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KĀHUI MAUNGA

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The National Park District Inquiry Report

Volume 1

Wai 1130

Waitangi Tribunal Report 2013



The cover photographs show the mountains Tongariro, Ngāuruhoe, and Ruapehu in the Tongariro National Park. The top photograph is by Glen Coates, the lower one by Daniel Talbot.

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Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Māori Affairs

The Honourable Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

The Honourable Dr Nick Smith
Minister of Conservation

The Honourable Simon Bridges
Minister of Energy and Resources

Parliament Buildings
WELLINGTON

10 October 2013

E te Minita kua roa te wā e tatari ana ngā iwi o te kāhui maunga kia rere tēnei manu ki ngā tihi o ngā maunga teitei e tū mai ra, ki ngā marae o te rohe tae atu ki ngā iwi nā rātou i whakaoreore te manu nei. Nā, kua rere te manu nei e te Minita, kua rere atu ki a koe me te ao whānui. Engari tae rawa mai ki tēnei wā, kua ngaro ētahi o ngā rangatira rongonui me ētahi o ngā kaumātua o te rohe i tū mai ki mua i Te Roopu Whakamana i te Tiriti o Waitangi ki te whakatakoto mai o rātou whakaaro, me a rātou whakamārama mo ngā raruraru i pā ki a rātou. I inoi rātou ki ngā mema o Te Roopu kia rapua he rongoa mo ngā mamaetanga o ngā iwi o te kāhui maunga. Ka tangi ki a rātou kua ngaro nei i te tirohanga kanohi. I konei rātou i te tīmatanga o ngā kerēme engari kāore rātou i kite i te mutunga o te kaupapa. No reira moe mai koutou.

I āta wānangahia ngā take huhua i horahia mai ki mua i a mātou o Te Roopu Whakamana i Te Tiriti o Waitangi. Kei roto i te pūrongo nei ngā hua o ngā hui i whakahaeretia, ngā take i āta wānangahia, ā ko tōna whakatutukitanga ko ngā tohutohu me ngā tūmanako hei whiriwhiri

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māu, hei whakatinana hoki mā Te Kāwanatanga. No reira, tēnā koe e te Minita a tēnā hoki koutou katoa ka pānui i tēnei pūrongo.

We have the honour of presenting you with our final, published report on the claims of ngā iwi and hapū of te kāhui maunga, the chiefly cluster of mountains, which include Tongariro, Ngāuruhoe, Ruapehu, Pihanga, Hauhungatahi, and Kakaramea. In this inquiry, te kāhui maunga dominate the landscape. All iwi and hapū who had their claims heard by us have close whakapapa links to the mountains, as well as to each other.

Of the 41 claims we heard, many related to one of two key areas: the establishment and management of the Tongariro National Park, or the creation and operation of the Tongariro power development scheme. Both of these matters are of national importance and are at the heart of this inquiry.

In relation to the creation of the Tongariro National Park, we are of the view that the phrase ‘noble gift’ is not suitable to describe Te Heuheu’s tuku of the mountain peaks in 1887. The tuku was not, as the Native Minister believed, an English-style gift of the mountains to the Crown. From the evidence we received, we found that Te Heuheu intended to accept the Queen as partner or co-trustee of the mountains. He was inviting her to share with him the rangatiratanga and kaitiakitanga of the maunga. Te Heuheu considered that this partnership would ensure that his tribe would never lose their association with the mountains, and that the mountains would be protected for the benefit of Māori and Pākehā forever.

The partnership – which promised so much in 1887 – delivered little for Māori. The Crown did not initiate compensation proceedings for lands compulsorily acquired for the national park. It did not consult with Whanganui iwi over the establishment or subsequent governance of the park, despite its awareness of Whanganui interests in southern regions of the park. With regard to the park’s administration, the Crown made no clear provision for ngā iwi o te kāhui maunga to exercise rangatiratanga over their taonga in national parks legislation, the Conservation Act 1987, or the range of policy documents presented to us. Overall, neither the Treaty partnership nor the partnership intended by Horonuku Te Heuheu was honoured.

In our report, we recommend that the Crown honour its obligations and restore the partnership intended by the 1887 tuku. Specifically, we recommend that Tongariro National Park should be made inalienable, and held jointly by the Crown and ngā iwi o te kāhui maunga under a new Treaty of Waitangi title. We recommend that the park be taken out of DOC control and managed jointly by a statutory authority which comprises representatives from the Crown and ngā iwi o te kāhui maunga. On this very important issue, we are encouraged by the Crown’s recent settlement with Ngāi Tūhoe in respect of Te Urewera National Park, which took place after the release of our pre-publication report. Te Urewera will now be protected by a special title and will be co-governed and co-managed by the Crown and Māori. Clearly, we as a nation

are ready to enter into Treaty-consistent arrangements for our 'national parks.' It is time for the unique circumstances of the 1887 tuku to be properly reflected in a partnership arrangement for Tongariro National Park, and we commend chapters 7 and 12 of our report for your attention on this matter.

Another key focus of our inquiry was the Tongariro power development (TPD), which is of considerable economic value to the Crown and the nation and involves issues of great importance to Māori. The TPD was constructed between 1964 and 1984. It covers 26,000 hectares and diverts water from Whanganui and Tongariro river systems into Lake Rotoaira for temporary storage. Electricity is generated at Rangipō and Tokaanu, and the waters are released to enhance the capacity of the Waikato River power stations.

For ngā iwi o te kāhui maunga, their waterways are taonga. Māori control and ownership of waterways are held in accordance with tikanga Māori and have never been relinquished. However, when the Crown set up the TPD, it met with only one iwi, Ngāti Tūwharetoa. The trustees who administer Lake Rotoaira, which was pivotal to the success of the TPD, were not consulted. Whanganui iwi were not consulted either. In conclusion, we found that the Crown did not act honourably, fairly, or reasonably when the TPD was established.

The TPD has impacted on lakes and rivers, resulting in loss of water quality, loss of habitat, and loss of kai. These effects are particularly evident at Lake Rotoaira, the largest body of water in our inquiry district. The lake is managed by the Lake Rotoaira Trust on behalf of what are now more than 11,000 beneficial owners. The Crown did not compensate the owners for the use of the lake for storage or for the impacts of the TPD. We recommend significant compensation to remedy these breaches. In particular, the Crown should no longer rely on its 1972 agreement with the Rotoaira trustees, which we have found to be a significant Treaty breach. We have also, since the release of the pre-publication version of this report last year, added findings and recommendations about development rights in respect of the waterways used in the TPD. In March 2013, the claimants sought specific findings from this Tribunal about the Crown's 'misappropriation' of their taonga to generate electricity (without payment). The Crown did not object to the Tribunal completing its report on this matter. Our new findings are in chapter 14.

Elsewhere in our report, we noted that customary fisheries are taonga of ngā iwi o te kāhui maunga. The Treaty was breached when species such as trout were introduced without consultation and when anglers' interests were prioritised over Māori interests. In terms of geothermal issues, we observed that both the Crown and Māori have a clear interest in sustainable management of the geothermal resource, and the management regime should reflect this partnership. We recommend the preparation of a national policy statement on the geothermal resource.

We also draw your attention to other claims which were brought before us. In relation to the operation of the Native Land Court in the nineteenth century, the Crown conceded that the

failure to take adequate or timely steps to provide for communal governance mechanisms was a Treaty breach, and contributed to the erosion of tribal structures. Furthermore, the Crown's imposition of the tenancy in common land tenure system forced Māori to take part in tedious and costly subdivisions, surveys, and hearings. On the evidence we received in relation to the court, we found that the Crown breached its Treaty obligations of partnership, good faith, and active protection, and ngā iwi o te kāhui maunga were prejudiced as a result.

Between 1880 and 1900, over half of the Māori land in our inquiry district was purchased, the great majority by the Crown. We found that the Crown employed the standard purchase methods it used in other parts of New Zealand, such as monopoly purchasing, advance payments, and undivided share purchases. Here, we endorsed the findings of other Tribunals that these practices undermined community ownership and collective decision-making and were in breach of the principles of partnership, autonomy, and active protection.

Māori land was also taken in our district for public works purposes. Land was taken for roading, railways, schools, military purposes, and the TPD. In a case study, we noted that Ōtūkou was a site of serious grievance – where materials were extracted without royalties, land was taken with meagre compensation, quarrying occurred for six years, and ancestral remains were damaged or destroyed. We make special recommendations that the land at Ōtūkou be restored to a usable condition and returned to the claimants, along with appropriate compensation.

In presenting our report to you, we acknowledge the concessions made by the Crown and we trust that these concessions and our own recommendations will assist you in finalising an appropriate settlement to restore a proper Treaty relationship between the Crown and ngā iwi o te kāhui maunga.

No reira kati mo tēnei wā.

Nāku noa, nā



Chief Judge Wilson Isaac

ABBREVIATIONS

AEE	Genesis Power Ltd, <i>Tongariro Power Development: Assessment of Environmental Effects</i> (Manukau: Genesis Power Ltd, 2000)	no	number
AJHR	<i>Appendix to the Journal of the House of Representatives</i>	NZED	New Zealand Electricity Department
app	appendix	NZFS	New Zealand Forest Service
ATL	Alexander Turnbull Library	NZLR	<i>New Zealand Law Reports</i>
CA	Court of Appeal	NZPD	<i>New Zealand Parliamentary Debates</i>
CFRT	Crown Forestry Rental Trust	OIC	Order In Council
ch	chapter	OTS	Office of Treaty Settlements
CNI	central North Island	p, pp	page, pages
comp	compiler	para	paragraph
doc	document	PC	Privy Council
DNZB	<i>The Dictionary of New Zealand Biography</i> , 5 vols (Wellington: Department of Internal Affairs, 1990–2000)	PEP	Project Employment Programme
DOC	Department of Conservation	pt	part
DTHR	Department of Tourist and Health Resorts	repr	reprinted
ECNZ	Electricity Corporation of New Zealand	RMA	Resource Management Act 1991
ed	edition, editor, edited by	ROI	record of inquiry
fl	flourished	ROLD Act	Reserves and Other Lands Disposal and Public Bodies Empowering Act
FMC	Federation of Mountain Clubs	s, ss	section, sections (of an Act of Parliament)
fn	footnote	SC	Supreme Court
fol	folio	sec	section (of this report, a book, etc)
ha	hectare	sess	session
LHAD	land history alienation database	SOE	State-owned enterprise
LINZ	Land Information New Zealand	SPB	Scenery Preservation Board
ltd	limited	TBZ	Taumarunui Borough Council
MA	Department of Maori Affairs file, master of arts	TNP	Tongariro National Park files
MOW	Ministry of Works	TNPMP	Tongariro National Park Management Plan
NCC	Nature Conservation Council	TPD	Tongariro Power Development
NIWA	National Institute of Water and Atmospheric Research	TTC	Tongariro Timber Company
NLC	Native Land Court	TTCMS	Department of Conservation, <i>Tongariro/Taupo Conservation Management Strategy, 2002–2012</i> (Wellington: Department of Conservation, 2002)
		TVZ	Taupō volcanic zone
		WAS	Waimarino Acclimatisation Society
		vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, papers, and documents are to the Wai 1130 record of inquiry, a select copy of which is reproduced in appendix iv.

HYPHENATION

In this report, hyphens are used for lengthy personal names the first time they appear. Historically, hyphens were a useful device for indicating the meaning of a name and to assist pronunciation. For example:

- ▶ Taupō-nui-a-Tia = Taupōnuiātia
- ▶ Roto-a-ira = Rotoaira
- ▶ Manganui-a-te-ao = Manganuiateao
- ▶ Paerangi-i-te-whare-toka = Paerangi
- ▶ Te Wai-a-moe = Te Waiamoe

Manganui-a-te-ao appears both as Manganuiateao and as Manganuioteao in claimant evidence. Unless recording a direct quotation, we use Manganuioteao.

Macrons are also used to indicate the vowel length of Maori words.

TE HEUHEU TŪKINO

The Ngāti Tūwharetoa paramountcy has had eight men who have carried the title Te Heuheu or Te Heuheu Tūkino:

- ▶ Herea Te Heuheu Tūkino I (?–1820)
- ▶ Mananui Te Heuheu Tūkino II (?–1846)
- ▶ Iwikau Te Heuheu Tūkino III (?–1862)
- ▶ Horonuku Te Heuheu Tūkino IV (1827–88)
- ▶ Tūreiti Te Heuheu Tūkino V (c1865–1921)
- ▶ Hoani Te Heuheu Tūkino VI (1897–1944)
- ▶ Sir Hepi Te Heuheu Tūkino VII, KBE (1919–97)
- ▶ Tumu Te Heuheu Tūkino VIII (c1942–)

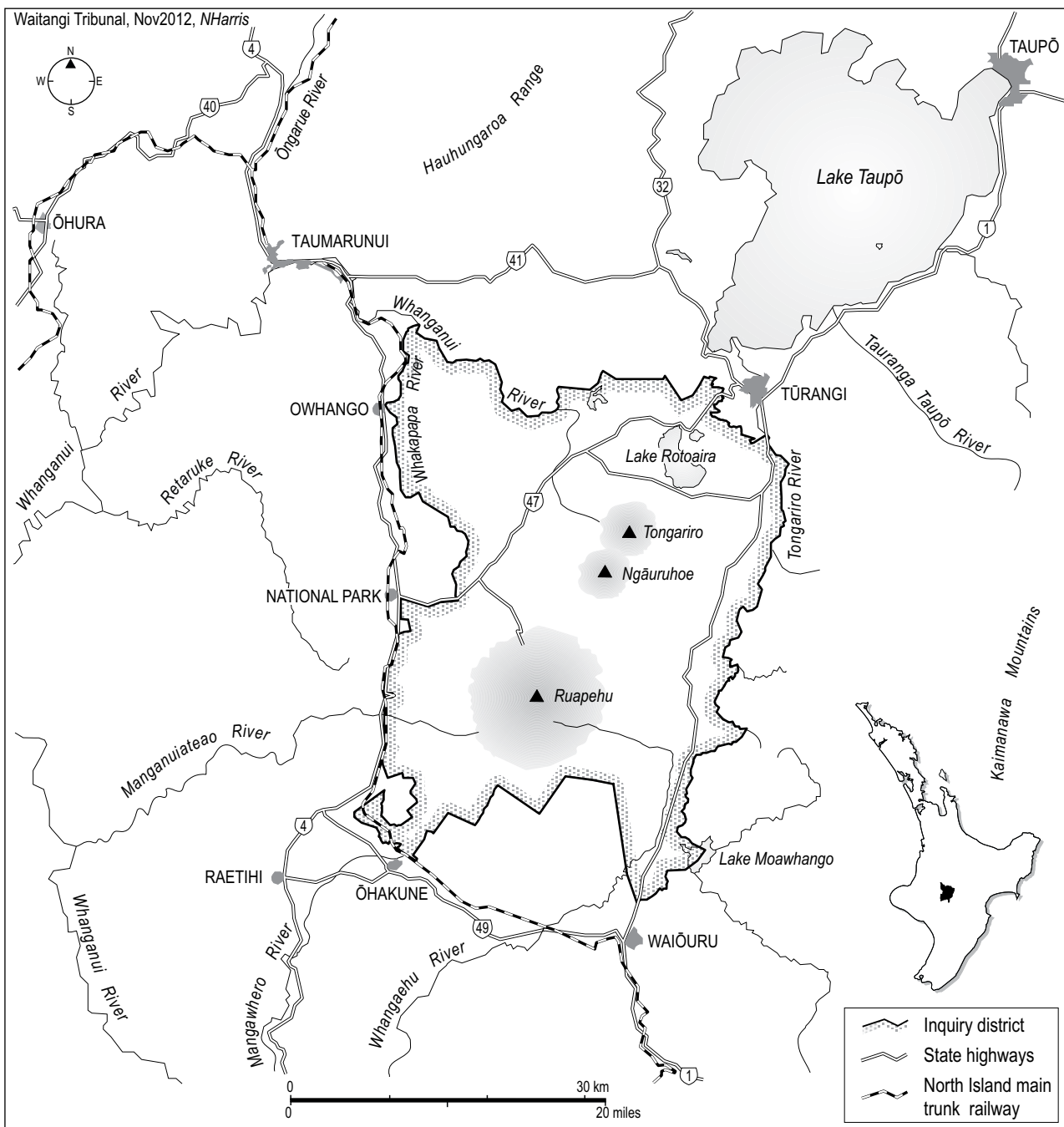
All eight men are mentioned several times throughout the report. To indicate which Te Heuheu we are referring to, their Christian name is given first.

PART I

THE DISTRICT, THE PEOPLE, AND THEIR CLAIMS

Part I of our report introduces the Tribunal's approach, the inquiry district, and the people of the volcanic plateau – ngā iwi (or ngā hapū) o te kāhui maunga. In our first chapter, we briefly outline the claims of each claimant group in our inquiry and we discuss the Tribunal's process, the jurisdictional issues, and the relevant Treaty principles. Chapter 1 also sets out the structure of our report.

In chapter 2, we turn to examine ngā iwi o te kāhui maunga, the people of the volcanic plateau. This chapter traces the origins and arrival of hapū and iwi in the inquiry district, the locations where they were based, and the relationships between groups. It examines how hapū and iwi have used and related to their environment economically, culturally, and spiritually. In doing so, it helps to reflect the extent and distribution of customary rights between hapū and iwi and also allows us to commence part II, where we begin to address the specific arguments of the claimants and the Crown.



CHAPTER 1

INTRODUCTION

1.1 THE NATIONAL PARK INQUIRY DISTRICT

At the heart of the National Park inquiry district stand three imposing mountains: the volcanic peaks of Tongariro, Ngāuruhoe, and Ruapehu. They dominate the landscape, and they also loom large in the identity of those iwi and hapū who live around them and have a traditional connection with them. But more than that, they stand at the heart of much that happened in the area. The national park, for instance, from which the inquiry district takes its name, would not have been created had it not been for the mountains. The park occupies much of the land within the inquiry's boundary, and many of the claims heard by the Tribunal relate to its creation or subsequent management. Similarly, the Tongariro power development (TPD) scheme, also the subject of a number of claims, would not have been possible without water from the streams and rivers that have their origins in the mountains. In this way, the mountains are central to many of the issues this Tribunal has been called on to investigate, and it is for that reason we have chosen 'te kāhui maunga'¹ (the chiefly cluster or company of mountains) as the title for our report. We note, too, that the claimants before us generally chose to identify themselves as 'ngā iwi (or ngā hapū) o te kāhui maunga', and we have retained that usage.

The area contained within our inquiry may be small, but it is important to the claimants. Though not heavily populated, it is an area where the interests of many iwi and hapū intersect. As such, it has been a place of encounter and mediation. Kin groups associated with the area also have many Treaty issues in common. Thus, although the Tribunal initially had plans to hear the claims of those iwi and hapū as part of neighbouring inquiries, in the end it became clear that the mountain area needed a district of its own.

1.2 THE INQUIRY DISTRICT

1.2.1 Establishment

The National Park inquiry district was officially constituted in February 2004, as recorded in a memorandum put out jointly by the Chairperson of the Waitangi Tribunal and the presiding officers of the Taupō (Central North Island) and Whanganui district inquiries.²

Acknowledging Ngāti Rangi's concern that 'the focus on overlapping issues between the Taupō and Whanganui inquiries be maintained', the memorandum stated that a member from each of the Taupō and Whanganui Tribunals would be appointed to the new National Park Tribunal.³ To allay fears about delays, the memorandum further noted that work would not be starting from scratch in the new inquiry but would, rather, build



Tongariro National Park from the air

on ‘the substantial foundations already constructed by the Whanganui and Taupō tribunals’, and that there was a timetable in place that was synchronised with the two existing inquiries.⁴

The boundaries of the National Park inquiry district were confirmed by the same memorandum, and those of the Taupō and Whanganui inquiry districts adjusted accordingly on 20 September 2004.⁵ For most purposes, the boundary of the new district would include Rangipō–Waiū 1, but the rest of Rangipō–Waiū would be included only in a very limited way, and Murimotu and Rangiwaewa would remain within the Whanganui inquiry.⁶ We discuss these limitations around the Rangipō–Waiū blocks in more detail in our section on jurisdictional issues, later in the chapter.

In line with these decisions, the chairperson announced the constitution of a separate Tribunal panel, tasked with inquiring into all claims arising in the National Park

district. The panel was to comprise a presiding officer and one member from each of the Whanganui and Taupō Tribunal panels. Joanne Morris, panel member for the Rotorua, Kaingaroa, and Taupō Tribunals, was appointed presiding officer for the new inquiry, and John Clarke, also from the Taupō Tribunal, was appointed as a panel member. A panel member from the Whanganui Tribunal had at that stage still to be decided.⁷

On 4 May 2004, however, John Clarke stepped down from the National Park Tribunal and was replaced by Sir Hirini Moko Mead.⁸ Then on 25 August 2004, Joanne Morris stepped down as chairperson of the National Park Tribunal and was replaced by Deputy Chief Judge (later Chief Judge) Wilson Isaac.⁹ On 5 July 2005, Sir Hirini, Sir Doug Kidd, Dame Margaret Bazley, and Dr Monty Soutar were formally appointed as Tribunal members on the National Park inquiry.¹⁰ The following year, on 15 February 2006, Dame Margaret stood down as a member of the



National Park inquiry, and was not replaced.¹¹ Therefore, the final National Park Tribunal panel consisted of presiding officer Wilson Isaac and panel members Sir Hirini Mead, Sir Doug Kidd, and Dr Monty Soutar.

1.2.2 Research and procedural issues

In order to maintain as much connection as practicable with the Taupō and Whanganui inquiries, the National Park Tribunal relied heavily on the research programmes of the Whanganui and central North Island (CNI) inquiries. In this way, the work necessary to finalise the research programme for the National Park inquiry was significantly reduced.¹² Nevertheless, claimants and the Crown were given the opportunity to file additional research as they saw fit.¹³

Altogether, 41 claims related to the new National Park inquiry district.¹⁴ These comprised a number of draft statements of claim and also several new claims, all

submitted by June 2005.¹⁵ To facilitate an efficient hearing process, the Tribunal then required claimants to submit ‘particularised statements of claim’, taking in any new evidence revealed by the research. It also asked the Crown to submit a statement or statements in response to those claims.¹⁶ The particularised statements of claim were to be filed in July¹⁷ and the Crown’s combined statement of response in September.¹⁸ By November of the same year, 19 ‘final statements of claim’ for the National Park inquiry had been lodged with the Tribunal. This number included a generic statement of claim on behalf of claimants affiliated to the Whanganui iwi.¹⁹ By August 2005, the National Park Tribunal had begun to combine the records of inquiry of each claim into one single combined record of inquiry, numbered Wai 1130.²⁰ The end of the year saw the final Statement of Issues filed, defining the specific matters that would be inquired into,²¹ and preparations well underway for hearings to begin in February 2006.



The National Park panel. From left, Dr Monty Soutar, Sir Doug Kidd, Chief Judge Wilson Isaac, and Sir Hirini Mead.

1.2.3 Location

The National Park inquiry district is bordered by the Taupō inquiry district to its north and east, the Taihape inquiry district in its south-east corner, and the Whanganui inquiry district to its south and west. The geographic area covered by the inquiry is dominated by the Tongariro National Park, but includes additional lands surrounding the park. From the north-west, the district boundary proceeds eastwards from Whakapapa Island near Kākahi up the Whanganui River, then skirts the

northern boundary of the Waimanu block, the Tongariro National Park and Ohuanga South 2B1B to meet the Tongariro River, which it follows south to its confluence with the upper Waikato River. It then proceeds successively southwards, westwards, and northwards, along the Rangipō–Waiū 1 block boundary to its junction with the Rangipō 8 and Murimotu blocks. From there, the boundary proceeds westwards following the southern and western edges of the Tongariro National Park until it crosses the Taupōnuiātia boundary line. It then follows that line

northwards along the western side of the Mahuia, Tāwhai, and Taurewa blocks to the Whanganui River.²²

1.3 THE HEARINGS

The National Park Tribunal panel heard evidence over eight weeks between February 2006 and February 2007. The hearings were held at various locations primarily in and around the Tongariro National Park. Of particular note is that the first week included one day when both the National Park and Whanganui Tribunals sat together to hear the traditional oral evidence of Ngāti Rangī.²³ This is the only time in the Tribunal's history when two panels have held a joint hearing. The day provided an opportunity for Ngāti Rangī to give its traditional evidence to both panels, but follow-up questioning was held over for the respective district hearings.

1.4 THE CLAIMS

As outlined above, the National Park inquiry combined claims originally lodged with the Whanganui and Taupō (later CNI) Tribunals. The National Park inquiry encompasses 41 individual Wai-numbered claims brought by Ngāti Tūwharetoa, Ngāti Hikairo, Ngāti Rangī, Ngāti Hāua, and others, as listed in more detail below.

Overall, most claims issues relate to the following topics:

- ▶ war and political engagement in the nineteenth century;
- ▶ the operations of the Native Land Court in the district;
- ▶ land purchasing practices and the taking of land for public works;
- ▶ the creation and management of the Tongariro National Park; and

Table 1.1: Tribunal hearings

	Agenda	Venue and location	Date
1	Ngāti Rangī	Raketapauma Marae, Irirangi; Maungārongo Marae, Ōhakune	20–23 February 2006
2	Generic hearing	The Grand Chateau, Mount Ruapehu SH48	13–17 March 2006
3	Site visits	Tongariro National Park	11–13 April 2006
4	Whanganui central cluster; descendants of Winiata Te Kākahi	Te Puke Marae (with pōwhiri at Mangamingi Marae)	15–19 May 2006
5	Genesis Energy; descendants of Rangiteauria	Powderhorn Chateau, Ōhakune; Tiorangi Marae	28 August – 1 September 2006
6	Ngāti Hikairo; descendants of Kurapoto and Maruwahine; Ngāti Tūrangitukua	Pāpakai Marae	18–22 September 2006
7	Ngāti Tūwharetoa; Ngāti Hikairo ki Tongariro; Ngāti Manunui; Ngāti Waewae; Ngāti Maniapoto	Ōtūkou Marae	11–13, 16–20 October 2006
8	Crown	Working Men's Club, Ōhakune	27 November – 1 December 2006
9	Generic hearing	Waitangi Tribunal Offices, Wellington	14 February 2007
10	Closing submissions	Ruapehu College, Ōhakune	9–13 July 2007

- › the establishment and ongoing management of the TPD scheme.

Listing claimants roughly in the order in which they appeared at hearings, the issues raised by each claimant group can be summarised as follows:

1.4.1 Ngāti Rangi

Ngāti Rangi's consolidated statement of claim was filed on behalf of the named claimants in Wai 151, Wai 277, Wai 467, and Wai 554, and also 'the uri of the three eponymous Ngāti Rangi tupuna – Rangituhia, Rangiteauria and Uenukumanawawiri'. The claimants adopt the generic pleadings relating to the Native Land Court as filed by the Whanganui iwi in the Whanganui inquiry. They also adopt the Whanganui claimants' generic pleadings on the Taupōniātia block and public works takings, filed in our inquiry (see below). They say that the Crown has failed actively to protect Ngāti Rangi's land base and other resources, or to respect Ngāti Rangi's rangatiratanga. Part of the problem, say Ngāti Rangi, is that the Crown failed to 'comprehend, recognise, protect and identify' the mana motuhake or tino rangatiratanga of Ngāti Rangi and the extent of Ngāti Rangi customary rights.²⁴

Of particular concern to Ngāti Rangi is the Crown's creation and management of the Tongariro National Park, including the alleged gifting of the maunga peaks to the Crown – their tupuna maunga, Ruapehu, being part of that transaction. Land blocks in which they had interests include Rangipō–Waiū, Rangipō North 8, Rangiwaea, Rangiwaea–Tāpiri, Waiakake, Raetihi, Rangataua, Urewera, and Waimarino. They claim that, as a result of continual Crown acquisition of their lands, there are very few blocks remaining in their ownership today. They note, too, that it was not only land that was lost, but also resources and other taonga, and no compensation was received for any of these. They say, in particular, that the Rangipō North 8 block was effectively confiscated under the Tongariro National Park Act 1894, and that this happened without the knowledge, consent, or approval of Ngāti Rangi or the receipt of any compensation.

They further say that the creation and development of

Crown policy and management structures for the park neither took into account the kaitiaki responsibilities of Māori, nor provided for any Māori input into the park's management. Of particular importance to Ngāti Rangi, in this context, is the protection of Mount Ruapehu's crater lake, Te Waiamoe, and numerous wāhi tapu and other sites of significance on the mountain. The management structures of the park have, say the claimants, 'distanced Māori from the maunga'.²⁵ Ngāti Rangi also adopt the generic pleadings of the Whanganui claimants in relation to the management of the park.

Ngāti Rangi's claims relating to the establishment of the TPD focus on the way in which they have, they say, been sidelined and their knowledge and concerns 'devalued or dismissed'. They say that the scheme has had a negative impact on their relationship with their waterways, and on food and water resources for present and future generations, and they adopt the generic pleadings of the Whanganui claimants.²⁶

During the hearings, Ngāti Rangi added considerable refinement and detail to these claims, as reflected in their closing submissions.²⁷

1.4.2 Descendants of Rangiteauria

A separate claim, Wai 1263, was also filed by the uri of Rangiteauria. These claimants allege that the acquisition, development, management, control, and use, by or on behalf of the Crown, of their lands in the upper Whangaehu catchment has prejudicially affected their interests. This includes the Ōhutu, Ōtiranui, Rangataua, Urewera, Waiakake, Rangiwaea, Rangipō, and Murimotu land blocks. The claimants also state that they were negatively affected by the acquisition and management of the waterways, fisheries, and resources of the upper Whangaehu, Mangawhero, and Moawhango Rivers and their tributaries. Furthermore, they say the creation of the TPD has adversely affected their taonga.²⁸

1.4.3 Claimants affiliated to upper Whanganui iwi

Generic pleadings were filed on behalf of Wai 48, Wai 81, Wai 146, Wai 151, Wai 221, Wai 277, Wai 467, Wai 554, Wai

555, Wai 836, Wai 843, Wai 954, Wai 1029, Wai 1072, Wai 1073, Wai 1170, Wai 1181, Wai 1189, Wai 1192, Wai 1202, Wai 1224, and Wai 1261, with most of those claimants then formally confirming adoption of the pleadings in their respective particularised statements of claim.

Whanganui iwi claim that they were substantially dispossessed of their lands in the National Park district, including, and in particular, the peaks of te kähui maunga which the Crown maintains were gifted to it by Te Heuheu Tūkino. The iwi state that, in particular, they lost their lands through the creation and operation of the Native Land Court system, including the individualisation of title, survey liens, tenure reform, and the court's prejudicial process. Another major factor in the loss of Whanganui iwi land was the creation of the Tongariro National Park, exacerbated by ensuing extensions to it. Whanganui Māori allege that they have suffered prejudice by virtue of the Crown's acts, omissions, legislation, policies, and practices in relation to the creation and management of the park. They say that, in the twentieth century, the Crown's rating system and its public works acquisitions both resulted in further alienation. The iwi's alienation from their ancestral lands has led to the destruction and desecration of their wāhi tapu and sites of significance. Dispossession from their lands has resulted in their social, political, and economic marginalisation and, in turn, in a loss of mana. It has also resulted in the breakdown of traditional political and social structures and 'the arousal of division, dissension and conflict between iwi and hapu.'²⁹

The iwi further state that the Crown by act or omission, particularly through the management of the National Park and the creation and operation of the TPD, caused the erosion of the natural ecology, habitat, and wildlife on their customary lands. They say the Crown failed to acknowledge and recognise Whanganui iwi interests and excluded the iwi from the management of the park and the TPD. They assert that the Crown, in doing so, also failed to protect the iwi's cultural and environmental integrity.

Note that in further Whanganui claim summaries given below, these generic pleadings are not repeated.

1.4.4 Descendants of Winiata Te Kākahi

Winiata Te Kākahi's descendants' claim, Wai 1181, concerns their tupuna's interests in the original Urewera block. The claimants state that, as a result of the various partitions and sales of lands in this block, the only part of it remaining in Māori ownership by 1955 was Urewera 2A2, which was then acquired by the Crown. Urewera 2A2 now comprises part of the Tongariro National Park. Consequently, the claimants state, they have been dispossessed and displaced from their traditional lands and resources, and suffered the destruction and erosion of their economic base, social patterns, identity, and traditional leadership structures.³⁰

1.4.5 Ngāti Hinewai

In their claim, Wai 1029, Ngāti Hinewai say that the investigation and individualisation of title by the Native Land Court effectively opened the door to the wholesale alienation of their land, including, in particular, virtually all their land interests in the Taurewa block. They claim that the Crown increased the expense of land court hearings and depressed the Māori economy in order to force Māori land owners to sell what was often their only significant asset. They then lost more of the Taurewa block through the taking of land for the Whakapapa Gorge Scenic Reserve. Further, they state, the Crown's application of the English law of succession, in particular the application of the *Papakura* rule of 1867, has made it difficult for Ngāti Hinewai to amalgamate their remaining Taurewa land interests. The loss of control over their land interests and papakāinga lands at Tieketahi makes administration of their remaining lands extremely difficult. Ngāti Hinewai say that today they do not own and control sufficient lands for their socio-economic development and well-being.

The Ngāti Hinewai claim also concerns the Crown's conduct during the battle of Te Pōrere in 1869.³¹

1.4.6 Mākōtuku block v1 claim

Wai 836 was lodged by Vivienne Kopua and Patricia Henare on behalf of Te Puawaitanga Mokopuna Trust, the Elenore Anaru Whānau Trust, and Tira Taurewera. The

claimants say they were prejudicially affected by the Native Land Court hearings in the Raetihi block and purchase of that block. They also say they were detrimentally affected by the taking of Raetihi 4B, part of the Mākōtuku survey district, and by the serious environmental impacts of mining the areas taken for a metal pit in Raetihi 4B. They further say that the Crown's acquisition of part Raetihi 4B by way of exchange conflicted with the claimants' plans to utilise the land for development. This land was governed by scenery preservation legislation and eventually incorporated into the National Park. Despite this, the claimants were never formally recognised in legislation for the management of the park.³²

1.4.7 Pēhi whānau

In Wai 73, the Pēhi whānau allege that the Crown compulsorily acquired their lands in Waimarino 4B2 and included parts of it within the boundaries of the Tongariro National Park. Despite this, they say, the management structures for the park fail to recognise their interests. The claimants further state that they have lost their natural resources and their customary interests in land. This has caused negative cultural and spiritual impacts.³³

1.4.8 Te Iwi o Uenuku

Te Iwi o Uenuku represents certain tangata whenua of the area south and west of Mount Ruapehu, who have grouped together for the purpose of pursuing claims Wai 954, Wai 1072, Wai 1073, Wai 1170, Wai 1189, Wai 1192, Wai 1202, and Wai 1261. They particularly raise issues relating to native land administration and alienation. As a result of the Crown's legislation and policies, say the iwi, they had lost all their land within the inquiry district by the year 2000, without redress, including Mount Ruapehu, Rangipō North, and other lands on and close to Mount Ruapehu. Almost all of these lands were alienated to the Crown. The area lost includes land in Waimarino 4B2, originally taken for defence purposes then incorporated into the National Park.

Other issues raised by the claimants relate to 'the massive transformation of the indigenous environment by the end of the nineteenth century', which they say the

Crown encouraged. The result was pollution of rivers and streams, including those flowing from Mount Ruapehu, and the destruction of land, forest growth, and birdlife. The environmental degradation contributed significantly to the claimants' loss of access to traditional resources. Claimants also allege that there is no effective Māori participation in new environmental management systems such as those managed by the Department of Conservation (DOC).³⁴

1.4.9 Ngāti Hāua

Ngāti Hāua and its constituent hapū held customary interests – overlapping or shared with other Whanganui iwi, Ngāti Hikairo, and Ngāti Tūwharetoa – in seven blocks within the inquiry district. In their claim (comprising Wai 48, Wai 81, and Wai 146), Ngāti Hāua say that the Native Land Court was ill-equipped to deal with the shared or overlapping interests in those lands, leading to the exclusion of Ngāti Hāua from court awards in five of the blocks and the award of minority interests in the other two. The Crown then acquired Ngāti Hāua's interests in the Waimarino and Urewera blocks and incorporated those blocks into the park. Ngāti Hāua say that they were never consulted by the Crown about the creation of the Tongariro National Park, which included their tupuna maunga, Mount Ruapehu. They claim that they were dislocated from their ancestral land, kāinga, resources, and wāhi tapu, and that they have also been alienated from the National Park through the Crown's management policies and practices. They say they have lost their economic, spiritual, and cultural base, leading to the destruction of their traditional land tenure system, social organisation, and traditional leadership structures.³⁵

1.4.10 Tamahaki

The Tamahaki claim, Wai 555, focuses on the Waimarino block. The claimants state that they were prejudicially affected by the Native Land Court hearing and purchase of the Waimarino block in the nineteenth century. In particular, the claimants say, they suffered the diminution of their cultural and spiritual links with the mountains, and their customary activities.³⁶

1.4.11 Ngāti Ātamira, Ngāti Kahukurapango, Ngāti Maringi, Ngāti Ruakōpiri

Claim Wai 843 has been filed on behalf of four hapū named in the original title order for the Waimarino 4 block. The claimants held customary interests in lands in the National Park district, including the Ōkahukura and Waimarino blocks, and in the mountains on those blocks. Their claim concerns the Native Land Court process in respect of the Ōkahukura block, the taking of Waimarino 4B2 for public works purposes, the loss of their interest in Urewera 2A2, their exclusion from the management of the National Park, and the cultural and spiritual impacts of the loss of their land and development opportunities.³⁷

1.4.12 Uenuku Tūwharetoa

In Wai 1224, the descendants of Uenuku Tūwharetoa state that the Crown's land purchase policy and land legislation resulted in the loss of customary interests in their land, particularly in the Waimarino block. This loss led to associated cultural and spiritual impacts such as a loss of autonomy, and social and economic impacts, including receiving no or reduced values for lands or loss of the opportunity to develop lands.³⁸

1.4.13 Descendants of Tamaūpoko and Waikaramihi

In Wai 221, the descendants of Tamaūpoko and Waikaramihi say that they held customary interests in a number of different land blocks within the inquiry district. They were particularly affected by the Native Land Court hearings and the subsequent Crown purchase of the Waimarino block. The claim also concerns public works takings which, the claimants say, were contrary to an agreement with iwi in the National Park district and made without any compensation. Other issues relate to the management of the National Park; the taking of the headwaters of the Whanganui River, without consultation, for the TPD; and the social and economic impacts and loss of autonomy associated with land loss.³⁹

1.4.14 Descendants of Kurapoto and Maruwahine

Claim Wai 1264, filed on behalf of the descendants of Kurapoto and Maruwahine, focuses particularly on the

negative effects of Native Land Court policies and processes. The claimants also say that the Crown's purchase policies left little room for the preference of tangata whenua to retain their land, and that the Crown purchased land at unfairly low prices. The claimants further state that they were excluded from title in the Rangipō North and other blocks. The loss of land has deprived them of economic benefits arising from the use of the lands, both historic and current. The claim also related to the alleged gifting of the maunga, and the management of the National Park.⁴⁰

1.4.15 Ngāti Hikairo and Ngāti Hikairo ki Tongariro

Ngāti Hikairo's consolidated claim (incorporating Wai 37, Wai 833, Wai 933, Wai 965, Wai 1044, and Wai 1196) focuses on the system governing the administration of Māori land and the process and tactics used by purchase agents to acquire that land. Ngāti Hikairo claim that this resulted directly or indirectly in the loss of large portions of their lands, including the Taurewa, Ohuanga, and Taupōnuīatia blocks, as well as their economic and sustaining resources, including mahinga kai, birding, cultivation, resource-gathering and customary fisheries. This caused lasting social and economic difficulties for Ngāti Hikairo. They further claim that the Crown 'gifted' the maunga to itself and the people of New Zealand without proper consultation and attention to properly ascertaining which groups had interests in the maunga. In creating the Tongariro National Park, the Crown gave itself compulsory powers of acquisition over lands it wanted, by virtue of the Tongariro National Park Act 1894. There was no consultation or compensation with the Native land owners over this measure. Ngāti Hikairo's claim further concerns:

- › the management of the National Park;
- › the extinguishment of Ngāti Hikairo title to riverbeds and the loss of their traditional fishing resources;
- › the establishment, management, and negative environmental, cultural and spiritual impacts of the TPD; and
- › ownership and control over geothermal resource, including the Ketetahi hot springs.⁴¹

One particular group bringing claims on behalf of Ngāti Hikairo (Ngāti Hikairo ki Tongariro, Wai 1262) say that they suffered the rapid alienation of their lands and that the remaining lands in tribal ownership are insufficient for the present and future needs of the tribe. They say that the Native Land Court failed to recognise all Ngāti Hikairo ki Tongariro core customary land interests and all of their other customary interests. The claimants further state that the Crown failed to create and maintain reserves sufficient and adequate for the present and future wants of Māori. Today, the hapū of Ngāti Hikairo ki Tongariro has no direct ownership, control, or guardianship of land because of the individualisation of title through the land court. The hapū also states that the Crown has not compensated them for their landlessness. Ngāti Hikairo ki Tongariro's claim further concerns the Crown's 'sharp purchase practices' and policies; the undermining by the Crown of the Rohe Pōtae alliance; the creation, expansion and management of the Tongariro National Park; public works takings; the Crown's contributions to the hapū's poor socio-economic situation; the impacts of the TPD on the hapū, particularly with regards to Lake Rotoaira; the establishment of the Ōtūkou quarry; geothermal springs and resources; forestry; the failure by the Crown to protect taonga; and the establishment and management of the land development schemes in Ohuanga.⁴²

1.4.16 Ngāti Tūwharetoa

The consolidated claim Wai 575 (incorporating Wai 61, Wai 178, Wai 226, Wai 269, Wai 480, Wai 490, and Wai 502) was submitted by Te Ariki Sir Hepi Te Heuheu on behalf of all the hapū of Ngāti Tūwharetoa. Fundamentally, the claim alleges that the Crown failed to respect the autonomy and te tino rangatiratanga of Ngāti Tūwharetoa, and actively sought to undermine the iwi's tribal leadership. The Crown waged war against Māori in the 1860s, then 'sought to exploit the advantage gained from its military victory to force Ngāti Tūwharetoa to open up their lands to colonisation'. Ngāti Tūwharetoa tried to protect their lands though the 1883 Rohe Pōtae compact, but then the Crown actively sought to undermine the compact. Through the Native Land Court and its associated legislation, the Crown

facilitated the alienation of Ngāti Tūwharetoa's land and resources. In particular, in 1885 the Crown induced Ngāti Tūwharetoa to place the Taupōnuīatia block through the Native Land Court in order to acquire as much of the tribe's remaining land as it could. The court process caused considerable inconvenience for Ngāti Tūwharetoa. The tribe was forced to attend multiple, lengthy, and costly hearings in order to defend their interests in a significant portion of their lands. The process of individualisation of title also caused the loss of customary rights and ownership of land, and damaged the social structure and organisation of Ngāti Tūwharetoa.

Of the land that had formed the Taupōnuīatia block, the Crown acquired over 13,500 hectares under the provisions of the North Island Main Trunk Railway Loan Application Act 1886, but most of that land was not needed for the railway route itself.

In the late nineteenth century, say Ngāti Tūwharetoa, the Crown actively sought to purchase as much land as it could without providing sufficient reserves. It also took advantage of oppressive and unfair purchase methods and the pressure tactics adopted by Crown purchase agents. Further vast areas of the Taupōnuīatia block were alienated by the alleged gifting of the Tongariro maunga, Crown purchases, compulsory acquisition, and in lieu of survey debts.

According to the iwi, the Crown developed its policy of creating a National Park without reference to those iwi and hapū who held mana whenua over the land concerned, including Ngāti Tūwharetoa. In doing so, the Crown 'imposed Pakeha perceptions of wilderness', assuming the land was of no value to Ngāti Tūwharetoa because it was not suitable for farming, and failed to take into account the area's significant cultural and spiritual value to the iwi. At the time of the so-called 'gifting' of the peaks, Ngāti Tūwharetoa were in a vulnerable position, and their objective was to keep the maunga sacred by transacting a 'tuku taonga' involving the Crown, Horonuku Te Heuheu, and six other rangatira of the region. In Ngāti Tūwharetoa's view, this imposed reciprocal obligations and conditions on the Crown – namely that there would be a partnership to hold and care for the

maunga. In particular, title for Tongariro would be held jointly between Ngāti Tūwharetoa and the Queen. The Crown would then be ‘under an obligation to protect the maunga from all forms of desecration’, mirroring Ngāti Tūwharetoa’s own obligations as kaitiaki. Instead, say the claimants, the Crown ‘failed to acknowledge and respect the tikanga pertaining to the gift’, and failed to honour the conditions on which the peaks had been gifted. Further, the Crown failed to ensure that the mana of the maunga was respected.

Throughout most of the twentieth century, the Crown pursued a policy of extending the park. This included acquisition of the area around Pihanga and Lake Roto-pounamu, which was gazetted as the Pihanga Scenic Reserve in 1965 and then added to the park in 1975. The expansion also included areas initially taken for defence purposes, under the Public Works Act 1928, and then incorporated into the park without consultation with Ngāti Tūwharetoa or any attempt to offer the lands back to them.

For over a century, say the claimants, the Crown’s management regime for the park reflected neither Ngāti Tūwharetoa’s intended partnership nor the Treaty. Not until the development of the Tongariro–Taupō conservation management strategy, approved in 2002, did the situation begin to change, but there are still flaws. The latter include a lack of resourcing for Treaty-focused initiatives such as He Kaupapa Rangatira, and a lack of opportunity for Ngāti Tūwharetoa to impose restrictions on culturally inappropriate activities in the park. Also of concern is that the Crown has failed ‘adequately to protect the unique habitat and indigenous flora and fauna of the Park’, deliberately introducing exotic animals, fish, and plants.

In terms of economic development, Ngāti Tūwharetoa are of the view that the Crown has failed to ensure they are able to benefit from economic opportunities arising from the park.

A succession of Crown acquisitions for public works during the twentieth century, such as compulsory takings and purchases for roads, metal pits, education purposes, and the trout hatchery, have resulted in further land loss. Of particular concern in the case of takings for

the Ōtūkou quarry is the associated social, economic, and cultural upheaval caused. Also included in the public works takings was land for the TPD scheme. In addition to the land loss involved, Ngāti Tūwharetoa say that the scheme has had detrimental effects on its customary fisheries (notably in Lake Rotoaira), geothermal resources, water, and natural environment and heritage. Separately from this grievance about the TPD’s alleged damage to the geothermal resource, the claimants say the Crown has failed to provide for Ngāti Tūwharetoa’s customary interests in that resource, and likewise has failed to acknowledge or provide for any Māori development right.

Other concerns raised by Ngāti Tūwharetoa relate to indigenous and exotic forestry. The claimants assert that the Crown purchased, or permitted the purchase of, large areas of Ngāti Tūwharetoa’s forested land without proper value being given to the timber. It then imposed a prohibition on the alienation or logging of their remaining indigenous forests, in some instances for a period of up to 40 years. Meanwhile, it failed to properly vet an agreement between Ngāti Tūwharetoa and the Tongariro Timber Company (TTC), involving over 100,000 acres of Ngāti Tūwharetoa’s land. In ensuing years, when difficulties arose, the Crown did not step in to assist and instead sought to purchase the land subject to the agreement. In this instance and in others, the Crown failed to ensure that Ngāti Tūwharetoa was left with a sufficient endowment of land. Despite the alienation of around 50 per cent of Ngāti Tūwharetoa’s land during the nineteenth century, throughout the twentieth century the Crown continued to purchase, or permit the purchase of, their residual land, ‘leaving Ngāti Tūwharetoa with insufficient land to sustain them as an iwi’.

Some Māori land was acquired by the Crown for prisons, including land where there were significant wāhi tapu that were then disregarded and sometimes desecrated. Land no longer required for the prisons was not offered back to the original owners. Other wāhi tapu are on land acquired by the Crown for defence purposes and some of those, too, have been desecrated.

The claim also raises concerns about the Crown’s local government legislation, where provision is made for

delegating powers to local government bodies. The claimants say that the Crown ‘has failed to ensure that the process of those delegations . . . is consistent with the Treaty guarantees and principles’. One example is that Ngāti Tūwharetoa, they say, is not sufficiently resourced to participate in local government processes. They also say that the Crown’s rating legislation has resulted in ‘onerous charging orders’ on some blocks which either led to the loss of land or made its development unviable.⁴³

1.4.17 Ngāti Manunui

In Wai 998, John Manunui, on behalf of Ngāti Manunui, states that the Native Land Court system failed to recognise the customary interests of Ngāti Manunui in their core lands at Taurewa, Ōkahukura, and the peaks of Tongariro. This has left them with insufficient land and resources for their present and future needs and prevented Ngāti Manunui from participating in economic development. Ngāti Manunui also claims that land was compulsorily acquired for public works from the limited amount held by Ngāti Manunui individuals without adequate or any compensation. Claimants also allege that the TPD was established without consulting with or gaining the consent of Ngāti Manunui, and that Ngāti Manunui suffered from the adverse effects of the TPD scheme on their awa as well as the destruction of their wāhi tapu. Ngāti Manunui lastly claims that the Crown failed to protect Ngāti Manunui from the loss of their valuable resources, including timber.⁴⁴

1.4.18 Ngāti Waewae

In Wai 1260, Ngāti Waewae state that the Native Land Court, between 1886 and 1900, failed to recognise all Ngāti Waewae core customary land interests. Instead most of their core customary lands were granted as absolute interests to other hapū. Ngāti Waewae say that they suffered the rapid alienation of their lands and that the land remaining in hapū ownership is insufficient for the present and future needs of the hapū. The lands set aside as absolutely inalienable reserves were equally insufficient. Ngāti Waewae’s claim further concerns ‘sharp purchase

practices’ employed by the Crown to acquire their lands. This included setting low fixed prices, the acquisition of land as a result of the payment of survey debts and making advanced payments or tāmana; the ‘gifting’ of the maunga; the court’s unfair and prejudicial process; the creation, expansion, and management of the National Park; public works takings of Ngāti Waewae lands; the burden placed upon Ngāti Waewae by the Crown’s rating policy and legislation, and associated land loss; the transfer of usage rights to Lake Rotoaira, and the establishment and operation of the TPD and its negative impacts on Ngāti Waewae’s economic, social, and cultural development, and their identity with the waters and lands around Lake Rotoaira; Ngāti Waewae’s interests in their geothermal springs and resources; te reo Māori, and the tikanga, kawa, ritenga, waiata, whakapapa, and other taonga of Ngāti Waewae as a hapū of Ngāti Tūwharetoa; and the establishment and management of the land development schemes on Ngāti Waewae lands in Taurewa.⁴⁵

1.5 THE TREATY OF WAITANGI AND ITS PRINCIPLES

The Treaty of Waitangi Act 1975, and its amendments, requires the Waitangi Tribunal to examine claims by Māori to ascertain whether certain acts or omissions of the Crown have breached the principles of the Treaty of Waitangi. If we find that Treaty breaches have taken place and the claims are well founded, and that the claimants have been prejudiced, then we may make recommendations for the removal of the prejudice and the prevention of its recurrence. This process is dedicated to healing the nation’s past and restoring the Treaty relationship between the Crown and Māori.

In fulfilling its duty under the Treaty of Waitangi Act 1975 and its amendments, the Tribunal is required to evaluate the meaning and effect of the Treaty as set out in the English and Māori texts. According to section 5 of the Act, the Tribunal ‘shall have regard to the two texts of the Treaty’, and ‘shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the two texts’. As with other Tribunals, we agree that

considerable weight should be given to the Māori text because that was the version assented to by the Māori signatories. This view aligns with the accepted principle of *contra proferentem* which maintains that any ambiguity in a contract is to be interpreted in favour of the non-drafting party. A useful articulation of this principle can be found in the 1899 United States Supreme Court decision of *Meehan v Jones* which found that treaties should be construed in the sense in which they would naturally be understood by Native Americans (or Indians, as they were then termed).⁴⁶

Over time, discussion about the English and Māori texts has tended to concentrate on the meaning of *kāwanatanga* or sovereignty on the one hand, and *tino rangatiratanga* on the other. We see *kāwanatanga* as meaning the right to govern and to make laws for the whole of New Zealand, and *tino rangatiratanga* as chiefly authority over the affairs of their people.⁴⁷

We also endorse the view of other Tribunals that sovereignty was ceded to the Crown in article 1 but that this must be qualified by the recognition of *tino rangatiratanga* in article 2.⁴⁸ Therefore, Māori ceded sovereignty in exchange for the protection by the Crown of *tino rangatiratanga*.⁴⁹

As with other parts of New Zealand, the interplay between *kāwanatanga* and *tino rangatiratanga* is at the core of the Treaty relationship between *ngā iwi o te kāhui maunga* and the Crown – a Treaty relationship which in this district found particular expression through the ‘gift’ of the mountains that was put into effect by the deed of conveyance between the Crown and Horonuku Te Heuheu on 23 September 1887. This transaction did not involve all the *iwi* and *hapū* of the area but it did bring the boundaries of *kāwanatanga* and *tino rangatiratanga* into consideration. The true and intended meaning of the transaction is thus of the highest importance and we are assisted by the principle of *contra proferentem* in understanding it. The relationship so created, a practical expression of the Treaty, was the genesis of the Tongariro National Park. It is also important in the context of section 4 of the Conservation Act 1987 which, when applied

to this district, has attempted to codify the relationship by requiring the Crown in its administration of the Tongariro National Park to give effect to the principles of the Treaty of Waitangi.

We examine these issues in detail later in the report. We now outline the Treaty principles we consider to be relevant to inform our discussion of the Treaty relationship between Māori and the Crown in this inquiry district. First, we note the view of the Privy Council on the role of the Treaty principles:

They reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty . . . With the passage of time, the ‘principles’ which underlie the Treaty have become more important than its precise terms.⁵⁰

1.5.1 Partnership

The partnership between the Crown and Māori required each party ‘to act towards the other reasonably and with the utmost good faith’.⁵¹ It also included the Crown’s duty to consult Māori. In the 1987 *Lands* case, Justice Richardson noted that in some instances, a Treaty partner ‘may have sufficient information in its possession’ to adhere to the Treaty principles without specific consultation; in other instances, however, ‘extensive consultation and co-operation would be necessary’.⁵² In 1989, Sir Robin Cooke noted that the good faith that the Treaty parties owed one another ‘must extend to consultation on truly major issues. That is really clear beyond argument’.⁵³ The principle of partnership thus included the duty to obtain the full, free, and informed consent of the correct right holders in any transaction for their land. Overall, the principle permeates much of our discussion of the Crown–Māori relationship, including the 1887 Deed of Conveyance between Horonuku Te Heuheu and the Crown.

1.5.2 Reciprocity

The principle of reciprocity involves mutual advantages and benefit. When the Treaty was signed, Māori ceded the *kāwanatanga* of the country to the Crown, and in return

the Crown guaranteed that their tino rangatiratanga over their land, people, and taonga would be protected.⁵⁴ The Treaty partnership necessitates that the Crown and Māori develop arrangements that consider both the Crown's wider responsibility as well as the more specific protection of tino rangatiratanga. Neither the Crown's right to govern, nor the guarantee of tino rangatiratanga is absolute. As the CNI Tribunal noted:

There was always to be room for two peoples, as both expected to gain from the Treaty. For Maori, the benefits would include access to new technologies and markets and to a new economy: both expected to benefit from a right to settled government or governments. The arrangement assumed a sharing of natural resources. Development of those resources was always going to lead to some modification of taonga. But the key was to ensure that both the Crown and Maori had the right to participate in how such development should proceed.⁵⁵

In our report, we consider whether the principles of partnership and reciprocity were upheld by the Treaty partners prior to and during the establishment of the park, as well as in the park's past and present administration.

1.5.3 Autonomy

As part of the mutual recognition of kāwanatanga and tino rangatiratanga, the Crown guaranteed to protect Māori autonomy.⁵⁶ In our view, the essence of autonomy is the ability of Māori to exercise authority over their own affairs within the parameters set out in the principles of partnership and reciprocity.

1.5.4 Active protection

Also arising from the principles of partnership and reciprocity is the duty of active protection of Māori rights and interests. This duty emanates, too, from the plain meaning of article 2 of the Treaty, where promises were made about 'full exclusive and undisturbed possession' of lands, resources, and other properties, for as long as Māori wished to retain them – promises that were made

at the time to secure the Treaty's acceptance. The Court of Appeal found that this duty was not merely passive, but applied to the active protection of Māori people 'in the use of their lands and waters to the fullest extent practicable', and that the Crown's responsibilities were 'analogous to fiduciary duties'.⁵⁷

Active protection requires honourable conduct by, and fair processes from, the Crown. It also necessitates consultation with – and, where appropriate, decision-making by – those whose interests are to be protected. As with other Tribunals, we consider that this principle requires the Crown to ensure that Māori are able to keep their land and taonga for as long as they wish, and also that they retain sufficient land and assistance for their future well-being.⁵⁸ As the Privy Council stated in 1994, the Crown's obligation to protect and preserve Māori property under article 2 is not absolute and unqualified but is based on the Treaty relationship, founded on 'reasonableness, mutual cooperation and trust'.⁵⁹

1.5.5 Options

An inherent aspect of the Treaty relationship was that Māori – whose culture, customs, and tribal authority were guaranteed and protected by the Treaty – would have options in the new developing society. Under the Treaty, New Zealand would be a country of two peoples, governed by partnership and mutual respect. As Te Tau Ihu Tribunal observed, Māori would be free to make their own decisions; they could opt 'to continue their tikanga and way of life largely as it was, or to assimilate to the new society and economy, or to combine elements of both and walk in two worlds'.⁶⁰

1.5.6 Mutual benefit

Both settlers and Māori expected that the Treaty would be beneficial; they envisaged access to the resources they required, as well as the stability they expected to result from the cession of sovereignty to the Crown. Settlers anticipated gaining from acquiring settlement rights, and Māori expected to gain from new technologies and markets. Both parties saw the Treaty as a means to develop

and prosper in the new, integrated nation state. To realise the desired goal of mutual benefit, however, the Crown and Māori, as Treaty partners, need to acknowledge their reciprocal obligations and responsibilities. As the Muriwhenua Fishing Tribunal said: ‘It ought not to be forgotten that there were pledges on both sides.’⁶¹

1.5.7 Equity

The principle of equity, in accordance with the obligations arising from kāwanatanga, partnership, reciprocity, and active protection, required the Crown to act fairly to both settlers and Māori and to ensure that settlers’ interests were not prioritised to the disadvantage of Māori. Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance.⁶²

1.5.8 Equal treatment

The Crown was required to treat Māori groups equally in accordance with the principles of partnership, reciprocity, active protection, and autonomy. When they signed the Treaty, many Māori hoped that the Governor would act as judge and peacemaker between tribes, and as *Te Raupatu o Tauranga Moana* noted, this also meant that the Crown must ‘not favour one [iwi] at the expense of others.’⁶³ As many Tribunals have noted, the Crown could not unfairly advantage one group over another if they shared a broad range of circumstances, rights, and interests.⁶⁴ Questions as to whether or not the Crown adhered to this principle arise in many aspects of the claims being considered by us.

1.5.9 The right of development

The right of development arises from the Treaty principles of partnership, reciprocity, mutual benefit, and equity. As the Muriwhenua Fishing Tribunal pointed out, if Māori knowledge, technology, ideas, opportunities, and practice were to be frozen at their 1840 levels, then the corollary had to be that the same should apply to settlers – a notion that is plainly nonsense. ‘A rule that limits Maori to their old skills forecloses upon their future’, said that Tribunal. Rather, the Treaty envisaged ‘a better life for both

partners.’⁶⁵ Furthermore, if settlers expected, through the Treaty, to be allowed access to the land and resources that had hitherto belonged to Māori alone, then such a sharing ‘requires that Maori development be not constrained but perhaps even assisted where it can be.’⁶⁶

The 1995 Court of Appeal case *Ngāi Tahu v Director-General of Conservation* covered important ground concerning the Māori right of development in current circumstances. Following their Treaty settlement, Ngāi Tahu developed a whale-watching business, and they objected to the director-general of conservation issuing a permit to a business competitor. The High Court found that the director-general was legitimately exercising kāwanatanga but ought to have consulted with Ngāi Tahu. It also found that the director-general had no obligation to grant Ngāi Tahu a temporary monopoly from the commencement of their business. Ngāi Tahu appealed the decision.⁶⁷

The Court of Appeal concluded – similarly to the *Te Ika Whenua* case involving hydroelectric power generation – that commercial whale-watching was a recent enterprise, had little to do with what might be construed as aboriginal rights at 1840, and was unlikely to have been anticipated at that time. But it also found that, through the lens of the Treaty, the enterprise was intimately linked to traditional taonga and fishery rights, to the extent ‘that a reasonable treaty partner would recognise that treaty principles are relevant’. The principle of active protection had to be considered. Commercial whale-watching was neither a taonga nor subject to tino rangatiratanga but was nonetheless ‘analogous’ to these. Furthermore, guiding visitors to observe natural resources had historically been ‘a natural role of the indigenous people’, and this constituted ‘a further analogy’. The court stated that Ngāi Tahu’s interests could not be reduced to ‘mere matters of procedure’ or ‘an empty obligation to consult’, because iwi were Treaty partners and were ‘entitled to a reasonable degree of preference’ in the consideration of permits. The court did not accept Ngāi Tahu’s entire case but noted that they succeeded in their appeal to a limited extent.⁶⁸ This has significant implications for the ongoing relationship between kāwanatanga and tino rangatiratanga. As the

majority opinion for the *Radio Spectrum Management and Development Final Report 1999* found:

The Crown was entitled to use its kawanatanga authority to manage the spectrum in the public interest . . . However, it was not entitled to sell management rights without consideration of Māori rangatiratanga rights.⁶⁹

At its most basic, acknowledging a Treaty right to development is, in our view, about giving Māori a ‘fair go’, along with Pākehā. Like the CNI Tribunal, we believe that it includes the following:

- ▶ The right as property owners to develop their properties in accordance with new technology and uses, and to equal access to opportunities to develop them.
- ▶ The right to develop or profit from resources in which they have (and retain) a proprietary interest under Māori custom, even where the nature of that property right is not necessarily recognised, or has no equivalent, in British law.
- ▶ The right to positive assistance, where appropriate to the circumstances, including assistance to overcome unfair barriers to participation in development (especially barriers created by the Crown).
- ▶ The right of Māori to retain a sufficient land and resource base to develop in the new economy, and of their communities to decide how and when that base would be developed.
- ▶ The opportunity, after considering the relevant criteria, for Māori to participate in the development of Crown-owned or Crown-controlled property or resources or industries in their rohe, and to participate at all levels (such criteria include the existence of a customary right or an analogy to a customary right, the use of tribal taonga, and the need to redress past breaches or fulfil the promise of mutual benefit).
- ▶ The right of Māori to develop as a people, in cultural, social, economic, and political senses.⁷⁰

1.5.10 Redress

The Tribunal's *Report on the Crown's Foreshore and Seabed Policy*, found that in those instances where the Crown has

breached the principles of the Treaty and Māori have suffered consequential prejudice:

the Crown has a clear duty to set matters right. This is the principle of redress, where the Crown is required to act so as to ‘restore the honour and integrity of the Crown and the mana and status of Māori’. Generally, the principle of redress has been considered in connection with historical claims. It is not an ‘eye for an eye’ approach, but one in which the Crown needs to restore a tribal base and tribal mana, and provide sufficient remedy to resolve the grievance. It will involve compromise on both sides, and, as the Tarawera Forest Tribunal noted, it should not create fresh injustices for others.⁷¹

It should also be noted that, in the view of the Privy Council, where the Crown's own actions have contributed to the precarious state of a taonga, there is an even greater obligation on the Crown to provide redress – and to as generous a degree as circumstances permit.⁷² We consider that the principle of redress should be viewed in the context of finding a better way forward for the Treaty relationship between ngā iwi ō te kāhui maunga and the Crown.

1.5.11 The right of pre-emption

Under article 2 of the Treaty, Māori ceded the right of pre-emption over their lands to the Crown, provided that the right was exercised in a protective manner and in accordance with Māori interests, in order for the settlement of the colony to commence in a fair and mutually advantageous manner.⁷³ However, we consider the terms of the Treaty to be somewhat contradictory on the matter of pre-emption. Under article 2, ‘the exclusive right of pre-emption’ is reserved for the Crown. The object of pre-emption was, as the Crown noted in this inquiry, to ‘minimise the risk of land speculation and to control and regulate settlement’.⁷⁴ We agree that the intention of pre-emption was to protect Māori. However, in our view, the issue is not just the monopoly itself, but how the monopoly was implemented. Without provisions for public auction or tender, Crown pre-emption could limit Māori options and impose artificially low prices. Given these factors, we consider that

the Māori right to tino rangatiratanga, in addition to their rights under article 3, reserved the right to set aside pre-emption in some cases with Māori consent.

1.6 JURISDICTIONAL ISSUES

1.6.1 Claims heard in the inquiry

As noted earlier, Chief Judge Williams indicated that the National Park Tribunal would ‘inquire into all claims arising in the National Park district.’⁷⁵ The Tribunal panel itself subsequently clarified that it saw this as meaning claims ‘which, for historical, geographical or political purposes’ can be shown to arise within the inquiry area. Notwithstanding that limitation, however, the Tribunal indicated it would examine generic issues common to other inquiries to the extent needed to address the claims before it.⁷⁶

1.6.2 Constraints to inquiring into particular issues

Drawing an administrative boundary is never easy and there were particular problems with finalising a boundary in the southeastern part of our district. In August 2003, a planned overlap subdistrict between the Taupō and Whanganui districts was amended to include Rangipō–Waiū 1.⁷⁷ When the independent National Park inquiry district was established, Ngāti Rangī sought to extend its boundaries to include the whole Rangipō–Waiū block. Several difficulties arose from this request, including the interests of other claimants whose grievances arise in the same area. In respect of Rangipō–Waiū, a number of claimants in the Taihape district with interests in the block were not ready to proceed and at the time did not wish to participate in any Tribunal inquiry.⁷⁸

In February 2004, Chief Judge Williams and Judges Wickliffe and Wainwright decided that the National Park Tribunal would hear all of Ngāti Rangī’s grievances arising in the district, including those regarding the whole of the Rangipō–Waiū block. It would then report on Ngāti Rangī’s claims in Rangipō–Waiū 1 (with the exception of certain forestry-related matters, as explained further below). It would, however, report only provisionally on Ngāti Rangī’s issues in respect of the rest of the

Rangipō–Waiū block: any final reporting on such matters was to be left to a future Taihape district inquiry, if still desired and not precluded by prior settlement.⁷⁹ Any Ngāti Tūwharetoa claims within the rest of Rangipō–Waiū would also be heard by a future Taihape Tribunal, again if still desired and not precluded by prior settlement.⁸⁰

As we noted earlier, the Murimotu and Rangiwaea blocks do not form part of the National Park inquiry district. Chief Judge Williams decided that the inclusion of these blocks, including the Karioi Forest, would have drawn into the National Park inquiry additional claimant groups, and lengthened the inquiry process.⁸¹ Instead, all grievances arising in the two blocks, including any grievances raised by Ngāti Rangī or Ngāti Tūwharetoa, were referred to the Whanganui district inquiry. This included all forestry matters relating to the Karioi Forest, including the small section located in Rangipō–Waiū 1.⁸²

Counsel for Ngāti Tūwharetoa sought clarification in July 2005 whether land takings for defence purposes would be addressed by the Tribunal in the National Park district inquiry.⁸³ The presiding officer issued memoranda-directions in August 2005 stating that, given that the majority of the defence land takings fell outside the National Park district inquiry boundary, it was more appropriate to consider those issues as part of a future Taihape inquiry.⁸⁴ We do, however, have two parcels of land in the southern part of our inquiry district (part Rangipō North 6c and Rangipō–Waiū 1B) that were taken for defence purposes in the 1940s, and discussion of those takings is included in our general consideration of public works takings (see chapter 10).

Claimants also queried, in December 2005, the extent to which the National Park Tribunal would inquire into the purchase of the Waimarino block. The Tribunal decided it would not examine the alienation of the entire block because only a small portion of the Waimarino block lay within the National Park inquiry district. For that reason, the Tribunal clarified that it would only deal with issues concerning the sale of those parts of the block involved in creating the Tongariro National Park, and any other specific issues relating to the small portion within the National Park inquiry district.⁸⁵

During our hearings in August 2006, Crown counsel asked the Tribunal to clarify what was expected of the Crown in terms of a response to TPD issues that have impact beyond the National Park district boundary. The Tribunal responded that all claims issues arising within the National Park inquiry district were relevant to the inquiry. That included those issues with an impact extending beyond the National Park district boundary.⁸⁶ In light of this, the Tribunal has considered the TPD's impact beyond the district boundaries where claimants have raised this as an issue (see chapter 13). That said, there may well be other impacts outside our boundaries that have *not* been raised in our inquiry, and our consideration of the TPD scheme should not be seen as precluding claimants from raising such issues in neighbouring Tribunal inquiry districts if they wish.

1.6.3 Participation of interested parties in the inquiry

(1) *Genesis Energy*

On 20 December 2005, counsel for Genesis Energy applied to participate in the National Park district inquiry as an interested party, in its role as owner and operator of the TPD scheme, indicating its willingness to 'assist the Tribunal with its understanding of the operation and potential effects of the TPD'.⁸⁷ The Tribunal received no objection from other parties to the inquiry regarding this matter and, thus, granted leave for Genesis Energy to participate on issues regarding the TPD.⁸⁸ At the hearing, Genesis provided two witnesses who gave evidence on the company's environmental management policies and practices in relation to the TPD, and on the details of its monitoring plans for the eastern and western diversions (with information on flora and fauna, and on minimum flows).⁸⁹

(2) *Ngāti Maniapoto*

The Tribunal also received a request for participation from counsel for Wai 800 Ngāti Maniapoto Ngāti Tama (Mōkau) claimants, who noted that the Crown had 'apparently focussed on the Sacred Compact during this inquiry in a manner not expected by Ngāti Maniapoto' and had filed evidence on the subject. While previously

comfortable that their interests within the National Park inquiry would be broadly protected by Ngāti Tūwharetoa, they now sought to participate in order to 'test, question, or challenge' any evidence put before the panel on the matter of the sacred compact.⁹⁰ No objections were received to this request, and the Tribunal granted Ngāti Maniapoto permission 'to participate in the National Park district inquiry on issues relating to the Rohe Potae'.⁹¹

1.6.4 Claims the Tribunal does not make findings on

There are some parts of specific claims that this Tribunal does not report on. We discuss these in turn.

(1) *Ngāti Hikairo, Wai 37, Wai 833, Wai 933, Wai 965, Wai 1044, Wai 1196*

The Wai 37 Ngāti Hikairo claimants alleged, in their final statement of claim filed in December 2004, that in passing the Native Lands Act 1909 and the Adoption Act 1909, the Crown failed to make proper allowance for the practice of whāngai. This issue was taken up in Ngāti Hikairo's initial consolidated statement of claim filed on 22 July 2005,⁹² and was included in the Tribunal's statement of issues for the inquiry.⁹³ It did not, however, feature in Ngāti Hikairo's amended consolidated statement of claim, dated 15 September 2006.⁹⁴ Furthermore, no evidence was filed on the issue, and it was not pursued in submissions. We do not, therefore, discuss the matter in our present report.

Ngāti Hikairo claimants also alleged that the Crown breached articles 2 and 3 of the Treaty, and failed in its duty of active protection, by passing the Tohunga Suppression Act 1907. That Act made it a criminal offence for any Māori to carry out traditional Māori forms of healing or prophecy. In so doing, said the claimants, the Crown failed to protect and provide for the practice of their religion and tikanga.⁹⁵

The Crown countered this by stating that the Act was aimed at suppressing the activities of 'new cult like figures who . . . sought to mislead Maori', and drew an analogy with the Quackery Prevention Act 1908 which operated similarly for Pākehā. Crown counsel also rejected a causal link between the Tohunga Suppression Act and any loss of traditional knowledge, noting that evidence

was presented in the inquiry as to the continuing practice of rongoā within the district. Counsel further submitted that there was no evidence anywhere of practitioners of rongoā Māori, or any other individuals, ever being prosecuted under the 1907 Act. Additionally, no evidence had been presented to this Tribunal concerning the Act or any alleged impacts it may have caused, and it would thus be difficult, in the Crown's submission, for the Tribunal to make any findings on the matter.⁹⁶

Counsel for Te Iwi o Uenuku responded to the Crown's arguments and stated that the Crown had suppressed tohunga by 'directing efforts toward the erosion of the traditional and philosophical baselines of Maori.' This, said counsel, had led to a disruption of socio-cultural values and a weakening of Māori authority, and was contrary to the Crown's obligations to protect Māori, their knowledge, and their rongoā. Counsel argued that whether or not charges were actually laid under the 1907 Act is in many respects irrelevant: the fact remained that tohunga and religious leaders felt they could not hold to their traditions without running the risk of prosecution. Further, said counsel, the passage of the Act contributed to a perceived downgrading of the value of medicinal flora and fauna, and made it 'more difficult for te Iwi Maori to justify and apply specific protection and kaitiakitanga through the exercise of tino rangatiratanga in relation to flora and fauna.'⁹⁷

We note and record these submissions but there remains the problem of insufficient evidence. Without a sufficient body of specific evidence against which to test the assertions made, we cannot report on this claim. We, however, remind parties that the Tohunga Suppression Act 1907 and rongoā were the subject of claims before the Wai 262 Flora, Fauna, and Intellectual Property Tribunal, whose findings have now been published in *Ko Aotearoa Tēnei*.⁹⁸

(2) *Wai 502, Tongariro Prison Farm*

In August 2006, after hearings had already begun, the Ngāti Tūrangitukua claims working party met and decided to move their claim about the Tongariro Prison Farm from Wai 575 (the Ngāti Tūwharetoa comprehensive

claim) to Wai 502.⁹⁹ A claim regarding the Tongariro Prison Farm lands had hitherto been progressed under the Wai 575 claim, the issue had already been covered by Ngāti Tūwharetoa's comprehensive statement of claim and had been included in the Wai 1130 statement of issues. For that reason the claimants stated there was no need to amend the original Wai 502 statement of claim.¹⁰⁰ Counsel, however, sought leave for Ngāti Tūrangitukua's evidence regarding the Tongariro Prison Farm to be heard in conjunction with evidence being presented by Peter Clarke¹⁰¹ – the latter being due to appear on behalf of the descendants of Kurapoto and Maruwahine.

Both the change of representation and the hearing request for Wai 502 were granted to Ngāti Tūrangitukua by the Tribunal on 8 September 2006.¹⁰²

As indicated above, Ngāti Tūrangitukua rely on Ngāti Tūwharetoa's amended statement of claim filed on 26 July 2005 as the final expression of their Tongariro Prison Farm grievances. In that document, Ngāti Tūwharetoa claimed that

- ▶ the Crown acquired extensive estates in the National Park for the Hautū and Rangipō Prisons, which comprise not only prison infrastructure but also farms and forests;
- ▶ Ngāti Tūwharetoa opposed the establishment of the prisons. The land contained significant wāhi tapu, prison inmates were put to work on the farms and forests, and wāhi tapu were desecrated. There was friction between Ngāti Tūwharetoa and the Prison Service about the desecration; also
- ▶ some of the prison lands are now surplus to requirements, and these have not been offered back to Ngāti Tūwharetoa.¹⁰³

In her opening submissions on 22 September 2006, counsel for Ngāti Tūrangitukua clarified that the hapū's claim focused on the Hautū blocks, and in particular Hautū 4 block (including part 4B2B2A and part 4A which together, in 1967, became the Mangamāwhitiwhiti farm block). She acknowledged that the land had been sold by Ngāti Tūrangitukua, not compulsorily taken by the Crown, but said that the Tribunal needed to understand the impoverished circumstances of the hapū at the time.

A major grievance in relation to the Hautū 4 land (and notably the part that became Mangamāwhitiwhiti) was that some of the area purchased by the Crown was later deemed by the Department of Corrections to be surplus to requirements, but was onsold to the Department of Lands and Survery (later LandCorp), rather than being offered back to Ngāti Tūrangitukua. This was in 1967, at the time of the TPD scheme and the associated establishment of the new Tūrangī township, and when LandCorp in turn decided to divest itself of Mangamāwhitiwhiti in 2005, there was again no statutory obligation on the Crown to offer Ngāti Tūrangitukua the opportunity to purchase it. Counsel acknowledged that the blocks in question fell outside the National Park inquiry district but said that Ngāti Tūrangitukua ‘objects to being cut in two’ by the Tribunal’s administrative boundary and feels that their claim to the prison farm lands ‘should not be governed by lines on a map.’¹⁰⁴

The Crown, in written and oral submissions, expressed the view that any claim regarding the acquisition or disposal of the Hautū blocks was outside the scope of the National Park Tribunal’s inquiry: the land fell, rather, within the CNI inquiry.¹⁰⁵ The Crown however accepted that if there were socio-economic issues arising in the National Park inquiry district in respect of the Tongariro Prison (including any having a bearing on parts of the Hautū blocks), it would be acceptable for them to be considered by the National Park Tribunal. This approach, the Crown argued, would be consistent with that adopted by the Tribunal in respect of the Waikune Prison.¹⁰⁶

Counsel for Ngāti Tūrangitukua rejected these arguments as a ‘technical procedural issue.’ Adhering to the Crown’s position, said counsel, just meant that Ngāti Tūrangitukua’s issues with the prison would be avoided altogether.¹⁰⁷ Despite this, counsel’s closing submissions highlighted that there were indeed socio-economic issues to be considered. These included the question of whether, in purchasing land from Ngāti Tūrangitukua, the Crown had ensured that the hapū was left with a sufficient endowment of other land. Also to be considered, in counsel’s view, was whether the duty to offer back surplus Crown lands should extend beyond public works takings

and include, for instance, land ‘where the original purchases occurred in conditions of extreme deprivation and poverty.’ A further matter identified by counsel related to whether the Crown, when it unilaterally took the decision to locate a prison in the claimants’ rohe, could have explored more ways of ensuring that tangata whenua benefited.¹⁰⁸

In this report, we shall not be making findings on the Hautū blocks. As all parties acknowledge, they fall within the CNI inquiry, not that of the National Park. We would add that the blocks have also, in a slightly different context, already been the subject of some comment in the *Turangi Township Report*.¹⁰⁹ Furthermore, in 1999, claims relating to the establishment of Tūrangī township were settled and we understand that after the close of our hearings, the Ngāti Tūrangitukua charitable trust – set up to manage the assets from the 1999 settlement – may have acquired a minority interest in the Mangamāwhitiwhiti block through its 12.5 per cent stake in a holding company which bought the block in 2006.¹¹⁰ Nor does this Tribunal intend to comment on the socio-economic issues raised by counsel: any consideration of whether Ngāti Tūrangitukua could be regarded as impoverished at the time they sold the block, or whether they had a sufficient endowment of other land, would involve recourse to evidence not filed in this inquiry. (This is a problem that besets us in relation to socio-economic issues more generally in this inquiry, as we discuss further below.) That said, we note the Crown’s concession that

The evidence available in relation to the National Park inquiry district does not appear to indicate any significant consideration by officials of the extent of land holdings of the people from whom land was acquired.¹¹¹

(3) *Wai 836, quarrying on Raetihi land*

The Wai 836 claim covers a number of issues, but there is one on which we do not make findings. That issue concerns quarrying on land in Raetihi 4B and Raetihi 5 – land that was apparently taken in connection with the North Island main trunk railway. Both areas fall outside our

inquiry district and we therefore do not make any findings or recommendations on the claims relating to them.

(4) *Wai 575, local government issues*

Ngāti Tūwharetoa claimants requested that we investigate tangata whenua status at the local government level.¹¹² We have received insufficient evidence in this inquiry on this issue; the only evidence was a brief from Stephen Asher.¹¹³ We note that local government issues have been dealt with in detail by the Tauranga Moana Tribunal, which heard a wide range of evidence, and made a comprehensive finding.¹¹⁴

1.7 APPROACH TO SOCIO-ECONOMIC ISSUES

In the statement of issues for the inquiry, the Tribunal set out socio-economic grievances raised by claimants in their pleadings. Those pleadings covered: the sufficiency of lands and resources; the right to development; employment; education; and health.

We note, however, that the only statements of claim to allege negative socio-economic impacts from Crown policies and practices in the above areas were those filed by Ngāti Hikairo, Ngāti Waewae, and Ngāti Tūwharetoa. Ngāti Rangi indicated during our first hearing week that they would be presenting evidence on socio-economic issues in the Whanganui inquiry. Counsel for selected claimants of Te Iwi o Uenuku, likewise stated in his closing submissions that his claimants would present the bulk of their socio-economic evidence in the Whanganui inquiry. Nevertheless, he did make submissions on employment, based on evidence filed in the National Park inquiry, and those will be taken into consideration in this report.¹¹⁵ Counsel on behalf of other claimants of Te Iwi o Uenuku also cited National Park evidence in her closing submissions on socio-economic issues.¹¹⁶

That said, any *general* consideration of socio-economic issues in this report is inherently problematic. Being dominated by a national park, our inquiry district excludes significant centres of population and economic activity, and indeed has only ever had a sparse resident population, whether Māori or Pākehā. Further, the district cuts across

at least two major tribal groupings that occupy a much broader geographical region, being mainly resident outside the district in small towns such as Raetihi, Ōhakune, Tūrangi, and Tokaanu – not to mention many other places further away. That being the case, it would be very difficult to say anything about socio-economic issues at a generic level while confining ourselves, as we must, to evidence from within the district.

Any discussion on a more restricted geographic or population basis is also problematic. Ōtūkou, a small community in the northern part of the inquiry district, is the only significant settlement within our boundary. However, even there, we lack a community-focused case study that might enable us to examine any changes to that community over time.

For these reasons, we have decided against a separate chapter on socio-economic issues such as health, education, and employment within this inquiry district. Rather, our approach is to integrate a consideration of socio-economic impacts, wherever possible and appropriate, with our discussion of other topics.

1.8 CONTENTS OF THE REPORT

This report is divided into five parts.

- ▶ Part I introduces the district, the people, and their claims. It comprises the present chapter and also chapter 2 which discusses the identity, relationships, and customary interests of ngā iwi o te kāhui maunga.
- ▶ Part II, comprising chapters 3 and 4, focuses on military and political engagement between tangata whenua and the Crown, and looks at the relationship between kāwanatanga and rangatiratanga.
- ▶ Part III examines land issues and the establishment of the Tongariro National Park. It contains six chapters in all, beginning with chapters 5 and 6, which focus on the nineteenth century – the first of these looks at the operation of the Native Land Court in our district and the second at Crown purchasing. Chapter 7 then examines the critical issue of how te kāhui maunga came into Crown ownership and also

looks at the creation of the National Park. This leads into a discussion of twentieth-century land issues in chapter 8, followed by development issues in chapter 9, and an investigation of public works takings in chapter 10.

- ▶ Part IV also comprises five chapters, and has as its theme the management and development of natural resources and the environment. Chapter 11 examines park administration in the period 1887 to 1987, while chapter 12 picks up the story from 1987 onwards, focusing particularly on the involvement of DOC. Waterways and customary fisheries are the subject of chapter 13; issues around the TPD scheme are investigated in chapter 14; and there is discussion of the geothermal resource in chapter 15.
- ▶ Part V contains our conclusions, which are summed up in chapter 16.

1.9 FROM PRE-PUBLICATION TO PUBLICATION

In order to fulfil our commitment to the parties that we would complete this report in December 2012, the Tribunal released a pre-publication version of it on 24 December 2012. Since then, the report has been reformatted, some references have been checked and amended, typographical errors have been corrected, minor editorial changes have been made, and illustrations have been added. Otherwise, the substance of the published report is the same as that released in December 2012, and our findings and recommendations have not changed – with one exception. In this published version of our report, we address an additional issue about the TPD in chapter 14 and make findings and recommendations in respect of it. We do so at the request of the claimants (and with the agreement of the Crown). Our pre-publication findings on the other TPD issues covered in chapter 14 have not altered.

In March 2013, counsel for Ngāti Tūwharetoa, Ngāti Hikairo ki Tongariro, Ngāti Manunui, and Ngāti Rangi made a joint submission, requesting that the Tribunal address an outstanding question from its statement of issues: ‘did Māori benefit economically from the

exploitation of their taonga in national development projects such as hydroelectricity generation?’¹¹⁷ In the pre-publication version of our report, we had noted the claims in relation to this issue, and the parties’ submissions in respect of it, but we had not made findings or recommendations. This was because the question of Māori water rights – especially as they relate to hydroelectricity – was then the subject of a separate, national inquiry. The claimants, however, submitted that they were not parties to the national freshwater and geothermal resources inquiry, and they did not want to participate in it or await its completion. Rather, they sought findings from this Tribunal on their specific grievance about the Crown’s use of their waterways without payment to generate electricity, in alleged breach of their Treaty property and development rights.¹¹⁸

In April 2013, we sought the views of the Crown and other parties as to whether we should now amend our report to address this issue.¹¹⁹ Ngāti Waewae, Rangiteauria Uri, and Ngāti Hāua agreed that we should do so.¹²⁰ In the Crown’s submission, the Tribunal had in effect deferred its inquiry into this aspect of the TPD claims, and – if that were the case – then it was open for the Tribunal to resume its inquiry and report fully on the claims. Crown counsel submitted:

The Crown does not oppose the request by claimants for the Tribunal to complete its inquiry through the provision of findings (in accordance with s6 Treaty of Waitangi Act) in relation to the Tongariro Power Development Scheme and water related claims pursued within the National Park Inquiry District.¹²¹

Although there was some disagreement on jurisdictional matters,¹²² all parties were agreed that it was open for the Tribunal to report fully on the outstanding TPD issue, and the Crown did not oppose the claimants’ request that we should do so. That being the case, we advised the parties on 11 June 2013 that we would consider the evidence and submissions filed in our inquiry and make findings about this additional issue. We also advised that this would delay the final publication of our report

until September 2013.¹²³ The new findings and recommendations are set out in sections 14.13.3, 14.14.1, 14.14.3, and 16.14.

Notes

1. Te kāhui maunga includes all the mountains of our inquiry district, the most prominent being Tongariro, Ngāuruhoe, Ruapehu, Pihanga, Hauhungatahi, and Kakaramea.
2. Chief Judge J V Williams, Judge C Wickcliffe, and Judge C M Wainwright, decision concerning National Park subdistrict boundary; Chief Judge J V Williams, memorandum constituting separate National Park inquiry, 2 February 2004 (paper 2.3.1)
3. Ibid, paras 3.5, 3.7
4. Ibid, paras 3.9, 3.13, 3.16
5. Judge Wickcliffe, memorandum, 20 September 2004 (Wai 1200 RO1, paper 2.3.28)
6. Paper 2.3.1, paras 4.8, 4.13, 4.20(d), 4.21(a)
7. Ibid, para 5.1
8. Chief Judge J V Williams, memorandum, 4 May 2004 (paper 2.3.4). This memorandum was incorrectly dated 2003.
9. Judge C M Wainwright, memorandum, 25 August 2004 (paper 2.3.7)
10. Chief Judge J V Williams, memorandum, 5 July 2005 (paper 2.3.19)
11. Judge J V William, memorandum, 15 February 2006 (paper 2.3.35)
12. Paper 2.3.1, p 3. The timeframe for the Whanganui casebook programme was June 2004, and August or September 2004 for the central North Island stage 1 casebook programme.
13. See, for example, Joanne Morris, memorandum, 2 April 2004 (paper 2.3.2) and Deputy Chief Judge W W Isaac, memorandum, 12 May 2005 (paper 2.3.15).
14. See claims 1.1.1–1.1.41(b)
15. Deputy Chief Judge W W Isaac, memorandum, 9 June 2005 (paper 2.3.17); Deputy Chief Judge W W Isaac, memorandum, 15 July 2005 (paper 2.3.20)
16. Deputy Chief Judge W W Isaac, memorandum, 14 April 2005 (paper 2.3.14), pp3–5
17. Judge W W Isaac, memorandum registering final particularised statements of claim, 27 April 2006 (paper 2.5.3)
18. Crown counsel, statement of response, 23 September 2005 (paper 1.3.2)
19. Claims 1.2.1–1.2.19
20. Deputy Chief Judge W W Isaac, memorandum consolidating and aggregating claims in the National Park district inquiry, 10 August 2005 (paper 2.5.1)
21. Waitangi Tribunal, statement of issues for Tongariro National Park district inquiry, December 2005 (claim 1.4.2)
22. Paper 2.3.1, p 11. For maps of the district boundaries, see also pages 12 to 14.
23. Judge W W Isaac and Judge C M Wainwright, memorandum, 7 February 2006 (paper 2.3.33)
24. Counsel for Ngāti Rangī, consolidated statement of claim, 22 July 2005 (claim 1.2.1), p 7
25. Ibid, p 17
26. Ibid
27. Counsel for Ngāti Rangī, closing submissions, 15 May 2007 (paper 3.3.33)
28. Counsel for Rangiteauria Uri, amended statement of claim, 4 August 2005 (claim 1.2.16)
29. Counsel for claimants affiliated to Whanganui iwi, statement of generic pleadings, 22 July 2005 (claim 1.2.3)
30. Counsel for of the descendants of Winata Te Kākahi, amended statement of claim, 22 July 2010 (claim 1.2.7)
31. Counsel for Ngāti Hinewai, amended statement of claim, 22 July 2005 (claim 1.2.4)
32. Counsel for Patricia Henare and Vivienne Kopua on behalf of Te Puawaitanga Mokupuna Trust, Elenore Anaru Whanau Trust, and Tira Taurewera, statement of claim, 23 July 2005 (claim 1.2.13)
33. Counsel for Sharon Pehi and others, on behalf of all the original owners of the Waimarino 4B2 block, amended statement of claim, 29 November 2005 (claim 1.2.19)
34. Counsel for Te Iwi o Uenuku, second amended statement of claim, 22 July 2005 (claim 1.2.5)
35. Counsel for Ngāti Hāua, first amended statement of claim, 22 July 2005 (claim 1.2.6)
36. Counsel for Tamahaki Incorporated Society, draft statement of claim, 22 July 2005 (claim 1.2.8)
37. Counsel for Barbara Lloyd, Ngāti Atamira, and others, statement of claim, 22 July 2005 (claim 1.2.9)
38. Counsel for Uenuku Tūwharetoa, statement of claim, 22 July 2005 (claim 1.2.10)
39. Counsel for Don Robinson, Ngāti Kurawhatia, and others, statement of claim, 22 July 2005 (claim 1.2.11)
40. Counsel for Peter Clarke and the descendants of Kurapoto and Maruwahine, first amended statement of claim, 22 July 2005 (claim 1.2.12)
41. Counsel for Ngāti Hikairo, consolidated statement of claim, 22 July 2005 (claim 1.2.2)
42. Counsel for Ngāti Hikairo ki Tongariro, amended statement of claim, 12 August 2005 (claim 1.2.17(a))
43. Counsel for Ngāti Tūwharetoa, fourth amended statement of claim, 26 July 2005 (claim 1.2.14)
44. Counsel for Ngāti Manunui, second statement of claim, 17 October 2005 (claim 1.2.18)
45. Counsel for Ngāti Waewae, amended statement of claim, 5 August 2005 (claim 1.2.15(a))
46. *Jones v Meehan* 175 US 1 (1899) (as cited in Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 181)
47. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation

- Direct, 2008), vol 4, pp 1237–1238, 1241; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 19
48. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 236–237
49. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), p 33
50. *New Zealand Maori Council v Attorney-General* [1994] NZLR 513, 517 (PC)
51. *New Zealand Maori Council v Attorney-General* [1987] NZLR 641, 642 (CA)
52. *Ibid*, p 683
53. *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142, 152 (CA)
54. Waitangi Tribunal, *Ngai Tahu Report*, vol 2, pp 238–245
55. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1238
56. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113; Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1659; Waitangi Tribunal, *The Taranaki Report*, p 5
57. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 (CA)
58. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 194
59. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 514 (PC)
60. Waitangi Tribunal, *Muriwhenua Fishing*, pp 194–195
61. *Ibid*, pp 190–191
62. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 61–64; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 5
63. Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 25
64. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 5; Waitangi Tribunal, *Tauranga Moana*, pp 24–25; Waitangi Tribunal, *Maori Development Corporation*, pp 31–32
65. Waitangi Tribunal, *Muriwhenua Fishing*, p 234
66. *Ibid*, p 195
67. *Ngai Tahu Trust Board v Director-General of Conservation* [1995] 3 NZLR 553
68. *Ibid*, pp 560–562
69. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report 1999* (Wellington: GP Publications, 1999), p 39
70. Waitangi Tribunal, *He Maunga Rongo*, vol 3, p 914
71. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), pp 134–135; see also Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 29
72. Waitangi Tribunal, *Radio Spectrum*, pp 32, 44, 68
73. Waitangi Tribunal, *Ngai Tahu*, vol 2, pp 238–245
74. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 8, p 271
75. Paper 2.3.1, para 5.1
76. Paper 2.3.20, pp 3–4
77. Chief Judge J V Williams, Judge C Wickliffe, and Judge CM Wainwright, further decision amending boundary for National Park subdistrict and Taupō inquiry, 6 August 2003 (Wai 903 ROI, paper 2.5.10)
78. Paper 2.3.1, para 4.11
79. *Ibid*, paras 4.20, 4.22(b)
80. *Ibid*, para 4.22(a)
81. *Ibid*, paras 4.16–4.17
82. *Ibid*, para 4.21; see also Judge W W Isaac, memorandum, 29 September 2005 (paper 2.3.24), p 4
83. Counsel for Ngāti Tūwharetoa, memorandum, 26 July 2005 (paper 3.1.56), paras 6–7
84. Judge W W Isaac, memorandum, 25 August 2005 (paper 2.3.23), p 2
85. Judge W W Isaac, memorandum, 14 December 2005 (paper 2.3.29), p 2
86. Judge W W Isaac, memorandum, 8 September 2006 (paper 2.3.48), p 5; see also paper 2.3.20, p 3
87. Genesis Power Ltd, memorandum applying for interested party status, 20 December 2005 (paper 3.1.112)
88. Judge W W Isaac, memorandum, 10 February 2006 (paper 2.3.34), pp 2–3
89. Tracey Hickman, brief of evidence, 24 July 2006 (doc E8); Jarrod Bowler, brief of evidence, 24 July 2006 (doc E9)
90. Counsel on behalf of Wai 800 claimants, memorandum applying for interested party status, 10 May 2006 (paper 3.2.83)
91. Judge W W Isaac, memorandum, 24 May 2006 (paper 2.3.43), p 3
92. Claim 1.2.2, pp 45–46
93. Claim 1.4.2, p 183
94. Margaret Poinga, Alec Philips, Terrill Campbell, Merle Ormsby, Daniel Ormsby, Tiaho Pillot, and Manu Patena, amended consolidated statement of claim for Ngāti Hikairo, 15 September 2006 (paper 1.2.2(a))
95. *Ibid*, pp 44–45
96. Paper 3.3.45, ch 15, pp 11–13
97. Counsel for Te Iwi o Uenuku, submissions in reply to Crown closing submissions, 7 July 2007 (paper 3.3.58), pp 15–19
98. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011)
99. Counsel for Ngāti Turangitukua, memorandum concerning representation, 5 September 2006 (paper 3.2.159), pp 2–3. The term ‘Tongariro Prison’ was initially used as an alternative name for the Hautū Prison but later came to take in the Rangipō Prison as well: see Arthur Parish, brief of evidence, 15 September 2006 (doc F25).

100. Counsel for Ngāti Tūrangitukua, memorandum notifying change of counsel, 28 August 2005 (paper 3.2.153), p 2
101. *Ibid*, p 3
102. Paper 2.3.48, p 2
103. Claim 1.2.14, p 45
104. Counsel for Ngāti Tūrangitukua, opening submissions, 20 September 2006 (paper 3.3.16), pp 2–4; Donna Hall, oral submissions on behalf of Ngāti Tūrangitukua, 20 September 2006 (recording 4.3.10). For more detailed information on the Tongariro Prison farm, see Arthur Grace, brief of evidence, 15 September 2006 (doc F24); doc F25; Arthur Parish, excerpt from work-in-progress concerning Hautu block determinations, 21 September 2006 (doc F25(i)); and Robert Severne, brief of evidence, 6 October 2006 (doc G49).
105. Crown counsel, memorandum concerning prison issues, 9 November 2006 (paper 3.2.249), p 3; David Soper, oral submissions on behalf of Crown, 20 September 2006 (recording 4.3.10)
106. Paper 3.2.249, p 3; see also paper 2.3.43, p 5
107. Counsel for Ngāti Tūrangitukua, closing submissions, 14 May 2007 (paper 3.3.26), pp 25–26
108. *Ibid*, pp 5–6
109. Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), pp 306–307, 322, 330, 363–364, 368
110. 'Ngati Turangitukua Charitable Trust', Ngati Turangitukua Charitable Trust, <http://www.ngatiturangitukua.co.nz/who-we-are.aspx>, accessed 25 January 2012; Yvonne Tahana, 'Treaty Payout Tied up in Collapse', *New Zealand Herald*, 25 March 2009, http://www.nzherald.co.nz/maori/news/article.cfm?c_id=252&objectid=10563389, accessed 25 January 2012
111. Paper 3.3.45, ch 11, p 10
112. Claim 1.2.14, pp 62–63, 68
113. John Asher, brief of evidence, 1 October 2006 (doc G38), pp 12–15
114. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 309–488
115. Counsel for Tamakana Council of Hapū and others, closing submissions, 23 May 2006 (paper 3.3.40(a)), pp 213–226
116. Counsel for Uenuku, closing submissions, 22 May 2007 (paper 3.3.37), pp 148–154
117. Counsel for Ngāti Tūwharetoa, Ngāti Hikairo ki Tongariro, Ngāti Manunui, and Ngāti Rangi, joint memorandum, 27 March 2013 (paper 3.4.11), p 1
118. *Ibid*, pp 1–5
119. Waitangi Tribunal, memorandum, 5 April 2013 (paper 2.5.16)
120. Counsel for Ngāti Waewae, memorandum, 10 April 2013 (paper 3.4.12); counsel for Rangiteauria Uri, memorandum, 19 April 2013 (paper 3.4.14); counsel for Ngāti Haua, memorandum, 19 April 2013 (paper 3.4.15)
121. Crown counsel, memorandum, 19 April 2013 (paper 3.4.13), p 3
122. See counsel for Ngāti Tūwharetoa, memorandum in reply, 1 May 2013 (paper 3.4.16)
123. Waitangi Tribunal, memorandum, 11 June 2013 (paper 2.5.17)

CHAPTER 2

NGĀ IWI O TE KĀHUI MAUNGA

*Ko Tongariro te maunga
Ko Taupo te moana
Ko Ngati Tuwharetoa te iwi
Ko Te Heuheu te tangata!*

*Ko Tongariro te maunga
Ko Rotoaira te moana
Ko Motuopuhi te pa
Ko Te Wharerangi te tangata!*

*Ko Ruapehu te maunga
Ko Whanganui te awa
Ko Haunui a Paparangi te iwi
Ko Turoa te tangata!*

*Tongariro is the mountain
Taupo is the lake
Ngati Tuwharetoa is the tribe
And Te Heuheu is the man!*

—Na Potatau te Wherowhero¹

*Tongariro is the mountain
Rotoaira is the lake
Motuopuhi is the settlement
And Te Wharerangi is the man!*

—Na Mananui Te Heuheu II²

*Ruapehu is the mountain
Whanganui is the river
Haunui-a-Paparangi is the tribe
And Turoa is the man!*

—Unknown³

2.1 INTRODUCTION

During the National Park inquiry, it became clear to the members of this Tribunal that we needed to unravel the relationships between kin groups if we were to better comprehend the crucial historical grievances introduced in many of the statements of claim, including the right of Horonuku Te Heuheu Tūkino IV to ‘gift’ the mountains. Moreover, there are a number of competing claims in this inquiry district and an appreciation of the relationships between kin groups as well as an awareness of their overlapping land interests will provide a broader context for dealing with them.

This chapter provides some insight into the origins and evolution of the iwi and hapū who had interests in the land now in the National Park. It describes their relationships with that land and with one another as well as outlining the use they made of the resources in the region over time. From the outset, the chapter describes who ngā iwi o te kāhui maunga are, where they came from, how they developed as hapū and iwi, as well as their customary use of the natural resources. The reader will comprehend better the issues which are discussed later in the report and which arose after the Crown’s management was applied to the region.

The chapter is broken up into four sections:

- ▶ Section 2.2 (Hapū and iwi): How are the terms hapū and iwi used? Why do modern day hapū and iwi disputes occur?
- ▶ Section 2.3 (origins and arrival): Where did the people of the volcanic plateau come from?

- ▶ Section 2.4 (relationships and locations): How are the various hapū and iwi connected? Where had they established themselves in 1840?
- ▶ Section 2.5 (customary use): How did the people of the volcanic plateau relate to their environment? What resources did they utilise in the area? What was the cultural, spiritual, and economic significance of the land and its resources?

In examining these questions, it is our intention to explicate the extent and distribution of customary rights between iwi and hapū of the volcanic plateau.

2.2 HAPŪ AND IWI

In this report, we have purposely used the terms ‘iwi’ and ‘hapū’ interchangeably. This is because Māori communities did not split into clearly identifiable autonomous groups either at an iwi or hapū level. Dr Angela Ballara points out:

Māori sources rarely if ever spell out neat, pyramidal schemes of ancient tribes and their sections . . . This is not because of some lack of a schematic approach to their origins, but because things such as descent group formation and iwi and hapū membership were rarely if ever as neat and exclusive as the European recorders would have liked.⁴

Furthermore, within Māori communities, gradations of tribal identity tend to be used indiscriminately given that their meaning and configurations are obvious to those Māori being referred to. As then Chief Judge Eddie Durie explained:

‘Iwi’ referred variously to original or early cognatic descent groups, a combination of local hapu, the people of a region generally, or the several people joined in a common expedition.⁵

Nor have we employed the terms ‘tribe’ or ‘sub-tribe’ as these descriptors create the perception that hapū are subordinate to iwi, which of course, is not always the case – the roles are interchangeable.

‘Iwi’ and ‘hapū’ as we use them in this chapter are predicated upon a distinct Ngāti Tūwharetoa or upper Whanganui iwi understanding of the nature of these kinship groups and this understanding is firmly based upon clear sets of historical circumstances. Hapū and whānau were the operative groups on the ground, whereas iwi were looked to as a potential for alliance in times of need, such as war or hosting visitors. It was not until ‘the contact and post contact periods [that] iwi combinations and names became more regular and settled’.⁶

To an outsider, the associations between iwi and hapū and the make-up of their populations in any region are complex because they are inextricably bound up in the whakapapa (genealogical) relationships of whānau. As the Gisborne Tribunal pointed out ‘[t]he relationships of obligations and counter-obligations between hapu, and between iwi and hapu’ and ‘the role and function of leadership within and between the groups’ has to be understood.⁷ Even today, as a strong tribal consciousness continues to be fostered and promoted, iwi, within their boundaries, revert back to the use of hapū descriptors. Outside their territory, they present a unified front, taking on the wider and well-known iwi name, sometimes with the qualifier ‘whānui’, to indicate the historical alliances between hapū and iwi. They continue to recognise the role and relevance of hapū but ascribe equal validity to an iwi identity.

The whakapapa charts laid out in this report came from the claimants themselves. We neither confirm nor deny their validity but simply utilise them to illustrate the relationships between ngā iwi me ngā hapū o te kāhui maunga.

2.2.1 Disputes between claimant groups

During the hearings, it did not escape this Tribunal’s attention that some claimant groups preferred to be viewed as autonomous iwi rather than hapū affiliated to a larger more widely known iwi. In fact, some claimants hotly disputed their whakapapa tie to the overarching iwi group, declaring an ancestor outside the iwi as their preferred line of descent. Such disputes are not uncommon among kin groups, small and large. They generally fall into three categories and we saw aspects of all three in the

claims brought before us. The three categories of dispute are as follows:

- ▶ Boundary disagreements, usually in respect of territory with shared or overlapping interests.
- ▶ Arguments between smaller and larger kin groups – generally called hapū and iwi disputes – in which the smaller group seeks independence from the larger.
- ▶ Quarrels between leaders within a related group where these are masked as inter-kin group disputes. In this type of dispute an individual, whānau or small group with leadership aspirations will adopt a wider kin group name in order to establish cultural credibility in their fight with the existing leadership.

In the main, smaller groups will spend much of their time and resources challenging the mandate of the larger iwi authority rather than concentrating on whether or not the Crown's actions are Treaty compliant. These groups often have little evidence to support their own legitimacy or mandate, and may also grossly over represent the number of people supporting their claims. Some of them may multiply their claims, taking the misconceived view that the more Wai claim numbers they accrue, the more credible their case.

The latter two types of disputes, the iwi or hapū disputes and quarrels between leaders, usually occur because there is some external incentive – a statutory requirement or a government policy – that provides some advantage for the larger group such as an iwi. Fisheries allocation is a typical example, but there are many others, such as devolution from the Māori Affairs Department, devolution under the Runanga Iwi Act 1990, the more recent requirement of local bodies or government agencies such as DOC to consult with iwi, or the Treaty of Waitangi claims process. The boosting of iwi status began in the 1980s when the Hui Taumata, the Māori Economic Summit meeting held shortly after the fourth Labour government took office, recommended iwi development as a preferred focus for Māori. In the succeeding decade, State policies began to reflect this recommendation and several government functions were devolved to various tribal authorities. The government's recent preference for dealing with large natural groupings in settling claims before the Waitangi

Tribunal has further encouraged hapū to 'upgrade' their status.

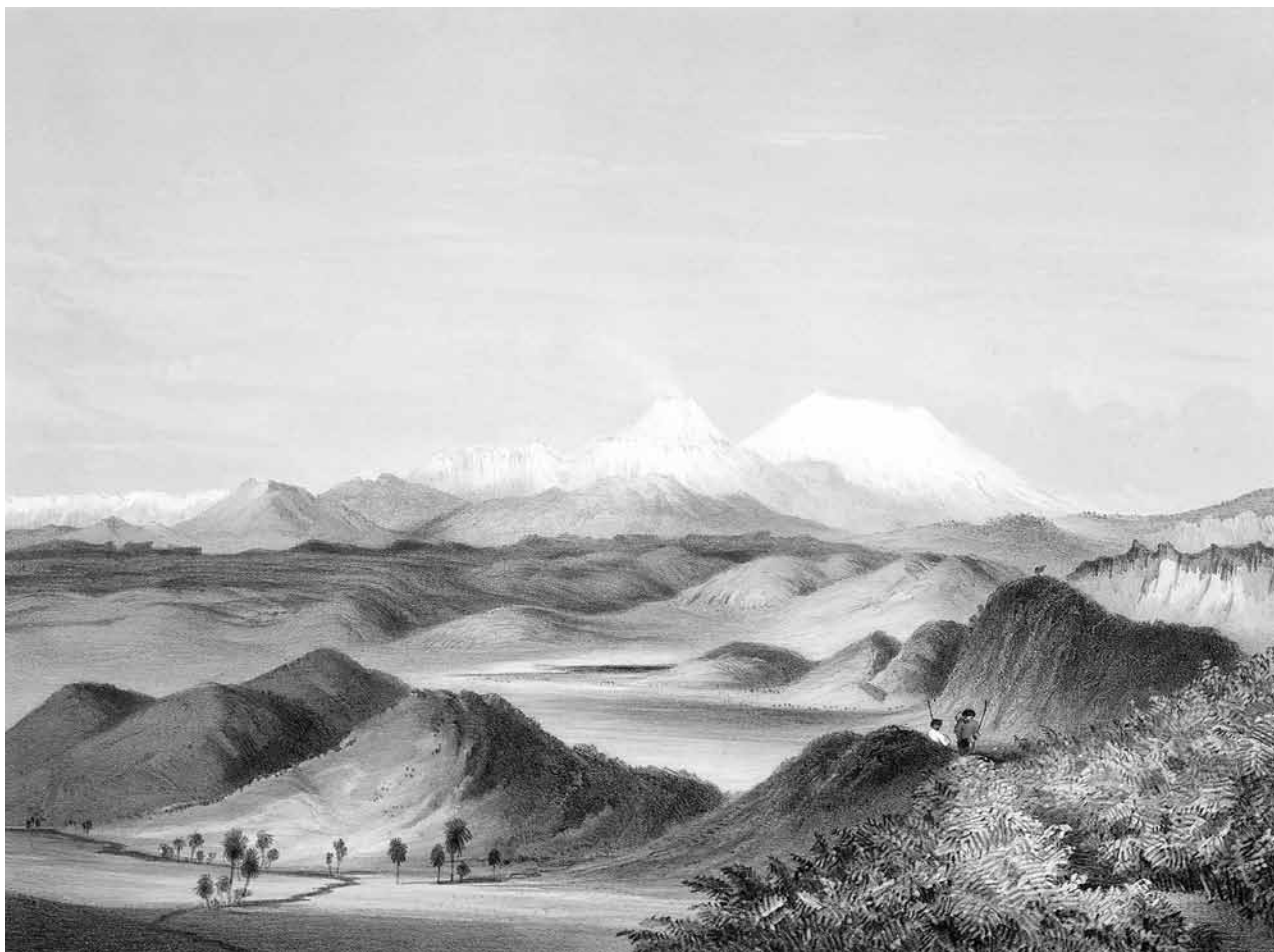
There are other historical influences that shaped the formation of present-day Māori groupings. The Native Land Court, for example, boosted the macro-level groupings from the 1860s by determining large tribal groupings and their boundaries. A counter-tendency then developed in the 1880s via the escalation of applications for subdivisions to hapū level or smaller. This became so prevalent by the 1890s that judges started to refuse to make orders or to make them subject to survey. Additionally, East Coast Māori leaders launched a counter-trend in favour of incorporations with block committees elected at hapū level.

From the 1920s to the 1950s, there was a huge boost to the macro-level by the creation of various trust boards. This began with the Arawa Trust Board, formed in 1921 to hold rights over the Rotorua lakes, and was followed closely by the Tūwharetoa Trust Board in 1926.

More recently, there has been a trend to rediscover old hapū names through the historical records unearthed in the course of preparing Treaty claims. In the Hauraki inquiry, some groups acknowledged that they had 'claimed under names that have been found in the records of the Native Land Court and possibly not anywhere else, or at least not in living memory.'⁸ The Tribunal's *Hauraki Report* mentions this tendency, stating that it was 'perhaps problematic' whether such names

should be retained for future use, rather than allowed to fade in the normal customary process by which small hapu flourished at one time but then merged with larger hapu or iwi with whom they had intermarried, or through other political or social circumstances.⁹

This external incentive creates and sustains a debate that we consider would rarely exist in a purely Māori context. In fact, in traditional terms it is the hapū that is the operative group (only 'hapu' was used in the Treaty) and there is usually greater security in hapū leadership than the more precarious iwi leadership. As the Turanganui (Gisborne) Tribunal's report describes:



The volcanic region of pumice hills looking towards Tongariro and the Ruapehu, 1847

Historically, hapu were the primary social unit of Maori society. They were kin groups claiming common descent (whakapapa) from an ancestor or ancestors, upholding its mana, maintaining rights in land over a specific territory (although the territory might intersect with the territory of other kin groups), and putting forward leaders who exercised temporal and spiritual power.¹⁰

It is also true that in the 1990s, legitimate autonomous hapū or iwi who felt uncomfortable under the umbrella of

one of the officially recognised iwi authorities were compelled to affiliate anyway or risk being marginalised. These disenchanted groups, who are often obscure in the historical record but who have survived through nearly 150 years of suppression and denial, now seek findings from the Waitangi Tribunal that restore their iwi identity, not so much to themselves, but rather in the eyes of the Crown and the larger group under which they have been subsumed. Even if they will share in the benefits of participating in the larger group with which they find themselves

affiliated, these smaller groups oppose the loss of mana and mana whenua inherent in their incorporation into the wider body.

Especially as the pace of Treaty settlements increases, the Tribunal has received more and more applications concerning the Crown's policies in this area. The applications essentially ask that we adjudicate disputes between and within hapū and iwi collectives in their relationship with the Crown. There are discussions in this report as to the mana and mana whenua of groups in the inquiry district based on the historic and contemporary evidence put before us. Recommendations are then made as to the appropriate groups with whom we believe comprehensive settlements should be negotiated regarding Treaty breaches the Tribunal has determined to be well-founded. Ultimately, however, the appropriate representatives for these iwi and hapū, and the degree to which iwi and hapū choose to coalesce as a larger body for the purpose of negotiations, are matters for the members for these groups themselves to determine. Where conflicts arise in these matters, groups have recourse to the Māori Land Court for mediation or adjudication under section 30 of Te Ture Whenua Māori Act 1993 to determine with whom the Crown should negotiate. Groups may also apply to the Tribunal if it is alleged that such conflict arises from Treaty-inconsistent Crown actions or policies in its settlement negotiations and mandating process.

In the next section, we describe the origins of the present-day iwi and hapū of the volcanic plateau. They derive from a variety of backgrounds. Their tūpuna were mobile men and women who were keen to explore their environs. In the early days the volcanic plateau was sparsely populated. Some of those who came and went did so to gather and use the resources in the region, or because of conflict with their neighbours in other areas. Others came and stayed, claiming the land for future generations of descendants.

2.3 ORIGINS AND ARRIVALS

Iwi and hapū who have customary interests in the land now in the National Park trace their descent from a

number of founding ancestors who personally, or whose immediate descendants, explored the region. Most of the oral traditions that were presented to us regarding the very first visitors could be grouped into two categories; those which pre-date the main period of Polynesian migration to Aotearoa and which are retained principally by the iwi or hapū in the upper Whanganui region, and those which relate to the main migration period itself. These latter traditions are remembered particularly among the iwi and hapū in the northern part of the volcanic plateau.

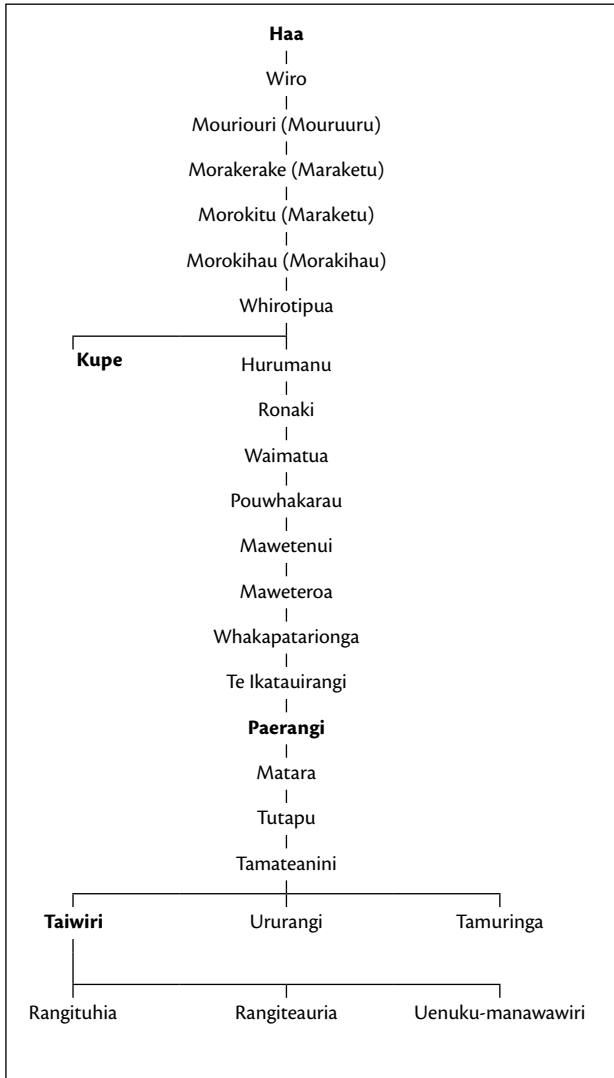
2.3.1 Early arrivals

Although subsequent generations of the early migrants intermarried with people of, for example, Te Arawa descent, a number of witnesses who appeared before us were at pains to emphasise the importance of their pre-waka tūpuna and the particular identity that this accords them as their descendants.

(1) *Paerangi*

The earliest name associated with the volcanic plateau that we heard during the inquiry was that of Paerangi-i-te-wharetoka. Ngāti Rangi claimed that after hauling up the North Island, which they call Haha-te-Whenua, the legendary explorer Māui-tikitiki-a-Taranga returned to Hawaiki and told Hā (Haa) among others that Pare-te-tai-tonga – the distinctive peak on Ruapehu – was the landmark that they should look for to find his great fish (see section 2.3.2(1) for a discussion of Ngāti Tūwharetoa traditions about the naming of the peak). In due course, Hā's descendant, Paerangi, from whom Ngāti Rangi take their name, travelling aboard a 'fabulous bird' called Te Kāhuirere, reached the volcanic plateau at Tuhirangi, south-west of Waiōuru.¹¹ Te Rau-a-moa, a reference to the bird, was a name applied to one of Ngāti Rangi's ancient marae.¹²

Subsequently, Paerangi's three great-great-grandchildren – Taiwiri, Ururangi, and Tamuringa – occupied te kāhui mounga (Ngāti Rangi spelling). From Taiwiri's children Rangituhia, Rangiteauria, and Uenuku-manawa-wiri comes present-day Ngāti Rangi and its three subsections Ngāti Rangiteauria, Ngāti Rangituhia and Ngāti Uenuku-manawawiri.¹³ Ngāti Hāua also claims descent through



Paerangi whakapapa

Paerangi as well as his contemporary Ruatipua (see section 2.4.3(2)).

(2) *Toi-kai-rākau*

Several of the early migrants to the region were descended from tūpuna who had settled other areas of the country

Te Rau a Moa: The Bird that Brought Ngāti Rangi

The late Matiu Marino Mareikura related how:

We came down from Paerangi i te whare toka . . . Paerangi of the house of stone, before anything else was here. This speaks of the actual beginnings of man . . . Te Rau a Moa was the bird that brought Ngati Rangi, dropped them . . . especially at Tuhirangi south west of Waiouru, from where we spread.¹

before the arrival of such canoes as Tainui and Te Arawa. Of these, the most frequently referred to was Toi (Toi-te-huatahi or Toi-kai-rākau whose descendants became known as Te Tini-o-Toi) who is associated both with the ‘Hawaiki’ homeland and the Bay of Plenty region, and whose uri (descendants), through intermarriage with the later migrants, ‘were among the most important early contributors to the central North Island population.’¹⁴ Toi connections are evident among many of the hapū in this inquiry district.

It is a point of interest that some oral traditions describe a people even earlier than Toi. Pei Te Hurunui Jones mentions them. ‘[T]hese people were not like Maoris,’ he said, ‘for some of them were very black and they had flat knees.’ Their women warmed to Toi’s men ‘because they were so handsome.’ Intermarriage led to absorption of the earlier population.¹⁵

This might help explain other early migrant groups, whose origins are not entirely clear. They occupied lands in the Rotoaira basin and around the eastern and northern shores of Lake Taupō for lengthy periods before being displaced by later arrivals.

Ngāti Ruakōpiri and Ngāti Hotu were two groups who were ousted and their remnant either married their subjugators or resettled in other regions. We will examine some of those exchanges later in our analysis, but for such groups, it is often the case that because of their

whakapapa, references to specific residency locations and customary resource use are sparse in the oral traditions. It is the conquerors' history that is remembered. As Sir John Te Herekiele Grace so aptly stated, 'No rangatira is proud of lines from any chief, no matter how important he was in his day, that was defeated, deprived of his mana and committed to the ovens.'¹⁶

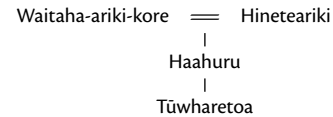
Thus, few or no detailed oral narratives have been retained about the first one or two hundred years of settlement around te kāhui maunga, perhaps also because the area was unoccupied for long periods of time. In any event, life in this early period seems to have been more about establishing subsistence economies in the richer resourced areas outside this inquiry district.

DNA studies substantiate the oral narratives by confirming that a considerable colony of Polynesian settlers was firmly established in Aotearoa about 800 or more years ago. Demographic simulations indicate that at least 50 women were necessary to create the critical mass, implying that unintentional voyaging could not have created such a situation.¹⁷ In contrast, recent archaeological evidence, such as kiore (rat) bones and rat-gnawed seeds, point to the first Māori settlers arriving no earlier than AD 1280 – less than a century before the arrival of the larger canoes from Tahiti and Rarotonga (if AD 1350 is taken to be the date of the latter's arrival).¹⁸ Under this second scenario, with the course to Aotearoa identified, calculated planning to reach the new land seems to have occurred in the 70-year period between these earliest migrants and the arrival of the larger Polynesian vessels.

2.3.2 The main migration period

This period refers to the deliberate landfall made by a number of large vessels associated with the main Polynesian migration to Aotearoa and their subsequent settlement patterns. These major voyaging waka arrived at different times and over a period of years around the fourteenth century. According to oral traditions the waka tūpuna of many of the iwi and hapū in the volcanic plateau was Te Arawa, but others are said to have reached this country aboard the Tainui, Aotea, Kurahaupō, Mātaatua, and Tākitimu waka.

There are also iwi and hapū who affiliate to other smaller waka. Te Paepae-ki-Rarotonga, for example, manned by Waitaha-ariki-kore, is believed to have made landfall near Matatā after the main flow of migration.¹⁹ Ngāti Hinewai claims this vessel as their waka of origin²⁰ while Ngāti Tūwharetoa also descends from Waitaha-ariki-kore.²¹



The new migrants settled regions like the Bay of Plenty, Hauraki, and Waikato; for example, Te Arawa around Maketu and Tainui at Kāwhia. They soon began exploring the environment beyond their immediate settlements and this brought them into contact with the descendants of the earlier settlers and with those from other recently arrived waka. During this period, land and resources were plentiful and new settlements were mediated more often than not without recourse to force. Marriage alliances were formed to reinforce fledgling relationships between the various groups. Ngāti Rangi told us, for example, that their tribal identity

emerged from the marriages with the descendants of Hau, who came on the Aotea canoe. [They] became known as Ati Hau (and in recent times as Te Ati Haunui-a-Paparangi) [and] through those connections Ngāti Rangi came to be regarded as part of the Whanganui River confederation of iwi.²²

Whakapapa ties between the early arrivals and the later migrants became multi-stranded over time. Hence, later sayings such as 'te taura whiri a Hinengākau' (the plaited rope of Hinengākau), an expression that conveys the complexity of Whanganui whakapapa, or 'mai i Maketu ki Tongariro' (from Maketu to Tongariro) that identifies the close genealogical relationship of the peoples in that extensive area.²³

The new migrants keen to explore the interior of the island found an expansive territory, which in many parts was unoccupied and unclaimed. These early

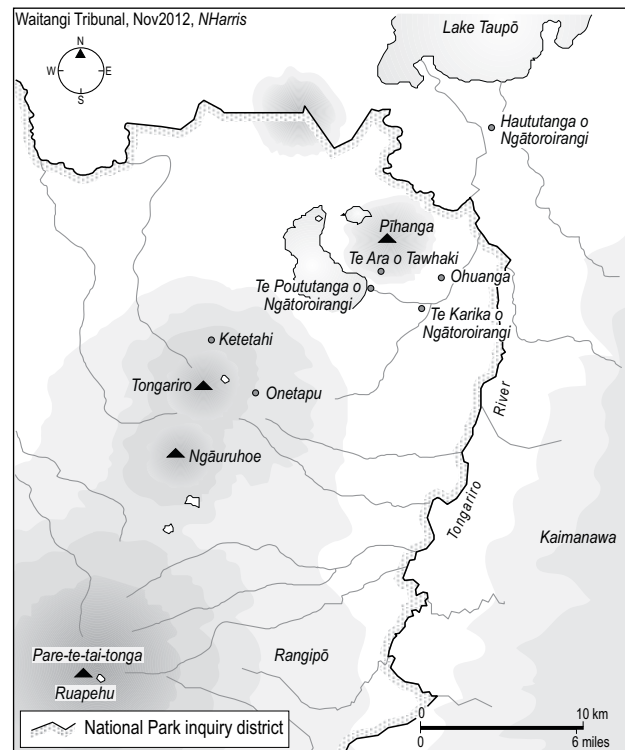
explorers included celebrated identities like Ngātoroirangi, Tamatekapua, Tia, Kurapoto, Tamatea-pōkai-whenua, and Hau, although not all traversed the land in this inquiry district.

(1) Ngātoroirangi

With regard to te kāhui maunga, one of the key tupuna for Ngāti Tūwharetoa and its associated hapū is Ngātoroirangi (although JH Kerry-Nicholls recorded that in 1883 Ngātoroirangi was also claimed as an ancestor as far south as Karioi by several Whanganui hapū).²⁴ This principal tohunga of *Te Arawa* waka, or ‘ariki ahorei kaupupuri’ as his Ngāti Tūwharetoa descendants described him, founded the iwi’s occupational interests in the inquiry district through right of discovery.²⁵

Ngātoroirangi’s approach to the volcanic plateau was from Maketu through Taupō, where he traversed the eastern side of the lake and then travelled to the area now known as the Hautū blocks. There where, in low cloud, he sniffed the wind to locate the direction of the mountains, hence the name Haututanga-o-Ngātoroirangi (the place where Ngātoroirangi inhaled the wind).²⁶ Te Pou-o-Rongomai (on the Ohuanga block), Pihanga, Te Karika-o-Ngātoroirangi, Te Poututanga-o-Ngātoroirangi, Te Ara-o-Tawhaki and Te Moana-o-Rotoaira are all names that the tohunga left on the landscape to mark his journey.²⁷ The details of his trek and the challenges he faced differ in detail depending on the narrator, but the general storyline is the same.

According to Ngāti Tūwharetoa, prior to Ngātoroirangi’s arrival the ancient guardians or kaitiaki of te kāhui maunga were the patupaiarehe (sprites or fairy people) and they had urukehu (light-haired) characteristics.²⁸ An account recorded by Sir George Grey said Ngātoroirangi placed the patupaiarehe on the mountains, but Ngāti Tūwharetoa tradition holds that they were created by the gods.²⁹ The stories of patupaiarehe and urukehu are found in the oral traditions of most iwi. Ngāti Tūwharetoa claimants told us that Te Ririo was one of these ‘kaitiaki patupaiarehe’, and some said he was the ruler of the patupaiarehe.³⁰ They gave instances where this revered supernatural being exacted penalties on individuals for breaches of the forest



Map 2.1: Nga waewae tapu o Ngatoroirangi

lore in the mountain region. Te Ririo also features in Ngāti Rangi’s oral traditions as the kaitiaki of Mount Ruapehu.³¹

When ascending the mountains, Ngātoroirangi met Hape-ki-tuārangi, a tohunga or explorer of Te Hapūoneone, one of the earlier migrant groups. Te Hapūoneone, along with Te Tini-o-Toi (Toi-kai-rākau’s descendants), occupied Whakatāne and surrounding lands.³² In other versions it was Tama-o-hoi, who was descended from both groups, whom he met near Mount Tarawera.³³ At Taupō, Ngātoroirangi had already encountered Tia (also of the *Te Arawa* waka). Tamatea-pōkai-whenua of the Tākitimu waka was approaching from the south and Kauika of the Aotea waka was coming from the west, each one setting up pou (posts to signify the land had been claimed) with the purpose of asserting a claim to the area. From Ngātoroirangi’s verbal discourse with



Ketetahi Hot Springs. The springs take their name from ‘one basket’ of fire thrown on to the side of Mount Tongariro. They are especially significant to Ngāti Tūwharetoa through the story of Ngātoroirangi, who brought geothermal activity to Tongariro.

Hape-ki-tuārangi came the names Kaimanawa, Rangipō, and Onetapu. Ngātoroirangi, determined to cross the mountain summits first, called to the atua of the climatic elements. The temperature plummeted and the mountains were soon enveloped by wind, sleet, snow, and darkness. Hape-ki-tuārangi and his companions perished on the lower slopes.³⁴

Meanwhile, Ngātoroirangi sought shelter behind a rock outcrop on Ruapehu which he named Pare-te-tai-tonga (protection from the south wind). Challenged by the ancient guardians — the ‘patupaiarehe urukehu’ — he reached the pinnacle of the tapu peak. Extremely

weak and near frozen, Ngātoroirangi called to his sisters in Hawaiki, Kiuwai and Haungaroa, to send heat. The two tipua, Te Hoata and Te Pupu, were despatched with three kete of Te Ahi Tipua (fire to warm Ngātoroirangi). Travelling underground and surfacing at various points along the way the tipua deposited the contents of the kete as they went. Their trail from Whakaari (White Island) to Tongariro is marked by the numerous pahū (geothermal vents) visible today.³⁵

On reaching Ngātoroirangi, the tipua had already distributed the contents of two of the kete. Displeased, Ngātoroirangi stamped the ground exclaiming, ‘Kotahi

anō te kete!’ (There is only one kit!) From this incident, the geothermal springs created on the north face of Tongariro became Kete-tahi, while the name Ruapehu memorialises the indentation on the surface caused by his stamping.

Ngātoroirangi subsequently drove his staff into the ground and its quivering opened another summit peak, hence the name Te *Ngāurutanga-o-te-kakau-o-te-hoe-o-Ngātoroirangi*.³⁶ Another version has it that Ngāuruhoe was a slave who accompanied Ngātoroirangi, and that the tohunga killed him to give greater mana to his request for Te Ahi Tipua, throwing him into the crater when the volcano burst forth.³⁷ After naming the peaks, the tohunga also named various sites and waterways in the region.³⁸

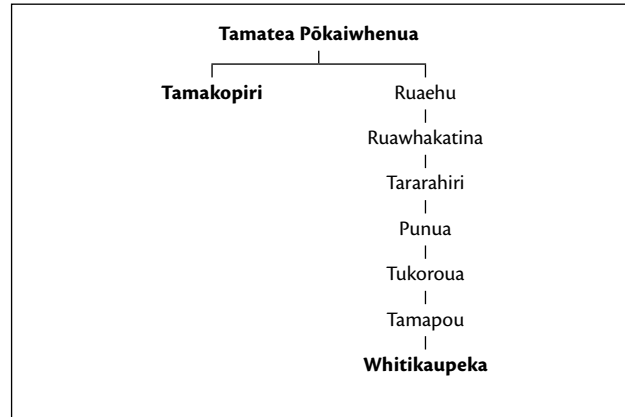
Ngātoroirangi eventually settled on the island of Motiti and died on a visit to Hoturoa at Kāwhia. From his death came the name Hikairo – ‘Tona tinana i hikairotia i te roto o Ngaroto’ (His body [lay] in a decomposed state in Lake Ngaroto).³⁹ While Ngātoroirangi did not live permanently on any part of the land in the National Park inquiry district, his descendants did so several generations later.

(2) Tamatea Pōkai-whenua, Ngāti Tama, and Ngāti Whiti

After receiving Te Ahi Tipua in the South Island, Tamatea Pōkai-whenua came north to reach and name Putiki-wharanui at the mouth of the Whanganui River. He went up river and after naming Te Ure-o-Tamatea (about half-way between Pipiriki and Taumarunui) he and his companions came upon the head waters of the Whanganui, from where they dragged their waka overland to Taupō:

From this place Tamatea sent his god to Roto-a-Ira, and when he found that food was to be had at that place he proceeded thither, and reached Pou-tu on the eastern side of the lake. This place was so named because, when Tamatea arrived at that place, he stood resting on his staff while he surveyed the district.⁴⁰

Tamatea met Ngātoroirangi at a place called Pōwaru near Rotoaira, named so either because they were unable to obtain food for eight nights or because Ngātoroirangi delayed him for that period.⁴¹ Tamatea named a number

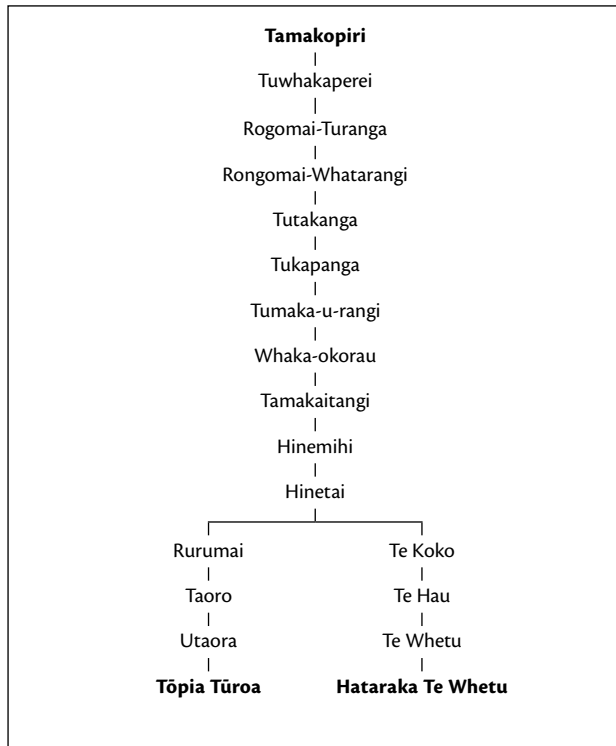


Whakapapa chart

of springs in the area, including the lakes now known as the upper and lower Tama between Ngāuruhoe and Ruapehu, while Ngātoroirangi continued to place names on the rivers and other sites around the mountains. Together the two went to Taupō to visit the places that Tia and Ngātoroirangi had previously named.⁴²

In time, Tamakopiri, a son of Tamatea Pōkai-whenua, brought his people from the Napier district to the eastern and southern parts of Taupō and to Murimotu. He came into conflict with a section of Ngāti Hotu (see section 2.3.3(2)) and dispossessed them of their land. Tamakopiri was killed in a subsequent skirmish and his people, who became known as Ngāti Tama, subsequently made peace with Ngāti Hotu. Ngāti Tama settled the eastern side of the Moawhango River (in the Taihape area) and lived amicably with Ngāti Hotu for several years.⁴³

Some six generations later, another descendant of Tamatea arrived from Mōhaka. This was Whitikaupeka whose people had been expelled from their territory by Ngāti Kurapoto of Te Arawa waka origins (see section 2.3.2(4)). Together with their Ngāti Tama relatives they took up arms against Ngāti Hotu and after a series of battles drove the original settlers south toward Tuhua and Rangitīkei.⁴⁴ Intermarriages between the two related groups led to the offspring being referred to as Ngāti Tama-whiti (or Ngāti Whiti-tama).



