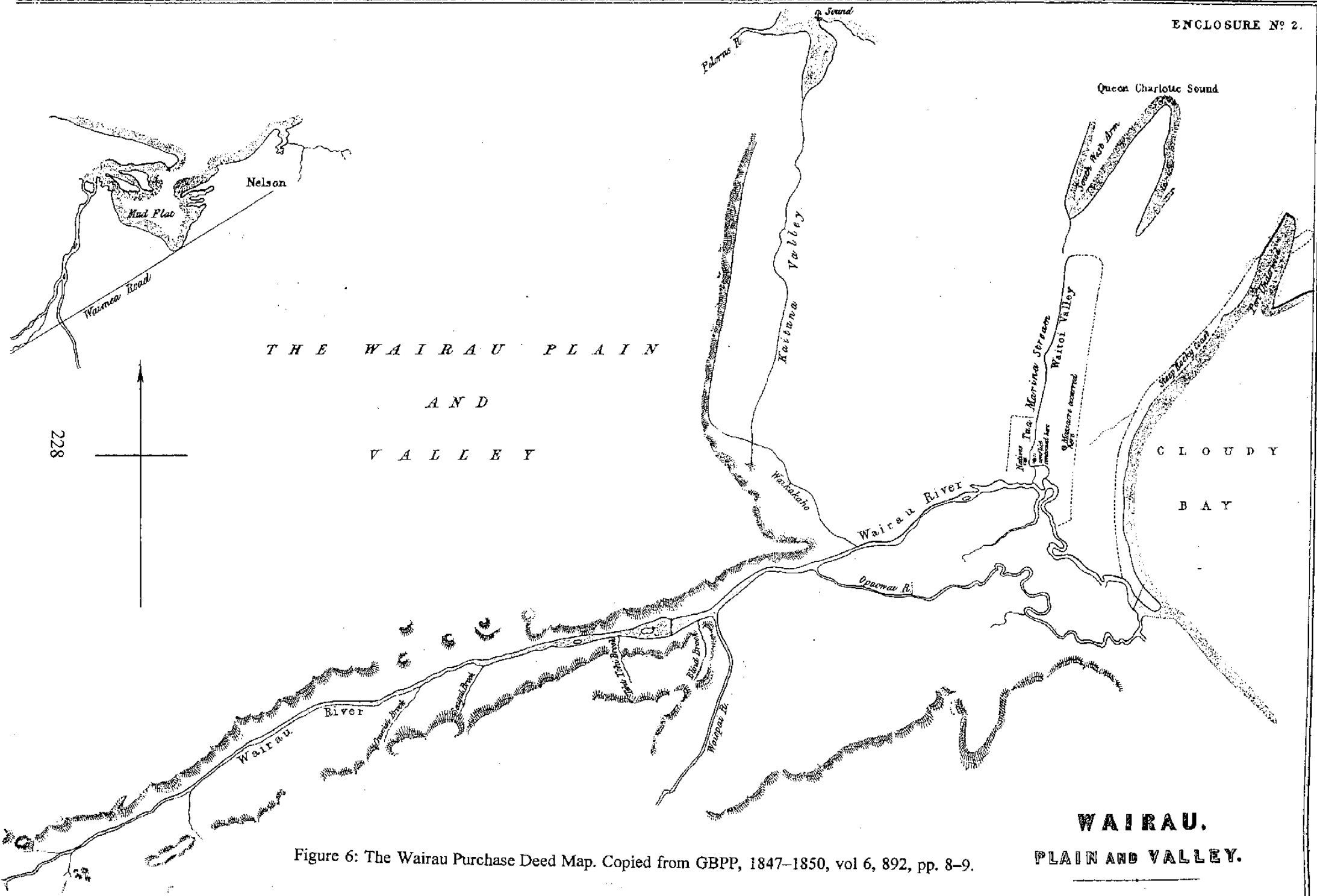
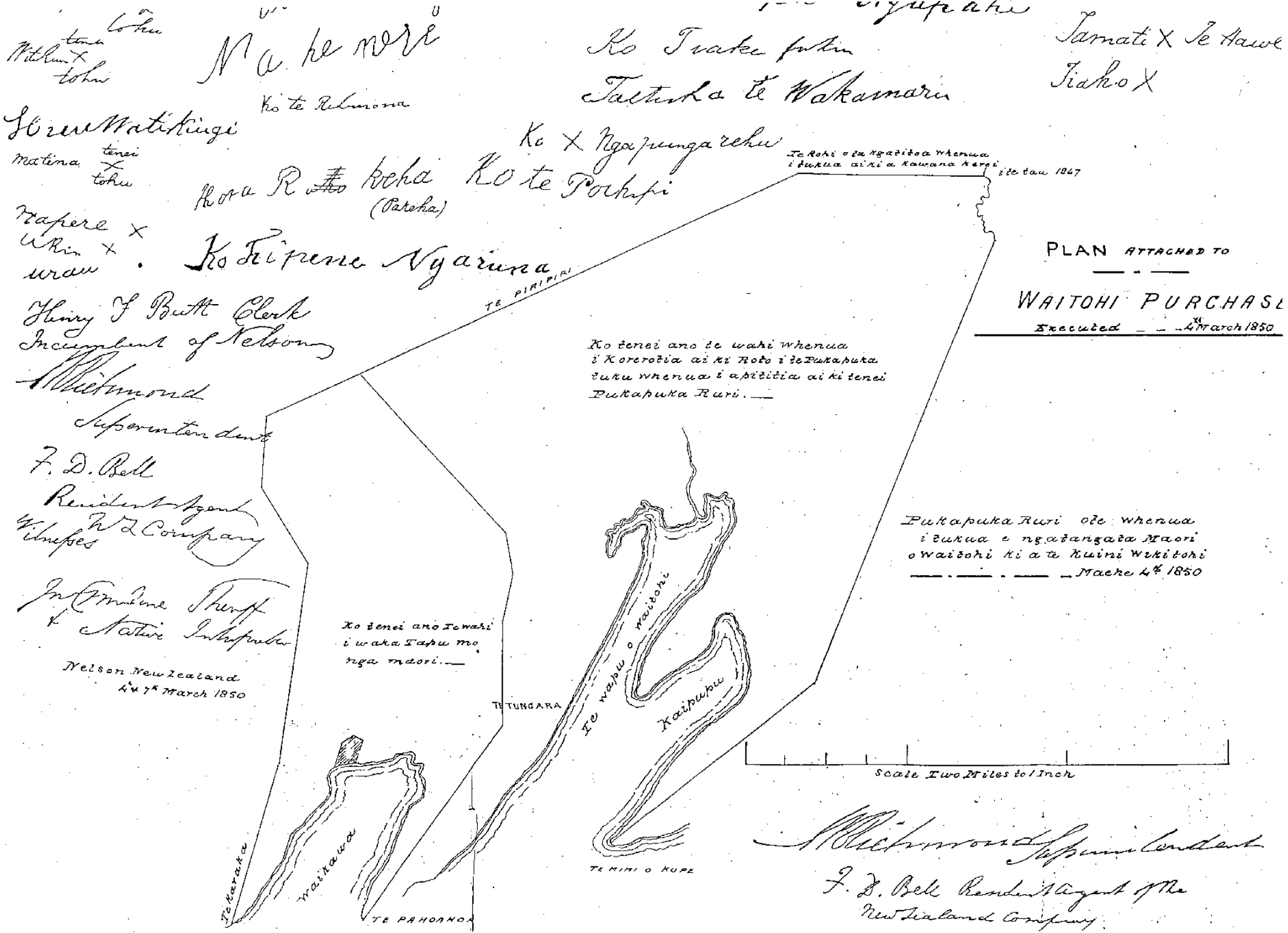


Figure 6: The Wairau Purchase Deed Map. Copied from GBPP, 1847-1850, vol 6, 892, pp. 8-9.

**WAIRAU.
PLAIN AND VALLEY.**

The pure colored Red is that portion of land in

Figure 7: Deed Map of the Waitohi Purchase. Copied from Mackay's Compendium.



