Tino Rangatiratanga
me te Kāwanatanga

Tino Rangatiratanga me te Kāwanatanga

The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry

Part 1

Volume 1

Wai 1040

Waitangi Tribunal Report 2023

The cover photograph by Stephen Western shows the flag of the United Tribes of New Zealand at Maiki Hill, Russell. Reproduced by permission of Sue Western.

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Tēnā te ngaru whatí
Tēnā te ngaru puku
Tēnā te kupu heke i te waí tuku kirí
Tēnā te tohu i te taí tímu i te taí parí
Kua ngū tō reo
Kua rongo tonu i te waí
Are maí ra e te karu kía rongo
Wete maí ra e te taringa kía kite
Tē tae ā tínana atu
Te rere atu te oranga

There is a wave that breaks
There is a wave that swells
There is a lesson in the ebbs of the water
There is a message in the surge of the tides
The voices of loved ones are now still
They remain heard in the waters
Open your eyes that you might hear
Free your ears that you might see
For whilst you are not with us in body
Your legacy lives on

Otí anō, waípuketía maí ra e te ngaru mahara
E te puna mātauranga
E te kura wānanga
Tauranga Moana
Te Whakatōhea
Koutou katoa kua eke kí te íwí nuí o te po
E kore e wareware
E kore e mutu
Maranga maí ra e te kupu
Tau maí ra e te aroha
Ma te tuhínga te waha i te moemoeā o
mauri ora
Tau ana
E tau

And so the waves swell in memory
The font of wisdom
The sacred knowledge
Dr Kihi Ngatai
Emeritus Professor Ranginui Walker
All who have ascended to the celestial heavens
You are not forgotten
You are always remembered
Your words remain
Your love abounds
Let this report be a mouthpiece for
the dreams of the people
Let it be done
Let it be so

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Te Rōpū Whakamana i te Tiriti o Waitangi
Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama

The Honourable Willie Jackson
Minister for Māori Development

The Honourable Kelvin Davis
Minister for Māori Crown Relations: Te Arawhiti

The Honourable Andrew Little
Minister for Treaty of Waitangi Negotiations

The Honourable David Parker
Attorney-General

Parliament Buildings
WELLINGTON

22 December 2022

E ngā Minita e noho mai nā i ērā taumata i te Whare Pāremata, ngā mihi maioha ki a koutou.

Tātai whetū ki te rangi, mau tonu, mau tonu, Tātai tangata ki te whenua, ngaro noa, ngaro noa.

E koutou kua ngaro ki te pū o mahara. Tēnei ka haku, tēnei ka mapu. Tēnei ka aue, tēnei ka auhi. Koutou katoa i te hinganga o te tini, i te moenga o te mano. He aha ma tātou? He tangi, he mihi, he poroporoaki. E moe, i te moenga roa, ki reira okioki ai.

While the starry hosts above remain unchanged and unchanging. The earthly world changes inevitably with the losses of precious, loved ones. To those of you who have been lost to the void of memories. For you we lament. For you we cry of distress. All of you who departed to the assembly of the hundreds and the congregation of the thousands. What are we left to do? Grieve, acknowledge, farewell. Rest now in peace.

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MINISTRY OF JUSTICE
Tāhū o te Ture

It is my honour to present our long-awaited report *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry*. This report is for part 1 of stage 2 of the Te Paparahi o Te Raki Inquiry.

He Whakaputanga me te Tiriti / The Declaration and the Treaty

Our stage 1 report, *He Whakaputanga me te Tiriti / The Declaration and the Treaty* (2014), concluded that Te Raki Māori and the Crown reached a momentous agreement at Waitangi, Waimate, and Māngungu in February 1840. We concluded that in February 1840 the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and the Governor were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā. The rangatira also agreed to enter land transactions with the Crown. The Crown promised to investigate pre-treaty land transactions and to return any land that had been wrongly acquired. In our view that promise, too, was part of the agreement made in February 1840. Further, as part of the treaty agreement, the rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs where necessary. If so, however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty.

Tino Rangatiratanga me te Kāwanatanga

In stage 2 of our inquiry, we shift focus to the 415 Te Paparahi o Te Raki claims submitted under the Treaty of Waitangi Act 1975. This part of the report addresses the key issues raised within these claims relating to the nineteenth century. Matters of great significance identified by claimants and considered in this volume include the investigation and determination of claims on pre-treaty land transactions; the events and aftermath of the Northern War; the alienation of Māori land through the Crown's exercise of pre-emptive purchasing; the establishment of a judicial system for determining and individualising title to customary Māori land; and continued land purchasing and loss during the late nineteenth century. Underlying these principal issues of claim was a focus on political engagement between Māori and the Crown. As the treaty relationship unfolded in the period our report covers, it was characterised by the Crown overstepping the bounds of the kāwanatanga, in conjunction with continual erosion of Māori tino rangatiratanga. While Te Raki Māori seek the return of lands, compensation, and specific cultural redress, central to their claims is the restoration of their ability to exercise the tino rangatiratanga as promised in te Tiriti.

In this report, we have not identified precisely when the sovereignty the Crown holds and

exercises today was acquired, nor have we considered its legitimacy in a contemporary context – those questions may feature in the Waitangi Tribunal's forthcoming kaupapa inquiry into constitutional issues.

Summary of chapters

Our report is extensive and covers a significant time period and significant issues. I provide a brief summary.

Chapter 1: Hei Tīmatanga Kōrero / Introduction

Our report begins with an introduction to the inquiry and the inquiry district. Over 26 hearing weeks, we heard wide-ranging evidence across seven taiwhenua: Hokianga, Whangaroa, Waimate–Taiāmai ki Kaikohe, Takutai Moana, Whāngārei, Mangakāhia, and Mahurangi and the Gulf Islands. This district covers approximately half of the land north of Tāmaki Makaurau and remains one of the most economically deprived parts of New Zealand. This introduction also establishes the major issues of claim to be addressed in the forthcoming second part of this stage 2 inquiry and introduces the taiwhenua in which many claimants elected to group themselves.

Chapter 2: Ngā Mātāpono o te Tiriti / The Principles of the Treaty

In chapter 2, we set out the principles of the treaty that apply to the circumstances arising from Te Raki claims. Because of our stage 1 conclusion, it was necessary to revisit how certain treaty principles have been previously expressed, and the rights and duties that arise from the treaty guarantees. It was important, in our view, that our articulation of the principles be based in the actual agreement entered into by Te Raki rangatira and the Crown in 1840. We therefore attach great weight to te mātāpono o te tino rangatiratanga/the principle of tino rangatiratanga, and the expectation of Te Raki rangatira in 1840 that they would continue to exercise their rights and responsibilities to their hapū in accordance with tikanga. Te mātāpono o te houruatanga/ the principle of partnership and te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect are also important principles in our inquiry that reflect the actual agreement entered into by Te Raki rangatira and the Crown in 1840.

Chapter 3: Tāngata Whenua / People of the Land

After having established the treaty context for the claims before us, we then describe Te Raki communities prior to 1840, who they were, where and how they lived, and what they valued and believed. While we do not address treaty claims in this section of the report, we draw your attention to the foundational and ongoing importance of hapū rangatiratanga within Ngāpuhi. The organising principle of te kawa o Rāhiri protects the independence of autonomous hapū, but also binds them together with mutual obligations in times of threat or strife.

Chapter 4: Tino Rangatiratanga me te Kāwanatanga, 1840–44: Ngā Tūtakitanga Tuatahi o Te Raki Māori ki te Kāwanatanga / Tino Rangatiratanga and Kāwanatanga, 1840–44: First Te Raki Māori Encounters with Kāwanatanga

As a central issue in our inquiry, Crown–Māori political engagement is addressed in three chronologically organised chapters of our report. A key concern for the claimants was the steps taken by the Crown to declare sovereignty over the North Island and then all of New Zealand in two proclamations issued by the Queen's representative Captain Hobson in May 1840. We find that it was clear from the wording of the May proclamations, reflecting the wording of the English text of the treaty, that the British considered a 'cession' of sovereignty to have taken place. However, the Crown made no effort to explain to rangatira the process by which it would assert sovereignty over the whole country, nor did it make clear that it intended to establish a government and a legal system entirely under its control. Given our stage 1 conclusions, it is evident to us that by proclaiming sovereignty over the northern island of New Zealand in May 1840 by virtue of 'cession' by the chiefs, the Crown acted inconsistently with the guarantees of te Tiriti as expressed in the te reo text which Te Raki rangatira signed.

Chapter 5: Te Pakanga o te Te Raki, 1844–46 / The Northern War, 1844–46

In chapter 5, we consider the origins of the Northern War, the Crown's conduct during the war, and its impacts on Ngāpuhi. We find that, in the year before the outbreak of war, Crown officials failed to consider Ngāpuhi leaders' concerns that te Tiriti was being ignored and that the Crown intended to impose its laws on and subordinate Māori. The frustration of some northern Māori with the trajectory of the treaty relationship lay behind Heke's flagstaff fellings of late 1844 and early 1845. We have described these fellings as a challenge to the Crown's encroachment on Ngāpuhi tino rangatiratanga and a signal that the Crown should meet with them and resolve issues of relative authority. Governor FitzRoy attempted to bolster support for the Crown at an important hui held at Waimate in September 1844, making a number of promises including the return of surplus lands, that is, land in excess of what was determined by Crown processes to have been legitimately acquired by settlers in pre-treaty transactions, which the Crown could then claim for itself. However, he also ignored opportunities for dialogue with Hōne Heke on more than one occasion. Instead, he threatened military action against Heke and his allies and chastised rangatira for not intervening in muru conducted in accordance with tikanga against settlers.

Throughout the ensuing conflict, the Crown was the aggressor, using military force to impose the sovereignty it believed had been acquired in 1840. In April 1845, FitzRoy instructed his forces to spare no 'rebels' and capture the principal chiefs as hostages. The Crown initiated attacks on the pā and kāinga of Ngāti Manu, Ngāti Hine, Ngāti Rāhiri, Ngāti Kawa, Ngāti Tautahi, Te Uri o Hua, Te Kapotai, and other hapū, destroying homes, property, waka, and food stores. The Crown

was also responsible for renewing hostilities when it attacked Ruapekapeka in December 1845 after a five-month hiatus where it had initially ignored Heke's first appeals for peace negotiations, and then made the surrender of land a condition for peace. By contrast, Heke, Te Ruki Kawiti, Hikitene, and their allies fought only when attacked, and sought to protect both Māori and settler communities as much as possible from the effects of conflict. We find that the Crown took advantage of and encouraged divisions within Ngāpuhi during the war and failed to adequately consider the welfare of non-combatants affected by its military campaigns. All these aspects of the Crown's conduct during the Northern War represent serious breaches of the treaty that had both severe immediate and long-term impacts on Ngāpuhi.

Chapter 6: Ngā Kerēme Whenua i Mua i te Tiriti, ngā Hokonga Whenua ki te Karauna Anake, me ngā Whenua Tuwhene / Old Land Claims, Pre-Emption Waivers, and Surplus Lands

In chapter 6, we consider the Crown's policies for the investigation of pre-1840 land transactions. Before signing te Tiriti, Te Raki Māori had transacted land with settlers within the context of their own laws, and the tikanga of tuku whenua. However, through the work of the first land claims commission and the subsequent bodies established to investigate old land claims, the Crown seized the power to determine the process for identifying land rights, and Te Raki Māori tikanga was supplanted without their consent or involvement in decision-making. We find that the Crown's imposition of English legal concepts, grant of absolute freehold title to the settlers concerned, and its own subsequent taking of the surplus were effectively a raupatu of Māori tino rangatiratanga over thousands of acres of land in Te Raki.

Chapter 7: Tino Rangatiratanga me te Kāwanatanga, 1846–65: Te Tikanga o te Hepeta o Kuīni Wikitōria / Tino Rangatiratanga and Kāwanatanga,1846–65: The Meaning of the Queen's Sceptre

In chapter 7, we discuss the major constitutional change that occurred during the 1850s and 1860s, fundamentally affecting the treaty relationship in Te Raki. The New Zealand Constitution Act 1852 established a bicameral national Legislature comprising a lower house of representatives to be elected by settlers and an appointed upper house. Most Māori men were excluded from the franchise because they could not meet the property test (Māori women, like Pākehā women, were excluded altogether). No specific provision was made for Māori representation in Parliament until four Māori seats were introduced in 1867 – far fewer representatives than Māori were entitled to on a population basis. In 1856 the settler Government – at its insistence – was granted self-government ('responsible' government) by the imperial government. The executive now comprised representatives of the settler parliament, whose advice the Governor had to accept. But the Governor initially retained the right to make decisions on Māori affairs himself, arguing that this would give Māori better protection. The settler Government was determined to end this arrangement, and gradually assumed responsibility for Māori affairs. Governor George Grey

accepted the principal of ministerial responsibility for Māori affairs in 1861, and the imperial government confirmed that principle in 1864.

During this period, Governors Gore Browne and Grey sought different solutions to provide for Māori involvement in the governance of their communities, such as the Kohimarama Rūnanga (a national rūnanga of Māori leaders) in 1860, and Grey's district rūnanga (intended to provide limited powers of local self-government) in 1861. However, despite Te Raki Māori support for these initiatives, both were short-lived and they gave way to directly assimilationist institutions such as the Native Land Court. Neither governor used the powers available in section 71 of the Constitution Act 1852 to establish native districts in which Māori could continue to govern themselves according to their own 'laws, customs and usages'.

We find that the transfer of authority by the imperial to the colonial Government and its ultimate decision that colonial ministries might assume responsibility for Māori affairs fundamentally undermined the treaty relationship. The Crown had promised to protect Māori in possession of their lands, in the exercise of their chiefly authority, and in their independence. Yet the Crown failed to build any of these safeguards into the new constitution. Instead, the Crown progressively transferred authority to the very settler population from which it was to protect Māori.

Chapter 8: Ngā Hokonga Whenua a te Karauna 1840–65/Early Crown Purchasing, 1840–65; Chapter 9: Te Kooti Whenua Māori i Te Raki, 1862–1900/The Native Land Court in Te Raki, 1862–1900; Chapter 10: Ngā Hokonga o ngā Whenua Māori, 1865–1900/Crown and Private Purchasing of Māori Land, 1865–1900

In chapters 8–10, we consider in detail other issues of claim related to the Crown's actions and omissions in respect of Te Raki Māori land. Key issues addressed in this group of chapters include the alienation of Māori land through the Crown's exercise of pre-emptive purchasing between 1840 and 1865 (chapter 8); the establishment of the Native Land Court as a judicial system for determining and individualising title to customary Māori land (chapter 9); and continued land purchasing and loss during the late nineteenth century (chapter 10). The Crown's imposition of a new system of land tenure from 1862, initially through its Native Land legislation was particularly devastating – not just to Te Raki Māori land ownership, but to the structures and practices underpinning the cultural, political, and economic organisation of hapū. The overall effect of the Crown's nineteenth-century land policies, often conducted on the ground by Crown purchase agents in ways that breached the treaty, was that only one-third of the district remained in Māori ownership by 1900. By the end of the nineteenth century, many Te Raki Māori lacked sufficient land for sustenance, let alone the future development and participation in the colonial economy that they had expected in 1840. Certain hapū were virtually landless.

Chapter 11: Tino Rangatiratanga me te Kāwanatanga, 1865–1900: Ngā Whakamātautanga o Te Raki Māori te Whakapuaki te Tino Rangatiratanga / Tino Rangatiratanga and Kāwanatanga, 1865–1900: Te Raki Māori Attempts to Assert Tino Rangatiratanga

The final substantive chapter of this report concerns the efforts of Te Raki Māori to assert their tino rangatiratanga in the late nineteenth century. They established committees to mediate internal disputes and manage relationships with settlers and the colonial Government; they engaged with other northern tribes to establish regular regional parliaments at Waitangi, Ōrākei, and elsewhere; they sought accommodation with the Kīngitanga; and during the 1890s, they took lead roles in the attempts of the Kotahitanga movement to establish a national Māori parliament and self-government recognised by the Crown. They sought no more than the Crown's legal recognition for local komiti and national paremata that were already operating. However, the Crown rejected or ignored their proposals, and in particular was unwilling to recognise any significant transfer of authority from colonial institutions. This was a historically unique opportunity to make provision in New Zealand's constitutional arrangements for Māori tino rangatiratanga at a national level. The Crown's failure to recognise and respect Te Raki rangatiratanga over this period was a breach of the treaty and its principles.

Recommendations

We anticipate that our findings and the recommendations will provide Te Raki Māori and the Crown further support and understanding as they move forward with negotiations to settle the claims of Te Raki tangata whenua. In order to assist the parties with this work, we recommend that:

- The Crown acknowledge the treaty agreement which it entered with Te Raki rangatira in 1840, as explained in our stage 1 report.
- The Crown make a formal apology to Te Raki hapū and iwi for its breaches of te Tiriti/the Treaty and its mātāpono/principles for:
  - Its overarching failure to recognise and respect the tino rangatiratanga of Te Raki hapū and iwi.
  - The imposition of an introduced legal system that overrode the tikanga of Te Raki Māori.
  - The Crown's failure to address the legitimate concerns of Ngāpuhi leaders following the signing of te Tiriti, instead asserting its authority without adequate regard for their tino rangatiratanga which resulted in the outbreak of the Northern War.
  - The Crown's egregious conduct during the Northern War.
  - The Crown's imposition of policies and institutions that were designed to wrest control and ownership of land and resources from Te Raki Māori hapū and iwi, and which effected a rapid transfer of land into Crown and settler hands.

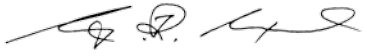
- The Crown's refusal to give effect to the Tiriti/Treaty rights of Te Raki Māori within the political institutions and constitution of New Zealand, or to recognise and support their paremata and komiti despite their sustained efforts in the second half of the nineteenth century to achieve recognition of and respect for those institutions in accordance with their tino rangatiratanga.

- All land owned by the Crown within the inquiry district be returned to Te Raki Māori ownership as redress for the Crown's breaches of te Tiriti/the Treaty and ngā mātāpono o te Tiriti/the principles of the Treaty.
- The Crown provide substantial further compensation to Te Raki Māori to restore the economic base of the hapū, and as redress for the substantial economic losses they suffered as a result of the Crown's breaches of te Tiriti/the Treaty and ngā mātāpono o te Tiriti/the principles of the Treaty.
- The Crown enter discussions with Te Raki Māori to determine appropriate constitutional processes and institutions at national, iwi, and hapū levels to recognise, respect, and give effect to their Tiriti/Treaty rights. Legislation, including settlement legislation, may be required if the claimants so wish.

Our last recommendation above will require consideration of how to enable the meaningful exercise of tino rangatiratanga at national, iwi, and hapū levels. Those discussions and negotiations will occur in part at a constitutional level and will require a sharing of power as envisaged in te Tiriti. We have no doubt that this process will be challenging for the Crown, but undertaking it in good faith is essential if the treaty partnership and the Crown's own honour is to be restored. It is important that any proposed resolution to the claims involve the legislative and policy reform necessary to reset the relationship between tino rangatiratanga and kāwanatanga so that the promises of te Tiriti are realised.

Heoi anō, e ngā amokura, e ngā amokapua, kua tukuna atu e mātou, a mātou whakaaro. Hei aha? Hei whakaaroaro mā koutou o te Whare Pāremata, mā ngā Māori o Te Raki, mā te motu whānui hoki.

Nāku noa,



Judge Craig T Coxhead
Presiding Officer

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We acknowledge also the many Tribunal staff and contracted researchers and report writers, past and present, who provided us with valuable support and assistance during the hearings and in the preparation of this report.

We wish to thank the staff who at various times assisted in the preparation and running of the Te Paparahi o Te Raki inquiry and hearings: claims coordinators Danny Merito, Tina Mihaere-Rees, Helayna Seiuli, Malesana Ti'eti'e, Tanumia So'oialo, and Destinee Wikitoa; and inquiry facilitators Fiona Small, Hannah Boast, Georgie Craw, Debbie Martin, Jenna-Faith Allan, Jacinta Paranihi, Tanja Schubert-McArthur, Michaela Coleman, and Emma Powell.

Rangi McGarvey supported the Tribunal with simultaneous interpretation through the greater part of our hearings, a role in which Conrad Noema, and Rangi's son, Paiheke McGarvey, followed him. Conrad Noema assisted us subsequently with the interpretation of te reo Māori sources. Alan Doyle was our sound technician for all of the hearings.

Registry staff who have assisted us during our inquiry include Nyenyezi Siameja, Rebekah Fistonich, Wiremu Rikihana, Paige Bradey, Tara Hauraki, Wiliame Gucake, and Hannah Watts. Judicial administrator Francis Cooke also assisted with legal advice.

We acknowledge the advice and work of successive chief historians Richard Moorsom and Cathy Marr (previously as principal research analyst), in particular on the local issues research programme for the Stage 2 casebook. We are also grateful to our research staff whom we commissioned to prepare reports for this inquiry: Barry Rigby, Nicholas Bayley, Coralie Clarkson, Alexandra Horsley, and Craig Innes; and to Jeff Abbott and James Skinner (for assistance in locating sources).

Many staff and contract writers contributed to the preparation of this report. In particular, we would like to thank senior report writer Ryan Anderson, and contracted report writers Bernard Steeds, Terry Hearn, and Vaughan Wood for their valuable contributions. We are also grateful for the assistance given by our report writing staff: principal historians Michael Allen, Daniel Morrow, and Margot Schwass; and report writers Sam Hutchinson, Ethan McKenzie, Anna Milne-Tavendale, Georgia Cervin, Helen Robinson, Sonja Mitchell, and Kristen Wineera; and Allie Maxwell, Esme Stark, Ella Arbury, Sophie Gordon and Joseph Llewellyn.

Finally, we wish to acknowledge those who contributed their time and skills to the production of this report: Jane Latchem, Steven Oliver, and Sarah Scobie performed countless editing and reference checking tasks; Maddison Hagger was responsible for the photographs; Noel Harris produced the maps; and senior editor Dominic Hurley undertook the report layout and typesetting.

ABBREVIATIONS

AJHR	*Appendix to the Journal of the House of Representatives*
AJLC	*Appendices to the Journals of the Legislative Council*
app	appendix
IUP / BPP	*British Parliamentary Papers: Colonies New Zealand*, 17 vols (Shannon: Irish University Press, 1968–69)
CA	Court of Appeal
ch	chapter
cl	clause
CMS	Church Missionary Society
col	column
doc	document
ed	edition, editor, edited by
fn	footnote
HMS	Her/His Majesty's Ship
ltd	limited
MB	minute book
memo	memorandum
MHR	member of the House of Representatives
NADC	North Auckland Development Company
NZJH	*New Zealand Journal of History*
NZLJ	*New Zealand Law Journal*
NZLR	*New Zealand Law Reports*
NZPD	*New Zealand Parliamentary Debates*
NZSC	*New Zealand Supreme Court*
OLC	old land claim
p, pp	page, pages
para	paragraph
PC	Privy Council
repr	reprinted
RM	resident magistrate
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sess	session
v	and (in a legal case name)
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, endnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 1040 record of inquiry, a copy of the index to which is available on request from the Waitangi Tribunal.

CHAPTER 1

HEI TĪMATANGA KŌRERO
INTRODUCTION

E ngā rangatira o Ngāpuhi, whakarongo mai. Kaua e uhia te Tiriti o Waitangi ki te kara o Ingarangi, engari me uhi anō ki tōu kara Māori, ki te kahu o tēnei motu.

Ngāpuhi chiefs, listen to me. Don't cover the Treaty of Waitangi with the English flag, but cover it with your own flag, with the cloak of this island.

—Āperahama Taonui (Ngāpuhi).[1]

1.1 The Te Paparahi o Te Raki Inquiry: Stage 2

This report addresses te Tiriti o Waitangi/the Treaty of Waitangi claims of iwi, hapū, whānau, other groups, and individuals of Te Paparahi o Te Raki, the great land of the North. It was in this district where rangatira and the Crown first signed the treaty at Waitangi on 6 February 1840, at Waimate a few days later, and then on 12 February at Māngungu. The first claim from this district was received by the Tribunal on 13 September 1985 and concerned rates on Māori land.[2] Tā Himi Henare (Sir James Henare) filed a further claim on 13 October 1988 concerning Crown actions affecting the Taumārere River and its confluence with Te Moana o Pikopiko i Whiti.[3] Since then, Te Raki Māori have lodged a total of 415 claims that have been registered by the Tribunal. While the vast majority of the claims were brought by Māori affiliating to Ngāpuhi, New Zealand's most populous iwi, claims were also brought by those affiliating to Ngāti Whātua, Ngātiwai, Patuharakeke, Ngāti Rehua, and Ngāti Manuhiri, among others.

In addressing these claims and the issues they give rise to, our inquiry has a broad geographical sweep, resulting in part from an early decision to combine five (later seven) taiwhenua (subregions) into an overarching district.[4] For our purposes, the Te Paparahi o Te Raki inquiry district includes Hokianga and most of Northland's east coast, broadly covering Whangaroa, Bay of Islands, Mangakāhia, Whāngārei, Mahurangi, and the Gulf Islands. It is inclusive of all territories north of Tāmaki Makaurau (Auckland) that have not been the subject of previous Waitangi Tribunal historical reports. We discuss the inquiry district and each taiwhenua in detail later in this chapter.

The process of hearing a large number of claims, spanning an extensive rohe, was neither a short nor a simple one. Many tangata whenua witnesses, Crown witnesses, lawyers, and technical experts presented evidence and legal submissions over 26 hearing weeks,

spanning five years, from 2013 to 2017. These hearings occurred alongside, and continued after, the release of our stage 1 report in November 2014, *He Whakaputanga me te Tiriti / The Declaration and the Treaty*. We received final submissions in reply in November 2018.

The stage 1 report assessed the meaning and effect of the 1835 he Whakaputanga o te Rangatiratanga o Nu Tireni / Declaration of the Independence of New Zealand, and te Tiriti / the Treaty at the time these documents were signed, in order to provide essential context for our inquiry into post-1840 claims. We concluded that rangatira who signed te Tiriti at Waitangi, Waimate, and Māngungu did not cede their sovereignty in February 1840.[5] This conclusion provided a foundational basis for stage 2 of the inquiry, in which we have heard and assessed claims from throughout the inquiry district that Crown acts and omissions breached the treaty and its principles from 6 February 1840 onwards.

This volume is the first part of our report for stage 2 of the Te Raki inquiry. The next two chapters discuss the treaty principles relevant to this inquiry, and the tribal landscape of the district. The following chapters address issues arising from claims related to Crown conduct in Te Raki, from the signing of the treaty to the end of the nineteenth century. Twentieth century issues, broadly considered, will be addressed in subsequent volumes of our stage 2 report.

This introductory chapter begins with an explanation of important terms relevant to this inquiry and provides a short account of the procedural background from the pre-hearing phase through to its completion. We discuss the inquiry as a whole, its particular features, and the types of claims we heard. We then set out the significant issues arising from the claims, before introducing each taiwhenua. Lastly, we outline the structure of this report and its chapters.

1.2 Whakatakotoranga Kupu / Terminology

In our stage 1 report, we adopted specific terminology for the purposes of our discussion and analysis.[6] As this terminology remains important in this stage 2 report, we repeat here our earlier explanations of key terms.

1.2.1 Te Tiriti and the Treaty

As in our stage 1 report, in this report we have chosen to use 'te Tiriti' to refer to the Māori text, 'the Treaty' to refer to the English text, and 'the treaty' to refer to both texts together, or to the event as a whole without specifying either text.

1.2.2 He Whakaputanga and the Declaration

Likewise, where we refer to 'he Whakaputanga o te Rangatiratanga o Nu Tireni' or 'he Whakaputanga', we are referring to the Māori text of the 1835 declaration. Where we refer to 'the Declaration of Independence' or 'the Declaration', we mean the English text; and we use 'the declaration' to refer to both texts together, or to the event as a whole without specifying either text.

1.2.3 Te Paparahi o Te Raki: the name of this inquiry

During early discussions with claimants, they suggested that our inquiry district be named 'Te Paparahi o Ngāpuhi' (the great land of Ngāpuhi). They also said they wanted an inquiry process that enhanced Ngāpuhi whanaungatanga, while allowing each hapū and community their own distinct voice.[7] However, while many parties to this inquiry identified themselves as Ngāpuhi, not all did. In keeping with the principle of whanaungatanga, we therefore chose the name 'Te Paparahi o Te Raki'.[8]

As noted earlier, we use Te Paparahi o Te Raki to refer to all territories north of Auckland that have not been the subject of previous Waitangi Tribunal historical inquiries.

1.2.4 Ngāpuhi

While 'Ngāpuhi' today refers to people from throughout the Bay of Islands, Hokianga, Whangaroa, and Whāngārei areas, and is sometimes used to refer to people from throughout the north, that was not always the case. As we discuss further in chapter 3 of this report, prior to the signing of the treaty, 'Ngāpuhi' comprised three separate but related groups: the inter-related hapū of Hokianga,

as well as a northern and a southern alliance of hapū surrounding the Bay of Islands.[9] As at 1840, 'Ngāpuhi' remained a grouping of autonomous hapū, each with their own zones of influence and resource rights, sharing common descent, who cooperated or competed as circumstances and tikanga required.[10] Throughout this report, we use 'Ngāpuhi' in a way that reflects its use in historical sources. When describing past events, we have used hapū names or lines of descent to more accurately reflect relationships at particular periods.

Where we use 'Te Raki' or 'Te Raki Māori', we are referring to the entire inquiry district and all those claimants who live within it. Most often, we use more specific terms, such as area or hapū names, to identify the places or people to whom we are referring.

1.2.5 The sound written as 'wh'

In te reo Māori, the phoneme (distinct sound) now written as 'wh' was typically written by Europeans in the early nineteenth century as 'w'. 'Kaiwhakarite', for example, was typically written 'kaiwakarite', and 'Whakaputanga' written as 'Wakaputanga'. In this report, we use the original 'w' spelling only in direct quotations; otherwise, we use the modern digraph 'wh'.

1.3 Ko te Hātepe Ture o ngā Tono Nei / Procedural Background

1.3.1 Appointment of the stage 2 panel

Stage 1 of the Te Raki inquiry ran over six years, from 2008 to 2014. Judge Craig Coxhead (Ngāti Makino, Ngāti Pikiao, Ngāti Maru, Ngāti Awa) was the presiding officer. The late Emeritus Professor Ranginui Walker (Whakatōhea), Joanne Morris, the late Kihi Ngatai (Ngāiterangi and Ngāti Ranginui), Professor Richard Hill, and the late Keita Walker (Ngāti Porou) completed the panel.

In November 2012, the Tribunal's deputy chairperson appointed Dr Robyn Anderson to the panel for stage 2 of the inquiry. In order to manage potential conflicts arising from her previous research, Dr Anderson did not attend hearings relating to the Whāngārei and Mangakāhia areas and has not been involved in the determination of relevant specific claims.[11] Following the release of the stage 1 report in November 2014, Professor Hill, Joanne Morris, and Keita Walker stepped down from the Te Raki inquiry. In February 2015, the Tribunal's chairperson appointed Dr Ann Parsonson as a panel member for stage 2 of the inquiry.[12]

1.3.2 Planning and hearings

At a judicial conference in December 2005, the then chairperson of the Waitangi Tribunal, Chief Judge (now Justice) Joe Williams, recommended that Ngāpuhi assemble a 'Design Group' to propose how the hearing of Northland claims should proceed.[13] Over two years, the Ngāpuhi Design Group (the Design Group) developed a comprehensive proposal and carried out extensive consultation with the claimant community.[14] The Design Group filed its proposal with the Tribunal in March 2007.[15]

The Design Group sought a comprehensive and substantial inquiry process that would enhance the claimants' whanaungatanga. They emphasised that the independence of hapū coexists with a Ngāpuhi-wide unity – a characteristic of Ngāpuhi social organisation expressed in the pepeha, 'Ngāpuhi kōwhao rau' (Ngāpuhi of a hundred holes).[16] The Design Group proposed that the five inquiry districts – Whangaroa, Hokianga, Bay of Islands, Whāngārei, and Mahurangi-Gulf Islands – be incorporated into a single district to cover all remaining treaty claims between Mahurangi and Muriwhenua.[17]

After receiving submissions from parties, the Tribunal chairperson supported the proposed single district inquiry, observing that the inquiry process should 'emphasise the relatedness and the kinship which binds all of the communities involved in this inquiry from south to north'. However, the chairperson stipulated that within the one large district, it would remain necessary to approach the inquiry 'section by section'.[18] The subregions within the district, which became known as taiwhenua, were intended to enable the claimants to organise themselves and prepare for hearings.[19]

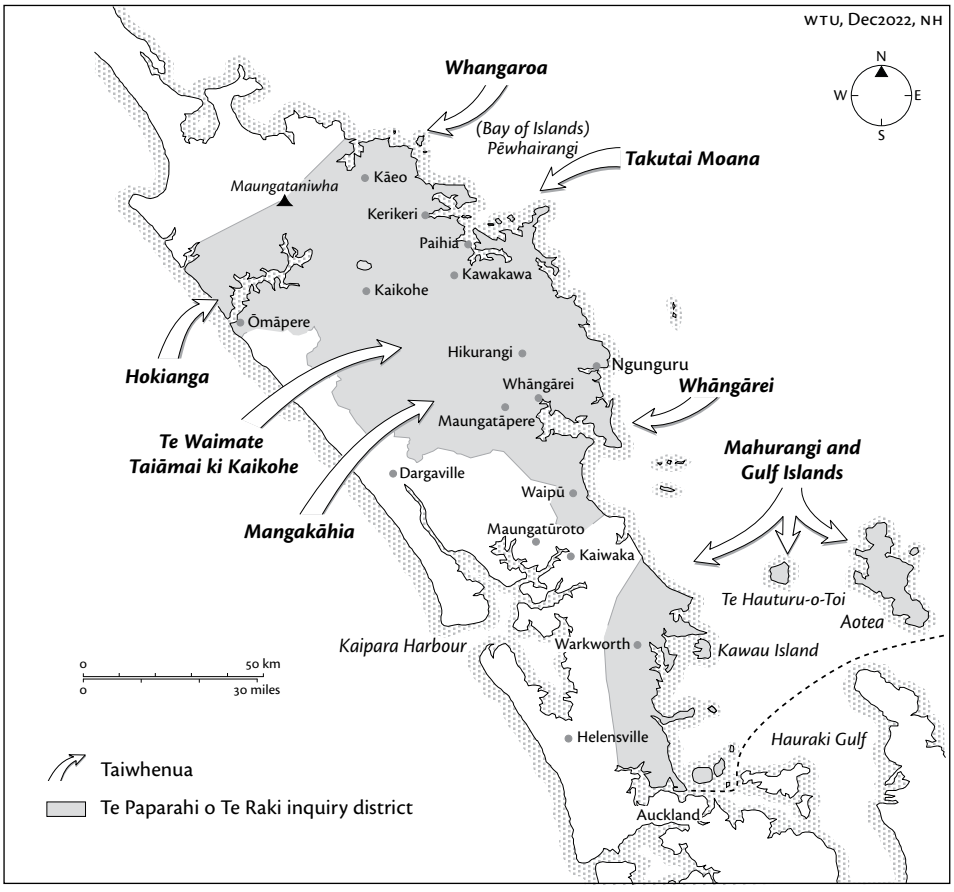
During the interlocutory stage of our inquiry, claimants

The Te Paparahi o Te Raki stage 2 panel. *From left:* Judge Craig Coxhead, the late Emeritus Professor Ranginui Walker, Dr Ann Parsonson, Dr Robyn Anderson, and the late Dr Kihi Ngatai.

emphasised that the issue of Crown sovereignty was central to their claims, and in 2007 they proposed that it be the subject of separate hearings.[20] In 2008, the Tribunal decided to hold early hearings on Te Raki Māori understandings of he Whakaputanga and te Tiriti as this was a matter central to all post-1840 Te Raki claims.[21] The stage 1 hearings began in 2010. The key questions to be answered concerned whether rangatira of the Bay of Islands and Hokianga ceded sovereignty to the British by signing te Tiriti o Waitangi in 1840, and how they understood the relationship they were entering into with the Crown under te Tiriti.[22]

Because the stage 1 inquiry only dealt with events up to February 1840, we did not make any findings of treaty breach or recommendations to the Crown under the Treaty of Waitangi Act 1975. We did, however, reach the conclusion that Te Raki rangatira who signed te Tiriti did not cede their sovereignty in February 1840. We stated that the meaning and effect of the treaty agreement 'came from the Māori text, on the one hand, and the verbal explanations and assurances given by Hobson and the missionaries, on the other'.[23] Rangatira agreed to share power with the Governor, though they 'had different roles and different spheres of influence'. They were to retain their independence and chiefly authority over their people and within their territories.[24]

Hearings for stage 2 of the inquiry proceeded with a regional approach, consistent with the claimants' principles of unity and autonomy. Earlier, in 2009, the Tribunal addressed numerous submissions from claimants and counsel regarding a proposal to sever Mahurangi and the Gulf Islands from the Te Paparahi o Te Raki inquiry. The Tribunal decided that Mahurangi and Gulf Islands would stay within the inquiry district, a decision it reaffirmed in February 2012 and again in February 2013.[25] In late 2012, the number of taiwhenua increased from five



Map 1.1: The inquiry district and taiwhenua.

to seven. Mangakāhia and Whāngārei would now each hold their own hearings, while Takutai Moana, the coastal Bay of Islands collective, would organise themselves separately from their inland whanaunga in Waimate–Taiāmai ki Kaikohe.[26] In September 2014, the Tribunal refined the Te Raki inquiry boundary so that the western boundary aligned with the boundary of the Te Roroa district, and the northern and southern boundaries aligned with the surrounding Muriwhenua and Kaipara district boundaries.[27] In November 2015, we granted five additional hearing weeks, increasing the original programme from 21 to 26 hearing weeks in total.[28] During the hearing phase, claimants from each taiwhenua came together to present evidence; each hapū had the opportunity to be heard on marae in their own rohe. Technical evidence relating to historical and contemporary issues common to all groups was also presented thematically throughout these hearings.[29]

We note here the level of cooperation and goodwill among claimant parties. We have no illusions that this collaboration was always easy, and we know that claimants were organising themselves in often trying circumstances. Difficulties stemmed from the sheer number of claims and the need to balance representation from different groups, given the large numbers of claimants wishing to offer their kōrero in the limited time available.

Week	Hearing	Venue	Duration
1	Opening statements	Te Tii Marae, Waitangi	18–22 March 2013
2	Takutai Moana	Waitaha Room, Copthorne, Waitangi	14–17 May 2013
3	Whangaroa	Turner Centre, Kerikeri	8–12 July 2013
4	Waimate–Taiāmai ki Kaikohe	Turner Centre, Kerikeri	2–6 September 2013
5	Whāngārei	Forum North, Whāngārei	14–18 October 2013
6	Mangakāhia	Korokota Marae, Mangakāhia	16–20 December 2013
7	Mahurangi	North Harbour Stadium, Auckland	10–13 February 2014
8	Hokianga	Mōria Marae, Whirinaki	7–11 April 2014
9	Takutai Moana	Tau Henare Marae, Pīpīwai	4–8 August 2014
10	Whangaroa	Ōtangaroa Marae, Whangaroa	22–26 September 2014
11	Waimate–Taiāmai	Turner Centre, Kerikeri	24–28 November 2014
12	Whāngārei	Akerama Marae, Tōwai	16–20 February 2015
13	Hokianga	Tuhirangi Marae, Waimā	13–17 April 2015
14	Takutai Moana	Whitiora Marae, Te Tii Mangonui, and the Returned and Services Association, Kerikeri	8–12 June 2015
15	Whangaroa	Te Tāpui Marae, Matauri Bay	1–4 September 2015
16	Waimate–Taiāmai	Turner Centre, Kerikeri	2–6 November 2015
17	Whāngārei	Terenga Parāoa Marae, Whāngārei	15–19 February 2016
18	Hokianga	Mātaitaua Marae, Utakura	18–22 April 2016
19	Takutai Moana	Oromāhoe Marae, Oromāhoe	18–22 July 2016
20	Hokianga	Tauteihiihi Marae, Kohukohu	22–26 August 2016
21	Local Issues Research Programme	Turner Centre, Kerikeri	17–21 October 2016
22	Porotī Springs claimants; Crown evidence	Waitaha Room, Copthorne, Waitangi	5–9 December 2016
23	Generic closing submissions	Te Whakamaharatanga Marae, Waimamaku	18–22 April 2017
24	Claims specific closing submissions	Terenga Parāoa Marae, Whāngārei	19–23 June 2017
25	Claims specific closing submissions	Ōtangaroa Marae, Whangaroa	31 July–4 August 2017
26	Crown closing submissions	Waitaha Room, Copthorne, Waitangi	16–20 October 2017

Table 1.1: The hearings

For many involved in the inquiry, the formal delineation of administrative boundaries belied the reality that claimant groups stood astride taiwhenua. This was especially so for larger hapū. Te Whiu, for example, has close connections with groups within Takutai Moana and Waimate–Taiāmai ki Kaikohe; Ngāti Hine, based in the north-east, interlinks with Takutai Moana, Whāngārei, and Mangakāhia; while Ngāti Rēhia also affiliates to groups within Takutai Moana, Waimate–Taiāmai, and Mahurangi. Te Parawhau closely relate to groups within Whāngārei and Mangakāhia; Ngāti Rangi to both Takutai Moana and Waimate–Taiāmai; Ngāti Kura to Whangaroa and Takutai Moana; Ngāti Manu to Waimate–Taiāmai, Whangaroa, Whāngārei, and Mangakāhia.

Alongside the cooperation between claimant groups, the Crown played an important role in fostering a productive inquiry process, including its active engagement throughout the process and in filling a funding gap in the early stages of the inquiry.[30] Without this support, it is unlikely the hearings could have proceeded as they did.

1.4 Ngā Kerēme / The Claims

The 415 claims in this inquiry can be broadly divided into subregional or district-wide claims; iwi or hapū claims; whānau or individual claims; and claims made on behalf of boards, trusts, or other groups such as Te Tai Tokerau District Māori Council. Often, the claims from these different groups overlap. The large number of claims brought before us, and the way that claimants chose to arrange and present their evidence, reflects the fundamental importance of hapū groupings in the north.

In this first part of our stage 2 report, we address the claims and evidence relating to the nineteenth century. During the interlocutory (pre-hearing) process, claimant counsel coordinated to produce generic submissions – collective pleadings on key issues of claim that could be adopted, in whole or in part, by the claimants. Broadly, the claims addressed in this volume raise the following major issues reflected in the generic submissions:

- *The relationship of tino rangatiratanga and kāwanatanga:* the political engagement between Te Raki hapū and iwi and the Crown in the nineteenth century. In part 1 of our report, we assess this issue over four periods between 1840 and 1900:
  - *1840–44:* the years immediately following the signing of the treaty and the Crown's proclamations of sovereignty, characterised by the establishment of Crown colony government and the Crown's attempts to assert its authority in Te Raki.
  - *1844–46:* a period in which some Bay of Islands rangatira signalled their dissatisfaction with how the treaty relationship had developed by felling the flagstaff on Maiki Hill, which led to violent clashes between Ngāpuhi and British forces, and internal divisions among Ngāpuhi in conflicts that would come to be known collectively as the Northern War.
  - *1846–65:* the aftermath of the Northern War, which saw Ngāpuhi attempts to re-establish their relationship with the Crown and encourage settlement in the north; and the Crown's grant of settler self-government in New Zealand, and its attempts to provide for Māori self-government and the titling of Māori land in Te Raki.
  - *1865–1900:* a period of far-reaching tenurial change under the Native Land Court and of two phases of extensive Crown land purchasing that resulted in sustained Te Raki Māori opposition to the Crown's assimilationist policies, and strong assertions of their autonomy.
- *The Crown's policies towards Māori lands:* how the Crown sought to govern land transactions and extinguish customary title in order to implement its plans for the settlement of the colony. To assess this issue, we discuss the following areas of Crown policy:
  - The Crown's investigation and confirmation of pre-treaty land transactions (old land claims); in particular, its retention of so-called 'surplus' land (rather than returning to Māori owners land that exceeded the maximum amount granted to pre-treaty purchasers); pre-emption

waivers to enable direct settler purchase of Māori land (1844–46); the award of scrip to settlers so they could move out of northern districts and take up land elsewhere; and the commissions of inquiry established during the mid-nineteenth and twentieth centuries to finalise grants and address grievances arising from these matters.
- The establishment, operation, and impact of the Native Land Court in the inquiry district from 1862 to 1900.
- The Crown's purchasing of Te Raki Māori land in the nineteenth century and its effect on the land base of Te Raki Māori. Here, we assess the Crown's policies and its purchasing operations on the ground over two periods during the nineteenth century: from 1840 to 1865 and from 1865 to 1900.