Whakapapa chart

In the late nineteenth century, Ngāti Tama was usually identified as a hapū of Ngāti Tūwharetoa, while Ngāti Whiti and Ngāti Tamawhiti were typically associated with Ngāti Kahungunu.⁴⁵ These groups figure largely in the history of the lands from Rotoaira to Murimotu. Indeed, Ngāti Waewae witnesses, in a twentieth-century case, described how Ngāti Whiti and Ngāti Tama frequently passed through the Rangipō–Waiū area to see the people living at Rotoaira, stopping over at Waitangi on the way.⁴⁶

In the 1878 census data collected by the resident magistrate, 69 members of Ngāti Whiti were recorded living at Pātea (the high country between Hawke's Bay and Taupō and outside the National Park inquiry district) while the 1881 census put the number at 29. The 1881 census places Ngāti Tama at Pātea (108), Poutū (53), and Kōtukutuku (15), while the 1878 census places them at Rotoaira (22).⁴⁷

During the nineteenth century, the most notable of the Ngāti Tama and Ngāti Whiti chiefs was Te Hau [Pai Mārire] (formerly known as Ihaka Te Hikiroa). He fought on the side of the Hauhau in the 1860s, hence his refashioned name. In 1883 he was living at Rotoaira when James Kerry-Nicholls wrote that his mana reached from the base of Tongariro to the upper Waikato (Tongariro River), and embraced a large part of the Rangipō Plains.⁴⁸

In 1886, three rangatira with Ngāti Tama whakapapa – Rāwiri Pikirangi of Poutū, Hataraka Te Whetu, and Tōpia Tūroa – were included among the 19 chiefs named in the lists for the subdivision of the mountain peaks.

(3) Ngāti Ruakōpiri (Te Patutokotoko) and Ngāti Hotu

Two early kin groups who migrated together to the region from the Bay of Plenty were Ngāti Ruakōpiri and Ngāti Hotu. Their origins are unclear, although some claim Ruakōpiri were the descendants of Waitaha-ariki-kore, who, as stated earlier, arrived in his own waka, Te Paepae-ki-Rarotonga.⁴⁹

It is believed that the two groups were living in the Taupō district when Ngātoroirangi and Tia, another member of Te Arawa waka, made their exploratory trips. Having migrated from Matahina, east of the Kaingaroa Plains, Ngāti Ruakōpiri lived for some time east of Taupō where they were attacked by Ngāti Tahu (whose origins are also blurred). They fled to Murimotu, where they took refuge among Ngāti Rangi and Ngāti Tamakana and other hapū of the Manganui-o-te-ao and upper Whanganui region.

In 1878, Ngāti Ruakōpiri were based in upper Whanganui at Te Ure-iti. Resident magistrate RW Woon believed they were a hapū of Te Patutokotoko, while Te Keepa Te Rangihiwini (Major Kemp), who had whakapapa connections reaching right up the Whanganui River, said that Te Patutokotoko was a name that Ngāti Ruakōpiri had adopted in the nineteenth century:

Patutokotoko was a new name given to the Ngatiruakopiri owing to a quarrel between that tribe and Ngatiruru. This people [Ngāti Ruru] were previously called Ngatiatuaroa. The Ngatiruakopiri said 'I will catch you like an owl [ruru]'. The

Te Keepa Te Rangihiwini

c182?–98

Te Rangihiwini – who came to be known as Te Keepa, Meiha Keepa, and Major Kemp – was a chief of Muaūpoko, Ngāti Apa, and Whanganui. In the 1840s, Te Keepa helped facilitate the sale of the Whanganui block, receiving a share of the payment in 1848. He also became a member of the armed police force. By 1862, Te Keepa was considered a leading government supporter in Whanganui, and in the mid-1860s, he fought the Hauhau along the Whanganui River and in South Taranaki. He assembled a loyal following of troops, and he and his men fought Titokowaru and Te Kooti in 1868 and 1869, winning considerable praise from the government. Te Keepa was promoted to major in 1868 and received several honours, but his strongest power base remained in Māoridom.

In 1865, Te Keepa became a Native Land Court assessor, and in 1871 he was made a land purchase officer. In the 1880s,

Te Keepa marked out a large territory of Whanganui lands to be kept in trust. Kemp's Trust was to be administered by a Māori committee, under Te Keepa's care. However, it required the Government's support to operate, and this was not forthcoming. After a tribal dispute over land at Murimotu, Te Keepa lost his positions as land purchase officer and assessor, but these were reinstated by Ballance in 1884. By this time, Te Keepa had accumulated considerable debt to lawyers, and in 1886 he agreed to sell land under the condition that it would be used according to his own proposals; however, this did not come to pass.

In the late 1880s, Te Keepa became involved in the Kotahitanga movement. Te Keepa's last recorded words were: 'Sell no more land, keep the remainder you have as sustenance for the Maori people.'¹

Ngāti Atuaroa said 'I will beat you with a walking stick [patu tokotoko].' Hence the names by which they are now known.⁵⁰

Barbara Lloyd, who gave evidence for Ngāti Ruakōpiri, disagreed, stating that her father, Te Hore Herewini, 'never once spoke of Patutokotoko as being his hapu.'⁵¹ In 1883, Ngāti Ruakōpiri was at Manganuioteao. By 1906, their rohe, shared with other hapū including Ngāti Uenuku, was described as extending from Manganuioteao to Raetihi and Waimarino (the block they received shares in).⁵² In the nineteenth century, their most well-known chief, who also had Ngāti Uenuku, Ngāti Tama, and Ngāti Whiti affiliations, was Te Peehi Tūroa and later his son Te Peehi Pakoro and grandson Tōpia Tūroa (see section 2.4.4(5)).

Some attribute a Tainui waka origin to Ngāti Hotu, others a Kurahaupō link, and others again thought they were descendants of Awanuiarangi which would give

them a Toi lineage.⁵³ Ngāti Hotu, whom Grace described as 'urukehu', settled a wide area from the north-west of Taupō to Mōhaka and into the Moawhango district.⁵⁴ Because they were so dispersed they were prone to attack by neighbouring groups expanding southward. For several years they were engaged in conflict with the sons and grandsons of Tūwharetoa (see section 2.4.2) before peace was sealed by the marriage of one of their own, Paepae-tehe, to Hineuru of Ngāti Tūwharetoa.⁵⁵

Over successive generations, however, subsequent descendants of the Tākitimu, Mātaatua, and Te Arawa waka forced Ngāti Hotu from their land. After several battles, the remnant fled to Rotoaira and eventually on to Tuhua and Taumarunui, where in time they were similarly treated by Ngāti Hāua. After this, the western lands of the volcanic plateau, Taurewa and Whangaipēke, became 'watea' (free for others to claim).⁵⁶

(4) Ngāti Kurapoto

At about the same time as Ngātoroirangi and Tia made their treks to the volcanic plateau, Kurapoto, also of the Te Arawa waka, is said to have visited the Taupō area. It was his son Kawhea, however, along with his followers who settled the area. They did this through a series of assaults, beginning at Ātiamuri and ending along the eastern shore of Lake Taupō. While they were later forced by Ngāti Tūwharetoa to resettle in the northern Taupō district, at Mōhaka and Tarawera they are briefly mentioned here because they, too, were partly responsible for driving Ngāti Hotu and Ngāti Ruakōpiri into the southern region of Taupō and onto the lands now in the National Park inquiry district. They became known as Ngāti Kurapoto.⁵⁷

As will be seen, as populations in the region and beyond increased, their descendants interacted more frequently. Inter-marriages became more political and inter- and intra-iwi and hapū relationships tended to be more tenuous as a result. The descendants of the early migrants would be subjugated by the descendants of the waka tūpuna; their territories were taken and they were subsumed by marriage or forced to flee. This waxing and waning of populations was all wrapped around the seasonal availability of food and natural resource use in the region.

2.4 RELATIONSHIPS AND LOCATIONS

By AD 1500, populations were certainly flourishing outside the volcanic plateau, but limited permanent occupation had occurred on the land now in the National Park inquiry district. Outside the district, whānau groups had multiplied into larger social entities where hapū were the powerful political and territorial force. In these areas, expanding populations, economic inequalities, and limited resources were resolved by hapū migrating to less populated and, sometimes, less hospitable regions. Some of the descendants of the early explorers set out to claim the inheritances bequeathed to them by tūpuna like Ngātoroirangi, despite the colder climate.

During the 1600s and 1700s, Aotearoa saw population

growth on a significant scale. Professor Ian Pool estimates that the Māori population for the country was somewhere about 100,000 in 1769.⁵⁸ Consequently, ownership, access, and user rights (shared and outright) concerning land, forests, sea, lakes, and waterways became more important to the continued existence of hapū. Robust oral traditions that recount the exploits of hapū and iwi during this period were laid before this Tribunal. These show that threats to a hapū's autonomy, or even its very survival, had more to do with the ambitions of neighbouring or distant hapū or iwi than the forces of nature.

Peace in this period tended to be maintained by vigilant war-readiness, as battles of varying scales occurred in every generation. In such an atmosphere, individuals were less inclined to endure an injury than to offer one. Often, battle-lines were drawn because of domestic quarrels, insults, or even an unintentional slip of the tongue. While these were catalysts, more often than not the source of the dispute lay in the increased population and the subsequent taxing of resources.

Thus, the defence of land became one of the main functions of the hapū. Hapū carried out all the major tasks necessary for group survival: cooperating in fishing and food gathering; land clearing; erecting fortifications; and constructing wharenuī and waka. Smaller hapū might reside together in a single pā, while larger hapū maintained one or several pā. This was the case in the southern Lake Taupō area and Rotoaira, where in 1840 Mananui Te Heuheu 11 and Ngāti Turumākina had a pā at Waihī, while Te Herekīkie and Ngāti Te Aho were a stone's throw away at Tokaanu. Several smaller Ngāti Tūwharetoa hapū were also living together in the Rotoaira basin either at Motu-o-Puhi or Poutū.

By 1840, there were numerous hapū who could claim rights to the lands and waterways that were to comprise the National Park. These hapū can be grouped into three major clusters. In the north were those generally described as being part of Ngāti Tūwharetoa, in the west and south-west were mixed communities who had links to both Ngāti Tūwharetoa and the hapū of upper Whanganui, and

in the south were hapū who strongly identified with the Whanganui River confederation of iwi.⁵⁹

2.4.1 Customary rights in land

Before setting out brief histories of the iwi and hapū of the National Park inquiry district who were on the land in 1840, it would be useful to make some broad points about customary land use in the same way that relevant general points were made about the terms ‘iwi’ and ‘hapū’ (see section 2.2). This will give us a context in which to understand the fluidity of boundaries, overlapping interests and shared user rights among the iwi and hapū in this district.

The wars waged between the early inhabitants of Aotearoa and the subsequent waka tūpuna were carried on for generations by the descendants of both groups and considerably influenced the nature of land rights. Take raupatu (right by conquest), for example, cut across whenua kitea hou (right by discovery). Many iwi and hapū during this period broke up and were scattered, the conquered to re-establish themselves elsewhere, the victors to enjoy the new territory and its resources which were the spoils of victory.

The natural and physical resources of te kāhui maunga over which Māori exercised management and control included the land, mountains, lakes, waterways, and all things on or in them – living or inanimate. Traditionally Māori did not ‘own’ land, but instead sought to develop a relationship with the land as a place upon which they could place their feet with confidence and without fear of their rights being challenged.⁶⁰ A hapū’s continued use of the resources on the land, even if only seasonal, strengthened their rights, regardless of whether the land derived from prior discovery, conquest, gift, or inheritance. Those rights were evidenced, for example, in the hapū’s named birding trees and the trails to track bird migrating patterns usually as berries ripened.⁶¹ While hapū interests were weakened through absence or irregular use, absence without ahi kā did not necessarily terminate all interests.⁶² The Tribunal report on *Te Tau Ihu o Te Waka a Maui*, for example, saw Ngāti Toa’s periodic visits from their bases in Kāpiti and Porirua to levy tribute from subject hapū across Cook’s Strait as a kind of occupation, derived from

the arms trade and over-arching military and maritime power.⁶³ In the case of te kāhui maunga, there were a number of hapū and iwi who had a view of different faces of the mountains despite not actually living there and, as we will discuss later, each had use rights in those areas, rather than outright ownership.

The colder climate about Te Kāhui Maunga, the elevation and slope of its land, and the difficulty of establishing imported sub-tropical food plants compelled its first settlers to instead explore the area’s extensive forests, wooded hills, wetlands, streams, lakes, and geothermal outlets. They found them well resourced, but because they were less sought after than the alluvial flats of other areas, they were less closely demarcated.

The hapū and its members used the land, lived upon it, cared for, and consumed its resources. They assigned names to the land’s significant features, fortified places, areas where fish and game were caught, and where the bones of noted ancestors were deposited. On this point, it is important to note that one of the greatest fears of losing land had to do with burial sites. Such sites identified a hapū or whānau’s close association with the land and when a group moved they usually removed or ritually buried the ones of the dead and removed the tapu from the land, as demonstrated by Ngāti Mutunga when they left Maitu Island in 1835. Conversely, enemy hapū, bent on eradicating the occupants’ historical rights, would commonly desecrate burial sites.⁶⁴ This is good reason for Ngāti Kurauia’s interest in the Hautū prison lands where they have a toma or burial cave. It may also be the primary reason why Horonuku Te Heuheu had his father’s remains removed from the slopes of Tongariro.

Some hapū shifted with the seasons, exploiting resources in different places and relocating from their usual residence to temporary kāinga for months at a time before returning.

Resource management had a clear intergenerational aspect to it, of which attachment to the land was a natural consequence:

This attachment embodied a ‘wise-use’ policy. That is, there was an awareness that resources could be exhausted by

over-use, and groups believed that their continued physical and (maybe more important) cultural existence was tied to their resources – land, waterways, etc.⁶⁵

In terms of use-rights, we concur with the Gisborne Tribunal in its assessment of the application of European ‘straight line’ boundaries to the fluid and flexible markers of customary title:

Resource rights were complex, convoluted and overlapping. They almost never phased clearly from hapu to hapu as one panned across the customary landscape. Instead, most resource complexes had primary, secondary, and even tertiary right holders from different hapu communities, all with individual or whanau interests held in accordance with tikanga and therefore by consent of their respective communities.⁶⁶

Che Wilson, in this inquiry, explained how blurred boundaries served a purpose:

they were never as black and white as it appears in the Land Court hearings. Traditional boundaries were deliberately grey. These areas of overlap or the shaded areas of ‘grey’ ensure that we maintain relationships with others. Black and white lines, on the other hand, encourage massive walls which only cause friction rather than maintaining key relationships.⁶⁷

Put another way, hapū were bound to the land through relationships that had resulted from the land being handed down the whakapapa line. Over time they evolved systems of resource management including the allocation of resource use-rights to whānau and sometimes other hapū, and systems of social organisation whereby rights to harvest, use, and occupy were controlled in the interests of the hapū as a whole. Use-rights accorded to individuals were generally conditional upon a regular contribution to the community and acceptance of its authority and norms.⁶⁸

Finally, it should be noted that people were mobile and could reside for a time among another iwi or hapū because of their close whakapapa ties, or through intermarriage (which were almost always strategic) or, in the case of

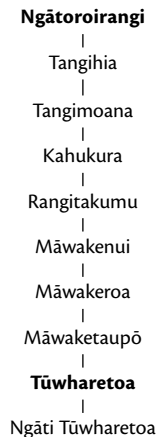
refugees, because of the goodwill of the rights-holders. Thus, these new or renewed whakapapa connections would enable them to access a different set of resources.

The complex web of relationships among iwi and hapū in this inquiry district highlights the need for a thorough appreciation of whakapapa and its treatment when trying to comprehend customary rights concerning te kāhui maunga. For this reason several whakapapa charts have been provided in this chapter to enable the reader to reach a clearer understanding of these relationships

We now introduce the iwi or hapū of the inquiry district beginning with those affiliated to Ngāti Tūwharetoa. These include Ngāti Tūrāngitukua, Ngāti Manunui, Ngāti Waewae, and Ngāti Hikairo.

2.4.2 Ngāti Tūwharetoa

It was eight generations after Ngātoroirangi that his descendants started to reclaim the lands left to them in the volcanic plateau.



When Tūwharetoa (variously known as Tūwharetoa-Waewae-Rakau, Tūwharetoa-Kaitangata, and Tūwharetoa-i-te-Aupouri) was born, he was named Manaia, and it was prophesied that he would return to the lands claimed by his tupuna.⁶⁹ On his father’s side, he was descended from the chiefs of the Te Arawa and Mātaatua waka, and through his mother, Hāhuru, a daughter of Waitaha-ariki-kore, he



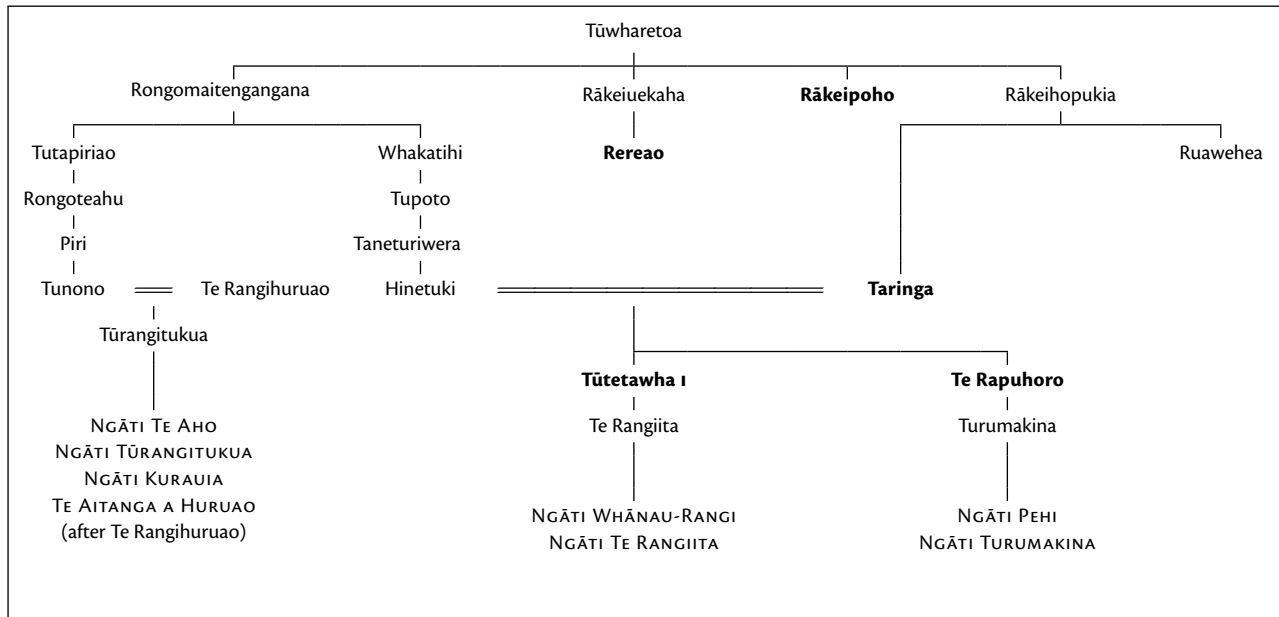
The Tūwharetoa i te Aupouri meeting house at Pūkawa near Waihi. It took time and a number of generations for the volcanic plateau lands granted by Ngātoroirangi to be reclaimed.

could claim descent from Te Hapūoneone, the early settlers of the Bay of Plenty region.⁷⁰

While he himself spent most of his life in the Kawerau area, Tūwharetoa did journey south to Taupō where he found Ngāti Ruakōpiri and Ngāti Hotu in occupation of the land. Returning to Kawerau he arranged for his sons to take back the territory bequeathed to them by Ngātoroirangi. Over several years and forays into the central plateau, his sons and grandsons battled Ngāti Hotu

and later their distant kin Ngāti Kurapoto and Ngāti Tama to achieve this objective.

His son Rākeipoho, along with Taringa, Rereao, and Moepuia, all grandsons of Tūwharetoa, fought a number of encounters before a peace agreement was concluded with the aforementioned kin-groups. This enabled Rākeipoho and Taringa to follow the path taken by Ngātoroirangi and rededicate the original tuāhu sites established by their tupuna.⁷¹



Whakapapa chart

(1) Ngāti Tūrangitukua, Ngāti Kurauia, and Ngāti Te Rangiiita

At the time, Tūtetawhā and Te Rapuhoro, great-grandsons of Tūwharetoa, lived at Rotoaira, before moving to Motutara at Karangahape on the western shore of Lake Taupō.⁷²

The peace with Ngāti Hotu and Ngāti Tama lasted only a generation before Tūwharetoa’s uri led contingents against the two groups. In this period, the most notable of Tūwharetoa’s uri were Te Rangiiita – who grew to be a great warrior – and Tūrangitukua, after whom Tūrangi township takes its name. As a result of these of battles, Ngāti Hotu was completely routed.⁷³

A section of Ngāti Tama moved to the western shores of Taupō, and while they initially paid reverence to the senior Ngāti Tūwharetoa chief in the area, Ruawehea, they later killed him. Those Ngāti Tama who survived the retribution meted out by Rākeipoho, Taringa, Waikari, and a young Te Rangiiita fled the district, eventually making their way to Rotorua.⁷⁴

After Ngāti Hotu and the abovementioned section of Ngāti Tama were expelled from the region, Tūrangitukua settled the lands around Tokaanu, his descendants adopting the name Ngāti Te Aho (later Ngāti Tūrangitukua and Ngāti Kurauia). Te Rangiiita established himself in the northern Taupō region, his people becoming known as Ngāti Whānau-rangi (later Ngāti Te Rangiiita).⁷⁵ For a time, Ngāti Tūwharetoa evolved into two divisions. Te Rangiiita became leading chief of Ngāti Tūwharetoa, but Tūrangitukua’s son, Te Rangitautahanga (a contemporary of Te Rangiiita), was acknowledged as having the senior bloodline.⁷⁶

Today, Ngāti Tūrangitukua’s principal marae is Hirangi at Tūrangi. Their appearance in this inquiry was related to the Hautū blocks on which sits the Tongariro Prison, and which falls just outside the National Park inquiry district.

For the most part, we have been talking about the forebears of Ngāti Tūwharetoa who settled outside the land taken in by the National Park inquiry district. However, the early history of Ngāti Tūwharetoa’s move down into

the central plateau is also generic to the hapū who eventually took up residence in the Rotoaira basin and beyond. We will now trace the origins of those hapū.

(2) Ngāti Manunui

Manunui-a-Ruakapanga, from whom Ngāti Manunui takes its name, was the son of Te Rangiita. So, the name Ngāti Manunui defines a particular section of Ngāti Te Rangiita. From the time of Te Rangiita, Ngāti Tūwharetoa was always firmly in occupation of the Taupō district, and Ngāti Manunui’s central places of residence were at Te Rapa and Pūkawa. This Tribunal was told that Te Rangiita’s father, Tūtetawhā, taught him about the forest and water resources about te kāhui maunga:

Tutetawha showed . . . Te Rangiita the internal access tracks that lead to mahinga kai areas from Kuharua maunga to Kakaramea to Pihanga, to Tongariro, Ngauruhoe and Ruapehu thence north to the Hauhungaroa, Tuhua and Hurakaia

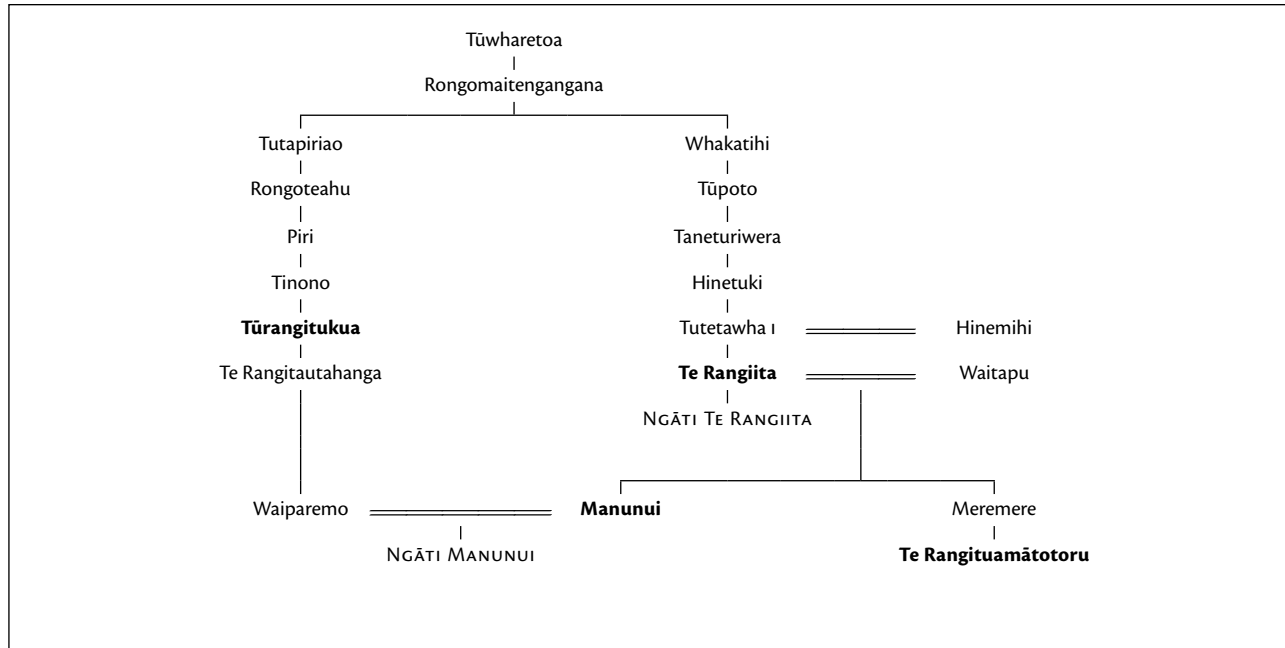
ranges pointing out the lands and the boundaries of Ngati Tūwharetoa . . .⁷⁷

While Ngāti Hotu, Ngāti Tama, and Ngāti Whiti must have roamed the same area previously, this is the first specific reference in the written record to people utilising the resources within the National Park inquiry district. The access routes and resources available were in turn conveyed to Manunui-a-Ruakapanga and his siblings.

Te Rangiita married Waitapu, giving their children a strong Ngāti Raukawa connection.⁷⁸ Manunui’s wife was Waiparemo, a granddaughter of Tūrangitukua, through whom Ngāti Manunui claims a further direct line to Tūwharetoa. As well, the uri of Manunui had connections to Mātaatua through his grandmother, Hinemihi, and also to sections of the Whanganui iwi through his second son’s marriages to Kahuti and Tuwhatiara.⁷⁹

Because Waiparemo was favoured by her father, Te Rangitautahanga, he conferred upon Manunui the atua

Whakapapa chart



(tribal god) ‘Rongomai’, large tracts of land at Pūkawa, and the war canoe Te Reporepo.⁸⁰ Initially Ngāti Manunui was known by the following hapū names: Ngāti Moetū, Ngāti (or Āti) Haunui, Ngāti Purakau and Ngāti Whānau-pukupuku. These hapū ‘occupied lands and exercised customary rights from Kuratau and Pukawa to Kakaramea to Pihanga to Tongariro thence north to Tuhua, Hauhungaroa and Hurakia ranges.’⁸¹

In Manunui’s time, conflict arose with a section of the Whanganui iwi at Manganuioteao. Manunui and his brothers took a taua (war party) to the valley and killed two men. The offended group, led by Te Rāhui, evened the score when they went to Taupō and killed two Ngāti Tūwharetoa. On their return, the Whanganui taua was met at Paparua above Ōtūkou. Manunui was wearing a kahukura cloak when he stepped forward to challenge Te Rāhui. The latter inquired, ‘Ko wai ko wai te tangata i te kahukura?’ (Who is the man with the red feathered cloak?)⁸² From this incident, the Ōkahukura block takes its name. The result of the meeting was a stronger relationship between the two groups. Tūmatangau, a chief who accompanied Te Rāhui, gave his daughter in marriage to Manunui’s son.⁸³ The whakapapa connections with Whanganui and particularly Ngāti Hāua remain very strong today. More importantly, the story suggests that by this period the route from the Manganuioteao valley through to Lake Taupō was well known and well traversed.

By the end of the nineteenth century, the various Manunui hapū had merged to become known as Ngāti Manunui. In the 1878 census, 53 members of Ngāti Manunui were recorded living at Hauwai, behind the Waihi falls, now part of the Waihi-Pūkawa (Tūwharetoa) farm.⁸⁴ John Manunui outlined the Ngāti Manunui rohe before this Tribunal:

The rohe begins at the north crater of Mt Tongariro and goes to the summit of Ngauruhoe to the Waikato [a peak] on Ruapehu thence down the northern face of Ruapehu to the Taranaki stream to the Whakapapaiti/Whakapapanui/Whakapapa thence down this river to its confluence with the Whanganui River at Te Rena thence down this river to its confluence with the Whanganui River at Te Rena thence down

that river to the township of Manunui. The boundary goes in an easterly direction to the headwaters of the Pungapunga Stream to the summit of Hauhangaroa thence down the Mangaongoki Stream its confluence with the Kuratau River to where the river runs into the lake (Lake Taupo) thence south down the shoreline to Pukawa, thence to a point the boundary goes southwest to the summit of Kakaramea Mountain thence in a straight line back to the commencing point.⁸⁵

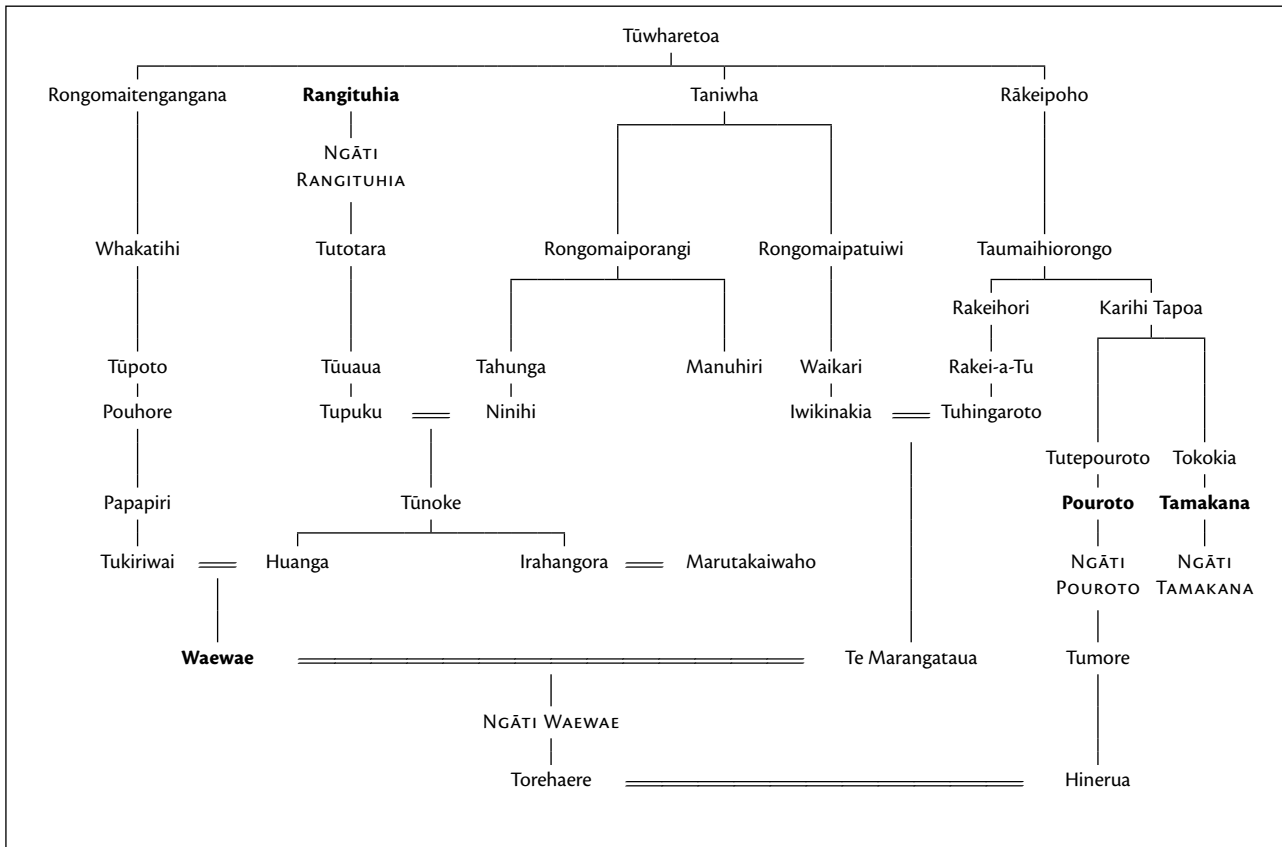
Ngāti Manunui said that they had occupied the Ōkahukura and Taurewa areas since they and other hapū of Ngāti Tūwharetoa defeated Ngāti Hotu at the battle of Te Whataraparapa (1650 to 1700) at Kākahi (outside the north-western boundary of the inquiry district) and Te Rena.⁸⁶ As we will see later Ngāti Tamakana, Ngāti Hinewai, and Ngāti Hikairo also claim interests in this area. In closing submissions counsel for Ngāti Manunui also pointed out that Ngāti Manunui had objected to the transaction between Te Heuheu and other rangatira and the Crown concerning the ‘gifting’ of ngā maunga.⁸⁷

(3) Ngāti Waewae

*Ko te paepae o Tuwharetoa ki Te Tonga,
te timatanga hoki o Ngati Raukawa Te Au ki te Tonga,
ngā hapu e rua a Ngati Pikiahu me Ngati Waewae.*⁸⁸

*The southern seat of Ngāti Tūwharetoa in the south,
at the beginning of Ngāti Raukawa in the south
where the two hapū Ngāti Pikiahu and Ngāti Waewae reside.*

At one time, Ngāti Waewae had sections distributed from north of Taupō to Rotoaira, Murimotu, and Rangitikei. We noted 15 pages of named kāinga, mahinga kai, taunga ika, huarahi, and wāhi tapu in *Te Taumarumarutanga o Ngāti Tūwharetoa Report* that bears out their interest in this region.⁸⁹ These related to the area from Taurewa in the north-west of the inquiry district in a clockwise direction through the Rotoaira Basin, across the Rangipō Desert, and almost as far south as Waiōuru. A hapū of Ngāti Tūwharetoa (although they have connections to Whanganui through Rangituhia and Ngāti Kahungunu as



Whakapapa chart

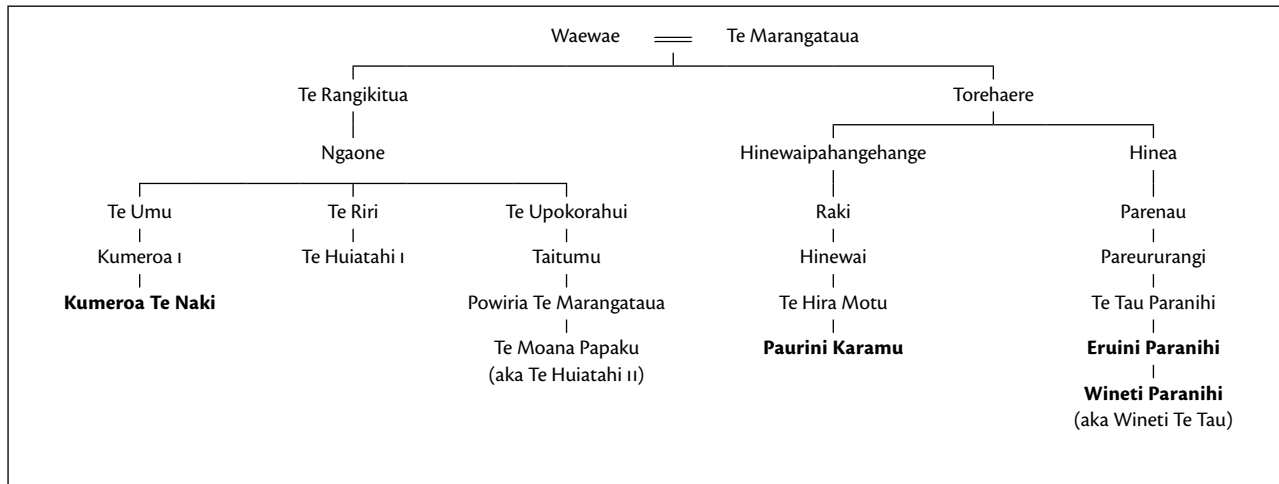
well), the vast majority of Ngāti Waewae are now based on Te Reureu land block in the Rangitikei district.

Along with Ngāti Pīkiahū, a hapū of Ngāti Raukawa, and at Mananui Te Heuheu II's request, Ngāti Waewae relocated to the Rangitikei in 1842 to protect Ngāti Tūwharetoa's southern land interests and to prevent land sales there extending to the Tongariro district. Te Tau Parinihi was the principal chief who led Ngāti Waewae, while Ngāwaka Maraenui was the chief of the Ngāti Pīkiahū group.⁹⁰

In time, Ngāti Pīkiahū and Ngāti Waewae merged and became Ngāti Pīkiahū Waewae. Now centred on Tokorangi in the Rangitikei area, they are a dual hapū representative

of Ngāti Raukawa and Ngāti Tūwharetoa.⁹¹ There is a saying extant in Ngāti Tūwharetoa that recognises the Ngāti Pīkiahū Waewae presence in the south: 'Ko te tomokanga o te iwi ki te tonga kei Tokorangi' (The gateway to Ngāti Tūwharetoa in the south is at Tokorangi).⁹²

Four wharenui exist at Te Reureu: Te Tikanga-ā-Tāwhiao (Tokorangi Marae); Poupatate (Onepuhi Marae); Te Hiri o Māhuta (Kākāriki Marae); and Kotuku (Onepuhi Marae). Ngāti Pīkiahū Waewae hapū primarily identify themselves with Te Tikanga and Poupatate, which once stood side-by-side at Onepuehu Pā (Onepuhi) until the Rangitikei flooded the area in 1898 and they were subsequently moved. Te Tikanga now stands atop of Tokorangi



Whakapapa chart

Hill, and Poupatate, although still located in Onepuhi, is a short distance away from where it once stood.⁹³

Ngāti Waewae emerged ‘in the days of the children of Taupounamu and his sisters Hinewaipahangehange, Hinea, Te Hei and his younger brother Huangā.’⁹⁴ One section carried the name Ngāti Marangataua after Waewae’s husband. The uri of Irahangora and Marutakaiwaho also became known as Ngāti Waewae through intermarriage. This couple named many sites of significance in the district.⁹⁵

Over time and a series of intermarriages Ngāti Waewae became closely connected to many hapū living in the region. Torehaere’s wife, Hinerua, for example, was descended from Pouroto, giving this section of Ngāti Waewae a close connection with Ngāti Pouroto and Ngāti Rongomai who are uri of Rākeipoho.⁹⁶ It was through Ninihi that Ngāti Waewae had claims to the land in the Rangipō district. Ninihi took Tupuku of Ngāti Rangituhia as his wife, no doubt to strengthen ties with the neighbouring upper Whanganui people.

Waewae’s ancestors had occupied land in the Hautū block since the first conquest over Ngāti Hotu. Some had intermarried with Ngāti Tama and Ngāti Whiti and some of their descendants remained at Rotoaira and Murimotu

during the migration to Te Reureu or returned there afterwards.⁹⁷ At the time, Te Huiatahi I was one of their chiefs who remained. In 1878 census records, however, showed only five adults and three children, who were living at Kōtukutuku (500 metres south of Ōpōtaka at the northern end of Rotoaira), claiming Ngāti Waewae as their primary hapū.⁹⁸

In 1886, five rangatira from Ngāti Waewae were put into the titles of the mountain peaks by the Native Land Court: Kumeroa Te Naki, Te Huiatahi II, Paurini Karamu, and the two half-brothers Eruini and Wineti Paranihi (the latter who said he was born at Rangitikei).⁹⁹ In 1887, the Native Affairs Committee reported on a petition they had received from Te Moanapapaku te Huiatahi and Kingi Te Herekiekeie contesting the gifting of the mountain peaks for a National Park.¹⁰⁰ They petitioned unsuccessfully for a rehearing of the application to subdivide the land, as they were at the Whanganui court at the time the Taupō court was dealing with the subdivision. These subdivisions will be discussed in chapter 5.

(4) Ngāti Hikairo

As stated earlier, the name Hikairo commemorates the death of Ngātoroirangi (see section 2.3.2(1)). There are



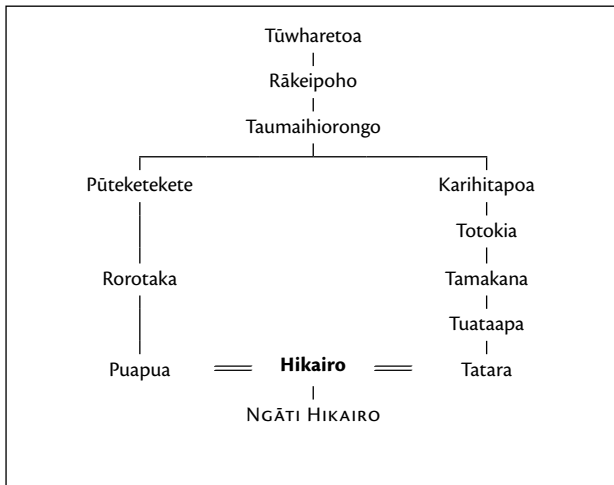
Ōkahukura, the meeting house at Ōtūkou. This is one of the Ngāti Hikairo marae that claim land that stretches well beyond the Rotoaira Basin.

various theories as to Hikairo's origins because there is more than one ancestor bearing that name (including a grandfather and grandson). Tūreiti Te Heuheu gave him a Waikato or Kāwhia origin and said that he had married two Ngāti Tūwharetoa women, Puapua and Tatarā.¹⁰¹ Some whakapapa attribute a Te Arawa link to Hikairo with Tamatekapua or Tia as his ancestor. Others believed Hikairo to be of Whanganui origin.

Ōtūkou, Pāpakai, and Hikairo (established at Te Rena circa 1998) are the three marae which locate present-day

Ngāti Hikairo. Their land interests, they claim, extend right over the Rotoaira basin to the western borders of Ngāti Tūwharetoa territory including Taurewa. Ngāti Hikairo consider themselves the kaitiaki of this particular region, a fact acknowledged by the other Ngāti Tūwharetoa hapū. However, Te Ngaehē Wanikau described a more expansive area in which they had interests:

from Paretaitonga at Ruapehu; north to Kakaramea, westward from the confluence of the Whakapapa and Whanganui



Whakapapa chart

Rivers, eastward to the Kaimanawa ranges. It includes the whole of the Roto-a-Ira basin, Tongariro, Ngauruhoe and part of Ruapehu.¹⁰²

Most agree that Hikairo married Puapua and Tatarā, descendants of Rākeipoho, Tūwharetoa's son, and that Hikairo acquired Ngāti Tūwharetoa land through his wives.

Rākeipoho is the name of the whare tīpuna at Pāpakai Marae; Taumaihirongo is the whare tīpuna at Kākahi (outside the north-western boundary of the inquiry district); Puapua and Hikairo are the wharekai and whare tīpuna at Te Rena. Over time, hapū such as Ngāti Marangataua, Ngāti Matangi, Ngāti Pouroto, and Ngāti Parehuia merged to become Ngāti Hikairo.¹⁰³ They settled the Rotoaira Basin – a bountiful larder, its waterways teeming with native fish and the surrounding forests spilling over with birdlife and other fauna.¹⁰⁴ We will be looking at Rotoaira in more detail in chapter 13. Suffice to say here that Ngāti Hikairo was deemed to be a prosperous people by early Europeans who came to the region.¹⁰⁵

One of Puapua and Hikairo's most well-known descendants was Te Wharerangi, whose status was such that his cousin Mananui said of him:

*Ko Tongariro te maunga
Ko Roto a ira te moana
Ko Motuopuhi te pa
Ko Te Wharerangi te tangata¹⁰⁶*

This pepeha is printed on a memorial tablet installed on the marae at Ōtūkou and acknowledges the kaitiaki status of Ngāti Hikairo in relation to Tongariro, Rotoaira, and Motuopuhi. We were informed by some of Te Wharerangi's descendants that it was some years later that the Waikato chief, Potatau Te Wherowhero, who became the first Māori king, expressed the more well-known form of the pepeha in relation to Mananui, thus linking the Te Heuheu line to the mountain.¹⁰⁷ That version is as follows:

*Ko Tongariro te maunga
Ko Taupo te moana
Ko Ngāti Tuwharetoa te iwi
Ko Te Heuheu te tangata¹⁰⁸*

Te Wharerangi was the son of Te Maari 1, of Ngāti Tūwharetoa and Tūkaiora. His father, Tūkaiora, descends from Tamakana and Uenuku, thus connecting him to Whanganui. This explains why both Ngāti Tamakana and Ngāti Uenuku claim Te Wharerangi as one of their chiefs.¹⁰⁹ When Te Wharerangi was born, his grandfather, Pakaurangi, took his own pare (headdress) of kōtukutuku feathers from his head and placed them on the baby's, thereby bestowing the mantle of rangatira on Te Wharerangi.

Te Wharerangi married Te Rangikoea, famous in history for having saved the life of Te Rauparaha (her cousin or nephew) when he fled to Rotoaira. Pursued by a Ngāti Maniapoto party, the chief hid in a kūmara pit at Ōpōtaka, the entrance to which Te Rangikoea sat over. When questioned by the pursuers, Te Wharerangi indicated the man they sought had headed south.¹¹⁰

Te Wharerangi was killed in 1829 when a musket-wielding ope taua from Ngāti Maru of Hauraki, with assistance from sections of Ngāti Tūwharetoa, captured Motuopuhi – his island stronghold at Rotoaira. The iwi of the interior had little access to muskets at this time.



Ngongo on the shores of Lake Rotoaira. Ngāti Hikairo settled in this area and prospered from the abundant riches readily available from the lake and surrounding forest.

One group of claimants (Wai 37, Wai 933, Wai 1196) alleged that it was Mananui Te Heuheu who advised Ngāti Maru of the weaknesses of Motu-o-Puhi.¹¹¹ These descendants of Te Wharerangi believed that Te Heuheu was resentful of their tūpuna's growing popularity:

Te Heuheu wanted some of this noble attention and so asked Te Wharerangi for his beautiful daughter Te Maari [11], for her hand in marriage. Te Wharerangi knew what Te Heuheu's intentions were and that he would not be a suitable match for his daughter. Instead he gave his beloved mountain Tongariro as a gift, knowing that Te Heuheu had no mountain to show his people how noble and powerful he was.¹¹²

Before the assault, Te Wharerangi, having received a premonition of disaster, had his wife Te Rangikoa and children Matuaahu (also known as Nini) and Te Maari II evacuated to their Ngāti Uenuku relatives at Manganuioteao.¹¹³

Later, another Ngāti Maru party came marauding through the district, but this time encountered musket-armed foe. Te Aitanga-o-Huruao (also known as Ngāti Tūrangitukua) pursued the Ngāti Maru taua and destroyed them. This Ngāti Tūwharetoa hapū built a new pā on Motu-o-puhi and remained there until Matuaahu returned as a young man many years later. The Reverend Richard Taylor, when he visited in 1843, estimated the pā

Te Wharerangi

?-c1828

Te Wharerangi was the son of Te Maari 1 of Ngāti Tūwharetoa and Tūkaioira of upper Whanganui (not to be confused with Tūkaioira 11, grandfather of Te Peehi Tūroa and father of Te Pikikōtuku). His parents' marriage was one of convenience to 'puru te toto' (plug the flowing of blood) between the two groups. Te Wharerangi held considerable mana over land and people.¹ His descendants described him as a 'spiritual man' and a 'man of peace.'² He was killed by Ngāti Maru of Hauraki when they attacked his pā at Motuopuhi.³

had a population of 200. In 1849, 148 people (Ngāti Pēhi now known as Ngāti Turumākina) were recorded living at Motu-o-Puhi, and 43 others under the same hapū name were at Poutū (at the southern end of Rotoaira).¹¹⁴ Other hapū associated with Rotoaira at different periods were Ngāti Hinewai, Ngāti Ngare, Ngāti Te Ika, Ngāti Waewae, Ngāti Te Marangataua, Ngāti Wī, and Ngāti Tama.¹¹⁵

Matuaahu and Te Maari 11 grew up in the Manganuioteao valley strengthening the Ngāti Hikairo — upper Whanganui connection. Te Rangikoea remarried Te Kōtuku Raeroa of Manganuioteao, a grandson of Te Pikikōtuku 1.¹¹⁶

Matuaahu was enrolled in three of the five titles to the mountain peaks and initially the Crown engaged in talks with him and other Ngāti Tuwharetoa leaders before only treating with Horonuku Te Heuheu.¹¹⁷ Reupena Taiaimai and Ngāhiti Rangimanawanui, who were Te Wharerangi's younger brother and cousin respectively, were also placed in the titles. Another of Matuaahu's cousins, Erina Te Huri, married Karihi Te Kehakeha (also known as Tokena Te Kehakeha or Tokena Kerehi), who was the son of Herea Te Heuheu Tūkino 1. Erina and Karihi's son was Hoko Pātena who appears in Tongariro 1 and Ruapehu 1 as Pātena Hokopakake. Thus, Ngāti Hikairo was well represented in

Matuaahu Te Wharerangi, aka Te Nini

(?!-?)

Matuaahu, the son of Te Wharerangi, escaped his father's fate. He and his sister Te Maari 11 were evacuated to their Ngāti Uenuku relatives before Ngāti Maru arrived at Motuopuhi in the late 1820s. As an adult, Matuaahu returned to the Rotoaira district after the tohunga Kumeroa sought him out. He joined Te Kooti and fought at Te Pōrere. When Horonuku Te Heuheu surrendered, he opted to continue for a time with Te Kooti. In 1869, Matuaahu established a pā at Ōtūkou, strategically situated against the Huimako cliff face.¹ In 1886, he was one of the chiefs, along with Horonuku, who claimed land on behalf of the descendants of Tūwharetoa, Tia, and others at the Taupōnuiatia block hearing in the Native Land Court.²

the titles to the mountain peaks. Matuaahu, Hoko Pātena and Ngāhiti Rangimanawanui were also three of the seven chiefs in whom Ketetahi Springs was subsequently vested. The other four were Horonuku Te Heuheu and his son Tūreiti, Paurini Karamu, and Keepa Puataata - all of whom were listed as owners on the original certificate of title for Tongariro 1C, the block in which the springs was located.

Sir John Grace said that Matuaahu was closely connected with Tongariro and never regarded himself as subservient to Te Heuheu around Rotoaira.¹¹⁸ Indeed, in March 1886 he brought a rehearing application on behalf of Ngāti Kahukurapango following the Taupōnuiatia judgment.¹¹⁹ Ngāti Hikairo's intimate association with Tongariro maunga forms the basis of their objection in May 1887, through Reupena Taiaimai, Te Huiatahi and others, to the gifting of the peaks.¹²⁰

Some of the descendants of Matuaahu told us that Te Rangihīroa is buried on the slopes of Tongariro.¹²¹ Te Rangihīroa was killed in the Hauhau-Government



Motupoi Pah with Tongariro, 1844. Various hapū inhabited the island for some years.

fighting at Ōmarunui in 1866. Matuaahu's eldest daughter Pareroihi, had also intended her own bones to be interred on the mountain. When her son, Te Raaro Sullivan, attempted to do so he was waylaid at Te Heuheu's pā and without Te Raaro's knowledge the people buried the bones there:

Tangata whenua pacified Te Raaro by saying other tupuna from the tomb (where Pareroihi's remains had lain the night before), had embraced Pareroihi to whakanoa (make good the wrongs done/make good the offence) the previous attempt to

inter Te Heuheu on the Maunga, and also because Pareroihi was a rangatira in her own right.¹²²

The lake on Tongariro is known as Te Wai Whakaata o Te Rangihiroa (the looking glass of Te Rangihiroa) and the crater is named Te Maari.¹²³ According to Ariki Piripi the name of the crater came about because the side of the mountain blew out at the time Te Maari I was born, although another tradition links the crater with the death of Te Maari II.¹²⁴

It should be noted that the CNI Tribunal accepted that

Reupena Taiamai

?-18??

Reupena, or Te Huri as he was also known, was the son of Te Maari i and Tukaioara and the younger brother of Te Wharerangi. Te Huri was present when Motuopuhi Pā was sacked and his brother was killed. He escaped with other refugees and took shelter among their Ngāti Uenuku relatives. Te Huri later returned to Rotoaira where he married three times. He lived at Ōtūkou.¹

Ngāti Hikairo was associated with the Hautū, Pāpakai, Taurewa, and Ōkahukura districts west and south of Taupō and historically with the Rangipō plains.¹²⁵

There were three factions of Ngāti Hikairo in this inquiry. That they were one and the same was acknowledged by both Te Ngaehē Wanikau (Wai 1262 during hearing week seven) and Shelly Christensen in hearing week six (on behalf of Wai 37, 933, 1196).¹²⁶ While all Ngāti Hikairo recognise their relationship with Ngāti Tūwharetoa, they want the Crown to deal directly with Ngāti Hikairo when it came to matters concerning their rohe. Two of the factions were adamant that Ngāti Tūwharetoa should not speak on their behalf and indeed one of these believed Ngāti Hikairo should be recognised as an iwi in their own right.

Ngāti Hikairo ki Tongariro (Wai 1262), a name adopted for the purpose of the Waitangi Tribunal process, stated clearly that they are a hapū of Ngāti Tūwharetoa and to this end they supported and adopted in full the Wai 575 generic Ngāti Tūwharetoa closing submissions.¹²⁷

The second group who brought claims on behalf of Ngāti Hikairo (Wai 37, 933, 1196) acknowledged their whakapapa links to Tūwharetoa but did not believe the Crown should be asking Ngāti Tūwharetoa to speak on their behalf.¹²⁸ For this group, there is the perception that recognition of such tupuna as Matuaahu Te Wharerangi in the literature and by the Crown leaves some whānau

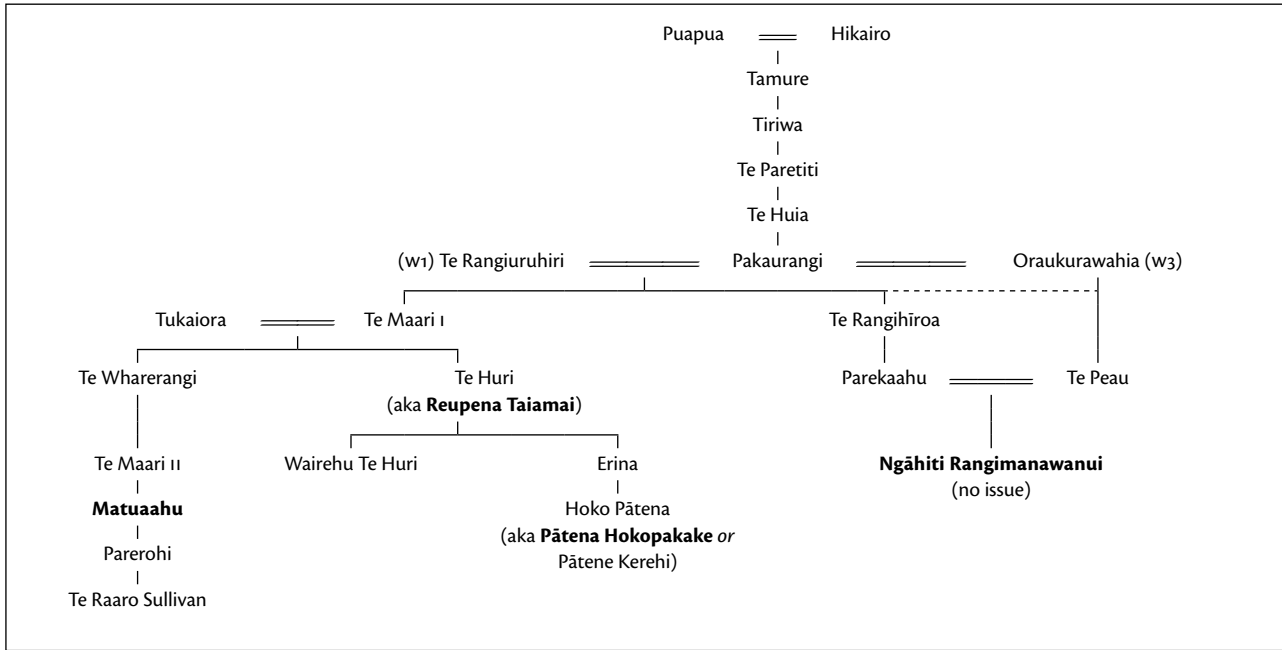
Hoko Pātēna or Pātēna Hokopakake or Pātēna Kerehi

?-?

Pātēna was the son of Tōkena (or Karihi) Te Kehakeha and Erina (who was a daughter of Reupena Taiamai or Te Huri).¹ In 1867, he was among a party of Ngāti Tūwharetoa chiefs who swore allegiance to the Crown, but later assisted Te Kooti when the prophet came to Taupō.² He is listed in the mountain blocks (Tongariro 1C and Ruapehu 1B) as Pātēna Hokopakake.³ In 1894, along with Taiamai Te Huri, Hokopakake petitioned the government for grants of land, amounting to 500 acres each, in the Waimarino Block, to be awarded to them for their assistance in arranging the purchase of the block.⁴

out and they want a proper account taken of other Ngāti Hikairo whakapapa lines.¹²⁹ This was a reference to Te Rangihīroa, Matuaahu's great-uncle. As Alec Phillips explained, 'Te Rangihīroa is the main Hikairo chiefly line for half of us of Ngāti Hikairo. Other people follow the Te Wharerangi line as the chiefly line.'¹³⁰

There is also the belief that wealth distribution among Ngāti Tūwharetoa is far from even – a perception not uncommon among iwi. 'Some families are constantly raised up and hold the positions of power within the tribe, we were told, 'while other families feel trodden down.'¹³¹ As tribal resources diminish and members become physically separated from their remaining land interests it is not difficult to see how such perceptions arise. Even the Ngāti Hikairo ki Tongariro claimants were unhappy with decisions being made 'over the hill', despite having a Ngāti Hikairo person on the trust board. Ngaiterangi Smallman explained to the Tribunal that before the Tūwharetoa Trust Board Act was changed, each hapū appointed their representative, but now the whole of Ngāti Tūwharetoa makes that decision for all hapū. He was clear that the Tūwharetoa Trust Board had played a part in 'obfuscating the role of Ngāti Hikairo as ahi kaa in our rohe.'¹³²



Whakapapa chart

The third claim brought on behalf of Ngāti Hikairo (Wai 833, 965, 1044) goes further and opposes any assertion that Ngāti Hikairo is a hapū of any other iwi:

The claimants submit that Ngāti Hikairo are an iwi in their own right with their own distinct identity, whakapapa, history and manawhenua. An examination of whakapapa alone indicates the direct connection Ngāti Hikairo has to whenua of significance such as Mount Tongariro and Lake Rotoaira. The people of Ngāti Hikairo are direct descendants of the whenua and are not reliant on indirect factors such as intermarriage via other iwi such as Tūwharetoa, to claim linkage or association.¹³³

(5) Te Heuheu and the paramountcy

Eventually Te Rangitūamātoru, the great-great-grandson of Te Rangīiata, was to set the high standard of leadership that would be associated with the role of paramount

chief. Even in his time during the late 1700s, however, the leadership of the people was dispersed among several hapū leaders living around Taupō’s shores and southwards to Rotoaira; ‘they were independent of each other and competitors, who sought to maintain and extend their own mana rather than that of a unified Tūwharetoa people.’¹³⁴ This being the case, how did Ngāti Tūwharetoa go from a group of quasi-independent hapū at the beginning of the nineteenth century to a relatively united iwi a few decades later? Furthermore, when did they develop the paramountcy of the arikitanga?

Over the years, several academics, both Pākehā and Māori, have tried to explain the nature of chiefly status.¹³⁵ A survey of their work suggests that the critical characteristics of arikitanga are derived through mana whakapapa, mana tangata, and mana whenua. Mana whakapapa meant that the senior line of descent from the founding ancestor of the tribe was the starting point for selecting an ariki.

Mana tangata required the recognition and acceptance of the ariki's status by each hapū and this often depended on his ability to lead wisely, his political astuteness, his ability to forge strategic alliances, and his prowess in war. Mana whenua indicated the geographical spread of influence of the cluster of hapū. The ariki, through strong leadership and wise counsel, was responsible for protecting their land and developing its resources. The degree to which he achieved this enhanced his and the hapū's status.

We heard similar evidence from Chris Winitana who gave what he called the 'sacerdotal background to the rise and rule of ariki' based on the teachings of Miringa Te Kakara, the last formal Ngāti Tūwharetoa traditional school of learning. This *whare wānanga*, which was renowned both tribally and nationally, operated from the foot of Pureora mountain in the western Taupō area. It drew select students from Ngāti Tūwharetoa, Ngāti Raukawa, Ngāti Rereahu, and Ngāti Maniapoto.¹³⁶ The ariki, Mr Winitana expounded, had not only the unenviable task of ensuring the physical safety of his people but also their spiritual safety:

The job of the ariki is to protect the soul of his people; anything that interferes with that *MUST* be addressed. It is not a choice, it is an imbued responsibility, fused into the DNA as it were. [Emphasis in original.]¹³⁷

Perhaps what distinguishes the ariki from all other rangatira then is the degree to which the attributes of mana whakapapa, mana tangata, mana whenua and the added spiritual dimension raised by Mr Winitana, were manifest in his life.

Sir John Grace recorded that selection of the paramount chief 'from a panel of high-born men' had been a custom among Ngāti Tūwharetoa instituted 'from the time of Tūrangitukua'.¹³⁸ Dr Angela Ballara believed that this account was 'somewhat over-coloured' and found that even in the time of Hereara Te Heuheu Tūkino I (circa 1750 to circa 1820) Ngāti Tūwharetoa were far from united; for even then, the leading chiefs often acted autonomously and certainly few were prepared to recognise the

Tauteka II

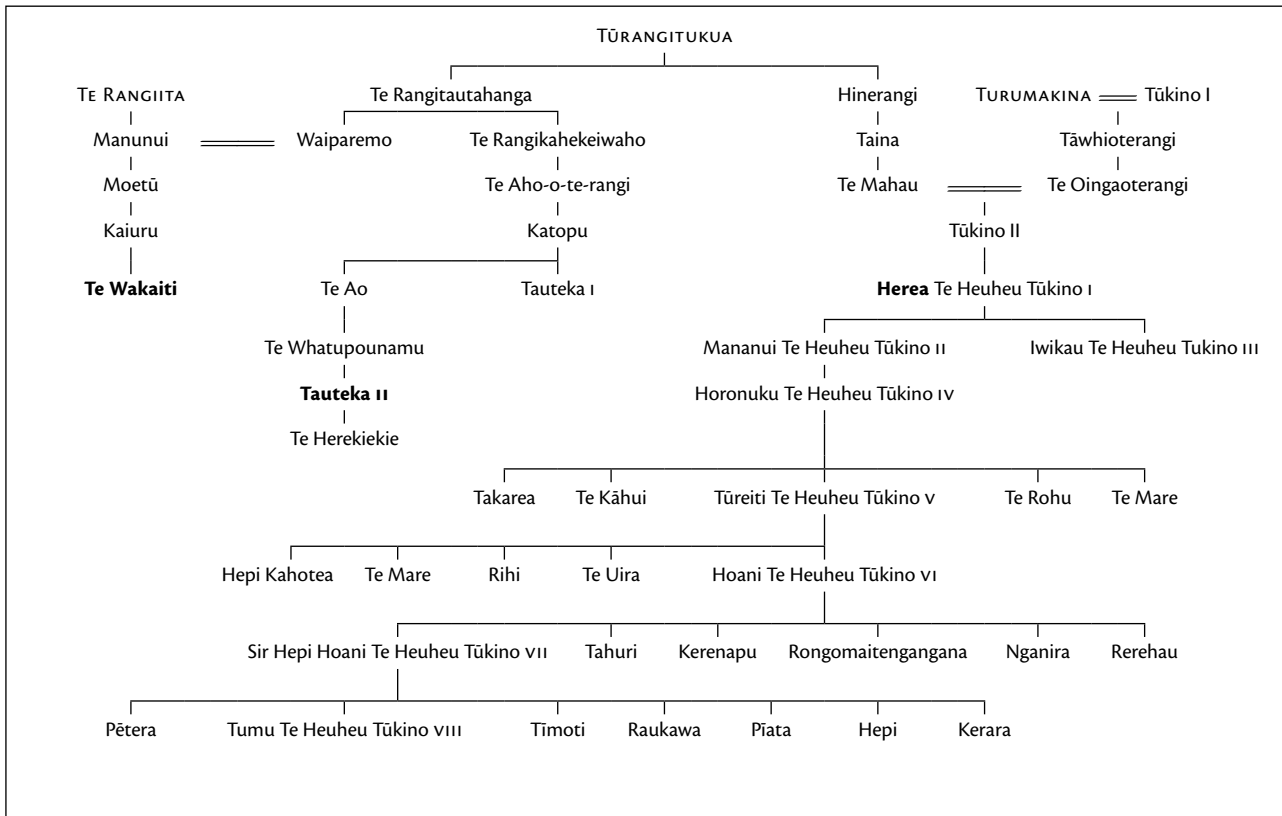
17??–1840

Tauteka II was the son of Te Whatupounamu, who in turn was a child of Te Ao. Te Ao's brother was Tauteka I. Tauteka II was the chief of Ngāti Te Aho, a hapū of Ngāti Tūwharetoa living on the southern shore of Lake Taupō. His wife had strong Whanganui links. On 24 August 1840, Tauteka II was killed during the Ngāti Tūwharetoa battle with Ngāti Ruanui and other iwi of Taranaki at Patoka Pā, Waitotara.¹

paramountcy of another.¹³⁹ She placed the ascendancy of the paramountcy at about the third or fourth decade of the nineteenth century, or in the time of Herea's son, Mananui.¹⁴⁰

Ngāti Tūwharetoa traditions hold that Te Rangitūmā-totoru's death did present an opportunity to install one from among the senior chiefs to paramount chieftainship. Because there were divisions beginning to appear among Ngāti Tūwharetoa and good relations needed to be maintained with neighbouring Ngāti Raukawa, Ngāti Maniapoto, Waikato, and Whanganui iwi, Te Wakaiti of Ngāti Manunui, who possessed the *atua* 'Rongomai', was an obvious frontrunner. Tauteka II (father of Te Herekiekie), leader of Ngāti Te Aho, with good Whanganui connections and descended through the senior Tūwharetoa line, was another. Hereara (often shortened to Herea) of Ngāti Turumākina, Ngāti Parekawa and Ngāti Te Koherā, as well as Ngāti Maniapoto, was also among the contenders.¹⁴¹ In the end, however, Te Wakaiti's arrogance and Tauteka's limited connections with their western and northern neighbours saw Herea preferred. Te Wakaiti's mana was passed to Herea, when the latter both worsted him in a duel and then performed the rite of *ngau taringa* (biting the ear). After this 'Te Wakaiti's hapū lost caste'.¹⁴²

While Herea may not have been the most senior



Whakapapa chart showing leading contenders for the paramuncy and their successors

member of the Ngāti Tūwharetoa aristocracy, he did have very important lateral connections with other chiefly lines and he was preferred because he was supported by the chiefs of most hapū. It should be noted that in the history of many iwi there is recognition that in ritual and ceremonial affairs, the leadership of the hereditary chiefs of highest lineage was unquestioned. But in all matters of business and war, those with greatest wisdom, those considered most competent to take action, were chosen to direct the iwi's dealings, irrespective of seniority.

Herea came to power at a time when the inter-iwi and hapū feuds were intensifying. Warriors had assumed a dominant place in society, which was reflected in the distribution and sharing of land. Like his father, Tūkino II,

before him, Herea, the leader of the Ngāti Turumākina section of Ngāti Tūwharetoa, enjoyed special status because he combined the qualities of warrior with chieftainship and expertise in tribal lore.

Herea, however, did not enjoy the paramount status of his successors. Rather, in his time he became 'first among equals' and even then a few of the hapū to the north and south of the lake would not accept him. Ultimately, though, he was able to establish his leadership and maintain amity about Taupō.¹⁴³

After Herea's death in the early 1820s some hapū tried to go their own way. When Herea's son, Mananui Te Heuheu Tūkino II, was picked to succeed his father the young chief quickly restored unity.

Ngau Taringa

This custom was practised in the higher departments of learning whereby a venerable sage of the priesthood passed on the *hau*, the sacred essence of wisdom, the soul of skill and knowledge to a near kinsman or other selected successor. In this rite the *tauira*, the pupil or successor, ceremoniously bit the ear of the dying ancient.¹

War had escalated with the introduction of the musket, while the regular threat of attacks from external foe had compelled hapū to congregate in large and central pā. Such hapū alliances were also critical to the execution of utu raids on neighbouring iwi. In this environment, military leaders dominated the battles that occurred, but none more so than Mananui. Dr Ballara states that if there was one single cause for the development of the paramouncy of the arikitanga of Ngāti Tūwharetoa in the early nineteenth century, it was Mananui's conduct in these wars:

Nothing occurred that did not involve him . . . He had a careful regard for what was tika (proper); he was not afraid to make peace if that was in the best interests of the people. He was not petty, pursuing every possible minor slight to the bitter end, at a time when personal mana in competition with others was the imperative driving the actions of many chiefs. He frowned on cannibalism, for the various peoples under his sway were so intermarried with neighbouring groups that as he said, one could never be sure one was not consuming a relative.¹⁴⁴

Due to his height, Mananui was a physically impressive man. Combined with a forceful personality, he grew quickly to become an outstanding leader. His very name (meaning 'Great Mana') acknowledged both his personal prowess and his inheritance of special knowledge and powers from his uncle, the tohunga Taipahau, when the old man was on his deathbed.



Mananui Te Heuheu Tūkino II

c1780–1846

Mananui was the son of Herea Te Heuheu Tūkino I and Herea's first wife Rangiaho. He was the second in the Te Heuheu line to lead Ngāti Tūwharetoa. Mananui died in a landslide following heavy rain on the slopes of Kakaramea on 7 May 1846.¹

Maheuheu

The name Te Heuheu comes from an incident that happened after Te Rangipumamao, an important Ngāti Tūwharetoa rangatira, died while visiting his Ngāti Maniapoto relatives. His relatives, when returning the body, found the journey difficult and so placed the body in a cave near Lake Taupō. Some years later when retrieving the bones for placement in an ancestral burial ground, Herea and others found the cave concealed with a brushwood shrub called Maheuheu. The name was then given to Herea's eldest son Mananui.

Mananui ensured the support of the waning branches of Ngāti Tūwharetoa through his marriages to the two grand-daughters of Te Rangitūmātoru, Herea's predecessor. Moreover, Mananui strengthened Ngāti Tūwharetoa's associations with neighbouring iwi, helped by the fact that his mother was of Ngāti Maniapoto. He is remembered

not only for defending the whole of Taupō against outside invasion when others could not, and by carrying the war to the invaders, but also for resolving local land disputes by judicious concessions . . . and by avoiding the testing of his authority in situations where, strictly speaking, he had no rights, either of property or of overriding mana.¹⁴⁵

The paramountcy received greater acknowledgement amongst distant iwi through the many campaigns that Mananui led against Ngāti Kahungunu and Te Āti Awa during the 1820s and 1830s. He could count among his allies such chiefs as the Ngāti Raukawa leader Te Whatanui. Mananui, himself, was sought as an ally at times by tribes as far away as Ngāti Toa in Wellington and Ngāti Porou on the East Coast.¹⁴⁶

Victor Walker has suggested that an ariki was the rangatira who was

Te Herekieke Tauteka

c 1813–61

Te Herekieke was descended from Whanganui through his mother, Te Kahurangi, and Ngāti Tūwharetoa through his father, Tauteka, leader of the southern Taupō tribe Ngāti Te Aho. Described as a tall, handsome man, Te Herekieke had his pā at Tokaanu where he also built a flour mill. Te Herekieke assumed the leadership of Ngāti Te Aho when his father died in 1840.¹

When Mananui Te Heuheu was killed in a landslide in 1846, Te Herekieke resented the ascension of Iwikau, Mananui's brother. Te Herekieke refused to recognise Iwikau's authority, and further tension developed when Iwikau tried to place his brother's remains in the crater of Tongariro. Reverend Grace helped to reconcile the two leaders in 1853.²

According to Sir John Grace, Te Herekieke's status and influence were acknowledged by Iwikau, as evidenced by the latter's question to Tawhiao, 'E pehea ana koe ki a Tongariro ka tukuna nei e te Herekieke Tauteka ki te Kuini?' (What have you to say about Tongariro that is now being given by Te Herekieke Tauteka to the Queen?)³

capable, above all others, of exhibiting the widest range [of leadership attributes and] at the highest level relative to the time and circumstance in protecting and enhancing the situation of their people.¹⁴⁷

And Peter Buck made the point:

A new ariki could acquire additional mana by the wise administration of his tribe at home and by the successful conduct of military campaigns abroad . . . the mana of a chief was integrated with the strength of the tribe.¹⁴⁸

Both statements are true of Mananui. That he was a highly principled leader of men is epitomised in

Iwikau Te Heuheu Tūkino III

?–1862

Iwikau was the son of Herea and his first wife Rangiaho. Iwikau signed the Treaty of Waitangi, to his elder brother Mananui's disdain. He accepted the leadership of Ngāti Tūwharetoa in 1846 after his brother was killed in a landslide, and he settled at Pūkawa. While there was initially tension between Iwikau and Te Herekieke over leadership, the conflict was alleviated with the help of missionary Thomas Grace.

Iwikau came to know Governor Grey in the late 1840s, and in 1850, Grey visited Pūkawa and recognised Iwikau's loyalty to the Crown. In 1855, Iwikau allowed the Reverend Grace to establish a mission station at Pūkawa. Throughout the 1850s, Iwikau provided support for Māori grievances over land loss, while also trying to constrain Māori protest. He was in favour of the idea of the kingship, and in 1856, he called iwi together for a meeting at Pūkawa to select a suitable candidate. When war broke out in Taranaki in 1860, Iwikau held Ngāti Tūwharetoa back from the fighting, in order to protect their lands.¹



Te Riri ka Ware Ware, circa 1848. The house that Mananui built for Te Herekieke represented a reconciliation following generational resentment over leadership choices.

the following statement that he made to Jerningham Wakefield of the New Zealand Company in regard to selling land and signing the Treaty of Waitangi:

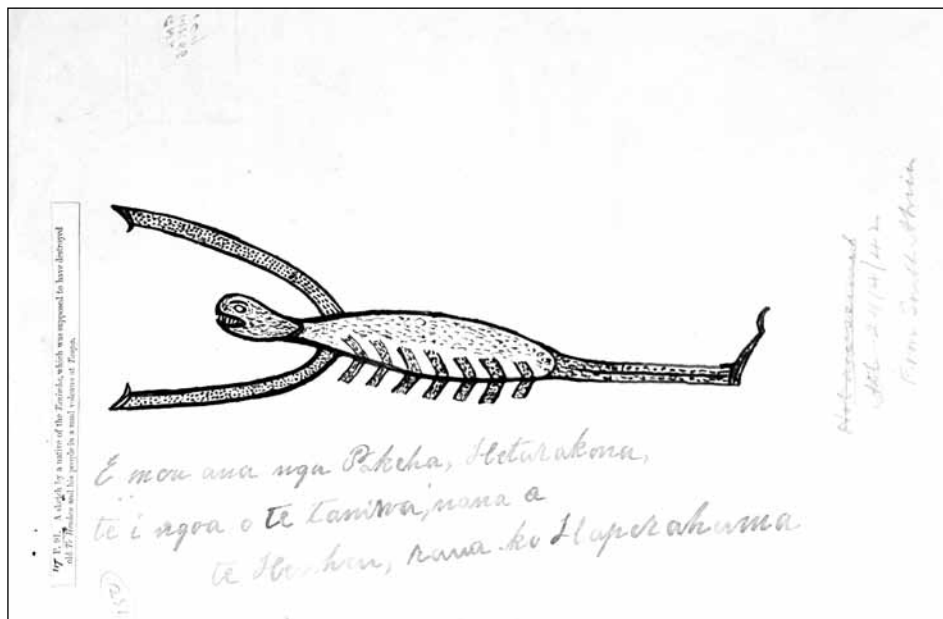
I am king here, as my fathers were before me, and as King George and his fathers have been over your country. I have not sold my chieftainship to the Governor, as all the chiefs around the sea-coast have done, nor have I sold my land. I will sell neither.¹⁴⁹

When it came to the Treaty, he would not put his signature to it and so was angered when he learnt that his younger brother Iwikau had signed.

Nevertheless, the resentment that was present when Herea beat Tauteka II for the paramouncy continued

through Tauteka's son, Te Herekieke Tauteka (circa 1813 to 1861). He and Mananui did resolve their differences, however, evidenced in the beautifully carved house that Mananui had erected for Te Herekieke; it was named 'Te Riri ka ware ware' – 'The burying of anger'.¹⁵⁰

Sadly, in 1846 Mananui was killed in a landslide at Waihi. Iwikau was selected to succeed him as Te Heuheu Tūkino III, as it was thought Mananui's surviving son Patatai (renamed Horonuku in memory of the landslide), was too inexperienced.



◀ A sketch of a taniwha. The taniwha was presumed to have been the cause of a landslide that killed Mananui Te Heuheu Tūkino II and his followers on Kakaramea mountain at Waihi in 1846.

▼ The Tangihanga of the Wanganui Natives for Te Heuheu at Motua-Puhi, Rotoaira, 1846.



When Iwikau was installed as paramount leader Te Herekieke's resentment resurfaced. By birth he was senior to Iwikau but he could do little because Ngāti Tūwharetoa as a whole had chosen Iwikau. Moreover, Te Herekieke's grandfather was one of those who had installed Herea over Tauteka 11. Still, Te Herekieke refused to recognise Iwikau's authority and maintained his own independence. When Iwikau attempted to inter his brother's bones on Tongariro, Te Herekieke wanted to take up arms against him but was dissuaded by the Reverend TS Grace. The fact that bad weather stopped the burial party from reaching the summit has been interpreted by Te Herekieke's descendants, as well as some of Ngāti Hikairo, as evidence that Te Heuheu had no whakapapa links to Tongariro and no right to be buried on the mountain.¹⁵¹

Iwikau proved to be a leader with considerable charisma and diplomacy. He faced the challenges of growing land alienation and the British colonists' threats to iwi control and management of their own resources. It seemed the Crown was reneging on the promises that Iwikau understood were imparted through the principles of the Treaty:

His disillusionment was soon replaced with open opposition to Crown policies that were inconsistent with these principles. The central role he played in the formation of the Kingitanga reflected this growing opposition.¹⁵²

The idea of a Māori king grew out of the necessity among Waikato, Ngāti Maniapoto, and their southern neighbours, to secure political solidarity in order to resist further land sales and settler encroachment.¹⁵³ Several hui were held during the late 1850s to select a king, and a number of leading men from highly respectable lineages, including Iwikau and Peehi Tūroa, both of whom declined, were recommended and sought out for the position.¹⁵⁴ After much debate Pōtatau Te Wherowhero, who Iwikau supported, consented and was installed as king at Ngaruawāhia on 2 May 1859 – an act that Wīneti Paranihi was later to claim resulted in Te Heuheu losing his own chieftainship.¹⁵⁵

The appeal of the paramouncy for Ngāti Tūwharetoa

would have been accelerated by the development of the Kingitanga. The Māori king seemed to offer a useful alternative in dealing with the Crown. Ngāti Tūwharetoa may well have recognised that the idea of a single sovereign, in the same way that the British had Queen Victoria with her mana, was an effective model to employ in dealing with their changing world. The great hui that Iwikau called at Pūkawa in 1856 certainly indicated that Ngāti Tūwharetoa initially saw advantages in some form of Māori unity under a Māori king.¹⁵⁶

Although the paramouncy evolved in Mananui's time it was still not firmly entrenched when 35 year-old Horonuku Te Heuheu Tūkino 111 took over the mantle of chieftainship in 1862. Te Herekieke had died the previous year so there would be no challenge, yet Horonuku's influence fluctuated among Ngāti Tūwharetoa for the next decade as the calamitous events of the 1860s and their aftermath played out (see chapter 3).

While Horonuku was prominent in the tribe's decisions during the 1860s about when and where to fight the British, in sheltering Te Kooti, and in forming the aukati, he was unable to prevent some of the tribe's northern hapū from withdrawing their support for the Kingitanga or taking the field against Te Kooti. After the wars and the subsequent period of probation he was required to serve, Horonuku again played a key role in negotiating with the Crown to open up the Rohe Pōtae and to a survey of the external boundary of the Taupōnuīatia block, so that his own description of himself in 1883 as 'te tino Rangatira o Ngāti Tuwharetoa' (the head chief of Ngāti Tuwharetoa) is accurate.¹⁵⁷ By the time of his alleged 'gift' of the mountains to the Crown four years later, an act that seems to be on its way to becoming what we would call the actions of an ariki, the paramouncy appears to have been in the ascendancy.

Tūreiti was 23 years old when he became Te Heuheu Tūkino v in 1888. He played a significant role in the Māori parliament of the 1890s, in the recruitment of Māori soldiers during the First World War, and in the establishment of Te Kotahitanga o Ngāti Tūwharetoa in 1918, the year in which he was also made a member of the Legislative

Council. In 1905, when giving evidence before a parliamentary committee, he was without doubt as to his authority among Ngāti Tūwharetoa:

they are all represented by me; I am Ngatituwharetoa. Whatever I say they will listen to and abide by, and if I say to them, Let us do this, they will do it.¹⁵⁸

In 1912, in *Te Puke Ki Hikurangi*, a Wairarapa-based newspaper set up to promote the work of the Māori parliament, Tūreiti was referred to as Te Heuheu Tūkino, rangatira o ngā hapū o Taupō (the chief of the several hapū of Taupō).¹⁵⁹ While his status among Ngāti Tūwharetoa is unambiguous, and clearly recognised by others, the term ‘ariki’, which today is synonymous with the paramountcy, had still not come in to useage in describing the Te Heuheu line.

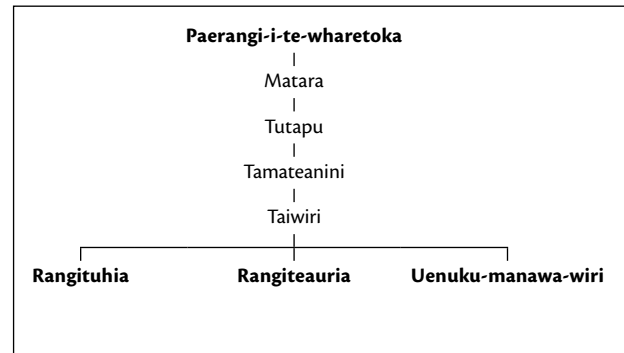
2.4.3 Ngā uri o Paerangi

Moving to the western side of te kāhui maunga we find a number of hapū and iwi who claim descent, in part, from Paerangi and, therefore, have a strong connection with the Whanganui confederation of iwi. Residing along the upper reaches of the Whanganui River, these hapū and iwi guarded the western entrance to and from te kāhui maunga. The river itself was the route to the interior, the other main course being via the main tributary from Ruapehu known as the Manganuioteao. The latter was navigable only a short way: a canoe could be floated two kilometres, four at the most, and at its upper reaches travellers had to climb the side of a gorge for about 300 feet before hauling their waka overland.¹⁶⁰

(1) Ngāti Rangī

Whaia e au Manganui-o-te-ao kia tau au ki runga o Ruapehu ki Nga Turi o Murimotu ko te Ahi-ka o Paerangi-i-te-Whare-Toka i puta mai ai a Rangituhia, Rangiteauria me Uenuku-Manawa-Wiri.

As stated earlier (see section 2.3.1(1)), Ngāti Rangī tribal identity comes from Paerangi. Although we received no



Whakapapa chart

specific detail about the period between Paerangi’s occupation of te kāhui maunga and the beginning of the nineteenth century it was clear that Ngāti Rangī believed they were an ancient people with a strong spiritual and historical connection to the volcanic plateau.

Ngāti Rangī told us they are sectioned into three areas: the descendants of Rangituhia in the Taihape area, Rangiteauria’s descendants to the south-west (Ōhakune, Waiōuru, and Raukawa falls), and Uenuku-manawa-wiri’s descendants to the west (Ōhakune, Raetihi, and Waikune).¹⁶¹

Land blocks in the inquiry district in which Ngāti Rangī told us these tūpuna had interests include:

- ▶ *Rangituhia*: Rangipō–Waiū, and Rangiwaea-Tāpiri/Rangipō North 8.
- ▶ *Rangiteauria*: Rangataua, Rangiwaea, Waiakake, and Rangiwaea-Tāpiri/Rangipō North 8.
- ▶ *Uenukumanawawiri*: Raetihi, Rangataua, Urewera, Waiakake, Waimarino, Rangiwaea-Tāpiri, and Rangipō North 8.¹⁶²

The uri of the latter, especially those associated with Ngāti Patutokotoko in the upper Whanganui River area, were branded as Hauhau in the mid-1860s. After the Battle of Moutoa, even those of Ngāti Rangī who fought on the Crown’s side found, like their Ngāti Patutokotoko relatives, that the Crown would not engage with them. While most of their physical land interests are outside the inquiry boundary, te kāhui maunga is of immense significance to

Ngāti Rangi ‘as it includes their maunga tupuna – Ruapehu and some of their most culturally and spiritually significant wahi tapu, wahi tupuna and taonga.’¹⁶³

Ngāti Rangi and Ngāti Hāuaroa (Ngāti Hāua) have had the responsibility of maintaining relationships along the Whanganui confederation’s northern and eastern boundaries, where they border Ngāti Waewae and Ngāti Hikairo.¹⁶⁴

In more recent times, Ngāti Rangi’s identity was subsumed under their Whanganui River connection. When the Whanganui River Trust Board was established, they affiliated more with their central river tupuna, Tamaūpoko, and referred to themselves as Ngāti Tamaūpoko rather than their mountain identifier Ngāti Rangi (see section 2.2.4(4)) for whakapapa of Tamaūpoko). Although there are strong whakapapa ties between Ngāti Rangi and their Whanganui kin, they say that they are ‘a distinctive group that stand strong as a separate entity.’¹⁶⁵ Today, Ngāti Rangi claim 14 marae with associated hapū. Few of these are in the National Park inquiry district:

Raketapauma	Ngāti Rangituhia
Tirorangi	Ngāti Tongaiti, Ngāti Rangiteauria, Ngāti Rangihaereroa
Tirohia	Ngāti Hioi
Ngā Mōkai	Ngāti Tongaiti
Kuratahi	Ngāti Rangituhia, Ngāti Parenga
Te Ao Hou	Ngāti Tupoho (Hapa), Ngāti Rangikitai
Maungārongo	Ngāti Tui-o-Nuku
Makaranui	Ngāti Uenuku
Mangamingi	Ngāti Tamakana
Tuhi Ariki	Ngai Tuhi Ariki
Te Puke	Ngāti Uenukumanawawiri, Ngāti Uenuku
Marangai	Ngāti Uenukumanawawiri
Mo-te-katoa	Ngāti Uenuku
Waitahupārae	Patutokotoko ¹⁶⁶

The Ngāti Rangi tribal structure was mandated in September 2008 with marae and pahake representatives from all of the 14 marae listed above nominated to its rūnanga which is called Te Kāhui o Paerangi.¹⁶⁷

It is difficult to reach any firm conclusions about Ngāti Rangi’s recent evolution because of gaps in the evidence that was put before us. Without their oral and traditional history report completed for the Whanganui inquiry district, but not available before the close of the National Park hearings, our findings on this aspect must remain inconclusive.

(2) Ngāti Hāua

Ngāti Hāua is a Whanganui iwi with strong connections to Ngāti Maniapoto, Ngāti Tūwharetoa, and Ngāti Maru of Taranaki. They also descend from Paerangi. In fact, the name Hāua-a-Paparangi is said to have originated from Paerangi’s journey to Aotearoa where he was assisted by the winds of Hau.¹⁶⁸

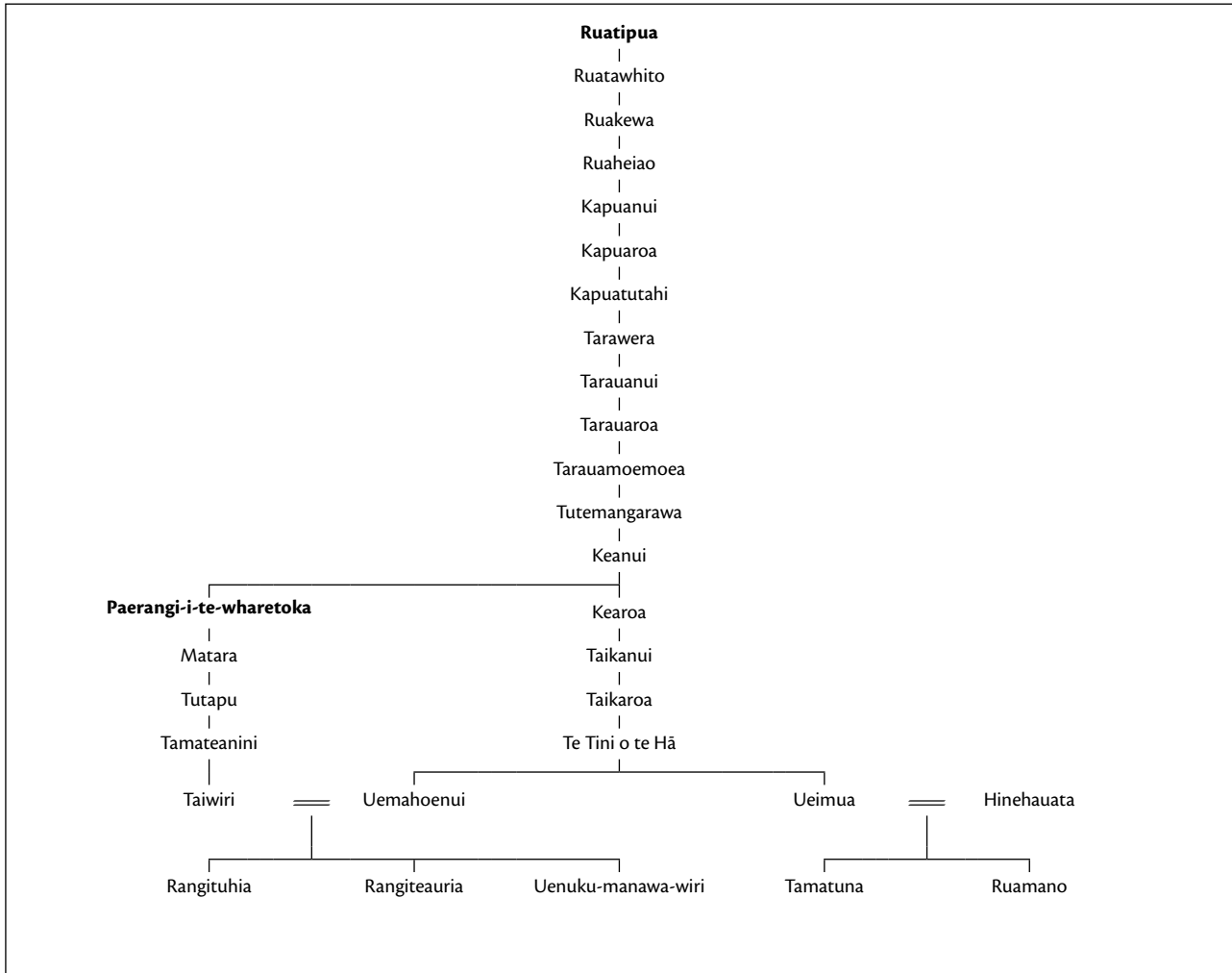
In Ngāti Hāua traditions, the Whanganui River was called Te Wainui-a-Ruatipua, after another of their pre-waka tupuna, Ruatipua. It is said that he preceded Turi of the Aotea waka by three or four generations and that he never came in any waka.¹⁶⁹

Taiwiri is a descendant of Paerangi (see section 2.3.1(1)). Uemahoenui and Ueimuia were two brothers. Uemahoenui married Taiwiri, a descendant of Paerangi, and begat the key tūpuna of Ngāti Rangi – Rangituhia, Rangiteauria, and Uenuku-manawa-wiri. Ueimuia married Hinehauata and begat Tamatuna, who is an important tupuna in the middle to upper reaches of the Whanganui River.

Ngāti Hāua were formerly known as Ngāti Ruatipua and Ruatipua was also a name given to a site on Tongariro where the waters issue from the mountain and form the river, the lower part of which Haunui of Aotea waka later named Whanganui.¹⁷⁰ Ngāti Hāua were also descendants of the people who migrated on the Aotea waka, making the group part of the Te Āti Haunui-a-Pāpārangi confederation.

Hinengākau was their most famous ancestress. She was the second of three children belonging to Tamakehu and Ruaka. While her brothers Tamaūpoko and Tupoho were the tūpuna for the middle and lower reaches of the Whanganui River, she bound together the iwi of its upper reaches.

Ngāti Hāua developed into two branches, Ngāti

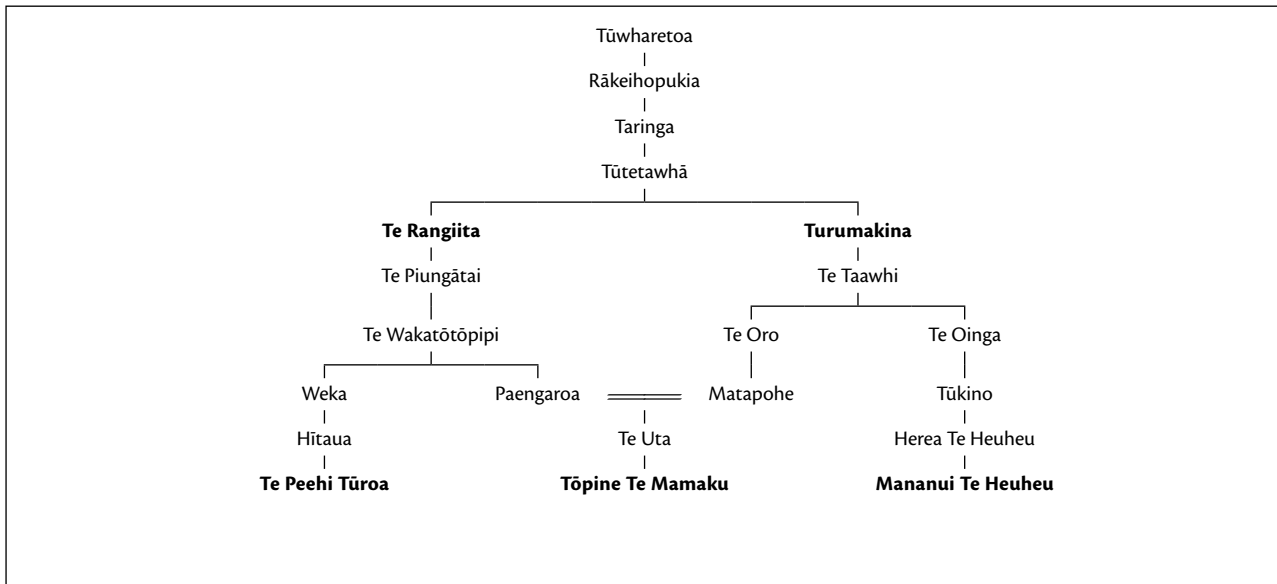


Whakapapa chart

Hāuaroa (the uri of Hinengākau’s son Hāuaroa) and Ngāti Hekeāwai, an offshoot of Ngāti Hāuaroa.¹⁷¹ Kevin Amohia told us that Ngāti Hekeāwai, whose whakapapa is intertwined with Ngāti Tūwharetoa, have land interests ‘extending out to the maunga [Ruapehu], Waimarino and beyond.’¹⁷² Ngāti Hāua witnesses also said a section of Ngāti Hekeāwai later became known as Te Patutokotoko. While there are other versions relating to the origin of

the name Te Patutokotoko it is worth noting that one of Te Peehi Tūroa’s sons, Wiari Tūroa, stated in evidence at the investigation of title to the Waipakura block, ‘the hapu name, Patutokotoko was a new name and the old name was Hekeawai.’¹⁷³

The Ngāti Hāuaroa branch were centralised around Taumarunui. Because of their location, Ngāti Hāua had to form strategic alliances with their larger surrounding



Whakapapa chart

neighbours to avoid conflict. They occupied a region where rivers met, and along those rivers came neighbouring iwi resulting in not just conflict but strategic intermarriage.¹⁷⁴ Dr Grant Young and Associate Professor Michael Belgrave note that,

Through Rangatahi and others, Ngati Haua whakapapa to Ngati Maniapoto, through Te Hoata, Ngatoroirangi and others Ngati Haua descend from the Te Arawa waka, through Hekeawai and others, Ngati Haua whakapapa to Ngati Tuwharetoa and through Hinengakau and others, Ngati Haua whakapapa to Whanganui, Taranaki, Ngati Tuwharetoa and Tainui.¹⁷⁵

Historical and spiritual associations with Ruapehu and overlapping interests strengthened by intermarriage are the basis for Ngāti Hāua’s claims in the National Park inquiry district. Kevin Amohia told us that so thick is the blood among the upper-river people that it is impossible for third parties to distinguish between Whanganui, Ngāti Hāua, and Ngāti Tūwharetoa hapū:

We acknowledge the many hapu that claim interests in the Maunga and surrounding areas. We have no difficulty with that because to Ngati Haua this area was a ‘buffer zone are[a]’ or ‘neutral ground.’ This was created by the strategic intermarriages between Ngati Tuwharetoa and Ngati Haua Rangatira.¹⁷⁶

Ngāti Hāua evidence suggests that the western side of the mountains was not densely populated and that the nature of their own interests was more likely related to seasonal resource gathering.¹⁷⁷

The district around Taumarunui was originally known as Tuhua. Taumarunui came into being when Te Pikikotuku lay dying in the heat of the day and asked to be sheltered from the sun’s rays.¹⁷⁸ The Whanganui River was the source of Ngāti Hāua’s access to the coast and the 140 miles could be traversed in a day by canoe – faster than any messenger could carry a warning by land to the hapū along the lower reaches of the river.

The most well known chief of Ngāti Hāua in the nineteenth century was Te Mamaku, baptised Tōpine (Tobin).

He fought alongside Te Rauparaha in the 1830s, led his people to Wellington to support Te Rangihaeata in 1846, threatened the township of Whanganui a year later and was sought as an ally by Te Kooti in 1868. The whakapapa chart shows how closely he was related to Te Heuheu and Te Peehi on his Tūwharetoa side.

2.4.4 Buffer groups

Between the descendants of Paerangi and Ruatipua in the south and west and Tūwharetoa in the north is a third collective of hapū and iwi that clearly has links to both groups. The collective includes from the claimant parties Ngāti Hinewai, Ngāti Uenuku, Ngāti Tamakana, and Ngā Hapū o Tamahaki. The key to understanding the intricate relationships between these groupings is whakapapa. To appreciate why the divisions are so marked between people who descend from common ancestors, one must have the context of the key events of the nineteenth century that took place around te kāhui maunga.

The wars of the 1860s left indelible marks on the fabric of Māori society in this region. Faced with the inevitable choice of supporting Māori nationalism or siding with the paler mainstream, the leaders of these hapū opted for the ally most likely to be supportive of their own cause. Some chose the British, others the Kīngitanga, and still others the Pai Mārire movement, even Te Kooti. Some changed sides during the wars as the situation changed, and became more or less threatening to each hapū's interests.

The introduction of the Native Land Court exacerbated the divisions between related hapū. Claims to exclusivity were made to land blocks in order to establish ownership, further distancing groups who had previously lived alongside each other sharing the natural resources of the region. When two opposing groups were put into the schedule of owners for the same block, relationships were further strained when one group sold their shares. Sellers and non-sellers factionalised hapū in a similar way that rebel and loyalist allegiances had previously.

(1) Ngāti Hinewai

Ngāti Hinewai is not an uncommon name and so the hapū who call themselves by that name at Te Rena should

not be confused with the Ngāti Hinewai which lived in the Mount Victoria area of Wellington in the early nineteenth century. Nor are they the same Ngāti Hinewai hapū associated with Ngāti Apa in the Turakina district, Ngāti Rangitihī and Ngāti Whaoa near Lake Rotomā, or Ngāti Maniapoto in the Tuhua region. It is difficult to say whether the Ngāti Hinewai hapū of Ngāti Tūwharetoa is in fact the same as the Ngāti Hinewai associated with Te Rena of the Taurewa block. Ngāti Tūwharetoa say Ngāti Hinewai is one of their hapū associated with the Korohe Marae on the south-eastern shores of Lake Taupō (nine kilometres north of the Tūrangi township) and trace their descent from Tūwharetoa through Rākainakaha, who married Hinewai.¹⁷⁹

The Ngāti Hinewai group who brought the Wai 1029 claim say they are none of the above. Although they admit they have links with the Whanganui, Ngāti Tūwharetoa, and Ngāti Maniapoto people, it is with the earlier Ngāti Hotu (see section 2.3.3(2)) that they say they are most closely connected. Almost no whakapapa and little primary source material, however, were provided by the Wai 1029 claimants to clarify their ancestry. In addition, they reject all the genealogical charts provided in the Belgrave and Young report that relate to Hinewai because they were sourced from the the court minute books on which they are not prepared to rely.¹⁸⁰ To explain the apparent lack of documented evidence about Ngāti Hinewai, in closing submissions their counsel characterised the hapū as 'mystical':

they're not a big hapu. They don't own a big incorporation. There's not screeds of material written about them. They don't even have their own marae . . . They don't feature in well-known publications. They don't feature prominently in the Native Land Court records. In fact, they don't feature there at all.¹⁸¹

From the material placed on the record for this inquiry it is clear that the Wai 1029 claimants identifying as Ngāti Hinewai are associated with the Te Rena area in the Taurewa block. They claim a Tini-o-Toi lineage with waka origins to *Te Paepae ki Rarotonga*.¹⁸² With urukehu

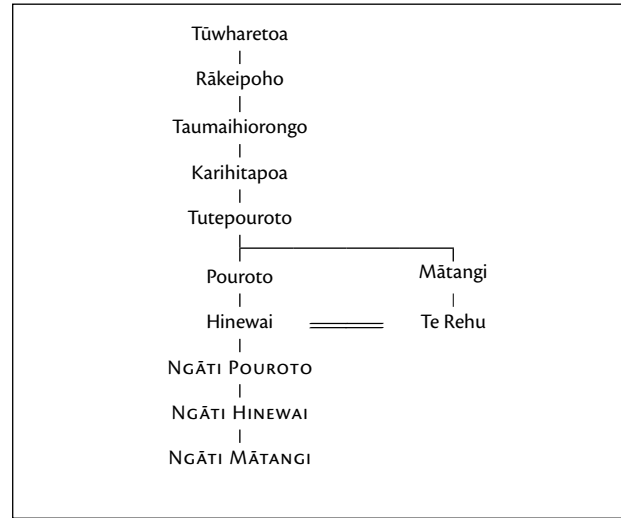
features (fair-skinned, green-eyed, and red-haired) they maintain their tūpuna were part of Toi's group that made landfall at Whakatāne. Over time they were pushed south to Taupō, Pihanga, and Rotoaira by the later immigrants of the Mātaatua waka. Eventually Ngāti Tūwharetoa forced them across the Whanganui River and into the Te Pōrere-a-Hinewai area (known as Te Pōrere-a-Rereao and Te Pōrere-a-Ngātoroirangi in Ngāti Tūwharetoa traditions).¹⁸³

They say their Ngāti Hinewai tūpuna built two pā, Ngā Hou Te Pō and Te Pōrere, and from these pā went back to Rotoaira to dig their crops and catch fish. Te Heuheu and his men caught them and killed their leader Tamakana, then an old man. We were told this killing took place circa 1830 but this date cannot be right (unless there are two people of that name) for Tamakana was Hikairo's wife's grandfather. A relative, Tamakeno, retrieved the body which had been mutilated:

only his head remained. His ears had been cut off and pinned to a tree; Taringapupu stream at Te Rena derived its name from this action. Tamakeno wrapped the head in a Whariki mat and buried it at Tiekitahi urupa at the northern end of Taurewa, now called Te Rena urupa.¹⁸⁴

Tamakana's immediate whānau went to the southern side of Ruapehu while Tamakeno led the remnant of the people to the Te Rena region where they reside to this day. Te Rena is in the north-western corner of the National Park inquiry district where four Ngāti Hinewai marae once existed: Pāharakeke, Ngararahana, Whakahou, and Tieketahi, which collapsed in the 1890s. Whakahou was the last of these. It burnt down in 1967.¹⁸⁵ A new house named Hikairo was built in 1998.¹⁸⁶ The wharekai is named after Hikairo's wife, Puapua.¹⁸⁷

This explanation for Ngāti Hinewai's origins is based on manuscript evidence supplied by Monica Mataamua (Tamakeno's great-great-granddaughter) for the Young and Belgrave report. Ms Mataamua stated that Ngāti Hinewai have always looked to Ngāti Maniapoto, rather than Te Heuheu for protection and even today they have a closer relationship with Ngāti Maniapoto than with Ngāti Tūwharetoa.¹⁸⁸ Counsel, in closing submissions, stated:



Whakapapa chart

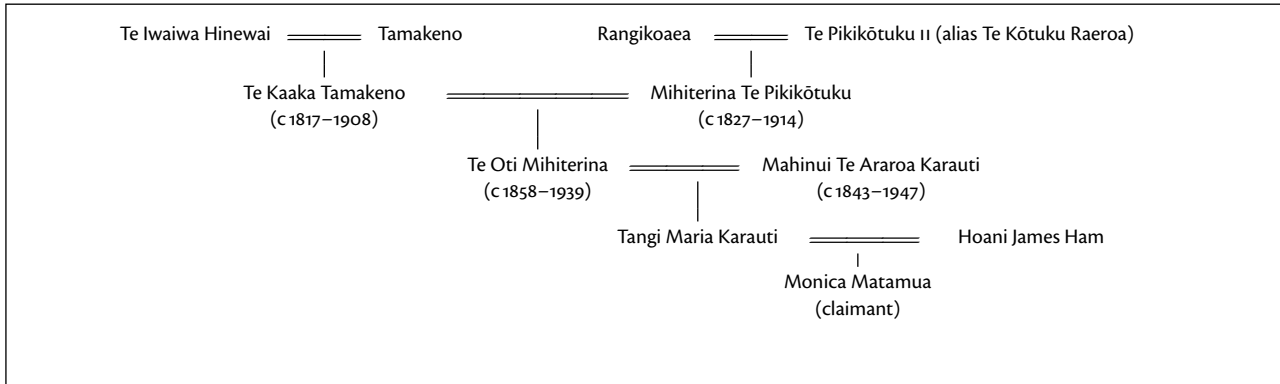
They do not deny their links with any particular *iwi* but they do emphasise certain relationships over others. As with many Māori, who Ngāti Hinewai is often depends on where they are.¹⁸⁹

The reports by Dr Robyn Anderson and Dr Angela Ballara put Ngāti Hinewai in the list of Ngāti Tūwharetoa hapū.¹⁹⁰ Moreover, Ngāti Pourototo, whose eponymous ancestor, Pourototo, was Hinewai's father, has usually been regarded as Ngāti Tūwharetoa.

During the investigation of title to the Taurewa block, Ngāti Tūwharetoa witnesses described the descendants of Hinewai as Ngāti Mātangi.¹⁹¹

Kevin Amohia of neighbouring Ngāti Hāua told us that there were at least two Ngāti Hinewai hapū within the upper reaches of the Whanganui River. Hinewai at Te Rena was a direct descendant of Tūwharetoa, he said, while the other Hinewai was of Ngāti Maniapoto but married into Ngāti Hāua. The latter resided at Akapiri or Piriaka as it is known today.¹⁹²

Ultimately, Monica Mataamua and the other Wai 1029 claimants, who they say number in the thousands, do not wish to identify as Ngāti Tūwharetoa possibly for



Whakapapa chart

historical reasons, but more likely because of present-day factors.¹⁹³ In 1991, the claimant’s whānau returned to begin farming the Taurewa 4 West E2B1 block which had been amalgamated into the Taurewa Farm. This 250-acre block, before the amalgamation, had been the sole property of the claimant’s grandmother – Te Oti Mihiterina.

Her whānau planted 200 fruit trees as well as flax and wetland trees to control flooding and they built the Whakahou Lodge at a cost of approximately \$48,000. They had turned their attention to re-building Whakahou Marae which had burned down in 1967 when the trustees of the Taurewa 5 West Trust evicted them – in fact, not once they say, but five times over the 14 year period since they returned. They now seek compensation for the loss of the hapū’s land base.¹⁹⁴ The claimants say that the documentary record, which presents Hinewai as a descendant of Tūwharetoa, is based on the evidence of Ngāti Tūwharetoa witnesses at the Taupōnuiātia investigation and is, therefore, biased. Once Taurewa was included in that investigation ‘only arguments based on Tuwharetoa whakapapa could carry any weight’, they state.¹⁹⁵

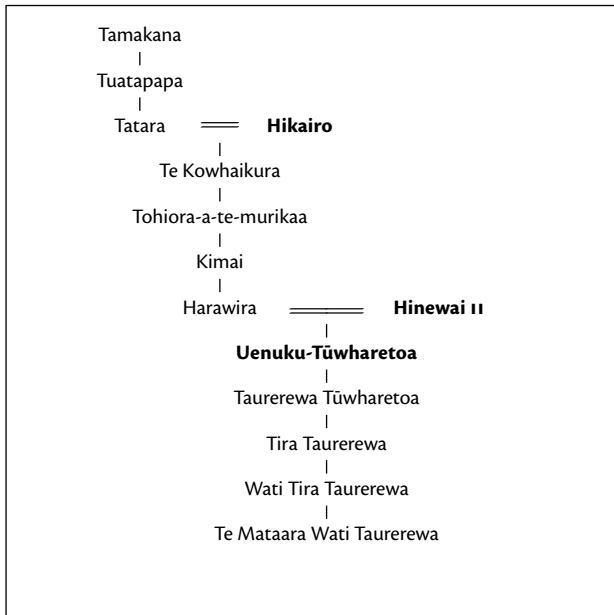
To counter the Ngāti Tūwharetoa connection, Te Mataara Wati Tira Pēhi (Wai 73 claimant on behalf of the Pēhi Whānau who said Ngāti Hinewai was also an important part of who they are) told us there was another Hinewai, the mother of Uenuku, whose whakapapa does not trace back to Tūwharetoa and whose land interests

were based around the present-day township of National Park extending west as far as the Whanganui River.¹⁹⁶ But the Uenuku she refers to appears to be Uenuku-Tūwharetoa, who lived in the nineteenth century, so this Hinewai could not have been the eponymous ancestor of Ngāti Hinewai (see section 2.4.4(2)). What is more, in the opening submissions for the Pēhi whānau, Tom Bennion shrouded ‘the real’ Hinewai further, when he said Ngāti Hinewai ‘is, like Uenuku a name which appears in several manifestations in this district’.¹⁹⁷

(2) Ngāti Uenuku

Another challenge for this Tribunal during the hearings was learning who was the eponymous ancestor of Ngāti Uenuku. Several Uenuku identities were put before us by various claimants and their counsel each suggested theories as to the derivation of the name Uenuku. The matter was made more complex when the several claimant groups at Te Puke Marae, Raetihi, acknowledged that they all belonged to Ngāti Uenuku.

It is unusual in any district for people not to know the founding ancestor of their hapū or iwi, but Aiden Gilbert suggested this was the case. He proposed a number of tipuna as potential progenitors even including the Uenuku of Hawaiki fame (father of Paikea and Ruatapu) as a possibility.¹⁹⁸ Wati Taurerewa, in a line of descent from Turi of the Aotea waka to herself, supplied the names of



Whakapapa chart of Hinewai II

various Uenuku – Uenuku o Whatikura, Uenuku Rau, and Uenuku Poroaki – while stating her pepeha (tribal identifier) thus: ‘Ko Ruapehu te maunga, Whanganui te awa, Āti Haunui-a-Pāpārangi, Uenuku te hapū, Aotea te waka.’¹⁹⁹ Uenuku nui a Whatihua, Uenuku Popoti, Uenuku Tutee and Uenuku Potahi were some of the other names mentioned.²⁰⁰

Some witnesses were adamant they knew which Uenuku it was. Arin Matamua, who gave evidence for Ngāti Hinewai, told us Uenuku was a child of Hinewai.²⁰¹ Wati Taurerewa supplied a whakapapa chart showing her connection to that Uenuku who she called Uenuku-Tūwharetoa. This was Ngāti Hinewai II, she said, who was referred to in the Waimarino list of non-sellers.²⁰²

Clearly, Uenuku-Tūwharetoa, who received interests in several blocks in the nineteenth century, was too recent to have been the eponymous ancestor of the Ngāti Uenuku hapū who were then living in large numbers at Manganuioteao. In fact, he referred to himself in the court hearings as Ngāti Tamahaki.²⁰³

Others suggested the name Uenuku was not a human tupuna, but instead referred to a metaphorical ancestor, namely, the rainbow existing as a korowai in the spiritual realm. They suggested that the upper Whanganui hapū and whānau living in its embrace made up the Uenuku people.²⁰⁴

There is enough evidence to suggest the Uenuku, from whom derives the hapū Ngāti Uenuku, was indeed an ancestor and not a supernatural phenomenon. Michael O’Leary stated in his report that

... ‘Ngāti Uenuku’ have been based around Raetihi for at least 100 years. They are referred to in 19th century land Court minutes and appear in large numbers in the 20th century Maori electoral rolls.²⁰⁵

We agree with the statement in the closing submissions made by counsel for the Tamakana Council of Hapū and others:

when witnesses spoke of Ngāti Uenuku they were referring to a hapu based at Manganui o te Ao – the references both in the land court and outside – such as the Stout Ngata report are clear – there are no references to Ngāti Uenuku being based elsewhere – until the 20th century, when the migrations away from the river valley began in earnest.²⁰⁶

The issue for this Tribunal is which Uenuku is the founding ancestor of this hapū and, perhaps more importantly, why there was uncertainty about his identity during the hearings.

The minutes of a meeting at Te Puke Marae, Raetihi in 1945 recorded that Uenuku was one of their chiefs ‘from whom derived the tribal name of this district.’²⁰⁷ Ngāti Rangi believed this referred to Uenuku-manawawiri, who was the tūpuna that people claimed under in most of the land blocks between the Mangawhero and Whangaeu rivers. Those who brought claims before this Tribunal as part of the Central Claims Cluster, however, say the reference was to Uenuku, son of Tūkaihoru, and from whom Ngāti Uenuku land rights in Waimarino are derived. Others simply did not know who the founding ancestor

was, but were nonetheless unwilling to accept any of the explanations put forward.

For example, Rosita Dixon told us that her great-grandfather, Winiata Te Kākahi, was at one time the chief of Ngāti Uenuku:

There is much debate around who the Uenuku is that we trace our descent from. I am not a whakapapa expert but I am clear that the Ngāti Uenuku we refer to is not the Uenukumanawawiri that others refer to . . . When I was a child I was told it was just Uenuku. No korero in the front and no korero at the back.²⁰⁸

From all the evidence put before this Tribunal, the explanation for Ngāti Uenuku seems to be this: the hapū name refers to two separate but related Uenuku – Uenukumanawawiri and Uenuku, son of Tūkaihoru. Obviously, Ngāti Uenuku and Ngāti Rangi have lived side by side for a very long time. This is because of common blood ties – they are all descendants of Paerangi, through Uenukumanawawiri or her first cousin, Tamatuna. Their two major settlements were Murimotu and Manganuioteao (where they were well established in the nineteenth century) and the people would seasonally migrate from one settlement to the other. ‘They also joined the yearly migration to the sea coast for the kahawai fishing at the river mouth, and saltwater fishing out to sea.’²⁰⁹

Kerry-Nicholls, in a chapter on the Whanganui River settlement of Ruakaka published in 1884, said that the following hapū were living in the Manganuioteao valley in the early 1880s and that their common ancestor was Uenuku: Ngāti Hau, Ngāti Apa, Ngāti Maringi, Ngāti Tamakana, Ngāti Atamira, Ngāti Ruakopiri, Ngāti-i-Kewaia, and Ngāti Tara.²¹⁰ Most likely, this would be a reference to Uenuku-manawawiri. When Raetihi township was founded towards the end of the nineteenth century, largely as a result of the construction of the North Island main trunk railway, many of the people living in the valley relocated. Those with a Ngāti Rangi bent tended towards Karioi and Ōhakune while those of the Ngāti Uenuku or Ngāti Ruakōpiri persuasion inclined more towards Raetihi. Barbara Lloyd told us that her grandfather,

Te Peehi Pakoro

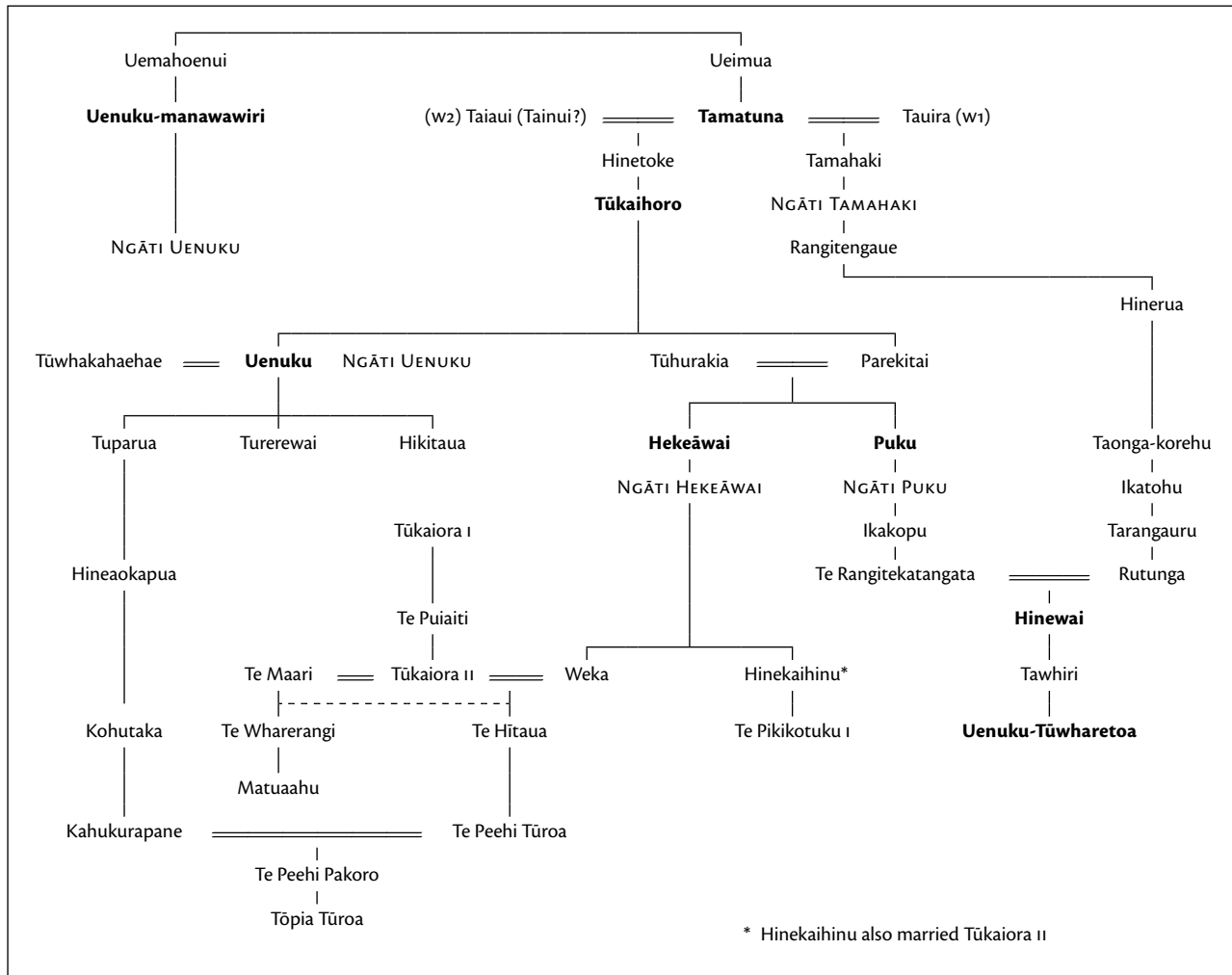
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Te Peehi Pakoro was the son of Te Peehi Tūroa and the father of Topia Tūroa. In 1847, he opposed the sale of land for Wanganui township. Along with his brother Tahana, he was a leader of the Whanganui ‘Hauhau’ forces in the 1860s.¹

Herewini Te Tawhero of Ngāti Ruakōpiri, built Marangai Marae, which used to be in Raetihi, ‘for all those people of Uenuku who moved to Raetihi from Manganui-o-te-ao.’²¹¹

In his time, Te Peehi Pakoro was identified as the chief of Ngāti Uenuku and during the investigation to the Waharangi land block, his son, Tōpia Tūroa, gave their descent line from Tamatuna through Uenuku. In all probability, this reference is to the grouping now based around Raetihi. At a hui at Pūtiki-wharanui in 1906, Whanganui leaders met with a Government representative to determine the districts and their representatives for the Kaunihera Marae Māori. Hōhepa Kawana was elected for the Manganuioteao, Raetihi, and Waimarino districts. The main hapū for this area were listed as Ngāti Uenuku and Ngāti Ruakōpiri.²¹² In 1908, Eruera Te Kahu the Ngāti Apa chief at Kauangaroa on the Whangaehu River identified the owners of the Raetihi blocks as Ngāti Uenuku, a people who, before their land was alienated, resided in the forests (he hunga noho nehenehe) and who were very knowledgeable (he hunga whakaputaputa mohiotanga).²¹³

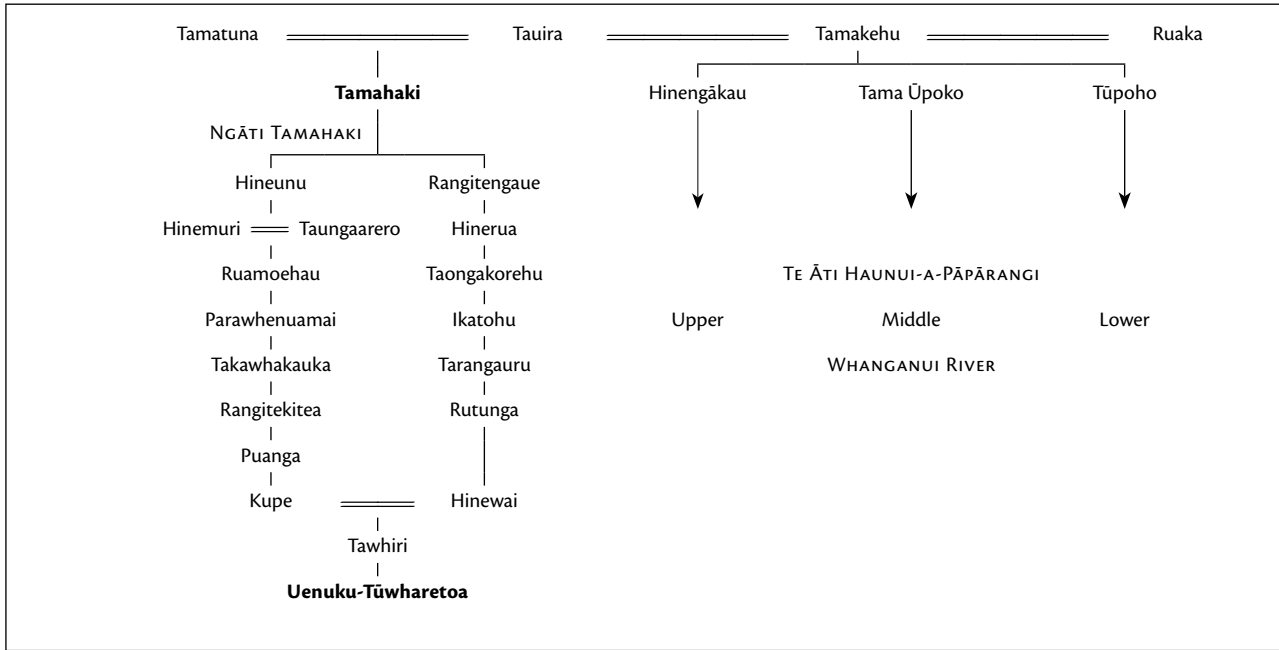
The relationship between Ngāti Rangi and their Uenuku relatives came apart during the wars of the 1860s when Te Peehi Pakoro and Tōpia Tūroa led their people into battle against Crown forces, first in support of the Kingitanga and then as adherents of the Pai Mārire faith. Ngāti Rangi generally took the opposing side. Although Tōpia Tūroa changed his policy in 1869 and took part in the government’s campaign against Te Kooti, a fissure between the two related groups had formed.



Whakapapa chart

The introduction of the court into the region in the 1870s encouraged communities to set up claims or counter-claims to land blocks before the court. The hearing process, however, served to widen the fissure further. We heard lots of evidence from claimants who believed that former ‘rebels’ did not always get shares in land where they in fact had interests. Moreover, claim conductors strategically selected hapū names to either include or

exclude kin groups in the ownership lists for the block. Where a hapū name was clearly extant over the land, Ngāti Uenuku, for example, witnesses were not averse to claiming a more recent tupuna by the same name. They did so to limit the number of people eligible to be included in the list of owners or to exclude their relatives who fought in opposition to them in the wars of the 1860s. Furthermore, after the owners of a block had been confirmed, tension



Whakapapa chart

between sellers and non-sellers added further to any existing fissures.

Ngāti Rangi argued that counsel for the Central Claims Cluster set out to give a strong identity to Uenuku in parallel to Ngāti Rangi when they are, in fact, the same people.²¹⁴ While this is accurate, the historical record shows that Ngāti Uenuku and Ngāti Uenuku-mamawawiri were two closely related but distinct hapū. Inter-marriage through the years between descendants of Uenuku-mamawawiri and Uenuku has further blurred the distinction.

To complicate matters further we were told of the Uenuku Tribal Authority set up to re-establish the identity of Ngāti Uenuku and to ‘provide a structure to represent the Uenuku people with local government, DOC and other iwi organisations’.²¹⁵

(3) Ngā Hapū o Tamahaki

The Tamahaki (Wai 555) and Uenuku-Tūwharetoa (Wai 1224) connection with both Ngāti Uenuku and the

Manganuioteao valley is so intermingled that at times it was difficult for the Tribunal to see a difference. Indeed, much of the evidence supplied by their witnesses had to do with the Manganuioteao valley, which is outside the inquiry district.²¹⁶

The Tamahaki Incorporated Society is the legal body set up to represent the Tamahaki Council of Hapū and grew out of the Whanganui Whare Wananga Trust. The trust was set up in the 1980s to research land between Pipiriki and Whakahoro including Waimarino and other blocks about Ruapehu. Tamahaki Incorporated (incorporated in 1994) is dedicated to those hapū that whakapapa to the tupuna Tamahaki.²¹⁷ The Council of Hapū takes its inspiration from 26 hapū that claimed under the tupuna Tamahaki during the 1895 rehearing of the Waimarino block. A claim under Uenuku-Tūwharetoa was part of this claim. This Uenuku was a descendant of Tamahaki and was present at the time of the Waimarino hearings.

The reports of Wharehuia Hemara, Michael O’Leary,

and Paul Meredith were the key pieces of research which the Tamahaki and Uenuku-Tūwharetoa claimants relied on. Yet the claimants felt that these reports had gaps and they hoped to add to the research during the hearings for the Whanganui inquiry district.²¹⁸

From the evidence gathered in these reports it is clear at least that Tamahaki, the son of Tamatuna, is the founding ancestor of Ngāti Tamahaki. The Whakapapa chart in our previous section demonstrates how closely related are Ngāti Tamahaki, Ngāti Uenuku, Ngāti Hekeāwai, Ngāti Puku, and Ngāti Pare. It also shows Uenuku-Tūwharetoa as a descendant of Puku.

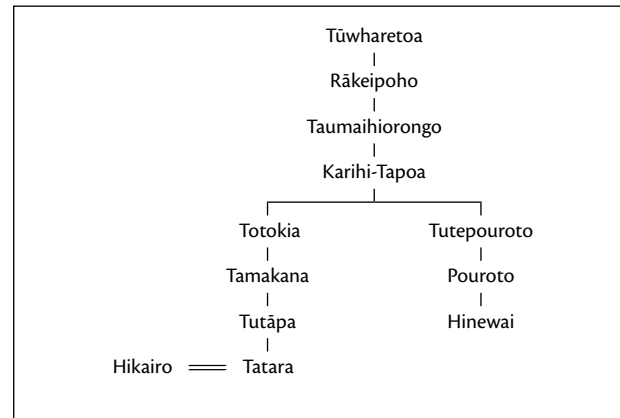
When Tamahaki learnt of his father's death by treachery he sought out Tamakehu at Hiruharama. Tamakehu avenged the death and took Tamatuna's widow for a wife.

The customary markers of Tamahaki's rohe were given as Taunoka (south of Pipiriki on the Whanganui River and outside this inquiry district) to Maraekōwhai, then to Ruapehu in the north excluding the Taurewa block, and back to Taunoka.²¹⁹ The Tamahaki claim is associated with the Waimarino, Ngaporo, Popotea, Waharangi, Ngāpakihi and Raetihi blocks on the eastern side of the Whanganui River and, on the western bank, with Maraekōwhai, Whitianga, Taumatamahoe and Whakaihuwaka blocks.²²⁰

(4) Ngā Uri o Tamakana

Ngā Uri o Tamakana and the Tamakana Council of Hapū (Wai 954) were names adopted for the purpose of amalgamating claims before this Tribunal. These groups said they were the same as Te Iwi o Uenuku (Wai 1170, Wai 1202, Wai 1262) and included Ngāti Tamakana, Ngāti Ruakōpiri (Wai 1072), Ngāti Tūmānuka, Ngāti Puku, Ngāti Hinewai, Ngāti Kahukurapango (Wai 1189), Ngāti Maringi (Wai 1192) and Ngāti Kōwhaikura (Wai 1073). They claimed that they are the tangata whenua of the area south and west of Ruapehu and that they continue to exercise rangatiratanga in that region. They also emphasised that their tūpuna were those that would not sell their land to the Crown.²²¹

Tamakana is usually regarded as a Whanganui ancestor. We note, for instance, that Whanganui resident magistrate, RW Woon listed Ngāti Tamakana as a hapū of



Whakapapa chart

Te Patutokotoko.²²² Tamakana, nevertheless, was also a descendant of Rākeipoho, thus linking the hapū to Ngāti Tūwharetoa. Ngāti Tamakana was closely connected with Ngāti Hikairo as well, since Tamakana's granddaughter married Hikairo.

Ngāti Tamakana's rohe stretched westwards across Taurewa to at least Waimarino, but at times they resided in the Murimotu area south of Ruapehu and at other periods east of Tongariro near Rotoaira with Ngāti Pouroto. The founding ancestors of these two hapū, Pouroto and Tamakana, were first cousins.²²³

Associated with Ngāti Tamakana in the Te Rena district of Taurewa were Ngāti Tamakeno, Ngāti Hinewai, and others.²²⁴ In the early 1880s, Kerry-Nicholls found Ngāti Tamakana living at Manganuioteao.²²⁵ Their various residences demonstrate again 'how mobile hapū were, how fluid their relationships and how little relevance the concepts of rigid human and physical boundaries had in pre-colonised Aotearoa.'²²⁶

Winiata Te Kākahi (circa 1840 to 16 December 1898) was a descendant of Tamakana who, with his whānau, received a third of the Urewera block after the 1887 investigation to title was completed. Those who brought claim Wai 1181 before this Tribunal on behalf of his descendants, felt the whole block should have been awarded to their tūpuna and other uri of Hinekoropanga and her sister

Kowhaikura. They did not want to align with either the Central Claims Cluster or the Uenuku Incorporation, but instead wished to act for themselves in respect of Winiata Te Kākahi’s lands.²²⁷

Other descendants of Winiata Te Kākahi, however, were part of the ‘embrace of Uenuku’ (Wai 1170). They stated that Te Kākahi was one of the ‘great chiefs’ of Uenuku.²²⁸

(5) Tūroa dynasty

The intricate web of relationships among these buffer groups is made more complex when an influential figure, who can whakapapa to them all, appears in the historical record. For such a person is able to transcend tribal boundaries, drawing in a variety of iwi and hapū connections as required.

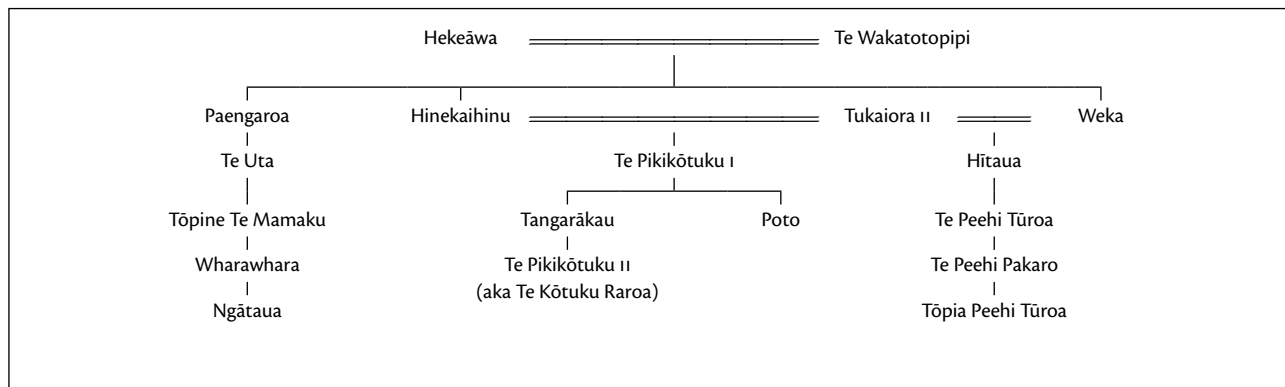
During the early nineteenth century, the ‘grand chief’ of the Moawhango, Hautapu, Mangawhero, Manganuioteao and upper Whanganui region was Te Peehi Tūroa I (circa 1730 to 1845). A rangatira with a forceful personality, he oscillated between residences at Rotoaira, Manganuioteao, and even the lower Whanganui. At the latter he had a pā, which was ‘probably his allotted place when he came to the coast to catch and dry fish to feed [his people] through the winter.’²²⁹ He and his immediate descent line were to the southern part of te kāhui maunga what Te Heuheu and his descendants were to the northern sector.