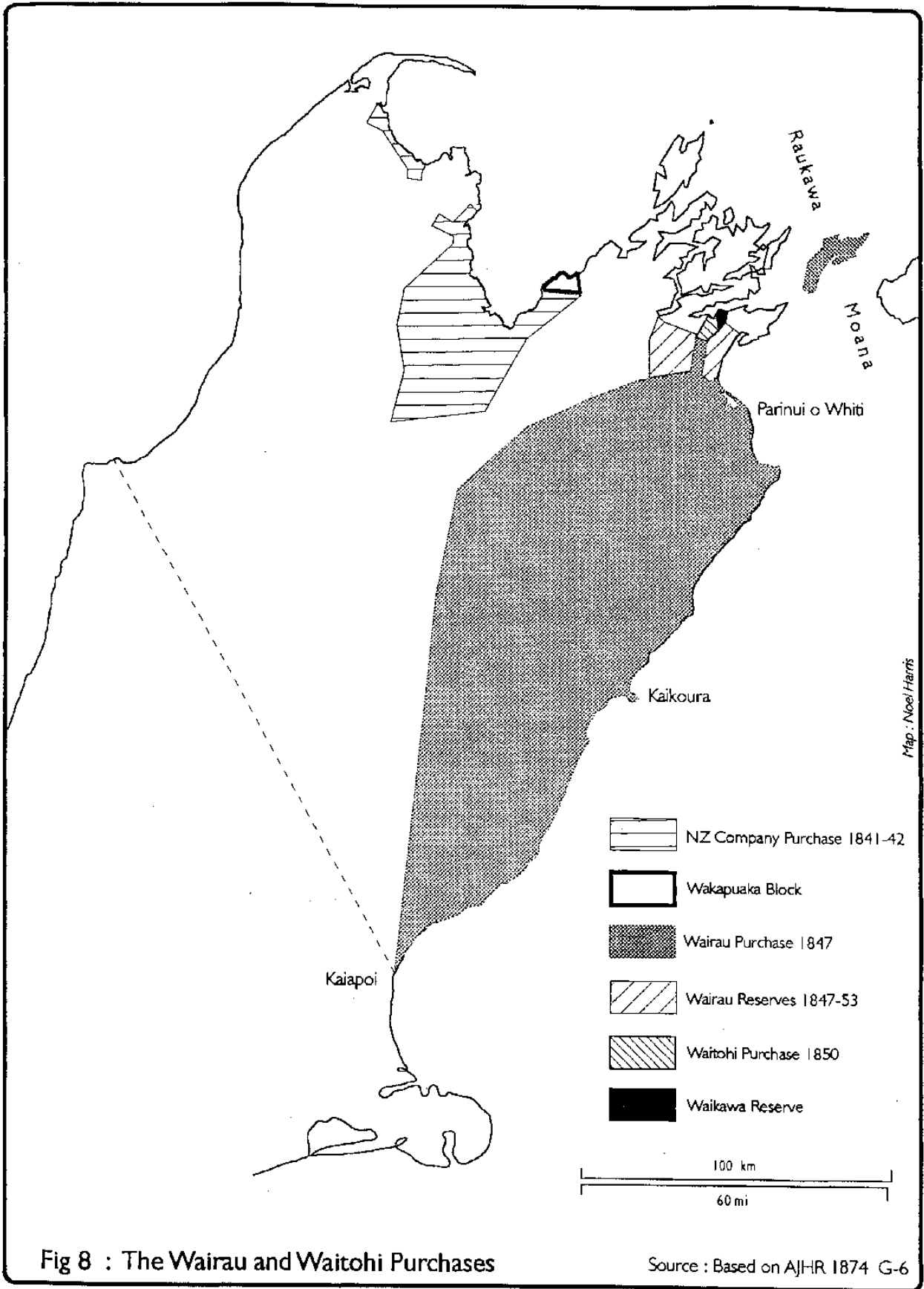
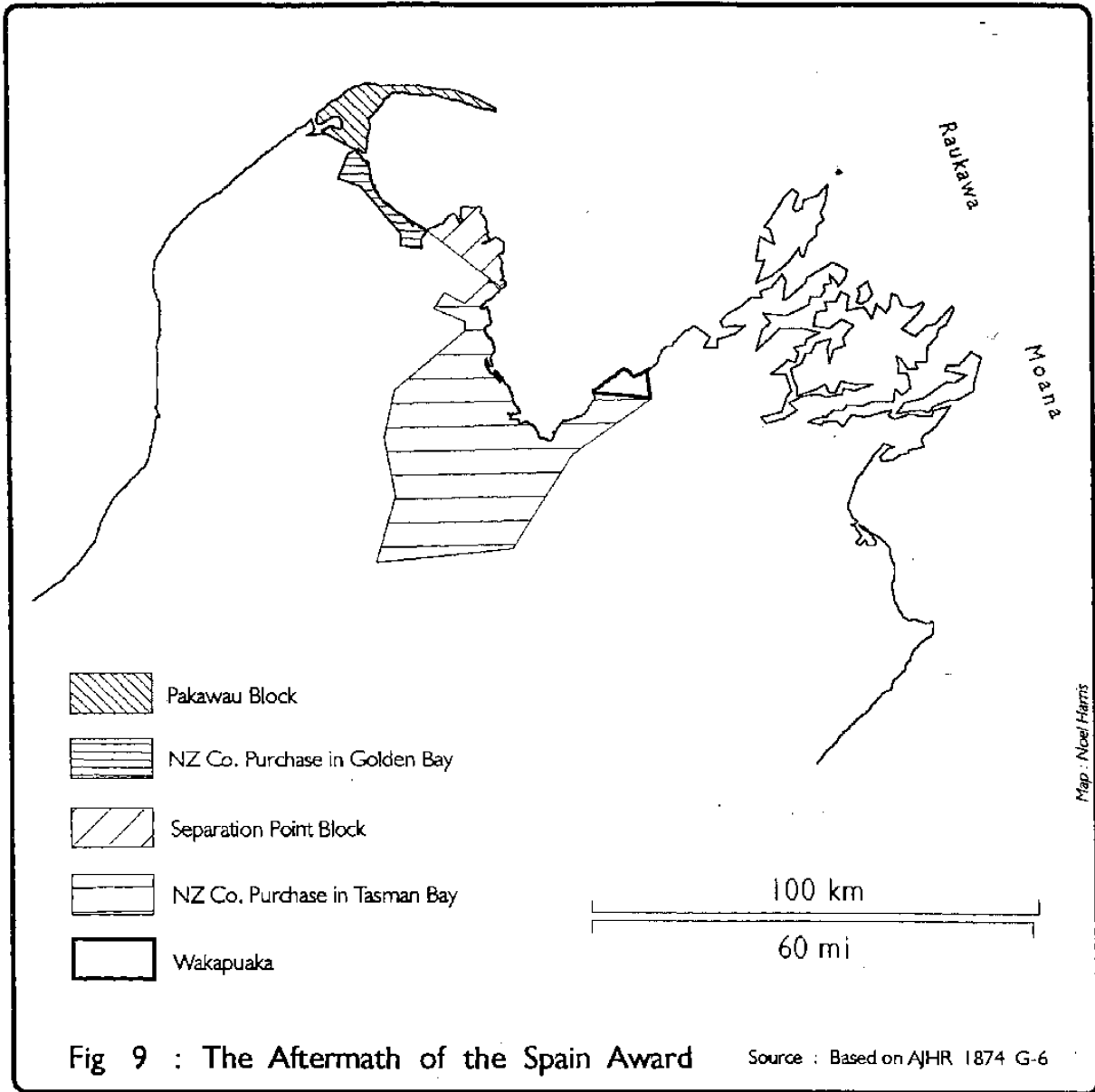


Fig 8 : The Wairau and Waitohi Purchases

Source : Based on AJHR 1874 G-6



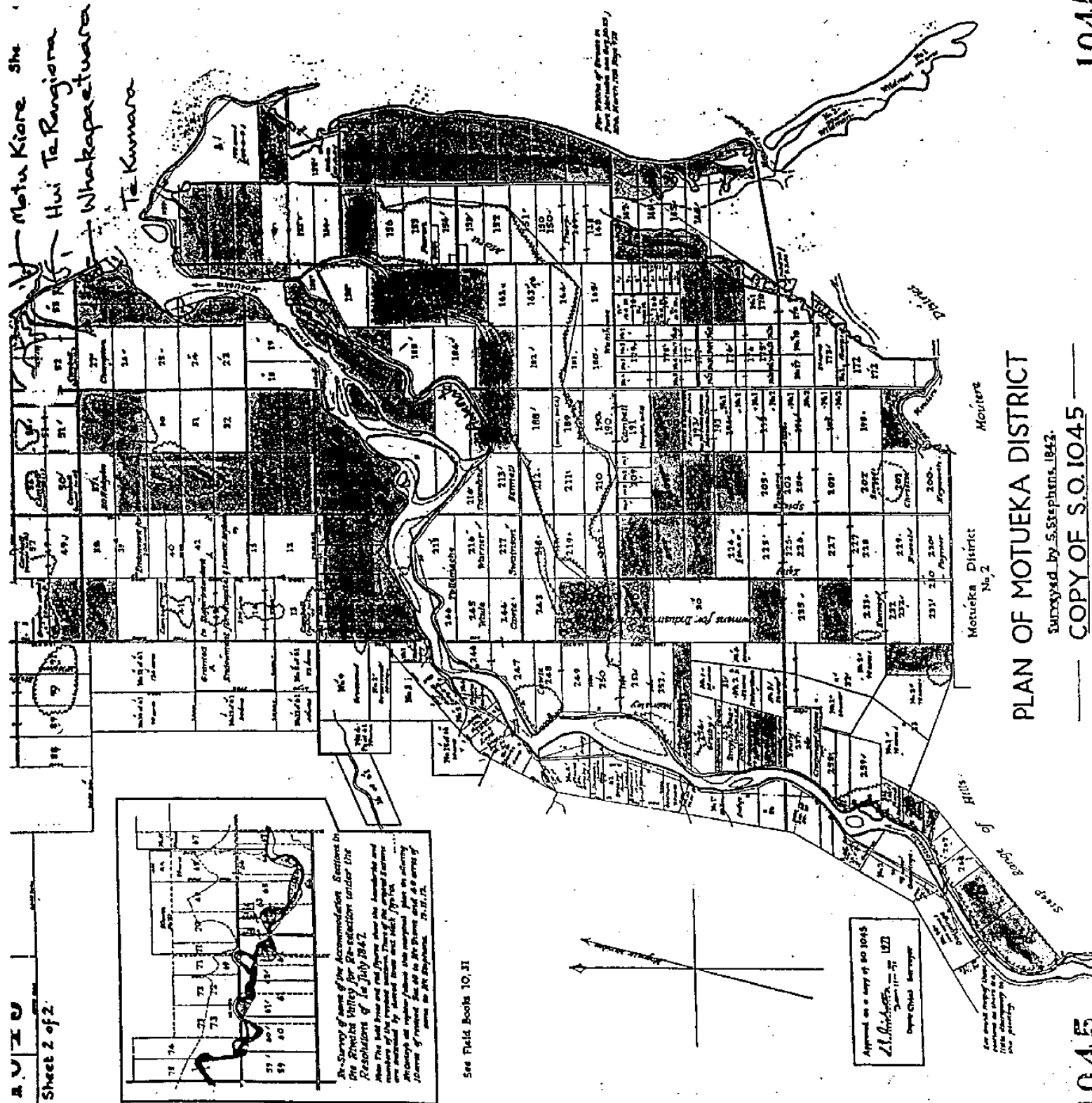


Figure 11: Suburban Tenth in the Motueka District. Copied from H & M J Mitchell, Map 5.2.2b, Wai 102 A-7.