These issues arise from the rapid development of the Crown's colony – broadly, the Crown's efforts to engage with hapū, to challenge and limit the exercise of tino rangatiratanga, to institute sweeping land tenure change through the individualisation of titles, and to facilitate land purchasing and British settlement on a large scale.

Part 2 of our stage 2 report will address claim issues predominantly relating to the twentieth century, including the exercise of tino rangatiratanga and the nature of political engagement between Te Raki hapū and the Crown in the decades after 1900; continued land alienation in the twentieth century, along with Crown policies for the retention, titling, and administration of remaining Māori land in Te Raki; public works taking of Māori land in the inquiry district; socio-economic issues; environmental issues; and local government and rating issues. The report will also address claims concerning Crown acts and omissions in respect of te reo Māori, including te reo o Ngāpuhi; the Crown's policies for recognising wāhi tapu and taonga in the district; and the effect these policies have had on Te Raki Māori.

A forthcoming volume of this report will address any remaining claims considered specific to the taiwhenua in which claimants have chosen to organise themselves.

1.5 Te Rohe o te Paparahi / The Paparahi District

The northern boundary of the Te Raki inquiry district runs from Whāngāpē Harbour on the west coast, across the Maungataniwha Range, to Whangaroa Harbour on the east coast. The western boundary includes a short section of the coast south of Hokianga Harbour, before running inland along the boundary set by the Te Roroa and Kaipara inquiry districts. The southern boundary runs along the north shore of the Waitematā Harbour. The eastern boundary runs down the east coast and includes some of the outlying islands, such as Hauturu (Little Barrier), Taranga and Marotiri (Hen and Chickens), and Aotea (Great Barrier), amongst many others.

The Te Raki inquiry district covers roughly half the land north of Tāmaki Makaurau, the other half having been the subject of five Tribunal inquiries between 1987 and 2006.[31] The Tribunal has also previously reported on a discrete issue in the Te Raki inquiry district: the *Ngawha Geothermal Resource Report* (1993) was an urgent response to a joint-venture application by the Bay of Islands Electric Power Board and the Taitokerau Maori Trust Board to use the Ngāwhā geothermal resource to generate electricity.[32] This inquiry addressed claims that the Crown's acquisition of land at Ngāwhā and the claimants' rights to the geothermal resource guaranteed under the treaty were not adequately protected by the Geothermal Energy Act 1953 and the Resource Management Act 1991.[33]

During our hearings, we were fortunate to be guided by tangata whenua on visits to some of their most important sites across Te Raki. These visits allowed us to see for ourselves the lands and waterways whose histories pervaded so much of the kōrero we had heard. We experienced the depth of traditional knowledge our guides held and their intimate connection to their whenua, their moana, their awa, their repo, and their puna, as well as their deep sense of grievance at their degradation and loss. Kaikōrero related the traditions associated with maunga that dominate the landscape, among them Te Ramaroa, Maungataniwha, Rākaumangamanga, and Tūtāmoe, some of the poupou (pillars) that support Te Whare Tapu o Ngāpuhi.[34] They took us to valleys such as Paraoanui,

Tuhirangi Marae, Waimā, during week 13 of the hearings, April 2015.

whose soil had in earlier times earned the north a reputation as an abundant area. We were shown sites such as Kahoe, where forests have been felled for logging, and their gum dug in the swamps for export, providing fluctuating employment and also causing ecological damage. We saw farmland, little of it now in Māori hands, that was once the site of collectively held wetlands, such as Hikurangi, with tuna that sustained local kāinga.

We traversed both coasts of this district, and their many culturally and environmentally significant inlets, harbours, and islands, including Whangaruru Harbour, Waikare Inlet, Motukokako Island (Hole in the Rock), Whangaroa, Te Ngāere, and Matauri. We heard of the environmental damage past and present affecting the waters in this district and of a resulting loss of kaimoana. We were also told of taonga such as Porotī and Waiwera, where access is limited due to private ownership.

Claimants took us to valued awa that facilitated trade and transport throughout the rohe, such as the Taumārere River, the Whirinaki River, and the meeting place of the Wairua and Mangakāhia Rivers, which together form the Wairoa River, critical to the peoples who depend on them. Everywhere, we were told of wāhi tapu and, too often, of the threats these face, now and in the future.

A historical account of the hapū of Te Raki, and their whakapapa connections to one another, and to iwi whose

lands border the inquiry district or who have claims within it, is given in chapter 3. For now, though, we briefly note statistics that reflect aspects of their contemporary circumstances.

The most recent census results available (from 2018) show that over 165,201 Ngāpuhi – approximately 19 per cent of the country's total population of Māori descent – then resided in New Zealand, a number that had grown steadily over the last 15 years. Ngāpuhi are a young population, with over 33 per cent aged under 15 and only 5.5 per cent aged 65 or older.[35] However, only 21 per cent, or 35,000 people, lived in Northland, in contrast to 38.5 per cent in Tāmaki Makaurau.[36] Ngāpuhi are also among the many Māori who have made their lives overseas.

The data also reveal Northland is one of New Zealand's most economically deprived areas and includes some of its most isolated places. According to the 2018 statistics, Ngāpuhi were over-represented in a range of socio-economic measures of deprivation, including unemployment and low attainment rates in formal education.[37] Census figures cannot, of course, tell the whole story. The kōrero we heard recorded the often-difficult lives of whānau and hapū. Te Raki Māori trace many of the circumstances their communities face today to colonisation and the history of broken Crown promises since 1840.

1.5.1 The taiwhenua

In the following sections, we offer an overview of the various taiwhenua that comprise the larger Te Raki district, in the order that claimant groups organised their hearings. This is not a comprehensive list of claimants or claims in each taiwhenua, but a general guide to key locations and groups based on the information provided to the Tribunal in claimant evidence and submissions.

(1) *Hokianga*

The Hokianga taiwhenua is situated at the north-west corner of our inquiry district, adjacent to Whangaroa district to its north-east and Waimate–Taiāmai ki Kaikohe to its east. It is the only taiwhenua on the west coast. Hokianga hapū are located either side of the Hokianga Harbour, in a rohe rich in natural resources and history. The region is known for a wooded interior that supplied the logging and gum extraction industries, and helped forge early relationships between local Māori and Pākehā settlers.

The claimants provided evidence on the following list of Hokianga hapū and some of their centres:

- Ngāti Manawa and Te Waiariki at Whakarapa and Pānguru;
- Te Kai Tutae at Pānguru;
- Te Ihutai at Mangamuka, Raukapara, Ōrira, and Kohukohu;
- Te Uri Māhoe at Mangamuka;
- Te Uri Kōpura at Rangiora, Mangamuka, and Ōmanaia;
- Te Patupō, Te Reinga, and Kohatutaka at Waihou;
- Ngāti Hao at Waihou, Hōreke, and Utakura;
- Ngāti Kairewa at Waihou and Hōreke;
- Te Ngahengahe at Waihou, Motukiore, and Ōrira;
- Ngāti Toro at Motukiore;
- Te Patu Toka at Whakarapa;
- Te Pōpoto at Rangiahua and Utakura;
- Ngāi Tūpoto at Te Huahua, Motukaraka, Tapuwae, and Kohukohu;
- Ngāti Here at Motukaraka and Ōue;
- Ngāti Pou at Waimamaku, Waimā, Waihou, and Mangamuka;
- Te Roroa at Ōmāpere, Pākanae, and Waimamaku;
- Te Poukā at Pākanae, Waimamaku, and Opononi;
- Ngāti Korokoro at Pākanae and Waimamaku;
- Ngāti Wharārā at Kokohuia, Ōmāpere, Opononi, and Pākanae;
- Te Hikutū at Whirinaki;
- Ngāti Hau and Ngāti Kaharau at Ōmanaia;
- Te Māhurehure at Waimā, Moehau, Motukiore, and Rāwene;
- Te Urikaiwhare at Waimā, Tāheke, and Rāwene;
- Ngāti Hurihanga at Waimā and Tāheke;
- Ngāti Pākau at Tāheke and Punakitere;
- Te Rouwawe at Moehau, Waimā, and Tāheke;
- Ngāi Tū at Ōtāua, Punakitere, and Tāheke;
- Ngāti Whātua at Waimā, Moehau, and Motukiore; and
- Te Whānaupani at Hōreke and Utakura.[38]

Whangaroa evidence being presented during week three of the hearings at the Turner Events Centre, Kerikeri, July 2013.

(2) *Whangaroa*

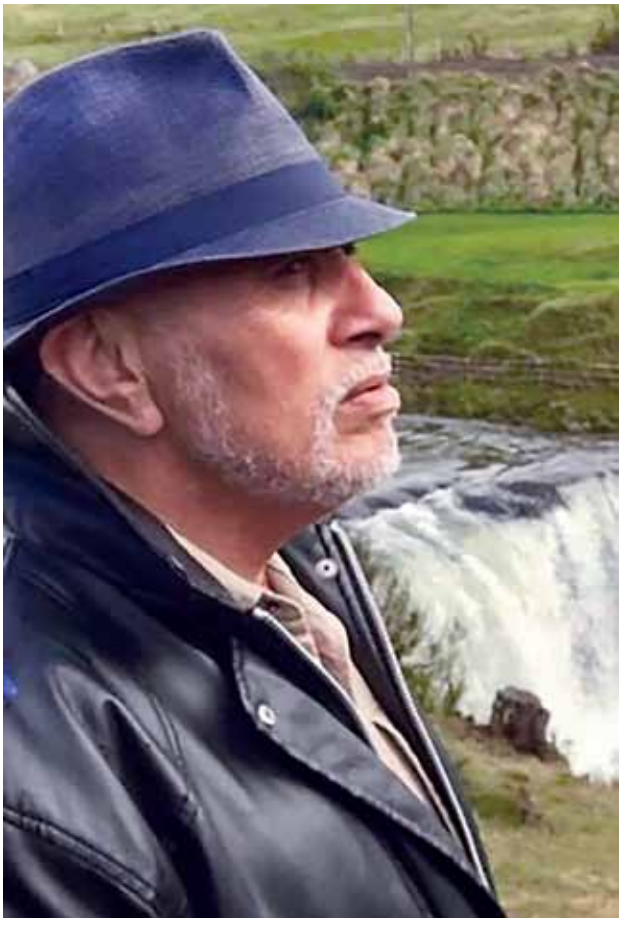
Whangaroa sits north of both Waimate–Taiāmai ki Kaikohe and Takutai Moana and to the north-east of Hokianga, extending to the northernmost point of our inquiry district. Claimants described the traditional rohe of Whangaroa hapū and whānau as the area bounded by 'the Takou River in the South and the Orua-iti River in the North, together with the traditional fishing grounds and islands off the coast of the mainland.'[39] Yet, they also stressed the difficulty of fitting hapū neatly within stable geographic boundaries. They have therefore 'developed a historico-political identity that is distinct from both Ngapuhi and Ngati Kahu.'[40]

The claimants provided evidence on the following Whangaroa hapū and some of their marae and areas of significance:

- Ngāti Rua at Taupō Marae;
- Ngāti Rangimatamomoe, Ngāti Rangimatakakaa, and Te Aeto at Ōtangaroa Marae;
- Ngāti Hoia and Mangawhero at Waihapa Marae;
- Ngāti Rēhia at Tākou Bay;
- Ngāti Kura, Ngāti Miru, Ngāti Rēhia among others at Tapui;
- Ngāi Tupango at Te Ngāere;
- Ngāti Ruamahue at Wainui;
- Ngāti Kawau at Karangahape Marae;
- Ngāti Pakahi at Mangaiti Marae; and
- Ngāti Uru, Ngāti Pakahi, and Te Whānaupani at Te Patunga Marae.[41]

(3) *Waimate–Taiāmai ki Kaikohe*

The richness of Waimate–Taiāmai ki Kaikohe land provided the opportunity for Waimate–Taiāmai hapū to enter into early economic relations with Pākehā traders and



Te Rangi Karaitiana (Rangi) McGarvey nō Tūhoe Pōtiki me Ngāti Whakaue. Mr McGarvey was the interpreter for the Wai 1040 inquiry during pre-hearing judicial conferences from 2008 and in hearings from May 2010 till his untimely passing in 2017. *Te Tama a Tūhoe Pōtiki me Ngāti Whakaue, kua ngaro ki te pū o mahara moe mai i tō moenga roa.*

whalers. The volcanic soil of the Taiāmai plains was ideal for food production and, guarded by pā on surrounding hilltops, the plains became known as 'the gardens of Ngapuhi'.[42] Waimate–Taiāmai ki Kaikohe is situated between Takutai Moana on the east coast and Hokianga on the west. Whangaroa is to its immediate north, and Mangakāhia is to its south.[43]

The claimants provided evidence on the following Waimate–Taiāmai ki Kaikohe hapū and some of their areas of significance and marae:

- Ngāi Tāwake ki te Tuawhenua, Ngāti Tautahi, Ngāti Rēhia, Te Uri Taniwha, Ngāti Kiripaka, Te Whānau Tara, Ngāti Hineira, Te Mounga, Ngāti Korohue, and Te Whiu at Te Waimate;
- Te Uri Taniwha, Te Whānau Tara, Ngāti Hineira, Ngāti Whakahotu, and Ngāti Korohue at Te Ahuahu;
- Ngāti Mau, Ngāti Rangi, Te Uri Taniwha, Te Whānau Wai, and Ngāti Kiriahi at Ōhaeawai/Ngāwhā;
- Ngāti Ueoneone, Ngāti Kura, Te Uri o Hua, Ngāti Whakaeke, Ngāti Tautahi, and Te Takoto Ke at Kaikohe;
- Ngāi Tāwake ki te Waoku at Matarāua; and
- Ngāre Hauata and Te Urikapana at Oromāhoe/Pākaraka.[44]

(4) *Takutai Moana*

The hapū coalition Ngā Hapū o Te Takutai Moana (Takutai Moana), which was formed in July 2009, covers a coastal area spanning the north and south of the Bay of Islands, and is bordered by Whangaroa to the north, Waimate–Taiāmai ki Kaikohe to the west, and Whāngārei to the south. Takutai Moana interests consequently often overlap with those of Waimate–Taiāmai ki Kaikohe, and also with hapū from Whangaroa, Whāngārei, and Mangakāhia. There are more claims relating to Takutai Moana than for any other taiwhenua in this inquiry.[45]

The claimants provided evidence on the following Takutai Moana groups and some of their marae and areas of significance:

- Ngāti Rēhia at Tākou, Whitiora, and Hiruharama Hou Marae;[46]
- Ngāti Rāhiri, Ngāti Kawa, and Te Matarahurahu at Oromāhoe;[47]
- Ngāti Kuta and Patukeha at Te Rāwhiti;[48]
- Ngāti Hine at Ōtiria, Te Rito, Kawiti, Kaikou, Miria, Mohinui, Matawaia, Waimahae, and Mōtatau Marae;[49]
- Ngāti Manu at Te Kāretu Marae;[50] and
- Te Kapotai at Waikare.[51]

A pōwhiri at Te Kāretu Marae in hearing week two, May 2013.

A site visit to Kohewhata Marae in hearing week four, September 2013.

A pōwhiri welcoming the Tribunal to Terenga Parāoa Marae in Whāngārei for week five of hearings, October 2013.

A pou at Korokota Marae in Mangakāhia, hearing week six, December 2013. The Te Parawhau kara flies side by side with the Union Jack, under the flag of the United Tribes of New Zealand.

(5) *Whāngārei*

The Whāngārei taiwhenua sits south of Takutai Moana, east of Mangakāhia, and north of Mahurangi, though Whāngārei and Mahurangi are separated by a stretch of Kaipara land. Prominent geographic features of Whāngārei include a long coastline renowned for its kaimoana, rolling volcanic hills, wetlands drained of water and kai to create farmland, and the spring waters at Porotī sourced from the Whatitiri maunga. The taiwhenua is home to the small city of Whāngārei, which differentiates it to some degree from the remainder of the largely rural inquiry district. The maunga Parihaka dominates the urban centre. The harbour is fringed with mangroves and overlooked by the maunga Manaia, one of the poupou supporting Te Whare Tapu o Ngāpuhi.

Whāngārei hapū are located in something of a border zone between major southern and northern iwi, so that groups such as Patuharakeke affiliate strongly to Ngāpuhi, Ngātiwai, and Ngāti Whātua.[52] Whāngārei claimants have participated in Tribunal inquiries for the Te Roroa and Kaipara districts. It is a region of complex intertribal relations.[53]

The claimants provided evidence on the following Whangārei hapū and some of their marae and areas of significance:

- Te Parawhau at Terenga Parāoa Marae.[54]
- Te Waiariki at Ngunguru Bay.[55]
- Te Orewai, a hapū of Ngāti Hine, at Tau Henare Marae.[56]
- Ngāti Hau at Pehiaweri Marae.[57]
- Patuharakeke at Takahiwai Marae.[58]
- Ngātiwai at Tuparehuia, Matapōuri, Punaruku, Pātaua, Otetao, Mōkau, Oākura, and Whananaki.[59]

(6) *Mangakāhia*

The Mangakāhia taiwhenua is where the rohe of Ngāti Hine, Te Parawhau, and Ngāti Whātua intersect. The area, claimant Te Ringakaha Tia-Ward told us, is 'a place of genealogical convergence'.[60] Geographically, it is situated in the interior of the inquiry district, south of Te Waimate–Taiāmai ki Kaikohe and west of Whāngārei. Mangakāhia is to a considerable extent defined by its relationship to the river that runs through its centre. Sourced from within the Tūtāmoe Ranges and extending to Hokianga, the Mangakāhia River is at the heart of the claimants' identity and their whanaungatanga.[61]

Their geographical situation has meant that Mangakāhia hapū are deeply connected to neighbouring iwi and hapū.

The claimants provided evidence on the following Mangakāhia hapū and some of their marae and areas of significance:

- Te Kumutu, Ngāti Toki, Ngāti Moe, Ngāti Whakahotu, and Ngāti Horahia at Parahaki Marae;
- Ngāti Toki, Ngāti Horahia, and Ngāti Te Rino (a hapū of Ngāti Hine) at Te Tarai o Rāhiri Marae at Pakotai;
- Ngāti Te Rino at Te Aroha Marae at Parakao;
- Te Parawhau at Korokota Marae at Titoki; and
- Te Uriroroi, Te Parawhau, and Te Māhurehure at Maungarongo Marae at Porotī.[62]

(7) *Mahurangi and the Gulf Islands*

Mahurangi, including the Gulf Islands, is the southernmost taiwhenua of the inquiry district. It stretches from Pakiri in the north to Waitematā in the south, and east to Aotea (Great Barrier Island) and the other islands off the east coast traditionally known as Ngā Poitu o te Kupenga o Toi Te Huatahi.[63] Mahurangi is the location of an intricate layering of affiliations between resident and neighbouring iwi and hapū. Prominent iwi and hapū in the district include Te Kawerau, Ngāti Whātua, Te Uri o Hau, Ngāti Rehua, Ngātiwai, and the various Hauraki iwi and hapū.[64] It is also geographically separated from the other taiwhenua by the boundaries of the Kaipara inquiry district. The peoples of this rohe have intimate connections with Kaipara, Te Tai Tokerau, Tāmaki Makaurau, Hauraki, Te Moana-nui-o-Toi/Tikapa Moana, and Tainui.

We received evidence on the following Mahurangi and Gulf Islands hapū and iwi and some of their marae and areas of significance:

- Ngāi Tāwake and Ngāti Rēhia at Te Whetu Marama Marae;
- Ngāti Whātua and Ngāti Manu at Mahurangi;[65]
- Ngāpuhi ki Tāmaki Makaurau, Ngāti Rongo, and Te Kawerau ā Maki at the Mahurangi Coast;
- Ngāti Rehua at Aotea; and
- Ngāti Manuhiri at Pakiri.[66]

1.5.2 Settlement legislation affecting the Tribunal's jurisdiction

Since hearings began, some of the 415 claims originally consolidated or aggregated into this inquiry – particularly those on the border of our inquiry district – have been negotiated and settled with the Crown by means of Treaty settlement legislation. The effect of these settlement Acts determines the extent to which the Tribunal can inquire into and report on particular claims.

Hato Petera college students performing a haka to the Te Paparahi o Te Raki stage 2 panel during hearing week seven relating to Mahurangi claims in February 2014 at North Harbour Stadium, Auckland.

Historical claims are fully settled in settlement legislation if they relate exclusively to the group that has settled. Where a claim is brought by any Māori or group of Māori on the basis of an affiliation to a different group from the group that has settled, and the claimant can establish that affiliation, then the claim falls within the Tribunal's jurisdiction. Where only parts of a claim relate to other interests outside of the group that has settled, then the claim is only settled to the extent that it relates to the settling group.

While claims outside the Tribunal's jurisdiction can inform and provide context for some events that may be outlined in this report, no findings or recommendations can be made in relation to them.

(1) *Settlement legislation fully or partially removing the Tribunal's jurisdiction*

Schedule 3 to the Treaty of Waitangi Act 1975 lists sections in settlement legislation prohibiting the Tribunal from further investigating settled historical claims. Several

pieces of settlement legislation affect this inquiry's scrutiny of issues:

- Section 17(3) of the Te Uri o Hau Claims Settlement Act 2002 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Te Uri o Hau claims.
- Section 13(2) of the Te Roroa Claims Settlement Act 2008 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Te Roroa claims.
- Section 14(4) of the Ngāti Manuhiri Claims Settlement Act 2012 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāti Manuhiri claims.
- Sections 13(4) and 13A(5) of the Ngāti Whātua Ōrākei Claims Settlement Act 2012 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāti Whātua Ōrākei claims.[67]
- Section 14(4) of the Ngāti Whātua o Kaipara Claims Settlement Act 2013 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāti Whātua o Kaipara claims.
- Section 15(4) of the Ngāi Takoto Claims Settlement Act 2015 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāi Takoto claims.
- Section 15(4) of the Ngāti Kuri Claims Settlement Act 2015 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāti Kuri claims.
- Section 15(4) of the Te Aupouri Claims Settlement Act 2015 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Te Aupouri claims.
- Section 15(4) of the Te Rarawa Claims Settlement Act 2015 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Te Rarawa claims.
- Section 14(4) of the Te Kawerau ā Maki Claims Settlement Act 2015 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Te Kawerau ā Maki claims.
- Section 15(4) of the Ngāti Pūkenga Claims Settlement Act 2017 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāti Pūkenga claims.
- Section 15(4) of the Ngāi Tai ki Tāmaki Claims Settlement Act 2018 removed the Tribunal's jurisdiction to inquire into or to make findings or recommendations on settled Ngāi Tai ki Tāmaki claims.

(2) *The Ngatikahu ki Whangaroa Claims Settlement Act 2017*

Section 15(6) of the Ngatikahu ki Whangaroa Claims Settlement Act 2017 preserved the Tribunal's jurisdiction to complete and release reports on those historical claims of Ngatikahu ki Whangaroa that are heard in the Wai 1040 Te Paparahi o Te Raki inquiry. Those historical claims therefore remain within the Tribunal's jurisdiction for the purposes of this report.

1.5.3 Structure of part 1 of the stage 2 report

This first part of our stage 2 inquiry report primarily addresses issues arising from the claims up to 1900.

In chapter 2, we begin by considering the implications for ngā mātāpono o te Tiriti (the principles of the treaty) of our stage 1 report conclusion that there had been no cession of sovereignty in Te Raki. We outline how the Tribunal has developed its jurisprudence on treaty principles and state our own views on those that we consider important in this part of the inquiry in light of the conclusions of our stage 1 report.

We discuss the tribal landscape of the district in chapter 3. We introduce the peoples of Te Raki, where and how they lived, consider their relationships with the natural world, and their systems of law, authority, and social organisation.

In chapter 4, we examine how the Crown–Māori relationship was negotiated in the immediate post-treaty years, up to 1844.

We discuss the Northern War in chapter 5: its origins

A pōwhiri at Tau Henare Marae welcoming the Tribunal for week nine of the hearings, August 2014.

and impacts, the Crown's conduct of the war, and its approach to peace negotiations.

Chapter 6 considers the Crown's validation of pre-treaty transactions (also known as old land claims) and pre-emption waiver transactions in a process that extended from 1840 well into the twentieth century.

In chapter 7, we discuss the extent of political engagement between Te Raki Māori and the Crown in the dynamic period following the Northern War up to 1865, during which the settlers achieved self-government.

The following chapters concern Crown purchasing and Māori land alienation in the nineteenth century (chapters 8 and 10) and the operation of the Native Land Court (chapter 9).

Finally, in chapter 11 we consider the relationship between Te Raki Māori tino rangatiratanga and kāwanatanga in the latter part of the nineteenth century and the determined efforts of Te Raki Māori both to resist the Crown's assimilationist policies and to secure Crown recognition of their autonomy between 1865 and 1900.

Notes

1. Merata Kawharu, *Tāhuhu Kōrero: The Sayings of Taitokerau* (Auckland: Auckland University Press, 2008), p 34. Āperahama Taonui was a signatory of te Tiriti and, later, a founder of the Kotahitanga movement.
2. Tiata Witehira, K Witehira, and T Tohu, statement of claim, 13 September 1985 (Wai 24, claim 1.1.1, SOC 1).
3. Tā Himi Henare (Sir James Henare), statement of claim, 13 October 1988 (Wai 49, claim 1.1.2, SOC 2).
4. Throughout this report, the term 'taiwhenua' will be used to refer to subregions of the Te Raki inquiry district.
5. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), pp 526–527.
6. Ibid, p 11.
7. Memorandum of the Ngāpuhi Design Group (#3.1.19), p 8.
8. Memorandum 2.5.11, pp 1–4.
9. Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, '"He Whenua Rangatira": Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), p 363.
10. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 2; Nuki Aldridge, transcript 4.1.1, Te Tii Marae, Waitangi, pp 106–107, 112–113.
11. Memorandum 2.5.137.
12. Memorandum 2.6.111.
13. Memorandum 2.5.2, p 1.
14. Memorandum 2.5.11, pp 1–2.
15. Memorandum of the Ngāpuhi Design Group (#3.1.19).
16. We set out the claimants' explanation for this pepeha in our stage 1 report. One explanation was provided by Dr (now Tā) Patu Hohepa: 'Ko te kōwhao-rau he kupenga, ko te kōwhao-rau he whakapapa, ko te kōwhao-rau he kāinga-rua, he kāinga-toru, ko te kōwhao-rau he whanaunga-maha, na reira, mātou i ora ai, nā te kōwhao-rautanga' ('The kowhao-rau we speak of can be likened to a net with many holes. Kowhao-rau refers to genealogy and relationships. Kowhao-rau can be likened to a second and third house. Kowhao-rau refers to our many kin relationships. And that is why we have survived, because of all of these separate but related connections'). See Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 36; Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 106, 112; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 14; memo 2.5.11, pp 2–4; the Ngāpuhi Design Group comprised Raniera (Sonny) Tau and Titewhai Harawira (Ngāpuhi Kaumātua/Kuia Council); Dr Patu Hohepa (Te Rōpū Whakapiripiri o Te Tai Tokerau); Hone Sadler and Paeata Clark (Te Aho Alliance – formerly the Ngāti Hine Claims Alliance); Te Rā Nehua and Hori Tuhiwai (Puhipuhi Te Maruata Collective); Pat Tauroa and Erimana Taniora (Whangaroa Papa Hapū); Rudy Taylor and Bob Ashby (Hokianga Claims Alliance); John Alexander and Kaye Baker (Te Waimate/Taiāmai Claims Alliance); Jane Hōtere and Aileen Austin (Mahurangi and Gulf Islands Collective); and Hirini Heta and Richard Nathan (Tai Tokerau Tiriti o Waitangi Forum – formerly the Tai Tokerau District Council Claims Committee): memorandum of the Ngāpuhi Design Group (#3.1.19), p 13.
17. Whāngārei claimants did not support this proposal: memo 2.5.11, pp 2, 4.
18. Memorandum 2.5.11, p 4.
19. 'Taiwhenua' translates to permanent home, land, or district: memo 2.5.102, p 1; memo 2.5.144, p 5.
20. Memorandum of counsel for Wai 375, Wai 510, Wai 513, Wai 515, Wai 517, Wai 520, Wai 523, Wai 861, and Wai 919 (#3.1.22), p 4.
21. Memorandum 2.5.15, p 2.
22. Our stage 1 report only considered three signings: at Waitangi on 6 February 1840, at Waimate on 9 and 10 February, and at Māngungu in Hokianga on 12 February: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 1.
23. Ibid, p 526.
24. Ibid, p 527.
25. Memorandum 2.5.24; memo 2.5.112, p [3]; memo 2.5.147, p 2.
26. Memorandum 3.1.798(a), pp 45–47; memo 2.5.132, p 5; memo 2.6.80, p 2.
27. Memorandum 2.6.89, pp 2–4; memo 2.6.101, pp 3–6.
28. Memorandum 2.6.165, p 20.
29. Memorandum 2.5.85, pp [1]–[2]; memo 2.5.127, pp 1–2.
30. Memoranda 2.6.28, 2.6.47.
31. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, Wai 17 (Wellington: GP Publications, 1988); Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22 (Wellington: Waitangi Tribunal, 1988); Waitangi Tribunal, *The Te Roroa Report 1992*, Wai 38 (Wellington: Booker and Friend Ltd, 1992); Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45 (Wellington: GP Publications, 1997); Waitangi Tribunal, *The Kaipara Report*, Wai 674 (Wellington: Legislation Direct, 2006).
32. Waitangi Tribunal, *The Ngawha Geothermal Resource Report 1993*, Wai 304 (Wellington: Brooker and Friend Ltd, 1993).
33. It was agreed that the Wai 1040 Tribunal could inquire into further Ngāwhā claims providing these had not previously been determined in the *Ngawha Geothermal Resource Report* (1993): memo 2.6.176, p 2.
34. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 46–47.
35. 'Demographics', Te Whata, https://tewhata.io/ngapuhi/social/people/demographics, accessed 7 November 2022.
36. Ibid.
37. Ibid.
38. We note Dr Hohepa's important qualification; he added that, though we can list the hapū of Hokianga and their various centres today, in the past each hapū 'not only had their "kōwhao" or main haukāinga, but also merged into other "kōwhao" because of genealogy links, whanaungatanga, and the like': Patu Hohepa, 'Hokianga: From Te Korekore to 1840', report commissioned by the Crown Forestry Rental Trust, 2011 (doc E36), pp 180, 181–183.
39. Opening statement for Whangaroa taiwhenua (doc E45), p 10.

40. Ibid, p 14.
41. Ibid, pp 25–31.
42. Opening statement for Te Waimate–Taiāmai and Kaikohe taiwhenua (doc E58(d)), p 5; Vincent O'Malley and John Hutton, 'The Nature and Extent of Contact and Adaptation in Northland, c 1769–1840', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A11), p 145.
43. Opening statement for Te Waimate–Taiāmai and Kaikohe taiwhenua (doc E58(d)), pp 2–3.
44. Ibid, p 3.
45. Opening statement for Ngā Hapū o Te Takutai Moana Collective (doc E49), p 5.
46. Te Huranga Hohaia (doc D8), p 12; Tony Walzl, 'Ngati Rehia Overview Report', report commissioned by the Ngāti Rehia Claims Group, 2015 (doc R2), p 12.
47. Opening statement for Ngā Hapū o Te Takutai Moana Collective (doc E49), p 63.
48. Ibid, p 58.
49. Ngāti Hine identified a number of marae in their evidence that are located in the Takutai Moana, Whāngārei, and Mangakāhia taiwhenua. We note that these taiwhenua do not have defined borders but were chosen by the claimants as general areas for the purposes of hearings: Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 31; opening statement for Ngā Hapū o Te Takutai Moana Collective (doc E49), p 5.
50. Opening statement for Ngā Hapū o Te Takutai Moana Collective (doc E49), p 60.
51. Ibid, p 14.
52. Opening submissions for Wai 745 and Wai 1308 (#3.3.71), p 3.
53. Opening statements for the Whāngārei taiwhenua (doc E46), pp 2–3.
54. Ibid, p 9.
55. Ibid, p 17.
56. Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 31; Te Orewai Te Horo Trust, statement of claim, 31 August 2008 (Wai 1753, claim 1.1.280, SOC 280), p 5; opening statements for the Whāngārei taiwhenua (doc E46), p 7.
57. Ngā Hapū ō Whāngārei site visit booklet, pt B (doc I45), p 26.
58. Ngā Hapū ō Whāngārei site visit booklet, pt A (doc I44), p 17.
59. Opening statements for the Whāngārei taiwhenua (doc E46), pp 6–7; 'Ngātiwai Marae', Ngātiwai, https://www.ngatiwai.iwi.nz/marae.html, accessed 20 September 2020.
60. Te Ringakaha Tia-Ward (doc J7), p 3.
61. Opening statement for the Mangakāhia taiwhenua (doc E54), pp 1–2.
62. Closing statement for the Mangakāhia taiwhenua (#3.3.293(a)), pp 5–12; Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 31.
63. Michael Beazley (doc K8), p 8.
64. Peter McBurney, summary of 'Traditional History Overview of the Mahurangi and Gulf Islands Districts' (doc A36(b)), p 2.
65. Walzl, 'Ngati Rehia Overview Report' (doc R2), p 299; Barry Rigby, 'The Crown, Maori, and Mahurangi, 1840–1881', report commissioned by the Waitangi Tribunal, 1998 (doc E18), pp 24–25.
66. Rigby, 'The Crown, Maori, and Mahurangi' (doc E18), pp 12–13; Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts', report commissioned by the Mahurangi and Gulf Islands District Collective and Crown Forestry Rental Trust, 2010 (doc A36), pp 81–86, 595–596.
67. Beyond the standard exclusion clause relating to a claim being brought on virtue of descent from an ancestor other than one of the settling group, Ngāti Whātua Ōrākei historical claims also do not include claims founded on a customary right exercised by one or more hapū predominantly outside the primary area of interest of Ngāti Whātua Ōrākei at any time after 6 February 1840: Ngāti Whātua Ōrākei Claims Settlement Act 2012, s 12(4)(a)(ii).

CHAPTER 2

NGĀ MĀTĀPONO O TE TIRITI
THE PRINCIPLES OF THE TREATY

> Te Tiriti above all else envisages a relationship between two peoples who have agreed that the interests of both are strengthened by partnership.[1]
>
> —Erima Henare

2.1 Hei Tīmatanga Kōrero / Introduction: The Implications of our Stage 1 Report for ngā Mātāpono o te Tiriti / the Principles of the Treaty

The key issue that concerns us here is the implications for ngā mātāpono o te Tiriti of our stage 1 report conclusion that there was no cession of sovereignty in Te Raki when the rangatira entered into a treaty agreement with the Crown at Waitangi, Waimate, and Māngungu in February 1840.

The Waitangi Tribunal, established by the Treaty of Waitangi Act 1975, is charged with making recommendations on claims 'relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles'.[2] The Treaty of Waitangi Amendment Act 1985 extended our jurisdiction, amending the 'certain matters' to include legislation, regulations, or proclamations passed or issued on or after 6 February 1840, and policies of the Crown, or acts or omissions on the part of the Crown, on or after the same date.[3] The Tribunal can inquire into and make recommendations on claims made by any Māori that he or she, or any group of Māori to which they belong, could be prejudicially affected by these acts, policies, or omissions.

The principles are not defined in any way in our governing legislation. It is left for the Tribunal itself to define the principles against which Crown actions will be tested. Each Tribunal panel, as it reports on the claims it is hearing in any given inquiry, decides which principles are appropriate for that inquiry. No Tribunal is bound by the decisions of a previous Tribunal inquiry (or the courts). A Tribunal inquiry panel may develop principles outlined in a previous inquiry, or add new principles.

Section 5(2) of the Treaty of Waitangi Act requires that the Tribunal:

> shall have regard to the 2 texts of the Treaty set out in Schedule 1 and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them.

In our stage 1 report, we set out our conclusions on the meaning and effect of the treaty, and its significance for the claims in our inquiry:

- We are bound by our legislation to regard the treaty as comprising two texts, though once we have considered the English text with an open mind, we are under no obligation to find some sort of middle ground of meaning between the two versions.
- We agree with the approach adopted by the Tribunal in previous reports, which has given special weight to the Māori text in establishing the treaty's meaning and effect; they have done so because the Māori text was the one that was signed and understood by the rangatira – and indeed, signed by Hobson himself. Where any ambiguity arises between the two texts, the Māori text should be accorded 'considerable weight'.[4]

In so exercising its jurisdiction, the Tribunal has from the outset considered, in particular, the relationship between article 1 and article 2 of the treaty, as well as the significance of the wording of those articles in both te reo Māori and English. In various inquiries, the Tribunal has reached different conclusions about the agreement at Waitangi and about whether the treaty was a treaty of cession. But it has been generally, if not always, accepted that Māori did cede sovereignty to the Crown. That has had implications for the treaty principles the Tribunal has articulated and applied over the years (as we will discuss further).

In this report, we face a set of circumstances that have not arisen before in a district inquiry. We held a wide-ranging preliminary inquiry which, at the request of Ngāpuhi, focused not on claims against the Crown arising after the signing of te Tiriti but on the relationship of Ngāpuhi hapū with the Crown in the two decades preceding its signing. Ngāpuhi sought Tribunal hearings on the significance of he Whakaputanga o te Rangatiratanga o Nu Tireni/the Declaration of the Independence of New Zealand (1835) and the signing, in February 1840, of te Tiriti. They did so to reflect what they considered to be the particular circumstances in which those two agreements were entered into, given that their rangatira were the first in Aotearoa to engage in both. They submitted that their post-1840 Tiriti claims must be considered and understood in light of these particular circumstances and these agreements.

In 2014, we released a stage 1 report that emphasised the treaty's unique position in Te Paparahi o te Raki. We concluded, on the basis of the extensive evidence before us – including evidence that had not been available to other Tribunal inquiries – that Ngāpuhi had not ceded sovereignty when they signed te Tiriti. This means that our approach to treaty principles differs from that of a number of other Tribunal inquiry panels and from that of the courts, which have stated that the Crown proclaimed sovereignty in 1840 over the North Island by virtue of 'the rights and powers ceded . . . by the Treaty of Waitangi', and over the South Island on the grounds of discovery.[5]

Our view, which we explain further in this chapter, is that we must consider if, or how, our understanding of treaty principles may evolve, both in light of our stage 1 report, and through the exploration of various principles in other Tribunal reports as applied to a range of contexts.[6] In Te Raki, it may no longer be appropriate to rely on principles that are based in a cession of sovereignty by rangatira to the Crown. The treaty principles we apply must reflect the expectations and understandings of Te Raki Māori that have arisen from the history of their relationship with the British Crown and from the undertakings given to them at the treaty ceremonies. They must not be preoccupied with the intentions of the British, who in any case, as we have shown in stage 1 of our inquiry, did not reveal their full intentions and expectations to Māori.[7]

The principles must be based in the actual agreement entered into in 1840 between Te Raki rangatira and the Crown, rather than in an assumption that sovereignty was ceded by Māori, who would become the Queen's subjects in return for the protection 'of their chieftainships and possessions'.[8] That was not the exchange that took place in Te Raki. Here, Māori leaders agreed to share power and authority with the Governor, though they would have different roles and different spheres of influence. They understood that they had received assurances from the Crown that they would retain their independence and

chiefly authority, and they also understood that through the treaty, the Crown and its agents asked for authority (kāwanatanga) to control the Europeans. This was the arrangement to which they consented. They appear, too, to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.[9]

In stage 1 of our inquiry, we raised the question of the implications of our conclusions for the principles of the treaty and suggested that counsel might make submissions on it in stage 2. Many counsel took this opportunity, and we summarise their submissions later.

In subsequent sections, we outline the Tribunal's views on treaty principles and on the meaning and effect of the treaty as developed in its various reports over several decades. More importantly, we set out the basis of our own views on ngā mātāpono o te Tiriti/the principles of the treaty. We do not suggest that treaty principles be dispensed with – indeed, this would hardly be compatible with our jurisdiction – or that they be substantially revised. But, as we noted in the stage 1 report, no earlier Tribunal inquiry has received the full range of evidence and arguments that we have about the broader historical context for the crucial events of 6 February 1840; the hui and whaikōrero that culminated in the signing of te Tiriti at Waitangi, Waimate, and Māngungu; and the significance of he Whakaputanga o te Rangatiratanga o Nu Tireni. We are the first to have had that opportunity.[10] Based on that evidence, in the context of the developing relationship between Ngāpuhi and the British Crown, we drew our conclusions about the nature of the agreement reached at Waitangi, and that is also our starting point for reconsidering ngā mātāpono o te Tiriti/the principles of the treaty. We emphasise that, as in every Tribunal inquiry, our focus is on the significance of te Tiriti to the claimant hapū and iwi of this inquiry district.

In this chapter we consider those principles that we regard as most significant to the issues of part 1 of our stage 2 report; that is, matters relating to the engagement of Te Raki Māori with the Crown, Te Raki autonomy, and Crown policies that affected Māori lands between 1840 and approximately 1900. We may add to these principles in subsequent volumes of this report. Throughout, we express the treaty principles in both te reo Māori and in English, as claimants invited us to do.

Nā te māngai mō ngā kerēme o te reo o Ngāpuhi me te reo Māori, Ms Thomas, i whakatakoto mai ana kōrero e pā ana ki te kaupapa o Te Reo Māori i roto tonu i te reo Māori. Ka whakatakotoria te mānuka e ngā kaikerēme kia reo māori ngā mātāpono. Ka hikina e mātou tēnā mānuka. Nā reira, mēnā he mātāpono reo māori tā ngā kaikerēme ka whai mātou i a rātou mātāpono reo Māori. Ā, ka āta tirohia e mātou ngā rīpoata o Te Rōpū Whakamana i te Tiriti o Waitangi. I ētahi wā, kua āta ruku hoki mātou i ētahi whakamāramatanga o Ms Thomas.[11]

2.2 Claimant and Crown Positions on te Tiriti / the Treaty and its Principles and the Rights and Duties of Treaty Partners

2.2.1 The claimants' generic submissions on the implications of the stage 1 report for treaty principles

Claimant counsel expressed a range of views. Claimants generally agreed that the principles should now be interpreted in light of the conclusions of the stage 1 report. A number of counsel considered that this meant questioning or re-evaluating some established principles; others did not.

Janet Mason, counsel who presented generic submissions for the claimants on issue 1 in our inquiry (tino rangatiratanga, kāwanatanga, and autonomy), submitted that the principles must be revised. As the Crown wrongly relies upon the treaty being a treaty of cession, she argued that there are consequences for the way the treaty principles are understood and applied. Counsel challenged the basis of several principles, widely considered central to treaty jurisprudence, as set out in the Tribunal's *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (2008) and on its website, notably partnership, reciprocity, autonomy, and active protection. For instance, the principle of reciprocity, which she cited, emphasises that partnership 'between the races' is a reciprocal one, involving fundamental exchanges. It states that 'Māori ceded to the Crown the kāwanatanga (governance) of the

country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected.'[12] She argued that it is clear from this statement of the principles that the Tribunal's position in *Te Tau Ihu* – consistent with the position of the courts and the executive – was premised on 'the fundamental, and incorrect, view that te Tiriti/the Treaty was a treaty of cession'.[13] In light of the Tribunal's conclusions in the stage 1 report,

> the Principle that the Crown acquired rights of governance over all Māori and over all of New Zealand must now be called into question. This cannot be a Principle given that it is not actually what the bargain under te Tiriti/the Treaty was.[14]

In other words, counsel stated, the claimants were not disputing that the Crown, under the laws of New Zealand, holds and exercises sovereignty; their argument was that the sovereignty the Crown purports to exercise does not derive from from the treaty.