In the first half of the nineteenth century, Te Peehi

became the undisputed leader of Te Patutokotoko but also brought together Ngāti Hāua and its sub-groups – Ngāti Hekeāwai and Ngāti Hauaroa, Ngāti Uenuku, Ngāti Hine-wai, Ngāti Puku, Ngāti Whiti, and Ngāti Tama. He was also of Ngāti Manunui and, therefore, Ngāti Tūwharetoa.

He rose to prominence as a fighting chief after defeating a taua raiding down the Whanganui River from Tuhua on the Ōhura River, north of Taumarunui. He then aligned with Ngāti Apa and made forays as far east as Porangahau. In 1819 to 1820 at Kaiwhakautā, he and a large Whanganui and Ngāti Tūwharetoa contingent blocked the retreat of the musket-armed Ngāpuhi who had invaded upriver. Again at Mangatōa, between 1821 and 1822, Te Peehi defeated part of the Amiowhenua northern war expedition. During the 1820s he was also involved in battles against Ngāti Raukawa and Ngāti Toa. He joined forces with Manunui Te Heuheu Tūkino II in his attack on Ngāti Kahungunu. Taking 300 men with him they ventured as far as Mahia where they laid siege to Ōkaroro pā.²³⁰ According to the Whanganui chief, Metekīngi, Te Peehi was given authority over all land from Tongariro to the sea by his uncle Te Pikikōtuku I and Tukaiaua.²³¹ Along with his son Te Peehi Pakaro, Te Peehi signed the Treaty of Waitangi when it was taken to Whanganui. While he lived at many places, Te Peehi’s principal pā was at Ngā Toko-e-rua, which was probably the closest pā to Ruapehu and the northern gateway to Manganuioteao.²³² Today, his

Whakapapa chart





Tōpia Pehi Tūroa

descendants have established Tohu-ki-te-rangi near the Whakapapa Village and it is the only marae on the western side of Ruapehu.²³³ He died on 8 September 1845 but his mana remains associated with Ruapehu.²³⁴

His sons, Te Peehi Pakaro (also known as Te Rangihopuata) and Tahana Tūroa, were leaders of the Whanganui Hauhau forces in the mid-1860s.²³⁵ Pakaro's son, Tōpia Pehi Tūroa (also part-Ngāti Raukawa), who was twice offered the Māori kingship (but deferred in favour of Te Heuheu), actively supported the Kingitanga movement in the 1850s and early 1860s and also the Pai Mārire adherents between 1864 and 1865. Disillusionment with the Kingitanga movement and Te Kooti's killing of his relative near Taupō in September 1869 saw Tōpia Tūroa join forces with Te Keepa Rangihiwini (Major Kemp). Together they pursued Te Kooti for five months through the Bay of Plenty region.²³⁶

Later, land interests in the Murimotu and Rangipō–Waiū land blocks saw Kemp and Tōpia Tūroa opposing each other in the court with direct aggression only just avoided.²³⁷

In 1886, Tōpia Tūroa was included in the title to Ruapehu 2 when the mountain blocks containing the peaks were subdivided. The following year, upon the death of Tōpine Te Mamaku of Ngāti Hāua, Tūroa became the paramount chief of the Whanganui iwi.²³⁸ Dr Ballara's report told us that:

Te Patutokotoko was not the only hapu name of the Turoa family; they had lines of descent from, and were of chiefly rank and status among, all the upper Whanganui and Manganui-a-te-ao peoples, including Ngāti Tamakana, Ngāti Uenuku, Ngāti Hāua, Ngāti Rangi, and others.²³⁹

He took the name Tōpia (Tobias) as an adult upon baptism. He died in 1903. One of his most well-known children was Kingi Tōpia.

2.5 CUSTOMARY USE

This section shows how ngā iwi o te kāhui maunga related to their environment. It describes the landscape withing the National Park inquiry district, lists the resources that were made use of within the region, and explains the cultural, spiritual, and economic significance of the land and its resources to ngā iwi o te kāhui maunga. It includes:

- ▶ a discussion of the spiritual and metaphysical ties to the land and particularly the mountains, namely the idea of being descended from the mountains and the significance of kaitiaki (spiritual guardians) on the land and in the rivers;
- ▶ the spiritual and healing aspects of water; and
- ▶ how identity is framed by land and resources, namely Ko Tongariro te maunga, and pride in naming every nook and cranny.

2.5.1 Landscape

The inquiry district encompasses almost 800 square kilometres and was described by Dr Ballara in her overview of

the landscape as the ‘Bermuda Triangle’ of the Rotoaira, Moawhango, and Murimotu area:

This ‘triangle’ was a long-term flash-point area, where Whanganui peoples met and contested for mana and resources with Taupō peoples in one direction and Hawkes Bay/Pātea peoples in another, with Rangitīkei peoples and their alliances complicating matters even further. However, it was also often where they made peace, including marriage alliances.²⁴⁰

While the district was characterised over time by different groups contesting the land and its resources, the alpine landscape was so vast and even uninhabitable during certain periods of the year that when European settlers arrived they mistakenly characterised great chunks of it as no man’s land. In fact, like a modern fridge or freezer, large areas of te kāhui maunga were only visited when whānau or hapū needed resources from it. The rangatira, Tōpia Tūroa, giving evidence in the investigation of the Rangataua block in 1881, explained the reason for the post-contact absence of tangata whenua:

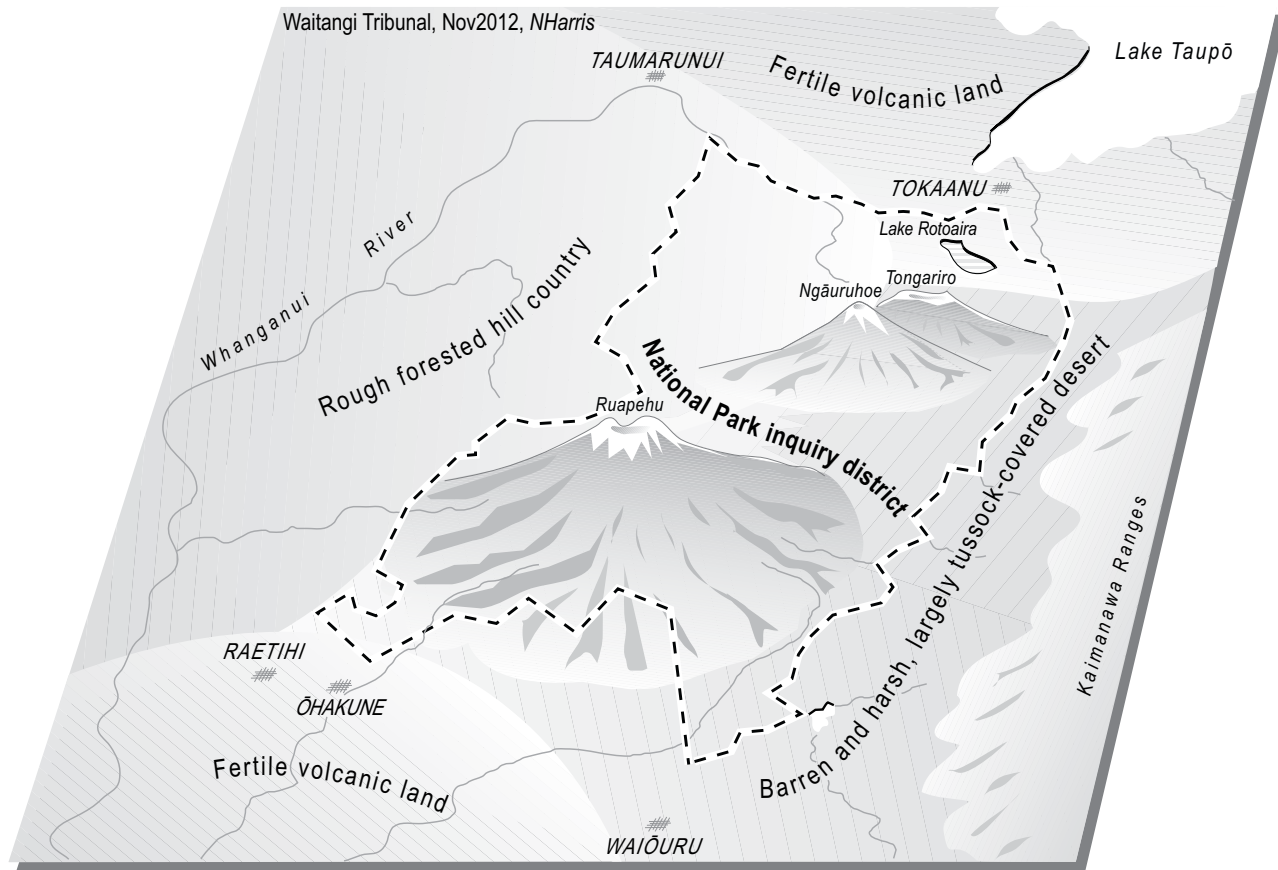
the non-occupation for five generations is quite true – but we had left this land not because we had no right or because we were afraid or because there was anyone to obstruct us, but we now live in other ways. We draw our maintenance from European neighbourhoods and from land sales, not in our old ancestral ways of collecting food. Our ancestors who were all relations did occupy the land. We do not but since there has been a rage for land selling, old claims, lying dormant, over lands which have long been unoccupied, have been hunted up and revived.²⁴¹

To describe the landscape in the inquiry district let us begin with a very brief geological survey before describing its topography. The terrain ranges from rough forested hill country in the west, to fertile volcanic land in the north near Lake Taupō and in the south near Raetihi and Ōhakune. The central and eastern region is barren and harsh, consisting largely of tussock-covered desert. A good deal of the central part of the district has always

been unoccupied. In Pākehā terms, much of the land in the inquiry district was marginal, but to ngā iwi o te kāhui maunga the land contained many resources that were used extensively by them.

Te Rena is at the north-western corner of the inquiry district near the junction of the Whanganui and Whakapapa Rivers. Here reside Ngāti Hinewai (previously known as Ngāti Mātangi), their significant landmarks being maunga Hena (379 metres) and Tieketahi papakāinga. Other groups associated with the Te Rena district include Ngāti Tamakana, Ngāti Tamakeno, Ngāti Hikairo, and Ngāti Manunui. Their neighbours to the west are Ngāti Hāua, although the latter claim intersecting tribal interests right to Ruapehu. While they admit that these interests were not as strong as other hapū, Ngāti Hāua emphasised the strategic alliances and marriages between themselves and Ngāti Tūwharetoa as the basis for their right to use resources within the Waimarino and Taupōniuitia boundaries.²⁴² Even today, it was pointed out, Ngāti Manunui do the wero for Ngāti Hāua on Ngāti Hāua’s Ngāpuwai Waha Marae at Taumarunui and a waka that Ngāti Manunui carved for Ngāti Hāua is kept at the marae, while the paddles are stored at Kākahi, a community on the western side of the confluence of the two rivers.²⁴³

Moving west across the northern part of the Taurewa and Ōkahukura blocks, over which Ngāti Hinewai claim they and Ngāti Tamakana hold mana whenua, we reach the man-made Lake Ōtamangākau, which was once a swamp area. The hilly terrain is covered in bush and bounded in the north by the Whanganui River. Again, there are overlapping interests here and, historically, Ngāti Hikairo, Ngāti Manunui and Ngāti Waewae were also associated with this landscape. Indeed, Ngāti Hikairo state their rohe stretches from the confluence of the Whanganui and Whakapapa Rivers right across to the Kaimanawa Ranges, north to Kakaramea and south to Pare-te-tai-tonga.²⁴⁴ To support their claim they reminded the Tribunal that the wharepuni Ngāti Hikairo established in 2002 and its wharekai Puapua, Hikairo’s wife, stand at Te Rena on land that has always been known as Hikairo ki Taurewa. In an arc running four kilometres south-west to the south of Ōtamangākau lay the other Ngāti Hikairo



Map 2.2: Landscape of the National Park inquiry district

pā called Te Pōrere, Pāpakai, and Ōtūkou. Tataia was the original location of the wharepuni Rākeipoho now at Pāpakai. Te Rangikapuia was its first name and it was the residence of Ngāti Waewae, Ngāti Marangataua, and others.²⁴⁵

The Wai 1029 claimants maintain that they have a special relationship with Te Pōrere stating that it was one of two pā built by their Ngāti Hinewai tūpuna. They claim that these pā, Ngā Hou Te Pō and Te Pōrere, were part of a series of defensive pā and that, '[f]rom the ramparts at Te Pōrere, there was a line of sight to the top of maunga Hena, around which maunga Ngāti Hinewai's papakainga

at Tiekitahi is situated.²⁴⁶ The strategic value of Te Pōrere pā site is underlined by the fact the Te Kooti built a redoubt there in 1868.

Moving in a south-westerly direction we come to Rotoaira, a larger lake covering an area of 13 square kilometres, seated in a graben between Mount Tongariro to the south and the smaller volcanic peak of Pihanga to the west. Prior to the TPD scheme, it was naturally drained by the Poutū Stream into the Tongariro River. Ngātoroirangi was said to have named the lake for the kaitiaki Ira. Since the beginning of the nineteenth century, within the inquiry district, it has been in the Rotoaira basin where



◀ The site of Whakahou Marae. Maunga Hena and Tieketahi papakāinga are notable landmarks of Te Rena in the north-west corner of the inquiry district, where Ngāti Hinewai is the major group.

▼ Heavily forested hill country on the western slopes of Mount Ruapehu. Native bush like this provided food, supported bird life, and gave Māori the means to treat ailments.



- ▶ Fertile volcanic farmland in the south near Ōhakune
 - ▼ Barren and inhospitable desert area of tussock and sand to the east of the mountains. Although largely unoccupied, the land still provided resources for Māori.





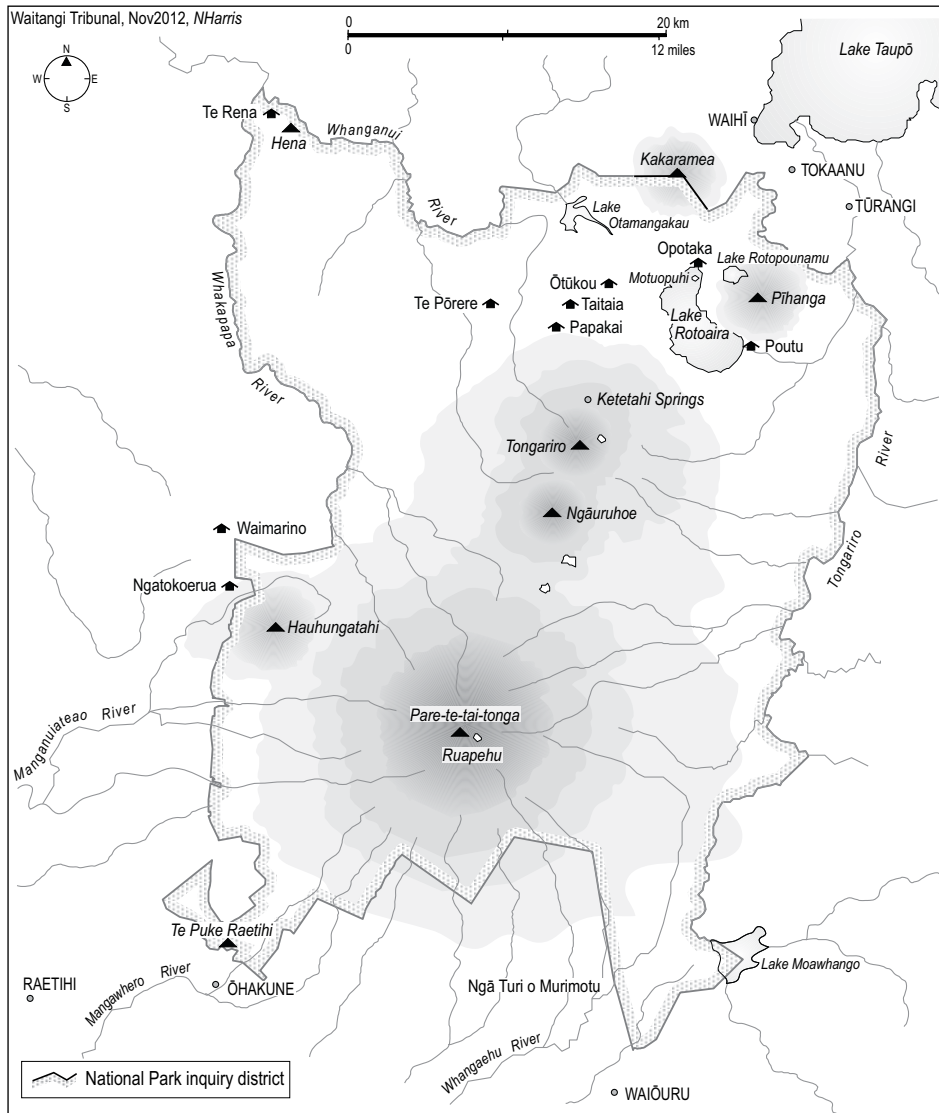
The mountains Ruapehu, Ngāuruhoe, and Tongariro. The active volcanoes form an impressive line, dominating the landscape from every angle.

the greatest concentration of settlement has occurred. Of particular note are the pā sites Ōpōtaka, Poutū (both located on the shore of the lake), and Motu-o-Puhi (on the island in the lake). There was a sunken causeway that led to the island which people waded across to reach Motu-o-Puhi, but this disappeared when the lake level rose. Ōpōtaka was surrounded by swamp on three sides, and by Lake Rotoaira on the other. This pā is renowned as the place where the Ngāti Toa chief Te Rauparaha, sought refuge with Te Wharerangi and his wife Te Rangikoaia (circa 1810) and where he composed his famous ngeri 'Ka Mate'. Ngāti Hikairo is recognised by Ngāti Tūwharetoa hapū

as holding ahikāroa and kaitiaki status over the Rotoaira basin.²⁴⁷

The central feature of the inquiry district is the majestic and active volcanoes Tongariro, Ngāuruhoe, and Ruapehu, which run in a south-westerly direction and which totally overshadow the landscape.

East of the mountains are the Rangipō Plains leading to the maunga Ngā Turi o Murimotu and stretching almost as far south as present-day Waiōuru, established in 1940. Ngāti Tūwharetoa, through Ngāti Waewae, lay claim in this area and the Native Land Court recognised their interests during the investigation to the Rangipō blocks



more than a century ago. In fact, the northern edge of the Rangipō North 8 block (still customary land) was set up as the boundary between Ngāti Tūwharetoa and Ngāti Rangī at the Taupōnuiātia hearings.

Peter Clarke, on behalf of the descendants of Kurapoto and Maruwahine, argued that on the basis that their

tupuna were living on lands adjacent to the inquiry district, namely the Hautū blocks, that they would have had interests particularly in the Rangipō North area. These did not equate to 'ownership interests', he claimed, but would have allowed for 'specific use or seasonal use rights, or rights of thoroughfare'.²⁴⁸



Camp life in the New Zealand bush, 1908. Railway workers on the North Island main trunk line, dwarfed by tall trees near the Hapuawhenua Viaduct, north of Ōhakune, where workers toiled in harsh conditions amid noise and smoke.

Ngāti Rangi have a long and undisputed association with the south-eastern slopes of Ruapehu based on claims that they were the first humans transported (by bird) to the region. This is further evidenced by a tradition of interring certain of their dead in the crater lake on the mountain.

A number of rivers have their headwaters on the eastern flank of the 2,797 metre volcano Mount Ruapehu. The Whangaehu is the most well-known, emerging from the Whangaehu Glacier, flowing eastwards across the Rangipō Desert, then south-west beyond the district for some 137 kilometres to the Tasman Sea south-east of Whanganui.

On the southern slopes of Mount Ruapehu, the boundary of the inquiry district is more unnatural than anywhere else. Historically, Ngāti Uenuku and Ngāti Rangi claim mana whenua rights in this part of the district. There was no permanent pā here, those with user-rights generally trekking up from the Manganuioteao valley (further south) to gather seasonal resources. Ōhakune township, which touches the south-western boundary of the inquiry district, began life in 1897 as a camp for workers building the North Island main trunk railway. It was reached via the Whanganui River and dray road from Pipiriki until the railway arrived in 1908. At Ōhakune and



Hapuawhenua Viaduct, 1909. Felled native trees make way for the North Island main trunk railway.

within the inquiry district stands Raetihi Hill (Te Puke Raetihi), which Te Iwi o Uenuku told us was the ‘sentry for the maunga and the people.’²⁴⁹ Running below it is another tributary from Ruapehu called Mangawhero – once a favoured tuna fishing river and later a trout stream.

The huge Waimarino block lies to the west of Mount Ruapehu and just a small portion that reaches up to the peak Pare-te-tai-tonga is captured within the inquiry district. Hau-hunga-tahi is the high feature on the plains that was at one time a haven for tītī. Waimarino pā (now National Park township on the fringe of the Park) was a permanent residence from at least the 1830s, as

was Ngā-toko-erua from the 1860s (also on the western fringe). Both pā border the inquiry district. A significant river running from Ruapehu in a south-westerly direction across the Waimarino Plains is the Manganuioteao. It was the route from te kāhui maunga to the lower reaches of the Whanganui River.

Moving north, the western slopes of Ngāuruhoē and Tongariro contain the Ōkahukura blocks (82,760 acres), an area that was never densely populated, but which the court awarded to 10 Ngāti Tūwharetoa hapū including Ngāti Hikairo and Ngāti Waewae.²⁵⁰ From here, the inquiry district swings north-west into the Taurewa



The Manganuioteao River. Flowing across the Waimarino Plains, the Manganuioteao historically provided an important route between te kāhui maunga and the Whanganui River.

blocks and Te Rena – the point at which our survey of the landscape began.

2.5.2 Relationships with land and resources

The stories about the natural environment in the central volcanic plateau and Māori explanations for how it was created have been passed down as oral traditions from generation to generation. Doubtless this has been done because the rationalisation intimately associates the

people with their surroundings. Their relationship with the land, forests, sea, lakes, and waterways are an important part of how ngā iwi o te kāhui maunga define themselves as people. They considered all of these animate and inanimate things to be taonga, although the degree of tapu they associated with each varies. (See chapter 11 for a detailed definition and discussion of taonga.) Most revered of these taonga are the maunga and the rivers that flow from them.

Two Teardrops

IN TRYING to kill the fish [Māui's brothers] carved out Ruapehu as the presiding pinnacle of Maori. Ruapehu was given the supreme mana to call on the Gods. Ruapehu asked Ranginui for some companion [sic]. He was given two teardrops. One was the Whanganui River, the other was Tongariro River. As time went on he asked for more companions and was given the mountains Tongariro and Taranaki. His third request became the female mountain Pihanga, and then Ngauruhoe was given as a servant to the mountains.¹

The late Matiu Marino Mareikura of Ngāti Rangī

(1) Ngā maunga

In this region, the mountains dominate the environment so that it is not surprising iwi and hapū formed close spiritual and cultural associations with them. Paul Meredith explained that all mountains 'were clothed with the poetic garment of Maori legend and tradition which spoke to their significance.'²⁵¹ In Ngāti Tūwharetoa traditions, for example, te kāhui maunga is part of Te Puku o Te Ika-a-Māui (the belly of the fish of Māui). Lake Taupō is its heart and the mountains its umbilical cord.²⁵²

We learned that Tongariro's prominence stemmed from the time when the mountains roamed the environment. Tongariro argued with Taranaki, Tauhara and Pūtauaki for the hand of the beautiful maiden Pihanga. Tongariro won out and Taranaki removed himself to the West Coast, creating the Whanganui River as he went, while the others shifted north. The basin left by Taranaki became Lake Rotoaira.²⁵³ Other areas have their traditions, too. Ngāti Rangī recounted how the Whanganui River was created from teardrops given by Ranginui to Ruapehu.²⁵⁴ We heard from Sonny Piripi of Ngāti Hikairo that Tongariro's wife is Te Maari and that 'Pihanga doesn't like that very much because she likes Tongariro too'. We learned from

Mr Piripi that sometimes a fog stretches over Tongariro in a line that joins up with Pihanga – a symbol of their relationship.²⁵⁵

We heard lots of evidence about the peaks being especially tapu and that local Māori rarely ventured up to that area. We should not take this to mean, however, that the mountains as whole entities were not tapu, which the Crown assumed when they drafted the *Tongariro National Park Management Plan 2003*, making reference only to 'the mountain peaks', which they said, 'are a taonga . . . [and] must be managed in a way that acknowledges and respects their mana and mauri.'²⁵⁶ To the Māori mind, because mountains are cloaked with chiefly qualities, they are imbued as a whole with a significant degree of tapu and therefore accorded great respect. Hence, the reference to Tongariro made in a newspaper dated 1878:

Tena kei tawhiti e tu mai ana Tongariro, te maunga tapu, e kore e takahia noatia e te wae wae ware, te nohoanga o te tuatara, te takotaranga o te puehu o nga tupuna rangatira kua mate atu.

In the distance is seen Tongariro, the sacred Mount – too sacred for common feet to tread its Tuatara-guarded solitudes, those last resting places of the dust of chieftains.²⁵⁷

So highly regarded was Tongariro as a 'maunga tapu', that on four occasions in 1878 Europeans were publicly notified not to go there or else suffer the consequences: 'I mea hoki nga Maori he tapu no Tongariro i kore ai ratou e pai kia haere taua Pakeha ki reira.'²⁵⁸ (The Māori state that because Tongariro mountain is tapu, they do not approve of Europeans going to that place.²⁵⁹) In 1839, when John Carne Bidwill, the first European settler at Tokaanu, climbed Tongariro without permission, Mananui Te Heuheu became irate and save for the intervention of Te Herekiele would have severely punished Bidwill to the point of taking his life.²⁶⁰ Not long after that he refused Jerningham Wakefield, Ernst Diffenbach and Captain Symonds access to Tongariro warning them 'you must not ascend my tipuna.'²⁶¹

Local children were brought up to understand that the



Te kāhui maunga and Lake Taupō. Both are hugely important to Ngāti Tūwharetoa through legend and tradition, as can be seen in the pepeha 'Ko Tongariro te maunga, ko Taupō te moana, ko Ngāti Tūwharetoa te iwi, ko Te Heuheu te tangata!'





The Tongariro River with Mount Pihanga, 1960.

mountains were not a playground and should always be respected. Sonny Piripi of Ngāti Hikairo remembered in his youth being warned by his father not to play on the rockslide on Tongariro. When thick fog caught Mr Piripi and his young relatives unawares, they were soon lost. They believed the fog was a consequence of their disrespect for the mountain and they never did it again.²⁶² Even many local Māori who visit the mountains today are reminded by their elders to show respect for te kāhui maunga, ‘don’t forget your karakia . . . and don’t be naughty’.²⁶³ The tapu

associated with te kāhui maunga helped explain for some why the region was sparsely populated. Kevin Amohia of Ngāti Hāua explained:

Hapu and Whanau did not reside permanently on the maunga. To a large extent the mountains were Tapu no-go areas used for burials and other purposes, or were used as resource areas for hunting birds, kiore and other species, collecting plants, dyes and particular kinds of timber rather than used as places of residence.²⁶⁴

An article in the newspaper *Te Korimako* in 1884 described mountains as symbols of identity such that the names of rangatira and their people became linked with them:

ko nga maunga nga mea e whakanuia ana e te tangata. E hau ana te rongo o ia maunga, o ia maunga; . . . e moiri-tahi ana te maunga, me te tangata; e puta ana ki tawhiti, a, waihotia iho hei whakatauaki.²⁶⁵

Mountains are something that are revered by man. Each mountain is renowned; . . . a mountain and a person (chief) become associated together and known throughout by a proverbial saying.

Hence, the oft-quoted pepeha, ‘Ko Tongariro te maunga, ko Te Heuheu te tangata.’ Anderson, while recognising the mana of the Te Heuheu line, correctly points out that

there had been other important rangatira in this region – men such as Te Wharerangi, Te Pēhi Tūroa, and Te Herekieke – who also looked to the mountains as tūpuna and as tribal markers.²⁶⁶

The association of a rangatira to a mountain is not surprising since the enduring quality of a mountain, its image of power and its prominence in the landscape are qualities that people desire in their leaders.

Indeed, many Māori believe in the living nature of the physical environment. Mountains, for example, are described as having mauri (a spirit or living essence). We learned from Ngāti Hikairo that Pihanga was viewed in some respects as a living guardian, often forewarning them of looming weather changes:

every time we were out on Lake Rotoaira (‘the Lake’) and we saw a big fog come and settle on top of Pihanga, we would know we would have to get off the Lake in a hurry because the weather was going to turn bad – Pihanga was warning everyone to get off the Lake.²⁶⁷

Ngāti Tūwharetoa made it clear that they considered Tongariro maunga akin to a tupuna. In fact, Mananui Te Heuheu had referred to it as his own head.²⁶⁸ Likewise, Ngāti Rangi claimed a spiritual connection with Ruapehu ‘so great, that the idea of it being willingly gifted to the Crown is absurd.’²⁶⁹

Ngāti Rangi maintains that they are part of ‘te kähui mounga’, that is, of the mountains themselves as well as descendants of the original inhabitants. ‘The mountain owns us, we do not own the mountain,’ was an expression we heard from a number of witnesses. The late John Tahupārae referred to the mountains collectively as te kähui maunga tangata (the chiefly mountain family) and identified them individually:

Ruapehu	Matua te mana
Tongariro	Matua te toa
Taranaki	Matua te tapu
Ngāuruhoe	Matua te pononga
Pihanga	Matua te hine ²⁷⁰

Boy Cribb, representing Tamahaki and Uenuku-Tūwharetoa (Wai 555, 1224, 1130), considered the mountains were ‘living entities’ and that without them the people would not survive. To prove his point he gave the example of the mountains’ tributaries supplying the Ōhakune and Raetihi reservoirs.²⁷¹

The reality is that all the claimants in this inquiry feel a spiritual association with the mountains. Some more with Tongariro, others with Ruapehu, but generally with the mountains as a collective, hence the reference – te kähui maunga. Those who live right at the foot of the mountains assert a more intimate relationship as with Ngāti Hikairo, Ngāti Rangi, and Ngāti Uenuku. Ariki Piripi explained:

The maunga are very important to Ngati Hikairo – not only are our ancestors buried up there but we grew up with them, we grew up beneath the snow. We were living there all the time, using the resources all the time. We knew where to go to find food, how to behave and survive on the mountains, what not to do and how to respect and look after them.²⁷²

And Che Wilson said:

The links with the maunga, our guardians to ourselves and to the heavens reinforces our duty as Ngāti Rangi to look after the maunga and those kaitiaki . . . Without us, who will look after them? This duty of looking after the mountain is the Ngāti Rangi responsibility for the rest of Whanganui as they look after the awa for us.²⁷³

This spiritual and metaphysical relationship with the mountains, the rivers and their resources goes to the essence of tribal and personal identity. This identity is fostered through song, which was clearly evident in the waiata that Ngāti Rangi performed before this Tribunal at Raketapauma and Maungarongo marae. Similarly, Ngāti Hikairo said many of their waiata were associated with Tongariro.²⁷⁴ As well, the whaikōrero we heard constantly made reference to such markers as Pare-te-tai-tonga - the southern peak of Ruapehu and Te Hokowhitua-Rākeipoho - the source of the Whanganui River on the northern rim of Tongariro, as symbols of tribal identity.

(2) *Wai*

The place of water in Māori society is important from both a spiritual and cultural standpoint. Water has the power to neutralise or lessen the perceived harmful effects of tapu by rendering something noa (free from tapu). Yet Ngāti Rangi told us they had a tradition of interring the bones of tūpāpaku in the crater lake, Te Waiamoe, on Mount Ruapehu. Te Ara ki Pare-te-tai-tonga was the track their tūpuna traversed to reach Te Wai-a-Moe via Ngarimu Tamaka (also known as ‘Round Bush’) and the Mangaehuehu Glacier.²⁷⁵ Te Waiamoe is considered the final resting place for the koiwi (bones) of key Ngāti Rangi tūpuna and, as the name suggests, these are waters where one sleeps. During the inquiry the Tribunal asked: Can water be tapu? For surely the committal of koiwi into Te Waiamoe immediately makes the crater lake tapu?

Che Wilson categorised the waterways in the inquiry district into four types: wai māori (fresh natural waters), wai ora (healing waters), wai tōtā (sulphuric waters), and wai ariki (hot waters).²⁷⁶ Te Waiamoe is made up of wai

Can Water be Regarded as Tapu?

Gerrard Albert, when he was manager of iwi relationships for the Manawatu–Wanganui Regional Council, provided this perspective in a cultural issues report for the Genesis Power Tongariro power development scheme’s consent renewal applications in October 2000:

Maori categorise water according to purity of origin from its source, or to what use it has been applied, or to the level of interaction that water has had with animals and human beings. Many tangata whenua contend that the waters flowing from the mountain of the Central Plateau in particular are *wai tapu* (sacred waters), as they represent the purest form of water from Ranganui . . . [and] the mountains themselves, as well as the rivers which flow from them are gifts directly from Ranganui, thereby adding weight to the contention that the waters are *tapu* (sacred).

The distance from the source to the point at which diversion may occur matters little – if the waters are untouched for any other use, they retain the qualities and values associated with them. Even the presence of limited aquatic life away from the source has little bearing, as the water retains a high classification in Maori eyes, that of *wai maori* (fresh water). Though now used commonly to describe any fresh water (as opposed to *wai tai* – sea water), in application to the headwaters of the rivers and tributaries in question here, wai maori retains the higher classification by virtue of being considered as waters ‘untouched’ by human hands. [Emphasis in original.]¹

tōtā or dead water so in our view, the water in the crater lake can be described as tapu.

Ngāti Rangi believes that the sulphuric waters of Te Waiamoe are the sweat gland of Ruapehu and are manifested in the form of the Whangaehu River and carried down to Ngāti Rangi.²⁷⁷ The rivers that flow from the mountains are likened to an umbilical cord connecting



Te Waiamoe, the crater lake on Mount Ruapehu. It is sacred to Māori since the bones of Ngāti Rangi tūpuna, or key ancestors, are given their final resting place here.

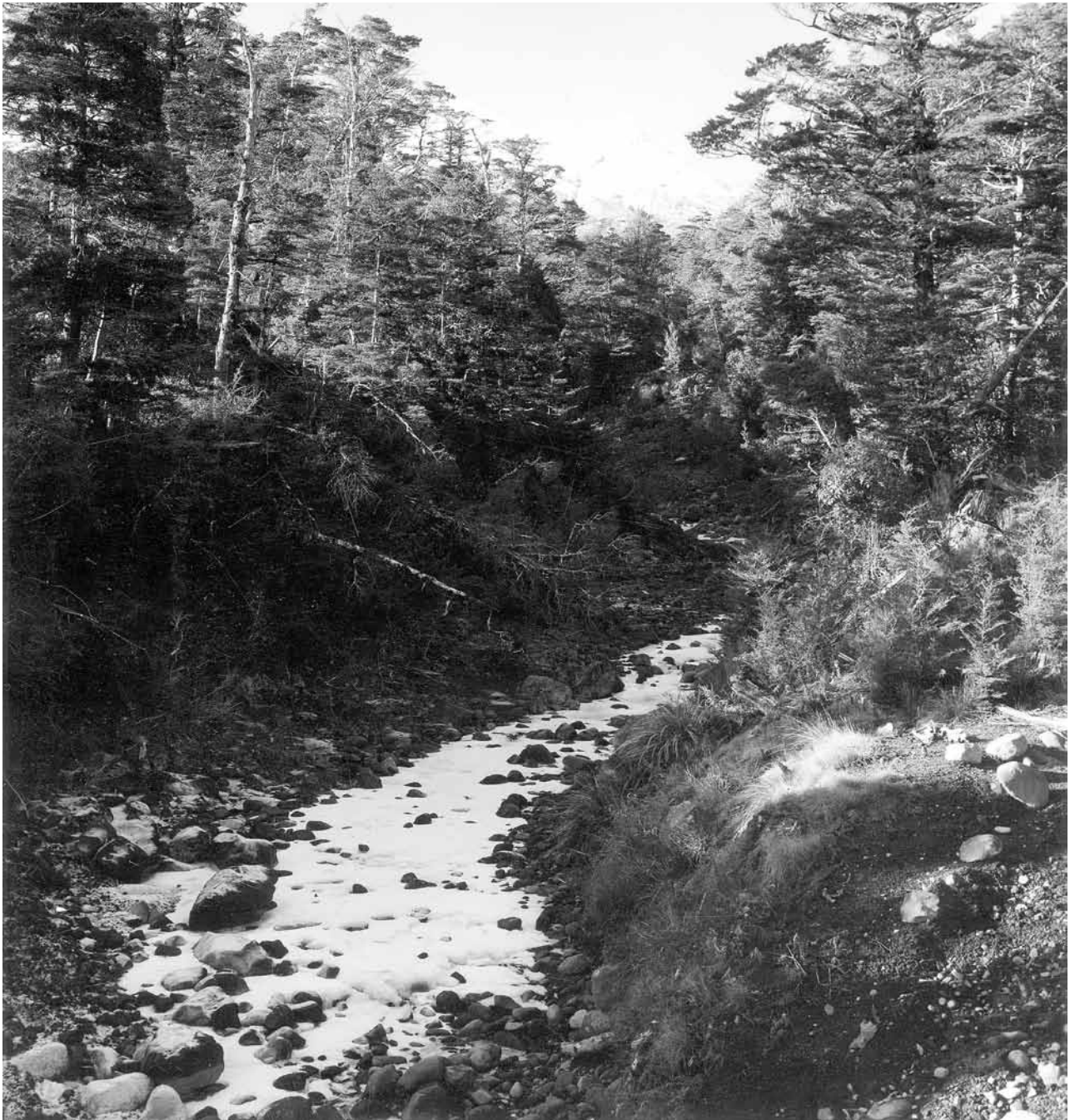
Ngāti Rangi to the spiritual essence of their ancestors' existence.²⁷⁸ This was in keeping with many of the claimants' views that the rivers in the inquiry district could be likened to the arteries of Papatuanuku: that each has a mauri and any unnatural diversions or controlled water-flows will lead to the deficiency of that mauri. Napa Ōtimi of Ngāti Tūwharetoa and Ngāti Turumākina told us that the mauri of Lake Rotoaira was a case in point:

The mixing of the waterways has drastically affected our native fish life and the whole Mauri and wellbeing of our taonga. The traditional fishing calendar for Lake Rotoaira which had been followed by hapu for generations [was] broken with the completion of the TPD. The tide and movement of water was in an anti clockwise direction from north to south traditionally taking a 137 day natural flow cycle according to many of our koroua and kuia.²⁷⁹

The umbilical link of the tangata whenua to the rivers in this region, or put another way, the oneness of people with their rivers, is perhaps best expressed through the well known whakatauki which the late Sir Archie Tairaoa reminded us of when he gave evidence for Ngāti Hāua:

<i>E rere kau mai te awanui</i>	<i>The mighty river flows</i>
<i>Mai te kahui maunga ki</i>	<i>From the mountains to</i>
<i>te moana</i>	<i>the sea</i>
<i>Ko Au te Awa!</i>	<i>I am the river!</i>
<i>Ko te Awa ko Au!</i> ²⁸⁰	<i>The river is me!</i>

Ngāti Hikairo researchers explained that the lake bed of Rotoaira resulted from the hollowed basin left by Mount Taranaki. Taranaki had wounded Tongariro in the side before he departed and the essence from the wound flowed into the lake bed.²⁸¹ Today, despite the historical



The frozen Mangawhero River, 1973. This is one of a large number of rivers that originate on Mount Ruapehu.

links of other groups, the Rotoaira basin is generally occupied by Ngāti Hikairo.

Of course many of the rivers in the inquiry district were thoroughfares by which people travelled. We listened to a number of accounts about waka that were carved from trees in the region and taken down the Whanganui River.²⁸²

Water also had physical healing attributes. The water from a creek (now called Soda Creek) about a kilometre south of the Wairehu Stream that runs into Lake Rotoaira was used to help relieve constipation.²⁸³ Che Wilson told us that the mix of wai māori and wai tōtā near the confluence of the Wāhianoa Stream with the Whangaehu River meant that it was a key bathing spot for those with skin ailments.²⁸⁴

Another therapeutic site of great significance to Ngāti Tūwharetoa and particularly Ngāti Hikairo is Ketetahi Springs on the northern slope of Tongariro. We learned that the springs were used by the hapū and iwi as a whole as well as others wishing to heal their rheumatism, arthritis, infected wounds, and their sports injuries.²⁸⁵ Dr Charlotte Severne related how ‘The ill and aged were carried up the Mountain and would stay in temporary shelters during their treatments.’²⁸⁶ The puia contained black sulphur and people would dam the water to create bathing pools.²⁸⁷ Sonny Piripi recalled how quickly skin disorders healed after bathing at Ketetahi:

The Springs were very good for arthritis, swollen legs or scabies. If you have anything like that on your legs the Springs will heal it. . . . Riding bareback skins your backside and then it turns into a scab and a rash, so we would go up to the Springs for a soak. You only had to go up there once, come back home and after a couple of days it was all gone away.²⁸⁸

We spoke earlier of how the springs got its name. In the final verse of the well-known waiata *Ka eke ki Wairaka* that was quoted as evidence, Rihi Puhīwahine of Ngāti Tūwharetoa reflected on the close associations between the natural and the human worlds when recognising Ngātoroirangi as having brought thermal energy to te kāhui maunga:

*Kāti au ka hoki ki taku whenua tupu,
Ki te wai koropupu i heria mai nei
I Hawaiki ra ano e Ngatoroirangi,
E ona tuahine Te Hoata, Te Pupu;
E hu ra i Tongariro, ka mahana i taku kiri
Na Rangi mai ano nana i marena
Ko Pihanga te wahine, ai ua, ai ahau,
Ai marangai ki te muri-e, kokiri!*

*But now I return to my native land;
To the boiling pools there, which were brought
From distant Hawaiki by Ngātoro-i-rangi
And his sisters Te Hoata and Te Pupu;
To fume up there on Tongariro, giving warmth to my body
It was Rangi who did join him in wedlock
With Pihanga as the bride, hence the rain, wind,
And the storms in the west; leap forth (my love)!²⁸⁹*

Certain spots in streams were used to perform tohi rites or blessings. These places were chosen because they emitted energy.²⁹⁰ They were also used for bathing after death or a battle. Don Robinson of Ngāti Uenuku and Ngāti Rangi recalled his grandfather instructing him to wash himself in the Mangawhero after working on the maunga.²⁹¹

Morehu Wana (also known as Molly Rupuha Reuben) explained that all the streams from the maunga were spiritually part of Ngāti Uenuku because their essence sustained the people and gave them vitality in their lives. ‘We swam in the waters as children’, she remarked, ‘We drank the waters. We fished in the waters. We used the waters as rongoa.’²⁹² Similarly, Te Rata Waho insisted that they were compelled to respect their rivers because the health of those rivers affects the lives of Ngāti Rangi: ‘[I]t is our life force’, he said, ‘and as it flows through our lands all that comes with it flows through us as a people.’²⁹³

(3) *Kaitiaki*

Associated with rivers were kaitiaki. We heard evidence on this subject as different witnesses tried to convey the spiritual impact they felt the diversion of water for the TPD scheme had had on their waterways:

Every waterway has its kaitiaki. Those were the taonga that were put there to protect the mauri. And so, if our rivers are diverted then we are upsetting the mauri and we are upsetting the kaitiaki that were put there for the very purpose of protecting the mauri of those rivers.²⁹⁴

Gerrard Albert explained how the deficiency in mauri affected the whānau or hapū responsible for looking after the resource:

The inability of tangata whenua to draw sufficient spiritual sustenance from water is claimed by many hapu and iwi as an adverse effect of both the diversion of the waters and the mixing of mouri between catchments. In spiritual terms, these are regarded as *poke* (spiritually unclean) practices, the net affect being the mouri of the water is disrupted and thereafter unable to provide sustenance to the wairua. The inability of tangata whenua to maintain their wairua in this manner can have metaphysical effects, with the problems manifesting themselves in physical and mental ailments. These can range from innocuous *mate Maori* (physical ailments associated with spiritual unease), through to more serious physical and mental sickness, culminating in *mate apakura* (death as a result of serious spiritual unease or *mate whakamomori* (suicide)).²⁹⁵

The late Matiu Mareikura's evidence put it bluntly:

You know to take away my Kaitiaki, you might as well take away my life. I might as well give you my hand to sever from my arm because that's what you do to me.

The kaitiaki is very, very important for us because he is our connection to our rights to go to the river. You see it's not just going to the water, you have to talk to these things first. You sit, and you pray, and you ask for their help, their assistance and their guidance and they give it to you and then you go.²⁹⁶

Ngāti Hikairo believes that Tongariro placed a spiritual guardian in Rotoaira which is there to this day. His name is Aorangi and he takes the form of a tōtara log.²⁹⁷ The log is white and sometimes has white raupō flowers lying on it.²⁹⁸ Tyrone (Bubs) Smith reported that Aorangi is ailing

because of the degradation of the mauri of Ngāti Hikairo's waterways:

Not long ago, he would always be seen within the lake, swimming upwind and against the current as he continuously circumnavigated his surrounds. Today, he is but a shadow of his former self, he has hauled himself up out of the water and not only is he sick, he is dying.²⁹⁹

Ngāti Manunui explained that Whangaipeke, the taniwha of the Whanganui River created the whirlpool at the confluence of the Whanganui and Whakapapa rivers when he turned around to head back downstream to his lair.³⁰⁰ His name relates to the vanquished Ngāti Hotu whose limbs were dismembered and fed to the taniwha.³⁰¹ The whirlpool has disappeared since the waters were diverted into the western diversion tunnel.³⁰² Merle Ormsby of Ngāti Hikairo spoke of the oldest kaitiaki Horikareo – the taniwha of the Tokaanu River.³⁰³ And Kevin Amohia spoke of the kaitiaki at the mouth of the Waimarino Stream which Ngāti Hāua paid respect to whenever eeling or fishing there.³⁰⁴

The mountains also had kaitiaki. Stories about the guardians of the mountains – Te Ririo (ruler of the patu-paiarehe), Takakā, Tarapikau, Taunapiki, and Rangitaiki – were conveyed in evidence. Edwyna Moana explained:

Our parents understood that there were kaitiaki that looked after the land and the people. My parents always spoke about the kaitiaki, Te Ririo . . . [he] looked after family members when they were sick.³⁰⁵

Ngāti Tūwharetoa told us that it was through Ngātoroirangi placating the kaitiaki with karakia that his descendants were able to establish themselves in the area.³⁰⁶ Ngāti Rangī said that they still go up the mountain to karakia and seek guidance from the kaitiaki on Ruapehu.³⁰⁷

When travelling in the mountain areas, specific preparations were made and observances were adhered to. We were told some travellers wore green chaplets and head-dress to shield their view of the mountain's gaze so as not



A strange occurrence at Upokongaro, Whanganui River, 1955. Gushing water created a whirlpool that was accompanied by a loud bubbling sound thought by Māori to indicate that taniwha were present.

to encourage the ire of the kaitiaki. The fear of the kaitiaki also ensured conservation protocols were adhered to.³⁰⁸ 'To cut down living trees in the mountain areas', for example, 'could only be done under the strictest conditions and only by knowledgeable tohunga or elders of the hapu and tribe.'³⁰⁹

It is a commonly held Māori belief that the spirits of tūpuna hover over wāhi tapu and that rivers and lakes

Kaitiaki

Monica Mataamua told us of two kaitiaki known to Ngāti Hinewai: Te Whiti-o-Rongomai, which appears as a bright white light in the western and southern areas of Ruapehu, and a striking male seagull that shows up at significant times and from which the Tieketahi papakāinga takes its name:

... [Tieketahi] would circle Hena and Whakahou and then it would follow the Tieketahi boundary down the Pepenui Stream to the Whanganui/Whakapapa River junction, then head upriver to Ruapehu. It is only seen by those it wants to show itself to. During the time of our grandparents, it came in the form of a fish. We have seen [it] ... maybe 10 times in the 14 years we have been back on [Taurewa] E2B1 ... We know it is a kaitiaki because you don't get seagulls around here too much. It was seen a few weeks ago near the Taurewa blocks the government is trying to sell.

... I saw such a light myself at Whakahou in 1996. I was staying there in a tent. The light hovered for a few seconds before it disappeared into Hena. In 1997, my two grandchildren saw it hovering above the Waimanu Block. The light was often seen along the Desert Rd when it was being built.¹

Kevin Amohia said Ngāti Hāua also recognised Tieketahi as their kaitiaki and that the bird came up the Whanganui River once a year.²

have their own protective or malevolent spirits. Matiu Haitana spoke of a waka taua that could be heard paddling a stretch of the Whanganui River between Anini and Papatupu, and a number of taniwha along the 'awa', including a white flounder at the bottom crossing of Karaka over to Moeawatea, as well as an eel with a red stripe on its back with eyes the size of plates.³¹⁰

Natural phenomena were sometimes likened to some sort of spiritual guide. Rangimarie Ponga, a witness for Tamahaki and Uenuku-Tūwharetoa, spoke of a white rainbow that appears in the Manganuioteao valley when someone from the valley dies. Each time she saw it as a child, her grandparents would remark 'that Uenuku had come to take his own home'.³¹¹ Indeed, in this inquiry the appearance of the rainbow was frequently referred to as a tohu (sign), particularly by those hapū united in the embrace of Uenuku (the Māori word for rainbow). When this Tribunal witnessed a rainbow over Mount Hau-hanga-tahi during the site visits, we were invited to regard this as a sign of the veracity of their claims. Maria Perigo, when giving evidence for the descendants of Winiata Te Kākahi, explained that on more than one occasion she had seen three rainbows appear at once in the Manganuioteao valley. She believed this was her ancestor Hinekoropanga.³¹²

(4) Wāhi tapu

The special regard for wāhi tapu imposes restrictions on how Māori behave towards them. Because they are special in a cultural, historical, or spiritual sense they require a change in behaviour from observers.³¹³ We saw this in the way some claimants revered the mountains and its rivers. Most of the claimants were able to identify wāhi tapu in the inquiry district, although the number varied greatly depending on the historical relationship with the land and the traditional knowledge that had been retained within that hapū. Ngāti Tūwharetoa in their 'Te Taumarumarutanga' report, for instance, gave evidence on a number of the sites associated with their patupaiarehe while providing a map with the locations of 50 wāhi tapu about te kāhui maunga. Included on the list were the following:

- ▶ *Te Whakapoukarakia*: A tiered hillock fortress where Te Haukopeke and his people carried out incantations for the return of Te Hamuti from Te Ririo.
- ▶ *Te Horehore*: A pa site where, prior to the hunting of the surrounding bird life, food offerings to Te Ririo and his clan were made under forest law.
- ▶ *Te Hanga*: To build a platform offering site to the guardian.

- ▶ *Rahuituki*: A conservation area where rituals to nga kaitiaki took place.
- ▶ *Oturere*: An area where the kaitiaki Te Ririo stood to take flight.
- ▶ *Pangarara*: The location where a party of travellers offended the guardian beings and were killed and eaten. Their bodies were found missing their lower limbs.
- ▶ *Te Pouraho*: The place where the upper body of an offender was hung and bound to a post by his genitals.
- ▶ *Tutangatahito*: The location where, in former times, the offender above had openly challenged the guardians.³¹⁴

We learned from Ngāti Hikairo of more than 10 wāhi tapu in their rohe, including Ketetahi Springs:

- ▶ *Paparua*: A battle site above the present site of Ōtūkou Marae, the battle from which Ōtūkou takes its name.
- ▶ *Te Wai Whakaata o Te Rangihīroa*: A small lake on Tongariro named after Te Rangihīroa, the eldest son of Pākaurangi.
- ▶ *Te Raroro-o-Te Rangihīroa*: After the death of Te Rangihīroa, Pākaurangi went up to Ketetahi to prepare and preserve the head of his son. It is from this event that the spring is named.
- ▶ *Te Maari*: Craters on the north-west face of Tongariro that were named after Te Maari I, the daughter of Pākaurangi.
- ▶ *Upoko Tataia and urupā*: Located on the Ōtūkou Road above Huimako.
- ▶ *Huimako*: A cliff face on the western bank of the Wairehu, overlooking Ōtūkou Marae. Matuaahu built his pā against this cliff face to counter musket warfare. The cliff commanded a view of the entire Rotoaira basin. Putatara and, later, shotguns would be sounded from the cliff as a signal that something important was happening in the district.
- ▶ *Mapouariki*: The place where the heads of two ariki, Tawiri-o-te-rangi and Te Rangi-ka-heke-i-waho, were slain by Tūrahui and set upon a clump of māpou.

- ▶ *Putate-uru*: A māra and pāharakeke, adjacent to a repo from which the paru was gathered for mahinga rāranga.
- ▶ *Tahuarangi*: Resting place for Rātana when travelling between his settlement near Whanganui and Matamata.
- ▶ *Manga-te-tipua*: A creek, also known as Sulphur Creek, which flows from Tongariro through the Okahukura Farm Trust into Rotoaira. This creek was an indicator of the weather conditions brewing on the mountain.
- ▶ *Wairua Tangata*: Close to Ngongo alongside State Highway 47.³¹⁵

The terrain is such that caves (ana) exist in many different parts of the inquiry district. Omangahau on the Taurewa block, which Ngāti Hinewai say was a refuge for their people, was used to hide Te Kooti and others after they were wounded at Te Pōrere. Some died and their bodies were left there: ‘It was declared a tapu place and was never visited or used again.’³¹⁶ We heard of burial caves near Ketetahi Springs belonging to Ngāti Hikairo and a large one in the Rangipō North 2 block belonging to Ngāti Waewae which was rediscovered only relatively recently.³¹⁷ The Tamahaki and Uenuku-Tūwharetoa witnesses described several wāhi tapu in the Manganuioteao valley, but this area is outside the inquiry district.³¹⁸

2.5.3 The resources of te kāhui maunga and their usage

As we have seen, the land in the inquiry district belonged to a number of hapū and over time its members used it, visited it or lived on it, named parts of it, and formed relationships with it. These hapū became its human kaitiaki, responsible for preserving and protecting the environment and its mauri while managing the use of its resources. Kaitiakitanga, in this sense, is a key dimension of rangatiratanga. For the hapū to maintain its kaitiaki role, human resources were required as well as effective governance and management of those resources.

The region’s harsh climate meant that large tracts of the land were without occupants for much of the year. The evidence of the late Matiu Mareikura, for example, pointed out that Ngāti Rangī did not have permanent

kāinga north of Karioi because the land was so inhospitable. But this did not mean that it was no man’s land.³¹⁹ After Te Wharerangi was killed, his family disappeared from the Rotoaira area for over two decades before returning to reclaim their tūrangawaewae. Despite the apparent absence of human activity the management and control of the natural and physical resources on the land were widely known to the hapū living on its fringes. Dr Ballara told us:

Taking any one stretch of land, Māori knew their own rights within it, both those more local and particularly in terms of crop cultivation and specific resources such as rat runs or eel ponds, and those more widespread and communal, such as the right to gather firewood and medicinal plants. They knew from which ancestors they claimed and inherited those rights; they knew about overriding mana of great chiefs over the land and their duties towards their protector and his to them; they knew about marriage or other gifts that had affected part of the land, and about the occasional more frequent permissive occupation and resource use by kin groups. . . . They knew about the rights to use the land for hunting and gathering, strictly restricted by rāhui for certain groups at particular seasons, open for wider use at other seasons.³²⁰

Through its leaders, the hapū exercised a right of management or guardianship – in other words, the practice and ethic of kaitiakitanga. ‘Thus, rangatira, on behalf of the collective and in accordance with tikanga, were entitled to involve themselves in the distribution, allocation and oversight of those rights.’³²¹ If there is a pattern that was to follow about te kāhui maunga, it was that areas of hunting and gathering as well as its highways, were kept open to use by the various members of the hapū or iwi while cultivated spaces were more closely monitored and demarcated.

In describing the resources they harvested, it is the land court evidence and tangata whenua oral evidence that provides the detail of customary resource use in this inquiry district and to which we must turn. There is a wealth of information that was put forward both as written evidence and which was conveyed to the Tribunal, either orally or in waiata, that show that the ancestors of

each of the claimant groups used different areas now in the National Park to gather resources. From the evidence these resources include:

- ▶ Freshwater fish: tuna (eel), tuna kāpō (blind eel), piharau (of the eel variety), inanga (whitebait), kōaro (*Galaxias brevipinnis*, somewhat akin to inanga but larger), kokopu (another galaxiad, sometimes known as native trout), kōura (crayfish), morihana (like goldfish or carp), Kākahi (mussels), ngaore.
- ▶ Birds: kākā, kererū, kiwi, tūi, weka, whio, karearea, pūkeko, titī or tāiko (mutton birds or black petrel), pārerā (wild duck), pekapeka (bats), karoro (seagull), eggs.
- ▶ Other fauna: kiore (rats), pigs (a later introduction)
- ▶ Plants: aruhe (fern root), kiekie, toetoe, harakeke, kawakawa, mamaku, kakaho, tawa, hīnau, tī kouka, tutu, koromiko, pikopiko, watercress, runa (dock leaf), pūhā, komata.
- ▶ Timber: tōtara, pūriri, pōhutukawa, mānuka, kahikatea, miro, matai, rīmu.
- ▶ Dyes: kokowai, paru.
- ▶ Other materials: water, geothermal resources, sulphur (used for medicinal purposes).

The sites where these resources were located with evidence of which kin groups used them are identified below (see section 2.5.3). The skill base that was developed in harvesting these resources is also given some attention. It should be remembered that food resources in this inquiry district were only gathered at certain times of the year. This meant that people visited the district when supply dictated. During the investigation of title to the Rangataua block, for example, Weronika Waiata of Ngāti Rangi, when describing the fish and birdlife in the southern Ruapehu area, commented on the impermanence of dwellings and the seasonal nature of harvesting:

I have been over the entire area of the [Rangataua] block and know the lake Rotokawau at its northern end. I have been often there catching inanga. There is a kainga up there not regularly inhabited, a mere stopping place used while up there fishing. When we go up from Otanika hither we cannot do it in one day; we generally sleep at Totara. We then go on,

and stay at Rotokawau while we are fishing; or if the kaka and weka are in good condition we catch them.³²²

Similarly, Ngāti Hikairo pointed out that their ancestors did not restrict themselves to living in permanent abodes in a single location, but rather moved seasonally to ensure there was kai available all year around. They had several cultivations on the Ōkahukura and Taurewa lands that they would work and then return to their principal kainga at Rotoaira.³²³ Whare and kainga belonging to Ngāti Waewae, and situated along the maze of complex track systems that cut through the dense forest and over the rugged landscape, reveal the transient nature of their existence.³²⁴

On the last day of 1871, Whanganui River residents visited te kahui maunga. Their report revealed the time lag since their last visit:

ka haere ta matou ope nui ki te takiwa ki Tongariro. I haere atu i etahi kainga i Whanganui nei; te take he whakaatu atu i a matou whenua ki nga uri . . . I te 9 o nga ra o Hanuere ka wehewehea ta matou haere; ka haere a Te Reimana me tona huihui ki Rangataua, ka haere a Te Kerei me tona huihui ki Raketawa, otira ki nga wahi katoa o Tongariro. Ka haere ko matou ki Waipuna, ki te Hihi, ki te titiro i nga whare o mua, me nga rakau waka, me nga tutu, me nga wai here manu.

a large party of our people proceeded from various settlements on the Whanganui to the district of Tongariro with the object of pointing out to our children and young men certain lands in that district in which we have an interest . . . On the 9th of January we divided into different parties, Te Reimana and his friends proceeding to Rangataua, and Te Kerei and his friends to Raketawa, and to various other parts of Tongariro. Our party went to Waipuna and Te Hihi to look at the sites of our houses in times past, and stumps of trees from the trunks of which we had formed canoes, and also the streams and places where we used to snare birds. [Official translation.]³²⁵

Resources were gathered with an expectation of sharing with others in the hapū. Jim Edmonds, a Ngāti Rangi pāhake, made this point when he recounted how



◀ Mānuka. The wood of mānuka could be fashioned into tools and weapons and it was commonly used as firewood.

▼ Toe toe. The feathery plumes of toe toe were used by Māori as a poultice on wounds or burns. Young shoots could be chewed to cure diarrhoea and urinary problems.





Pou-tū Stream and Mount Tongariro, circa 1910

Not everybody is a hunter or a fisher. Everyone has their role. The old people often chose the food gatherers. And it would stay with that family for two or three generations. It was a form of survival but also a form of aroha, this was the tikanga, sharing. For whatever reason, others weren't able to go out and fish. . . .

Everyone knew when I was going out to get kai because I rode past their houses. And the kai would get shared out when I got home. That's how it went.³²⁶

(1) *Ngā Ika*

The rivers and lakes were filled with a variety of fish-life including tuna (eels), kōura (freshwater crayfish), kōaro, kokopu, inanga (whitebait), and, more recently, trout. The origins of these species are associated with local traditional beliefs. The inanga, for instance, were said to have been introduced by Ngātoroirangi. He shook out his cloak and the strips became inanga, which Kerry-Nicolls said still abounded in the lake in 1883.³²⁷

The ability to provide delicacies for your visitors enhances a chief's mana. Napa Ōtimi told us that while Whanganui is famed for serving tuna as their kai rangatira, Te Heuheu was renowned for presenting his guests with koura.³²⁸ Dulcie Gardiner, who lives at Te Whare-o-kōura along the Tokaanu River, described how their people would 'toetoe koura' (catch crayfish using a line and bait) from the riverbanks. Ms Gardiner's own whānau had two large crayfish holes and they used mīti pirau tied with harakeke strung from mānuka rods. 'Koura had poor eyesight but a strong sense of smell', she said, 'so they could smell that piece of meat. They would cling to it and as soon as you felt the weight you would fling it out.'³²⁹ Hemi Biddle told us the Korohe community used the same technique in the Mangakoura Stream (again outside the inquiry district, just north of Tūrangi).³³⁰ Although these waterways are just outside the northern boundary of the inquiry district there were kōura holes in many of the rivers and the techniques for catching the crayfish were generally the same. Tiaho Pillot, a Ngāti Hikairo claimant, said the women would feel along the banks of the river to find the crayfish nests:

With their kete handles securely clenched between their teeth, they would slowly but surely search for koura. Once they were located, our women would then reach inside the nests and grab them around their backs and quickly put them in the kete.³³¹

Morihana (a type of carp) was also caught in the Tokaanu River. Not only was it a food source but the jelly from the morihana could be fed to old people and babies as a form of rongoā because it was rich in important nutrients.³³² The liquid contents in the morihana's bladder seemed to rid them of their chest infections.³³³ Merle Ormsby explained how her whānau caught morihana:

just in front of our homestead at Te Pahiko, we traditionally caught morihana in the backwash (inlet). We would form a wall of people in the river and then one or two people would go to the top of the inlet and drive the fish down towards the

wall of people. All we would need to do then was to scoop the carp up in our kete.³³⁴

Ngāti Manunui explained that the expanse of the Whanganui River between its source and where it meets the Ōhura River provided an abundance of food including eels, kōura, kokopu, cockabully, freshwater mussels, and whitebait.³³⁵ On special occasions groups used to go to the two big rivers, the Whanganui and the Whakapapa, for fish and eels. One man could catch 50 eels. The fish 'were skewered with sticks to open them up, salted and then hung on the verandah to dry – usually for months.'³³⁶ We heard lots of evidence about tuna. The swamp area where Lake Ōtamangākau is now situated was once a wetland where Ngāti Hikairo went to catch tuna.³³⁷ Ngāti Uenuku listed the following rivers among their storehouses for tuna: Manganuioteao, Mangawhero, Toanui, Makakahi, Ōrautoha, Ngāpakahi, Makara, Makatote, Ōruakukuru, Parapara, and Whanganui Awa.³³⁸ Morehu Wana said the Taonui, Mangawhero, and Mākōtuku streams were all fished by her father and that there were eeling and kōura places all along them.³³⁹ Turama Hāwira explained that his forbears had long monitored the tuna in the Mangawhero River and today his whānau continues the role:

We have also been monitoring the confluence of the Mangawhero and Whangaehu rivers. It is tapu for us to take tuna at the time when they are migrating. When going to the confluence you can actually see the tuna bunching up in schools of 80 to 200 at the meeting of the waters and traditionally you could almost count down to the exact week or the particular flood they would go to sea on.³⁴⁰

Jim Edmonds, when giving evidence for Ngā Uri o Rangiteauria, shared lots of practical knowledge about tuna in the Whangaehu Stream. Tuna heke (migrating eels) would have to pass through the Whangaehu during their journey to the coast. They migrated about March or April after preparing themselves for the salt water by cleaning themselves in the river's sulphuric waters. Increased levels of sulphur, obvious by a grey froth on the

river's surface, would occur at certain times in the year. Tuna heke would float with the current on top of the water not eating, but rather getting nourishment from the froth which in turn helped clean their insides out.³⁴¹ To catch them, Jim explained, an eel pā was built where there was a build up of froth:

We would make a pā by building strong stone walls, sometimes a metre in width and 3 metres in length on either side. The pā would channel the water into a poha, a type of funnel-net we made out of hoops of supple jack and woven flax. The opening of the poha was up to two metres wide. It was securely fastened to trees, or posts set firmly into the pā. At the end of the poha was a hinaki, a large net.³⁴²

Tuna from the creeks that feed into the Whangaehu, he told us, were a delicacy 'especially the ones that have pink flesh and taste like crayfish.'³⁴³ The late Matiu Mareikura's evidence provided further insight into the logic behind the pā which he was taught to utilise to trap the piharau and ngaore, a technique he said that had not changed in hundreds of years:

and they're looking for the special current that you create to slow the big current down . . . The fish will go across backwards and forwards, and when they feel the right one they will all go to that one channel. . . . People think 'Oh, you just build a paa' . . . but you're building a special current, they like the water at a certain speed and that's how you catch them. . . . Once it fills up, you put the net at the bottom with the kids in there and that's when the kids really enjoy it – kids with branches shaking them, running down the race.³⁴⁴

Fish and tuna were sought for sustenance and also to feed visitors at tangi and other formal gatherings. Ngāti Hikairo stated that Rotoaira was well known as the food basket of Ngāti Tūwharetoa.³⁴⁵ Morihana, inanga, and kōaro were the main sources of food caught in the lake. The streams that fed the lake – Wairehu, Ōtara, and Poutū – were also regularly fished.³⁴⁶ Charles Mitchell, a biological consultant specialising in freshwater fisheries, explained that kōaro were highly abundant in Lake

Rotoaira prior to the introduction of salmonids. The fish were small and scaleless (10 centimetres was often as big as they grew), and they were trapped at night by setting hinaki in the springs around the lake.³⁴⁷ A seasonal fish, the kōaro would be prevalent in November in Lake Rotoaira above the Poutū River. Strong westerlies, which are the prevailing wind on the lake, would often wash the kōaro up onshore by the bucket-full.³⁴⁸ Charles Mitchell recounted how 'Mapouriki, Ngapuna and Waione were the best springs about the lake for Koaro.'³⁴⁹ Weighted nets made of muka titore were placed near the outlets of the underground springs to harvest the small fish. Kōaro were often used to flavour food making it more salty.³⁵⁰ Kōaro, potatoes, and watercress was a common meal for families around the lake.³⁵¹ About 1906, rainbow trout were released into the lake against the wishes of local Māori. The result was the collapse of the kōaro fishery in Rotoaira.³⁵²

(2) Ngā Manu

The forests in the inquiry district were once teeming with bird and animal life: weka, kakapō, titī, kiwi, and kererū to name some of the species. No better description was given this Tribunal of the healthy state of bird life in pre-contact times and the rapid decline following European settlement than an account quoted from an 1884 newspaper. Reverend Richard Taylor recorded it during a visit to Tōpia Tūroa's pā at Nga-toko-e-rua:

i mua ki te haere matou ki te ngahere kahore e rangona a matou korero i te hoihoi o te manu he kapi tonu nga manga o nga rakau katoa i te tini o aua manu, i reira he nui atu te kukupa me era atu mea kia matou, a inaianei he tini o nga manu kua kahore. I nga tau kua pahure nei i ora ano te kakapo i roto i nga ngahere, a inaianei kua kahore katoa . . .

Formerly when we went into a forest we could not hear ourselves speak for the noise of the birds, every tree was full of them. Then we had pigeons and everything in plenty; now many of the birds have died out. A few years ago there was kakapo in the forests, now it is gone; and many other things have gradually died away.³⁵³



Kererū. One of a number of birds prized by Māori for their feathers, the kererū was also a highly valued food, eaten on special occasions.

We heard lots of evidence about kererū gathering, a custom continued even to recent times despite the law forbidding such practice. Sonny Piripi described how his tūpuna used water troughs to snare kererū:

By the time we came along, they had introduced guns and we used to get kereru by shooting them . . . We would shoot them for special occasions such as weddings and things . . . Kereru was a very sacred thing to eat to our koroua and kuia . . . they would take the feathers off in the bush, and dig a big hole to bury the feathers in. You don't want the feathers floating around the bush otherwise the other kereru will get scared and fly off. It was not permitted to eat pigeons in the bush . . . They would bring back the kereru and cook it, and the first that must eat it is the women³⁵⁴

Kererū fed on miro copses when the trees were in fruit. Some of the trees were especially named like Ngātitiouruonga at Kapuanui. Eighty-six-year-old Ringakāpō Payne of Ngāti Kurauia, Ngāti Waewae, and Ngāti Hikairo, recalled that the men would go out together into the bush during the winter months after the kererū had gorged themselves on miro berries:

No women ever took part in these expeditions as their presence was prohibited. Koro was the eldest male during our time in Otukou and he would say karakia in the bush . . . That was male business and I have no knowledge of the rituals involved . . . The pigeons were plucked in the bush. Some of the feathers were kept for making Maori mats and the rest buried deeply.

None of the catch was ever eaten in the camp, it was all taken to Otukou where the birds were prepared and cooked. There was a special way of removing the bones. Some of the birds were eaten fresh, but many were preserved in their own fat for special occasions.³⁵⁵

Edwyna Moana of Ngāti Hikairo said they used to eat both kererū and tūi. They tasted much the same although the tūi is a much smaller bird.³⁵⁶ Sonny Te Ahuru, who did a lot of hunting on the Taurewa block, said in June the place was busy with pigeon, tūi, kākā, and wild pigs all of which he used to shoot. The kererū, he recalled, had a beautiful taste when feeding on the miro berries.³⁵⁷ Rangi Downs recalled that kiwi and kererū were a common sight in the bush on Mount Pihanga. He explained:

it was mainly kai for wahine, especially the fat part. We would break it up with our hands, we didn't use knives and the men were left [to eat] the meat off the bones. They were delicious.³⁵⁸

Hemi Biddle of Ngāti Tūwharetoa and from Korohe described the same tikanga, which his father taught him.³⁵⁹

The Urewera block was a favourite hunting spot for Ngāti Uenuku because the miro trees were so numerous. Buddy Taiaroa explained that the name was originally Moanawera and before that Kopuni. The name changed



Native forest below the mountains. Birds and animals used to be plentiful here, but since European settlement there has been a gradual decline in the fauna. This is being steadily addressed by the Department of Conservation.

in the time of their tupuna Hinekoropanga who burnt her knee while warming herself beside a fire.³⁶⁰

Jim Edmonds, who spoke for the descendants of Uenuku-Tūwharetoa, said that the Mangaturuturu Stream, which flows from Mount Ruapehu in a westerly direction behind Raetihi and Rongokaupō to the Manganuioteao River, was renowned for the abundance of birdlife, kiore,

and other animals along its banks. His tūpuna set snares in the trees using long sticks called 'tahu' and the 'turu-turu' kept the snares in position. Kiore were a delicacy and the turuturu were also used to hold the front of the kiore traps upright.³⁶¹

The tītī (mutton bird), we were told, were plentiful about Mount Hau-hunga-tahi and Rangipō, but were

eradicated during the Second World War.³⁶² Jim Edmonds explained that Hau-hunga-tahi was also known to his people as Puke-tītī (Mutton Bird Hill), the nesting place of the tītī:

They would fly across from Taranaki. One such flight route was directly over the Manga-titi stream, where they rested and fed before carrying on. Rua-titi (muttonbird hole) is a neighbouring stream and rohe. The muttonbirds nested in holes in the tussock above the bush line. The old people found that the young muttonbirds were being eaten by introduced rats and stoats. The hill then became known as Puke-kiore (rat hill).³⁶³

John Reweti said his Ngāti Waewae elders told him there were hundreds of burrows along the eastern and northern upper slopes of Ruapehu. Ngā-piri-a-Taramouhere, between the Whangaehu and Wāhianoa streams (partially on the Rangipō North 8 block), was a favoured area for the tītī.³⁶⁴ Mark Gray also knew tītī was hunted on Rangiwaea-Tāpiri.³⁶⁵ They were a valued food source and, like those of other birds, their feathers were utilised to line or adorn their garments. Weka also was prevalent about Rangipō.³⁶⁶

Pārera (wild duck) eggs were collected from the causeway leading to Motu-o-puhi and tāiko (black petrel) eggs were retrieved from the slopes of Tongariro.³⁶⁷ Even karoro (seagull) eggs were to be found on the mountain. There were certain times of the year that people would make a pilgrimage to collect them.³⁶⁸

The relationship people had with the natural resources of te kāhui maunga was as much about their conservation as about their use. Consequently, all food sources were gathered with the future of the resource in mind. Witnesses giving personal testimonies reiterated the fact that when hunting and fishing in the region they would only take what they needed and would return the little ones.³⁶⁹

(3) Rongoā

In a society without medical doctors to refer patients to, each hapū relied on members with specialist knowledge of remedies that could be produced from plants, leaves,

roots, bark, branches, and also geothermal resources. Consequently, Māori methods for treating illnesses such as sore throats, broken bones, burns, cuts, bruises, and internal problems were well developed before Europeans reached Aotearoa. This information was passed down orally. Rangimarie Ponga, for example, told us as a child her family used koromiko for sore stomachs, and pītau and mamaku for burns. The mamaku, she said, was scraped and placed on the burn.³⁷⁰ Te Mataara Pēhi explained that koromiko was a good course of treatment for diarrhoea and that during the Second World War it was sent overseas for the soldiers.³⁷¹

While a few people retain an awareness of basic remedies and which plants to use, such as 'poultices for bruising or infected wounds, drinks for cleansing your insides, flax sap to keep a cut clean.'³⁷² Yet, a number of witnesses decried the loss of such knowledge:

One of the things the younger generation lost is rongoa knowledge. When I was a child we didn't go to the doctor unless we had to get an operation. We were brought up on rongoa instead. . . . we were always given rongoa for whatever we had, from upset tummies to sores on our skin.³⁷³

The gathering of rongoā had to be carried out in a sustainable way to ensure that there would still be some the next time it was needed. As one witness aptly put it, '[t]he bush was our old people's chemist' and its growth had to be monitored.³⁷⁴

Karakia accompanied the gathering and making of rongoā and we were told by Edwynna Moana that it was never made in the house: 'It was always made outside . . . It was all very tapu when my Dad and uncle were making it.'³⁷⁵

(4) Other resources

There are two geothermal fields in the inquiry district – Tongariro and Tokaanu-Waihi. The first is entirely in the district while the latter is only partly within. Both are considered taonga by the claimants and the CNI Tribunal has since acknowledged that the surface features, the geothermal fields, and the Taupo volcanic zone (TVZ),



◀ Koromiko. This plant was used by Māori in ritual ceremonies as well as rongoā to treat rashes, bowel complaints and sore stomachs.

▼ Horopito. This distinctive plant was used by Māori to treat fungal skin infections and to help wean babies off the breast. It could also be used as a peppery herb in cooking.





Miro berries. Once kererū had fattened themselves on the berries, they were considered by Māori to be a delicacy.



Harakeke seen at close range.

which includes the fields and features in the National Park inquiry district, are indeed taonga.³⁷⁶ Ngāti Tūwharetoa and Ngāti Hikairo claimed that the geothermal resources are spiritually significant to them and that traditional rights to use the pools and springs were allocated according to tikanga.³⁷⁷

Red ochre, sulphur, paru, and bark for dyes were to be found in only certain places in the inquiry district.³⁷⁸ During our site visits Rosita Dixon showed the Tribunal one of these places near Raetihi where her tīpuna extracted the ingredients for dye. Harakeke provided the material necessary for mats and garments and as we learnt these, like rongoā plants, were taken under the appropriate karakia and tikanga.

In addition to the natural resources of the environment māra kai and cultivation sites existed wherever permanent residences were established. Mahinga kai (the creation and maintenance of food gardens) was a communal exercise but each hapū and whānau had clear sections within the māra. The cultivations at Omawete, for example, illustrate how this worked:

Ngāti Waewae worked the cultivation in common with Ngāti Rongomai, Ngāti Marangataua and Ngāti Pouroto, and at the same time maintained separate hapū and whanau plots by the use of irrigation drainage running through the mara.³⁷⁹

Because of the lush alluvial soil, the ground selected for

Harakeke in swampy ground below the mountains. All parts of the plant were used by Māori for weaving mats, kete, and clothes; for dyeing and for binding; for medicinal purposes in the case of fresh cuts, blisters, and dressing wounds; and for stitching. They were also used in karakia; for example, before starting out on a fishing expedition.



gardens provided rich returns. We also heard lots of references to the abundance of watercress in the waterways.

2.6 TRIBUNAL FINDINGS

The geography in this inquiry district is marked by massive areas of terrain that were never permanently occupied, most obvious being the mountains, which dominate the environment. Moreover, there existed complex customary titles under which several hapū held rights to the area. We have seen that each kin-group associated with te kāhui maunga knew their territories and how far their user-rights extended. In traditional Māori society the boundaries between iwi and hapū groups might often be blurred. Any given group might on one occasion identify with their Ngāti Tūwharetoa neighbours, on another with their Whanganui kin, and at other times again might choose to exist independently. The relationships between

hapū were fluid and changed over time. Precise boundaries were not traditionally required between human groups. It follows that precise boundaries could not easily be applied to the lands and waters the groups occupied or used. Whilst a web of specific markers was known from historical associations or to resolve disputes, the demand for continuous precise boundaries and compartmentalisation of interests is a post-contact development, and is indeed 'difficult'. The evidence presented before this Tribunal reveals an on-going pattern of communal or collective unity at the hapū level for some purposes, family action for others, and unity above the hapū level for dealing with external enemies or threats. As stated in the introduction to this chapter, above day to day family life, hapū were the operative group on the ground, while iwi were looked to as a 'whakaruruhau' – 'a sheltering tree' in times of need.

We have also seen that the climate about te kāhui

maunga was often inhospitable and many users of its resources retained an itinerant existence in relation to those areas over which they held mana. Most groups settled on the fringes of the National Park inquiry district or beyond and made treks onto the land in the inquiry district as the seasons allowed or as they required its resources.

Movement seasonally from Tokaanu to Rotoaira, for example, for resource gathering in and about the lake, meant that some hapū had ownership or user rights or both on land both inside and outside the National Park inquiry district. The Crown argued that this access to rights across the park boundary justified its purchase of all the land within the National Park. In the case of hapū like Ngāti Hikairo, however, nearly all their land was in the inquiry district.

Also, during the period in which it obtained most of the area in the district, the Crown operated under the misconception that the land was unoccupied, without understanding that te kāhui maunga was a resource area on which whānau and hapū relied for much of their high-protein, high-fat diet. Access to te kāhui maunga and its resources was in fact critical to its people sustaining their lifestyle.

In the introduction to this chapter, we signalled our intention to give a lead as to the extent and distribution of customary rights between iwi and hapū of the volcanic plateau. We do so, however, with caution as the Tribunal is not an arbiter of custom and customary rights.

The Tribunal is, however, expected to judge what the Crown's duties were with reference to issues of customary usage and ownership and whether it fulfilled them under the Treaty of Waitangi. An understanding of customary rights is important to enable us to make this assessment and to allow us to form an opinion as to who held rights in a particular area at a given time.

Our findings and opinions are informed by all the evidence and submissions made to us during the course of the inquiry. We appreciate that where there are overlapping or competing claims the issues as to customary rights must be handled with care. Nor is it our place to tell claimants who they are and we should not bring our

own prejudices into our assessment of the evidence and submissions presented to us. It is with these provisos that we make the following comments.

The claimants are such because, as Māori, they were able to lodge a claim under the Treaty of Waitangi Act 1975 and they stated they brought that claim before this Tribunal on behalf of a group or for their whānau. In terms of the evidence they filed, the following sets out who they seem to be:

- ▶ There are clearly associations with Ngāti Tūwharetoa in the case of a number of claimant groups. Ngāti Tūrangitukua, Ngāti Kurauia, Ngāti Te Rangīta, Ngāti Turumākina, Ngāti Hikairo, Ngāti Waewae, and Ngāti Manunui are hapū of Ngāti Tūwharetoa. There were three claimant groups who lodged claims as Ngāti Hikairo in this inquiry. At least one of these did not want to be associated with Ngāti Tūwharetoa for the purposes of this inquiry but both their whakapapa and history show that Ngāti Hikairo is part of Ngāti Tūwharetoa through Hikairo's two wives, Puapua and Tatara, who were descendants of Tūwharetoa. This is not to deny their linkage to Ngāti Hikairo ki Kāwhia through their paternal line. In respect of iwi or hapū relationships, we hold the view conveyed by the Whanganui River Tribunal that, '[w]hile Maori custom generally favours hapu autonomy, it also recognises that, on occasion, the hapu must operate collectively'.³⁸⁰ The evidence shows that when Ngāti Tūwharetoa hapū have acted collectively in the past, Ngāti Hikairo have been part of the collective. To eliminate confusion in this report, Ngāti Hikairo and Ngāti Hikairo ki Tongariro will be referred to as Ngāti Hikairo, with reference to their Wai numbers where a distinction is necessary.
- ▶ With regard to Ngāti Hinewai, in our view their whakapapa also shows they are part of Ngāti Tūwharetoa through Hinewai's father Pouroto who was five generations removed from Tūwharetoa. The two whakapapa we were given for Hinewai 11 showed her as the mother of Uenuku-Tūwharetoa on the one hand and as the grandmother on the other. This Hinewai (who, we were told, had a strong Ngāti

Maniapoto lineage) could not have been the progenitor of Ngāti Hinewai as she flourished in the early nineteenth century.

- ▶ We did not get the full picture of Ngāti Rangi because not all their evidence was available to this Tribunal. But again their whakapapa clearly demonstrates that Ngāti Rangi, Ngāti Uenuku, and Ngāti Tamahaki are all closely related and their whakapapa are so intertwined that it appears almost impossible that members could be one and not the other. This was demonstrated during the hearing at Te Puke Marae when all parties acknowledged their Ngāti Uenuku connection.
- ▶ In the case of Ngāti Uenuku, after sifting through the blurred and sometimes veiled evidence, we believe the progenitor of the hapū that resided during the nineteenth century in the Manganuioteao valley, was the daughter of Tūkaihoru and also the nephew of Tamahaki. These two were the grandson and son respectively of Tamatuna (see whakapapa chart, section 2.4.4(2)). However, the descendants of Uenuku-manawariri also carry the name Ngāti Uenuku and the close connection between the two groups is self-evident (for example, Uenuku-manawariri is Tamatuna's first cousin). Ngāti Uenuku's land interests in this inquiry district through Uenuku (nā Tūkaihoru) are in Waimarino while interests derived through Uenuku-manawawiri lie generally between the Mangawhero and Whangaehu rivers.
- ▶ With regard to Ngā Hapū o Tamahaki again we did not have all the evidence available to us: these claimants expected to add to any gaps in information during the hearings for the Whanganui inquiry district. The evidence we were able to review implies that they are a group related both to Ngāti Rangi and Ngāti Uenuku. In this inquiry, while they stated that their interests lay in land between Waimarino and Raetihi, their issues mainly revolve around matters of common concern (for instance, with Ngāti Rangi and Ngāti Uenuku).
- ▶ Similarly, when the amalgamated claims under Ngā Uri o Tamakana are studied it is clear that the

whakapapa lines of these hapū are intertwined with the whakapapa of the other claimant groups, particularly Ngāti Uenuku, Ngāti Pouroto, and Ngāti Hinewai. While their Whanganui connection is widely-recognised, and though it is the stronger, their Ngāti Tūwharetoa link through Totokia, and with Ngāti Hikairo particularly, cannot be overlooked (see whakapapa chart, section 2.4.4(4)). Hence, there is some support for their assertion to having had customary interests in land and resources not just at Taurewa and Waimarino, but at times in Murimotu and as far north as Rotoaira.

- ▶ As to Ngāti Hāua, they are clearly centralised around Taumaranui (outside this inquiry district) but with strong whakapapa connections to both Whanganui iwi and Ngāti Tūwharetoa. It appears that any traditional claims that Ngāti Hāua have to areas now in the national park only relate to seasonal resource gathering on the western side of the mountains. Having said this, it should be noted that, while traditionally hapū had distinct interests at various places in te kāhui maunga's resources, they also had a common interest in the mountains themselves and, therefore, customary responsibilities to all the hapū of te kāhui maunga.

Finally, in making the comments above, this Tribunal is reminded of the strategic alliances of the past among ngā iwi o te kāhui maunga and encourages those claimant clusters with common associations to adopt a similar tactic for the purpose of negotiations. The Crown is more likely to negotiate with larger groups than smaller ones so we ask the claimants not to forget the whakapapa provided to us during the course of the inquiry. We encourage them to coalesce into unified groups in terms of those whakapapa relationships and we urge those leading such groups to have consideration for the smaller clusters.

Notes

1. John Te Herekiele Grace, *Tūwharetoa: A History of the People of the Taupo District* (Wellington: Reed Books, 2005), p 237 (doc A12, p120)

2. Merle (Maata) Ormsby, brief of evidence, 4 September 2006 (doc F9), p 5
3. Grace, *Tuwharetoa*, p 237 (doc A12, p 120)
4. Angela Ballara, 'Tribal Landscape Overview, c 1800–c 1900' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2004) (doc A2), p 9
5. Eddie T Durie, 'Custom Law', unpublished paper for Waitangi Tribunal members, 1994, p 29
6. *Ibid*, pp 26, 29
7. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 14
8. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 70
9. *Ibid*, p 71
10. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 14
11. Toni Waho, Che Wilson, Tūrama Hawira, Esther Tinirau, and Hinurewa Poutu, 'Te Ahi Ka o Paerangi: Te Mana Whenua o Ngāti Rangi: Ngāti Rangi Customary Tenure Report', report prepared on behalf of the Ngāti Rangi Claims Committee, February 2006 (doc A69), pp 13–14; Matiu Mareikura, brief of evidence, not dated, C/1992/52, Māori Land Court, Aotea district, p 3 (Te Whetumarama Mareikura, brief of evidence, 10 February 2006 (doc A65), app 1, [p 6])
12. John Tahupārae, oral evidence, 20 February 2006, Maungarongo Marae, track 2 (recording 4.3.5); doc A69, p 13
13. Document A69, p 5
14. Document A2, p 5
15. Pei Te Hurinui Jones, *Nga Iwi o Tainui* (Auckland: Auckland University Press, 1995), pp 14–16
16. Grace, *Tuwharetoa*, pp 113–114 (doc A12, pp 58–59)
17. R P Murray-McIntosh, Brian J Scrimshaw, Peter J Hatfields, and David Penny, 'Testing Migration Patterns and Estimating Founding Population Size by Using Human mtDNA Sequences', *Proceedings of National Academy of Science*, vol 95 (1998), pp 9047–9052
18. Janet M Wilmshurst, Atholl J Anderson, Thomas F G Higham, and Trevor H Worthy, 'Dating the Late Prehistoric Dispersal of Polynesians to New Zealand Using the Commensal Pacific Rat', *Proceedings of the National Academy of Science*, vol 105, no 22 (2008), pp 7676–7680
19. Document A2, p 31
20. Monica Matamoa, brief of evidence, 5 May 2006 (doc D25), p 2
21. Grace, *Tuwharetoa*, pp 104, 114 (doc A12, pp 54, 59)
22. Document A69, p 5; Robyn Anderson, 'Tongariro National Park: An Overview Report on the Relationship Between Maori and the Crown in the Establishment of the Tongariro National Park' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (doc A9), p 10
23. Document A2, pp 165–166; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 17
24. James Henry Kerry-Nicholls, *The King Country; or Explorations in New Zealand: A Narrative of 600 Miles of Travel through Maoriland with a Treatise on the Origin, Physical Characteristics, and Manners and Customs of the Maori Race* (London: Sampson Low, Marston, Searle & Rivington, 1884), p 255
25. Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa: The Shadow of Ngati Tuwharetoa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), p 18
26. *Ibid*, pp 19–20
27. *Ibid*, pp 21–22
28. *Ibid*, p 22; Herbert W Williams, *A Dictionary of the Maori Language* (Wellington: Department of Education, 1975), p 470
29. Sir George Grey, *Polynesian Mythology and Ancient Traditional History of the New Zealand Race, as Furnished by Their Priests and Chiefs* (London: John Murray, 1854), p 112; doc G17, p 50
30. Document G17, pp 51–52
31. Mark Tumanako Gray, brief of evidence, 10 February 2006 (doc A68), p 3
32. Tamati Kruger in the Central North Island District Inquiry referred to Hape-ki-tu-matangi-o-te-rangi who landed at Ohiwa. See Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 17.
33. Document A2, pp 65–66
34. Document G17, pp 22–24
35. *Ibid*, pp 24–25
36. *Ibid*, p 25
37. Grace, *Tuwharetoa*, p 64 (doc A12, p 34)
38. Document G17, pp 32–36
39. *Ibid*, pp 40–42
40. Thomas William Downes, *Old Whanganui* (Christchurch: Capper Press, 1915), p 9
41. *Ibid*; doc G17, p 39
42. Document G17, p 39
43. Grace, *Tuwharetoa*, p 115 (doc A12, p 59)
44. *Ibid*, p 117 (p 60)
45. Document A2, p 148
46. Tokaanu Native Land Court minute book 45, 22 March 1966, fol 357
47. Tahu Kukutai, Ian Pool, and Janet Sceats, 'Central North Island Iwi: Population Patterns and Trends' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2002) (doc A22), pp 65, 75
48. Kerry-Nicholls, *The King Country*, pp 177–178
49. Document A2, pp 30–31
50. Taupō Native Land Court minute book 2, 30 April 1881, fol 144
51. Barbara Lloyd, brief of evidence, 5 May 2006 (doc D47), p 6
52. Document A2, pp 31–32. The term 'rohe' is used here and elsewhere, not as referring to a neatly-bounded area of exclusive possession, but rather to a slightly indefinite area where rights were held and exercised, sometimes overlapping or interspersed with other groups also exercising rights.
53. Document A2, p 32
54. Grace, *Tuwharetoa*, p 115 (doc A12, p 59)
55. Te Maari Gardiner, *He Ohaaki Na Nga Matua Tupuna ko Okahukura: The Story of a Tuwharetoa Wharepuni* (Tūrangi: Ōtūkou Marae Committee, 1993), p 17

56. Document A2, p 34
57. Ibid, pp 75–76; Grace, *Tuwharetoa*, p 117 (doc A12, p 60)
58. D Ian Pool, *The Maori Population of New Zealand, 1769–1971* (Auckland: Auckland University Press, 1977), pp 53–58
59. Document A9, pp 8–10
60. Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia Publishers, 2003), pp 272–273
61. Document G17, p 221
62. Durie, 'Custom Law', p 73
63. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: The Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 79–83
64. Mead, *Tikanga Māori*, p 270
65. Counsel for claimants, generic submissions on national park management and environment law, 15 May 2007 (paper 3.3.34), p 4
66. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 1, p 18
67. Che Philip Wilson, brief of evidence, 10 February 2006 (doc A61), pp 7–8
68. Durie, 'Custom Law', p 67
69. Ibid, p 58
70. Grace, *Tuwharetoa*, pp 103–104 (doc A12, pp 53–54)
71. Document G17, p 61
72. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 83
73. Grace, *Tuwharetoa*, pp 130–132, 154–155 (doc A12, pp 67–68, 79)
74. Ibid, p 155 (p 79)
75. Document G17, p 156
76. Grace, *Tuwharetoa*, p 160 (doc A12, p 82)
77. Document G17, p 155
78. Ibid, p 157
79. Ibid, pp 157, 160
80. Ibid, p 158
81. Ibid, p 161
82. Ibid, pp 159–160
83. Ibid, p 160
84. Document A22, pp 65–66
85. John Manunui, brief of evidence, 28 September 2006 (doc G27), p 7
86. Document G17, p 173
87. Counsel for Ngāti Manunui, closing submissions, 14 May 2007 (paper 3.3.27), p 7
88. Document G17, p 251
89. Ibid, pp 226–240
90. Ibid, p 245
91. Jacinta Huatahi Paranihi, 'He Take Hei Pupuri Tonu i te Whenua: A Perspective on Hapū Formation in Māori Society' (Honours thesis, University of Otago, 2008), fol ii
92. Martin Wikaira, 'Ngāti Tūwharetoa: Lands and People', *Te Ara: The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/ngati-tuwharetoa/page-1>, last modified 22 September 2012
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94. Document G17, p 197
95. Ibid, pp 198–199
96. Ibid, p 199; Wineti Paranihi, under cross-examination by Reupena Taiamai in the investigation to the Okahukura block, Taupō Native Land Court minute book 4, 5 March 1886, fol 300
97. Document G17, p 245. Ngāti Waewae history and customary interest covered in chapter 6 of this report: doc A2, p 149.
98. Tony Walzl, *Ngāti Tuwharetoa Socio-Economic Analysis, 1865–1970* (Lower Hutt: Walghan Partners, 2007) (doc I9), p 78
99. Paranihi, under cross-examination by Reupena Taiamai, Taupō Native Land Court minute book 4, 5 March 1886, fol 300
100. Ibid
101. Document A2, pp 136–137; compare Taupō Native Land Court minute book 16, 6 February 1904, fol 82
102. Te Ngaehe Wanikau, brief of evidence, 27 April 2005 (Wai 1200 R01, doc E20), pp 3–4 (doc G17, p 76)
103. Document G17, p 76
104. Te Ngaehe Wanikau, brief of evidence, 28 September 2005 (doc G21), p 21
105. Te Ngaehe Wanikau, second brief of evidence, 28 September 2005 (doc G21(a)), p 3
106. Document G17, p 79
107. Document F9, p 6
108. Grace, *Tuwharetoa*, p 237 (doc A12, p 120)
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110. Document F9, p 7; doc D15, p 13
111. Tiaho Pillot, brief of evidence, 4 September 2006 (doc F6), p 5
112. Ibid, p 6
113. Gardiner, *He Ohaaki Na Nga Matua Tupuna ko Okahukura*, p 27
114. Document A22, p 65
115. Document A9, p 8
116. Document D15, p 13; see, for example, Kevin Hikaia, brief of evidence, 15 August 2005 (doc E24), p 11
117. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 28 May 2006 (paper 3.3.42), p 59
118. Grace, *Tuwharetoa*, p 237 (doc A12, p 120)
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121. Arika Piripi (Alec Phillips), brief of evidence, 12 September 2006 (doc F10(a)), p 3
122. Document F9, p 12
123. Terrill Campbell and Georgina Poinga, brief of evidence, 4 September 2006 (doc F7), p 9
124. Document F10(a), p 8; doc F9, p 13
125. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 89

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127. Counsel for Ngāti Hikairo ki Tongariro, closing submissions, 15 May 2007 (paper 3.3.25), p 2
128. Paper 3.3.30, p 9
129. *Ibid*, p 12
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131. Paper 3.3.30, p 13
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137. Document G25, p 4
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145. *Ibid*, pp 169–170
146. Angela Ballara, 'Te Whatanui', *The Dictionary of New Zealand Biography: Te Ara – The Encyclopaedia of New Zealand*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/1t86/te-whatanui>, last modified 30 October 2012; J A Mackay, *Historic Poverty Bay and the East Coast* (Gisborne: J A Mackay, 1949), p 87
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153. Evelyn Stokes, 'Wiremu Tamihana Tarapipipi Te Waharoa (?–1866)', *Dictionary of New Zealand Biography: Te Ara – The Encyclopaedia of New Zealand*, Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/biographies/1t82/te-waharoa-wiremu-tamihana-tarapipipi>, last modified 30 October 2012
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155. During the Rangipō North hearing of 16 March 1886, Wineti Paranihi said, 'Te Heuheu is a chief – he is a chief over the people of Tuwharetoa – he lost his chieftainship by electing a King at Pukawa': Taupō Native Land Court minute book 5, 16 March 1886, fols 5–6.
156. David Grace, *A Driven Man: Missionary Thomas Samuel Grace – Battling for Maori Causes amid Controversy, Hardship and Danger* (Wellington: Ngaio Press, 2004), pp 106–107
157. Petition of Heuheu Tukino, AJHR, 1883, 1-2, p 20
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171. Document E24, p 7
172. *Ibid*, pp 4–5, 7–9; counsel for Ngāti Hāua, closing submissions, 23 May 2007 (paper 3.3.39), pp 11–12
173. Paper 3.3.39, p 12
174. Document E11, p 9
175. *Ibid*, p 12
176. Document E24, p 10
177. Paper 3.3.39, p 17

178. Downes, *Old Whanganui*, p 22
179. Document A2, p 136. See also the map of Ngāti Tūwharetoa's rohe at 'Ngāti Tuwharetoa: Rohe (Tribal Area)', Te Puni Kokiri, <http://www.tkm.govt.nz/iwi/ngati-tuwharetoa/#>, accessed 4 November 2011. Korohe was a name given by the early missionaries and is taken from the biblical name Colossae.
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183. *Ibid*, pp 2–3
184. Document D15, p 10
185. *Ibid*, p 34; doc D25, p 12
186. Te Wharerangi (Sonny) Te Ahuru, brief of evidence, 4 September 2006 (doc F5), p 4
187. Edwyna Moana, brief of evidence, 4 September 2006 (doc F3), p 2
188. Document D25, p 9
189. Paper 3.3.18, p 2
190. Document A9, p 8; doc A2, p 136
191. Document D15, p 31
192. Document E24, p 14
193. Document D25, pp 4, 9
194. Document D15, p 35; paper 3.3.18, p 109. It should be noted that Ngāti Hinewai is said to be closely associated with Ngāti Tamahaki. See Dr Wharehuia Hemara, 'Central Claims Charitable Trust Oral and History Project', 1 May 2006 (doc D14), p 45.
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202. Document D46(f)). Note: Boy Cribb gave Tawhiri as Uenuku-Tuwharetoa's parent and Hinewai as Tawhiri's mother. See Robert Cribb, brief of evidence, 5 May 2006 (doc D27), pp 6–8.
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210. Kerry-Nicholls, *The King Country*, pp 276–277
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212. *Te Puke ki Hikurangi*, vol 6, no 31 (13 March 1906), p 5
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215. Paper 3.3.40, p 14
216. For example: Turuhia (Jim) Edmonds, brief of evidence, 5 May 2006 (doc D29), p 4; Rangimarie Ponga, brief of evidence, 5 May 2006 (doc D30), pp 5–8
217. Ross McKay Wallis, brief of evidence, 5 May 2006 (doc D28), pp 4–6
218. Counsel for Tamahaki and Uenuku Tūwharetoa, opening submissions, 17 May 2006 (paper 3.3.5), p 7
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Page 76: Whakapapa chart

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Page 87: Two Teardrops

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PART II

KĀWANATANGA AND RANGATIRATANGA

In part II of our report, we turn to examine the military and political engagement between the Crown and ngā iwi o te kāhui maunga in the latter part of the nineteenth century. Rather than seeing ngā iwi o te kāhui maunga as a single collective during this period, we divide them into two groups:

- ▶ Ngāti Tūwharetoa and its affiliates; and
- ▶ those more likely aligned with iwi and hapū of the upper Whanganui region.

This is not to deny the complex web of relationships between the various hapū and iwi comprising those two groups – which we highlighted in chapter 2 – but rather to reflect the usage in the contemporary documentary evidence, much of it recorded by government officials. That historical record often fails to give the specific names of the hapū and iwi involved, and instead uses only very loose descriptors to identify groupings. For that reason, the authors who prepared the key historical reports for this inquiry also tend to use more general descriptors when delineating the Māori participants (for example, upper Whanganui Māori, northern and southern Taupō, Taupō or Whanganui Kingitanga, and so on).

The key topics of military and political engagement in our district – the wars of the 1860s, the battle at Te Pōrere, the Rohe Pōtae negotiations, and the Taupōnuiātia application to the court – overlap with other Tribunal inquiries. As we have noted, much of the research relied on in this inquiry was also presented to the Whanganui and Central North Island (CNI) inquiries. The upcoming Te Rohe Pōtae inquiry will also deal with many of the issues that we touch on in chapter 4.

Part II begins with an examination of the wars that occurred in and around our inquiry district in the 1860s. The Crown and the claimants agreed that it was necessary to consider the broader context of the wars; as the CNI Tribunal observed, inquiry boundaries should not be seen as ‘a straitjacket.’¹ Chapter 3 thus examines the background to the wars, from after the signing of the Treaty up until the 1860s, in order to better understand the origins of the 1860s conflict, and its effects on Ngāti Tūwharetoa and upper Whanganui iwi and hapū. Complex loyalties were forming over these two decades, with the influence of Christianity, the advent of the Kingitanga, and the rise of Pai Mārire. Most of ngā iwi o te kāhui maunga did not fight in Taranaki in 1860, but were drawn into the war against the Kingitanga in Waikato in 1863. The wars in Taranaki and Waikato sparked other conflicts throughout the North Island for a decade, and in our inquiry district, hapū, iwi, and whānau were divided by their allegiances. Over the period of the wars, most of the

conflict occurred outside the boundaries of our inquiry district, the marked exception being the battle at Te Pōrere in October 1869, where 41 people were killed.

The claims in our inquiry raised questions about who was responsible for the wars, the particular allegiances of Te Heuheu, and the disruption and destruction that resulted from conflicts both at Te Pōrere and further afield. We examine each of these issues in chapter 3. The wars of the 1860s and the battle at Te Pōrere have already been the focus of several other Tribunals, including Hauraki, Tūranga, and CNI. The CNI Tribunal made preliminary findings on both the battle at Te Pōrere and the context of the wars. We note that we have heard additional evidence and claims pertaining to our particular inquiry district, including claims from Whanganui iwi.

After the wars, ngā iwi o te kāhui maunga shifted their focus towards peace and political engagement with the Crown, and chapter 4 of our report focuses on the negotiations between the Crown and Māori in the 1870s and 1880s. Of particular importance to our discussion here will be the requirement under the Treaty for a balance between kāwanatanga (governance) and tino rangatiratanga (tribal autonomy). The 1870s and 1880s was a complex period, with many different proposals as to how to manage lands, the advent of negotiations to open up the King Country, and the looming prospect – and then introduction – of the court in the inquiry district. After the wars, ngā iwi o te kāhui maunga resumed their focus on how to retain tino rangatiratanga over their lands and their institutions, and they tried many different approaches, such as large hui, leasing, Kemp’s Trust, the Rohe Pōtae negotiations, and the Taupōnuiātia application. The Crown responded with various reforms, including Bryce’s Native Committees Act

1883, and Ballance’s succession of hui, as well as the Native Lands Administration Act 1886. This chapter examines each of these measures in turn.

As we noted in our first chapter, the CNI Tribunal’s report was released while our inquiry was still in process. The claimants in our inquiry urged for the National Park Tribunal to support the majority of the CNI Tribunal’s preliminary findings. However, the claimants also stressed that in some areas, where this Tribunal had the benefit of additional evidence and research – such as on the Rohe Pōtae ‘compact’ and the Taupōnuiātia application – additional or refined findings should be made.² We examine these claims in our fourth chapter. As there were no claims regarding political engagement beyond 1886 in our inquiry, our discussion of political engagement ends there. The CNI Tribunal has already covered political engagement beyond the 1880s, as will the upcoming report on the Whanganui inquiry.

Following this discussion of political and military engagement in the National Park district, the next part of our report will move on to land issues, and the establishment of the Tongariro National Park.

Notes

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CHAPTER 3

TOWARDS CONFLICT, 1840–70: HE RIRI KEI TE HARAMAI

3.1 OVERVIEW OF ENGAGEMENT BETWEEN THE CROWN AND NGĀ IWI O TE KĀHUI MAUNGA, 1840–63

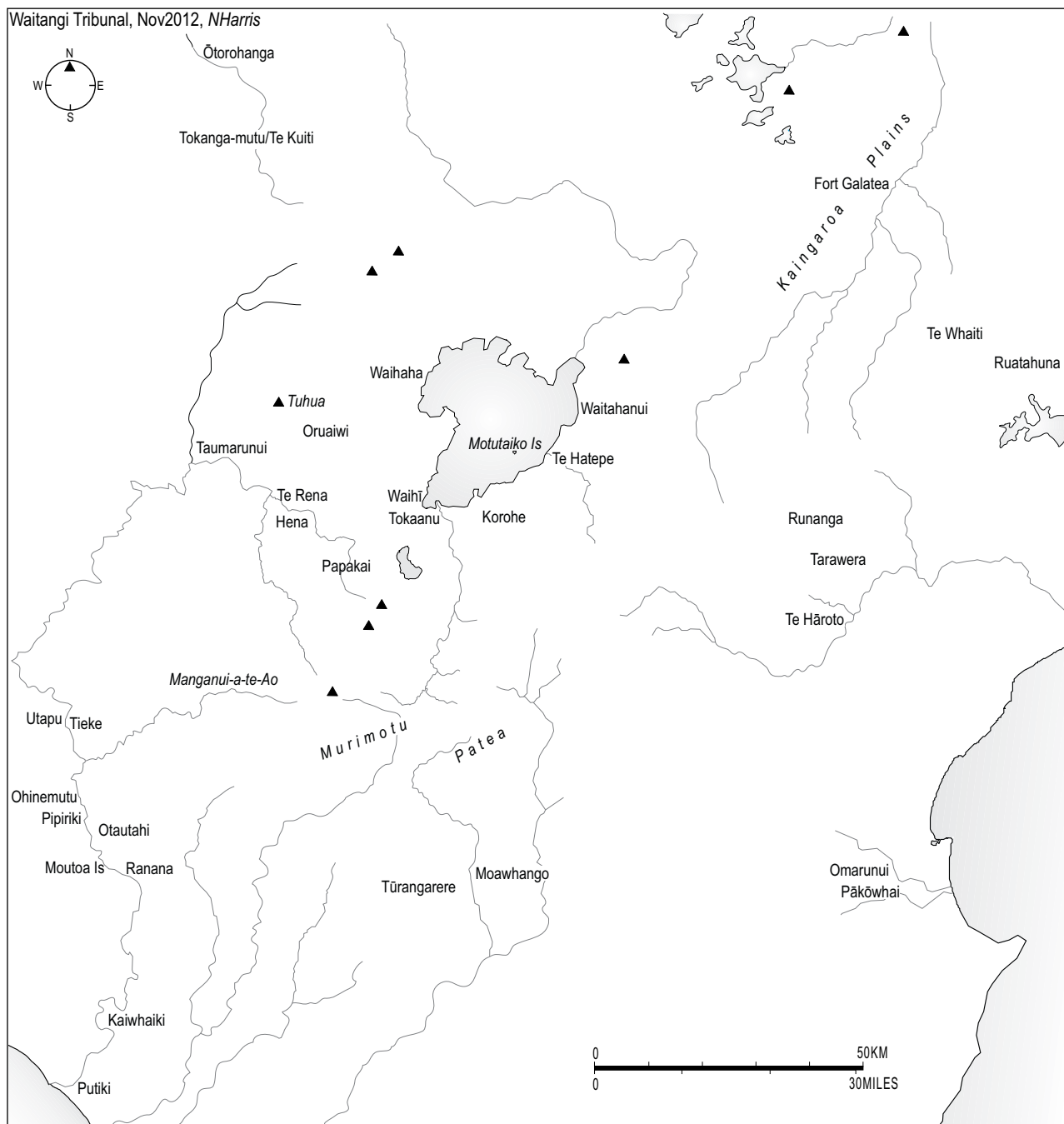
In this chapter, we review the experience of ngā iwi o te kāhui maunga during the three decades after the signing of the Treaty. In so doing, we examine the political and religious influences that led to war with the Crown in neighbouring districts and ultimately to the battle of Te Pōrere in our inquiry district. We begin with an overview of Crown engagement with ngā iwi o te kāhui maunga prior to the outbreak of fighting in Waikato in 1863, after which time ngā iwi o te kāhui maunga were drawn into a war outside their region.

3.1.1 Autonomy: ‘Hau wahine e hoki i te hau o Tāwhaki!’

The two decades following the signing of the Treaty of Waitangi were relatively peaceful in the central plateau area, although taua (war parties) were still considering and sometimes carrying out forays into the territory of neighbouring tribes to exact utu. Māori remained in the ascendancy in relation to Pākehā about te kāhui maunga even though the only real permanent occupation, beyond seasonal resource gathering, was around Lake Rotoaira, where Ngāti Hikairo, Ngāti Waewae, and some Ngāti Tama and Ngāti Whiti went regularly to plant and fish and left a small caretaker population.¹ In the 1830s, the area between Rotoaira and Manganuioteao had been abandoned after taua had passed through numerous times to invade Taupō or upper Whanganui. Its residents had headed to the safety of their kin along the Whanganui River or gathered for mutual protection on Motutaiko Island, in Lake Taupō, or in great pā around that lake’s edge. In 1842, for example, as Edward Jerningham Wakefield travelled the 45 to 50 miles between these centres of population he noticed several deserted pā and settlement sites and his companions pointed out a number of battlefields.²

After the signing of the Treaty of Waitangi, the Crown stationed magistrates at Rotorua and Whanganui for periods in the 1850s, but te kāhui maunga remained beyond the reach of the colonial government. Indeed, no serious government presence was felt until the 1860s when a resident magistrate based at Ōruanui, at the northern end of Lake Taupō, began sittings throughout the district. Europeans who came to live in the region were few in number and did so largely by invitation. They were encouraged ‘to lease land under the protection of the chiefs’, but any who had designs on purchasing tracts were not welcome.³

The Māori population in the 1840s around the Taupō area is estimated to have been approximately 1,600 people and these were, in the main, descendants of Tūwharetoa.⁴ In 1840, Mananui Te Heuheu Tūkino II refused to sign the Treaty and conveyed to Queen



Map 3.1: Significant sites

Victoria's representative the message that Her Royal Highness should return from whence she came: 'Hau wahine e hoki i te hau o Tāwhaki'.⁵ More than once, the great chief told Pākehā visitors that he rejected the Queen's authority in his territory.⁶ As we saw in chapter 2, he sent Ngāti Waewae to the Rangitikei district to protect Ngāti Tūwharetoa's southern land interests from Crown agents in Whanganui seeking to buy up large tracts of land under the Crown's right of pre-emption.⁷ Although he died in 1846, Mananui's attitude to colonial impingement continued to be reflected in Ngāti Tūwharetoa's spirit of independence and their endeavours to maintain tino rangatiratanga especially over their lands. His injunctions to hold fast to the land would be evoked during the wars of the 1860s.

Early population counts and estimates for the Whanganui Māori population are unreliable, but from 1840 the trend was certainly downward with very poor fertility and replacement ratios.⁸

Despite some Whanganui chiefs, including Te Peehi Tūroa and his son Te Peehi Pakoro, appending their names to the Treaty of Waitangi, it was not until the 1860s that British law found its way to the upper reaches of the Whanganui River. The first Pākehā were seen upriver only in the 1840s, and for at least two decades the chiefs remained the real administrators of authority in their communities. That said, like their lower river neighbours, Māori from the river's upper reaches made the most of the opportunities offered by having a settler town established at the mouth of the river. They interacted with Pākehā accessing the new markets without having to sell their land.⁹

3.1.2 Peace and prosperity: 'Haere, kauwhautia te Rongopai ki nga wahi katoa o te ao!

By the 1830s, Ngāti Ruanui converts to Christianity in Taranaki had adopted a mix of Wesleyan and Māori versions of Christianity, but their evangelists' attempts to spread the gospel among Whanganui iwi ended with at least four of their number being killed and eaten.¹⁰ It was Wiremu Eruera Te Tauri, of the Ngāti Tūwharetoa hapū Ngāti Te Rangiita, who was first able, in 1838, to preach

the Christian message at Pūtiki. Te Tauri's success was due to his chiefly links to Te Āti Haunui and his marriage to a woman of the local Ngāti Ruaka. Christianity soon spread up the river. The Reverend Henry Williams, who trekked from Pūtiki to Taupō in December 1839, recognised Christian practices at pā all along his route.¹¹ The gospel, it seems, had been accepted 'without hearing a word from a Pakeha missionary'.¹²

With the gospel came literacy and Māori eagerly sought the latter as a means to gain access to the new world. After meeting a group of Ngāti Tūwharetoa lads along the river, Williams wrote:

These youths had books which were given them from the Rotorua station and could read; they were residing in this neighbourhood. Thus had instruction been conveyed from tribe to tribe and many have been taught to read in the remotest parts of the island and had the Word of God conveyed to them, who never saw a European.¹³

Indeed, it was estimated that by the 1850s, half of all Māori adults could read and about one-third could write in Māori.¹⁴

When the Reverend Richard Taylor arrived at Pūtiki in 1843, his missionary efforts appear to have been well rewarded, if the number of baptisms recorded (peaking at 768 in 1848) is an accurate way of measuring the spread of the gospel among Māori.¹⁵ The Anglican missionary's influence stretched to the upper reaches of the Whanganui River, one of his converts being Tahana Tūroa, the younger brother of Te Peehi Pakoro, who along with Taylor did much to secure peace between hapū of the upper and lower reaches of the river.¹⁶ Both the Wesleyans, through Richard Woon, and the Catholics, via the Frenchman Father Jean Lampila, also had varying success along the river.¹⁷ With Christianity having taken hold among former enemies, the need for hapū to live in or around a fortified village was unnecessary and so all along the river they moved down to the fertile flats along the river-side. As if to reflect the new mood of hope, many of the names of these new communities were taken from the Bible.¹⁸

Why Did Ngā Iwi o te Kāhui Maunga Turn to Christianity?

New Zealand historians in the 1970s produced one of the most searching debates on Christian ‘conversion’ in the English language.¹ Generally speaking, the issues that interested them related to the circumstances surrounding Māori conversion, especially since American Harrison Wright suggested Māori had converted wholesale due to mental and cultural disruption resulting from the impact of European technology and society.²

It was all useful argument, but really much of the debate was centred round the experience in the north, with only Kerry Howe locating his research outside of the Bay of Islands. In some respects, the situation about te kāhui maunga differed from the northern experience. Conversion, in Māori terms, came almost entirely by way of the agency of influential members of other tribes trying to evangelise their former enemies. A loss of confidence in the indigenous culture does not appear to have been a factor in the acceptance of Christianity by either upper Whanganui or Ngāti Tūwharetoa hapū. Nor the inference that Māori valued not so much the Christian message but the messengers who brought it. Such proposals suggest ngā iwi o te kāhui maunga were passive agents during the early colonisation period. Of course, they were not, nor indeed, were Māori as a whole.

The acceptance of Christianity among Ngāti Tūwharetoa came later than in the coastal regions. Despite the Rotorua-based missionary Thomas Chapman (Tamati Hapimana) making intermittent visits from 1839 and the Reverend Seymour Spencer setting up a mission station at Motutere (about half-way between Taupō and Waihi) in 1843, the gospel really only took hold towards the end of the 1840s after two Ngāti Ruanui proselytisers were martyred at Tokaanu.

Christianity had already reached Taranaki, and though many Ngāti Ruanui chiefs were very angry, it was decided

The single most important inducement, sighted by Māori elders and not often given due emphasis, was Christianity’s ability to bring to an end tribal warfare and its associated evils of ‘kaitangata’ – the practice of eating human flesh, which was rather more common than many people realise, and ‘whaiwhaia’ – bewitching. Witness, for example, Iwikau Te Heuheu’s statement to Agnes Grace when asked if he had ever been on the road to Napier before:

The tears started into the old warrior’s eyes and he replied: ‘Oh yes, Mother, I know that road well; it is one of the roads on which we used to go to kill men. I have killed and eaten many men on that road. I am sorry for it now, but Mother, I knew no better then.’³

It is difficult to appreciate what impact this sudden termination had on a society that for generations had not been able to conceive of any course to halt these practices, and had accepted the customs as an inevitable way of life.

Doubtless, men like Te Heuheu accomplished a real change of heart. ‘Such cases have not been wanting,’ wrote the Reverend Thomas Grace in 1856, ‘though they do not appear to be on a large scale. At the same time it must be remembered that we are not good judges of our own work.’⁴

to let the incident pass. When Taylor brought a party from Whanganui to Iwikau Te Heuheu at Pūkawa and Te Herekieke at Tokaanu to ask that the hatchet be buried between the tribes, hostilities between Ngāti Tūwharetoa, Ngāti Ruanui, and Ngā Rauru ended, allowing an open door for the spread of the gospel.¹⁹ Te Huiatahi I invited a missionary presence at Poutū, where he offered to set aside land and erect a mission station, while many Ngāti Tūwharetoa presented themselves as candidates for baptism.²⁰ In contrast to Whanganui, where the spread of Christianity led to a cessation of hostilities between

Last Act of Utu

On 12 March 1847, the last act of utu between Ngāti Tūwharetoa and Ngāti Ruanui occurred when Mānihera and Kereopa of the latter tribe went among Ngāti Tūwharetoa in an attempt to spread the gospel. They had ventured into their enemy's territory in accordance with God's great commission to go and make disciples of all nations – 'Haere, kauwhautia te Rongopai ki nga wahi katoa o te ao!' After preaching at Waimarino then Waiariki (two pā at the southern end of Lake Taupō), they headed for the settlement of Tokaanu – the residence of Te Herekieke. En route they were ambushed and killed by a group led by Te Huiatahi 1 of Ngāti Waewae from Rotoaira, 'an old chief nearly seventy', who felt duty bound to avenge his relative, Tauteka, who was killed by Ngāti Ruanui at Waitōtara in 1841. Tauteka's widow (who was Te Herekieke's mother) had solicited Te Huiatahi's services when her own people at Tokaanu were reluctant to do it.¹

former enemies, the gospel amongst Ngāti Tūwharetoa took hold only after hostilities ended.

The arrival of Catholicism in the southern lake district came about because of a period of neglect on the part of the Protestants. When Seymour Spencer withdrew from the district in 1844, Ngāti Tūwharetoa again asked for a resident missionary. For many years, none was forthcoming, which allowed the Roman Catholics to make inroads around Lake Taupō. By the end of the decade, they had established a mission in southern Taupō that could count among its congregation Ngāti Hikairo, Ngāti Tūrangitukua, and one section of Ngāti Turumākina. As we will see, these would be the Ngāti Tūwharetoa hapū that were present in the pā at Te Pōrere in 1869. In 1852, Fathers Lampila and Regnier performed their first baptisms, which included Tanira (Takuira?) Te Herekieke's. (Tanira was Tauteka's son.) Christian marriages amongst

Ngāti Tūwharetoa also began to occur at that time, with Tōkena Te Kerehi (Mananui Te Heuheu's younger brother) and Irena Moe being among the first couples to take their vows.

In 1850, the Church Mission Society finally moved to answer Ngāti Tūwharetoa's call for another missionary by preparing to send the Reverend Thomas Grace. However, Grace was diverted to Tūranga to substitute for Archdeacon William Williams, who was abroad, and it was not till a full three years later that he was able to make a preliminary expedition to select a site at Pūkawa – the pā to which Iwikau Te Heuheu had removed himself after his brother's death. Grace and his family relocated there in April 1855, and from the outset they had Iwikau's protection, even though most members of the Te Heuheu whānau at Waihi had adopted the Catholic faith.

Iwikau's principal wife was of Ngāti Manunui, and Pūkawa was part of their lands. Seventy acres were set aside for the mission station, and by the end of the first

Blaze of Faith

An oral tradition about the spiritual allegiance to the Roman Catholic Church by most members of the Te Heuheu whānau is given in John Te Herekieke Grace's *Tūwharetoa*. He records an occasion where Taylor and Father Lampila argued before Mananui Te Heuheu as to whose faith was the correct one. The chief stopped the argument and requested that a fire be lit. When it was ablaze he invited the reverend to sit on it. Taylor declined so the priest was asked to do so. Lampila slowly approached the fire and just as he was about to step into it, Te Heuheu halted him and said, 'Your god must be the greater; for no sooner had I turned to you, than you were prepared to sit on the fire. I am a great chief and, therefore, I must have a great god. I will accept your faith!' ¹ It was said that Lampila was wearing roman sandals under his robe. ²

year, 10 cottages, a two-storey mission house, and a chapel had been built, while nearly a hundred Māori were living there, attracted no doubt by the new teaching, the peace, and by the trading opportunities the station provided.²¹ Next to Ngāti Manunui, it was Ngāti Te Rangiita who helped Grace most in his work. This early Christian era was characterised by the splitting of communities and the establishment of new Christian villages, while the unconverted or followers of other denominations remained in the old locations.²² Pūkawa illustrates this point. Te Heuheu lived there while his own hapū, Ngāti Turumākina at Waihī, were divided, one section Catholic and the other Protestant.²³

In general, it was the men of rank who were to become the leading protagonists of the faith message, or as the missionaries describe them, the native teachers, and monitors. Grace could count among his teachers a number of young chiefs in strategic villages: Hāre Tauteka at Tokaanu, Hakaraia in the Tongariro delta area, Wairehu at Rotoaira, Aperahama te Whetū at Motutere, Te Poihipi Tukairangi at Ōruanui, and Hone Teri and Te Haeana on the western bay side of the lake. Assisting him at Pūkawa were Reupena Taiamai (younger brother of Te Wharerangi) and Hoani Te Aramoana, Rāwiri Kahia, and Hōri Hapi, the latter three all well-born chiefs of Ngāti Te Rangiita. Their spouses and Ruingarangi, Iwikau's principal wife, were responsible for the domestic side of the work at the station and they became Mrs Grace's friends.²⁴ Despite the strong emphasis on the Queen as the head of the church and the defender of the faith, reflected in the Anglican prayers that these men would have recited regularly, in the decades to come some of them would shift their allegiance to the Kīngitanga, to Pai Mārire, to Te Kooti, or to all three. In some cases, they rejected the British monarch outright, before returning to her when these other movements brought grief.

At times, Christianity took a back seat to poor race relations between Māori and settler. From the outset, confusion and uncertainty surrounded the New Zealand Company's purchase of the land on which both the Hutt Valley and Whanganui settlements were established. Both Ngāti Tūwharetoa (1845) and Ngāti Hāua (1846)

Te Huiatahi i c 1777 – c 1855

Te Huiatahi was a chief of the Ngāti Waewae hapū of Ngāti Tūwharetoa. He was renowned for avenging Tauteka ii's death when he killed Te Manihera Poutama and Kereopa, two Ngāti Ruanui preachers who were trying to proselytise Ngāti Tūwharetoa. The killing occurred on 12 March 1847, on the instruction of Tauteka's widow, and Te Huiatahi was reportedly about 80 years old at the time. With assistance from the Reverend Richard Taylor, peace was eventually made between the two tribes. Te Huiatahi requested a minister for his pā at Poutū where he offered to set aside land and build lodgings for a missionary. From that time, many of his people were baptised.

were involved in excursions to the Wellington district to align themselves with Te Rauparaha and Te Rangihaeata respectively. The latter under Tōpine Te Mamaku attacked a military outpost at Almon Boulcott's farm in the Lower Hutt, killing six British soldiers, before eventually returning to the Whanganui River.²⁵

The repercussions for the Whanganui district were considerable and lasting. Because various hapū disputed the terms of the sale of the land for the Whanganui township, disagreeing with one another about who had mana (traditional authority) over the town, and because of the Boulcott affair, by early 1847 Whanganui had become a garrison town.²⁶ This angered both Te Mamaku and Te Peehi Pakoro, who was the head of the Patutokotoko people. These two were considered to be the leaders of the upper Whanganui hapū.

More reinforcements from the militia arrived, and a number of women and children were evacuated. By this time, there were nearly 800 soldiers and fewer than 200 settlers. Tensions increased when a relative of the chief's was accidentally shot in the face by a British sailor. The murder of Mary Gilfillan and three of her children a few



The Reverend Thomas Samuel Grace

c1815 – 30 April 1879

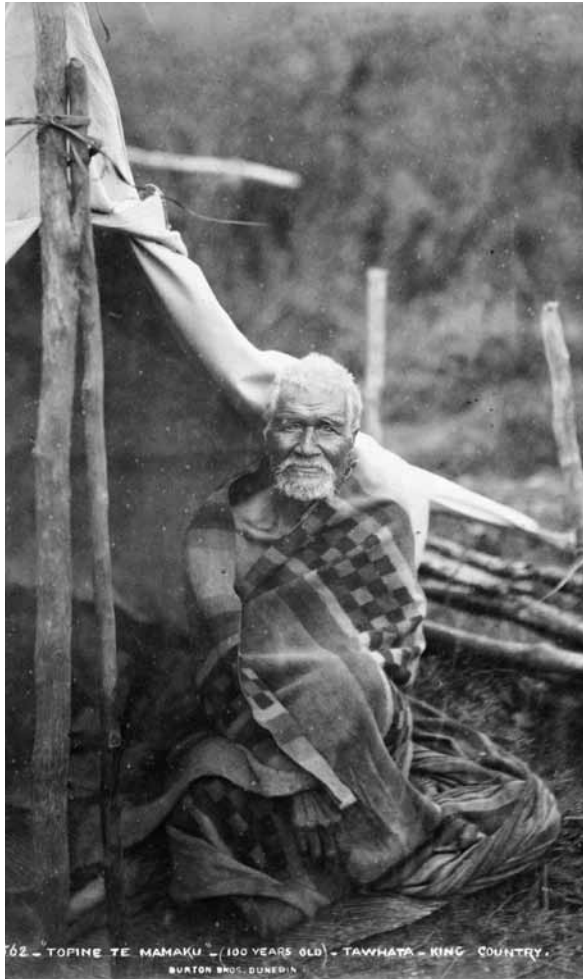
Born in Liverpool, England, Thomas Grace was a successful businessman before he joined the Church Missionary Society and came out to New Zealand in 1850 with his wife, Agnes, and two children. A third child, Thomas Samuel junior, was born at sea.

Grace's first posting was to Turanga, where he stood in for the Reverend William Williams for almost three years. In 1855, he established a mission station at Pūkawa, on 70 acres set aside under the mana of Iwikau Te Heuheu. The original raupō mission house was eventually replaced by a substantial two-storeyed house, an industrial school, boarding school, and cottages.

Grace opposed the official policy of rapid racial amalgamation, supporting instead the principle of Māori economic independence. He encouraged sheepfarming and imported machinery to allow his parishioners to learn to spin and weave. After the 1856 Hinana hui at Pūkawa to install the Māori King, Grace was accused of instigating the King movement and Donald McLean urged the Church Missionary Society to remove him. When the Taupō district became unsettled by war in 1863, the Grace family, which now included eight more children, left Pūkawa. Grace never returned permanently to the Taupō district. He died in Tauranga at 64 years of age.¹

days later, regarded as an act of utu, created panic in the settlement. Five of those responsible for these killings were captured by lower river people and handed over to the British military. Four were executed. Te Mamaku responded with a blockade of the town. Two months of minor skirmishes followed before the blockade was lifted. In May 1848, through the Whanganui deed, the government effectively repurchased the Whanganui block, paying £1,000 for 34,911 hectares, 2,200 of which were reserved for Māori.²⁷

Despite such interludes, prosperity embraced the upper river people. In 1848, Te Mamaku's war with the government was well over, and it was estimated that 75 tons of wheat was being grown on the river, for which Whanganui Māori were receiving as much as three shillings and sixpence a bushel.²⁸ Governor Grey offered financial assistance, and several water-driven flour mills were built. The ever-increasing settler population in Whanganui town provided a steady market for their produce and a welcome source of trade goods.



62 - TOFINE TE MAMAKU - (100 YEARS OLD) - TAWHATA - KING COUNTRY.
BURTON BROS. DUNEDIN

Tōpine Te Mamaku

c 1790–1887

Tōpine Te Mamaku was a chief of Ngāti Haua-te-rangi in the upper Whanganui region. In the 1820s, he was talked out of joining Te Rauparaha and Ngati Toa in their migration to Kapiti. In 1829, he fought against Te Rauparaha and his Ngati Raukawa allies, narrowly avoiding death.

In 1846, Te Mamaku and his Ngāti Haua-te-rangi warriors joined Te Rauparaha's lieutenant Te Rangihaeata in resisting European settlers in the Hutt Valley. Te Mamaku himself led an attack on a military outpost at Almon Boulcott's farm, where his party killed six soldiers and wounded four, successfully demoralising the Pākehā community.¹

Back in upper Whanganui the same year, Te Mamaku warned the settlers that any soldiers sent to Wanganui would be attacked, and when soldiers arrived he was true to his word. There were sporadic raids and murders the following year after some young upper Whanganui Māori killed a settler's family and were hanged. Te Mamaku was one of the leaders of a war party that blockaded the Wanganui township, before eventually a truce was made.

After his baptism in 1853, Te Mamaku continued to be involved in fighting, including a conflict with Te Kere in the mid-1850s. Although he was offered the kingship in 1857, he declined, but he did support the Kingitanga from 1858. With Tōpia Tūroa, Te Mamaku opposed Te Kooti. He did not support settlement beyond the King Country boundary, and he joined Kemp's Trust, which aimed to protect Whanganui lands.²

As Dr Angela Ballara noted, even though Ngāti Tūwharetoa had fewer opportunities than their coastal neighbours to trade with the big centres, like the upper river people the tribe managed to prosper.²⁹ Ernst Dieffenbach reported as early as 1841 that the people of Taupō were as well supplied with European commodities as people on the eastern coast; only the direction of

trade was different – through Whanganui to the Kāpiti Coast and Wellington rather than to Auckland.³⁰ Māori may have felt that the biblical promise that blessings follow spiritual obedience applied here.

The 1850s saw a waning of missionary influence, perhaps caused by the diversion of hapū energy towards a profit-driven economy. The considerable resources that

were needed to build mills and the increased price of wheat, for example, led to the cultivation of more fields, so that the time required to tend the cultivations increased in proportion to the amount of produce.³¹ This was no doubt Taylor's perception, but, on the other hand, the missionaries had always encouraged people to take up farming and produce market surpluses; and many Māori had tended to see 'religion' as part of their general well-being, including the material side. Grace put the waning down to Māori not being able to meet the high standards set by the missionaries. 'Our whole line of things has been something for them to wonder at rather than to imitate,' he wrote:

In short we have planted a native Church without native responsibility. Should it wither away, we ought not to be surprised. How can I wonder that the Taupo Maoris say to me: 'You yourselves have taught us to expect payment . . . we have always been paid and therefore expect it' . . . I really think our custom to Maori teachers has been unscriptural. We have sent them to preach the Gospel but we have not provided, not even taught them, that they should live by the Gospel. This state of things has been ruinous to the native church and to the Maoris themselves.³²

The prosperity unfortunately did not last, and by 1856 things began to change for ngā iwi o te kāhui maunga. First, the economy slumped when prices for market produce fell. The rush to the goldfields in Victoria, Australia, had stimulated the boom in New Zealand grain, but the market collapsed with the development of the vast Australian wheat production.³³ The recession that followed was compounded by continued Crown and settler encroachment, and the more the Crown pushed its magistrates into Māori districts the more Māori reacted against them. Māori were very interested in law (ture) to deal with new exigencies (they had been from the early 1830s and during the Treaty negotiations), but they wanted to be involved in its planning, introduction, and administration.³⁴ It was in this context that ngā iwi o te kāhui maunga considered new Māori institutions to cope with their changing circumstances. The most influential of these would be the Kingitanga.

3.1.3 The Kingitanga

The idea of a Māori king grew out of the necessity among iwi to secure political solidarity in order to resist further land sales and settler encroachment.³⁵ Enthusiasm for the movement gathered momentum in the latter part of the 1850s and reached its zenith, in terms of support from other tribes, in 1863 and 1864, during the campaigns waged by the government against the Kingitanga in the Waikato and at Tauranga. Unfortunately, the establishment of the king resulted in a greater level of misunderstanding by the Crown than it ought to have. It seemed to bring into focus the question of allegiance to the Crown and suggested a state of rebellion, which was far from its mood and purpose.

Both Ngāti Tūwharetoa and upper Whanganui supported the aims of the Kingitanga. In 1860, Grace wrote:

As regards Taupo, I may say that the position of the Maoris is an armed neutrality. Until now the Gospel has held them back. They say they will not fight until they have a just cause. Since the commencement of the war [in Taranaki], the King movement has gained ground with them. Their cry is: 'We must do something to save our island!' Judging from the eagerness with which we try to purchase their lands, from the great numbers of newcomers and also from the hasty way in which we went into the war, their conviction is that we want their whole island.³⁶

Though Iwikau had continued his brother's resistance against land sales to the government, he had emerged as a moderate. He had embraced Christianity and 'set his face against wars with the pakeha', always seeking to restrain Māori protest.³⁷ While he supported the grievances of other tribes over land loss, he did manage to keep Ngāti Tūwharetoa out of the troubles of Taranaki. 'If you go to Taranaki,' he told his people, 'you will not return.' (Ki te haere koe ki Taranaki e kore koe e hoki mai.)³⁸

For similar reasons, Te Mamaku and other upper Whanganui chiefs declined Ngāti Ruanui's invitation to join the inter-iwi fighting that erupted over land in northern Taranaki between 1854 and 1857. They could not, however, stay out of the war started by the Crown with their

Kingitanga allies and kin at Waitara and later at Waikato in the 1860s.