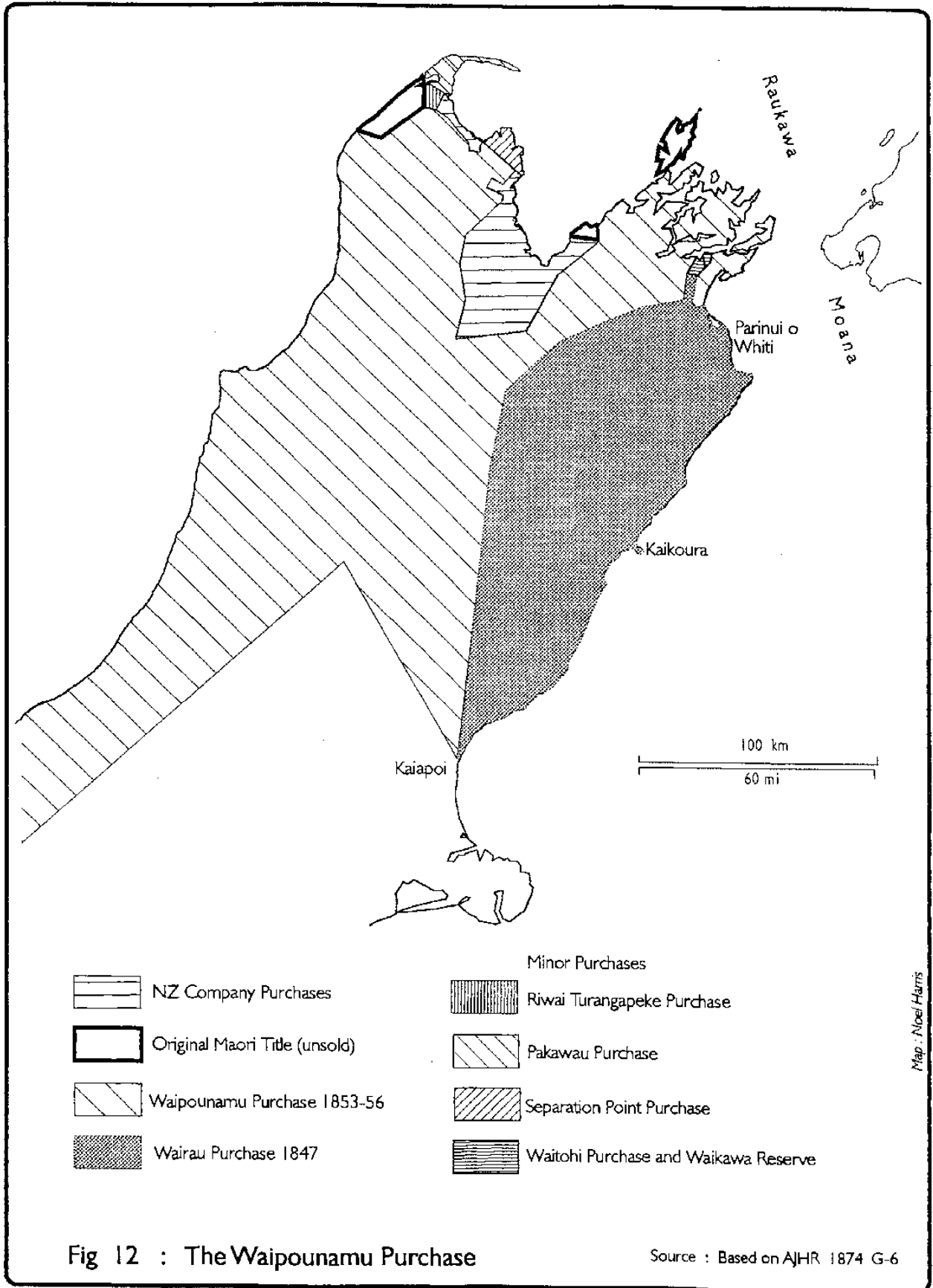


Fig 12 : The Waipounamu Purchase

Source : Based on AJHR 1874 G-6

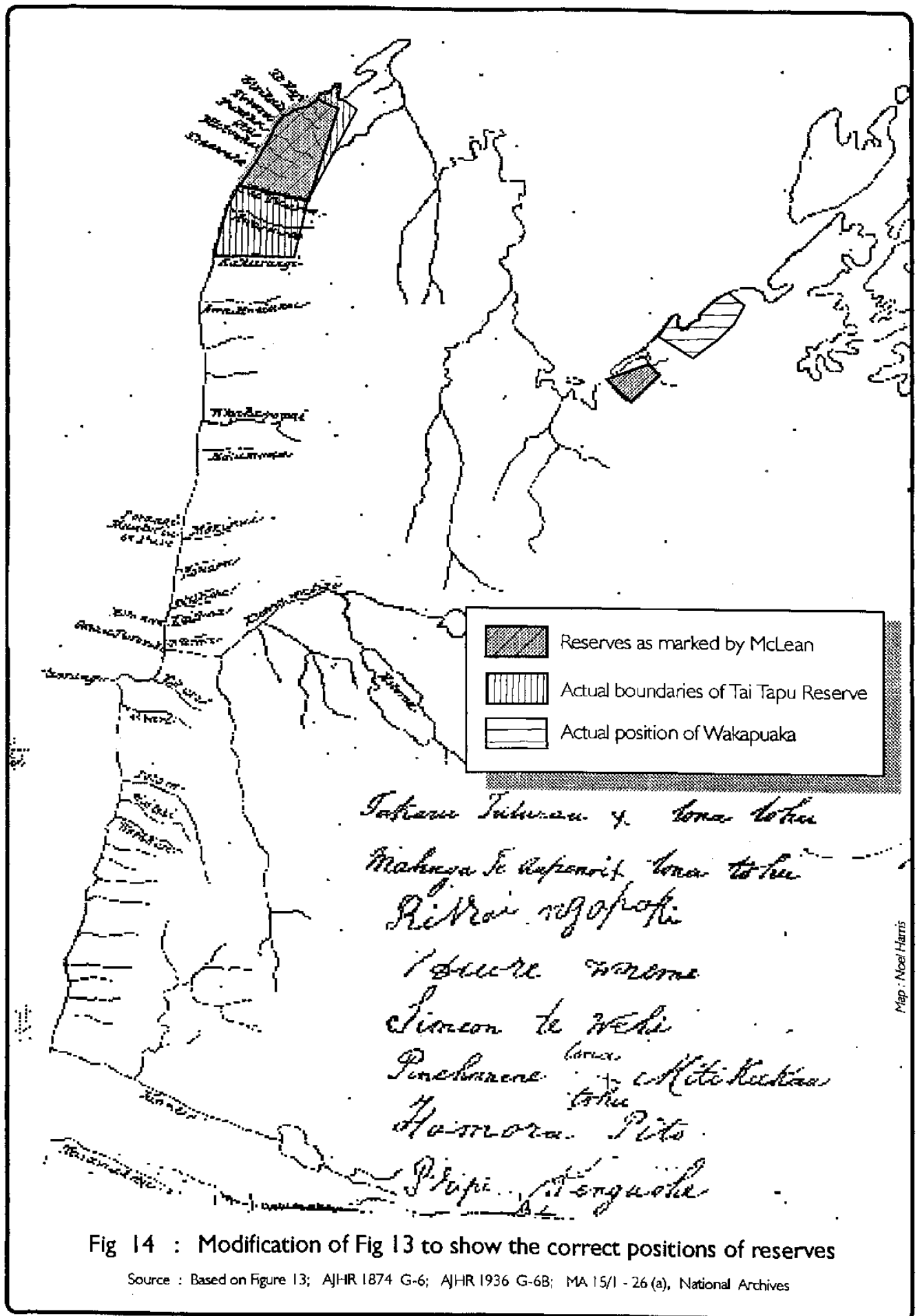


Fig 14 : Modification of Fig 13 to show the correct positions of reserves

Source : Based on Figure 13; AJHR 1874 G-6; AJHR 1936 G-6B; MA 15/1 - 26 (a), National Archives