Ms Mason cited legal expert Professor Jane Kelsey's evidence in our inquiry to the effect that the stage 1 report offered the opportunity to revisit treaty principles and 'restore tino rangatiratanga and tikanga Māori' to their core; as the stage 1 report said, the treaty principles 'must inevitably flow' from the agreement between Māori and the Crown in February 1840.[15] Therefore, counsel argued, the principles must be revised in this report to accommodate the Tribunal's conclusion that there was no cession of sovereignty in the treaty.[16] She considered their application not only to historical claims but also to current circumstances.[17] Her submission focused on the Crown's present 'heightened duty' as it exercised its 'de facto sovereignty' to protect Māori rights and interests until Te Raki Māori and the Crown agreed on a constitutional framework and mechanisms to give effect to the partnership consistent with the treaty negotiated in 1840.[18]

Counsel focused in particular on the 'revised principle' of partnership (under which 'it is accepted that te Tiriti/the Treaty was not a treaty of cession'), submitting that the treaty instead envisaged 'three spheres of authority':

- the British Crown governing its subjects over land 'legitimately' acquired by it or them ('British Authority');[19]
- Māori tino rangatiratanga over Māori peoples, lands, and other taonga ('Māori Authority'); and
- a partnership, to be discussed and agreed to where Māori and English populations intermingled ('Shared Authority').[20]

This was, she argued, the nature of the partnership understood in February 1840, and against which Crown conduct must be assessed.[21] Counsel also pointed to the duty of each partner to act reasonably and 'with the utmost good faith' towards the other, as a corollary of the duty of partnership.[22] In her submission, the 'de facto sovereignty currently exercised by the Crown must be re-negotiated without undue delay to give effect to the Partnership that was envisaged under te Tiriti/the Treaty'. In her discussion of the principles, she stated that, under the treaty, the British Crown was given the right to exercise kāwanatanga over its settlers and over the land they 'legitimately' acquired. But the Crown had unilaterally enlarged that authority to usurp the sphere of Māori authority, and it had also acted 'unilaterally in the Shared Authority Sphere', to the detriment of Māori.[23] Counsel's submissions on the revised principles of active protection and rangatiratanga pointed to how the Crown might best exercise the authority it had 'usurped' until it agreed with Te Raki Māori on a new, treaty-consistent constitutional structure and on a process for the realisation of the exercise of tino rangatiratanga.[24] The Crown must also observe the principles of informed decisions and equity (so that the interests of settlers are not prioritised to the detriment of Māori), and redress (where there have been Tribunal recommendations regarding breaches of the treaty, these ought to be implemented).

Counsel's final principle was that of fiduciary obligations. She submitted that the Crown owes Māori a fiduciary obligation in relation to:

- all property for which it has a pre-emptive right;
- its de facto exercise of authority of Te Raki Māori peoples, lands, and other taonga; and

- the tino rangatiratanga of Te Raki Māori over their peoples, territories, lands, and other taonga.

She cited the June 1987 case of *New Zealand Maori Council v Attorney-General* (the *Lands* case), which describes the responsibilities of the Crown as a treaty partner as 'analogous to fiduciary duties', requiring not merely 'passive' duties of the Crown but 'active protection' of Māori 'in the use of their lands and waters to the fullest extent practicable'.[25] More recently, she submitted, in the case of *Proprietors of Wakatū v Attorney-General*, the Supreme Court has confirmed the Crown's fiduciary obligations, 'at least in relation to matters of property'. 'Whether [the Crown] owes fiduciary obligations in other matters', counsel summarised, 'is to be assessed on a case-by-case basis.'[26]

Counsel added guidelines for decision-making to implement mechanisms giving effect to the treaty partnership. We return to her submissions about guidelines for the future in a subsequent volume of our report.

2.2.2 Specific claimant submissions on the implications of the stage 1 report for treaty principles

A number of counsel responded to the Tribunal's invitation to make supplementary submissions on treaty principles. Some adopted the generic closings as a whole, while others adopted certain paragraphs but dissented from others.[27] In broad terms, the various positions of claimant counsel may be summarised as follows:

- criticism of those principles that are based on the premise that the treaty was a treaty of cession by which the Crown acquired sovereignty; such principles should be reviewed or revised to reflect the fact that the relationship between Te Raki Māori and the Crown is one of equals;
- affirmation that the stage 1 report findings mean that the Crown is held to a higher standard in this inquiry, in order to give effect to the guarantees in the treaty and protect the mana of rangatira; the Crown's duties should accord with what Māori understood partnership to mean, and the expectations that they held of the Crown, when they signed te Tiriti;
- uneasiness with treaty principles that derive from the Crown's own statement of principles in the 1980s or with those defined by the courts. In particular, it was submitted that the principle of active protection should be revisited in light of the conclusion of the stage 1 report that sovereignty was not ceded by the rangatira of Te Raki. Further, the principle of autonomy/rangatiratanga should replace that of partnership as the overriding principle;
- affirmation of existing principles, though some modification may be necessary; and resistance to the position adopted in generic submissions – namely, that the Tribunal should disregard past Tribunal jurisprudence;[28]
- commitment to the principles being expressed and discussed in te reo Māori; and
- reconsideration of the rights and obligations of the parties to the treaty arising from the principles.[29]

In this section, we outline some of counsels' key submissions in further detail.

Tu'inukutavake Afeaki, counsel for claimant Kingi Taurua (whose claim was made on behalf of Ngāti Kawa, Ngāti Rāhiri, and Ngāti Rēhia), submitted that the treaty principles argued were first laid out through the *Lands* case and have subsequently been defined by Parliament. Thus he argued that the 'principles' were 'conceived and developed from within a Pākehā sphere of legal discourse and Westminster-style judicial and political process, and the fact that it was done under the presumption that ultimate authority over Māori rested with the Crown'.[30]

The principles as expressed through the *Lands* case and defined by Parliament, Mr Afeaki asserted, were brought together unilaterally, without the claimants' input; and they 'confuse the true meaning of te Tiriti, irrespective of the fact that it is te Tiriti that Rangatira signed and made sacred and not the principles'.[31] He added though that, while he applied the principles of the treaty in his submissions, this by no means indicated an acquiescence in or acceptance of the Crown's sovereignty over Mr Taurua or his tīpuna; this was simply the only path to securing a remedy.[32]

Yet, te Tiriti itself, he submitted, laid the basis for a relationship:

> [it] brought together Māori and Pākehā as equal 'Treaty Partners'. So at a fundamental level there exists a duty on the Crown to treat the Claimants' tīpuna with the utmost respect for their Tikanga, Tino Rangatiratanga, and Mana. Each partner would act reasonably and in the utmost good faith toward each other.[33]

Season-Mary Downs, counsel for Te Rūnanga o Ngāti Hine and many named claimants, suggested that a number of core principles may need to be revised in light of the stage 1 report, given that they have hitherto been based on the Crown's assumption of sovereignty. Among them is the principle of partnership, which must now reflect the 'fundamental agreement in Te Tiriti' that Māori agreed to share power with the Governor. The principle of reciprocity no longer applies, she argued, in that it has also been based on the understanding that Māori ceded sovereignty of the country. Furthermore, the principle of active protection is now 'flawed where it maintains that the Crown's duty to actively protect flows from the Crown's sovereign right to govern'. If the Crown had observed the treaty agreement at 1840, then the duty of active protection 'would not need to exist today, because Maori would simply have exercised rangatiratanga'. Ms Downs submitted that other protective principles, such as that of equal treatment, also appear to assume that the Crown is sovereign, that it exercises 'an overarching superior authority, and as part of that authority, it must treat Māori equally'. But if the 1840 agreement were complied

Some of the claimant counsel who made submissions on the treaty and its principles during the Tribunal's hearings. *From left*: Janet Mason, Tu'inukutavake Afeaki and Dr Season-Mary Downs.

with, and Māori and the Crown both exercised authority in their respective spheres, 'there would be no need for these protectorate, fiduciary-type Treaty principles'.[34]

Dr Bryan Gilling, representing numerous claimant groups, stated that he had not identified any new principles, or any existing principles that had become superseded or incorrect.[35] Rather, some 'careful modification and rebalancing of order and weight' was required as a result of the Tribunal's conclusions of the stage 1 report for it to give effect to the spirit of the treaty.[36] In respect of partnership, he considered the overarching statements from the *Lands* case were still applicable; the Court of Appeal stated that the partners are required to act reasonably, honourably, and in good faith.[37] The principle comes from the nature or the 'spirit' of the agreement, in his view, rather than from any particular clause within it. And to the extent that the courts or the Tribunal have seen the principle of partnership as springing from a 'solemn exchange' of sovereignty for protection of tino rangatiratanga, this had been 'overturned' by the Tribunal's stage 1 conclusions.[38] Dr Gilling supported the emphasis of the generic submissions that the treaty was not one of cession but a treaty of partnership. Given that each party (as the Tribunal concluded in our stage 1 report) was to have their own sphere of authority and an equal say in the 'shared authority' sphere, Māori could not (as has been suggested by the Court of Appeal) be subordinated to the wishes and demands of the Crown in their own sphere or in the shared sphere. Rather, the relationship should be redefined as a true partnership, which reflects the equality of status of the partners.[39]

Dr Gilling suggested therefore that the principle of

autonomy should be revised so that it encompasses 'the full extent of Te Raki Maori authority assured to them under Te Tiriti'.[40] Similarly, the Crown's duty remains of active protection of tino rangatiratanga (consistently reaffirmed by the Tribunal and the courts, and extended to a wide range of Māori interests).[41] Counsel considered the idea, which has previously informed Tribunal jurisprudence, that article 2 involved a fundamental exchange of the cession of sovereignty in return for the guarantee of tino rangatiratanga. He questioned whether this meant that the exchange was fundamental to the Crown's duty of active protection. In his submission it was not. The duty did not derive solely from article 2 but also from the preamble and article 3; the duty is thus explicitly set out when the treaty is read in its entirety.[42]

Counsel argued that, despite our conclusion in the stage 1 report that there was no cession of sovereignty, the Crown's duty to actively protect tino rangatiratanga not only remained but was also heightened. He gave three reasons for this: first, that rangatira and the British representative signed a document that explicitly guaranteed their tino rangatiratanga; this had also been explained to the rangatira by Williams. Secondly, he submitted that it was the understanding of both parties that tino rangatiratanga should be protected; the British stressed their wish to acquire sufficient authority to control British subjects and to protect their authority, while rangatira did not 'regard kawanatanga as undermining their own status or authority'.[43] It was, and remains, the duty of the Crown to understand what tino rangatiratanga means for Māori so that it can give meaningful and practical effect to their authority – a duty derived from the duty of active

Some of the claimant counsel who made submissions on the treaty and its principles during the Tribunal's hearings. *From left*: Dr Bryan Gilling, Te Kani Williams, and Annette Sykes.

protection, said counsel.[44] Thirdly, counsel suggested that it is clear from the stage 1 report that an exchange between the Crown and Māori did occur – even if it did not involve a cession of sovereignty in exchange for protection of tino rangatiratanga. In the Tribunal's view, he said, the guarantee of tino rangatiratanga was in return for '*allowing the Governor a limited authority*' (emphasis in original). This reading of te Tiriti should be adopted.

Dr Gilling added that, in light of the Crown's duty, it was important that it understood what tino rangatiratanga means for Māori, 'but there is no evidence that the Crown even attempted to find this out, let alone take meaningful steps to ensure its protection'.[45] Instead, he submitted, Te Raki Māori were treated 'as the constituent group in Te Tiriti and the subservient group within New Zealand', which meant that their guaranteed tino rangatiratanga 'has often been overridden by their imposed sovereign entity, the Crown'. That, he stated, is not the case with partners, each of whom should have its own sphere of authority, and each should work with the other 'reasonably, fairly, and in good faith . . . to make the sphere of shared authority work'.[46]

Other counsel saw no need to revise treaty principles – though this did not mean they discounted the significance of the conclusions reached at stage 1 of our inquiry.[47] Rather, they submitted that the responsibilities of the Crown to interpret existing principles consistently with the obligations recognised in the conclusions of the stage 1 report were heightened.

Te Kani Williams, submitting on behalf of claimants representing Kenana Te Ranginui Marae Trust, Pikaahu hapū, Ngāti Kuta ki Te Rāwhiti, Patukeha hapū, the Te

Reo o Ngāpuhi, and the Tohunga Suppression Act claims, questioned the legitimacy of the Crown's sovereignty.[48] He did not advocate disregarding past treaty jurisprudence, 'including findings that have been extremely favourable for Māori'.[49] He submitted that the stage 1 report confirmed long-held Te Raki Māori understandings of te Tiriti, and that this extended also to the principles. The starting point for understanding the principles, he submitted, 'is the text of Te Tiriti itself . . . [the principles have] always come from the basis of what was guaranteed to Te Raki Māori'. Thus, he argued, the stage 1 report conclusions do not 'materially impact on, or change, the principles themselves'. What the conclusions do is 'place the onus back on the Crown to show how [it has] acted consistently with Te Tiriti and its principles', given the better awareness that Māori did not cede sovereignty in te Tiriti.[50]

Similarly, in supplementary submissions for a number of claimants, Peter Johnston noted that the Crown had acted in accordance with its incorrectly held view that rangatira had ceded sovereignty. It therefore had a heightened duty to actively ensure and protect the mana of rangatira ('including Te Raki Māori') not only to make and enforce law over their people or their whenua but also to ensure they could share their power and authority with Britain. In the socio-economic context, the Crown had a heightened duty to include Māori (including Te Raki Māori) in a way that 'gave mana to the partnership relationship'. It had – and still has – heightened duties to recognise Māori authority and tino rangatiratanga over, and responsibility for, the economic development and socio-economic well-being of its peoples. Likewise, it had – and has – heightened duties to actively protect

Some of the claimant counsel who made submissions on the treaty and its principles during the Tribunal's hearings. *From left*: John Pera Kahukiwa, Alana Thomas, and Paranihia Walker.

Māori (including Te Raki Māori) from the adverse effects of settlement, particularly those arising from matters over which the Crown exercised control (including land and resource loss, fragmentation of land ownership, and restricted access to development capital).[51]

We note the position of John Pera Kahukiwa (counsel for Te Waiariki, Ngāti Korora, and Ngāti Takapari, as well as Ngāti Torehina ki Matakā claimants), who argued that the principles have not changed since te Tiriti was entered into. Instead, the Tribunal's focus should be on the principles that arise out of the actual agreement entered into in 1840, as determined in our stage 1 report. He said that Ngāpuhi considered there are two kinds of principles: those that arise from the fundamental motives of the parties, and those that may be considered desirable standards of behaviour. Among these standards, he then identified principles of bilateralism (where intermingling between the rangatira me ngā hapū and the Crown and its people occurs, and there is anticipation of a joint venture); and comity (which he explained as mutual respect between parties, including regarding the other's mana, authority, and jurisdiction).[52] Comity, he added, entails 'courtesy . . . friendly recognition as far as practicable of each other's laws and usages'; it has also been described as 'a principle of restraint, to be applied and exercised where authorities or jurisdictions overlap'.[53] Mr Kahukiwa emphasised that central to both bilateralism and comity was respect for each other's separate spheres of influence and authority over their respective peoples, and maintenance of the independence of those authorities.[54]

We received submissions in te reo from Alana Thomas, counsel for the Te Reo o Ngāpuhi and Te Reo Māori

claimants, giving the principles relevant to the issue of te reo Māori:

a. te Mātāpono o te Tauutuutu;
b. te Mātāpono o te Houruatanga;
c. te Mātāpono o te Matapopore Ngangahau.

Hei tāpiri ake ki aua mātāpono, ka noho te otinga o tēnei Taraipunara i te rīpoata tuatahi mo Te Paparahi o te Raki hei kaupapa whakapū mo te take o Te Reo Māori.[55]

Counsel provided the following English translation:

a. the Principle of Reciprocity;
b. the Principle of Partnership; and
c. the Principle of Active Protection.

Additional to those principles, in Counsel's submission, this Tribunal must first consider the findings contained in the Te Paparahi o te Raki Stage One report as it is those findings that create the basis and the foundation for the principles.[56]

Counsel specified a number of protective duties arising from these principles that the Crown must discharge. She submitted:

Hei whakakapi ake i tēnei wāhanga o te tuhinga nei, i raro i te tāwharautanga o aua mātāpono, ēnei takohanga kua hora nei:

a. He here tō te Karauna ki te aro pū atu i te mana me te rangatiratanga o Te Hunga Māori o te Raki, me ōna momo katoa;
b. He here tō te Karauna ki te tiaki me te whakahaumaru i te rangatiratanga, ngā whenua, ngā kainga me nga taonga katoa o Te Hunga Māori o Te Raki;
c. He here ano tō te Karauna ki te whakawhanake, ki te whakarauora, ki te whakahaumaru noki i Te Reo Māori me Te Reo o Ngāpuhi hei taonga. Ka noho haepapa tonu te Karauna ki te whakatairanga i Te Reo Māori hei taonga, hei reo mana o Aotearoa;
d. He here tō te Karauna ki te whakatū he kawana e ngākau nui ana ki ngā takohanga i raro i te Tiriti; he kawana e matatau ana i Te Reo; ka mutu
e. He here tō te Karauna ki te noho tahi ki Te Hunga Māori o te Raki kia hanga ētahi kaupapa here e mau tonu ana i te pūmaharatanga, me ngā whāinga o Te Hunga Māori o te Raki.[57]

The English translation provided by counsel reads:

In Counsel's submission, the following duties emerge from the three principles that are discussed above:

a. The Crown has a duty to recognise the mana and rangatiratanga of Te Hunga Māori o te Raki and all that is encompassed within the exercise of that rangatiratanga;
b. The Crown has a duty to protect and safeguard Te Hunga Māori o te Raki rangatiratanga, their lands, homes, and ō rātou taonga katoa;
c. The Crown has a duty to strengthen, revitalise and protect Te Reo Māori and Te Reo o Ngāpuhi as taonga. The Crown remains responsible for promoting Te Reo Māori as a taonga, and as an official language of Aotearoa;
d. The Crown has a duty to establish and provide Te Hunga Māori o te Raki with a government that is genuine about upholding its obligations and duties under Te Tiriti, a government that is proficient in Te Reo Māori;
e. The Crown has a duty to work alongside Te Hunga Māori o te Raki to establish policies that align with the aspirations and objectives of Te Hunga Māori o te Raki.[58]

Paranihia Walker, counsel for Pārahirahi C1 Trust and ngā hapū o Ngāwhā, submitted:

the dominant language of the principles identified to date has been the English language, both in terms of designation and discussion. This approach can never be consistent with Te Tiriti, because it favours the language, philosophy and law of only one party to it.[59]

Ms Walker suggested the Tribunal rectify the imbalance by giving due weight to te reo Māori in its discussion of any principles flowing from te Tiriti. Such an approach,

Some of the claimant counsel who made submissions on the treaty and its principles during the Tribunal's hearings. *From left*: Jason Pou and Peter Johnston.

in her view, was long overdue. She submitted that some appropriate starting points for identifying treaty principles included:

a) respect for rangatiratanga, including tino rangatiratanga, mana, kawa, tikanga and te reo Māori;
b) respect for kāwanatanga, in its appropriate domains;
c) discussion and mutual consent in relation to matters of common interest; and
d) respect for kawa, tikanga and te reo Māori when considering the application, scope or otherwise of rangatiratanga. It is only through this law, philosophy and language that the essence of rangatiratanga can be captured.[60]

Ms Walker added, 'To approach the exercise in any other manner is to fall into the trap carefully designed and set by successive colonial governments.'[61]

Counsel for Ngāti Manu and counsel for Hokianga claimant groups both said their claimants 'observe the text of Te Tiriti o Waitangi' and that they expected that the Crown's guarantees to them would in turn be honoured. They referred to principles of 'Respect, Fairness and Natural Justice', which they said underlined the claimants' understanding of the 'covenant', and asserted the importance of the Crown's dealing with Māori 'in an honourable and good faith way, and [that it] should ensure the protection and prosperity of Māori as a people including their economic, physical, spiritual and cultural wellbeing.'[62]

Ngāti Manu counsel Annette Sykes argued that the Crown's fiduciary obligations extend to active protection of Ngāti Manu, Te Uri Karaka, and Ngā Uri o Pōmare,

> to the fullest extent practicable in possession and control of their property and taonga and their rights to develop and expand such property and taonga using modern technologies . . . [their] ongoing distinctive existence as a people . . . [their] economic position and their ability to sustain their existence and their ways of life.[63]

In addition, counsel argued, the Crown was obliged to ensure Māori benefited from its governing structures, and its legislation and policy. As a result, the duties of the Crown included ensuring the following:

> the retention of rangatiratanga over tūrangawaewae . . . [the active protection of] recourse to spiritual and physical resources as they were traditionally managed . . . [and ensuring] the retention of rangatiratanga over taonga, social structures, property and resources in accordance with their own laws, cultural preferences and customs.[64]

Ms Sykes also introduced supplementary submissions on tikanga on behalf of Ngāti Manu and other groups that stated:

> Ko te ngako o ngā kōrero ka rangona e te marea . . . he whakamāhuki mō te mana Māori motuhake. (The essence of the submissions you will hear . . . allude to matters of self-autonomy and self-determination of the rights and obligations of the Māori Peoples.)[65]

Ms Sykes also noted that a legal system consistent with the principle of partnership would have taken into account tikanga Māori: '[s]pecifically, it would have accounted for how Tikanga Māori could co-exist with Crown law on a basis that would reflect the Tino Rangatiratanga of Te Raki Māori'.[66] Ms Sykes remarked that much of the evidence in this inquiry consistently refers to tikanga as 'the first law of this land' and submitted that tikanga was a taonga, which the Crown must protect.[67] She also submitted that the Crown has a duty of active protection in respect of tikanga Māori to ensure its preservation, and in particular, its transmission from generation to generation. The Crown has a further duty to ensure that Māori can choose to adapt their tikanga and rights to their way of life largely in accordance with the te Tiriti guarantee of tino rangatiratanga. Like counsel for Ngāti Kawa, Ngāti Rāhiri, and Ngāti Rēhia, Ms Sykes cited principles, but rooted them firmly in the treaty itself – in article 2, the preamble, and what is commonly referred to as the fourth article or article 4.[68]

Jason Pou, on behalf of Hokianga claimants, detailed the Crown's duties to protect the whānau and hapū of Hokianga through the exercise of good government. It had a duty to ensure, among other things, the protection and promotion of Hokianga entitlements to peace and law and order; the absence of discrimination in the eyes of the law and law makers; and the determination of matters affecting Māori land by Māori, in accordance with their own methods of reaching agreements. The Crown also had a duty to remedy past breaches, without '[taking] advantage of levels of poverty and subordination that the whanau and hapu of Hokianga have been burdened with following Crown injustice'.[69]

Mindful of te kawa o Rāhiri (the law of Rāhiri),[70] counsel also spoke of a framework of 'inseparable rights' essential to 'the concept of nationhood which forms part of the Hokianga assertion of identity'.[71] These included 'the right to be distinct peoples albeit adapting with time'; the right to the 'territorial integrity of their land base'; the right to 'freely determine their destinies . . . [to] be the architects of their own future'; the right to self-government; and the right to have previous injustice remedied.[72]

2.2.3 The Crown's position on the treaty and its principles

Crown counsel's main submission was that the conclusions reached in our stage 1 report do not, and should not, affect treaty principles.[73]

Counsel submitted that the Tribunal itself has decided 'not to alter treaty principles' in light of the stage 1 report. It cited *He Whiritaunoka: The Whanganui Land Report*

Crown counsel during hearing week 18 in April 2016 at Mātaitaua Marae, Utakura. *From left:* Kevin Hille, Gillian Gillies, and Andrew Irwin, who represented the Crown from the beginning of the stage 1 hearings, and kaumātua Sam Davis.

(2015), which stated that the Waitangi Tribunal 'has rejected the suggestion that the Treaty should apply differently in different places, depending on how the Treaty was received there, or even whether the Treaty was received there'. Treaty duties applied, it said, even where Māori were not offered the treaty and did not sign it.[74] In *He Whiritaunoka*, the Tribunal found that Whanganui Māori did not agree to the Crown's assumption of sovereignty but the Crown assumed it anyway; consequently, the effect of the treaty is to bind the Crown to use that appropriated power well in relation to Māori. Crown counsel cited the Tribunal's view in *He Whiritaunoka* that 'What that means in practice has come to be conceived of in terms of "principles" of the treaty.'[75] The Crown noted that the report further decided against recrafting the principles of the treaty, sticking rather to the principles that were 'core to the Tribunal's jurisprudence' – that is, partnership, good faith, reciprocity, active protection, and autonomy.[76]

The Crown suggested that if Ngāpuhi did not cede their sovereignty (as the stage 1 report says), Ngāpuhi are in a similar position to other tribes who signed the treaty but did not intend to cede sovereignty either (such

as Whanganui Māori); or who did not sign and therefore could never have intended to cede sovereignty (such as Moriori and ngā iwi o Te Urewera).[77] As the Tribunal has already reported on the claims of these groups, the Crown argued it would be inconsistent if it now applied amended or heightened treaty principles to Ngāpuhi.[78]

Crown counsel further submitted:

- In the seminal *Lands* case, the Court of Appeal developed a conception of treaty principles that has already accounted for the Tribunal's essential conclusions in its Te Raki stage 1 report; that is, about the understanding (or lack of understanding) Māori signatories may have had regarding the reference to sovereignty in the English text. The judges' view was that there was a real question as to whether Māori signatories understood they were asked to cede the sovereignty referred to. They variously noted the marked differences between the English and Māori texts of the treaty, the different meanings attributed to 'kāwanatanga', and that the concept of sovereignty as understood in English law was unknown to Māori. Justice Bisson also noted the opinion of Professor Hugh Kawharu that the chiefs would have believed they were retaining their rangatiratanga intact and all customary rights and duties as trustees for their tribal groupings.[79]
- The stage 1 report itself stated that its essential conclusion that Ngāpuhi did not cede their sovereignty was not radical and represented continuity rather than change. It cited previous Tribunal and court decisions and the views of leading scholars over the previous generation. Therefore, counsel argued, it would be out of step with this approach if the stage 1 report conclusions led to a change to treaty principles, 'including principles as articulated by the Tribunal'.[80]
- Treaty principles are timeless. Counsel cited the view of Justice Bisson in the *Lands* case that the principles must have the same meaning today as they did in 1840; what changed were the circumstances in which those principles apply: 'At its making, all lay in the future. Now much claimed to be in breach of the principles and of the Treaty itself, lies in the past. It did not provide for what was to happen if, as has occurred, its terms were broken.'[81] Crown counsel suggested that, despite the Tribunal's application of the principles in different contexts, the principles themselves needed to remain in a fundamental, broad sense; this gave 'strength and consistency' to the values that underpin them.
- The application of treaty principles is of the utmost importance. In counsel's view, the most important thing for the Tribunal to do is apply the principles to the 'facts'. The Tribunal, counsel submitted, should pay special attention to two principles in this inquiry: the duty on the Crown and Māori to act in good faith, fairly, reasonably, and honourably towards one another, 'often said to be the paramount principle'; and the duty of the Crown actively to protect the matters referred to in article 2. Therefore, the threshold for treaty breach requires conduct that is dishonourable, unfair, or unreasonable. Counsel maintained this was not a low threshold.[82]

Moreover, counsel noted that the courts have found:

> [t]he duties owed by the Crown under treaty principles are not unqualified and will be tempered by reasonableness and practicality. The Crown, in carrying out its obligations, is not required to go beyond taking such action as is reasonable in the prevailing circumstances.[83]

Nor, Crown counsel argued, does the 'paramount principle' mean that 'every asset or resource in which Māori have a justifiable claim to share must be divided equally'.[84]

2.2.4 The claimants' reply submissions

In reply submissions, some counsel were critical of the Crown's approach. Dr Gilling, for example, in his submissions for Dr Terence Lomax on behalf of Te Uri o Hawato, rejected the Crown's submission that the Tribunal's conclusions from stage 1 'do not, and should not, affect treaty principles'. The list of principles might not have changed,

counsel stated, but he rejected the view that their interpretation had not changed either. Dr Gilling suggested that, because the Crown did not enter into 'any discussion as to how the starting point of any of the principles may change' as a result of stage 1, it was open to the Tribunal to reach conclusions in its stage 2 report on the extent to which the previous report 'evolves our understanding and interpretation of the principles of Te Tiriti'.[85]

Ms Mason, counsel who made the generic submissions on political engagement, clarified her argument and challenged the Crown's position that claimant counsel had in fact offered no revision of what treaty principles should now be.[86] The claimants, she said, submit that some of the principles 'as currently enumerated' are not consistent with the meaning of te Tiriti and therefore rest on a false foundation. 'Most obviously', she stated, 'the current Principles overstate the authority conferred to the Crown under te Tiriti/the Treaty.'[87] Citing Professor Jane Kelsey's evidence, she submitted that the current principles are 'neither neutral nor immutable and should not be treated as such'. She added that '[t]he Waitangi Tribunal has the exclusive mandate in its own jurisdiction to generate new Principles that truly reflect the constitutional relationship established in te Tiriti/the Treaty.'[88] In particular, she suggested that in light of stage 1 of our inquiry, which concluded that sovereignty was not ceded, the principle of partnership 'changes fundamentally'. She reiterated that three spheres were envisaged – British authority, Māori authority, and shared authority – and 'that this was the nature of the partnership that was to follow the signing'. She submitted that all Crown conduct must be assessed against that partnership, and not against the idea that the Crown is entitled to govern as long as it does so reasonably.[89] The principle that 'provided that the Crown has Kāwanatanga over all of Aotearoa New Zealand', counsel argued,

> ought to be revised to say that the sovereignty that the Crown currently exercises is in breach of te Tiriti/the Treaty, and is held and exercised partially on behalf of Māori, by the Crown, in trust, in a protectorate capacity, until such time as the Partnership arrangement envisaged . . . [in 1840] has been negotiated and given effect to.[90]

Mr Kahukiwa, on behalf of Te Waiariki, Ngāti Korora, and Ngāti Takapari similarly challenged the Crown's assertion that he had argued that 'no revision of treaty principles is needed'.[91] Counsel clarified that the Tribunal's conclusions in the stage 1 report – based on te Tiriti's true meaning and effect – should lead to a reassertion and exposure of the principles as they existed in 1840, as opposed to a 'revision or amendment' of treaty principles.[92] Counsel also rejected the Crown's argument that the Court of Appeal's conclusions on the treaty principles in the *Lands* case already accounted for the context traversed in the stage 1 report. Counsel pointed out that, in the Court's majority decision, Justice Robin Cooke emphasised that the case was confined to the practical application of the State-Owned Enterprises Act 1986, and that 'the story of the signing of Te Tiriti was not within the scope of their judgment'.[93] Mr Kahukiwa submitted that, as the stage 1 report specifically interrogated evidence on the treaty signings, the Crown's '[attempt] to undermine [the stage 1 report] with a case that by its own admission did not delve into those matters does not stack up'.[94]

In her submissions in reply on behalf of Ngāti Manu, Ms Sykes was deeply critical of the Crown's submissions on the treaty and its principles, particularly its alleged interpretation of 'tino rangatiratanga as something less than the full sovereign authority that the Māori signatories to the Treaty understood it to mean'.[95] Citing the evidence of Professor Kelsey, Ms Sykes highlighted that deriving treaty principles largely from that interpretation would be inconsistent with the conclusions in the stage 1 report, and would 'deny the authority intrinsic to tino rangatiratanga and the legitimacy of tikanga as the rules and processes to govern relationships and behaviour and resolving disputes'.[96] Instead, she argued, '[i]f the Treaty is to be honoured as the Crown submissions promote then Te Raki Māori must have the right to make laws within their own territories – unfettered, but cognisant of Pākehā Law.'[97]

2.3 What the Tribunal Has Said Previously about ngā Mātāpono o te Tiriti / the Principles of the Treaty, and the Rights and Duties that Arise from the Treaty Guarantees

In this section we consider what previous Tribunal reports have said about ngā mātāpono o te Tiriti / the principles of the treaty, and the rights and duties arising from the treaty guarantees. We begin with the Tribunal's reminder in *He Whiritaunoka* of the derivation and purpose of treaty principles. In that report, the Tribunal considered why it is statutorily required to identify treaty principles and suggested that this was

> perhaps the most effective way of defining a standard for assessing Crown conduct that responds to the power imbalance that developed and continued after 1840. Those who assumed power did not consider that there needed to be an ongoing application of the Treaty's provisions, because – from their perspective – the purpose of the Treaty was fulfilled once the Crown assumed sovereignty and land transactions progressed. In requiring the Tribunal to identify Treaty principles, the Act recognises that it was the Treaty that the newcomers relied on to gain the upper hand and set the agenda.[98]

Thus, the Tribunal concluded, it has long been accepted that treaty principles are to be derived 'not only from its texts but also from the context and spirit in which the Treaty was entered into'; in other words, the principles are derived from the *meaning and effect* of the texts. Given that the *contra proferentem* rule and legal precedents concerning treaties with indigenous peoples direct the Tribunal to ascertain 'the natural meaning of the Treaty' to those Māori who entered into it, the Tribunal considered that the treaty principles most relevant to its inquiry 'are those that speak to the kind of relationship that Māori properly expected to be able to enter into'.[99] They should, therefore, reflect understandings about what the treaty signified 'that would have been recognisable, realistic, and relevant to people' at the time the treaty was signed.[100]

These statements appear entirely applicable to the Te Paparahi o Te Raki inquiry, and we return to them later in section 2.4. They draw on broad principles of treaty interpretation we adopted at the outset of this inquiry, which both privilege the Māori understanding of a treaty where there was ambiguity arising from its two texts in different languages, and attach particular importance to the context and spirit in which the treaty was entered into in the Bay of Islands and Hokianga by Ngāpuhi leaders and the Crown.

2.3.1 Tribunal development of ngā mātāpono / the principles

In any discussion of ngā mātāpono o te Tiriti / the principles of the treaty, it seems to us, we must start with the words of te Tiriti, and with the particular circumstances in which te Tiriti was explained to Māori leaders, and agreed to, or rejected by them.

In our discussion of earlier Tribunal reports in *He Whakaputanga me te Tiriti*, we focused on those arising from Tribunal inquiries into claims in the northern part of New Zealand, where the treaty was of 'unique importance' to claimants; and also on reports of the early- to mid-1980s that made a point of examining what was promised and agreed at Waitangi in February 1840. The Tribunal had a particular interest in understanding the two texts of the treaty and the differences between them, and whether Māori had agreed to a cession of sovereignty.[101]

We concluded that the Tribunal reports we looked at have reached different views about the agreement at Waitangi.[102] Some implied that:

> Māori in 1840 did not cede to the Crown what the English text describes as 'all the rights and powers of Sovereignty', while others have regarded a cession of sovereignty as being very clear to both parties.[103]

We noted legal scholar Ani Mikaere's view that the Court of Appeal's judgments in the *Lands* case led to a shift in Tribunal reports towards a greater emphasis on the English text and the Crown's acquisition of sovereignty.[104]

We considered the landmark *Lands* case in the Court of Appeal, which focused on the principles of the treaty (as section 9 of the State-Owned Enterprises Act 1986 required), noting that the proceedings at Waitangi in

1840 were not traversed in any particular detail as part of those proceedings. The Court felt it unnecessary for the purposes of the case before them to consider the differences between the treaty texts and the 'possible different understandings of the Crown and the Maori in 1840 as to the meaning of the Treaty',[105] although it did acknowledge that there were 'grounds for thinking there were important differences between the understanding of the signatories as to true intent and meaning of article 1 of the Treaty'.[106] The judges were unanimous in concluding that the Crown had acquired sovereignty in 1840.[107]

We agreed that the Tribunal has clearly been influenced by the Court of Appeal's findings. We suggested, however, that the Tribunal has made its own important observations since the *Lands* case – evidence of a clear development in thinking beyond these findings.[108] We particularly note that it has from the outset derived principles from both British and Māori worldviews, law, experiences of their mutual relationship, and intentions in entering into the treaty.

We turn now to examine the evolution of the Tribunal's consideration of key treaty principles.

2.3.2 Te mātāpono o te tino rangatiratanga

The Tribunal has long emphasised that the treaty guaranteed the rights of Māori to exercise their tino rangatiratanga (full authority) over their lands, their villages, and all their taonga, and in each inquiry has assessed Crown actions and omissions in light of this principle of tino rangatiratanga.

We begin with the *Report of the Waitangi Tribunal on the Orakei Claim* (1987), issued six months after judgment was delivered in the *Lands* case. It was the first Tribunal report to articulate principles relating to the Crown's duties when purchasing Māori land; these were based on a detailed analysis of the instructions of Secretary of State Lord Normanby to Captain Hobson and other documents relating to the Crown's right of pre-emption (we discuss these matters in section 2.3.5).

But we note first the report's important discussion on the meaning of tino rangatiratanga in article 2, which seems to us to illuminate that principle, even if – in those very early days of Tribunal jurisprudence – it was not specifically identified as a principle as such. The Tribunal's discussion reflected kōrero among kaumātua on the two texts of the treaty that, in our view, drew out a principle based in the te reo text. The meaning of the phrase 'tino rangatiratanga', the Tribunal said, had caused it 'much trouble'.[109] It was concerned that 'the continued use of "rangatiratanga" to describe the authority of the Maori in respect of their lands and other interests may perpetuate a Victorian view that Maori society was hierarchical'. But clearly, it said, Ōrākei Māori did not see things that way. The Tribunal cited the view of John Rangihau of Tūhoe, expressed in discussion with two Tribunal members shortly before his passing, that 'there was no such thing as a chief in Maori terms, insofar as the concept of "chief" was an English concept, suggesting the rangatira above and the people below'.[110] Rangihau stated that '[r]ecognition by the people was . . . a very important element in the identification of a rangatira'; indeed, 'that which distinguished the true rangatira was the quality of commonality', and it was this which 'binds the leader as one with his people'.[111] The Tribunal concluded that it would render 'rangatiratanga' as 'authority', 'tino rangatiratanga' as 'full authority', and 'to give it a Maori form [they added] we use "mana"'.[112]

What were the implications of this discussion for the guarantee in article 2 of the 'tino rangatiratanga' of Māori over their lands? The Tribunal concluded that this acknowledgement in the Māori text

> necessarily carries with it, given the nature of their ownership and possession of their land, all the incidents of tribal communalism and paramountcy. These . . . include the holding of land as a community resource and the subordination of individual rights to maintaining tribal unity and cohesion. A consequence of this was that only the group with the consent of its chiefs could alienate land.[113]

In other words, the principle illuminates the nature of authority in Māori communities and of Māori rights in land, and thus the making of decisions about the alienation of land.

The *Report on the Manukau Claim* (1985) also concluded that 'The guarantee of undisturbed possession or of rangatiratanga means that there must be a regard for the cultural values of the possessor' – specifically, in that case, of fisheries. It added that: 'The guarantee of possession entails a guarantee of the authority to control that is to say, of rangatiratanga and mana.'[114] The *Muriwhenua Land Report* (1997) considered rangatiratanga in the context of pre-treaty land transactions; it stated:

> The aspects of rangatiratanga important to this case include the right to have acknowledged and respected the hapu's system of land tenure and of contracting, and also the hapu's customary preferences in the administration of their affairs or the management of their natural resources.[115]

The Tribunal made that statement in the context of a discussion of Māori custom, values, and law, stressing the importance of the social mores that 'were likely to have influenced Maori in their transactions with Europeans'. The 'fundamental purpose of Maori law was to maintain appropriate relationships of people to their environment, their history and each other'. The essential Māori value of the land was that 'lands were associated with particular communities' and could not pass outside the descent group. The main right lay with the community, and there was no right of land disposal independent of the community. Outsiders might be incorporated within the community, as happened across the Pacific, by (for instance) land allocation, and in doing so they were obligated to contribute to the community, with the expectation that the relationship would strengthen it.[116]

Tribunal inquiries have also underlined tino rangatiratanga as an indigenous right. In *The Taranaki Report: Kaupapa Tuatahi* (1996), tino rangatiratanga was explained as autonomy, or

> the inherent right of peoples in their native territories. Further, it is the fundamental issue in the Taranaki claims and appears to be the issue most central to the affairs of colonised indigenes throughout the world.[117]

In introducing the United Nations Draft Declaration on the Rights of Indigenous Peoples, the *Taranaki* report defined 'aboriginal autonomy' or 'aboriginal self-government' as:

> the right of indigenes to constitutional status as first peoples, and their rights to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government.[118]

Subsequent Tribunal reports have consistently affirmed that tino rangatiratanga is an equivalent term to autonomy or self-government.[119] The Tribunal has further asserted its equivalence to the term 'mana motuhake', which similarly means separate authority or self-government.[120]

In *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (2004), the Tribunal considered the scope of Māori autonomy, defining it as:

> the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.[121]

Moreover, the report asserted, Crown recognition of Māori autonomy was essential to the treaty relationship. According to the terms of the treaty, 'tribal autonomy was the only basis for a quality Treaty relationship'; a relationship between the Crown and Māori 'which did not properly limit the sovereignty of the Crown so as properly to protect the autonomy of Maori could not have been consistent with the Treaty'.[122]

In *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims* (2008), the Tribunal added that inherent in Māori autonomy and tino rangatiratanga is 'the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlements'.[123]

In recent years, the Tribunal has introduced specific references to the Crown's obligations in respect of tikanga.

The Tribunal found in the *Report on the Crown's Foreshore and Seabed Policy* (2004) that the article 2 guarantee of tino rangatiratanga was inherently a guarantee of the right to exercise tikanga:

> The exercise of mana by rangatira was underpinned and sustained by adherence to tikanga. The chief whose thoughts and actions lacked that essential and recognisable quality of being 'tika' would not be sustained in his leadership.