3.1.4 The 1858 legislation

The legislation of 1858 showed how the Crown planned to use the law to promote land policies ‘incompatible with the Maori aspirations that gave rise to the Kingitanga movement’. The Native District Regulations Act 1858 authorised the large tribal rūnanga acting under Pākehā chairmanship to make local bylaws, while the Native District Circuit Courts Act 1858 enabled circuit court judges, assisted by Māori assessors and juries, ‘to enforce common law together with the by-laws.’³⁹

When Governor Gore Brown and his ministers could not find common ground on the 1858 Native Territorial Rights Bill, which intended individualisation of land title, the secretary for native affairs, Donald McLean, was given scope to progress land policy. In McLean’s view, the best interests of Māori were to be served by the Crown acquiring their land. This would open the way to European settlement, with a consequent improvement in Māori living standards. He applied this policy to the existing resident magistracy that had been established in 1855. While the system had much to commend it and even though it found favour in several districts, including Waikato, the officials tasked with implementing it were seen to be supporting settler interests. This resulted in continuing antagonism between Māori and the Crown over the land question. Tensions grew, and when war finally broke out over the Waitara purchase in Taranaki, McLean blamed the Kingitanga.⁴⁰

3.1.5 The Kohimarama conference

The central North Island (CNI) Tribunal addressed the various government failures to include the Kingitanga in the machinery of the State and pointed to the Kohimarama conference as a critical lost opportunity.⁴¹ Held in July 1860, this was a national hui called and sponsored by Gore Brown at which the Governor and Donald McLean intended to justify the war in Taranaki and to isolate the Kingitanga. While they invited over 200 representatives from all tribes, among the absentees were a

number of leading Taranaki and Waikato chiefs. There were several resolutions adopted at the conference but two took particular advantage of the absence of Taranaki and Waikato representatives:

That this conference is of the opinion that the project of setting up a Maori King in New Zealand is a cause of strife and division, and is fraught with trouble to the country . . . That this conference having heard explained the circumstances that led to the War at Taranaki, is of the opinion that the Governor was justified in the course taken by him; that Wiremu Kingi himself provoked the quarrel; and that the proceedings of the latter are wholly indefensible.⁴²

Though Kohimarama had limited outcomes, Gore Brown did secure the stamp of approval he was after, since most of the chiefs appended their signatures to the resolutions. But, in truth, the hui’s response was one of indifference. The Reverend Robert Burrows, who was present, later wrote that some of the chiefs were ‘not all prepared to throw the whole onus of that war upon the shoulders of Wiremu Kingi’ and had actually pleaded for ‘a cessation of hostilities’ in Taranaki. Burrows also questioned whether those who signed the resolution, regarding Wiremu Kingi, echoed the sentiments of the majority of people whom they professed to represent.⁴³

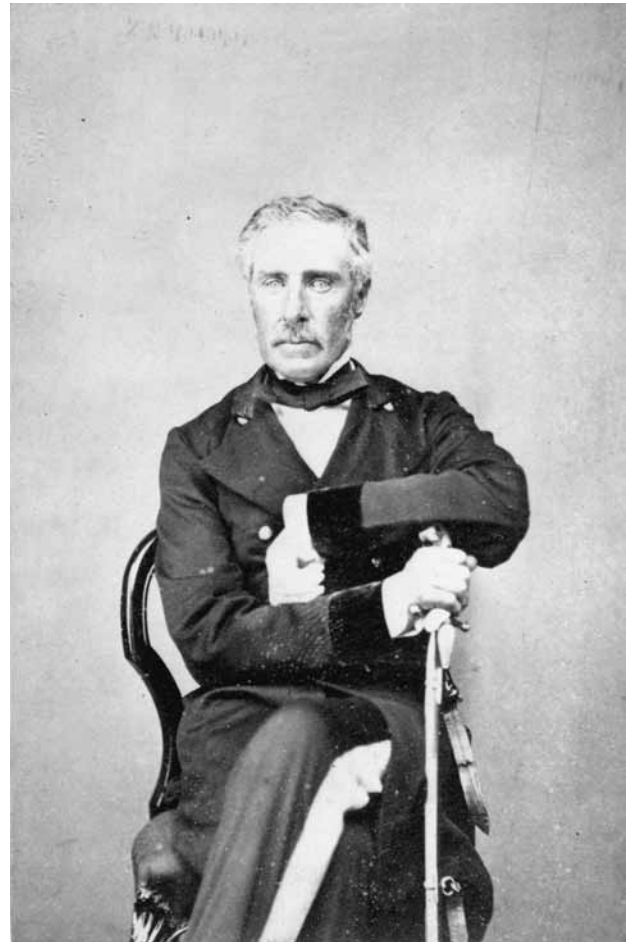
The Kohimarama conference is of less relevance to ngā iwi o te kāhui maunga than most other regions, given no representatives from Ngāti Tūwharetoa attended – not even those who were government supporters.⁴⁴ Similarly, only Tahana Tūroa of upper Whanganui was there: his father, Te Peehi Pakoro, and Tōpine Te Mamaku were both invited, but declined to attend. For Māori generally, though, the hui promised ‘the beginning of a new order in race relations’. Gore Browne tried to establish a native council and a title tribunal, which might have permitted Māori real power and authority. But these institutions were never realised, as they were blocked by the settler-run government.⁴⁵ While the Governor told his superiors in London that Māori had recognised Kohimarama as ‘the first real step towards governing them in the manner they desire to be governed’, it was not self-government that

Ngāti Tūwharetoa and Whanganui got, but rather ‘Grey Government’, which in the end they would have trouble both understanding and appreciating.⁴⁶

3.1.6 Governor Grey’s ‘runanga system’

In September 1861, George Grey returned to New Zealand to take up his second term as Governor. He tried to avert further war, and to provide Māori with systems of law and government that were compatible with Crown authority and Māori aspirations. His implemented policy came to be known as ‘the Runanga System.’⁴⁷ Grey wished to restore Māori confidence in the Crown’s intentions while at the same time weakening Kīngitanga support and avoiding a repetition of the debacle at Waitara.⁴⁸ Under his plan the country was divided into native districts, with a resident magistrate taking the role of civil commissioner to supervise local self-government in the Taupō district. The commissioner was to select kaiwhakawā (native assessors), who in turn were to appoint members to a district rūnanga that operated in ways not dissimilar to the church rūnanga that had long been in existence in the Māori dioceses.

In June 1862, George Law, who had been a schoolteacher at Pūkawa under Grace, returned to Taupō to become its civil commissioner and thus became responsible for appointing kaiwhakawā, all from the northern end of the district. The kaiwhakawā were not selected because of any partiality towards the northern Ngāti Tūwharetoa hapū but rather because the rest of Ngāti Tūwharetoa chose not to engage with the new institutions. Suspicious as they were of any government initiatives, they neither nominated candidates nor attended Law’s meeting. The idea that the government now intended to build Māori support and engagement – rather than seeking land as it had done before in neighbouring districts – seemed to most Ngāti Tūwharetoa a leap too far.⁴⁹ While Law was active in his role till the end of 1863, he really lacked the authority to enforce the new system. From 1864, he was repeatedly absent from the district and was noticeably both undependable and unstable eventually being charged at the end of the year with embezzling official funds to which his Taupō Māori officials testified against him.⁵⁰



Sir George Grey, 1870s. Grey was the Governor of New Zealand from 1861 to 1868.

Similarly, John White, who was appointed resident magistrate in the Whanganui district in October 1862, was merely tolerated by Kīngitanga supporters. The upper river hapū had brought their lands under the protection of the King and, to assert this, they placed an aukati (restriction on travel) upriver at Maraekōwhai, later taking it further downstream to Pipiriki.⁵¹ White was apparently astute enough not to push his operations too far upriver and only visited villages south of Pipiriki, which is less than

one-third of the way up the river.⁵² In any event, his work only really lasted six months, for after the war resumed in Taranaki and Waikato was invaded, the ‘new institutions’ became redundant as Whanganui focused on the conflict. In 1865, for reasons of economy, retrenchments were carried out. But new appointments of assessors were made and the official posts of many rangatira continued, as part of the ‘pacification’ programme. Official rūnanga meetings mostly ceased (although the assessors around Taupō continued to hear and record cases) but the concept remained alive and in 1872 McLean attempted to pass new legislation to support it.⁵³

3.1.7 The wars

According to Dr Ballara, the alliances formed during the earlier inter-tribal musket wars were reflected in the wars fought for and against the government in the 1860s, and these had a lot to do with kin links and whakapapa.⁵⁴ As stated previously, Ngāti Tūwharetoa did not involve themselves in the war in Taranaki in the 1860s but some upper Whanganui felt compelled to aid their neighbours, some of whom were their relatives. Waikato was a different story, however, given ngā iwi o te kāhui maunga’s avowed commitment to the Kingitanga cause. Thus when their Waikato kin were invaded in July 1863, sections of both Ngāti Tūwharetoa and upper Whanganui found themselves in a war for Māori autonomy outside their district. Only pockets of hapū, in both regions, refused to embroil themselves in the fight against the Crown, believing it better to progress with the new power than in opposition to it.

These wars, which escalated across the North Island, lasted a decade and aggravated or created new rifts among ngā iwi o te kāhui maunga. Iwi, hapū, and even whānau were split, resulting in tragedies where some whānau were split, resulting in tragedies where some whānau fought and killed each other, or were forcibly separated from each other, sometimes through exile, leaving a bitterness that some claimants told us has lasted till today. The war in Taranaki, though it was over by 1863, eventually brought the fighting to upper Whanganui, and the fighting upriver ensured that the conflict went down the river.⁵⁵ The wars also prepared the ground for the Pai

Mārire movement, which sparked the war in Hawke’s Bay and the East Coast in 1865. The latter, in turn, exiled Te Kooti to the Chatham Islands, along with his Whakarau (the unhomed or exiled, as he had named his followers), and this was the genesis of the campaigns against Te Kooti in the Tūranga, Urewera, and eventually Taupō districts from 1868 to 1869, which led to government troops entering the central plateau area. We therefore turn now to a brief summary of the parties’ cases on the wars.

3.2 MILITARY ENGAGEMENT IN THE DISTRICT

3.2.1 Claimant submissions

The claimants submitted that ngā iwi o te kāhui maunga were affected by wars in and outside the inquiry district and they were drawn into the fighting due to links of obligation, kinship, or former alliances with those who were subject to Crown aggression. Some fought for the Crown but both sides suffered significant losses. Even those that did not fight suffered since, according to the claimants, economic disruption was probably more prejudicial than the actual losses in war. Furthermore, the Crown’s military engagement divided ngā iwi o te kāhui maunga between those for and against the government, creating a strong political dichotomy which lasted long after the wars.⁵⁶

Following their defeat in the Waikato, Ngāti Tūwharetoa submitted that the tribe was ‘in turmoil’ as they hosted Waikato refugees. They argued that after their defeat their tīpuna must have feared the confiscation of their lands and so in March 1866 ‘Te Heuheu made a political decision to seek relations with the Government.’⁵⁷

The Crown’s mishandled pursuit of Te Kooti and the Whakarau led to one of the most brutal campaigns of the New Zealand wars. The claimants submitted that the Crown pursued the Whakarau to demonstrate that they were rebels, and to justify the Crown’s confiscation of land in other districts. According to the claimants, the Crown-instigated pursuit of Te Kooti into the Taupō region in 1869 amounted to a Crown invasion. The Crown did not attempt to broker a peaceful outcome before or after invading. For Māori, surrendering was only an option after surprise attacks, and those attacks involved damage

to property, the taking of hostages, and loss of life. The Crown's incursion into both Taupō and Tokaanu brought war, unnecessary suffering, and divisions and fighting between kin.⁵⁸

In what seems to be a contradiction to this line of reasoning, the claimants submitted that ngā iwi o te kāhui maunga did not collectively commit themselves to Te Kooti, whose influence in the National Park rohe was severely limited by the Kingitanga's refusal to support him in October 1868. By early 1869, many Taupō rangatira backed a komiti opposing Te Kooti's arrival in the district, which – when it finally gained Crown support – became the organiser of the Taupō Native Contingent. By late 1869, Te Kooti's support was seriously waning, with upper Whanganui opposing him after the battle at Te Pōrere.⁵⁹

In Ngāti Tūwharetoa's submission, they stated that Te Heuheu decided to support Te Kooti when he arrived in the district in 1869, but Te Kooti's arrival divided Ngāti Tūwharetoa, with cousins fighting against one another at Te Pōrere. Although the historians' evidence suggested that Te Heuheu was held hostage by Te Kooti, Ngāti Tūwharetoa submitted that, in accordance with oral evidence, Te Heuheu willingly supported Te Kooti. They argued that what historians identified as Te Heuheu's lack of support for Te Kooti was in actuality Te Heuheu's reluctance to make his allegiance apparent to the Crown. Other claimants suggested that, after Te Pōrere, any criticism of Te Kooti from Ngāti Tūwharetoa rangatira was due to the shame of defeat.⁶⁰

The claimants argued that, at the battle at Te Pōrere, the Crown was culpable for Thomas McDonnell's actions, together with those of the men under his command and the Arawa and Whanganui irregulars.⁶¹ Ngāti Hinewai claimants argued that the Crown murdered the captured and wounded fighters in the aftermath of the battle. The report that there were 37 'clean kills' at Te Pōrere was dubious. They submitted that prisoners must have been taken and executed, as in the battle of Ngātapa in Tūranga and they submitted that there had been earlier threats that executions would occur.⁶²

According to Ngāti Tūwharetoa, following Te Kooti's defeat at Te Pōrere, Te Heuheu surrendered to the Crown,

and was officially regarded as a captive. Ngāti Tūwharetoa understood this to mean that their land would be confiscated. They claimed that there was evidence to suggest that Te Heuheu was held under house arrest from October 1869 to August 1870. They also argued that for a chief with significant mana like Te Heuheu, this would have held serious, long-lasting implications.⁶³

The claimants argued that ngā iwi o te kāhui maunga were not in 'rebellion' and that the Crown took the approach of 'reckless disregard' in determining whether or not groups were in rebellion.

3.2.2 Crown submissions

The Crown agreed with the claimants that it was necessary to consider the context for the battle at Te Pōrere. Crown counsel argued that the Crown was justified in taking military action against the Whakarau, because the Crown's actions came after the Whakarau's earlier attacks at Matawhero, Patutahi, and Ōweta. As the Tūranga Tribunal found, Māori had Treaty responsibilities as well as Treaty rights, and the Whakarau's actions did not align with those responsibilities. In accordance with the Tūranga findings, counsel argued that the Crown's military pursuit of Te Kooti was justified. The events in the National Park area were part of the pursuit of Te Kooti and his followers; the Crown argued that 'war' is not an appropriate term.⁶⁴

The Crown submitted that the evidence regarding Te Heuheu and Ngāti Tūwharetoa's relationship with Te Kooti is 'at best, ambiguous'. While the historians, who prepared reports for this inquiry, concluded that Te Heuheu was likely a prisoner of Te Kooti, Ngāti Tūwharetoa oral evidence and claimant counsel suggested that Te Heuheu supported Te Kooti while pretending not to under the eyes of the Crown. The Crown noted that while Te Heuheu's loyalties remain unclear, some Ngāti Tūwharetoa – and particularly southern Taupō Māori – did support Te Kooti at Te Pōrere. The Crown submitted that what mattered is that at the time the Crown considered Te Heuheu was not allied with Te Kooti and his actual allegiances may be irrelevant.⁶⁵

The Crown maintained that there was no Treaty breach at Te Pōrere; although the Tūranga Tribunal identified

excesses which occurred at Ngātapa, the evidence does not support the argument that executions occurred at Te Pōrere.⁶⁶

The Crown challenged the claimants' emphasis on the issue of rebellion, arguing that whether a group was in rebellion is irrelevant. There was no raupatu in the inquiry district, and the conflict was not a 'war' against Ngāti Tūwharetoa or other Māori in the inquiry district. It was a pursuit of Te Kooti and his followers.⁶⁷

Furthermore, the Crown suggested that within the inquiry district, there is little evidence to show that destruction of property or social and economic disruption occurred as a consequence of Crown military engagement. The Crown noted that there were complaints that government forces of Ngāti Kahungunu destroyed crops at Tokaanu; however, not only is this outside the inquiry district, but compensation was discussed and provided. Lastly, there is insufficient evidence to make a finding regarding the impact on inter-Māori relationships, or the extent, if any, of Crown culpability for this.⁶⁸

The Crown noted that in the aftermath of Te Pōrere, the Crown's response to Te Heuheu's surrender was that he must be treated with leniency. This approach seemed to be primarily based on the understanding that Te Heuheu was not allied with Te Kooti, and also that he might be a strategic ally. Confiscation was never seriously considered, and any discussion of a 'substantial pledge' to be made by Te Heuheu seems to have been abandoned by this time. There is no evidence that the notion of a 'substantial pledge' resurfaced while negotiating the gift of the maunga. There was discussion of a small cession, such as land for a small settlement and redoubt, and assistance with making roads. However, McLean recorded that any degrading treatment of Te Heuheu under the eyes of Māori would 'greatly diminish his influence for good'.⁶⁹

Crown counsel submitted that in Te Heuheu's time as a 'captive' of the government following the battle at Te Pōrere, Ngāti Kahungunu chiefs appeared to monitor his behaviour, but it is unclear to what extent his freedom of movement was constrained. From December 1869 to January 1870, Te Heuheu went with a ministerial party around Northland, where he expressed regret for his

involvement with Te Kooti. There is no evidence that Te Heuheu was not speaking his mind in this case. He was 'rehabilitated' in August 1870, and thereafter considered a supporter of the government.⁷⁰

3.2.3 Submissions in reply

The claimants submitted that many of the findings of the Tribunal's report on the central North Island apply in this inquiry district. The CNI Tribunal affirmed the claimants' argument that the Waikato war was the first of many Crown campaigns against the Kīngitanga, sparking conflict throughout a wide region, including at Te Pōrere.

The claimants cited the CNI Tribunal's finding that the Crown breached the Treaty in its pursuit of Te Kooti and the Whakarau. They said that the Crown's failure to negotiate with the appropriate parties or comply with civil law meant that its actions constituted a military attack. Counsel submitted that in Taupō, the Crown made no effort to negotiate with Te Iwi o Uenuku, Ngāti Tūwharetoa, or Ngāti Raukawa leaderships. War between the Crown and Māori was avoidable in general, as well as in specific instances where tribes were attacked. Thus, the Crown's waging of war against ngā iwi o te kāhui maunga was a breach of the Treaty from the start.⁷¹

The claimants also made submissions on particular issues. In response to the Crown's argument that there were no eye-witnesses to the killings at Te Pōrere, Ngāti Hinewai claimants pointed out that Colonel McDonnell was an eye-witness and he had reported 37 Māori dead. That all 37 were casualties and did not include some executions was unlikely, they argued, as the redoubt was well protected from rifle fire.⁷² Others stated that in the wake of the wars, some groups were essentially refugees, forced to face Crown authority.⁷³ Ngāti Tūwharetoa submitted that in the case of Te Heuheu, evidence shows that following Te Kooti's withdrawal, he was trying to fend off confiscation and other potential punishments.⁷⁴

The claimants argued that Taupō Māori who supported Te Kooti should not be considered to have been in rebellion, but the Crown had rejected use of the term 'rebellion' to describe its view of the situation in the National Park area. Te Iwi o Uenuku further argued that the Waikato

Raupatu Claims Settlement Act 1995 is relevant in this inquiry district, and that they should be granted the same concessions for raupatu as Waikato-Tainui. Their counsel submitted that many Māori in this inquiry district have whakapapa which interweaves with the Kingitanga tribes and hence view themselves as affected. Furthermore, following Te Pōrere, many tribes did consider that confiscation of their land was a possibility. Although, as the CNI Tribunal observed, many officials by this time considered raupatu to be an ‘expensive mistake’, the claimants agreed with that Tribunal’s assessment that the threat of confiscation was still very real.⁷⁵

3.2.4 Tribunal analysis

(1) *The historical evidence*

The principal historical reports available to our inquiry are Bruce Stirling’s analytical narrative on Taupō in the 1860s plus his supplementary evidence regarding the fate of Horonuku Te Heuheu after he surrendered to the Crown; Dr Robyn Anderson’s report on Whanganui iwi and the Crown from 1865, Dr Ballara’s tribal landscape overview in Taupō and other districts in the nineteenth century and the Wai 575 Claims Cluster Steering Committee’s ‘Te Taumarumarutanga o Ngāti Tūwharetoa’ report.⁷⁶ We also heard oral evidence from witnesses including Paranapa Otimi, George Asher, Che Wilson, Toni Waho, and Monica Mataamua, who provided useful insights into iwi and hapū politics during the war period (sometimes conflicting with the documentary evidence). Furthermore, we were able to survey an important body of primary source material that although used to some extent in evidence, was not mined as extensively as it might have been. We refer to the Māori newspaper collection which can be viewed and searched online.⁷⁷ The collection contains 17,000 pages from 34 historic periodicals published primarily for a Māori audience between 1842 and 1932.

(2) *Background to war in the Taupō district*

We begin by noting again that despite their isolation, ngā iwi o te kāhui maunga were very conscious of events in the wider colony. Messengers were frequently passing between hapū and iwi carrying letters or oral testimonies

about the impact of colonisation in other tribal regions. Often hui were held to debate the collective response to such information and sometimes representatives would venture to other tribal regions to see for themselves what was occurring or to give and receive feedback from Crown representatives. From the 1840s, Māori-language newspapers became an important source of information in following political developments among Māori. By the 1860s ngā iwi o te kāhui maunga were contributing their own news items, particularly to the government-subsidised *Te Waka Māori o Ahuriri* and the Kingitanga’s *Te Hokioi o Niu Tirenī*. A glance at today’s newspapers, however, would suggest that journalistic reporting does not necessarily equate to historical truth so it must be expected that Māori-language newspapers were limited in the same way. With these points in mind, the first question for the Tribunal was: What was the experience of ngā iwi o te kāhui maunga prior to the New Zealand wars and how did they align themselves during the wars?

As stated in the prologue, rather than seeing ngā iwi o te kāhui maunga as a single collective we deal with them generally as two groups – Ngāti Tūwharetoa and upper Whanganui.

(3) *Ngāti Tūwharetoa Kingitanga: ‘Tawhia! Puritia! Tō mana kia mau!’*

Several hui were held during the 1850s to select a Māori king and a number of leading chiefs from highly respectable lineages, including Iwikau Te Heuheu, were sought out for the position. The matter was a weighty one and action was not taken quickly or lightly: it required much consideration and careful preparation. Iwikau, himself, convened one of the most significant of these hui at Pūkawa in November 1856, called Hīnana ki uta, Hīnana ki tai (search the land, search the sea). We were informed that it took Ngāti Tūwharetoa two years to prepare for the hui and 3,000 to 4,000 people from various parts of the country attended, some arriving six months prior while others stayed for up to two years afterwards.⁷⁸ Tōpia Tūroa, we were also told, was the messenger who travelled the motu calling the tribes and chiefs to the hui. It was at the Pūkawa hui that Ngāti Tūwharetoa, along with other iwi,

gave their support to Potatau Te Wherowhero of Ngāti Mahuta. That the Kīngitanga movement was a response to the tribes' call for a united resistance to land alienation is reflected in the haka that Iwikau recited after the chiefs had made their decision. The words are a concise expression of the philosophy that lay behind the conflict between Māori and Pākehā at a time when Māori were still cognisant of their power in the land:

<i>Ka ngapu te whenua</i>	<i>When the land is put asunder</i>
<i>Ka ngapu te whenua</i>	<i>When the land is put asunder</i>
<i>Ka haere ngā tangata ki hea?</i>	<i>Where shall the people stand?</i>
<i>Aua</i>	<i>Aua</i>
<i>Ko Ruaimoko</i>	<i>Oh Ruaimoko</i>
<i>Tawhia!</i>	<i>Hold it!</i>
<i>Puritia!</i>	<i>Grasp tightly to the land!</i>
<i>Tō mana kia mau!</i>	<i>Be firm!</i>
<i>Kia ita! Aha! Ita! Ita!</i>	<i>Let not your mana, your land</i>
<i>Kia mau tonu!</i>	<i>Be torn from your grasp!</i> ⁷⁹

Meetings followed in Waikato. After much debate and with the persistence of Iwikau, Potatau finally consented and was installed as King at Ngaruwāhia in 1858. He died in 1860 and was succeeded by his son Matutaera.

One of the attractions of the Kīngitanga was the opportunity to secure all land holdings under a solitary rūnanga for the benefit of future generations. The Ngāti Tūwharetoa research report stated that pou whenua, known as 'Te Pou o te Kīngi', were erected in the territories of iwi who aligned themselves to the Kīngitanga to indicate that their land was under the protection of the King and to recognise both the new and historical connections between tribes and with the Kīngitanga. Ngāti Tūwharetoa and Whanganui were among a number of iwi who raised pou whenua to demonstrate their allegiance, although they maintained their mana and autonomy over their land.⁸⁰

When stressing the depth of Ngāti Tūwharetoa's commitment to the Kīngitanga, the CNI Tribunal referred to the evidence of Paranapa Otimi about the significance of the Pūkawa hui, the binding nature of the decisions made there, and the use of the plaited flax rope to symbolise



Tukaroto Potatau Matutaera Te Wherowhero Tāwhiao, 1880s. Tāwhiao became the second Māori king after King Potatau died in 1860. The various selection hui held during the 1850s had given momentum to the Kīngitanga movement, which called upon all tribes to unite against land alienation.

the strength and unity of all the iwi that attended the hui. In the light of Iwikau's haka and other oral submissions by claimants, that Tribunal considered that 'Ngati Tuwharetoa were and are bound to the Kingitanga.'⁸¹

Support for the Kīngitanga in Ngāti Tūwharetoa, however, was not altogether unanimous. There were isolated pockets of hapū along the northern shore of Lake Taupō who later withdrew their backing for the movement and instead aligned themselves with the government. Most



Hohepa Tamamutu of Ngāti Tūwharetoa. Preferring to support the government, Tamamutu withdrew his support for the kingitanga.

notable of these were Hōhepa Tamamutu and his Ngāti Te Rangiita people at Ōruanui and Poihipi Tukairangi's Ngāti Ruingarangi, Ngāti Te Rangiita, and Te Hikitū hapū at Tapuaeharuru. When Iwikau twice overruled decisions the Ngāti Te Rangiita rūnanga had made, they told him:

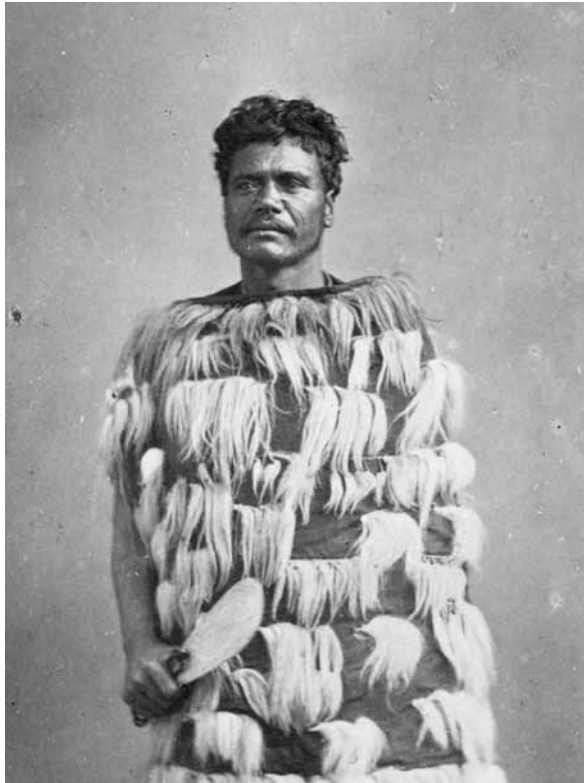
whakarongo mai e Heu . . . ko te kupu a tenei komiti ka whakahokia atu to kingitanga me te runanga me [o] ratau tikanga katoa o te kingi, ka hoki katoa atu, mau e whakahaere, kia rongo mai ano koe ka pakaru taua inaianei. Ka rere au a Ngāti Te Rangiita ki te kawanatanga. Ka mate ke koe, ka mate ke ahau i enei kupu.⁸²

listen O Heu . . . the word of this committee is that your kingship and the runanga with all its king rules, be returned, you run things, and so that you may know that we are broken up now. I, Ngāti Te Rangiita, take flight to support the government. You shall indeed be destroyed, I shall indeed be destroyed by these words.⁸³

At a hui at Ōruanui, during Christmas 1862, Tamamutu told Horonuku Te Heuheu and other chiefs that the Kingitanga had 'departed so far from the [original] object . . . viz brotherly love to exist between the two races, etc' that he felt justified in 'deserting it'.⁸⁴ Despite Paurini Karamu labelling him a turncoat and an adulterer because he had left the Māori King and married the British government, by April 1864 Tamamutu, Rāwiri Kahia, and others of his hapū were with another of the government's allies, Te Arawa, at Ōhinemutu, where they fought to prevent further Kingitanga reinforcements passing through the lakes district to Waikato.⁸⁵

Historian Bruce Stirling described this period as one in which 'Taupo Maori' were attempting to manage change. However, 'In the end, change of the type favoured by the Crown' was ultimately imposed by force, resulting in 'wars that were not of Taupo's making'.⁸⁶

As previously stated, Ngāti Tūwharetoa had remained aloof from the first conflict in Taranaki in 1860 as they felt the cause was not a just one. Iwikau was opposed to the war and frequently told Grace that he would not involve himself in it. 'But,' wrote Grace, 'if the Waikato were attacked by us, he would be compelled to help them.'⁸⁷ Iwikau died in October 1862 and his successor, Horonuku, continued his late uncle's resolve to refrain from participating in the war at Taranaki when it reignited, even after senior Whanganui rangatira, like Te Peehi Pakoro and his son Tōpia Tūroa, with strong ties to Taupō (as well as customary connections to northern Taranaki), went to Pūkawa in July 1863 to encourage Ngāti Tūwharetoa's participation. While Horonuku refused, apparently those with stronger ties to upper Whanganui, the Rotoaira people, consented to join the fight. Later that month, Rewi Maniapoto did his best to influence Horonuku and the various Kingitanga supporters at Taupō to come together



Horonuku Te Heuheu Tūkino IV

1827–88

Initially known as Patātai, Horonuku Te Heuheu Tūkino IV was the son of Mananui and Te Mare. He spent much of his youth among his Ngāti Maniapoto and Tainui relatives. His name was changed to Horonuku (meaning landslide) in memory of his father's death in 1846. Horonuku was 19 when his father died and was considered too young to carry the mantle of leadership; it was not until the death of his uncle Iwikau in 1862 that Horonuku became the paramount chief of Ngāti Tūwharetoa. Shortly afterwards, the war in Waikato broke out, and Horonuku felt bound to go to the aid of his Tainui kin. He reached Ōrākau, but the attacking British force prevented him from getting into the pā.

In 1869, Horonuku was with Te Kooti during the battle at Te Pōrere, and after the battle, he surrendered to the Crown. In 1886, he took Ngāti Tūwharetoa lands through the Native Land Court, and the following year he transferred te kāhui maunga to the Crown. Horonuku was married to Tahuri Te Uaki, and they had five children. One of their daughters, Te Kahui, married member of parliament Lawrence Grace. Horonuku's successor was his only son Tureiti (1865–1921), who became a member of the Legislative Council.¹

at Tataraimaka, proclaiming that Ngāti Maniapoto had resolved to support Taranaki in the defence of its lands.⁸⁸ But Hāre Tauteka, the chief at Tokaanu, told George Law, the resident magistrate at Ōruanui, that his people had not involved themselves at Waitara or Tataraimaka because they felt it was not 'a real cause to fight', particularly after the government's concessions about the disputed Waitara land. However, Hāre added, the situation was different at Waikato: if the Governor invaded Waikato then Law would have to leave. Indeed, 'the whole matter rested there', at Waikato.⁸⁹

While the various hapū in Ngāti Tūwharetoa deliberated the resumption of the war in Taranaki, there was no

such debate about the Crown's unprovoked invasion of Waikato when imperial troops crossed the Mangatāwhiri River on 12 July 1863. Many Ngāti Tūwharetoa did travel to Rangiaowhia, Hairini, and Ōrākau to render support to their Waikato kin. At Ōrākau, Horonuku's relief force of 150 to 200 men (including some Ngāti Raukawa and Ngāti Hāua) attempted to reinforce the pā but was stymied by the British artillery. One of the defenders in the pā recounted that the would-be reinforcements 'came as near to us as they could, but were fired at by the big guns'. He went on: 'They sat on the hill and wept their farewell, for they thought that none of us would escape'.⁹⁰

Despite the losses at Waikato, Ngāti Tūwharetoa

claimants stressed to us that Horonuku was ‘bound to go to war in support of his kin who had trained him as a warrior.’⁹¹ The CNI Tribunal, while it made no findings on whether Ngāti Tūwharetoa were in rebellion when they went in aid of the King, offered the following to assist parties in their negotiations and we agree with these opinions:

Those tribes which went outside their own lands to fight a defensive war in support of the Kingitanga, were fighting for their kin, their King, and their own futures. The Kingitanga was their response to settler land-hunger and the one-sidedness of a kawatanga that was responsible only to the settlers. The Crown’s determination to inflict a massive defeat on the Kingitanga was an attack on them and their tino rangatiratanga, just as surely as if it took place in their own rohe.⁹²

We would add, however, that it is likely the Crown did not view it this way and in the end there were no consequences in terms of land confiscations for those of ngā iwi o te kāhui maunga who went to aid their Waikato kin.

In the aftermath of Ōrakau, Ngāti Tūwharetoa faced a new plight at home. Those hapū in the southern and western Taupō districts had to shelter large numbers of Kingitanga refugees who, while they were not pursued by Crown forces, could not remain in Waikato.⁹³ Even the King, during the winter of 1864, was at Waihi with Horonuku.⁹⁴ Food and imported goods had already become scarce, especially as the people had neglected their crops to concentrate on the war. The Pūkawa mission station, which Grace had vacated a year earlier for the want of supplies, was broken into during this period and his property removed.⁹⁵ Only his house was spared. In order to feed the refugees, those who had formerly been part of his congregation were compelled to start killing the mission station’s sheep and cattle built up through the 1850s. Added to this, later in the year, ‘the fever . . . was raging amongst them’, said Grace, which led to many deaths.⁹⁶

Attempts at peace with the government were sought. A hui was held at Ōruanui in June 1864, with both Kingitanga adherents and their government-supporting whanaunga. Te Heuheu did not attend, but those

present resolved to send to Auckland the two kaiwhakawā, Hōhepa Tamamutu and Perenara Tamahiki (a rangatira of Ngāti Tarakaiahi of Waihaha, on the north-western shores of Taupō), to deliver their terms of peace to Governor Grey. It was a peace in which ‘the sovereignty of the Māori King shall be acknowledged’, where they would be allowed to retain their firearms and ammunition, and the refugees could return to their lands.⁹⁷ Isaac Shepherd, George Law’s clerk and interpreter, suspected such peace overtures by ‘Taupo Kingitanga’ to be merely attempts to buy time until they could regroup and strike again.⁹⁸ He advised the hui that it was unlikely that the Governor would accept their terms because it did not guarantee future peace.⁹⁹

In this tentative period between the wars, Ngāti Tūwharetoa continued to harbour resentment towards the government and those of their kin who had not supported them. The confiscation of over a million acres of Waikato land that was soon to follow ensured that the tribe remained open to any means by which they might carry on their resistance to British rule in their own region. This was the situation surrounding te kāhui maunga when the harbingers of the Pai Mārire faith made their entry.

(4) Whanganui Kingitanga: ‘Kua kite atu te haka, uru tonu atu ki roto tenei hanga te tamariki’

The hapū of upper Whanganui had attended the great hui at Pūkawa. Two of their rangatira – Tōpine Te Mamaku and Te Peehi Pakaro, son of Te Peehi Tūroa who died in 1845 – like Iwikau Te Heuheu, declined the offer of the kingship. However, along with their people, they later became most ardent supporters of the Kingitanga cause. A couple of years after the Pūkawa hui, Te Peehi’s half-brother, Tahana Tūroa, and son, Tōpia Tūroa, were said to be the local leaders of the Whanganui Kingitanga. In fact, in 1858, Tōpia, about 38 years at the time, was credited with having formally introduced the Kingitanga to Whanganui, after his stay in Waikato. Metekingi Paerangi, of Ngā Poutama and Ngāti Tūmango (and who also had ties to Ngāti Apa), told the chiefs who attended the Kohimarama conference in 1860 that he and others of the lower river had rejected the Kingitanga cause, advising Tōpia it would not last:

Ko taua tamaiti i haere mai, he mahi tamariki tena; kua kite atu te haka, uru tonu atu ki roto tenei hanga te tamariki. I tona hokinga ake ki Whanganui ki a Pehi, kahore hoki ia i hoki mai. Ka kiia e matou tenei kupu, E tama, he huia tetahi manu, he kokako tetahi manu; ko te huruhuru o te kokako ka tahaetia e te huia. E kore pea e rite te Kingi Maori, ta te mea no te Pakeha taua ingoa. No reira ka noho tonu taua tamaiti, kahore hoki i hoki mai ki te Kingi.

It was a lad who came to us about it, this childish affair, and as young men when they see the haka must join in it, so this attracted some. This youth returned up the Whanganui to Pehi (Turoa) but he did not come back. We said to him, Son, there is a bird called the Huia, and there is another called the Kokako. The feathers of the Kokako were stolen by the Huia. This Maori King project most probably will fail, for the name is borrowed from the pakeha. It was this which caused that young man to remain away; he did not return again to agitate the King question.¹⁰⁰

Tōpia had brought back Waikato emissaries, converted to Catholicism, and then encouraged his people to support the Kingitanga cause. The main pā of Te Peehi, Tahana and Tōpia, Pipiriki, which is midway along the Whanganui River, was later a key point on the Kingitanga's southern border.¹⁰¹ On the upper river, Hāre Tauteka of Tokaanu, whose mother was from Whanganui, was thought to be among the first to join the movement.¹⁰²

Whanganui support for the Kingitanga was in part a reaction to earlier losses and Māori interaction with the Crown in land transactions down river. After the 1848 Whanganui deed, there had been several years of uncertainty while boundaries remained unsurveyed. Furthermore, Māori had observed the large scale purchasing of Ngāti Apa lands to the south and how difficult a time Taranaki were having holding onto their land. Taylor heard that those who attended the Pūkawa hui had decided

that no more land should be sold by the natives to the Europeans, that Tongariro was the centre of a circle of which the circumference was the Hauraki, Waikato, Kawhia, Mokau,

Taranaki, Ngati Ruanui, Waitotara, Whanganui, Rangitikei, Titiokura; that this was to be a Rohe Tapu, or boundary which no chief should infringe upon by selling any more land¹⁰³

While it opposed land sales, the Pūkawa hui promoted the leasing of land to encourage the settlement among Māori of the type of Pākehā they wished to have reside amongst them. Although many upper Whanganui hapū were growing in opposition to the government in general they remained friendly towards settlers at a personal level.

When war broke out in Taranaki in March 1860 over the purchase of the Waitara block, the hapū of upper Whanganui refrained from involvement. The sale of land and the increasing commitment of some tribes to the Kingitanga cause did, however, result in a grand two-day hui in August at Kōkako, a Ngāti Rangituhia kāinga in the Murimotu district.¹⁰⁴ It was attended by more than 500 people from Ngāti Kahungunu, Ngāti Tūwharetoa, Whanganui, and iwi from the district extending from Waitōtara to Manawatu. The purpose of the hui was to agree on tribal boundaries, though the Kingitanga supporters who attended also had their own agenda: they wished to bring all the land under the tapu of the King and thus prevent it being sold.¹⁰⁵

Another hui between upper Whanganui and Ngāti Raukawa took place in 1861. This time they addressed the question of whether individual chiefs should be allowed to lease their lands without the assent of the King or his rūnanga, and there was further debate about which lands were to be subject to the King.¹⁰⁶ By now, the hapū of upper Whanganui were among the staunchest advocates of the Kingitanga – so much so that Taylor reported to the newly returned Governor Grey in September 1861 that their chiefs were openly saying that, if the King were attacked in Waikato, they would go to his defence. They were still sympathetic towards settlers, however, and did not want the war to spread to their district.¹⁰⁷ But, when Grey visited Pūtiki and Kaiwhaiki a year later, he was told that if he attempted to go further upriver he would be turned back by Kingitanga supporters.¹⁰⁸

Hapū from the middle reaches of the Whanganui River responded quickly, with at least two parties of 25

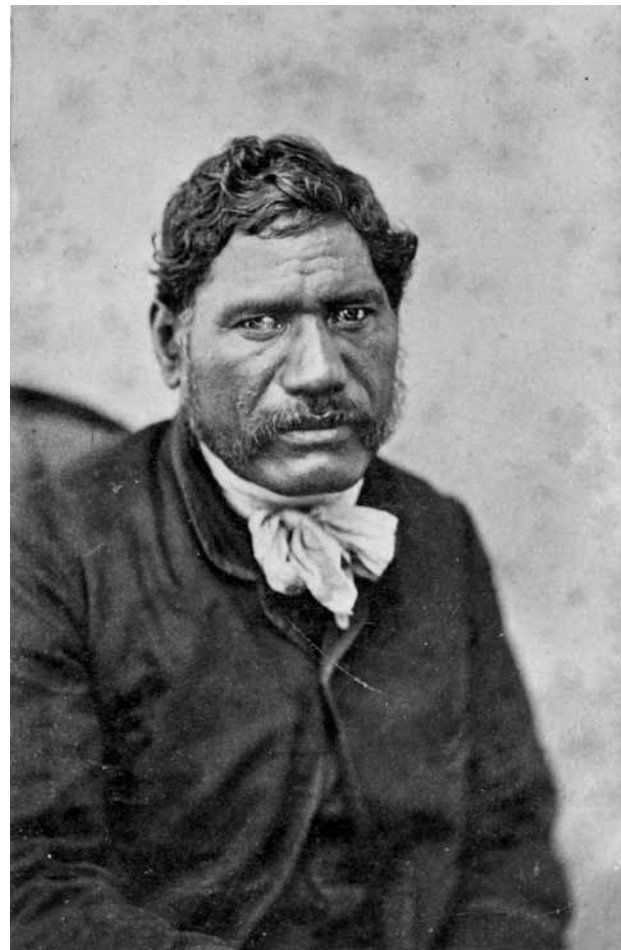
to 30 leaving Pipiriki and heading directly to the seat of war. Further upriver they remained neutral until reports came back of the Whanganui losses in a surprise attack by General Cameron's 650-strong force at Tataraimaka. When news of the death of the 'genial Hori Patene' – a rangatira from Pipiriki – and more than 20 others reached Tōpine Te Mamaku and Te Peehi Pākaro, they felt culturally obligated to seek utu. In August 1863, a force of 400 led by the two chiefs reached Warea in Northern Taranaki. Tahana Tūroa, who had been wounded at Tataraimaka, and his nephew Tōpia were with them. They took part in raids on Tapuiwaewae and then Tapuaeruru in early October before returning to their homes in the New Year because of food shortages in Taranaki.¹⁰⁹

Te Mamaku and Tahana also took a party to assist Ngāti Maniapoto and the Kingitanga at Ōrakau, but like Ngāti Tūwharetoa, they too appear to have arrived too late to join the fighting.¹¹⁰ Te Mamaku, and perhaps others, remained in the area, helping the survivors build new pā further south, beyond Ōtorohanga.¹¹¹ April 1864 was really the end of Whanganui's participation in other tribes' fights, and were it not for the sudden arrival of a radical new faith, life along the Whanganui River might well have returned to the comparatively peaceful state that existed before the war in Taranaki.

(5) *Hauhau: 'Hapa! Pai marire, hau!'*

Although the Pai Mārire movement (later known as Hauhau) had its genesis in 1862, it only came to national prominence in April 1864 after an ambush on a British patrol at Ahuahū, Taranaki. It was an attack carried out by the more militant followers of the faith, in contravention of the instructions of its founding prophet Horopāpera Te Ua (later known as Te Ua Haumene).

Riki and Rura were the deities that Pai Mārire followers invoked during ritual worship focused around a niu pole or mast. In line with Christ's promise to his disciples that the Holy Spirit would descend upon them, its believers claimed to speak in tongues and prophesied as they circled the niu. The raised hand was adopted and subsequently used in battle along with the expression 'Hapa! Pai marire, hau!' (Pass over good and peaceful). It was



Horopāpera Te Ua, later known as Te Ua Haumene. Haumene was the founding prophet of the Pai Mārire movement, or Hauhau, which was most prevalent along the Whanganui River.

maintained that if a follower conducted himself in this way, bullets would not hurt them but pass over the head.¹¹²

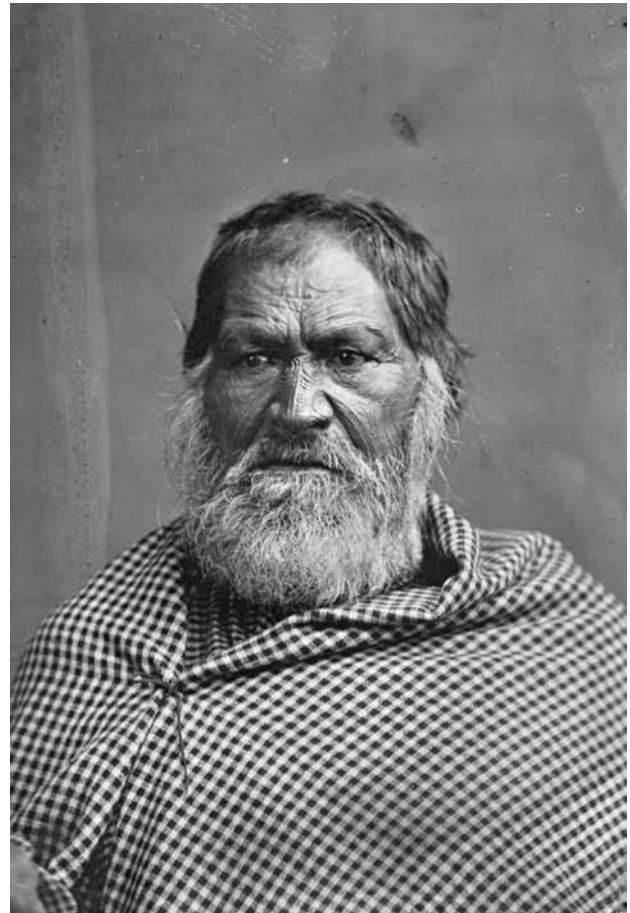
For hapū along the Whanganui River, the new movement would threaten their existing social structure, challenge the established leadership, and fracture their relationships with one another far more than the Kingitanga ever did.¹¹³ What is more, the militant aspect of the

movement would result in government authority creeping further up the river. From the early 1860s Christianity was already failing, with churches becoming disused while their once staunch worshippers ‘kicked over the traces’ of the Protestants and Catholics.¹¹⁴ This, and the fact that the new religion came hard on the heels of the losses suffered at Tataraimaka, meant that the Pai Mārire faith found fertile ground among the upriver hapū. Moreover, the government had commenced its plan for the confiscation of Taranaki and Waikato lands and many could see that eventually they might face the same fate.

It was Mātene Rangitauira who brought his own militant version of Te Ua’s message, along with the preserved head of Captain Lloyd (one of the soldiers killed at Ahuahu), to the River. At the end of April 1864, he arrived from Waitōtara to receptions at Ōhoutahi and Pīpīriki where his party erected niu poles. His kin at Pīpīriki, as well as visitors from Utapu, Tieke, and Manganui-o-te-Ao, welcomed what he preached, and more carved tōtara poles with flags bearing Pai Mārire symbols began sprouting as far upriver as Rūrūmaikatea, Ngāti Hāua’s Kingitanga pā near Taumarunui.¹¹⁵

It soon became apparent that Rangitauira and his followers intended attacking Whanganui Township and driving out the soldiers whom he held responsible for the deaths of Hōri Pātene and other kin the previous year.¹¹⁶ That he intended to use the river as his line of approach, without the approval of those who lived along it, meant that Rangitauira was buying a fight with down river hapū.

Te Peehi Pakoro declined Rangitauira’s invitation to be the movement’s leader on the river.¹¹⁷ Tōpine Te Mamaku does not appear to have endorsed the movement either and seems to have maintained a position of neutrality.¹¹⁸ Te Peehi’s whakapapa spanned the whole river right to the Pākehā settlement at Whanganui and he faced the predicament of how to retain his mana without damaging his ties along the river. While he sympathised with Pai Mārire aims, Te Peehi was conscious of the longer term risk of drawing government anger up the river.¹¹⁹ He told Rangitauira that the river could not be used to carry a taua downstream beyond the chief’s own kāinga at Peterehama. An observer later recalled that Rangitauira was dismissive,



Putiki chief Te Mawae

telling him: ‘There are no chiefs in New Zealand now. Te Peehi is less than a common man, altogether beneath my feet. I and my god will act as we think fit.’¹²⁰ Realising he could not dissuade him, Te Peehi forewarned the Pūtiki chiefs, Te Mawae and Hōri Kingi Te Ānaua:

The water leaks into the house of Tinui a Tiakai (or my order for peace in this district is broken). Now do you look at your relative Matene. He has broken the order for peace. He has gone over the sacred place of concord. We cannot plead for him now (let him take the result of his folly).¹²¹



Putiki chief Hōri Kīngi Te Ānaua

Te Peehi also persuaded the Kīngitanga below Pipiriki to join the Pūtiki chiefs in preventing the taua from passing.¹²²

At dawn on 14 May, the two groups met at the island of Moutoa. The battle was brief. The island was nothing more than a long scrub-covered sandbank, and the two parties, each of at least 100 men, beached at either end. Before a large audience of their supporters, who watched

from opposite sides of the river, the fight ensued but lasted no more than half an hour, leaving among its dead 16 from Te Ānaua's force and up to 52 from the Pai Mārire taua including Rangitauira. There were also many wounded and several taken prisoner. Wairehu Te Huri of Ngāti Hikairo (son of Te Huri, otherwise known as Reupena Taiamai, who had been assistant to the Reverend Thomas Grace in the 1850s) was amongst the Hauhau side. He gave an account of the fighting to James Cowan almost four decades later:

Our prophet told us the bullets would not touch us . . . so we went fearlessly to the fight. I had a gun; most of our men had guns and tomahawks and also spears and mere. Our warriors sprang on shore; the Government troops sprang on us; the Hauhau returned the volley, then we advanced driving the Government back. But suddenly they rallied and came at us and many Hauhau looked their last on the bright light of day. Then the warriors fought at close quarters with their tomahawks and stone and whalebone mere. Skulls were smashed and heads were split – Aue! It was a fight of olden times, with the rakau Māori (Māori weapons) hand to hand. Our prophet was killed and we were beaten and fled and I fled too. What is the use of staying to be killed anyhow? . . . That was in the days when I was a Hauhau; but I am now a man of peace and a kaikarakia of the Church of England.¹²³

Those Pai Mārire who escaped took refuge for a while at Perakama among Ngā Rauru.¹²⁴ Despite the casualties, there were no real victors after Moutoa and the battle only led to further fighting, which compelled some of those who had remained neutral to choose sides.

When the superintendent of the Wellington Province, Isaac Featherston, for example, determined Pipiriki now to be the point at which government authority extended upriver, Te Peehi and his remaining Kīngitanga forces had little choice but to respond to this challenge to the chief's authority. In November 1864, he was joined by Tahana and Tōpia with about 200 men, including some from Waikato or Ngāti Maniapoto at Ōhoutahi, about six kilometres south of Pipiriki.¹²⁵

A battle took place in February 1865, when a 400-strong

force under the command of Pūtiki rangatira attacked the pā. Hōne Wiremu Hipango, one of the rangatira on the Pūtiki side, was killed, while Tōpia was wounded. Under pressure, the bulk of the defenders withdrew upriver leaving 60 to surrender. These included Te Peehi and Te Mamaku whose mana was such that they were not taken prisoner. Te Peehi soon after took the oath of allegiance before Governor Grey at Whanganui, but Te Mamaku seems to have returned upriver unrepentant.¹²⁶

Tōpia also met Grey in March, but unlike his father, he refused to swear allegiance. The Governor believed that Tōpia was implicated in the killings of James Hewett on his farm at Waitōtara in February 1865 and the Reverend Carl Völkner at Ōpōtiki in the following month. After giving Tōpia a day to get away, Grey declared him outlawed, with a reward of £1,000 for his capture. Tōpia would remain a fugitive until 1869, when, after a relative was killed by Te Kooti's party, he transferred his allegiance to the Crown.

In April 1865, colonial troops garrisoned Pipiriki to prevent any further Hauhau force from coming down to threaten Whanganui township. Te Peehi again took this as a challenge and responded by assembling a force of some 1,000 Whanganui, Ngāti Pehi, Ngāti Tūwharetoa, and Ngāti Raukawa at Pukehinau and Ōhinemutu. Pai Mārire adherents from the eastern Bay of Plenty may also have joined his force. Wi Karamoa Takirau wrote from Tokaanu to report that on 22 May he had reached Ōpepe, where he saw two Pai Mārire 'ope taua' coming from the east. The party included 30 Ngāti Awa and 15 Ngāti Pukeko, who had casks of powder. The group was with 'Te Ua's nephew'. After this group, there came 15 Te Urewera with 'Tōpia Temutumutu', also carrying powder.

Tūroa's force besieged Pipiriki for 12 days from 19 July, withdrawing beyond Ōhinemutu when government reinforcements arrived. A consequence of this action was the exclusion of Te Peehi from Grey's general pardon of October 1865. It was not until the winter of 1867 that the chief was finally pardoned.¹²⁷

The impact of Pai Mārire in Ngāti Tūwharetoa territory did not result directly in bloodshed. In June 1864, Matutāera, who was still then sheltering with Te Heuheu at Waihi, accepted an invitation to travel to Taranaki to



Kereopa Te Rau. After joining Pai Mārire emissaries, Te Rau converted many local Māori to the movement and incited emotion and rage amongst them against the missionaries in southern Taupō.

meet Te Ua, who gave the King the name Tāwhiao. The meeting established strong links between Kingitanga and Pai Mārire.

In December 1864, Te Ua sent a group of emissaries to spread the new religion to the tribes of the eastern seaboard and it was en route that the movement took hold in southern Taupō. The emissaries were told to carry out their mission peacefully and 'not interfere with the pakehas'.¹²⁸ Te Ua certainly did not want further murder committed. The Taranaki party were joined by Kereopa Te Rau of Ngāti Rangiwewehi and his son, who, when they reached Waitōtara, obtained the preserved head of Captain Lloyd, which Kereopa took with him in a basket.¹²⁹

It seems that, after they left Pipiriki, the peaceful aspect of the mission changed to one of aggression levelled at the missionaries, whom they deemed to be in league with the government. Grace later reported that, when the emissaries reached southern Taupō, many locals (including his former teachers) converted to Pai Mārire, apparently seeing more hope in Te Ua's marriage of Old Testament and Māoritanga than in the Pākehā preachings of missionaries, who they felt had abandoned and betrayed them at Rangiaowhia.¹³⁰

According to Pātara Raukauri, Te Ua's apostle, after leaving the Whanganui River the party visited Rotoaira then Tokaanu, where:

Kereopa came with his head and set it up on the stump of a tree, and Kereopa summoned the tribe, women as well as men, to dance before that head. The cause for that work of Kereopa was rage for the people killed by the Pakeha at Rangiriri and Orakau.¹³¹

Descriptions of similar ceremonies at pā in the Tūranga region provide some insight into how Māori fell so readily under the Hauhau spell. One witness told how Pātara shed tears most copiously as he explained to the uninitiated that their tangi was for the people 'stripped naked' and for 'the islands reduced by half'. Many of the onlookers, he said, 'could not restrain themselves from joining in'.¹³² Another witness wrote:

It was a mourning on account of those who had been slain in the war with the English, and for the land which had been taken from them in Waikato. It was commenced by the Taranaki natives, but the effect was overpowering upon the bystanders, who joined in by degrees until there were very few who did not unite in the chorus. There was a chord touched which vibrated in the native breast. It was the 'aroha ki te iwi,' *amor patrice*, and they could not resist it.¹³³

There was also the promise of miraculous cures for health problems which in any culture has always been an inducement that has won followers to a faith. A Tūranga chief later confessed that 'the reason he enlisted under the

Hauhau banner was that Kereopa told him that he would be cured of his lameness if he made a nightly bed companion of the murdered pakeha's preserved head'.¹³⁴

After Tokaanu, the Pai Mārire emissaries travelled to Te Heuheu's pā at Waihi where Kereopa again made a passionate speech about the losses at Rangiriri and Ōrakau. Pātara then went to Pūkawa to inspect the contents of Grace's vacant house, which had not been touched when the Kingitanga refugees sacked the station 16 months earlier. The dwelling was looted and Grace's own parishioners took part in auctioning its contents.¹³⁵ Pātara was purported to have stated that he would have killed Grace if he had found him there.¹³⁶ Those at Pūkawa were said to be ashamed of the robbery, but later some of them were found in possession of the missionary's belongings. Grace levelled the blame for the plundering at Hāre Tauteka who, he said, had become an advocate of the new faith.¹³⁷

In Stirling's assessment, the plundering would have required at least Te Heuheu's tacit approval given that he lived nearby and there were reports (second and third-hand) that suggested he did consent.¹³⁸ However, in some quarters Horonuku was believed to be an opponent of the new faith, he having sought to dissuade the King from going to visit Te Ua. By the account of Isaac Shepherd (clerk and interpreter for Commissioner George Law):

When Te Heu Heu . . . saw that Matutaera had consented to go to Taranaki, he then addressed Matutaera, and said, 'Listen to me. Two different religions have been introduced to us, the Protestant, and the Roman Catholic, and under these two religions, Potatau was made King, and now this man invents a new religion. As you are determined to listen to Rewi and go to Taranaki, go! But recollect!! If you find all that is said true, it will be very good, if the contrary, we turn our backs upon you.'¹³⁹

This seems to align with the report from the government's land purchase agent at Whanganui, James Booth, who stated that the Ngāti Tūwharetoa forces that went to aid their kin on the river appeared to have come mainly from Tokaanu and the Rotoaira area, where links to Whanganui seemed stronger, rather than from Waihi and

Pūkawa.¹⁴⁰ So the government knew in 1863 that Horonuku was not the driver of anti-government sentiment.

All things considered, the Pai Mārire religion came onto the scene at an opportune time. Many of the Kīngitanga adherents had been anxious for a way by which they might carry on their opposition to British rule and saw in the new religion a more effective means by which all Māori might be united in their victimhood against Pākehā domination. Pai Mārire not only offered an avenue by which they could bring into focus their resistance, it also strengthened their cause by providing a kind of religious justification for fighting back.

Tōpia Tūroa and other rangatira with strong links to Ngāti Tūwharetoa were key figures in this resistance and in the fighting that occurred on the Whanganui River in early 1865 (at Pipiriki and Ōhoutahi). As the fighting spread to the Bay of Plenty, the Urewera, Tairāwhiti, and Hawke's Bay districts, a number of hapū located between these expanding conflicts were drawn into the war. Those at Tokaanu and Rotoaira, for example, rallied alongside their Whanganui whānau to defend the river against government incursion, while at the other end of the lake Hōhepa Tamamutu's people were insufficiently armed to bar their Kīngitanga kin, now turned Hauhau, from access to the Kaingaroa Plains as they had done a year earlier. Nonetheless, this did not prevent Tamamutu from taking his people to the Bay of Plenty again to fight alongside Te Arawa against the Hauhau.¹⁴¹

As the Pai Mārire followers began to suffer reverses during the second half of 1865, they grew to realise that their upraised hands would not save them from bullets, and that their prophets could not raise the dead, nor fulfil their promises of supernatural healing. The Governor's proclamation of December 1864 calling on 'rebel' Māori to 'come in' and take the oath of allegiance thus began to garner appeal: it made sense to swear allegiance to a queen who had so far proved victorious on all fronts and to rededicate oneself to a God who had shown himself to be more powerful than Riki and Rura. It also 'helped reduce the likelihood of being condemned as "rebels" and rendering their land liable to confiscation.'¹⁴²

The first evidence of this 'coming in' came in January 1866, when Grey crowed to his superiors that:

almost the entire population of the Lake Taupo district . . . abandoned all intention of any further prosecution of war or disturbance, and that a large section of them are quite prepared to co-operate with the Europeans in punishing any tribes who may still attempt to carry on the war.

Booth reported later that month that 30 men and about a dozen women of the Ngāti Pēhi, Ngāti Kurauia, and Ngāti Pou hapū of southern Taupō came to Rānana to take the oath of allegiance. They were led by Hāre Tauteka, and according to Booth another 70 had gone to Napier for the same purpose.¹⁴³

Two months later, on 28 March 1866, Horonuku and Kīngi Te Herekieke (Hāre Tauteka's nephew) went to Ōhinemutu to meet with Grey, where the Governor afterwards reported that they made 'their complete submission to the government'. He then 'required' both chiefs to accompany him on his progress around the country.¹⁴⁴ If they did so, this seems not unlike the 1869 'house arrest', prominent in the claimants' evidence and which we address later, for here too they were effectively being treated as prisoners.

In October 1866, when Pai Mārire converts from Ngāti Hineuru, at Te Hāroto Pā and Tarawera Pā along the Napier-Taupō road, were defeated and captured by government troops at Pētāne and Ōmarunui, it was feared that their Kīngitanga relatives from Waikato and Ngāti Tūwharetoa, now also turned Pai Mārire, would endeavour to seek utu for the killing of their leaders Pānapa, Te Rangihīroa, and others. The northern Taupō hapū that supported the government requested Crown assistance. Notwithstanding the usual rhetoric from the officials, little assistance was forthcoming. It seemed to these Ngāti Tūwharetoa chiefs that in spite of their constant requests for reinforcements and firearms, the government was unconvinced of the urgency to provide them with any serious support.¹⁴⁵

At the end of January 1867, another Ngāti Tūwharetoa

party of about 100 reached Napier intent on swearing allegiance before McLean, as Governor Grey had encouraged them to do. McLean was away in Wellington so, on 7 February, they took the oath before resident magistrate

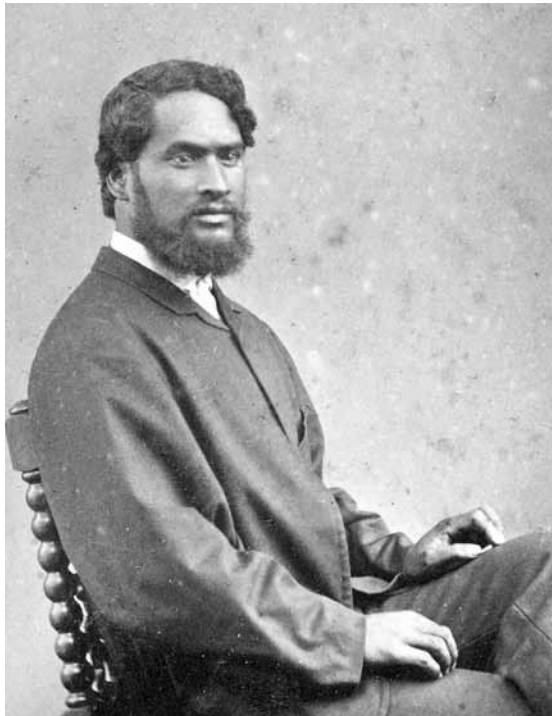
Cooper, with Horonuku Te Heuheu, Paora Matenga, and Paora Hapi acting as witnesses.¹⁴⁶

A year later, Horonuku was certainly back onside with the government. In January 1868, the civil commissioner at Tauranga, Henry Tacy Clarke, discussed with him the likelihood of an attack being made on the ‘friendly natives’ at Taupō. Native Minister Richmond advised Clarke to inform the chief that, ‘the government will do their utmost to support their loyal friends in case of [an] outbreak.’¹⁴⁷

After the resident magistrate at Rotorua, Dr William Nesbitt, visited Taupō in October, he advised the Native Department that there should be three assessors for the district. The Resident Magistrates Act 1867 had allowed for the continuation of the system of Māori assessors and police working with settler magistrates in rural districts. In November 1868 the assistant under-secretary, Henry Halse, informed Clarke that Nesbitt’s recommendation had been endorsed by the department. Accordingly, Hōhepa Tamamutu and Horonuku were appointed to the role, and with ‘Hare’, who had been appointed earlier, were to share in the sum of £100 allocated for the salaries of the three assessors.¹⁴⁸ Official confirmation of Horonuku’s role, however, was not gazetted until March 1869.¹⁴⁹ The choice of the chief as a native assessor shows the extent that the government considered Te Heuheu to be an ally at this time, prior to the arrival of Te Kooti at Taupō.

(6) Troopers and arms: ‘E tupu e te kumara, e ohu e te anuhe’

From the time Te Kooti and the Whakarau landed at Whareongaonga, in July 1868, he made it apparent that he intended to make his way to the King Country to enlist the support of the King, but that his final objective was Tauranga-Taupō on the eastern shore of Lake Taupō. This place was associated with Te Rangitāhau (also known as Tāhau, of Ngāti Hineuru and Ngāti Kurapoto), whose home was close by at Waitahanui but who had been captured at Ōmarunui in October 1866 and sent to Wharekauri. Reportedly six feet four inches tall and about 24 stone, Tāhau was one of Te Kooti’s most impressive and



Kingi Te Herekieke
18??–19??

Kingi Te Herekieke was the grandson of Te Herekieke Tauteka. He fought consistently for the King movement but did not support Pai Marire. In 1866, he was one of the last to finally submit to the Government. In 1869, to show that he opposed Te Kooti, Te Herekieke raised a Union Jack flag above his pa.¹

loyal lieutenants.¹⁵⁰ His communication with Wirihana Te Koekoe, the chief at Tauranga-Taupō, would result in a personal invitation to Te Kooti to go to his village.

Nor would Te Kooti be going amongst strangers. George Asher told the Tribunal that oral traditions passed down to his father held that the prophet knew many of the Ngāti Tūwharetoa chiefs from his early association with Grace and from his subsequent visits to the Pūkawa mission station.¹⁵¹ There is no reason to doubt this statement since from October 1850, Grace, who substituted for William Williams, had charge of the archdeacon's mission station at Whakatō near Tūranga until 1853 and Te Kooti was then one of his pupils.¹⁵²

At Whareongaonga, Te Kooti asked only for an open path to the interior, but if molested would fight.¹⁵³ He was pursued and after a number of initially successful offensives on his part in the Tūranga district he was driven into the Urewera ranges. Some Ngāi Tūhoe came to Te Kooti's aid, as did a number of Whakatōhea, especially those who had suffered from confiscation, as well as Ngāti Hineuru from Tarawera (Napier and Taupō), and a party of Ngāti Porou from the Coromandel area.¹⁵⁴ With a reinforced taua he led lightning attacks on unsuspecting Pākehā and Kāwanatanga (pro-government) Māori in the eastern Bay of Plenty before launching raids on Wairoa and Mōhaka. Soon pressed back into the mountainous Urewera country, his force was to find no peace as Colonel George Whitmore, who at that time was in effect commander-in-chief of the army, launched several attacks from the government's newly established redoubt at Galatea.

At the same time, fighting in southern Taranaki had reignited, this time with Titokowaru of Ngāti Ruanui, which led to fresh tension on the upper Whanganui and in southwestern Taupō. The campaigns on two sides of the island sparked off military activity around Taupō itself, and renewed rumours about the Hauhau threat in the west and north-west of the area, as well as fear that Te Kooti might appear from the east and make his way there. There also remained a Pai Mārire presence in eastern Taupō and inland Hawke's Bay, albeit one that had ceased to be a military threat.¹⁵⁵

As 1868 drew to a close, the relationship between Ngāti



Te Kooti Arikirangi Te Turuki. Te Kooti was a Māori leader, a prophet, and the founder of the Ringatū Church. He is most well known for his part in the New Zealand Wars (1868–72), particularly at Te Pōrere, and for evading capture by government forces.

Tūwharetoa's Pai Mārire, Kingitanga, and Kāwanatanga factions began to strain. Wirihana Te Koekoe, the chief at Tauranga-i-Taupō, was rumoured to have gone to Te Kooti to invite the Whakarau back to his kainga.¹⁵⁶ The rumour turned out to be true. Wī Kingi Te Paia, a Rongowhakaata chief who also claimed to be Te Kooti's prisoner, later explained to the government the reason behind Wirihana's invitation:

... I remember ... a visit from a Taupo chief belonging to the tribe of Te Heuheu. His purpose being to disclose the words and thoughts of the second Te Heuheu [that is, Mananui], whose wishes are always to keep fast hold of the land. He therefore had come to fetch Te Kooti to Taupo, there to organize a means of killing the Pakeha and creating disturbance, whereby to fulfil the wishes of the deceased Te Heuheu. His name was Wirihana, and he was afterwards killed at Te Kooti's kokiri on Whakatane. This man sang Te Heuheu's waiata. (. . . The song urges the people to keep to the land and resist the pakeha. . . .)¹⁵⁷

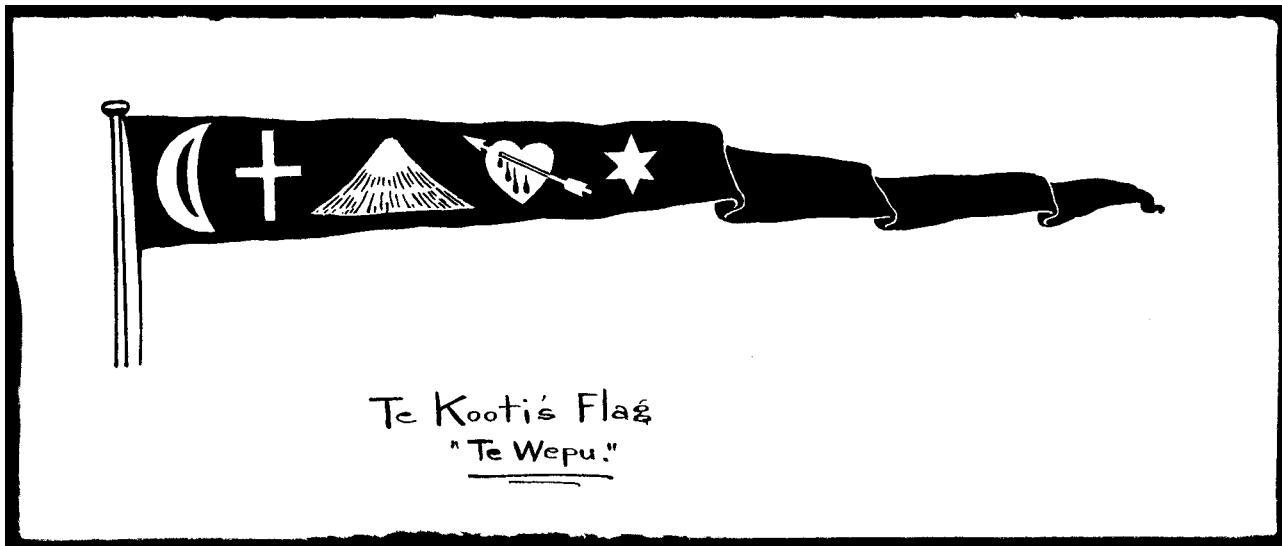
Ngāti Te Rangiita, Ngāti Kurauia, and Ngāti Turumākina, after a 'runanga' meeting, sent Hōhepa Tamamutu to Donald McLean in Napier to try to obtain 40 to 50 guns to protect themselves because of the threat of fighting.¹⁵⁸ McLean was then the member of parliament for Napier and the superintendent of Hawke's Bay Province (which took in the Taupō district), a position he held until 30 March 1869. The pretext for these Ngāti Tūwharetoa being armed, they told him, was that a Hauhau party waiting at Pūkawa had fired on their canoe when they had gone there

from Tokaanu to discuss the survey line for the government's telegraph poles.¹⁵⁹ There was some suggestion that the warning shots were fired because Tamamutu persisted in trying to run the line through disputed land.¹⁶⁰ A media report suggested that they may have been shot at because someone put a flag on a hill for a telegraph survey.¹⁶¹

Te Heuheu was absent at the time the rūnanga met, having already started for Rangitikei before receiving the letter calling him to the meeting.¹⁶² Rūnanga had become popular again, especially since the other mode of local regulation, the Church, had gradually lost its influence as its teachers, once the chiefs of the villages, had left their positions, attracted by the income offered for official salaried positions.¹⁶³

In the New Year, 1869, the Ngāti Tūwharetoa rūnanga, using the designation 'The committee of chiefs of Taupō - Ngāti Tūwharetoa-i-te-Aupouri', had their request for government troops published in the February issue of *Te Waka Māori o Ahuriri*. Among the more than 30 signatories were Horonuku Te Heuheu, Hōhepa Tamamutu, Hāre Tauteka, Paurini Karamu, Kingi Herekietie, Te Kepa Puataata, Te Reweti Te Kume (of Ngāti Tahu), and

Te Kooti's flag, 'Te Wepu'



Hemopō Hikarahui. Their letter stated that they were looking for a way to end the troubles that had been visited upon them, because their relationship with Pākehā was now threatened by the ‘Hauhau’ troubles enveloping their district. ‘E tupu e te kumara, e ohu e te anuhe’, was the statement they used to invite ‘etahi rau hoia, turupa ranei’ (some hundreds of soldiers or troopers) to Taupō.¹⁶⁴ The analogy in the statement was that, while the kumara (that is, Ngāti Tūwharetoa) develops, caterpillars (Te Kooti and his followers) gather around to consume them. At the same time, the chiefs implored Pākehā to temporarily cease gold prospecting until the ‘Hauhau’ trouble was over and rather turn their attention to digging out the weeds in their garden (that is to say, their district). This, they believed, would not take long if they all gave the task their full attention.¹⁶⁵

Te Kooti was, of course, not a Pai Mārire adherent, and so the term ‘Hauhau’ was inaccurate as a label for him or the cause for which those with him fought. However, as Stirling observed, ‘Hauhau’ during this period was used as ‘a catch-all term of condemnation for any who opposed the government’.¹⁶⁶

Meanwhile, a report stated that some of the Ngātapa refugees had obtained shelter with Matuaahu Te Whare-rangi, the ‘chief of a Hauhau settlement at Rotoaira lake’.¹⁶⁷

In March, Rewi Maniapoto, the leader of the Kingitanga movement among Ngāti Maniapoto, called a meeting at Moerangi, which was near the source of the Kuratau River on the west side of Lake Taupō. He invited all parties, with a view to coming to a final decision as to whether there was to be peace or war.¹⁶⁸ Rewi was earlier reported as trying to persuade ‘the friendlies’ not to molest ‘the Hauhau’ (that is, Te Kooti’s supporters) should they pass through Taupō.¹⁶⁹ The outcome of the Moerangi meeting was later conveyed to Captain John St George by Te Heuheu:

Taupo Hauhaus not to rise if Te Kooti is not molested in passing through Taupo. The King’s Natives will not rise if no action is taken against Ngatimaniapoto for the murders at White Cliffs [the killing of the missionary the Reverend John Whiteley in northern Taranaki].¹⁷⁰



Captain John Chapman St George. St George was one of four in the government (kāwanatanga) force to die at Te Pōrere.

Twenty-four-year-old St George, who had fought in the earlier wars, had been in the district since November 1866. He was both an agent for the government, observing and reporting on developments among Ngāti Tūwharetoa, and a runholder, having acquired a leasehold property near the Kaingaroa plains. For some time he had been trying

to resurrect and secure for himself the position of resident magistrate for Taupō. This never eventuated and instead he was made temporary commander of the Taupō Native Contingent which came into being in April 1869. He was killed at Te Pōre.

(7) *Preparing for Te Kooti: 'Kua tata te whawhai'*

Ngāti Tūwharetoa were aware that Te Kooti was coming to Taupō; they just did not know the exact timing. This was obvious at the start of April, when kāinga along the eastern lakefront were being abandoned for the refuges of Tapuaeharuru and Te Hatepe. Some, like those at Tauranga-i-Taupō, clearly sympathised with the Whakarau. Just as they had supported the Kīngitanga movement or Pai Mārire, they saw in Te Kooti yet another means by which they might renew their resistance to British rule and avenge the loss of relatives in the earlier fighting. Wirihihana Te Koekoe was one such casualty of battle: viewed by St George as the 'acknowledged head of the Hauhau of Taupō and Tongariro', he had fallen while participating in an attack by Te Kooti on a flour mill near Whakatāne.¹⁷¹ Te Rangitāhau and others wrote to his son, Wi Te Wirihihana at Tauranga-i-Taupō, to inform him that they had avenged his father's death and told him, 'Me noho tonu koutou i Tauranga naka a tae noa atu matou' (Stay there at Tauranga until we come to you).¹⁷² St George reported in early April that the Tauranga-i-Taupō people were preparing food for Te Kooti's arrival.¹⁷³ Te Kooti's mailmen were also intercepted carrying letters to Tauranga-i-Taupō and Waikato indicating that the prophet could definitely be expected in the Taupō district sometime soon.

A concerned Hōhepa Tamamutu wrote to McLean asking again for troopers and 'three swivel guns' stating that some Ngāti Tūwharetoa, at least, were prepared to take the offensive if Te Kooti did not make an appearance soon.

Ka nui ra te rarururu o tenei whenua. Kua tata te whawhai engari heoi ano to matou pouri ko te Heuheu ma he tokoiti no matou . . . Ki te kore a te Koti e hohoro mai ki Taupo nei ka wahia ano e matou ki te Whaiti whawhai ai . . . E hoa tukua

katoatia mai nga rau e waru o Ngati Kahungunu me te Pakeha ki te whawhai i a te Koti me te Urewera ki[a] wawe te mate whakararuru tahi i a tatou.¹⁷⁴

There is much trouble in this district. Fighting is near but our gloom is that both ourselves, Te Heuheu and the others are few in number . . . If Te Kooti does not attack Taupo we will divide ourselves again and go to Te Whaiti to fight him . . . Friend, release 800 Ngati Kahungunu and European troops to fight Te Kooti and Te Urewera to hasten the resolution of our troubles.¹⁷⁵

The northern Taupō chiefs met at Tapuaeharuru to discuss the threat posed by Te Kooti and they passed the following resolutions:

- ▶ A letter to be sent to Paora Hapi and Te Heu Heu asking them to muster here and wait until the ill [disposed?] came to Taupo;
- ▶ 10 men are to be left at Te Hatepe as a guard to arrest any of Te Kooti's or upper Taupo messengers, 10 men are to be sent as a guard for the same purpose to Ōpepe, 10 men sent to Parehaua for the same purpose;
- ▶ The Govt to be written to by me asking for a troop to be stationed at Taupo to render assistance to us;
- ▶ Ammunition to be sent here by Government to be stored;
- ▶ The Ngati Tahu to be asked to come here and distinctly declare their intentions or else to be disarmed.¹⁷⁶

The invitation to Te Heuheu and Paora Hapi may suggest that Poihipi Tukairangi, Tamamutu, and the other northern Taupō chiefs were not altogether confident their southern neighbours were as resistant to Te Kooti as they were. Te Heuheu and 40 of his men had been at Te Hātepe at the beginning of April.¹⁷⁷ Hapi's arrival four days later with 22 men soon reassured them as he also brought news that eight others from Tauranga-i-Taupō were departing to join Te Kooti. On the other hand, Te Heuheu sent word that he was going to a tangihanga in Kīngitanga territory. St George noted, it 'does not look at all well' and added: 'I saw by Poihipi's laugh that he understood the thing.'¹⁷⁸

Tamamutu and Paora Hapi also wrote to Karaitiana Takamoana to let Ngāti Kahungunu know that while they expected Te Kooti to come to Taupō, they were not waiting around for him, especially as some Ngāti Tūwharetoa who were Hauhau supporters were now wanting to fight as allies for the prophet. They asked Karaitiana to send Henare Tomoana and a 100 or more Ngāti Kahungunu to rendezvous with their force of 100 at Rūnanga (along the present Napier–Taupō highway), ‘kia wawe te mate i a tatou’ (to prevent death coming upon us both).¹⁷⁹ The previous day, Te Kooti had completed his raid on Mōhaka where nearly 60 Māori and seven Europeans were killed.¹⁸⁰

Tamamutu and Tukairangi took up positions at Ōpepe and Rūnanga where their men patrolled the area hoping to intercept any of Te Kooti’s messengers. On 18 April, St George received instructions from Colonel Whitmore, who was at Maketu, to raise a 100-strong contingent from ‘the natives on the eastern side of the lake’ and to employ the chiefs Hōhepa Tamamutu, Poihipi Tukairangi, Reweti Te Kume, and Paora Hapi. The force, which would become known as the Taupō Native Contingent, was to assist with the government’s first invasion of the Urewera district by blocking Te Kooti’s escape route to Taupō, but the contingent would have to feed themselves and the men would be on minimal pay.¹⁸¹ Three days later St George rode to Ōpepe to enlist Tukairangi and Tamamutu’s services, but because they wanted better wages, it took three days to recruit the required men. Paora Hapi, who arrived while St George was there, was keen to participate but could offer only 20 to 30 men.¹⁸²

The contingent, consisting mainly of Ngāti Te Rangiita, Ngāti Tūtemohuta, Ngāti Wairangi, and Ngāti Tahu men, marched to the upper Rangitaiki River, to Te Arawhata, where they were to meet up with a column coming from Matatā, one of three converging on Ruatahuna and Ahikereru intent on destroying Tūhoe’s ability to shelter Te Kooti.¹⁸³ They waited several days in appalling weather for the column to arrive. At the end of the month, when it had still not materialised, they returned to Tapuaeharuru.¹⁸⁴ Whitmore’s column eventually got started in May. When St George tried to persuade the contingent to take the field again, in support, Paora Hapi told

him that they would not cross the Kaingaroa ‘owing to a superstition of death to any ope that [?] [tries to enter] the Urewera by this route.’¹⁸⁵ However, Hapi and 30 of his men were at Fort Galatea by 6 May.¹⁸⁶ It was to this excursion that Te Heuheu was referring when he addressed the Ngāti Tūwharetoa chiefs after the battle of Te Pōrere.

Bad tribe, it was you who made the raid into the Urewera country, and afterwards left me as food for Te Kooti. I was left alone and forsaken by you. . . . But I do blame Hohepa Tama[m]utu, and had he led the charge [at Te Pōrere], on my power I should have aimed at him and shot him, as he is the sole cause of my misfortune.¹⁸⁷

The implication was that the northern chiefs had assisted in driving Te Kooti towards Taupō and that once he had made Tauranga-i-Taupō, Tamamutu, in particular, did nothing to prevent him heading further south. In actuality, there was little Tamamutu and the others could have done at that stage as they were clearly outnumbered.

In mid-May, Horonuku having returned from a visit to Tāwhiao (and probably the tangihanga mentioned above), sent an invitation to all the Ngāti Tūwharetoa parties to come to Waihi, setting the date for 17 May.¹⁸⁸ The northern chiefs chose not to attend because, they said, they found the sparsely worded invitation ambiguous (probably because it did not set out the purpose of the meeting), but also because of ‘the suspicions they still held towards not only the Kingitanga but even Te Heuheu himself.’¹⁸⁹

Writing from Ōmarunui at the end of May, Paora Hapi told Samuel Locke (Te Raka), the magistrate for the East Coast districts, that at the proposed hui Te Heuheu intended discussing Tāwhiao’s request to let Te Kooti pass through Taupō unmolested. He wrote that at Tokanga-amutu Te Heuheu had told Tāwhiao, ‘E te kingi e kore au e pai kia tae mai te tangata kohuru kia piri ki tou taha.’ (O King, I do not agree that that murderous man should draw close to your side.) When asked again, Te Heuheu was adamant: ‘Kaore au e pai kia tae mai a te Koti ki konei. Ko taua tangata ka mate ia i te mate, e mate rawa ai ia i tona mate mo ana mahi he.’ (I will not agree to Te Kooti coming here. That man shall die on account of his

wrongs.) According to Hapi, Tāwhiao relented but reiterated a proclamation he had made to all iwi at a hui at Hangatiki on 26 April:

1. *Ko te patu a te tangata i te whenua me mutu.*
2. *Ko te patu a te tangata ki te tangata, kati.*
3. *Ko te mau ki te mau, te matou ki te matou.*¹⁹⁰

The *Daily Southern Cross* translated the proclamation as follows:

1. . . . ‘Let striking of the land by men cease’ (ie, let there be no selling of land, let there be no leasing of land, or any interference in land matters).
2. . . . ‘The striking [of] men, one the other, suffice’ (ie, the King party are not to make any attacks on the Queen party, or upon the Europeans).
3. . . . ‘The left to the left, and the right to the right’ (ie, the Maoris are the left hand, and should be united as the pakehas, who represent the right hand, are united; or it may mean that the left is represented as being evil, whilst the right is represented as being good, and that therefore evil will be followed by evil, and good will be followed by good).¹⁹¹

In other words, Tāwhiao was for peace and he wished Ngāti Tūwharetoa to be also. At that stage, only three weeks before Te Kooti’s arrival, Te Heuheu had made no intimation that he wished to have anything to do with the prophet. In fact, if what he told Tāwhiao is accurate, he was prepared to do all he could to prevent Te Kooti getting through to Waikato.¹⁹² In contrast, the Ngāti Tūwharetoa research report stated that Horonuku intended to support Te Kooti, but was conscious ‘that Crown eyes were upon him’ because of his involvement in the fighting at Waikato. So he directed ‘several of his closest relatives’ to aid Te Kooti ‘as Ngāti Tūwharetoa generals’ to the prophet’s cause. These included his uncle Tōkena Te Kehakeha and Tōkena’s son Hoko Pātena, Petera Te Whatāiwi, Te Hanairo, Te Ōtimi Neri, Te Rauparaha Neri, and others.¹⁹³

The King also proposed that Te Heuheu call Ngāti Tūwharetoa together, all parties, to convey what the two

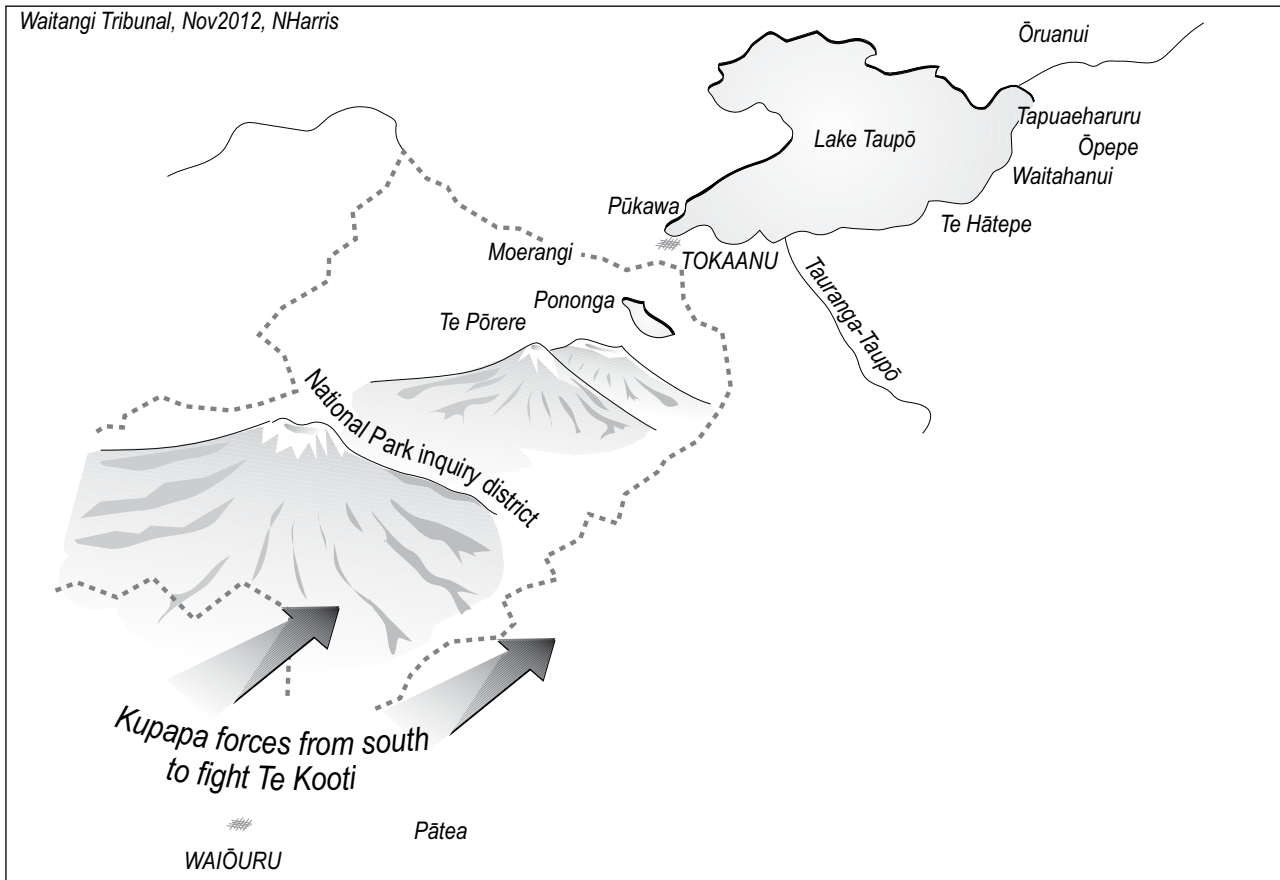
had agreed to. This was in part Te Heuheu’s intention when he called the Waihi meeting for 17 May. Another was to plan for a bigger future hui to be held in September at Te Awapoupou, about 20 kilometres from Waihi. Tāwhiao intended to be there, and an invitation was to be extended to Pākehā leaders, as well as pro-government Māori, and Pai Mārire supporters. The plan was abandoned after fighting broke out, but according to Mr Stirling, it showed ‘the Kingitanga’s ongoing efforts to promote peace and unity, and their opposition to any fight that Te Kooti might bring to their lands.’¹⁹⁴

Rangatira from Moerangi and other western Taupō and Tuhua kāinga did go to the 17 May hui, but as no one from the northern end of the lake turned up, they gave up and returned home. After this there would be no more attempts at peacemaking around the lake. Time had run out. Te Kooti was about to make his entry into the region, conflict would follow, and Ngāti Tūwharetoa would be pitted against each other in a war not of their making.

(8) Ōpepe

In early June 1869, Ngāti Tūwharetoa finally saw a response to their constant requests for Crown assistance. It came first in the form of a handful of troopers reconnoitering the Tapuaeharuru locality as a potential military base. Colonel Whitmore had directed Lieutenant-Colonel St John to move his headquarters from Fort Galatea nearer to Taupō. Whitmore had suggested Ōpepe, where the Napier–Taupō track intersected the main trail from Rangitaiki and the Urewera country, as a new depot from which supplies could be brought in from Napier. St John, however, was slow to make his preliminary reconnaissance of the area and by the time he and an escort of cavalrymen set out from Fort Galatea, on 4 June, he was too late: Te Kooti, forced to leave the Urewera ranges, was already on the move, on his long-deferred mission to enlist the sympathies of Te Heuheu and Tāwhiao.¹⁹⁵

When the Galatea detachment reached Ōpepe, 10 miles south-east of the Tapuaeharuru pā, 14 of them were left to set up camp while the officers continued on to the pā. Two days later, on 7 June, the Ōpepe escort was ambushed by the advance guard of Te Kooti’s column numbering 50



Map 3.2: Military conflict in the Taupo region

armed men.¹⁹⁶ Guided by Te Rangitāhau, who was very familiar with the tracks into the area, and with Te Kooti to the fore, they killed nine of the troopers while five others barely escaped with their lives.¹⁹⁷

The next day (8 June) the rest of the column arrived, numbering about 200 people (50 mounted on horses and the others on foot), which included a number of Tūhoe chiefs and a significant force of their fighting men. Together they continued on to Waitahanui, which had already been evacuated. Passing through Hinemaiaia they killed an elderly man named Hona, the only person there, and burnt some whare. This would prove a costly mistake

for Te Kooti, as will be seen, for old Hona was a relative of Tōpia Tūroa. On reaching Paora Hapi's Ngāti Tūtemohuta pā on the hill at Te Hātepe, Te Kooti's men were said to have killed six men and 15 women and children, leaving Paora to flee with the survivors to the military outpost at Te Hāroto.¹⁹⁸ Another account, however, had it that these were the total number of dead for Taupō some weeks later, and that only one man found hiding at Te Hātepe was killed.¹⁹⁹ The column camped the night at Te Hātepe where under orders from Te Kooti 200 men fired a volley at Motutaiko, the island in the lake, supposedly as an offering to Te Kooti's god, and perhaps as a defiant gesture



Ōpepe, circa 1870. Ōpepe was the scene of a surprise attack by Te Kooti's men in June 1869.

since there were several Ngāti Te Rangiita chiefs buried on Motutaiko including Te Rangitūamātotoru.²⁰⁰ At sunrise the pā was torched, the smoke being seen from both Tapuaeharuru and Tauranga-i-Taupō. Motutere was next set fire to before Te Kooti reached the 'seat of his objectives', namely Tauranga-Taupō, on 10 June, where the prophet had predicted support would come.²⁰¹

There were conflicting accounts of how Te Kooti was received at this place but it appears on balance that he was welcomed and that most of the Tauranga-i-Taupō people voluntarily joined him. Some resistance came from Hōhepa Tamamutu (a descendant of Te

Rangitūamātotoru), who with a party of 20 men had gone from Tapuaeharuru to Paora Hapi's assistance. Not finding him, however, the party had advanced towards Te Kooti's position at Tauranga-i-Taupō, where outnumbered they withdrew after a brief skirmish.²⁰²

At this juncture, an estimated 100 Tūhoe followers of Te Kooti went back to the Urewera, probably because they had heard that Pākehā troops were at Waikaremoana. Also, it seems that Te Kooti had entered into a compact with his followers that, 'whenever they happened to be in a district belonging to any chief who had joined him, such chief should have a voice in the operations', and at

Hāre Tauteka

18??–23 July 1872

Hāre Tauteka was the son of Tauteka II and brother of Te Herekiele Tauteka.¹ He fought against the Crown in support of the Kingitanga, but joined the Crown against Hauhau supporters and took the field against Te Kooti at Te Pōrere. In 1867, Hāre was appointed to the role of assessor at Taupō.² He was considered one of the influential Ngāti Tūwharetoa chiefs after Te Pōrere and up until his death.

this time, Te Rangitāhau quarrelled with Te Kooti over the killing of his kin at the other villages.²⁰³ Indeed, Te Rangitāhau's role with Te Kooti would become ambiguous as time went on.²⁰⁴

Te Kooti and his remaining party went further south to Tokaanu, where he found that anyone who was obviously in the Kāwanatanga camp had already left the village. These were part of Ngāti Kurauia who, under Hāre Tauteka and his nephew Kingi Herekiele, had withdrawn to Tūranganui, which was Ngāti Rangi land to the south of Murimotu. There they were awaiting the assistance of their Whanganui relatives to whom they had sent messengers. Their homes at Tokaanu were looted and torched and their cattle and horses appropriated, an act that won the support of some and ensured the non-cooperation of others. The less enthusiastic supporters of the government who remained at the southern end of the lake were left with little choice but to either voluntarily support Te Kooti or be forced to join him.²⁰⁵

A number of factors at this time led to a lull in the government's pursuit of Te Kooti. The Ōpepe ambush saw Lieutenant-Colonel St John withdraw to Fort Galatea. Whitmore had taken ill and Colonel Harrington, based at Tauranga, was given command of the Bay of Plenty district. Rather than following-up Te Kooti, Harrington ordered the armed constabulary to abandon the redoubts

from Matatā to Galatea and to fall back on Tauranga where he intended to put the men through a course of drill for a few months.²⁰⁶ Then, on 24 June, the Stafford ministry (1865 to 1869) was defeated, resulting in a change of government.

(9) Te Heuheu: captive or ally?

It was the middle of winter and the interlude gave Te Kooti an opportunity to recruit among Ngāti Tūwharetoa. Retaining Tauranga-i-Taupō as his base, Te Kooti sent some of his men to Waihi where Te Heuheu and Paurini Karamu and their people were about to depart across the lake (probably to Tapuaeharuru). Captain John St George heard they were already in their canoes and he thought they could have got away when Te Kooti's messengers appeared.

There are two contrasting orthodoxies regarding Te Heuheu's relationship with Te Kooti. The first says that the chief willingly supported the prophet, if not when Te Kooti arrived at Waihi – which was about 11 June – certainly when they were at Moerangi two weeks later. Claimant counsel argued that, despite the discrepancies in the evidence, this view aligns with Ngāti Tūwharetoa oral tradition. Certainly it accords with John Grace's account in his history of *Tūwharetoa* where he states:

Te Kooti knew Te Heuheu Horonuku and many of the chiefs of Ngāti Tūwharetoa. He had moved among them many years before when he was at the mission station at Pukawa. There was one thing he had in common with Te Heuheu Horonuku, and that was that each of them had taken up arms against the Government. The Taupo chief still remembered the injustice meted out to his kinfolk in Waikato. When Te Kooti arrived at his [Te Heuheu's] pa and told him that he intended enlisting the services of Waikato, Ngāti Maniapoto, Taranaki, Ngapuhi, and other tribes which were sympathetic with them and the movement to overthrow pakeha rule, he readily joined him. Some authorities are inclined to state that Te Kooti forced him into doing so, but that is hardly correct.²⁰⁷

In addition to the enticement to overthrow British rule, some believed Jehovah was on Te Kooti's side. Witness the

following explanation given by Hoeta Te Hata of Ngāti Te Rangiita, a participant in the events that transpired at Taupō and who would later become the first Ngāti Tūwharetoa Anglican minister:

e ki ana ratou kai a Te Kooti tonu te Atua a Ihowa o nga mano. Na te Atua tonu a Te Kooti i arahi mai i te moana nui a Kiwa. Ko te take tenei i uru ai nga iwi ki raro i te maru o Te Kooti ka puta hoki te motu nei me te iwi hoki i a Te Kooti. Kai a ia hoki a Ihowa o nga mano pera me Mohi i arahi ra i a Ihairaira i te moana whero me te koraha. He penei te mahara me te whakaro o nga iwi e uru nei ki raro i te maru o Te Kooti.²⁰⁸

they said that Te Kooti had the supernatural presence of God – Jehovah of the thousands – with him. That it was also God who had led Te Kooti across the great ocean of Kiwa. This was the reason the people [were willing] to come under the mantle of Te Kooti and that the island and also its people supported Te Kooti. He had Jehovah with him just like Moses had when he led the Israelites through the Red Sea and across the desert. This is what the people reflected on and thought over when they chose to come under Te Kooti's mantle.²⁰⁹

The Jehovah referred to 'was the Jehovah of the Jews of the captivity, oppressed by kings and governors, dispossessed of their homelands and striving to hold onto what they believed to be the tapu, the mana and the customs of their people.'²¹⁰ In the Te Urewera inquiry, that Tribunal also cited Te Kooti's spiritual leadership as a key reason for why Tūhoe initially supported him strongly. 'Te Kooti', the Tribunal noted, 'cannot be considered simply as a man who gathered malcontents about him to commit murder and depredation. On the evidence before us, that makes no sense.'²¹¹ They quoted, among others, Professor Wharehuia Milroy who told how his tipuna 'looked to Te Kooti and to the Ringatu faith as salvation for Tūhoe and to prevent subjugation by the Crown, that is, to prevent surveys and sales of Tūhoe land at Waikaremoana.'²¹² If we are to accept the Ngāti Tūwharetoa oral tradition then we have to acknowledge that, like Tūhoe, Te Kooti for a time at least, garnered a similar appeal for those Ngāti Tūwharetoa, including Te Heuheu, who fought with him.

Many of them believed he was possessed of supernatural spiritual powers and they were more fearful of the prophet himself than of the consequences of not joining him. It seems Te Kooti 'had a fascination for those he encountered' and in his presence they became powerless to resist. Dr Ballara suggests this is what happened to Te Heuheu and his people at Waihi.²¹³

The second of the orthodoxies holds that Te Heuheu sided with Te Kooti reluctantly, indeed that he was held captive. Five men who escaped from Waihi reported that the chief and all the others were prisoners: Te Kooti 'did not kill any of them but prevents them getting away.'²¹⁴ It was widely known that Ngāti Tūwharetoa were poorly armed; they had after all been asking the government for several months to loan them guns. Indeed, just eight weeks earlier, when Paora Hapi had questioned the Tokaanu people (in the absence of Hāre Tauteka and Paurini Karamu, who were at Whanganui) about what they would do if Te Kooti came to Taupō, they are said to have replied that 'they were going to remain quiet and prepare food for him'. On hearing this, Paora made them give up 'some government guns', but in the event these numbered only three.²¹⁵ Powerless to defend themselves, the women and children were taken hostage to ensure the support of their menfolk.

According to newspaper reports, Te Heuheu said afterwards that he had gone to Tauranga-i-Taupō where he was told about 'the man who had been killed' (probably old Hona). Addressing himself to those who had made the raid into the Urewera country, he said they had abandoned him. 'I then got frightened', he is reported as saying. 'Te Kooti came when I got back [to Waihi], and I was taken prisoner' (I hopukia au e ia i Waihi). In this account, it seems he felt constrained to remain and fight on Te Kooti's side, as part of a strategy of self-preservation: 'I have fought against you, but what was I to do? I was a prisoner.'²¹⁶

(10) To see the King: 'Kuhua te hoari ki roto i te pukoro'

During his sojourn at the southern end of the lake, Te Kooti sent out spies to ascertain the strength of Tapuaeharuru. Evidently, he was contemplating an attack on the pā.

However, the 200 northern Ngāti Tūwharetoa staying there (including 100 women and children) had been recently reinforced by the Tuhourangi chief, Wi Keepa Te Rangipūāwhe, and 100 men from Te Arawa. Changing his mind, therefore, Te Kooti set out again, on about 15 June, with most of the people from Tauranga-i-Taupō, Korohe, Tokaanu, Waihi, Pūkawa, and Rotoaira, this time heading in a westerly direction to the settlement at Moerangi. These people were already known to support Te Kooti. Wiremu Kingi Te Paia later told the government that about 100 Ngāti Tūwharetoa welcomed them there, having prepared vast quantities of food for them. He said that their chief, Wiripō Tohiraukura (later captured at Te Pōrere) strongly advocated fighting the Pākehā, continuing the killing, and holding the land.²¹⁷ He then went on:

But of Te Heu Heu I am not quite certain. I thought he was a Kawanatanga . . . He rose and said, 'Welcome, the man from the land of the sunrise (Te Tairawhiti).' His words were good. He did not speak of withholding the land or of persistence in fighting. I rose and spoke, as I liked the straight road Te Heu Heu had taken.²¹⁸

Te Heuheu's change of heart, at least towards the Ringatū faith, was said to have occurred the next morning. Te Paia recounted that, 'At sunrise, Te Kooti was again glorifying his god (whakamanamana)', and testified again to the chief and Ngāti Tūwharetoa, 'persuading them to adopt his religion, and worship his atua, to which Te Heuheu's people consented.'²¹⁹ Speaking in later times, Sir Apirana Ngata, though Anglican himself, would explain the appeal that spiritual leaders like Te Kooti had for other Māori:

In crises like these Māori history is full of examples of tribes throwing up either great fighting chiefs, or fanatics with the requisite appeal either of personality or a creed of ritual conformable to the mental background of the race and the desperate urgency of the times. In the long history of the Polynesians there had always been a priesthood subtly versed in the art of swaying the mind and passions of the people, and belief in supernatural powers displayed in the person of priest

Paurini Karamu

c 18??–c 1889

Paurini Karamu was of Ngāti Kurauia and Ngāti Waewae. Along with Horonuku Te Heuheu and Matuaahu Te Wharerangi, Paurini was with Te Kooti when he came to Taupō. Paurini, however, chose not to remain with Te Kooti and escaped to his relatives at Whanganui.¹ Paurini was one of the chiefs whose name appears on the Native Land Court application for the Taupōnuatia block in 1886, and he was also put into the titles of the mountain blocks. He married Katarina Pikiāo and they had three children.²

or chief was not new in Maori life. It was in this tradition that priestly leaders arose to fire the people to demonstrate actively and physically their continued opposition to the pakeha and their determination to drive him into the sea whence he came. While some believed fully in the new cults and were genuinely carried away, others thought them useful.²²⁰

Those present at Moerangi that day may have accepted Te Kooti's faith and may well have been enticed by the authority and skill of his oratory, but just how committed they were to him is uncertain. Only a week later, at least two of the leading Ngāti Waewae men, Paurini Karamu (also of Ngāti Kurauia) and Te Huiatahi (alias Te Moana Pāpaku), both trustees in the mountain blocks 17 years later, fled Te Kooti and immediately tried to raise war parties to fight him.

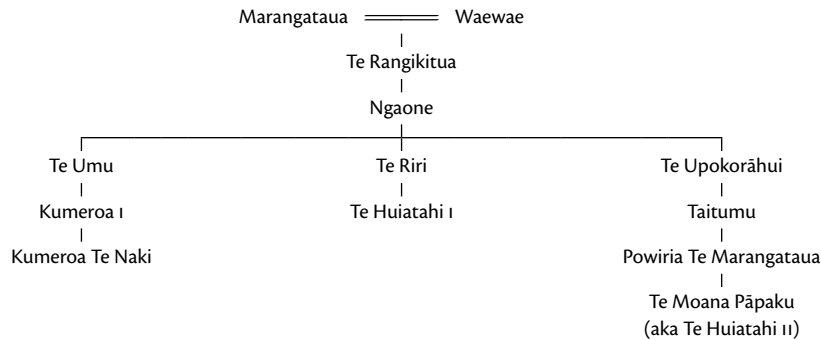
From Moerangi, the party of 200 pushed on to Taumarunui, where Te Kooti failed to induce Ngāti Hāua to join him.²²¹ Later, when Tōpia Tūroa and Tōpine agreed to place a blockade on the upper Whanganui River and thus prevent Te Kooti from using it, the old chief went to inform Te Kooti. He was said to have wept with Te Kooti's people before leaving.²²²

In early July, Tāwhiao sent word that he would welcome

Te Huiatahi II

c18??–c18??

Te Moana Pāpaku, a great nephew of Te Huiatahi I, was also known as Te Huiatahi. In 1869, he was in Te Heuheu's party that went with Te Kooti from Tokaanu. However, when they reached Tuhua he escaped, as did Paurini Karamu. Paurini headed to Whanganui while Te Moana Pāpaku went to Tawhiao to ask for a force to assist him to fight against Te Kooti.¹ Along with Kumeroa Te Naki, Te Moana Pāpaku was among five Ngāti Waewae placed in the titles to the mountain peaks.



Te Moana Pāpaku was also the name of the stretch of land that linked Motuopuhi to Te Ngongo Beach at Rotoaira. It was destroyed when the lake level was raised for the Tongariro power development.² A pā once stood at Te Ngongo with a whare tupuna named Toheapuku.³

Te Kooti, but only if he came in peace. By the time Te Kooti's column had passed through Tuhua, his numbers, one eyewitness said, had swelled to well over 500 men, plus another 300 women and children.²²³ Wiremu Kīngi Te Paia, however, thought that there were no more than 200 of them.²²⁴ Many of the men were heavily armed with breech-loaders and rifles, and the King was able to muster only 250 supporters. Around 100 of the Ngāti Tūwharetoa were noticeably unarmed, and it is likely that these were Te Heuheu's people. It was at Tuhua that Paurini and Te Huiatahi managed to escape. Paurini headed south to his relatives on the Whanganui River, while Te Huiatahi was reported to have gone straight to the King to ask for men to attack Te Kooti, but Tāwhiao did not agree.²²⁵ This

tends to confirm Te Heuheu and his people's semi-hostage status.

On 10 July, Te Kooti's column reached Te Kuiti, where Rewi Maniapoto welcomed them. As recorded by Binney: 'the two men were related through Te Kooti's father, and this bond of kinship Rewi would honour through all his dealings with Te Kooti.'²²⁶ Te Kooti assured Rewi that he was there not to depose the King but to stir Waikato to action as his allies. They then went together to Tokanga-amutu, that part of Te Kuiti that Ngāti Maniapoto had made over to the King after the Waikato land confiscations.

But they soon met with a rebuff from Waikato and the King and it appears it was of Te Kooti's own making. One account says that a welcoming feast had been proposed,

and the King's people brought great gifts of food. Te Kooti, appropriating the role of host, ordered his men to fire a volley over the heads of the food bearers, with the result that they all threw down their gifts and quickly retired. Waikato remained at a distance and were very angry with Te Kooti for this humiliation.²²⁷ In the meeting that followed, it seemed to Waikato that Te Kooti had come to challenge both them and the King to accept his proposals about continuing the fight and turning to his faith. Their response was a refusal to bow down to his 'Atua' and advice to him to sheath the sword: 'Kuhua te hoari ki roto i te pukoro'.²²⁸

As a result, the prophet did not gain an audience with Tāwhiao at all, despite his waiting for over a week. Tāwhiao's house was constantly guarded while the King remained inside it. Furthermore, all the houses in the area were deliberately occupied, forcing Te Kooti and his party to camp on the roadside. One of the chiefs who had accompanied the prophet later wrote that being with him outside Tāwhiao's whare, spurned as they were, was like being with 'a decayed dog' (me te kuri pirau).²²⁹

Te Kooti had little choice but to return with his supporters by the route they had come, but not before a pronouncement from Tāwhiao was formally read to them telling Te Kooti 'Kati te pakiki' (Cease asking or bothering (us)). The King then went on to tell Te Kooti that all roads, with the exception of the route via Tuhua to Taupō, were closed to him, and that they intended escorting his party to the boundary of the King Country.²³⁰

As to Te Heuheu's part at Te Kuiti, he was said to have spoken 'violently' in favour of Te Kooti and, according to William Searancke, the resident magistrate in the Waikato, 'danced about like a madman, with a brace of revolvers stuck in his belt'.²³¹ This seems at odds with Horonuku's close relationship with Tāwhiao and what the chief was supposed to have told the King during his visit in May (referred to earlier): 'E te Kingi, e kore au e pai kia tae mai te tangata kohuru kia piri ki tou taha' (O King, I do not agree that that murderous man should draw close to your side). It does fit, however, with the orthodoxy that he supported Te Kooti willingly. In contrast, St George learnt

from two spies whom he had sent to Pukerimu (near Titirapunga) that Te Heuheu and Ngāti Tūwharetoa 'have left Te Kooti and are Tawhiao's guests'.²³²

In the meantime, while Te Heuheu and his people had been away, the Kāwanatanga force at Tapuaeharuru had plundered the villages left vacant at the southern end of the lake, including Tokaanu, which was one of the locations Te Kooti was heading back to. This had come about on 11 July, when St George instructed some of his men to cross the lake and get as much food as they possibly could as Tapuaeharuru was desperately short of provisions. Any canoes that Te Kooti's party might likely use, were to be taken. St George gave his men 'strict orders not to destroy anything'.²³³ These orders were noted down:

This journey is to fetch food and canoes. It is not right to disturb or catch horses. It is not right to take food from Tokaanu, rather canoes. Be fair in taking food. It is not right to burn houses or break goods. It is not right for a person to go by land, all will go by canoe.²³⁴

The foraging party got back four days later with waka from Tauranga, Korohe, Tongariro (probably Waitahanui Pā), Waihi, and Pūkawa. They also had with them a bullock, 30 to 40 pigs, about 200 kete of potatoes, and 20 to 30 kete of kūmara.²³⁵

When Te Kooti and his party returned from Te Kuiti, it was rumoured that his men set fire to all of the southern villages.²³⁶ On top of the July plundering raid, it is little wonder that there were anything left. But it seems that there were still dwellings, stores, and other property remaining, at least at Tokaanu, for Ngāti Kurauia later complained that the Ngāti Kahungunu contingent had looted and destroyed what remained. In fact, Ngāti Kurauia thought that the Kāwanatanga troops were responsible for more damage than when Te Kooti had occupied the place. Their chief, Hāre Tauteka, placed the blame for almost all of the destruction on the Kāwanatanga force, claiming that Te Kooti would not have destroyed crops and ploughs, 'for he thought these things would become his property'. This is not an unreasonable assumption given the prophet's

earlier prediction that he would find refuge at Taupō. His people had also ploughed land at Pāpakai for potatoes and he had had a cart and horse team moved there.²³⁷

(11) *Return to Taupō: 'Kia hiki ano te patu'*

On 6 August, Te Kooti and his party headed back to Taupō, this time accompanied by Rewi Maniapoto, who wished to observe the prophet's work. Te Kooti's party

now amounted to 200 men, of whom 60 were his bodyguard, and another 100 were women and children.²³⁸ In addition to the Whakarau and Ngāti Tūwharetoa components of the party, there were also Tūhoe, Ngāti Awa, and Ngāti Porou ki Harataunga among them. At Matuiwi they split into two groups, one heading to Rotoaira, the other to Tokaanu.²³⁹

A rush of messages criss-crossed each other as the

Sir Donald McLean

1820–77

Donald McLean, a Scottish Highlander from the Inner Hebrides, arrived in New Zealand in 1840 and quickly grasped the Māori language. He was appointed to the protectorate of aborigines in 1844, and posted as a sub-protector to Taranaki, where he mediated disputes between Māori and settlers. When Governor Grey abolished the protectorate in 1846, he retained McLean as a police inspector in Taranaki, and from 1848, McLean became increasingly involved in land purchase negotiations. He married in 1851; however, after giving birth to a son, his wife died the following year.

By 1853, McLean was appointed chief land purchase commissioner, and in 1856, Governor Browne added the role of native secretary. Grey returned to the governorship in 1861, but a rift developed between him and McLean. By 1863, McLean had moved to Hawke's Bay and become involved in provincial administration. In 1866, he was elected to parliament as the member for Napier, serving initially as a backbencher under Edward William Stafford. Under William Fox, he became both Native Minister and Minister for Colonial Defence from 28 June 1869. That year, he commented on the ineffectiveness of confiscation, and accepted Te Heuheu's surrender without taking Ngāti Tūwharetoa lands. He continued as Native Minister under successive premiers – and drafted the Native Lands Act of 1873 – before his resignation on 7 December 1876. He died a month later.¹



government, its officials, and military officers tried to discover Te Kooti's movements, whether Te Heuheu was his prisoner or with him voluntarily, and which Ngāti Tūwharetoa hapū could be relied on to assist in apprehending Te Kooti. With the change of government McLean had taken on the powerful portfolios of Defence and Native Affairs and he would play an influential role in ensuring the Ngāti Tūwharetoa Kāwanatanga forces at Taupō were adequately reinforced, and perhaps more importantly, how Te Heuheu and those of Ngāti Tūwharetoa with Te Kooti were to be treated when they surrendered.

On 18 August, Te Kooti reached Rotoaira. He went first to Pāpakai for he had with him the Ngāti Hikairo chief, Matuaahu Te Wharerangi (also known as Te Nini), whose territory this was. In the intelligence that St George received, it was claimed that 'Te Heuheu, Wiripō [Tohiraukura], and Matuaahu are very strong on Te Kooti's side' and that 'Te Heu Heu is his right hand man.'²⁴⁰

Meanwhile, their poorly armed Ngāti Kurauia relatives at inland Pātea – that is, Hāre Tauteka and Te Herekieke, and others who had deserted Tokaanu – were still trying to get guns and ammunition from the government so that they could take the field against Te Kooti. They had already melted down the church bell at Tokaanu to make shot for their muskets.²⁴¹ They had also appealed unsuccessfully for arms to Metekīngi, but the chiefs of lower Whanganui River refused to send any lest they fall into the hands of Te Kooti.²⁴² Now they wrote to Ngāti Te Rangīta at Tapuaeharuru asking them to go to Tokaanu, but St George would neither release the men of his contingent, nor supply Ngāti Kurauia with the requested munitions.²⁴³ Undeterred, together with Ngāti Tama and Ngāti Whiti, 100 men in all, they secured themselves at a pā 15 kilometres south of Rotoaira and waited for reinforcements in the shape of Rēnata Kawepō and Ngāti Te Upokoiri.

From there a scouting party of four was sent to reconnoitre the Rotoaira area. On 7 September, this scouting party was captured near Poutū at the south-eastern end of Lake Rotoaira. When they refused to join Te Kooti they were 'put to the sword', their bodies left ritually exposed.²⁴⁴ One report said they were men from Ngāti Tama while another was more specific, naming them as Tauira of

Waikato, Te Whatu of Taupō, Rini of Ngāti Pīkiahū, and Mita of Ngāti Awa.²⁴⁵ While Tauira was from the King's home area, and known to him, another was Tōpia Tūroa's relative.

(12) *Upper-Whanganui position*

If the upper Whanganui River people were contemplating giving Te Kooti any assistance, these executions, said to have been ordered by the prophet himself, ensured that any backing was now withdrawn. Save for Wiremu Pākau, a blind chief of Ngāti Taipoto, with a small party of 12 who had joined Te Kooti at Tokaanu, these hapū had not supported Te Kooti despite his initial letters of invitation. In fact, quite the opposite, some who had been requested by Hāre Tauteka and Kīngi Herekieke to go to Ngāti Kurauia's assistance had indeed done so.²⁴⁶

Ngāti Patutokotoko had stayed out of developments in Taupō until Tōpia Tūroa received word that his relatives had been killed; first the old man Hona at Hinemaiaia and then the scouts mentioned above. Another account had it that Tūroa and his people had determined to pursue Te Kooti because he had attacked Ngāti Hekeāwai, at Pāpakai, while the men were absent at Tūrangi. Historian David Young was informed by people on the upper Whanganui River that because of their kin relationship to Ngāti Hekeāwai, Tōpia and Ngāti Patutokotoko were compelled to fight against Te Kooti. Professor Binney did not mention this incident in *Redemption Songs*, and in her view, it was the former killings which had condemned Te Kooti in Whanganui's eyes.²⁴⁷ Whatever the wrongdoing, the consequences for Te Kooti were significant.

After Rewi Maniapoto withdrew his support for Te Kooti in early September 1869, he sought out Te Peehi Tūroa and Tōpine Te Mamaku who both agreed to decline Te Kooti refuge on the river.²⁴⁸ Furthermore, in late October after the fall of Te Pōrere, Tōpia Tūroa and 200 men committed to joining Major Kemp in pursuing and harassing Te Kooti.²⁴⁹

(13) *Fighting at Tauranga-i-Taupō and Tokaanu*

While Whanganui and Waikato were shunning Te Kooti, the government was also taking active measures to deal



Te Keepa Te Rangihiwini. Te Keepa and his loyal followers were a formidable force fighting in campaigns on the side of the government for six years from 1865. One of these battles was against Te Kooti at Te Pōrere. Te Keepa earned the respect of both Māori and colonial forces, but his main area of influence was amongst Māori.

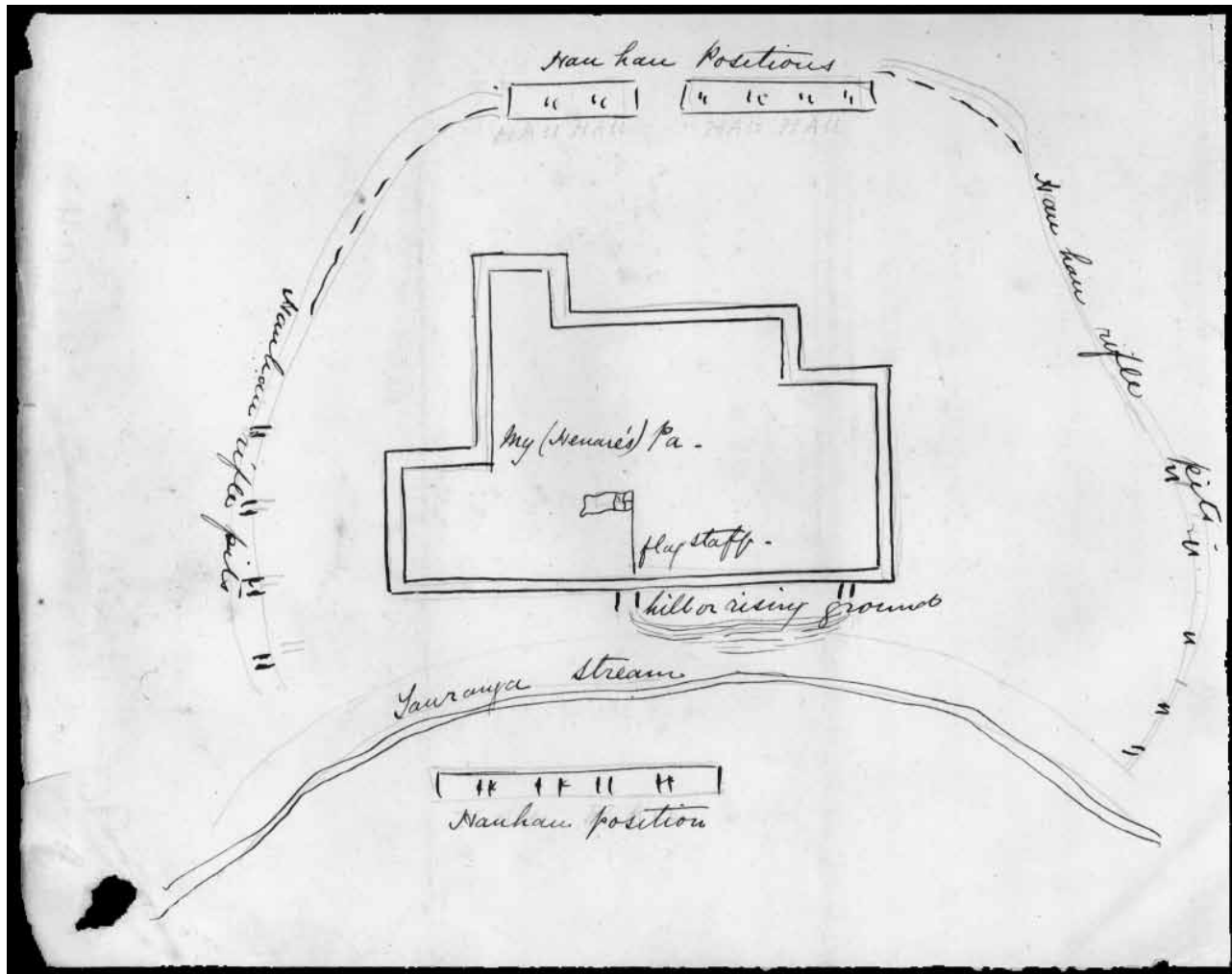
with him, first by amassing a military force against him and then blockading his escape route to the Urewera. There was Captain St George and the Taupō Native Contingent, together with the Te Arawa group under Te Rangipuawhe and Henare Pukuata, at Tapuaeharuru. Then there was the Armed Constabulary field force, under Colonel Herrick, which had recently withdrawn from

Wairoa. They were sent to man the military outposts at Ōpepe, Rūnanga (where Paora Hapi and his people were), Tarawera, and Te Hāroto. Ngāti Kahungunu (numbering 120), Ngāti Tama, Ngāti Whiti, and Ngāti Te Upokoiri (the three combined totalling 60) sent men from the east, as did Whanganui from the south-west. Finally there were those Ngāti Kurauia who were at a pā south of Rotoaira.

At the beginning of September 1869, a force of 120 mounted Ngāti Kahungunu men under Henare Tomoana and Pāora Kaiwhata reached Tauranga-i-Taupō. When they passed through Rūnanga, Colonel Herrick, who had 200 men at that outpost, told them he thought Te Kooti was still in the King Country. Even so, Paora Hapi and as many as 50 men accompanied Tomoana's party.²⁵⁰ Rēnata Kawepō and a party of Ngāti Te Upokoiri came up via Moawhango and joined Colonel Thomas McDonnell at Rotoaira. McDonnell had brought 27 men from Whanganui and he was expecting Major Kemp with another 70 from Muaupoko, Ngāti Ruaka, and Ngāti Apa in a few days' time. When McDonnell arrived, on 12 September, he assumed charge of overall operations. There were now more than 700 troops in the region, mostly Māori.

Tomoana and Paora Hapi's ope arrived at Tauranga-i-Taupō in the afternoon of 8 September. At night, they saw several fires at Tokaanu, Waihi, and near the Tongariro River and knew that Te Kooti had returned. So they set about entrenching themselves. The next morning they sought a more strategic position near the Tauranga Stream and there they established a pā on rising ground. In the meantime a reconnoitring party under Paora Hapi went to nearby Korohe. From the Te Matauhipo hill, they spotted 80 mounted men and 200 on foot down in the bay moving in their direction. They rushed back to the pā, which was still being completed, to forewarn Tomoana and the others. Te Kooti's force soon appeared and assailed the pā from all sides, but after several hours firing they withdrew, carrying off their wounded with the loss of three killed. They came on again the next day, but again could not take the pā. Five of Tomoana's party were wounded.²⁵¹

One account had it that Te Kooti had told Te Heuheu that God would give the pā into his hands at midday



The siege at Tauranga-i-Taupō, 1869. Henare Tomoana's forces had hastily erected a pā there.

(ka hoatu e te Atua e Ihowa o nga mano tenei pa ki tona ringaringa). When this did not occur, they retired to Tokaanu, taking with them all the Ngāti Kahungunu horses, numbering about 120, which had been tethered near the lakeshore.²⁵² The unfulfilled prophecy and the unsuccessful assault lost Te Kooti a potential ally in Rewi Maniapoto, who was unimpressed and returned to the King Country.²⁵³

Te Kooti had also sent another force to Hāre Tauteka's pā south of Rotoaira. This party was more successful, attacking and setting fire to the fortification. There is no record, however, of any casualties having been sustained.

The day after the attack on the Tauranga-i-Taupō pā, Henare and Paora sent some of their young men to see if they could locate the horses of the pā's defenders. At Korohe they encountered Te Rangitāhau and others. A

firefight broke out and while no one was injured they did manage to recover about 40 horses.²⁵⁴

St George and 100 men from the Taupō Native Contingent, together with 70 from the Te Arawa force, reached Tauranga-i-Taupō on 12 September.²⁵⁵ Te Kooti was still holding Tokaanu, this being a key point of control for any movement between east and west Taupō. Colonel McDonnell sent scouts to reconnoitre the area around Tokaanu and they were in time, two days later, to see Te Kooti and his followers departing, taking the cattle and the Ngāti Kahungunu horses with them.²⁵⁶

Around 15 September, Colonel Herrick and about 100 men of the Mounted Division arrived to reinforce Tomoana's men.²⁵⁷ Together with Ngāti Kahungunu, Ngāti Te Rangiita, and the Te Arawa force, they converged on the vacated pā at Tokaanu, their total number now in excess of 400 men.²⁵⁸

Clearly outnumbered, Te Kooti had decided to withdraw to Moerangi and fight another day.²⁵⁹ Moerangi remained a sanctuary for Te Kooti because it was considered to be inside the King's territory and the government feared that any attack inside the Rohe Pōtae might encourage the Kingitanga to support Te Kooti. The break in hostilities gave McDonnell the opportunity to properly organise the troops that had come to the southern lake district. He placed the Ngāti Kahungunu, Ngāti Tūwharetoa, Te Arawa parties, and the Armed Constabulary at Tokaanu and had the remainder of the force – the Whanganui, and the Ngāti Upokoiri party who had come up via Moawhango with Rēnata Kawepō – located at Poutū. Here, beside Lake Rotoaira, he had his men build a 'defensive work'.

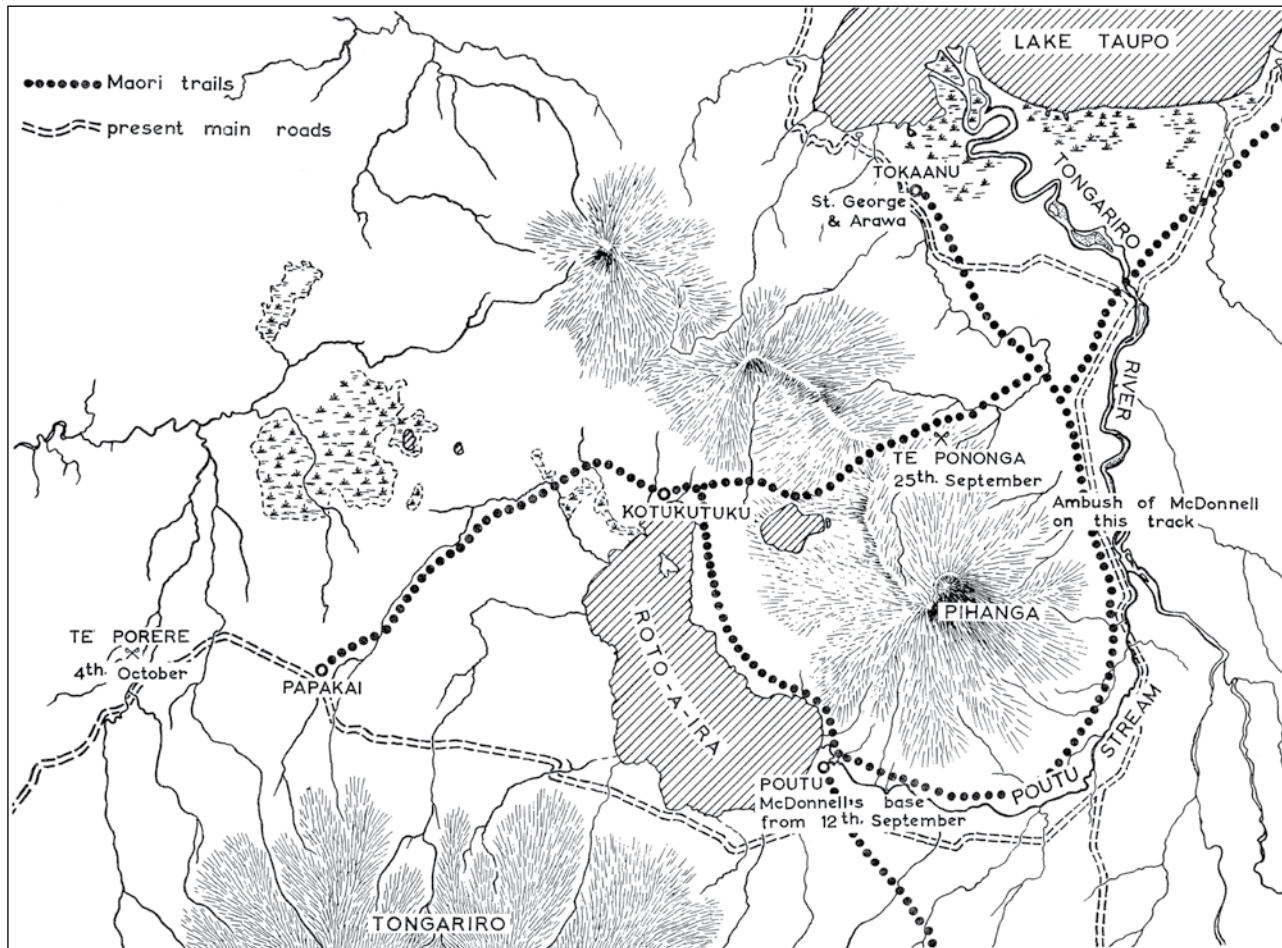
On 25 September, Te Kooti struck back with between 250 and 300 men, this time launching an attack on Tokaanu from the densely forested Te Pononga ridge above the village. Lieutenant-Colonel McDonnell learnt from a prisoner that Te Kooti had personally led the attack and that he had used his entire force, although Te Heuheu and his own men had remained behind with the women and children.²⁶⁰ The attack failed and McDonnell estimated that Te Kooti suffered about 30 casualties, at least seven of whom were killed. One of the dead was Wī Piro,



Colonel Thomas McDonnell. McDonnell was in charge of a large, predominantly Māori, force fighting against Te Kooti at Te Pōrere.

who had fallen fighting at Te Kooti's side. He was said to be a close relative of Te Kooti and had been with him since the Chathams.²⁶¹ 'The wounded', McDonnell told McLean privately, 'had their heads cut off at once and much trouble was saved.'²⁶² Of the Māori Kāwanatanga troops, two died and four were wounded.²⁶³

Again, Te Kooti retreated to Moerangi, and it was from there that they returned south to Pāpakai and commenced building the Te Pōrere redoubt. The Ngāti Tūwharetoa research report gives the area as Te Pōrere o Rereao, Rereao being Tūwharetoa's grandson, and describes the redoubt more properly as Mahaukura Pā.²⁶⁴ Ngāti Hinewai



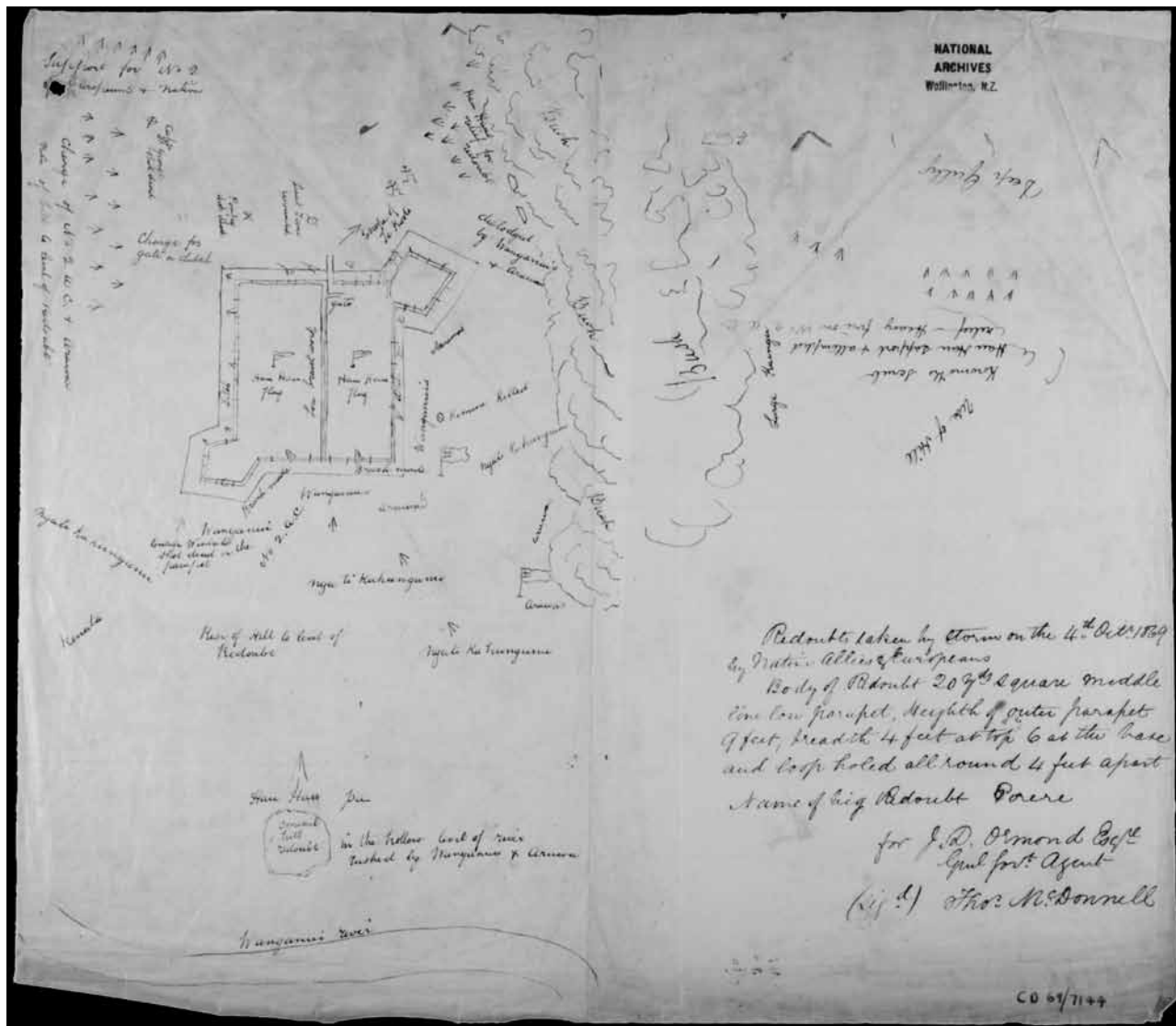
Area of McDonnell's operations against Te Kooti, September–October 1869

claimants referred to it as Te Pōrere a Hinewai.²⁶⁵ Binney says it is not clear who built Te Pōrere but that 'there is a persistent tradition that the site was chosen by Ngāti Tuwharetoa, and the redoubt built by them, as a test of Te Kooti's military skills.'²⁶⁶

The work on the pā at first went unnoticed by the Crown forces, perhaps because of the atrocious weather at the end of September: it snowed hard, with driving winds and sleet for several days.²⁶⁷ Kāwanatanga scouts, however, soon discovered their presence at Pāpakai.²⁶⁸

(14) *The battle of Te Pōrere*

On 3 October, the Whanganui (112), Te Arawa and Taupō Native Contingent (100), Ngāti Kahungunu (130), Ngāti Tūwharetoa and Ngāti Upokoiri (100), and No 2 Division of the Armed Constabulary (100) marched at night in the rain – 540 men all told – arriving at Pāpakai from three different directions, only to find that the enemy had retired to Te Pōrere.²⁶⁹ In the morning light, the troops could see, some two miles away, what a commanding position Te Pōrere redoubt afforded its defenders. They



Te Kooti's redoubt at Te Pōrere. The sketch marks the route Te Kooti took when escaping into the bush.

could see, too, the convenient bush line just behind, offering a tactical escape route for the defenders, should it be needed.