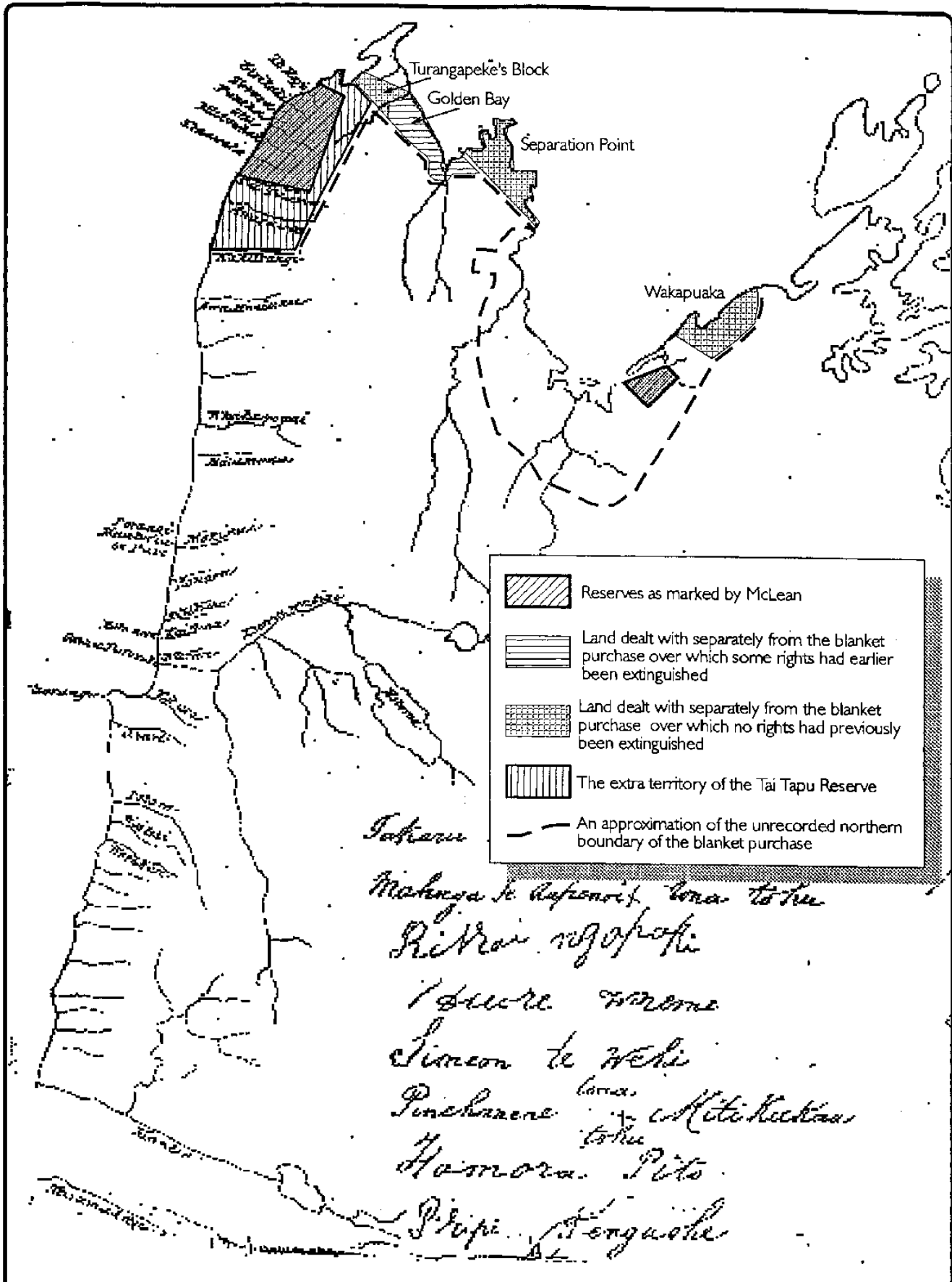
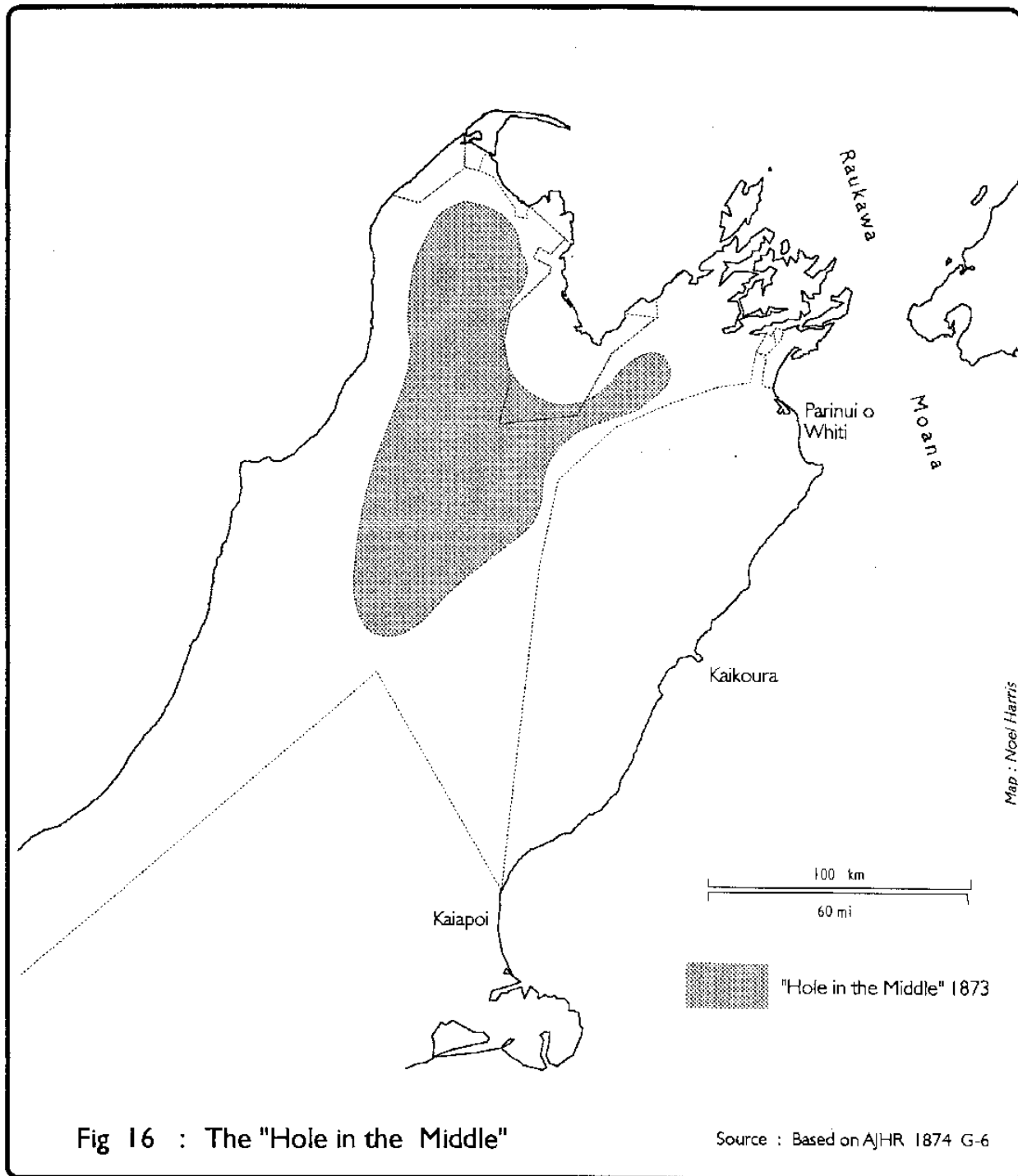
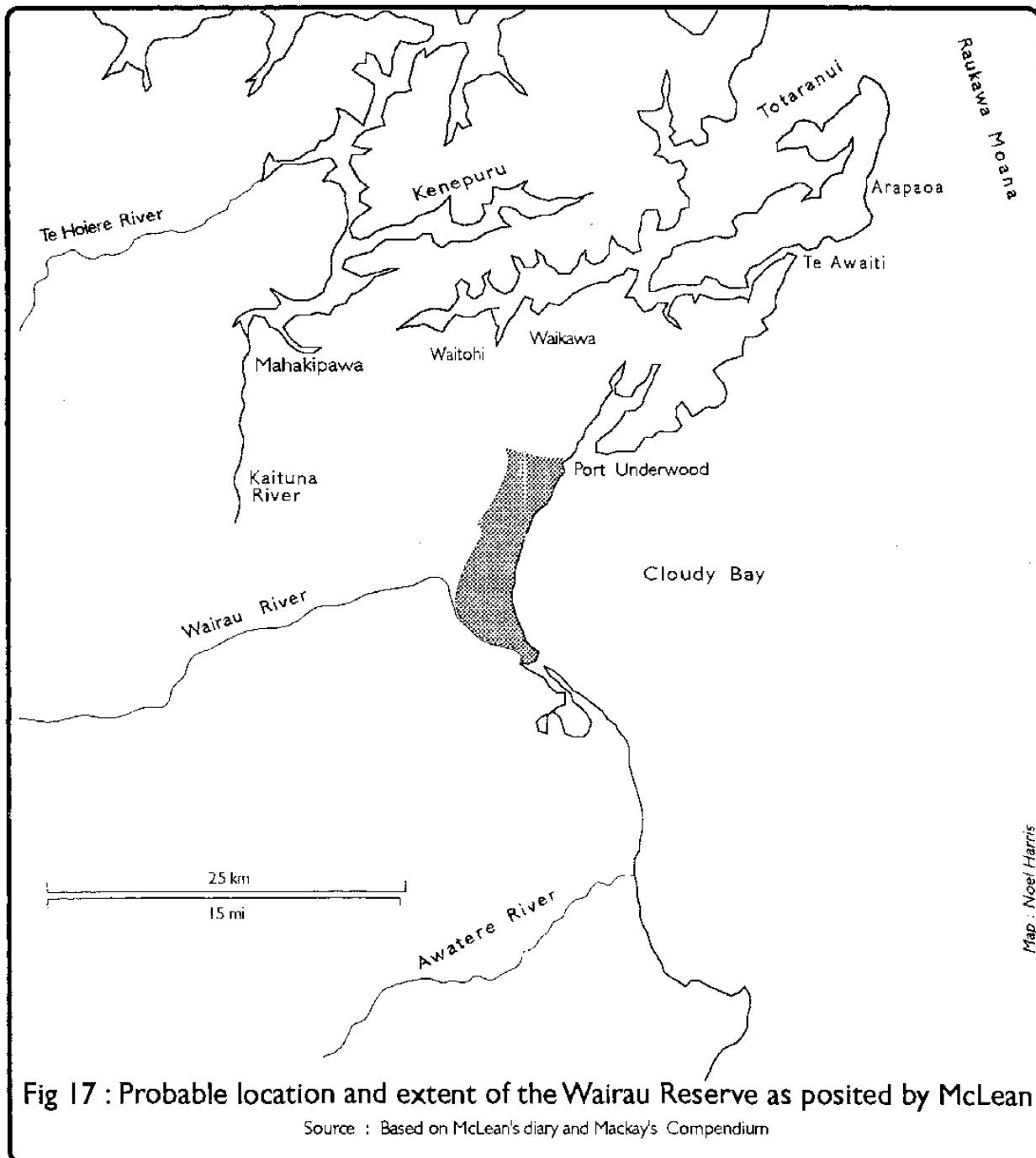



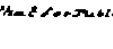

Fig 15 : Modification of Figure 13 to show land treated for separately from the "blanket" cession of all rights