Moreover, the Crown's guarantee of tino rangatiratanga was meaningless unless also accompanied by the tikanga 'that sustain and regulate the rangatira and his relationship to the people, and the land'.[124] In the Te Rohe Pōtae inquiry, the Tribunal has also spoken of the importance of tikanga in relation to tino rangatiratanga. In *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, it noted:

> tikanga underpinned how 'tino rangatiratanga' was exercised as it was relevant to their land tenure, the environment, social and political relationships, and generally to the Māori way of life in Te Rohe Pōtae. Tikanga mediated relationships between people and taonga, and was therefore an integral aspect of tino rangatiratanga. In respect of any interests or taonga, a community's authority (mana or tino rangatiratanga) depended on its exercise of the relevant tikanga. Because the guarantee of rangatiratanga was a promise of protection for Māori autonomy, the Crown was therefore obliged to respect Māori tikanga as a system of law, policy, and practice.[125]

2.3.3 Te mātāpono o te kāwanatanga

The Tribunal has often considered the differences between article 1 in te reo Māori and in English, and accordingly the relationship between 'kāwanatanga' in the Māori text, and 'sovereignty' in the English. It has found that the power to govern as defined in the Māori text was not unrestrained. Nor was it equivalent to 'sovereignty', the term used in article 1 of the English text. In the *Manukau* report, the Tribunal wrote that the kāwanatanga ceded to the Crown was a lesser authority than sovereignty, whereas rangatiratanga is 'not conditioned' and 'tino rangatiratanga' meant 'full authority status and prestige with regard to their possessions and interests'.[126] It added:

> As used in the Treaty ['kāwanatanga'] means the authority to make laws for the good order and security of the country but subject to an undertaking to protect particular Maori interests.[127]

Some Tribunal inquiries that stated Māori 'ceded' authority to the Crown have characterised it in different terms. In the *Orakei* report, as we noted in stage 1 of our inquiry, the Tribunal stated:

> 'Kawanatanga' . . . likely meant to the Maori, the right to make laws for peace and good order and to protect the mana Maori. That, on its face, is less than the supreme sovereignty of the English text and does not carry the English cultural assumptions that go with it, the unfettered authority of Parliament or the principles of common law administered by the Queen's Judges in the Queen's name.[128]

The Ōrākei Tribunal considered that contemporary statements show that 'Maori accepted the Crown's higher authority and saw themselves as subjects[,] be it with the substantial rights reserved to them under the Treaty'. But as we have noted earlier, it also wrote that the Māori text conveyed the 'full authority' that Māori would retain – that is, 'that they would retain their mana Maori'. We added that the Ōrākei inquiry 'did not grapple with the apparent contradiction between "full authority" for Maori and sovereignty for the Crown'.[129]

The view of the *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (1988), however, was that the supremacy of the Queen's authority was clear, because the Crown was to have an overriding control; the chiefs' speeches at Waitangi, it said, demonstrated that they understood this, and 'tino rangatiratanga' equated more to 'tribal self-management'.[130]

Tribunal reports have often said that the scope of kāwanatanga is limited by those interests protected by the guarantee of tino rangatiratanga in article 2. For example,

Ahu Moana: The Aquaculture and Marine Farming Report (2002) – citing the *Report on the Muriwhenua Fishing Claim*, the *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (1993), the *Te Whanganui-a-Orotu Report* (1995), and *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (2001) – said:

> the kawanatanga of the Crown must not be exercised in such a way as to diminish the guarantees in article 2 of rangatiratanga of the tribes to exercise control over their resources. This involves more than acknowledging ownership or tenure. It means providing for Māori control because of the guarantee of rangatiratanga. The Tribunal has variously described rangatiratanga as the exercise by Māori of autonomy, authority, self-government, or self-regulation over their tribal domain, which includes lands, waters, and oceans, and, as an extension of that, it encapsulates their right to the development of their resources.[131]

While the kāwanatanga of the Crown is limited by te Tiriti's guarantee of tino rangatiratanga, the principles of partnership and equity give rise to a Crown duty to ensure that its laws and policies adequately give effect to treaty rights and guarantees in both their letter and their implementation. This duty has sometimes been referred to as a principle of good government.[132] As the Tribunal observed in *The Mokai School Report* (2000), this principle is inherently linked to, and defines, the extent of its kāwanatanga rights:

> In shorthand form, the effect of the other Treaty principles on the Crown's right of governance may be said to require the Crown to exercise 'quality kawanatanga' or, more familiarly, 'good governance', where the meaning of 'quality' and 'good' is determined by the consistency of the Crown's governance with the entirety of the Treaty's principles.[133]

The Tribunal has also emphasised the fiduciary nature of the treaty relationship as partly underpinning the Crown's good governance obligations, especially since it has been in a position of power over its treaty partner for much of the period since the treaty was signed.[134] In *The Petroleum Report* (2003), the Tribunal stated:

> The Crown exercises its governmental power – its kawanatanga – as a partner and as a fiduciary. It follows that this power must be used to make good on article 2 and article 3 promises except in exceptional and clearly justifiable circumstances.[135]

We note also that in the *Muriwhenua Land Report* the Tribunal suggested a principle of 'fair process'. Noting that the Treaty promised 'necessary laws and institutions', it pointed to Lord Normanby's stipulation that a protector of aborigines be appointed to maintain an oversight of State action in the interests of Māori people. He promised also that pre-treaty transactions would be inquired into and lands held unjustly would be returned. The principle, the Tribunal decided, is:

> that the Government should be accountable for its actions in relation to Maori, that State policy affecting Maori should be subject to independent audit, and that Maori complaints should be fully inquired into by an independent agency.[136]

In its Tūranga district inquiry report *Turanga Tangata Turanga Whenua*, the Tribunal considered the Crown's obligations under its own constitutional rules and under the treaty. It pointed to the importance in the treaty of three key ideals: the rule of law, just and good government, and the protection of Māori autonomy. Despite the Queen's promises in the treaty to end the lawlessness that characterised relations between Māori and Pākehā, and to introduce a settled form of civil government for that purpose, the Crown had disregarded its own law when it found it politically expedient to do so. The Tribunal gave examples in *Turanga Tangata Turanga Whenua*: the Crown's military incursions and its attack in 1865 on Waerenga a Hika, a defensive pā in which there were

many women and children; its prolonged detention on Wharekauri of Te Kooti and his followers, and (after the subsequent battle of Ngātapa) its execution of a number of Tūranga Māori 'without charge, trial, or conviction'; and its 'unlawful confiscation' of Tūranga Māori property rights. It found these actions, committed in the name of the Crown in New Zealand, to be 'brutal, lawless, and manipulative'. These actions, the Tribunal concluded, were inconsistent with the constitutional rules that the Crown brought with it from Great Britain and were introduced through article 1 of the treaty.[137] Foremost among those rules was that the Crown, 'as the embodiment of executive government, is subject to the law and has no power to act outside it'. In its conclusions on the Crown's unlawful conduct, the Tribunal stated:

> the moral authority of the Crown to require its subjects to comply with a standard of conduct prescribed by law depends on the Crown itself adhering to that standard. The Crown had to be above revenge. How else could it claim to govern in the name of all New Zealanders? If we are truly a country respectful of the rule of law, these matters must be acknowledged and put to right.[138]

The Tribunal further affirmed not only that the Crown is obliged to abide by its own laws but that:

> It was implicit in the language and the spirit of the Treaty that government in New Zealand would be just and fair to all. There ought to have been no room for laws or policies calculated to defeat Maori interests in order to favour settler interests.[139]

The Tribunal also considered the Crown's duties in the balancing of the two treaty spheres of authority in *He Maunga Rongo: Report on Central North Island Claims* (2008). In that inquiry, the Tribunal reiterated that the treaty provided for the right to make national laws and observed that these duties to balance interests for the purposes of a 'successful partnership' are tested against 'reasonableness, not perfection'.[140] The Tribunal highlighted a series of circumstances where the Crown might need to balance its treaty duties 'against the needs of other sectors of the community':

- in exceptional circumstances such as war or impending chaos;
- for peace and good order;
- in matters involving the national interest;
- in situations where the environment or certain natural resources are so endangered or depleted that they should be conserved or protected; and
- where Māori interests in natural resources have been fully ascertained by the Crown and freely alienated, and/or are not subject to contest between Māori.[141]

The Tribunal was clear, however, that the Crown 'ought not to undertake the balancing exercise without restraint'.[142] It referred to *The Whanganui River Report* (1999), which stated that Māori rangatiratanga is not to be qualified by a balancing of interests. It is not conditional, but was asserted to be protected, absolutely; rather, it is governance that is qualified by the promise to protect and guarantee rangatiratanga for as long as Māori wish to retain it.[143] Thus, surmised the Tribunal in *He Maunga Rongo*, 'Maori rangatiratanga over their property rights or interests was to be respected and provided for in governance.'[144]

Previous Tribunal inquiries have accordingly identified the Crown's Native Land legislation, its introduction of a new land tenure system, its creation of the Native Land Court, and its land purchasing policies and practices in the nineteenth century as prejudicial to Māori, and therefore inconsistent with the Crown's duty to govern fairly and justly.[145] In *He Whiritaunoka*, the Tribunal considered that the 'most basic and incontrovertible' standard of good government in the years following the treaty's signing was to ensure 'fair and proper practices in land transactions'.[146] In its conclusions on Crown purchasing in the Whanganui district from 1870 to 1900, the Tribunal stated:

> In that this was a regime enabled by legislation, we cannot say that the Crown acted outside of the law. Usually, it did not. However, we can say that it was not good government, because it was neither just nor fair.[147]

In its report, the Tribunal also pointed out that by 1840, Whanganui Māori had experienced little contact with British Governors or Kāwana, and it considered kāwanatanga was 'an open textured word and concept'. It found no evidence that Māori in that district would have understood kāwanatanga as a 'significant check on their exercise of te tino rangatiratanga.'[148] However, the Tribunal observed, '[t]he idea of what "kāwanatanga" connoted would develop over time, as land transactions were entered into and as the new society was established.'[149]

In *Te Mana Whatu Ahuru*, released after our stage 1 report, the Tribunal considered it did not have evidence that the Crown had explained to the Te Rohe Pōtae signatories 'that it sought a supreme, unfettered power over all people and territories'. Instead, the Tribunal said,

> the evidence is that it explained that it wanted a governing power that could be used to control settlers and protect from foreign threat, thereby protecting Māori and bringing mutual benefit.[150]

While the Tribunal has consistently concluded that kāwanatanga was not equivalent to the full power and authority denoted by the term 'sovereignty', *Te Mana Whatu Ahuru* suggested that the balance of kāwanatanga and tino rangatiratanga in the treaty 'did not give rise to a situation in which either Māori or the Crown are able to claim an absolute authority'.[151] As with the treaty's limits on the remit of the Crown's kāwanatanga rights, 'tino rangatiratanga was limited by the Crown's right to govern, and in particular to control settlers and settlement in accordance with the principle of kāwanatanga.'[152]

2.3.4 Te mātāpono o te houruatanga / the principle of partnership

Partnership has long been a key treaty principle derived from the expectations of the partners at the time they entered into the treaty. The principle was characterised by the Court of Appeal in the *Lands* case when it spoke of a partnership requiring each partner 'to act towards each other reasonably and with the utmost good faith'.[153] The court also described these mutual responsibilities as 'analogous to fiduciary duties'.[154] In other words, the principle of partnership states the basis on which post-treaty relationships between Māori and the Crown should be conducted.

The Tribunal has considered the principle of partnership over many years and has talked about it in different ways. It has generally been understood as reciprocal, involving 'fundamental exchanges for mutual advantage and benefits'. Māori 'ceded' sovereignty (in the English text) or kāwanatanga (governance, in the Māori text) of the country in return for the Crown's guarantee that their tino rangatiratanga (full authority or autonomy) over their land, people, and taonga would be protected.[155] Given our conclusions from stage 1, we do not consider it appropriate in our inquiry district to describe a 'fundamental exchange' in these terms. However, partnership remains a crucial principle in this inquiry. Recent Tribunal inquiries have increasingly considered the nature of relationships – between Māori and the Crown; iwi, hapū, and the Crown – and the obligations of the partners to each other, especially the obligations of kāwanatanga. These inquiries have therefore been concerned not only with the application of treaty principles to historical claims but also with examining what 'partnership means for the relationship between Māori and the Crown, and for the place of New Zealand's two founding cultures in this land'.[156]

The Wai 262 inquiry report *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (2011) was the outcome of the Tribunal's first whole-of-Government inquiry into Māori claims. Its scope was broad; it focused on law and Crown policy in relation to Māori identity and culture, 'both now and in the future', which led to the involvement of core and independent Crown agencies, Crown-owned companies, representatives of the university system, the private sector, and many individuals.[157] But if the inquiry was forward looking, it

was also rooted in mātauranga Māori, the key concern of the claimants, which refers not only to Māori knowledge but also to the Māori way of knowing. It incorporates 'language, whakapapa, technology, systems of law and social control, systems of property and value exchange, forms of expression, and much more': traditional technology relating to food cultivation and gathering, knowledge of the various uses of plants and wildlife, systems of controlling relationships between people, the arts and performing arts, and various rituals and ceremonies. In other words, mātauranga Māori concerns the unique Māori way of viewing the world; it incorporates Māori culture, its underlying values or principles, and Māori traditional knowledge.[158] The claim therefore has strong historical roots in traditional knowledge, in the signing of the treaty, and in the long history of policy in which the Crown 'largely supported and promoted one of our two founding cultures at the expense of the other'.[159]

The Tribunal's view in *Ko Aotearoa Tēnei* was that, through the treaty, the Crown 'won the right to enact laws and make policies'. However, the Tribunal stated, that right 'is not absolute'. Like any constitutional promises, those made in the treaty cannot be set aside without agreement, except after careful consideration and as a last resort. In broader terms, the claim concerned the survival of Māori culture and its ongoing place in Aotearoa. In this context the most important of the treaty promises, the Tribunal said, was the guarantee to protect the tino rangatiratanga of iwi and hapū over their 'taonga katoa' – that is, the highest chieftainship over all their treasured things.[160]

The Tribunal considered what exercising tino rangatiratanga means in relation to mātauranga Māori, and how mātauranga might be protected in a modern New Zealand context. The exercising of tino rangatiratanga, it said, must be protected to the greatest extent possible – but, like kāwanatanga, it is not absolute. Its sobering view was that,

> [a]fter 170 years during which Māori have been socially, culturally, and economically swamped, it will no longer be possible to deliver tino rangatiratanga in the sense of full authority over all taonga Māori. It will, however, be possible to deliver full authority in *some* areas. [Emphasis in original.][161]

What the delivery of full authority might entail depended on the circumstances of the case. But the Tribunal added a powerful caveat: law- and policy-makers should always keep in mind 'that the tino rangatiratanga guarantee is a constitutional guarantee of the highest order, and not lightly to be diluted or put to one side'.[162]

Turning to the principle of partnership, the Tribunal suggested it could be seen as an overarching principle, 'beneath which others, such as kāwanatanga and tino rangatiratanga, lie'.[163] It contrasted the emphasis on partnership in New Zealand with other post-colonial societies, which stress the power of the State and the 'relative powerlessness of their indigenous peoples by placing state fiduciary or trust obligations at the centre of domestic indigenous rights law'.[164] In New Zealand, however, unique arrangements are built on 'an original Treaty consensus between formal equals'. The Tribunal noted that, in New Zealand, '[w]e . . . have our own protective principle that acknowledges the Crown's Treaty duty actively to protect Māori rights and interests. But it is not the framework. Partnership is.'[165] This is a discussion that roots 'partnership' firmly in the treaty itself.

The Tribunal recommended a number of innovations in Crown procedures designed to express what it called 'the new generation of Treaty partnership in which Māori have a meaningful voice in the ongoing fate of their taonga, and the partnership itself is not static but is being constantly rebalanced'.[166] It discussed partnership principles that it suggested differed from 'the principles of good behaviour spelled out by the Court of Appeal in 1987 in the *Lands* case' and were instead principles that could be practically applied 'in the context of modern government policies and programmes'.[167] It examined how the partnership relationship might change in the future and potentially become the partnership that was promised at the time of the signing of the treaty – 'a relationship of equals'.[168] Further, it suggested that 'on many occasions what we believe is needed more than anything is a change in mindset – a shift from the 'old' approach that valued only one founding culture to one in which the other is equally supported and promoted'. Partnership required 'cooperation and, on the part of the Crown, a willingness

to share responsibility and control with its Māori Treaty partner where it is appropriate to do so.'[169]

Two reports published since our stage 1 report was released, have taken somewhat similar approaches to the principle of partnership. In *He Whiritaunoka*, the Whanganui Land inquiry contrasted the situation of Whanganui Māori when they signed the treaty with that of Ngāpuhi at Waitangi. In Whanganui, Māori had almost none of the experiences of Ngāpuhi in terms of contact with Pākehā, with traders, or any long-term relationship with missionaries, Indeed, the purchase deed of the New Zealand Company, which Edward Jerningham Wakefield took to Whanganui at the same time, probably seemed of greater importance than the treaty and was signed by many more rangatira. Yet Whanganui Māori were aware of the benefit that establishing relations with Europeans could bring, and the Tribunal concluded that they expected the process of engagement to continue and advance as more Pākehā arrived.[170] Whanganui Māori may have regarded the two signings as very similar; both, the Tribunal said, conveyed 'the common message that Europeans would be arriving and that understandings needed to be arrived at about where and how they would live and how their leaders and rangatira would interact'.[171] But they would not have had any reason for supposing that the use of the word 'Kawanatanga' in the treaty 'was intended to convey the full power and authority of the "sovereignty" that Māori ceded in the English version'.[172] By signing the treaty, Whanganui rangatira were agreeing to embark on a relationship with the incoming Pākehā population. 'They did not know very much about what it was going to look like, but they were agreeing in good faith to venture into the future with these new people'.[173]

The Tribunal, having raised the question of different Māori understandings of the treaty in light of their previous interaction with Pākehā, stated that the Tribunal 'does not determine the meaning and effect of the Treaty for different groups of Māori in light of their own experience of engaging with the Treaty and signing it'. It made it clear, however, that the Crown's treaty duties applied whether or not there was Māori consent, because the Crown had gained the benefits of the treaty everywhere.[174] The Tribunal hesitated to agree that the treaty does not bind Māori if they did not consent to it, arguing that it would not benefit Māori if this were said now, for they would not regain sovereignty or the lands they did not want to sell (despite their rights under the treaty to retain them).[175]

In its discussion of the treaty principle of partnership, the Tribunal concluded:

> Māori in Whanganui had every reason to believe that the new society would proceed on the basis of partnership between their leaders and the new arrivals. This included establishing settlers on the land and working cooperatively with them. It also involved maintaining Māori authority in their own spheres and cooperating in areas of intersecting interest.[176]

It added, 'Where there is an ethic of partnership, there is no room for one partner to impose changes on the other without participation and agreement.'[177]

In part 1 of *Te Mana Whatu Ahuru*, the Tribunal reached a similar conclusion about the nature of partnership, though through a rather different route. In its view, the treaty represented a 'coming together of two peoples, each with their respective cultural, legal, and political traditions'. Its approach to determining the treaty's meaning and effect was based on the meeting of two legal traditions: one based on European law, the other on tikanga. In both traditions, they said, there needed to be consent and acknowledgement of the other's authority.[178] The Tribunal considered the fundamental 'Treaty exchange' in this context:

> Māori communities retain their tino rangatiratanga, including their right to autonomy and self-government, and their right to manage the full range of their affairs in accordance with their own tikanga. As part of the Treaty exchange, the Crown guarantees to protect and provide for the exercise of Māori authority and autonomy.[179]

The Tribunal also saw the treaty as creating a shared realm in which their two authorities were to coexist. The power arrangement would be 'in the nature of one

sovereign entity consisting of multiple governmental authorities'. The primary responsibility of Māori was the maintenance and well-being of their own communities and territories. The Crown's principal focus (spelled out in the treaty's preamble and in verbal explanations) was on control of settlers and settlement.[180]

The Tribunal suggested that kāwanatanga allowed the Crown to govern and make laws for particular purposes. To that extent, the Tribunal said, the treaty had modified the ultimate sovereign authority held by Māori communities; that authority had become instead a right to self-determination and autonomy – or self-government – that existed alongside the Crown's right to make laws and govern. Tino rangatiratanga must have been understood by Māori as at least an equivalent power to the Crown's kāwanatanga.[181] Thus, the Tribunal concluded that 'there would need to be further discussions between Māori and the Crown about how these two forms of power would intersect and co-exist'.[182] The Tribunal offered the following explanation of the principle of partnership:

> The Treaty established a relationship that was subject to ongoing negotiation and dialogue, under which the Crown and Māori would work out the practical details of how kāwanatanga and tino rangatiratanga would co-exist. Both partners owe each other a duty to act honourably and in good faith. Neither partner can act in a manner that fundamentally affects the other's sphere of influence without their consent, unless there are exceptional circumstances.[183]

The Tribunal explained the function of the principle of partnership similarly in *Te Urewera* (2017), noting the meaning of the terms 'sovereignty', 'tino rangatiratanga', and 'mana motuhake' in their respective languages:

> The concepts of 'sovereignty' on the one hand, and 'tino rangatiratanga' or 'mana motuhake' on the other, connote absolute authority, and so cannot co-exist in different people or institutions. Thus, striking a practical balance between the Crown's authority and the authority of a particular iwi or other Maori group must be a matter for negotiation, conducted in the spirit of cooperation and tailored to the circumstances.[184]

Among the duties arising from the treaty partnership is the Crown's duty to engage with Māori on matters of importance to them. This is often referred to as the duty of consultation. The Tribunal has sometimes distinguished circumstances in which Crown consultation with Māori may be necessary, and has stated that the Crown must ensure consultation is in accordance with treaty guarantees or with treaty principles.

An early statement of this duty was made in *The Ngati Rangiteaorere Claim Report* (1990), which stated:

> In the view of the Crown the exercise of kawanatanga, or sovereignty in the English text, clearly included the right to legislate; but in our view this should not have been exercised in matters relating to Maori and their lands and other resources, without consultation. Likewise, in the implementation of such laws, Maori should have been involved in the decision-making process.[185]

The *Ngawha Geothermal Resource Report* (1993) considered that 'full discussion' with Māori was necessary before the Crown made decisions on matters which might 'impinge upon the rangatiratanga of a tribe or hapu over their taonga'. In its view:

> The Crown obligation actively to protect Maori Treaty rights cannot be fulfilled in the absence of a full appreciation of the nature of the taonga including its spiritual and cultural dimensions. This can only be gained from those having rangatiratanga over the taonga.[186]

In the *Te Ika Whenua Rivers Report* (1998), the Tribunal put it this way:

> In our view, if there is to be consultation that satisfies the terms of the Treaty, there must first be recognition of the rights and interests of Maori under article 2. It is not possible for the Crown successfully to argue the proper exercise of kawanatanga in accordance with the terms of the Treaty without indicating the regard it has had to the guarantees contained in article 2. Likewise, it is not sufficient to consult without recognition of any right or interest and then argue

> that such consultation complies with the requirements of the Treaty.[187]

Similarly, the Central North Island Tribunal's view was that the Crown has a duty to

> consult Maori on matters of importance to them and . . . obtain their full, free, prior, and informed consent to anything which alters their possession of those lands, resources, and taonga guaranteed to them in article 2.[188]

The Tribunal added:

> the test of what consultation is reasonable in the prevailing circumstances depends on the nature of the resource or taonga, and the likely effects of the policy, action, or legislation.[189]

Tribunal reports concerning contemporary issues also made relevant comments on how the Crown and Māori should engage on matters of concern to Māori. In *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993* (2016), which followed an urgent inquiry, the Tribunal cited the finding of *Ko Aotearoa Tēnei* that decision-making under the treaty should take place on a sliding scale, depending on the nature and extent of the respective interests of treaty partners in the issue at hand.

One of the Crown's duties as treaty partner, when it was preparing new legislation for Māori land in 2015, was 'not only to consult with Māori as to the governance of their lands' but also to seek and receive 'Māori agreement in respect to changing the law as to how they are to own, manage and control their lands under the law'.[190] The Tribunal did not accept that the Crown had an interest as great as Māori in the institutions that Māori had constituted under the 1993 Act to govern and manage their taonga tuku iho:

> Indeed, in this particular case, we find that the Māori interest in their taonga tuku iho, Māori land, is so central to the Māori Treaty partner that the Crown is restricted (and not unreasonably so) from simply following whatever policy it chooses.[191]

Overall, the Tribunal concluded, the Crown must carefully consider and inform itself of the impact its laws and policies may have on Māori individuals and groups, principally by adequately engaging and consulting with them. This standard has also been expressed in other Tribunal reports as a standalone duty of consultation or duty of informed decision-making.[192] Proceeding with law and policy without consulting Māori can only be treaty-consistent in exceptional circumstances, such as when delays might cause prejudice.[193] Ultimately, the Tribunal has maintained that the Crown must be accountable to its treaty partners in its formulation and implementation of law and policy.[194]

In a rather different inquiry, the Tribunal considered claims about the Crown's review, through Te Puni Kōkiri, of the Maori Community Development Act 1962 and the role of Māori Wardens. In the subsequent *Whaia te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (2015), the Tribunal adopted a treaty principle of 'collaborative agreement':

> this principle applies in legislative and administrative matters where the authority of the Crown to make law and the right of Māori to exercise autonomy overlap. It requires dialogue between the Treaty partners and . . . requires consultation and cooperation, possibly even negotiation towards obtaining Māori agreement in the development of administrative arrangements and legislation affecting Māori institutions.[195]

The Tribunal cited article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which articulates the duty of States to

> consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions . . . to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.[196]

Though these reports concerned twentieth- and twenty-first-century matters, the Tribunal's discussion of the importance of the involvement of Māori in decision-making remains relevant to the nineteenth century.

2.3.5 Te mātāpono o te matapopore moroki / the principle of active protection

Active protection has long been seen as a key treaty principle. The Manukau Tribunal stated as early as 1985 that the treaty 'obliges the Crown not only to recognise the Maori interests specified in the Treaty but actively to protect them', and moreover that 'the omission to provide that protection is as much a breach of the Treaty as a positive act that removes those rights.'[197]

The *Orakei* report, which was the first detailed study by the Tribunal of British motives in annexing New Zealand, stressed the protective intentions of the Crown. This was evident in the great importance of the 'humanitarian impulses' that led the British government to intervene in New Zealand 'with a view to protecting the Maori people from the adverse consequences of colonisation'.[198] These motives were set out in detail in Lord Normanby's instructions to Hobson, which also made it clear that Hobson was to emphasise these intentions in seeking Māori assent to the treaty. The Tribunal further pointed to Normanby's concern that Māori should be protected by the Crown in their land transactions. It concluded that the Crown's obtaining, under the treaty, the 'valuable monopoly right to purchase land from the Maori to the exclusion of all others' imposed on the Crown 'certain duties and responsibilities'. The first duty of the Crown therefore was to ensure that Māori in fact wished to sell; the second was 'to ensure that they were left with sufficient land for their maintenance and support or livelihood', that is, 'that each tribe maintained a sufficient endowment for its foreseen needs'.[199] And the report reiterated the Manukau Tribunal's view that omission to protect Māori treaty interests was as much a Treaty breach as a positive act that removes or abrogates those rights.[200]

The Tribunal reported in *The Ngai Tahu Report* (1991) on extensive purchases conducted in the South Island within the first 20 years after the signing of the treaty, either by or under the auspices of the Crown. The theme of protection runs strongly through its discussion of treaty principles, which began with the tenet: 'The cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.' The Tribunal cited Justice Casey in the *Lands* case approvingly ('the whole thrust of article 2 was the protection of Maori land and the uses and privileges associated with it') but added that 'rangatiratanga [as confirmed and guaranteed in article 2] embraced protection not only of Maori land but much more'.[201]

The Crown also had an obligation to protect Māori treaty rights. The preamble to the treaty, the Tribunal pointed out, expressed the Queen's anxiety to 'protect the just rights and property of Maori. Article 3 extends the Queen's Royal protection and bestows all the rights and privileges of British subjects on the Maori people.' The duty of protection extends to the Crown's exercise of its right of pre-emption in a range of ways, including ensuring a 'meaningful exercise of rangatiratanga' when purchases were negotiated and the Crown's duty to ensure that the land the tribe wished to retain was clearly identified.[202]

The Tribunal has drawn on the principle of active protection widely since that time, emphasising the context of British humanitarianism; the principle is derived, in other words, from British aims and concerns.[203] The *Te Tau Ihu* report found that the Crown's duty was 'not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable' and that its responsibilities, as affirmed by the Court of Appeal in 1987, are 'analogous to fiduciary duties'.[204] Active protection requires 'honourable conduct by, and fair processes from the Crown', as well as 'full consultation with – and where appropriate, decision-making by – those whose interests are to be protected'.[205] Accordingly, the Crown was required to guard Māori from 'transactions to which they did not give full, free, and informed consent, or in which they might unknowingly harm their own interests'.[206]

In defining this duty as including article 2 guarantees, the Tribunal affirmed that the Crown is obliged actively

to protect Māori autonomy. In *Te Mana Whatu Ahuru*, the Tribunal found that the Crown had a duty actively to protect Māori rights and interests,

> including the exercise of Māori authority – this included a duty not to ignore, deny, or interfere with Māori authority or relationships with lands and other taonga, and a duty to actively support those relationships to the greatest extent practicable in accordance with Māori wishes (including through legislation and institutional arrangements if that was what Māori communities sought).[207]

Tribunal inquiries have thus concluded that the treaty's guarantee to protect Māori exercise of tino rangatiratanga included the protection of their right to manage their land, peoples, and taonga (that is, language, culture, and other taonga of an intangible nature) in accordance with tikanga.[208]

The Tribunal also found in the *Report on the Crown's Foreshore and Seabed Policy* that the law and policy relating to freshwater taonga was a matter requiring a collaborative approach.[209] In finding that '[t]he foreshore and sea were and are taonga for many hapū and iwi', the Tribunal stated:

> Māori had a relationship with their taonga which involved guardianship, protection, and mutual nurturing. This is not liberal sentiment of the twenty-first century but a matter of historical fact. The Crown's duty under the Treaty, therefore, was actively to protect and give effect to property rights, management rights, Māori self-regulation, tikanga Māori, and the claimants' relationship with their taonga; in other words, te tino rangatiratanga.[210]

In *Te Mana Whatu Ahuru*, quoting the *Report on the Crown's Foreshore and Seabed Policy*, the Tribunal observed:

> The Crown's guarantee of tino rangatiratanga was meaningless . . . unless also accompanied by the tikanga 'that sustain and regulate the rangatira and his relationship to the people, and the land'.[211]

Elsewhere, the Tribunal has also discussed how the duty of active protection and the principle of equity are 'closely linked'.[212] The Tribunal has noted that the Crown's obligations actively to promote Māori rights, citizenship privileges, and their well-being and socio-economic status under the principle of equity are heightened by its duty of active protection. We discuss this further below.

2.3.6 Te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development

In the *Muriwhenua Fishing Claim* report, the Tribunal made an early statement of Māori rights to development. It commented that Normanby's instructions to Hobson could be described as reflecting the principle that:

> nothing would impair the tribal interest in maintaining personal livelihoods, communities, a way of life, and full economic opportunities, It was subject to the overriding principle of protecting Maori properties. It was even more important that settlement would not in itself be the excuse to relieve Maori of that which they wished to keep.[213]

Further, the Tribunal stated:

> It is the fundamental right of all aboriginal people, following the settlement of their country to retain what they wish of their properties and industries, to be encouraged to develop them as they should desire, and not to be dispossessed or restricted in the full enjoyment of them without a beneficial agreement.[214]

In the *Ngai Tahu Sea Fisheries Report* (1992), the Tribunal similarly found that Māori had a right to develop their properties themselves, including developments made possible by scientific and technological developments.[215]

The *Te Tau Ihu* inquiry stated that, when the treaty was signed, 'both settlers and Maori were expected to obtain or retain the resources necessary for them to develop and prosper in the new, shared nation state'. It also cited Lord Normanby's statement in his instructions to Hobson that the true payment for Māori 'who parted with land would

be the rise in value of what they retained, which would enable them to participate fully in the benefits of settlement'. Thus, the Tribunal surmised, it was critical that Māori retained sufficient land and resources.[216] *The Radio Spectrum Management and Development Final Report* (1999) interpreted the principle of mutual benefit to mean that:

> Maori expected, and the Crown was obliged to ensure, that they and the colonists would gain mutual benefits from colonisation and contact with the rest of the world, including the benefits of new technologies.[217]

The Tribunal's emphasis on the treaty's guarantee that Māori retain sufficient land and resources also extended to a guaranteed right of development. Citing the *He Maunga Rongo* report, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (2012) summarised that 'Māori had the right to develop as a people and to develop their properties.'[218] *He Maunga Rongo* itself noted that the Tribunal and the courts had generally accepted a development right, based on the 'strong emphasis, in the wording of both texts of the Treaty [the preamble, article 2, and article 3], on guarantees for the properties and taonga retained by Maori'. This was:

> part of the full property rights guaranteed by the Treaty and . . . fundamental to the expectation that Maori would use their properties to participate in the new opportunities, and share in the benefits, that were brought by the Treaty and by settlement.[219]

The Tribunal went on to consider how the Crown's obligation of active protection applies to the development right and how a treaty development right might extend to modern circumstances and enterprises. It concluded that Māori in the Central North Island inquiry district have a treaty right of development, including:

- 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 Maori 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 Maori 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 Maori 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); and
- the right of Maori to develop as a people, in cultural, social, economic, and political senses.[220]

2.3.7 Te mātāpono o te mana taurite / the principle of equity

The Crown's obligation to treat Māori equitably arises from article 3, which promises all Māori the rights and privileges of British subjects.

Article 3 guarantees Māori equal citizenship rights, including equal rights to political representation.[221] As the Tribunal noted in the *Maori Electoral Option Report* (1994) regarding the franchise rights guaranteed by article 3: 'It is difficult to imagine a more important or fundamental right of a citizen in a democratic state than that of political representation. This right is clearly included in the protection extended by the Crown to Maori under article 3.'[222]

The report further affirmed that the Crown has a treaty duty to sustain Māori citizenship rights, including their right to political representation in central Government.[223] In *Tauranga Moana, 1886–2006* (2010), the Tribunal affirmed that through the guarantees in article 3, Māori

are similarly assured representation at the local government level.[224]

The Tribunal stated in the *Te Arawa Mandate Report* (2004) that the principle of equity obliged the Crown to 'apply the protection of citizenship equally to Maori and to non-Maori, and to safeguard Maori access to the courts to have their legal rights determined'.[225]

In *He Maunga Rongo*, the Tribunal applied the principle to the sphere of economic development, pointing out that British politicians and officials recognised that specific efforts were needed from the Crown not just to grant Māori formal legal equality with the settlers (as is implied in article 3 of the treaty) but also to ensure equality in practice, including the 'equal ability to utilise properties and resources to participate in new economic opportunities'.[226]

More broadly, the Tribunal has outlined the principle in accordance with the obligations arising from kāwanatanga, partnership, reciprocity, and active protection as requiring 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.[227]

Various Tribunal panels have also drawn attention to the difference between equal and equitable treatment, and we return to this issue later.

2.3.8 Te mātāpono o te whakatika / the principle of redress

Te mātāpono o te whakatika/the principle of redress derives from the Crown's partnership obligation to act reasonably and in good faith, and its duties under active protection. This means that the Crown should remedy treaty breaches and the prejudice that arises from them. The Crown is required to act in a way that restores both its own honour and integrity, and the mana and status of Māori.[228] The Court of Appeal, in its 1987 decision on the *Lands* case, affirmed the Crown's 'duty to remedy past breaches' identified by the Tribunal as an enduring one, except in 'very special circumstances, if ever'.[229]

In *The Offender Assessment Policies Report* (2005), the Tribunal – citing the *Lands* case – said:

> The principle of redress derives from the Crown's obligation to act reasonably and in good faith. It is relevant when a breach of Treaty principle and resulting prejudice to Māori is established. In that situation, the Crown is obliged to restore its honour by providing a remedy for the wrong that has been suffered.[230]

In its report on stage 1 of the National Freshwater and Geothermal Resources inquiry, the Tribunal considered the finding made in *Te Ika Whenua Rivers* that the Crown must 'redress Treaty breaches by taking positive steps to make amends, including compensation for loss'.[231] The Tribunal commented that this requirement 'applies just as much if not more to present or ongoing breaches as it does to historical breaches'.[232] In respect of Crown redress for treaty breaches of Māori rights and interests in water bodies, it suggested:

> If the claimants and the interested parties have residual proprietary rights (as the case examples suggest that they do), then the Crown's Treaty duty is to undertake in partnership with Māori an exercise in rights definition, rights recognition, and rights reconciliation. If we follow the reasoning of the Te Ika Whenua Rivers Tribunal, it might result in a new 'form of title' that recognizes the customary and Treaty rights of Māori in their water bodies. Or it might, as the Crown suggests, take the form of putting into effect the recommendations of the Wai 262 Tribunal so that kaitiaki can have control of taonga or partnership arrangements where appropriate. It might be a combination of both or something else altogether.[233]

2.4 Our View of ngā Mātāpono o te Tiriti / the Treaty Principles, and the Rights and Duties that Arise from the Treaty Guarantees

In our inquiry, we have placed particular importance on the following treaty principles:

- te mātāpono o te tino rangatiratanga;
- te mātāpono o te kāwanatanga;

Erima Henare presenting for hapū of the Takutai Moana taiwhenua, during opening week of hearings for stage 2 of the Te Paparahi o Te Raki inquiry at Te Tii marae, Waitangi, in March 2013.

- te mātāpono o te houruatanga/the principle of partnership;
- te mātāpono o whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect;
- te mātāpono o te matapopore moroki/the principle of active protection;
- te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development;
- te mātāpono o te mana taurite/the principle of equity; and
- te mātāpono o te whakatika/the principle of redress.

As we stated in the introduction, it is important in this inquiry that ngā mātāpono o te Tiriti/the principles of the treaty reflect the expectations and understandings of Te Raki Māori as well as those of the British, which have often been emphasised. The instructions of Lord Normanby to Hobson have been seen as the crucial statement of British understanding of the Crown's responsibilities to Māori as they embarked on the annexation and colonisation of New Zealand. But, as is evident from many Tribunal reports, they cannot stand alone.

In Te Paparahi o Te Raki, our starting point is the context and the circumstances in which rangatira of Te Raki entered into te Tiriti. These were, as we explain later, unique. Ngā mātāpono/treaty principles, as we apply them in this inquiry, are based in the actual agreement entered into in 1840 between Te Raki rangatira and the Crown, which for Te Raki rangatira did not involve a cession of their sovereignty. Te Raki Māori leaders expected effective recognition from the Crown of their tino rangatiratanga over their own affairs and lands. They agreed to share power and authority with Britain, and expected the Crown to exercise its authority over the growing number of settlers in their rohe.

In light of this, we will revisit in the following sections the way that certain treaty principles have been expressed, and their significance, as well as the rights and duties that arise from the treaty guarantees.

2.4.1 Te mātāpono o te tino rangatiratanga

In this inquiry, we attach great weight to the principle of tino rangatiratanga, often referred to as the principle of autonomy. We prefer the former term. It connects the principle directly to the words of te Tiriti – a matter of great importance to the claimants. It also reflects the claimants' deeply held view that only the Māori text, te Tiriti, is of any relevance to them because that was what their tūpuna understood and committed themselves to. Te Tiriti had mana, its own authority, in ways the English version did not. In the words of Erima Henare, 'It is to that Tiriti that our ancestors, our tūpuna affixed their tohu tapu from the ngū of their noses, making it tapu.'[234] Ngāti Hine and Ngāpuhi leader Tā Himi Henare has also explained the sacredness of te Tiriti:

> [T]he most important thing for me and the Māori people is – for the Treaty to be made honourable and prestigious. The main thing for me is the spiritual side of the Treaty. What good is the spirituality when it has no integrity? When the

> integrity of the treaty exists, the integrity of a spiritual nature will also exist and the integrity of all the customs that come with the Treaty will also be spiritual. Spirituality cannot be seen by the human eye; however the body of the Treaty was signed by our ancestors.[235]

This is the context in which Ngāpuhi interpret the significance of te Tiriti both in and after 1840.

We begin, as the claimants did, with te kawa o Rāhiri (the law of Rāhiri) – and we discuss this further in chapter 3. Dr (now Tā) Patu Hohepa, giving evidence for Hokianga claimants, spoke of rangatiratanga, tikanga, and mana in the context of te kawa o Rāhiri. He explained why the founding tupuna Rāhiri kept his two sons apart; their separate communities could then thrive, and when trouble threatened, they could unite to support each other:

> i puta mai nga tikanga me nga ture i te wa o Rahiri, heke mai ki nga kuia me nga kaumatua o Hokianga me Taumarere.
>
> Te Kawa o Rahiri . . . links us back to Kupe and to Maui and to all those from whom we descend. It reflects who we are and how we exercise authority over and between each other. . . .
> . . . [it] dictates the way in which rangatiratanga is exercised within and throughout Hokianga.
>
> . . . . .
>
> To understand Te Kawa o Rahiri requires one to understand the way that conflict holds us as Ngapuhi together, providing for a convergence of our laws and tikanga, shaping our expression of mana.
>
> This unification and convergence comes through the sons of Rahiri, Uenuku Kuare and Kaharau Manawakotikoti and their wives.
>
> These two sons were kept apart so that they could work together which is highlighted by the whakatauki:
>
> *Ka mimiti te puna i Hokianga,*
> *Ka totō te puna i Taumārere*
> *Ka mimiti te puna i Taumārere,*
> *Ka totō te puna i Hokianga.*
>
> *When the Hokianga spring runs dry,*
> *the Bay of Islands spring flows*
> *When the spring of the Bay of Islands runs dry,*
> *the Spring of Hokianga flows.*[236]

Dr Hohepa also told us during closing submissions:

> . . . Te Kawa o Rahiri dictates the way in which rangatiratanga is expressed within a Ngapuhi context.
>
> I hesitate to say that it is an expression of sovereignty[,] [a] . . . foreign term[,] . . . it is not sovereignty, it is something more. . . .
>
> . . . . .
>
> Te Kawa o Rahiri tells us we have rangatiratanga as a hapu but we, each and every one of us have to be rangatira of that kaitiakitanga.
>
> The rangatira I am referring to is not the English translation chief, it is the one who binds the group together. So it is the group that is in charge and it is why, under Te Kawa o Rahiri the people are the chiefs of the chiefs and the debate that surrounds the exercise of rangatiratanga binds us together.
>
> He Whakaputanga can be seen as a reflection of Te Kawa o Rahiri when seen through the lens of support by a number of hereditary leaders.
>
> . . . . .
>
> Through Te Tiriti o Waitangi our rangatira sought to protect our ability to maintain our rangatiratanga and the Crown promised to assist us in this endeavour.[237]

In his kōrero, Dr Hohepa moved from te kawa o Rāhiri to he Whakaputanga o te Rangatiratanga o Nu Tireni, stressing the link between them, and to te Tiriti. He looked to the future, 'where Te Kawa o Rahiri would be maintained by us as espoused by our rangatira within He Whakaputanga, and which the Crown promised to respect when it signed Te Tiriti o Waitangi'. He stressed that in te Tiriti the rangatira had sought to maintain their tino rangatiratanga and that the Crown had promised to support them in this.[238]

The significance of he Whakaputanga to Ngāpuhi was impressed upon us from the time of our arrival in Te Raki. In considering the immediate context in which te Tiriti was signed, we place particular importance on the unique circumstances of the declaration to which the rangatira

The formidable leader Hongi Hika with Waikato and the missionary Thomas Kendall. This triple portrait was painted during their visit to London in 1820. The rangatira had travelled to England to meet with King George IV, accompanied on their trip by Kendall.

had put their tohu, on or soon after 28 October 1835. He Whakaputanga must be seen in the context, outlined in our stage 1 report, of the relationship between Te Raki rangatira and the British monarchy that had developed over the previous 15 years in particular. Hongi Hika's visit to England in 1820, at a time of increasing relations with traders and, more recently, missionaries, was regarded by the claimants as a 'momentous event' in their history.[239]

The meeting of Hongi and Waikato with King George IV, following their visit to the House of Lords, was of especial significance. Hongi returned home believing that he and King George had established a personal relationship and had reached agreement that soldiers would not be sent to New Zealand, since it was the King's wish that the country be preserved to Māori.[240]

In 1831, after the arrival of a French warship caused

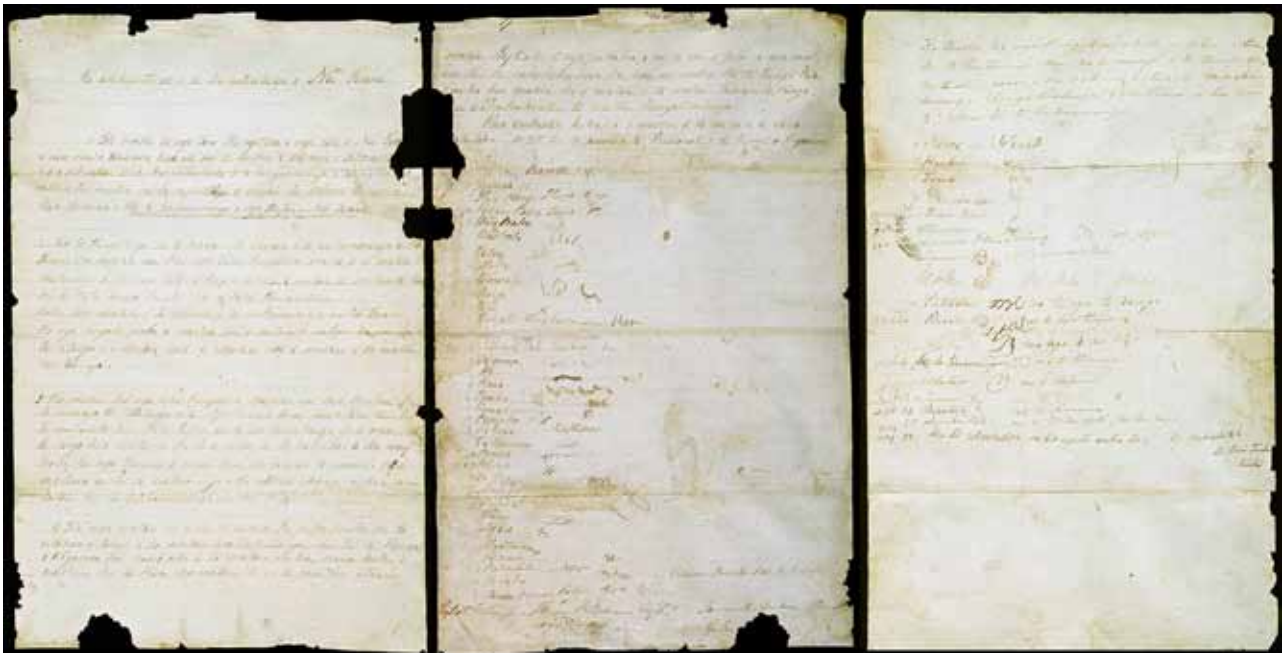
some anxiety, Hongi Hika's visit was followed by a Ngāpuhi petition to King William IV, seeking his friendship and his care for them. Secretary of State for War and the Colonies Lord Goderich replied formally at the command of the King in 1832, and explained that James Busby was being sent to reside in New Zealand as His Majesty's Resident, who would investigate complaints made about unwelcome acts of any British subjects. In 1833, at a time when British commercial interests in New Zealand were increasing, Busby arrived and established himself at Waitangi. And in 1834, Busby held a hui with the rangatira at which they selected a flag to be flown on New Zealand vessels, which the King approved, and which the Royal Navy was instructed to respect.[241]

The following year, Busby drew up the Declaration of Independence at a time of apparent threat by an Anglo-French adventurer, Charles Philippe Hippolyte de Thierry, who had written to Busby to inform him of his imminent arrival with armed troops to establish a 'Sovereign Government' of an independent New Zealand.[242] Thirty-four northern leaders initially put their names to the document. They represented both the northern and southern hapū alliances of Ngāpuhi (we discuss these hapū groups further in chapter 3), the great majority being from the Bay of Islands and Hokianga. More northern rangatira signed between 1836 and 1838, including leaders from Hokianga, Te Rarawa, Ngāre Raumati, Te Aupōuri, Waipoua, and Tangiterōria. Te Hāpuku of Hawke's Bay (1838) and Te Wherowhero of Waikato (1839) later added their names.[243]

Extensive evidence on the meaning and significance of he Whakaputanga was heard in stage 1 of our inquiry, and we noted then that much of this evidence had not been heard publicly before. Rather, a British view of its significance has long prevailed, based on the English text and British expectations of the commitments they understood the rangatira to have entered into. The te reo Māori text of he Whakaputanga, however, was significantly different; and this was, in our view, the definitive document embodying the 'unilateral declaration' of its signatory rangatira.[244] Busby's English text was translated into Māori by Henry Williams; it is possible that Eruera Pare, a young relative of Hongi Hika who copied the text, assisted Williams. We rely here on back-translations (from the Māori text of he Whakaputanga into English) by northern scholars, and refer readers to these in our stage 1 report.[245] Given their differing translations, we have provided a summary of the four articles here:

1. the rangatira declared their 'rangatiratanga' in respect of their territories, their paramount authority, and leadership of their country, and declared the sovereign state of their land[246] under the title of te Whakaminenga o nga Hapu o Nu Tireni (the sacred confederation of the tribes of New Zealand/the assembly of the hapū of New Zealand);[247]
2. the sovereignty/kingship ('Kingitanga'), the mana within the land of the Confederation was declared to lie solely with the true leaders ('Tino Rangatira') of the gathering; no foreigner was allowed to make ture (laws, or perhaps decisions) within their territories, or to govern except under their authority;[248]
3. the rangatira agreed to meet in a formal gathering (rūnanga) at Waitangi in the autumn each year to enact laws (wakarite ture) in the interests of justice, peace, and trade;
4. the rangatira agreed that a written copy of the declaration should be sent to the King of England, and because of their care of Pākehā who lived in New Zealand, they asked the King to remain as their protector (matua) in their inexperienced statehood (tamarikitanga), lest their authority and leadership be ended.