The Kāwanatanga forces were eating when scouts reported a party from Te Pōrere had left the redoubt and

was advancing towards them. At 11 am, this party attacked, but it was repelled and then pursued in the driving rain towards Te Pōrere.²⁷⁰ Major Kemp's Whanganui contingent was the first to reach the lower redoubt, located on a slight spur immediately west of the Whanganui River.

Te Pōrere

Te Pōrere 'was modelled on a classic form of British redoubt, with earthen walls surrounded by a discontinuous outer ditch in a simple square plan (approximately 20 metres by 20 metres), and flanking angles in the north-western and south-eastern corners that would have held about twenty men each.'¹ An incomplete low wall or breastwork ran from the eastern wall to the entrance in the western wall and Professor Binney has suggested its function might have been

to divide the pā into two political segments – Te Kooti and Ngāti Tūwharetoa, each with their own flags.² While the redoubt's strength was its escape route to the bush, it was otherwise poorly located because of the dead ground to its front and rear allowing an assault party cover. Additionally, its loop holes had a design fault in that they were at an angle which made it difficult for the defenders to fire into the outside ditch once enemy were in it.

Te Kooti's lower redoubt, 1970



Te Kooti's upper redoubt, 1970



Built of pumice, earth, and ferns, this pā consisted of a complex maze of trenches that provided cover from most directions. Meanwhile the Te Arawa and Ngāti Kahungunu contingents encountered some of the enemy along the river bank and forced them to retreat to their outposts. Tōkena Te Kehakeha, who was one of those defending the lower redoubt, said that many of their men were in the bush foraging for food when the assault happened. He recalled that the night before, Te Kooti had honoured them in speech, referring to their opponents as 'a

plague on the land' including their own Ngāti Tūwharetoa relatives who were 'part of the overwhelming tide':

We had the lower pa, 15 of us. Foraging groups reported the advance of several groups of soldiers and friendlies towards the Whanganui River. The upper pa also reported forces approaching. Most of our fighters were in the bush and we soon knew that we would be cut off. Our guns, powder and bullets were no match, and we had limited supply . . . Forced to retreat we made our way back through the bush to the top

fort. We could hear gunfire and the calls to rally and prepare to die. I was told to remain in the bush with our women and children. My gun had no karihi (cartridges). Several of us, the older ones, and those women with children were told to seek safety at Moerangi.²⁷¹

By 3 in the afternoon, the combined force had successfully taking the lower redoubt, and began working their way towards the upper redoubt (also known as Mahaukura).²⁷² It was sited on the edge of a low rise close to the bushline. Ngāti Kahungunu were in front, Te Arawa to the right, and the Whanganui contingent, Ngāti Upokoiri and Armed Constabulary to the left.

As the Kāwanatanga force approached, Te Kooti ordered two white flags to be hoisted. These were emblazoned with a half moon, a cross, and the letters ‘W J’ in red. As the Te Arawa contingent moved in, St George received a shot to the head from a breech-loading carbine believed to have been fired by Peita Kōtuku of Te Hāroto.²⁷³ St George was the only Pākehā fatality of the battle. Despite their best efforts, the Kāwanatanga forces failed to fully surround the upper redoubt as some of Te Kooti’s force kept up a heavy covering fire from higher ground to the west and from the bush to the north. However, the Ngāti Kahungunu and Te Arawa contingents took the trenches to the front and right of the redoubt, followed up by the Whanganui contingent.²⁷⁴ By stuffing pumice into the loopholes, they forced the defenders to expose their faces above the parapets in order to see where they were firing. From there, the assault parties were able to jump up onto the parapets and fire into the pā. It was thus only a matter of time before the pā fell, and those who could, made for the bush just before the final assault.²⁷⁵

To see our own Tawa’s forces [ie, Te Arawa – ‘Tawa’ being the Māori name for Gilbert Mair who was one of their officers, though not involved at Te Pōrere] rushing at us defiant and sure, my Ariki wanted to settle the fighting the old way, standing atop of the earth wall raising his patu only to be answered by the sound of gunfire. His anger not at us for dragging him down, but at there being no honour left in war. Later, he would be angered more in learning that Poihipi was

one of the fighting force, saying ‘if I had known I would have shot him myself, and then cried over him and buried my kindred cousin.’²⁷⁶

According to Te Heuheu, Te Kooti, who was inside a rifle pit surrounded by a bodyguard of women,

stopped in the Pa till just before it was taken when as he was putting his hand into his waist coat pocket for caps he was struck by a bullet which wounded his thumb and second finger and cutting the third finger completely off and also passing through the fleshy part of his side.

In great pain and assisted by Tōkena Kerehi (or Te Kehakeha), Horonuku’s uncle, Te Kooti made for the bush.²⁷⁷

It seems that anyone who remained in the pā, or the males at least, were shot or bayoneted. ‘In about a minute,’ Major Kemp reported, ‘they were lying thick as a heap of sharks.’²⁷⁸ Many of the defenders appear to have been shot from their own parapets. Certainly, Winiata Pakoro of the Whanganui contingent climbed up onto the earthwork and began firing repeated shots into the ‘crowded pā’. Ordered to get down, by Colonel McDonnell, he replied, ‘Only one more shot’, and fired again. The next moment he fell dead, hit in the heart.²⁷⁹

The fleeing party were not pursued immediately the bush being dense and the weather raining hard.²⁸⁰ Te Heuheu said that if the Kāwanatanga party had followed them up in the creek instead of on the track, Te Kooti would have been caught, as he had no gun and was going slowly because of the pain of his wound.²⁸¹

(15) *Casualties: were prisoners executed?*

As a result of the assault, the Kāwanatanga forces lost four dead and four wounded. The dead were St George, Winiata Pakoro (mentioned earlier), Komene, and Pape (Pompey) – the three last all belonged to Major Kemp’s Whanganui contingent. The wounded were Lieutenant Turei Karatau, who was another of the Whanganui contingent, Captain Hōri Tometi from Tuhourangi, another named Hōri of Ngāti Kahungunu, and the elderly chief Rēnata Kawepō, who lost an eye. The circumstance of how



Native bush behind the upper redoubt at Te Pōrere. Te Kooti would have made his escape into native bush similar to this.

Kawepō received his wound is of interest not only because it happened at the hands of a female assailant but also because the identity of her husband may offer some clues about who fought on which side. During the breakout, Kawepō, who had pursued those fleeing, was in hand-to-hand combat with a powerful man at the edge of the bush. Their patu were drawn when a woman, whose husband had been shot in the pā, charged at Kawepō:

rakurakuia nanakia ana e ia te kanohi matau o Renata i riro rawa mai i ana maikuku koi, wahi iti te riro ai tera o ana kanohi i te mea e raru ana ia i te hauhau i raro i ona turi. Katahi ka hopukia e ia nga matikara o taua wahine ngaua rawatia ana tae rawa ki nga wheua. I te taua wa pu ano i rere

mai tetahi tangata toa no Ngati Poro[u] me tona pu, puhia rawatia ki nga roro o taua hauhau, mate rawa.²⁸²

she scratched viciously and Renata's right eye was gouged out by her sharp fingernails, but he had little time to worry for he was concerned with the Hauhau below his knees. He grabbed the fingers of that woman and bit them to the bone. At the same time a warrior from Ngati Porou [Petera Rangiheuea] raced over with his gun and shot the Hauhau in the head, and killed him outright.²⁸³

The woman was recorded by Cowan as 'the wife of Paurini'. This could not be Paurini Karamu, of course, for he had escaped Te Kooti at Tuhua and gone to his relatives

on the Whanganui River. Professor Binney in *Redemption Songs* called the man ‘the chief Herekieke Paurini’ and noted that his tangi was held in 1891 at Tokaanu.²⁸⁴ This might have been Hāre Tauteka’s brother, and if it was, it demonstrates just how divided some families were.

Te Kooti’s force lost 27 dead in the redoubt and 10 more in the bush. Many were wounded including several women, although the total number is unknown, and 40 prisoners were taken.²⁸⁵ Only one prisoner was a male adult, 35 were women and four were children. This was the chief Wiripō Tohiraukura of Moerangi. He was wounded and was later used to open negotiations with Te Heuheu for the surrender of those Ngāti Tūwharetoa who escaped. Others who accompanied Wiripō included Iwikau Te Heuheu’s widow, Ruingarangi, her sister Paerau, and two of Te Kooti’s wives – Heni Kumekume and Mere Tawharawhara (a sister of Te Waru Tamatea, chief of Te Whānau-a-Hinemanuhiri of the upper Wairoa district). The latter managed to escape shortly after.²⁸⁶ Among those who got away were Te Heuheu, Tukorehu Koauau, Ririmu Te Rakato, Taupō, Wairehu, Matuaahu Te Wharerangi, Te Tuhi, Paora Te Wakaiti, Apiata Tanirau, Te Tuku Takurua, Raupo, Paerau, Hapurona, and Kereru – the last three belonging to Ngāi Tūhoe.²⁸⁷ Another was Wiremu Pākau, a blind chief from Whanganui who, along with 12 men, had joined Te Kooti.²⁸⁸ The dead included, from Ngāti Tūwharetoa, Te Kepa Poito, Te Waaka Rurupuku (killed by Wenerei Ngamanako), Hoera Te Wharepurangi, Atiria, and Te Iringa. There were also Hōhepa Takurua and Te Tohea Te Wakaunua (son of Nikora Te Wakaunua) who were Ngāti Hineuru, and their wives. The majority of those killed, though, were part of the original Whakarau or from villages between Te Whaiti to Waikaremoana. Their names went unrecorded.²⁸⁹

McDonnell afterwards wrote: ‘We buried their dead by throwing down the sides of the angle on them.’²⁹⁰ Those Ngāti Tūwharetoa who had defended the pā were said to be mostly Ngāti Turumākina, Ngāti Tūrangitukua, Ngāti Hikairo, and some Ngāti Te Rangīta.

As for Te Kooti, Te Kehakeha led him and others ‘in the general direction of Te Rena via an old Ngāti Hotu track’. He recounted:



Memorial plaque to Te Kooti’s fallen followers at Te Pōrere. A total of 37 of Te Kooti’s force died in the redoubt and in the bush. Most of their names went unrecorded.

Halfway along this track at a place called Ngapari, a number of Ngāti Te Rangīta parted from Te Kooti and others and crossed the Whanganui River at a place called Pukepoto crossing to return to Moerangi, Powaru and Hauai . . . Those who went to Hauai heard of the death of their relative Paora Hapi who died of his wounds at Tokaanu.

Te Kooti, although wounded, rested for a short time in Te Rena departing for Tuhua where he knew he would be safe because of the aukati line. At Oruaiwi, located at the foot [of] Tuhua Maunga he and the remaining members of his whakaraui found refuge with a Pai Marire sect living there. Te Peita Kotuku, one of his most trusted warriors, came from this district.²⁹¹

As stated earlier, counsel for Ngāti Hinewai questioned the reliability of the account that the 37 dead were ‘clean kills’ and he put it to this Tribunal that prisoners must have been executed, as had occurred after the battle of Ngātapa in Tūranga nine months previously. He noted that there had been threats that executions would occur and pointed to McDonnell’s statement about wounded prisoners having their heads cut off just two weeks

earlier. He also highlighted what Professor Binney and Mr Stirling had extrapolated from those facts. Professor Binney wrote: ‘Hohepa Tamamutu, leader of the Ngāti Tūwharetoa Kāwanatanga contingent, thereby made plain his position: he would not be taking any male prisoners.’ Mr Stirling reiterated her conclusion.²⁹² As further evidence, counsel referred the Tribunal to Cowan’s statement derived from Peita Kōtuku that ‘all the Hauhaus found in the pa when the attackers at last succeeded in rushing it were shot or bayoneted.’²⁹³ Professor Binney noted that the last defenders of the pā had been the women.²⁹⁴

If we set aside James Cowan, James Belich, Judith Binney, and Mr Stirling’s interpretations of the primary sources, we are left with Major Kemp, Hoeta Te Hata, Peita Kōtuku and Colonel McDonnell’s first-hand accounts. None of them say explicitly that any of the 37 dead were executed after the battle. Hoeta Te Hata’s memoirs of the pursuit of Te Kooti’s party, shortly after Te Heuheu’s surrender, suggest that there was indeed an understanding among the Māori contingents that their military leaders expected some, at least, of the male adult prisoners not to be held alive. He wrote that Colonel McDonnell had wished to execute one of the Whakarau whom Hoeta himself had captured.²⁹⁵ This was Tawhana, who was the son of Te Rangihīroa, the Ngāti Hineuru chief killed at Ōmarunui in 1866. Through his mother, Tawhana was Hoeta’s nephew. Hoeta wrote:

Mehemea i tutaki ia ki tetahi atu tangata ke kua mate . . . Te rongonga o te kanara kia Tawhana no Wharekauri he herehere ka tono ki nga rangatira kia hoatu kia whakamatea e ia. Kihai i tukua e nga rangatira. He nui tana tono kia whakamatea a Tawhana. Heoi, kihai rawa a Henare, a Renata, a Paora Kaiwhata i whaka[a]e ki tana tono.²⁹⁶

If he had run into someone else instead [of me] he would have been killed . . . When the Colonel heard that Tawhana had been a prisoner at the Chathams he ordered the chiefs to give [the young man] that he might kill him. The chiefs did not hand him over. He was adamant Tawhana should be killed. However, Henare, Renata and Paora Kaiwhata refused to obey his order.²⁹⁷

McDonnell made no mention of an attempt to have Tawhana executed in his report to Ormond, despite describing Tawhana’s capture on 25 October as well as his own suspicions that the young man had been involved in the ‘Poverty Bay murders’ and ‘the Opepe affair’.²⁹⁸

Set against what happened at Ngātapa, where a similar account exists of a Kāwanatanga chief protecting refugees by refusing to hand them over to Colonel Whitmore for fear of them being executed, and the evidence provided by the hand of Colonel McDonnell himself when he told McLean of the murder of the wounded after the Tokaanu battle, it is possible to see how counsel for Ngāti Hinewai arrived at his conclusion that not all the 37 dead were ‘clean kills’. In its report on the Tūranga claims, that Tribunal stated that both Whitmore (the officer in command in the field) and Richmond (the senior politician responsible) ‘were clearly aware of the executions [at Ngātapa] and acquiesced (at the very least) in their commission.’²⁹⁹ However, to extrapolate from that finding and apply it to the two men who filled those important roles at Taupō – Colonel McDonnell and Donald McLean – without any clear testimony at all that any executions took place after hostilities ended and the prisoners had been rounded up, in this Tribunal’s opinion, is a leap too far.

That said, how does one account for the uneven casualty rate between the opposing forces at Te Pōrere? The account of Winiata Pakoro standing on the parapet and firing shot after shot into the melee partially explains how so many were killed inside the pā and why so many women were wounded. Close-quarter fighting with the bayonet must have accounted for others. In Major Kemp’s report, he said that, once they rushed the pā and were astride the parapets, ‘in a minute they [ie the defenders] were lying as thick as a heap of sharks.’³⁰⁰ Others were shot in the open as they tried to escape the pā. Sergeant Wallace of Number 2 Division, narrating the incidents of the attack to Cowan decades later, said:

I had some good shooting there as they were retreating, running out of their gateway, into the trench, and then making for the bush. . . . I was trying to get one fellow who wore a smoking-cap. Lying flat on the ground I got a splendid shot,

and he disappeared. I don't know whether it was I or someone else who got him, but I don't think I missed; our Terry carbines were very good up to 400 yards. This man at whom I was shooting was armed with a spear consisting of a bayonet fastened on a long pole.³⁰¹

The weapons of the Kāwanatanga force must also have been a factor in the high casualty rate, especially when it is realised that some, like this defender, were poorly armed, a point recorded by Tōkena Te Kehakeha (see sec 3.2.4(14)). The Calisher and Terry 30 bore carbine had first been used in New Zealand in 1863 by the Forest Rangers:

These carbines were the latest thing in military technology because they were loaded from the breech end at a time when the conventional military rifles of the period were loaded from the muzzle – standing up.

The carbine was

originally intended for Calvary troops as it could be loaded while riding a horse. The Forest Rangers recognised that this meant it could also be loaded while lying down, behind cover.

With a barrel measuring 20.5 inches from nipple to muzzle, an overall length of 37 inches, and a weight of six pounds 1½ ounces, 'it was an ideal weapon for the close country, close quarter type of actions being fought in the New Zealand bush'. By August 1869, the New Zealand government had 1736 on issue or in store. At Te Pōrere, the rate of fire and accuracy of the breech-loading Calisher and Terry would have given the attacking force a distinct advantage. When originally tested, the weapon had an 85 per cent strike rate on targets at 500 yards.³⁰²

That casualty lists are disproportionate when the two sides are compared is best explained by the difference in numbers and quality of firearms and the subsequent rate and volume of fire that was poured into the pā and upon its defenders when fleeing. Also, the pā was built on a hill that had sloping ground angled in such a way that the Kāwanatanga force could crawl up it without being hit by rifle fire.

(16) *Aftermath of war: 'Kia whakahokia mai a Ngāti Tūwharetoa . . . kia noho anō ki Taupō'*

The surviving prisoners were taken back to Pāpakai and that night the Kāwanatanga chiefs and Pākehā officers met to consider what would be done with them. It was during these discussions that the women stated that the reason they and their husbands had fought against the troops was so that Taupō would not go to the government. By this, they meant they feared the confiscation of their lands. Although confiscation of the land of insurgents had by this time been abandoned as a policy, it seems plausible that it lingered as a strong fear in people's minds and was a motivating factor in their aggressiveness: as we saw earlier, resistance had escalated elsewhere in response to confiscation.³⁰³ While the 1863 to 1865 legislation was no longer being applied, 'cessions' were being demanded of Māori in other districts, not least of all in Tūranga where Te Kooti had come from. The prophet's own land had been under threat and he would not have failed to emphasise to the people around Taupō that they might very well lose their land.

It was decided that leniency should be shown to those Ngāti Tūwharetoa who had sided with Te Kooti and that they should be allowed to return to settle at Taupō – 'Kia hoki mai a Te Heuheu ma ki Taupō'. According to Hoeta Te Hata, when this request was put to Colonel McDonnell he agreed.³⁰⁴

The next day (5 October) Wiripō and Riungarangi were allowed to take the news to their people.³⁰⁵ Te Heuheu told them from his bush refuge (Puketapu, according to one account, where the wounded were being attended to) that he would surrender but first wanted to collect his people together. He sent his wife Takarea and two children including Tūreiti with a note to McDonnell to this effect.³⁰⁶ McDonnell reported to Ormond (who had succeeded McLean as superintendent of the Hawke's Bay Province) that Te Heuheu and Te Wharerangi 'have sent me word to-day that they have had enough of it'. They have 'left' Te Kooti, he said, and would 'surrender themselves tomorrow'.³⁰⁷ However, the next day neither turned up. Matuaahu (also known as Nini), headed towards Tuhua despite being urged by Te Heuheu to surrender,

apparently to collect his women and children, or to seek refuge for he was 'expecting harsh treatment'.³⁰⁸ Horonuku waited two more days before he felt compelled to surrender, buying valuable time for his people and Te Kooti to get to safety among their Ngāti Maniapoto kin,³⁰⁹ and prompted no doubt by McDonnell's further message warning 'that he must come in immediately . . . and bring in his arms with him, or take the consequences'. The chief arrived at Kōtuketuku at about 6 in the evening on 7 October and 'surrendered with his uncle and a few followers'. McDonnell had instructed the Armed Constabulary at Tokaanu and Major Kemp's force to join the Te Arawa

contingent at Kōtuketuku in case Te Heuheu did not show, in which case he intended 'to attack him at daylight next morning'.³¹⁰

McDonnell had the Ngāti Tūwharetoa party disarmed before Paora Hapi and Major Kemp questioned them on the whereabouts of Te Kooti, the strength of his support, and why Te Heuheu had fought on Te Kooti's side. It was then that Te Heuheu stated he had been a prisoner and having been deserted by others of his tribe, 'what else was he to do?' Horonuku agreed with everything Major Kemp said and was prepared to accept the consequences of his actions whatever they might be. He disclosed that

John Davies Ormond

1831?–1917

Born in Berkshire, John Ormond left England in 1847 to become confidential clerk to his brother-in-law, EJ Eyre, who was sworn in as lieutenant-governor of New Munster in 1848. In 1857, Ormond acquired a Crown grant of a large sheeprun in Hawke's Bay, and by the following year, he had become an elected member of the Hawke's Bay provincial council. He later served under Donald McLean as his deputy superintendent, becoming close friends with McLean and succeeding him as provincial superintendent in 1869. Alongside his provincial career, Ormond also entered the House of Representatives, and he held the Clive seat from 1861 to 1881 and the Napier seat from 1884 to 1890. Ormond's parliamentary colleagues called him 'The Hon J D', and his family referred to him as 'The Master'. In 1871, he was appointed Minister of Public Works under William Fox, a portfolio he held until the end of the following year. In 1876, under Harry Atkinson, he became secretary for Crown lands and Minister for Immigration, but he reverted to the public works portfolio the following year for a period of around nine months. In 1891, he was called to the Legislative Council, where he remained a member until his death in 1917.¹



Te Kooti only had 90 to 100 men with him, half of whom were from Ngāi Tūhoe and the other half were those who had escaped with him from the Chathams. These latter had ‘suffered severely’ at Te Pōrere.³¹¹

McDonnell wrote to Ormond asking what was to be done with the prisoners. He was instructed to tell them that the government wished them to encourage their friends who had not yet surrendered, including Matuaahu, to do so quickly; that while they would be dealt with leniently the government could not ignore what they had done. Te Heuheu and the ‘principal men’ were to be brought to Ormond in Napier where a ‘substantial pledge’ to ensure good behaviour would be required of them and where they would learn what the government intended to do with them.³¹²

In the meantime, Premier William Fox asked Ormond whether he could suggest an appropriate punishment for Te Heuheu and stated that he thought ‘he ought to give land at Taupō for a small settlement and redoubt, and pledge himself to assist in road-making’. Fox said he believed Te Heuheu’s claim that he was forced to join Te Kooti and he instructed Ormond to do nothing that would degrade Te Heuheu, because he would probably be an ally in future operations at Taupō.³¹³

A fortnight later McLean, writing as the Minister of Defence, instructed Ormond to place Te Heuheu under the care of Karaitiana Takamoana until a court of inquiry could be held to determine Te Heuheu’s ‘innocence or complicity with Te Kooti’.³¹⁴ McLean felt that it would not be ‘judicious or politic to confiscate any of Te Heuheu’s land’ because:

In the first place, Te Heuheu’s personal possessions are very small, and so much mixed up with the land of friendly Natives, that the trouble of getting a clear title would be greater than the cost of acquiring such land at Taupo as may be necessary for settlement. I believe that the members of the Cabinet are agreed that the confiscation policy, as a whole, has been an expensive mistake.³¹⁵

The Minister added that in his opinion cession of land

was ‘the most politic and satisfactory mode of acquiring territory’ because it would not require the army to defend it. Like Fox, McLean also told Ormond not to punish or degrade Te Heuheu because such actions could ‘greatly diminish his influence for good’.³¹⁶

(17) House arrest: ‘Ahakoa miro whero pango ma ranei, kotahi ano te puare o te ngira e kuhua ai’

Consequently, Te Heuheu was detained and conducted to Napier by Henare Tomoana and an escort of his men, the party arriving on 3 November. When Te Heuheu reached Taradale it was now four weeks after his initial surrender, sufficient time to determine an effective strategy for dealing with the changed situation he and his Ngāti Tūwharetoa relatives found themselves in. According to Tōkena Te Kehakeha, a shadow force of Ngāti Tūwharetoa followed their chief to Napier, their food ration consisting of ‘one kumara and two potatoes every two days’.³¹⁷

The chief was met by Ormond the next day who, in the presence of Tomoana and his brother Karaitiana Takamoana, told Te Heuheu that the government (rather than a court of inquiry as directed by McLean) would determine how he should be dealt with. Ormond did not immediately ask Te Heuheu to explain ‘the causes that took him over to Te Kooti’, nor did he seek the assurances, which he understood Te Heuheu was ready to give, ‘of future good conduct’. Instead, Ormond advised him that such statements ‘had better be made more publicly’, and, accordingly, he would invite ‘a few of the chiefs of the district’ to hear Horonuku’s ‘statements’ on another day, when these rangatira would also be told of the government’s decision with respect to Te Heuheu and his people. According to Ormond, Horonuku ‘expressed himself perfectly satisfied’ and supplied the superintendent with intelligence on Te Kooti’s movements, including information on efforts by Ngāti Maniapoto, Ngāti Tūwharetoa, and Whanganui Māori to prevent Te Kooti moving out of the area.³¹⁸

Ormond reported to McLean on 5 November that he had found Te Heuheu ‘most quiet and submissive, and everything that could be wished’. Ormond went on to

Omangahau – Te Kooti’s Lair: ‘Concealed in the Most Inaccessible Place’

The information Horonuku shared with Ormond as to the stance taken by his people towards Te Kooti post-Te Pōrere was in contrast with what actually happened on the ground. He told Ormond that Matuaahu and Ngāti Tūwharetoa ‘would avail themselves of an invitation to come in’, that they had ‘entirely separated themselves from Te Kooti, are antagonistic to him, and are assisting to bar the road to Waikato against him.’¹ Information gleaned by Lieutenant Gilbert Mair some six weeks later, however, found that Ngāti Tūwharetoa (ie Te Hapuiti – a hapū of Ngāti Hikairo and Matuaahu’s people) had in fact ‘concealed Te Kooti in the most inaccessible place while he was suffering from his wound.’ Mair wrote, that having lost some 10 to 12 relatives at Te Pōrere, including Matuaahu’s son, these Ngāti Tūwharetoa (numbering around 40), had rejoined Te Kooti at Tuhua claiming that they would not surrender until they had ‘made utu for them.’²

According to Tōkena Te Kehakeha, after Te Pōrere Horonuku delayed his surrender to enable his forces and Te Kooti to get to safe refuge amongst their Maniapoto kin at Hikurangi.³ En route, ‘Te Kooti took sustenance from the people at Tieketahi’, the kāinga of Te Kaaka (Te Kāka) Tamakeno and his wife, Mihiterina Te Pikikōtuku. Te Keepa

Puataata was with Te Kooti when they reached Te Rena. He testified in 1904:

we found houses & crops there at that time – at Tieketahi – It was from the potato crop then growing that we got ‘pura-pura’ (seed) for subseq planting at Te Rena – I have s[ai]d that those crops, &c belonged to Matuaahu ma – prior to arrival of Te Kooti . . . What I heard was that it was built by Te Kāka ma & Matuaahu. I heard so from Te Kāka himself . . . Te Kooti did not actually go to Te Rena – It was after he left us at Whata-whataarangi that we went on to Te Rena (3 or 4 miles distant.)⁴

Monica Mataamua, a great-granddaughter of Te Kāka, told the Tribunal that the place where Te Kooti was initially sheltered was a cave named Omangahau, which still today is so concealed it is extremely difficult to find. ‘Even we don’t really know where it is’, she said:

One day we tried to find Omangahau. We climbed to the summit of Hena and when we got to a certain place along the ridges, we heard strange voices in the bushes and trees all around us. But we couldn’t see anyone around. We left when that happened.⁵

explain that he had ‘slightly deviated’ from McLean’s memorandum regarding the court of inquiry:

inasmuch as I have arranged that the Government shall determine, and announce the course they decide in respect to Te Heuheu, and hear his explanations, in place of a commission of Natives and Europeans doing so.³¹⁹

The local rangatira, who were to include Te Hapuku and Tareha Te Moananui – the member of parliament for eastern Māori, were merely to be witnesses to Horonuku’s anticipated ‘confession’. Te Heuheu, Ormond said, was

‘glad the government itself was going to decide about him.’³²⁰

The following day (6 November) Te Heuheu returned to Taupō with Tomoana who was going ‘to fetch his [Ngāti Kahununu] people home’. Te Heuheu had asked to be allowed to bring his womenfolk and children back to Pākōwhai where they were to remain for a time under Karaitiana’s surveillance.³²¹ This is what the Ngāti Tūwharetoa research report refers to as the period of ‘house arrest’. It is unclear how long this confinement lasted; none of the historians whom the Tribunal questioned seemed entirely sure.³²² Mr Stirling thought it likely

covered the period from first surrender until Te Heuheu went to Auckland in December, but he said that it might have also included this latter period while he was in the north.³²³ Andrew Joel, historian for the Crown, agreed that ‘between October 1869 and June 1870 something akin to house arrest was in operation.’³²⁴ The Ngāti Tūwharetoa research report stated:

The term house arrest is not used in the sense of being kept under lock and key, but rather a lack of freedom to move about freely, and an obligation to keep in contact with certain Crown agents and officials.³²⁵

Using this definition, the period of confinement would have lasted until late July 1870, since the *Hawke’s Bay Herald* of 5 August 1870 reported Horonuku’s release from Tareha’s ‘keeping’ at about that time:

The highest Taupo chief, Te Heuheu (lately a rank Hau Hau), after having been in the keeping of Tareha for some months, has returned to his home, it is to be hoped, a wiser and better man, with his eyes well opened, and his mind fully convinced of the advantage to himself and tribe of having the Pakeha as friends instead of enemies.³²⁶

After Te Heuheu returned with his relatives to Pākōwhai from Taupō *Te Waka Maori o Ahuriri* carried a letter to the editor from the chief. This was probably the public statement that Ormond had requested. In it Te Heuheu began by reiterating his claim that he had been held prisoner by Te Kooti and that it was now only a matter of time before Te Kooti was killed or captured since Kingitanga and Kāwanatanga forces alike had barred most of his escape routes, and his food and ammunition had been exhausted. He warned other iwi to beware of Te Kooti lest he enslave them before discrediting him as a false prophet.

He parau noa tana mahi e whakahihi nei – kua kore ana tangata. I porangi nga iwi i mua ki tana ki he atua tona hei whakaora i a ratou ko ana tangata. Inaianei kua kitea te parau, kua motumotu tona ringa, kua mahue ia e te nuinga o ana tangata, kua hemo i te kai, he omaoma tonu tana mahi ki te

ngahere. Na, mehemea he atua tona tena ia e pena? Kaore ra pea. Ko tenei koi noho nga iwi a whakarongo ki ana patipati – he parau anake.³²⁷

What he is doing showing off (to everyone) is of no consequence – he has lost his followers. Before he was able to destabilise (or fool) the people with his claim that he had a god that would save he and his people. Now it will be seen as false, his hand is cut in pieces and he has been deserted by the majority of his people, they are starving and he is constantly running away into the forest. Now if he had a god would that happen to him? Perhaps not. With this, beware that the people might listen to his coaxing words – it is all false.³²⁸

Te Heuheu remained with Karaitiana at Pākōwhai for about one month. McLean had asked that Te Heuheu be sent to Auckland to be interviewed by him.³²⁹ In December, the Māori press reported that the two chiefs had embarked aboard the *Weretana*. This was the ss *Wellington*, which left for Auckland on 11 December.³³⁰ There were at least three others with them, since, a fortnight earlier, Karaitiana had asked the government to pay for the passage to Auckland of three ‘friends of himself and Te Heuheu.’³³¹

In Auckland, Te Heuheu did meet with McLean and Governor Bowen before accompanying McLean and a ministerial party (23 December) on a tour of Northland, visiting Ngāpuhi rangatira.³³² No record of what transpired at Auckland has been found. On Christmas Day, McLean, Te Heuheu, and the ministerial party visited the home of Maihi Paraone Kawiti near Kawakawa, when Te Heuheu was publicly addressed by Kawiti, ‘in a long speech about the King movement, to which [Te] Heuheu made a suitable reply’, reiterating his position that he had realised the folly of supporting Te Kooti and had rejected him as a ‘foolish man causing trouble.’³³³ Te Heuheu said:

I made the King, but I have forsaken him. The principal object in setting up the King was to prevent bloodshed between the pakeha and Maori. These were the words of [Iwikau] Te Heuheu: ‘Although the eye of the needle is small, yet let threads of different colour—red, white, and black

– be thrust through,’ but Waikato made it a cause of war. Te Awaitaia (the late Wiremu Nero) disapproved of the scheme, and said there would be war. Te Heuheu saw their error, and abandoned their policy. I took part in the war at Waikato, but I ran away. I then joined the Hauhau, but I have left that work. I have now attached myself to the Governor. . . . I am now following Mr McLean.³³⁴

The analogy of the eye of the needle – ahakoa miro whero pango ma ranei, kotahi ano te puare o te ngira e kuhua ai – to convey the necessity for both Māori and Pākehā to be subject to the same law, was first uttered at the Pūkawa hui in 1856.³³⁵ During the 1856 to 1863 period Māori (especially Waikato and connected iwi) certainly seem to have considered that they could support the Māori King and still be under one law.³³⁶ This was part of Wiremu Tamihana’s symbolism – the King, the Governor, both covered by the law of god and the queen (or variations on that). So too, Bishop Selywn reported that Kingitanga spokesmen at the great hui at Peria in October 1862 affirmed to him the concept of one law for both peoples, the difficulty being how to divide the mana.³³⁷ Te Heuheu’s statement to McLean in December 1869 seems consistent with this. But discussion may never have got down to practical decisions about which authority would have what powers, and who would have the residual authority (the undefined powers).

Te Heuheu accompanied McLean to Hokianga on 29 December, where he was addressed by Hōne Mohi Tāwhai. Himi Te Ake of Hokianga also spoke, criticising Te Heuheu saying: ‘You were foolish to fight against the Pakeha – you have lost land and men. That is the result of evil doing.’ Te Heuheu replied:

I am ashamed, and therefore had not spoken before. It is on account of the wrong to which you have alluded. I am highly connected with the southern tribes, with Waikato, with Ngati Raukawa, Taupo, and Ngati Kahungunu. I am not connected with Taranaki or Ngati Porou, and yet was left as a payment for their wrong-doing. . . . I am now accompanying Mr McLean. We [two] are now of one mind. As soon as we return to the South I intend to ask to be allowed to take

Europeans to the back of those who are fighting. I wish to establish Europeans at Taupo.³³⁸

Again, Te Heuheu’s words reverberate with his claim of abandonment, of having been left for Te Kooti and that, ultimately, the fault for this did not rest with him. Himi Te Ake’s reference to losing land was no doubt based on a perception that the government would follow its past policy and confiscate part of Ngāti Tūwharetoa territory.

Te Heuheu, it seems returned to Napier in January 1870, although no clear evidence of the actual date was presented to the Tribunal. Ormond wrote to McLean on 4 January requesting that he arrange for Te Heuheu to return:

you had better send Te Heuheu back, there is great jealousy between Tareha and Karaitiana as to who shall keep him. I have told them that when he returns he will stay with who he likes but that in the meantime I have arranged that his people stay at Pakow[h]ai. I hear his women are getting into trouble also so that he had better come back. I do not think he should go to Taupo at any rate not until things are more settled there but he might live with the Paora Hapi people at Haroto or Runanga or stay with these natives as you think best.³³⁹

The next mention of the chief’s movements appears in a letter from Ormond to McLean dated 17 May 1870 where he wrote that Locke was going to Taupō the following day and taking with him ‘Heu Heu & a deputation from these Ahuriri natives, to bring back Poihipi, and the rest of the Taupos.’³⁴⁰

The record is silent on the treatment meted out to Te Heuheu during the house arrest period, and as Crown counsel noted, ‘it is unclear to what extent his freedom of movement was constrained.’³⁴¹ There was a vague report, in a South Island newspaper dated 1 January 1870, which suggested Te Heuheu was to undergo a period of hard labour:

Rewi [Maniapoto] has already given a proof of the sincerity of his promise to make a slave of Te Kooti – should he be able to catch him. He has a gang of prisoners among whom is the

chief Te Hura, engaged in digging wood out of the river for firewood, and it is reported that Te Heuheu is shortly to be transferred to his care to be put through a similar course of hard labour.³⁴²

No evidence of any ‘hard-labour’ having taken place has been located and Ormond’s letter gives no hint of any such punishment being instituted. Indeed, it seems that Te Heuheu was not subject to any punitive action beyond being restricted in his movements for a time. As stated earlier, Te Heuheu was released at the end of July, whereupon he returned to his home at Waihi.

In April 1871, Matuaahu Te Wharerangi eventually gave himself up and he was also allowed to return to his home at Pāpakai without serious consequences.³⁴³ He, like Te Heuheu and the other Ngāti Tūwharetoa chiefs, soon turned his attention to ensuring road access to the region was undertaken, and schools were established ‘where their children might learn the language and arts of the English,’ dependent, however, on the government for the resources to create the infrastructure. The Crown expected only one thing in return: supine loyalty. Generally they got it. When Governor Bowen visited Taupō in April 1872 he was addressed by several of the Ngāti Tūwharetoa chiefs. Hāre Tauteka’s speech was fairly reflective of the mood of the hui:

Welcome, O Governor to Taupo. It is with great joy we welcome you. We look upon you as our father, the father of the Maori people. . . . We are rejoiced to welcome you after the troubles we have gone through, and we look to you to keep us from further trouble. . . . Taupo is yours; Tongariro is yours; they are in your hands.³⁴⁴

As a demonstration of their loyalty, these rangatira asked the Governor for ‘Queen flags’ (Union Jacks) so they could replace the Hauhau flags that they had everywhere destroyed. The pacification of the traditional ruling power, followed by the chiefs’ willingness to ally themselves with the government, and their subsequent dependency on the government for future resourcing allowed the Crown a permanent presence about te kahui maunga. The

theory of ‘indirect rule’ was not new. It had been used by the British in several of its colonies. India, for example, where a tiny minority controlled the indigenous population which numbered in the millions, British rule was maintained at minimal cost by delegating all local power to existing elites, retaining only the essentials of central authority (in particular the purse strings) in British hands.³⁴⁵

(18) *The sword of Damocles: ‘Kia hoki mana atu a te Heuheu ki tona whenua’*

Stirling told us that he could find no record of what Te Heuheu ‘confessed’ to, during his time either in Napier or Auckland:

Instead, the issue of the extent of his complicity in Te Kooti’s actions in southern Taupō from June to October 1869 seems to have been determined by Ormond and McLean largely on the basis of political expediency rather than any close analysis of what facts (and testimony) were available.³⁴⁶

Crown counsel argued that the Crown’s response to Te Heuheu’s surrender was that he must be treated with leniency.³⁴⁷ The preceding review of the evidence suggests the Crown did do this, and the government was certainly ready to accept Te Heuheu’s claim that he had been a prisoner. In November 1869, McLean told Waikato chiefs that, while Te Heuheu had done wrong and had been foolish, that was in the past. ‘He is now in my hands: I will not forget the difficulties of his position,’ he said. ‘[L]eave it for me to release him.’³⁴⁸ He said a similar thing to the Ngāpuhi rangatira at Hokianga: ‘Te Heuheu was taken by Te Kooti, and it was not till Te Kooti had been beaten in fight that Te Heuheu escaped and gave himself up to us.’³⁴⁹

Counsel for Ngāti Tūwharetoa contended that for a chief with significant mana like Te Heuheu, the period of house arrest would have held serious implications and the Ngāti Tūwharetoa research report states that their rangatira ‘lost mana’ because of the ‘degrading treatment’ suffered.³⁵⁰ Counsel also maintained that for Ngāti Tūwharetoa, Te Heuheu’s surrender meant their land would be confiscated.³⁵¹ ‘For years afterwards,’ Ngāti

Tūwharetoa told us, ‘they [that is, their tūpuna] were kept under scrutiny by the Crown’, and Dr Ballara was of the opinion that Te Heuheu was indeed ‘being kept in line’. She rejected the suggestion that the events of 1869 had no bearing in later years.³⁵²

This was an interesting perception but the more important question is whether this perceived threat carried through to the 1880s in such a way as to have pressured Te Heuheu into ‘gifting’ the mountain peaks. Counsel for Te Iwi o Uenuku, in cross-examination of Mr Stirling, used the metaphor of the sword of Damocles to illustrate the precarious situation the chief found himself in after Te Pōrere.³⁵³ But could the imminent and ever-present peril of punishment suggested by the sword metaphor still be hovering over Te Heuheu’s head 16 years later? This very question was asked by the Tribunal in cross-examination. Any such threat would have had to be premised on the caveat of losing land by confiscation.

While confiscation was never seriously considered as an option by the Crown, the documentary record does show that the threat was real in the minds of not just Ngāti Tūwharetoa, but neighbouring iwi also. On 19 and 20 November 1869, for example, at a hui held at Ōhinemutu to mark the opening of Te Ao Marama, a meeting house built for Te Peehi Tūroa, Resident Magistrate Booth recorded that, in reply to a welcome by Tūroa’s brother Wiari, several chiefs referred to Wiari and ‘you Taupō people’ as having given up Tongariro and Taupō to the government because of their support for Te Kooti.³⁵⁴

While Te Heuheu’s allegiance was in doubt had the Crown entirely ruled out demanding a ‘cession’? Cession could be relatively fair and benign, with much land being given back to the customary owners. But in Tūranga, for example, cession had been so forced as to amount to confiscation, and while most of the ceded land was returned to Tūranga Māori, the titles that cloaked it might not have been what Māori wished for.³⁵⁵ Booth’s statement implies that there might have been some discussion of a gift and that ‘the Taupō people’ (not just Te Heuheu), were making an offer of the land to ward off alternative possible Crown demands.

Fox met with Tōpia Tūroa, Major Kemp, and others

at Rānana on 29 November to discuss Te Kooti. Fox had taken guns and powder with him to give to Tōpia for his stated aim of fighting against Te Kooti. Kemp spoke and asked Fox to give Tongariro lands to the original owners, who, according to Kemp, were Tūroa, Hāre Tauteka, Hōri Kingi’s children, and chiefs of the Whanganui who had claims in the Taupō–Tongariro area. He asked Fox not to confiscate land, as had been done in Taranaki, but to give it to him and others.

Fox, in reply, promised not to take the ‘land about Taupo, the land of Hare Tauteka, of Tōpia, of Wirihanu’. And although Te Heuheu had joined Te Kooti, Fox reiterated that he would be forgiven. The premier stated that Te Heuheu had gone to Auckland to see McLean and the Governor and, ‘perhaps when Mr McLean comes he will say give me a piece of land at Taupō; the thought will then be with you, with Hāre Tauteka, with Tōpia, with Kemp, and the rest.’³⁵⁶

McLean, however, did not pursue the land question. He told the Waikato chiefs during his November visit:

I have no intention of interfering with the land at Taupo; my fighting there is with the men—the workers of evil there. I do not wish to fight with the land it remains with its owners at Taupo—what I desire is to put down evil doing there, and to give protection to those tribes who adhere to us they must be protected.³⁵⁷

Three and a half years later Hōhepa Tamamutu, reflecting on this period, reminded Ngāti Tūwharetoa that they did not lose any land and that Te Heuheu had regained his former status:

i te taenga mai o te Kooti ki waenga i a koutou, maha noa atu i patua, ko nga taonga i murua, riro herehere atu ana a te Heuheu me etahi o ana hoa. No te taenga o te Makarini ki Waikato ka tae atu te kupu a Rewi ki a ia kia hoatu a koutou whenua hei whenua mona, notemea kua riro atu nga tangata i a te Makarini. Titiro, wahi iti kua riro ano a koutou whenua i taua taima. Otira kahore a te Makarini, ta matou Kawanatanga i whakaae, whakahokia ana e ia te kupu a Rewi ka mea, “Ka waiho e au tena ki nga rangatira e toe ana o Taupo. E pai ana

hoki ahau, kia hoki mana atu a te Heuheu ki tona whenua.” No reira au ka whakaaro, ko te Heuheu te tino rangatira o te iwi, i hoki mai ia ki waenganui o koutou me tona mana kua mohio hoki ki tona kuaretanga o mua. Ka noho ki te karanga i ona tangata kua noho raruraru i runga i te mahi whawhai; ki te whakaaro ano i to tatou mana o mua.³⁵⁸

when Te Kooti came among you the result was many were killed, goods were plundered and Te Heuheu and his friends were taken prisoner. When McLean reached Waikato Rewi asked him for your land because the people [ie owners] were under McLean’s control. Look, just a small portion of your lands at that time were taken away. However, McLean on behalf of our government would not consent and so he told Rewi, ‘I shall leave it to the remnant chiefs of Taupo. I am content to return Te Heuheu to his estate.’ It was then I realised Te Heuheu is the *great chief* of the tribe. Fully aware of his earlier folly he has rejoined you with his mana intact. He regathered his people, those who had got offside because they were involved in the war; with the intent of reestablishing our position of influence that we held in former times.³⁵⁹

It is also worth noting that Tamamutu reinforced Te Heuheu’s own standpoint that he had been taken hostage by Te Kooti.

3.2.5 The Tribunal’s findings

The submissions on the military engagement in our inquiry district often tend to run beyond the evidence. Despite this, those submissions have led us to identify six questions about the conflict that resulted in the battle of Te Pōrere. We list them here and provide the Tribunal’s response to each.

(1) *Who was responsible for the conflict in 1869?*

The only fighting between Crown troops and ngā iwi o te kāhui maunga in our inquiry district took place in September to October 1869, and amounted to a skirmish at Poutū in which four men were killed and the assault on the redoubt at Te Pōrere where 41 people died. This chapter provides the context that led to those events noting that all other fighting between ngā iwi o te kāhui

maunga and Crown troops in 1869 occurred outside this inquiry district at the south-eastern end of Lake Taupō. It also notes that some hapū from te kāhui maunga fought against Te Kooti alongside Crown troops.

As has been shown, from July 1868 Te Kooti had made clear his intention of visiting the Taupō region. In March 1869 he was invited to Tauranga-i-Taupō by Wirihana Te Koekoe, the chief of that place, and two months later he arrived. Meanwhile from as early as January 1869 the Crown had received requests from Ngāti Tūwharetoa rangatira, including Te Heuheu, to supply an armed force for the Taupō region. Thus, ‘invasion’ is not an accurate descriptor for the presence of Crown troops in the region nor is the claimants’ submission that the Crown did not consult with the appropriate parties or comply with civil law. The fighting that ensued really was not a war between ngā iwi o te kāhui maunga and the Crown, war having come from outside the district. While Te Kooti, in taking up Te Koekoe’s invitation may have been fleeing to this district or was being driven to it, it was his advance party that ambushed Crown troops at Ōpepe, and then killed local Ngāti Tūwharetoa at Hinemaia and Te Hātepe; and this before any resistance was offered on the part of Crown troops. The bulk of Crown troops came into the region after this, in response to the killings and at the request of Ngāti Tūwharetoa rangatira. If Te Kooti had not come into the district Crown troops would not have followed.

(2) *What was the relationship between Te Kooti and Te Heuheu?*

The impression this Tribunal has of Horonuku Te Heuheu is of an intelligent strategist committed to the self-preservation of his people and their lands. Thus, he became a willing supporter of Te Kooti until the defeat at Te Pōrere, at which time he claimed to be a reluctant participant. At Puketapu he bought time to allow Te Kooti to escape, yet distanced himself from the prophet after he surrendered and soon denounced Te Kooti as a false prophet – he ran with the hare and hunted with the hounds to use a familiar analogy. In saying this, the Tribunal is of the opinion that Te Heuheu and the other Ngāti Tūwharetoa chiefs had to make hard decisions in difficult times which often

required great diplomatic skills. To portray Horonuku as oppressed during this period is to do him a disservice and is not consistent with the contemporary evidence.

(3) *Were ngā iwi o te kāhui maunga in rebellion?*

We make no findings on whether ngā iwi o te kāhui maunga were in rebellion when they went in aid of the King or when they fought at Te Pōrere or in the southern Lake Taupō region. We agree with the CNI Tribunal when it said, ‘Those tribes which went outside their own lands to fight a defensive war in support of the Kingitanga, were fighting for their kin, their King, and their own futures.’³⁶⁰ We heard no evidence that ngā iwi o te kāhui maunga were ever accused of being in rebellion and we also note that the Crown accepted that, given the execution of prisoners at Tokaanu and Ngātapa, those Ngāti Tūwharetoa in the redoubt at Te Pōrere had the right to defend themselves from capture.³⁶¹ Given that no land was ever confiscated in this region we do not agree with claimant counsel’s submission on behalf of Te Iwi o Uenuku that the Waikato Raupatu Settlement Act is relevant in this inquiry district, or that that the claimants should be granted the same concessions for raupatu as Waikato–Tainui.

(4) *What happened at the battle at Te Pōrere?*

The battle opened with a foray by a party of Te Kooti’s followers on the Crown troops at Pāpakai. The troops responded by driving their attackers back to Te Pōrere in the pouring rain. At the redoubt the fighting escalated, there being no time for McDonnell or his men to determine who in the pā was for or against Te Kooti as suggested they should have in claimant submissions.³⁶² We found no clear evidence that any executions took place in the aftermath of the battle at Te Pōrere.

(5) *What disruption occurred as a consequence of the Crown’s military engagement?*

The claimants argued that ngā iwi o te kāhui maunga suffered extensively from harm to property, deaths, and severe economic disruption as a consequence of the wars in and outside the inquiry district.³⁶³ Ngā iwi o te kāhui maunga were indeed affected whether they fought or not,

and regardless of which side they fought for, as evidenced, for example, in those killed at Hinemaia and Te Hātepe. But like the question of whether ‘severe’ destruction of property or ‘extensive’ social and economic disruption occurred only as a consequence of Crown actions there is insufficient evidence to make a finding. Both the Crown force and Te Kooti’s followers were culpable in destroying property, although it is likely Te Kooti was less inclined to destroy resources as he was hoping to settle in the Taupō district, a point made by Hāre Tauteka when he complained about the actions of Crown troops: ‘Te Kooti did not act in this way for he thought these things would become his property’ (Kaore i penei a te Kooti i mahara hoki a ia mana ana mea katoa).³⁶⁴

The claimants also argued that the Crown’s military engagement divided Māori between those for and against the government, creating a strong political dichotomy, which lasted long after the wars.³⁶⁵ While that may very well have been the case, there is insufficient evidence to make a finding regarding the impact on inter-Māori relationships, or the extent, if any, of Crown culpability for this. Again, we find insufficient evidence to substantiate a Treaty breach.

(6) *What was Te Heuheu’s position after the battle?*

After Te Pōrere, the Crown accepted Te Heuheu’s claim to have been Te Kooti’s hostage and determined to treat him with leniency taking care not to degrade his mana as it saw him as a useful ally. It does not appear that Te Heuheu was subjected to the hard labour enforced upon such chiefs as Te Hura of Ngāti Awa. He was required to relocate to Pākōwhai in Napier where he resided from November 1869 to the end of July 1870. It is unclear to what extent his freedom of movement was constrained while at Pākōwhai, other than he was being monitored by the Ngāti Kahungunu chiefs Karaitaiana Takamoana and Henare Tomoana. In December 1869, he was taken on a tour through Northland, where newspaper accounts show he was received and treated as a chief rather than ‘paraded’ about.

When Te Heuheu eventually returned to Waihi, he resumed his leadership role in the tribe. Although

confiscation was never seriously considered as an option, the threat of cession was real immediately after Te Pōrere, but even that had receded by the end of 1869.

Notes

1. Angela Ballara, 'Tribal Landscape Overview, c1800–c1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts' (commissioned overview report, Wellington: Crown Forestry Rental Trust, 2004) (doc A2), pp 147–155, 167–168, 398
2. Edward Jerningham Wakefield, *Adventure in New Zealand: With Some Account of the Beginning of the British Colonization of the Islands*, 2 vols (London: John Murray, 1845), vol 2, pp 93–96; doc A2, pp 185, 275
3. Bruce Stirling, 'Kingitanga to Te Kooti: Taupo in the 1860s' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2005) (doc A59), p 12
4. M K Walton, 'The Population of the Lake Taupo Region, New Zealand, 1839–59', *New Zealand Journal of Archaeology*, vol 8 (1986), pp 73–89
5. Wai 575 Claims Cluster Steering Committee, 'Te Taumarumarutanga o Ngati Tuwharetoa: The Shadow of Ngati Tuwharetoa' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2006) (doc G17), p 279. This whakatauki is recorded in another context in *Te Tiupiri*, vol 1, no 43 (1898), p 2.
6. Document A2, p 401
7. During negotiations for the Whanganui block, Ngāti Apa had indicated a willingness to sell further territory to the north and to the south, to which Te Heuheu became concerned since Ngāti Apa had interests in the Rangitikei district: see Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996), p 53; Jacinta Huatahi Paranihi, 'He Take Hei Pupuri Tonu i te Whenua: A Perspective on Hapū Formation in Māori Society' (Honours thesis, University of Otago, 2008), pp 66–67.
8. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 148
9. Bruce Stirling, 'Whanganui Maori and the Crown, 1840–1865' (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (Wai 903 ROI, doc A65), p 650
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129. Parata Raukatauri, ‘An Account of the Journey of Te Ropu, of Taranaki (Patara), to the East Coast’, *Nelson Examiner and New Zealand Chronicle*, 28 September 1870, p 4. Two of Kereopa’s daughters had been burnt to death at Rangiaowhia.
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131. Raukatauri, ‘An Account of the Journey of Te Ropu’, p 4, col 2
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141. Document A59, pp 147–148
142. *Ibid*, pp 151–152
143. *Ibid*, p 152
144. Sir George Grey to Edward Cardwell, 28, 29 March 1866, AJHR, 1866, A-1, pp 93–94 (as quoted in doc A2, p 457; doc A59, p 157)
145. Document A59, pp 160–161
146. *Ibid*, pp 169–170; *Te Waka Maori o Ahuriri*, vol 4, no 2 (1867), p 9. Those recorded as having taken the oath were Kerehi, Paurini, Matiu, Karauti, Tarei, Hoani Pungarehu, Kupe, Patariki Te Wharehiki, Kiniapa Nini, Pita Na Hoani, Petera Te Heu Heu, Patena Te Heu Heu, Pango, and Ruka Te Kakara.
147. Rolleston, under-secretary, Native Department, to Civil Commissioner Clarke, 19 February 1868, MA 4/63, Archives New Zealand, Wellington, pp 383–384 (as quoted in doc G10, p 2)
148. Halse to Tauranga civil commissioner, 21 November 1868, MA 4/64, Archives New Zealand, Wellington, pp 226–227 (as quoted in doc G10, p 3)
149. 10 March 1869, *New Zealand Gazette*, 1869, no 15, p 151 (doc G10, p 3)
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151. Document G17, p 298; see also Grace, *Tuwharetoa*, p 487
152. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press and Bridget Williams Books, 1995), pp 16–17
153. *Ibid*, pp 93–94
154. Statement of Tamati Ngatiporou in Gilbert Mair to Clarke, 26 March 1869, AJHR, 1869, A-10, p 19 (as cited in doc A2, p 496)
155. Document A59, p 196
156. Binney, *Redemption Songs*, p 149 (doc A59, p 216)
157. JH St John, ‘The Story of Te Kooti’s Campaign, Related by Wiremu Kingi’, 2 April 1870, AJHR, 1870, A-8B, p 27; see also Mair, *Te Awa-o-te-Atua*, to Clarke, 26 March 1869, AJHR, 1869, A-10, pp 19–20 (as cited in doc A59, p 216)
158. Letter from Hohepa Tamamutu, Paurini, Hare Tauteka and Kingi Herekiekie to Donald McLean, 26 December 1868, MS-papers-0032-0692L-02, Alexander Turnbull Library, Wellington, <http://mp.natlib.govt.nz/static/introduction-mclean?=en>
159. Letter from Hare Tauteka, Hohepa Tamamutu, Paurini and others to Donald McLean, 21 December 1868, MS-papers 0032-0692K-11, Alexander Turnbull Library, Wellington (Waitangi Tribunal translation); *Hawke’s Bay Herald*, 29 December 1868, p 2
160. St George to Donald McLean, 17 January 1869, MS-papers-0032-0023, object id 1015173, Alexander Turnbull Library, Wellington
161. ‘Government Telegrams’, *Evening Post*, 4 March 1869, p 2, cols 4–5
162. St George to Donald McLean, 14 December 1868, MS-papers-0032-0023, object id 1004490, Alexander Turnbull Library, Wellington
163. Document A59, p 192
164. ‘E tupu e te kumara, e ohu e te anuhe’ means ‘As the kumara grows, the caterpillar gathers around it’.
165. *Te Waka Maori o Ahuriri*, vol 5, no 10 (1869), p 59. The translation is by the Waitangi Tribunal.
166. Document A59, p 209
167. ‘The Defeat of Te Kooti’, *Taranaki Herald*, 23 January 1869, p 3, col 2
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169. St George to Donald McLean, 16 February 1869, MS-papers-0032-0023, object id 1023159, Alexander Turnbull Library, Wellington
170. St George to Clarke, 2 April 1869, AJHR, 1869, A-10, p 24 (doc A2, pp 497–498)
171. Mair to Clarke, 26 March 1869, AJHR, 1869, A-10, pp 19–20 (doc A59, p 216); St George, diary, 9 November 1868, MS-1842 to 1845 (MS-Copy-Micro-0514), Alexander Turnbull Library, Wellington (as cited in doc A59, p 197)
172. Te Reneti, Tahau, and others to Wi Te Wirihana, MSS 32.693C, Alexander Turnbull Library, Wellington (as quoted in Binney, *Redemption Songs*, p 159)
173. St George to Donald McLean, 8 April 1869, MS-papers-0032-0557, object id 1007275, Alexander Turnbull Library, Wellington
174. Hohepa Tamamutu to Donald McLean, 1 April 1869, MS-papers-0032-693D, object id 1031557, Alexander Turnbull Library, Wellington
175. The translation is by the Waitangi Tribunal.
176. St George, diary, 6 April 1869, MS-1842 to 1845 (MS-copy-micro-0514), Alexander Turnbull Library, Wellington
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178. St George, diary, 6 April 1869, MS-1842 to 1845 (MS-copy-micro-0514), Alexander Turnbull Library, Wellington
179. Hohepa Tamamutu and Paora Hapi to Karaitiana Takamoana, 12 April 1869, MS-papers-0032-0693D-04, Alexander Turnbull Library, Wellington. The translation is by the Waitangi Tribunal.
180. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 415
181. Document A59, p 224
182. St George, diary, 22 April 1869, MS-1842 to 1845, Alexander Turnbull Library, Wellington
183. Binney, *Redemption Songs*, p 162; doc A59, pp 222–227
184. Binney, *Redemption Songs*, p 169; doc A59, p 226
185. St George diary, 4 May 1869 (as quoted in Binney, *Redemption Songs*, p 169)
186. Colonel Whitmore, ‘The War on the East Coast’, *Hawke’s Bay Herald*, 14 May 1869, p 2, col 4
187. ‘Another Defeat of Te Kooti’, *Daily Southern Cross*, 27 October 1869, p 8, col 2
188. Te Heuheu to Perahama and others, 12 May 1869, MS-papers-0032-0693E, Alexander Turnbull Library, Wellington
189. Document A59, p 229

190. Paora Hapi, Omaruanui, to Raka, 30 May 1869, MS-papers-0032-693E-13, Alexander Turnbull Library, Wellington
191. Document A59, p 228. The explanation was given in ‘Tawhia’s Proclamation’, *Daily Southern Cross*, 7 May 1869, p 3, col 4. The proclamation was made at Hangatiki on 26 April 1869.
192. Paora Hapi to Raka, 30 May 1869, MS-papers-0032-693E-13, Alexander Turnbull Library, Wellington
193. Document G17, p 299
194. Document A59, p 229
195. Cowan, *The New Zealand Wars*, vol 2, p 362; Thomas W Gudgeon, *Reminiscences of the War in New Zealand* (London: Sampson Low, Marston, Searle & Rivington, and E Wayte, 1879), p 300
196. St John, ‘The Story of Te Kooti’s Campaign’, p 28
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198. Document A2, p 504
199. St George diary, 17 June 1869, MS-1842 to 1845 (MS-copy-micro-0514), Alexander Turnbull Library, Wellington (as cited in doc A59, p 231)
200. Grace, *Tuwharetoa*, p 247
201. St John, ‘The Story of Te Kooti’s Campaign’, p 28; Binney, *Redemption Songs*, pp 159, 170
202. Binney, *Redemption Songs*, p 170
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204. Binney, *Redemption Songs*, pp 170–171
205. Document A2, pp 504–505
206. Cowan, *The New Zealand Wars*, pp 370–371
207. Grace, *Tuwharetoa*, p 487
208. Te Hata, ‘Notes in Maori on Tuwharetoa’, pp 74–75 (doc B11(e), [p 54])
209. The translation is by the Waitangi Tribunal.
210. Apirana T Ngata and ILG Sutherland, ‘Religious Influences’, in *The Maori People Today: A General Survey*, ed ILG Sutherland (Christchurch: Whitcombe & Tombs, 1940), p 355
211. Waitangi Tribunal, *Te Urewera – Pre-publication, Part II*, 2 vols (Wellington: Waitangi Tribunal, 2009), vol 1, p 279
212. Ibid, p 389
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214. Binney, *Redemption Songs*, p 172
215. St George diary, 11 April 1869, MS-1842 to 1845 (MS-copy-micro-0514), Alexander Turnbull Library, Wellington (as quoted in doc A59, pp 221–222)
216. ‘Another Defeat of Te Kooti’, *Daily Southern Cross*, 27 October 1869, p 8, col 2; *Te Waka Maori o Ahuriri*, vol 6, no 7 (1869), pp 32–33
217. Binney, *Redemption Songs*, p 172
218. St John, ‘The Story of Te Kooti’s Campaign’, p 28
219. Ibid
220. Ngata and Sutherland, ‘Religious Influences’, p 350
221. Te Hata, ‘Notes in Maori on Tuwharetoa’, p 75 (doc B11(e), [p 54]); Waitangi Tribunal translation. Binney states that an estimated 540 men and 300 women and children were with Te Kooti at Titiraupenga, near Moerangi: *Redemption Songs*, pp 174–175.
222. St John, ‘The Story of Te Kooti’s Campaign’, p 29
223. Maihi Pohepohe, 1870, AJHR, 1870, A-8, p 5
224. St John, ‘The Story of Te Kooti’s Campaign’, p 28
225. *Te Waka Maori o Ahuriri*, vol 6, no 6 (1869), p 2
226. *New Zealand Herald*, 1 March 1889 (as quoted in Binney, *Redemption Songs*, p 176). Binney states in an endnote: ‘This point was made in 1889, when Rewi secured the solicitor W J Napier for Te Kooti, after his arrest.’
227. ‘Statement of Ranapia and Two Others to Clarke re Speech of Maihi Pohepohe to the Ngati He’, 20 August 1869, AJHR, 1870, A-8, p 5
228. Te Hata, ‘Notes in Maori on Tuwharetoa’, p 76 (doc B11(e), [p 54])
229. Binney, *Redemption Songs*, p 178
230. Searancke to Native Minister, 23 July 1869, AJHR, 1869, A-10, pp 90–91
231. Searancke to Donald McLean, 12 July 1869, AJHR, 1870, A-1, pp 25–26; Searancke to Donald McLean, 28 July 1869, AJHR, 1870, A-10, pp 91–92
232. St George to Donald McLean, 30 July 1869, ACFK 8163 AGG-HB 1/1/1/177, Archives New Zealand, Wellington
233. St George diary, 10 July 1869, MS-1842 to 1845 (MS-copy-micro-0514), Alexander Turnbull Library, Wellington (as quoted in doc A59, p 237)
234. Captain St George’s regulations, 11 July 1869, MS-1842 to 1845 (MS-copy-micro-0514) (translation by Jane McRae, Auckland University), Alexander Turnbull Library, Wellington (as quoted in doc A59, p 237)
235. Document A59, p 237
236. Ormond to Donald McLean, 8 September 1869, AAYS 8638 AD 1 1869/6008, Archives New Zealand, Wellington
237. Binney, *Redemption Songs*, p 190
238. Ibid, p 181
239. St John, ‘The Story of Te Kooti’s Campaign’, p 29
240. St George diary, 6 August 1869 (as quoted in doc A59, p 241)
241. Document G17, p 299
242. ‘Notes of Native Meetings Held in Upper Wanganui’, 1869, AJHR, 1870, A-13, p 5; doc A59, p 241
243. St George diary, 9–10 August 1869, MS-1842–1845 (MS-Copy-Micro-0514) (as cited in doc A59, p 241)
244. Binney, *Redemption Songs*, p 185
245. Te Hata, ‘Notes in Maori on Tuwharetoa’, p 76 (doc B11(e), [p 55]); Wiremu Pukapuka to Donald McLean, 23 September 1869, AJHR, 1870, A-21, p 7
246. JD Ormond to Defence Minister (Donald McLean), 5 November 1869, AJHR, 1870, A-8, p 28 (as cited in doc A2, p 509); see also ‘Notes of Native Meetings Held in Upper Wanganui’, 1869, AJHR, 1870, A-13, p 4
247. Binney, *Redemption Songs*, p 185
248. Ibid
249. ‘Notes of Native Meetings Held in Upper Wanganui’, p 6
250. Te Hata, ‘Notes in Maori on Tuwharetoa’, p 79 (doc B11(e), [p 56])

251. JD Ormond to the Colonial Secretary, 20 September 1869, AJHR, 1870, A-8, pp 14–15
252. Te Hata, 'Notes in Maori on Tuwharetoa', p 85 (doc B11(e), [p 59])
253. Rewi later said that he had only accompanied Te Kooti because he was escorting him out of his territory. Binney, *Redemption Songs*, pp 184–185.
254. Te Hata, 'Notes in Maori on Tuwharetoa', p 86 (doc B11(e), [p 60]); JD Ormond to colonial secretary, 20 September 1869, AJHR, 1870, A-8, p 15
255. Te Hata, 'Notes in Maori on Tuwharetoa', pp 84–85 (doc B11(e), [p 59]); Cowan, *The New Zealand Wars*, vol 2, p 373; *Te Waka Maori o Ahuriri*, p 13
256. Ormond to colonial secretary, 20 September 1869, pp 14–15
257. Ibid
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259. Ormond to colonial secretary, 20 September 1869, pp 14–15
260. Lt-Col McDonnell to JD Ormond, 26 September 1869, AJHR, 1870, A-8, p 17
261. Cowan, *The New Zealand Wars*, vol 2, p 375
262. McDonnell to McLean, 27 September 1869, MS-papers-0032-0412, Alexander Turnbull Library, Wellington
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270. Ibid
271. Document G17, pp 300–301
272. Kemp to Mete Kingi, 7 October 1869, p 23; Cowan, *The New Zealand Wars*, vol 1, p 380
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275. Ibid
276. Document G17, p 300
277. 'Enclosure no 30. Speech in Answer to Chiefs of Ngati Tuwharetoa', 1870, AJHR, 1870, A-8, p 24; 'Another Defeat of Te Kooti', *Daily Southern Cross*, 27 October 1869, p 8, col 2
278. Kemp to Mete Kingi, 7 October 1869, p 23
279. Cowan, *The New Zealand Wars*, vol 2, p 378
280. Ormond to colonial secretary, 7 October 1869, AJHR, 1870, A-8, p 21
281. 'Speech in Answer to Chiefs of Ngati Tuwharetoa', p 24; 'Another Defeat of Te Kooti', *Daily Southern Cross*, 27 October 1869, p 8, col 2
282. *Te Korimako*, vol 0, no 75 (1888), pp 6–7
283. The translation is by the Waitangi Tribunal.
284. Binney, *Redemption Songs*, p 434
285. McDonnell to Ormond, 5 October 1869, pp 21–22
286. Binney, *Redemption Songs*, p 90
287. Paper 3.3.37, p 41; Te Hata, 'Notes in Maori on Tuwharetoa', p 97 (doc B11(e), [p 67]).
288. Te Hata, 'Notes in Maori on Tuwharetoa', p 96 (doc B11(e), [p 64]); paper 3.3.37, p 41. Te Heuheu later said that after Te Pōrepe Pakau and 50 men were guarding Otapu, where the track leaves the Whanganui River for Waitara, to prevent Te Kooti using it: see Ormond to Donald McLean, 5 November 1869, AJHR, 1870, A-8, p 28.
289. Te Hata, 'Notes in Maori on Tuwharetoa', p 98 (doc B11(e), [p 66]); Kemp to Mete Kingi, 7 October 1869, p 23. Henare Tauraua Pukeariki and Korokai Takurua were two others who were killed. Pehieke was another captured: paper 3.3.37, p 39; doc A59, p 247.
290. <http://www.historic.org.nz/TheRegister/RegisterSearch/RegisterResults.aspx?RID=7652&m=advanced>, accessed December 2012
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292. Binney, *Redemption Songs*, p 184
293. Paper 3.3.18, pp 7–14
294. Binney, *Redemption Songs*, p 190
295. Te Hata, 'Notes in Maori on Tuwharetoa', p 100 (doc B11(e), [p 67])
296. Te Hata, 'Notes in Maori on Tuwharetoa', pp 99–100 (doc B11(e), [pp 66–67])
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301. Cowan, *The New Zealand Wars*, vol 2, pp 376–377
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305. Ibid
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307. McDonnell to Ormond, 5 October 1869, p 22
308. Ibid; Ormond to McLean, 5 November 1869, p 27
309. Document G17, p 300
310. McDonnell to JD Ormond, 9 October 1869, AJHR, 1870, A-8, pp 24–25
311. Ibid, p 24
312. Ibid; McDonnell to Ormond, 13 October 1869, p 24
313. Fox to JD Ormond, 14 October 1869, AJHR, 1870, A-8, pp 24–25

314. McLean to JD Ormond, 27 October 1869, AJHR, 1870, A-8, p 26; McDonnell to Ormond, 9 October 1869, p 24
315. McDonnell to Ormond, 27 October 1869, p 26
316. Ibid
317. Te Kehakeha was found out when his tamoko was recognised and 'returned via Omaha through the Gentle Annie track, or as it is known today as the Moawhango to Hastings road'. This was two months after the battle of Te Pōrere: doc G17, p 300.
318. Ormond to McLean, 5 November 1869, p 27
319. Ibid, p 19
320. Ibid
321. 'Taupo', *Hawkes Bay Herald*, 5 November 1869, p 2, col 5. Tomoana's force returned for want of food: McLean to Tomoana, 18 November 1869, AJHR, 1870, A-8A, p 7.
322. Paper 3.3.43, p 35; Angela Ballara, under cross-examination by Mike Doogan, 13 March 2006, Grand Chateau, National Park (transcript 4.1.7, p 6); Angela Ballara, under cross-examination by Karen Feint, 13 March 2006, Grand Chateau, National Park (transcript 4.1.7, p 31); Robyn Anderson, under cross-examination by Karen Feint, 14 March 2006, Grand Chateau, National Park (transcript 4.1.7, pp 111–112); Robyn Anderson, under questioning by Monty Soutar, 14 March 2006, Grand Chateau, National Park (transcript 4.1.7, pp 185–186); Andrew Joel, under questioning by Monty Soutar, 27 November 2006, Ōhakune Returned and Services Association Working Men's Club (transcript 4.1.12, p 149)
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330. *Te Waka Maori Ahuriri*, vol 6, no 9 (16 December 1869), p 4; 'Port of Ahuriri – Departures', *Hawke's Bay Herald*, 14 December 1869, p 2, col 4
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336. Ward, *A Show of Justice*, pp 98–101
337. 'Papers Relative to the Native Meeting Held at Peria in October 1862', AJHR, 1863, E-12, p 12
338. *New Zealand Herald*, 13 January 1870 (as quoted in doc G10, pp 5–6)
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350. Document G17, pp 301–302
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2. Harrison M Wright, *New Zealand, 1769–1840: Early Years of Western Contact* (Massachusetts: Harvard University Press, 1959), pp 144–165
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Page 127: Last Act of Utu

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in future confrontations the missionaries should enter the fire tied together. He [Lampila] used this tactic against the Reverend Arthur Stock on the Wanganui River in October 1855 and against Richard Taylor at Ranana. None accepted the 'fiery ordeal' but the challenge increased Lampila's standing with his supporters.

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Page 129: The Reverend Thomas Samuel Grace

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2. *Te Waka Maori o Niu Tirani*, vol 8, no 15 (14 August 1872), p 98; doc A59, p 138; Law to Grey, 28 July 1863, BPP, 1862–64, vol 41 [3277], pp 52–53 (TUB, vol 13, pp 400–401) (as quoted in doc A59, p 116)

Page 160: Paurini Karamu

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Page 161: Te Huiatahi II

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Page 176: John Davies Ormond

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CHAPTER 4

POLITICAL ENGAGEMENT, 1870–86:

KA NUI RA TE RARURARU O TENEI WHENUA

4.1 INTRODUCTION

In the years before the ‘gift’ of the maunga, the Crown started to actively extend its sovereignty over the inquiry district, through leasing arrangements, negotiations with tribal and pan-tribal groups, and the introduction of the court. Ngā iwi o te kāhui maunga responded with numerous strategies to maintain control over their lands, such as Kemp’s Trust, participation in the Rohe Pōtae ‘compact’, and the Taupōnuiātia application to the court. Throughout this period, the government was also becoming increasingly aware of the potential value of tourism in our inquiry district, and the national park concept was gaining momentum.

The desire to complete the North Island main trunk railway was a primary factor for government policy in the 1870s and 1880s. The railway was the main focus of Vogel’s 1870s public works policies, and securing land for its route continued to be a key objective for governments throughout the 1880s.¹ Opening up the central North Island was considered to be an important step towards ending the recession and encouraging economic growth. The prospect of the railway also gave impetus to the establishment of the national park, as it promised to allow tourists ready access to the region’s scenic wonders.²

The government had identified tourism as an economic opportunity as early as the 1840s, and was eager to take advantage of the potential resources that the central North Island offered. The possibilities for tourism at this time tended to be seen in the European health and mineral spa tradition, natural and scenic wonders, and leisure activities such as fishing and hunting.³ The Tongariro–Tokaanu area, being both scenic and geothermal, was also affected by the development of tourism in what had become known as ‘the Hot Lakes district’, centred on Rotorua. By the 1860s, the area was recognised as part of what is now known as the Taupō Volcanic Zone, stretching from the central North Island to White Island.⁴

The government’s interest in acquiring land with tourism potential overlapped with debates around the railway and scenery preservation along the Whanganui River. From the colony’s earliest days, the government’s awareness of tourism potential was also heightened by the activities of private parties. There was competition between private parties’ attempts to monopolise development opportunities – particularly Robert Graham’s ‘springs empire’, which began near Auckland but encroached into the central North Island in the 1880s – and the government’s efforts to exert State control. From the 1840s



◀◀ Chateau Tongariro and Mount Ngāuruhoe, in a New Zealand Railways publication, early 1930s. The poster advertising the national park contains the essential words 'Best reached by rail'. The planning and construction of the main trunk line through the centre of the North Island was a major government work between 1885 and 1908 and led to the potential for tourism being realised in the volcanic plateau.

◀ Visit New Zealand, *Wonderland of the Pacific*, 1930s. The scenic wonders of the central North Island are promoted in this poster.

► Tongariro National Park *New Zealand: Playground of the North Island*, 1930s. This poster is promoting tourism and recreation in Tongariro National Park.

to the transfer of the maunga in 1887, many high-profile visitors came to the Tongariro area and recommended that the State should acquire these valuable resources itself, and, from the 1870s, there was increasing pressure on the government to establish a national park based on the 1872 model of Yellowstone in the United States. That model allowed for some input from private parties, provided their role was facilitated by the government. In 1874, outgoing Premier William Fox suggested that the volcanic and thermal areas in the central North Island were worthless in Māori ownership; however, he stated that with government ownership, possibly accompanied by government-facilitated private enterprise, the land could prove extremely lucrative to the nation.⁵

Although the tourism potential of the mountains was clearly acknowledged, our inquiry district remained difficult for tourists to access, and the heart

of tourism remained beyond it, centred on the Pink and White Terraces.⁶ However, in June 1886, the terraces were destroyed when Mount Tarawera erupted, and consequently it appears that the government began to look to other potential sites for State-sponsored tourism.⁷ In February 1887, an editorial comment in the *New Zealand Herald* noted that, in the Tongariro district,

here may be opened up a new country for the tourist, comprehending baths and terraces and hot springs of a remarkable character, and also Alpine scenes and wonders of striking grandeur.⁸

Following the eruption, there was even more pressure on the government to consider who 'owned' the thermal areas, and to attain control of these resources.⁹ The Crown's priorities in our inquiry district – to obtain as



much land as possible, including land for tourism assets, for the purpose of scenery preservation, and land for the railway – informed the Crown’s engagement with *ngā iwi o te kāhui maunga* throughout the 1870s and 1880s.

4.2 IN THE WAKE OF THE WARS, 1870–80

Following the wars and the defeat of Te Kooti at Te Pōrere in 1869, *ngā iwi o te kāhui maunga* worked hard to ensure that the peace would endure. Although military conflict had changed the region, the tribes continued to look for ways to assert control over their lands through their own institutions.¹⁰ The 1870s was a complex period, and Whanganui Māori and Ngāti Tūwharetoa explored different methods to retain control of their lands. Over the course of the decade, there was a series of hui to strengthen unity, growing interest and support for the Repudiation movement, and the establishment of tribal and pan-tribal committees for the tribes to manage their own affairs.

After the battle at Te Pōrere, those Ngāti Tūwharetoa who had supported Te Kooti surrendered to the Crown, and the 1870s saw the tribe appear to shift their overall position closer to the government.¹¹ At a Ngāti Tūwharetoa hui in Tokaanu in 1873, Te Heuheu noted his change in attitude towards the land:

Ki taku titiro e rua nga tangata, nga ingoa ko ‘Pupuri’ raua ko ‘Tuku’ . . . I mea au he tamaiti ahau na ‘Pupuri’ i mua, engari whakarongo mai e nga iwi, kua maka atu e ahau i tenei ra taua aroha ki a ia, a kua piri atu ahau ki a ‘Tuku’ hei matua arahi i au.¹²

The way I see it there are two people. The names are ‘Pupuri’ (holders [of the land] ie non-sellers) and ‘Tuku’ (releasers, ie sellers or lessors). . . . I said I was a child of ‘Pupuri’ in the past, but listen to me people, today I have thrown off that affection for him, and I cling to ‘Tuku’ as a father to guide me.¹³

Te Heuheu supported the alienation of land, provided that alienation was controlled by Ngāti Tūwharetoa’s own komiti structures. Not all the chiefs at the meeting agreed

to throw off their affection for ‘Pupuri’ and accept leasing as an option. However, the majority did support the government’s proposal to set up a tribal komiti. They also agreed that there was nothing to be gained by opposing the government. Hohepa Tamamutu stated:

Mehemea i tahuri matou ki te whawhai ki te Kawanatanga tera kua ngaro atu katoa a matou whenua, kua kore i tae mai ki tenei hui korero tahi ai i tenei ra.¹⁴

If we had turned to fight the Government then all our land would have been lost, and we would not be at this meeting talking together today.¹⁵

The chiefs also discussed a ‘Rohe Potae’, or outward boundary of Taupō, to guard against the other tribes’ influence in the district.¹⁶ In the following decade, a pan-iwi Rohe Pōtae would be negotiated with the Crown, as we discuss later in the chapter.

Throughout the 1870s, Ngāti Tūwharetoa were involved in various hui. These included reconciliation hui with Whanganui iwi, meetings of the Repudiation movement – which we discuss below – and hui which included both kāwanatanga and Kīngitanga Māori. Ngāti Tūwharetoa also took part in tribal and regional committees, such as the Taupō committee.

To the south, Whanganui communities were involved in a succession of hui in the early 1870s to confirm peace between various hapū, and, by the later 1870s, to settling relationships among neighbouring iwi, including between Whanganui and Ngāti Tūwharetoa. Throughout the early 1870s there were also meetings held to confirm the boundaries between tribes, and to develop a response to the court, land alienation, settlement, and European institutions of law and order.¹⁷

The Repudiation movement focused on overturning court titles on the East Coast, and in the early 1870s, the movement’s influence began to spread to the central North Island.¹⁸ A meeting with emerging Repudiation movement leader Karaitiana Takamoana was held in March 1872 at Ōruanui, north of Taupō, where Te Heuheu and

Rāwiri Kahia (both future signatories to the Taupōnuiātia application) spoke.¹⁹ In 1874, Henare Matua, the leader of the Hawke’s Bay-based movement, visited the Whanganui district, where he garnered considerable support for the movement among Whanganui Māori.²⁰ In March 1876, a meeting was held at Te Waiohiki that included Te Heuheu and members of Whanganui. At the meeting, Henare Matua asked why it was that Māori ‘cannot, or are not allowed, to work with the Government, in regard to the adjudication of Maori claims to land’. According to *Te Wananga*, Henare Tomoana also urged that

the Native Land Court must cease to wield its present power. Let all land sales cease, and let single individuals for the future cease to sell land, and let the people agree or not as to what lands are to be sold by the Native people.

Te Heuheu stated early on that he ‘fully’ agreed to all the meeting proposals. Tōpia Tūroa also voiced his agreement to the meeting’s terms.²¹

The government’s road-building programme was beginning to transform the Taupō area in the early 1870s, and Governor Bowen listed his favoured weapons for conquest as the ‘spade and the pickaxe.’²² Native Minister Donald McLean’s ‘pacification’ project included the use of Māori labour to participate in public works projects, notably road-building. However, Ngāti Rangi’s refusal to work on the roads for the low rates the government offered led to a stalemate on the road at Tokaanu.²³ Road-building mostly occurred on the edges of the Rohe Pōtae; throughout the 1870s, our inquiry district remained relatively isolated. Yet, despite the prevailing isolation, the benefits of access to the new colonial economy – in the form of improved communication, farming, and the leasing of land – were becoming increasingly apparent to Māori in the wake of the wars.²⁴

As noted in our previous chapter, ngā iwi o te kāhui maunga were also well aware of goings on outside the inquiry district, and this included the impact of the court, which, although it did not enter our inquiry district until 1880, was in force in Whanganui and northern Taupō

from the mid-1860s. Between 1865 and 1880, there were numerous hearings outside, but not far from the inquiry district. Some of these hearings featured rangatira from this inquiry, including individuals who were later involved in the Taupōnuiātia application to the court (see section 5.5.2).

At the end of 1876, selected chiefs of Ngāti Tūwharetoa – including Te Heuheu and Tōpia Tūroa – wrote to the editor of *Te Wananga*, calling themselves a central committee of Ngāti Tūwharetoa. They announced that a hui would be held in either 1877 or 1878, featuring ‘the three tribes of people, the Kingites, the Europeans, and the Queenite Maoris.’²⁵ A meeting held in late December 1877 reportedly established ‘the Committee of Taupo Te Aupouri.’²⁶ This Taupō committee recognised the government and its laws, and aimed for a role in local administration of both land disputes and judicial issues, while liaising with the government. By including both kāwanatanga and Kīngitanga Māori, it had a broader embrace than the Repudiation movement.²⁷ Te Heuheu was elected chairman by a small majority, and the committee’s discussions included the issue of Pākehā visiting the maunga. In 1878, Agnes Grace, wife of the Reverend Thomas Grace, witnessed the Taupō committee at Tokaanu:

These meetings are intended to represent a new state of things. The Maoris have long found that they cannot defend themselves by an appeal to English Law . . . These conditions have induced them to defend their interests and regulate their land transactions in a legal way by periodical meetings, or Parliaments, of their own.²⁸

However, because the Taupō committee had no legal powers, its potential was limited.²⁹

In line with the Treaty’s required interplay between tino rangatiratanga and kāwanatanga, Māori continued to seek out avenues to exercise self-government alongside the government throughout the 1870s and 1880s. Section 71 of the Constitution Act 1852, which allowed the Governor to declare self-governing native districts, was never used, despite repeated requests from Māori throughout the

second half of the nineteenth century. Native Minister McLean’s Native Councils Bills of the 1870s were also supported by many central North Island and Whanganui Māori. The Native Council Bills proposed to enable elected Māori councils to exert some control over local government and title determination. However, the first Bill in 1872 was withdrawn from parliament by McLean, a second ‘watered down’ Bill was introduced and withdrawn in 1873, and a third was promised in 1874, but never eventuated. Instead, the government passed the Native Lands Act 1873, the effects of which we will discuss further in chapter 5.³⁰

In the 1870s, the government was also focused on acquiring land in our inquiry district, the initial target being the southern blocks. As part of its economic and settlement policy, the government sought to acquire the strategically important land in the region. Māori resistance to selling, however, led the government to pursue leasing arrangements, and a number of lease agreements were entered into. Although a pragmatic solution, it was not one that met with universal approval, and even in the early 1870s, the government’s practice of leasing was being severely criticised by some members of parliament.³¹ By 1876, Native Minister McLean recommended abandoning the lease negotiations already entered into, and in 1878, his successor John Sheehan suggested parliament either seek to acquire the freehold of leased lands or ‘abandon the leases altogether.’³²

Meanwhile, alongside the leasing activity, and despite Māori preference for leasing their lands, the government continued to make advance payments for the freehold of land blocks in our inquiry district. Government land purchase agent James Booth was particularly active in the region; in 1874, Booth paid £250 in advances to several Māori for the Ōkahukura block, without identifying or consulting the considerably larger group of owners. Booth later claimed that the advances were for a block called Hauhungatahi, which he described as located west of Tongariro and ‘very large’ (and which later appears to have become part of the Waimarino block).³³ Tōpia Tūroa, having found out about the payments, returned £200 of

the cash in 1875, and warned against the Crown agents' tendency to pay advances:

I bring you this cash in order you may take it back. We have a cause for not selling the land, it is a particular cause known to you . . . I said I will repay this money with blood.³⁴

Despite this, the government's advance payments in the inquiry district continued; Booth reported paying further advances on the Ruapehu block in the early 1880s.³⁵

In parallel with these interactions with the government, some Māori in our inquiry district sought to develop their land through private business partnerships and leasing arrangements with individual Pākehā. During the 1870s, select members of Ngāti Tūwharetoa entered a business partnership with Pākehā in the Ōkahukura block, and some Whanganui Māori sought to develop their lands in the Rangiwaea and Rangipō–Waiū blocks. The aim of these arrangements was for Māori to use Pākehā finance and expertise to generate income and allow the Māori owners to participate in the colonial economy. Retaining ownership and control of their lands, however, was a critical objective. We examine these trends below.

4.2.1 Leasing in the Rangipō–Waiū block

The government's negotiations for land in the southern part of our district provide important context for Māori political engagement in the 1880s, particularly for the formation of Kemp's Trust, which we discuss in our next section. While private leasing occurred throughout the region, Crown leasing occurred in only two blocks in our inquiry district: the Rangiwaea and Rangipō–Waiū 1 blocks. Both of these are part of the four 'Murimotu blocks': Rangipō–Waiū, Rangiwaea, Ruanui, and Murimotu. Of these blocks, Ruanui, Murimotu, and the rest of Rangipō–Waiū (excepting Rangipō–Waiū 1) are located in the Whanganui inquiry district, and will be addressed in that inquiry.

There were no claims brought to us concerning Crown leasing in the Rangiwaea block. Certain claims were, however, made concerning Crown leasing in the Rangipō–Waiū 1 block.³⁶ In 1881, the wider Rangipō–Waiū block

Thomas Morrin

c 1840–1915

Thomas Morrin was born in Montreal, Canada. He arrived in New Zealand in 1865 with his brother Samuel, and they created a successful hardware business, Messrs T and S Morrin. Thomas was the successful contractor for the first Auckland waterworks, a pioneer on the Thames goldfields, and a promoter of the Waihi mine. One of the founders of the Auckland Stud Company, he was well-known for breeding sheep, cattle, and thoroughbred horses. Morrin was not considered a natural charmer, and was described as owing success to 'strict concentration of faculties [rather than] social advantage or other extraneous aid'. He purchased and leased a significant amount of land in the North Island, including the large Waikato estate, Lockerbie. Eventually his business exploits failed, and he filed for bankruptcy in 1889. He moved back to Canada in 1905, and a decade later he died in Vancouver. The Waikato town of Morrinsville is named after the Morrin brothers.¹

was awarded to Ngāti Rangī, Ngāti Tama, and Ngāti Waewae by the court.³⁷ Although title to Rangipō–Waiū 1 was awarded to Ngāti Waewae, Ngāti Rangī has always claimed customary title to the Rangipō–Waiū block, and it was Ngāti Rangī, not Ngāti Waewae, who made claims before this Tribunal relating to leasing in that block.³⁸ We have therefore decided to examine Ngāti Rangī claims in the Rangipō–Waiū 1 block, despite their not having legal title to the block. We do not, however, make findings relating to those parts of the wider block that lie outside our inquiry district.

Ngāti Rangī claimants stated that the Crown imposed a monopoly leasing arrangement on the Rangipō–Waiū 1 block. This, they said, prevented them from controlling their land and benefiting from the economic opportunities in those leasing arrangements, forcing them into a

situation where the only party they could engage with in respect of their land interests was the Crown, which led to the eventual Crown purchase of the block.³⁹ The Crown responded that the claimants, in analysing this issue, ignored the role of Māori agency in selling the land. The owners could not be made to sell, and the lease did not have a right-to-purchase clause.⁴⁰

The four Murimotu blocks were already a contested area for Māori prior to any outside intervention, and Rangipō–Waiū was a particular site of conflict between Ngāti Rangi and Ngāti Tama.⁴¹ In the late 1860s a number of Auckland land speculators were attracted to the lands in the Rangipō–Waiū region. This included a partnership consisting of John Studholme, Thomas Morrin, Edmund Moorhouse, and Thomas Russell. Private land agent John Buller conducted negotiations with local Māori on their behalf to either purchase or lease a large area of land in the south, including the Rangipō–Waiū block.⁴² In 1872, Tōpia Tūroa and Ngāti Tama opened leasing negotiations for Rangipō–Waiū with Studholme and Morrin. During 1873, Ngāti Rangi also negotiated leasing arrangements with Studholme and Morrin. The aim of Ngāti Rangi and Ngāti Tama's leases was to use the Auckland firm's financial and pastoral expertise to develop their lands and take advantage of economic opportunities.

Like many Māori in the 1870s, those with interests in the Murimotu blocks tended to favour leasing over sale, and preferred to deal with private parties, rather than the Crown.⁴³ Informal leases already existed between Māori and private parties on these blocks – Studholme and others appear to have grazed stock on all four blocks from 1873 – but as the blocks were still under customary title, these leases were not legal. Only the government could get legal contracts to land before title was confirmed, and even then, titles could not be fully confirmed until the land went through the court.⁴⁴ Initially this was enabled under the Native Land Act 1865, and after that Act was repealed by the Native Land Act 1873, the government still retained similar rights 'to enter into arrangements' under the Immigration and Public Works Amendment Act 1871.⁴⁵

Although Māori preferred to lease to private parties,

John Studholme

1829–1903

John Studholme was born in Carlisle, Cumberland, and studied at Oxford. While in England, he purchased land in southern New Zealand, and immigrated to Canterbury with his brothers in 1851. After a brief jaunt to the gold-fields in Australia, the brothers returned to the South Island, where they travelled from Nelson to Christchurch on foot. John Studholme was a frequent walker, and was said to have once walked from Nelson to Bluff.

A financier and a land speculator, Studholme had interests in both the North and South Islands. In 1854, he and his brothers purchased the Waimate Run. Along with his brother Michael and others, Studholme leased the Murimotu blocks in 1875. Studholme was also involved in leasing the Owahaoko, Piako and Morrinsville runs, although most of these endeavours would cause financial trouble for him and his partners.

Studholme was one of the oldest magistrates in Canterbury, the first member of the provincial council for Timaru, and a member of the House of Representatives for Kaiapoi twice, and later twice for Gladstone. He was known for his sheep, and he also raced horses; he and his brother won the Canterbury cup twice. For the last twenty years of his life, he lived a considerably less public life, and he died in London.¹

the Crown was interested in acquiring the land for itself. In September 1871, McLean stated that for 'colonization and settlement', the Crown should acquire what appeared to be the four Murimotu blocks.⁴⁶ Both provincial and central government officials discussed possible purchase or lease of Murimotu lands in order to expand settlement, enhance economic development, and gain access to the interior North Island. There was particular focus on the Ruanui block, which was seen by Booth to be the 'key to the whole of the interior'.⁴⁷ By 1873, there was clear

competition between government agents and private parties to acquire Murimotu lands. Studholme and Morrin were trying to negotiate with local Māori for a lease for Rangipō–Waiū, but the negotiations were difficult and protracted due to competing interests among iwi, and because a lease could not be confirmed until the land had been through the court. By early 1874, no formal deeds of agreement had been signed.⁴⁸

In March 1874, an arrangement was made between the government and private parties Studholme, Morrin, Russell, and Moorhouse. The arrangement was that the government would acquire a lease for Rangipō–Waiū and Murimotu proper, and the private parties would sublease the lands from the government. The arrangement thus put the Crown in control by negating the ability for Māori and private parties to negotiate directly with one another. There was benefit for the private parties, too, in that the Crown's confirmed lease provided them with increased security.⁴⁹ Māori claimants to the blocks, on the other hand, were not party to this arrangement, received no benefit, and most remained unaware of the deal until two months later.⁵⁰

The existing tension between Māori of the region was exacerbated by the 1874 agreement. There were several reasons for confusion: pre-existing agreements between private parties and prospective Māori owners; uncertainty regarding what the 1874 agreement meant for existing leases; unclear boundaries for the blocks; previous grazing of sheep on the land, and the fact that payments were still made to Māori after 1874 from these unofficial leases. Importantly, the 1874 arrangement also made it difficult for Māori to approach the court. Māori in this area had supported the notion of taking the land through the court, and they needed secure title in order to confirm the leasing arrangements. The Crown's willingness to negotiate for blocks before title was determined made it even more difficult to identify Māori interests and led to distrust and an adversarial relationship between Māori groups and between Māori and the Crown.⁵¹

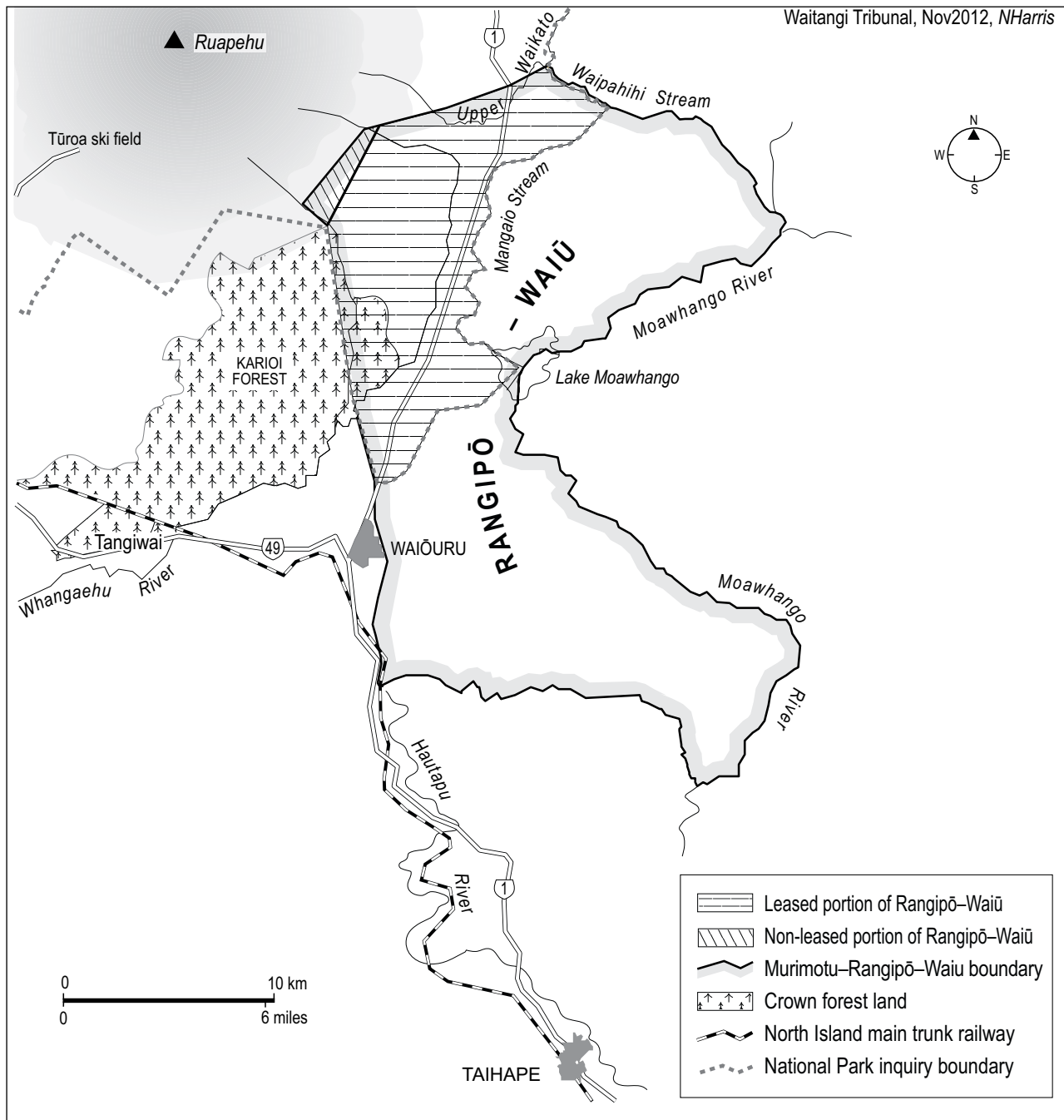
Native Minister McLean met with Te Keepa and others in order to secure the lease to Rangipō–Waiū with Ngāti Rangi and Ngāti Tama on 5 September 1874. Te Keepa

initially opposed leasing to the government instead of directly to private parties, but eventually he acquiesced. He later reported that this was because Booth had told him that he needed to sublease to the government for the arrangement to become legal. Booth reported that he had been sent by the government to 'inform the native claimants to the land that they could not legally lease the land unless it was done through the Government'.⁵² Whether deliberate or not, this was misleading on the government's part. If the land had gone through the court, there could have been legal leases with private parties; however, throughout the negotiations Te Keepa never appeared to be aware of this fact. Meanwhile, soon after the March 1874 agreement, the government included the Murimotu blocks under a proclamation disallowing private purchase, ensuring that this was no longer an option.⁵³ This initial proclamation was made under the Immigration and Public Works Acts 1870 and 1874 (and a further proclamation would be passed in 1878 under the Government Native Land Purchases Act 1877).⁵⁴

The government's lease could not be confirmed until the court had determined the blocks' owners. In the case of the Rangipō–Waiū and Murimotu blocks, persistent conflict between claimants meant that the process of survey and obtaining court orders took a long time.⁵⁵ Dr Nicholas Bayley noted that the Rangipō–Waiū block involved particularly serious disputes between Te Keepa and Tōpia Tūroa. It was not until the early 1880s that the court decided title to Rangipō–Waiū. The block Rangipō–Waiū 1 was awarded to Ngāti Waewae in 1881. Out of the 26,000-acre block, the Crown leased 24,126 acres.⁵⁶

The main concern for the central government (as well as certain provincial governments before they were abolished in 1876) was to prevent private parties from gaining direct control of the land.⁵⁷ The government did not benefit financially from the subleasing arrangements, but it did benefit from the option to purchase the lands in the future.⁵⁸ This was a trend that the central North Island (CNI) Tribunal commented on:

Whether or not the Crown entered all leases with the deliberate strategy of trying to turn them into purchases, there was



Map 4.1: The Rangipō–Waiū lease

much the same outcome. Government leases did not actually lead to settlement by sublessees – they were either turned into purchases, or ultimately abandoned. Māori communities were caught in limbo, not able to gain full profit from the leases they had signed in good faith, but unable to use their land and resources for alternative purposes either.⁵⁹

This is precisely what happened in Rangipō–Waiū 1.

The government could have allowed Māori to negotiate with private parties, in accordance with Māori wishes, and assisted in resolving conflict between competing groups. Instead, the government only exacerbated the conflict in the attempt to advance its own interests, arranging leases without consulting Māori, and then declaring pre-emption so as to close down any other option for those with customary interests in the land.⁶⁰ While the Crown had a right of pre-emption under the Treaty, it was also bound to work in the interests of both Treaty partners. By arranging leases without consultation and then declaring pre-emption, the Crown privileged its own interests, and deprived Māori of the opportunity to develop or manage their own lands.

4.2.2 Leasing in the Ōkahukura block

Private leasing also occurred in the northern Ōkahukura block. In 1877 and 1878, Lawrence and John Grace entered an arrangement with two other parties to develop the block as a sheep and cattle farm. The partnership was with Morrin and Studholme, the financiers who were subleasing the Murimotu blocks, and also Te Heuheu, Matuaahu, and Tōpia Tūroa, who were representatives of the Ōkahukura block's Māori owners. The terms of the partnership were that Morrin and Studholme would provide the starting capital, and the Māori owners would supply the land – initially rent free but later at a nominal lease – and also the labour. Profits would be shared. The Māori owners were to repay Morrin and Studholme their half of the original capital from the farm's income and, once this was paid, they would share equally in the profits.⁶¹ Lawrence and John Grace were to act as managers, and mediate between Morrin and Studholme and the Māori owners, as well as share in any profits. All three

parties would therefore benefit from the partnership. When Matuaahu agreed to the arrangement, he reportedly stated that, ever since the Kingitanga hui of 1856, he had 'endeavoured to hold the land from the grasp of the white men'; however, seeing as the land was 'being eaten from all sides', he agreed to a survey and lease.⁶²

Ngāti Tūwharetoa wanted to maintain control of their lands and benefit from the leasing arrangement. However, the Graces' long-term aim seems to have been to acquire sole ownership of the land by obtaining freehold title, buying out both the Māori owners and Morrin and Studholme. They invested large sums of their own money to develop the scheme; Lawrence Grace later claimed that he had spent more than £14,000 on negotiations, stock, and surveying costs in relation to the block.⁶³ Some of this was in the form of loans to the Māori owners, whom the Graces hoped would later be induced to sell the land. However, before the Graces were able to have the title determined by the court and purchase the block, the Crown enacted the Native Land Alienation Restriction Act 1884, and private purchasing in the Taupōnuīātia district was prohibited.⁶⁴

While the imposition of Crown pre-emption over the block under the Native Lands Alienation Restriction Act prevented the Graces from completing their planned purchase of the block, it also prevented Ngāti Tūwharetoa from pursuing any path other than leasing or selling their land to the Crown. Despite the wish for Ngāti Tūwharetoa to maintain control over their lands, they lacked the finances to pursue any development initiatives on their own land, and in the wake of the Taupōnuīātia application (see section 4.6.3), the Crown purchased most of the Ōkahukura block.⁶⁵

4.3 CLAIMANT SUBMISSIONS ON POLITICAL ENGAGEMENT IN THE 1880S

Counsel for Ngāti Tūwharetoa and counsel for Te Iwi o Uenuku stated that after the wars, Māori continued to try to find ways to maintain their tino rangatiratanga against the increasing threat of Crown control. Ngāti Tūwharetoa and upper Whanganui iwi were involved in several large



Lawrence Marshall Grace

1854–1934

Lawrence Grace, fourth son of Reverend Thomas Grace, was nine years old when his family relocated from Pūkawa to Auckland. As a young man, Grace dabbled in the goldfields at Thames before unsuccessfully trying sheep-farming on the Waimarino plains with his twin brother John. A fluent speaker of Māori and well-versed in Māori customs, Lawrence became an interpreter in the Native Land Court. He was described as man of 'striking appearance and great stature'. In the early 1880s, he married Te Kahui (1860–1929), daughter of Horonuku Te Heuheu, and their first child was born in August 1883. The following year, he was elected to the House of Representatives as member for Tauranga, but served for only one term. He then moved to Wellington where he variously became a sub-commissioner of the Native Land Court, an interpreter for the Native Land Court, and an interpreter for parliament, serving in the latter role for a number of years. In 1908, he took on the editorship of the Kahiti. He retired from the native department in 1919.

Lawrence and Te Kahui had five sons and seven daughters. One son, Lieutenant Thomas Percy (Hami) Grace (1890–1915), was killed at Gallipoli, while the eldest son, Lawrence William Grace (1888–1932), who also served overseas, became a solicitor.¹

hui throughout the 1870s.⁶⁶ New komiti and rūnanga presented an easy opportunity for the Crown to negotiate with Māori on a collective basis. According to counsel for Ngāti Tūwharetoa, ngā iwi o te kāhui maunga were exploring a variety of ways to engage with the modern world; however, the Crown's refusal to support such initiatives denied the exercise of tino rangatiratanga.⁶⁷

One example of Māori attempts to maintain control over their land was that of the Whanganui Lands Trust, or Kemp's Trust. Whanganui claimants stated that the trust was created by Whanganui rangatira to manage and

develop Whanganui lands and maintain tribal control over those lands. These rangatira sought the Crown's assistance to give effect to the trust. According to the claimants, the Crown, however, not only misinterpreted the trust's intentions, but was 'openly hostile' to the concept.⁶⁸

4.3.1 The Rohe Pōtae negotiations

Many claimants in our inquiry adopted counsel for Ngāti Tūwharetoa's submissions on the Rohe Pōtae 'compact',⁶⁹ and others stressed that the Rohe Pōtae will be examined more thoroughly in the impending Rohe Pōtae inquiry.⁷⁰

Some upper Whanganui claimants drew attention to the fact that their part in the negotiations will be more thoroughly canvassed in the Whanganui inquiry.⁷¹ Counsel for Ngāti Tūwharetoa acknowledged that this Tribunal has not heard the evidence of Ngāti Maniapoto on the Rohe Pōtae, but nevertheless argued that the Tribunal's findings regarding the 'compact' and its effects on Ngāti Tūwharetoa should be more than preliminary.⁷²

The 'compact' was a series of agreements in the early 1880s, generally agreed to occur from 1882 to 1885. Several of the claimants agreed that the negotiations amounted to an understanding between the chiefs and the Crown regarding the North Island main trunk railway line and the management of the anticipated settlement from the railway. The 'compact' would allow the allied iwi – which included Ngāti Tūwharetoa and upper Whanganui – to exercise tino rangatiratanga over their lands and institutions, by avoiding the destructive effect of the court, preventing land sales, and enabling leasing. The chiefs believed that the 'compact' would legally protect the district, and Māori communities would gain better methods to manage and participate in the settlement process.⁷³ Counsel for Ngāti Tūwharetoa argued that the Crown had a heightened responsibility, following the Rohe Pōtae petition, to reform the damaging court system.⁷⁴

When the Crown negotiated the Rohe Pōtae 'compact', it did not negotiate with the Kīngitanga. Counsel for Ngāti Tūwharetoa and counsel for Te Iwi o Uenuku submitted that in bypassing the Kīngitanga, the Crown rejected the tino rangatiratanga of the Kīngitanga and its adherents. They stated that the Crown compromised the unity of the Kīngitanga, and enacted 'divide and rule' tactics aimed to open up the King Country. The Crown could have entered into negotiations with king Tāwhiao when he met with Native Minister John Bryce at Whatiwhatihoe in 1882. The king had shown that he was willing to accept Crown sovereignty, provided there was the allowance for Māori self-governance; however, Bryce's proposals would not allow for this, and the king had no choice but to reject them.⁷⁵

Counsel for Ngāti Tūwharetoa asserted that the Crown's divide and rule tactics enabled the Crown to exert its authority over the Rohe Pōtae, and to arrange for the

construction of the railway. The Crown's decision to negotiate with the Rohe Pōtae alliance divided the King (with his outright rejection of any agreement until legal reforms occurred), from the other rangatira (who agreed to make certain concessions). Counsel submitted that the Crown deliberately sought to weaken the Kīngitanga. She rejected the Crown's suggestion that the Kīngitanga would have disintegrated without Crown interference, and also the submission that the Rohe Pōtae alliance would not have maintained its status as a distinctive unit. Counsel argued that the 'Four Tribes' (who are usually listed as Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui) might not have experienced such a clear break from the king as the Crown suggested. While there were strategic differences between them, king Tāwhiao and Te Wahanui had essentially the same goals, and they continued to meet and debate. Any divisions were deliberately created by the Crown.⁷⁶

Counsel for Ngāti Tūwharetoa submitted that the government had no intention of recognising the Kīngitanga as a semi-autonomous governmental authority, and the Crown failed to consider other options that would allow for Māori self-governance. In addition, counsel asserted that the extent of Ngāti Tūwharetoa's participation in the Rohe Pōtae alliance is not entirely clear, and Te Heuheu clearly opposed the negotiations. However, had the Crown kept its promise to the alliance to reform the court and assist it to exercise tino rangatiratanga, all Māori could have reaped the benefits.⁷⁷

According to counsel for Ngāti Tūwharetoa, the Crown misrepresented the Rohe Pōtae survey as pertaining to Ngāti Maniapoto only. Because of the Crown's deception, Te Heuheu believed that the survey application was a Ngāti Maniapoto claim, and he likely felt some urgency to act for Ngāti Tūwharetoa interests. The survey allowed the government to coerce Ngāti Tūwharetoa to submit the Taupōnuiātia application. The Rohe Pōtae boundary was already problematic for Te Heuheu, as it split Ngāti Tūwharetoa lands in two. Counsel noted that Te Wahanui was not seeking personal control over other tribes' lands; rather, the Crown was responsible for spreading this rumour, causing further divisions between the chiefs.⁷⁸

Counsel further argued that the Rohe Pōtae application to survey the external boundary of their lands was not intended to be an application to the court. She argued that the Rohe Pōtae leadership clearly and consistently rejected the court; they only applied for survey because they were informed this was the only way to protect their external boundary. Māori understood that following the application, a Crown grant would be issued, and then they could determine the inner divisions of the land themselves.⁷⁹

Counsel for Ngāti Tūwharetoa and counsel for Te Iwi o Uenuku submitted that the Crown failed to abide by the Rohe Pōtae compact's spirit, intention, and terms. The Crown did not act in good faith in conducting the agreements, but rather misled Māori to successfully pursue its own interests.⁸⁰ The Crown failed to meet the Rohe Pōtae alliance's requests in the following ways:

- ▶ It failed to accept that it was bound by the compact. In addition, the Rohe Pōtae leadership's trust in the process meant that they did not pursue other alternatives.⁸¹
- ▶ It failed to honour the agreements both during and after the negotiations; in contrast, the leadership kept their word and allowed surveys for the railway.⁸²
- ▶ It failed to abide by the leadership's request to block the court's access to the Rohe Pōtae and prevent land sales.
- ▶ Its attempts at legislative reform to meet the leadership's requests – through the Native Land Laws Amendment Act 1883 and the Native Committees Act 1883 – were inadequate. They failed to provide the necessary tools for land management, the committees were impracticable, and it provided misleading information regarding the committees' powers.⁸³
- ▶ It failed to abide by the promise to recognise and institute an external boundary. Once the survey was completed, the government failed to consult the Rohe Pōtae alliance on the railway, instead breaking the alliance and ensuring its dissolution.⁸⁴
- ▶ It failed to protect Māori interests, for instance by encouraging Te Heuheu to submit the Taupōnuīātia application.
- ▶ It misrepresented its own interests: it claimed to

encourage leasing over sales; that it did not intend to purchase large tracts of land; and that pre-emption was a measure to protect Māori, rather than in the interests of the Crown's purchasing objectives. Overall, the Crown pursued its own objectives at the expense of Māori, and there is strong evidence that the Crown had already set these goals at the outset.⁸⁵

In sum, counsel for Ngāti Tūwharetoa stated that the Crown managed to achieve: an end to Māori sovereignty in the Rohe Pōtae; the dissolution of the Kīngitanga's power; the construction of the railway; the introduction of the court to the district; and Crown purchase of significant tracts of land at low prices.⁸⁶ There was some evidence pertaining to the issue of liquor in the area of the Rohe Pōtae; however, as none of it referred specifically to our inquiry district, we leave this issue for the Rohe Pōtae inquiry.⁸⁷

4.3.2 The Taupōnuīātia application

Several claimants adopted counsel for Ngāti Tūwharetoa's submissions on the Taupōnuīātia application.⁸⁸ Counsel for Ngāti Tūwharetoa submitted that the 1885 Taupōnuīātia application was never intended to be an application to the court. Ngāti Tūwharetoa were misled by the Crown, and the result was exactly the land sales they were trying to avoid. The application was a product of the Crown's determination to introduce the court to Taupō and open up the Rohe Pōtae district. Counsel argued that Native Minister Ballance openly used the court to further government policy; he stated that a primary reason to have the court sit at Taupō was to resist the king. The introduction of the court effectively broke down the Rohe Pōtae alliance and opened up the district to Crown purchasing.⁸⁹

Counsel argued that Ngāti Tūwharetoa submitted the application in the belief that it would merely confirm their boundary, not as an invitation for the court to investigate title. It was believed that the application would act like the Rohe Pōtae; Te Heuheu even referred to it as such. Ngāti Tūwharetoa were opposed to the court, as confirmed by the 1885 Poutū hui. After the hui, Ngāti Tūwharetoa submitted the Taupōnuīātia application to the court, directly contradicting the outcome of the hui. Counsel submitted

that the Crown agents likely understood that Te Heuheu only intended the court to confirm the external boundary, and either they misled him into believing that what he sought was possible, or they failed to discourage him. In fact, the court could not legally define the external boundaries of the lands, and the court could not award land as a tribal title to iwi or hapū. Counsel argued that it was entirely possible that Ballance, via Lawrence Grace, made promises to Te Heuheu similar to those to the Rohe Pōtae alliance, and these promises were not upheld.⁹⁰

When Te Heuheu submitted his application, there were already 108 other applications pending in relation to Taupō lands. Counsel for Ngāti Tūwharetoa argued that Te Heuheu was left with no option but to submit Ngāti Tūwharetoa lands to the court. The Crown suspended the other 108 applications in order for the overarching Taupōnuīātia claim to be heard. Crown counsel has conceded that no proper notice was issued in this instance, and claimant counsel thus argued that the suspension of these applications was unlawful. Counsel for Ngāti Tūwharetoa and counsel for Hikairo ki Tongariro argued that the Crown used the 108 suspended claims to convince Ngāti Tūwharetoa to agree to subdivide the block; they would not have agreed to this proposal otherwise.⁹¹

Several claimant groups were critical of the role of the Grace brothers in the application process.⁹² Counsel for Ngāti Tūwharetoa argued that the Graces acted as Crown agents, under Ballance's directions, to further Crown objectives. She noted that John and Lawrence Grace played key roles in engineering the Taupōnuīātia application. Correspondence between Ballance and Lawrence Grace shows that introducing the court to Taupō was crucial in order to achieve the government's overall objectives. The Native Affairs Committee and the Taupōnuīātia Commission of Inquiry of 1889 both expressed reservations with the Graces' role in the application process. Select claimant groups noted that the Crown failed to consider the conflicts of interest in the Graces' positions, particularly in the case of Lawrence Grace.⁹³ They argued that the Crown took advantage of Lawrence Grace's position to further the government's objectives.⁹⁴

Counsel argued that, although Ngāti Tūwharetoa were deceived by the Crown, the Taupōnuīātia application was an act of unity among numerous interested tribes. The application was not solely a Ngāti Tūwharetoa application, and should not be seen as coming only from Te Heuheu. The application listed the names of 38 leading rangatira representing 141 hapū. The boundary was based on tribal markers from ancient times (although it had to be altered to remove lands that had already gone through the court). The application as a whole demonstrated the vast array of support Te Heuheu enjoyed.⁹⁵

4.4 CROWN SUBMISSIONS ON POLITICAL ENGAGEMENT IN THE 1880s

4.4.1 The Rohe Pōtae negotiations

Crown counsel said that key factors such as the breakdown of the Kingitanga and the emergence of the Rohe Pōtae will have to wait until the King Country inquiry. There is insufficient evidence before this Tribunal to consider whether the Crown's bypassing of the Kingitanga was an act of bad faith. The Crown's submissions are primarily intended to provide context for the key issues of the gift and the Taupōnuīātia application. In counsel's view, it is unnecessary to consider the Crown's bypassing of the Kingitanga in order for the Tribunal to assess the relevant issues in this inquiry.⁹⁶

The Crown stated that the arrangements regarding the railway consisted of a series of negotiations, dialogue, and incremental agreements. These negotiations did not bind the government or successive governments to a pledge or pact. The Crown submitted that king Tāwhiao rejected Bryce's offers in 1882 because of the issue of sovereignty, and mostly at Wahanui's insistence.⁹⁷ The ministers who were involved in the negotiations genuinely tried to fulfil the arrangements that were made. Bryce and Ballance were concerned to reform the native land legislation to do what was best for Māori as well as promote settlement, and Ballance consulted with Māori to that end. When Ballance's legislation went through in 1886, however, Māori did not put any of their land into it, and it failed as

a consequence. It is unclear as to whether Māori changed their minds, or whether they never wanted the legislation at all.⁹⁸

The Crown took issue with the claimants' argument that the Rohe Pōtae alliance did not submit their lands to the court for determination or to have their internal boundaries assessed. Crown counsel agreed that the Rohe Pōtae leadership wished to retain control and management of their lands; however, counsel argued that the leadership were aware that, in order to receive legal protection, they needed to take their lands through the court. Internal subdivision of the land was also clearly anticipated, and frequently mentioned in discussions.⁹⁹

The question, therefore, was whether the court was expected to play a role in determining subdivisions. Crown counsel submitted that it was extremely unlikely that the Rohe Pōtae leadership believed that they could make subdivisions without the court's confirmation. It is likely that the leadership anticipated that they would determine the internal boundaries – as for the external boundary – and then have the court confirm this. The evidence that the claimants submitted dealt with the external boundary arrangements only. This did not negate that further boundaries would be made. The Crown argued, in contrast to the claimants, that the Crown's understanding of this was relevant for this Tribunal. However, in the end it is unclear how the boundary decisions would have been made, as they were ultimately overridden by the Taupōnuiātia application.¹⁰⁰

There is no evidence to support the claimants' case that the Crown misrepresented the Rohe Pōtae alliance and its application as only pertaining to Ngāti Maniapoto or Wahanui. The Rohe Pōtae petition divided the rohe of Ngāti Tūwharetoa, and Te Heuheu would not accept such a division. It was a purely political division in nature, in that it divided between those who supported the king and those who did not. It could be seen to trump Te Heuheu's authority, or threaten the tribe's control of its own rohe. As the claimants recognised, the Taupōnuiātia application was Te Heuheu's claim for a Rohe Pōtae for Ngāti Tūwharetoa. Those who were part of the alliance were part

of the discussions, and would understand that it was not a Ngāti Maniapoto affair. After the supposed acts of misrepresentation, the alliance was still intact in February 1885.¹⁰¹

4.4.2 The Taupōnuiātia application

The Crown submitted that there is no evidence that Te Heuheu was manipulated into submitting the Taupōnuiātia application. While Lawrence Grace likely advised Te Heuheu on the application, there is no way of knowing what degree of influence he exercised. There is also no evidence that Grace gave any additional assurances to Ngāti Tūwharetoa.¹⁰² The evidence suggests Te Heuheu sought the court's intervention in the district. Te Heuheu had lodged earlier claims for Taupōnuiātia. The overall evidence suggests that Te Heuheu opposed the Rohe Pōtae boundary from the outset. The Crown argued, against the claimants' arguments, that Te Heuheu's 'kiwi egg' speech at Poutū was ambiguous. There is only one piece of evidence that recorded Te Heuheu supporting the Rohe Pōtae boundary, and in the Crown's view, this is outweighed by the evidence to the contrary. Although claimant counsel pointed out that there were at least four signatories to both the agreement reached at the Poutū hui – which opposed the court – and the Taupōnuiātia application, the Crown submitted that the overall evidence does not support the argument that Ngāti Tūwharetoa did not intend to submit their lands to the court.¹⁰³

Crown counsel agreed with the claimants that the application was a 'pre-emptive', or even defensive, strike on Te Heuheu's part. However, the Crown argued against claimant accusations of Crown manipulation or interference with the process. The application was signed by many leading rangatira, not just Te Heuheu, and as counsel for Ngāti Tūwharetoa identified, it was an act of unity, demonstrating strong support for Te Heuheu. None of this suggested Crown control or manipulation.¹⁰⁴

Crown counsel submitted that many of the claimants' arguments involving the Grace brothers were overstated. The Crown called for careful analysis of the brothers' complex web of personal, whānau, and Crown roles, and noted that these issues reach outside the Taupōnuiātia

application and the 'gift'. Crown counsel rejected the claimants' suggestion that the Grace brothers were acting on behalf of the Crown simply because they were, at times, Crown officials.¹⁰⁵ Although Lawrence Grace was a member of the House of Representatives, he was not a Crown official; any ostensible authority does not apply to him.¹⁰⁶

The evidence does not show improper collusion between the Graces and the Crown, nor that the Crown used the Grace brothers to manipulate the Taupōnuiātia process. According to Crown counsel, the evidence does not support the accusation that the Graces were acting in accordance with under-secretary Lewis and Ballance's political strategy. There is no evidence to show that Lawrence Grace and Ballance colluded to manipulate the court. Furthermore, there is no evidence that John Grace played a role in suspending the publication of the 108 applications.¹⁰⁷ The Grace brothers pursued various different interests; however, the Crown does not accept that, in the instances when the Graces acted as private individuals, the Crown should be held culpable for turning a 'blind eye' to the Graces' personal interests.¹⁰⁸

The Crown submitted that the suspension of the 108 claims to the court did not suggest Crown management or manipulation. In the Crown's submission, evidence showed the Ngāti Tūwharetoa leadership probably not only knew of the claims' suspension, but also approved of it. Te Heuheu and others had already submitted an earlier claim to Taupōnuiātia, and delaying publication of these claims was intended to allow the Ngāti Tūwharetoa leadership to submit a single claim covering the entire block.¹⁰⁹ The Crown noted that the hearing would have been the same without the suspension; thus, the suspension is not the issue, rather it was when the 108 claims were returned to the court. However, there does not appear to have been any prejudice arising from the decision to suspend the claims. Furthermore, there is no evidence of any resulting protest from Māori. Ballance appeared to be the one who requested the suspension of the claims. This, the Crown acknowledged, was inconsistent with statute, which required the Governor to suspend court applications.

However, the Crown argued that Ballance's suspension was 'not inconsistent with the spirit of the legislation.'¹¹⁰

The Crown rejected the argument that the Crown manipulated the court's process and made subdivision inevitable. Crown counsel asked: if subdivision was the desired outcome for the Crown, what was the point in suspending the 108 claims, which would have naturally resulted in subdivision? At its hearing in January 1886, the court gave the successful claimants the option of whether to have a title issued, or to carry on with subdividing the block. This suggested that the court did not see subdivision as inevitable. Furthermore, the komiti of Ngāti Tūwharetoa rangatira chose to proceed with subdivision.¹¹¹

In response to the claimants' argument that the komiti had no choice but to consent to subdivision because of the 108 claims hanging over their heads, Crown counsel noted that the 108 suspended applications were not gazetted for hearing by this date; they were not gazetted until the day after the Taupōnuiātia judgement. There is no evidence that those officials publishing the claims were aware of the claimants' decision to proceed with subdivision. There is also no evidence that the chiefs were approached by the Crown or the Graces regarding those impending claims. There was no subsequent protest or complaint regarding this issue.¹¹²

The Crown argued that evidence suggests the komiti willingly opted for subdivision. A letter from Lawrence Grace prior to the hearing suggested that he and Ballance had both already discussed subdivision with Ngāti Tūwharetoa. It seems the komiti was formed purely to manage the Taupōnuiātia arrangements, and the Crown submitted that the komiti's immediate decision in court suggested they had already considered the issue of subdivision. There is no evidence that the Graces had strong influence over the komiti; considering the komiti's membership, and the claims that the Graces favoured Te Heuheu, it appears unlikely the Graces exercised much influence. The fact that the court offered the option of subdivision further suggests the Graces were not manipulating the court. Finally, the Crown submitted that the evidence suggests that Ngāti Tūwharetoa considered the

court's decision cause for celebration, which rests uneasily with the claim that subdivision was unwelcome.¹¹³

In the Crown's view, the active role that the komiti played and the rapid progress of the court further suggests that the parties were aware of the impending subdivision. Although the claimants argued that out-of-court arrangements regarding subdivision suggested the komiti had little control, the Crown argued that this actually shows Ngāti Tūwharetoa exercising agency, and the court behaving as an adjunct to Māori decision-making. The claimants had also questioned whether the court was even required. However, the Crown argued that there was no guarantee that komiti could have resolved tensions between Ngāti Tūwharetoa and others. The presence of the court was requested so that tribal tensions could be addressed.¹¹⁴ The claimants suggested that the komiti was forced to proceed with subdivision; however, the Crown submitted that there is no evidence of this. There are many speculative claims regarding Taupōnuīātia, with no evidence in support.¹¹⁵

4.5 SUBMISSIONS IN REPLY

Counsel for Ngāti Tūwharetoa urged that this Tribunal adopt the preliminary findings of the CNI Tribunal on all matters that pertain to the National Park inquiry district. However, the claimants added that in some areas where the National Park Tribunal has had the benefit of additional evidence and research – as in the context of the Rohe Pōtae negotiations, the 'compact', and the Taupōnuīātia application – additional or refined findings might be made by this Tribunal.¹¹⁶

4.5.1 The Rohe Pōtae negotiations

The CNI Tribunal accepted that it was in the Crown's power to negotiate with the Kingitanga and co-opt it into the machinery of the State, thus preventing war and commencing colonisation.¹¹⁷ Counsel for Ngāti Tūwharetoa completely rejected the Crown's argument that there is insufficient evidence to decide whether the Crown bypassed the Kingitanga. Counsel argued that Te Heuheu

stayed loyal to the king over this time.¹¹⁸ According to counsel for Te Iwi o Uenuku, there were no significant splits in the Kingitanga before the Crown's intervention.¹¹⁹

Counsel for Ngāti Tūwharetoa also supported the CNI Tribunal's view that the Crown could have created legislation to promote constructive engagement with Māori, or provided komiti with legal backing to allow for self-government, title determination, and community land management. The Rohe Pōtae negotiations and the Taupōnuīātia application were both opportunities for the Crown to adhere to the Treaty and allow for Māori to exercise tino rangatiratanga. However, where the Crown did not actively undermine or reject these opportunities, it failed to take them up.¹²⁰

4.5.2 The Taupōnuīātia application

Counsel for Ngāti Tūwharetoa agreed with the CNI Tribunal's key findings on the Taupōnuīātia application. She noted that the application would not have been necessary if the Crown had met the reasonable demands of the Rohe Pōtae alliance. Ngāti Tūwharetoa entered the court in the context of Ballance's promises to facilitate communal land management; however, when the court process finished, the new legislation had not granted these powers to Māori.¹²¹

Counsel for Ngāti Tūwharetoa submitted that selected findings of the CNI Tribunal need to be reconsidered by the National Park Tribunal, to refine the analysis, as well as consider the wider range of evidence available to this Tribunal. She argued as follows:

- ▶ The CNI Tribunal did not have sufficient evidence before it to demonstrate the contrasting positions of Ngāti Tūwharetoa leaders and hapū. According to counsel, it is apparent that the Crown manufactured a situation where the Kingitanga leadership and the Rohe Pōtae negotiators disagreed on issues of strategy, and that this ensured the dissolution of the Rohe Pōtae.
- ▶ The CNI Tribunal appeared to regard the application as a Ngāti Tūwharetoa-only affair. However, the application involved many hapū of other tribes.

- ▶ Ngāti Tūwharetoa's evidence suggested that Ngāti Tūwharetoa expected only a 'determination' in court. There are parallels with the 'gift' argument here, as Ngāti Tūwharetoa's cultural paradigm may have shaped their understanding of the process. Counsel argued for reconsideration of the CNI Tribunal's argument that Ngāti Tūwharetoa 'must have known' that by late 1885 the Crown had no legal grounds to allow them to award their own titles, and that Ngāti Tūwharetoa had anticipated subdivision in the court.
- ▶ The CNI Tribunal stated that it had no evidence that the Crown used the 108 earlier applications to pressure Te Heuheu to submit the Taupōnuiātia application. However, Counsel argued that it was the fact of these 108 applications that forced Te Heuheu to act.¹²²

Counsel agreed that Te Heuheu did oppose the Rohe Pōtae alliance's negotiations; however, this was due to his allegiance to the Kingitanga and his concern that Ngāti Maniapoto were claiming Ngāti Tūwharetoa lands. Te Heuheu was not in opposition to the alliance's commitment to reforming the land laws.¹²³

Crown counsel argued that there was no evidence that the Crown manipulated Te Heuheu into submitting the Taupōnuiātia application. Counsel for Ngāti Tūwharetoa rejected this argument; she conceded that the evidence was 'largely circumstantial' but she submitted that:

- ▶ Before the Taupōnuiātia application, the Native Minister announced in parliament that very large areas of Taupō would be brought before the court.
- ▶ The Grace brothers facilitated the filing of applications, which met both the Graces' and the government's objectives.
- ▶ Lawrence Grace clearly worked closely with Ballance to meet Crown objectives. It cannot be assumed that Grace informed Ngāti Tūwharetoa of the Crown's objectives, or that Ngāti Tūwharetoa accepted these objectives.
- ▶ The fact that the application was an act of unity made by many tribes does not necessarily denote that there was no Crown manipulation. It may be an instance of Crown objectives and Ngāti Tūwharetoa objectives failing to match.¹²⁴

The Crown submitted that Ngāti Tūwharetoa applied to the court voluntarily and there was no protest or objection. Counsel responded that this argument ignores the fact that Ngāti Tūwharetoa believed they could control the process by submitting the application.¹²⁵

4.6 TRIBUNAL ANALYSIS

Our analysis is divided into three discrete topics, arranged in chronological order: Kemp's Trust, the Rohe Pōtae 'compact', and the Taupōnuiātia application. For each of these issues, the key question that frames our analysis is: During the 1880s, what were the opportunities for ngā iwi o te kāhui maunga to exercise tino rangatiratanga over their lands?

We begin with Kemp's Trust in 1880.

4.6.1 Kemp's Trust

The Whanganui Lands Trust, or Kemp's Trust, was one of several attempts to propose an alternative to the system of title determination and land management after the end of the wars. There are clear parallels between the trust and other contemporary bodies that aimed to exercise tribal control over land, such as the Kingitanga, the Rohe Pōtae, the Repudiation Movement, the Rees Pere trusts, and also attempts to set up large-scale rūnanga.¹²⁶ Proponents of Kemp's Trust aimed to enable Whanganui Māori to engage with and control Pākehā settlement in the area. The trust comprised a large area of land between Whanganui and Mount Ruapehu, spanning a vast area of land, the exact acreage of which remains unclear.¹²⁷ Some of the key conflicts in the area involved land in Rangipō–Waiū, part of which is in our inquiry district.¹²⁸ Kemp's Trust will be examined in detail in the Whanganui inquiry; our findings on this issue are preliminary.

In this inquiry, the claimants alleged that the Crown 'failed to support, facilitate or uphold, by practical assistance or by the promotion of reform legislation or any other means, the [trust's] intentions and work'. According to the claimants, the Crown not only misinterpreted the trust's intentions, it was 'openly hostile' to those intentions, and made efforts to undermine the trust itself. The

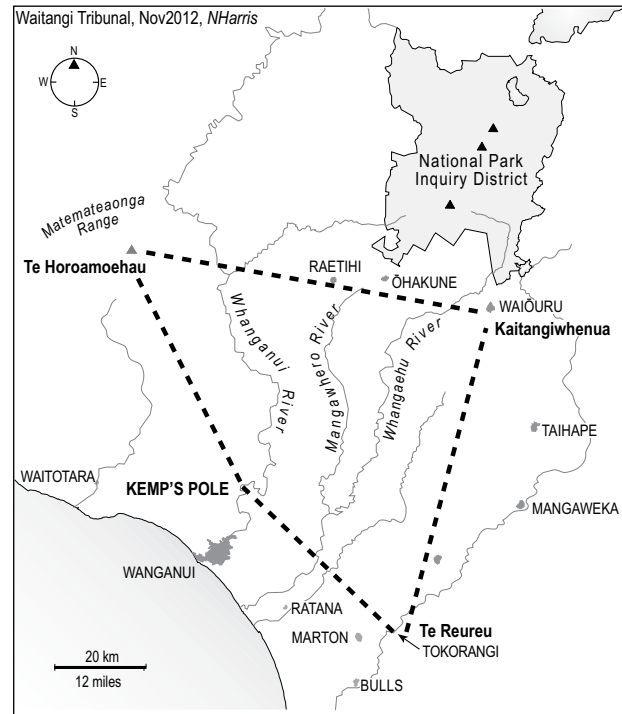


Keepa Te Rangihiwini, 1880s. Te Keepa created a trust which aimed to improve the system of land sales for Māori and to manage revenue from leasing and sales.