Source : Based on Figure 13; AJHR 1874 G - 6; Mackay's Compendium

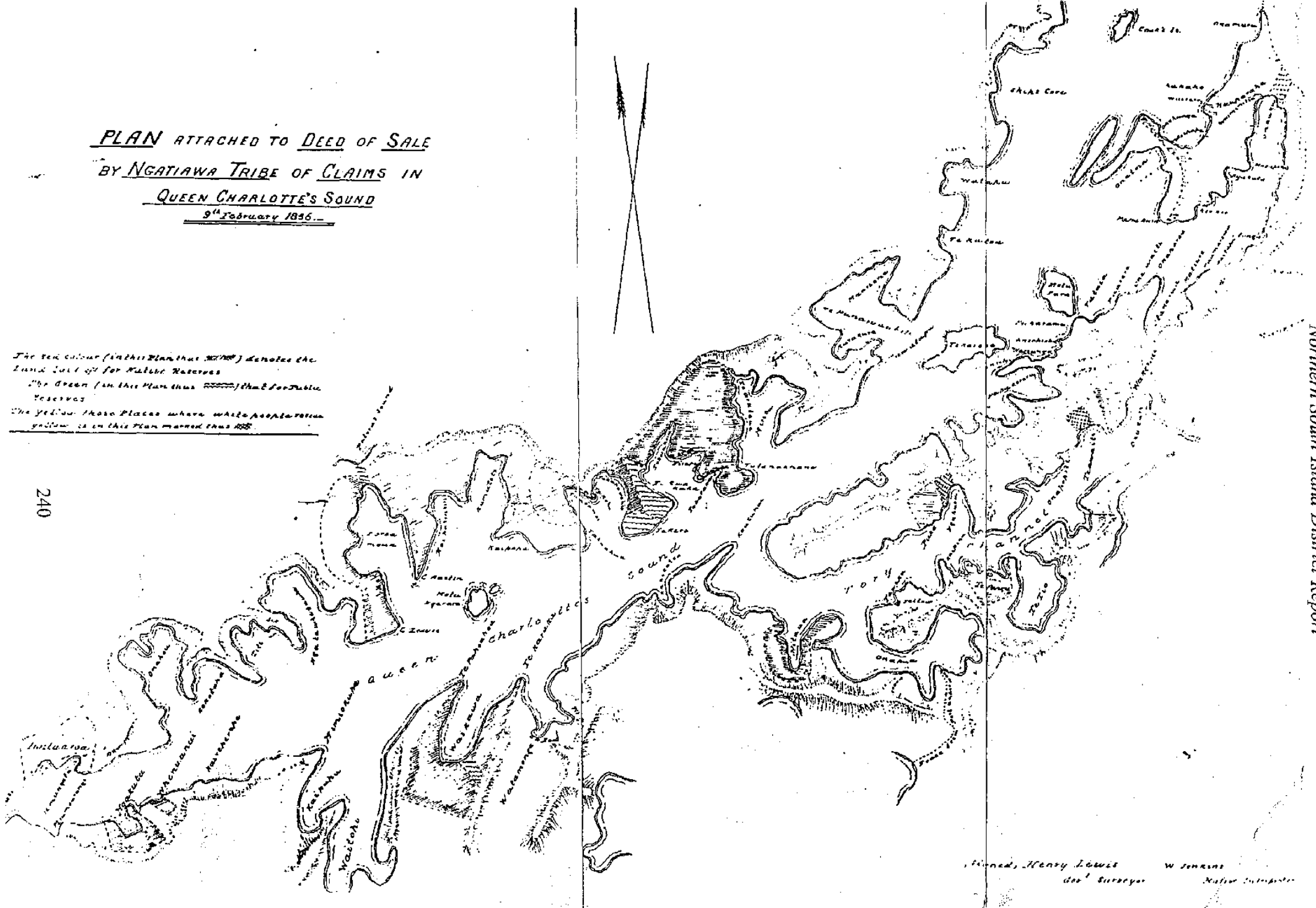




PLAN ATTACHED TO DEED OF SALE
BY NGATIWA TRIBE OF CLAIMS IN
QUEEN CHARLOTTE'S SOUND
9th February 1856.

The red colour (in this Plan thus ) denotes the
 Land sold off for Native Reserves
 The Green (in this Plan thus ) that for Public
 Reserves
 The Yellow those Places where white population
 yellow is in this Plan marked thus 

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Northern South Island District Report

Drawn, Henry Lewis
 do^r Surveyor
 W. Semas
 Native Interpreter

Figure 18: Deed Map of the Queen Charlotte Sound Purchase. Copied from Mackay's *Compendium*.

PLAN ATTACHED TO DEED OF SALE
Executed by
NGATIKUIA TRIBE
16th February 1856

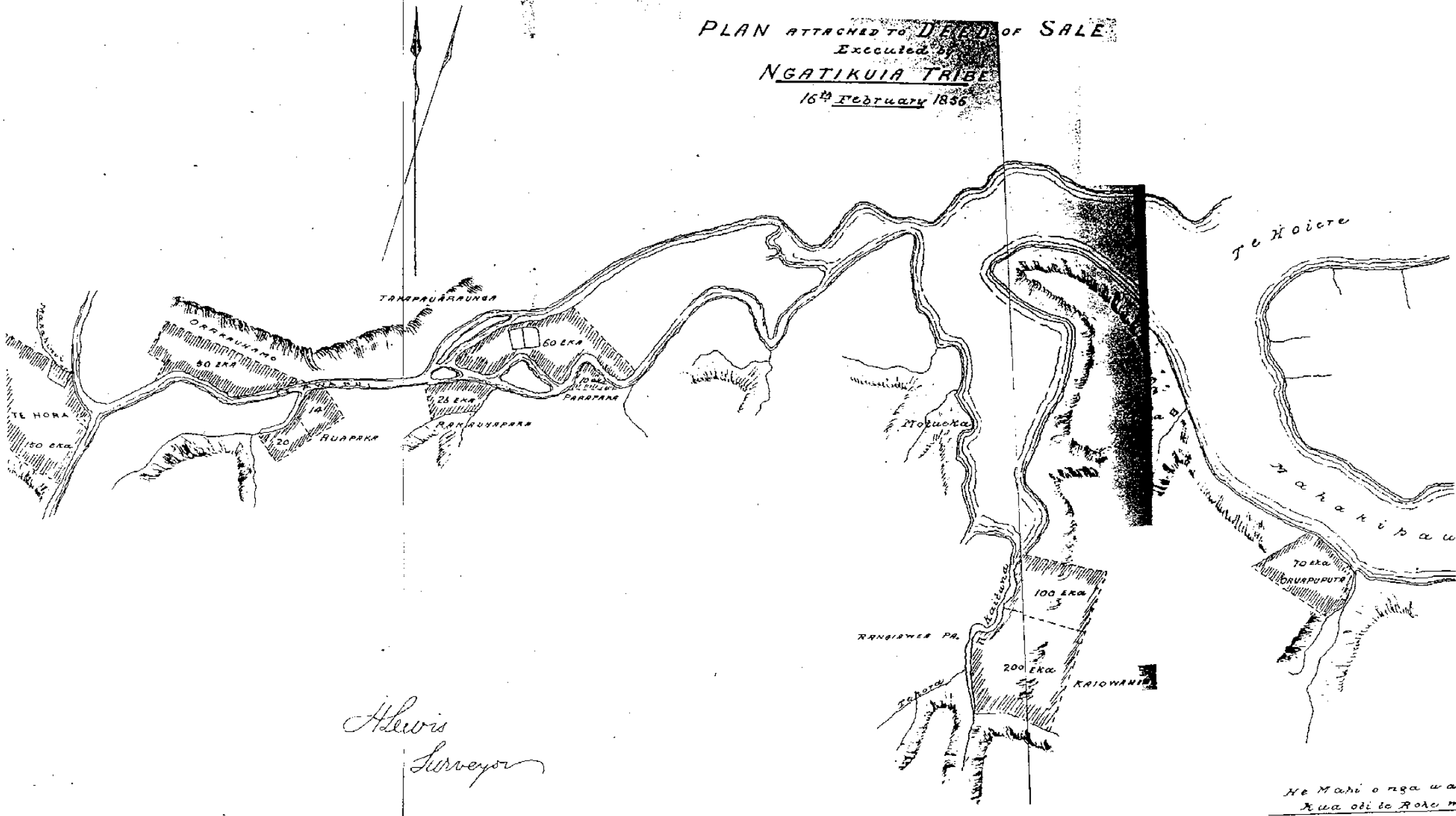


Figure 19: Deed Map of the Pelorus Sound Purchase. Copied from Mackay's *Compendium*.