The rangatira, in our view, intended he Whakaputanga as an expression of the highest level of authority within their territories. They asserted their tino rangatiratanga – their rights as leaders of their hapū subordinate to no one else within their territories. They asserted their kīngitanga – that their status was equal to that of the King, and that there should be no leaders above them. Taken together, these assertions of mana, tino rangatiratanga, and kīngitanga undoubtedly amounted to an assertion of their authority to make and enforce laws, and therefore of their sovereignty. Despite Busby's wish to create a chiefly legislature so that it could carry out his instructions and to



Facsimiles dating from 1877 of the 1835 He Whakaputanga o te Rangatiratanga o Nu Tireni. The first sheet shows the four articles of the Declaration of Independence and the signatures or tohu of the 34 rangatira who put their names to the document on 28 October 1835. The final sheet, added subsequently, shows the tohu of the 18 rangatira who put their names to the declaration over the following four years between 1835 and 1839.

establish an executive under his control, it does not seem that the rangatira saw he Whakaputanga as heralding any new development in the existing forms of their political organisation. They signed it as leaders of autonomous hapū and did no more than agree to deliberate and act in concert when circumstances required it.[249]

The final part of he Whakaputanga concerned the relationship of the rangatira with the British monarch and their wish that he would be a matua for them, 'kei whakakahoretia to matou Rangatiratanga'. That is, it is clear that Māori requested the protection of the King specifically from threats against their rangatiratanga – such as that posed by de Thierry, the self-proclaimed 'Sovereign Chief'.[250] They were not seeking 'some kind of formal protectorate arrangement'; rather, as we concluded in our stage 1 report it was a 'written assertion of the mana, rangatiratanga, and independence of those who signed, supported by a commitment to unify in the face of foreign threat'. We saw it also as a renewed declaration of friendship with Britain and its King, initially forged between Hongi Hika and King George, 'based on mutual benefit through trade, mutual commitments of protection, and British recognition of rangatiratanga and mana i te whenua'.[251]

It is crucial not to lose sight of Te Raki Māori understandings of the significance of he Whakaputanga. It seems doubtful that rangatira had relinquished their assertions of mana and independence by 1840. On the contrary, they may well have felt there was nothing in te Tiriti to challenge that position.[252] The rangatira were being assured in te Tiriti of the retention of their tino rangatiratanga rights, and they had requested Britain to use its power to protect their exercise of these rights. He Whakaputanga was an unambiguous declaration that

hapū and rangatira authority continued in force, and that Britain had a role in making sure that state of affairs lasted as Māori contact with foreigners increased.[253] By contrast, as far as the British were concerned, the only purpose of he Whakaputanga in 1840 was to provide a basis for the establishment of British authority, through a cession of sovereignty. Hobson assumed that the treaty would supersede the Declaration of Independence.[254] But he Whakaputanga provides a unique context in which the signing of te Tiriti by Ngāpuhi rangatira must be understood. It has remained significant ever since in the political history of the north.

Accordingly, Te Raki rangatira expected their authority to continue to be recognised and respected once they had reached this significant agreement with the new Kāwana (Governor). That, to them, was what the Tiriti agreement meant. That was their understanding of the basis on which their relationship with the British would be conducted, and on which they would assess it. Interpreting te Tiriti's guarantee of tino rangatiratanga and the significance of that guarantee to the hapū and iwi of Te Raki must be grounded in their worldview, experience, and understandings. We introduced this worldview in our stage 1 report and will discuss it further in our next chapter.

We heard kōrero about the relationship of rangatira with their hapū, about the relationships between hapū, about Māori systems of law and authority, and about the web of spiritual relationships that was central to understanding all of these.[255] Rangatira embodied the mana of their atua (ancestor-gods); they exercised authority in relation to both territories and their hapū, whose members also were descended from the atua. Mana was bestowed by virtue of their relationship with people (mana tangata), land (mana whenua), and tūpuna (mana tūpuna); all of which embodied atua.[256]

And with the authority rangatira might exercise, and the respect they were entitled to if they earned it, Erima Henare explained, came obligation: 'Rangatira . . . were also duty bound to protect the mana of the hapū, its lands and the lives that were led there . . . Because it was the hapū who gave Rangatira their status, it was to the hapū that Rangatira owed their allegiance.'[257]

Each polity 'exercised its own mana and lived according to its tikanga secure in the uniqueness it had developed over centuries'.[258] But relationships between groups, based on whakapapa, were influenced by how close whanaungatanga (kinship) was; and the principle of manaakitanga (encompassing values of generosity, kindness, and support for others), which sustained each community, also ensured relationships with other groups were maintained.[259]

These tikanga, and the values that underlay them, were reflected also in the relationships and dealings of hapū and their rangatira with the Pākehā who came to live in Te Raki. And they were reflected also in the approach of iwi and hapū to 'formalising some relationship by treating with the British Crown'. In the words of indigenous rights lawyer Moana Jackson, who appeared before us, the evidence of all the kōrero in te reo before, and at the time of signing of te Tiriti indicates that 'rangatira were mindful of their responsibility to preserve and even enhance the mana they were entrusted with. In 1840 they . . . could only act according to law and commit the people to a relationship that was tika in terms of their constitutional traditions.'[260]

In our view, he Whakaputanga was, above all, an affirmation of tino rangatiratanga. Te Tiriti continued this affirmation, and in fact strengthened tino rangatiratanga rights and responsibilities. While it permitted a new, limited Crown presence in New Zealand, Te Raki Māori understood it as an agreement that would sustain and guarantee those rights and responsibilities that their communities had possessed and practised for generations prior to the time of the treaty signings.

In Te Raki, where the treaty was first signed, where it was debated at considerable length by rangatira, where assurances were given by missionaries and by the Queen's representative Hobson himself in a hui that clearly seemed momentous at the time, where accounts of that hui and the whaikōrero have survived (even if they are not as comprehensive as we would wish), we have been able to reach conclusions about how Ngāpuhi and Te Raki rangatira understood te Tiriti. We consider that it is not sufficient to suggest (as the Crown does) that they 'are in a similar position to other tribes who signed the treaty but

did not intend to cede sovereignty'. Te Raki rangatira were clear about the history and nature of their relationship with the British Crown and what they therefore expected from te Tiriti. They were dealing with the Kāwana sent by the Queen, who had not indicated that their own authority would be compromised in any way. He had not explained that the British intended to assume an overriding authority, despite having every opportunity to do so. The rangatira did not regard kāwanatanga as undermining their own authority. They regarded the treaty 'as enhancing their authority, not detracting from it'.[261]

These understandings, in our view, must guide us in our interpretation of te mātāpono o te tino rangatiratanga as we assess Crown acts and omissions over the decades that followed.

2.4.2 Te mātāpono o te kāwanatanga

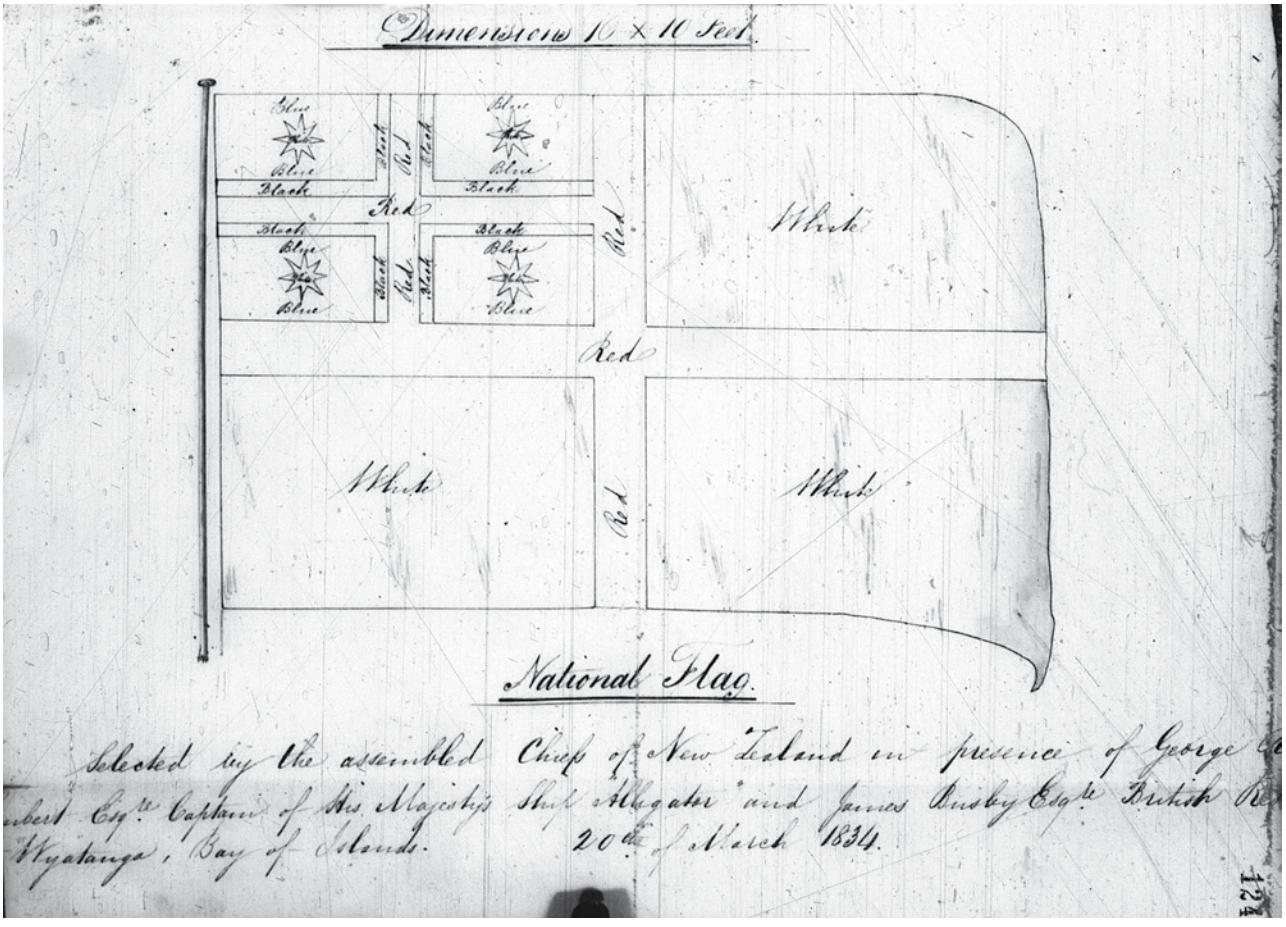
Our consideration of the principle of kāwanatanga is informed by the understandings both of Te Raki rangatira and of the Crown, though it is clear that there was not in fact a great deal of common ground between them.

In our stage 1 report we considered, based on the detailed specific evidence and legal submissions presented to us, that the rangatira who signed te Tiriti at Waitangi understood 'the authority over New Zealand that the Governor would have – te kāwanatanga katoa – [to be] primarily the power to control British subjects and thereby keep the peace and protect Māori'.[262] That is, the Governor would have more power than Busby to achieve these aims and would 'create the conditions for peace and prosperity'.[263] The Governor would also deal with a particular cause of concern for Te Raki Māori: we considered that 'rangatira would have understood that – in keeping with its offer of protection – the Crown would enforce Māori understanding of pre-treaty land transactions, and therefore return land that settlers had not properly acquired'.[264] We concluded that 'the rangatira may also have understood kāwanatanga as offering Britain's protection against foreign threats'. Notably, the rangatira were aware of the interest of the French in New Zealand and in the Pacific, which was generally presented to them as a danger to their country and their independence.

In short, Te Raki rangatira expected the authority of the Kāwana would be confined to his own sphere, and that the treaty required the Crown to engage with Te Raki rangatira on matters that might impact the respective spheres of each of them.

Yet, as we have seen, the Crown interpreted the treaty to entitle it to assert sovereignty over New Zealand and its peoples. This was a move that reflected the shift in British policy from 'minimum intervention' in the Pacific (initially strongly influenced by the missionary societies) to its acceptance of an increase in British authority in New Zealand, and finally of the desirability of securing sovereignty over the whole country. At the same time the Government moved to adopt a plan for the establishment of a settlement colony in New Zealand. These twin decisions would shape the country's future. But there was a third decision also: because Britain had previously recognised New Zealand's independence, the Crown required Māori to consent to the establishment of any form of British jurisdiction in their islands.[265] This led to the composition, public discussion and signing of the treaty which (following he Whakaputanga) was in two languages; it recorded Māori consent to the Crown's sovereignty only in English and, while some of the guarantees made to Māori were also expressed in English, the crucial guarantee in their own language was that of their tino rangatiratanga over their whenua, their kāinga, and all their taonga. In all the kōrero that preceded the signing by Te Raki rangatira, what they sought from the Kāwana and the missionaries – and believed they had received – were assurances that they would indeed retain their own independence and authority.[266]

The Crown's treaty obligation was accordingly to foster tino rangatiratanga, not to undermine it. When tensions arose with Te Raki Māori after its proclamations of sovereignty, it must refrain from coercing them into submission to Crown authority by the use of force, or the threat of force – an obligation which was greater when kāwanatanga was newly established, and the Crown was aware that Ngāpuhi prized their independence and were apprehensive about Crown actions. The Tūranga Tribunal affirmed, the Crown stood for 'just and fair government'.[267]



A sketch of the flag of the United Tribes of New Zealand sent to the Colonial Office in Britain. The colours for each section are marked out with the accompanying text stating that New Zealand's first national flag was 'selected by the assembled Chiefs of New Zealand'.

Its duty from the outset was to ensure treaty rights and guarantees were recognised in its laws and policies – especially those affecting hapū autonomy and tikanga, and hapū retention, control and management of their lands and resources, including the determination of titles. Laws must be equitable (see our discussion of the principle of equity in section 2.4.7). Where Government decisions or policies, or their impacts, were discriminatory, or placed unreasonable limitations on tribal or hapū exercise of tino rangatiratanga, they were not in accordance with the agreement reached with Te Raki Māori in February 1840 as to the respective spheres and responsibilities of kāwanatanga and rangatiratanga.

In accordance with the principle of kāwanatanga, the Crown had particular responsibilities to Māori when the British Parliament considered and passed the New Zealand Constitution Act in 1852, heralding major constitutional change. The principle required the Crown to ensure that its treaty duties were not abrogated as self-government was granted to the colonial Government,

which progressively assumed responsibility for the Crown–Māori relationship. It had to ensure engagement with Māori on these changes, and their effective participation in the new New Zealand Parliament and in the national and provincial governments. And in the new political landscape the authority of Māori leaders must be recognised and given effect, and the structure and functions of any district or national rūnanga under consideration must be negotiated and agreed with them.

The Crown had further responsibilities in the latter part of the nineteenth century when it devolved governing authority and functions to a range of new local authorities, to ensure that those authorities would also exercise their functions in accordance with treaty obligations. Given the impact of decisions taken at local level on Māori communities and their authority, resources, and infrastructure, this was particularly important.

We accept that it might well be the case that in some situations the Crown must balance its treaty obligations to Māori against the interests of other sections of the community – for instance, in exceptional circumstances, such as war, or in the interests of public safety, or in matters involving the national interest. But even so, as the Tribunal has found in the past, such a balancing exercise must not be undertaken 'without restraint'; that is, it must not diminish the authority of tribes and hapū.[268] And in the absence of such exceptional circumstances, the Crown had and has no right to impinge on the rights of Te Raki hapū and iwi to make their own decisions.

2.4.3 Te mātāpono o te houruatanga / the principle of partnership

The treaty marked a new stage in the relationship between Ngāpuhi – and their sphere of autonomous authority expressed in te Tiriti as te tino rangatiratanga – and the British Crown. With the signing of the treaty, the basis for a partnership was laid. In February 1840, rangatira had sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals.

Eruera Maihi Patuone, according to Bishop Pompallier, head of the French Catholic mission at Kororāreka, brought 'his two index fingers side by side' to demonstrate that he and Hobson 'would be perfectly equal, and that each chief would similarly be equal with Mr Hobson'.[269] This was the basis on which rangatira expected their relationship with the British officials to develop.

In Te Raki, this understanding of equal authority was the origin of te mātāpono o te houruatanga / the principle of partnership. We understand that the imagery of 'houruatanga' conveys not just working together, but moving forward together and beside each other. This principle, as expressed by the Tribunal in *Ko Aotearoa Tēnei*, has been seen as the overarching one. This is because it emerges from the agreement of 1840 that Māori entered into with the Crown, which the Tribunal describes as 'an original Treaty consensus between formal equals'.[270] We agree that in Te Raki the treaty was entered into by 'formal equals'. But we must query whether there was 'consensus'. On the face of it, there was agreement; but as we have shown in our stage 1 report, Te Raki rangatira did not agree to some key terms of the treaty as set out in English because these were not explained to them (we discuss this issue further in chapter 4).[271] Because the rangatira made no cession of sovereignty, we do not see the authority granted to the Crown – kāwanatanga – as a superior authority, an overarching power to govern, make, and enforce law, albeit 'qualified' by the requirement to give effect to treaty guarantees, including the right of Māori to exercise tino rangatiratanga. To that extent we depart from the framing of the principle of partnership by the Tribunal in earlier reports for some other inquiry districts. Rather, the Crown's authority was expressly limited in Te Raki to its own sphere. Alongside it, and equal to it, was that of tino rangatiratanga.

The treaty partnership, therefore, required the cooperation of both parties to agree their respective areas of authority and influence, and both parties were required to act honourably and in good faith. The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed: that was for Māori to negotiate with the Crown. Shared spheres of authority, as we pointed out in stage 1 of our inquiry, must also be agreed. Negotiating these spheres, and how

The kara of the United Tribes of New Zealand flying alongside iwi and hapū flags at Tuhirangi Marae. Selected by rangatira in 1834, the kara was regarded as a symbol of their mana and of the Crown's recognition of it. Hōne Heke demanded that the kara fly at equal height with the Union Jack as an expression of the joint authority of Governor and rangatira.

they were to be managed, was in our view the key issue facing both Crown officials and Te Raki leaders as their relationship developed over time. The Crown was obliged, for example, to acknowledge rangatiratanga by recognising the need to engage with hapū and include them in decision-making about whether, or how British law was to operate in Māori communities or in cases where both Māori and settlers were involved. As the shared authority of the treaty partners developed, the need would arise for joint consideration of how two legal systems, one based in tikanga, and the other in British common law, could operate alongside each other. Similarly, the Crown was obliged, when it embarked on consideration of laws affecting the administration and alienation of Māori land, to ensure that its policies were transparent; that Māori leaders – including Te Raki leaders – were involved in their design and in decision-making; and that it would be Māori communities whose authority over their lands, their titles, and their alienation would be recognised and would be given force in New Zealand law, if that was what they wished, to enable their participation in the new economy.

These were not extraordinary standards. As the Tribunal has shown in various reports, on occasion, throughout the second half of the nineteenth century,

Crown officials and Ministers did make attempts to engage with Māori leaders – which we take as evidence that they felt such a responsibility. Te Raki leaders, for their part, made numerous and sustained attempts to put their issues to Crown representatives, and to suggest their own policies. We consider in this report the outcome of these various initiatives.

Consistent with the treaty, the relationship of the Crown with Te Raki Māori should always have been based on dialogue and shared decision-making, as well as independent decision-making by either party where appropriate and where both parties agreed to this. Where unilateral Crown consultation has left hapū and iwi feeling disempowered, but trapped in processes that seem to them to offer the shadow of participation rather than the substance, it has not met the test of partnership. In accordance with the principle of partnership, the Crown's duty was always to engage with Te Raki Māori leadership actively (rather than merely consulting), and to ensure their role in shaping policy. True partnership remains the ideal; the foundation of any renegotiation of the relationship between Te Raki Māori and the Crown.

2.4.4 Te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect

It seems to us that mutual recognition and respect are vital qualities in the treaty relationship, and we consider this to be an important treaty principle in our inquiry. In Te Raki, we trace the principle to the treaty itself and the expectations of those who entered into the agreement. They were expectations that for Te Raki Māori were grounded in their experience of Pākehā who had come to trade or to settle amongst them; as well as in their experience of British missionaries, and the interest of many in the Christian religion and in literacy. Ngāpuhi understood that their rangatira had established a mutually respectful relationship with the British monarchy reinforced by article 4 of he Whakaputanga, which set out the terms of the relationship between rangatira and Britain. That relationship was underpinned by Te Raki Māori enthusiasm for western technology, for the extent of international trade and transport networks that opened to them and the array of shipping that visited their ports, and by their aspirations for future development, with Britain as an ally.[272]

By 1840, the British approached their relationship with Māori with considerable respect, though also with some ambivalence. On the one hand, Māori often enjoyed a high reputation among those European theorists who ranked indigenous peoples by various measures of 'civilisation'; on the other, there were dire warnings from Busby and the missionaries during the 1830s of a calamitous decline in the Māori population through intertribal warfare and introduced diseases, leaving them increasingly incapable of controlling the fast-growing settler population.[273] Normanby's subsequent instructions to Hobson thus stressed the importance of securing the 'surrender' from Māori of a 'national independence which they are no longer able to maintain'.[274] The Crown's expectation was that Māori welfare would be best served by their acceptance of the Queen's sovereignty. Yet, as we have shown in our stage 1 report, Normanby also wrote at length on the importance of safeguarding Māori in land transactions, protecting their long-term interests and – for the meantime – ensuring that they might observe their own customs.[275]

There seemed to be at least the basis for a relationship between Māori and the Crown based on recognition and respect for each other's values, beliefs, laws and institutions. But that relationship would be sorely tested over the decades that followed, in particular for Māori, as they saw their tino rangatiratanga repeatedly challenged and undermined. The respect of Te Raki Māori for the governing and legal institutions of the British would be tested against their understanding of te Tiriti and the extent to which they experienced Crown recognition of their own institutions. Given their understanding of te Tiriti, we think that that was a fair test for them to apply to the monarchy, the authority of Parliament, of magistrates and courts, including the Native Land Court.

We note the importance attached to mutual recognition and respect in the report of the Canadian Royal Commission on Aboriginal Peoples, which has emphasised the 'rebalancing of political and economic power between Aboriginal nations and other Canadian

governments' as the key to progress towards self-government of Aboriginal peoples, and their securing an adequate land and resource base, as well as equality in social and economic well-being.[276] The commission's vision of this renewed relationship was based on several principles, among them mutual recognition and mutual respect. It also emphasised that mutual recognition means that:

> . . . Aboriginal and non-Aboriginal people acknowledge and relate to one another as equals, co-existing side by side and governing themselves according to their own laws and institutions.[277]

It was important also, it suggested, that mutual recognition can be justified in terms of the 'values of liberal democracy in a manner appropriate to a multinational society'. This laid the basis for building a 'strong and enduring partnership between Aboriginal and non-Aboriginal people in Canada'. For people of all cultures, mutual respect is also characterised by qualities of 'courtesy, consideration and esteem extended to people whose languages, cultures and ways differ from our own'; it was thus essential to 'healthy and durable relations between Aboriginal and non-Aboriginal people in this country'.[278]

We see this expression of mutual recognition and respect between indigenous and non-indigenous peoples and institutions as entirely appropriate to the New Zealand context and the treaty relationship. We are mindful of our earlier discussion of the kawa of Rāhiri's people, of the values, laws, and institutions of ngā hapū o Te Paparahi o Te Raki. In our view, it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law. As counsel put it to us, ngā hapū o Te Raki referred to tikanga in a number of contexts 'which may generally be described as the framework of law and custom and the application of that in the way of life of Ngā Hapū'. Tikanga, counsel said, 'still lies at the heart of Māori society, is unique to each iwi, and is dynamic. . . . [T]he application and practices of tikanga have been maintained.'[279] Tikanga is fundamental to the 'ongoing distinctive existence as a people', even though it may adapt over time to changing circumstances. It underlies the ways in which Te Raki Māori control their land, their water, and their taonga, manage their relationships, and resolve disputes. Tikanga has its own mana whakahaere and is central to how Te Raki Māori live everyday life 'with all its customs and procedures'.[280] It is itself, counsel said, a taonga.[281]

We note that previous Tribunal reports have variously emphasised the Crown's obligation to recognise and respect Māori concepts and systems, particularly tikanga and the Māori sphere of authority outlined in the treaty.[282] For the Crown, its recognition and respect of hapū communities, their authority over their lands and waters, taonga (including awa, maunga, and ngahere), and their values, rights, and spheres of authority, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.

What did this mean in practice in the nineteenth century? It points in our view to the duty of the Crown, as the coloniser, to understand the take by which Te Raki Māori held land and resources; recognition of the relationship between rangatira and their community, and the importance of that relationship to decision-making in Māori communities; recognition of the responsibility to be transparent in dealings with land, as being essential to community well-being; respect for kaitiakitanga; respect for sites that should be protected in course of land transactions, in particular wāhi tapu; and understanding of Māori relationships with their waterways.

2.4.5 Te mātāpono o te matapopore moroki / the principle of active protection

The Tribunal has often stated that the principle of active protection is inclusive of the Crown's duty to protect Māori interests and their exercise of tino rangatiratanga. We accept that this duty is widely understood and utilised, and that it had and continues to have an important role in the context of treaty claims and settlement processes.

The statements of royal protection in the treaty and

An unfinished reconstruction of the signing of te Tiriti o Waitangi painted in 1940, the year of the treaty's centenary. It shows an unidentified rangatira signing the document as Captain Hobson, missionary Henry Williams, and other rangatira look on.

in the instructions sent to Captain Hobson still resonate today. They reflect a British articulation of the duty of protection they believed should characterise the Crown's relations with Māori as it assumed sovereignty. The opening statement in the preamble of the treaty states that Her Majesty is 'anxious to protect [the] just Rights and Property' of the native chiefs and tribes; and by article 3 the Queen 'extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects'. Article 2 states the Crown's guarantees of 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties . . . so long as it is their wish and desire to retain the same in their possession'.[283] Finally, Lord Normanby's instructions to Captain Hobson spell out further the nature of Crown protection:

> All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any

> contracts in which they might be the ignorant and unintentional authors of injuries to themselves.[284]

Protection of Māori interests, then, was a duty the British imposed on themselves, as they embarked on the annexation and colonisation of New Zealand, intending to secure large tracts of land for the new settlers. We note that there is some irony in the fact that, despite protection being conceived as a British duty, Te Raki Māori had long extended their protection, in the form of manaakitanga, to Pākehā who lived among them, and to visiting traders.

Yet it has emerged that active protection is also a treaty principle about which the claimants in this inquiry felt conflicted, given its paternalistic implications (see our summary of claimant positions in section 2.2). We do not think this interpretation is surprising. It is a principle, after all, that reflects a power imbalance and the duty assumed by the imperial power towards the 'Native' people of New Zealand as it established its Government there.

In the Wai 262 inquiry, the Tribunal, as we noted earlier in section 2.3, put its finger on this difficulty when it pointed to the difference between the emphasis on partnership in New Zealand and the stress in other postcolonial states on 'the power of the state and the relative powerlessness of their indigenous peoples' – hence their placement of State fiduciary or trust obligations 'at the centre of domestic indigenous rights law'. The Tribunal observed that 'we do of course have our own protective principle that acknowledges the Crown's Treaty duty actively to protect Māori rights and interests.' However, that is not the framework for the treaty relationship, the Tribunal stated, 'Partnership is'.[285]

Some claimants spelt out the tension associated with the reliance on 'active protection' more explicitly. Dr Patu Hohepa stated that 'Te Kawa o Rahiri would be protected and maintained, not by anyone else, but by us'.[286] Annette Sykes, counsel for Ngāti Manu and other groups, though generally supportive of the principle of active protection, was nevertheless conscious also of its origins and its limitations. She submitted that 'the idea of "active protection" is flawed'. It was similar, she said, to the Crown's 'fiduciary duty' being:

> promoted by virtue of the decisions of the Courts . . . highlighting the importance of relationships that can be characterised by residual obligations arising out of the honour of the Crown. It necessarily implies a superior or supreme power.

In short, 'the current "active protection"', in her view, 'is embedded in an unequal power relationship that pervades all the institutions of government'. Because the Crown asserts unilateral and undivided sovereignty, it circumscribes partnership and reciprocity. Nor can it be argued that the Crown has an ongoing duty to protect Māori only until this relationship is perfected: 'The prevailing concept of Crown sovereignty does not allow it to be perfected.'[287]

We agree with counsel for Ngāti Hine that had the Crown observed its obligations under both texts of the treaty from 1840 – particularly its commitment to recognition of tino rangatiratanga – the duty of active protection might not have assumed such importance.[288] In our view, to say the Crown is obliged to 'protect' the rights and authority guaranteed under article 2 is problematic in Te Paparahi o Te Raki. It misunderstands the fundamentally separate, equivalent spheres of authority that were recognised by the treaty and understood by Te Raki rangatira; the Crown cannot paternalistically 'protect' what it has no authority over. The Crown, after all, had guaranteed through the treaty that it would not take steps to undermine or usurp Māori autonomous control over their people, land, resources, and taonga.

We accept, however, that the principle of active protection has served a very useful purpose, as claimants acknowledged, precisely because the Crown's commitment to tino rangatiratanga was often absent. In its very expression, the duty calls for active effort from the Crown jointly to realise the potential of the treaty as a living, evolving agreement. We consider the active protection of tino rangatiratanga is not a Crown duty arising from its sovereign authority, rather it is an obligation on its part to help restore balance to a relationship that became unbalanced. Because the Crown expanded its sphere of authority far beyond the bounds originally understood by Ngāpuhi in February 1840, this duty is heightened so long as the imbalance remains. But as the fundamental

relationship between Te Raki Māori and the Crown is renegotiated, we see this duty as sitting alongside the other treaty principles we have highlighted in this inquiry.

Partnership, not active protection, is the framework for governance of New Zealand; this unique arrangement is one to be celebrated and cherished.[289] In the interests of pursuing this ideal partnership, we consider that the treaty standards embodied in the principle of active protection as articulated in previous Tribunal reports are still useful for assessing Crown actions and omissions, and for reminding the Crown of its obligations where such actions and omissions, particularly in respect of land loss, have caused prejudice to Māori. We use it in this report accordingly. However, we prefer to emphasise the principle of mutual recognition and respect as better reflecting the treaty-based partnership that Te Raki Māori entered into.

2.4.6 Te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development

Te Raki Māori expected, both from their understandings of the words of te Tiriti and from oral explanations of it, that they would benefit from the agreement they made with the Crown in 1840. This included benefiting from the presence of a British Kāwana and settlers in New Zealand; for example, through trade opportunities and new technologies. Additionally, 'Māori had the right to develop as a people and to develop their properties.'[290] The treaty guarantee of full rights in properties (including taonga to which British law did not recognise a property right) and of tino rangatiratanga over them included a right to develop them if Māori so chose. To this end, they expected (and the treaty promised) that they would retain enough lands and other resources to ensure their current and future economic well-being. The Crown's duty was to ensure that Te Raki hapū each retained the lands and resources that they wished to retain or would need to engage with the new economy and benefit from the treaty and from colonisation. Clearly Māori had the right to take part in new opportunities and commercial ventures, and the further right to positive assistance (such as Government funding) to do so – often expressed in Tribunal reports as their right to development. The Crown must also assist hapū by providing suitable land titles which would enable them to borrow using their collectively held land as security. These were all ways in which the Crown was required to make specific efforts to help Māori become 'equal in the field' with settlers – an obligation that Crown representatives and officials often recognised.[291] In such ways, Te Raki Māori would both contribute to and benefit from the economic development of the colony, alongside settlers.

2.4.7 Te mātāpono o te mana taurite / the principle of equity

The principle of equity and the duties that arise from it are wholly applicable to the claims in our inquiry. Through article 3 of the treaty, Te Raki Māori were guaranteed equitable treatment and citizenship rights and privileges, and the Crown undertook actively to promote and support both. Equity requires the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations of Te Raki Māori. Providing the same or similar service across Māori and non-Māori population groups may be quite unlikely to satisfy the principle of equity. The Crown must actively address inequities experienced by Māori, and this obligation is heightened if inequities are especially stark. At its heart, satisfying the principle of equity requires fair, not just equal or the same, treatment. This is a duty to be undertaken in partnership with Te Raki Māori communities.

The principle required the Crown to act fairly as arbiter between Māori and settlers; it could not advance settler interests at the expense of Māori. This had important implications for Māori political representation in national, provincial, and local bodies that make laws or bylaws expected to apply to Māori. It also applied to Māori voting rights. It applied in the design and operation in Māori districts of introduced law in respect of offences, crimes, and sanctions, and in decisions about the role of Māori in both processes. Similarly, equity applied to consideration of the Crown's assertion of a right of pre-emption and to its handling of old land claims; in particular, through the

Sketch by Church Missionary Society missionary Richard Taylor depicting the celebratory feast arranged by Hobson and held at the establishment of trader and shipbuilder Thomas McDonnell on 12 February 1840, the day after the signing of te Tiriti at Māngungu.

legislation of the late 1840s and 1850s, and its application to Crown settlement of these claims.

The Crown had a further duty to ensure that Māori land titles were equitable, especially as the basis of new titles was imported from a very different legal and social context. The Crown was aware that Māori land rights were held from the community, and that Māori developed their land and resources collectively. Its duty, therefore, was to ensure that titles provided to Māori under the Crown's Native Land regime were both culturally and legally appropriate, so that they acknowledged the rights of Te Raki hapū and conferred the same benefits on them as general titles did on settlers.

2.4.8 Te mātāpono o te whakatika / the principle of redress

Where the Crown has breached the treaty agreement through its legislation, policy, actions, or omissions, Te Raki Māori are afforded the right to redress from their treaty partner, including financial or other compensation. This right may arise from assault on or sustained undermining of hapū and iwi autonomy; or from breaches resulting from failure to protect taonga; or involving land loss or other loss of resources or resource rights. Importantly, the fact that this principle is 'derive[d] from the Crown's obligation to act reasonably and in good faith' raises the question of broader Crown obligations to

redress prejudice in the decades before historical claims could be made to the Tribunal.[292] In our view, the Crown had an obligation to investigate fully claims of injustice or prejudice or both made in the many petitions Te Raki Māori submitted. Where it found that its actions were inconsistent with promises made in the treaty, it had a further obligation to provide timely and adequate redress. The Crown has in fact shown that it did recognise such an obligation in that it has on occasion entered into direct negotiations to settle Māori claims, acknowledged prejudice, and provided some limited redress in the period preceding the establishment of a Tribunal process.

Substantive redress is an important step in re-establishing the mutual recognition and respect embodied in the treaty relationship, for restoring the honour of the Crown, and for providing a renewed opportunity for giving effect to the treaty's guarantee of tino rangatiratanga and, ultimately, te mātāpono o te houruatanga.

2.5 Kōrero Whakatepe / Concluding Remarks

In laying out the principles that we see as particularly relevant to this part of our stage two inquiry, we have focused on how the treaty's principles, rights, and duties suggest a pathway for the realisation of the treaty partnership in our inquiry district, and particularly for proper recognition of the rights and responsibilities that Te Raki Māori expected they would retain. In summary, they are:

- *Te mātāpono o te tino rangatiratanga / the principle of rangatiratanga:* In te Tiriti, Te Raki Māori, their hapū, and their iwi are guaranteed their tino rangatiratanga. Te Tiriti had its own mana, affirming and sustaining the authority of rangatira alongside that of the Kāwana. Rangatira upheld the mana of hapū through the exercise of tikanga (law), including the rights they had possessed and the responsibilities they had fulfilled for generations. The hapū is the source of their authority, and the requirements of whanaungatanga and manaakitanga form the bonds that hold together communities. For Ngāpuhi, conflict also holds the hapū together; though distinct and autonomous, they also align to offer mutual support. Thus, rangatiratanga, tikanga, and mana must be understood in the context of te kawa o Rāhiri (the law of Rāhiri). He Whakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of the Independence of New Zealand) of 1835, supported by a number of hereditary leaders, was above all an affirmation of their tino rangatiratanga. Te Tiriti continued that affirmation, looking to the future while reinforcing the friendship between Te Raki rangatira and the British monarchy that had developed over the previous 20 years. Te Raki rangatira expected that, in accordance with te Tiriti, their authority would continue to be recognised and respected and that they would continue to exercise their rights and responsibilities to their hapū in accordance with tikanga.
- *Te mātāpono o te kāwanatanga / the principle of kāwanatanga:* In accordance with the treaty agreement entered into between Te Raki Māori and the Crown's representative in February 1840, the Crown would, through the new Kāwana, have the right to exercise authority over British subjects, and thereby it would keep the peace and protect Māori interests. Rangatira may also have understood kāwanatanga as offering Britain's protection against foreign threats and, in keeping with its offer of protection, it would enforce Māori understanding of pre-treaty land transactions. Te Raki Māori expected that their authority in their sphere would be equal to that of the Crown in its sphere and that questions of relative authority would be negotiated as they arose through discussion and agreement between the parties. The duty of the Crown was (and is) to foster tino rangatiratanga (Māori autonomy), not to undermine it, and to ensure that its laws and policies were just, fair, and equitable and would adequately give effect to treaty rights and guarantees, notably those affecting hapū autonomy and tikanga and hapū retention and management of their lands and resources. In accordance with the principle of kāwanatanga, the Crown

had a further duty to ensure that its treaty duties are not abrogated, as when it granted the colony a constitution and representative institutions in 1852, and self-government in 1856; it was important that the colonial Government exercise its functions in accordance with Crown treaty obligations.

- *Te mātāpono o te houruatanga/the principle of partnership:* Te Tiriti marked a new stage in the relationship of Te Raki Māori with the British Crown. The principle emerges from the treaty agreement itself; te houruatanga conveys that the partners will move forward together and beside each other. Because there was no cession of sovereignty by Te Raki rangatira, kāwanatanga, the authority granted to the Crown was not a superior authority, an overarching power, albeit 'qualified' by the right of Māori to exercise tino rangatiratanga. Rather, the Crown's authority was expressly limited in Te Raki to its own sphere. Alongside and equal to it, was that of te tino rangatiratanga. To that extent we depart from the framing of the principle of partnership by the Tribunal in earlier reports for some other inquiry districts. Negotiating and managing their respective spheres of authority, as well as shared spheres as the two populations intermingled, was the key issue for the treaty partners in the years after te Tiriti was signed. The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed; that was for Te Raki Māori to negotiate with the Crown. The Crown's duty was and is to engage actively with Te Raki Māori on how it should recognise Te Raki tino rangatiratanga and, where agreed, give effect to it in New Zealand law. Partnership was and is the framework for governance in New Zealand; both parties must act honourably and in good faith.
- *Te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect:* Before 1840, the relationship between Te Raki Māori and the Crown was broadly based on mutual recognition and respect. These are vital qualities in the treaty relationship; each party must recognise and respect the values, laws, and institutions of the other. For Māori in particular, the relationship would be sorely tested as they saw their tino rangatiratanga repeatedly challenged and undermined. Their respect for British governing and legal institutions would be tested against their understanding of te Tiriti and the extent to which they experienced Crown recognition of their own institutions. We think that was a fair test for them to apply to the monarchy, the authority of Parliament, and the courts (including the Native Land Court). The Crown for its part must respect tikanga, which is at the heart of Te Raki Māori values, law, and the Māori way of life, as are mana, whanaungatanga, mātauranga, and kaitiakitanga. The Crown's recognition and respect of hapū communities and their authority over their lands and waters, and taonga, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.
- *Te mātāpono o te matapopore moroki/the principle of active protection:* This has been a widely understood and utilised principle, and has long been applied to the Crown's duty to protect Māori interests, including their land rights and their exercise of tino rangatiratanga. It reflects a British articulation of the duty of protection they believed should characterise the Crown's relations with Māori as it assumed sovereignty and embarked on the colonisation of New Zealand. In this inquiry, despite the claimants' recognition of its importance, we are mindful of their reservations about the principle as reflecting a power imbalance, a duty undertaken by the imperial power when it assumed a superior authority, establishing its Government in New Zealand. Had the Crown observed its obligations under both texts of the treaty from 1840, particularly its commitment to recognition of tino rangatiratanga, the duty of active protection might not have assumed such importance. We consider that active protection is not a Crown duty arising from its sovereign authority. Rather, it requires the Crown to help restore balance to a relationship with Te Raki Māori that had become unbalanced as the Crown assumed an authority far

beyond the bounds understood by Ngāpuhi when they signed te Tiriti in February 1840. We draw on the principle in this report because we consider that it is still useful for assessing Crown actions and omissions, and for reminding the Crown of its obligations where such actions and omissions have caused prejudice to Te Raki Māori. But we prefer to emphasise the principle of mutual recognition and respect as better reflecting the treaty-based partnership that Te Raki Māori entered into.