Crown, however, rejected the allegation that it did not respect the desire for Whanganui iwi to maintain control over their lands.¹²⁹

(1) *Aspirations of those behind Kemp's Trust*

In 1880, Te Keepa worked with lawyers Sievwright and Stout to create Kemp's Trust. Through the trust, they intended to use property law to protect Whanganui lands from uncontrolled Crown purchase. The trust aimed to ensure that sufficient land was retained by Whanganui Māori, control the speed at which land passed through the court, and manage the revenue from the sale and lease of trust lands.¹³⁰ Like the trusts established on the East Coast, Kemp's Trust employed traditional tribal structures because contemporary native land legislation



Map 4.2: Kemp's Trust

did not allow for community land management. Kemp's Trust shared many similarities with the Rees Pere trusts in Tūranga from 1878 to 1881: both were collaborations between Māori leaders and Pākehā lawyers; both aimed to accommodate Pākehā settlement and Māori development; and both aimed to do so by controlling the pace of settlement and ensuring the retention of Māori land. Both also had strong support from Māori.¹³¹

One purpose of Kemp's Trust was to promote 'close settlement' to accommodate larger numbers of Pākehā rather than the few that had till then benefited by acquiring land from Māori. Close settlement ensured that Māori would benefit not only from land alienation, but also from the economic activity arising from larger numbers of settlers. In the 1880s, public opinion was turning against



The village of Raorikia and 'Kemp's pole', circa 1880s. The pole set up by Te Keepa Te Rangihwinui (Major Kemp) marked the boundary of an area known as Kemp's Trust that he wanted reserved for Māori.

private land-dealers because they were seen to compromise the interests of small settlers; close settlement was a popular Liberal policy, promoted by Stout and Ballance.¹³² For this reason, the Whanganui press supported Te Keepa's position when he opposed the survey of Rangipō-Waiū. In the *Wanganui Herald*, Ballance stated that while Te Keepa was likely to be made the 'scapegoat' for trouble at Murimotu, the actual cause was the speculators

and their 'insatiable land greed'.¹³³ In this regard, we can see that the aspirations of those behind the trust aligned with the interests of small settlers. We also note that close settlement necessitated 'improvement' of the land, such as the surveying of small blocks and the building of roads and bridges. This meant that the trust's ability to borrow money at the outset was vital.¹³⁴

When the trust was created, two deeds were signed. The

first deed, referred to as the trust deed, vested the land within the trust's boundaries in Te Keepa as the trustee. The second deed declared that the administration of the trust would be controlled by a council – appointed by the owners of the land – alongside Te Keepa. While the trust deed has not been located, its contents were outlined in the press, and that account closely resembles Sievwright and Stout's description of how the trust would function.¹³⁵ First, the trust lands would be surveyed and taken through the court in order to obtain marketable title. The role of the council was to ensure that decisions regarding alienation were informed by tribal interests. The council would determine the boundaries and lists of names, and the court would effectively rubber-stamp the council's decisions. The council's role thus attempted to answer the ongoing question of how to alienate Māori land and allow Pākehā settlement, while ensuring that Māori gained economic benefit and maintained sufficient land in order to continue to exercise their tribal authority.¹³⁶

After title determination, the trustees would create inalienable reserves to ensure that Māori retained sufficient land. It was acknowledged that the trust would need to borrow money at first, by mortgaging land that had not been reserved. Once the reserves were allocated, the remaining lands would be used for sale and lease to settlers. This would not only encourage settlement, but also create proceeds that would repay debt, fund infrastructure such as roads and railways, pay grantors, and be reinvested.¹³⁷

(2) Did the Crown play a part in the trust's failure?

Because Kemp's Trust encouraged settlement, it could be seen to work in the interests of both Māori and the government. Furthermore, as noted above, there was increasing support from small settlers to control private purchase. However, the trust was not without its problems, and historians have noted that it could only operate effectively with the government's support.¹³⁸ Crown historian Michael Macky concluded that the primary difficulties facing the successful operation of the trust were legal.¹³⁹ The native land legislation – with its lack of provision for communal land management – ensured that a trust model

would struggle from the beginning. The Tūranga Tribunal observed this with regard to the Rees Pere trusts,¹⁴⁰ and the same was true for Kemp's Trust in our inquiry. Furthermore, much of the land in Kemp's Trust had not been through the court. According to section 87 of the Native Land Act 1873, any conveyances regarding Māori land that had not been through the court were invalid.

It is difficult to see how a system of community land management could exist alongside the contemporary native land legislation. Under the Native Land Act 1873, there was no legal provision for community trust structures. That meant there was no way to stop individual claimants dragging the community into the court process, or to stop individual owners from selling their share of land.¹⁴¹ As Professor Alan Ward argued:

Without a major change in the land laws, and while the purchase of individual interests in land went on, it was impossible for organisations attempting to straddle tribal lines to retain their control for long.¹⁴²

It was not clear if, even after Māori land had been through the court, that land could be vested in the trust. The Rees Pere trusts on the East Coast experienced a significant setback in 1881 when the Supreme Court ruled that a trust deed that had been through the court was legally void.¹⁴³ Furthermore, much of the land in Kemp's Trust had already been proclaimed under negotiation through the Government Native Land Purchases Act 1877. More than 1,000,000 acres of land in the Whanganui and National Park districts were under government negotiation prior to the trust's establishment. In order for the trust to function, the government would have had to revoke these proclamations before the land could be alienated to private parties. There were also difficulties with the trust's intention to borrow money, as section 4 of the Native Land Amendment Act 1878 made mortgaging Māori land illegal. The government would have had to lift this ban in order for the trust to operate.¹⁴⁴

Considering all of these factors, the legal difficulties were overwhelming obstacles for the trust's establishment. As Mr Macky discussed in cross-examination, the

contemporary legal environment ‘made the trust’s objectives largely impossible to achieve.’¹⁴⁵ However, Mr Macky also stated that even if all of the legal obstacles had been overcome, the government would have likely opposed the trust anyway. The government was concerned about losing its influence over the district, and particularly the impact that the trust could have on the security of the Crown’s landholdings. Furthermore, Mr Macky stated, the government tended to oppose any scheme that advocated the court ‘rubber-stamping’ Māori councils’ decisions.¹⁴⁶

Indeed, the government was quick to oppose the trust from the outset. In September 1880, when Sievwright and Stout first wrote to Bryce to request his co-operation in the trust’s formation, Bryce strongly opposed the proposition. He further protested that the trust included land on which the government had paid advances, and he considered it was ‘objectionable’ that

natives who had disposed of the land, so far as they could legally do so to the Government attaching their names to agreements to sell, and taking advances or payments thereon, should, aided by you [Siewwright and Stout] seek to convey it to another person for a different purpose.¹⁴⁷

Te Keepa, Sievwright, and Stout rejected Bryce’s argument. They stated that the trustees intended to honour all proper agreements to transact land, and they also argued against improper advances, which McLean had already acknowledged were often made with little evidence that those being paid had any rights to the land. They also noted that Bryce himself had been critical of purchase practices in the district.¹⁴⁸ With regard to such practices in respect to advances, Te Keepa responded that

these are not the Queen’s laws, but are the laws of the present Government and of your heart who enacted such laws in order that you might obtain possession of my land for yourself.¹⁴⁹

The primary reason that the government opposed the trust – and thus obstructed its functioning – was because it was considered a threat to official government processes,

and particularly the goal of Crown purchasing. The government feared that the trust’s survey of a tribal boundary line, for instance, would negate the Crown’s past transactions.¹⁵⁰ As Mr Macky conceded in cross-examination:

Mr Boast: It’s clear isn’t it that the Government, at least the Hall Government, was not at all interested in supporting the scheme?

Mr Macky: That’s a fair comment, yes.

Mr Boast: And that was because this particular Trust project was perceived as an impediment to the Crown’s developing system of Crown purchasing. Is that correct?

Mr Macky: That is probably the most important reason.¹⁵¹

Another potential reason for the government’s opposition – and thus, the failure of the trust itself – was the lack of unanimous Whanganui Māori support for Te Keepa.¹⁵² Some Māori with interests in the trust lands opposed Te Keepa, and from the beginning the trust was hindered by questions of title and boundary.¹⁵³ When Te Keepa called a meeting at Raorika in November 1880, he invited Ngāti Whiti and Ngāti Tama so they might all come to a decision regarding their tribal boundaries. However, Ngāti Whiti and Ngāti Tama refused to attend, or to support the trust. Bryce, too, declined an invitation to attend. It was unclear how the trust planned to deal with disputes among Māori. The conflict showed that Te Keepa was not an uninterested party in the region, and thus his ability to transcend tribal and hapū divisions was in question. Bryce was reportedly concerned that Te Keepa was trying to establish an advantage over Tōpīa Tūroa’s rights in the region.¹⁵⁴

The restrictions of the legal environment and the government’s refusal to support the trust meant that Te Keepa and his supporters were forced into the court.¹⁵⁵ Despite Te Keepa’s wish to establish tribal boundaries under the trust, the government responded that the regular process should be used, and everyone concerned should consent to the court. The government considered that the only reason Te Keepa participated in the Rangipō–Waiū hearings in 1881 was to try and move the hearing to another location or to prevent the hearing from occurring altogether. Te Keepa

did attempt to move the hearing location to Murimotu – instead of Tapuaeharuru where Ngāti Tūwharetoa were the tangata whenua – but with no result. The main point is that by this time, Te Keepa had little choice but to attend the unreformed court, in order to protect Whanganui interests.¹⁵⁶

We agree that internal dissent among Māori, and particularly the conflict at Rangipō–Waiū, would have weakened Kemp's Trust. However, we also note that there was significant support for the trust among Whanganui Māori. Sievwright and Stout told the Native Minister that support was 'practically unanimous', and while the trust deed has not been located, contemporary reports estimated that it was signed by between 600 and 700 owners.¹⁵⁷

The trust presented an opportunity for the Crown to enable Māori to control alienation and to manage their lands in accordance with traditional tribal structures. These were pressing issues in the late nineteenth century, as tribes increasingly struggled to maintain control over their lands. But was it realistic in the 1880s to expect the kind of legislative change that would allow the trust to function? We leave this question for the Whanganui inquiry, but we do note that the trust was not the only way for Māori to manage lands and protect traditional tribal structures. As this chapter outlines, there were several different tribal and pan-tribal attempts to achieve this end during the 1880s. Had the government provided some means for this to occur – and it did have the opportunity under the native land legislation of 1862, 1865, or 1873 – communities could have decided what to do with their lands themselves.¹⁵⁸

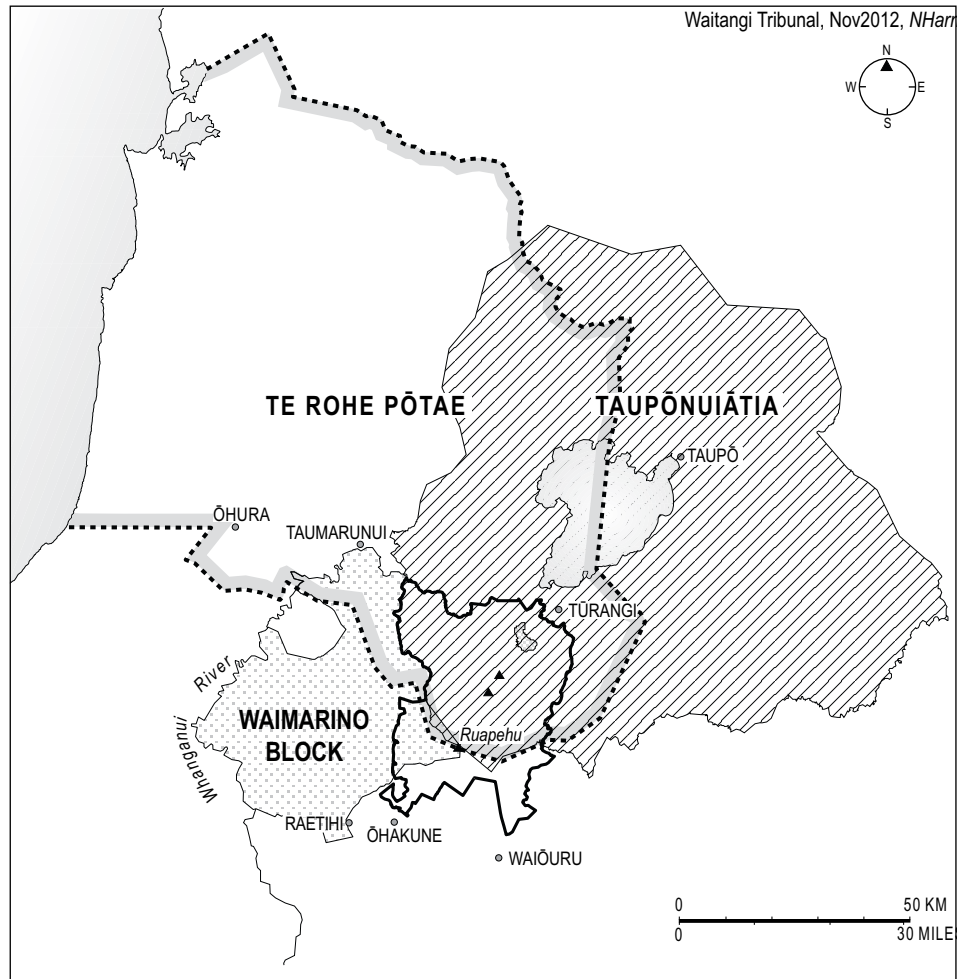
This was entirely plausible at the time, as there was a considerable amount of support for Māori participation in land management. The idea of Māori committees was being debated all over the country, and many Māori had requested that the government enact legislation to empower Māori committees to exercise greater Māori control of their own lands. The Native Committees Bill 1882 – which proposed Māori control of surveys, title investigations, and land sales – nearly passed the House.¹⁵⁹ Discussions of the native committees legislation in the early 1880s may have encouraged Te Keepa and his

followers to persist with their council in the hope the law might change. The Native Committees Empowering Bill 1882 required the court to 'take judicial notice' of committees' decisions. Native Minister Bryce strongly objected to the Bill; the House was divided over it, and it did not go to committee for consideration. Later, a revised Native Committees Act 1883 was passed. But the committees provided for in this Bill did not require the court to pay attention to their decisions, the committee districts were large and unwieldy, and an 1884 Whanganui committee was not well-supported. Although John Ormsby's Kāwhia committee was an example of an effective, operating committee, it was the exception to the rule. Furthermore, Te Keepa's council was still reportedly operating in 1884, so the committee did not instantly replace the council.

It is difficult to put a date on the dissolution of Kemp's Trust, but it appears that by 1885 it had stopped functioning. Without legal reform, the trust could not operate, and by this time, Whanganui Māori had agreed to sell lands within its boundaries. Furthermore, in 1885, Te Keepa met with Ballance and agreed to support a committee formed under the 1883 native committees legislation, which would seem to make Te Keepa's council redundant.¹⁶⁰ Despite Te Keepa's support of the native committees legislation, the Native Committees Act 1883 arranged committees that were (with the exception of the Kāwhia committee) largely unworkable. We discuss the legislation further below. For the moment, we note the CNI Tribunal's comments:

the Native Committees Act 1883 was a very serious missed opportunity. Instead of incorporating Maori aspirations as represented by the Maori members' Bills, the Crown created committees for districts that were too large to be workable or acceptable to Maori, and gave them no power in any case.¹⁶¹

Although Kemp's Trust was not without its problems, it posed an opportunity for the Crown to allow Whanganui Māori to exercise greater control over alienation and manage their own lands. The Crown's decision to ignore Kemp's Trust both safeguarded the Crown's purchasing interests in the region and ensured that the trust would fail. The Crown would not substantially engage with the

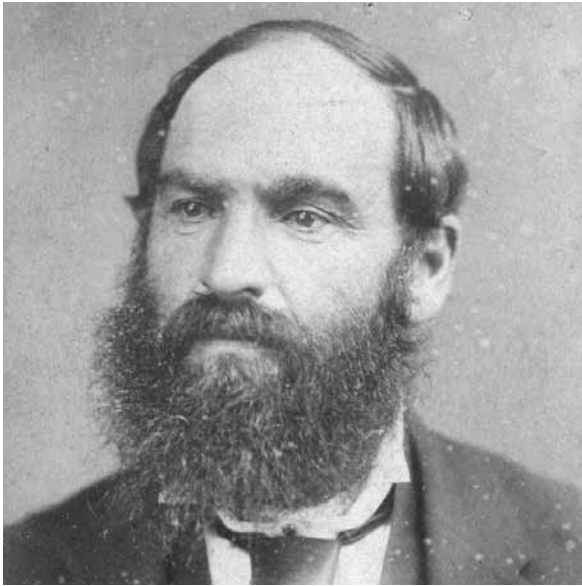


issue of Māori land management until Ballance's reforms later in the decade.

4.6.2 The Rohe Pōtae 'compact'

The Rohe Pōtae 'compact' was the product of a series of meetings between the Crown and the four or five tribes that comprised the Rohe Pōtae alliance, from 1882 to 1885. In our inquiry, the negotiations were a key source of contention between the claimants and the Crown. The negotiations also created the circumstances for the next major

topic in this report, the Taupōniatia application. For the purposes of our discussion, we note that there is a marked difference between the territory of the Rohe Pōtae lands – which was the subject of considerable discussion prior to the alliance's negotiations – and the issue we focus on here, that is, the negotiations between the Rohe Pōtae alliance and the Crown in the 1880s. We have not heard the evidence of Ngāti Maniapoto in this inquiry, and thus, we deal only with Ngāti Tūwharetoa and upper Whanganui, and our analysis is preliminary. A thorough investigation



John Bryce

14 September 1833 – 17 January 1913

John Bryce was born in Glasgow but his family immigrated to New Zealand in 1840. Largely self-educated, Bryce tried different occupations before settling on farming in 1853 and, for the next 50 years, running a farm near Wanganui. In 1854, he married Anne Campbell, and they had 14 children together.

Bryce's political career began in local politics in 1859, and in 1866 he was elected to represent Wanganui in the General Assembly. He resigned from both provincial and

central governments due to ill health the following year, but in 1868 he was commissioned as a lieutenant to protect the Wanganui region from the military threat of Titokowaru.

That same year, Bryce was involved in an incident that reputedly resulted in an attack on unarmed children, and Rusden's 1883 'History of New Zealand' reported that he had dashed upon Māori women and children and 'cut them down gleefully and with ease'. In a high profile libel case, Bryce sued Rusden in the High Court in London, won, and was entirely exonerated of the accusations.

In 1871, Bryce returned to the General Assembly, holding the Wanganui seat until 1882 and then the Waitotara seat until 1887. He was the chairman of Native Affairs from 1876 until 1879, when he became the Minister for Native Affairs in John Hall's government.

Bryce advocated firm action against the non-violent resistance of Te Whiti and Tohu at Parihaka, but the government's lack of sympathy for this position led him to resign in 1881. Notwithstanding this, the same year he returned to office to institute that very policy, and in November he directed the Armed Constabulary as they marched on Parihaka.

On his return from Parihaka, Bryce had a falling out with Hall, which resulted in him resigning again in 1882. Despite this, Bryce was once more appointed Minister for Native Affairs under Frederick Whitaker in 1882, and subsequently under Harry Atkinson – as Minister for Native Affairs and Defence – in 1883.

In general, Bryce enforced the law against Māori who opposed alienation, and he increased the power of the Native Land Court. He was briefly the leader of the opposition in 1890, before he tendered his final resignation.¹

of these issues will be canvassed by the Rohe Pōtae Tribunal.

(1) *The negotiations of the 1880s*

Through a series of complex negotiations conducted over several years, the Rohe Pōtae leadership agreed to open up

the King Country for settlement.¹⁶² During the 1870s, the government had tried to convince king Tāwhiao to open up the King Country, but when negotiations with the king deteriorated in 1882, Native Minister Bryce shifted to negotiating directly with Ngāti Maniapoto. In January 1883, the leaders of the Rohe Pōtae alliance's 'Four Tribes'

– most commonly referred to as Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui iwi – came together at Pūnui to discuss possible negotiations with the government regarding their lands.¹⁶³ There were a series of meetings with Bryce and his successor John Ballance, culminating in the Rohe Pōtae leaders' agreement to allow the railway through in 1885. Like the Kingitanga, the Rohe Pōtae leaders sought control over their own lands – including the ability to lease land – and to stop the damaging effects of the court.¹⁶⁴

The June 1883 petition articulated the chiefs' conditions for letting the railway go through. It was filed on behalf of Ngāti Maniapoto, Ngāti Raukawa, Whanganui, and Ngāti Tūwharetoa, and was presented to the House of Representatives on 26 June 1883.¹⁶⁵ The June petition or 'prayer' was recorded as having been signed by Wahanui, Taonui, Rewi Maniapoto (all Ngāti Maniapoto), and '412 other persons'. The petitioners protested the fact that existing laws all tended to 'deprive us of the privileges secured to us by the second and third articles of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands'. They stated that they did not see the good in the laws regarding their lands, and that the courts had become 'a source of anxiety to us and a burden upon us'. They asked the Crown:

What possible benefit would we derive from roads, railways, and Land Courts, if they become the means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.¹⁶⁶

As in other Māori proposals of the period – such as Kemp's Trust or the Rees Pere trusts – the Rohe Pōtae leaders stated that they did not wish to keep lands 'locked up from Europeans, or to prevent leasing, or roads being made therein'. Instead, the petitioners asked for a system which would better accommodate Māori needs as well as Pākehā settlement, while avoiding the prejudice the previous system had inflicted.¹⁶⁷

The requests of the 1883 petition were as follows:

1. It is our wish that we may be relieved from the entanglements incidental to employing the Native Land Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court.
2. That Parliament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.
3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth in this petition . . .
4. When these arrangements relating to land claims are completed, let the Government appoint some persons vested with powers to confirm our arrangements and decisions in accordance with law.

Lastly, the petitioners requested to lease their lands through public auction.¹⁶⁸

(2) *Ngāti Tūwharetoa and the Rohe Pōtae negotiations*

Counsel for Ngāti Tūwharetoa argued that by negotiating with the Rohe Pōtae alliance, the Crown created a divergence in the strategy of the Kingitanga, and this resulted in Ngāti Tūwharetoa having contrasting positions on the Rohe Pōtae negotiations. It also guaranteed, according to counsel, that the Kingitanga would be weakened, and the Rohe Pōtae alliance – because it was not representative of the Kingitanga – would not succeed.¹⁶⁹ In order to assess this argument, we start by first considering the position of Ngāti Tūwharetoa with regard to the Rohe Pōtae negotiations, and second, the particular position of Te Heuheu, before we assess whether the Crown was responsible for these positions.

With the benefit of new evidence presented in this inquiry, counsel for Ngāti Tūwharetoa argued that within Ngāti Tūwharetoa there were different positions on the Rohe Pōtae negotiations of the 1880s.¹⁷⁰ This challenged the CN1 Tribunal's conclusion that there was 'no reason whatsoever to doubt' Ngāti Tūwharetoa's involvement in the Rohe Pōtae alliance.¹⁷¹ Although Ngāti Tūwharetoa



Ngāti Maniapoto chief Wahanui, 1885. Wahanui and other chiefs petitioned the Crown with conditions for the railway passing through their land and protested that current laws were depriving Māori of their land.

were described as being one of the ‘Four Tribes’ of the Rohe Pōtae ‘compact’, counsel argued that the situation was considerably more complex, and evidence showed that Ngāti Tūwharetoa support for the Rohe Pōtae negotiations was ‘uneven’. Because of the patchiness of the historical record, she stated that we cannot determine which individuals were involved in which meetings, such as the 1883 Kihikihi hui, and this has implications for the relationship between the Treaty partners.¹⁷² The Crown

did not make submissions regarding the particular position of Ngāti Tūwharetoa with regard to the Rohe Pōtae negotiations.¹⁷³

The CNI Tribunal pointed out that Ngāti Tūwharetoa were clearly involved in the Rohe Pōtae alliance, having been listed as one of the four tribes that submitted the June 1883 Rohe Pōtae petition. Te Heuheu appeared to believe that the Rohe Pōtae petition was Ngāti Maniapoto’s (and more particularly Wahanui’s) attempt to claim Ngāti Tūwharetoa lands, and he most likely opposed the petition. However, the CNI Tribunal said this did not negate the fact that Te Heuheu and Ngāti Tūwharetoa still shared the overall aspirations of the Rohe Pōtae alliance, as embodied in the June 1883 petition, quoted above. Thus there was no inconsistency in Ngāti Tūwharetoa as a tribe being part of the alliance, and the June petition was likely the best reflection of overall Ngāti Tūwharetoa goals in 1883.¹⁷⁴

Documentation of Ngāti Tūwharetoa’s involvement in the Rohe Pōtae alliance is patchy. Ngāti Tūwharetoa evidence reports that Te Herekikie and Matuaahu supported the negotiations, while Te Heuheu opposed them.¹⁷⁵ Although Ngāti Tūwharetoa were one of the four tribes who submitted the June 1883 petition, the original document does not appear to have survived, and the names of the individual signatories are recorded in the official record only as Wahanui, Taonui, Rewi Maniapoto, and 412 others. It is not clear which individual chiefs from Ngāti Tūwharetoa signed, and the evidence suggests that Te Heuheu was probably not a signatory, as he filed his own petition against the June petition two months later.¹⁷⁶

Members of Ngāti Tūwharetoa were also present at the meeting at Kihikihi on 30 November, when Bryce told Rohe Pōtae Māori that they could not survey their external boundary without going through the court: ‘Everything comes back to what I said at first – investigation of title.’¹⁷⁷ The *New Zealand Herald* reported that the next day, 1 December, at Kihikihi, William Grace

read the application for survey, and read out the boundaries which the natives propose to have, also the names of thirty

chiefs which were inserted in the body of the document, and who represent four tribes, namely, Ngatimaniapoto, Ngatiraukawa, Ngatitūwharetoa and Ngatihikairo.¹⁷⁸

The agreement reached at Kihikihi was signed by 30 chiefs who represented those four tribes: Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Ngāti Hikairo.¹⁷⁹ However, the original document was, again, lost by the government. While Grace affirmed the commitment of Ngāti Tūwharetoa to the Rohe Pōtae alliance, we once more do not know which Ngāti Tūwharetoa chiefs signed.¹⁸⁰ The only chiefs that the newspapers noted were Rewi, Hitiri Te Paerata, Taonui, Hopa Te Rangianini, and Wahanui (who signed after the meeting was over). These five chiefs reportedly ‘authorize[d] the Government to proceed with the survey’. Following the Kihikihi hui, selected Rohe Pōtae rangatira wrote a letter to S Percy Smith on 19 December 1883, and the list of names included Te Herekieke, Ngahuru Te Rangikaiwhiria (Ngāti Manu-nui) and Te Pikikotuku (Te Herekieke’s uncle).¹⁸¹

Under questioning by the Tribunal, Crown historian Dr Donald Loveridge suggested that Ngāti Tūwharetoa did not fully support the Rohe Pōtae negotiations:

Tribunal: [T]he public documentation suggests they were in fact not part of this momentum in Kihikihi and elsewhere . . .

Dr Loveridge: I think . . . and this is just my impression from reading all this material, that Tuwharetoa was never fully behind the four tribes . . .¹⁸²

Dr Loveridge noted that the first mention of an officially recognised Rohe Pōtae alliance appears to be the June 1883 petition, which included Ngāti Tūwharetoa. However, after the June petition and prior to the December 1883 hui at Kihikihi – both of which named Ngāti Tūwharetoa as one of the four tribes – there were objections to the Rohe Pōtae alliance’s survey from key members of Ngāti Tūwharetoa.

Te Heuheu objected to the June petition about six to eight weeks afterwards, in his own petition of August 1883.¹⁸³ The House of Representatives received this petition (again, the original is missing) in early August, and

the petition referred to the Rohe Pōtae petition as a Ngāti Maniapoto ‘claim’, casting it as an attempt to encroach on Ngāti Tūwharetoa authority. Like the earlier petition, however, Te Heuheu listed various ills of the court which he wished to be remedied:

Petitioner says he is head chief of Ngatitūwharetoa, Taupo. He refers to the petition of Ngatimaniapoto, in which is a claim for lands of his tribe. This, he says, is without his consent. He gives the boundary of the lands which belong to his tribe (a branch of the Arawa). Petitioner complains of the excessive fees allowed to lawyers in the Land Court, and also of the practice of holding Courts at places distant from the lands adjudicated upon. He prays for redress of the various grievances above enumerated.¹⁸⁴

Te Heuheu’s petition contested Wahanui’s claim and defended the Ngāti Tūwharetoa right to much of the district apparently claimed by Ngāti Maniapoto.¹⁸⁵ The petition also objected to particular practices of the court. The same day that it was tabled in the House, the *Waikato Times* reported a meeting in Ōtorohanga, called by Wahanui. The purpose of the meeting, according to the paper, was to discuss the boundary set out in the June petition and to decide whether to exclude all lands that did not belong to Ngāti Maniapoto, because of problems with other tribes pulling out marker pegs. The reporter stated that

It will thus be seen that the petition regarding which so much has been said by the press throughout the colony, and in connection with native matters now before Parliament, was not the outcome of the various tribes therein mentioned.¹⁸⁶

Many leading chiefs refused to attend Wahanui’s meeting, and as Dr Loveridge noted, considering the circumstances and timing, it is likely that Te Heuheu was one of them.¹⁸⁷ However, it was less than four months later that the Rohe Pōtae survey application was signed by the four tribes, including Ngāti Tūwharetoa.

Te Heuheu’s was not the only objection to the June petition; on 21 August 1883, another petition arrived, this time

from ‘Ngatimaniapoto’ and ‘Waikato’, with 489 supporting signatures attached. It, too, protested against what it termed ‘Wahanui’s petition’, and particularly the clauses dealing with ‘the ancestral lands of Potatau and Tawhiao’. Judging by a letter written from Whatiwhatihoe on 24 July presaging the filing of this new petition, it is probable that Tawhiao himself was the driving force behind the petition, even though he did not sign it himself.¹⁸⁸

Objections to the Rohe Pōtae negotiations – from Ngāti Tūwharetoa and from other parties – persisted after this time. Toakohuru and 101 others of the ‘Hapus of Whanganui’ wrote to Bryce in April 1884, protesting that

We repudiate the tribal boundary made by Wahanui and Manga [Rewi] which runs through our tribal lands. We have a large area of land within that boundary, and as we were not informed that Wahanui and Manga intended to survey the exterior boundary, we the hapus of Whanganui interested in lands within those boundaries withdraw our lands from the survey . . . so that they may remain under the same authority and management as other Whanganui lands.¹⁸⁹

Dr Loveridge argued that these objections were immediate responses to the first Rohe Pōtae petition, and for Ngāti Tūwharetoa, they ultimately resulted in the Taupō-nuiātia application to the court.¹⁹⁰ In September 1884, objections to the Rohe Pōtae included another petition from Te Heuheu along with 21 others (along with the appendage ‘from all of us’) from Ngāti Tūwharetoa. This petition once more argued against Wahanui’s boundary line and requested that the boundary line be taken back to cover Ngāti Maniapoto land only:

We address you with reference to Wahanui’s external boundary which has been carried over the land belonging to us the Ngati Tuwharetoa tribe. We object to his external boundary line for he is a Ngatimaniapoto and his boundary line should be taken back in to his own land.¹⁹¹

The Crown’s draft reply noted that for the land surveyed, the title had not yet been determined, and the land must go through the court to decide the matter.¹⁹²

In her written answers, historian Cathy Marr stated that she understood that only those Ngāti Tūwharetoa who were Kingitanga supporters and had interests in the district were part of the Rohe Pōtae alliance. Ms Marr, who had not yet received the traditional history report, agreed that more research was required regarding Ngāti Tūwharetoa’s involvement as part of the Rohe Pōtae. She agreed that tangata whenua evidence would be significant in determining this.¹⁹³ We consider that the lack of documentary evidence makes it difficult to assess the actual nature and extent of Ngāti Tūwharetoa’s commitment or opposition to the Rohe Pōtae negotiations. Further research would need to be undertaken to determine exactly which individuals were involved in which agreements.

From the wider range of evidence available to this Tribunal, we think there may well have been more ambivalence among Ngāti Tūwharetoa with regard to the Rohe Pōtae negotiations than the CNI Tribunal suggested. However, we agree that there was unity among Ngāti Tūwharetoa with regard to the Rohe Pōtae alliance’s priorities, including the reform of the court, which we discuss further below.

(3) *Te Heuheu’s position on the Rohe Pōtae negotiations*

Counsel for Ngāti Tūwharetoa argued that Te Heuheu’s opposition to the Rohe Pōtae negotiations stemmed from his allegiance to the Kingitanga as well as his concern that Ngāti Maniapoto were claiming Ngāti Tūwharetoa lands.¹⁹⁴ Counsel also argued against the Crown’s contention that Te Heuheu opposed the Rohe Pōtae alliance from the outset. She implied, rather, that it was the Crown that had manipulated Te Heuheu into opposing the Rohe Pōtae survey. Te Heuheu – and other leaders around the country – were interested in the possible success of the negotiations, because land law reform would benefit all Māori.¹⁹⁵

Claimant counsel argued that Te Heuheu rejected the court for as long as possible, in line with Kingitanga ideals. Although the position of Te Heuheu and Ngāti Tūwharetoa occasionally shifted with regard to political initiatives, this was due to Ngāti Tūwharetoa discovering ways to adapt

to their new world, and they remained committed to the assertion of their mana and rangatiratanga. The claimants and the Crown agreed that Te Heuheu intended for the Taupōnuiātia application to be a Ngāti Tūwharetoa ‘Rohe Pōtae’. They also agreed that the application was a ‘pre-emptive’ or defensive strike.¹⁹⁶ Ngāti Tūwharetoa kōrero stated that Te Heuheu was not opposed to the railway, but wished to prevent the loss of land, and have some control over how the railway was implemented. He did not oppose opening up the Rohe Pōtae, but he wanted it to be on Ngāti Tūwharetoa’s terms.¹⁹⁷ The Crown responded that the evidence clearly showed that Te Heuheu opposed the Rohe Pōtae alliance from the outset, and that this predated the Crown’s supposed manipulation of the Rohe Pōtae as pertaining only to Ngāti Maniapoto.¹⁹⁸

Counsel for Ngāti Tūwharetoa argued that the boundaries put forward by the Rohe Pōtae alliance were ‘effectively the same’ as those of Te Pou o Te Kīngi. Ngāti Tūwharetoa traditional history records that the tribes which supported the Kīngitanga placed pou whenua or Te Pou o Te Kīngi to mark lands under the mantle of the Kīngitanga. These served both to mark a line that the government could not cross, and also to symbolise the connection between the tribes and the Kīngitanga. There were both old Te Pou o Te Kīngi – from ancient times, marking historical agreements, battles, or other events – as well as newer ones. According to the kōrero, ‘Whanganui pou . . . link up with the Ngāti Tūwharetoa pou that link up with the Maniapoto, Raukawa, Waikato boundaries and so on’. Taken together, they thus demonstrated that the tribes had come together to support the Kīngitanga.¹⁹⁹ In cross-examination, Crown counsel questioned Paranapa Otimi about the opposition to the Rohe Pōtae boundary:

Mr Doogan: [F]rom the documents we have looked at, the bringing of the Taupōnuiatia application was in large part a reaction to the Rohe Pōtae boundary which came down through Lake Taupo. Is that your understanding as well?

Mr Otimi: No, it wasn’t a reaction at all . . . It was fulfilling the request of the kīngitanga. ‘Go home, identify your pouwhenua to the kīngitanga so that we can all be joined as one.’²⁰⁰

According to Ngāti Tūwharetoa kōrero, Te Heuheu objected to the Rohe Pōtae alliance’s boundary because it also claimed ‘the feather of the hat’, in that it ‘cut through Tauranga Taupo to the Kaimanawa range’. He saw this particularly as Wahanui’s doing. Mr Otimi argued that Te Heuheu’s objection was therefore made on behalf of his whanaunga. However, he thought that Te Heuheu was also ‘asking whether or not the other chiefs had supported Wahanui in respect of his claim.’²⁰¹ This interpretation implies that Te Heuheu’s objections were due to his allegiance to the Kīngitanga, not just to Ngāti Tūwharetoa; it suggests that Te Heuheu argued against the boundary because he believed that, through the Rohe Pōtae petition, Wahanui was trying to extend his influence, and possibly not with the full support of Ngāti Maniapoto.²⁰² Thus, it implies that Te Heuheu’s objection to the Rohe Pōtae survey was a reflection of Ngāti Tūwharetoa’s commitment to the Kīngitanga.

Dr Loveridge and Dr Keith Pickens both partly explained Te Heuheu’s objections to the Rohe Pōtae by the fact that the Rohe Pōtae boundary bisected the Ngāti Tūwharetoa rohe. This interpretation would accord with the fact that when Te Heuheu and other Ngāti Tūwharetoa leaders filed the Taupōnuiātia application, they did not hesitate to include land that had already been through the court, suggesting that (as noted by the CNI Tribunal) the tribe’s true preference was to keep all its land together, under Ngāti Tūwharetoa control.²⁰³ It is evident that Te Heuheu was concerned about the splitting of Ngāti Tūwharetoa’s rohe; when Taonui of Ngāti Maniapoto tried to convince him to withdraw the Taupōnuiātia application, Te Heuheu reportedly responded with feeling:

Your boundary splits me in two . . . What about the half of me that is left outside? Who is to save that part. No, I prefer my people to die together as a whole. If you object to my Court going on, state your objection to the Court. We will meet there.²⁰⁴

Dr Loveridge argued that the Rohe Pōtae boundary risked trumping Te Heuheu’s authority, or imperilling

Ngāti Tūwharetoa's control of its own rohe.²⁰⁵ This accords with the Pouakani Tribunal's view that the Taupōnuīātia application was an assertion of Ngāti Tūwharetoa's mana, in reaction to the boundary proposed by the alliance:

The line of the Rohe Potae drawn by Ngati Maniapoto was literally cutting the rohe . . . of Ngāti Tuwharetoa in two parts. Te Heuheu was asserting his right to have all his territory heard in the Native Land Court as a whole block – Taupōnuīatia. It was a matter of mana, the mana of Te Heuheu and Ngati Tuwharetoa. [Emphasis added.]²⁰⁶

The Pouakani Tribunal's comments underline that the matter was complex. Not only was there the issue of Ngāti Tūwharetoa's lands being divided, but there was the shifting sand of a multi-iwi alliance and, more particularly, of which leaders or-- which group might be gaining ascendancy within that. We do not see Te Heuheu's rejection of the Rohe Pōtae petition as a clear objection on behalf of the Kīngitanga. Rather, it was in accordance with Te Heuheu's belief that the Rohe Pōtae application was a claim pushed by Wahanui, to raise the profile of Ngāti Maniapoto.

It is difficult to discern exactly what Te Heuheu's motives were.²⁰⁷ However, Ms Marr noted that chiefs in Te Heuheu's position were under pressure to act in what they perceived was the interests of their communities, and the railway provided considerable urgency to act, because of a perceived risk of land takings.²⁰⁸ A further aspect to consider is that there may be a tendency to overstate Te Heuheu's position within Ngāti Tūwharetoa at the time of the events discussed here. Although Te Heuheu opposed the June 1883 Rohe Pōtae petition, this does not necessarily mean that the whole of Ngāti Tūwharetoa opposed it. Dr Ballara and Dr Anderson both noted that the Crown tended to treat Te Heuheu as though he had more authority than was the reality in the 1870s and 1880s. Such a view on the Crown's part failed to take into account the fact that Te Heuheu's leadership was challenged within Ngāti Tūwharetoa (from Te Wharerangi, for example).²⁰⁹ We have already commented on the status of the ariki in

chapter 2. Generalising about a tribe's position is by necessity a simplification; as we have noted, there were parts of Ngāti Tūwharetoa in our inquiry district who were not Kīngitanga supporters at this time.²¹⁰

The Rohe Pōtae alliance and the Kīngitanga both wanted Māori control over their own lands, provisions for leasing, and to stop the negative effects of the court. On the matter of reforming the court, the Four Tribes' June 1883 petition requested the prevention of 'fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court'.²¹¹ We note that Te Heuheu shared the motivation to reform the court in his own petition of August 1883, where he protested against 'the excessive fees allowed to lawyers in the Land Court, and also of the practice of holding Courts at places distant from the lands adjudicated upon', and asked the House to address these grievances.²¹²

Te Heuheu believed that the Rohe Pōtae petition was aimed at furthering Ngāti Maniapoto interests; he objected to the June petition in his own petition of August 1883, and to the 'external boundary' of the Rohe Pōtae in his later petition of September 1884. As Dr Loveridge noted, the second petition came closely on the heels of rumours that the Crown was granting Wahanui a seat on the Legislative Council, and it is quite possible that this motivated Te Heuheu to act.²¹³ In our view – and here we agree with the CNI Tribunal – Te Heuheu filed the Taupōnuīātia application for multiple reasons: fear of others claiming the land; the fact that the Rohe Pōtae split the Ngāti Tūwharetoa rohe; the Grace brothers' persuasion; and the desire to create a Ngāti Tūwharetoa Rohe Pōtae, which was a matter of mana.²¹⁴

Objections to the Rohe Pōtae petition from Te Heuheu and selected Ngāti Tūwharetoa may have in part been due to commitment to the Kīngitanga's aspirations (and we note here that there were those close to the king who also protested against the Rohe Pōtae petition, as witnessed by the other counter-petition filed around the same time as Te Heuheu's). However, we conclude that the objections were mostly based upon concern that Wahanui and, through him, sections of Ngāti Maniapoto, were trying

to extend their influence. If the Rohe Pōtae petition were allowed to go ahead uncontested, and if it were to succeed, it was not clear who might control those lands that were part of Ngāti Tūwharetoa's rohe. This aligns with Ms Marr's observation that while there was considerable support for the Kingitanga at this time, there was also a great deal of pressure on chiefs to provide support for their own communities. It also aligns with Ms Marr's comment that Te Heuheu may have objected to the Rohe Pōtae petition because he had concerns about what the Rohe Pōtae leadership and negotiations would mean for Ngāti Tūwharetoa interests.²¹⁵ The evidence in this inquiry supports Ms Marr's argument.

Iwi and hapū within pan-tribal organisations retained their independence and authority.²¹⁶ In his August 1883 petition, Te Heuheu objected to what he saw as a Ngāti Maniapoto-dominated claim to the Rohe Pōtae lands, and he also gave boundaries for Ngāti Tūwharetoa lands.²¹⁷ In doing so, he stressed Ngāti Tūwharetoa's right to directly control their own lands, rather than giving power to any overarching body. In this context, the other counter-petition filed around the same time, namely the petition from 'Manuhiri and 488 others of the Maniapoto and Waikato tribes', is not without significance, since it likewise protested the inclusion of certain lands in the earlier overarching claim filed by Wahanui.²¹⁸ In our view, Te Heuheu's decision to file his own petition demonstrates that he had the interests of Ngāti Tūwharetoa specifically in mind. His later petition of September 1884, with 21 other members of Ngāti Tūwharetoa, objected once more to:

Wahanui's external boundary which has been carried over the land *belonging to us the Ngāti Tūwharetoa tribe* – We object to his external boundary line for he is a Ngātimaniapoto, and his boundary line should be taken back in to his own land. [Emphasis added.]²¹⁹

The evidence shows that Te Heuheu opposed the Rohe Pōtae in order to protect the Ngāti Tūwharetoa rohe and, furthermore, that he intended the Taupōnuīātia application to define that rohe and assert Ngāti Tūwharetoa mana.

(4) *Did the Crown misrepresent the alliance's goals?*

Despite the claimants' arguments, in our inquiry we have heard no evidence that the Crown manipulated Te Heuheu into believing that the Rohe Pōtae negotiations pertained to Ngāti Maniapoto only. As in the CNI inquiry, the historical evidence does not support the claimants' contention that the Crown conducted any kind of misinformation campaign to that effect. There is evidence of anxiety among Ngāti Tūwharetoa that the Rohe Pōtae negotiations were Ngāti Maniapoto's (or more particularly Wahanui's) attempt to claim the entirety of the land. There is also evidence that this concern influenced Te Heuheu's application to the court. However, Mr Stirling and Ms Marr's evidence for a government misinformation campaign is primarily circumstantial. Although newspapers quoted Bryce calling the Rohe Pōtae the 'boundary of Ngātimaniapoto', the newspapers also referred to it as the boundary on behalf of the 'four tribes'. The government's internal files referred to 'Wahanui's block', but this does not show that the survey was publicised in this way. The CNI Tribunal noted that there is also no evidence that the government made any effort to clarify the situation for Ngāti Tūwharetoa; it merely encouraged further applications to the court.²²⁰

One of the difficulties of determining whether or not the Crown created any difference in strategy between the Kingitanga and the Rohe Pōtae alliance is pinpointing when that different strategy emerged. Ngāti Tūwharetoa traditional history argued that the Grace brothers played a part in dividing Māori at the 1883 hui at Kihikihi.²²¹ However, we lack any specific evidence of how the Grace brothers' influence might have manifested itself there. We will discuss the role of the Graces and other Crown agents further in chapter 6; for now, we note that we have heard no evidence that the Crown, through the Graces, instigated this difference in strategy at the Kihikihi hui.

Finally, while Crown agents might have met with Māori to convince them the Rohe Pōtae claim was only Ngāti Maniapoto's – as Mr Stirling and Ms Marr suggested – we note that there is no firm historical evidence that this occurred. Whanganui Māori also believed that the survey would work largely to the benefit of Ngāti Maniapoto.²²²

We have heard no evidence that the Crown was responsible for either of these misconceptions. As we have seen in our previous chapter, there were divisions within Ngāti Tūwharetoa that predated the Rohe Pōtae negotiations. The evidence simply shows that parties believed the Rohe Pōtae survey would benefit only Ngāti Maniapoto – and that this was influential in Te Heuheu's decision to submit the Taupōnuiātia application. Dr Anderson claimed that Te Heuheu submitted the application because of 'the success of the government's strategy of dividing the Rohe Pōtae alliance.'²²³ In our view, this is not supported by the evidence.

(5) *The expectations and understandings of the Rohe Pōtae negotiations and the Crown's obligations*

While Ngāti Tūwharetoa and Whanganui claimants referred to the Rohe Pōtae negotiations as a 'compact', Crown counsel objected to this term. However, all parties agreed that the negotiations were a process, and what the Crown referred to as 'a series of discussions, negotiations and incremental agreements.'²²⁴ This will be discussed further in the Rohe Pōtae inquiry. For our purposes, we agree with Ms Marr that this 'series of agreements' amounted to agreed conditions for the opening of the King Country, and that these negotiations were part of an ongoing relationship between the parties, a relationship that reflected the Treaty relationship.²²⁵ While there were few written agreements throughout the process, as Dr Loveridge noted, an agreement does not have to be written to be an agreement, and ministers like Ballance recognised that verbal discussions had significance.²²⁶ The key question, therefore, is what the parties understood was being agreed to, and whether these agreements were upheld. First, we examine the major source of disagreement between the claimants and the Crown in our inquiry, which is what the parties agreed to at Kihikihi in 1883. After that, we turn to the Crown's reforms in response to the Rohe Pōtae negotiations.

(a) *The question of the external boundary:* Following Bryce's legislative reforms in 1883, the meetings at Kihikihi in late 1883 saw Māori participants agree to a survey by Crown

surveyors of the external boundary of their lands. The significant point of disagreement for historians, claimants, and the Crown was whether the agreement meant something more than merely an 'external boundary' for the four tribes.²²⁷ What the Rohe Pōtae alliance and the Crown understood from the agreement is itself in contention; Ms Marr argued that at this point, Bryce and the alliance were 'talking past each other.'²²⁸ She argued that Māori intended the survey application to define and protect the Rohe Pōtae lands, and were not expecting the court to determine customary title for them. According to Ms Marr, the court was not yet reformed and Māori merely sought professional confirmation of their boundary.²²⁹ Dr Loveridge, on the other hand, stated that Māori understood that to get legal recognition of their external boundary, they had to have the title determined by the court.²³⁰ We note that despite their apparent status as one of the four tribes, Whanganui representatives were not present at the Kihikihi meeting, and nor was their absence commented on.²³¹

The contemporary evidence is sparse. Despite Bryce's draft letter to Wahanui and Taonui suggesting 'a quiet business talk' would be 'more likely to prove satisfactory than a large public meeting,'²³² a large public meeting was held. The *Waikato Times* and the *New Zealand Herald* provided accounts of that meeting.²³³ At Kihikihi, before the chiefs reportedly agreed to use the court, Bryce assured them that the key matter was title investigation: 'Therefore, I advise you . . . to have your titles investigated.'²³⁴ According to evidence submitted by Dr Loveridge, the Rohe Pōtae alliance agreed to take their lands through the court, survey the external boundaries of the block, and also allow trig surveys on the block. Ngāti Maniapoto traditional history records the understanding as being that 'the Native Land Court would only be permitted to determine the exterior boundaries of Te Rohe Pōtae' and that the appropriate tribes would determine the internal divisions.²³⁵

We note that, while the hui at Kihikihi confirmed that the external boundary survey should go ahead, the expectation on both sides was that subdivisions would occur later. Where understandings appear to have differed is

over the degree of control Māori would have in that later process. Bryce stated at Kihikihi that the petitioners' wishes had been carried out 'so far as possible' and that now title investigation should commence. 'That action', he continued, 'will be followed by the appointment of a committee to assist the Court . . . I will undertake to send two Judges to this district, to remain two years if necessary.'²³⁶ Wahanui replied:

I have agreed to your words . . . Let there be only one survey. When that is finished make the subdivision surveys, so that each one may know his place. Let the survey be an external one.²³⁷

Rewi agreed with Wahanui, and added that '[a]fter the tribal boundary is determined subdivision surveys can go on afterwards'. Taonui, for his part, stressed there should be only one survey: 'the subdivisions to stand back; tribal boundaries to be arranged first; no other survey to take place till authorised by the natives. A committee will arrange all these matters.' Bryce sought to clarify the situation, by stating that he understood 'what you want is that the tribal boundary should first be fixed, after that the subdivisions.'²³⁸ In cross-examination, Ms Marr questioned whether Māori were really talking about internal 'surveys', as the only record we have is the newspaper reports, which would have translated their discussions.²³⁹

The matter of the committee referred to by Bryce is an instance where the parties appear to have been talking past each other. According to the weight of Māori evidence, the Māori understanding was that following the external survey, subsequent internal subdivisions would be made by a legislatively empowered komiti. The agreement for survey relied on this understanding. According to the newspapers, Bryce made it clear at Kihikihi that the court would confirm the outer boundary, and that Māori committees would be able to enquire into titles. Reference in the newspapers to him saying that judges might remain in the district for 'two years if necessary' might have warned people that Bryce did not intend just a 'rubber stamp' operation. However, we are mindful that even the Māori members of parliament had taken some

time to realise that the committees provided for in the Native Committees Act 1883 would have far less power than those envisaged under the failed 1882 Bill.

The *Herald* reported a translated version of the agreement at Kihikihi. In the agreement, the chiefs asserted that the government should survey the external boundary 'in order that a Crown grant may issue to us, our tribes, and our hapus'. That 'grant' was used in the singular suggests that Māori saw the agreement as relating, in the immediate, only to the external boundary.²⁴⁰ Further, the quid pro quo envisaged by the chiefs seems to have been direct and immediate: they would allow the survey and, in turn, the Crown would issue a tribal title to the land – with no lengthy investigation. However, there seems to be less certainty about how they envisaged the process from there onwards, including a degree of confusion over what was meant by 'subdivisions' and 'tribal boundaries'. Rewi and Wahanui both referred to subsequent 'subdivision surveys', but Taonui said that after the external survey had been carried out, subdivisions should 'stand back' and tribal boundaries (plural) should be arranged first. According to Professor Ward, Bryce later wrote a file note recording that he had agreed to Wahanui's request for survey and award of title in terms of tribal and then hapū boundaries, rather than individual awards.²⁴¹ It seems to us, therefore, that Taonui perhaps saw 'subdivision' as implying individualisation of title, and that a particular worry on the chiefs' part was that, irrespective of what terminology was used to describe further divisions of the rohe, all land should stay in tribal, not individualised, ownership. This again is likely to have fuelled an expectation in their minds that court involvement would be minimal.

According to Ms Marr, Māori would have believed that while the Crown would carry out any surveying, they themselves would decide matters of ownership and title, and that the reformed court – if it was involved at all – would give legal protection to the iwi boundaries already decided.²⁴² Ms Marr noted that it is unlikely the leadership would have welcomed an unreformed court into the district, having previously criticised it in the 1883 petition, and afterwards, in June 1884.²⁴³ We are inclined to agree.

However, we also agree with Dr Loveridge that while the Rohe Pōtae leadership had requested an alternative system to the court in the June 1883 petition, they may have accepted a court that could (and would) rubber stamp decisions made by iwi and hapū.²⁴⁴ The petitioners had notably requested to be ‘relieved from the entanglements’ of the court. We agree with Dr Loveridge that the June petition, while very critical of the effects of the court, was not necessarily a rejection of the entire court system. When, in December, Bryce claimed that the court had been reformed, it appears that the petitioners consented to allow the court to confirm the boundary.²⁴⁵

Whatever the exact understandings at Kihikihi, we note that the outcome was clearly quite different from what the Rohe Pōtae leaders had intended. In terms of the survey itself, Ms Marr pointed out that Māori paid for an external survey of the land, which the government later benefited from, because the railway survey proved helpful for later court hearings. In the end, the external boundary survey of the Rohe Pōtae, in Ms Marr’s words, ‘was rendered largely meaningless and ineffective’. This was not the intention of the Rohe Pōtae leaders, nor what the Crown had encouraged them to understand from the negotiations.²⁴⁶ To whatever degree the court was expected to be involved, the Rohe Pōtae alliance was requesting that their land be defined and protected. Why, then, were the Rohe Pōtae lands eventually subject to the very alienation that the leaders were trying to avoid? We turn now to Bryce and Ballance’s reforms, to see the extent to which the Crown tried to meet the Rohe Pōtae leaders’ requests.

(b) *Bryce’s reforms*: When Bryce met with the Rohe Pōtae leadership at Kihikihi, newspapers reported him telling those present that:

so far as possible the wishes of the petition were carried out: the Native Lands [*sic*] Court was improved and simplified; lawyers and agents have been excluded from the court; means have also been arranged for committees to enquire into titles . . . All difficulties are now removed.²⁴⁷

The main pieces of legislation he referred to were the

Native Land Laws Amendment Act 1883 and the Native Committees Act 1883. The former Act made it not merely void but illegal for private parties to deal in land before it had been through the court. Those private parties who did so were subject to a fine of up to £500. The presence of lawyers in the court was also disallowed for a period of time. One thing that the legislation did not do, however, was prevent the Crown from dealing in land that had not been through the court. The Crown was permitted to continue to rely on advance payments where this was deemed appropriate.²⁴⁸

Bryce’s Native Committees Act 1883 allowed for the creation of Māori district committees. As we have mentioned, there were multiple Bills for Māori committees prior to the 1883 Act. Bryce had opposed three Native Committees Bills from 1880 to 1882, including the Native Committees Bill 1882, which nearly passed the House. The closeness of the 1882 vote was due to increased Pākehā members’ support for Māori committees. Committees were considered to be a way to resolve Māori disputes before the court intervened, accelerate the court’s process, and to bring Māori under British law and government. Members like Bryce who opposed the Bill, did so on the basis that Māori and Europeans should share one law. During debate on the 1882 Bill, however, other members supported it on the basis of cultural and legal pluralism, support for Māori self-government and self-management, or because the alternative was seen to be hypocritical (because in every other instance, Māori were only considered an exception in matters where it was to the settlers’ advantage).²⁴⁹

Bryce’s 1883 Bill was a considerably modified version of the 1882 Bill. In 1884, Bryce continued to argue that, in light of their numbers, Māori self-government was an ‘absurdity’, that Māori were incapable of deciding land titles, and that Māori should ‘accept European institutions and laws.’²⁵⁰ However, there was increasing pressure on the government to meet Māori demands, due to the need to open up the King Country and allow the railway to go through, and it was also under attack in the wake of what had occurred at Parihaka, in Taranaki. Not only that, but Māori chiefs were complaining directly to the queen. As the CN1 Tribunal noted, all of this pressure, along with the



'On the war-path again'. The members of parliament whipping John Bryce on his way to the King Country suggest his tardiness and reluctance to deal with Māori issues. He also faced Māori demands and complaints for allowing the North Island main trunk railway to proceed through Māori land.

support of Māori and many parliamentarians for the idea of committees, and the need to respond to the Rohe Pōtae petition, meant that Bryce had to give way. His 1883 Bill passed the House without debate.²⁵¹

Under the proposed 1882 Bill, committees would have been empowered to decide land titles, which would have meant they virtually replaced the court. Bryce's modified Bill only allowed committees to investigate title 'for the information of the Court'. Committees were empowered

to deal with very small disputes; they had no jurisdiction over civil disputes worth more than £20. They were also required to report to the court, which was not bound to pay any attention to their recommendations. In the Legislative Council in 1883, Premier Frederick Whitaker introduced the Bill, stating that it was not dissimilar from the earlier Bill and was a 'tentative measure' which would not result in any harm.²⁵² Sir George Whitmore commented that the similar titles of the 1882 and 1883 Bills meant that the Māori members had been deceived at first; however, they had come to realise that the 1883 Bill 'gave them nothing but a sort of sop to keep their mouths shut'.²⁵³

Bryce himself acknowledged in parliament in 1885 that the committees' power was very limited, and he denied vehemently that the Act granted any kind of self-government for Māori.²⁵⁴ The Kāwhia committee under John Ormsby provided a rare example of a successful committee under Bryce's legislation, but this may be explained by the fact that Ngāti Maniapoto were a tightly organised iwi working within a rohe that was reasonably well-defined. Elsewhere, attempts to set up committees failed, as generally the districts under the Native Committees Act were unmanageably large.²⁵⁵ The committee in which Ngāti Tūwharetoa was supposed to participate covered the whole of Taupō, Tauranga, Maketu, and Rotorua. Ngāti Tūwharetoa's smaller Taupō committee was simply ignored.²⁵⁶

In criticising the failings of the system set up, we must not overlook the fact that komiti were at least given official recognition. However, given that legislation empowering Māori committees was evidently possible in the early 1880s, we agree with the CNI Tribunal that the Native Committees Act was a 'very serious missed opportunity'.²⁵⁷ Bryce effectively subverted the Māori members' intentions with his 1883 Act. We concur with the conclusions of the Native Land Laws Commission 1891, that on the whole, the 1883 Act was merely a 'hollow shell' that 'mocked and still mocks the Natives with a semblance of authority'.²⁵⁸

(c) *Ballance's reforms*: In 1884, John Ballance took over from Bryce as Native Minister, and the following year he

John Ballance

1839–93

John Ballance was born in Ireland, and spent time in Belfast and Birmingham before coming to New Zealand and settling in Wanganui in 1866. The following year, he established a newspaper, the Evening Herald. During the war against Titokowaru in 1868 and 1869, Ballance's newspaper criticised the efforts of the British forces, and Ballance himself spent a night in prison because he refused to turn out as part of the compulsory local militia. He did participate in the war effort, with the Wanganui Cavalry Volunteers, which he helped found.

In 1875, he narrowly won the seat for Rangitikei, and did so again, more comfortably in 1876. Ballance supported the Liberal policy of close land settlement, and he joined Grey's Ministry in 1878. He was soon appointed colonial treasurer, but following a disagreement with Grey, he resigned in 1879. The same year, he won the Wanganui seat, only to lose it two years later.

In 1884, Ballance reclaimed his seat and became Minister of Lands and Immigration, Native Affairs and Defence in the Stout–Vogel government. In 1889, he became leader of the opposition, and when Atkinson resigned in 1891, Ballance formed the country's first Liberal government. While he was still Premier, he died of cancer at age 54.¹



toured the North Island, meeting with Māori. One of these meetings was with the Rohe Pōtae leaders at Kihikihi. Ballance acknowledged in selected meetings that Māori were entitled to significant powers of self-government under the Treaty. In a meeting with Tāwhiao, Ballance stated:

We are prepared, under that Treaty, as I have said – under the laws which the Queen has given to the colony, and under the Constitution of the colony – to give the Natives large powers of self-government. That is the meaning of the Treaty.²⁵⁹

At some of Ballance's meetings, representatives of upper Whanganui and southern Taupō were present, but Ballance did not meet with Ngāti Tūwharetoa. Nevertheless, we consider it likely that the information and promises, given the significance of the content, would have been conveyed to other leaders by those rangatira who did attend. Ballance's meeting at Kihikihi, for instance, included Herekiele (although he spoke for Whanganui interests on that occasion).²⁶⁰

At Ballance's hui with the Rohe Pōtae alliance, Ormsby asked Ballance whether his promises to the leadership

should be written down. Ballance responded that he had given ‘long explanations’, and went on to say:

I hope you will take them exactly as I have given them, and, if you think there is any point still obscure, I am quite prepared to explain it; but I think I have put it beyond the possibility of even misinterpretation . . .

He considered the ‘official report of my speeches’ to be a sufficient record.²⁶¹

Ballance argued that when legislation pertaining to Māori was being proposed, there should be a process of consultation with Māori throughout the country. While he rejected the notion that Māori should have a separate national body and still advocated a major role for the court, he also stressed that the government would maintain the Treaty. Overall, Ballance’s promises were a significant step towards Māori self-government and management of lands.²⁶²

There were three parts to Ballance’s promises to Māori: improving the district komiti system, creating a new proposed system of communal land management, and improving Māori representation in central government.²⁶³ His promises to improve the system of district komiti were in keeping with his statement that Māori were entitled to a system of local self-government. In accordance with Māori desires, district komiti would be reduced from their present size. They would be empowered to decide land titles, acting as a lower court, with the Native Land Court operating as court of appeal. At Kihikihi, Ballance promised that the committees would be provided with

larger powers on preparing cases for the Native Land Court, so that all cases will come before the Native Committee in the first instance, and then go on to the Native Land Court, which will finally deal with the matter.²⁶⁴

According to Ballance, committees would also be given powers to administer affairs of local justice, and they would manage local affairs, act as local government bodies, and raise revenue. While meeting with the Rohe Pōtae alliance at Kihikihi, Ballance promised to bring a

Bill before the next session of parliament to amend Bryce’s Native Committees Act.²⁶⁵

On the subject of communal land management, he promised a new system wherein block committees would be elected to manage lands on the owners’ behalf. This would create a communal and corporate mechanism to manage lands. The system would privilege leasing over sales, and if the land were to be leased or sold, government commissioners and elected Māori boards would act as agents for the block committees. Ballance also promised to enhance the level of Māori participation in central government, trying to make the number of Māori members of parliament proportionate to the population of Māori in New Zealand.²⁶⁶

In the House, Ballance recommended increased powers for native committees, who might ‘act as a Court of first instance, allowing the Native Land Court to act as a Court of Appeal’.²⁶⁷ He stated this in the House in 1884, repeating this intention while meeting with Māori in 1885, and when his statements in the House were read out to him by Harris the same year, he responded: ‘Yes, I am in favour of that’.²⁶⁸ The CNI Tribunal noted that Ballance’s statements generated considerable ‘good will and expectation’, which led Māori – including the Rohe Pōtae leaders – to consent to the main trunk railway line and also submit to the court. However, despite his repeated assurances, Ballance did not introduce the promised Bill to amend the system of district committees in 1885 or 1886. The Stout government lost power in 1887.²⁶⁹

(d) *The Native Land Administration Act 1886*: Ballance did succeed in getting the Native Land Administration Act through parliament in 1886, and when he did so, it was the first time in nearly 20 years that a Native Minister had passed legislation to enable communities to manage land. Māori who chose to place their land under the Act would elect a block committee to decide whether to lease, sell, or occupy a block of land. If the committee opted to lease or sell, they would pass the land on to a government commissioner, at which point the committee’s role ended. After that point, the commissioner would auction off the land, leasing or selling in accordance with the owners’

preferences.²⁷⁰ This move towards corporate management can be seen as a response to the Rohe Pōtae alliance's requests to relieve 'the entanglements incidental to employing the Native Land Court to determine our titles to the land'.²⁷¹

The Act had great promise and, as the CNI Tribunal has noted, some of its principles were more Treaty-compliant than any legislation that had come before. The Bill was introduced after Ballance's hui with Māori in 1885, and it was discussed again at further hui in 1886 – including at Waipatu and Aramoho – after which the Bill was amended. However, despite all this, the resulting Act was not used by Māori; no land was put into it, and 1887 saw the government fall and the Act repealed.²⁷² Crown counsel stated that it was unclear whether Māori had changed their minds, or if they never wanted the legislation in the first place.

The CNI Tribunal examined the reasons for the failure of the Act. When Ballance met with Māori at Waipatu in January 1886, they made several requests for changes to the draft Act, most of which Ballance took measures to respond to. However, there were two difficulties that Māori raised that were not amended in the 1886 Act. First, as the district committees were not given any powers or role, after the block committee's initial decision, the commissioners would act alone. Second, there was no clause added to ensure that the block committees would act at the direction of the owners. As the CNI Tribunal noted:

Together, these two points meant that neither the block committees nor the Government commissioner would be responsible to the owners, either directly (as a community), or at the tribal level (District Committee). These were the things that would, Māori had told Ballance, prevent them from risking placing their land under the Government.²⁷³

Māori were concerned that the 1886 Act would give too much power to individuals, at the expense of the community of owners. While Ballance's process had included extensive consultation with Māori on the draft Bill, Māori made key requests that Ballance's Act did not accommodate.²⁷⁴

On the matter of the 1886 Act, we agree with the CNI Tribunal that

Proposals for hapu communities to make considered decisions about their economic future and the management of their lands had been around for decades, as had the thought that the Government could act as their agent in auctioning land for lease or sale, ensuring the highest market returns. These proposals were at last acted on in the 1886 legislation. Had they been translated into a system in which Māori had confidence . . . then the Act would likely have been a success.²⁷⁵

Instead, the Stout government was replaced in 1887, and in 1888, the Atkinson government repealed Ballance's Act and reinstated free trade under the new native land legislation.²⁷⁶

(e) *Did the Crown fulfil its obligations?* The Rohe Pōtae leadership had taken the following from its negotiations with the Crown: a reformed court would confirm the external boundary to the Rohe Pōtae; Māori committees would be legislatively empowered to determine the internal boundaries of the land; and Māori would be able to manage their own lands. Ballance's promises – to enhance the powers of district komiti and to pass legislation for the community management of lands – would have fuelled these expectations. It was quite feasible for the Crown to fulfil its half of the bargain, and it could have done so while still accepting the Taupōnuiātia application in October 1885, which we discuss below. Instead, it chose not to reform the court and it failed to provide adequate powers for Māori committees, the results of which we cover in our following chapters.

4.6.3 The Taupōnuiātia application

The early 1880s saw the Rohe Pōtae leadership agree to let the railway go through their rohe in return for what they considered the Crown's promise to grant tribes the legal power to manage their lands. The fact that this legal power was not granted, along with Te Heuheu's fear that the Rohe Pōtae alliance did not adequately represent Ngāti



The first sod is turned for the main trunk railway, 15 April 1885. The group, which includes Rewi Maniapoto and Sir Robert Stout, is standing on the confiscation line at the southern bank of the Puniu River.

Tūwharetoa, contributed to Te Heuheu submitting the Taupōnuiātia application to the court in October 1885.

In our inquiry, the claimants and the Crown agreed that Te Heuheu intended the Taupōnuiātia application to be a Ngāti Tūwharetoa ‘Rohe Pōtae’, or an assertion of Ngāti Tūwharetoa mana.²⁷⁷ The parties diverged, however, when it came to the details of the application. Claimant counsel argued that Ngāti Tūwharetoa did not voluntarily submit the application, but instead were manipulated by the Crown, through the Grace brothers and the existing

108 other applications to the court. According to counsel, Ngāti Tūwharetoa intended the application to act as a ‘determination’ of the external boundary, after which they would decide the subdivisions themselves; they did not expect a full title investigation in the court. Counsel argued that the applicants believed they could control the court’s process and avoid the worst perils of the land laws.²⁷⁸ In response to these arguments, the Crown submitted that it did not manipulate or interfere with the court’s processes, and that Ngāti Tūwharetoa did appear

to understand Taupōnuīātia to be a full application to the court.²⁷⁹ There were also several claims regarding the hearings and the subdivisions of the Taupōnuīātia block, and these will be addressed in chapter 5.

We have divided our analysis of the application into two parts, in which we assess the key arguments of the claimants and the Crown. First, we examine the objectives and expectations of the applicants prior to and during the filing of the Taupōnuīātia application. This includes anxiety among Māori regarding the Rohe Pōtae boundary and survey activity, and the effects of the pre-existing 108 claims on the decision to file the application and to subdivide the land in court. Secondly, we look at the expectations of Ngāti Tūwharetoa as the Taupōnuīātia application proceeded through the court. This includes whether Ngāti Tūwharetoa expected only a confirmation of their external boundary, and if the application was intended to be inclusive of tribes other than Ngāti Tūwharetoa. We begin with a brief outline of the Taupōnuīātia application itself.

(1) *An outline of the Taupōnuīātia application*

Before he filed the Taupōnuīātia application, Te Heuheu sent two petitions to the Crown – one in August 1883, and the other in September 1884 – to object to the Rohe Pōtae alliance's claim. Although the Rohe Pōtae claim was supposed to be on behalf of four or five tribes (including Ngāti Tūwharetoa), Te Heuheu believed that it was a principally a ploy by Wahanui aimed at furthering Ngāti Maniapoto's interests, and he objected to the fact that it included Ngāti Tūwharetoa lands. This objection was clearly evident in the September 1884 petition, where Te Heuheu refers to 'Wahanui's external boundary which has been carried over the land belonging to us the Ngati Tuwharetoa tribe'.²⁸⁰

Te Heuheu and other members of Ngāti Tūwharetoa attended a large hui in September 1885 at Poutū, pledging their continuing allegiance to the Kingitanga. One of the reported resolutions from the hui – which were signed by most of those in attendance, including Te Heuheu – was that the court be eradicated 'throughout the whole Island'.²⁸¹ Despite this apparent rejection of the court in September 1885, Te Heuheu and 'many others' went

on to submit the Taupōnuīātia application at the end of October. The listed chiefs on the application of 31 October 1885 were:

Te Heuheu Tukino; Matuaahu Te Wharurangi; Kingi Te Herekieke; Paurini Karamu; Wineti Paranihi; Te Huiatahi; Te Huaki; Taringa; Te Rerehau; Te Papanui Tamahiki; Hitiri Te Paerata; Hohepa Tamamutu; Ihakara Kahua; Te Kume; Te Roera Matenga; Hemopo Hikarahui; Rangitahau; Werewere; Wi Maihi Maniapoto; Hira Irihei; Takarei Ruha; Rawiri Kahia; Mere Hapi; Hama Pahiroa; Hori Te Tauri; Enoka Te Aramoana; Wharekaihua; Puku; Waaka Tamaira; Eru Moho; Te Rehutai; Eru Oho; Te Keepa Puataata; Patena Kerehi; Reupena Taiamai; Hori Hapi; Te Wakaiti; Kemara Te Tuhi; and others.²⁸²

At the time that the Taupōnuīātia application was filed, there were already 108 earlier claims relating to land within the intended block. While these claims were supposed to be notified in the *Kahiti o Nui Tireni* on 10 October 1885, the Crown, apparently anticipating Te Heuheu's application, delayed this notification until on or after 28 January 1886, after the Taupōnuīātia hearing had concluded.²⁸³

On 1 December 1885, Chief Judge James MacDonald sent a telegram to under-secretary Lewis with the Taupōnuīātia application enclosed. The chief judge acknowledged that the boundaries, as shown, included land already inquired into, which would not be reinvestigated in the hearing:

Much of the land within that area has already been 'thro the Court' and the notice (copy also annexed) is to prevent unnecessary alarm or confusion. Before the sitting of the Court the area will be 'marked out' on the land sufficiently for the purposes of the Court and a sketch plan certified by the Survey Dept furnished. The business resolving itself into an ordinary proceeding on investigation of title I do not see any reason to apprehend difficulties.²⁸⁴

Thus, despite the boundaries of the original application, the actual application would only refer to papatupu (customary) lands. The chief judge's attached notice stated that

Thomas William Lewis

1841–91

Thomas William Lewis arrived in New Zealand around 1860, and when the Waikato war broke out in 1863, he joined the colonial defence office. Six years later, when he was only 28, he became private secretary for the native and defence office, under the newly appointed Minister Donald McLean. From then on, Lewis worked under six different Native Ministers in different incarnations of the native office, rising through the ranks to become under-secretary for the Native Department in 1879, a post he held until his death in 1891. He was described as 'an energetic and painstaking public servant'. Lewis died in Sydney while he was on leave in 1891, after catching cold at a sculling race. He was 50 years old.¹

Existing memorials, Certificates and Crown Grants relating [to] lands which have been adjudicated upon within the above mentioned area will not be disturbed by the Court.²⁸⁵

The court began sitting at Taupō on 14 January 1886. On 15 January, it was adjourned for discussions of the block's boundary, and Ngāti Maniapoto reportedly requested that Ngāti Tūwharetoa withdraw their claim. Ngāti Tūwharetoa refused, but set up a working party to revise the boundary for Taupōnuiātia to exclude Ngāti Maniapoto lands in the west, as well as Whanganui lands in the south.²⁸⁶

The court resumed the next day, and Te Heuheu gave boundaries for the claimants and submitted a list of 141 hapū to the court. He stated that he claimed the land on behalf of ancestors which included Tūwharetoa and Tia. The same day, the counterclaimants were heard – and some counterclaims were withdrawn – and the court was adjourned until Monday 18 January, when the majority of the remaining counterclaims were withdrawn. On the following day, there appears to have been further protest from Ngāti Maniapoto before the court sat, and Te Heuheu

once more refused to withdraw his claim. On 22 January 1886, the court ruled in favour of Te Heuheu and Ngāti Tūwharetoa. On the same day, the court asked whether the claimants intended to submit a list of names or to proceed with subdividing the block. Ngāti Tūwharetoa opted to subdivide, and the court was adjourned to allow Ngāti Tūwharetoa to discuss the arrangements. Following the Taupōnuiātia judgment, the *Bay of Plenty Times* reported that Ngāti Tūwharetoa were planning celebrations in the form of a great hakari to which Ngāti Maniapoto, Te Arawa, Urewera, upper Whanganui, and Hawke's Bay tribes were also invited.²⁸⁷

(2) Expectations and objectives behind the application

In order to consider the claimants' allegation that the Crown manipulated Ngāti Tūwharetoa into submitting the Taupōnuiātia application, it is necessary to examine the expectations and objectives of Ngāti Tūwharetoa leading up to the application's filing. For Māori in the inquiry district, the context prior to filing the application was one of confusion about the nature of various surveys, and the possibility of land takings. The government had initially suggested that railway work could result in several small land takings, and Taupō chiefs may have felt compelled to file larger applications. Ms Marr considered that there was a great deal of pressure on chiefs to provide for their communities. Furthermore, many chiefs with interests in the Rohe Pōtae lands wished to unite their wider tribal groupings after the war.²⁸⁸

(a) *The Poutū hui of 1885*: A key event in the period prior to the submission of the Taupōnuiātia application was the Poutū hui of September 1885.²⁸⁹ This hui, convened by Tōpia Tūroa and others, demonstrated the continued power and influence of the Kingitanga in the mid-1880s. There were reportedly nearly 1000 people in attendance, including Te Heuheu. Most of those present – including upper Whanganui and parts of Ngāti Tūwharetoa – strongly supported the Kingitanga's quest for reform, and sought a practical expression of that reform through being able to administer their own lands within an officially sanctioned Kingitanga boundary.²⁹⁰

In line with this stance, there was, not surprisingly, strong opposition to the court. Judge David Scannell's clerk, Sergeant ES Thomson, reported that those present sought that the court be eradicated 'throughout the whole Island', and Scannell's covering letter to the report listed one of the meeting's several resolutions as being 'to withdraw the adjudication of their lands from the Native Land Court'. Another resolution was that 'Maori Committees should be appointed to rule and manage all the business of the Island, also under the mana of Tawhiao'.²⁹¹

Te Heuheu asked that a document be produced 'for signatures backing up the king'. In due course, a document was brought forward, which those present were asked to sign to show (in Thomson's words) 'their adherence to the resolutions placed before the meeting, and declaring their submission to the king'. Te Heuheu then argued that everyone – not only chiefs – should sign, and this was finally agreed to.²⁹² In his cover letter, Scannell noted that the only ones not to sign the resolutions were 'that part of the Ngatituharetoa (Taupo) Tribe residing on the eastern and northern sides of the lake'.²⁹³

Te Heuheu's pledge to the Kīngitanga at Poutū appears, on the surface, to conflict with his application to the court less than two months later. The claimants, along with historians Mr Stirling and Dr Anderson, suggested that following the Poutū hui, the Crown manipulated Te Heuheu so that he submitted the Taupōnuiātia application on 31 October.²⁹⁴ A focal point for the claimants was the role of the Grace brothers during and after this hui.²⁹⁵

In cross-examination, the Crown noted that following the Poutū hui, on 18 September, the *Yeoman* newspaper reported that:

Heuheu and Hohema Te Mamaku, chiefs of this district and their hapus are in favour of leasing or selling lands and strongly resented the unwarrantable interference of strangers coming into the district, interfering in local native matters. They also declare that they will petition the Government to hold a land court as soon as possible in Taupo.²⁹⁶

This report appeared soon after the Poutū hui and a month before Te Heuheu filed the Taupōnuiātia

application. In cross-examination, Dr Anderson accepted that this did complicate her notion of Te Heuheu changing his mind between the Poutū hui and the Taupōnuiātia application:

Mr Soper: But it does suggest though that there's no change about in [Te Heuheu's] position from the Poutū hui to his application six weeks later.

Dr Anderson: That is true.²⁹⁷

Dr Anderson's concession suggested that by the time of the Poutū hui, Te Heuheu had already resolved to submit his lands to the court. Mr Stirling, however, pointed out that the *Yeoman* was Ballance's newspaper, and the likely informant for this information would have been Lawrence Grace, who already had plans for the court's intervention. For Mr Stirling, therefore, the *Yeoman* reportage was not evidence that Te Heuheu already supported the notion of a court application at the time of the Poutū hui.²⁹⁸ While Mr Stirling's argument suggested that Lawrence Grace manipulated Te Heuheu to submit the Taupōnuiātia application, we have no direct evidence of this manipulation in our inquiry.

Rather, there is further evidence that by the time of the Poutū hui Te Heuheu already planned to take his lands through the court. Te Heuheu had submitted applications to the court before the Taupōnuiātia application in October 1885. This included an earlier, undated claim for Taupōnuiātia, which was submitted by Te Heuheu, Te Waka Tamaira, Matuaahu Te Wharerangi, Hōri Te Tauri, Hami Pahiroa, Rāwiri Kahira, and 388 others. This claim closely resembled the later claim for Taupōnuiātia, and it also overlapped with many previous claims that Te Heuheu had made to the court, including one from March 1884. The Crown noted that Rāwiri Kahira is recorded as speaking in support of the court at Poutū.²⁹⁹ The evidence thus renders the claimants' allegation of manipulation problematic. Furthermore, we note that the application was submitted by many influential chiefs other than Te Heuheu, and these chiefs would not all have been subject to Grace's alleged manipulations.

In the Crown's view, the overall evidence suggests that

Te Heuheu's relationship to the king was more complicated than the claimants suggested. The Crown argued that Te Heuheu maintained a consistent position against the Rohe Pōtae boundary, as clearly demonstrated by his August 1883 petition to the Crown and the subsequent court applications. The only piece of evidence that does not fit with this position is Thomson's record of Te Heuheu supporting the resolution at the Poutū hui. The Crown says that the latter evidence 'should not be preferred over the weight of contrary evidence'. According to the Crown, it was entirely possible that Thomson incorrectly recorded Te Heuheu's support. Mr Stirling did observe that Thomson's report was, at times, inaccurate, 'patchy', and 'rather garbled'.³⁰⁰ The Crown also pointed to a level of tension between Te Heuheu and the king, suggesting that Te Heuheu's loyalty to the Kingitanga was more nuanced than might appear. For instance, although Te Heuheu urged everyone to sign at Poutū and to support the king, he also commented that Tāwhiao 'went from us bearing malice against Tuwharetoa, Ngatiraukawa and Ngatimaniapoto, and did not consult us *re* his trip to England'.³⁰¹

At the Poutū hui, Te Heuheu made his famous kiwiweka speech, which Thomson recorded in some detail:

My final words: My boundary is like a kiwi's egg lying before me, and it is not yet broken, and I wish the kiwi to hatch it. I have given the boundary and the land to him; my mana is also with him. My boundary which was spoken of by Hohepa matters not; if a portion is rotten or sold, my egg remains. When it is hatched it will come forth. It matters not about the disputed boundary of Ngatimaniapoto, and they should shift your boundary. Listen! This is the day my egg shall be hatched, it matters not whether through a lease, a sale, or adultery. My boundary is the former one. If my egg is not hatched to-day I shall talk to the whole of us; I shall not throw it away. Rotten men and rotten land should be buried in a graveyard. This is the day the king is to be established.³⁰²

Ngāti Tūwharetoa history related how Horonuku Te Heuheu performed the kiwiweka ritual at the Poutū hui. Traditional history describes the ritual as follows:

He gave his korero at night . . . The huia is the most chiefly of birds, the kiwiweka is the bird that cannot fly. Nor could Horonuku; like the kiwiweka he was bound to the land. As a flightless bird the kiwiweka has to protect the egg. They sat around in the shape of a kiwi's egg, with Horonuku in the centre. He talked about the history and tikanga of the kiwiweka. The male looks after the egg, and assists it to hatch. If the male doesn't assist the kiwi chick to break the egg in two, the chick picks at the shell and leaves it in fragments. Horonuku's comparison is to the land: the land is to be kept intact and not fragmented. Rarangi matua, there were two defensive patterns. The chick is the future generation of the kiwiweka, the people.³⁰³

According to Ngāti Tūwharetoa traditional history, Te Heuheu's speech foreshadowed the Taupōnuiātia application. His speech was a warning against the fragmentation of lands.³⁰⁴ While claimant counsel interpreted the speech to demonstrate Te Heuheu's opposition to the court, the Crown argued that the speech was ambiguous.³⁰⁵ We are inclined to agree with the latter position. However, we agree with Ngāti Tūwharetoa that the kiwiweka speech demonstrated Te Heuheu's commitment to keep his lands intact, through his wish for his 'kiwi egg' – that is, his boundary – to hatch without shattering into many small pieces.

Ms Marr further stated that the Poutū hui may have reflected Māori concerns regarding the government surveys at this time. She suggested that these concerns resulted in two lines of action which, although contradictory in some respects, were both aimed at protecting their interests: increased applications to the court on the one hand, and increased support for the Kingitanga (and opposition to the court) on the other. The Poutū hui attracted far more people than expected, and according to Ms Marr, likely resulted in increased government concerns regarding the progress of the railway and future cooperation with government policy. Ms Marr argued that this meant the government pressured Māori to submit to the court. At the Aramoho hui in 1886 – which was a follow-up to a hui at Waitapu, and was attended by both Whanganui and southern Taupō Māori – Native Minister

Ballance stated that the government had a ‘duty’ to resist Tāwhaio, who, according to Ballance, was trying to coerce chiefs to give up their lands to him. Ms Marr thought that it was likely that the government pressured Te Heuheu in the wake of the Poutū hui.³⁰⁶ However, we can only go on the evidence before us, and we have seen no proof that such pressure was applied.

At least four Ngāti Tūwharetoa rangatira signed the resolutions from the Poutū hui as well as the Taupōnuiātia application, and claimant counsel argued that this demonstrated that Ngāti Tūwharetoa did not intend to submit their lands to the court.³⁰⁷ However, given the evidence before us – of prior applications to the court, the reportage in the *Yeoman*, the Poutū hui, and the kiwiwaka speech – we note that Ngāti Tūwharetoa neither clearly opposed nor clearly supported the court leading up to the Taupōnuiātia application. The situation was more complicated.

From the evidence before us, the reasons Te Heuheu submitted the Taupōnuiātia application were: fear that others were claiming the land; the fact that the Rohe Pōtae boundary bisected the Ngāti Tūwharetoa rohe; and, as a matter of mana, Ngāti Tūwharetoa wanted their own Rohe Pōtae. We also note that the Crown encouraged claims to the court, and sought the Taupōnuiātia claim in particular.³⁰⁸ We have heard no evidence of specific Crown manipulation following the Poutū hui.

On the other hand, while there is sufficient evidence to question Te Heuheu’s opposition to the court at this time, we also consider the picture to be more complicated than the Crown’s argument suggests. Te Heuheu’s participation at Poutū appears to demonstrate the difficult situation he found himself in. Although three senior Ngāti Tūwharetoa rangatira had signed the Rohe Pōtae survey letter, Te Heuheu could not sign, as he believed it to be detrimental to Ngāti Tūwharetoa interests. As Te Heuheu and Ngāti Tūwharetoa could not control the court, they had to decide between participating and trying to exert as much control as possible, or opposing the court and letting the land go through the court without their input. We agree with Ngāti Tūwharetoa traditional history and Mr Stirling that Te Heuheu used the kiwi metaphor at

the Poutū hui to demonstrate his determination to retain control over his land. The Taupōnuiātia application was intended as a Ngāti Tūwharetoa Rohe Pōtae, despite the fact that this was clearly not what transpired.³⁰⁹

(b) *The 108 existing applications*: As discussed above, there were 108 claims already filed to the court for land within the area of Taupōnuiātia before Te Heuheu and his fellow chiefs filed the main application on 31 October 1885. Counsel for Ngāti Tūwharetoa argued that the fact of these 108 prior applications led Te Heuheu to submit the Taupōnuiātia application; once the 108 applications were filed, the court’s intervention was unavoidable. Counsel also argued that the Crown interfered with the process of the court in order to suspend the 108 applications and allow for the Taupōnuiātia claim to go through. Counsel agreed with the CNI Tribunal’s observation that the Crown generally encouraged applications to the court. She also argued, though, that the 108 applications were used by the Crown to pressure Te Heuheu to submit the Taupōnuiātia application.³¹⁰ According to counsel for Ngāti Tūwharetoa, the Crown manipulated the court when it withheld publication of the 108 claims. Crown counsel responded that the evidence showed the Ngāti Tūwharetoa leadership probably not only knew, but approved of the claims’ suspension.³¹¹

Although the 108 claims were supposed to be published in the *Kahiti o Nui Tireni* on 10 October, Under-Secretary Lewis suspended their publication, under direction from Native Minister Ballance. In giving the instruction, Ballance failed to follow the procedure laid down in the legislation, which stipulated that, where a claim was to be suspended, written notice was first to be provided to the court by the Governor. The suspension of the claims was not lifted until January. The hearing for the Taupōnuiātia block began on 14 January 1866, and judgment for the main block was given on 22 January. Just a day later, Lewis wired Chief Judge MacDonald regarding the 108 applications, and notice of the impending claims appeared in a *Kahiti* of the same date. However, according to Crown historian Dr Pickens’ evidence, the 23 January *Kahiti* was not actually published until on or after 28 January.³¹²

We have no clear evidence that Ngāti Tūwharetoa opposed the suspension of these other claims, or that Crown agents used their existence to force Ngāti Tūwharetoa to submit the Taupōnuīātia application. In fact, Dr Pickens and Mr Stirling both agreed that it was likely Ngāti Tūwharetoa actually approved of their suspension. In Dr Pickens' view, Ngāti Tūwharetoa's awareness of these claims would have played a part in the motivation to file the wider Taupōnuīātia application, to avoid a more lengthy series of court sittings, with serious repercussions, financial and otherwise.³¹³ Lawrence Grace, in correspondence with Ballance, claimed to have told Ngāti Tūwharetoa of the

desirability of expediting the settlement of their land [claims], if possible at once and [in one] operation, and so avoiding protracted delays and heavy expenses of numerous courts spread over a long term of years, and that this could best be effected by submitting their whole tribal claim for investigation by the court in one block.³¹⁴

In terms of what Ngāti Tūwharetoa knew about the previous claims, we have already mentioned that they overlapped with Te Heuheu's prior applications. Several of the blocks had actually already been through the court, and some of the claims were for succession or subdivision for blocks with already determined titles.³¹⁵ Clearly, these claims could not have been used to coerce Ngāti Tūwharetoa to submit the Taupōnuīātia application. Furthermore, two thirds of the 108 applications contained at least one signatory to the later Taupōnuīātia application, and 19 of these applications listed Te Heuheu Tūkino as an applicant.³¹⁶ This confirms that Ngāti Tūwharetoa would not only have been aware of the claims, but would have likely approved of their suspension.

Furthermore, of the total 108 claims, two are for an area called 'Taupōnuīātia'. The first of these includes three signatories to the later Taupōnuīātia application: Hōri Te Tauri, Eru Moho, and Rangitāhau. The land referred to is located on the northern portion of the lake. The second claim, the area of which resembles the later Taupōnuīātia application, was put forward by Te Heuheu Tūkino, Hōri

Te Tauri, and many other signatories to the later application.³¹⁷ According to Mr Stirling's evidence, this claim overlaps with 107 of the 108 claims.³¹⁸ This shows that Te Heuheu and his fellow chiefs had already opted for a broad application; the 108 applications did not force them to file the later claim.

The evidence does suggest that ministers and officials intervened in the court's process in order to hold back the 108 applications prior to the hearing for Taupōnuīātia, and allow for the wider Taupōnuīātia claim to be heard. As Dr Pickens commented in cross-examination:

I formed the opinion that the Government may well have been the source of suggestion to Tuwharetoa that they proceed with the big application and that in the context of that, that's the reason why the smaller more numerous applications were held up.³¹⁹

Once the hearing commenced, however, the court disallowed further intervention of this nature.

We have already stated that one of the reasons that Ngāti Tūwharetoa submitted the Taupōnuīātia application was because of fear of other tribes claiming their lands, and we have noted Te Heuheu's particular concerns about the intentions of Wahanui and Ngāti Maniapoto. The decision to file the Taupōnuīātia application demonstrates the agency of Te Heuheu and fellow chiefs, and their intention to assert Ngāti Tūwharetoa mana. As we have shown, in his petitions against the Rohe Pōtae from August 1883 and September 1884, Te Heuheu was determined to assert the Ngāti Tūwharetoa right to their own rohe. Because we have heard no evidence of Ngāti Tūwharetoa reactions against the 108 claims – and the majority of claims came from the later signatories to Taupōnuīātia – we find it unlikely that the claims played a primary role in the decision to file the Taupōnuīātia application. Instead, they show us the path leading up to the final Taupōnuīātia application.

Before we turn to consider the applicants' expectations as the case proceeded through the court, we briefly consider the claimants' argument that the 108 applications were influential in Ngāti Tūwharetoa's subsequent decision to subdivide the block in court. The claimants argued

that by allowing the 108 applications to return to court on 23 January, the Crown manipulated the court's process to make subdivision inevitable; with these claims 'waiting in the wings', the applicants had no choice but to subdivide the land themselves.³²⁰ In contrast, the Crown argued that the fact that Ngāti Tūwharetoa were given the option in court of whether or not to subdivide meant that subdivision was not inevitable. In court, the komiti of Ngāti Tūwharetoa rangatira chose to proceed and subdivide the land, and according to the Crown, there did not appear to be any prejudice arising from the decision to first suspend then reinstate the claims, nor any subsequent protest from Māori.³²¹

On 22 January 1886, the court gave the successful Taupōnuiātia claimants the option of whether to have a title issued or to carry on with subdividing the block. Mr Stirling argued that while the court appeared to give Ngāti Tūwharetoa a choice, because the 108 applications were 'lurking behind the scenes', Ngāti Tūwharetoa were forced to subdivide.³²² Dr Pickens disputed that. He stated that Ngāti Tūwharetoa had already decided they wanted to subdivide before the publication of the 108 claims. The evidence shows that Ngāti Tūwharetoa chose to subdivide the block in court on 22 January; publication of the claims was proposed on 23 January, but they were not in fact gazetted until a week later.³²³ The timing, therefore, does not support Mr Stirling's assertion that the Crown had deliberately planned to 'unleash' the applications to force subdivision, and there is no other evidence that the alleged manipulation actually occurred. As we have noted, several of the blocks had already been through the court, and select claimants for the Taupōnuiātia application were also signatories on many of the pending claims. Indeed, a subsequent newspaper article suggests that Ngāti Tūwharetoa's decision to subdivide was strategic, not forced, enabling them to deal with the totality of their lands in a rational and organised manner: on 26 January 1886, the *New Zealand Herald* reported that 'after long consideration and conference with each other and adjoining tribes', Ngāti Tūwharetoa had been 'determined to make one claim of the land comprised within their ancient "kohe patae" [*sic*], or tribal boundary', and

had thus chosen to deal with it all simultaneously, first allocating areas to hapū and then proceeding to 'allocate the lands to each section or groups of hapus, and the individuals comprising the same'.³²⁴

We thus conclude that there is no evidence that the 108 suspended applications were used to coerce Ngāti Tūwharetoa into subdividing the Taupōnuiātia block during the hearing. Furthermore, as the CNI Tribunal noted, the judge provided the possibility of subdividing the block, or making a list of alienable, unallocated, individual interests for the whole block. In this context, subdivision was preferable to individualisation.³²⁵

(3) *Expectations of the case as it went through the court*

In this section, we examine the arguments regarding whether or not Ngāti Tūwharetoa expected only a 'determination' of their lands in the Taupōnuiātia case – as the claimants submitted – or whether, as the Crown argued, they expected a full title investigation. We also test the claimants' thesis that Taupōnuiātia was intended to be an inclusive application involving tribes other than Ngāti Tūwharetoa.

(a) *Did Ngāti Tūwharetoa expect a 'determination' only?*

The claimants argued that Ngāti Tūwharetoa expected only a 'determination' of the outside boundary of the Taupōnuiātia block. Counsel argued for a reconsideration of the CNI Tribunal's argument that Ngāti Tūwharetoa 'must have known' that by late 1885 the Crown had no legal grounds to allow them to award their own titles, and thus, Ngāti Tūwharetoa had anticipated subdivision in the court. According to counsel, there are parallels with the 'gift' argument in this instance, as Ngāti Tūwharetoa's cultural paradigm may have shaped their understanding of the process.³²⁶

In counsel's view, Ngāti Tūwharetoa believed that the Taupōnuiātia application would act like the Rohe Pōtae; it would confirm their boundary so that they could arrange the subdivisions themselves. Ngāti Tūwharetoa tribal history stated that the application was a declaration that the land belonged to Ngāti Tūwharetoa, with no need for a comprehensive court investigation. Counsel argued

that for Ngāti Tūwharetoa, what occurred in the court was completely unexpected. Counsel further noted that the original boundary for the Taupōnuīātia application included the whole rohe of Ngāti Tūwharetoa, including lands that had already been through the court.³²⁷

Counsel also submitted that it was entirely possible that Ngāti Tūwharetoa's understanding of legal title did not concur with the reality. The court could not legally define the external boundaries of the lands; the Native Land Act 1873 meant that title had to be awarded to individual owners that the court decided upon, and the court could not award land as a tribal title to iwi or hapū. However, counsel argued that it was unlikely Ngāti Tūwharetoa would have been aware of this. She argued that we cannot tell what Ngāti Tūwharetoa understood the application to mean, and we cannot tell what their advisers told them. Crown agents likely did understand that Te Heuheu only intended the court to confirm the external boundary, and either they misled him into believing that what he sought was possible, or they failed to discourage him. It was possible that Ballance, via Grace, made promises to Te Heuheu similar to those made to the Rohe Pōtae alliance, and these promises were not upheld.³²⁸

In the Crown's view, many of the claimants' arguments regarding Taupōnuīātia were speculative, with little evidence to support them. The evidence suggested that the Ngāti Tūwharetoa komiti willingly opted for subdivision. A letter from Lawrence Grace suggested that he and Ballance had discussed subdivision with Ngāti Tūwharetoa prior to the hearing. Furthermore, it appeared that the komiti was formed for the purpose of managing the Taupōnuīātia arrangements, and that the active role that it played, its immediate decision in court, and the rapid progress of the hearing all suggested that the parties were aware of the impending subdivision. There was no evidence that the komiti was forced to proceed with subdivision.³²⁹

The Crown also said there was no evidence that the Graces had strong influence over the komiti; considering the komiti's membership, and the evidence that the Graces favoured Te Heuheu, it appears unlikely that the Graces exercised much influence. In the Crown's view, the

fact that the court offered Ngāti Tūwharetoa the option of subdivision further suggests that the Graces were not manipulating the court. Although the claimants argued that out-of-court arrangements regarding subdivision suggested that the komiti had little control, the Crown argued that this actually shows Ngāti Tūwharetoa exercising agency, and the court behaving as an adjunct to Māori decision-making. Finally, the Crown submitted that the evidence suggests that Ngāti Tūwharetoa considered the court's decision cause for celebration, which rests uneasily with the claim that subdivision was unwelcome.³³⁰

In order to assess these various arguments, we must begin by examining Ngāti Tūwharetoa's expectations and understanding of the court process by late 1885 when they submitted their application. In our inquiry, the evidence in support of claimant counsel's submission – that Ngāti Tūwharetoa believed the Taupōnuīātia application to be only a 'determination' of their external boundary – came from two strains. First, Ngāti Tūwharetoa's traditional history report argued that the determination was a key part of Ngāti Tūwharetoa's strategy – *rārangi matua* – to protect their lands. Secondly, Mr Stirling claimed that some Crown agents may have believed that it was possible to confirm an external boundary for Taupōnuīātia, rather than commence with a full title investigation. According to Mr Stirling, given that even Crown agents were not aware of the legal context, it was extremely unlikely that Ngāti Tūwharetoa would have known that a determination was not possible. We shall examine both strains of evidence below.

(b) *Tribal history – Rārangi matua tuatahi*: Ngāti Tūwharetoa's tribal history explained the reasons why Ngāti Tūwharetoa filed the Taupōnuīātia application. Ngāti Tūwharetoa stated that after they opposed the Crown in 1869, the threat of confiscation loomed over them. The traditional history report noted that:

Ngāti Tūwharetoa believe that the conflict [at Te Pōrere], and Te Heuheu Horonuku's association with Te Kooti, had a direct bearing on the 1886–1887 Taupōnuīātia Native Land Court determinations that led to the supposed 'gifting' of

the maunga to the Crown. Placed under house arrest in Heretaunga, and [considering] the leniency extended to him after the battle of Te Porere [it follows that] Horonuku was indebted to the Government.³³¹

We assess whether Te Heuheu was coerced into the apparent gifting of the maunga in chapter 7 (see section 7.6.4(2)). In this chapter, we assess the extent to which Ngāti Tūwharetoa tribal evidence assists us to determine Ngāti Tūwharetoa's expectations of the court's process. We note here, however, that in cross-examination, counsel for Ngāti Tūwharetoa suggested that the continuing threat was no longer direct confiscation of lands, but rather the prospect that the Crown would open up the country by other means.³³² We have not heard evidence that confiscation was still considered to be a real possibility by the late 1880s. We agree, however, that there was pressure on Ngāti Tūwharetoa to try to protect their lands from other parties. Traditional rivalries were exacerbated by the fact that other tribes were bringing neighbouring lands through the court.

According to Ngāti Tūwharetoa traditional history, Te Heuheu and the other chiefs developed a strategy to avoid confiscation of Ngāti Tūwharetoa lands. The strategy was 'rārangi matua', the drawing of defensive lines. The first line of defence saw the tribe try to demarcate the boundary of a large area of land, viewed by Ngāti Tūwharetoa as its Rohe Pōtae. In the event, there was a slight retrenchment, particularly on the western and south-western sides. Nevertheless, as we discuss later (in the next section), the tribe acknowledged that, within the boundary, there were still those living who were descendants of Ngāti Raukawa, Ngāti Rereahu, Ngāti Tahu, Ngāti Whaoa, Ngāti Maniapoto, Ngāti Manawa, and Ngāti Whare.³³³ According to the traditional history report:

They wanted a determination, that it was their land, and a confirmation of the external boundary of their land. Their vision was to take an inclusive approach to counter the confiscation process that they had witnessed with the loss of Waikato and Taranaki lands and its impact on the King movement.³³⁴

They then went on to submit the Taupōnuiātia application 'on behalf of the descendants of Tuwharetoa; Tia and of others.'³³⁵ Dr Ballara's evidence corroborates the view that the move was protective and inclusive:

The Taupōnuiātia block was born of anxiety for the future. Horonuku was trying to put a boundary around his people's lands, including those of his wider kin links outside of Taupo, within which control should remain in the hands of the Māori owners of the land.³³⁶

The second defensive line pertained to the maunga, and will be more fully canvassed in chapter 7 (see section 7.6.1(3)). In cross-examination, Mr Otimi described the two defensive lines as 'a line and a fall back position', and said it was a strategy that Ngāti Tūwharetoa still uses every day.³³⁷

Ngāti Tūwharetoa traditional history records that when the chiefs submitted the Taupōnuiātia application, they only intended for the court:

to declare that Taupōnuiātia was theirs and to confirm the external boundary of the lands of Ngāti Tūwharetoa. The kaumatua of Ngāti Tūwharetoa have always been very clear on this. The korero refers to the 1886 Taupōnuiātia Determination. The chiefs were seeking a Determination from the Court that confirmed the external boundary of the block. The chiefs maintained that Ngāti Tuwharetoa never intended that land to be carved up into 163 blocks or that titles be issued.³³⁸

The traditional history report also discussed the fact that Te Heuheu Tūkino considered his body to resemble the land:

One time he considered his body to be similar to the land, one of his thighs on Titiokura, the other on Otairi, one of his arms on Pare te tai tonga, one on Tuhua mountains. His head on Tongariro, his body lying on Taupo. That his word made sacred the land, a region of his mana, a region where Pakeha were forbidden to enter, land never to be lost to the Pakeha. This was the greatest concern to him.³³⁹

As the land was analogous to Mananui Te Heuheu's body, this makes it even less likely that Ngāti Tūwharetoa would ever consent to cutting the land into pieces. Mr Otimi argued that: 'If [his lands] were to go into the Pakeha, his body would be cut up and so would his mana'.³⁴⁰ This shows that the chiefs did not anticipate the extent of alienation that would result from the application.

According to tribal history, the Crown ignored the inclusive intent of both the 1885 application and Te Heuheu's 1886 evidence in proceeding with subdivision. The Taupōnuīātia block was partitioned into 163 separate blocks by September 1887. There were many requests for rehearing, listing dissatisfaction with court judgments, incorrect owners listed, rightful owners omitted, and clashes between hearings. Only one of 21 of these requests was successful.³⁴¹

(c) *The understanding of Crown officials:* In cross-examination, Mr Stirling argued that initially, some Crown officials did not realise that it was not legally possible to simply confirm the external boundary of Taupōnuīātia. In 1888, Chief Judge MacDonald – rejecting 20 applications for rehearing – explained the 1886 Taupōnuīātia application as follows:

The idea of including such a considerable area in the one investigation arose, it is thought, from a willingness on the part of Government that the Native Land Court should determine a much disputed question as to the proper boundary between the lands of Ngatimaniapoto and Tuwharetoa, and *it was only on its being pointed out that the law had with the repeal of the [Native Lands] Act of 1865, ceased to provide for the ascertainment of a mere tribal boundary line, that it was resolved to arrive at the desired conclusion by having investigated the title to a block, one boundary whereof should express the site of the desired line.* [Emphasis added].³⁴²

Mr Stirling stated that this was evidence that initially, the government's own officials were not aware that a boundary determination was not possible. If officials did not appear to be sufficiently familiar with the legislation, Mr Stirling questioned why Ngāti Tūwharetoa should

have been aware that a confirmation of their external boundary was not possible. He submitted that at the time of the Taupōnuīātia application, the government appeared to intend to confirm the external boundary. In cross-examination, he argued that

there are telegrams around the time that the application is coming in and they have already suspended the *Gazette* with the numerous block claims in favour of this big one and they are saying where is the application for the Tuwharetoa boundary line, they seemed to think that's what it is . . .³⁴³

There are in fact numerous examples of the application being referred to as a 'boundary'. On 31 October 1885, William Grace sent a telegram to Ballance reporting that 'Leading chiefs of Taupo signed application Tribal Boundary & are ready to carry case thro' Court'.³⁴⁴ On 19 November 1885, Chief Judge Macdonald appeared to refer to the Taupōnuīātia application as 'Grace's application as to Ngati Tuwharetoa boundary line'.³⁴⁵ Another example occurred on 29 December 1885, when Henare Te Herekau and others from Foxton wrote to Native Minister Ballance to request that the court not sit at Tapuaehauru 'to adjudicate upon Ngati Tuwharetoa's external boundary' in January 1886. They requested that the court wait until March because of the scarcity of food at Taupō in January. In relaying the letter to the Minister, government officials expressed no surprise or doubt about the way the case had been described by the writers, merely recommending that 'the Natives be informed that this is a matter for the Native Land Court'.³⁴⁶

A letter from Rewi Maniapoto is also of interest in the context of this discussion. The translated copy of Rewi's letter to Ballance from 4 November 1885 outlines how Te Heuheu had written to Rewi 'informing [him] that the Chiefs at Taupo have all agreed to make an external boundary to their country, and have accordingly laid it out'. According to Rewi, Te Heuheu had suggested that he do the same. Rewi said he had agreed, adding 'for I have witnessed the justice of his (Te Heuheu's) management, together with his tribe Ngati Tuwharetoa'.³⁴⁷ While this suggests that Te Heuheu believed the Taupōnuīātia

application to be only for an external boundary, we do not have a copy of Te Heuheu's letter, and thus we do not know when it was written and nor can we be certain that Rewi reported the full content.

The CNI Tribunal has said that by late 1885, Ngāti Tūwharetoa 'must have known that the Crown had not provided a legal means for them to award their own titles' and that they had therefore come to expect that they would need to 'subdivide the land between hapu themselves' in court. Given the evidence already outlined, we think it highly possible that Ngāti Tūwharetoa initially expected an external boundary determination of their lands, and that this held sway into 1885. However, we think that by the time of the hearing the tribe was resigned to the idea of subdivision in the court. Our view is informed by several pieces of evidence. First, as the Crown noted, there is a letter from Lawrence Grace to Ballance, dated early January 1886, stating that he had by then met with Ngāti Tūwharetoa and pointed out the benefit of settling the entire tribal claim at once – including establishing title and apportioning reserves, in order to avoid delays and expensive protracted court hearings.³⁴⁸ As counsel for Ngāti Tūwharetoa contended, we cannot know in what terms those matters were discussed (and thus whether Grace specifically mentioned subdivision), nor whether Ngāti Tūwharetoa accepted the ideas he put forward.³⁴⁹ Nevertheless, the later evidence of Hitiri Te Paerata, a chief of both Ngāti Raukawa and Ngāti Tūwharetoa, and a signatory to the Taupōnuiātia application, also supports our conclusion that Ngāti Tūwharetoa came to see subdivision through the court as a necessity.³⁵⁰ The minute book records Te Paerata's understanding following the application process:

I thought the tribal boundary, ie, the Rohe Potae, was sufficient for Te Heu Heu, and all chiefs and myself consented thinking it was sufficient. I thought that we the hapus would arrange sub-divisions. I also thought that considering we were friends to support him and I was supporting him, owing to our ancestral relations. We were one body, one mind, one tribe. This day I find he [Te Heuheu] wants to sub-divide the land.³⁵¹

Judgment for Taupōnuiātia was given on 22 January 1886 in favour of Te Heuheu and Ngāti Tūwharetoa. After ownership of the block was determined, Ngāti Tūwharetoa were given a choice in court of whether or not to subdivide, and immediately opted to proceed with subdivision.³⁵² Had they chosen not to do so, the alternative would have been to draw up a list of alienable, unlocated, individual interests for the whole block. As the CNI Tribunal noted, subdivision was preferable to individualisation.³⁵³ Even though this was not what Ngāti Tūwharetoa had sought – and they could not have prevented the widespread alienation that would follow – at the time of the Taupōnuiātia hearing, subdivision was the best option available to them.

The evidence suggests that both the Taupōnuiātia case and the subdivisions were arranged by a Ngāti Tūwharetoa komiti with Te Heuheu as chair. In our view, this confirms the arguments of both the CNI Tribunal and Dr Pickens that Ngāti Tūwharetoa had a good measure of control over the process once the application reached hearing. Hapū came up with their lists of owners mostly out of court.³⁵⁴

In terms of the advantages and disadvantages of such a process, both the CNI Tribunal and Mr Stirling expressed a degree of doubt about whether the swift out-of-court process would have provided sufficient protection of people's rights. We agree that the process chosen may not have been ideal. However, as we have noted, Ngāti Tūwharetoa would have been aware of the government's failure to provide legal means for komiti to determine titles. While Ngāti Tūwharetoa may have initially believed that they could have their own external boundary, by the time of the hearing it was clear that the government had refused to recognise the Taupō komiti, and there was no legal means for them to determine title. Thus, the only options remaining to them were to have the court decide ownership of the subdivisions or to follow the path of out-of-court arrangements supervised by their informal komiti. We have already noted that Dr Ballara saw Te Heuheu's motivations in filing the Taupōnuiātia application as primarily protective (aligning with the Crown and claimant arguments that it was essentially a defensive strike).³⁵⁵ When it became apparent to Ngāti Tūwharetoa that subdivision was unavoidable, the option for their own informal

komiti to control the subdivisions most closely aligned with the tribe's protective impulse. In this way, as noted earlier, subdivision could proceed in a rational and organised manner.

By way of postscript, we note that the initial Taupōnui-ātia judgment was given on a Friday. By the following Monday, plans were well underway for a major Ngāti Tūwharetoa celebration to take place on the Wednesday, with large canoes of food arriving, and many other tribes invited. In our view, this supports Dr Pickens' contention that 'at the end of the initial phase of the Taupōnuiātia hearing Ngāti Tūwharetoa clearly believed they had been well served by the Court.'³⁵⁶ We would go further. Clearly, at the time the feast was being prepared, the tribe already knew that the case was going to proceed to subdivision, yet they did not call the celebration off. This suggests to us that they did not see the situation as a failure, even though subdivision may have been their fallback position rather than their first choice. Indeed, the *New Zealand Herald* article published on Tuesday 26 January, quoted earlier, even asserts that 'the natives of Taupo and interior' had generally expressed 'much satisfaction with the whole proceedings.'³⁵⁷ Whether or not one takes that at face value, it seems to us that Ngāti Tūwharetoa had, at the very least, a sense that they had done their best in the circumstances.

(d) *Was the application an inclusive application?* Counsel for Ngāti Tūwharetoa argued that the Taupōnuiātia application was 'an impressive act of unity', and involved hapū of many tribes other than Ngāti Tūwharetoa. In her view, the CNI Tribunal failed to acknowledge this.³⁵⁸ The Crown agreed that Te Heuheu was not the only one behind the Taupōnuiātia application. However, the Crown did not comment as to whether that 'act of unity' extended beyond Ngāti Tūwharetoa itself.³⁵⁹

Ngāti Tūwharetoa tribal history affirmed that in filing the Taupōnuiātia application, Te Heuheu had the support of the chiefs and the hapū. The boundary of the application was well known, as it was marked by pou whenua, tribal markers based on ancient historical agreements. Ngāti Tūwharetoa stated that no survey was required, as 'these places were well known to all the tribes and hapū.'³⁶⁰

In association with the application, Te Heuheu submitted a list of 141 hapū in court on 16 January 1886. Dr Ballara noted it would be a 'stretch of interpretation' to state that all of these 141 hapū listed were Ngāti Tūwharetoa.³⁶¹ Ngāti Tūwharetoa's traditional history reported that the list:

was not for the benefit of the descendants of Tuwharetoa and Tia, but was designed to include all of the various hapu and tribes on the land at that time. The application included the descendants of Tuwharetoa and of Tia, such as Rauhoto a Tia, and of other tupuna, including hapu of Te Arawa, Ngati Raukawa, Ngati Maniapoto, Ngati Rereahu, Ngati Tahu, Ngati Whaoa, Ngati Manawa, Ngati Whare and others.³⁶²

This testimony appears to be supported by the documentary evidence, as Te Heuheu stated in court that the claim included descendants of ancestors beyond Tūwharetoa and Tia. After handing in the list of 141 hapū, the court asked whether all of the ancestors in the block descended from Tūwharetoa and Tia, and the minute book records Te Heuheu's response as an emphatic 'no.'³⁶³ His full response was as follows:

No, I hand in the list of the hapus who I admit as claimants in this block (list handed in marked A) There are a great number of hapus descended from Tuwharetoa and Tia and a few from others, all these hapus have an interest in the block.³⁶⁴

Te Heuheu further stated that 'the descendants of Tuwharetoa and Tia and other ancestors have lived continually on this land up to the present time.'³⁶⁵ The court requested the names of the additional ancestors to the Taupōnuiātia block, and Te Heuheu provided a list on 19 January. The list was as follows: Tahu (tipuna of Ngāti Tahu), Tama Ihutoroa (a tipuna of Ngāti Tama), Apa (tipuna of a hapū affiliated to Ngāti Manawa), and Manawa (tipuna of Ngāti Manawa).³⁶⁶ That Ngāti Tūwharetoa expected others' interests within the block to be recognised would seem to be supported by the fact that they included, on the guest list for their celebrations after the 22 January judgment, what the *Bay of Plenty Times* described as 'Ngatimaniapoto, the Upper Wanganui,

and the Hawke's Bay tribes, the Urewera and the Arawa tribes.³⁶⁷ It is a list not too dissimilar from the tribal groupings given in Ngāti Tūwharetoa's traditional history report as those intended to be included within their 'first line of defence',³⁶⁸ and suggests that the celebration was intended to be a joint one, involving all those represented in the claim.

Following the judgment to the Taupōnuiātia 'parent block', however, the court rejected any claims to Taupōnuiātia that did not descend from Tūwharetoa or Tia. Ngāti Tūwharetoa's traditional history report argued that this discounted many other tupuna, and omitted rightful owners from the land, thus undermining Te Heuheu's inclusive application. The report argued that 23 of the 141 listed hapū were omitted.³⁶⁹

While Tūwharetoa and Tia were the primary ancestors, Te Heuheu clearly indicated that there were other ancestors whose descendants had interests in the block. Given Te Heuheu's response in court, it is clear that he did not intend to exclude other tribes from making claims to subdivisions of Taupōnuiātia. This is also shown in Te Heuheu's attempts to include additional hapū on the list for Taupōnuiātia West. When the court struck these hapū from the list, Te Heuheu requested that the court withdraw the Taupōnuiātia West block, because it was actually split between three tribes: Ngāti Tūwharetoa, Ngāti Maniapoto, and Ngāti Raukawa. However, the court dismissed Te Heuheu's request, stating that the first Taupōnuiātia decision meant that those who were not Ngāti Tūwharetoa were excluded from the block.³⁷⁰

As the CNI Tribunal observed, the court's decision to award the block to only the descendants of Tūwharetoa and Tia had 'downstream implications' for claimants to the subdivisions, as no claims through a different ancestor were accepted. For instance, in the case of Taupōnuiātia West, the court refused to hear those who wished to claim through Ngāti Raukawa or Ngāti Maniapoto. Both Hitiri Te Paerata's attempts to claim Taupōnuiātia West through Ngāti Raukawa, and Taonui's attempts to object to the Maraeroa case on behalf of Ngāti Maniapoto were refused. Te Paerata was most irate and, in his anger, blamed Te Heuheu (as we have seen from his outburst in

court, quoted earlier). However, as Mr Stirling notes, Te Heuheu had actually indicated to the court that one part of Taupōnuiātia West should be for Te Paerata. The problem was that the court refused to countenance any non-Tūwharetoa allocations.³⁷¹ In the CNI Tribunal's words:

The court's failure to accommodate major claimant communities – Ngāti Raukawa and Ngāti Maniapoto – to the western blocks, which Te Heuheu was also anxious for, does not reflect well on its impartiality, its flexibility, or its understanding of customary rights.³⁷²

By disallowing any ancestors other than Tūwharetoa and Tia, the court went against the wishes of Ngāti Tūwharetoa and excluded legitimate customary right-holders from the block.

Counsel for Ngāti Tūwharetoa argued that the Taupōnuiātia application acknowledged 'many hapū of other tribes' and was not 'Tūwharetoa-only'. That said, as Mr Stirling observed in reference to another block, the court tended to be 'combative and exclusive rather than inclusive and co-operative'.³⁷³ The court forced individual tribes to act in their own interests. We can see this trend in the court's operation throughout the country, and the Taupōnuiātia application was no exception.

We agree with the claimants, Crown, and CNI Tribunal that the Taupōnuiātia application was essentially intended to be a Rohe Pōtae for Ngāti Tūwharetoa. Indeed, counsel for Ngāti Tūwharetoa noted that the original boundary for the Taupōnuiātia application included the whole rohe of Ngāti Tūwharetoa, including lands that had already been through the court.³⁷⁴ As we have discussed, Chief Judge MacDonald sent a telegram to under-secretary Lewis in 1885, affirming that the original application to the court included land which the court could not inquire into, and that these boundaries would be altered for the hearing.³⁷⁵ We accept that the reason that Ngāti Tūwharetoa included these lands in the original boundary was because the Taupōnuiātia application was intended to be a Ngāti Tūwharetoa Rohe Pōtae.

Nevertheless, rohe are never 'hard edged'. Rather, as we described in chapter 2, around the edges of a core area,

be it of hapū or iwi, the interests of the group shade into those of its neighbours, and use rights are negotiated in a way that maintains relationships. The problem in the present case was precisely with overlapping interests, and we agree with the CNI Tribunal that the court should have been more careful examining them in the large Taupōnuīātia block.³⁷⁶ As other Tribunals have noted, there tended to be an uneasy relationship between, on the one hand, overlapping interests in land and resources and, on the other, the strict boundaries required by the court.³⁷⁷ Mr Stirling's contention is that for the Taupōnuīātia application, 'the change in the boundaries before the inquiry commenced, particularly on the Western, South Western boundary was perhaps *to some extent* a withdrawal to core . . . Tūwharetoa interests' (emphasis added).³⁷⁸ We agree with Dr Ballara and Mr Stirling that the boundaries of the Taupōnuīātia block were not an exact reflection of Ngāti Tūwharetoa customary interests. We have already noted that Ngāti Tūwharetoa recognised that others had interests within the Taupōnuīātia boundary and, as Mr Otimi stressed in cross-examination, Ngāti Tūwharetoa also had traditional and customary rights to lands outside of Taupōnuīātia.³⁷⁹

The Taupōnuīātia application was essentially a Ngāti Tūwharetoa claim, which sought to define and protect Ngāti Tūwharetoa interests, and certainly its core interests, and attempted to acknowledge – albeit largely unsuccessfully, in the event – other customary interests inside its boundaries. Because they saw the Rohe Pōtae application as being a largely Ngāti Maniapoto-dominated claim, Ngāti Tūwharetoa were concerned to assert the right to their own land. Furthermore, when Te Heuheu and other members of Ngāti Tūwharetoa protested against the Rohe Pōtae, they notably protested against Wahanui and Ngāti Maniapoto gaining any rights to Ngāti Tūwharetoa lands. They did not protest on behalf of the Kīngitanga or along with other tribes, but instead filed a petition for Ngāti Tūwharetoa. It is therefore clear that the application was an assertion of Ngāti Tūwharetoa mana.

We note that Ngāti Tūwharetoa filed the Taupōnuīātia application in the context of Native Minister Ballance's promises of 1885 and 1886 that ngā iwi o te kāhui maunga

would be empowered to collectively manage their lands. However, as we have seen, Ballance's legislation for block committees was not taken up by Māori, who feared that it did not sufficiently represent their interests. The Taupōnuīātia application was intended to be inclusive in that it recognised tribes other than Ngāti Tūwharetoa – some of whom the court then failed to acknowledge – but the application was primarily intended to define Ngāti Tūwharetoa lands and assert their mana.³⁸⁰ As we will address in chapters 5 and 6, in the case of Taupōnuīātia, what eventually occurred was precisely the uncontrolled alienation that Ngāti Tūwharetoa had been trying to avoid.

4.7 TRIBUNAL CONCLUSIONS

Many of the issues in this chapter will be further examined in the upcoming Whanganui or Rohe Pōtae inquiries, and thus we make only preliminary findings, pertaining principally to the land located inside our inquiry district. We have examined several instances where Māori developed strategies to control alienation and manage their own lands, through leasing arrangements, Kemp's Trust, the Rohe Pōtae negotiations, and the Taupōnuīātia application. The Native Committees Act 1883 and the Native Land Administration Act 1886 were both opportunities for the Crown to assist Māori to manage their own lands; however, for a variety of reasons, they fell short of that goal.

The Murimotu blocks and Kemp's Trust will be examined in detail by the Whanganui Tribunal. On the issue of leasing, we note that in the instances of both the Rangipō–Waiū 1 block and the Ōkahukura block, the Crown pursued its own interests, which deprived Māori of the opportunity to retain control and develop their own lands.

The Rohe Pōtae negotiations will be considered more thoroughly for the Rohe Pōtae inquiry. We note that during the negotiations of the 1880s, the Rohe Pōtae leaders believed that a reformed court would confirm the external boundary to the Rohe Pōtae, Māori committees would be legislatively empowered to determine the internal boundaries of the land, and block committees would manage the land in question. The Crown could have responded to the leaders' requests; furthermore, Bryce's committee

legislation, and Ballance's promises to enhance the powers of district committees and pass legislation for block committees likely encouraged the leaders' expectations. Instead, the court was not significantly reformed, Bryce's committee legislation was inadequate, Ballance's legislation failed, and as we will discuss in chapter six, the Crown's purchase of undivided shares continued.

The Taupōnuiātia application – while intended as a Ngāti Tūwharetoa Rohe Pōtae – would also result in precisely the individualised dealings and alienation that Ngāti Tūwharetoa were trying to protect themselves against. We have not heard evidence to persuade us that Ngāti Tūwharetoa were manipulated into submitting the application by the Grace brothers, or that the 108 existing applications played a role in coercing the tribe to submit the application. It was an application that acknowledged other tribal interests, but it was essentially Ngāti Tūwharetoa's attempt to protect their own rohe. By 1885, Ngāti Tūwharetoa would have expected to subdivide the land, and by this point, subdivision appeared to be the best option available. We map out the consequences in the following chapters.

Notes

1. Bruce Stirling, 'Taupo–Kaingaroa Nineteenth Century Overview', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A39), vol 2, pp 789–790
2. Cathy Marr, 'Summary and Response to Statement of Issues: Waimarino Purchase Report', April 2006 (doc A43(a)), pp 2–3; Andrew Joel, 'Summary: The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park' (commissioned summary report, Wellington: Crown Law Office, 2006) (doc A56(b)), pp 3, 16
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233. ‘The Native Minister and the Kingites: They Agree to Apply to the Land Court’, *New Zealand Herald*, 1 December 1883, p 6; ‘The Native Minister in Waikato: Meeting at Kihikihi between Mr Bryce and the Ngatimaniapotos’, *Waikato Times*, 1 December 1883, p 2; see also doc A43, pp 129–140
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CHAPTER 5

THE OPERATION OF THE NATIVE LAND COURT IN THE NINETEENTH CENTURY

The cry of the Maoris has been that they should be allowed to make the law themselves under the rights conferred upon them by the Treaty of Waitangi, but the Crown holds on to all these privileges, and refuses to surrender them, and only gives little trifling concessions to the Natives. . . . So now all we say is this: You people have had the control and disposal of these lands for a long time, and you have proved that you cannot use them for our benefit; they have slipped away from us continually. Give us the control ourselves; we ought to be considered.¹

—Tūreiti Te Heuheu Tūkino v to the Native Affairs Committee, 1898

5.1 INTRODUCTION

The Crown's land titles system came relatively late to the National Park inquiry district. Although the court was operating in neighbouring areas such as Whanganui and northern Taupō from the mid 1860s, the first hearing involving our inquiry area was not until 1880. But once introduced into the region, it transformed the lands and lives of ngā iwi o te kāhui maunga. Within little more than a decade, virtually all land in the district had been taken through the court and was held under court-issued title.