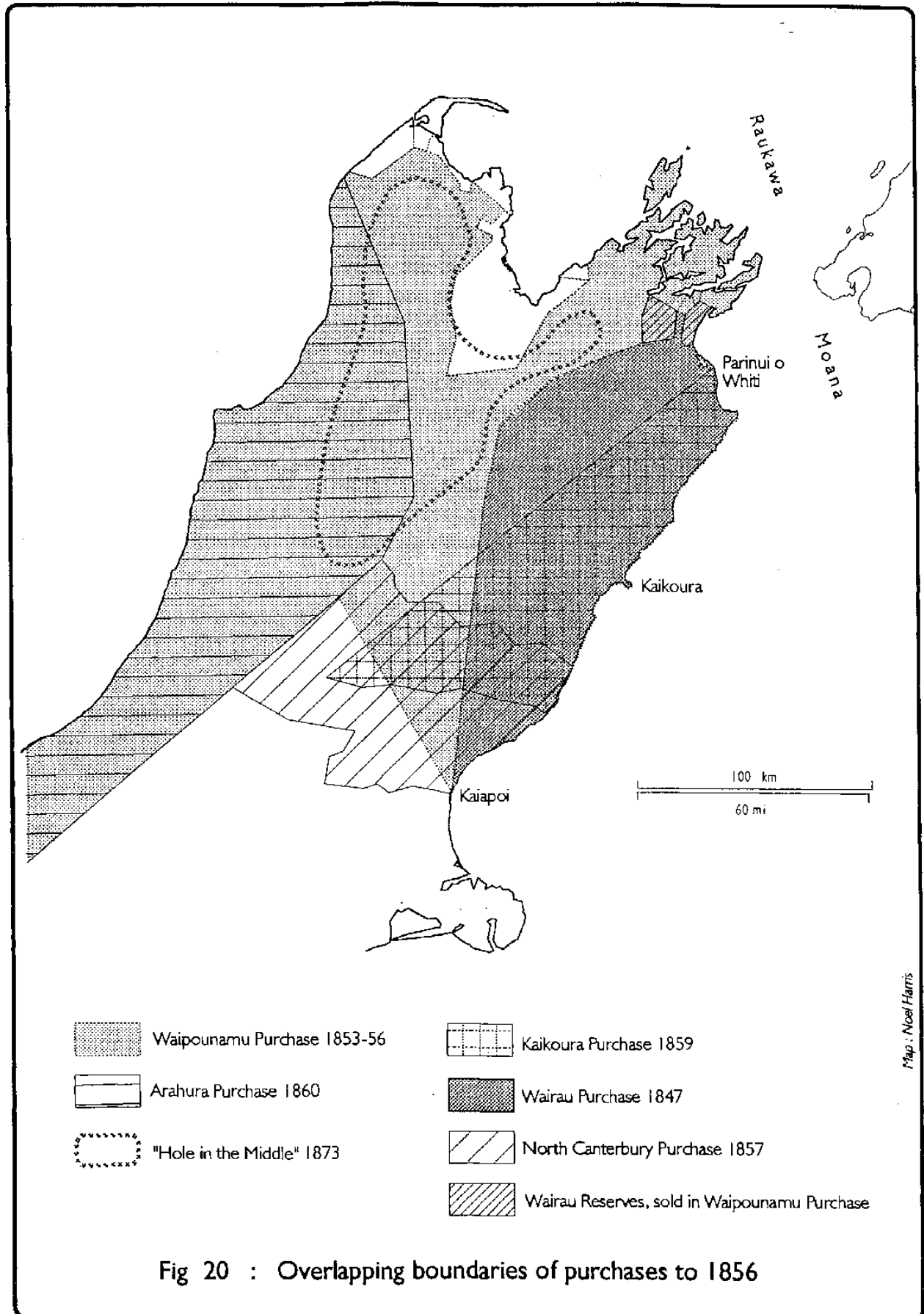


Fig 20 : Overlapping boundaries of purchases to 1856

Plan

of the
ORIGINAL PROVINCE
OF NELSON

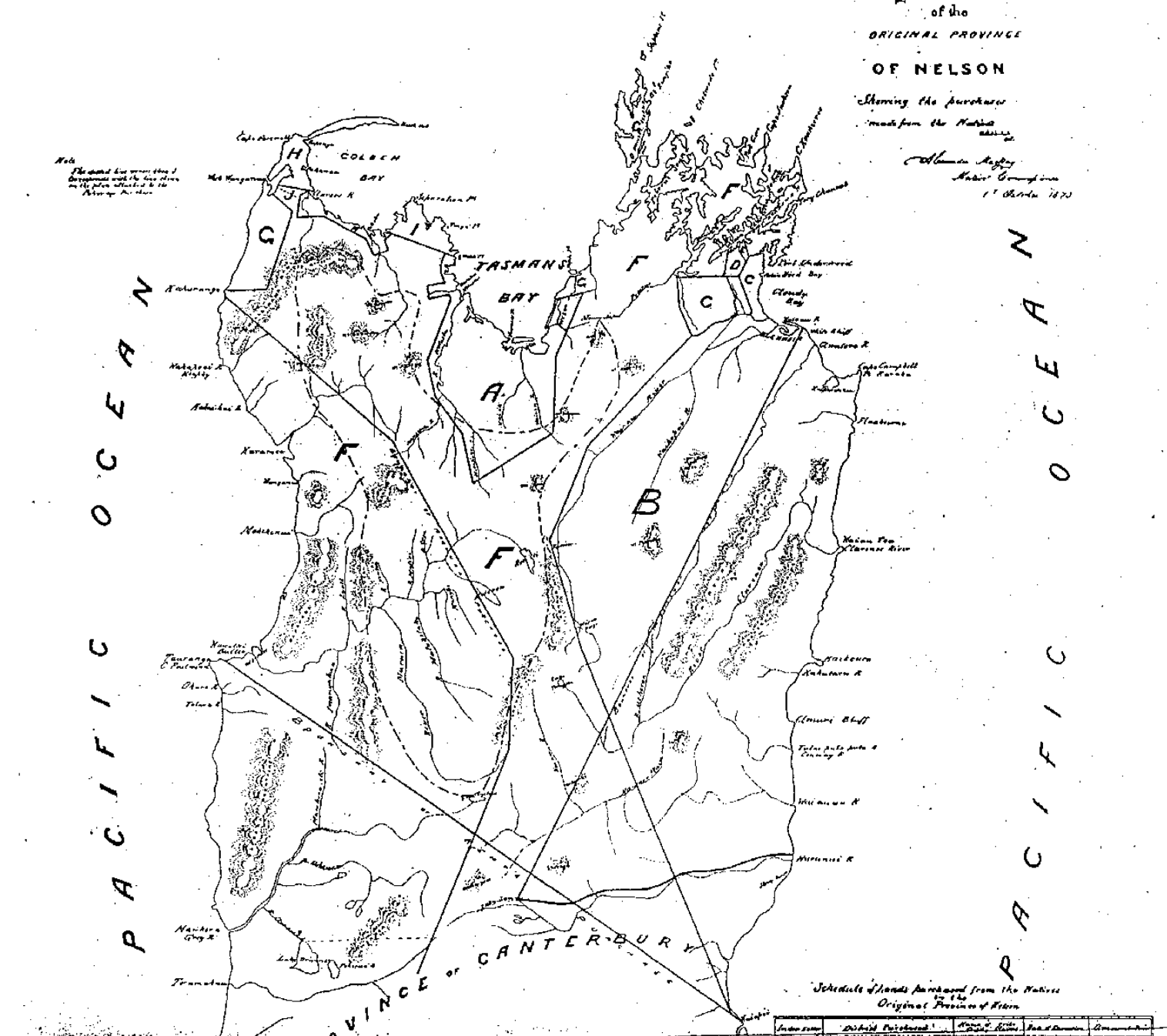
Showing the purchase
made from the Natives

Alexander Mackay
Public Commissioner
17 March 1873

Note
The dotted line represents the
boundary of the land alienated
in the plan referred to in the
Schedule to this plan

PACIFIC OCEAN

PACIFIC OCEAN



Key to Plan

A New Zealand Company's Purchase
 B Māori Purchase
 C Land conveyed from sale out of the Māori Block by the Ngātiwhakaue tribe in March 1867 but subsequently included in the former sale to the Crown in August 1868
 D Māori Purchase
 E Land reserved for the Māori adjacent to Nelson Strait
 F Ngātiwhakaue Block & subsequent purchase
 G Land conveyed from sale out of the Ngātiwhakaue Block at Waipara, Elwood Island and the Whangaparāoa at the place taking possession of which occurred in 1810 &c.
 H Māori Purchase
 I Separation Point
 J Block of land intervening the Māori purchase and land sold by the Ngātiwhakaue and Ngātiwhakaue tribes to the Government in November 1811 for which River Waipara was subsequently reserved under a grant of fee from the Government in the shape of a part of District 2, one part and a plough

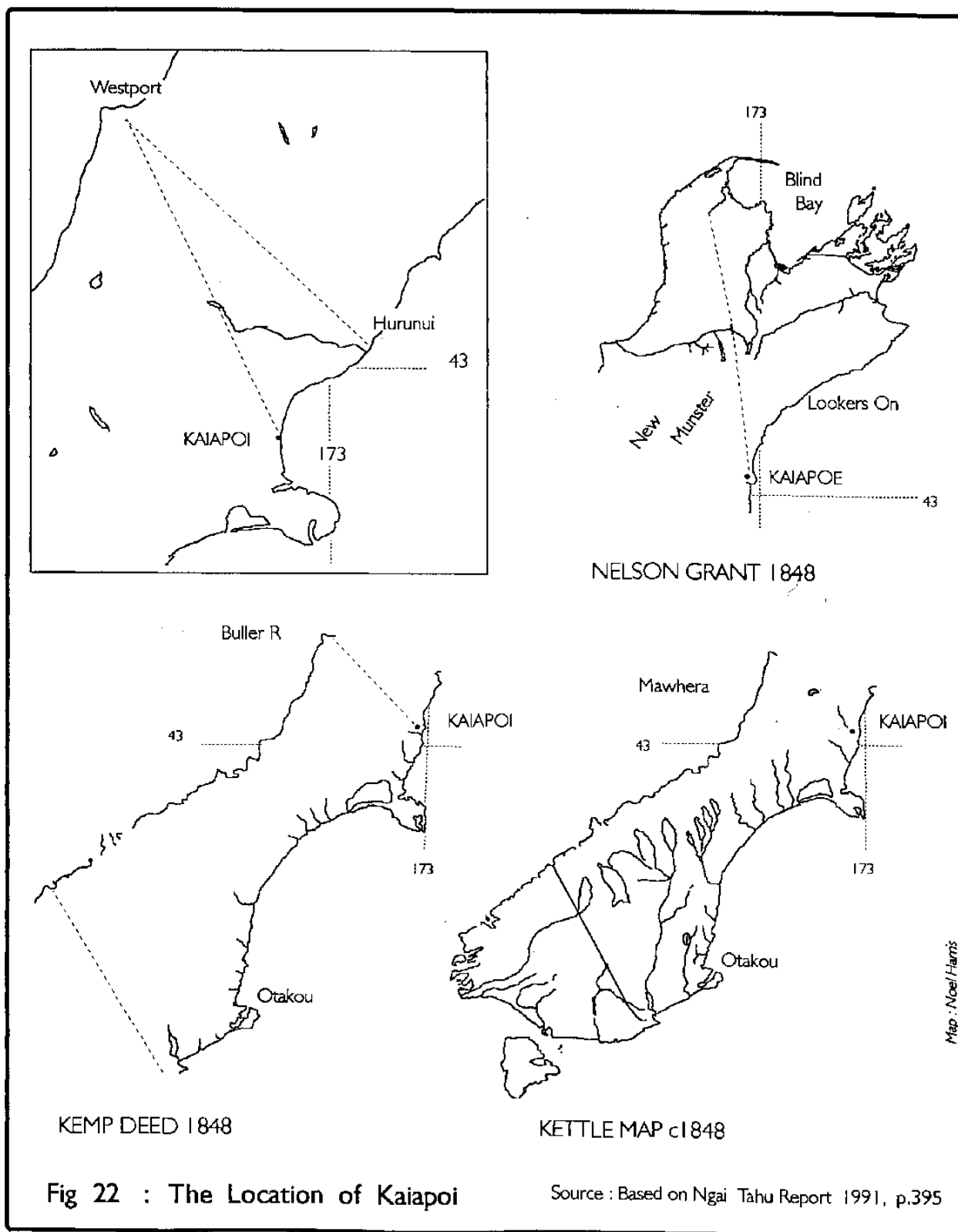
Note
The land included within the thin line on the East and the red on the West Coast indicates the territory reserved from the Ngātiwhakaue tribe within the boundaries of former purchases. The land indicated within the dotted line is the country now claimed by the Māori.