- *Te mātāpono o te whai hua kotahi me te matatika mana whakahaere/the principle of mutual benefit and the right to development:* Te Raki Māori expected to benefit from the presence of a British Kāwana and new settlers through trade opportunities and new technologies. It was the Crown's duty to ensure that they retained the land they needed for their present and future economic well-being. Māori had the right to develop as a people and to develop the properties and resources guaranteed to them by the treaty, including the right to engage with the new economy if they wished to do so. Their development right further included the right to positive assistance from the Crown where appropriate (for instance, where they faced unfair barriers to development). Te Raki Māori were to contribute to and benefit from the economic development of the colony, alongside settlers.
- *Te mātāpono o te mana taurite/the principle of equity:* Through article 3 of the treaty, Te Raki Māori were guaranteed equitable treatment and citizenship rights and privileges. However, equal treatment for Māori and non-Māori population groups is unlikely to satisfy the principle of equity. It is the Crown's duty to provide to Māori fair, not just equal or the same treatment, as provided to other citizens. The guarantee of tino rangatiratanga and the undertaking that Te Raki Māori tikanga would be recognised and respected also requires the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations of Māori. The Crown cannot advance Pākehā interests at the expense of Māori. And it must address inequities experienced by Māori. This applied to Māori political and legal rights and to their property rights; to the assessment of their old land claims by Government commissions in accordance with legislation, and to the kinds of land titles provided to Māori by the Crown's Native Land regime.
- *Te mātāpono o te whakatika/the principle of redress:* Where the Crown breached the treaty agreement through its legislation, policy, actions, or omissions, Te Raki Māori have the right to redress from their treaty partner, including financial or other compensation. From the outset, however, it was the Crown's duty to investigate fully claims of injustice or prejudice or both made in the many petitions or letters Te Raki Māori submitted, or in their direct approaches to Parliament, and to address those claims in light of the Crown's guarantees in both texts of the treaty.

Under the treaty agreement, it has always been the Crown's duty to give effect to the guarantee of tino rangatiratanga contained in the plain meaning of article 2. The Crown's progressive expansion of its own authority from 1840 in ways that have encroached on and often eroded that of Te Raki Māori has heightened this duty.

Today, the Crown has the power and capacity to recognise, respect, and give effect to the treaty guarantee of tino rangatiratanga. It has had this power since it signed te Tiriti. Its duty to give effect to the guarantee of tino rangatiratanga is as important today as it was in 1840. That is the basis for te houruatanga, a partnership in which each party to the treaty recognises the authority of the other, and together they decide how each will exercise that authority on matters in which both have important interests.

Notes

1. Erima Henare (doc E49(k)), p 14.
2. Treaty of Waitangi Act 1975, preamble.
3. Treaty of Waitangi Amendment Act 1985, s 3 (1).
4. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), pp 521–522.

5. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at 690 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 438).
6. Janine Hayward, "Flowing from the Treaty's Words": The Principles of the Treaty of Waitangi', in Janine Hayward and Nicola Wheen, eds, *The Waitangi Tribunal/Te Roopu Whakamana i te Tiriti o Waitangi* (Wellington: Bridget Williams Books, 2004), p 40.
7. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 519–526.
8. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 at 663 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 438).
9. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 527–529.
10. Ibid, p 433.
11. Counsel for the Te Reo o Ngāpuhi and Te Reo Māori claimants in our inquiry, Ms Alana Thomas, provided her submissions, including the principles relevant to the issue of te reo Māori, in te reo. Claimants challenged us to provide the principles in te reo, and we have accepted that challenge. We have drawn on principles in te reo provided by claimants, and occasionally have sought clarification from Ms Thomas. We have also considered explanations of principles given in other Tribunal reports.
12. Claimant closing submissions (#3.3.228), p 114; see also Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, Wai 785, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 2–8.
13. Claimant closing submissions (#3.3.228), p 118.
14. Ibid, p 131.
15. Ibid, pp 118–119, 126.
16. Ibid, pp 120–121.
17. Ibid, pp 135–136.
18. She stated that the revised principles she had proposed came from an amalgamation of principles from the 1987 *Lands* case decided by the Court of Appeal, those devised by the executive, and those of the Tribunal as set out in its *Te Tau Ihu* report: claimant closing submissions (#3.3.228), pp 135, 137.
19. Counsel suggested that 'no more than 5% of the dry land of Aotearoa New Zealand had been "legitimately" acquired, and that these were the only areas where the Crown was entitled to exercise kāwanatanga, along with the 3% of the population at 1840 who were non-Maori'. Hence, these lands and peoples were the limit of the Crown's kāwanatanga rights: claimant closing submissions (#3.3.228), p 141. Some other counsel took issue with the suggestion that five per cent of the land had been 'legitimately' acquired: closing statement for the Mangakāhia taiwhenua (#3.3.293), pp 5–7; closing submissions for Wai 1507 (#3.3.257), pp 8–14.
20. Counsel stated that she derived her three spheres from the Tribunal's conclusion on the meaning of te Tiriti, and 'characterised' them 'as essentially identifying 3 distinct spheres of "sovereignty" co-existing under te Tiriti/the Treaty as at 1840'. Elsewhere she used the term 'three spheres of authority': claimant closing submissions (#3.3.228), pp 7–8, 136. The Tribunal did not use either term, as more than one other counsel pointed out. It referred to the rangatira agreeing to share power with the Governor, as equals – 'although of course they had different roles and different spheres of influence': Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 526–527.
21. Claimant closing submissions (#3.3.228), p 136.
22. Ibid, p 140.
23. Ibid, p 140.
24. Ibid, pp 137–138.
25. Ibid, p 143; *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, p 664.
26. *Proprietors of Wakatū v Attorney-General* [2017] 1 NZLR 423 (SC); claimant closing submissions (#3.3.228), p 143.
27. Closing submissions for Wai 774 (#3.3.391), p 7; supplementary submissions for Wai 234, Wai 246, and others (#3.3.231), pp 2–3; supplementary closing submissions for Wai 320, Wai 736, Wai 1307, Wai 1140, Wai 1958, Wai 2062, and Wai 2476 (#3.3.234), p 3.
28. Closing submissions for Wai 774 (#3.3.391), p 13; supplementary submissions for Wai 49, Wai 682, Wai 1464, Wai 1546, Wai 68, Wai 149, Wai 455, Wai 565, Wai 1440, Wai 1445, Wai 1518, Wai 1520, Wai 1527, Wai 1551, Wai 1677, Wai 1710, and Wai 2182 (#3.3.241), p 27; synopsis of supplementary submissions for Wai 620 and Wai 1508 (#3.3.239), p 4.
29. The specific submissions of claimant counsel were summarised by counsel Janet Mason in her reply submissions on political engagement: submissions in response regarding political engagement (#3.3.450), pp 199–244.
30. Closing submissions for Wai 774 (#3.3.391), pp 12–13.
31. Ibid, p 13.
32. Ibid, p 16.
33. Ibid, p 14.
34. Supplementary closing submissions for Wai 49, Wai 682, Wai 1464, Wai 1546, Wai 68, Wai 149, Wai 455, Wai 565, Wai 1440, Wai 1445, Wai 1518, Wai 1520, Wai 1527, Wai 1551, Wai 1677, Wai 1710, and Wai 2182 (#3.3.241), pp 12–18.
35. Dr Gilling's supplementary submissions were made on behalf of the following claimants: Te Raa Nehua (Wai 246 and Wai 1148), Hemi-Rua Rapata (Wai 234), Karanga Pourewa (Wai 1312), Erimana Taniora (Wai 1333), Waitangi Wood (Wai 1661), Louie Katene (Wai 1684), Terry Tauroa (Wai 1843), Audrey Leslie (Wai 1943), Lisette Rawson (Wai 2254), Drew Hikuwai (Wai 1613), William Hikuwai (Wai 1838), Sailor Morgan (Wai 1846), Tahua Murray (Wai 2389), Te Huranga Hohaia (Wai 492 and Wai 1341), Robin Paratene (Wai 1726), John Davis (Wai 1753), Harry Mahanga (Wai 2027), Maiki Marks (Wai 2424), Dr Terence Lomax (Wai 605), Tarawau Kapa (Wai 1515), James Eruera (Wai 249 and Wai 2124), Ricky Houghton (Wai 1670), and Ken McAnergney (Wai 1940): supplementary submissions regarding Tiriti principles and the *Wakatu* decision (#3.3.231), pp 1–3.
36. Ibid, p 7.
37. Ibid, p 8.
38. Ibid, p 9.
39. Ibid, p 12.
40. Ibid, pp 15–16.

41. Ibid, pp 17–19.
42. Ibid, p 19.
43. Ibid, p 20.
44. Ibid, pp 21–22.
45. Ibid, pp 21–22 (emphasis in counsel's submission).
46. Ibid, pp 21–22.
47. Supplementary closing submissions for Wai 320, Wai 736, Wai 1307, Wai 1140, Wai 1958, Wai 2062, and Wai 2476 (#3.3.234), pp 7–10; supplementary submissions regarding issues raised at hearing week 23 (#3.3.232), pp 3–4; synopsis of supplementary submissions for Wai 620 and Wai 1508 (#3.3.239), p 10; supplementary submission for Wai 49, Wai 682, Wai 1464, Wai 1546, Wai 68, Wai 149, Wai 455, Wai 565, Wai 1440, Wai 1445, Wai 1518, Wai 1520, Wai 1527, Wai 1551, Wai 1677, Wai 1710, and Wai 2182 (#3.3.241), pp 12–20.
48. Supplementary closing submissions for Wai 320, Wai 736, Wai 1307, Wai 1140, Wai 1958, Wai 2062, and Wai 2476 (#3.3.234), pp 2, 5–6; see also memo 2.6.141.
49. Counsel who presented the generic closing submissions for issue 1 later challenged Mr Williams's characterisation of her submissions as inviting the Tribunal to 'disregard the myriad of past Tribunal jurisprudence': supplementary submissions (#3.3.444), pp 13–14.
50. Supplementary closing submissions for Wai 320, Wai 736, Wai 1307, Wai 1140, Wai 1958, Wai 2062, and Wai 2476 (#3.3.234), pp 5, 7, 8–10.
51. Supplementary submissions regarding issues raised at hearing week 23 (#3.3.232), pp 3–4.
52. Synopsis of supplementary submissions for Wai 620 and Wai 1508 (#3.3.239), pp 9–10; John Kahukiwa, transcript 4.1.30, Terenga Parāoa Marae, Whāngārei, p [227]; memorandum of counsel for Wai 620, Wai 1411–1416 and Wai 2230 (#3.2.2570), pp 3–4.
53. Memorandum of counsel for Wai 620, Wai 1411–1416 and Wai 2239 (#3.2.2570), p 4.
54. Ibid, pp 4–5.
55. Ko te tapaetanga whakakopani mo te take o te reo Māori, tikanga, wāhi tapu, taonga (#3.3.221), p 15.
56. Summary of claimant closing submissions (#3.3.221(c)), pp 7–8.
57. We reproduce these submissions in full, and will address the issues of Te Reo Māori me Te Reo o Ngāpuhi in the next part of our stage 2 report: ko te tapaetanga whakarapopoto mo te take o te reo Māori (#3.3.221(b)), pp 11–12. These duties were also submitted by counsel for issue 14 (te reo Māori, wāhi tapu, taonga, and tikanga).
58. Ko te tapaetanga whakakopani mo te take o te reo Māori, tikanga, wāhi tapu, taonga (#3.3.221(c)), pp 12–13; ko te tapaetanga whakakōpani mo te kereme Wai 2062 (#3.3.388), pp 19–20; closing submissions for Wai 2062 (#3.3.388(a)), p 21.
59. Amended closing submissions for Wai 53 (#3.3.370(b)), pp 9–10.
60. Ibid, p 10.
61. Ibid.
62. Closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399(b)), p 81; amended closing submissions for Wai 549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297(a)), p 28.
63. Closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399(b)), p 81.
64. Ibid, pp 82–83.
65. Supplementary submissions for tikanga, in te reo Māori (#3.3.221(i)), p 3; supplementary submissions for tikanga, in English (#3.3.221(j)), p 3.
66. Ko te tapaetanga whakakopani mo te take o te reo Māori, tikanga, wāhi tapu, taonga (#3.3.221), p 69.
67. Ibid, p 61.
68. Ibid, pp 59, 61. We discussed what is commonly referred to as the fourth article of the treaty, which broadly guaranteed that Māori custom and religion would be protected. This was first raised orally at Waitangi on 6 February 1840 by Bishop Jean Baptiste Pompallier, head of the French Catholic mission at Kororāreka: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 372. Hobson later promised to preserve Māori custom in a 'fourth article': Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 435. The late claimant Rima Edwards presented to us oral traditions confirming the existence of this fourth article handed down from Heke Pokai, Ngamanu, and Te Hinaki within Te Whare Wānanga o Te Ngakahi o Ngāpuhi: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 451. We concluded that the 'so-called "fourth article"' was 'an oral addition to the Crown's treaty undertakings to the rangatira': Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 518.
69. Amended closing submissions for Wai 549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297(a)), pp 28–29.
70. As explained by Patu Hohepa in our hearings: transcript 4.1.25, Tauteihiihi Marae, Kohukohu, pp 796–800. We discuss te kawa o Rāhiri in section 2.4.1.
71. Amended closing submissions for Wai 549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297(a)), pp 24–25.
72. Ibid, pp 24–27.
73. Crown closing submissions (#3.3.402), p 34, see also pp 34–40.
74. *The Whanganui Land Report*, counsel said, pointed to the examples of Rekohu and Te Urewera: Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, Wai 903, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 143.
75. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 151 (Crown closing submissions (#3.3.402), p 35).
76. Ibid, pp 155–156 (p 35).
77. Crown closing submissions (#3.3.402), pp 35–36.
78. Ibid, p 36.
79. Ibid, p 37.
80. Ibid, p 38.
81. Andrew Irwin, transcript 4.1.32, Waitahi Events Centre, p 49.
82. Crown closing submissions (#3.3.402), p 39.
83. Ibid, pp 39–40, citing *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC), p 517.
84. Crown closing submissions (#3.3.402), p 40, citing *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142 (CA), p 152.
85. Submissions in response for Wai 605 (#3.3.435), pp 3–5.

86. Counsel also suggested that the Crown, while summarising the 'differing approaches' of several counsel to the revised principles she had proposed in the generic submissions, had not referred to the submissions made on behalf of 'a number of Claimant Counsel, many of which in fact support the Revised Principles'. She appended a table summarising the submissions of claimant counsel on the revised principles: claimant submissions in reply (#3.3.450), pp 139–140; see also annex B, pp 198–244.
87. Submissions in response regarding political engagement (#3.3.450), p 143 (emphasis added in counsel's submissions).
88. Submissions in response regarding political engagement (#3.3.450), p 145.
89. Janet Mason, transcript 4.1.29, Te Whakamaharatanga Marae, Waimamaku, pp 61–62; submissions in response regarding political engagement (#3.3.450), p 147.
90. Submissions in response regarding political engagement (#3.3.450), p 144.
91. Reply submissions for Wai 620, Wai 1411–1416, and Wai 2239 (#3.3.455), p 11 (Crown closing submissions (#3.3.402), p 33).
92. Reply submissions for Wai 620, Wai 1411–1416, and Wai 2239 (#3.3.455), p 11.
93. Ibid, pp 18–19.
94. Ibid, p 20.
95. Reply submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.475), p 22.
96. Elizabeth Jane Kelsey (doc AA1), p 6 (cited in reply submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.475), pp 22–23).
97. Reply submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.475), p 23.
98. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 155.
99. Ibid.
100. Ibid, p 150.
101. Ibid, pp 433–434.
102. These reports included *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, Wai 6 (1983), *Report of the Waitangi Tribunal on the Manukau Claim*, Wai 8 (1985), *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9 (1987), *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, Wai 17 (1988), *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22 (1988), and *Muriwhenua Land Report*, Wai 45 (1997). See also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 433–437.
103. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 433.
104. Ibid, p 434.
105. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 at 691 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 438).
106. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 at 690 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 438).
107. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 438.
108. Ibid, p 434.
109. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 185.
110. Ibid, pp 186–187.
111. Ibid, pp 187–188.
112. Ibid, p 188.
113. Ibid, pp 188, 190.
114. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wai 8, 2nd ed (Wellington: Waitangi Tribunal, 1989), p 70.
115. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45 (Wellington: GP Publications, 1997), pp 21–28, 390–391.
116. Ibid, pp 21–28, 390–391.
117. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wai 143 (Wellington: Legislation Direct, 1996), p 5.
118. The Declaration was sought from the United Nations by the world's indigenous minorities to 'define their rights in relation to national states'. A United Nations working group took 12 years to complete the draft Declaration in 1994. The United Nations General Assembly adopted the Declaration in 2007. The New Zealand Government endorsed the Declaration in 2010; Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 20.
119. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, Wai 215, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 22–23; Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, Wai 2490 (Wellington: Legislation Direct, 2015), p 23; Waitangi Tribunal, *Te Whanau o Waipareira Report*, Wai 414 (Wellington: GP Publications, 1998), p 215.
120. Waitangi Tribunal, *Tauranga Moana*, Wai 215, vol 1, p 18; Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage One*, Wai 1200, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 172; Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 5–6, 19–20.
121. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 113.
122. Ibid, vol 1, p 113.
123. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 4.
124. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, Wai 1071 (Wellington: Legislation Direct, 2004), p 3.
125. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, p 182.
126. Waitangi Tribunal, *Report on the Manukau Claim*, Wai 8, pp 66–67.
127. Ibid, p 66.
128. Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, p 189 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 434).
129. Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, p 189;

see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 434.
130. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22, 2nd ed (Wellington: Government Printing Office, 1989), pp 186–187.
131. Waitangi Tribunal, *Ahu Moana: The Aquaculture and Marine Farming Report*, Wai 953 (Wellington: Legislation Direct, 2002), p 64.
132. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 2, pp 428–429.
133. Waitangi Tribunal, *The Mokai School Report*, Wai 789 (Wellington: Legislation Direct, 2000), p 10.
134. Waitangi Tribunal, *Te Maunga Railways Land Report*, Wai 315 (Wellington: Legislation Direct, 1994), pp 67–68, 70.
135. Waitangi Tribunal, *The Petroleum Report*, Wai 796 (Wellington: Legislation Direct, 2003), p 58.
136. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 390.
137. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, p 736.
138. Ibid, pp 736–737.
139. Ibid, p 737.
140. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1238.
141. Ibid, pp 1238–1239.
142. Ibid, p 1239.
143. Waitangi Tribunal, *The Whanganui River Report*, Wai 167 (Wellington: GP Publications, 1999), p 329 (Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1239).
144. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1239.
145. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 2, pp 737–738; Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 427, 472–473, 531, 534, 535–536.
146. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 157.
147. Ibid, p 536.
148. Ibid, p 147.
149. Ibid, p 148.
150. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 205.
151. Ibid, p 207.
152. Ibid, pp 209–210.
153. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), p 667.
154. Ibid, p 664.
155. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 4.
156. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, Wai 262, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 24.
157. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi*, Wai 262 (Wellington: Legislation Direct, 2011), pp xix, 18.
158. Ibid, pp 22–23.
159. Ibid, p 245.
160. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, Wai 262, vol 1, pp 14–18.
161. Ibid, p 16.
162. Ibid, p 17.
163. Ibid.
164. Ibid, p 19.
165. Ibid.
166. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, Wai 262, p 19.
167. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, Wai 262, vol 2, p 577.
168. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuatahi*, Wai 262, p 248.
169. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, Wai 262, vol 2, p 450.
170. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 135–137.
171. Ibid, p 150.
172. Ibid, p 147.
173. Ibid, p 151.
174. Ibid, pp 143–144. The Tribunal specified the *Rekohu* report and the *Te Urewera* report as having reached this conclusion after considering that neither the Moriori nor certain groups in Te Urewera were offered the opportunity to sign the treaty.
175. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, p 144.
176. Ibid, p 156.
177. Ibid, p 156.
178. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 207.
179. Ibid, p 216.
180. Ibid, pp 207–209.
181. Ibid, pp 180–181.
182. Ibid, p 181.
183. Ibid, p 216.
184. Waitangi Tribunal, *Te Urewera*, Wai 894, 8 vols (Wellington: Legislation Direct, 2017), vol 1, p 134. The *Te Urewera* report was issued in successive pre-publication volumes between 2009 and 2015; part 1 was released in 2009, some years before our stage 1 report.
185. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990*, Wai 32 (Wellington: GP Publications, 1990), p 31.
186. Waitangi Tribunal, *The Ngawha Geothermal Resource Report 1993*, Wai 304 (Wellington: Legislation Direct, 1993), pp 101–102.
187. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, Wai 212 (Wellington: GP Publications, 1998), p 108.
188. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1236.
189. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1237.
190. Waitangi Tribunal, *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993*, Wai 2478 (Wellington: Legislation Direct, 2016), p 202.
191. Waitangi Tribunal, *He Kura Whenua ka Rokohanga*, Wai 2478, p 261.
192. For example, in Waitangi Tribunal, *Napier Hospital and Health Services Report*, Wai 692 (Wellington: Legislation Direct, 2001), pp 66–68, 256, 263, 324, 368.

193. Waitangi Tribunal, *The Offender Assessment Policies Report*, Wai 1024 (Wellington: Legislation Direct, 2005), p 12.
194. Waitangi Tribunal, *Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates*, Wai 2540 (Wellington: Legislation Direct, 2017), p 23; Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, Wai 2575 (Wellington: Legislation Direct, 2019), p 133.
195. Waitangi Tribunal, *Whaia te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim*, Wai 2417 (Wellington: Legislation Direct, 2015), p 42.
196. Ibid, p 40.
197. Waitangi Tribunal, *Report on the Manukau Claim*, Wai 8, p 70.
198. The Ōrākei Tribunal discussed the Crown's motivations for signing the treaty as part of its wider consideration of the Crown's assertion of a right of pre-emption under article 2, and whether this imposed a reciprocal duty on the Crown to protect Māori interests. In its assessment of the treaty's provisions, the Tribunal considered that it should have regard to 'all relevant surrounding circumstances and any declared or apparent objects or purposes': Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, pp 193, 206.
199. Ibid, pp 193, 206.
200. Ibid, p 209.
201. Waitangi Tribunal, *The Ngai Tahu Report 1991*, Wai 27, 3 vols (Wellington: GP Publications, 1991), vol 2, p 236.
202. Ibid, vol 2, pp 240–241.
203. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, pp 116–117, 390–391.
204. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, p 642 (cited in Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 4).
205. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 4.
206. Ibid, vol 2, p 541.
207. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 215.
208. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, Wai 1071, p 3; Waitangi Tribunal, *The Ngai Tahu Report 1991*, Wai 27, vol 3, pp 725–726; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, Wai 6, 2nd ed (Wellington: Government Printing Office, 1989), p 53.
209. Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy*, Wai 1071, p 28.
210. Ibid.
211. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 182.
212. Waitangi Tribunal, *Hauora*, Wai 2575, p 34.
213. Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, p 216.
214. Ibid, p 220.
215. Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992*, Wai 27 (Wellington: Brooker and Friend, 1992), p 256.
216. Waitangi Tribunal, *Te Tau Ihu o te Ika a Maui*, Wai 785, vol 1, p 5.
217. Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report*, Wai 776 (Wellington: GP Publications, 1999), p 52.
218. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1667 (Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, Wai 2358 (Wellington: Legislation Direct, 2012), p 50).
219. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 3, pp 891, 912.
220. Ibid, p 914.
221. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 212.
222. Waitangi Tribunal, *Maori Electoral Option Report*, Wai 413 (Wellington: Brooker's Ltd, 1994), p 12.
223. Ibid, p 15.
224. Waitangi Tribunal, *Tauranga Moana*, Wai 215, vol 1, pp 384, 387, 477, 479–480.
225. Waitangi Tribunal, *Te Arawa Mandate Report*, Wai 1150 (Wellington: Legislation Direct, 2004), p 94.
226. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 3, p 945.
227. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, Wai 1130, 3 vols (Wellington: Legislation Direct, 2013), vol 1, p 17.
228. Waitangi Tribunal, *The Tarawera Forest Report*, Wai 411 (Wellington: Legislation Direct, 2003), p 29.
229. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, pp 664–665.
230. Waitangi Tribunal, *Offender Assessment Policies Report*, Wai 1024, p 13.
231. Waitangi Tribunal, *Te Ika Whenua Rivers Report*, Wai 212, pp 134–135 (Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, Wai 2358, p 79).
232. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, Wai 2358, pp 79–80.
233. Ibid, p 80.
234. Erima Henare (doc A30(c)), p 6.
235. Tā Himi Henare, interview, 'Ngā Pukorero o te wa ko te reo o kui o koro ma' (Manuka Henare, Angela Middleton, and Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New, Te Aho Claims Alliance Oral and Traditional History', Te Aho Claims Alliance Report, Mira Szászy Research Centre, University of Auckland Business School, 2013 (doc E67), p 238).
236. Closing statement of Patu Hohepa (#3.3.203), pp 3–4. This translation is from Dr Hohepa's evidence: Patu Hohepa, 'Hokianga: From Te Korekore to 1840', report commissioned by the Crown Forestry Rental Trust, 2011 (doc E36), p 172. We note that the whakataukī is stated in slightly different ways but that the imagery is consistent whichever version is given. That imagery is of the intertwining of the east and the west coasts, of Taumārere and Hokianga, of descendants

of Rāhiri's sons Kaharau and Uenuku-kūare; their actions affect each other. The whakataukī speaks to the alliance of the destinies of Ngāpuhi on the Te Tai Tamawāhine (eastern) and Te Tai Tamatāne (western) coasts: Nuki Aldridge (doc B10), p 33; Patu Hohepa (doc A32), p 4; John Klaricich (doc C9), pp 13–14; Marsha Davis (doc C21), p 16.

237. Closing submission of Patu Hohepa on behalf of Hokianga Whakapau Karakia (#3.3.203), pp 5–6.

238. Ibid, pp 4, 6.

239. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 95.

240. This detail was contained in a later letter Hōne Heke wrote to Queen Victoria in 1849, which is cited in our stage 1 report on page 100; we suggested there that, while we cannot be certain of the accuracy of the account, Heke's version is plausible.

241. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 122–134.

242. Charles de Thierry was an adventurer born of French parents who had lived much of his life in England, had met Hongi, Waikato and Kendall there, and had long cherished the hope of establishing a colony in New Zealand. His 1835 announcement however came out of the blue. Busby, though evidently not viewing de Thierry as representing an act of French aggression, decided to take steps against his pretensions lest he destabilise intertribal politics and to call a meeting of chiefs to 'declare the Independence of their Country': Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 159–160.

243. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 165–167.

244. Ibid, p 198.

245. The full back-translations of Dr Patu Hohepa, Nuki Aldridge, Dr Manuka Henare, and Professor Margaret Mutu are reproduced in *He Whakaputanga me te Tiriti* at pages 174–175, with our detailed discussion of the interpretation of the four articles of he Whakaputanga at pages 171–183.

246. We noted in our report that several claimants gave evidence about the meaning of 'wenua rangatira', suggesting it contained nuances that could not easily be captured in English, and cited John Klaricich as representative of these; the phrase, he said, was 'about belonging, about land at peace explicit in practice of custom, uniquely Maori'; 'wenua' referred not to land as a possession but to its nurturing and sustaining qualities: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 172–173.

247. We also noted that 'Te Whakaminenga' potentially had different meanings to different parties: to many claimants it was a formal assembly of rangatira from autonomous hapū, gathering together to act in concert in response to increased European settlement. Some stated that Whakaminenga existed prior to 1835; others that it was created by he Whakaputanga: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 177–179.

248. We stated in our stage 1 report that all witnesses who spoke 'were consistent in a view of power or authority deriving from the land, as distinct from being simple authority over it': Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 180.

249. Ibid, p 201.

250. Ibid, p 202.

251. Ibid, p 203.

252. Ibid, pp 520–521.

253. Ibid, p 502.

254. Ibid, p 520.

255. Ibid, p 23.

256. Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, '"He Whenua Rangatira": Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), pp 224–232, 365–366; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 31.

257. Henare (doc A30(c)), p 12.

258. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 12.

259. Ibid, p 33.

260. Moana Jackson (doc D2), p 18.

261. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 519.

262. Ibid.

263. Ibid, p 524.

264. Ibid, p 519.

265. Ibid, p 333.

266. Ibid, pp 517–520.

267. Waitangi Tribunal, *Turanga Tangata, Turanga Whenua*, Wai 814, vol 2, p 737.

268. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1239.

269. Peter Low, 'Pompallier and the Treaty: A New Discussion', NZJH, vol 24, no 2 (October 1990), p 192 (Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 518–519).

270. Waitangi Tribunal, *Ko Aotearoa Tenei*, *Te Taumata Tuarua*, Wai 262, vol 1, pp 18–19.

271. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 526–528.

272. Ibid, pp 182–183.

273. Ibid, p 229.

274. Ibid, pp 316–317.

275. Ibid, pp 319–320.

276. Royal Commission on Aboriginal Peoples [Canada], *Report of the Royal Commission on Aboriginal Peoples*, 5 vols (Ottawa: Canada Communication Group, 1996), vol 5, pp 1, 16, https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx, last modified 2 November 2016.

277. Ibid, vol 1, pp 645–646.

278. Ibid, p 649.

279. Ko te tapaetanga whakakopani mo te take o te reo Māori, tikanga, wāhi tapu, taonga (#3.3.221), pp 56, 61.
280. Ibid, pp 75, 86.
281. Ibid, p 137.
282. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 390; Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 5; Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, Wai 262, vol 1, pp 237, 299–300; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 182.
283. Treaty of Waitangi Act 1975, sch 1.
284. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 87.
285. Waitangi Tribunal, *Ko Aotearoa Tēnei*, *Te Taumata Tuarua*, Wai 262, vol 1, p 19.
286. Closing submission of Patu Hohepa on behalf of Hokianga Whakapau Karakia (#3.3.203), p 6.
287. Memorandum 3.2.2318, pp 10–11.
288. Supplementary submissions for Wai 49, Wai 682, Wai 1464, Wai 1546, Wai 68, Wai 149, Wai 455, Wai 565, Wai 1440, Wai 1445, Wai 1518, Wai 1520, Wai 1527, Wai 1551, Wai 1677, Wai 1710, and Wai 2182 (#3.3.241), p 16.
289. Waitangi Tribunal, *Ko Aotearoa Tēnei*, *Te Taumata Tuarua*, Wai 262, vol 1, pp 17, 19.
290. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 4, p 1667 (Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, Wai 2358, p 50).
291. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 3, pp 89–93.
292. Waitangi Tribunal, *The Offender Assessment Policies Report*, Wai 1024, p 13.

CHAPTER 3

TĀNGATA WHENUA
PEOPLE OF THE LAND

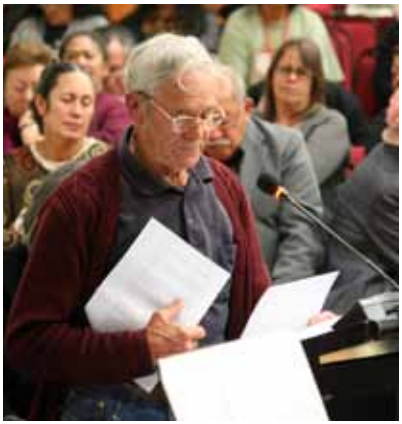
Ka mimiti te puna i Hokianga
Ka totō te puna i Taumārere
Ka mimiti te puna i Taumārere
Ka totō te puna i Hokianga

When the Hokianga spring runs dry
The Bay of Islands spring flows.
When the spring of the Bay of Islands runs dry
The spring of Hokianga flows.[1]

3.1 Hei Tīmatanga Kōrero / Introduction

This chapter is about the peoples of the inquiry district prior to the signing of te Tiriti – who they were, where and how they lived, and what they valued and believed. It explores the principles and values that guided their lives; explains their systems of law, authority, and social organisation; describes their relationships with the many harbours, mountains, lakes, rivers, and other landforms and water bodies in their territories; traces the emergence and evolution of hapū and iwi through conflicts, migrations, and intermarriages; and summarises their responses to the arrival of Europeans. Some of this material has already been traversed in our stage 1 report. However, we return to it here to assist readers unfamiliar with that report, and to establish the important context for all the claims before us.

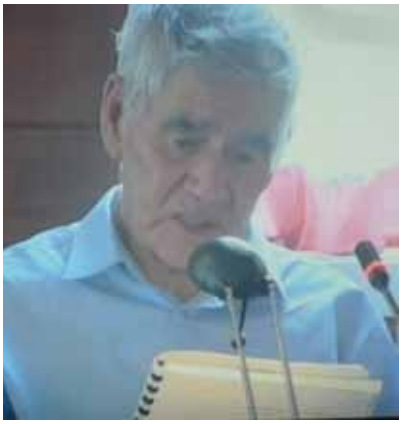
The chapter unfolds from the earliest traditions by tracing the cosmological origins and early waka and settlement traditions of the peoples of this district – traditions which, for many, converge on Rāhiri, the central unifying ancestor for Ngāpuhi. Section 3.3 then traces the emergence of Rāhiri's people from their Hokianga and Kaikohe homelands to exercise influence over much of the district, a process that reshaped relationships and led to the formation of new hapū and iwi groupings. Finally, section 3.4 describes the significant changes that occurred during the 1830s as the peoples of this region increasingly engaged with European traders and missionaries, and with the British Crown. The picture that emerges is one of autonomous peoples who pursued multiple strategies – including



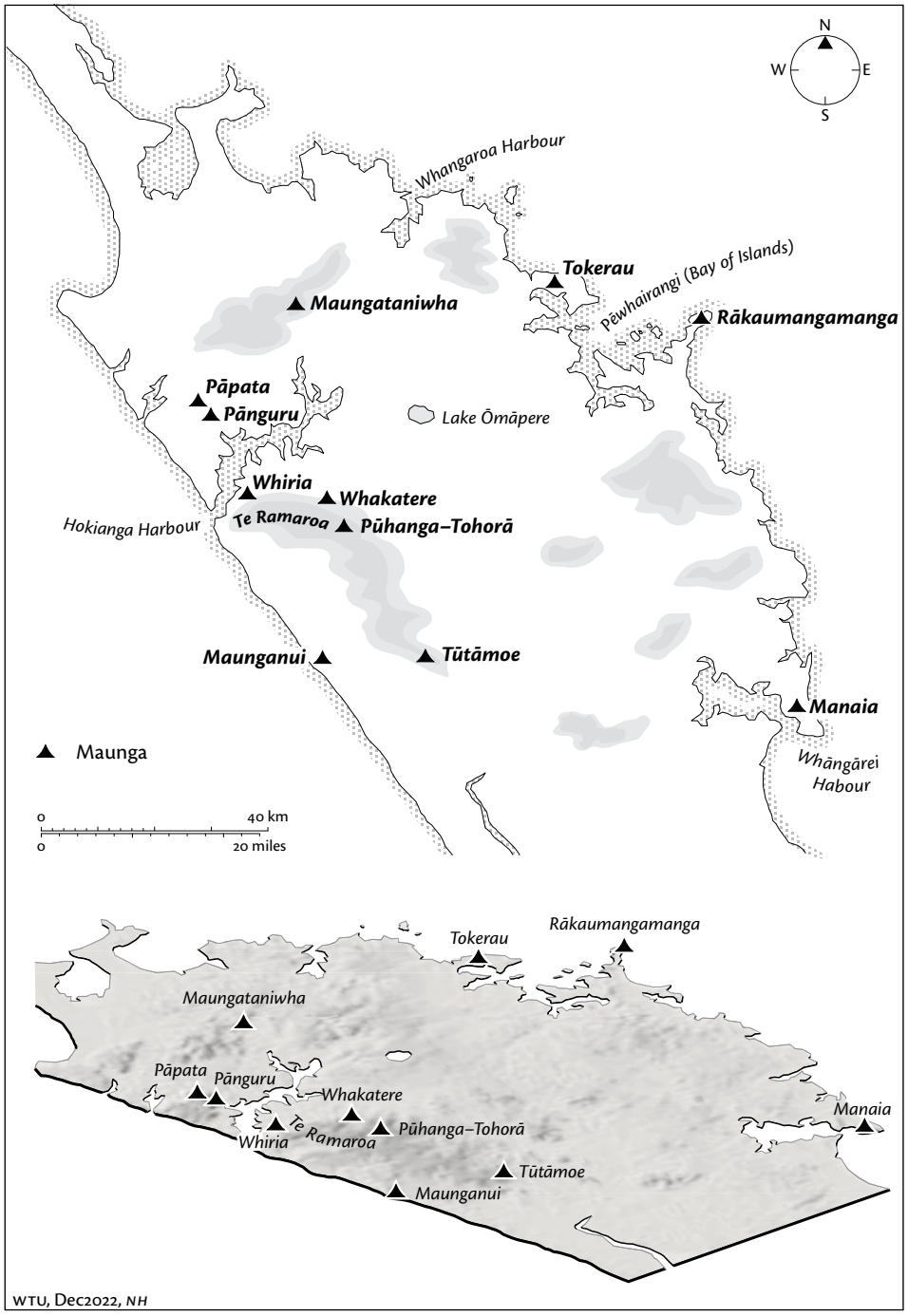




Some of the claimants (and the claimant group they are representing) who presented evidence on the tāngata whenua of the Te Paparahi o Te Raki inquiry district. *This page from top, left to right:* David Peters (Te Whakapiko), Erimana Taniora (Ngāti Uru, Te Whānaupani), Frances Goulton (Ngā Hapū o Whangaroa), Michael Beazley (Te Uri o Maki-nui), Moana Nui A Kiwa Wood (Ngāti Rua), Nau Epiha (Ngāti Kura), and Taipari Munro (Te Uriroroi, Te Parawhau, Te Mahurehure ki Whatitiri).



On this page from from top, left to right: **John Klaricich (Ngāti Korokoro Ngāti Wharārā, Te Poukā), Kingi Taurua (Ngāti Kawa, Ngāti Rāhiri, Ngāti Rēhia), Dr Mary-Anne Baker (Ngā Uri o Te Kēmara I o Ngāti Rāhiri me Ngāti Kawa), Patricia Tauroa (Ngā Hapū o Whangaroa), Pita Tipene (Ngā Hapū o te Takutai Moana), Robyn Tauroa (Ngā Hapū o Whangaroa), and Waimarie Kingi (Ngāti Kāhu o Torongare me Te Parawhau).**



Map 3.1: Te Whare Tapu o Ngāpuhi.

migrations, battles, intermarriages, alliances, and trading relationships – in vigorous pursuit of security, well-being, and mana.

In Ngāpuhi traditions, the territories of Ngāpuhi-tūturu (which Hokianga kaumātua Dr (now Tā) Patu Hohepa translated as '[r]eal Ngāpuhi' or 'genuine Ngāpuhi')[2] are encircled by 'nga poupou maunga o te wharetapu o Ngapuhi' ('[t]he mountain pillars of the sacred house of Ngapuhi').[3] These 12 maunga encompass territories north and south of Hokianga, as well as the Bay of Islands and Whāngārei. Each maunga is likened to a carved pillar supporting the roof of a house. According to Dr Hohepa, the maunga form the shape of a fern frond or koru, with Whiria at its centre.[4] They are regarded as living entities, standing as 'guardians and sentinels' for Ngāpuhi hapū, 'who look to each other for support'.[5]

Claimants and historians also spoke of 'Ngāpuhi-nui-tonu' ('great everlasting Ngāpuhi') and Ngāpuhi-whānui (broad Ngāpuhi), terms that refer to iwi from Muriwhenua to Tāmaki, including Te Aupōuri, Te Rarawa, Ngāti Kahu, Ngāpuhi, and Ngāti Whātua.[6] During the 1830s, the term 'Ngāpuhi' was used in a more narrow sense, to describe the hapū of the 'northern alliance' (including Ngāi Tāwake, Ngāti Tautahi, Te Uri o Hua, and Ngāti Rēhia), thereby excluding southern alliance and Hokianga hapū such as Ngāti Manu, Ngāti Hine, Te Pōpoto, and Te Māhurehure.[7] Some sources said the name 'Ngāpuhi' was principally for purposes of warfare; otherwise, the people of Ngāpuhi were identified by their hapū.[8]

Dr Hohepa told us a number of traditions accounting for the name 'Ngāpuhi'. The earliest originates from Kupe's two chiefly wives, Hineiteaparangi and Kuramarotini, who were the first 'puhi' (women of exceptional rank, character, and ability).[9] In one tradition, Ngāpuhi was named for the taniwha Puhi-moana-ariki, who accompanied Nukutawhiti and Ruanui to Aotearoa.[10] In another, 'Ngāpuhi' refers to the many taniwha commanded by Puhi-moana-ariki, and are collectively known as Ngāpuhi-taniwha-rau.[11] A further tradition is that 'Ngāpuhi' refers to Puhi-moana-ariki of an ancient line of Ngāti Awa,[12] and that Puhi-moana-ariki, Puhi-kai-ariki, and Puhi-taniwha-rau are three names given to the son of the high-born

Dr Patu Hohepa speaking on behalf of Hokianga claimants during closing submissions, hearing week 24, Terenga Parāoa Marae, Whāngārei, June 2017.

Arikitapu, to commemorate the circumstances surrounding his birth.[13] In other traditions they were brothers or successive generations of tūpuna.[14] A further tradition is that Rāhiri named the group after Puhi-ariki, who travelled on the *Mataatua*.[15]

Just as there are many explanations for the origins of the name 'Ngāpuhi' (not all of which have been discussed here) so there are many different explanations of Ngāpuhi identity. Ngāpuhi identify with many maunga and awa,[16] and with ancestors from many waka including Kupe, Nukutawhiti, Ruanui, Puhi-moana-ariki, and Ahuaiti.[17] These multiple waka and lines of descent converged on Rāhiri, and for this reason – as well as his military prowess – he is usually regarded as the tribe's founding or unifying ancestor.[18]

In turn, since Rāhiri's time, Ngāpuhi bloodlines from many waka and tūpuna have continued to interweave and overlap. As a result, Dr Hohepa explained, all Ngāpuhi are 'multi-related (karanga maha) and kindred grouped (whanaungatanga)', and can travel freely and choose from

Te Whare Tapu o Ngāpuhi

Te whare tapu o Ngāpuhi
He mea hanga tōku whare, ko Papatuānuku te paparahi
Ko ngā māunga ngā poupou,
ko Ranginui e tū iho nei te tuanui.
Puhanga Tohorā titiro ki Te Ramaroa
Te Ramaroa titiro ki Whiria
Ki te paiaka o te riri, ki te kawa o Rāhiri
Whiria titiro ki Pānguru, ki Pāpata
Ki ngā rākau tū pāpata e tū ki te hauāuru Pānguru–
Pāpata titiro ki Maungataniwha
Māungataniwha titiro ki Tokerau
Tokerau titiro ki Rākaumangamanga
Rākaumangamanga titiro ki Manaia
Manaia titiro ki Tūtamoe
Tūtamoe titiro ki Maunganui
Maunganui titiro ki Whakatere
Whakatere titiro ki Puhanga Tohorā.
Ehara ōku maunga i te māunga nekeneke; he maunga tū tonu, tū te ao, tū te pō.