The court, and the native lands system in general, was a central and contentious part of our inquiry and claimant groups detailed numerous grievances on the subject. The Crown's view, however, was that relitigating 'systemic issues' relating to the court is not necessary because 'no new evidence has been provided by any party that would materially advance [previous] the debate.'² While the existing body of debate had not led to any general Crown acknowledgement of Treaty breach regarding the operation of the native land laws, said the Crown, this was not to suggest 'that the native land laws were Treaty compliant in all regards, or to deny that breaches may exist.' Rather, it preferred to reserve any admission of breach for the Treaty settlement process with specific claimant groups, based on the specific experience of those groups.³

We can see that it is important to 'focus on the particular experience of each claimant group under the native land laws regime', and on how that regime impacted on them specifically, in order to come to an appropriate settlement. In the context of our inquiry, however, we must take a broader approach because thematically, as well as geographically, the court in the National Park inquiry district cannot be understood in isolation.

overlaps into our inquiry district) and the way it came into the court and was dealt with; as well as submissions from specific claimant groups. The latter often focused on particular blocks.⁴

5.2.1 General matters relating to the court and the law governing it

The claimants submitted that this Tribunal can and should adopt the generic findings of past Tribunals on the court and the native land legislation from 1873, and particularly mentioned the findings of the Turanga and Hauraki Tribunals.⁵ It was noted that the Crown has not specifically accepted the findings of the Turanga Tribunal.⁶

In the claimants' submission, the court's central function was 'to transmute . . . customary title into a title recognised under colonial law'.⁷ The problem, in their view, was that this involved individualisation of title which not only created tradable property interests in land but, in the process, ignored traditional use rights and overlapping interests, and served to marginalise and destabilise chiefly and tribal control and authority over land. They noted Henry Sewell's 1870 comment to parliament that one of the main objectives of the Native Land Act 1865 had been 'the detribalisation of the Maori' so that 'their social status would become assimilated' to that of the settlers. The Crown's subsequent legislation they said, had continued in a similar vein, in the hope that Māori would, in the words of Crown witness Dr Keith Pickens, 'gradually opt for greater individualisation'. In short, the Crown failed to provide a system of landholding that allowed for Māori custom and tradition. Memorials of ownership – which, from the evidence, were the primary form of land court title in the inquiry district – failed to allow for hapū ownership, yet in counsel's submission 'it was the hapu, rather than hapu individuals, that held customary interests in most lands'. Furthermore, the court either tended to allocate interests only to individuals from a single hapū, thus privileging one group over others, or only accepted hapū descended from certain tipuna. Memorials of ownership also fixed owners in time, blocking the fluid interpretation of ownership under tikanga Māori. Neither rangatira nor hapū could prevent land being fragmented by individuals

wanting to sell their share; partition occurred if a majority of individual owners in that particular block agreed, without reference to the wider kin group in the area.⁸

In terms of who should be held accountable for problems associated with both the land tenure system and the court, the claimants contended that the Crown was ultimately responsible not only for the Native Land legislation, but also for the actions of the court and the judges. The government and the court worked closely together, and the court's operations were clearly linked to directions from ministers. The claimants drew attention to instances where the court acted illegally yet the Crown then not only failed to rectify matters, but actually created retrospective laws to validate the court's past practices. Some of the Ngāti Hikairo claimants described the legislative scheme as 'loose', and said that it left the court 'vulnerable to manipulation'.⁹

The claimants submitted that in any case the court was not an appropriate body to consider and determine title. In the claimants' view, not only did the court system not allow for appropriate recognition of the complexity of customary rights under tikanga Māori, or the relationships that informed Māori tenure, but the judges of the time were not adequately equipped to make decisions in accordance with tikanga.¹⁰ This was despite the fact that the Crown had undertaken, through the Treaty, to protect Māori rangatiratanga, which meant it should, rather, have ensured that 'the process was positive for Māori and responsive to Māori needs'. Various claimants argued, too, that the adversarial nature of court proceedings caused serious divisions, and weakened iwi relationships.¹¹

5.2.2 The introduction of the court into the area

Again referring to the Crown's duty of active protection of Māori 'tino Rangatiranga o o ratou wenua o ratou kainga me o ratou taonga katoa', under article 2, the claimants submitted that there should have been full consultation with tribal leaderships before introducing the court to the National Park rohe. Such consultation, including an explanation of the terms and effects of the court's introduction, was 'a minimum requirement in terms of the Treaty'. Better still, the Crown should have worked to design a

process jointly with Māori that would have allowed both for settlement and for active Māori engagement in the economy. However, they say, there is no available evidence that the Crown did consult with tribal leaderships before the court was introduced. Lack of consultation and information then meant that hapū leaders were unaccustomed to the court's processes when it arrived and many would-be participants were 'at sea with court proceedings and how to conduct a case'. Indeed, in general, Māori opposed the court when it was introduced to the district.¹²

Rather than the court being 'client-driven' and a vehicle for Māori agency, as suggested by the Crown, the claimants say that it was 'almost impossible' for Māori to stop the court and avoid participation once it was introduced to a district. For example, 'Māori could be forced to engage in the court process in order to protect their title from applications made by other Maori or to obtain lease payments from the Crown or private parties.' Māori also made defensive applications to the court, such as in the case of the Taupōnuīātia block, to defend against other potential claims over their lands.¹³

In the claimants' submission, the Crown's key aim was to 'obtain as much land as quickly, and as cheaply as possible, to open settlement and fund the construction of the roadway[sic – railway?]. A further motive, they say, was 'the securing of land including the maunga and key geothermal resources for tourism purposes'. The thrust of the claimants' submissions is that this could not happen unless the court first created tradable individual property interests. The court's introduction was thus vital to the Crown's success in achieving its purchasing aims.¹⁴

5.2.3 Title investigation and the court in action

(1) Notification

Under the rules of the court, there was no requirement that all interested parties be notified directly. In some instances, claimants said, interested parties received no notification, and in other instances the notification was insufficient. Whanganui claimants, in particular, identified several blocks where they said notification was inadequate.¹⁵ The claimants also argued that there should have been formal notification for Taupōnuīātia's subdivision

cases; in their view, the fact that notification occurred in an oral announcement during the main title investigation hearing was 'most unfair'. They said such a situation may have been illegal, and it was clearly inconsistent with the Treaty. In their view, the subdivision of Taupōnuīātia constituted a separate hearing, and should have been gazetted.¹⁶

(2) Hearing clashes

The claimants asserted that there were clashes in the scheduling of hearings, particularly between Taupōnuīātia and Waimarino. Many southern Taupō and upper Whanganui claimants, they said, were unable to attend the Taupōnuīātia hearing because of the clash with Waimarino, and by the same token, Ngāti Tūwharetoa missed the Waimarino hearing. Counsel for Ngāti Rangī noted that while the two hearings were not at the exact same time, travelling between the two locations in time for both hearings would have been extremely difficult. The claimants pointed to numerous instances where Māori unsuccessfully protested against clashes. Ngāti Waewae, for example, having missed the Taupōnuīātia subdivision hearings of Tongariro and Ruapehu due to a clash, applied for rehearings and filed petitions but these had no effect. Counsel for Ngāti Tūwharetoa pointed to the chief judge's lack of sympathy for those who failed to attend hearings in such circumstances (or even if the absence was due to illness, or inadequate notification), and said it was clear that the court gave no protection to the interests of absentees.¹⁷

(3) Mapping and boundaries

On the subject of block boundaries and the way these were identified, claimants thought that the Taupōnuīātia investigation and subdivisions and also the Waimarino and Waiakake blocks must all have been heard under the Native Land Act 1880, which required only a sketch plan, rather than a full survey, prior to title investigation. That Act did still require the boundaries to be physically marked out on the ground, however, and the claimants allege that this did not happen for any of these blocks. This was a 'fast-tracking' of the court's process, they said, and allowed the Crown to rapidly subdivide and alienate

land. For the Waimarino block, counsel submitted that although the boundary could patently not have been marked out on the ground, given the nature of the terrain, the court accepted statements that it had been, which it must have known to be untrue. In the case of Waiakake, boundaries for the block were exceedingly unclear yet the court still granted a memorial of ownership with no proper survey. As to the Urewera block, the descendants of Winiata Te Kākahi alleged that at least one of the maps used in court was inaccurate – a matter which had been pointed out at the time by their ancestor, who was a claimant in the block and who had a knowledge of maps having worked for a Crown-appointed surveyor.¹⁸

The claimants stressed the importance of physically marking out or surveying boundaries, and of making plans available, to ensure that people knew what was happening, and cited a number of instances where they said this had not happened. It was alleged, for example, that there was inadequate notification of the survey plan for Waimarino, and no hearing allocated for any objections. In the case of Taupōnuiātia, Whanganui claimants submitted that Whanganui Māori were not well informed. Only two men from Ngāti Hāua were present when the hearing opened and it is not clear that they were representing Whanganui Māori more widely. When they lodged an objection, the western boundary was changed. However, the boundary line was not changed across Ruapehu – a matter which later caused unrest among other Whanganui Māori.¹⁹ Later, when the Ruapehu blocks were subdivided, there was no certified plan (which was likely because the subdivision was regarded as a continuation of the original Taupōnuiātia subdivisions and, therefore, carried out under the 1880, rather than the 1886, Act). In the claimants' submission, although the block boundaries were 'reasonably simple ones', it is possible that 'the process of partition would have had much more publicity [than] it actually did' if there had been an actual survey, since 'marking a survey out on the ground is a very public process'.²⁰

(4) *The court's processes*

Many Māori protested at the time about the court's rapid processes. In the case of the Taupōnuiātia hearings,

counsel for Ngāti Tūwharetoa submitted that the haste of the process meant that some potential rights-holders were not heard at all.²¹ The claimants in our inquiry also cited many other instances where they felt the court's processes had been inadequate or unfair and said that the Crown had failed to provide appropriate recourse. They submitted that applications for rehearing were mostly rejected; petitions were ignored; and commissions of inquiry made no significant recommendations or findings. Where recommendations were made, they were either ignored or not put into effect. In the case of Taupōnuiātia, for example, the Native Affairs Select Committee agreed that Hiraka Te Rango's petition about certain south-western blocks should be inquired into, but the government ultimately ignored their recommendation. A complaint from Kingi Herekiele and others received similar treatment, despite a ministerial promise to have it investigated. Responses to petitions appeared subject to whim, and petitions often needed to be resubmitted annually until they were addressed. Some claimants suggested that the dismissal of applications for rehearing and petitions showed that court decisions were predetermined and could not be fairly reviewed. Tamahaki and Uenuku Tūwharetoa submitted that, although

Definitive proof is lacking . . . there are strong indications of a coordinated strategy, perhaps through the chief judge liaising with the Native Department and T W Lewis, under secretary of the Native Department, in particular, to stifle any possibility of a rehearing of the National Park blocks.²²

(a) *The Taupōnuiātia hearing*: In terms of problems with particular hearings, claimants said that the Crown failed to adequately address the considerable protest from several groups regarding the Taupōnuiātia application and proceedings. It was noted that the Taupōnuiātia proceedings, along with the transfer of the maunga, elicited strong protest from Whanganui, Ngāti Waewae, and other southern-based hapū, which was effectively ignored by the Crown. Counsel for Ngāti Hāua noted that Ngāti Hāua rangatira objected to Horonuku Te Heuheu submitting

the application – objections that were subsequently withdrawn, following out-of-court discussions. Other rangatira applied for rehearings without success. Ngāti Hikairo claimants argued that the court excluded Ngāti Hikairo from title to their own lands, and the process was ‘managed and manipulated’ by the Crown in favour of Crown purchase. Counsel submitted that the Tribunal should investigate and report on the operation of the Taupōnuiātia hearings, and the Crown response to Māori coming before the court, particularly in regard to the many requests for rehearing and other protests that were ignored by the Crown at the time. In counsel’s view, the Crown was reluctant to ensure that the 1889 Taupōnuiatia Royal Commission inquired into the southern blocks of Taupōnuiātia as this would challenge the legitimacy of the Crown’s acquisition of the maunga and its right to purchase National Park land cheaply. Counsel argued that despite the omission of these blocks, both the evidence put to that Commission and its findings were relevant to this inquiry because they shed light on the actions of the court and some of the people involved in land transactions in the area.²³

(b) *Taupōnuiātia subdivisions*: Many claimants noted grievances with regard to Ōkahukura and other subdivisions of Taupōnuiātia. Ngāti Waewae claimants, for example, said that Ngāti Waewae had complained at the time about the way the Ōkahukura block was subdivided and allocated. Indeed, Ngāti Waewae protests about the allocation of land in various Taupōnuiātia subdivisions had continued on into the twentieth century with several applications for rehearing, petitions, a request for a review of the Taupōnuiātia boundary, and another for a wider inquiry into Taupōnuiātia and Waimarino. The only positive result from all this activity appears to have been an adjustment to the boundary between the Ōkahukura 2 and 8M2 blocks. Ngāti Hikairo claimants made similar comments about Ōkahukura, citing the Crown’s failure to address Ngāti Hikairo’s protests about the allocation of interests there. Other Ngāti Hikairo claimants said that in Ōkahukura the Crown took more Ngāti Hikairo land than it had purchased. These same claimants said that the tribe

had suffered significant prejudice as a consequence of the court’s treatment of the Ōkahukura, Rangipō North, and Taurewa blocks, particularly from individualisation, subdivision, and survey costs. Ngāti Manunui likewise alleged that the court failed to properly recognise Ngāti Manunui interests in the Ōkahukura and Taurewa blocks. Although some of Ngāti Manunui were included in the titles indirectly, they said that, overall, the court’s ruling resulted in significant loss of land and resources for Ngāti Manunui, as well as causing divisions within Ngāti Tūwharetoa. The land that Ngāti Manunui retained was largely unusable due to fragmentation, and the Crown failed to protect Ngāti Manunui in its retention of those holdings.²⁴

(c) *The Waimarino hearings*: The Waimarino hearings, too, were the subject of many claims in our inquiry. In the claimants’ submission, the Crown took advantage of the fact that if no objections were forthcoming at the hearing (sometimes because potentially interested parties were absent), the court would most likely vest the land in the applicants. The claimants noted that members of many hapū, including Ngāti Waewae and Ngāti Hāua, boycotted the hearings and were thus excluded from the list of owners. They say that many unrecorded owners were left landless and squatting on the land after the Waimarino hearings, and significant protests resulted. Counsel for Tamahaki and Tūwharetoa Uenuku noted that Horonuku Te Heuheu himself had filed an application for rehearing, perhaps demonstrating concern about the fate of the peaks, but the application was dismissed. Counsel for the Uenuku cluster of claimants submitted that the descendants of the non-sellers in the Waimarino block were effectively disenfranchised by the court’s process. They also pointed to similar problems with Waiakake and Rangataua, saying that the awards for these blocks were in breach of tikanga in that they limited the list of owners to just a few individuals known to be cooperative with the government, to facilitate Crown alienation, thereby disenfranchising the wider hapū and causing lasting grievance.²⁵

In generic submissions on Waimarino, counsel argued that it was clear that the Crown had ‘actively manipulated

the Native Land Court and possibly even assisted in perpetrating a fraud'. In particular, the *Gazette* references to the block's boundaries were so vague that Māori would not have known the entire western flank of Ruapehu was included in the block. Furthermore, the Crown assisted with the application, knowing that aspects of it were misleading or false and also knowing that the application risked, or clearly would result in, 'depriv[ing] some owners of their customary rights at law without a proper or any hearing'. The Crown's acquisition of the western part of Ruapehu was thus, in the claimants' view, in gross breach of the Treaty.²⁶

(5) *The judges' conduct and competence*

At the time of the hearings, there were sometimes complaints regarding the judges' competence and possible bias. Judges, assessors, and interpreters were all accused of taking sides. According to the claimants, judges could be monolingual or have only limited understanding of the Māori language, and thus were unable to appropriately consider Māori custom. This was a failure of the legislation and the court and resulted in misunderstandings such as the wrongful arrest of Taonui during the Taupōnuiātia case. The claimants questioned the judges' independence and the degree of bias or undue and inappropriate influence, both in their appointment to the court and in their ability to make correct decisions. In the claimants' submission, the evidence suggests that Judge David Scannell was most likely appointed because the government desired a 'more pliable' judge for Taupōnuiātia than Judge Frederick Brookfield, who was, they suggest, removed from court because he would not tolerate the Grace brothers' manipulation of the hearing. Counsel for the Tamakana claimants argued that the judges were clearly working 'hand in glove' with the land purchase officers, and would protect Māori interests only when it did not conflict with title conversion. Although nineteenth-century assessors were supposed to be able to veto a judge's decision, there is no evidence of this having occurred within the inquiry district. While most Native Land Court legislation of the period required a judge and an assessor to agree, generally the judge decided and the assessors simply concurred. The

claimants were of the view that the assessors' input was minimal.²⁷

(6) *Out-of-court arrangements and 'rubber-stamping'*

In terms of out-of-court arrangements that were then 'rubber stamped' by the court, the claimants noted it was not guaranteed that everyone in a hapū would be recorded on a memorial. In any case, they argued, the interests were specific to the individual rather than the group, thereby implying that even if there was Māori agency in the drawing up of lists, the rubber stamping of such lists was of limited value. In the case of Taupōnuiātia, Ngāti Tūwharetoa said that the court relied upon a tribal komiti to make out-of-court arrangements so that their land could then be speedily processed. The iwi had not wanted the court, and the fact that they had managed to maintain unity and that the komiti had been able to reach 'voluntary arrangements of their own accord', despite 'the court process and the inflexible nature of Native Land tenure', was a 'remarkable feat'. Where there was dissent, it was largely because 'it simply was not possible to reflect all ancestral interests in the land without some arbitrary compromises': under the law, individuals had to be named as owners – there was no mechanism for vesting ownership in hapū. In the case of Ōkahukura, Ngāti Hikairo claimants suggested that the court's rubber-stamping reflected the 'loose nature of the Court's orders', noting that certain out-of-court arrangements had involved Lawrence Grace and probably also his brother William – the latter subsequently applying for subdivision so that one portion could be sold to the Crown.²⁸

(7) *Crown agents and alleged Crown interference*

Apart from their involvement in out-of-court arrangements, there were other contexts, too, in which the role of Crown agents was raised as an issue. Leaving aside claimant submissions about land purchasing activities, which will be addressed in the next chapter, we note here a related issue which is that when Crown agents made advance payments to Māori, their aim was to acquire sufficient interests for the Crown to have its share partitioned out of a block – thus, say the claimants, the agents

were instrumental in bringing landholders into the court system. Where agents worked on commission, there was even more incentive for the agents to ensure that a court hearing was held, since payment of money to them was dependent on the case reaching court.²⁹

A particular issue for claimants was the alleged conflict of interest in the case of a number of agents, officials, and others linked with the Crown, particularly with regard to the Taupōnuīātia block (where the Grace brothers were cited as notable examples) but also in the Waimarino purchase. In the claimants' view there was 'clear collusion' between Crown agents and court staff, which affected both the court's process and its result. Applications for rehearing, they say, often mentioned such concerns.³⁰

(8) *The cost of interaction with the court*

If Māori wanted to benefit from the new economy, say the claimants, they generally had either to sell or to lease land. Either way, they had to go to court to obtain title, and this was a costly process for them. Court-related costs included court fees, surveyors' fees (which we shall consider in greater detail in the next chapter), legal and interpreters' fees, not to mention food, travel, and accommodation expenses. In the claimants' submission, such costs were exorbitant and resulted in significant hardship and the loss of land. They say that the outlay required could often add up to two-thirds or three-quarters of the purchase price of the block, and sometimes even exceeded that price. In the case of the Rangiwaea block, they note that about a quarter of it was alienated to help pay for court costs. The claimants noted that Māori protested about court-related costs, but the Crown did little to remedy the problem.³¹

The claimants submit, furthermore, that the Tribunal should take an expansive view when looking at the issue of cost, and consider not only the direct costs of the court but also how the court process indirectly affected Māori with regard to health and community resources. For that reason, they rejected the need to examine court-related costs on a case-by-case basis, saying that such an assessment risked overlooking additional, significant costs that are difficult to quantify, such as time spent away from

cultivations when attending hearings, and the hunger that resulted. Similarly, they pointed out that most hearings were not held locally to the block or Māori kāinga and said that this often meant living in rough conditions for the duration of the hearing, a situation which on occasion led to sickness and even deaths. Ngāti Hikairo claimants pointed out that those who did not go to hearings risked losing their lands, implying that, irrespective of cost or inconvenience, they had little option but to attend if they possibly could.³²

5.3 CROWN SUBMISSIONS

The Crown devoted a full chapter of its closing submissions to the topic of the court.³³ Its chapter on land alienation between 1860 and 1900 also contained points of relevance to the topic.³⁴ However, the Crown chose to present only limited submissions on the Waimarino block (notably on the issue of the clash between the hearings of Waimarino and Taupōnuīātia), saying that generic issues regarding the block would be fully canvassed in the Whanganui inquiry.³⁵

5.3.1 General court matters and the governing law

In its closing submissions, the Crown made the observation that in past settlement negotiations 'where the evidence supports such a statement', the Crown has been willing to acknowledge that

the framework of the native land laws, as they were developed in the 19th century, contributed to the erosion of traditional tribal structures, which were based on collective or communal interests in land.³⁶

It, however, then added a rider to the effect that it sees breach as lying more in any failure to take remedial or mitigating steps to address the erosion of tribal structures, rather than in 'any particular element of the native land laws that may have contributed to this state of affairs'.³⁷ The Crown also said that the native land laws cannot be considered without also taking into account land alienation and Crown purchasing, and that there are significant

differences between experiences in the National Park district and those of the Turanga (Gisborne) area. For example, land was processed under different legislation; the court was introduced later to the National Park district; Turanga was mostly alienated through private purchase; and tribal and communal structures in National Park may not have been as eroded to begin with.³⁸

The Crown acknowledged that it failed, prior to 1894, to provide for 'more corporate/commercial governance mechanisms' within the native land laws (apart from a provision introduced in 1886 for owners to elect a block committee to decide whether to sell or lease land). It accepted that had such mechanisms been introduced sooner, they 'would likely have assisted in preventing the erosion of traditional tribal structures.' Nevertheless, the Crown argued that before ascribing any great weight to this, there should be consideration of whether a particular group had sought such mechanisms or protested their lack. There should also be a consideration of the degree to which land loss was suffered as a consequence; and the extent to which groups found ways of using the system to accommodate a communal approach. In response to allegations that the court system was 'complex, inefficient and contradictory', Crown counsel argued that the native land laws had developed over time, and the system was complex because the Crown was dealing with a tenurial revolution. The Crown was not able to anticipate all the outcomes of its policy, and counsel stressed that experiences differed for each claimant group. Policy regarding Crown dealings, through which most of the land in the inquiry district was sold, remained relatively consistent over time.³⁹

Although the Crown conceded that the land's vulnerability to partition, fragmentation, and alienation contributed to the erosion of traditional tribal structures, it said these phenomena cannot be seen solely as a product of the court's operation, as this denies Māori agency and external factors beyond Crown control. The court was clearly instrumental in enabling the alienation of Māori land; however, the legislation and the court had less impact in communities where chiefly authority and traditional values were strong. There was on-going

debate among Crown officials, and sometimes between Crown and Māori, regarding the best ways to promote and facilitate the colonisation of New Zealand, and this sometimes led to changes in legislation in favour of Māori decision-making.⁴⁰

The Crown said that it was not responsible for the actions of the court and notes the findings of previous Tribunals that the court was not part of or acting on behalf of the Crown. That said, the Crown acknowledged that it may be liable 'in respect of the legislative framework put in place, any actions that may have influenced or imputed [sic – impacted?] upon the Court, and in its response to Court decision.'⁴¹

The Crown says that, historically, it ensured that the court was an appropriate body, equipped with suitable processes and effective mechanisms, to discern the rights of customary right-holders. Counsel submitted that the presence of expert witnesses and assessors, and the acceptance of voluntary agreements, suggests the court had the ability to identify correct right-holders. Assessors provided expertise in tikanga and mātauranga Māori. However, the Crown conceded that the new tenure system did not allow for a range of customary rights, including shared, overlapping, and usufructuary rights. The Crown did not accept the claimants' argument that the very nature of the title the court could award – being individualised and not catering for complex interests or tikanga – demonstrated that the court was not an appropriate body to identify customary rights. This conflated two issues: the identification of customary rights, and the nature of title. The Crown argued that no new system of tenure could have accommodated the complexities of customary rights.⁴² Furthermore, the Crown suggested that only an external, independent adjudicator such as the court could have resolved the more serious inter-tribal conflicts among Māori. In more than one instance, Māori requested the court's intervention for this purpose.⁴³

5.3.2 The court's introduction into the area

Despite claimants' insistence that Māori were not consulted on the introduction of the court, the Crown argued that Māori played a major role in whether the court would

function in the district. The relatively late introduction of the court into the area, said the Crown, ‘clearly indicates the ability of Maori to influence whether the Court operated in the District’. The court’s introduction was influenced by the high-level political dialogue occurring between Māori and the Crown. Furthermore, engagement in the new economy necessitated precise boundaries, and Māori acknowledged that clear title was required in order for them to participate in the economy. The court process was initiated by applications submitted by Māori, and the Māori impetus to engage with the court has been under-researched.⁴⁴

The Crown accepted that if one group made an application to the court, this generally obliged other groups to join the court process. However, the converse could also apply: Ngāti Tūwharetoa’s decision to engage with the court over the Taupōnuīātia application, for instance, could have been ‘stymied by the will of other groups who did not wish to engage’. Furthermore, it was the Crown’s submission that most Māori willingly participated in the court. Contrary to claimants’ arguments that individuals forced communities into the court, claims by individuals were rare in the inquiry district, and the evidence suggests that applicants did not act without the support of a community of owners. Given the overlapping interests in the land, any forum that determined land tenure and interests – including komiti – would require all those claiming land to participate. The issue, said the Crown, was ‘one of Maori tenure and politics not the Court per se’. It was possible, in the Crown’s view, that hapū or iwi may have made defensive claims to try to prevent other competitors, but this did not appear to be a widespread issue, and tended to occur only in areas that were heavily disputed. The court process was not usually adversarial and often concluded in voluntary agreements.⁴⁵

In terms of the Crown needing to acquire land in the district, counsel argued that unlike in Turanga, Māori in the National Park district were able to resist strong statutory pressure to sell lands. Ngāti Tūwharetoa retained significant holdings of productive land, and Whanganui Māori also retained significant landholdings outside the

inquiry district. The Crown agreed with the Hauraki Tribunal that the reform of land tenure was inevitable; counsel rejected the argument that the native land laws were ‘raupatu by another name’.⁴⁶

5.3.3 Title investigation and the court in action

(1) Notification

Crown counsel submitted that awareness of court hearings or the absence of notification does not appear to be a significant issue in this inquiry. Judges of the time appeared to believe that the notification provisions were sufficient. Any complaints tended to concern subdivision or succession rather than initial title investigation. Although subdivision and succession hearings could be notified in the same way as title investigations, the court also had the power to subdivide land as part of the initial title investigation. In such instances, an in-court announcement was considered sufficient, as in the case of Taupōnuīātia. However, very few requests for rehearing or petitions regarding Taupōnuīātia were due to a lack of notification.⁴⁷

(2) Hearing clashes

The supposed clash of the Waimarino and Taupōnuīātia hearings was the subject of applications for rehearing; however, evidence shows that these blocks were not heard on the same date. There were clashes between some Taupōnuīātia subdivision hearings and the initial Waimarino hearing, but this did not preclude Whanganui Māori from participating in the first Taupōnuīātia hearing. The Crown acknowledged that ‘there would have been hearings occurring in other districts at this time’, about land in which National Park Māori may have claimed interests, but the evidence presented to this Tribunal shows that the court was committed to avoiding clashes; where the court was informed of clashes, it adjourned proceedings.⁴⁸

(3) Mapping and boundaries

The Crown submitted that blocks in the National Park district were heard under three different Acts regulating

the court – those of 1873, 1880, and 1886. Counsel said that under the 1886 Act, the court needed ‘to be satisfied that it had a certified map, although, it could proceed to investigate on the basis of a sketch plan on the application of the Governor’.⁴⁹

Based on Dr Keith Picken’s evidence that Waiakake was heard under the 1873 Act, the Crown acknowledged that there should have been a survey map prepared prior to the court’s hearing of the case. However, there had been at least one earlier instance where this had not occurred. On that occasion (in Gisborne), the judge concerned had commented that proceeding on the basis of a sketch plan only was preferable to having to cancel the hearing, and that using sketch plans had, in any case, been normal practice before 1873. In the Waiakake case, the court did note that a ‘proper and complete’ map would have to be provided in due course. There is no evidence that the Crown was aware of the court’s apparent failure to adhere to legislation in the case of Waiakake, but it is likely to have known of general court views on the need for full surveys because the matter was addressed in the 1880 legislation.⁵⁰

In the case of the Ruapehu blocks, the Crown pointed to evidence which states that, contrary to claimant assertions, the boundary was redrawn so as to exclude not only considerable areas on the western side but also areas to the south. Furthermore, it is possible that the two Whanganui Māori present at the Taupōnuiātia hearing were attending ‘in some form of representative capacity’.⁵¹

(4) *The court’s processes*

The Crown says that there is little – if any – evidence that Māori participants were unfamiliar with the court’s process and were thus compromised; it argues that the claimants’ particular example of Rangipō North is taken out of context.⁵²

If Māori were dissatisfied with the way a hearing had been conducted, they could register that dissatisfaction through applications for rehearing or petitions to parliament. The establishment of the Tauponuiatia Royal Commission shows that petitions were sometimes acted upon. The Crown stressed that applications for rehearing

conveyed concerns to the court, not the Crown. Although the majority of these applications in the inquiry district were dismissed, this is not in itself evidence for injustice. A substantive remedy was not always necessary with each request. Rejected applications usually failed to introduce further evidence or identify a technical fault on the part of the court. The Crown argued that a rehearing was granted only when ‘not to do so would clearly create an injustice’. Eighty per cent of the Taupōnuiātia awards did not elicit any formal protest from Māori.⁵³

(5) *The judges’ conduct and competence*

The court featured a judge and at least one assessor at all relevant times. At least some of the judges seem to have been well-regarded by Māori. Only three of the nine judges in the district were trained as lawyers, but most were fluent in the Māori language. Those who were not were dependent on interpreters, and the Crown noted that difficulties sometimes arose as a result. However, most blocks were heard by courts with at least one Māori-speaking judge. Taupōnuiātia was the exception, and the Crown argued this may not have caused any difficulties as the case involved little hearing of evidence and many out-of-court arrangements. There is no evidence of complaints of bias against the judges in this inquiry; the claimants’ example occurred outside the district. Nor is there evidence of judges tailoring decisions to align with Crown agents’ advances. Despite claims that the judges’ approach to tikanga might lack ‘subtlety’, this is impossible to assess from the evidence.⁵⁴

According to the Crown, the assessors’ role in the court was significant and often underestimated. The exact extent to which they engaged is hard to tell; however, under the 1874 Act the assessors’ agreement was essential to validate a judge’s decision and this provision was continued in the legislation of 1880 and 1886. That is, although assessors could not overrule a judge, neither could a judge overrule the assessors. Furthermore, the Crown argued, certain decisions show assessors playing an active role, and the legislation provided assessors with the potential to exert considerable influence.⁵⁵

(6) Out-of-court arrangements and ‘rubber-stamping’

In the Crown’s submission, the court was ‘always willing to accept arrangements made by Maori outside the Court’. Crown counsel acknowledged, however, that where this had happened, it is sometimes difficult to assess ‘how accurately the titles reflected customary ownership’, especially if little evidence was given in court about how the arrangement had been arrived at.⁵⁶

In the case of Taupōnuīātia, the Crown commented that ‘counsel for Ngāti Tuwharetoa appears to accept that . . . the Court was operating as an adjunct to Maori decision-making and as an instrument of Māori agency’ and noted that newspapers of the time reported Ngāti Tūwharetoa celebrating after the initial hearing.⁵⁷ The Crown also says it appears likely it was understandings and agreements reached in out-of-court arrangements that enabled the Taupōnuīātia boundary to be adjusted, at the beginning of the hearing.⁵⁸ In the case of the out-of-court arrangements relating to the Ōkahukura and Rangipō North subdivisions, the Crown said that there is limited evidence on the issues raised in our inquiry by Ngāti Hikairo. However, the available evidence suggests that there was no objection to the list of names presented for Ōkahukura 2, and that some initial disagreements over Rangipō North were resolved by the out of court discussions.⁵⁹

(7) The role of Crown agents

The role of Crown agents needs to be looked at in specific court hearings, as it varied significantly. The Crown argued that there was nothing wrong with Crown agents giving evidence, as it was in their interests to identify the correct owners. In the case of complaints lodged against the Grace brothers in the late 1880s, it pointed to contemporary internal official correspondence which stated that ‘while it was part of Mr [William?] Grace’s duty to appear in Court to protect the interests of the Crown by submitting necessary evidence[,], he could not otherwise influence the decisions[,], and the painstaking impartiality of the presiding Judges is beyond question’. The Crown submitted that in the National Park inquiry district, the court did not appear to be influenced or bound by prior actions

of Crown land agents, including situations where agents had already paid prior advances.⁶⁰

(8) The cost of interaction with the court

The Crown submitted that claimants generally exaggerated the impact of costs: general court fees were insignificant, especially as many hearings in the district were brief. Costs associated with court sittings were not a heavy burden on owners, caused no protest, and did not usually force sales. The claimants’ contention that fees could be considerable was based on the example of Rangiwaea, where the hearing was unusually long for the district. Even in the case of Rangiwaea, however, the 24 per cent of the block that was alienated to meet court costs is far from the two-thirds to three-quarters suggested by one claimant witness. Evidence is generally lacking with regard to lawyers’ fees and witness costs. Furthermore, lawyers were blocked from the court at times, as in the Taupōnuīātia hearing.⁶¹

There is no evidence to quantify the more indirect costs such as travel and living costs. In any case, said the Crown, the same sort of costs would have arisen if tenure reform were handled by a Māori rūnanga. Although some Māori protested about the locations of hearings, the remoteness of the district meant it was unavoidable that some Māori would have to travel to hearings. The location chosen for hearings would have depended upon factors such as communication facilities, for example. In some instances, the court did change venues in accordance with Māori requests.⁶²

The Crown’s submissions on survey costs, like those of the claimants, will be summarised in the next chapter.

5.4 SUBMISSIONS IN REPLY**5.4.1 General court matters and the governing law**

The claimants reiterated their view that the Tūranga findings do apply in this inquiry district. In both Tūranga and National Park, the principles were the same: title was individualised through memorials of ownership, and land could be alienated without the consent of tribal

communities or rangatira. In the claimants' submission, article 2 of the Treaty put an obligation on the Crown to maintain Māori tenure and social structure for as long as Māori wished to retain them. This, coupled with Lord Normanby's instructions that there be no purchase of any lands needed by Māori for their own comfort, safety or subsistence, means there was an obligation on the Crown not to effect any tenure transformation without first consulting with Māori and obtaining their agreement. In the claimants' view, the Crown could have created a forum that accommodated overlapping interests in land, but it failed to do so. The claimants maintained that the court was not a suitable adjudicator to resolve contentious inter-tribal disputes, as evidenced by the fact that those disputes continue today. The claimants further submitted that the Crown's rejection of systemic conclusions about native land legislation was inconsistent with its own systemic concession that the legislation did not provide sufficiently for corporate governance structures.⁶³

In addition, the claimants said that the Crown ignored the evidence and failed to respond on several specific issues, as outlined below.

5.4.2 The court's introduction into the area

According to Whanganui Māori, the court came late to the National Park district largely because of the isolated nature of the area, which made it difficult to survey (a requirement under the 1873 Act).⁶⁴ Refuting the Crown's assertion that Māori had generally acted with the support of their community in making applications to the court, they pointed to Rangiwaea as an example of individuals acting 'not only without the support of, but against the express wishes of the community of "owners"'.⁶⁵ The claimants reiterated their position that claims were brought by groups of individuals, rather than by the hapū. They also said that, contrary to the Crown's position, the Taupōnuiātia application was itself a defensive claim.⁶⁶

5.4.3 Title investigation and the court in action

Ngāti Waewae were of the view that the Crown had missed the point that their claims in relation to hearing

clashes were about the Taupōnuiātia subdivision hearings, not the initial hearing. This, they said, had resulted in some Ngāti Waewae people failing to have their objections heard or in them being omitted from ownership lists in those subdivisions.⁶⁷

On the matter of mapping and boundaries, Whanganui claimants said that, contrary to the Crown's assertion that the boundary across Ruapehu was redrawn in response to iwi discussions, after the Taupōnuiātia application, the block map shows that change occurred only on the western side of the mountain.⁶⁸ They also reiterated their belief that the Waiakake block was heard under the 1880 Act, since the application was gazetted under that Act and the hearing did not begin until 22 July 1881. The judge, being in this case a lawyer, would have known that the new provisions about survey plans, being 'repugnant' to those of the 1873 Act, would have repealed the latter, even though there were other provisions of the earlier Act which, being consonant with the new legislation, remained in force.⁶⁹

Ngāti Waewae said that, contrary to the Crown's position that Māori of the district were familiar with the court's processes, 'there is extensive evidence that key leaders conducting the cases for hapū before the Native Land Court within this Inquiry District were unaware [of] and unfamiliar with the fast-paced process'.⁷⁰

Ngāti Hikairo claimants pointed to 'the rapidity of the process of investigation, the large number of partitions, and the significant Crown awards' in the Taupōnuiātia case and maintained their position that the hearing was 'managed and manipulated', resulting, for Ngāti Hikairo, in the substantial loss of the Ōkahukura block – the impact of which has not been acknowledged by the Crown.⁷¹

In the view of Whanganui claimants, the Crown was being 'fanciful' in its assertion that rehearing applications were generally approved if applicants could point to a technical mistake in the process: all but one of applications in the National Park inquiry district were rejected, and the application that was accepted did not appear to involve a technical mistake.⁷²

In their generic response submissions, the claimants said that although the Crown maintained that there is no

evidence on the record of any complaint about the court being biased, this is not so, and pointed to contemporary complaints from Hitiri Te Paerata and Taonui. They also cited other contemporary evidence suggestive of bias. Ngāti Waewae similarly said that although the Crown had rejected their example of court bias as being outside the inquiry district, the case cited was one that had been put to the Rees-Carroll inquiry as an example of wider problems and could therefore be regarded as generic. The claimants stressed that there was clear evidence of bias operating in the court's process, and even had there been no complaints, it could not be taken to signify that no bias existed.⁷³

Whanganui claimants noted that the Crown had drawn attention to the number of voluntary agreements in the Taupōnuiātia blocks but had failed to mention that there were no such agreements in the Whanganui blocks.⁷⁴

5.5 TRIBUNAL ANALYSIS

In this section, as in the submissions sections, we will move from the general to the specific, basing our analysis on the questions given at the beginning of the chapter. We thus start with a general consideration of the court and its governing legislation before moving to a consideration of how it was introduced into our inquiry district and whether local Māori wanted it. We then go on to look at particular aspects of the court in action, before ending with a discussion of the costs involved in participating.

5.5.1 Treaty consistency of native land law and its application

(1) *Native land law in the nineteenth century*

After we completed our hearings in July 2007, a new development occurred. During the presentation of its closing submissions in the Whanganui district inquiry, the Crown made a number of concessions in relation to the native land laws.⁷⁵ These followed a facilitated series of meetings between Crown, claimant, and Tribunal historians designed to elicit, if possible, some sort of consensus on issues relating to the court and its governing legislation. That facilitation process resulted in what became known

as the 'Hot Tub statement'.⁷⁶ The Crown said its intention in making concessions was to avoid having to 're-litigate systemic or generic issues concerning the native land laws and Crown purchasing'⁷⁷ – a welcome step forward.

Of particular relevance to our inquiry was the Crown's acknowledgment that 'its failure to take adequate or timely steps to provide for communal governance mechanisms was a breach of the Treaty'. The Crown further acknowledged that 'the awarding of titles to individuals rather than iwi or hapū' was also a breach of the Treaty in that it 'made land more susceptible to partition, fragmentation and alienation, which in turn contributed to the erosion of tribal structures'.⁷⁸

Although still asserting that there was a place for Māori to be able to act individually at times, the Crown acknowledged that 'what was required was a system that adequately and fairly balanced the rights of the collective on the one hand, and individual rights on the other'. When viewed in the round, the Crown conceded, the native land laws did not strike this balance. While the Crown considers it appropriate, and consistent with the article 3 guarantee, for individuals to be able to exercise rights individually, the native land laws did not offer adequate protection for communal structures or for rights to be exercised or managed communally. The absence of communal title prior to 1894 is the most glaring example of this and has been acknowledged as a Treaty breach.⁷⁹ In the Crown's submission, this particular acknowledgment of breach was 'a significant concession' to 'a significant issue'.⁸⁰

In terms of our own inquiry, the Crown's concession of Treaty breach in relation to the absence of communal title prior to 1894 is of major importance and we welcome it. Had paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu, for instance, been able to secure tribal title to Taupōnuiātia, on behalf of all the 141 hapū listed on the application, it might have permitted the maintenance of some sort of tribal control over the retention or disposal of around two million acres or some six thousand square kilometres of land.⁸¹ As it was, once the judgment for the Taupōnuiātia block had been issued, on 22 January 1886, matters moved quickly to subdivision, with one and a quarter million acres already having been processed by

the time the court adjourned in April. By September 1887, the whole of the rest of the block had also been subdivided. Much of the land was alienated to the Crown.

In our view, the problems of the new land tenure system stemmed in large part from the introduction of ownership to land being held by individual Māori as tenants in common with others. The affect of this tenure system meant individual Māori could sell their shares independent of the others. The impact of this tensure system is discussed later in the chapter. The Crown acknowledged that the 10-owner rule which operated from 1865 to 1873 'can be seen as an inadequate attempt to provide a communal form of title'.⁸² Although that rule had no application to our inquiry district – because no land went through the court during the years it was in force – what is relevant is that the Crown's concession effectively recognises the impacts of awarding ownership to named individuals to hold as tenants in common, because 'the real issue is that those on the title were not made accountable at law to the wider community'. As the Crown then went on to add: 'This meant that even if it were intended that those on the title were to act in a trustee-like manner, there was no way that such obligations could be enforced'. The Crown acknowledged that this made the land more susceptible to alienation because '[t]here was insufficient protection of communal interests and structures'. Finally the Crown acknowledged that the rule 'operated in a manner that did not reflect the Crown's obligations to actively protect the interests of Maori in land that they may otherwise wished to have retained in communal ownership and this was a breach of the Treaty and its principles'.⁸³

We would point out that the lack of a communal title continued to be a problem after the 10-owner provision was repealed. In short, it was not the number of owners that mattered; rather, it was that they were legal owners of undivided shares as tenants in common, and thus able to pass title to their individual interests and have those interests succeeded to by their successors. In our inquiry district, this has direct relevance to the case of the Ketetahi Springs, for instance, where such a situation continually undermined the strong desire of hapū to retain ownership collectively for the long term.

Not only was there an absence of a useful communal title but, with few exceptions, the Crown stood out against joint tenancy – never more strongly and specifically than by section 75 of the Native Land Court Act 1894:

it is hereby declared that all land heretofore held or hereafter to be held jointly by Natives beneficially entitled thereto shall be deemed to be and to have been and shall be held by them as tenants in common, and not as joint tenants . . .

In sum, the Crown's various acknowledgments of breach on matters of Native Land law, welcome as they are after so much expenditure, over so many claims and hearings, of so much emotional and intellectual energy and financial resources of Crown and Māori alike, do not go to the heart of the problem and address the fundamental breach found in all native land legislation – namely, the constricting requirement of ownership interests being recorded as tenancies in common. The numbers of owners who might be listed – whether 10, dozens or scores – is rather beside the point. Indeed the provision in the Native Land Act 1873 requiring the listing of all owners in a 'Memorial of Ownership' caused hundreds to be listed in some cases, all of whom held undivided interests in common. These shares were a half-way house between customary or collective ownership and individual ownership. The owner of a share on such a memorial could not use the land in any exclusive or commercially productive way, for their share was not defined on the ground. All they could do was hold their interest in the land passively, sell it, or, in rare cases, lease it for up to 21 years. Indeed, in the case of the Taupōnuiātia lands, once title had been issued the owners' only commercial option was to sell to the Crown, because of the Native Lands Alienation Restriction Act 1884 imposing Crown monopoly purchase rights in an area of some four million acres including our entire inquiry district.

In our view, conceding to a Treaty breach in respect of the 10-owner rule, applying as it did for only eight years, stops short of what is needed because it implies something substantially less than recognition of the Crown's role in imposing a system that had such far-reaching effects on

Māori – including ngā iwi o te kāhui maunga. In effect, the imposition of tenancy in common severed each Māori from his or her collective customary ownership or title environment and exposed them individually (and generally unadvised) to the determined and persistent attentions and intentions of purchase agents – who, in our district, were more likely than not to be Crown agents, often privileged by pre-emptive provisions in the legislation.

Beyond this issue of tenancy in common, which we regard as major, we refrain from further comment on native land law, especially as comprehensive investigations have already been undertaken by the Tūranga and Hauraki Tribunals, amongst others. Instead, we now turn our attention to the court itself.

(2) *Appropriateness of the court and its processes to determine customary rights*

The Crown has acknowledged that its Native Land legislation failed to provide adequately for communal governance. In order to consider the impacts and implications of this, it will be important to bear in mind the material set out in chapter 2, about the way of life of ngā iwi o te kāhui maunga prior to the arrival of the court and its individualisation of title. As we made clear there, customary land rights in the area were generally not exclusive, meaning that different groups could legitimately assert interests in the same piece of land. Although large parts of te kāhui maunga were not permanently inhabited, every area was known, named, and claimed. Rights to the limited amount of cultivable lands were generally closely controlled and demarcated, while access was rather more open (but still mediated) in hunting and gathering areas. In addition, tracks and rivers formed a ‘highway system’ which allowed different groups to visit the region seasonally, or on an occasional basis, to use its resources. This also enabled them to maintain their traditional associations with the land and, just as importantly for customary tenure, with other tribes. The mobility of local tribes can be seen in the way the whare and kāinga of Ngāti Waewae, for instance, were dotted through the region. Ngāti Rangī, too, referred to the ‘traditionally nomadic’ lifestyle of many communities in the area:

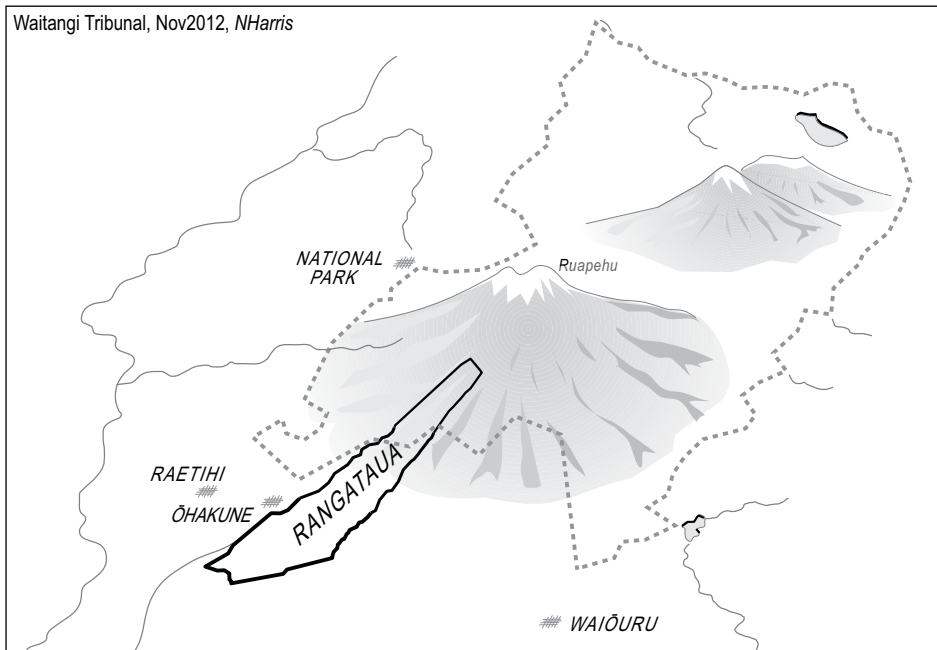
The larger part of the iwi moved from location to location leaving principal kaitiaki on the land to protect their rights. Their lands within the Inquiry District were part of their annual cycle where they traversed their domain from the mountain to the sea. They called on the relationships forged with other iwi and hapū over the centuries to maintain access to their traditional resources.⁸⁴

Given the complexity of the traditional system, we agree with the Crown that it is difficult to see how the new tenure method introduced by the Crown could have provided for all customary rights and interests.⁸⁵ The issue was, therefore, whether the Crown’s title determination process was able to adequately recognise customary rights and communal structures.

What does the evidence tell us about how well the court was equipped to deal with Māori customs regarding land and its use?

Let us begin by looking at how cases were run. The general practice (as elsewhere in the country) was that when the court opened, on or around the notified day, those who had applied for the hearing (the ‘claimants’) would request that the block in question be granted to them. The court would then ask if there were any objections. Any objectors present could be designated counterclaimants, and they and the claimants would then make their cases and be subject to cross examination. However, if no objectors were present – for whatever reason – the land would invariably be granted to the claimants without any inquiry into the often complex and overlapping customary rights in the area. Although it was the court’s legislative responsibility to rule who were the ‘owners according to native custom’, it was not court policy to delay its decisions until it could hear from all possible claimants (a probably unrealistic target in cases involving land blocks that covered vast areas, where hundreds and perhaps even thousands of people may have viewed themselves as having rights) or even to ascertain that it had heard from a majority of them. Nor was it required to carry out an investigation of interests by any other means.

During the earliest hearings in the region, a small number of counterclaimants were generally present in each



Map 5.2: The location of the Rangataua block

instance, which meant that the court did at least hear some evidence before it issued its decisions. However, the case of Rangataua, a block of around 23,000 acres in the south of the inquiry area, illustrates some of the problems that could arise.⁸⁶ Weronika Waiata (also known as Nika Hupene or Winiata) was a high-born woman of the Ngāti Rangirotea and Ngāti Tamakaikino hapū of Ngāti Rangī. She and her party of supporters had been involved in pre-title sale negotiations over the land, following which they applied for a hearing and asserted that they possessed exclusive rights to the block. The court's ability to make an informed decision was impeded by the fact that many potential rights-holders boycotted the hearings and were not present to challenge these claims and to present a fuller picture of customary rights in the region.⁸⁷

But the absence of interested parties was not the only problematic feature of the court's adjudication of customary tenure. In our inquiry district as elsewhere, the court tended to place great emphasis on the role of occupation in establishing rights to land. As Dr Pickens points out, it

was evidently guided by a belief that the strongest traditional claim to land was established through continuous or permanent occupation of the land from the time of one's ancestors. However, in most parts of our inquiry district, exclusive and continuous occupation was not a common reality. Indeed, there were very few permanent kāinga anywhere within our boundary. Instead, mobile groups tended to camp in various places on a seasonal basis or visit for gathering specific resources.⁸⁸ The evidence presented by the few counter claimants who did appear at the Rangataua hearing informed the court of this more complex reality. They argued that they had rights to the land based not on permanent occupation but on ancestral links, and especially that they and their relatives hunted and fished on it. They did not deny that Waiata and her group had legitimate interests in some parts of the block, but emphasised that these were rights were not exclusive.⁸⁹

We note that it was not only Māori who drew this more complex reality to the court's attention. The district officer,

James Booth, also gave evidence in the Rangataua case. As land purchase officer, Booth had made pre-title payments to Waiata's party regarding the block and it can therefore be presumed he was keen to see their claim to the land recognised. Certainly he stressed that title to land must be derived from 'descent and occupation' and that long-term absence of five generations or so 'would be fatal to establishment of title'. Nevertheless, he also accepted that high-ranking rangatira, prominent in the wider region, held an important role in customary tenure:

Pehi Tūroa [the father of Wiari Tūroa, one of the counter-claimants] was a great chief in Whanganui. . . . Pehi had authority over the whole run[?] up to Taupo including Rangataua.⁹⁰

Despite this evidence, the court granted Waiata and her party ownership of the overwhelming majority of the land (21,360 acres, being 93 per cent of the block), while most of the counterclaimants, led by the great chief's son, Wiari Tūroa, were denied any legal title whatsoever. The only recognition of the latter's chiefly lineage, and the degree of customary authority and influence such a lineage might have been expected to confer, was the court's concession that he had 'a small right'. On the recommendation of the native assessor, the court ruled that Tūroa and those with him should be granted 200 acres each – a total of 1,600 acres.⁹¹ That decision left Tūroa with no say in the future use or disposal of the large area awarded to Waiata.

Similar problems were apparent in the court's handling of customary rights in the adjoining Waiakake block. Waiata, with her grand uncle Metera Te Urumutu, again claimed exclusive rights to the land, based on descent from the ancestor Tamakaikino and on occupation. Other Māori appeared in court to argue that they, too, had ancestral and occupational links to the land. Wiari Tūroa asserted that his mana, as chief, entitled him to at least equal rights with Waiata's party. After brief consideration, the court granted Waiata and Te Urumutu control over virtually all the block, dismissing the links of those who could not show permanent occupation. Again Tūroa received only a token, individual, share of the land.⁹²

These two cases appear to us clear examples of a situation where the court's decisions, made in accordance with the Crown's native land laws, led to an erosion of tribal authority over land, prejudicing the interests not only of the Tūroa lineage but of the tribe in general.

In 1881, the Rangataua case was reheard, this time with wider range of claimants present (including those who had boycotted the original hearing) and with eight days of evidence compared to the three for the original hearing. One after another, witnesses testified that no single group, including Waiata's, traditionally enjoyed monopoly rights to the land. Indeed, one kaumātua, Te Poari Kuramate, stated that five hapū maintained links to the area and that

Some years the whole of them went up to catch birds. Some years only one or other. All of these had equal rights in this land. I never heard of any one of these families disputing the rights of the others to go there if they chose.⁹³

Witnesses also emphasised that there was no tradition of individual ownership of land and no contemporary support for individuals being able to sell without permission from chiefs and the wider community. Tōpia Tūroa agreed he had introduced Waiata and Te Urumutu to Booth, the Crown purchase agent, but was upset when it became clear that they planned to sell the land and keep all the proceeds for themselves.⁹⁴ Under cross-examination, even Te Urumutu reluctantly admitted that there was no custom of individuals owning parts of the tribal estate and that the consent of the tribe was required before individuals could sell land.⁹⁵

The rehearing featured a positive, albeit unusual, feature when the court requested advice from local chiefs and experts on tikanga. These experts provided potentially valuable insight into the complexity of customary tenure in the block and the region more generally. Tōpia Tūroa, for instance, stated:

Occupation in a cultivated and closely settled district, confers a right to the actual spot occupied, even though the whole tribe had a general right. This cannot be so strictly held in such a country as Rangataua.⁹⁶

Aropeta Haeretūterangi discussed how most of the block was forest land, suitable for hunting and gathering, with only small cultivable patches:

In such a block the claims of actual residents established by their cultivation would be only equal in value to those of others who only hunted over the land, but lived alongside of them. The fruits and berries would be equally open to all, without difference of right to them.⁹⁷

The court's ensuing decision can be regarded as an improvement on the original in so far as it included mention of more hapū. However, those named as owners in the three Rangataua partitions that resulted could of course receive title only as individuals, not as a collective.⁹⁸ In other words, the prejudice was not mitigated. The Crown quickly purchased many of the interests in Rangataua and acquired much of the block.⁹⁹

We draw attention here to the Crown's statement in its closing submissions to us:

The Crown acknowledges that it has an obligation to actively protect . . . tribal structures [affecting the collective or communal custodianship of land] and has accepted, where the evidence permits, that the failure to do so is a breach of the Treaty. In making this acknowledgement it is the Crown's position that it is the omission of the Crown to take steps to remedy or mitigate the erosion of these tribal structures that is the breach, rather than any particular element of the native land laws that may have contributed to this state of affairs.¹⁰⁰

The Rangipō–Waiū hearings, like the Rangataua rehearings, saw a reasonably wide range of evidence presented to the court which suggested that traditional rights to land were highly complex and disputed. Dr Pickens argued that the history of disputes regarding this land was proof that the court was needed as an external, independent adjudicator on customary rights.¹⁰¹ His argument is, however, rather weakened in our view by the fact that the court's decisions regarding Rangipō–Waiū (and elsewhere) did not end inter-community disputes over land but instead tended to lead to more grievances and protests. Indeed,

the court's practice of dividing witnesses into 'claimants' and 'counterclaimants' tended to mean that the court process was, by its nature, adversarial.

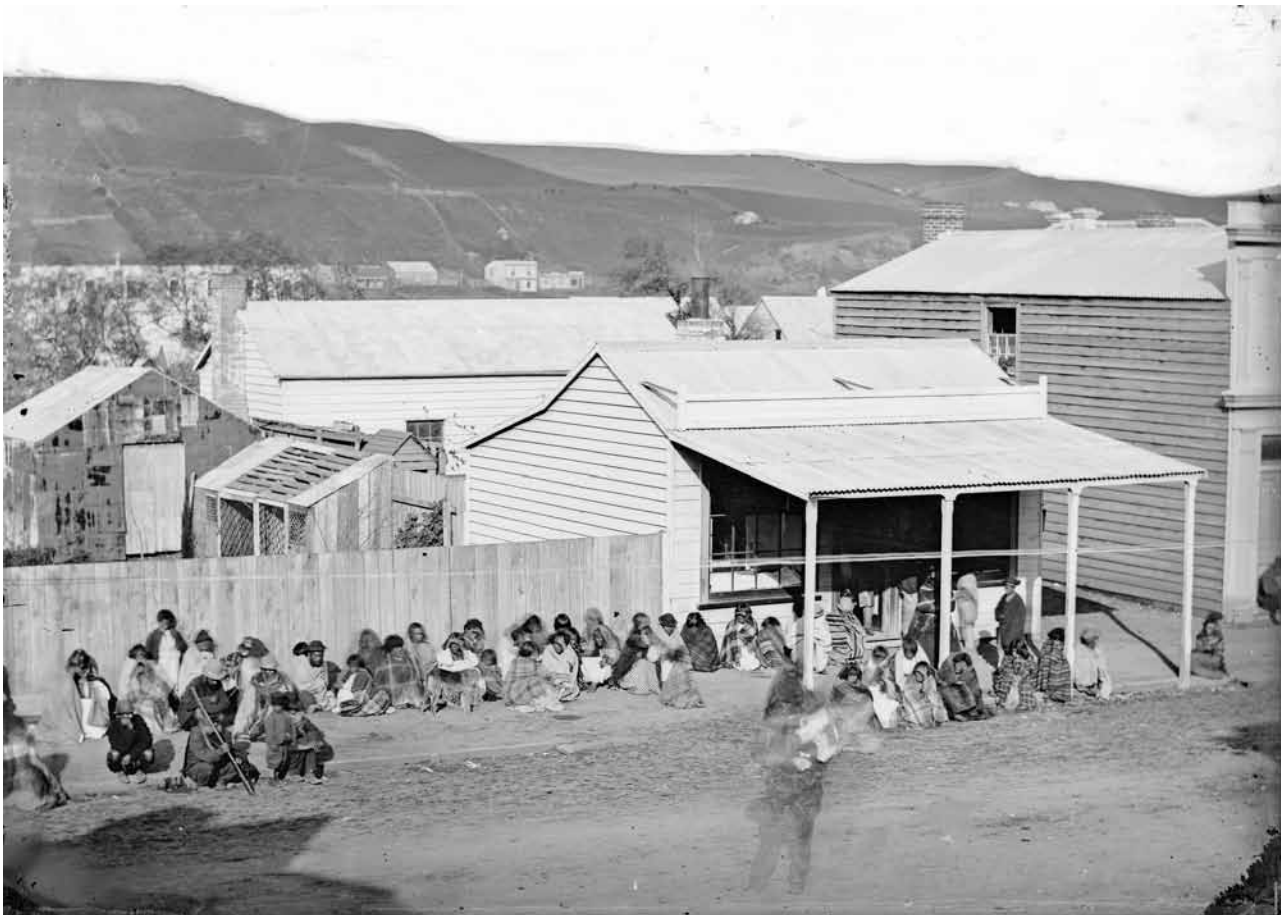
As we have seen, the Crown maintained in its submissions that the court was an appropriate body with suitable processes and effective mechanisms to discern the rights of customary rights-holders. It argued that the nature of the title issued did not infringe on the court's ability to correctly determine customary land rights. According to Dr Pickens, the court showed a good understanding of Māori customs regarding land.¹⁰² He was also of the view that the tenure created by the court was to some degree in accordance with the wishes of local Māori for 'development or modernisation' of existing land use and tenure.¹⁰³

We disagree. As we said, the issue was thus whether the Crown's title determination process was able to adequately recognise customary rights and communal structures at that time. The Rangataua case, in particular, is evidence that it failed to meet this realistic requirement and that there was prejudice as a result. By the Crown's own admission, this was a breach of the Treaty.

5.5.2 Iwi knowledge of the Native Land Court and land legislation

(1) Information about the court

It is important to note from the commencement of the Court in 1865 until today, there has been no Native Land Court or Maori Land Court hearings within our inquiry district. The first hearing involving land within our district was not until 1880 and heard in Whanganui. However, between 1865 and 1880, there had been numerous land court hearings close to our inquiry district involving some of the main rangatira from our inquiry district. In our view, this gave ample time and opportunity for Māori connected to the National Park inquiry district to be informed of the purposes, functions, and processes of the court. In effect, more than 20 years had elapsed since the concept of a court or tribunal to adjudicate on Māori land titles was first mooted by the government. The evidence presented to us, however, suggests that, during this long gestation period, discussions were not numerous between Crown representatives and the people of the area about



Māori waiting for a Native Land Court hearing, late 1860s. As Māori lived in rural areas it was often difficult and costly for them to attend court hearings in towns. Sometimes land was given in payment for expenses.

the introduction of the court and its likely ramifications. At such meetings as did occur, Crown officials perhaps not surprisingly tended to present the idea of a court in a highly favourable light. For instance (as we saw in chapter 3), some Whanganui rangatira with connections to our inquiry district were present at the Kohimarama conference of 1860. On that occasion, Governor Gore Browne presented proposals for a new tribunal to ascertain tribal interests in land. Those present were told that secure title to land was necessary for Māori prosperity and peace, and

were given to understand that they would have significant control over the proposed system and its land ownership decisions:

It is very desirable that some general principles regulating the boundaries of land belonging to different Tribes should be generally received and adopted: for, until the rights of property are clearly defined, progress in civilization must be both slow and uncertain. When disputes arise between different Tribes in reference to land, they might be referred to a

committee of disinterested and influential Chiefs, selected at a Conference similar to the one now held . . .¹⁰⁴

The chiefs present were told by Governor Browne that the conference would be convened again the following year and that in the interval they should carefully consider matters.¹⁰⁵ The government, however, failed to call further conferences or engage in any other ongoing discussions which might have ensured that any Crown-sponsored method of defining land rights was developed in partnership with Māori leaders and reflected their consent. Indeed, within our inquiry district there is little evidence of any direct government engagement, on the ground, with local Māori, on any topic and in May 1861 Governor Browne specifically mentioned Taupō as one of several districts which had ‘never been visited by an officer of the government.’¹⁰⁶

In 1862, the Native Lands Act was passed, providing for the Governor to establish land courts for the determination of native title. The Act indicated that the new courts, while each under the supervision of a European magistrate, would comprise a panel of jurors (in practice, local chiefs) responsible for ‘ascertaining and declaring who according to Native custom are the proprietors’ of the land being investigated. In reaching their conclusions, the chiefs and magistrate were to take into account ‘such evidence as they shall think fit’. They were then to ‘certify their proceedings for the Governor’s confirmation’. However, customary rights would not be immediately transformed into absolute legal ownership in a European sense. Instead, land would remain under tribal or community title, unless the tribe or community chose to apply for subdivision.¹⁰⁷ When resident magistrate John White presented the legislation to Whanganui Māori that same year, he indicated that the intention was for the court process to be based on seeking Māori consensus over land rights and boundaries through a rūnanga of tribal leaders.¹⁰⁸

There is then a gap of some nine years when we have no evidence of any direct discussion about the court between Crown representatives and ngā iwi o te kāhui maunga (although that is not to say that none occurred – perhaps on an informal basis, for instance). Nevertheless, it is

probable that during this time, many Māori of this inland region were gleaning information in or from other areas where the court had already been introduced. Certainly, knowledge of the King movement’s opposition to the court is likely to have been widespread among them, given the involvement of a number of their own leaders. The Repudiation movement, too, although based in the Hawke’s Bay, is known to have made contact with Māori in the Whanganui and Taupō areas, through the efforts of Henare Matua – efforts which, in the words of one historian, ‘assisted the tribes of those districts to withstand land purchase operations until the late 1870s.’¹⁰⁹ Another prominent historian, Vincent O’Malley, has observed that, in the Whanganui area, upper Whanganui tribes were ‘generally opposed to the Native Land Court and to any form of land dealings and . . . warmly receptive to the Hawke’s Bay Repudiation movement.’¹¹⁰

It was not, however, until 1871, with the establishment of the Haultain commission, that Māori, anywhere, got any opportunity to make formal submissions about the court and its governing legislation.¹¹¹ Most of the chiefs attending that inquiry supported the concept of an independent panel to help resolve issues of title, but there was considerable dissatisfaction with the court as it actually functioned. In particular, there were strong demands that it allow greater Māori authority over determination of land title and land management.¹¹² Te Keepa Rangihiwini (who would later play a significant role in trying to keep the court out of our inquiry district) had already gained considerable experience of the court’s effects in the Whanganui district, and indeed had been appointed as an assessor there.¹¹³ He said that he and his people were ‘anxious to have some alterations’ because:

Under the present system, men lose their lands; others get land that does not belong to them, because they are strong to talk. There is much confusion also about the Crown grants.¹¹⁴

The following year, in May, Governor Bowen met with southern Taupō rangatira at Tokaanu. The Governor presented the court as essential for an orderly and transparent land title and alienation system that would help create a

peaceful and mutually prosperous future for Māori and Europeans alike. He encouraged Kingi Te Herekietie and the other chiefs gathered there to use the court to resolve any disputes over land. The law would protect the ‘lands . . . and all the other rights of the Maoris’. Māori would not be pressured or forced to sell their land for ‘the ownership (*mana*) of the land remains, as it always remained, with the Maoris themselves.’¹¹⁵

This vision of the court as the arbitrator of disputes and the facilitator of beneficial interaction between Māori and the developing colonial economy was reinforced by other government officials. Keen to get their land into court by whatever means possible, to facilitate its purchase, government land purchase officer James Booth told Māori participants in disputes over land in the Murimotu area that ‘the most direct way out of these difficulties was to have the land surveyed and passed through the Native Land Court.’¹¹⁶ Upper Whanganui resident magistrate Richard Woon also encouraged Whanganui communities to put their lands through the court.¹¹⁷ As he told a major hui of Whanganui rangatira (including Te Keepa), in 1872, he believed that the court would help heal tribal divisions and solve current land disputes.¹¹⁸ However, unlike Booth, he did not promote the court as the sole body able to achieve such an end, and also encouraged discussion of land boundaries at rūnanga meetings. Indeed, he was in favour of rūnanga having a greater say over land, and in May 1873 wrote to the Native Department in support of a Native Councils Bill that had been introduced at the previous sitting of parliament by Native Minister Donald McLean. According to McLean, the legislation, if passed, would have enabled Māori to ‘arrive at an adjustment of the differences connected with the land’ through deliberations in their own councils, and to have done so with the sanction of the law. Both the 1872 Bill and another introduced in 1873 failed to pass. Despite this, Whanganui Māori (and notably followers of Henare Matua) persisted with sittings of their rūnanga which Woon reported as being ‘constantly at work’ dealing with a variety of matters, including the settling of land disputes.¹¹⁹

A large meeting held at Taupō in mid-1875 seems to have been another Māori initiative aimed at resolving a

dispute over land. Although it again concerned land outside our inquiry boundary, it is relevant to our discussion in that it seems to be indicative of a deliberate decision to avoid using the formal court while nevertheless adopting some of its methods. The gathering, held in September of 1875, was reported by Charles Davis and Henry Mitchell as being a ‘great Taupo meeting relative to certain territory on the western shores of Lake Taupo’. They explained that these lands were ‘disputed on the one side by the Hau-Hau element, under the chiefs Hauraki, Te Tuhi, and others, and on the other by the friendly Natives under Te Heu Heu, Paurini, and Hohepa Tamamutu’. Their report went on:

Major Scannel[!] was chosen president of the meeting, and the assessors . . . were Te Kepa te Rangipuawhe [of Tuhourangi] and Arekatera te Puni. The evidence taken was most voluminous. The whole of the testimony adduced at this local Court was forwarded to the Hon the Native Minister, for his information.¹²⁰

This was clearly not an official sitting of the court, since Scannell, although a resident magistrate since 1872, was not appointed to the court bench until December. Rather, it more closely followed the model that had been set out in the 1862 legislation (described earlier).

From this, it seems that Māori of our area were not lacking in information about how a court hearing was conducted. Indeed, Te Keepa Rangihwinui had been serving as an assessor for the Whanganui district since 1865 and other assessors from the central plateau area included Hāre Tauteka, Poihipi Tukairangi, and Hōhepa Tamamutu, all of Ngāti Tūwharetoa.¹²¹ We must assume that these men had acquired a knowledge of the court’s workings and may also have acted as advisors to their people in matters relating to court procedure.

The central North Island Tribunal has found that, both at a national and tribal level, Māori leaders were not fully informed of the various Native Land Acts that not only established the court but also ushered in ‘far-reaching changes to their tenure system.’¹²² That Tribunal also suggested there was little indication of significant discussion



Outside a land court sitting, Tokaanu. Lack of notice and problems with transportation and living arrangements made attendance at hearings difficult for Māori.

with Māori of their inquiry district, including Ngāti Tūwharetoa, before the court arrived there.¹²³

In our own inquiry district, it seems to us that, although a certain amount of information was provided, on occasions, directly to the chiefs and people of the district, that information often did not acknowledge the full range of likely results, for Māori, of involvement with the court. According to Crown officials, the court would peacefully and effectively settle local disputes over land rights while allowing Māori significant communal control over the land investigation and adjudication process. Crown officials likely did genuinely hope that the court, if accepted

into the region, would have such positive consequences. Nevertheless, in our view many of them were less than forthright about the principal aim of the new tenure system which, in the words of the preamble to the Native Lands Act 1865 was to ‘encourage the extinction of [Maori] proprietary customs’, so as to create the individual ownership that could facilitate land sales. While many Māori in our inquiry district gleaned information from their own sources, that is not the same as being properly informed by Crown representatives about the nature and intent of the court and its governing legislation.

So what evidence do we possess about the court’s

subsequent introduction into the district? Did formal court hearings become widely sought or was Māori engagement reluctant? And did the Crown do any better at informing local Māori, during and after the court's introduction, about the workings of the associated legislation?

(2) *Indications of Māori views of the court's introduction*

Not until the end of the 1870s was there any move on the part of any groups or individuals of ngā iwi o te kāhui maunga to engage with the court in order to determine title in our district, and it was to be on the southern fringes of the area that the court first made its entrance. We have already made reference to the Rangataua block.

In 1879, government purchase officer James Booth made pre-title payments to certain individuals in that area but failed to adequately inquire into which groups held rights in the land. He was also woefully unclear about the boundaries of the land he thought he was purchasing.¹²⁴ This led to him making partial payments to two different groups of people regarding overlapping lands, in the mistaken belief that he was making down payments on two separate blocks. One party who had received initial payments, and were keen to receive more, were willing to make an application to the court so that they could receive title.¹²⁵ Crown historian Dr Pickens emphasises that the application was made not by a single individual but by four named people plus unidentified 'others'.¹²⁶ However,

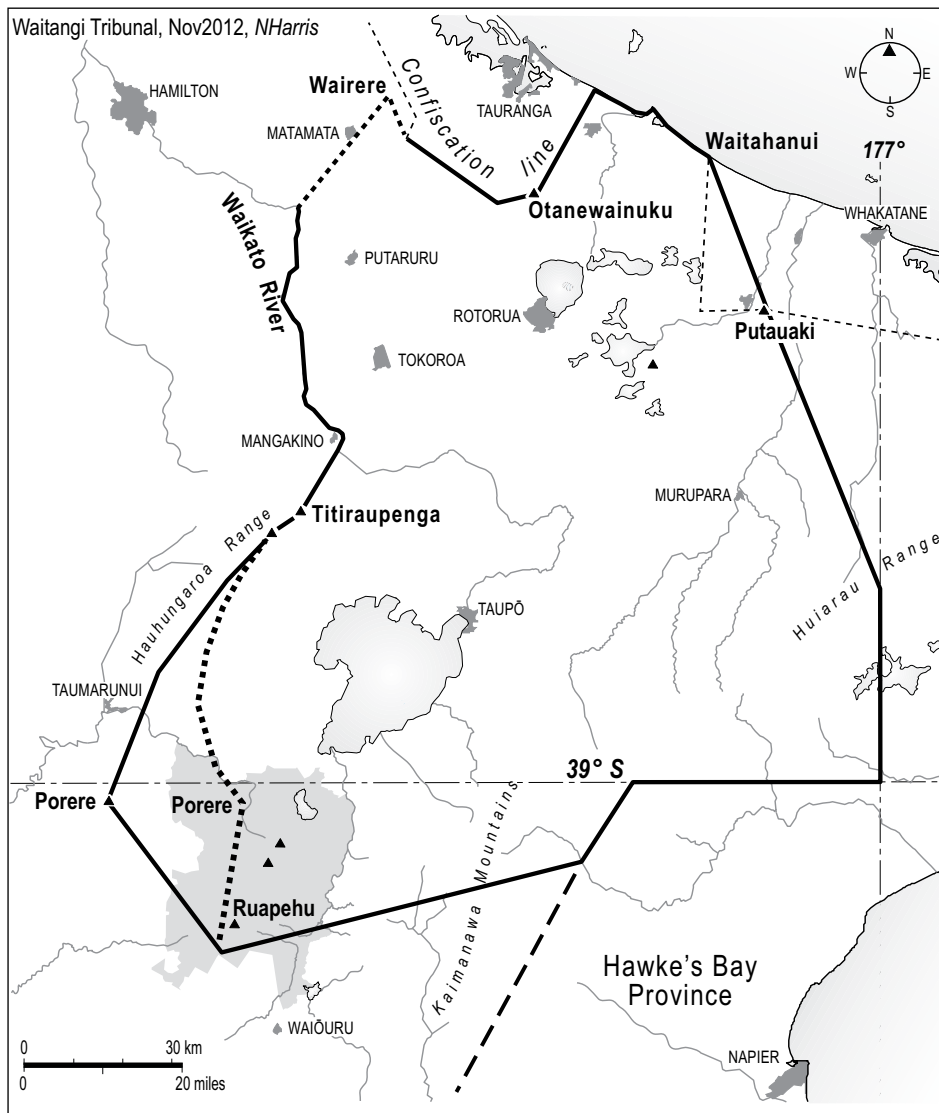
John Edward Grace

1854–1932

Twin brother of Lawrence, the two were involved in sheep-farming on a large scale in the country around the mountains. In 1876, John Grace began as clerk and interpreter for the Native Land Court in the Wellington district and in early 1886 he was appointed land purchase agent for the Taupōnuiātia lands. He also acted as an interpreter for the Taupōnuiātia Court from 14 January of the same year. It appears that the Government dispensed with his services as a land purchase agent at the end of July 1886, although he remained a licensed interpreter until 1916.

John married Te Arahori te Wharekaihua, and then following her death, he married Rangiamohia Te Herekieke (grand-daughter of Te Herekieke). Both were high-ranking Ngāti Tūwharetoa women. John had six children, of whom three were particularly well known: Puataata Alfred, who for many years was secretary of the Tūwharetoa Trust Board; Te Takinga Arthur, New Zealand Māori rugby rep, killed in action at Gallipoli; and Sir John Te Herekieke. John Grace died at his home on the banks of the Tongariro River at Tokaanu.¹





as we have already noted, many others with interests in the block refused to attend.¹²⁷ Prominent among these were Te Keepa (Major Kemp) and his followers, who was seeking to prevent the court from sitting over lands within the boundaries of what was to become known as Kemp's Trust, an area which included Rangataua. Without any

legal method of stopping the court from sitting, Te Keepa and his followers boycotted the Rangataua hearing. Many other groups and chiefs who would subsequently assert rights to Rangataua were also absent.¹²⁸

In this part of the district at least, then, it seems that the introduction of the court was not widely sought

– which is perhaps to be expected in light of the influence, noted earlier, of the Repudiation movement in the upper Whanganui.

Further north, John Grace, acting for the Pākehā speculators Thomas Morrin, John Studholme, and Thomas Russell, made advance payments in relation to land in Ōkahukura and tried to convince local Māori to seek title through the court so that the purchases could be finalised.¹²⁹ In 1880, a court hearing over the land was abandoned, in part due to opposition from Horonuku Te Heuheu, Tōpia, and others.¹³⁰ The following year, however, other blocks were brought to the court. Title to Rangipō–Waiū was determined at Tapuaeharuru in April and May 1881 and, shortly afterwards, the title investigation for Waiakake (and the rehearing of Rangataua) took place at Upokongaro. The Rangipō–Waiū hearing partly had its roots in pre-title dealings. Overall, the situation in the Murimotu district, including what would become the Rangipō–Waiū block, was confused and volatile. From the late 1860s, competing Crown and private agents had entered into numerous leases with various tribal groups and individuals without any formal agreement or sufficient investigation into who held customary rights in the area. These pre-title dealings lacked legal standing or practical clarity, and frequently involved multiple ‘agreements’ on overlapping pieces of land or no clearly agreed boundaries whatsoever.¹³¹

In effect, the triangle between Rotoaira, Moawhango, and Murimotu was what might be termed a ‘zone of encounter’ where hapū from Whanganui, Taupō, Rangitikei, and Hawke’s Bay or Pātea had long mediated, and shared, the use of resources. Conflict had been interspersed with conflict resolution and inter-marriage, leaving mixed communities of Ngāti Tama, Ngāti Whiti, and Ngāti Waewae among those claiming interests in the area.¹³² There were ongoing attempts by local rūnanga and chiefs to settle these complex disputes but even where they were successful, Māori institutions lacked the legal authority to make any decisions ‘official’. Local Māori were repeatedly urged, especially by land agents, to take the disputes to the court. Between 1867 and 1880, therefore, various competing parties in the Rangipō–Waiū area

attempted to survey their claims and applied for court hearings in an effort to gain legal title to land.¹³³ It is an example of a situation where the activities of agents contributed significantly to bringing landholders into the court system.

Others, meanwhile, did their best to keep the Rangipō–Waiū land out of the court. Te Keepa (who, as we saw, had already been intimately involved in court hearings as a native assessor) led the most well-documented attempt to do so. His position was connected to his own role in the Murimotu conflict, but was more generally an expression of his increasing dissatisfaction with the court and the Crown’s land purchasing actions in the Whanganui region.¹³⁴ In early 1880, he instructed his followers to avoid the court and led an armed disruption of government attempts to survey Rangipō–Waiū in preparation for a court hearing. Later in the year, he began efforts to establish his land trust (Kemp’s Trust, see chapter 4) and, in November, erected the first of four carved poles intended to mark its boundaries.¹³⁵

In early 1881, Te Keepa tried to have Rangipō–Waiū surveyed but not, apparently, in relation to a court application. Hearing about it, Native Minister William Rolleston directed that Te Keepa be reminded that all surveys were required by law to be under the control of the government: Te Keepa should make application to the court in the ordinary way.¹³⁶

It must be assumed that Te Keepa capitulated in the matter of a court hearing since on 7 March four claims concerning Rangipō–Waiū were gazetted for hearing at Taupō two weeks later – one of them from Horonuku Te Heuheu, two from Tōpia Tūroa, and one from Te Keepa himself along with others of Ngāti Rangituhia.¹³⁷ Indeed, Sievwright, advisor for Kemp’s Trust, had commented to Native Minister Rolleston only the previous month that ‘there was nothing now to be done by his clients but to go to the Court and promote a settlement of the title [to the Murimotu lands] before the Court.’¹³⁸ It was probably a wise conclusion given that, as we have seen, boycotting the court had already resulted in Te Keepa and his supporters being shut out of other land they claimed, which had then been sold to the government.¹³⁹ Indeed, the

other three claims in Rangipō–Waiū, filed by Horonuku Te Heuheu and Tōpia Tūroa, had similarly come despite those leaders' support of the Kīngitanga, known for its general hostility towards the Crown's land tenure system. In short, it seems that in this part of the inquiry district, while there were some who proactively sought to use the court to gain title, there were others who were dragged in on a defensive basis.

Most of the inquiry district, however, did not come under the native lands system until 1886 or 1887 when title hearings for Taupōnuīatia, Waimarino, Urewera, and Raetihi took place. Of these, we note that the 254,678 acres of the Taupōnuīatia block that fall within our boundaries represent 73 per cent of the entire inquiry district. This late engagement, over such a large part of the district, suggests in itself that ngā iwi o te kāhui maunga were generally reticent about using the court but can we tell if they were actually hostile to the idea?

As we saw in chapter 4, the Kīngitanga – which refused to recognise the court and promoted peaceful disruption of court processes such as surveys – had strong backing in the inquiry district. Among others, Horonuku Te Heuheu expressed his support for Kīngitanga policy and Tōpia Tūroa remained a prominent figure in the movement. Anti-court sentiment was also strongly associated with the prophet Te Kere Ngataierua who created an extensive following, including among upper Whanganui and southern Ngāti Tūwharetoa hapū.¹⁴⁰ Meanwhile, the imposition of Crown-derived title over Rangataua and the subsequent sale of the block remained a particular grievance for Te Keepa and his Whanganui people. Te Keepa's Council occasionally held alternative land adjudication investigations, although the government's refusal to allow Māori institutions any more than a limited advisory role in the official land title process badly damaged Kemp's Trust and its ability to prevent use of the court.¹⁴¹

Indeed, in August 1883, as we saw in the previous chapter, the Rohe Pōtae alliance filed a petition in which matters relating to native land legislation and the court featured prominently. Although the names and tribal affiliations of most of the petition's signatories can no longer be identified, we note that Kingi Te Herekīkie and other

Te Kere Ngatai-e-rua

c 182?–1901

Te Kere was a carver, healer, prophet, and peacemaker who was probably born in the 1820s. Despite his close connections with Tōpine Te Mamaku, the two leaders clashed in a bloody feud over land and Te Kere relocated to Pūtiki. The feud was eventually resolved through marriage. In 1864, Te Kere witnessed the Battle of Moutoa, and thereafter he pursued peaceful solutions to conflict.

Te Kere became an emissary of peace, working with Titokowaru and Te Kooti. He lived a nomadic life, travelling the central and lower North Island. He is said to have made one of the King's 12 pou (supports). By 1885, Te Kere was reaching the peak of his powers with his Paetiuihou movement, which opposed selling Māori land and sought to abandon the Native Land Court, increase the King's powers, prevent liquor sales, and create local Māori governments. His movement was closely linked to Te Whiti at Parihaka, and it had a broad range of followers from Taranaki, Tuhua, upper Whanganui, Ngāti Maniapoto, Ngāti Tūwharetoa, Ngāti Raukawa, and Ngāti Hāua.¹

Te Kere and many of his followers boycotted the Native Land Court, and consequentially they were left out of the ownership lists for lands where they had interests (for example, the Waimarino block). Along with his followers, Te Kere settled at Tawatā near Maraekōwhai on the upper Whanganui River in 1892. He died there in 1901.²

Ngāti Tūwharetoa and upper Whanganui chiefs were prominent in the alliance. Te Keepa, for his part, led calls for Wahanui to be allowed to explain the petitioners' concerns to the House of Representatives.¹⁴² The petition condemned:

the tendency of the laws which you have enacted from the beginning up to the present day, they all tend to deprive us of the privileges secured to us by the second and third Articles

of the Treaty of Waitangi, which confirmed to us the exclusive and undisturbed possession of our lands. We do not see any good in any of the laws which you have enacted affecting our lands, when they are brought into operation, in adjudicating upon lands before the Native Land Court at Cambridge and other places; and the practices carried on at the Land Courts have become a source of anxiety to us and a burden upon us.¹⁴³

The petitioners noted that whenever they complained of the evils of this system, they were told that their 'only remedy is go to the Court [them]selves.' This they were not prepared to do. Instead, the petition named a large region of land that remained under customary authority, including most of our inquiry district, that they wanted legally protected from the court and from land purchasing. The external boundaries of this area, and the internal subdivisions, titles, and rights would be determined by Māori themselves. Once this had been completed, it was requested that the government 'confirm [their] arrangements and decisions in accordance with law'.¹⁴⁴

As Dr Pickens has argued, Horonuku Te Heuheu probably did not sign this particular petition. However, the Ngāti Tūwharetoa chief's general opposition to the court was clearly and consistently expressed. Indeed, he submitted his own petition shortly afterwards which included protests against the court and its costs.¹⁴⁵

Then, the following month, came a development that might have seemed to offer some hope: in September 1883, parliament passed the Native Committees Act which allowed for officially recognised Māori committees to investigate land matters and provide information to the court. Ngāti Tūwharetoa had already had their own tribal komiti that had been dealing with land matters in the Taupō area since at least 1878, but this was not formally recognised by the Crown. When tidings of the new Act reached them, Māori of the central plateau area called a meeting and elected a new committee of 12 (including Matuaahu Te Wharerangi and Horonuku Te Heuheu), which they hoped would meet the requirements of the law and be granted legal recognition by the government. They were not well pleased to find the Taupō area

subsumed within a massive Rotorua–Taupō–Tauranga Native Committee district. Not only was the committee district huge but it did not properly reflect their preferred affiliations. In 1884, for instance, Hōhepa Tamamutu and 39 (unnamed) others described as being of Ngāti Tūwharetoa, petitioned the government that 'the boundary line running through Taupo may be extended to the other side of Ruapehu'. They complained that they did not wish to be 'mixed up with the Arawa Committee of Tauranga'. Despite their links with their Arawa neighbours to the north (not to mention having fought, like Te Arawa, on the government side in the campaigns against Te Kooti some 20 years earlier, as we discussed in chapter 3), in the past Tamamutu and his people had consistently identified themselves primarily as Ngāti Tūwharetoa, and thus, much preferred to be part of a committee that involved both their Ngāti Tūwharetoa and upper Whanganui relatives about te kahui maunga. Equally telling is that even Major Scannell, the resident magistrate, was later to observe that the Tauranga committee was 'too far away to be of any use to those in this district'.¹⁴⁶

Alongside the hope of greater recognition for their committees, however, other evidence shows that applications for court hearings were nevertheless being filed. By 1885, 108 separate applications had been submitted, in respect of land ranging from Rangipō in the south up to Whakamaru in the north, and westward towards Ngāti Maniapoto's rohe.¹⁴⁷ Many of these were succession and subdivision applications for blocks which had been through the court. Repeated applications for a title hearing had been made in Ōkahukura, for example, where Grace had secured a survey by 1882.¹⁴⁸ Likewise, in January 1884, Horonuku, Paurini Karamu, Matuaahu, and Tōpia requested that the court hear their southern lands, including Ōkahukura and Rangipō.¹⁴⁹ Afterwards, an application for a larger area still (not to be confused with the later Taupōnuiātia application) was filed by Te Heuheu and 393 others.¹⁵⁰

In early 1885 came a further development. Apparently having concluded that more face-to-face contact would be advisable between the government and Māori 'on the ground', Native Minister John Ballance set out for a series

of meetings in various locations around the North Island, including Rānana (on the Whanganui River) and Kihikihi (south of Te Awamutu). As Te Keepa told him at the Rānana meeting:

There has always been a Minister called a Native Minister, but the practice hitherto has been for him to confine his attention to the towns, and if the Natives wished to see him they had to go to him; and he was always too much engaged to give his attention to the Maoris, so we invited you to come here to see us.¹⁵¹

Ballance was, Te Keepa said, ‘the first Minister that has accepted an invitation to come up the Wanganui River’.

At the meetings, the Minister gave promises of further legislative reforms that would give Māori committees substantial authority. Although the Minister did not visit Taupō, Kīngi Te Herekīkie, Matuaahu Te Wharerangi, and Tōpia Tūroa (‘a man of very great influence, not only among the Taupo Natives, but also among the Upper Whanganui’, as Scannell noted) were among chiefs present at these hui. At the meetings, the Minister gave to understand that district committees would be granted significant powers of self-government including the right to decide on matters relating to their lands:

We are prepared, under [the] Treaty, as I have said – under the laws which the Queen has given to the colony, and under the Constitution of the colony – to give the Natives large powers of self-government.¹⁵²

You have all a voice in the election of your own Committees. We propose to give you great powers of self-government over these, and not to take from you any of the powers you now possess.¹⁵³

. . . we desire that the people themselves should join with the Government in administering their lands for the welfare of both races. . . . I think the Committees may do a great deal of good in the ascertainment of title to land . . . after the Committee has ascertained the title . . . the Court should give legal sanction to the decisions of the Committee.¹⁵⁴

That is, the court would be maintained but its main role

would be to give legal sanction to the decisions reached by the Māori committees.

Ballance also promised greater community involvement at the block level. Acknowledging that ‘much harm [had] arisen’ from the lack of collective control over land blocks, he outlined proposed new legislative provisions whereby all interested owners would be named on the title, not just a few. They would then elect a block committee which would make decisions about how their land should be leased and disposed of.¹⁵⁵

News of Ballance’s undertakings would almost certainly have been conveyed to Horonuku Te Heuheu, and is likely to have become known among Ngāti Tūwharetoa more generally. That Te Heuheu was at least aware of the promise to strengthen district committees is supported by a letter written by Te Wharerangi to Ballance, after the hui with the Minister at Rānana. Indicating general agreement with Ballance’s proposals, Te Wharerangi told him that just as the Whanganui district could be left to the Whanganui komiti to manage, so should the mana over Taupō lands be left with him (Te Wharerangi) and Te Heuheu.¹⁵⁶

In September 1885, events took another turn. About 1,000 Māori from the upper Whanganui and Taupō areas attended a big hui at Poutū, including many of the key leaders of our inquiry district such as Horonuku Te Heuheu, Tōpia Tūroa, Kīngi Te Herekīkie, and Matuaahu Te Wharerangi. The meeting gave its overwhelming approval to resolutions calling for the court to be done away with entirely, and for the control of Māori lands to rest solely with the Māori committees.¹⁵⁷ It was doubtless not the outcome Ballance had been seeking.

However, as participants at the Poutū hui themselves noted, resolutions to keep the court out of an area were easy to make but hard to achieve. In the case of the ‘Taupō lands’, it seems that Ballance promptly made a direct and personal approach to Te Heuheu, through the intermediary of Lawrence Grace, to urge him and Ngāti Tūwharetoa to file the Taupōnuiātia application as a ‘whole tribal claim for investigation by the Court in one block’. Lawrence’s brother, William Grace, also pressed the case.¹⁵⁸ Judging from later comments made by Ballance (to Māori at

William Henry Grace

1848–1913

The eldest son of the Reverend Thomas Grace, William Henry Grace was 16 when the family left Pūkawa. William claimed that he was one of the first licensed interpreters in the colony. In October 1877, he joined the native department in Wellington. He was employed first as an additional interpreter to the House of Representatives, and then as private secretary and interpreter to Native Minister Sheehan until the end of August 1878; during that period, he was present at a number of meetings with Rewi Maniapoto. Grace was appointed native agent for the Waikato district, and he was also land purchase agent for the Upper Waikato from 1878 until his contract was terminated at the end of 1879. He had settled in Kihikihi by this time, and remained there for the rest of his life.¹

William first married Mary Matuku Matakau (or Matahua) with whom he had one son; however, this marriage appears to have been short-lived. He subsequently married Makareti Te Hinewai, said to be a niece of Rewi Maniapoto.² From the beginning of 1886, William was again employed by the Native Department as a land purchase officer – a position he held until the end of March 1888. During this period, he negotiated for the purchase of Taupōnuīātia lands. He was also involved in negotiations for the acquisition of the mountains. He was later re-employed by the Native Department as an interpreter.³



Aramoho, near Whanganui), he likely told the Graces to stress to Ngāti Tūwharetoa the need for a court application in order to secure their ownership of the land against the risk of encroachment from Tāwhiao:

Now, let me explain why the Court sat at all at Taupo. I found that Tawhiao was bringing his influence to bear in order to get the chiefs and the people of Taupo to sign a memorial handing over the whole of their lands to him. . . . I

saw an effort and indication on the part of Tawhiao to become possessed of all the lands on the island, and I felt certain that was wrong, and that it was the duty of the Government to resist Tawhiao to the very utmost. That is one of the principal reasons why the Court sat at Taupo at the time it did.¹⁵⁹

Irrespective of what Ballance and the Graces may have said, it is certain that a single hearing of the Taupōnuīātia lands, instead of multiple separate claims, offered practical

advantages to paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu, and his people: by creating a united tribal claim, there was less likely to be a scramble among many different applicants for piecemeal determination of title, involving considerable expenditure of time, effort, and financial resources. On 31 October 1885, Horonuku Te Heuheu and others lodged a new application for a court hearing over an enlarged Taupōnuīātia block. William Grace wrote to Native Minister Ballance that same day informing him that '[l]eading chiefs signed application [for] tribal boundary and are ready to carry case thro' court in accordance with plan arranged by us'. For safe measure, William then continued to lobby tribal members in the days and weeks following, informing Ballance on 22 December that he had been 'seeing and interviewing natives, with the view of getting them to lay aside any objections they may have to the land going through the Court, which has all meant a great deal of time being expended'.¹⁶⁰

Still, not all agreed with taking Taupōnuīātia to the court. The large number of petitions and protests submitted to the government suggest dissatisfaction that the hearing took place at all, as well as more specific grievances. Many of the petitioners stated that they had rights to the land but had not participated in the hearings, including a number that had signed the original Taupōnuīātia application.¹⁶¹

Two months after the Taupōnuīātia application, in December 1885, came an application for a hearing of Waimarino, an area of over 454,000 acres. It was signed by three Ngāti Tamakana chiefs from Manganuioteao who claimed to be representing a wider group, including some more prominent rangatira of the upper Whanganui. However, some important leaders of the region, including Tōpia Tūria, were apparently not involved in the application. Horonuku Te Heuheu and Kīngi Te Herekīkie also played no part in it.¹⁶² As with other blocks, opposition to the court came from a variety of quarters. For example, since part of the proposed Waimarino block came within the area over which the Rohe Pōtae alliance asserted influence, local followers of both the alliance and the Kīngitanga opposed the application. Te Kere and his



Map 5.4: The Waimarino block relative to the inquiry boundary

followers also held considerable influence in the area and, as we have mentioned, were consistent in their opposition to the court and in their attempts to avoid any interaction with it.¹⁶³ The hearing nevertheless went ahead.

Shortly after the hearing, many upper Whanganui and southern Taupō chiefs took part in the Aramoho hui with Ballance, referred to above, where Māori repeatedly voiced their opposition to the court. There were more calls for Māori committees to replace the court and for no further hearings until Ballance's promised legislative changes had been enacted.¹⁶⁴

In early 1887, the title investigations for the Raetihi block of around 20,000 acres and the approximately 12,000-acre Urewera (or Huriwera) block took place. These areas appear to have been excluded the previous year from the nearby Waimarino block on the understanding that the court would investigate them separately at a later period.¹⁶⁵ The subsequent Raetihi application

seems to have been made by collective decision, and there does not seem to be any evidence of pre-court dealing.¹⁶⁶ As to the Urewera block, however, there is evidence that the Crown was keen to obtain the part that lies within our inquiry boundary for inclusion in the national park. There is also evidence to suggest that the land purchase agent, William Butler, had been talking to potential sellers before the application went in.¹⁶⁷

Following the Raetihi and Urewera hearings of 1887, the only part of our inquiry district that remained outside of the Crown's titles system was south of Ruapehu, and it was not until 1893 that the area concerned came before the court, as part of the approximately 55,000 acre Rangiwaea block. There had been one or two much earlier attempts to have Rangiwaea surveyed and brought before the court, but these had failed in the face of strong opposition both to the court in general and to a hearing over Rangiwaea in particular.¹⁶⁸ By 1893, Weronika (Nika) Waiata, who was of Ngāti Rangī and niece of one of the earlier applicants, was ready to try again.¹⁶⁹ She and two others applied for a court hearing in the hope of gaining legal rights to the land and facilitating its sale. The government had already made advance payments on this land and this time the applicants were successful.¹⁷⁰ Crown and claimant historians have broadly agreed that this was an instance where a court hearing was triggered by the wishes of only a few Māori individuals.

Rangiwaea is also, however, an instance where a hearing took place despite the fact that large groups of local Māori repeatedly informed the government that there was no communal support for it. For example, Rotohiko Reretai and 124 others of Ngāti Rangipōutama signed a letter stating that the application for court investigation had not come from iwi and hapū with rights to the land. The land, they stated, was occupied by them and crucial to their sustenance and society. Any attempts to survey or pass it through the court without the consent of 'all the owners' would, they warned, cause trouble. Haimona Te Aoterangi and 413 others also asked for government 'protection from persons who try to rob people of their lands'.¹⁷¹

Despite all this, on 16 January 1893 the title investigation into Rangiwaea opened at Wanganui. Te Keepa,

William James Butler

1848–1904

Born in Mongonui, north of Auckland, William James Butler tried his hand as a surveyor, in the flaxmilling business, and on the Thames goldfields, before he was appointed a Government native agent for the Wairarapa in 1878. He went on to work as an interpreter for the native office in Wellington in 1879, and soon afterwards became private secretary for Native Minister John Bryce, and subsequently for Ministers Rolleston and Ballance. Butler was present at the invasion of Parihaka, and also for some of the arrests and forcible removals of Māori.¹ He was fluent in te reo, and one newspaper considered that his 'accurate knowledge of [Māori] manners and customs' ensured that 'he obtained their confidence in the fullest degree.'² In 1885, Butler began work as a land purchase commissioner in Wanganui and acquired a large quantity of land for the Government, including the Waimarino block. He was appointed a judge of the Native Land Court in 1893.³

backed by a large group of followers, was present but only in order to urge that the hearing be abandoned. The Treaty of Waitangi, he told Judge Robert Ward, guaranteed that Māori could do what they wished with their land. Their wish was to keep this land out of the court. The application, he stated, had been made by just a few individuals and the 'great number of people' opposed it. If the hearing continued, he and his people would refuse to take part. The court's response was emphatic and, as Dr Pickens remarks, predictable: the hearing would go ahead. The explicit justification was that individuals had a legal right to have their case heard and their interests defined. A newspaper account of the time, later cited approvingly by the land court judge concerned, stated that the attempts to halt the hearing were 'only a part of the tactics pursued by Kemp and his people for the last four years or more, ie to

oppose the court and stop all new claims'. The chief judge of the Native Land Court was also in full agreement that the court had acted wisely. Te Keepa's actions were 'part of an organized scheme of opposition to the Native Land Court and . . . it would have been a mistake for the Court to have in any way given into him'.¹⁷²

Indeed, Waiata herself acknowledged that she was one of only a small minority who wanted the involvement of the court, saying that Kemp and 'the whole of the Natives in this district' had joined together to try to prevent the application and the hearing. Significantly, and apparently speaking more generally, she also commented: 'had it not been for us[,] none of the lands in the interior would have been brought before the Court perhaps for years to come'.¹⁷³

(3) *Conclusions*

We have seen that, during the late 1860s and the 1870s, some information about the court had been provided directly to some Māori within our inquiry district, and they had gleaned other information through their own channels. Several chiefs had served as assessors. Aspects of the court appear to have been seen as useful: we have noted, for instance, that a type of informal court was held by Māori, with Major Scannell presiding, in September 1875 at Taupō, for the purposes of dispute resolution over lands in the west of our district. Generally speaking, though, the evidence shows that ngā iwi o te kahui maunga were not at all keen to invite the formal court in, and it was not till a group with interests in Rangataua, in the south-west, made an application for hearing, in 1879, that the wall of collective resistance was breached. Even then, there was something of a lull in hearings after the first three blocks (Rangataua, Waikake, and Rangipō-Waiū) went through the court. That is not to say, though, that there necessarily had been a hiatus in applications: of the 108 applications that had accumulated by the end of 1885, we note that some may have been filed as early as 1880.¹⁷⁴

In part, the lull in hearings may have been because Māori in the region were still trying to find other means of resolving their land issues, or at least some ways of having

more influence over the court and its decisions. We have noted, for example, the existence of tribal komiti and the response by local Māori to the provisions of the Native Committees Act 1883.

Alongside that, however, it must have been becoming increasingly clear to Ngāti Tūwharetoa leaders (and others) that not only would the court not be abolished but it would become more and more difficult to avoid. The Crown's land tenure system already affected large areas of the tribe's northern and eastern lands, outside our inquiry district, and was making inroads from the south. Coming under increased pressure, too, from Native Minister Ballance through the intermediary of the Grace brothers, Horonuku appears to have decided that if the court was to sit in the remaining areas, he and his people would do their best to benefit from it – a vision doubtless encouraged by Ballance's 1885 promises of legislative reforms that would not only give Māori committees significant influence in the land court's determination of titles, but also give block committees a substantial say in what happened to the land once title had been issued.¹⁷⁵

Seen in this light, Te Heuheu's move towards the court would appear to have been a strategic one in response to a range of pressures and incentives. While he might have preferred to keep the court out, his course of action was pragmatic: faced with little alternative, he would instead do his best to use the court to define and protect Ngāti Tūwharetoa's mana over their rohe as a whole. Indeed, to this end, he included in the application large areas of northern and eastern land that had already been adjudicated upon by the court. The fact that the application was also signed by many others from Ngāti Tūwharetoa suggests that he was not alone in believing that their best hope now lay with the court. Certainly, that is the impression conveyed by a newspaper article immediately after Taupōnuiātia determination, which gave to understand that Ngāti Tūwharetoa had come to see that securing 'a settlement of their tribal boundary' was 'a matter of the greatest importance for them, for hitherto they have been subjected to the constant worry necessarily arising from the surrounding tribes endeavouring to make an encroachment into their territory'.¹⁷⁶

As to Waimarino, there is little indication of what discussions took place among local Māori leading up to the Waimarino application and little direct evidence on their motivations in making it. It is a matter that will no doubt receive further attention in the Whanganui inquiry. However, what is known suggests that the Crown's land titles system was increasingly seen as impossible to avoid.¹⁷⁷ It is almost a truism that where Crown purchase agents were active, the court soon followed (and vice versa) and we know that government purchase officers had been active in the area, advance payments on Waimarino land had already been made, and some smaller applications for hearings had already been filed. Seeking title over such a large area may therefore, like Taupōnuiātia, also have been intended to avoid numerous smaller hearings. Then again, Ballance's promises that Māori communities would retain significant collective control over Crown-granted land may again have been important. His undertakings to empower Māori committees were well known and found considerable support in this area.¹⁷⁸

In the case of Rangiwaea, as we have already noted, there is general agreement that this was an instance where the court became involved following an application from just a few Māori individuals. In the view of Crown historian, Dr Pickens, Rangiwaea was the exception: across the rest of the inquiry district, applications for title investigation were made by 'hapū and even tribes', indicating considerable collective support for the court.¹⁷⁹ Claimant historians, on the other hand, emphasised the degree of collective opposition towards the court, with Dr Anderson highlighting other cases in the south of the inquiry district in which tribes and chiefs were unable to stop land being brought before the court.¹⁸⁰

Our own view inclines towards that of the claimants. Overall, we cannot agree with the Crown's argument that Rangiwaea was an isolated example and that there was, in general, support for the court. We note that when the court was introduced into the inquiry district more than a decade earlier, in a case very similar to Rangiwaea, it was essentially the same small group of individuals involved (although led, it is true, by a woman of high rank within the hapū).

Indeed, the wider contextual evidence presented to this Tribunal has indicated that the dominant position of ngā iwi o te kahui maunga was one of opposition to the Crown's land adjudication process, with a strong desire for an alternative system to be created. Local chiefs frequently claimed that the Treaty guarantee of rangatiratanga included the right for the community, rather than individuals, to decide whether land should be placed under the Crown's titles system. Only rarely do we see examples of collective support for the land court – but even there, as the Hauraki Tribunal has already said: 'The fact that Maori went to the court (even when they did so entirely voluntarily) does not mean they were content with the process or the forms of title that emanated from it.'¹⁸¹

These initial conclusions are further borne out by evidence of ongoing protests against the court, which continued for the rest of the nineteenth century and beyond. Tūreiti Te Heuheu, for instance, was particularly prominent in calls for the court to be abolished, or at least reformed, and in demands for Māori institutions to be granted greater legal powers over their lands. In 1891, he had told the Native Lands Commission that a Ngāti Tūwharetoa committee should be able to

manage all matters connected with the land belonging to the tribe, and other matters affecting the Māoris. But the Committee, to be effective, would require the support of the Government.¹⁸²

The court or an equivalent tribunal, the chief argued, should have a role, but only as an appeal board for disputes that the committee could not settle or decide upon.

Ngāti Tūwharetoa also played a major role in pan-tribal protests against the court, including the Kotahitanga movement. At the first full parliament or paremata of the Kotahitanga in 1892, Tūreiti was elected to the movement's Rūnanga Ariki or Upper House, while Kingi Te Herekieke was appointed a local officer for the Taupō district. The Paremata called for the court to be boycotted and judges done away with.¹⁸³

In 1895, Crown attempts to survey Ōkahukura lands within the Taupōnuiātia block were disrupted as part of a

wider policy in the area to disrupt all surveys, ‘to have no land courts and to refuse to sell land’ to the government. The local land purchase officer was convinced that Tūreiti Te Heuheu was at the heart of the resistance.¹⁸⁴

In 1898, as a representative of the Kotahitanga leadership and also on behalf of Whanganui, Te Arawa, Ngāti Raukawa, and Ngāti Maniapoto Māori, Tūreiti told the Native Affairs Committee that he supported the idea of a rūnanga to investigate Māori land matters. When questioned about the role of the court in such a scenario, he responded:

I say there should be only one tribunal to deal with Maori matters. Why should there be two?

... I would abolish it.¹⁸⁵

Whanganui-affiliated chiefs and hapū were also involved in anti-court activity. In 1892, Te Keepa took a prominent role in a petition endorsing Kotahitanga demands that the court ‘cease to exercise jurisdiction in relation to Native Lands’. District committees, operating under a Federated Māori Assembly, should be empowered to decide title issues, which would be forwarded to the Governor for legal approval. The petition condemned the native land laws as ‘bad from the beginning’. These laws had created an alien and damaging form of individual tenure, which had extinguished the power of Māori leaders and ‘disunited’ the people. Particularly upsetting to the petitioners, given their commitment to the principle of partnership with the Crown, was that the government had, for many years, ignored their demands that they be able to ‘administer their own lands and properties’:

We cannot at all understand how intelligent persons who are sent to Parliament by the people, to make laws could allow us to be trampled upon and ill-treated year after year, because it is alleged that it is the wish of each Government to do what is right towards the Maori people and not what is wrong.¹⁸⁶

In sum, there is no shortage of examples of Māori protesting against the lack of provision for tribal structures to be recognised, and to be instrumental in deciding on land

matters. Instead, the government rejected tribal and pan-tribal demands for exterior boundaries to be surveyed and protected from the court, and for the hapū and iwi within the area to be allowed to reach their own agreements over land rights. The Native Committees Act 1883, which promised some influence within the court system, in fact delivered little; and the Native Lands Administration Act 1886 failed to meet the expectations engendered by Ballance in his meetings with Māori.

Overall, the native land legislation disempowered communal Māori institutions. Tribal rūnanga or leaders could not make legally binding decisions on land rights or legally prevent hearings, nor could they decide what land the court could adjudicate on and what land would remain under customary tenure. The court was the sole means by which Māori could gain legal title to their land. Collective hapū agreement was not needed for the land to be transformed from customary to Crown tenure. Rather, a single individual or very small group could apply for a court investigation, facilitate the necessary surveying, and facilitate a title hearing.¹⁸⁷ This made the court, as historians and previous Tribunals have agreed, remarkably difficult to avoid. As time went by, if a hearing seemed inevitable, it came to the point where few would stand aside and let their connection to the land go legally unrecognised. They participated not because they wanted to but because they needed to.

Notwithstanding this conclusion, we cannot entirely agree with the claimant submission that hapū leaders of our inquiry district were unaccustomed to court processes and that many would-be participants were ‘at sea with court proceedings and how to conduct a case.’¹⁸⁸ Certainly the conventions of how hearings were run were likely to feel strange to new participants. However, as we have seen, a number of chiefs had already been acting as assessors by the time the court entered our inquiry district, and it is likely that quite a few ordinary Māori would also have participated in court hearings elsewhere, given the sparsely inhabited nature of the district and the likelihood of them having other land interests beyond our boundary. What is likely to have been novel, however, as the claimants in our inquiry have pointed out, was the fast pace of the process

at a number of hearings: many Taupōnuiātia subdivisions were decided in rapid succession, which caught some people unawares. Also likely to have been problematic were the complexities of the law, and the fact that provisions changed over time: what was permitted one year, in terms of running a case, may not have been permitted the next. That is, difficulties experienced by participants generally did not arise as a result of the court being a new phenomenon within the district, but rather from changes in the law governing the court's processes. As such, the difficulties faced by Māori of our inquiry district were doubtless much the same as those faced by Māori elsewhere. In this respect, we would draw attention to the conclusions of the Hauraki Tribunal which observed:

the 1873 Act was itself confusing, even to the Ministers and officials administering it. . . . There is a huge weight of evidence, from official inquiries such as the 1891 commission and from senior public figures (including judges) that by the late 1880s it [the code for dealing with land] was scarcely intelligible even to legal specialists.¹⁸⁹

Our discussion now turns to whether the court and its processes were fair and effective.

5.5.3 Title investigations and Crown Treaty obligations

In this section, we will look at the court in action in the district. Did the way that the court operated, under the Crown's legislative provisions, uphold the terms and principles of the Treaty? We begin by considering what notification was given of hearings, whether hearing clashes affected those wishing to attend, and what action was taken to make sure that the boundaries of the land being investigated were clearly understood. We then look at the court's processes and examine what happened at individual hearings, including what opportunities there were for protest and appeal. We end the section with some consideration of the judges' conduct and competence and the role of assessors, a discussion of out-of-court arrangements, and some investigation into the conduct of Crown agents.

(1) Notice of hearings

A significant issue during our inquiry was whether ngā iwi o te kāhui maunga were given adequate opportunity to attend court hearings. An important aspect of this was whether they were given proper notification.

The provisions of the Native Land Act 1873 signal a recognition that Māori awareness of court hearings about land in which they had an interest was an essential precondition of the title process. One might add that such an awareness might anyway be expected under the principles of natural justice. Under the terms of the Act, the court needed to be satisfied, before hearings could proceed, that the Māori applicants had informed everyone they believed to have an interest in the land, including all the members of any hapū or tribe mentioned in the application. Court officials appear to have deemed the requirement impractical and unnecessary and it was in fact rarely enforced. It was to be abandoned in the 1880 legislation.¹⁹⁰

The Native Land Court Act 1880, which guided most if not all hearings in our district,¹⁹¹ diminished and left vague the legal standards of notification. The chief judge was simply required to notify interested parties 'in such manner as appears to him best calculated to give proper publicity to the same', and this provision was left in place by the 1886 Act. In practice, the details were left largely to court officials to carry out, under a set of written guidelines. As outlined by the court's 1880 code of practice, the main form of communicating hearing details were notices published in both the English-language *New Zealand Gazette* and the Māori-language *Kahiti*. However, court officers were also to distribute gazette notices to the Native assessors, to named and known claimants, counterclaimants, and objectors, and to other persons 'as the Chief Judge shall think necessary'. In cases of subdivision, notification could be by simple announcement in the courtroom if the subdivision was regarded as a continuation of the initial title investigation – the assumption being that all interested parties were already in court.¹⁹² We will come back to this matter shortly.

There seems to have been no legislation or court rule, however, about how far in advance court hearings were to

be notified. The 1873 Act simply made reference to hearings being notified ‘as soon as may be’ after receipt of the application and completion of the survey and, as mentioned above, the only stipulation in the 1880 and 1886 Acts was to give ‘proper publicity’ to any upcoming hearings.¹⁹³ The 1880 ‘General Rules of the Native Land Court’ specified no particular time period other than that notices were to be ‘distributed and published . . . as quickly as possible.’¹⁹⁴ *Gazette* notices for the Rangataua, Rangipō–Waiū, and Waiakake blocks were published approximately two weeks before the investigations were scheduled to begin.¹⁹⁵ Just over four weeks’ notice was given for the Waimarino title investigations, and slightly longer – around six weeks – for the Taupōnuiātia title investigations (the latter period of notice including Christmas, however).¹⁹⁶

The claimants in our inquiry argued that this was inadequate. Particular mention was made of the long and difficult trips faced by Ngāti Waewae and other hapū based near Marton, for instance, if they were to protect their interests at the Taupō court.¹⁹⁷ They noted that Ngāti Waewae leader Wīneti Paranihi had unsuccessfully demanded a rehearing on the grounds of insufficient notice. He had arrived late to the Taupōnuiātia hearings to find that the crucial title investigations were already finished and the block was in the process of subdivision.¹⁹⁸ Ngā Uri o Tamakana likewise argued that notice was inadequate for many Whanganui Māori, and contributed to their absence from the Taupō-nui-a-Tia hearings and their under-representation at the Waimarino hearings.¹⁹⁹

Although the Crown maintained during our inquiry that the notification system by and large worked well, Dr Pickens acknowledged in cross-examination that some interested groups would have been unable to attend hearings. The Tribunal questioned whether, where large numbers of people were likely to be involved, notice of one month was sufficient ‘to get the message to everybody, to mobilise, to get the food sources needed that are required to take you to a Court sitting and be there on time’. Dr Pickens’ response conceded that it would probably not be sufficient for those living some distance away as in the case of Ngāti Waewae at Te Reureu, where he said, ‘they

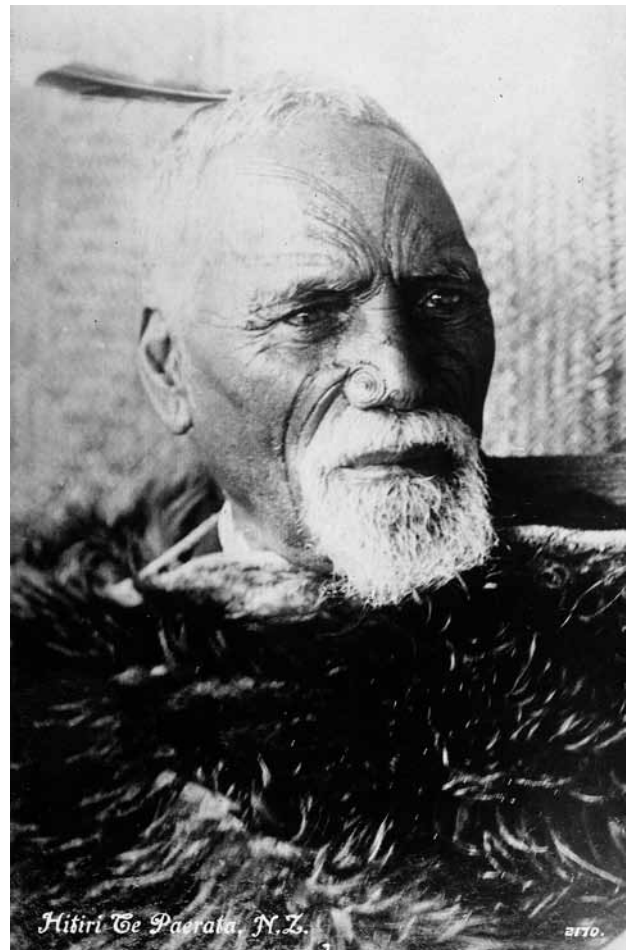
would have had to start out quite promptly’ in order to make it to the start of the hearing.²⁰⁰ We note from the evidence that in the case of Urewera block (much smaller than the huge Taupōnuiātia and Waimarino blocks, and likely, therefore, to involve far fewer interested parties), even the native land purchase officer, William Butler, was moved to observe that if there was to be a subdivision hearing: ‘Most of the owners live some distance away and two or three weeks notice would be necessary to give them an opportunity of attending Court.’²⁰¹

Notification of the commencement of Taupōnuiātia subdivision hearings, in particular, appears to have been problematic since, as permitted under the court’s code of practice, the information was merely communicated orally in the courtroom at the end of the Taupōnuiātia title investigation – although we note that some Ngāti Kahungunu claimants appear to have been told informally, as early as 15 January, of likely subdivision hearings.²⁰² The formal announcement that the case would proceed to subdivision was made in court on 22 January 1886 and the hearings began just 10 days later.²⁰³ A number of affected Māori, when they later found out about the hearings, thought that this was insufficient notification and complained. Tōpia Tūroa, Paiaka Te Paponga, and other Whanganui Māori, included the failure to inform them of the subdivision hearings among a range of complaints about court and the ‘murderous’ work it was carrying out ‘on the part of the government.’²⁰⁴ Hitiri Te Paerata (primarily of Ngāti Raukawa) and Ngāti Maniapoto leader Taonui Hikaka argued that under the Native Land Court Act 1880, the request to subdivide Taupōnuiātia was an application in its own right that was required to be separately gazetted, with notice distributed to interested persons. Their argument was rejected in a number of different forums, essentially on the grounds that the court was entitled under the legislation to treat an application for subdivision as part of the original title investigation, and not a new hearing requiring separate notification.²⁰⁵

Then there was the problem of insufficient information being given, in the notice, as to the timing of any particular case. As Chief Judge MacDonald observed, early in his

tenure, it had been the practice of the court to accumulate business ‘the entire mass of which it has been the custom to *Gazette* for the same Court for the first day of its sitting’. The result had been, he said, ‘that the Natives congregated at the opening of the Court have to remain weeks or months even without a chance of their business being earlier reached’. In Cambridge, for instance, an accumulation of seven years’ claims had all been gazetted at once. He proposed that, in future, it should become the practice to gazette ‘only such amount of business as may be transacted in a reasonable time.’²⁰⁶ Even with this improvement in place, however, the actual timing of any particular case would still have been difficult for Māori to gauge. As Cathy Marr points out in relation to a notice about the Waimarino hearing, the date advertised would still be the date when the court was due to open and there was generally no certainty about when any particular case would be brought on: ‘Those interested just had to attend until the case came up.’²⁰⁷

There were other deficiencies, too, in the amount of information given. One owner with interests in a Taupō-nuiātia subdivision complained that hardly anyone was at a 1887 sitting when lists of owners for the block were to be put in, ‘because it was [understood to be] a court for succession claims, so we stayed away.’²⁰⁸ In another example, Te Moana Pāpaku was not aware that Maruia, his ‘special part’ of Pūkawa was to be investigated. Yes, whanaunga had received pānui for the Taupōnuiātia sitting, he said, ‘but not Maruia, my special part’. When he afterwards complained that he had missed the sitting (and that furthermore the land had since been sold), Chief Judge MacDonald was unsympathetic: he responded that the hearing had been notified ‘according to law’ and he would therefore assume ‘that the natives had had proper notice, and were aware of the sitting.’²⁰⁹ Even Matuaahu Te Wharerangi, who as a prominent Ngāti Tūwharetoa leader would surely have known that the Taupōnuiātia subdivision hearings were being held, could be caught unawares: he and others of Ngāti Kahukurapango (to whom he also had links) complained that they had not been informed about the Ōkahukura hearing which they had, as a consequence, missed.²¹⁰ A rough timetable of hearings does



Hitiri Te Paerata. Along with Taonui Hikaka, Paerata argued that the request for subdividing the Taupōnuiātia block should be regarded as a separate case from the title investigation, with a separate *Gazette* notice, and that all those interested should be informed and given sufficient notice to attend.

appear to have existed, but it was evidently subject to change at short notice: the hearing of one subdivision might be adjourned, for instance, and another brought on instead.²¹¹

Furthermore, the Taupōnuiātia subdivision process moved very swiftly: with the use of out-of-court

arrangements (which we shall discuss later), a subdivision could be heard and ordered in the space of very little time indeed. It was thus easy for an interested owner to be absent at the crucial moment. Te Keepa Puataata, for instance, had been at the hearings but decided to absent himself while Pouakani was being heard as he had no interests to defend in that particular block. Unfortunately, however, Waihi then came on for hearing unexpectedly and by the time Puataata got back to court, he found that the block had already been awarded without reference to him and his people.²¹² We also note the case of Wīneti Paranihi of Ngāti Waewae. Paranihi, as we saw earlier, had already missed the main Taupōnuiātia title investigation. When he appeared before the court on 5 March 1886, during a break in the Taupōnuiātia West case, and tried to submit additional names for the Ōkahukura block, which he had likewise missed, he was told that the list has already been passed and ‘if he was not here to look after his own interests, it was his own fault’. Fortunately he was, in the end, able to get the names added, but only through out-of-court discussion.²¹³

Problems around notification were further exacerbated by the situation regarding the pre-existing 108 applications filed by many different groups and individuals claiming rights to various parts of the area covered wholly or partly by the Taupōnuiātia block. In October 1885, a planned gazette announcement that these applications would be heard by the Taupō court was stalled through intervention by the government.²¹⁴ Many of these applicants were left in the dark about what would become of their claims, and there is no evidence that the court made any systematic attempt to inform them that the overarching Taupōnuiātia title investigations would be held instead.

Then, in late January 1886, it was announced in the *Kahiti* that the investigations into these 108 applications would take place after all, and would begin at Taupō on 26 February 1886.²¹⁵ However, there was no indication that the subdivision of Taupōnuiātia had already been scheduled to start – a matter of some importance, one would have thought, given the likely overlap of interests. In the event, the subdivision hearings did not begin until 1 February, but they were to move quickly. On 11 February

1886, Chief Judge MacDonald issued a poorly-worded ‘clarification’ which muddied the waters further. He stated, in effect, that the planned investigations from 26 February into the 108 separate applications were postponed for an indefinite time and would take place only after a gazette notice had been issued informing local Māori of the relevant details.²¹⁶ MacDonald’s message again gave Māori no inkling that the court had already begun subdividing Taupōnuiātia, and was shortly to adjudicate on rights to Ōkahukura, Rangipō North, and other areas. Rather, some local Māori interested in these lands concluded from the chief judge’s notice that they had no need to attend the Taupō court and that they would be informed in due course if relevant hearings were planned. For instance, two years later the (by then) ex-judge Brookfield stated that claimants in the Rangipō block had been ‘misled by the second notice’ and ‘thought they would have ample opportunity when divisions were re-gazetted’.²¹⁷ Similarly, Hiraka Te Ranga later petitioned the government that his people had been misled by the confusing *Kahiti* notices and were consequently absent when rights to subdivisions involving Tongariro, Rotoaira, and other parts of Taupōnuiātia were being decided.²¹⁸

Clearly, with blocks as big as Taupōnuiātia it is not realistic to expect that every potential right-holder would receive, directly and individually, official notification of hearings – or at least not for the initial title determination which had the potential to be of interest to many hundreds, if not thousands. However, under the Crown’s obligations of *kāwanatanga*, it had a duty of good faith and reasonableness. In our view, it is not unrealistic to expect that the Crown would ensure a notification system where there was a genuine attempt to inform a wide spectrum of interested parties, communities, and leaders, giving a clear understanding of what lands were to be investigated and when, so that the news could percolate in timely fashion through the affected population. Nor does it seem unrealistic to expect that there might have been some monitoring, before hearings began, of the extent to which this aim had been achieved. In the case of the Taupōnuiātia subdivisions, in particular, the Crown seems to have fallen far short of these standards.

(2) *Hearing clashes*

Even supposing notice was sufficient, were hearings scheduled so that those interested had a reasonable opportunity to attend? Given the nature of customary tenure, it was not uncommon for Māori to have interests spread over a large geographical area. As we have seen, this was particularly so in the central plateau region where the climate and terrain were such that hapū tended to range over it for resource-gathering rather than confine themselves to small areas. The region was also one where the government had been able to establish few administrative centres where a court might sit. This combination of factors meant that local Māori might need to attend hearings in a number of different places, often distant from each other. Did the scheduling of hearings allow for such a situation?

The title investigations into the Taupōnuīātia block began on 14 January 1886 at Tapuaeharuru, Taupō. By 22 January 1886, the Taupō court had ruled which iwi and hapū held rights to Taupōnuīātia. It then began subdividing the block and granting the land to individual owners. The first stage of the subdivision process began on 1 February and continued until April 1886. During that time, partitions encompassing much of the National Park region, including the maunga, were created and title granted, and it is thus this stage that is of most relevance to our inquiry. Ōkahukura was awarded to a list of hapū on 3 February 1886. From the following day until 12 March 1886, it was further subdivided, with Tongariro 1 and Ruapehu 1 among the partitions created and title decided. Between 16 and 20 March, Rangipō North was subdivided and title orders made, including for Tongariro 2 and Ruapehu 2.²¹⁹

Meanwhile, hearings at Upokongaro, five miles upriver from the town of Whanganui, had also begun – on exactly the same day as the opening of the initial Taupōnuīātia title investigation. Apart from occasional adjournments, the Taupō and Whanganui courts both continued in session throughout the first part of 1886, and indeed the Whanganui court sat virtually continuously from January to November of that year. However, the most crucial of the Whanganui cases, from the point of view of those in our inquiry district, was the title investigation of the huge

Waimarino block. This was a block which included a considerable part of Ruapehu maunga and shared a section of its boundary with Taupōnuīātia. The initial Waimarino hearing did not begin until 1 March and it finished on 16 March, when the interlocutory title order was issued.²²⁰

Even before either hearing opened, the Crown was warned of Māori anxiety about potential clashes. In late 1885, the ‘Principal Natives’ of Whanganui called for the Whanganui court not to open in the new year so that they could attend the Taupōnuīātia title determination first. Government officials mooted a potential compromise: the Whanganui court would still open as planned but initially consider only minor cases such as successions. This, it was suggested, would allow Te Keepa and other Whanganui leaders to go to Taupō and make their case regarding Taupōnuīātia and then return to the Whanganui court, without their interests being compromised. Whanganui Maori apparently agreed to identify a list of title investigations they wanted delayed.²²¹

In the event, court records suggest that only two Ngāti Hāua chiefs – Te Pikikōtuku and Ihimaera Tuao – played any part in the Taupō hearing (and then only at the very beginning), and it is not entirely clear that they were acting as mandated representatives of the Whanganui tribes as a whole. Whanganui is mentioned at only one point in the court minutes, early on, where Tuao’s tribal affiliation is given as Ngāti Hāua. For the rest, Whanganui is not referred to at all.²²² Certainly, some major chiefs who had long asserted rights to parts of Taupōnuīātia were absent from the Taupō hearings. In the case of Te Keepa, it seems he may have been ill, at least initially, although he is also known to have been an applicant in three of the blocks scheduled to be heard at some point in the Whanganui court. His daughter was also an applicant in five cases at Whanganui. Dr Pickens observes that the Whanganui court did not begin title investigations, per se, until 23 January, and then only of ‘very minor’ blocks; the first major block, Ōpatu, was not investigated until 27 January. It is possible, therefore, that Te Keepa could have got to Taupō and back in time. But could he be sure? In any case, as it turned out, the Taupō court did not adjourn after the Taupōnuīātia title determination but went on to

consider subdivisions, so he would still have been faced with a dilemma about which hearing should take priority. Te Keepa in fact stayed in Whanganui and appeared at the court there during February – which was at virtually the same time that the Ōkahukura and Rangipō North subdivisions (lands he asserted an interest in) were being adjudicated upon at Taupō.²²³ With the vital Waimarino investigations looming as well, it would seem that other Whanganui-based Māori made a similar decision not to make the long trip to Taupō.

In March 1886, Matuaahu Te Wharerangi and others protested on behalf of Ngāti Kahukurapango regarding

the great number of these courts [that] opened in the same month during this year. There is a court at Taupo, a court at Napier, and a court here at Whanganui. We are engaged with this court. Who is to attend the court at Napier? And at Taupo? And who at Whanganui? Inasmuch as we are all interested in these sessions of the court.²²⁴

Given some of the overlaps that had occurred, they requested a rehearing of Ōkahukura and Rangipō North. Te Keepa, too, called for a rehearing into Taupōnuiātia lands, stating:

We the Whanganui tribes together with all its hapus have ‘mana’ over the lands lying at the foot of these mountains but owing to the action of the Government in appointing two sittings of the Native Land Court in the same month made it impossible to attend as we had to attend the hearings at Waimarino at Wanganui at the same time.²²⁵

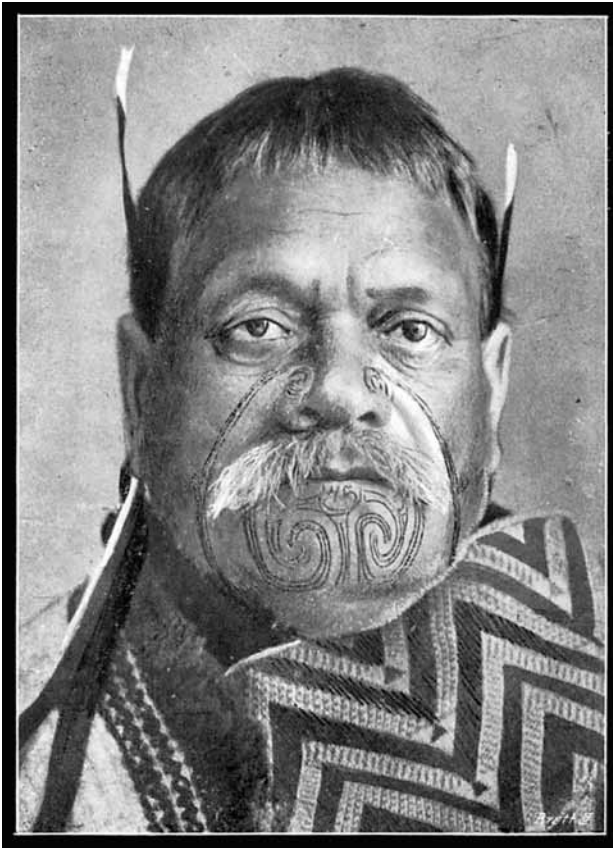
Chief Judge MacDonald rejected these and other applications principally on the basis that ignorance of, or inability to attend, a particular hearing were not sufficient grounds for rehearing. In the case of Te Keepa’s request he asserted that ‘the interest of the Wanganui natives were amply represented; and had they not been, the absence of persons from the Taupo sitting, which opened on the 14th of January [1886], could not have been caused by a sitting which did not open until the 22nd of the month following.’²²⁶ As we have noted, however, there is no evidence

of a substantial Whanganui presence at the Taupōnuiātia title determination. Rather, Whanganui Māori had lodged many complaints about unavoidable absence from the hearings. Likewise, the fact that the initial Waimarino and Taupōnuiātia title investigations took place a month apart did not mean there were not other interests that Māori might wish to defend in the respective courts, given that other, earlier, cases were set to be heard in Whanganui and that the Taupō court went on to consider subdivisions.

Tribes to the east of our inquiry district also expressed difficulties with the scheduling of hearings. In mid January 1886, Ngāti Kahungunu and others called for their claims in Taupōnuiātia to be heard at Napier, a more convenient location for them. The request was refused. They then attempted to delay the Taupōnuiātia hearings, having no kaiwhakahaere present who could conduct their case. When they failed to secure a sufficiently long adjournment, the few Ngāti Kahungunu chiefs present withdrew from the title investigation, having been informed that they would anyway be able to pursue their claims at a later date when Taupōnuiātia was subdivided.²²⁷ It seems they then became involved in a court hearing in Hastings. In February 1886, while the Hastings hearing was in full swing, they learned that the Taupōnuiātia subdivisions were happening sooner than they expected. Clearly annoyed at having been caught unawares, they complained to Chief Judge MacDonald that ‘they could not be in two places at the same time.’²²⁸

In the case of Hitiri Te Paerata (Ngāti Raukawa) and Taonui Hikaka (Ngāti Maniapoto), it was a not another court sitting but a hearing at the resident magistrate’s court in Cambridge that kept them away from the opening of the Taupōnuiātia hearing. Learning that they had been subpoenaed to appear in Cambridge, they tried to get the Taupōnuiātia hearing delayed. Being unsuccessful, they arrived in Taupō too late either to lodge an objection to the hearings or to then effectively make their people’s case for inclusion in the block.²²⁹

During closing submissions, the Crown acknowledged that hearing clashes did at times affect National Park Māori.²³⁰ It however qualified this concession by saying that such clashes were not deliberately designed.



Taonui Hikaka, Ngāti Maniapoto leader. Taonui Hikaka, along with Hitiri Te Paerata, was a victim of hearing clashes. He could not be present at the opening of the Taupōnuīātia hearing because he was required by law to be in Cambridge at the same time.

Furthermore, overlapping hearings could be difficult to avoid given the uncertainty of how long a case may take, and the difficulty of communication between courts, not all of which had access to telegraph communications. Clearly there were times when problems would arise as a result of what the *Bay of Plenty Times* termed one court ‘tripping up the heels of the other.’²³¹ On at least some occasions, it may also have been hard to know in advance which groups may wish to attend a particular sitting. Dr Pickens pointed out that the government and the court

did sometimes take corrective steps when made aware of scheduling problems: in 1881, for instance, the investigation of Rangipō–Waiū at Tapuaeharuru (Taupō) was adjourned on three occasions in response to requests from Māori involved in land court hearings at Cambridge – a positive outcome that had been facilitated by the existence of a telegraph in both centres.²³²

The Crown is understating the true position. The fact of the matter is that overlaps between major hearings took place. It was clear from the statement of Matuaahu Te Wharurangi that in all probability Māori would not have been able to attend overlapping hearings between Taupō, Napier, and Whanganui in the 1880s. As we have mentioned earlier, there were no court sittings in our inquiry district for ease of attendance for those resident within or close to our inquiry district. From the Crown’s perspective, hearings could be no closer than a venue which had a telegraph line. Should a land adjudication system for which the Crown was ultimately responsible (and which was at least as much for its own benefit as for that of Māori) have allowed overlaps between major hearings, especially once these had been flagged as problematic by prominent chiefs of the areas affected? It was in our view entirely predictable that many Māori interested in Taupōnuīātia would wish to assert rights in the adjoining Waimarino block and to other Whanganui lands, and vice versa, especially given the way the two blocks converged on a maunga of great significance to many people of the area. Notices of applications from Whanganui Māori had begun appearing in the *Gazette* from as early as 1881, for example, in relation to Ōkahukura and other areas that would eventually come up for hearing as part of the Taupōnuīātia subdivision process.²³³ There can thus be no excuse for the Crown and the court not being aware of such interests and we are not convinced that the Crown did all it could to monitor what was happening and ensure that there was no ‘real clash’ between the Waimarino hearing and the Taupōnuīātia subdivision hearings.²³⁴ Certainly, the Whanganui court made some attempt at accommodation in that it offered to hear succession cases and the like first, so as to slightly delay the hearing of some blocks, which might have permitted attendance at the Taupō

court for the initial Taupōnuiātia title determination at least. However, given the distances involved, and the less-than-positive views of many Whanganui Māori about the Land Court, it is not clear how realistic even that idea was. It does not seem unreasonable to assume that Whanganui Māori would see their Whanganui lands as their core priority. It would thus take a great deal of trust in the court and its processes for them to leave the area when a sitting was about to commence, and head off on the long journey to Taupō to attend the Taupōnuiātia title determination – especially not knowing in advance how long the latter would take. On the basis of the evidence presented, it would appear that many felt this was not a viable proposition. Furthermore, it did not solve the problem of the clash with the ensuing Taupōnuiātia subdivision hearings.

We have already found that ngā iwi o te kāhui maunga largely opposed the introduction of the court. It was, rather, the Crown that was keen for the court to be introduced so to bring as much of the area as possible under its title system, in order to facilitate the ‘opening up’ of the district to outside ownership, whether by the Crown or private individuals. As Thomas William Lewis, then head of the Native Department and of the Native Land Purchasing Department, testified to the Rees Commission of Inquiry into the native land laws in 1891:

the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the Court serves no good purpose, and the Natives would be better without it, as, in my opinion, fairer Native occupation would be had under the Maoris’ own customs and usages without any intervention whatever from outside. Therefore, in speaking of the Native Land Court, this test to it must, I consider, be applied – viz, that there should be a final and definite ascertainment of the Native title in such a way as to enable either the Government or private individuals to purchase Native land.²³⁵

In the circumstances, we believe it was incumbent on the Crown to ensure that the court’s processes were as fair as possible to Māori. To have fewer overlapping hearings might have slowed the overall court schedule but, on the

whole, it seems to us that the wish for haste was rather on the Crown side than that of Māori. Not only should all practicable steps have been taken to avoid overlaps between major hearings such as those discussed above, but in cases where long distances were involved there ideally needed to be a reasonable time-lapse between the finish of one hearing and the start of another.

To summarise, evidence relating to courts other than Taupō and Whanganui is sparse for our inquiry, but there appears to have been at least one clash between the Taupō and Napier courts that was unresolved. On the other hand, a delayed start in Taupō was permitted on another occasion, where there was a clash between that court and the one in Cambridge. Of major concern to us, however, is the overlap between the courts in Whanganui and Taupō, which meant that few if any Māori from either of those areas were able to play a major role in the sittings of both courts which, to our mind, calls into question the fairness and integrity of the process for awarding title to the land within our inquiry district. It was and is a sparsely inhabited area. Most Whanganui Māori lived to the west of our district; most Ngāti Tūwharetoa lived to the north of it. It would not be unreasonable for them to regard those respective areas as first priority in terms of securing title – hence Ngāti Tūwharetoa’s focus on the Taupō court and the Whanganui people’s on Whanganui. But we have noted, too, the great cultural significance of the land within our boundary, not only to those two major groups but also to others. Home of the majestic and symbolic kāhui maunga, it was also an important place of resource-gathering and communication for the surrounding tribes. No group should have been prejudiced by being unable to attend court and defend those interests.

(3) *Mapping and boundaries*

When parties came before the court for title investigations and subdivision hearings, was it always clear exactly what land was being investigated? Various provisions were introduced relating to mapping and the definition of boundaries, but these changed over time. The legislative requirements affecting the hearings in our inquiry district thus differed, depending on when they were held.

As the Crown has acknowledged, the Native Land Court Act 1873 stipulated that a proper survey map needed to be prepared and approved prior to any court hearing of a case to determine ownership of land. Section 23 of the Act specified that the survey had to be properly authorised and that the boundaries of the land block being investigated were to be ‘distinctly marked out’. Moreover, a marginal note beside section 33 firmly stated: ‘Surveys imperative in every case’. However, when Henry Dillon Bell (son of Francis Dillon Bell) appeared before a Native Affairs Committee inquiry in 1886, he said the requirement had been found ‘utterly unworkable’ and that Judge Rogan, for one, had not always complied with it. That said, however, even where a case had proceeded without a proper plan, no final certificate would have been issued until a full survey had been carried out.²³⁶

In 1880, the requirement for a survey before hearing was dispensed with. Indeed, the Native Land Court Act 1880 demanded only that the application include ‘a description of the land by name or otherwise, sufficient to identify it’ and that ‘if a plan has been made’ (emphasis added), the application should include mention of it. However, the Act did insist on a statement in the application that ‘the boundaries have been clearly marked out on the ground by stakes or otherwise.’²³⁷ Furthermore, before proceeding with the case, the court needed to assure itself, under section 22, that the boundaries of the block had indeed been physically marked out as stated in the application and that, if a plan had been deposited, it was correct and ‘the rules in respect of surveys have been complied with’. Lastly, a final certificate of title could be issued only after an approved survey plan had been prepared, and opportunity given for public inspection of the plan and for objections to be heard by the court.²³⁸ Until then, court orders both on title investigations and on subdivisions were interim only.

In December 1880, the General Rules of the court were published in the *Gazette*. A section on surveying included the following instructions:

All boundary lines must be distinctly marked on the ground, and when in forest, high scrub, or fern they must be

cut and cleared four feet wide. All angles of boundaries to be marked with pegs of approved hardwood . . . All larger trees standing near the lines to be blazed, and trees near corner pegs must be conspicuously marked . . .²³⁹

Further legislative changes were introduced in 1883. Under section 17 of the Native Land Laws Amendment Act passed that year, there was no longer a requirement to state in the application that the boundaries had been marked out on the ground. Nor did the application have to confirm that where a sketch plan had been made, it had been deposited with the court. In terms of identifying the boundaries, the only 1880 requirement to remain was for the application to contain a sufficient ‘description of the land by name or otherwise’. At the hearing, however, the court was still to satisfy itself that ‘the boundaries of the land have been marked out’ (the implication being that this was on the ground, although there is perhaps a degree of ambiguity on the point) and that if a plan had been deposited, it was correct. Furthermore, as before, the certificate of title could be finalised only after a proper survey had been carried out and an opportunity provided for public inspection of the plan, with opportunity given for objections to be heard.

In 1886, the situation changed yet again with the passage of another Native Land Court Act. Under sections 18 and 79 of that Act, before any title investigation could proceed, the court had to be satisfied that it had before it a certified map of the land in question, approved by the surveyor general or ‘some officer authorized by him’. The marginal note beside section 18 summarised the situation as: ‘No investigation without certified map’. However, matters were not quite so simple: section 18 also went on to say that, if such a map were not produced, the Governor could nonetheless request that the investigation proceed on the basis of any sketch map which the court might consider sufficient.

(a) *Waiakake*: In 1881, the *Gazette* notice advertising the Waiakake hearing described the block as being ‘bounded on the West by the Mangaehuehu up to Ruapehu; on the East by the Waiakaki [*sic*] Stream to its junction

with the Mangaehuehu on the South; and on the North by Ruapehu.²⁴⁰ Claimant counsel has suggested that this was not sufficiently precise, and that particularly on the northern side of the block, it left unclear what land was to be investigated.²⁴¹ We are inclined to agree. The word ‘Ruapehu’ must have been intended to mean the mountain, but what point on the mountain? In the first phrase, for instance, the description refers to ‘the Mangaehuehu up to Ruapehu’, but rivers do not rise on the very top of mountains so what point is being referred to? Is it perhaps the source of the Mangaehuehu, high on the mountain’s southern flank? Or should one project an imaginary line between the stream’s source and the mountain’s peak? And if the latter interpretation, which peak? The name ‘Ruapehu’ itself means ‘two peaks’ and the maunga also has other lesser peaks. Certainly the higher of the two main peaks is towards the south, but other distinctive high points stand between it and the stream’s source.²⁴² The existence of more than one peak also renders ambiguous the description of the block as being bounded ‘on the north by Ruapehu.’

During the hearing, the court relied on a sketch map by one Gregor McGregor. Years later, McGregor was to recall having drawn the map, and also that he had produced another map of the large Raketapauma block (outside our inquiry boundary). In the case of the latter, he commented that it had taken him ‘some time to traverse the block to obtain the natural features to make it plain for investigation.’²⁴³ It is a comment that suggests he took his work seriously. However, we cannot be sure that he would have been able to be similarly thorough in the case of the Waiakake block, simply because of the rugged nature of the terrain (particularly on the slopes of the maunga). Indeed, James Park, who was to scale Ruapehu for surveying purposes in January 1886, left a vivid account of the great difficulties of the task.²⁴⁴ Certainly, some counterclaimants at the Waiakake hearing protested that McGregor’s sketch map was inaccurate, and one said he thought that Weronika Waiata, the applicant, had merely ascertained the boundaries by walking the road that traversed the block. ‘How did Weronika get the sketch plan made?’ He added, ‘I suppose she was looking out for

money.’ This comment implies that he thought that she had been induced to bring the block to court and needed a sketch map to do so.²⁴⁵ There seems to be no mention in the court minutes about the boundary having been physically marked out on the ground, as would have been required under the 1880 legislation.²⁴⁶

But was the case carried out under the 1880 legislation? There seems to be no reason why it should not have been, since the hearings commenced in July 1881, well after the 1880 Act came into effect. Matters are complicated, though, by the fact that the 1880 Act did not entirely repeal the 1873 Act. Rather, it repealed only ‘so much of the “Native Land Court Act, 1873,” as is repugnant to [the new] Act.’²⁴⁷ Nevertheless even where the new law was not specific on any given matter, it is not unreasonable to suppose (as claimant counsel has pointed out) that Judge Brookfield, being an experienced lawyer, would have been perfectly capable of establishing which bits of the new Act were ‘repugnant to’ the earlier legislation and which were not. Whether the clerk of the court was similarly well placed is a moot point. Dr Pickens was of the view that references to sections of the two Acts had become garbled in the court minutes through clerical error and that the hearing had been carried out under the 1873 legislation.²⁴⁸ We are not convinced. There were indeed alterations to the minutes but the result is confused in terms of enabling a definitive decision about which legislation was intended to be referenced. In the end, however, the question is somewhat academic in the context of the present discussion in that, insofar as mapping is concerned, the Waiakake case did not meet the requirements of either piece of legislation: if the hearing was conducted under the 1873 Act, there should have been a proper survey, not just a sketch map; if it was conducted under the 1880 Act, a sketch map was acceptable but there should have been confirmation that the boundary had been physically marked out on the ground. Neither requirement was properly fulfilled.