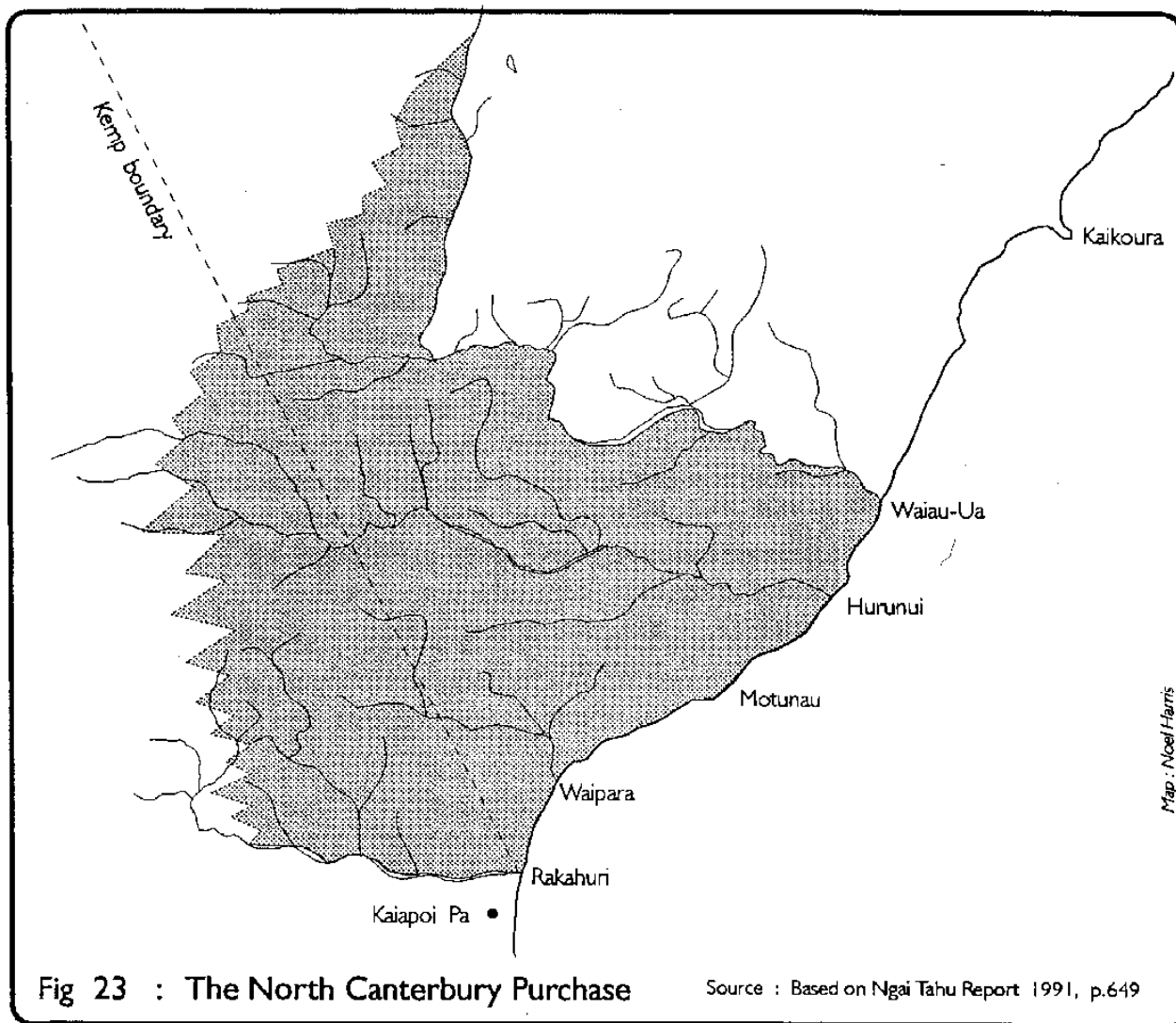
Schedule of Lands purchased from the Natives in the Original Province of Nelson

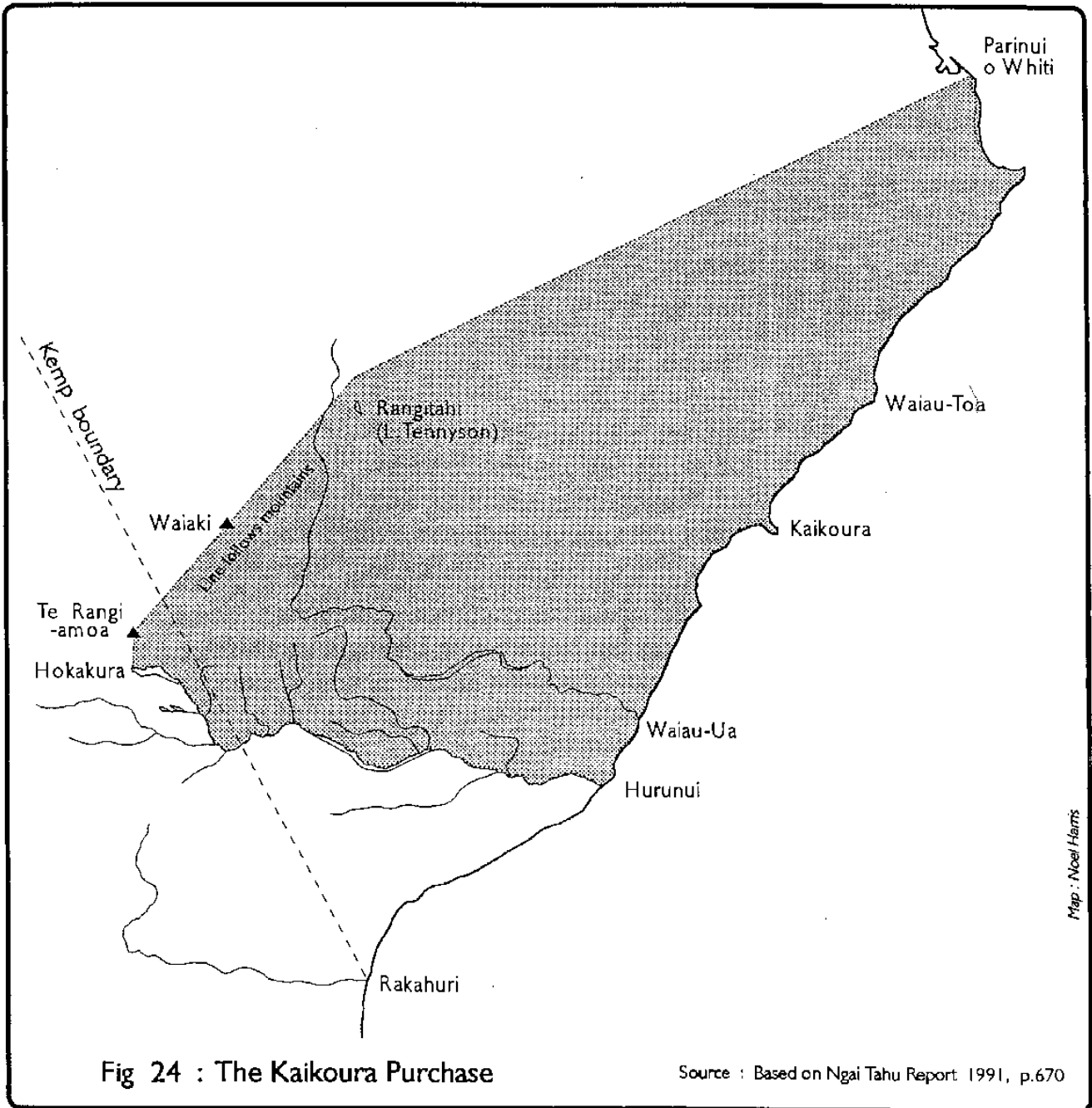
Block name	District Purchased	Area of Block	Date of Purchase	Acres
A	Nelson District 1811 Purchase	Ngātiwhakaue	24 Nov 1811	1200
B	Māori	Ngātiwhakaue	24 Nov 1811	1000
C	Māori	Ngātiwhakaue	24 Nov 1811	1000
D	Māori	Ngātiwhakaue	24 Nov 1811	1000
E	Māori	Ngātiwhakaue	24 Nov 1811	1000
F	Queen Charlotte Sound	Ngātiwhakaue	24 Nov 1811	1000
G	Queen Charlotte Sound	Ngātiwhakaue	24 Nov 1811	1000
H	Māori	Ngātiwhakaue	24 Nov 1811	1000
I	Separation Point	Ngātiwhakaue	24 Nov 1811	1000
J	Separation Point	Ngātiwhakaue	24 Nov 1811	1000

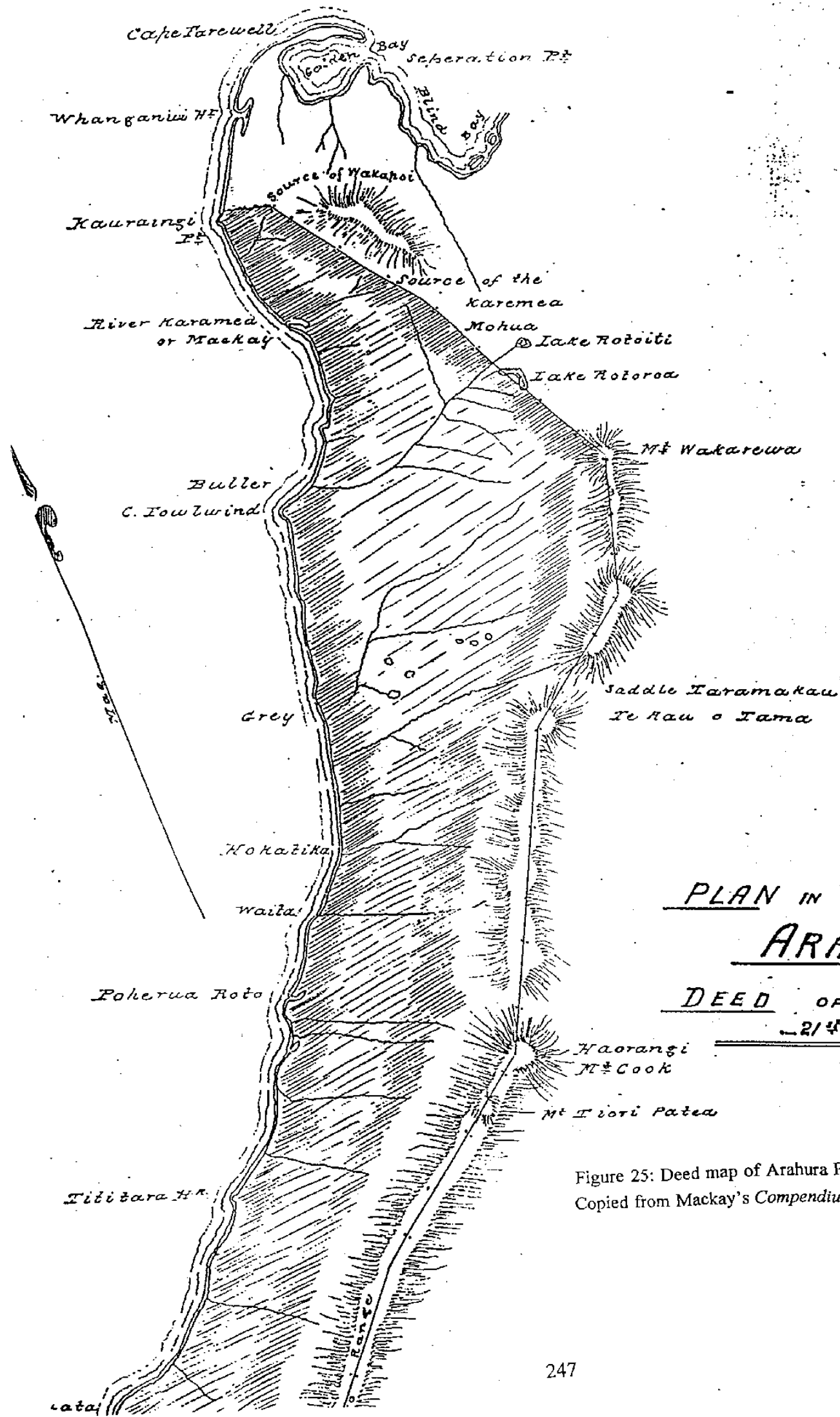
Note
Total amount expended by the New Zealand Company and the Government in the purchase of land as recorded in the foregoing Schedule £127,111 10s 0d
A large portion of this purchase is situated in the County of Midland