My house
is built with the Earth Mother as the floor,
The mountains the supporting carved pillars,
And the Sky Father standing looking down is the roof.
Puhanga Tohorā look at Te Ramaroa
Te Ramaroa look at Whiria
To the taproots of warfare, the laws of Rāhiri
Whiria look at Pānguru and at Pāpata
To the standing trees leaning from the westerly winds
Pānguru–Pāpata look at Maungataniwha
Maungataniwha look at Tokerau
Tokerau look at Rākaumangamanga
Rākaumangamanga look at Manaia
Manaia look at Tūtamoe
Tūtamoe look at Maunganui
Maunganui look at Whakatere
Whakatere look at Puhanga Tohorā
My mountains are mountains that do not move;
Mountains that stand forever, day and night.[1]

multiple hapū identities.[19] His own Te Māhurehure hapū, for example, had 'several *manga hapū* (branches of hapū) which we can choose as ours at any time'. There were also many 'closely interlinked hapu' from within Hokianga – including Ngāti Hau – Ngāti Kaharau, Ngāi Tū (or Ngāi Tūteauru), Ngāti Korokoro, Ngāti Manawa, and several others – 'which any Te Mahurehure can transfer to' by choice; and many hapū outside of Hokianga, including Ngāti Tautahi of Kaikohe, Te Kapotai of the Bay of Islands, Ngāti Hine of Taiāmai, and Te Parawhau of Whāngārei, who 'draw their linkages to us of Te Mahurehure, and of us to them, whenever required'.[20] This flexible approach to hapū identification is reflected in the saying 'Ngāpuhi kōwhao rau' ('Ngapuhi of a hundred holes'), describing the independence and interconnectedness of Ngāpuhi hapū.[21]

3.2 Te Ao o Ngāpuhi / The Ngāpuhi World

3.2.1 The origins of te ao o Ngāpuhi

As we set out in our stage 1 report, claimants told us that their tūpuna had understood their place in the universe through the principle of whakapapa (genealogical progression) by which all things could be traced back to the beginning of creation.[22] We were told all whakapapa begins in Te Korekore, the absolute nothingness.[23] Everything both material and spiritual emerged from here and took form: wairua (the spirit that infused all things), mauri (essential energy or life force), consciousness,

▶ ***There is more in Te Kore*** **by Ngāpuhi artist Kura Te Waru Rewiri depicts the beings within Te Kore - including the various manifestations of Io - from whom Te Pō and Te Ao Mārama were formed**


there
TE KORE

darkness, light, sound, sky, earth, and water.[24] The physical world then began with Ranginui (the heavens, and the male principle) and Papatūānuku (the earth, and the female principle), from whom all elements of creation descend.[25]

Among their many children are Uru-tengangana (god of the stars and heavens), Tū-matauenga (god of mankind and warfare), Tāne-mahuta (god of forests, birds, and most other living things), Tangaroa (god of the sea and all within it), Rongomatāne (god of cultivated foods and of peace and forgiveness), Tāwhirimātea (god of weather), Haumia-tiketike (god of foods that grow above the ground), Whiro (god of death, sickness, and all bad things), and Rūāumoko (god of earthquakes and eruptions).[26] These brothers lived in Te Pō, in the tight embrace of darkness. They considered whether to let light into this world and made the momentous decision to separate their parents. Tāne pushed up with his feet against Ranginui, and Papatūānuku cried out in pain as light came into the world. Kua mārama te Ao. All people descend from these atua (ancestor-gods).[27] Likewise, from Tāne-mahuta descend all trees, birds, butterflies, insects, small plants, and other flora and fauna that clothe the world. From Tangaroa descend all fish and reptiles. From Rongomatāne descend all cultivated plants such as kūmara, and from Haumia-tiketike descend ferns and other edible plants.[28] Because of this web of genealogy, Rima Edwards explained, 'ka noho whanaunga nga mea katoa o Te Ao' ('all things of the world are related').[29]

In Ngāpuhi tradition, as related to us by Mr Edwards, the motivating force behind this creation was a supreme being, Io, who dwelled within Te Korekore, and from whose consciousness the worlds of Te Pō and Te Ao Mārama were formed. Edwards referred to the various manifestations of Io, including Io Mātua te kore ('the first God who came out of Te Korekore'), Io te kākano ('the seed from which all things in the World grow'), Io te mana ('the supreme power of Io Matua Te Kore from beyond'), Io te mauri ('the living element in all things created to the world'), Io te tapu ('the pure spirit that is free of evil'), Io te wairua ('the spirit of Io that is given to the heart of the world'), Io te matangaro ('knowledge that cannot be seen or known by mankind'), and Io te wānanga ('the spring and source of all knowledge').[30]

Mr Edwards also explained how Io retained the greater part of his powers to himself and to Rangi and Papa and their children.[31] The powers of the children are evident in the battles that have raged between them, to this day, because of their disagreement and anger over the separation of their parents, when light came into the world. As the powers of the atua are unleashed on the world, they bring both destruction and sustenance. Tāwhirimātea in his anger floods the land, but the floodwaters then flow to the sea, nourishing the children of Tangaroa, while the sea evaporates to the heavens and brings life-giving rain; Tangaroa delivers floods and king tides that claim land and forests but also the fish that sustain mankind; Rongomatāne bears peace and goodwill; while Tū-matauenga brings war and Whiro sows death and harm. By these means, the world is sustained in its original balance even as change occurs.[32]

3.2.2 Explorers from Hawaiki

In his traditional history of Hokianga, Dr Hohepa wrote that Tāne-mahuta made his home on Hawaiki, where he found shelter from the attacks of his brothers Tāwhirimātea, Tangaroa, and Tū-matauenga. Hawaiki was both a mythical place of origin and a series of historical homelands from which early Polynesians set out to explore the Pacific Ocean.[33] The name 'Hawaiki' lives on in various parts of the Pacific, including Hawaii and Savai'i (in Samoa). Hawaiki is also a former name of Ra'iātea in the Society Islands.[34]

Claimants gave whakapapa showing 12 to 14 generations from the first humans (Hine-ahu-one and Tiki-nui) to the birth of Māui-tikitiki-a-Taranga,[35] the famed ancestor-god who harnessed the powers of fire and the sun, and whose epic voyages from Hawaiki led to his fishing up many islands including Te Ika a Māui (Māui's fish, or the North Island), before he was killed – in Whangaroa, according to the traditions of its hapū – by Hine-nui-te-pō while seeking the secret of immortal life.[36] According to Dr Hohepa, Māui traditions are known throughout much of the Pacific, in lands as dispersed as Hawaii, Rarotonga,

The tūāhu of Kupe, a memorial stone to the navigator, located on the foreground of the marae atea at Pākanae Marae. Kupe discovered and named many of the sites in Hokianga before his return to Hawaiki. Overlooking the marae is Whiria maunga, the site of Rāhiri's pā.

and the Solomon Islands.[37] Dr Hohepa referred to Māui as occupying a time between gods (such as Tāne-mahuta) and humans, although others regarded him as a historical figure and 'pillar ancestor' for their own peoples.[38]

In Ngāpuhi traditions, Kupe, the great navigator, set out from his homeland (which Dr Hohepa identified as Ra'iātea) to find the southern land fished up several generations earlier by his ancestor Māui.[39] Travelling with his whānau and crew on a double-hulled waka known variously as *Matahourua*, *Matahoura*, and *Matawhao*,[40] they are said to have followed an octopus to Aotearoa or, alternatively, used a navigational aid handed down from Māui that represented Pacific navigational routes as the arms of an octopus.[41] It was Kupe's wife, Hine-i-te-aparangi, who first sighted land, which was subsequentally named 'Aotearoa.'[42]

In Hokianga traditions, Kupe's first landfall was at Te Pouahi on the harbour's northern shores. According to Hohepa, it was the glow of light above the shore, from the maunga later named Ramaroa, that enticed them to turn into the harbour.[43] Kupe named the harbour 'Te Puna o te Ao Marama' (the pool or spring of the world of light) in reference to the way the light 'rippled off the harbour waters' on their arrival.[44] It was from here that Kupe set out to explore the coasts of Te Ika a Māui and Te Waipounamu (Whangaroa tradition is that Kupe landed in that harbour first).[45] Though Kupe searched for signs of other people, most Ngāpuhi traditions hold that he found the islands uninhabited.[46]

3.2.3 Early settlement – Nukutawhiti and Ruanui

After returning to Hokianga, Kupe completed an uruuruwhenua (a ceremony to lay claim to the land). There, he and his whānau remained for several decades before he decided, in his old age, to return to Hawaiki.[47] According to Dr Hohepa, Kupe turned his son Tuputupuwhenua (also known as Tumutumuwhenua) into a taniwha and left him as guardian over the land.[48] Whereas Ngāpuhi traditions contain no record of Tuputupuwhenua having offspring, other northern traditions recall him and his wives – Kui and Tārepo – as important founding tūpuna.[49]

Along with his son, Kupe also left the taniwha Ārai-te-uru and Niua (or Niniwa) as guardians over the harbour mouth: Ārai-te-uru to protect the rocky south headland, and Niua the north headland opposite.[50] Kupe's footprints, and those of his dog Tauaru, were left in soft clay (which eventually turned to rock) on the coast north of the Hokianga head. An anchor from Kupe's waka, and placenames such as Pākanae and Hokianga remain, continuing to mark his authority in the rohe.[51]

Claimants also spoke of Tūrehu and Patupaiarehe occupying lands in many parts of this district.[52] Many regarded these as spirit people, shrouded in mist, who lived in mountain forests[53] and served as their guardians;[54] others said they were founding ancestors who preceded or travelled with Kupe and intermarried with later arrivals.[55] 'To the old time Maori,' Whangaroa kaumātua Nuki Aldridge told us, 'they are real people and they figure in tangata whenua history, [though] their history is a closely kept secret.'[56]

On Kupe's return to Hawaiki, he found his homeland in a state of war. He passed on what he knew of Aotearoa. Some generations later, his descendant Nukutawhiti re-adzed *Matahourua* to create a larger waka, *Ngātokimatawhaorua* or *Ngātokimatahourua*. Nukutawhiti's relative Ruanui built a new waka, *Māmari*, and they set sail together for Aotearoa, following the route handed down from Kupe.[57] While *Māmari* is usually recalled as a separate waka, one account suggested that it may have been one of the hulls of *Ngātokimatawhaorua* (the other being *Tirea*).[58] This is one of several traditions of double-hulled waka with distinct names arriving in the north.[59]

When *Ngātokimatawhaorua* and *Māmari* arrived in Aotearoa, they made landfall at Hokianga.[60] *Ngātokimatawhaorua* is said to remain at or near Te Pouahi, resting in a limestone crevasse beneath the sandhills.[61] According to Dr Hohepa, these early settlers found no sign of Tuputupuwhenua or any descendants in Hokianga and its environs, and did not encounter other people for several generations.[62] Other waka traditions refer to descendants of Tuputupuwhenua and others such as Kui and Tūrehu occupying extensive areas both south and north of the harbour.[63] In Dr Hohepa's view, there is insubstantial evidence to indicate that the Hokianga was inhabited prior to the arrival of Nukutawhiti and Ruanui, and as such they were the first inhabitants of the area.[64]

The land that Nukutawhiti and Ruanui found was larger than Hawaiki, and abundant. Its 'vast subtropical rain forests' grew 'from the water's edge to far beyond the distant uplands'. These forests 'teemed with birdlife', and contained edible ferns and berries, and timber for new waka with which to explore the harbour and rivers. The harbour, ocean, and rivers were also rich in fish, shellfish, birds, and marine mammals. Notwithstanding this abundance, Dr Hohepa wrote, this new environment was unsuited to tropical crops such as hue and taro, and so adapting to it must have been challenging.[65]

Nukutawhiti and Ruanui established separate settlements on either side of the harbour entrance (there are differing traditions as to which belonged to each).[66] Both built houses where they could commune with their atua, and when a whale appeared in the harbour, both uttered incantations, seeking to create a storm on the shoreline opposite that would guide the great sea mammal towards their own so it could be offered to the gods. Neither succeeded – the whale swam out to sea – but from this event the harbour acquired a new name, 'Hokianga whakapau karakia' (Hokianga where the karakia became exhausted).[67]

Over time, Nukutawhiti and his people explored the harbour's southern shores and river valleys, gradually moving inland as far as Lake Ōmāpere and establishing a settlement and gardens near the current site of Ngāwhā pā, while also maintaining settlements at the harbour entrance and shores. Ruanui and his people meanwhile explored the northern shores and river valleys, gradually moving east to Whangaroa and north to Kaitāia.[68] Nukutawhiti's daughter Moerewarewa eloped with Ruanui's son on the *Māmari*, heading south towards Kaipara before moving inland to the lands south of Kaikohe.[69]

According to Dr Hohepa, the descendants of Nukutawhiti and Ruanui were the only occupants of Hokianga for about four generations, during which time there was peace and extensive intermarriage between the two groups.[70] The harbour and its rivers facilitated ongoing exploration and contact.[71] Over time, and before others arrived, they also spread out to occupy Whangaroa, Whāngārei, and Kaipara. At some point, according to Dr Hohepa, Nukutawhiti's people took the name 'Ngāpuhi', after the taniwha Puhi-moana-ariki who had guided them to Aotearoa (see map 3.1, 'Te Whare Tapu o Ngāpuhi').[72]

Ārai-te-uru and Niua, the taniwha left by Kupe to guard the entrance to Hokianga Harbour. Ārai-te-uru protects the rocky southern headland and Niua protects the northern headland.

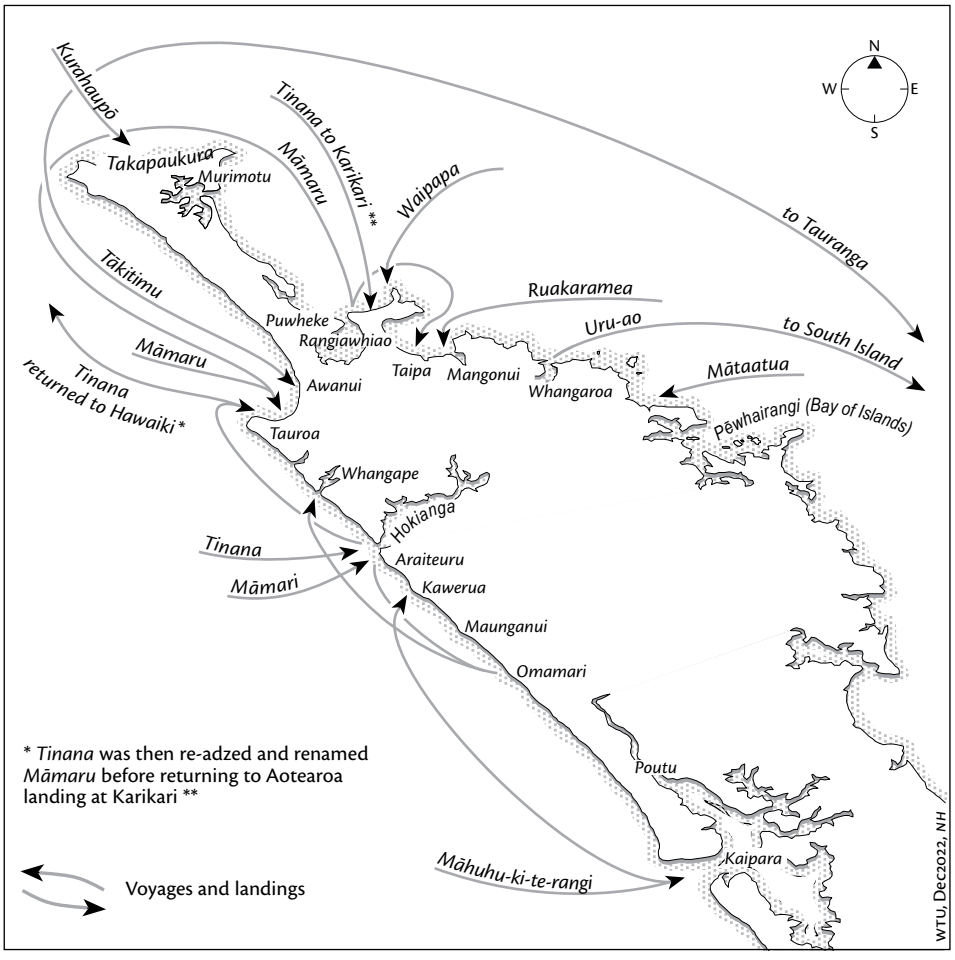
Ruanui's people adopted the name 'Ngāti Te Aewa', from Puhi-te-aewa, and later became Ngāti Ruanui. In turn, sections of Ngāti Ruanui eventually became part of other far north tribal groups including Te Rarawa, Te Aupōuri, and Ngāti Kahu.[73]

Whereas most people of this district recall Nukutawhiti and Ruanui as founding ancestors, in Mahurangi and Hauraki traditions that honour is usually said to belong to Toi-te-huatahi (Toi the only child). In some traditions, Toi was indigenous to Aotearoa, while in others he travelled here from Hawaiki in search of his lost grandson, Whātonga. Traditions also differ over whether Toi arrived before or after Kupe, though Dr Hohepa stated that he arrived after Kupe but before Nukutawhiti and Ruanui.[74]

One tradition is that Toi travelled on the waka *Te Paepae ki Rarotonga*, making first landfall at Hauturu (Little Barrier Island), which was then occupied by Patupaiarehe. According to Hohepa, he also landed at Tāmaki-makaurau and Whitianga, among other places, before settling at Whakatāne. Toi's people, Te Tini o Toi, are said to have occupied the Bay of Plenty and also to have spread throughout the Hauraki and Tāmaki districts, where Toi is recalled in several place names including Te Moana-nui-a-Toi (the Hauraki Gulf). Over time, his descendants intermarried with other peoples and moved north into this district.[75]

3.2.4 Waka traditions

According to Ngāpuhi tradition, the descendants of Nukutawhiti, Ruanui, and Toi were followed by several other waves of settlers – all of whom are integral to this district's story. In the following sections, we set out some



Map 3.2: Waka landings and voyages.

of the evidence we received from claimants regarding these traditions.

(1) *Uru-ao*

One early arrival was *Uru-ao*, which is of uncertain origin,[76] and is said to have stopped at various locations in the north including Waitangi, Tākou, Whangaroa, Mitimiti, Whāngāpē, and Ahipara. There, its people – known as Waitaha – are said to have intermarried with descendants of Ruanui. Te Waiariki is a prominent tupuna from this lineage, and her descendants are said to have occupied much of Hokianga, as well as parts of Whangaroa. Some Hokianga and Whāngārei hapū continue to carry her name.[77]

All other waka are said to have originated from Hawaiki, which according to Dr Hohepa mainly refers to locations in eastern Polynesia.[78] *Kurahaupō*, *Tākitimu*, *Tinana*, *Māmaru*, *Waipapa*, and *Ruakaramea* all made landfall in the far north, while *Māhuhu-ki-te-rangi* landed at Kaipara, and *Mātaatua* stopped at Tākou Bay on the east coast before travelling on to the Bay of Plenty.[79] Through generations of migration, intermarriage, and conflict, the

peoples of these waka intermingled with earlier arrivals and made settlements throughout this district. *Moekākara* made final landfall at Manukau Harbour,[80] and *Tainui* and *Te Arawa* first landed in the Hauraki and Tāmaki areas before continuing on to other destinations.[81]

(2) *Kurahaupō and Tākitimu*

In Muriwhenua traditions, *Kurahaupō* made landfall at Takapaukura in the far north. Its crew settled the surrounding lands, where they encountered Tūrehu or other tāngata whenua. They intermarried, creating a new people initially known as Ngāti Kaha (or Ngāti Kaharoa).[82] At about the same time as *Kurahaupō* arrived, *Tākitimu* made landfall near Awanui on the west coast of the Muriwhenua district. Its commander, Tamatea-mai-i-tawhiti,[83] married Te Kura of Ngāi Tuputupuwhenua, and their son Rongokako then married Muriwhenua of *Kurahaupō*. All iwi of this district (and indeed many other iwi throughout Aotearoa) are said to descend from them, and in particular from their son Tamatea-pōkai-whenua. His hapū, Ngāi Tamatea, had influence throughout the far north and, through later migrations and intermarriages, came to occupy Hokianga, Te Roroa, Kaipara, and Taiāmai territories, becoming important ancestors in Ngāti Whātua and Ngāpuhi history.[84]

(3) *Tinana and Māmaru*

Tinana landed a little further south in Ahipara Bay. Its people settled there and began to explore further south towards Hokianga, where they encountered and intermarried with Ngāti Ruanui. Following many further migrations and battles from the 1600s through to the 1800s, and further intermarriages with sections of Ngāpuhi[85] and other hapū, they eventually became known as Te Rarawa, who continue to occupy the west coast north of Hokianga.[86]

After some time in Aotearoa, Tūmoana, commander of the *Tinana*, returned to Hawaiki, leaving his children behind.[87] In Hawaiki, *Tinana* was re-adzed and renamed *Māmaru*. It then returned to Aotearoa, landing on the Karikari Peninsula. According to one tradition, its captain, Parata, married Tūmoana's daughter Kahutianui, and in turn their descendants intermarried with those of Ngāi Tamatea (later Ngāti Kahu), thus uniting the *Māmaru*, *Kurahaupō*, and *Tākitimu* lines. Descendants of this marriage occupied much of the east coast from Rangaunu south to Whangaroa and beyond.[88] We received evidence that, while Ngāti Kahu take their name from Kahutianui, Ngāti Kahu ki Whangaroa take their name from Kahutianui's mother Kahukura-āriki.[89] Another Ngāi Tamatea tradition records their connection with other tribes through the marriage of Kahukura-āriki, the son of Kahungunu and Hinetapu in this version, to Te Mamangi. Kahungunu was the son of Tamatea-uruhaea and the grandson of Muriwhenua, daughter of Pohurihanga of the *Kurahaupō* waka. Through both the male and female descent lines these two traditions converge, and together established the name Kahu for the tribe.[90] As well as Ngāti Kahu, hapū descending from intermarriage between peoples of these northern waka included Ngāti Kurī, Ngāi Tākoto, and Te Paatu.[91] The waka *Waipapa* and *Ruakaramea* appear to have been later arrivals in the far north. From them emerged Ngāti Tara, now generally known as a hapū of Ngāti Kahu occupying lands as far south as Kaingapipiwai.[92]

(4) *Mātaatua*

Mātaatua is said to have travelled at about the same time as *Kurahaupō*, their two crews closely related.[93] According to northern traditions, *Mātaatua* landed at Tākou, where its crew remained for some time before continuing south. It then made landfall in the Bay of Plenty where many of its people remained, marrying into groups descended from Toi.[94] One of the groups to emerge from these intermarriages was the iwi Ngāti Awa.[95] Over time, their descendants migrated north into Tāmaki and southern Kaipara.[96]

Meanwhile, some early Ngāti Awa people returned to Tākou and settled there under the leadership of Puhi-moana-ariki. Their descendants spread out to occupy the Bay of Islands, Waimate, Whangaroa (where they intermarried with Ngāti Kahu), and northern Hokianga as far as Kaitāia and Ahipara. As noted in section 3.1, in some traditions Ngāpuhi is named for this Puhi-moana-ariki,

The late Dr Kihi Ngatai at the *Mātaatua* waka memorial during a Tribunal visit in June 2015. The memorial marks the resting place of the waka at the Tākou River (north of Whangaroa) and was erected in memory of the ariki of the waka, Toroa, and his brother, Puhi-Moana-Ariki, and to commemorate the hikoi of their uri to Tākou in 1986.

whose descendants intermarried with those of Nukutawhiti.[97] Ngāti Miru and Te Wahineiti, who came to occupy lands from Whangaroa to the Bay of Islands, were also of *Mātaatua*,[98] while Ngāti Torehina of Whangaroa emerged from intermarriage between Ngāti Awa and other groups, notably Ngāi Tahu.[99]

(5) *Māhuhu-ki-te-rangi*

Māhuhu-ki-te-rangi landed first at Tākou. Finding that area occupied by tāngata whenua, the crew continued to explore the east coast, leaving people behind at several places. One who remained behind was Manaia, who is said to have travelled 'throughout Aotearoa', traversing the east and west coasts of Te Ika a Māui and crossing to Te Waipounamu before returning to the north, where his waka foundered near Whangaroa. He eventually settled at the southern entrance to the Bay of Islands. His descendants came to occupy coastal lands as far as Whāngārei, before intermarrying with southern peoples and moving into Mahurangi and various offshore islands. Manaia's people were initially known as Ngāti Manaia, and much later as Ngātiwai.[100] Ngāre Raumati was founded by the ancestor Huruhuru and occupied the south-eastern Bay of Islands from about 1600. One claimant said Ngāre Raumati had Bay of Plenty origins and had travelled north with Puhi-moana-ariki; other sources associated them with Ngāti Manaia. Huruhuru's major pā was at Rākaumangamanga.[101]

After exploring the east coast, *Māhuhu-ki-te-rangi* then rounded Te Reinga and travelled down the west coast, stopping at Kaipara. According to Te Roroa traditions, the lands between there and Hokianga were already settled by descendants of Tuputupuwhenua, with whom the people of *Māhuhu-ki-te-rangi* intermarried. In turn, their descendants intermarried with sections of Nukutawhiti's people,[102] and with Ngāi Tamatea, Ngāti Kahu, Ngāti Awa, and related peoples who were migrating south to escape conflict in their Muriwhenua homelands. These migrations and marriages contributed to the foundation of Te Roroa and Ngāti Whātua peoples.[103]

(6) *Moekākara*

Moekākara (or *Tu-nui-a-rangi* in some traditions) landed at Te Ārai just south of Mangawhai. Finding the district already occupied, the crew remained only for a short time before moving on to a new settlement, Ōtāhuhu, at the Manukau Harbour. In the *Moekākara* tradition, Ōtāhuhu was named after the waka's captain Tāhuhunuiorangi. After Tāhuhunuiorangi's death, some of his Ngāi Tāhuhu people returned to Mangawhai before expanding north and west. Ngāi Tāhuhu and associated peoples Ngāti Rangi and Ngāi Tū are said to have occupied lands encompassing Whāngārei, northern Kaipara, Mangakāhia, Taiāmai, and southern areas of Hokianga and the Bay of Islands.[104] Some claimants said Ngāi Tāhuhu reached as far north as

Ahipara.[105] Te Roroa traditions also refer to Ngāti Rangi occupying southern Hokianga and Taiāmai at about the same time as Ngāi Tāhuhu, but say this hapū had Ngāi Tamatea origins.[106] Over time, Ngāi Tāhuhu, Ngāti Rangi, and Ngāi Tū intermarried with other peoples, including Nukutawhiti's descendants. They are recalled as important founding ancestors for Ngāpuhi and for many Ngāpuhi hapū.[107]

(7) *Tainui and Te Arawa*

While the waka mentioned earlier all made first landfall in the north, *Tainui* and *Te Arawa* landed in Hauraki and Tāmaki before their people migrated into Mahurangi and Kaipara. Both waka arrived in the Hauraki Gulf at about the same time, about eight generations after Toi. *Te Arawa*'s captain Tamatekapua gave new names to several of the gulf's islands and other features, while *Tainui* explored Tāmaki and Waikato. Several of their crew remained in Tāmaki, intermarrying with earlier tāngata whenua, and with descendants of Toi and others. Ngāi Tai (sometimes known as Ngāti Tai)[108] emerged from these and other intermarriages. They and other closely related hapū came to occupy territories in Hauraki, Tāmaki, and Mahurangi, including several of the islands in the Hauraki Gulf.[109] Among the early *Tainui* ancestors was Taihaua, whose descendant Taimanawaiti is said to have exercised mana over the territories north of a line from Maungawhau (Mount Eden) and the mouth of the Tāmaki River to Rangitoto and Tiritiri Matangi. In turn, one of his sons inherited mana over his Tāmaki lands, while another, Taihua, inherited the territories north of the Waitematā.[110] Ngāti Taimanawaiti are now commonly regarded as a hapū of Ngāi Tai. However, the claimant Jasmine Cotter-Williams told us they were an independent iwi with distinct whakapapa.[111]

Having landed at Hauraki and Tāmaki, *Tainui* and *Te Arawa* continued on to their respective Waikato and Bay of Plenty homelands.[112] In later generations, peoples of both waka would migrate north into Hauraki and Tāmaki, and in turn into Kaipara and Mahurangi. One such group was Ngāoho, who later divided into various groups including Ngāriki, Ngāiwi, and Te Waiōhua, the latter emerging from intermarriage with Ngāti Awa.[113] They were followed by the *Tainui* tupuna Maki, whose people migrated north from Kāwhia, occupying Tāmaki (which is named for him), southern Kaipara, and the Mahurangi coast and islands, alternately fighting and intermarrying with Ngāoho, with Ngāti Taihaua and Ngāti Taimanawaiti, and with Te Roroa and Ngāti Manaia peoples who were migrating south.[114] According to some sources, Maki's people intermarried with Ngāti Awa at Tāmaki before moving north.[115]

In turn, other *Tainui* groups – Ngāti Maru and Ngāti Paoa – occupied Hauraki and Tāmaki during the 1700s, becoming involved in a series of conflicts against Maki's people and Ngātiwai along the Mahurangi coast. Another *Tainui* group, Te Uri o Pou, was pushed out of Hauraki at this time, moving north and intermarrying with Ngāpuhi of upper Hokianga, where they became known as Ngāti Pou.[116]

All of these waka and iwi are integral to this district's story. Through multiple generations of contact, conflict, and intermarriage their many lines have interwoven and merged, ultimately forming the great tribal confederations that emerged in the 1800s – Te Aupōuri, Te Rarawa, Ngāti Kahu, Ngāpuhi, Te Roroa, Ngāti Whātua, and the Marutūāhu confederation of Hauraki. All but Marutūāhu are sometimes identified as part of an even larger coalition, Ngāpuhi-nui-tonu, which is said to occupy all lands from Tāmaki to Te Reinga.[117]

3.2.5 The lens of whanaungatanga

As discussed in our stage 1 report, early explorers and settlers brought from Hawaiki a way of understanding the world that was based on whanaungatanga (kinship) and whakapapa (genealogical lines of descent).

(1) *Communion between spiritual and physical worlds*

In this conception of the world, all rights and obligations, and all power and authority, are handed down from Io Matua Te Kore to atua (ancestor-gods), and to their descendants in the natural and human worlds.[118] Throughout life there was constant dialogue between the ancestors and the spiritual world.[119]

As ancestors landed their waka, founded settlements, laid claim to resources, or engaged in any other significant event, they uttered karakia appealing to the gods for their support.[120] Founding tūpuna such as Kupe, Nukutawhiti, Ruanui, and Tāhuhunuiorangi all built altars where these ceremonies could be completed;[121] and others established wānanga where spiritual knowledge and its practical uses could be handed down to new generations.[122] Taniwha (spiritual guardians) guided waka journeys, created landforms, and stood guard over lands and waterways.[123]

As Hone Sadler of Ngāti Moerewa explained, wherever early Māori went, 'i hīkoi tahi me ō rātou atua' ('they walked with their gods'), and therefore no activity occurred without karakia:

> Kua pēra katoa ki te taiao, ō tātou tūpuna i a rātou e hīkoi ana, i hīkoi tonu, i karakia tonu, karakia tahi, i hīkoi tahi me ō rātou atua. I hīkoi-tahi ai rātou me ō rātou atua ki tō rātou taiao. Hei ārahia atu nei i ā rātou i roto i wā rātou mahi katoa, kāhore he mahi kia timata, kia karakia anō, mehemea he tua rakau, mehemea he hī ika, mehemea he hanga whare, he iwi whakapono, he iwi marama ki tō rātou ao, e taea e rātou katoa i ngā karakia te tāhuri atu i ngā tohu o te ao, kia rite ki tā rātou e hiahia ana.
>
> Our ancestors when they walked the earth they prayed and they walked with their gods, they walked with their gods all through their world. They led them everywhere in all the things they did. There wasn't a single thing they did without karakia at first. Whether they went to fell a tree, when they went fishing, whether they were erecting a house, they were people of faith and belief. People who understood their world, they could achieve through their karakia, to read the signs of the world, to accomplish what they wanted.[124]

He spoke of atua as kaitiaki – caretakers or guardians – over the physical universe. Life was lived in service of them, and every action required their consent.[125] John Klaricich of Ngāti Korokoro told us that the physical and spiritual worlds could not be distinguished any more than 'raindrops are, when mixed with the waters of the earth'.[126]

(2) *Tapu*

Earlier we noted Rima Edwards' definition of tapu as 'spiritual purity'.[127] Yet tapu has practical as well as spiritual connotations. To be tapu is to be set aside for service to atua, and therefore to be excluded from all other purposes.[128] Hence, in his uruuruwhenua ritual at Hokianga, Kupe appealed to the atua to make the land tapu, setting it aside for his descendants.[129] Likewise, tapu could reserve one person for a position of leadership, and another for a position of spiritual authority; it could demand that plants or wildlife were cared for and were only harvested or caught at certain times; and it could seal off locations associated with death, ill health, or ill fortune.[130] To comply with the requirements of tapu and therefore act as atua wished was to bring good fortune, whereas to violate the law of tapu was to invite spiritual misfortune manifesting in the forms of illness, injury, or even death. In this way, tapu acted as a form of social control that was based on spiritual authority and did not generally require physical enforcement.[131] As Mr Edwards explained to us in a stage 1 hearing:

> Ko te tapu he wairua horomata horekau nei he kino kei roto. Engari ki te takahia tera tapu ko nga hua ka puta he kino katoa. I konei ano ka puta te mana o Whiro. Ko te tapu tetahi mea e mataku ai te tangata Maori na runga i tana mohio ki te takahia e ia te tapu ka pa mai ki runga kia ia ki tana whanau, hapu, iwi ranei tetahi raruraru nui.
>
> Sacredness is an element that gains the respect of the spirit of man. Tapu is a state of spiritual purity that contains no evil. But if that sacredness is trampled on the outcomes are all bad. It is here that the mana of Whiro becomes active. Desecrating that which is made sacred brings enormous fear to the Maori person because he accepts that if he desecrates that which is sacred he invites great tragedy for himself his whanau, hapu and iwi.[132]

There is great respect also for Hine-nui-te-pō, who holds the enormously sacred power over death. Because she defeated Mauitikitiki in his quest for eternal life, 'a

great sacredness was placed upon the female element which places her mana above that of the male element in this respect'.[133]

(3) *Mana*

Tapu was inextricably linked with mana, which Mr Edwards defined as 'supreme power'. Mana can be understood as the authority, handed down by atua, to take action in this world on their behalf. Mana was first imbued by Io Matua Te Kore into Ranginui and Papatūānuku and then into their children such as Tāne-mahuta and Tangaroa, and into their many descendants – trees, birds, and fish – and finally handed down to mankind. Mr Edwards explained:

> Koia tenei te mana tukuiho e korerotia nei e te Tangata ara iti noaiho o tenei mana i tukua maie ia ki te tangata ko te nuinga o te kaha o tona mana i puritia e ia kia aia ano ara kia Rangi me Papa me a raua tamariki a Tane ma.
>
> This is the supreme power that is talked about by man and only a small part of Io's mana he handed down to mankind, the greater part of his powers he retained to himself, to Rangi and Papa, and to their children Tane and the others.[134]

According to the Ngāpuhi theologian Māori Marsden, mana encompasses permission from atua to act for a particular purpose, and the power and authority to do so.[135] Among humans, that power and authority could be inherited through lines of descent, and, in particular, chiefly lines or those associated with spiritual authority. This was mana tūpuna. Mana over land (mana whenua) could be inherited through ancestral associations with particular places or resources, exercised through occupation and use (see section 3.2.6(3)), and through the return of placenta and bones to those lands. Similarly, mana over other resources such as oceans and waterways (mana moana) could be inherited and maintained through ongoing use. Mana could also be acquired through direct communion with the gods (mana atua), as practised by tohunga; and through actions that served the kin group (mana tangata), such as the exercise of great skill in warfare, diplomacy, cultivation, or food gathering, or great care and generosity in the care of others and the natural world.[136] Frances Goulton of Whangaroa put it this way, mana whenua could be seen as corresponding with the economic sphere, mana tangata with the political, and mana atua with the underlying 'values and principles that guide our way of life'.[137]

(4) *Tikanga*

A fundamental requirement of mana was that it must be exercised in ways that accorded with the gods' wishes and were therefore tika (right or correct). To act in a manner that was not tika would cause a loss of mana. In a world viewed through the lens of kinship, what was right or tika could be measured by its effect on relationships, including relationships among people, relationships with atua and ancestors, and relationships between people and elements of the natural and spiritual worlds.[138]

One requirement of this kinship-based system was the principle of utu (reciprocity), under which all relationships must be maintained in balance. Just as there was balance between Ranginui and Papatūānuku, between Tāne-mahuta and Tangaroa, and between Nukutawhiti and Ruanui, so balance must be maintained in all relationships. Yet such balance did not necessarily mean an absence of conflict: just as the atua fought, so, too, might people.[139] In practical terms, utu could involve punishment and retribution for wrongdoing, but equally it underpinned concepts such as manaakitanga (hospitality and caring for others) and kaitiakitanga (stewardship of the natural world).[140] Nuki Aldridge explained utu as 'an adjustment mechanism'. It was not about revenge but about 'effecting a law and restoring balance', or seeking justice in the same manner as a father would were his son wronged.[141]

Guidance on how to manage relationships and how to maintain balance could be found in the actions of atua and other ancestors. Stories of atua defined relationships among mankind and elements of the natural world – forests, oceans, rivers, flora, and fauna – providing

information on which actions were acceptable and which violated the fundamental balance among all things. Similarly, stories of ancestors told people what had happened in the past and could therefore be replicated in accordance with the wishes of atua. Just as Kupe and others left their footprints on the land, their descendants could occupy, live, travel, and harvest food in those locations.[142]

Sacred and specialised knowledge about the nature of ancestors' deeds has been passed down orally over generations in various forms, including place names, whakapapa (genealogies), pepeha (sayings), whakataukī (proverbs), tauparapara (incantations relating to whakapapa), waiata (song), mōteatea (song-poetry), whakairo (carving), rāranga (weaving), and tā moko (tattooing).[143] Mr Klaricich, for example, spoke of Nukutawhiti's hautū (waka-paddling song) which appealed for *Ngātokimatawhaorua* to be delivered from Tangaroa's rising waves to the safety of Papatūānuku and Tāne-mahuta, thereby giving 'insight into their beliefs in the power of their karakia'. People of the harbour mouth could still hear their ancestor singing in the 'incessant voice of the surf and the ocean'.[144] Similarly, Erimana Taniora of Ngāti Uru told us, tā moko worn by his ancestors Te Puhi, Ngāhuruhuru, and Te Ara served as a 'record of their whakapapa and standing in their hapū'.[145] According to Te Warihi Hetaraka of Ngātiwai, symbols used in whakairo explained tribal history, identity, and connections to atua, thereby serving as expressions of mana. 'Whakairo,' he said, 'was our written language'.[146]

The principle of whanaungatanga, together with the imperatives of tapu, mana, and utu, and the knowledge handed down from ancestors, forms the basis of a system of law and authority that was imported to Aotearoa by early Māori inhabitants and then adapted to the new land.[147] It was a system based on broad principles which could then be applied flexibly depending on circumstances. Mr Aldridge defined tikanga as 'guiding commandments', which then informed kaupapa ('the body of principles') and ritenga (the practical rules that were required to enforce these commandments and principles).[148] While matters such as land tenure, social and political structures, and religious beliefs could change, the underlying tikanga endured. 'Its authority is in the present,' he said. '[B]esides its moral and ancestral authority, it adds rationale, authority and control which is timeless. It goes deeper than custom or practice to mean the true, honest and proper cultural ways.'[149]

Although the law of tapu did not generally require enforcement action, the law of utu typically did. Where offences against mana had occurred, utu required the aggrieved party and their kin to seek some form of redress from the transgressors and their kin. Depending on the offence and the relationship between the parties, this might take the form of koha, exchange of taonga,[150] the offer of a chiefly marriage,[151] or be made in goods, resources, or land.[152] Where life had been taken, the death of a rangatira of equivalent mana was typically required.[153] Among close kin, the most common means of dispute resolution was the taua muru (plundering party), through which the offended party restored its mana by visiting the offenders and taking or destroying property. Often, taua muru ended in a hākari (feast). If a taua muru was resisted, force might be used to extract utu. But for the most part, taua muru was 'a ubiquitous Maori system for peaceful dispute resolution', which was commonly used in the Bay of Islands and Hokianga as well as in other parts of the country.[154]

3.2.6 Political structures and leadership

While the principles of whanaungatanga and the values of mana, tapu, and utu remained constant from the time of the early explorers from Hawaiki times down to the present, much else changed, including environmental and economic relationships, social and political structures, and leadership.

(1) *Social organisation among early inhabitants*

In general, the earliest explorers exercised and acquired mana by serving the interests of their kin groups; by leading them from Hawaiki in times of conflict and scarcity, bringing them to a new land, and establishing spiritual authority to occupy those lands and use their resources. The captains and crews of these early waka required

immense courage and were skilful seafarers, navigators, and explorers, able to 'read the waves' and calculate direction of travel from signs such as marine and bird life, and ocean colour and currents.[155] Typically, either they or members of their crew were tohunga, who possessed the spiritual authority to commune with atua and seek guidance and support for their ventures. Among their crews were people with expertise at fishing, gardening, and food gathering, all of which were vital for survival in the new land.[156]

After landfall, these new settlers faced the task of surviving and adapting to a different environment. Just the north of Aotearoa by itself was vaster than any Hawaikian homeland.[157] Though abundant in bird and sea life, the environment was also challenging – densely forested and too cool for food crops such as kūmara and taro to grow year-round as they had in their eastern Pacific homelands. Though we do not have detailed evidence from this district, these early migrants are believed to have lived in extended family groups and to have led transient lifestyles, occupying semi-permanent coastal sites while also undertaking extended seasonal journeys inland to harvest birds, berries, fern, and other foods.[158]

(2) *The emergence of hapū*

In the first few centuries after settlement there is very little record of significant conflict occurring between the various groups. On the contrary, neighbours from different waka generally lived peacefully alongside one another and frequently intermarried, creating new groups. Over time, a pattern of small, relatively mobile whānau groups gave way to one of larger groups comprising several extended families, who worked together to occupy and defend land on a permanent basis, and to control and make use of economic resources. These groups, known as hapū, dominated the social, political, and economic landscape from the late 1500s right through into colonial times. Population growth was one factor in the transition. Another was the decline of large fauna (such as moa and fur seals) which increased dependence on cultivated foods, fish, and shellfish, so creating a requirement for year-round control of gardens and fishing grounds.[159]

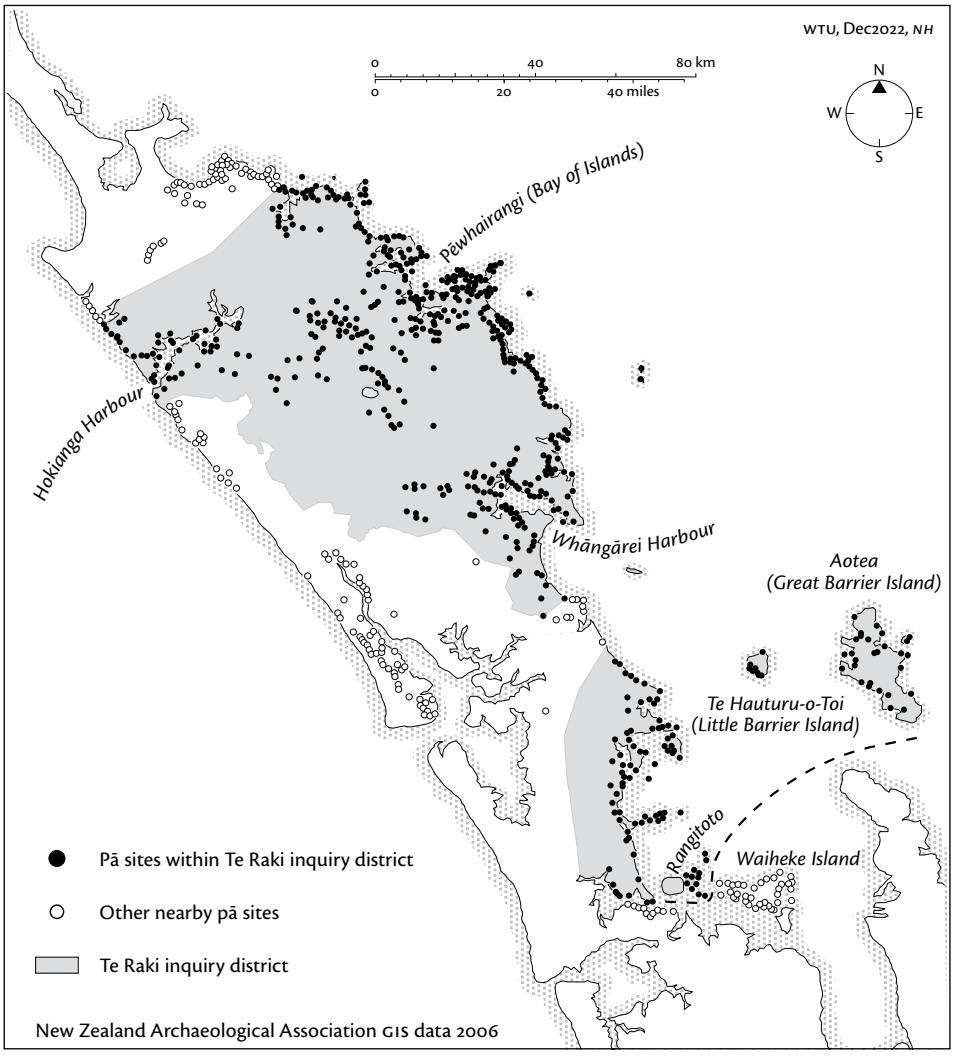
To a significant degree, even after the emergence of hapū, routine daily economic activities (such as small-scale gathering and cultivation) continued to be undertaken by whānau. Hapū formed to manage larger-scale activities such as shark-fishing expeditions, shared cultivations, and territorial defence. They commonly formed among groups who shared recent ancestors and common strategic interests, taking their names from those ancestors or from events that had led to their formation. New hapū typically emerged every few generations, and realigned as intermarriages occurred or interests changed.[160]

(3) *Territorial and resource interests*

Because of their economic and defensive roles, hapū held authority over land and other significant resources, and also over significant assets such as large waka and pā (defensive fortifications) which were built with increasing regularity from about 1600 onwards.[161] Mr Edwards told us:

> [K]o te Hapu te kaipupuri i te mana kaitiaki o nga whenua me era atu taonga. Ko nga Hapu ano hoki te mana whakahaere i nga tikanga me nga mahi. Ko te whanau kei roto i te Hapu. Ka whanau mai he uri horekau i whanau mai ki roto i te whanau engari i whanau mai ki roto ki te Hapu.
>
> [T]he Hapu held the mantle of guardianship of the land and other possessions. It was also the Hapu that held the mantle of governance of the customs and things to be done. The whanau was within the Hapu. When a child is born that child was not born into the whanau but was born into the Hapu.[162]

Claimants spoke of the intimate connections between people and land. Because land possessed the mana of Papatūānuku and of other atua, it was not a possession to be owned but an ancestor to whom each individual and hapū owed obligations. '[N]oku tenei whenua' (I belong to this land), Mr Aldridge told us.[163] Expert witness Dr Manuka Henare said that 'through whakapapa, humanity and the whenua, the land and natural world are one, such is the intensity of this most fundamental relationship.'[164]



Map 3.3: Pā sites in Te Raki.