Be that as it may, whatever the governing legislation, no final title should have been issued without a proper survey. In his testimony in 1886, Henry Dillon Bell was adamant that even where there was evidence of the 1873 rules not having been strictly adhered to, a memorial of

ownership would never have been issued until a proper plan had been received by the court.²⁴⁹ Certainly, in the case of Waiakake only an interlocutory order was issued in 1881 and the court said that a ‘proper and complete map’ would need to be provided.²⁵⁰ What happened after that is unclear, however. There is a *Gazette* reference to a memorial of ownership having been issued in August 1882, but evidence given in 1893, during a later case concerning the block, suggests that no such memorial had been issued and that in fact the survey had only recently been completed.²⁵¹ Despite this, the court had immediately proceeded, in 1881, to define the interests of the individual owners. The four main owners entered into negotiations to sell the land in 1884, a deal which was later given legal effect under the Validation of Titles Act 1892.²⁵²

(b) *Taupōnuīatia*: In the case of Taupōnuīatia, an application for investigation was submitted by Lawrence Grace on behalf of Horonuku Te Heuheu and others of Ngāti Tūwharetoa, and published in the *Kahiti* in December 1885. The application included errors in the stipulated boundaries, which were later corrected by a second *Gazette* notice. Henry Mitchell would later report to Ballance that the ‘boundary as gazetted . . . caused considerable surprise and consternation in what is known as the “King country” – and to the great Tribes whose land claims adjoin or were included therein’. A further source of potential confusion was that the application’s accompanying sketch map, drawn by Henry Mitchell, included large areas that the court had already adjudicated on. Mr Stirling suggests that it was intended by Te Heuheu as a broad indication of tribal interests rather than as an indication of the land that would be adjudicated during hearing. Nevertheless, the uncertainty prompted the chief judge to issue a clarification notice, stating that the Taupōnuīatia investigation would not affect land titles already issued.²⁵³

When the court opened in January 1886 to hear the Taupōnuīatia case, it did so under the 1883 legislation (the 1886 Act not coming into effect until October of that year). There was thus no longer a need for the boundary to have been physically marked out on the ground, nor even for the claimants to have produced a sketch map, as long as

the court was satisfied that those present knew what area was being discussed.

No sooner had the court opened than it adjourned, at Horonuku’s request, and did not fully resume for another two days. Subsequent records reveal that part of the reason for the adjournment was to give time for discussion about boundaries, in response to the ‘[l]etters and communications of a very urgent character’ that had been received by Te Heuheu from Ngāti Maniapoto and others about the extent of the area being claimed. In Mitchell’s later account to the Native Minister, he wrote:

A committee of 35 of the leading men of Ngati Tuwharetoa, including Te Heu Heu, was formed and many conferences with the representatives of the tribes mentioned ensued – resulting in the boundary as gazetted being altered so as to exclude considerable areas of land on the southern and western sides of the block . . .²⁵⁴

When the court resumed, Te Heuheu described the new boundary orally but also made reference to the sketch map, now amended, saying ‘I am claiming within the yellow line’.²⁵⁵ Two Ngāti Hāua chiefs, having inspected the boundary indicated, withdrew the objections they had earlier raised. It is not clear, from the evidence presented to us, that there was any further discussion about the boundary before the court gave its judgment on 22 January. Indeed, the court minutes recorded that the court had been ‘saved a great deal of trouble by the natives themselves having agreed upon the outside boundaries’.²⁵⁶ However, the Ngāti Maniapoto leader, Taonui Hikaka (who, as we noted earlier, had been detained by a court case in Cambridge) later pointed out that he had been able to play no part in either the original or the altered boundaries on the sketch map. In 1889, he, Wahanui, and others protested that they had therefore not been ‘wholly aware’ that land they claimed was included in the Taupōnuīatia block. It was only after the final judgment in September 1887 that they realised that the land ‘was gone from [them]’. They blamed the law and the court’s ‘manner of proceeding’ for their predicament.²⁵⁷

In fact, in early September 1887, the survey of the



A group of Māori at Tapuaeharuru, 1886. Some important court hearings were held at Tapuaeharuru at the northern end of Lake Taupō.

exterior boundary was still not finished. The Native Department under-secretary, Lewis, wrote to the assistant surveyor general urging haste in its completion and pointing out that ‘the orders of the court will be technically interlocutory only until this is done and [the] approved plan exhibited’.²⁵⁸

Despite this, by the time Lewis wrote, the subdivision process was already nearly complete and ownership of the 163 subdivisions of Taupōnuiātia, including the areas acquired by the Crown, virtually all decided upon. In giving its decision on 24 September, the court recorded:

Inasmuch as there has not during the proceeding been placed before the Court any sufficient plan of Taupōnuiatia, the Court has now to require a survey to be made and a sufficient plan and description to be deposited in Court, such surveys and plans will of course comprise each of the several parts into which, in our decision, Taupōnuiatia has been separately dealt with.²⁵⁹

As Dr Pickens has acknowledged, the lack of clear surveying information for the Taupōnuiātia subdivisions led to results that were ‘not always satisfactory’. Referring

particularly to Ketetahi and the other Ōkahukura subdivisions, he commented that when land was subdivided merely on the basis of sketch maps, the outcome could be ‘risky’.²⁶⁰

Indeed, the frequent lack of ‘any sufficient plan’ led to a long legacy of complaints. For instance, in addition to those of Taonui and Wahanui and others, already noted above, Ngāti Waewae and others petitioned in 1904 that the surveying of the Ōkahukura subdivisions included ‘very great discrepancies’ and boundaries located in the wrong places.²⁶¹ Even the assistant surveyor general complained, on 28 September 1887, that the title orders just issued would lead to significant alterations to the boundaries already surveyed.²⁶² Further, one of the three principal issues inquired into by a special Tauponuiatia Royal Commission, set up in 1889, was that of boundaries, notably the western boundary between the Taupōnuīatia block and the Rohe Pōtae. Its findings led to a reinvestigation of some areas along that section of boundary (but none within our inquiry district).²⁶³

Government surveyors had in fact begun trying to survey the exterior boundary in January 1886, soon after the initial hearing.²⁶⁴ The full range of surveying was not to be completed, however, until early 1891. The court then needed to make the survey plans available for public inspection and provide an opportunity for people to lodge objections, which had to be dealt with before title could be finally issued.²⁶⁵ The Native Land Court Act 1880 left it to the court to give notice ‘in such manner as it may think best adapted to attract the attention’ of interested parties that the plan was ready to be inspected – a provision unaffected by the 1883 amending legislation.²⁶⁶ On 12 March 1891, the *Kahiti* announced that Māori had 14 days to get to the Cambridge court to inspect the survey plan. However, the start-date given for the inspection period was 6 March – six days prior to the date of publication. By the time the message was circulated, the chance to view and protest against the survey had virtually expired, especially given the travelling distances involved for many of those affected. Clearly this was unacceptable, and following correspondence between the Native Department under-secretary and the Native Minister, the chief judge

was asked to intervene. He was able to conclude a more satisfactory arrangement whereby the survey plan would be available for inspection at both Taupō and Marton, for periods in June and July.²⁶⁷ Following these inspection sessions, the Taupōnuīatia plan was finally given formal approval by the court.²⁶⁸

Kingi Te Herekīkie and southern Taupō hapū, however, were still not satisfied with the boundaries and called for a new commission of inquiry to deal more particularly with the southern blocks. The Native Minister rejected the idea. They then lodged a petition, as did various others – all of these petitions mentioning boundary issues (among other matters). The Native Affairs Committee recommended that ‘the Government should institute inquiries into the whole question of the Taupōnuīatia Block’, but no new commission was established.²⁶⁹ Māori complaints over surveying issues, including of the subdivisions, would continue, but the ability to change any of the boundaries had long since been lost.

(c) *Waimarino*: From the evidence, it would seem that the initial Waimarino hearing was held under the 1880 Act as modified by the 1883 amending legislation. As we have seen, this meant that all that was required for a hearing to be granted was a ‘description of the land by name or otherwise’. Nevertheless, on the form making application for hearing, submitted in late 1885, the applicants had not crossed out the printed text about a boundary having been marked out on the ground. A verbal description of the intended boundary, added by hand, made reference to various named points and features, including Ruapehu. In counsel’s view, this description did not adequately alert local Māori to how much of the maunga was included in the application, and Judge O’Brien (one of the judges who heard the case) was later to record in his minute book that the boundary as gazetted should be ‘taken carefully’ as among other things it appeared to include ‘a lot of land on the east side . . . which belong [*sic*] to Ngāti Tuwharetoa’.²⁷⁰

Prior to the commencement of hearing, a sketch plan was prepared. Because time was limited and the block was large, the plan drew on information from surveys already being carried out for other purposes (such as general

triangulation and planning for the main trunk railway), supplemented by a certain amount of additional work. Indeed, Crown historian Keith Pickens describes the plan as having been ‘cobbled together from existing survey data’ with only a ‘very limited amount of new work being undertaken’. Particular areas of concern, in terms of the need for further information, included the north-eastern part of the block which falls within our inquiry district. According to claimant historian Cathy Marr, there seems to have been ‘little or no community participation’ in the work of drawing up the plan. Furthermore, local Māori had no chance of examining it before the title investigation began in March 1886.²⁷¹

It will be recalled that the 1883 legislation required the court, at hearing, to verify that the boundaries of the land had been marked out and that any sketch plan was correct. Given the huge size of the block, and what appears to have been a very limited timeframe for bringing the case to court, we agree with claimant counsel that it seems unlikely that the boundary would in fact have been marked out on the ground (despite the statement made in the application), especially to the standard indicated by the 1880 land court regulations. Certainly, none of the three sets of court minutes relevant to the case indicate any of the witnesses referring to pegs in the ground or lines having been cut, and the court appears not to have raised any questions about the matter. Furthermore, a later internal note to the assistant surveyor general comments: ‘The northern boundary of the Waimarino Block recently passed the Court *has to be defined on the ground*’ (emphasis added), which tends to confirm that no line had yet been marked out.²⁷² As to the sketch plan, we have already noted its rather ad hoc nature. From the evidence available, it seems the external boundary shown likely followed the one described in the application. Judge O’Brien’s later comment that the boundary should be ‘taken carefully’, and that certain parts should be ‘excepted’, suggests he was not convinced of its accuracy. When a title order was issued on 16 March, finalisation of the certificate of title was conditional on a proper survey being made.²⁷³ Some local communities who had opposed their lands being included in the title investigation believed that the

full survey would rectify matters. Their hopes were not to be fulfilled.²⁷⁴

Surveying began in April 1886. A number of surveyors were diverted to the task from other work, and the urgency of the survey’s completion was stressed. One surveyor was told that lines did not need to be cut on the ground unless absolutely necessary and insisted on by Māori.²⁷⁵ In the meantime, Crown negotiations to purchase much of Waimarino were already underway. From the evidence, the survey of Waimarino was finished in considerable haste, probably sometime in early February 1887. On 30 March 1887, the court sat to consider the Crown’s application to be awarded the majority of the block, including the entire area that falls within the boundary of our inquiry.²⁷⁶

(d) *Rangiwaewa*: From around 1879, Te Winiata Te Puhaki and Weronika Waiata had been attempting to have Rangiwaewa surveyed so as to be able to apply for title over it, but had been prevented by local opposition. Nonetheless, they entered into negotiations to sell the land to the Crown and in 1892 applied for a court hearing. Other Māori protested to the Crown, and warned that attempts to survey the land in support of the application would be met by force. Government officials replied, correctly but disingenuously, that no survey was planned.²⁷⁷ In fact, no survey was needed. Although the Native Land Court Act 1886 stipulated that there could be no title investigation without a certified survey, section 18 provided a loophole: the court was empowered, on the application of the Governor, to ‘investigate title to Native land upon any sketch map which it may consider sufficient’. In the Rangiwaewa case, the Crown applied for the requirement of survey to be waived, and in January 1893, the Rangiwaewa title investigation began. Subsequent protests about the court having relied only on a sketch map were rejected.²⁷⁸

(e) *Conclusions*: As we have seen, at least four title investigations relating to the National Park inquiry district took place on the basis of a sketch map only. Two of those investigations involved vast areas of land. Dr Pickens’ view is that such maps provided sufficient information for title

investigation, and he notes Henry Dillon Bell's 1886 argument that delaying a formal survey allowed disputes over boundaries to be settled during the course of hearings. Official surveys could then be carried out, without trouble, before the final certificate of title was awarded, and at the expense of the appropriate people, the title-holders.²⁷⁹

There is some merit in this view. After all, what was important is that those affected by the hearing should understand exactly what land was being adjudicated upon. If that information could be conveyed by use of a sketch map, we see no problem. Indeed, Bruce Stirling makes the point that boundaries had been traditionally described with words, not by visual representations, and Cathy Marr comments that in the nineteenth century not all Māori were familiar with maps. Her point would seem to be borne out by Scannell's observation that, at the Taupōnuīatia hearing, he could not be entirely certain that Taonui had understood the map put before him.²⁸⁰ In the context of a land court hearing, however, accuracy of understanding was important. When boundaries were to be hard and permanent, failing to correctly locate particular features around a block's perimeter could result in inadvertent and permanent exclusion from the area encompassed.

There were several ways boundaries could be identified. The main ones that come to mind are: verbal descriptions (either written or oral); sketch maps; 'walking the bounds'; marking out on the ground; and formal survey. Each had its advantages and disadvantages. Verbal descriptions had the advantage of following traditional practice and, assuming the presence of someone with the requisite knowledge, were simple to provide. However, as we have seen with Waiakake and the name 'Ruapehu', they could be ambiguous unless everyone shared the same understandings about what point was signified. Such ambiguity was again evident in the case of Taupōnuīatia, where Horonuku Te Heuheu's description of the boundary running 'along the eastern slope of Tuhua range' was interpreted by the surveyor as meaning that it passed through the peak of Tuhua.²⁸¹ Clarity of understanding was not helped by a tendency of surveyors to appropriate Māori names and apply them to some other feature than

the one originally intended – a problem which could also bedevil sketch maps. Ms Marr comments, for instance, that surveyors often gave trig stations Māori names taken from some nearby (or even not so nearby) feature, which could lead to confused understandings.²⁸² Similarly, Daniel Paranihi, of Ngāti Waewae, told us in evidence that the name 'Mahuia', applied by the land court to part of the Ōkahukura block, had originally been used only to mean the river; the land itself was properly part of Ōkahukura. As to the name 'Rangipō', by some accounts it had traditionally been used to designate an area stretching right up to Lake Rotoaira but that usage was not reflected in the block names applied by the land court.²⁸³ Sketch maps could also simply be inaccurate. When a name such as 'Petania' was put in the wrong place on a map, it was likely to give a very confused impression of what land was being adjudicated.²⁸⁴

Then, there is the point that sketch maps were often produced at the Crown's request or to support the case made by the applicants. At the hearing of Waiakake, for example, it seems the sketch map had been produced with input from Weronika Waiata, the applicant, whereas the counterclaimants saw it for the first time only when they entered the court and only then had a chance to dispute its accuracy. Of course, as Dillon Bell pointed out in 1886, that was partly the point: '[t]he boundary was often the very thing in dispute' and using a sketch plan could help to tease out difficulties before the full survey was carried out.²⁸⁵ Nevertheless, it seems to us that basing a sketch plan on information from only one group could not help but give the perception of privileging that group's version, placing those that disputed its accuracy into the position of mere 'objectors' or 'counterclaimants' – much as the very act of one group bringing a claim tended to advantage that group and put others 'on the back foot'.

We have little evidence of interested parties walking proposed boundaries used by the court. Rather, the only time boundaries seem to have been walked in colonial New Zealand was when a sketch map was being prepared, a survey carried out, or a boundary about to be marked out. On such occasions the mapper or surveyor would often seek out one or more local Māori to accompany

him and point out salient features. It was not, however, a public process where boundaries could be discussed and debated. Furthermore, those willing to act as guides tended to be those in favour of the work being undertaken: those who opposed the court process in general, or who opposed a particular application, were not likely to want to assist. Indeed, where there was likely to be opposition to the work, there is evidence that it was not publicised – meaning that many of those potentially interested in the land may not have known it was happening²⁸⁶

This brings us to the idea of physically marking the boundaries on the ground, preferably well in advance of hearing. It is a practice that would have sat well with the traditional idea of pou whenua or marker posts. It would have provided clear information about the proposed boundaries of the block to be investigated and would have also, as acknowledged by Dr Pickens, served the dual purpose of helping to alert local Māori to the likelihood

of an imminent court hearing. Crown officials clearly understood that such publicity could be a disadvantage in some instances; when the boundary was being decided between Waihaha and Maraeroa, in Taupōnuīatia West (just outside our inquiry district), assistant surveyor general Stephenson Percy Smith commented that a particular section had ‘not been marked on the ground and it is quite probable the Maori may object to the line when they see it on the ground.’²⁸⁷ Other disadvantages of physically marking out a boundary were that it was time-consuming and expensive (especially for larger blocks). For these reasons, even when it was a legal requirement under the 1880 Act, corners were sometimes cut and the requirement was either ignored or it was only partially observed. In our inquiry district, Waiakake seems to have been a case in point.

Full surveys were clearly the most thorough method of illustrating a boundary in that they involved both work

Stephenson Percy Smith

1840–1922

Stephenson Percy Smith travelled to New Zealand with his family when he was nine years old. Following a cadetship with the Survey Department, he became assistant-surveyor in Taranaki in 1857. As well as his surveying expeditions, he went on his own excursions, which included an 1858 journey with Julius Haast and Ferdinand Hochstetter from Taranaki to Taupō, through Tongariro–Ruapehu, and on to Whanganui. In 1859, Smith moved to Auckland to join the Native Land Purchase Office as a surveyor, and in 1863, he married Mary Ann Crompton. Two years later, he was appointed district surveyor at Taranaki.

In 1868, Smith was conducting the triangulation and subdivision of the Chatham Islands at the same time that Te Kooti and the whakarau successfully escaped. In the 1870s, Smith was transferred back to Auckland to work on a major triangulation of Auckland and the Hawke's Bay. Smith

became chief surveyor of the Auckland district, before being appointed assistant surveyor-general in 1882. He continued to travel around New Zealand as well as the Pacific Islands. In 1899, he was appointed surveyor-general and secretary for Crown lands and mines. The following year, he retired.

Throughout his life, Smith collected considerable information on Māori traditional history and culture, and after he retired, he published many articles, books, and monographs, and was acknowledged as a Polynesian scholar. With Edward Tregear, he founded the Polynesian Society, with the aim of documenting Māori traditional culture before the ‘dying race’ disappeared.

Today, several of Smith's ideas – such as those regarding Māori origins – are discredited. However, his works are generally considered valuable reflections on nineteenth-century Māori and Pākehā culture.¹

on the ground and a subsequent visual rendition of the information gathered. If carried out in advance of hearing, they usually attracted the awareness of at least some local communities. However, like the physical marking of boundaries, they were expensive – and much of that expense tended to fall on Māori as we shall discuss in the next chapter. They also took time to complete, thus acting as a potential brake on the court's process. Furthermore, even surveyors cut corners on occasions, as we saw in the case of Waimarino.

We realise that no method was likely to perfectly serve the needs of both the Crown and local Māori (claimants and counterclaimants). Nevertheless, from a Treaty perspective, we believe it was incumbent on the Crown to ensure that whatever the method or methods chosen, there was ample opportunity for Māori participation and feedback since it was their land that was at stake. As we said before, what was important was that those affected should understand exactly what land was being adjudicated upon and should have the opportunity to comment (and to have their comments heard). From the evidence before us, not only was that not always the case, but in some instances the court did not even abide by the legislation set down for it by parliament. There is no evidence of any great Crown concern over this state of affairs – indeed, there is evidence of the government turning a blind eye, on occasions, when due process was not followed – and we are of the view that in such instances the Crown failed in its duty of active protection.

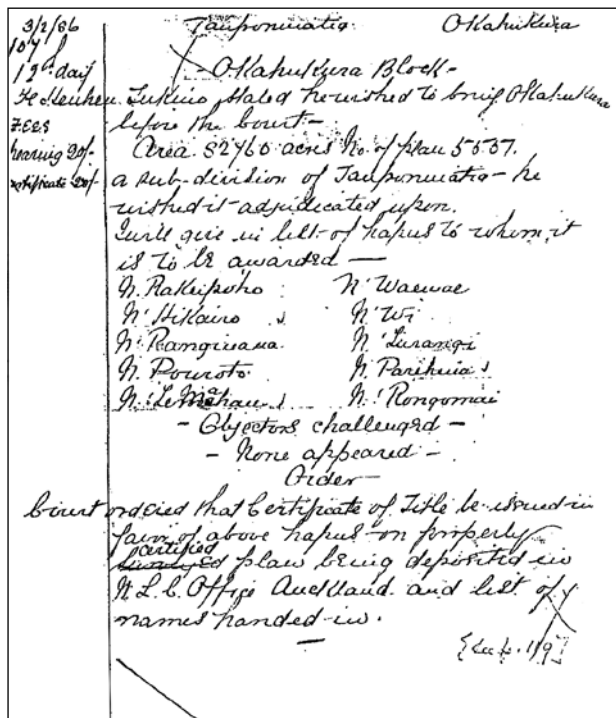
(4) Investigating customary rights and 'rubber stamping'

We now turn to a consideration of court processes for determining customary rights and assigning title, as used in our inquiry district. In particular, what provision was there, if any, to accommodate the interests of those not present at hearings, and where courts 'rubber-stamped' decisions made by Māori themselves, was this Treaty compliant?

(a) *Taupōnuiātia*: The cycle of *Taupōnuiātia* court hearings (including both initial title determination and then subdivision) began in January 1886 and did not finish

until September 1887. However, that period also included adjournments – notably from April 1886 to January 1887 (during which time, in June 1886, Mount Tarawera spectacularly erupted, bring devastation to some neighbouring tribes). Indeed, the *Taupōnuiātia* case had no sooner opened on 14 January 1886 than it was adjourned to allow for discussion among Māori outside of the court – discussion which appears to have resulted in two Ngāti Hāua chiefs, among others, withdrawing their objections to the case proceeding.²⁸⁸ By 22 January the court had approved Te Heuheu's recommendations and named the tupuna, iwi, and hapū for the entire parent block.²⁸⁹ We will come to the matter of out-of-court discussions shortly but, for the moment, we note that the legal ownership of this massive block was decided upon despite the almost complete absence of public investigation, in open court, into customary rights. Had there been such an investigation, of course, the two judges would have needed to rely heavily on their assessor and interpreter since neither judge spoke te reo Māori. As it was, apart from some minor discussions sparked by specific objections made by local Māori, the complex issue of who held traditional rights was missing from the court hearings. Indeed, the Crown has acknowledged that 'little evidence was heard by the court'.²⁹⁰

The splitting up of the *Taupōnuiātia* parent block into 163 subdivisions, and then into smaller parcels still, was likewise not based on an open inquiry into customary rights. Indeed, the court made most of its pivotal decisions regarding ownership of land within the huge block after hearings of only a few hours or even minutes. For example, on 3 February 1886, Horonuku Te Heuheu asked that title for the 82,760-acre Ōkahukura block be awarded to 10 named hapū. No objectors were present in the courtroom so it was ordered that a certificate of title would be issued once a list of individual owners was handed in and a certified survey plan presented. Ōkahukura was before the court for just a few minutes, and as Dr Pickens points out, the notes of the entire proceedings take up less than a page of the official minute book.²⁹¹ Also on 3 February, Te Heuheu asked the court to award the roughly 87,800-acre Rangipō North to nine hapū. The court agreed, pending



Native Land Court minute book entry for the Taupōnuīātia hearing, 3 February 1886. Sometimes certificates of title were issued speedily and with only a brief description in the minutes, as was the case in this Ōkahukura block of 82,760 acres.

a list of owners and a survey plan. Once again, the proceedings required no more than a few minutes of the court's time.²⁹² This enabled the court to make rapid progress in transmuting customary title into legally alienable tenure.²⁹³

The following day, before the list of owners for Ōkahukura was handed in, Te Keepa Puataata applied for the block to be subdivided into 10 portions and allocated to particular hapū. Provisional ownership lists for each subsection were quickly prepared and handed in. Apart from one group who complained of their exclusion, and were subsequently awarded areas of land, no objections were made in court, and no investigations of customary rights ensued.²⁹⁴

A similar story can be told regarding the other parts of Taupōnuīātia that are within our inquiry district. On 16 March, for example, Mita Taupopoki presented the court with a plan to subdivide the Rangipō North block into nine smaller blocks. The court asked whether the named hapū supported the scheme. Wineti Paranihi was the principal objector, on behalf of Ngāti Waewae. He appeared ready to present to the court the complaints of a number of hapū but then, for reasons that are unclear, withdrew his objections, and the subdivisions were quickly approved by the court. Lists of owners were handed in, and after a few revisions in response to Māori objections, were duly approved.²⁹⁵

During these hearings, the subdivisions incorporating the Tongariro, Ruapehu, and Ngāuruhoe mountains were also created and vested in the sole ownership of Horonuku Te Heuheu. The court heard no evidence regarding customary rights to these sacred maunga, nor to the Ketetahi Springs that became the legal property of seven individuals.²⁹⁶

The Crown told us that this lack of investigation was positive rather than problematic. It argued that the court, through accepting the recommendations put to it by Te Heuheu and others, allowed the hearings to be an exercise in Māori agency and decision-making.²⁹⁷ Ngāti Tūwharetoa leaders were allowed and indeed encouraged to help the court subdivide and individualise Taupōnuīātia.

In our view, it was certainly appropriate that the court work with Māori communities and leaders to help determine title. Out-of-court discussions among Māori – such as those that were critical to the initial Taupōnuīātia hearing – could, and indeed should, have been part of the inquiry into customary rights. However, no record was kept of such discussions and no account of them was required to be given in court. All we have in the case of Taupōnuīātia are random snippets of information. Henry Mitchell, for instance, told the Native Minister that the committee comprised '35 of the leading men of Ngāti Tuwharetoa, including Te Heuheu' and that, at the beginning of the hearing, it had held 'many conferences' with representatives of other tribes, resulting in an alteration to the southern and western boundaries of the block.²⁹⁸

William Grace, apparently referring to the same set of discussions, told the Taupouitiatia Royal Commission in 1889:

A general talk took place. The Maniapoto urged Te Heu Heu to withdraw the case so as to have a Rohe Potae for the whole of the people and allow Wahanui to finish his negotiations.

The Tuwharetoa would not agree. The Maniapoto then asked for the boundary to be moved so as to include only the Tuwharetoa lands. They said they would consider this request.

Then the Tuwharetoa met by themselves and appointed a committee to arrange matters. Te Heu Heu, Patena Kerehi, Keepa Puataata, Waka Tamaira, Te Roera Matenga, Papanui, Te Takiwa (until Hitiri should arrive), Hira Matini, Apera-hama Te Kume, were members.

The committee were busy discussing the alteration of the western boundary and the result was the yellow boundary . . .²⁹⁹

Hitiri Te Paerata, giving evidence to the Native Affairs Committee in 1888, recalled that the committee had included ‘Hare [Tauteka], Poihipi, Hohepa [Tamamutu], Ruruka, Te Huiatahi, Matuahu, Paurini, and Tamahiki’, but said it had met only twice.³⁰⁰ This suggests that he was referring to meetings that occurred only after the hearing was properly underway.

We still have no indication, though, of the real substance of the committee’s discussion. From these sparse records, it would seem that the focus was initially on the outer boundary (especially in the west), rather than customary rights in the block as a whole. The point to be made is that no information about the content of out-of-court discussions was required to be given out at the time of the hearing. Yet, the law had allocated to the court the responsibility of ensuring that title to Māori land was based on customary usage and title. Our concern is that the rapid court process, and a lack of explanation of the rationale behind out-of-court decisions reached, meant that even though justice may have been done, it could not

be clearly seen to have been done. That is, there was no requirement to demonstrate that the recommendations presented to the court, and which it approved with little or no inquiry, were the result of inter-community consensus and did indeed reflect customary usage and rights.

Another point is that ‘rubber-stamping’ did not necessarily overcome the problem of absences. While out-of-court discussion certainly had the potential to take into account the interests of absentees, the lack of any requirement for transparency offered no guarantees – meaning that affected Māori still needed to be present at the hearing, ready to object if necessary. As Hitiri Te Paerata later complained to the Native Affairs Committee: ‘The thing was not arranged between the two or three contending parties, but arranged between those who were present in the Court.’³⁰¹ Given the problems noted earlier in terms of notification, hearing clashes, uncertainty of time-tabling, travel distances, and the like, simply asking for objections on the day did not constitute adequate protection for Māori. It was virtually inevitable, given the size of the parent block, the range of groups who may have claimed rights within it, and the speed with which title was decided, that some of those claiming customary rights in the land would be excluded both from the informal discussions and the formal court hearing.

Under the Treaty principle of equal treatment, the Crown had an obligation to deal even-handedly with Māori groups. Irrespective of the ultimate outcome of the hearings, which may or may not have been just, we are not convinced that the process used to determine ownership in the Taupōnuiātia block (in this instance) fulfilled that requirement.

Then there is the fact that in at least one case, the court chose to cut across a tikanga-based agreement come to by Māori where the rationale had actually been explained. The case in question is that of Taupōnuiātia West. After claimants and counterclaimants had adjourned for a day in order to try to come to an arrangement amongst themselves, Horonuku Te Heuheu requested that the block be withdrawn from hearing ‘because it is divided between three tribes, viz, Ngati Tuwharetoa, Ngati Raukawa, and

Ngāti Maniapoto'. The court said that the case 'couldn't possibly be withdrawn', apparently because it had already decided that 'Ngāti Raukawa at Kapiti' had no interest in the parent block.³⁰² In short, the court refused to accept the agreement arrived at – an agreement supported not only by tikanga but also, one would have thought, by the right of property owners to deal with their property as they saw fit: Te Heuheu and Ngāti Tūwharetoa had already been listed as major owners in the parent block and if they were prepared to acknowledge that other kin groups might have a customary interest in some part of it, it is in our view questionable why the court should decide otherwise.

(b) *Waimarino*: The Waimarino hearings, which also took place in 1886, strengthen our impression that the nineteenth-century Native Land Court process was less concerned with customary rights and more concerned with preparing land for alienation. Title investigations for the more than 450,000 acre block – which included the south-western side of Ruapehu – opened in March 1886. It was an area involving complex, intersecting tribal interests. The proceedings were notable, and notorious, for their speed and lack of open investigation. Within just four days, the hearing was over. Only a minority of local Māori appear to have taken part and little evidence was given in open court over customary rights. Indeed, a number of hapū such as Ngāti Waewae and Ngāti Hāua boycotted the hearings. Others with interests in the northern part of Waimarino did not attend either, perhaps thinking that their interests would be protected by virtue of also falling within the boundary of the Rohe Pōtae which had yet to be investigated.³⁰³

The speed with which customary title was converted in Waimarino raises questions about whether the communities and chiefs of the area can be deemed to have given their informed consent. Moreover, later government documents indicate that the Crown was aware that a number of leading men had failed to appear at the hearing in support of the claims of themselves and their people. Te Kere of Ngāti Waewae and many of his followers, for example,

had been part of the boycott; they would be rendered virtually landless as a result of the court's determination.³⁰⁴ The court records provide scant explanation of how the court reached its decisions: little customary evidence is recorded, and there is little indication of out-of-court discussion (still less of agreement) about hapū rights.³⁰⁵ This has raised claimant suspicions that the hearings were closely managed by the Crown in the interests of its purchasing ambitions – suspicions heightened by the fact that around one third of those on the ownership list appear to have been minors.³⁰⁶ The Whanganui inquiry will no doubt look more closely into these allegations, and in any case, as we have already said, we would not presume to make any sort of definitive finding on a block that sits largely in another inquiry district. Nevertheless, in the context of the present discussion and from the evidence before us, it does not seem to us the Waimarino hearing constituted an open and careful investigation by the court into customary rights.

(c) *Rangiwaea*: We have already noted that from around 1879, Te Winiata Te Pūhaki and Weronika Waiata, his niece, had been attempting to have Rangiwaea surveyed in order to apply for title over it, but had been prevented by local opposition. After a failed bid by Te Pūhaki and others to bring Rangiwaea to court in 1891, a second attempt, this time by Weronika (Nika) Waiata, Rapera Waiata, and Hohi Mātene, finally secured a hearing that began in January 1893. In the lead-up to the hearing, the court received numerous letters from other Māori in the area stating that they claimed rights to the land, lived upon it, and were tied to it economically and otherwise. They were angered by the attempts of the Te Pūhaki and Waiata party to gain legal ownership and repeatedly informed the court that the applicants were not entitled to speak for all those who claimed rights to the land. As we saw earlier, when the court opened on 16 January, Te Keepa, described by Ngāti Rangi in their evidence to us as 'a cousin to Nika Waiata and a tribal nephew to Winiata Te Pūhaki . . . through a *teina* Ngāti Rangi line' (emphasis in original) attempted to have the hearing abandoned. The records

say he was supported by ‘a very large number of followers’. The judge refused, and Te Keepa and most of his followers left the courtroom in protest.³⁰⁷

Waiata then presented her case for the block being granted to her and her party on the grounds of descent from the ancestor Rangiteauria and occupation. (Relevant here is Ngāti Rangī’s evidence about their women customarily holding mana whenua as well as their men.)³⁰⁸ The court asked for objections. Not surprisingly perhaps, given that many possible rights-holders had just departed the court, no objections were tabled. The court, however, held over its decision till following day. The next morning, there still being no objections, the court announced that only those who were descended from Rangiteauria and had ahi kaa were entitled to a legal interest in the land, and Waiata was asked to draw up a list of names. Provision was nevertheless made for others not on her list, but who met the court’s criteria, to ‘set up cases to be investigated by the Court.’³⁰⁹

On the day Waiata’s list was handed in, the *Wanganui Chronicle* reported, ‘the Courthouse was crowded with people, a large number of whom were those who had left a few days previously with Major Kemp’. The article then went on:

These people had now altered their minds and wanted to get in as owners, but they were told only the descendants of Rangiteauria having ‘Ahi Ka’ would be enrolled. When Nika Waiata’s list of names had been published a great many people claimed to be owners who were not included in her list or who were not admitted by her. They handed in their lists, and the Court was occupied many days investigating those claims, after which some were admitted by the Court or by Nika Waiata and some were dismissed.³¹⁰

According to the newspaper (which reported the court’s judgment in detail), in the ‘many days’ spent investigating, the judge had been careful to trace the lines descending through all three of Rangiteauria’s children – namely, his two sons, Taukaituroa and Hioi, and his daughter, Hinekehu. It seems, however, that there was no question

of the court expanding the list to include the descendants of any ancestor other than Rangiteauria. Shortly afterwards, Waiata and her Pākehā husband, Thomas Adamson (previously of the Whanganui militia), would inform the Native Minister: ‘We have now succeeded in bringing this block before the Court and it has been awarded to the ancestor *which we set up*’ (emphasis added). It was a block in which they had already sought from the Crown an advance against purchase, and they stressed their role in undermining Te Keepa’s efforts to keep the block out of court.³¹¹

In this instance, although we note the advantage that accrued to the Crown in the block being principally awarded to Waiata and her party, it seems that the court had undertaken a thorough examination of customary rights. Without further information about the cases put forward by those descended from other ancestors, it is not possible to come to any firm decision about whether the court fell short in its responsibility to ensure that title to Māori land was based on customary usage and title. On the face of it, it would appear not.

Overall, however, we are of the view that many, if not most, hearings relating to land within our inquiry district were not thorough in their investigations into customary rights and usage. While we applaud the fact that Māori (and notably Ngāti Tūwharetoa) were often given the opportunity to discuss matters out of court and then present lists of owners to the court for approval, what concerns us is that there was no requirement for the out-of-court process to be open and transparent. Indeed, the Crown has conceded that there is little evidence to show how out-of-court agreements were reached and what basis they had in custom.³¹² Such a requirement would have ensured either that the thoroughness and fairness of the out-of-court process could be evident to all or, alternatively, that suspected shortfalls could be highlighted and tested. As it was, those who were not party to the out-of-court discussions risked being prejudiced if, as often seems to have been the case, the decisions arrived at were then merely ‘rubber-stamped’ by the court without any requirement for an explanation of how the decisions had

been arrived at. In our view, this does not meet the Treaty standard of good governance or of fairness and equal treatment between groups.

(5) *Judges and assessors*

The legislative provisions regarding judges and assessors changed over time. For the period up to 1899, the situation for ordinary sittings of the land court (as opposed to those dealing with rehearings) can be summarised as follows:

1865: The court is to comprise one judge and at least two assessors. No decision or judgment ‘unless the Judge presiding and two Assessors concur therein.’³¹³

1867: The judge is empowered to sit with only one assessor, but the two must concur in any decisions.³¹⁴

1873: One or more assessors may sit and assist in the proceedings, but only ‘when required by the presiding Judge.’ The concurrence of any assessor is no longer essential to a decision.³¹⁵

1874: At least one assessor is to sit alongside the judge and assist in the proceedings. No decision or judgment unless the judge and at least one assessor concur.³¹⁶

1878: If an assessor does not agree with the judge, his reasons are to be noted in the court records.³¹⁷

1886: The court is to comprise of ‘one or more Judges and one or more Assessors, as the Chief Judge may direct.’ In each case, ‘the assent of one Assessor shall be necessary to the validity of a decision.’³¹⁸

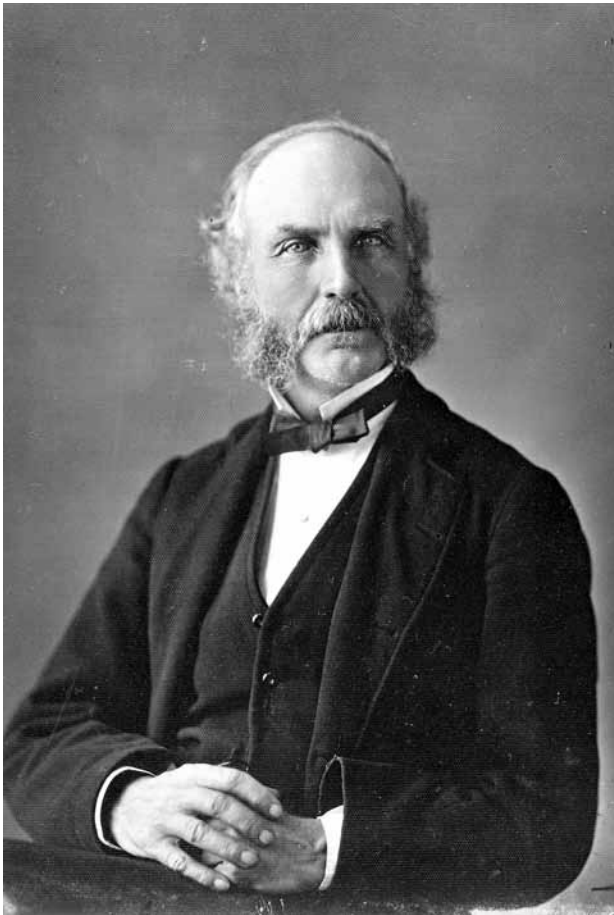
1894: The presence of an assessor is required for all cases dealing with matters such as title determination, partitioning, determination of relative interests, succession, and probate and native trusts, but for all other cases a judge may sit alone. In any event, the concurrence of the assessor is not necessary.³¹⁹

In our inquiry district, Native Land Courts generally comprised one or (more rarely) two judges and a native assessor, plus supporting staff including a clerk and sometimes an interpreter. We begin by looking at whether the Crown appointed judges competent to determine matters of law and custom.

Nine judges presided in the National Park inquiry district. Alongside this, Francis Dart Fenton, John (sometimes called James) Edwin MacDonald, and Hugh Garden Seth-Smith, as chief judges, decided on many applications for re-hearings.³²⁰ Of all these, only Major David Scannell was based within the region.³²¹ More importantly, only a minority of the men had legal backgrounds: Fenton, MacDonald, Seth-Smith, Laughlin O’Brien, and Frederick Brookfield. Dr Pickens suggested that a lack of legal training was not an impediment to a judge because the court ‘had a detailed set of rules covering all aspects of its operation.’³²² We presume he was referring to guidelines such as the General Rules of the Native Land Court published in 1880, but this is to ignore the complexities of a legislative regime that changed over time. Certainly, as Dr Pickens pointed out, a judge could telegraph the chief judge for guidance.³²³ However, that would depend on his being alert to the existence of a potential difficulty in the first place. All judges, whatever their background, doubtless did their best, but lacking familiarity with the intricacies of the ever-changing native land law must surely have been a disadvantage.

Important, too, was an understanding of customary land tenure and contemporary Māori land issues. Dr Pickens emphasised that a number of the men had prior experience in Māori affairs. Before becoming a land court judge, Edward Walter Puckey had been an interpreter and district officer and Charles Heaphy had experience in surveying and reserves administration. Scannell, Robert Ward, and Edward Williams had been resident magistrates.³²⁴ Nevertheless, claimant historians point out that Scannell and various others had military careers or a background in purchasing Māori land, which was not particularly ideal preparation for a role which involved protective responsibilities towards Māori and their land.³²⁵

Of the nine judges, at most four (and more likely only three) were fluent in te reo Māori but Dr Pickens argued that the problem was mitigated by the presence of interpreters and Māori assessors, and by the flexibility of the court process which allowed out-of-court discussion among Māori to shape court judgments.³²⁶ Crown counsel



Francis Dart Fenton, 1870s. One of nine judges presiding over lands within the National Park inquiry district, Fenton served as chief judge of the Native Land Court from 1865 to 1882. His views that Māori affairs should be administered by European law and civil government rather than separately under the Native Department brought him into conflict with government policies and with Donald McLean, who headed the Native Department.

acknowledged in particular that at the Taupōnuiātia hearings in early 1886, neither of the judges was fluent in te reo Māori, but said that ‘given the high level of out of Court arrangements and the little evidence heard by the Court this may not have been a significant issue.’³²⁷ Some judges, however, did combine knowledge of te reo Māori

with considerable experience in working with tribal communities. Williams, for one, was well versed in te reo Māori, a scholar of Māori issues, and had helped his father, Archdeacon Henry Williams, translate the Treaty of Waitangi in 1840.³²⁸

Scannell’s appointment to the bench in December 1885, shortly before the Taupōnuiātia court began, is likely to have been viewed somewhat apprehensively by local Māori. Earlier that same year, as a major in the Armed Constabulary, he had occupied Tokaanu with his troops, and at the time of his new appointment, he was still commanding the local Armed Constabulary – a situation that continued until 1888. Since July 1872, he had also been the resident magistrate at Taupō. It is not certain that he had any great sensitivity to, or even understanding of, Māori culture and viewpoints. By way of example, his action in 1887 in sending the court assessor and interpreter to witness an exhumation of kōiwi in order to test a witness’s assertion that there was a Ngāti Raukawa urupā at the spot strikes a rather jarring note.³²⁹ Earlier, too, the Ngāti Maniapoto chief Taonui had protested that neither Scannell nor Brookfield, who sat jointly, had ‘any knowledge of Māori customs and law in regard to land tenure’. Taonui further asserted that both judges lacked independence and the language skills necessary to their role.³³⁰ That said, others who attended the Taupōnuiātia court are reported to have been ‘much pleased with Judge Scannell’.³³¹ Perhaps not suprisingly, the positive or negative nature of the viewpoints seems to have borne a strong correlation with whether the judges’ decision had favoured or gone against the person expressing the opinion.

Modern historians have also criticised the views and impact of a number of other key court figures who were active in our inquiry district, including several who were regarded by Pākehā of the time as being experts on tribal culture. Overall, we were not presented with enough evidence to state conclusively whether these figures showed legal and cultural competency during hearings regarding land in our inquiry district. We agree with Dr Ballara, however, that the principal issue was perhaps not the personal qualities of individual judges but rather the system they operated under. The Crown’s land titles system was

established to transfer customary rights into individual, alienable ownership, as under secretary Lewis effectively testified to the Rees Commission in 1891, when he said that ‘the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement’. Indeed, as we noted earlier, he went on to add: ‘Unless this object is attained the Court serves no good purpose, and the Natives would be better without it, as, in my opinion, fairer Native occupation would be had under the Maoris’ own customs and usages without any intervention whatever from outside.’³³²

In short, the role of judges in our inquiry district was not so much to understand customary tenure as to preside over its total replacement.

In terms of a formal role for Māori as part of the official court ‘machinery’, we saw earlier how the Native Lands Act 1862 effectively provided for a court made up of Māori commissioners presided over by a European magistrate. The Native Lands Act 1865 jettisoned this short-lived experiment in partnership, however, and the formal Māori role in the court hierarchy was henceforth restricted to the position of native assessors. Moreover, their presence was not always mandatory: as we saw in the summary at the beginning of this section, under the Native Land Act 1873 it was left to the presiding judge to decide whether he wanted an assessor to assist him. Furthermore, even if an assessor was present, the judge could issue his decision without the assessor’s agreement. Along with other aspects of the Act, this led to a Māori petition to parliament in 1874, demanding that

the Assessors or Assessor may have authority, when in the Court, equal to that of the European Judges. Let not one be greater or less than the other, lest the judgment be wrong.³³³

In August of that same year, parliament passed the Native Land Amendment Act 1874, which stipulated that at least one assessor must be present at every land court sitting and that, for a court decision to be valid, it must be agreed upon by both the judge and at least one assessor. This provision was continued in the 1880 and 1886 legislation and was thus in place for all title hearings within the

National Park inquiry district. Under the 1878 legislation, if an assessor disagreed with the judge, the reason for his disagreement was to be recorded in the court minutes – a requirement which does not appear to have been repealed in the period to 1894 at least.

Although under the legislation there was potential for assessors to have significant influence over the court’s operations and decisions, the extent to which this actually happened is not clear, in that for our inquiry district there is relatively little evidence as to what role they actually played. Court minutes are largely silent on the extent to which assessors participated in questioning witnesses during hearings. No records of consultations and discussions between judges and assessors have been located, and there are no known examples of assessors vetoing decisions or holding opinions contrary to those of the judges – although if the 1878 legislation was being adhered to, any dissession should have been recorded. Nevertheless, assessors may not have been as passive as this paucity of information would suggest. As Crown historian Dr Pickens has pointed out, in the instance of Waimarino we have a rather fuller account of proceedings than is often the case, since in addition to the court minutes there are also the personal minutes of Judge Puckey and Judge O’Brien. The two latter accounts of proceedings make rather more frequent mention of the assessor than does the former. Indeed, according to Dr Pickens, Judge O’Brien’s minute books shows ‘that the Assessor probably asked more questions than either of the two Judges.’³³⁴

As was usual practice, all the assessors involved in hearings in our inquiry district were well respected customary experts from other regions. Hone Keeti or John Gage, for example, was from Waikato, Paraki Te Waru from Hokianga, Nikorima Poutotara from Thames, and Hans Tapsell from the Bay of Plenty. Although this placed them in the position of having to ‘pronounc[e] on matters outside their own rohe’ which may have been, as Dr Ballara asserts, ‘contrary to all forms of Māori etiquette’, we accept Dr Pickens’ point that the practice was designed to protect the impartiality of the court and prevent accusations that assessors acted out of bias and self-interest.³³⁵ Indeed in this context, we note an item in *Te Wananga*,

referring to decisions made by Māori komiti in respect of Pāpakai. The original decision had apparently been made by the Ngāti Tūwharetoa komiti, who had found in favour of Ngāti Hikairo over Ngāti Waewae. However, that decision had subsequently been reversed by ‘nga Komiti o nga iwi matau’ (the committees of the learned iwi), a body which involved Te Keepa Taitoko (chair of the Whanganui komiti), Maniapoto, and Tōpia Tūroa, as well as Horonuku Te Heuheu, Hōhepa Tamamutu, and others.³³⁶ The point here is not whether the local Ngāti Tūwharetoa komiti had shown any sign of bias (which ngā komiti o ngā iwi mātau stressed was not the case), but that there were occasions when Māori themselves chose to involve respected figures from outside the immediate area to ensure that justice was not only done but seen to be done.

More than a decade before any of the hearings within our inquiry district, Judge Maning had let it be known that he took no account of his assessors’ opinions and resented having to sit in close proximity to them during hearings.³³⁷ However, it seems likely that judges’ attitudes had begun to change over time, and that some judges at least were becoming more receptive to the presence, and the opinions, of their assessors. Certainly, within our inquiry district, John Gage seems to have some influence during the Rangataua hearing in 1880: his suggestion that Wiari Tūroa and party had a ‘small right’ and should each be granted about 200 acres was recorded in the minutes, and his recommendation was reflected in the court’s final decision.³³⁸ By the 1880s, a few assessors, nation-wide, may have even come to possess considerable influence. The Ngāti Porou leader, Paratene Ngata, who acted as assessor in the Rohe Pōtae investigation in 1886, claimed to work harder and have a greater responsibility in decision-making than the judges he worked with, and resented being paid so poorly in comparison.³³⁹

Ngata’s comment about remuneration is not without significance. Native Land Court judges usually received a salary of around £600 per annum, while assessors were paid just a fraction of that for their services, even allowing for the sometimes part-time nature of their work.³⁴⁰ This strongly suggests that despite a perhaps growing influence, the work of assessors was still not valued as highly

as that of judges – a point conceded by Dr Pickens, who noted the similarity with the historical situation over pay scales for women.³⁴¹

We also note in passing a report on a case of alleged bribery of an assessor, presented to parliament in 1886 by Commissioner Hugh Garden Seth-Smith. The case related to an incident at the Rangipō rehearing at Upokongaro, in April 1882, and in the end Seth-Smith decided there was not ‘sufficient evidence to sustain the charge of bribery’ (although he did regard the transaction as ‘improper’).³⁴² Our reason for alluding to it in the context of the present discussion, however, is that even the allegation of bribery indicates a perception, at least in some quarters, that assessors might be worth bribing – which in turn implies that they might be able to influence the outcome of a case.

In general, though, evidence on how much influence assessors actually had in practice is slim. Although as the Crown correctly observes, judges in the period from 1874 to 1893 were not able to overrule assessors, we have not seen anything in the evidence presented to us to disturb the dominant view of historians that it was judges, rather than assessors, who were pivotal to decision-making in the Land Court. Regardless of the opportunities opened up by legislation, the assessor was seen as an assistant rather than full partner in the court process. It was a situation that fell far short of what local Māori demanded – that their own institutions be granted the legal right to allocate land entitlements. Nevertheless, that view must be tempered by the observation that informal committees and out-of-court discussion and agreements could offer an avenue for Māori agency. We note, for example, the role played by a committee of 35 leading men who, at the opening of the Taupōnuiātia hearing, succeeded in reaching agreement to adjust the block boundary, thus allowing the case to proceed. Out-of-court discussion also often led to lists of owners being agreed. That said, we again stress that, whatever the process used, it was important that it be transparent and inclusive.

(6) Provision of remedies for alleged injustices

Native Land Court judgments generated a variety of grievances among ngā iwi o te kāhui maunga. Indeed,

the Crown has effectively conceded that one in five of the Taupōnuiātia awards alone elicited a formal protest of some sort.³⁴³ What concerns us here, however, is not the appropriateness or otherwise of the court's original judgments, but rather the process available at the time for addressing any complaints raised. Did the Crown provide an effective avenue for grievances to be inquired into and addressed? Leaving aside the fact that many Māori had seen their land brought under the Crown's title system against their wishes, with no prospect that this situation could ever be reversed (and also leaving aside more general complaints about the court, such as those made to the Haultain Commission in 1871), what methods were open to ngā iwi o te kāhui maunga to complain about specific court decisions?

(a) *Applications for rehearing*: Applications for rehearing were one of two main avenues open to individuals and groups to complain about court decisions (the other being petitions to parliament, which we shall come to shortly). Between 1865 and 1880, the Governor-in-Council was empowered to order a rehearing of 'any matter judicially heard before the [Native Land] Court'. The Native Lands Act 1865 gave no indication of how to make application for rehearing, but it instituted a time restriction of six months. Where a rehearing was granted, it was to be heard by at least one judge and two assessors.³⁴⁴ The Native Land Act 1873 reduced the requirement to one judge and a single assessor, and the assessor did not need to concur in the judge's decision.³⁴⁵ Then in 1878, the appeal period was shortened to three months.³⁴⁶ Explaining the shortened timeframe, Premier John Hall later said that 'the longer period [had been] found inconvenient, and to bear hardly upon the Native owners' – although he did not specify in what way it 'bore hardly' upon them. Hall also revealed that for the 15 years during which the granting of rehearings effectively rested with the government, the decision had generally been based on advice from the chief judge.³⁴⁷ We presume it is not unlikely that the chief judge had, in turn, been advised by the judge involved in the original case – a presumption based on the period post-1880 (discussed further below), when the practice seems to have

been regarded as perfectly normal and acceptable, giving the impression that it was probably of long standing.

In 1880, responsibility for deciding rehearing applications was formally shifted to the chief judge – perhaps because, under the Native Land Court Act of that year, the government itself, through the Governor, could henceforth make an application for rehearing and, had the provisions not changed, the Governor could have been placed in the position of having to decide for or against his own application. Also permitted were applications from 'any Native who feels himself aggrieved by the decision of the Court'. All applications were to be made in writing 'subject to and in manner directed by any rules for the time being in force', and a time limit of three months was maintained. (The 'General Rules of the Native Land Court', published in December of that year, merely stated that rehearing applications 'may be made in any form if within the limited time'.) Any rehearings granted were to be heard by two judges (of whom one could be the chief judge himself), assisted by one or two assessors.³⁴⁸ We note here that this increase in the size of the rehearing panel would likely have meant an accompanying increase in the cost of holding a rehearing.

There was no clear stipulation, in the more than 20 years between 1865 and 1888, that the process for deciding on applications be a public one, with applicants able to put their case for a rehearing in person – although legislation of 1881 did make passing reference to applications being heard³⁴⁹ (a matter which was to become significant, as we shall see below). Furthermore, neither legislation nor court rules made clear on what grounds a rehearing should be granted or denied.³⁵⁰ Under the 1865 legislation, as we have seen, the decision was effectively made by ministers on the advice of the chief judge. After 1880 and until 1888, successive chief judges continued to see the task as administrative, to be decided largely on the basis of confidential advice from the judge who had heard the original case. It was a decision made without any input from an assessor and generally (but not always) without any hearing in open court.³⁵¹

By the mid-1880s, as noted by historian Dr Grant Phillipson, the lack of any open process was beginning to

engender protest. In 1886, Lawrence Grace raised the matter in parliament, requesting that the rules be changed so that parties had the option of appearing in court or chambers to argue for or against a rehearing being granted. He said that the lack of provision for this ‘had been felt for some time past.’³⁵² Ballance, as Native Minister, promised that the matter would be considered, but nothing happened until 1888, when an Act was passed requiring that every application for a rehearing be henceforth ‘determined by the Chief Judge sitting in open Court, assisted by an Assessor.’³⁵³ There was, however, no requirement that the assessor agree with the chief judge’s decision. Furthermore, Dr Phillipson comments that in practice the chief judge continued to rely heavily on confidential reports from the judge who had heard the original case.³⁵⁴

Then, in 1891, came the *Mangaohane* case in the Court of Appeal, where it was ruled that deciding applications without a hearing had been unlawful. The Appeal Court judges based their decision on the Native Land Acts Amendment Act 1881, which had referred to the chief judge exercising ‘his duty of *hearing* applications for rehearing’ (emphasis added). Indeed, as Dr Phillipson notes:

Two of the judges also found that it would have been ‘manifestly improper’ or ‘unreasonable’ to determine these applications on the papers alone, even had the law allowed it (which it did not).³⁵⁵

Towards the end of 1894, legislation was finally passed to create a Native Appellate Court.³⁵⁶ This however came too late for Māori in our inquiry district where, as we have seen, the last native title determination had been held in 1893 and the window of opportunity for lodging appeals had already passed.

We do not know the exact number of applications lodged between 1879 and 1893 by Māori from our inquiry district but it was substantial: virtually every title hearing had led to formal complaints in the days or weeks following.³⁵⁷ Many were rejected out of hand, for merely technical reasons. For example, a significant number of applications for the rehearing of Taupōnuiātia were

dismissed as ‘premature’ since no final court order had yet been issued.³⁵⁸ On the other hand, applications were also not considered if they were made too long after hearing, which in the case of all National Park blocks meant a window of three months.³⁵⁹ An application regarding the Rangiwaea block was rejected out of hand for falling just outside that time. This was in addition to five other applications that were considered for hearing but turned down.³⁶⁰ Of the others that were rejected on technical grounds, most were decided without any opportunity for applicants to expand on their case since, as we have noted, there was no requirement for any public process before an application was accepted or rejected.

Turning now to those applications not rejected out of hand for technical reasons, it seems that some were in fact considered in open court. Some 20 requests for rehearsings of various parts of Taupōnuiātia, for example, were considered by Chief Judge MacDonald at the Cambridge court in early 1888, and another five relating to Rangiwaea were heard by Chief Judge Seth-Smith at Whanganui in 1893.³⁶¹ It is not clear why these particular applications should have had a public hearing to decide on their merits, whereas others did not. It does, however, mean that we have more information about them than we do about some of the others. In terms of the Taupōnuiātia applications, for instance, those relating particularly to land within our inquiry district came from a variety of kin groups (sometimes in combination), including the following:

Ngāti Waewae	Four applications
Ngāti Tama	Three applications
Ngāti Marangataua	Three applications
Ngāti Pouroto	Two applications
Ngāti Rangiuaua	Two applications
Ngāti Te Ika	One application
Ngāti Rongomai	One application
Ngāti Wi	One application

Also among the 20 were applications that did not cite any particular iwi or hapū but, rather, named one or more chiefs. In the case of those relating to our inquiry district, some of the chiefs involved were Retimana Te Rango (of

inland Pātea), Eruini Paranihi (of Ngāti Waewae), Takurua Te Kuru, and Keepa Te Rangihwinui (of the Whanganui tribes).³⁶²

As to the geographical spread of the blocks referred to in the applications, few parts of our inquiry district escaped mention and, significantly, four cited one or more of the maunga. In addition, three referred to land in Ōkahukura, three to Rangipō North blocks, and one to Taurewa.³⁶³

When we look at the specific grounds cited in these, and other, applications (as and where the grounds are recorded, which is not always the case), we see that applicants commonly claimed that court decisions were faulty, and that their rights to the land had not been adequately recognised. There were, for instance, complaints that interested parties had been unavoidably absent from court hearings and had thus been unable to assert their own connections to the land. These absences were often attributed to a need to attend other court hearings occurring around the same time, and inadequate notification of when sittings would take place and what they involved. Sometimes people complained that even individuals with no or little connection to the land had been included on the legal list of owners.³⁶⁴

Irrespective of the grounds cited, however, and with or without a public process to consider the application, the chances of being granted a rehearing seem to have been slim to the point of virtual non-existence. For example, as Dr Pickens has conceded, 'the Court's practice was not to accept as sufficient grounds for a rehearing a simple assertion that someone had been absent when a case was decided.'³⁶⁵ It did not seem to matter whether the absence was due to ignorance of the hearing, illness, a court clash, lack of clarity about when a given case would be heard, or through deliberate boycott. Then again, other grounds for complaint, whether singly or in combination, fared little better in terms of yielding a positive outcome. A table of the 20 applications relating to Taupōnuīatia for instance (including seven relating specifically to land within our inquiry boundary) lists a range of grounds for complaint, but only in one case was a rehearing granted. The land concerned (Waihi 1) is outside our inquiry district,

and the decision to rehear apparently came as a result of something the chief judge heard while the application was being considered in open court.³⁶⁶ The five applications for a rehearing of Rangiwaea, also considered in open court, in 1893, were, however, all rejected.³⁶⁷

In fact, despite the many applications mentioned in the evidence presented to us, only one rehearing involving land in our inquiry district was granted, and that was for Rangataua, under the 1873 Act. Unfortunately, since we do not know who applied for the rehearing of the block or on what grounds, it is not clear why only this block, out of all the possibilities, was granted a new investigation. All we know is that the application was filed 'on or about the third day of September' 1880, thus falling within the stipulated appeal period (which, as we have seen, had in fact been shortened to three months by the amending legislation of 1878) and that the rehearing was granted by the Governor in Council. The *Gazette* notice advising of the decision indicated that the earlier court judgment had been annulled and that the case was to be heard afresh 'in manner provided by the said Act'.³⁶⁸

So what was the outcome of the Rangataua rehearing? As we know, many local Māori had refused to attend the original hearings of 1880 as part of a wider boycott of the Native Land Court. The result was that the court had granted most of the block to Weronika Waiata's group, with Wiari Tūroa's party receiving just a small portion. In 1881, the Rangataua rehearing was far more widely attended. Even prominent opponents of the court such as Te Keepa played some role in the proceedings, which were presided over by two judges, Brookfield and Williams, and the native assessor Pomare Kīngi. In many respects, the result was a fairer outcome in that the court's decision extended ownership to a wider group of people. However, there was of course nothing that could be done about the individualisation of that ownership. As a result of the rehearing, the block was divided into three parts. Rangataua North was granted to two individuals from Ngāti Rangirotea, 31 individuals of Ngāti Rangiahuta, and 11 from Ngāti Puku. Title to Rangataua South was issued to two people from Ngāti Rangirotea, and one from Ngāti Rangiahuta. Rangataua West (outside our inquiry district)

was granted to Winiata Te Kākahi and two individuals from Ngāti Rangirotea.³⁶⁹ While this was taking place, however, Crown purchase officers were buying up the individual shares from the new owners. This included the shares of the 11 Ngāti Puku owners in Rangataua North, representing an area of 8448 acres, which were shortly afterwards partitioned out and vested in the Crown as Rangataua North 1.³⁷⁰

Apart from this one rehearing, for which the application was considered by the Governor in Council, all other applications for rehearing seem to have been handled under post-1880 legislation which stipulated that they be decided by the chief judge. The chief judges to hold office during this period were Francis Dart Fenton (1865 to 1882), John (James) Edwin MacDonald (1882 to 1888), and Hugh Garden Seth-Smith (1888 to 1893).

In 1881, Chief Judge Fenton considered an application regarding Rangipō–Waiū. Tōpia Tūroa, representing Ngāti Tama, had been angered by the court's original decision and sought a rehearing of the entire block. Applications were also filed by Pohipi Tukairangi and Aropeta Haeretuterangi of Ngāti Rangipoutaka. Fenton permitted a rehearing for only the Rangipō–Waiū 2 portion of the block, which lies outside our inquiry district. It is not clear why he refused a rehearing of the rest of the block.³⁷¹

We also know little about why rehearsals involving the Waimarino block were not allowed. Chief Judge MacDonald in 1886 and 1887 rejected applications from, amongst others, paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu. The fact that Te Rangihuatau, the leader of the 'winning' party in the original hearing, also lodged an application suggests that there was considerable dissatisfaction with the court's original decision, although we have no information about what grounds for complaint were cited and there was no open-court consideration of the applications before the notices of dismissal were published in the *Gazette*.³⁷²

MacDonald also dismissed all requests for rehearsals in the Taupōnuīatia block except, as we have seen, for Waihi 1, outside our inquiry district. Where the applications were based on absence from the original hearing,

MacDonald was firmly of the view that the applicants' lack of any claim on the land was already 'too well established' to justify a rehearing merely because 'some persons failed to be at an investigation they could have attended had they been so pleased'. Private reports from the judge of the original hearing (Scannell), whose decisions were precisely those being challenged, also proved pivotal.³⁷³

In September 1893, at a court sitting in Whanganui, Chief Judge Seth-Smith considered and rejected five applications for rehearsals of Rangiwaea. Regarding those who had boycotted the original hearing, he said that they had deliberately refused to take advantage of their opportunity to lay their claim before the court and then went on: 'That they have now repented is not a sufficient reason for allowing them a further opportunity by granting a rehearing.'³⁷⁴ More generally, he observed:

in view of the manifest inconvenience that would arise if cases were allowed to be re-opened on any but the strongest grounds, the Court must use great caution in exercising its discretionary powers.³⁷⁵

The inescapable fact is that in over 10 years, no chief judge granted any request for the rehearing of land within our inquiry district, irrespective of the grounds (technical or otherwise) on which the applications were made, and only one rehearing had been granted by Order in Council in the period before that. In practice, therefore, as the Te Urewera Tribunal found in their inquiry, 'the right to apply for a rehearing was an illusory remedy'.³⁷⁶

Of particular concern to us is the application process itself. According to the 1880 legislation, applications for rehearing had to be made 'subject to and in manner directed by any rules for the time being in force'.³⁷⁷ However, the only further guidance then provided, as far as we can tell, was under the land court rules published in the November 1880 *Gazette* which said that applications could be 'made in any form'.³⁷⁸ While on the one hand this had the merit of leaving Māori unrestricted, in terms of how they might wish to submit their application, it also gave little guidance on what would be most helpful

in terms of even getting their application considered, let alone accepted. The same land court rules said that the chief judge could return the application for amendment or explanation; or refer it to ‘the other party’ for comment; or fix a time and place to hear the parties to the application. From the evidence presented in our inquiry, though, we have seen that there was often no public process for considering the applications. Furthermore, when applications were dismissed, there was no legal requirement to explain why.

The Crown has said in its closing submissions to us that rehearing applications were generally approved if applicants could point to a technical mistake on the part of the court, in the hearing process.³⁷⁹ However, we have seen no instance where allegations of technical mistakes led to a rehearing in our inquiry district: the one rehearing that was granted does not seem to have involved any such allegations. By contrast, technical mistakes on the part of applicants for rehearings were commonly used as a reason for the applications to be dismissed out of hand. Notable in this respect are the large number of applications for a rehearing of the initial Taupōnuīātia block which were dismissed as ‘premature’ because a final order for the block had not been issued – a rather contrived line of reasoning given that the block was proceeding directly to subdivision and there was no intention to issue such an order. With the dismissal of these applications, it is not at all obvious what avenue there was, if any, to have any concerns about the original hearing addressed. A number of fresh rehearing applications were prepared after the court’s final judgment at the end of the subdivision process, but in terms of the block as a whole the opportunity for remedy had passed. Indeed, by that same 1897 judgment, the court had already defined Crown awards in many of the subdivisions.

We particularly note the Appeal Court’s 1891 finding that deciding applications without any form of public hearing had been illegal after 1881 and that, illegal or not, it was ‘manifestly improper’ and ‘unreasonable’ to decide applications on the papers alone. We agree with Dr Phillipson that the Appeal Court judges’ opinion

represents a standard applicable to the earlier period as well. We accordingly find that in this matter the Crown breached its Treaty duty to make informed decisions and its duty of good governance, as well as the principle of redress.

Although from the late 1880s there seem to have been more frequent open hearings to consider applications – such as the 21 relating to Taupōnuīātia, considered in 1888, and the five relating to Rangiwaea, in 1893 – it would appear that the advice of the judge whose original opinion was being challenged still, as a matter of course, held as much sway as anything said in court. That advice was provided confidentially and was thus not open to challenge. In our view, therefore, a degree of Treaty breach remained.

In 1894, as we have seen, the Native Appellate Court was established but this came too late for ngā iwi o te kāhui maunga. Their calls for redress had already been dismissed and they had been denied access to an independent, effective means of protesting against the court process.

(b) *An approach to the Supreme Court:* In 1888, Brookfield (one of the judges in the initial Taupōnuīātia case but now dismissed from the bench, as we discuss further below) accepted to act as solicitor for Hitiri Te Paerata of Ngāti Raukawa, over the matter of trying to secure a rehearing of the block. As later explained to the Native Affairs Committee by James Carroll (the member for Eastern Māori), Brookfield advised Te Paerata and his supporters to ‘[set] up their case in two courts: in the Supreme Court and before this committee, having the one object – to get a rehearing of their case’. Accordingly, they sought from the Supreme Court ‘an injunction to prevent the issue of any order or anything being done with the [Taupōnuīātia] block’, pending a decision on associated petitions to the government (which we discuss below). Taonui Hikaka brought a similar Supreme Court action, which seems to have been heard at the same time. The cases concerned the interpretation of section 34 of the Native Land Court Act 1880, which said ‘the Court may . . . order one or more divisions to be made in such manner as the Court thinks

fit'. In August 1888, the Supreme Court found against the claimants. They had a year to appeal the decision but did not do so.³⁸⁰

(c) *Petitions and other direct appeals to the government:* Petitions to the government were investigated by the Native Affairs Committee, made up of Pākehā and Māori parliamentarians. The committee could suggest that Māori grievances required further consideration, with the prospect that a case would be referred back to the court for rehearing, a commission of inquiry established, or that special legislation would be passed. But the committee could only recommend, not order, and the government was free to ignore its advice.

We have no definitive figures on the number of petitions presented to parliament by members of *ngā iwi o te kāhui maunga*, in relation to land within our inquiry district. However, the instances cited in the evidence before us do help to illustrate the kind of problems encountered. For example, the Taupōnuiātia proceedings alone prompted numerous petitions of protest to the government. Among them was one filed in 1887 by Tohiora Pirato and 213 others, probably around the time Horonuku Te Heuheu signed the agreement over the mountains, which effectively protested the limited number of names in the titles to the Ruapehu, Tongariro, and Ngāuruhoe blocks, and the exclusion of the petitioners from those lists. The Native Affairs Committee made no recommendation, on the grounds that the petitioners had 'furnished no evidence in support.'³⁸¹ Te Moana Pāpaku Te Huiatahi and another likewise protested their exclusion from the mountain blocks, saying they had been unable to attend the Taupō court owing to a clash with the Waimarino hearing. The committee again made no recommendation, saying that the petitioners could apply to the court for a rehearing (as indeed they did, a request for the rehearing of Tongariro and Ruapehu, signed by Te Moana Pāpaku Te Huiatahi and others, being application number 14 of the 21 heard and rejected at Cambridge in 1888).³⁸²

Another petition filed in late 1887, by Matuaahu Te Wharerangi and 27 others, sought a rehearing of the Ōkahukura block. The committee reported on this

petition in May 1888, by which time the Taupōnuiātia case was before the Supreme Court. For this reason, they said, they made no recommendation. A further five petitions filed in 1888 met with this same response.³⁸³

Taken together, these various Taupōnuiātia petitions filed in 1887 and 1888 reflected wide unease among those who felt excluded from, or hostile to, the original hearings, not to mention the Crown's subsequent acquisition of lands that were, in time, to become part of the national park. Petitioners raised objections regarding the original court's findings, and some complained that the court sat when they were unavoidably absent.³⁸⁴

The Taupōnuiātia petition filed by Heperi Pikirangi and 13 others, immediately after the Supreme Court ruling, summed up the difficulties of trying to seek remedy through the courts: they had sought a rehearing and been refused; they had then taken a case to the Supreme Court and lost; and their funds would not support further court action.³⁸⁵

The Native Affairs Committee responded promptly to Pikirangi's petition, issuing its recommendation on 29 August (only a week after the Supreme Court's ruling). It commented in doing so that it had not been able to give full consideration to the issues raised by Pikirangi because 'inquiry into petitions of this character necessarily occupies considerable time, and requires evidence not easily obtainable by a Committee sitting in Wellington.'³⁸⁶ The comment suggests that the committee treated its petition work very seriously but was only too aware of its constraints. In this instance, not having been able to make a full inquiry, it recommended that:

*The whole of these petitions [that is, the petitions relating to Taupō-nui-a-Tia] should be referred to the government, with a recommendation that inquiry should be made into each case. [Emphasis added.]*³⁸⁷

The government, however, proved reluctant to reopen the question of Taupōnuiātia through the courts and nothing eventuated.

Whatever the reason behind the government's reluctance in the matter, some petitioners, too, were by this

time abandoning the whole idea of court action as a way of seeking redress over Taupōnuiātia. In the latter part of 1888, Te Paearatā's lawyer, Connell, for example, was pressing the government for an independent commission of inquiry into the specific blocks that were the subject of his client's complaints.³⁸⁸ In January 1889, Taonui Hikaka and nine others of Ngāti Maniapoto also suggested that a special commissioner be appointed to look into blocks of particular interest to them.³⁸⁹ Thomas Lewis, as under-secretary of the Native Department, instead proposed a mediation between Ngāti Tūwharetoa, Ngāti Maniapoto, and Ngāti Raukawa (or at least their representatives). When the idea failed through lack of agreement over a venue, William Grace wrote to Lewis suggesting that the matter go back to the land court.³⁹⁰ It was a proposal that was unlikely to find favour with either the government or local Māori.

Instead, in April 1889, Native Minister Edwin Michelson, took steps to initiate a full commission of inquiry, although in the end the government agreed only to a limited inquiry involving the western part of Taupōnuiātia and with restricted terms of reference. In terms of the Native Affairs Committee's recommendation in response to the petition of Hepiri Pikirangi and his supporters, noted above, this hardly seems satisfactory. As Crown historian Keith Pickens has acknowledged, it was basically that petition that had led to the commission, by keeping Taupōnuiātia 'live' after the Supreme Court's ruling. However, by limiting the terms of reference, the commission was obviously not going to address the petitioners' interests in areas such as Ōkahukura, Rangipō North, and Kaimanawa (which had been clearly mentioned in the petition).³⁹¹

Although Pikirangi does not seem to have protested, at least initially, about the limited terms of reference, others did – among them Wīneti Paranihi and 10 others, and Hiraka Te Rango, all complaining about the exclusion of the southern part of Taupōnuiātia.³⁹² Despite such complaints, the Taupōnuiātia Royal Commission, which sat for 17 days in mid-1889, did not deal with any land within the National Park district.³⁹³ Some would view that exclusion as rendering the commission and its process irrelevant

to our discussion. We disagree. For one thing, its investigations and report throw light on the kind of practices engaged in by some of the people prominent within our own inquiry district – a matter that will become particularly relevant in our next chapter on Crown purchasing. For another, we need to take into account that the commission's failure to deal with the southern part of Taupōnuiātia represented the loss, for those affected, of an avenue of redress.

The southern Taupō people were not to be put off, however. In the wake of the commission's failure to hear their claims, Kīngi Te Herekīkie and his people contacted their Māori member of parliament, Hoani Taipua, who spoke with the Native Minister, Alfred Cadman, and suggested a new commission of inquiry to look at the southern blocks. When nothing useful resulted, Te Herekīkie, Pikirangi, and eight others travelled to Wellington to put their case in person. That was followed up by a letter to Cadman, and the filing of more petitions. A further petition, in 1891, again called for a comprehensive commission of inquiry into southern Taupōnuiātia lands.³⁹⁴ These ongoing protests finally forced a response from the Native Affairs Committee which recommended that:

the Government should institute inquiries into the whole question of the Taupōnuiātia Block, and if it is found that the merits of the cases warrant such a course, a [new] special Commission should be appointed. This, the Committee think, would be the best mode of finally settling all the difficulties in connection with the block in question.³⁹⁵

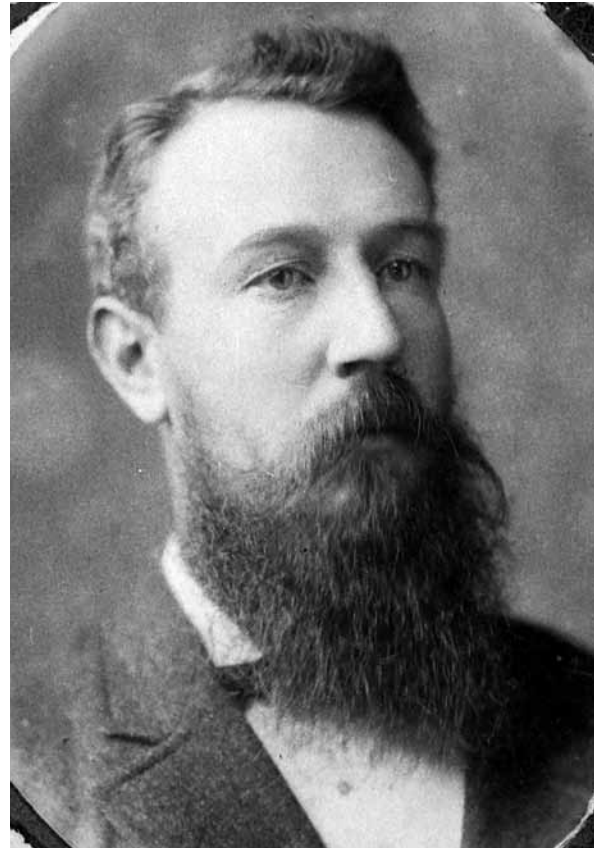
Their recommendation was ignored. The Crown did not inquire into or address the many complaints related to the Taupōnuiātia hearing (other than those concerning the western parts of the block inquired into by the 1889 commission), nor the subsequent acquisition of much of that land by the Crown.

Petitions regarding the Waimarino hearings also proved ineffective. The Whanganui Tribunal will examine protests involving the court and the related Crown purchasing in this block, many of which came from Tuhua chiefs and refer to land outside of our inquiry district. We note,

Alfred Jerome Cadman

1847–1905

Born in Sydney, Alfred Jerome Cadman was still an infant when his parents came to New Zealand in 1848. Educated at Wesley College, he completed a carpenter's apprenticeship. After the outbreak of the wars of the 1860s, Cadman served with the volunteer forces, before he entered a sawmilling business at Coromandel. The business prospered, and Cadman developed an interest in local politics, becoming the first chairman of Coromandel's county council in 1877. From there, he moved to national politics, being elected to represent Coromandel in 1881. Although he initially kept a low profile, he had strong views on the need for closer land settlement. In 1891, he was appointed Native Minister under Ballance, taking over the portfolio from Ballance himself. Cadman started on a course to abolish the native department, repealing the Native Districts Regulation Act 1858 and the Native Circuit Courts Act 1858, which together had underpinned the department's jurisdiction over Māori affairs. Then in August of the same year, he introduced a Bill attempting to codify Māori land law. The Bill was defeated, as was a Native Land Court Bill, and Ballance contemplated replacing Cadman with James Carroll. Cadman, however, had his supporters – including Richard Seddon and Sir George Grey – and he retained his portfolio.¹



however, Cathy Marr's conclusion that the government generally failed to take action to address these grievances, being concerned that offering investigations or remedies could open the 'flood gates' of complaint. Te Kere and his people, who had been rendered virtually landless due to their refusal to take part in the court process, eventually received a small grant of land. This redress was both inadequate and exceptional. Ms Marr comments that 'gradually individuals appear to have given up seeking redress

through official channels, especially when they were consistently informed it had become too late to have such concerns considered'.³⁹⁶

We have noted above that the Native Affairs Committee does seem to have done its best to investigate the petitions placed before it for consideration, but that it was all too aware of the constraints it faced, being based in Wellington and having only limited time to deal with the many petitions before it. There is evidence that, at least in some

cases, it was forced to rely upon the opinions and advice of the Native Land Court judge who had presided over the hearing being complained of, albeit augmented by information from government officials. Thus, to this extent, the committee's process shared the same major defect as the process for deciding on rehearing applications. Certainly we know that in the case of Rangiwaea, the committee sought the opinion of Judge Ward, who conveyed to them his view that those seeking inquiry and redress were rebellious opponents of the court, not entitled to the law's full protection. Chief Judge George Boutflower Davy endorsed Ward's view, emphasising that it was organised opposition to the court which had caused the problem and that 'there [was] no reason to believe any real injustice [had] been done' to the petitioners.³⁹⁷ As already discussed, his predecessor Chief Judge Seth-Smith had dismissed rehearing applications by Te Keepa and many others on the grounds that through their boycott of the court, they forfeited their right to explain their claims to the land. Indeed, it was in response to Seth-Smith's denial of a rehearing that Te Keepa and Waata Hipango then lodged their petition, on behalf of Ngāti Pa, Ngāti Pōutama, and Ngāti Ruaka, for a reconsideration of the case. Given past experiences, the petitioners were this time at pains to downplay their overall opposition to the court, focusing instead on more limited grounds that they hoped would lead to an inquiry – namely that the Rangiwaea hearing had taken place without a proper survey, and that many rights-holders had, for non-political reasons, been absent from the hearings.³⁹⁸ We do not know whether the committee talked with Te Keepa and the other petitioners in more depth about their grievances, but it declined to recommend further inquiry into the case.

Over and above this defect of having to rely, at least to a degree, on the advice of those whose decisions were often the very source of the complaints, there remains the problem that the committee did not have the final say on whether any further action would be taken. Indeed, as we have seen, even where the Native Affairs Committee recommended that the government take action, rarely did anything happen to remedy the matters complained

of. There was no open process on how the government arrived at these decisions.

In summary, the Crown's legislation resulted in a process that led to many allegations of injustice and hardship. Without wishing to comment on the merits or otherwise of any specific instance of complaint or protest (since we are a commission of inquiry, not a court), we concur with the general finding of other Tribunals that the Treaty principle of redress obligated the Crown to provide fair and effective remedy for any grievances that were judged well-founded.³⁹⁹ In our view, that included ensuring that processes for investigating the grievances were fair and transparent.

We have already found that prior to 1894 and the creation of the Native Appellate Court, the Crown failed to establish an independent and appropriate method to address applications for rehearing. We have now seen that Māori from our inquiry district often made direct approaches to the Crown and filed petitions instead or as well. Neither method yielded a better result. We thus find that the Crown breached the principle of redress and also its Treaty duties of good governance and active protection.

(7) *Alleged Crown interference in the court's processes*

(a) *Crown agents*: There were numerous allegations during our inquiry about the role of Crown agents, most of which focussed on the activities of the Grace brothers. Here we consider, in particular, to what extent the Graces might have been acting on behalf of the Crown during the Taupōnuiātia hearings, and whether they inappropriately influenced the court. We will not at this stage, though, discuss Crown agents' roles in land purchasing since the latter topic is one that will be addressed in depth in our next chapter. For the purposes of the present chapter, we include reference to the Graces' land purchasing activities only at a broad level, as part of the wider picture.

According to claimants, the hearings were a 'managed and manipulated process, managed by Crown agents for their own and the Crown's end'.⁴⁰⁰ The Graces, they say, indulged in corrupt practice, colluded with court staff, and used their contacts with local Māori and knowledge

of court procedures and personnel ‘to ensnare the land and obtain possession of it.’⁴⁰¹ Their aim was to get title granted to those willing to sell land to the Crown, or those with whom they had personal or business connections, and to keep others excluded. According to claimants, the Crown should be held responsible for the improper actions of its agents and their conflicts of interests, which it knew of and benefitted from.⁴⁰²

In reply, Crown counsel argued that these claims rest on supposition rather than solid evidence. There is no proof of ‘active and ongoing Crown manipulation of, and interference with, the Court process.’⁴⁰³ Lawrence Grace was a member of the House of Representatives at the time of the Taupōnuīātia hearing; he was not a Crown official. Both William and John were employed as Crown officials at various times, but ‘there is no evidence that they gave any assurances or undertakings of any nature (whether on behalf of the Crown or not) that may have influenced Ngāti Tūwharetoa to act in a particular way to their detriment.’⁴⁰⁴ Crown counsel submitted that the claimants have exaggerated the influence of the Graces, and there is no solid backing for arguments that they were part of a political strategy engineered by Native Minister Ballance and Native Department under-secretary Lewis. Furthermore, the Crown did not accept that it should be considered responsible for all the actions of the Graces during the hearings, or that it turned a ‘blind eye’ to any improper conduct.⁴⁰⁵

The multifaceted roles of Lawrence, John, and William Grace in the history of the Taupōnuīātia block stemmed from their complex range of overlapping interests and ties to the Crown, the court, and to local Māori. They were raised in the area, spoke te reo fluently, and their father, the missionary Thomas Grace, was highly respected by local tribes. These ties were deepened by marriage and whānau links to key chiefs of the region. Lawrence and his twin brother John married Ngāti Tūwharetoa women of considerable standing. Lawrence and (Henrietta) Te Kāhui (daughter of Horonuku Te Heuheu) had 10 children, who featured prominently on the ownership lists of the Ōkahukura and Rangipō North subdivisions. John had four children with his wife Te Arahori Te Wharekaihua

and then, after her death, two more sons with his second wife Rangiamohia (daughter of Te Herekieke). It was one of these last two sons, John Te Herekieke Grace, who was the author of the book *Tūwharetoa*. William’s wife was of Ngāti Maniapoto and Ngāti Raukawa descent and was said to be a niece of Rewi Maniapoto. However, he also continued to have close links with Ngāti Tūwharetoa, including through his brothers’ family relationships.⁴⁰⁶

At various points from the 1870s onwards, the three brothers were employed as court officials and in Crown land purchasing. Lawrence was a native land agent for a period, and both he and John worked as clerks and interpreters for the Native Land Court. William acted as a government land purchase officer and native agent for the Native Department. In the 1880s, their familiarity with court procedures and ties with the hapū of our region led them also to represent and assist claimants to the court. During the 1881 Rangipō–Waiū hearings, for example, Lawrence was the court’s interpreter while his twin John represented Weronika Waiata, one of the Māori claimants.⁴⁰⁷

Alongside that, John and Lawrence Grace had personal business and land interests in the region, including as investors and the managers of a Pākehā–Māori sheep farming scheme in Ōkahukura set up with the encouragement of Horonuku Te Heuheu, Tōpia Tūroa, and others (a venture which is discussed in more detail in the next chapter). These activities also drew them into the land court process on occasions. In 1883, as part of their ambition to purchase the land outright, John arranged for the survey of the Ōkahukura block and, on behalf of whānau members, tried to get a title hearing for it.⁴⁰⁸ Always with an eye for new possibilities, John wrote to Lawrence in January 1884 that they ‘might bona fide champion Ngāti Tūwharetoa in Taupo and work against all capitalists and adventurers, form and fund committee, stores, etc., etc., and act entirely as their agents and advisers both against private people and government.’⁴⁰⁹ However by mid-1885, John, in particular, was in financial difficulties and his views on working solely for Ngāti Tūwharetoa had undergone a significant change. Now he wrote to Lawrence, telling him:

You see we must work on the strongest side which is Government. Private persons and land buying are coming to an end, and you can never make money by siding with the native side.⁴¹⁰

A factor in this change of heart had perhaps been the 1884 reintroduction of Crown pre-emption and the Crown's keenness to obtain land around Tokaanu for a township and tourist centre. Certainly, John later claimed credit for having persuaded Ngāti Tūwharetoa to lodge a title application for that land in mid-1885. More widely than Tokaanu, however, the Crown's land purchasing programme, as Bruce Stirling has commented, was to prove (initially, at least) a

life saver for the Graces, variously providing them with Government employment, enhancing their political influence, and enhancing their future prospects in the district.⁴¹¹

Their fortunes were already significantly boosted with the election, in July 1885, of Lawrence Grace to parliament as member for Tauranga, which included the Taupō region. As a result, Lawrence was able to have 'several conversations' about the potential for 'settlement of the Taupo country' with Native Minister Ballance, later giving to understand that the idea for the large Taupōnuiātia application had been put to the government by himself:

The result of that Court has had a most important influence on the whole colony . . . and this policy I had some difficulty in inducing Mr Ballance to adopt'. [Emphasis added.]⁴¹²

Be that as it may, the Taupōnuiātia application fitted well into the government's overall objectives, which Lawrence listed in a letter to Ballance in January 1886 and said he supported – namely that the Crown should acquire land near the North Island Main Trunk Railway line, and secure the Ruapehu, Tongariro, and Ngāuruhoe mountains, as well as the main thermal springs in the area. Individualising Māori land tenure 'as thoroughly as possible' was considered essential to achieving these aims and to settling 'the native tribes of Taupo permanently'

on the lands that would remain in their possession. Both Ballance and Grace agreed that it was imperative that the court 'be ordered to sit at Taupo to enable the natives to give effect to these objects'.⁴¹³

In September 1885, it was brother William's turn to lobby Ballance, seeking appointment as a Native Land Court judge, no less. In support of his application he wrote: 'for many years past I have been enjoined in ascertaining the titles of Maori to their land and consider myself well versed in their customs, etc.'⁴¹⁴ His quest was not successful but in the following month he was sent by the government to secure, if possible, a Ngāti Tūwharetoa title application for the whole Taupōnuiātia area.⁴¹⁵ Lawrence himself also returned to Taupō to contribute his own urgings, later reporting to Ballance that he had pointed out to Ngāti Tūwharetoa:

the desirableness of expediting the settlement of their land [claims] if possible at once and [in one] operation . . . and that this would best be effected by submitting their whole tribal claim for investigation by the Court in one block, and during which, as the investigation progressed the establishment of titles, the apportionment of reserves, and cessions of land to the Crown could all be satisfactorily decided and settled once and for all . . .⁴¹⁶

By the end of the month, William was able to telegraph Ballance to reassure him that leading chiefs had 'signed application [for] tribal boundary and are ready to carry case thro' court in accordance with plan arranged by us'.⁴¹⁷

Alongside these negotiations with Ngāti Tūwharetoa, Lawrence was also lobbying government contacts with a view to securing for his brothers a significant part in the Crown's land purchasing programme in the area. In November, Lawrence telegraphed Ballance from Taupō to remind him that he had promised to William an appointment.⁴¹⁸ William himself directly lobbied the under-secretary of the Native Department, Thomas Lewis. Ballance and Lewis corresponded, and a proposal to appoint William as land purchase officer was put to Cabinet for its approval on 5 December. The position was confirmed to William on 21 December, just a day

before William wrote from Kihikihi saying he deemed his appointment as land purchase officer to have started 1 November and submitting an invoice for his salary and expenses since then. In support, he detailed work undertaken, which included ‘[getting] the natives to . . . have their titles to the lands in that district [Taupō] investigated’ and conferring with the chief judge in Auckland about the publication of the Taupōnuīātia application.⁴¹⁹

According to the Taupō court minute book, when the Taupōnuīātia title investigation opened in mid-January 1886, William appeared ‘representing the government’. Later he would tell the Taupōnuīātia Royal Commission that he had been sent to Taupō to ‘watch the government interests’ (presumably in a general sense), and indeed by this time he was both land purchase officer and government agent for the the district. Yet, when he began speaking at the hearing, it was for the Ngāti Tūwharetoa claimants, explaining how they would present their case.⁴²⁰ The later report of the Taupōnuīātia Commission indicates that he also assisted them ‘by suggesting questions and giving them advice’.⁴²¹ It is possible, too, that he may have been intending to pay court fees for some claimants, although as Crown counsel has said, the meaning of the court minutes is not entirely clear on this point.⁴²²

As the hearing progressed, William was also involved in strategy on the sidelines. In February 1886, for instance, he informed Lewis: ‘we are holding back lists of names [for Ōkahukura] in order, if possible, [to] arrange purchase for Crown on portions.’⁴²³ It is not clear who was meant by ‘we’, but his communication would seem to be clear evidence that not only was he intimately involved with the process of drawing up or presenting the ownership list, in a way intended to assist Crown purchasing goals, but that the Native Department was aware of this.

As indicated earlier, we shall discuss Crown purchasing in detail in the next chapter. Here, it is sufficient to note that while hearings were underway, Crown purchase agents and officers operated ‘in the wings’, including being present during the crucial out-of-court discussions. Land purchasing activities took place both before and during title determination. Once an interim title order had been

issued, the Crown, through its agent or representative, would then inform the court of its agreement to purchase. For example, on 12 March 1886, the court awarded an Ōkahukura subdivision, Tāwhai, to 11 claimants. William Grace immediately informed the court that the Crown had already made arrangements to purchase part of the block. This portion, Tāwhai South, was then vested in the claimants for the purpose of being conveyed to the Crown once survey and final title had been completed.⁴²⁴

Indeed, William Grace found himself ‘so engaged attending court and negotiating with natives’ to buy their land that he required clerical assistance. He enlisted Judge Scannell’s clerk, Thompson, who even accompanied him on his forays to secure more signatures from would-be sellers. Scannell not only allowed the arrangement but, since Thompson was not being paid for these ‘extra-curricula activities’, recommended to under-secretary Lewis that he be accorded a bonus (which means that Lewis must, or should, have known of the situation). The recommendation does not seem to have yielded a response.⁴²⁵ Meanwhile, William had suggested to the Native Land Purchase Office that the Crown adopt a new form of purchase deed that would greatly reduce the ‘innumerable attestations’ required on the existing deed – a piece of proactive lobbying on his part to try to get the alienation process streamlined. It was a form of deed, he said, which was ‘now always used by private persons who purchase Maori lands’. We do not know what response he received, if any. Other activities engaged in by William at this time included providing recommendations to local shopkeepers so that would-be sellers could receive credit, pending payment for their land being purchased.⁴²⁶

Not content with his existing multiple roles, William then sought to become involved in the formal surveying of the Taupōnuīātia block and its subdivisions, as an agent for Ngāti Tūwharetoa. Early in 1887, the assistant surveyor-general, Stephenson Percy Smith, let it be known that the Native Department objected to the idea. However, the evidence shows that William still became involved – possibly informally – in negotiating survey agreements on behalf of the tribe.⁴²⁷

Later in 1887, William also became involved in a dubious deal over some land in the Pouakani area of Taupōnuīātia, essentially paying ‘bonuses’ to certain claimants to keep their names out of the ownership list, the aim apparently being to restrict the number of owners (which included his own wife) and facilitate Crown purchase. He subsequently revealed that it was not the only time he had paid such bonuses and that he regarded them as perfectly legitimate under what he termed his ‘discretionary powers as a Land Purchase officer’. In Waimarino, he had ensured that ‘500 acres was given back to the chiefs after the whole block had been bought’, which was, he said, ‘a bonus for services rendered’. The Native Department later denied any knowledge of the practice and gave to understand that it would never have sanctioned it. The Taupōnuīātia Commission, investigating the Pouakani matter in 1889, was to find that ‘Mr WH Grace, a Government Land Purchase Officer’ had indeed induced one party ‘to withdraw large claims of her own and her relations to a certain portion of the Pouakani block’ – which, together with its other findings, it ‘respectfully submit[ted]’ to the consideration of His Excellency Lord Onslow, as Governor.⁴²⁸

In February 1888, William was sent a letter of dismissal, to take effect from 31 March. Rather than cite grounds of inappropriate behaviour or conflict of interest, however, it linked the dismissal to a need for a general retrenchment in the public service. But William’s dismissal did not stop him from staying in touch with government officials. Hearing of petitions objecting about various aspects of the Taupōnuīātia hearings, he contacted Lewis with a proposal to get Taupō Māori to file counter-petitions. He was willing to use his influence with local Māori to see such a petition signed, he said, and he would contact his brother John to act along similar lines. Before the end of August, he was also seeking re-appointment for government land purchase work. This time, Lewis was more willing to voice criticism: he advised the Native Minister to decline William’s approach, having come to the conclusion that Grace’s methods were too much those of the private agent and that he was not to be trusted to work without supervision. Patrick Sheridan, the under-secretary of

the Native Land Purchase Department, was later to comment that, in matters concerning Taupōnuīātia, William had been ‘guided by a wrong sense of duty and the advice of his brother [Lawrence] who was then in the House [of Representatives]’. William was nevertheless later re-employed as an interpreter.⁴²⁹

Meanwhile, prior to and during the Taupōnuīātia hearings, John Grace had also been engaged in various activities related to the court and its processes. In mid-1885, as we have already seen, he was involved with a title application for Tokaanu and at around the same time, on behalf of local residents such as ‘Gallagher and Noble, Ross, Blake, Black, etc.’ (apparently local shopkeepers and hotel owners), he actively lobbied his twin, Lawrence (now a member of the House of Representatives), to use any influence he might have with Ballance to get the land court sitting in the Taupō area. He followed up with numerous other suggestions of ‘things required to be done’, later asking that these letters be destroyed as, apart from being ‘regular scrawls’, it ‘would not do [for them] to fall into other hands’.⁴³⁰

One letter, written in October 1885, urged Lawrence to ‘get Ballance to write me a letter of appointment’. If Lawrence could only secure him work as a government land purchase agent, he said, he was even willing to pass some of the salary to Lawrence (to whom he owed money). Clearly desperate, he wrote: ‘Stick to and worry Ballance and Lewis until you get what you want . . . I am just hanging on till you return.’⁴³¹ The quest for appointment as a government official was not successful, but he and Henry Mitchell did secure a contract to work on commission for six months, as private land agents buying land for the Crown. The arrangement, which began in January 1886, was that the two of them would work in tandem with John’s brother, William, who, as a government officer, could be made responsible for the advances of government money that would be needed to cover purchase payments. John’s later recollection, writing to Sheridan, the Native Department under-secretary, in August 1897, was that he had ‘devoted the whole of [his] time and a great deal of money to the execution of [this work] from the

13th January 1886 to the 24th September 1887 – although it must have been under two or more separate arrangements with the Crown, since the first agreement was terminated around July 1886.⁴³²

Despite this heavy involvement in purchasing land for the Crown, when the Taupōniātia hearings opened on 16 January 1886, it was John who acted as the court's interpreter.⁴³³ Moreover, on top of these more formal roles in land purchasing and interpretation, there were his kinship connections to Ngāti Tūwharetoa, through his wife. As John Aitken Connell would later observe while acting as lawyer for Hitiri Te Paerata, John was 'largely interested' in the outcome of the Taupōniātia case.⁴³⁴ Evidence from Dr Pickens reveals that John's simultaneous involvement in both interpreting and land purchasing in Taupōniātia was (retrospectively) recognised by officials as a matter for concern: when under-secretary Lewis finally became aware of the situation four months later, in May 1886 (while the Taupōniātia hearing was adjourned), he expressed alarm and advised urgent efforts to find a replacement – although he did say that at the time of John's appointment as interpreter, it was not known that he would be commissioned to purchase land on behalf of the Crown. By July 1886, Grace was no longer authorised to interpret at the Taupō court.⁴³⁵

There were also concerns in some quarters about the quality and accuracy of the interpretation that John had provided during the weeks he was employed in the role, with Connell maintaining that he had failed to 'fairly and correctly interpret the evidence to the court, so much so that the natives at a further stage refused to go on with the cases unless another interpreter was substituted'. Judge Scannell afterwards corrected this assertion by saying that the case in question was not Taupōniātia but another block, being leased by Grace, where title had already been granted. Nevertheless, we note that Connell was not the only one to raise doubts: Judge Brookfield (who had little or no knowledge of te reo) later commented that John's interpretation at the Taupōniātia hearing had been 'different' from what he was subsequently told were the facts. Allegations of Grace deliberately misleading the

court were not definitively proved, however, when the Tauponuiatia Commission investigated.⁴³⁶

Lawrence Grace's involvement with land court processes had also been significant. We have already noted that he was a native land agent for a period, and that he worked as a clerk and interpreter for the court. In April 1880, he and brother William were jointly advertising in the *Waikato Times* as 'licensed interpreters and Native Land purchase agents' and, as we earlier briefly mentioned, in 1881 he had been directly involved in court in an official capacity as the interpreter for the first few days of the Rangipō–Waiū hearing (despite an objection by Heperi Pikirangi).⁴³⁷ After his election to parliament in 1885, the only official role to which he was appointed, while a member, was that of commissioner under the Native Schools Act 1880 – an appointment which took place in November 1885.⁴³⁸ He did not hold a ministerial post, and in 1886 his direct involvement in the Taupōniātia case was unofficial (other than an interest in formalising the acquisition of land for a school at Hātepe).⁴³⁹ Nevertheless, we have already seen how he had been heavily involved in high-level discussions behind the scenes, over the preceding months, and the direct communication with Ballance and with officials appears to have continued during the hearings.

When parliament was not in session, Lawrence was at the Taupōniātia hearing. On one occasion he was even described in court minutes as the Crown's representative, and from time to time he seems to have appeared in court as William's replacement.⁴⁴⁰ Indeed in the Pākehā press, he was seen virtually as the architect of the hearing, with the 'extinguishment of native title on such a bold and gigantic scale' being attributed by the *Bay of Plenty Times* 'largely, if not solely' to his 'perseverance and energy'.⁴⁴¹

Alongside this, however, evidence given to the Native Affairs Committee in 1888 showed him as acting on behalf of Ngāti Tūwharetoa throughout the Taupōniātia hearings.⁴⁴² He advised some claimants, paid their court fees, was appointed as trustee for minors in his Māori family and was involved in the claims of his wife and children.⁴⁴³ At the same time, as noted above, he also seems to have had an arrangement with his brother John to share

the latter's commission on any purchases made for the Crown.⁴⁴⁴

Later, in October 1891 (and now no longer a member of parliament), he again became involved in Crown land purchases, initially receiving payments from the Native Land Purchase Office for witnessing signatures on purchase deeds, and then, from 1892, for being more directly involved in purchasing.⁴⁴⁵

Such a constant mixing of roles and blurred allegiances, by all three brothers, did not go without protest from affected Māori – especially in relation to the Taupōnuiaia hearings – and the discontent was loud enough to reach the ears of others not immediately involved. In 1886, for instance, an unknown but 'reliable source' reported from Auckland that

Great complaints are made by the chief Taonui and other influential natives of the dishonest proceedings of LM Grace MHR and John Grace in connection with the passing of lands through the Native Land Court recently held at Taupo.⁴⁴⁶

The communication, which was forwarded to Sir George Grey, then went on to mention the arrangement whereby Lawrence was to receive part of William's commission on land purchases for the Crown, and commented that '[t]he principal chiefs of the Ngāti Maniapoto strongly object to WH Grace having anything to do with their lands', in light of rumours that he had formerly been 'implicated in some very dishonest transactions' as a private agent. There was also discontent, said the communication, about the way land interests had been awarded to the wives and children of the Grace brothers, and the fact that the brothers themselves had in some instances been appointed as trustees.

Other complaints found their way to Hoani Taipua, the member for Western Maori. In 1887, he wrote to the Native Minister informing him that

There are a great number of applications to me from the people of Taupo that the Grace brothers be suspended from any government employment. Great is the evil of the works

of those men in the Taupo district. They (the Maori) suffer through their work.⁴⁴⁷

At the core of the many different complaints he had received was that the Graces were perceived as having given out government money to buy land and then, when the land came to court, had acted in support of those to whom they had given the money, such that '[t]he Maori of that district say that in every case those who drew money from the government always gained and won the case'. On top of that, there were the Graces' family connections. As a result of such concerns, said Taipua, people wanted the Graces to be 'dispensed with by the government'. They wanted new men appointed – and 'let them be good men', he added.⁴⁴⁸

Made aware of the complaints, Lewis immediately dismissed them as inspired by 'the followers of the prophet Takerei', an opponent of land sales. Focusing entirely on the actions of William Grace, and ignoring the fact that the complaints had referred to 'the Grace brothers' (plural), he assured the Native Minister that, while it was

part of Mr Grace's duty to appear in Court to protect the interests of the Crown by submitting necessary evidence[,] he could not otherwise influence the decisions and the painstaking impartiality of the presiding Judges [was] beyond question.

The complaints of Taipua's constituents were accorded no further investigation.⁴⁴⁹

Then, too, there were the appeals for rehearing and petitions to the government, which we have already discussed, some of which also cited complaints about the Graces. Te Moana Pāpaku, for example, voiced protests that Ngāti Waewae, Ngāti Wī, and other hapū had been wrongly excluded from title to Tongariro and Ruapehu and had been injured by the Graces who were 'officers of the government, officers of the court and commissioners'. Their calls for a rehearing were rejected.⁴⁵⁰

In 1889, the actions of the Graces were again raised as an issue, this time in front of the Taupōnuiaia Royal

Commission. Although the commission failed to address matters specific to those parts of Taupōnuiātia that fall within our inquiry district, the evidence presented in relation to the Graces is nevertheless of interest in the context of the present discussion. Hitiri Te Paerata, for instance, claimed that the three brothers, and especially William, effectively controlled the court, and, in addition to being highly critical of John Grace's partiality as interpreter, as we noted earlier, he claimed that after John was replaced, William constantly interfered with the translations offered by the new interpreter.⁴⁵¹

The commission's report, submitted to the Governor on 17 August 1889 and subsequently presented to parliament, did not even mention the allegations against John and it regarded many of Hitiri's claims of improper conduct against William Grace as unsubstantiated. Nevertheless, it did accept that William had assisted Hitiri's opponents:

by suggesting questions and giving them advice; and, being himself interested in the Pouakani Block, through his wife (a Native or half-caste), and by reason of his having made large advances to the claimants, amounting to over £600 on his own responsibility, and, further, by his desire to facilitate the sale to Government, it is more than probable that when out of court he also aided and guided them in the course they should pursue.⁴⁵²

Under-secretary Lewis responded to the finding by saying that neither the department nor the government had any knowledge that 'Mr WH Grace, the Government Land Purchase Officer, was taking any partizan action before the Court', and went on to say: 'Such action was certainly never authorised and I should regard such a course as an infringement of his duty as a Government Officer.'⁴⁵³

Lewis's comments about ignorance of what was happening raise concerns. We agree with the Crown that some of the more extreme allegations against the Grace brothers remain unproven. The degree of influence they had over the court and its decisions, while difficult to precisely define, appeared to stop well short of the complete control and manipulation inferred by some claimants.

However, at the very least, it can be said that the Crown did little to mitigate or manage the strong likelihood of a conflict of interests, given the Grace brothers' multiple connections and spheres of activity.

We acknowledge that with a small population and an even smaller pool of qualified people from which to draw, the Crown was limited in whom it could use: as the Hauraki Tribunal has observed, 'multiple roles were not unusual in the nineteenth century' and officials might often 'wear several hats'.⁴⁵⁴ Part of the problem, in our view, stemmed from the Crown's failure to create a clear enough distinction between its land purchasing programme and the adjudicative responsibilities of the court. Purchasing activities were allowed to run parallel with court hearings, and negotiations took place before title rights had been investigated. This led to suspicion that the title investigation process was being manipulated in the interests of land purchase. The close whānau ties between the Graces and some claimants only heightened fears that the court was not distributing justice openly and equally. We shall return to this matter in our next chapter which discusses Crown purchasing. For the time being, we make the following observations:

- ▶ With respect to Lawrence Grace, although at various times he was employed as a Crown official, for interpretation and land purchasing purposes, this was not his role at the time of the Taupōnuiātia hearings. Counsel for Ngāti Tūwharetoa notes that 'agency' is defined as 'the relationship that arises when one person is appointed to act as the representative of another'.⁴⁵⁵ By that definition, Lawrence might indeed be regarded more as a representative of Taupō Māori than of the government: he had been elected by the Māori constituents of Tauranga (which included the Taupō area) to represent them in parliament, and he did not hold any ministerial portfolio.
- ▶ With respect to John Grace, we accept the Crown's position that it was not department policy to allow its officers to occupy conflicting roles simultaneously. However, we cannot help but wonder why it took so long for Thomas Lewis, as head of both the Native

Department and the Land Purchase Department, to realise that John was working simultaneously as interpreter for the Taupōnuiātia court and as a Crown-commissioned land purchase agent in the area. We can only think that it resulted from trying to do too much, too fast, and without adequate oversight. Certainly Lewis moved to resolve the situation when it was drawn to his attention but that was four months later, which hardly demonstrates good governance or active Crown protection of Māori and their interests.

- ▶ With respect to William Grace, we again have concerns that there was not adequate management and supervision of his activities, but we reserve further comment until the next chapter where his purchasing activities are further discussed.

Overall, our view is that the Grace brothers acted principally for themselves, using their various roles and connections as might best further their fortunes. Where the Crown can be taken to task is in not better monitoring and controlling their activities. We accept that there was perhaps not the same sensitivity towards potential conflicts of interest as there is today, because of the necessity of relying on a small pool of people, and we agree with Crown counsel's submission that the Crown did not deliberately turn a blind eye to the Graces' activities. However, nor did it proactively seek to inform itself about what was happening. Yet, the Graces were clearly key to much court-related activity in the wider Taupō area and the Crown often profited from the results.

Furthermore, the Crown frequently chose not to investigate in any great depth when problems were drawn to its attention. We have already concluded that applications for rehearing were considered without proper transparency of process. The same was true of petitions, and even where action was recommended by the Native Affairs Committee, little resulted. Several of those applications and petitions, as we have noted, included complaints about the activities of the Grace brothers. Although the Taupōnuiātia Royal Commission ostensibly considered some of the complaints, it in fact focused on the activities

of William (which, as we have said, we will examine further in the next chapter). We note here, though, that the commission observed:

Whether Mr Grace, a Government officer, should have mixed himself up in any way with matters in dispute between the Natives themselves may be a question for the Government to determine.

We have seen, that in response, Lewis sought to distance both the government and his departments from any responsibility. Indeed, by 1890 William was back in government service as an interpreter (this time mostly in the King Country).⁴⁵⁶

(b) *Native Land Court judges*: Claimant arguments that the Crown exercised improper influence over the Taupōnuiātia court include allegations that Judge Scannell was appointed to hear that case because he was likely to be sympathetic to outcomes sought by the Crown.⁴⁵⁷ There are also allegations that political pressure led to the removal of Judge Brookfield during the course of the Taupōnuiātia hearings.⁴⁵⁸

The evidence cited in support of these allegations includes suspicions that the Graces, at the time, had improper control over both Taupōnuiātia judges. As we noted in the previous section, a report from an anonymous but 'reliable source' was forwarded to George Grey in June 1886. In addition to the matters already discussed, the report suggested that

The chief Taonui asserts that the manner in which the court at Taupo dealt with the lands that came before it was most disgraceful. Neither of the presiding judges had any knowledge of Maori customs and laws in regard to land tenure . . . Major Scannell AC (who was appointed at the express wish of LM Grace being an intimate friend of his) has but a slight knowledge of it [the Maori language]. John Grace (whose wife is a member of the Ngati Tuwharetoa tribe and was therefore interested in the lands that were adjudicated upon) acted as interpreter to the court.

*Consequently natives belonging to other tribes who opposed the claims of the Ngati Tuwharetoa to certain blocks of land could not obtain justice. It is alleged that both the judges were influenced by the Graces. [Emphasis added.]*⁴⁵⁹

That Scannell was personally known to the Graces is not in doubt. In 1885, for example, John Grace had written to his brother Lawrence that Scannell was ‘willing to do anything’ to try to further a particular trustee relationship, but that he could not certify that ‘all the money is paid when in reality [it is] not.’⁴⁶⁰ This was before Scannell was appointed to the bench, and we do not have any more details about the matter in question, but the comment clearly signifies that John had known him well enough to approach him for assistance over the trusteeship. In our view, however, it also signifies that Scannell was a man who ‘played by the rules.’ Similarly, several years later, in 1894, Lawrence Grace referred to Scannell as ‘our judge’ but in the same breath went on to describe him as ‘a splendid man as regards seeing fair play.’⁴⁶¹ Certainly, Scannell’s military background and his limited knowledge of te reo Māori were not ideal for a Native Land Court judge, as we observed earlier, but nor were they unusual, or a guarantee that he would do the government’s (or anyone else’s) bidding.

As to Judge Brookfield, he and two other judges were retired in March 1887. The official reason was budgetary cutbacks. Bruce Stirling suggests, however, that Brookfield had likely grown unhappy about the role Crown agents were playing in proceedings, and was dismissed for not acting according to government wishes.⁴⁶² In 1889, Hitiri Te Paerata told the Tauponuiatia Commission that ‘perhaps’ Brookfield was removed ‘because he would not play into Mr [William] Grace’s hands.’⁴⁶³

Little evidence is available to back these suspicions. The royal commission heard nothing on this matter apart from Hitiri’s less than definitive suggestion, and made no pronouncement regarding it. Moreover, at no point did Brookfield himself claim that he had been removed due to political pressure, even during the course of his dispute with the government over the level of compensation

he received for his dismissal. Brookfield subsequently rejoined private practice and represented Te Paerata and Taonui Hikaka in their legal complaints against the Taupōnuīatia hearings. Mr Stirling suggests that the ex-judge was seeking to remedy the wrongs inflicted by his court due to Crown interference, but there is no record of Brookfield offering such an explanation.⁴⁶⁴ Instead, material produced by Dr Pickens suggests that cost-cutting was indeed the cause, and not just an excuse, for Brookfield’s removal.⁴⁶⁵

5.5.4 The costs of participating in the court process

In this section, we look at the financial and other costs of the court process. Most expensive of all were survey costs, but we defer most of our discussion of these until the next chapter, since they are closely intertwined with the issue of land alienation. Other direct costs for Māori included court fees, and payments to lawyers and interpreters. Associated costs of the court included the food, travel, and accommodation expenses of attending court hearings. Participation in hearings could also bring considerable socio-economic disruption, and a heightened risk of being exposed to communicable illnesses.

During our inquiry, there was no real meeting of minds between Crown and claimant historians on how expensive the court was or how much land was alienated to meet court-related debts. The claimants cite Dr Angela Ballara, who suggested that in the wider central North Island region costs of court adjudication were typically two-thirds or three-quarters of a block’s purchase price and sometimes even higher.⁴⁶⁶ While we accept the Crown’s argument that charges in our inquiry district did not reach such levels, the Stout–Ngata commission estimated in 1907 that more than a third of the Rangiwaea block had already been sold to meet costs, with more survey costs pending.⁴⁶⁷ In all, said the commission, ‘a low estimate’ of the overall cost for Māori of obtaining titles to Rangiwaea (including subdivisions and partitions) was £4,200.⁴⁶⁸

The Crown, for its part, argued that Rangiwaea was an exceptional case, given that the original hearing alone lasted around four months, which was considerably longer

than most hearings in our inquiry district. Dr Pickens further suggested that the Rangiwaea costs were minor, if split between the large number of owners in the block. Moreover, he considered it not unreasonable that the owners should have been required to alienate a portion of their land to clear court debts.⁴⁶⁹ Overall, the Crown maintained that claimants exaggerated the impact of costs, which it said were generally not a heavy burden in our district. It also maintained that there is little evidence that costs or related debt commonly forced sales.⁴⁷⁰

We are aware that it is not always possible precisely to quantify the costs and consequences of the court in our inquiry area, given that the available evidence is limited and sometimes anecdotal. Nonetheless, we believe there is enough material to show that costs had a negative impact on *ngā iwi o te kāhui maunga*.

Paramount chief of Ngāti Tūwharetoa, Horonuku Te Heuheu and his tribe, for example, agreed to a single, large-scale hearing for the Taupōnuīātia block having been told that this would avoid the cumulative expense and disruption of a rash of smaller adjudications. Nevertheless, by 1889, the tribe was complaining that hearing and survey fees had forced them to sell around 300,000 acres, or one-quarter of the entire block.⁴⁷¹ The Crown agreed that 300,000 acres may have been lost to meet the costs of the Taupōnuīātia hearing and the initial surveying, although thought that the figure should be treated with some caution. But in any case, argued Dr Pickens, this was not an unfair outcome for Ngāti Tūwharetoa. It was a 'relatively small portion' for a tribe who had 'a lot of land to start with' to swap for the benefits of having the 'secure' and alienable title.⁴⁷² We do not agree. For one thing, it is by no means certain that the tribe saw alienability by individuals as a benefit. The area that had to be transferred was determined by the Crown as it unilaterally fixed the price per acre. Furthermore, although the new title may have been 'secure', there was the added complication of it being individualised which made economic development of retained land problematic. Finally, when we heard Dr Pickens say that Ngāti Tūwharetoa 'had a lot of land to start with', members of the Tribunal felt as if they had been

transported back in time to the 1880s.⁴⁷³ The arrogance of the Crown, as portrayed by Dr Pickens, had not changed and this was clear evidence of a breach of the principle of good faith.

(1) *Direct court costs*

Participating in court hearings did not come free of charge. Throughout most of the late nineteenth century, each claimant group was usually required to pay a fee of £1 a day for the duration of the court hearing, and there was, in addition, a fee of two shillings for each witness giving evidence. Court orders generally cost five shilling each, although £1 was charged for partition orders and certificates of title. Other fees were also sometimes charged, including for applications for adjournment. In our inquiry, it is recorded that a fee of £1 5s was payable for the application to adjourn the Waiakake hearing.⁴⁷⁴

The Crown, in its submissions, has stressed these charges were insignificant for *ngā iwi o te kāhui maunga*, given the usually short duration of court hearings in our region. Certainly, court fees were minor in comparison to survey charges.⁴⁷⁵ The CNI Tribunal, too, has commented that direct fees for participation in the court were usually the least of the court-related costs for local communities.⁴⁷⁶ For the initial Rangataua hearing, for example, court fees for two days of hearing time came to £4, divided equally between the claimants and counterclaimants.⁴⁷⁷ Nonetheless, the costs could add up. For the original Rangiwaea hearing, where the court sat for four months, the claimants had to pay around £70 in court fees alone.⁴⁷⁸ Subdivisions and partitions then resulted in further costs. As the Stout–Ngata commission commented:

At each step costs were incurred in Court fees, agents' fees, and expenses of attendance. We find that Court costs on partition amounted to nearly £100, costs in succession orders £20, . . . while agents' fees and expenses of attending the Courts may be estimated at £750.⁴⁷⁹

When combined with other expenses (not least that of getting surveys done, which we shall discuss in the

next chapter), such costs all added to the burden of court participation.

(2) Legal fees and translation costs

Although there is limited evidence regarding legal fees and translation costs, Dr Pickens has supplied a useful summary of charges relating to the 1881 Waiakake investigations, where claimants and cross-claimants were represented by lawyers. A list of expenses submitted by one of the lawyers involved, a Mr Betts, provides some indication of costs. Betts himself charged £5 5s, apparently for half a day of services, while the charge for the interpreter indicates a daily rate of £2 2s. These costs were to be paid by the counterclaimants, because they had requested an adjournment.⁴⁸⁰

In fact, there were no set rates until 1890 and, especially in longer hearings, costs could be expensive. As a consequence, in 1883, Te Keepa and 278 Whanganui Māori petitioned the Crown to request that lawyers be banned from court hearings, because of the cost. In the same year, Horonuku Te Heuheu also protested against what he considered the excessive fees charged by court lawyers. As it happened, new legislation was already under consideration at the time and the Native Land Laws Amendment Act 1883 stipulated that lawyers, agents, and representatives should be excluded from ordinary hearings except where the 'age, sickness, or infirmity, or . . . unavoidable absence' of any party rendered it necessary for someone else to represent him or her – although different provisions applied in the case of subdivision hearings.⁴⁸¹ It is for this reason that no lawyers participated in the initial Taupōnuiātia title hearing. While this presumably kept expenses down, it may have handicapped claimant understanding of the court process and elevated the importance of mediators such as the Grace brothers who, as we have seen, were always keen to offer advice to groups they favoured.

The Native Land Court Act 1886 again permitted lawyers and agents to appear, providing the presiding judge gave his consent.⁴⁸² During the four-month Rangiwaea hearing in 1893, legal and agents' fees amounted to £1,200. It is not clear exactly which of the claimants or

counterclaimants paid these costs but Dr Pickens notes that Weronika Waiata 'in her letter offering to sell land on the block, had specifically mentioned the expenses associated with the Court hearing as being the reason for selling'.⁴⁸³

(3) The incidental costs of attending court

During our inquiry, both claimants and Crown agreed that the costs of travelling to court hearings in distant towns, and the expenses of accommodation and food, could be substantial, although the Crown stressed that there are few firm figures given in the evidence.⁴⁸⁴ That said, the general indications are that expenses were a concern.

Prior to the Rangataua hearing for, example, the resident magistrate of Wanganui, Richard Woon, reported that the claimants wished to have the hearing 'in their midst, where they could more easily and more cheaply procure food, and obtain house accommodation'.⁴⁸⁵ Their plea failed and the case was heard in Wanganui. In August 1880, James Booth, the district officer, indicated that, as a result, they were under financial pressure:

[they] have come a very long distance from the interior. They are incurring expenses here which they had no means of paying. They asked for an advance to pay actual expenses of living.⁴⁸⁶

There was also the difficulty of finding accommodation. The court did shift to Upokongaro for a while in the early 1880s, but by the mid-1880s it was holding its hearings in Whanganui again and most of those attending had to camp in tents on the riverbank. Judge Ward noted that they 'often suffer very considerable hardship for want of needful shelter'.⁴⁸⁷ After a hearing in 1887 that included the Raetihi and Urewera blocks, William Butler, the land purchase officer in Whanganui, also made reference to the accommodation problem, reporting that 'serious complaint' had been made by some of those who had now returned home, about:

the want of accommodation while attending Court in support of their claims to land, and with some reason, for no doubt



Upokongaro, on the banks of the Whanganui River, the site of several court hearings. Sometimes, two hearings were scheduled at the same time in different places (as occurred at Upokongaro and Tapuaeharuru in January 1886), with the result that Māori who wanted to attend both proceedings could not do so.

they are subjected to hardships on these occasions when they are compelled, in their own interests, to be in attendance for a great length of time⁴⁸⁸

In terms of financial cost, living expenses for the four-month Rangiwaea hearing in Wanganui in 1893 were estimated at around £800.⁴⁸⁹ While accepting that this was unusually long for the hearing of any individual block, we are mindful of the fact that it was not always clear when a particular block would be heard. As noted earlier, Chief

Judge MacDonald did take steps to improve the situation in the 1880s, but it is clear from the evidence before us that the only way to be absolutely certain of being on hand when one's case was called was to be present on the day the court opened and then stay for the duration of the sitting.

Indeed, the costs of extended court hearings in towns could be disastrous for some participants – although doubtless a welcome source of income for local Pākehā shopkeepers and merchants. William Grace, for example,

used to recommend would-be sellers to local storekeepers so that they could receive credit against a future payout on their land interests.⁴⁹⁰ As Dr Ballara explained:

The need for money was compounded in a vicious circle of economic pressure by the need to spend long periods attending the Land Court, often in towns where costs were high, subject to the temptations of public houses and stores. In those periods, rather than earning, Maori were paying Court fees, lawyers' fees, and were confronted with surveyors' fees, all of which cost more land to satisfy. They were also having to buy expensive food in European-owned stores, which could have been avoided if the sittings were held in the locality of the blocks, instead of towns convenient for the judges and other Europeans involved.⁴⁹¹

There is also evidence to suggest that court hearings were often associated with significant socio-economic disruption. We agree with the Crown that Māori poverty and ill-health should not be simplistically attributed to the court alone. However, contemporary reports indicate that protracted hearings, in combination with other factors, took a harsh toll on local Māori.

After the Taupō court adjourned in April 1886, it was reported that the recently appointed native medical officer, Dr Leslie had found:

a considerable amount of sickness among the Natives, he having attended several hundred cases and that, especially during the Land Court, there have been an exceptional number of deaths.⁴⁹²

In his medical report of 1886, Dr Leslie stated:

there is a great deal of sickness among the natives of this and other districts assembled at Lands Court here. [W]hooping cough is epidemic. The sick list is exceptionally large, there being over 270 cases of all kinds since the commencement of the quarter.⁴⁹³

Similar reports of negative health impacts came from the medical officer, Earle, at Whanganui, who noted that

each sitting of the land court in the town was usually followed by 'severe illness and some deaths', sometimes reaching epidemic proportions. He intimated that overcrowding and alcohol were the likely root causes.⁴⁹⁴

Health problems were not the only socio-economic cost that could result from court attendance. In March 1886, during the Taupōnuiātia hearing at Tapuaeharuru, Judge Scannell reported to under-secretary Lewis that although the local people could already only cultivate 'very little more than sufficed for their actual wants', he foresaw that the 'very large consumption of provisions' that was occurring during the hearings would lead to 'considerable scarcity in the ensuing winter'.⁴⁹⁵ In other words, their normal small surplus risked becoming a significant deficit because of the court sitting. By May of the following year, Lewis was slightly more optimistic, reporting that:

During the greater portion of the year the majority of the Natives have been attending the Native Land court at Taupo, and consequently there has been less cultivation undertaken than is usual, but I believe enough has been done to supply their own wants.⁴⁹⁶

Clearly, the Tarawera eruption of June 1886 had not had the same devastating effect on the people of Tapuaeharuru as it had on their Te Arawa neighbours to the north. By either of Lewis's reports, however, it is clear that so many local people had been diverted by Court attendance, over such a long period of time, that they would barely manage to produce enough food for subsistence purposes, and the chances of them having any surplus crops or livestock to trade for cash or other goods, or to support groups visiting for further hearings, were slim indeed. Indeed, when the Taupōnuiātia subdivision hearings had reconvened at Tapuaeharuru in January 1887, after a break of several months, Horonuku Te Heuheu had asked that the sitting adjourn to Waihi, at the southern end of the lake. Aperahama Te Kume had supported the change of venue, giving as a reason 'the scarcity of food'.⁴⁹⁷ The request was declined, and the court proceeded to sit at Tapuaeharuru for the next six months. Stirling speculates that the court's decision was not unrelated to Tapuaeharuru's proximity

to the Pākehā township of Taupō, and to the absence of a telegraph at Waihi.⁴⁹⁸ In regard to the latter, we note the Crown's acknowledgement that, in general, access to communication facilities would indeed have played a role in determining the location of sittings.⁴⁹⁹

Taken together, we believe the evidence discussed in this section is sufficient for us to conclude that court attendance frequently caused significant hardship to local Māori communities, even deaths.

(4) *Conclusions*

Court costs, both direct and indirect, went hand-in-hand with the Crown's introduction of its system of landholding. As the Pouakani Tribunal has said:

There is nothing in the Treaty of Waitangi which required the transmuting of traditional Maori forms of land tenure into title cognisable in British law. By imposing requirements for survey and associated costs, fees for investigation of title in the Native Land Court, and other costs such as food and accommodation while attending lengthy court sittings, many Maori were forced into debt. That there had to be a fair system of establishing ownership when a sale was contemplated is accepted. The legislation under which the Native Land Court operated went much further than that and required that all Maori land be passed through the Court with all the attendant costs of that process. When the debts were called in, Maori paid in land.⁵⁰⁰

Earlier in this chapter, we found that ngā iwi o te kāhui maunga were, on the whole, reluctant to engage with the court: they used it because they had no other real alternative if they wanted legal title to their lands. The costs associated with the court's introduction, which as we have seen were often burdensome, must be deemed a resultant prejudice. We shall come back to this issue when we look at survey costs, in the next chapter.

5.6 TRIBUNAL FINDINGS

We welcome the Crown's acknowledgment that 'its failure to take adequate or timely steps to provide for communal

governance mechanisms was a breach of the Treaty.' We likewise welcome its acknowledgment that 'the awarding of titles to individuals rather than iwi or hapu' was also a breach of the Treaty in that it 'made land more susceptible to partition, fragmentation and alienation, which in turn contributed to the erosion of tribal structures.'⁵⁰¹

We note, furthermore, that the Crown has conceded that the '10-owner rule' which operated from 1865 to 1873 'can be seen as an inadequate attempt to provide a communal form of title.'⁵⁰² In our view, this concession effectively recognises the impacts of awarding ownership to named individuals to hold as tenants in common – a situation which continued after the 10-owner provision was repealed, and which thus makes the Crown's concession relevant to this inquiry even though no land in our district went through the courts in the period 1865 to 1873. In short, it was not the number of owners that mattered; rather, it was that they were legal owners of undivided shares as tenants in common, and thus able to pass title to their individual interests and have those interests succeeded to by their successors.

Indeed, with few exceptions, the Crown actively rejected joint tenancy – as evidenced, for example, in section 12 of the Native Lands Act 1869 and again, most strongly, in section 75 of the Native Land Court Act 1894 where the marginal note states 'Joint tenancy by Natives abolished'. This imposition of tenancy in common exposed each Māori owner individually (and generally unadvised) to the determined, persistent, and often privileged attentions and intentions of purchase agents who, in our district, were more likely than not to be Crown agents, often privileged by pre-emptive provisions in the legislation.

Beyond this issue of tenancy in common, which we regard as major, we refrain from other comment on native land law, since substantial findings have already been issued on the matter by previous Tribunals. However, our inquiry district is unique in one important respect. From the beginning, the overriding intent of the Crown was to acquire the mountains and retain them in public ownership for a national park. But it was not impossible for the rights and interests of Maori to be recognised in the process of achieving outcomes mutually beneficial to both

parties. Instead, because of the tenancy in common land tenure system that Maori were subjected to, they were forced to take part in the charade of hearing, subdivision, survey and acquisition of individual shares, partition and further acquisition of remaining individual shares ad nauseum. And this only ended up with the land being back in one title and in Crown ownership. We therefore find that the legislation that led to the processes that ngā iwi o te kāhui maunga were subjected to breached the Crown's Treaty obligations of partnership, good faith, and active protection.

Notes

1. *Tūreiti Te Heuheu Tūkino v to the Native Affairs Committee*, 30 September 1898, AJHR, 1898, I-3A, p 19; Bruce Stirling, 'Taupo-Kaingaroa Nineteenth Century Overview', 2 vols (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A39), vol 2, p 1556
2. Crown counsel, closing submissions, 20 June 2007 (paper 3.3.45), ch 7, p 14
3. *Ibid*, pp 4, 6
4. Claimant counsel, generic submissions on the Native Land Court, 22 May 2007 (paper 3.3.38); claimant counsel, generic submissions on Waimarino block, 14 May 2007 (paper 3.3.22); counsel for Robert Cribb and others, closing submissions, 14 May 2007 (paper 3.3.19), p 64; counsel for Ngāti Hāua, closing submissions, 23 May 2007 (paper 3.3.39), p 15
5. Paper 3.3.38, pp 2-3
6. *Ibid*, pp 3-4
7. *Ibid*, p 5
8. *Ibid*, pp 10-20, 23-29
9. *Ibid*, pp 2-5, 10-13, 22-23, 31-32, 75-76; counsel for Ngāti Hikairo, closing submissions, 15 May 2007 (paper 3.3.30), pp 25-26; counsel for Ngāti Rangī, closing submissions, 15 May 2007 (paper 3.3.33), p 19
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75. Crown counsel, closing submissions on breach issues, 10 December 2009 (Wai 903 ROI, paper 3.3.130)
76. Agreed Historians positions statement on Native Land Court, March, April and May 2009 (Wai 903 ROI, paper 3.2.569)
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78. Ibid, pp 13–14
79. Ibid, pp 14–15
80. Ibid, pp 4–5
81. ‘Two and a half million acres, more or less’ was the area given by Lawrence Grace in correspondence with the Native Minister in 1885. WH Grace to Native Minister, 31 October 1885, NO 85/3711A with MA 71/6, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, p 886). *The Bay of Plenty Times* of 26 January 1886, p 2, in reporting the case, mentioned ‘over a million and a half acres’.
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87. Ibid, pp 51–60; Robyn Anderson, ‘Whanganui Iwi and the Crown, 1865–1889’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004) (doc A29), p 127; doc A69, pp 27–28
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210. Document A39, vol 2, pp 996–997
211. See, for example, *ibid*, pp 959, 961, 967–968, 971.
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351. Grant Phillipson, "An Appeal from Fenton to Fenton": The Right of Appeal and the Origins of the Native Appellate Court', *New Zealand Journal of History*, vol 45, no 2 (2011), p 173
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355. Ibid, p 177; Native Land Acts Amendment Act 1881, s 2
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357. Document A50, p 402
358. Chief Judge MacDonald's notes, not dated, on Matuahū Te Wharerangi, Te Rangi Huatau, and others to chief judge, 16 April 1886, NLC 86/1204 Taupōnuiātia Closed Correspondence File, Rotorua Māori Land Court (as quoted in doc A39, vol 2, pp 994–1002)
359. Document A50, pp 38–39. Pickens states that the Rangataua application was decided under the Native Land Act 1873, which allowed six months to lodge an application, but the period had been shortened to three months by the amending legislation of 1878: doc A50, p 61.
360. Ibid, pp 386, 392
361. Ibid, pp 278, 386; doc A39, vol 2, pp 1003–1005, 1007. Stirling's table shows that there were 21 Taupōnuiātia applications, but one, described as '20a', largely repeated matters covered in numbers 12 and 19.
362. Document A39, vol 2, pp 1003–1005
363. Document A50, pp 278–280; doc A39, vol 2, pp 1003–1005
364. Document A50, p 402; doc A39, vol 2, p 1005
365. Document A50, pp 41–42
366. Document A39, vol 2, pp 1003–1005, 1017–1018
367. Document A50, p 386
368. 'Rehearing of Native Land Claim', 17 February 1881, *New Zealand Gazette*, 1881, no 14, p 219
369. Document A50, p 192
370. Ibid, pp 193–194, 196
371. Ibid, pp 119–121; Taupō Native Land Court minute book 2, 1 December 1881, fols 249–251; Taupō Native Land Court minute book 3, 15 March 1882, fols 69–149; Whanganui Native Land Court minute book 5, 23 March 1882, fols 56–57
372. Document A43, pp 308–309; doc A50, pp 358–360, 362–365
373. Chief Judge MacDonald's report, 27 February 1888, NO 88/1650 with MA 71/6, Archives New Zealand, Wellington (as quoted in doc A39, vol 2, pp 1010–1020)
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382. Document A39, vol 2, pp 1011, 1351; doc A50, pp 276–279
383. Document A39, vol 2, pp 1022–1023; 'Native Affairs Committee (Report of the)', AJHR, 1888, 1-3, p 4
384. Document A39, vol 2, pp 1022–1023; 'Native Affairs Committee (Reports of the)', AJHR, 1888, 1-3, pp 24, 28, 40
385. Document A39, vol 2, pp 1023–1024; 'Native Affairs Committee (Reports of the)', AJHR, 1888, 1-3, p 40; doc A50, pp 286–287
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387. Document A39, vol 2, pp 1028, 1048; 'Native Affairs Committee (Reports of the)', AJHR, 1888, 1-3, p 40
388. Document A39, vol 2, pp 1036, 1039, 1042
389. Ibid, pp 1042–1043
390. Ibid, pp 1044–1048
391. Document A50, p 287; doc A39, vol 2, pp 1024, 1352; 'Native Affairs Committee (Reports of the)', AJHR, 1888, 1-3, p 40
392. Document A50, pp 287–288; 'Native Affairs Committee (Reports of the)', AJHR, 1889, 1-3, p 2
393. Document A50, pp 288, 295; doc A39, vol 2, pp 1077–1078
394. Document A39, vol 2, pp 1352–1355
395. 'Native Affairs Committee (Reports of the)', AJHR, 1891, sess 11, 1-3, p 30 (as quoted in doc A39, vol 2, pp 1354–1355)
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