Figure 21: Alexander Mackay's Map of Maori land Alienation, 1873. Copied from AJHR 1874, G-6.









PLAN IN MARGIN OF
ARAHURA
DEED OF PURCHASE
21st May 1860

Figure 25: Deed map of Arahura Purchase.
 Copied from Mackay's Compendium.

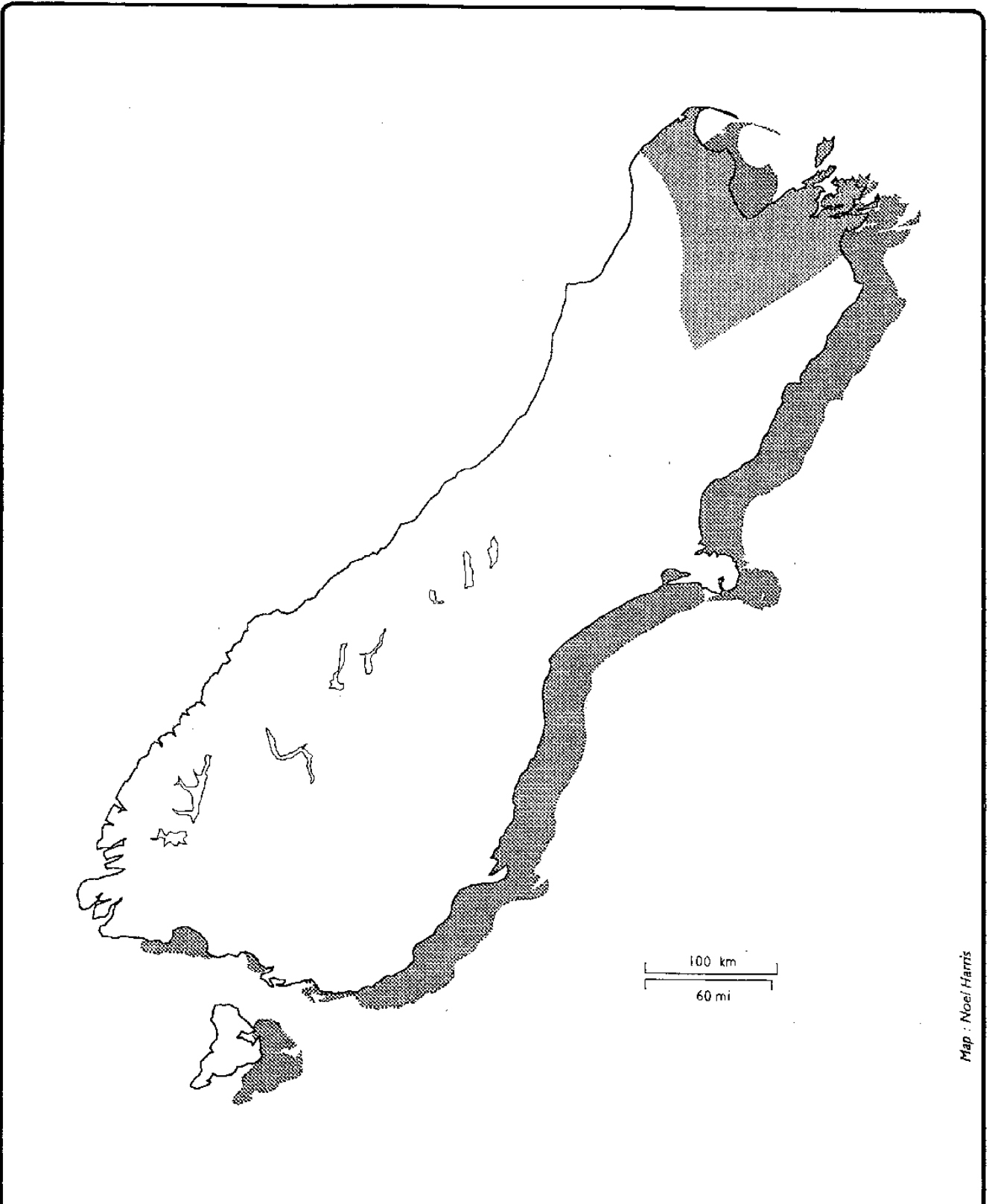
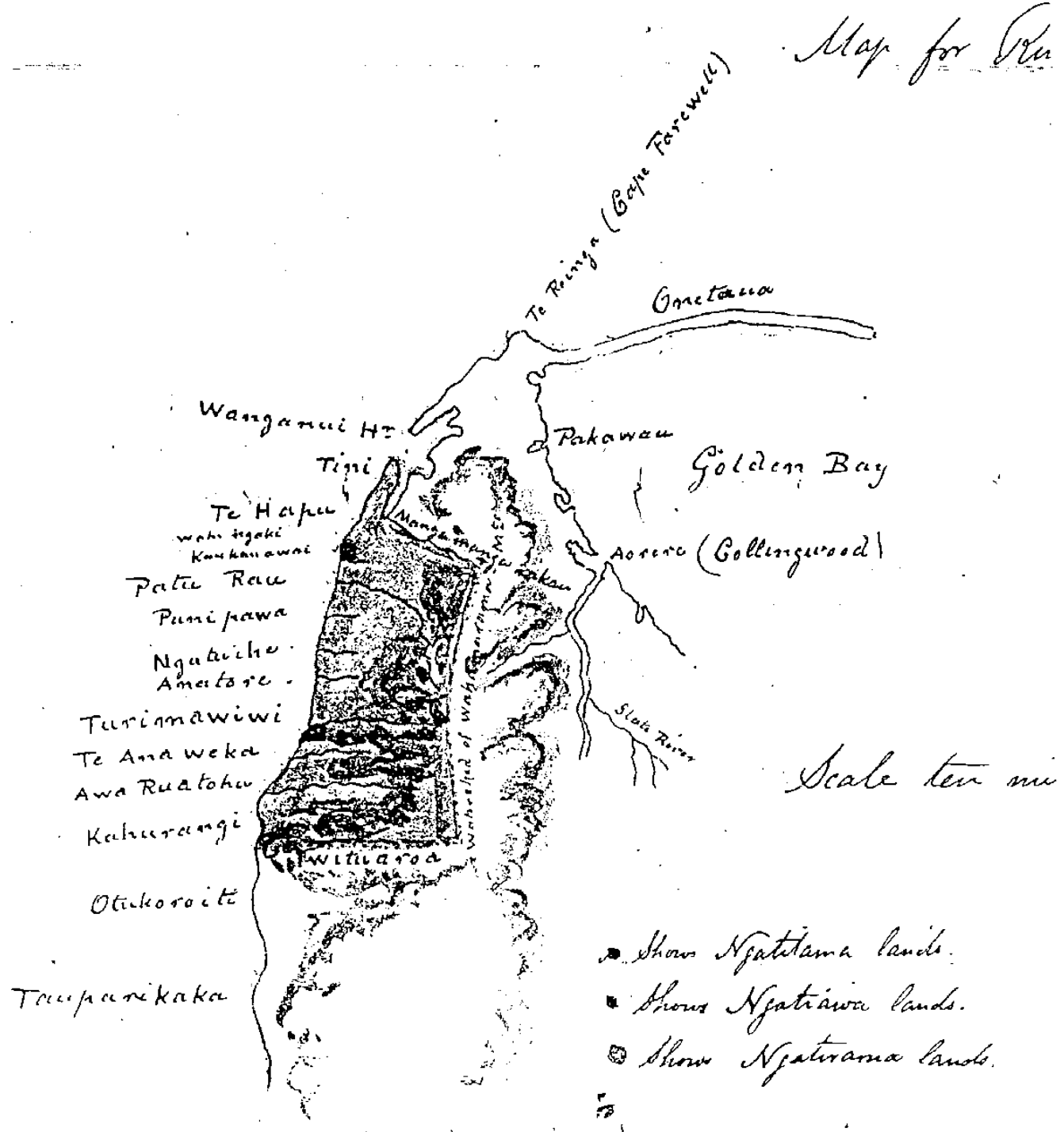


Fig 26 : Boundaries of iwi rohe as determined by the Maori Appellate Court



Mapi whakaaatu o te whenua Maori kei te Taitapu
 te hoki ki te tikanga o te reta o te Kawanataanga
 te 24 Peperu 1863.

Na Tini Make
 Kai Whakante
 of Native Reserve at Taitapu
 sally arranged by Mr Bell in
 244. 24 Feb/63. James Mackay
 Commissioner of Native Reserves
 May 28/64

Figure 27: James Mackay's Sketch Map of the Taitapu Reserve. Copied from the National Archives, MA 15/1 - 26(a).

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Cooper, Holt, & Rhodes	OLC 132-134
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Fitzherbert & Heberly	OLC 1314
Henry Freeman	OLC 1329
J. Guard/Guard & Wynen	OLC 204-207
James Jackson	OLC 984
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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:

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- (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