Whakapapa 'connects us to the pito [umbilical cord] and the bones of our tupuna which have been buried in the whenua before us', and therefore 'connects us to the mana our tupuna had over the rohe during their lives', said Tapiki Korewha of Ngāti Hau-Ngāti Kaharau.[165]

In this context, claimants emphasised the mana of women (mana wāhine) with respect to land, hapū well-being, and whakapapa. '[T]he whenua is a woman', we were told. 'A mother. Papatuanuku is a woman.'[166] We were reminded that the word 'whenua' means 'land' and 'placenta', both of which nurture and provide sustenance; each child is born from one to the other, and so becomes tangata whenua.[167] '[K]o au ko Papatūānuku, ko Papatūānuku ko au,' Frances Goulton told us, 'the land is me and I am the land through Papatūānuku.'[168] For these reasons, we were told, mana whenua was particularly

Claimant witness Professor Manuka Henare presenting on the oral and traditional history report for Te Waimate Taiāmai during hearing week four at Turner Events Centre, Kerikeri, in September 2013.

associated with women, and was commonly handed down by matrilineal descent.[169] In turn, women bore obligations to nurture and care for the land,[170] and also to 'maintain the whare tapu o te tangata . . . our whakapapa.'[171] Women were often therefore key decision makers with respect to matters such as land rights and obligations, hapū alliances and intermarriage, birth and healthcare, cultivation, and restoration of relationships after warfare.[172]

Although hapū had ancestral relationships with (and kaitiaki obligations to) whenua, their rights depended on ongoing occupation and use,[173] and were typically not exclusive. Claimants explained how the earliest settlers, with their nomadic lifestyles, held resources in common and shared them freely.[174] As hapū emerged and developed permanent associations with pā, kāinga, cultivations, and other resources, they continued to acknowledge intersecting and overlapping rights.[175] Neighbouring hapū might, for example, occupy distinct territories while sharing fishing grounds and other resources, as well as acknowledging each other's rights of access and seasonal occupation.[176]

Hapū territories therefore cannot be understood as lines on a map; rather they were zones of influence that intersected and overlapped, and had boundaries that were precisely defined but also 'multi-levelled and fluid'.[177] These zones were defined by reference to the deeds of ancestors, the places associated with them (such as settlements, cultivations, fishing grounds, fortifications, and urupā (burial grounds)), and the placenames and stories they left.[178] Rights were subject to ongoing negotiation, and could be transferred by agreement (such as gifting of land in return for military or other assistance) or by raupatu (conquest followed by occupation).[179] Where that occurred, the victors generally married into the hapū of the defeated peoples, as a means of securing and sustaining peace. As was explained by expert witnesses Doctors Manuka Henare, Hazel Petrie, and Adrienne Puckey, 'the underlying rationale was the creation of kinship bonds, especially through the birth of children with ties to each of the contenders.'[180]

(4) *Rangatira and rangatiratanga*

As we outlined in our stage 1 report, the emergence of hapū – and the associated competition over land and resources – required new leadership skills. Rangatira (literally, 'weavers of people') were responsible for coordinating and guiding hapū activity. Dr Bruce Gregory said they were kaitiaki (guardians) for their people.[181] Patu Hohepa said that 'rangatira' could best be translated as 'unifier', and certainly not as 'chief'.[182] They were required to be skilled warriors and experts at military strategy but equally to be diplomats, capable of negotiating peace agreements and securing alliances – either temporary or permanent – by means such as intermarriage, gift giving, their oratorical skills, and offers of mutual protection. They were also

economic leaders, managing and coordinating large-scale activities such as pā and waka construction, major cultivations, and long-distance fishing expeditions. And they were mediators and guides for their people, securing decisions about important matters by consensus among whānau leaders.[183]

Rangatira were typically of senior descent, but they acquired their positions through effectiveness at serving their people and maintained their status only if the people continued to give their support. Men and women played complementary roles, which varied from place to place and people to people, and were subject to their own tikanga.[184] When hapū were determining who would lead, first-born children often gave way to younger siblings who excelled in arts such as warfare, peacemaking, alliance-building, and management of cultivations and other food sources, and could therefore best serve their people.[185] Often, roles were specialised, with one leader fulfilling diplomatic and military functions while others looked after spiritual or economic affairs or both.[186] The tohunga whakairo (master carver) Te Wihari Hetaraka of Ngātiwai told us of the vital role played by tohunga interpreting the gods' intentions and thereby providing guidance for their people:

> In conjunction with the Rangatira, Tohunga became the protector and sole authority of the use of knowledge and from this knowledge created laws and rules. They were responsible for apportioning this knowledge according to the needs and capacity of the peoples of that time. Rangatira were responsible for enforcing these laws.[187]

Nuki Aldridge told us that tohunga – trained in whare wānanga that were established in Nukutawhiti's time[188] – typically remained 'behind the scenes', and that Europeans had not understood their importance as leaders.[189]

For those exercising a leadership role, the mana belonged not to them but to their hapū and the atua from whom they descended. A rangatira's fundamental obligation was to protect his or her people's shared mana.[190] As Patu Hohepa of Hokianga told us during our stage 1 hearings, 'ko te hapū te rangatira o ngā rangatira' ('it's the hapū who are the chief of the chiefs').[191] In Ngāpuhi traditions, many leaders are seen as exemplars of the qualities of rangatira. Principal among them is Rāhiri – the shining day – who first united the various Hokianga descendants of Nukutawhiti and secured their lands.

3.2.7 Rāhiri's people

Stage 1 of our inquiry introduced Rāhiri, his life and significance, and we return here to this important history to assist readers unfamiliar with that report.[192] Rāhiri was born sometime in the 1600s. Tauramoko, his father, a seventh-generation descendant of Nukutawhiti, lived in southern Hokianga. His mother was Hau-angiangi, the daughter of Puhi-moana-ariki of Ngāti Awa. Rāhiri was born and grew up at Whiria Pā in Pākanae, southern Hokianga,[193] and took his name from an older Ngāti Awa relative.[194]

His lifetime spanned a period of increasing turbulence, in this district and elsewhere, centred on control of land for cultivation. Puhi-moana-ariki had left the Bay of Plenty after a dispute about kūmara gardens,[195] and the *Tainui* leader Maki had left Kāwhia about the same time for a similar reason.[196] Not long afterwards, a series of conflicts occurred in the far north, sparking a great migration by sections of Ngāti Awa, Ngāti Miru, Ngā Rīriki, Ngāi Tamatea, and others into southern Hokianga and Kaipara, where they fought with Ngāpuhi and other earlier settlers.[197] These conflicts seem to have motivated a series of strategic intermarriages between Rāhiri's family and neighbouring iwi. Rāhiri's brother Māui married into Ngāi Tamatea, who by then were occupying territories in southern Hokianga and Taiāmai.[198] His older brother Tangaroa-whakamanamana also married strategically and is recalled as a founding ancestor for Ngāti Whātua and for many Whangaroa hapū.[199]

Rāhiri, too, married outside Ngāpuhi into powerful neighbouring iwi. Tribal traditions refer to him undertaking a long journey from his Pākanae home into Kaikohe and then down the Mangakāhia Valley, where he met his first wife Ahuaiti. Several places are named for this journey including Te Iringa, Tautoro, and the maunga Te Tārai o Rāhiri, where he groomed himself before beginning

Whiria maunga stands at the centre of te wharetapu o Ngāpuhi. Whiria was the site of Rāhiri's pā, where he was born and grew up. The maunga was named for the plaited rope on the great kite called Tūhoronuku that Rāhiri released to determine the respective territories of his sons.

his courtship.[200] Ahuaiti was of Ngāti Manaia[201] and Ngāi Tāhuhu;[202] the latter were also at war with Ngāti Awa and Ngāi Tamatea.[203] Her marriage to Rāhiri did not last and she returned, pregnant, to her southern Mangakāhia home.[204] She named her son Uenuku-kūare – Uenuku for the rainbow who was her 'only friend' as she gave birth alone, and kūare (ignorant) because in one tradition 'there was no one to perform the correct ceremonial dedication rituals' to mark his birth,[205] or, in another, because 'he had no father to teach him karakia and traditional lore'.[206] Rāhiri then married Ahuaiti's cousin Whakaruru, who is said to have had Ngāti Awa heritage.[207] They, too, had a son, named Kaharau, who grew up with his father at Pākanae. Rāhiri married a third time, to Whakaruru's sister Moetonga.[208]

While Rāhiri's marriages unified many of this district's tribes, his military prowess was also important. With his cousins Te Kākā and Tōmuri, and his son Kaharau, Rāhiri

Hokianga and Taumārere – the Springs of Ngāpuhi

Ka mimiti te puna i Hokianga
Ka totō te puna i Taumārere
Ka mimiti te puna i Taumārere
Ka totō te puna i Hokianga

When the Hokianga spring runs dry
The Bay of Islands spring flows.
When the spring of the Bay of Islands runs dry
The spring of Hokianga flows[1]

This whakataukī, attributed to Rāhiri, has multiple meanings that have been detailed in our stage 1 report, but we summarise these again here.[2] It can refer to the ebb and flow of tidal waters in Hokianga and Bay of Islands, which are linked by underground waterways where taniwha travel from coast to coast.[3] Rāhiri is also said to have named the ancestral river Taumārere, which encompasses the network of waterways running from the slopes of Mōtatau maunga into the Bay of Islands, including the Ramarama and Tāikirau Streams.[4]

The whakataukī also refers to the division of lands between Rāhiri's sons, and the enduring bonds of kinship that required them to unite in times of trouble.[5] As Ngāti Hine kaumātua Erima Henare explained: 'When the people of Hokianga require assistance, the people of Taumārere help them. When the people of Taumārere require assistance, the people of Hokianga help them.' In this way, Ngāpuhi can be understood as distinct hapū and hapū groupings who unite in times of need.[6]

Ngāpuhi also express this relationship by referring to the west coast as Te Tai Tamatāne, and the east coast as Te Tai Tamawāhine – the male and female coasts – which were distinct but had 'fortunes [that] were intertwined'. According to Ngāti Hine claimants, 'The eastern coast was called Tai Tama Wahine because of its beautiful, tranquil harbours and bays. And although still beautiful, Tai Tama Tane was less forgiving than the east coast, more rugged and a thousand times more dangerous.'[7]

These sayings also refer to important ancestors from each coast – male warriors such as Kaharau and Tūpoto from the west coast, and wāhine rangatira such as Maikuku, Hineāmaru, and Rangiheketini from the east (see section 3.3.3(2)).[8]

engaged in a series of battles against Ngāti Awa. Whiria, his pā at Pākanae, became known as an impregnable fortress. Through these campaigns Rāhiri and his relatives defended the Ngāpuhi homelands in Hokianga and Kaikohe, and secured peace with Ngāti Awa and Ngāti Miru at Whangaroa. During Rāhiri's lifetime, a section of Ngāti Awa agreed to depart from Hokianga, some returning to their ancestral lands at Whakatāne and others moving to Taranaki where they became known as Te Āti Awa. Their departure must have been based on a tatau pounamu (peace agreement – literally, 'greenstone door'), because Rāhiri's youngest brother Māui travelled with the Taranaki contingent, and, later in his life, Rāhiri also visited Ngāti Awa at Tāmaki and Whakatāne before going to live in Taranaki.[209] Other sections of Ngāti Awa (and their Ngāti Miru relatives) remained in Whangaroa, the Bay of Islands, and Waimā, intermarrying with sections of Ngāpuhi. Conflicts with these peoples would continue for many generations, as we will see later.

While there are other tūpuna such as Nukutawhiti, who might also be regarded as founding ancestors for Ngāpuhi, nearly all claimants see Rāhiri as having played the most significant role in consolidating and expanding their influence, due both to his military successes and the significance of his marriage alliances.[210] Rāhiri's descendants refer to him as 'te tumu herenga waka' ('the stake to which the canoe was tied');[211] the 'tumu whakarae' ('chief of the highest rank');[212] and 'te upoko ariki' (which Dr Hohepa

defined as 'the first and ultimate ariki, supreme chief and leader').[213] The great Ngāti Hine and Ngāpuhi leader Tā Himi Henare once wrote that Rāhiri 'brought together the scattered groups descended from Nukutawhiti' and called them 'Ngāpuhi', in so doing provided another explanation for the tribal name. This sentiment is recalled in a phrase 'ngā maramara o Rāhiri' ('the chips of Rāhiri').[214]

Rāhiri's influence is also evident in his decision to divide his territories between his sons. As Uenuku-kūare approached adulthood, he came to live with his father at Pākanae, causing his younger brother Kaharau to become jealous. Fearing conflict between them, Rāhiri sent them to plait twine that was long enough to encircle their pā. Once the twine was completed, Rāhiri attached it to a kite and set it free. It flew east, landing at Te Tuhuna, near present-day Kaikohe, and Rāhiri used this as the separation point between Uenuku's Taiāmai rohe in the east and Kaharau's Hokianga rohe in the west.[215] In this way, Rāhiri intended that the brothers would stand as equals, independent of each other but also bound together and obliged to support each other in times of threat or strife. This principle of distinct and autonomous hapū able to align and offer mutual support has come to be known as te kawa o Rāhiri (Rāhiri's law).[216]

Dr Hohepa defined the kawa as one of 'divided interlocking protection',[217] under which each section of Ngāpuhi 'could work together but also . . . work apart'.[218] 'To understand Te Kawa o Rāhiri', he said, 'requires one to understand the way that conflict holds us of Ngā Puhi together. It provides for a converging of our laws and tikanga, shaping our expressions of mana.'[219] The kawa was like an 'unwritten Magna Carta',[220] which 'dictates the way in which rangatiratanga is expressed [and exercised] within a Ngāpuhi context'.[221]

Consistent with Rāhiri's wishes, Uenuku-kūare chose to live at Pouerua, where he kept up the alliance-building tradition by marrying Kareāriki of Ngāi Tāhuhu. Their children were Uewhati, Maikuku, Hauhauā, and Ruakiwhiria. Kaharau lived at Whiria and Pākanae. His first marriage was to Kohinemataroa, who was Rāhiri's niece and also had Te Roroa heritage.[222] She bore a son, Taurapoho, who then unified Ngāpuhi lines by marrying Uenuku-kūare's daughter Ruakiwhiria. Kaharau's second and third marriages were to Houtaringa and Kaiāwhī of Te Roroa.[223] Over the next two or three generations their descendants would restore Ngāpuhi authority over their Hokianga and Kaikohe homelands, and in turn would push out to establish control of most of the district's remaining territories. Many new hapū would emerge as that expansion occurred, along with new divisions and alliances.

3.3 Te Mārohatanga o Ngāpuhi, 1750–1830 / The Unfolding of Ngāpuhi, 1750–1830

3.3.1 Introduction

This section provides a general introduction to the district's many hapū and their lands. It introduces key tūpuna and hapū; describes their deep and intimate relationships with the harbours, mountains, waterways, and other features of their territories; and traces the significant realignments that occurred from the mid-1700s through to about 1830 as Ngāpuhi of Hokianga and Kaikohe exerted their influence on other parts of the district through a combination of military campaigns and strategic intermarriage – a process that Dr Hohepa called 'the unfolding of Ngāpuhi'.[224]

Warfare was not constant during this period, but it was regular. There were peaks from about 1790 to 1810, and again in the 1820s when large regional campaigns occurred under the leadership of Hongi Hika and other leaders such as Pōmare I, Te Morenga, Rewa, and Patuone. Their scale and frequency declined rapidly from the mid-1820s, and the realignment of tribal interests in this district was, with limited exceptions, complete by 1830.

We will consider each region in turn, beginning with Ngāpuhi homelands in Hokianga, then will turn to other regions in the order in which northern or southern alliance forces arrived and, by exerting their authority, caused significant realignment in the tribal landscape. After Hokianga, we consider Ngāpuhi settlement of Whāngārei and Mangakāhia during the 1700s; the expanding influence of northern and southern alliance hapū in Taiāmai and Waimate during the late 1700s; and

the major intertribal wars of the 1820s and their effects on Mahurangi and other territories. After these regional wars had ended, the final stage in the 'unfolding of Ngāpuhi' was completed in the pre-treaty period with a realignment of Whangaroa hapū after Hongi's return there in the late 1820s.

Our depictions of hapū relationships with land and other geographical features rely on claimant evidence, as presented to us either directly or through traditional histories. We acknowledge – as claimants did – that hapū territories intersect and overlap, are often contested, and are subject to change over time. The following sections are intended to provide context for our consideration of claims; they are not intended as definitive statements of resource rights.

3.3.2 Hokianga: te pito o Ngāpuhi

Hokianga is known as 'te pito o Ngāpuhi' (the navel of Ngāpuhi)[225] because Kupe, Nukutawhiti, and Ruanui landed and made homes there, and because Rāhiri was based there as he defended the tribe's territories and paved the way for the later Ngāpuhi expansion.[226] Kupe provided both 'foundation and substance', said John Klaricich, for the deep spiritual and ancestral connections between Hokianga people and their environment. He 'began the human process of naming the hills, lakes, streams, trees, birds, creatures and other things, all beginning points for himself and for us'.[227] Pākanae, Te Pouahi, and Porokī were coastal settlements Kupe named.[228] So, too, were the maunga surrounding the harbour entrance:

> From the sandspit where he landed he saw for the first time, the mountain on the south side of the harbour, whose glow had guided him into Hokianga. Kupe gave the name Te Ramaroa to the peak. Later he named the group of nearby hills in a way that gave body to the land. He placed Te Ramaroa as tupuna, his children Puketi and Paeroa are the two peaks west, their daughter Tamaka stands at the foot of Te Ramaroa. One twin son Paoro stands at the foot of Paeroa. The other Mahena was banished to the bay in Koutu . . . At the foot of Puketi, is Tangihia, their still born child. This is the family of Ramaroa.[229]

Kupe also left the taniwha Ārai-te-uru and Niua to guard the harbour entrance, their 'immutable presence' embodying the mana of Hokianga and Ngāpuhi[230] and enduring as 'a source of power and inspiration'.[231] This whakataukī is an appeal to the taniwha for help:

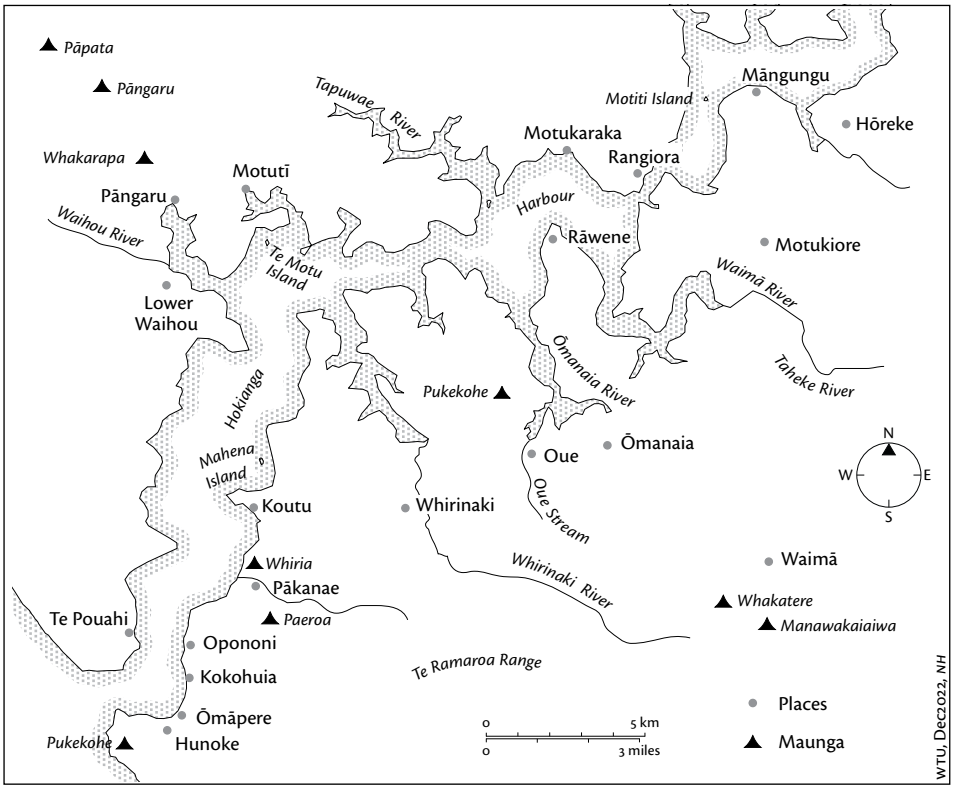
> Kotahi ki reira ki Arai-te-uru kotahi ki reira kotahi ki Niua, a homai he toa, he kaha e aua taniwha ki Ngāpuhi.
>
> One there is Arai-te-uru, another there is Niua; may those taniwha bring courage and strength to Ngāpuhi.[232]

Others told us of the underground pathway linking Ārai-te-uru to the maunga Puhanga Tohorā,[233] and of her many children, who explored the harbour, digging channels where they live on as awa (streams, rivers): Whirinaki, Ōmanaia, Waimā, Waihou, Mangamuka, Tapuwae, and Motutī.[234]

Rāhiri, too, left his footprints on the landscape as he consolidated authority in Hokianga.[235] The maunga Whiria is named for the plaited rope on the kite that he released to determine the territories of his sons.[236] The maunga Whakatere ('migrate') refers either to Ahuaiti's migration north to be with Rāhiri,[237] or to a later migration by Torongare and Hauhauā and their children including Hineāmaru, who became the founding tupuna of Ngāti Hine.[238] On the north side of the harbour, Tarakeha, Pukepoto, Te Reinga, Moumoukai, Wharerimu, Panguru, and Papata maunga are regarded as rangatira who sheltered Ngāti Manawa and related hapū 'in tumultuous times'. According to Hinerangi Cooper-Puru of Te Waiariki, Ngāti Manawa, and Ngāti Kaitutae:

> Within those mountains are the bones of our Tupuna, those great leaders who have passed. In this way we are not only bound to the land, we are a part of it. . . . Our Mana is in our links to our lands because our lands connect us to ourselves.[239]

Hokianga, Mr Klaricich said, was 'a damp place of forests and hills, of fog that rolls down the harbour out to sea, a place of heavy dews, a place always with the sound



Map 3.4: Hokianga.

of the ocean'.[240] Its people regarded the ocean as a source of sustenance and of spiritual connection to Hawaiki:

> Our old people viewed the sea with its ever changing surface, its depths and its edges; as the body that separates yet binds land with land, people to people, people to land; with power over life, the sustenance of life; its voice of lament, to the drawing and receding spiritual currents and tides, to spiritual Hawaiki. Pouahi the landing place; Pakanae the papakainga; Maraeroa the gathering place; Te Wahapu, the beginning place of the expanse of ocean that separates, yet takes us back to Hawaiki in body, mind and in spirit to the beginning and ending place of the ancestor Kupe. Maraeroa, the beginning place of the sea pathway that separates Hokianga from Hawaiki, yet inseparably binds one to the other, land to land, the living to the living and those of the spirit as one. Maraeroa, the place where we stand, the expanse, the sea pathway that led Kupe to Hokianga, that Nukutawhiti and Ruanui retraced.[241]

(1) *Tūpoto's people*

In the generations after Rāhiri, his children and grandchildren continued to defend Hokianga against Ngāti Awa and Ngāti Miru invaders, while intermarrying with allies to the south (Ngāi Tamatea and Ngāti Rangi) and north (Ngāti Ruanui). Most sources agree that Taurapoho's sons, Tūpoto and Māhiapōake (or Māhia), ended the battles and secured control of Hokianga and Kaikohe,[242] though some fighting continued for a generation or two afterwards.[243]

Tūpoto married three times. His first two wives were descendants of Uenuku-kūare, and his third was of Ngāi Tamatea.[244] According to Dr Hohepa, each of Tūpoto's

children were given responsibility for defending and protecting their mana in one or more of the Hokianga river valleys.[245] Over generations their hapū grew and developed, sharing the harbour's fisheries and developing large gardens in river headlands, which were also shared, and storing the produce in caves, pā, and forest hideouts. The overlapping and intersecting rights of neighbouring hapū led to 'intricate agreements on waterways, trails, forests and forest products, ocean access, and shellfish and fishing grounds', and to strong trade and ceremonial relationships within and beyond Hokianga.[246]

(2) *Coastal Hokianga*

The descendants of Tūpoto's first marriage occupied territories on either side of the harbour entrance, and became known as Ngāti Korokoro, Ngāti Wharará, and Te Poukā. During the 1800s, other groups would join them and settle at Waiwhatawhata.[247] Tūpoto's second marriage produced one son, Kairewa, who married Waimirirangi of Ngāpuhi and Ngāi Tamatea.[248] They settled in the Whirinaki river valley, where their descendants became known as Te Hikutū.[249]

On the opposite side of the harbour in the Whakarapa, Motutī, and Tapuwae river valleys, several other hapū also descend from Kairewa and Waimirirangi. These include Ngāti Manawa, Ngāti Kaitutae, and Te Waiariki, who are particularly associated with settlements at Panguru and Whakarapa; Ngāi Tūpoto, who are associated with Te Huahua and the Tapuwae Valley;[250] and Ngāti Te Reinga, who are particularly associated with the maunga of that name and the lower Waihou Valley, while also having interests in the Motutī and Tapuwae Valleys.[251] These hapū now affiliate to Te Rarawa as well as Ngāpuhi;[252] indeed, some regard Te Rarawa as originating with Ngāi Tūpoto.[253]

Among this district's hapū, Te Waiariki have a significant place. There are many traditions about their origins. One is that they descend from Waitaha, who arrived in Aotearoa on the waka *Uru-ao* and intermarried with Ngāti Ruanui.[254] Rākaihautū, captain of that waka, is said to have had the power of flight.[255] Another tradition is that they travelled on *Huruhurumanu*, sometimes described as a gleaming, feathered waka that skimmed above the waves without ever touching them.[256] They are variously said to have originated from Hawaiki, Tibet, and a location known as Patu-nui-o-Āio where sea and sky meet.[257] Other traditions refer to waka *Te Rereti*, *Rapahoe*, and *Tamarere Tī*,[258] and to tūpuna Tūkete and Te Operurangi.[259] Te Waiariki tradition is that the hapū had settlements throughout Hokianga before they were overrun by other iwi.[260] Many Te Waiariki migrated to Kaipara and then to Ngunguru, near Whāngārei, where they remain.[261] But they also retain their connections to Hokianga, and in particular to Motuiti Marae at Panguru.[262]

The people of Te Waiariki are renowned for their expertise in spiritual matters and in natural sciences ranging from astronomy to agriculture, which were important for navigation and economic well-being. According to Te Waiariki traditional historian Ngaire Brown, the hapū maintained whare wānanga at Panguru, and at Waimā, Ngunguru (Huitau Pā), and in Ngāti Hine territories.[263]

Inland from Whirinaki, the Ōmanaia and Ōue river valleys were home to Ngāti Hau, which Kaharau founded and named after his Ngāti Awa grandmother Te Hauangiangi.[264] Ngāti Hau therefore predates Tūpoto and – like Te Waiariki – are regarded as a very old hapū. They are said to be known more for spiritual expertise than fighting prowess, and are particularly associated with Te Whare Wānanga o te Ngākahi o Ngāpuhi, through which many Ngāpuhi leaders have passed.[265] Several generations after Kaharau, a new hapū was formed under his name,[266] and a section of Ngāti Hau left Ōmanaia seeking good gardening lands, settling in the territories of Ruapekapeka and Puhipuhi, where over time they became aligned with other Ngāpuhi hapū. By the late eighteenth and early nineteenth centuries, there were increased hapū movements and hostilities in the region of Whāngārei.[267]

(3) *Inland Hokianga*

Inland Hokianga, according to Dr Hohepa, was the province of Tūpoto's son Tūiti, who married Marohawea of *Tainui*.[268] From this union emerged several closely related hapū.[269] Their child, Rangihaua (or Rangihana), married

Kuiawai, the daughter of Tūpoto's youngest son, Tūteauru. Te Māhurehure of the Waimā Valley descended from them, as did related hapū Ngāti Pākau (of Tāheke Valley) and Ngāi Tū (of the Ōtāua and Mangatawa Valleys).[270] Tūteauru, who also descended from Te Waiariki,[271] is also an important ancestor for Te Hikutū.[272] Rangihaua is further recalled as the founding ancestor of Ngāti Pou,[273] who shared territories in the Waihou, Mangamuka, and Waimā Valleys,[274] and later (by the late 1700s) expanded into Waimate and Ōhaeawai.[275]

Rangihaua's sister Tutahua married Tauratumaru, who descended from Rāhiri's brother Mokonui-ā-rangi.[276] Their descendants became known as Te Pōpoto, who are associated with territories throughout the Mangamuka, Waihou, Ōrira, and lower Utakura Valleys and their environs, including the Maungataniwha and Puketī forests.[277] During the 1700s and 1800s, other hapū emerged from Te Pōpoto including Ngāti Hao, Ngāti Ngahengahe, and Ngāti Toro of Waihou, Hōreke, Utakura, Rāhiri, Motukiore, and Ōkaihau.[278] Also associated with the lower Waihou Valley were Ngāti Kairewa, who descend from Kairewa and Waimirirangi.[279] The Waihou and Mangamuka Valleys end only a few kilometres from Whangaroa and the Bay of Islands. By descent and intermarriage, Te Pōpoto formed close connections with many hapū of those districts including Ngāti Uru, Ngāi Tūpango, Ngāti Tautahi, Ngāti Rāhiri, and Ngāti Rangi, all of whom will be discussed later.[280]

The Ōrira, Mangamuka, Te Karae, and Tapuwae Valleys and surrounding lands, such as Ōmahuta and Maungataniwha, are associated with Te Ihutai and Ngāti Tama, both of whom descend from Tauratumaru's brother Tamatea. Te Ihutai are also closely related to Ngāi Tūpoto and Ngāti Here, who share the Tapuwae Valley, and identify as Te Rarawa as well as Ngāpuhi.[281] Pairama Tahere (Te Ihutai, Te Uri o Te Aho) said Te Ihutai ('to sniff the smell on the sea breezes') referred to the hapū role in providing other Hokianga hapū with early warning of attack from the north.[282] Mr Tahere also told us of the great importance of Maungataniwha to his people. Though Whangaroa hapū have other traditions, he told us that Nukutawhiti named the maunga to commemorate its discovery by Ārai-te-uru and Niua while they were chasing kanae (mullet) up the Mangamuka River.[283] Claimants also identified Te Uri Māhoe, Te Uri Kōpura, Kohatutaka, Te Uri o Te Aho, Ngāti Kiore, Raho Whakairi, Tahāwai of Whangaroa, and others as having interests in the Mangamuka Valley.[284]

Many of Tūpoto's children and grandchildren were involved in the final Hokianga battles against Ngāti Awa, Ngāti Miru, and related hapū. Kairewa and Tūiti were both killed in southern Hokianga battles against the Ngāti Awa hapū Ngā Rīriki.[285] Tauratumaru and Tamatea joined Kairewa's Te Hikutū hapū in a series of battles at Waihou, Wairere, and Whirinaki, before inflicting the decisive defeat at the Bay of Islands. Hokianga hapū then established permanent settlements along the east coast – Te Hikutū at the mouth of Te Puna Inlet, and descendants of Tauratumaru between Matauri and Te Ngāere.[286]

3.3.3 The emergence of the northern and southern 'alliances'

Twentieth-century authors looking back on Ngāpuhi history have concluded that three distinct sections had emerged by the mid-to-late 1700s. The Hokianga people were one of those sections. A second section was based around Kaikohe and is now commonly known as the 'northern alliance', while a third occupied southern Taiāmai and is known as the 'southern alliance'.[287] Ngāti Rāhiri of Waitangi and Pouerua shared lines of descent with the southern alliance but also formed close associations with northern alliance and Hokianga hapū.[288]

The northern and southern alliances were not permanent political groupings under unified leadership; rather, they comprised autonomous hapū who were closely related by descent and intermarriage, shared common lands and strategic interests, and – during times of conflict – often acted together. From the late 1700s, the northern and southern alliances (and some Hokianga hapū) pushed out independently into other parts of this inquiry district, asserting their authority and reshaping the tribal landscape in fundamental ways. Here, we briefly introduce the main hapū of these alliances.

(1) *The 'northern alliance': Māhia's people*

The 'northern alliance' – Ngāti Tautahi, Ngāi Tāwake, Te Uri o Hua, Ngāti Rēhia, and related hapū – descend from Tūpoto's brother Māhia. In the mid-to-late 1700s, these hapū occupied territories around Kaikohe, extending south-west into the Ōtaua and Punakitere Valleys and Matarāua. In the north, these territories bordered the fertile Taiāmai plains and the eeling grounds at Ōmāpere, as well as the headlands of several river valleys. Maunga and 'deep forest' lay to the south.[289] Neighbouring hapū included Ngāi Tū, Ngāti Pākau, and Te Māhurehure to the west; Te Pōpoto and Ngāti Pou to the north; and 'southern alliance' hapū such as Ngāti Rangi and Ngāti Hine to the south and east.[290]

Just as Ngāpuhi remember Tūpoto as securing Hokianga, they celebrate Māhia for consolidating tribal influence around Kaikohe.[291] His pā, known as Pākinga, was an important centre where warriors were trained and rangatira met for councils of war.[292] Wiremu Reihana of Ngāti Tautahi said it was 'the control centre of Ngāpuhi',[293] from which Māhia's descendants would extend their influence into Waimate and the northern Bay of Islands.[294]

Ngāti Tautahi descended from Māhia's daughter Ngahue and her husband, Tautahi, whom claimants said was 'a giant', of ancient lineage, whose mother was Whakaeke, eponymous tupuna of the Kaikohe hapū Ngāti Whakaeke.[295] Prior to the Ngāpuhi expansion into the Bay of Islands, Ngāti Tautahi lived in a territory bounded by Kaikohe, Ōtāua, Maungakawakawa, and Tautoro, encompassing the headlands of the Punakitere River and its tributaries, as well as Te Iringa and Pākinga. Tautahi lived at Kirioke, one of many peaks on Maungakawakawa.[296]

Tautahi and Ngahue's son was Te Wairua, who grew up and lived at Pākinga. He was father to Auha, Whakaaria, Te Perenga, Te Muranga, Kawhi, Kuta (eponymous ancestor of Ngāti Kuta), and others. Through their marriages, these children united the lines of Ngāti Tautahi with the other principal hapū of the northern alliance,[297] as well as creating important connections to Ngāti Rāhiri (discussed later) and Te Pōpoto.[298] Auha's mother was from a Kaikohe hapū, Te Uri o Hua, who descend from Maikuku through her daughter Ruakino (see the following section).[299] Auha and Whakaaria also became the leaders of the Ngāpuhi push into Waimate and the Bay of Islands late in the 1700s.[300] Many other Bay of Islands leaders of the early 1800s descended from Te Muranga.[301]

Ngāi Tāwake are named for Tāwakehaunga.[302] Their lands lay inland from those of Ngāti Tautahi, between Ōtaua and Matarāua.[303] Auha married Pehirangi, the granddaughter of Tāwakehaunga. The early nineteenth-century military leader Hongi Hika descends from this line, which united Ngāti Tautahi, Ngāi Tāwake, and Te Uri o Hua.[304] Ngāti Tautahi and Ngāi Tāwake were also joined by the marriage of Auha's half-brother Whakaaria to Pehirangi's sister Te Aniwa.[305]

Prior to the expansion of the northern alliance into Waimate and the Bay of Islands, Ngāti Rēhia homelands were 'on the swamp lands' of Ōrauta, east of Kaikohe.[306] The hapū's eponymous ancestor Rēhia was the great-grandson of Uewhati. Rēhia's grandson Tuaka married Te Perenga, the sister of Auha and Whakaaria, and because of this connection Ngāti Rēhia joined them in fighting campaigns (discussed later).[307]

(2) *The southern alliance and Ngāti Rāhiri: Maikuku's people*

By the mid-1700s, the 'southern alliance' section of what would become Ngāpuhi – comprising Ngāti Hine, Ngāti Rangi, Ngāre Hauata, and others – occupied territories in the southern Taiāmai plains (broadly from Tautoro to Kawakawa) extending as far as Matawaia and Mōtatau.[308] A closely related hapū, Ngāti Rāhiri, occupied territories from Pouerua to Waitangi, encompassing Kaipātiki (Hāruru), Otao, Puketona, Oromāhoe, Ngahikunga and Kaungarapa (Pākaraka), the Waiaruhe River valley, and the Werowero and Kaipatiki Streams.[309] The Taiāmai plains were highly prized for their warm climate and fertile volcanic soils, which were 'well guarded by surrounding pā on hill peaks'.[310]

Both Ngāti Rāhiri and the hapū of the 'southern alliance' traced common descent from Uenuku's daughter Maikuku. As a young woman she was regarded as highly tapu and for that reason was sent to live alone in a cave, Te Ana o Maikuku, on the coast at Waitangi. The Whangaroa

leader Huatakaroa and eponymous ancestor of Te Uri o Hua (variously said to be Ngāti Kahu, and Ngāti Miru), hearing of her great beauty, found her there and followed a taniwha into the cave, where he 'broke Maikuku's tapu' and married her.[311] He and Maikuku initially lived at Ruaorangi Pā, which was situated where the flagpole now stands at the Waitangi Treaty Grounds. Their first son, Te Rā, was born there. He founded Ngāti Rāhiri,[312] who in later generations intermarried with neighbouring hapū from both northern and southern alliances.[313] Ngāti Kawa descended from marriage between Te Rā's granddaughter and a Ngāre Raumati rangatira,[314] and continue to be closely associated with Ngāti Rāhiri.[315] Ngāti Manu (discussed later) trace descent from Te Rā's daughter Te Rukenga.[316]

After Te Rā was born, Maikuku and Huatakaroa moved inland, occupying Oromāhoe and Pouerua.[317] The latter was once a major pā and garden site for Ngāi Tāhuhu, and had also been Uenuku's home.[318] Maikuku had six other children, of whom two – Rangiheketini and Torongare – became founding ancestors for the Bay of Islands southern alliance, and important ancestors for Ngāpuhi of Whāngārei.[319] Rangiheketini's immediate descendants lived at Tautoro and in the forests of Matarāua and Mōtatau,[320] moving late in the 1700s to lands east of Ōmāpere.[321] Like Pouerua, Tautoro is recalled as a highly prized pā and garden site occupied by Ngāi Tāhuhu and other hapū including Ngāti Rangi, Ngāti Moerewa, and Ngāti Manu.[322]

Rangiheketini's people took the name Ngāti Rangi,[323] in so doing giving a new lineage to a much older name (as previously discussed, Ngāti Rangi is also known as a section of Ngāi Tāhuhu or Ngāi Tamatea who occupied Taiāmai and intermarried with Ngāpuhi).[324] Several other hapū emerged from Rangiheketini's lineage, including Ngāti Hineira,[325] Ngāti Moerewa,[326] Ngāti Manu,[327] and Ngāti Ruangāio, from whom several Whāngārei hapū emerged.[328]

All of these hapū can also claim descent from Rangiheketini's brother Torongare, an important ancestor of Ngāti Hine[329] who travelled extensively with his wife Hauhauā and their children throughout southern Hokianga, Mangakāhia, Whāngārei, and southern Taiāmai.[330] According to Pita Tipene of Ngāti Hine, this journey took at least seven years. Hauhauā died before it was completed, and Torongare was unwell. Their eldest daughter Hineāmaru, 'through strength of character', led her whānau through the final stages of the journey, settling them at Waiōmio where she established famous kūmara gardens.[331] Mr Tipene gave evidence that:

> All of the stories about Hineamaru growing kumara at Paparata . . . and how she took the kumara to her father for sustenance, are etched into the psyche of Ngati Hine and they sit there as symbols of our progenitor and eponymous ancestor who is a woman.[332]

An ailing Torongare settled nearby at Mohinui.[333] Pita Tipene told us of Hineāmaru's journeys to visit her father, carrying kūmara – an act that symbolised her role in providing sustenance for her people, which matched the resilience she had shown in guiding them through their difficult crossing.[334] Hineāmaru married Koperu, a leader of Ngāi Tū.[335] Their descendants, known as Ngāti Hine, occupied extensive territories from Waiōmio and Ōrauta in southern Taiāmai to Matawaia and Pipiwai in the south. They also became associated with Tautoro, which they shared with their Ngāti Rangi kin.[336] Many other hapū chose to affiliate with Ngāti Hine, including Ngāre Hauata, and later Te Uri Taniwha, Te Whānau Whero, and Te Urikapana of Taiāmai;[337] Ngāti Kopaki and Ngāti Te Ara,[338] and Te Orewai of Pipiwai and Kaikou.[339]

Whereas Hokianga and Kaikohe hapū see themselves as the original occupants of their lands, Ngāti Rangi and Ngāti Hine acknowledge earlier occupation by descendants of Tāhuhunuiorangi and Tamatea. Indeed, according to Erima Henare, during Hineāmaru's lifetime her people were known either as Ngāti Rangi or Ngāi Tamatea.[340] Paeata Brougham-Clark (Ngāti Rangi, Ngāti Hineira) emphasised these older lines of descent, telling us that Ngāti Hineira, Ngāti Manu, Ngāti Rangi, and also their neighbours Ngāre Raumati and Te Roroa should not be understood as an inter-hapū coalition but as 'a single large kin group'.[341]

3.3.4 Whāngārei ki Mangakāhia: te Nohonga o Torongare

South of Taiāmai and Hokianga for a distance of about 50 kilometres the terrain is hilly from coast to coast. A network of rivers and streams – Mangakāhia, Hikurangi, Wairua, Wairoa, and others – provided vital transport connections which were used by Ngāi Tāhuhu, Ngāpuhi, and others in north-south migrations. Of these rivers, the Mangakāhia is of particular importance; Millan Ruka (Te Māhurehure, Te Uriroroi) described it as a 'highway of war (and peace)'.[342]

In southern Mangakāhia and around Whāngārei the landscape opens up into fertile plains which, like Taiāmai, are ringed with volcanic cones. These territories lie on the border between several iwi, and have been heavily contested, their fertile land, abundant fishing grounds, and strategic transport routes making them highly attractive for settlement.[343]

(1) *Early settlement*

Claimants told us of the ancestor Manaia landing at Rākaumangamanga and setting out on an epic voyage of exploration spanning the whole of Te Tai Tamāhine and much else besides.[344] Manaia's descendants remain on the lands between Whangaruru and Mangawhai, and in many other parts of northern Aotearoa.[345] His story is etched into Whāngārei's landscape; Mount Manaia stands guard over the inner harbour, while smaller peaks represent his wife and children, and nearby rocks his pononga (servant) and dog.[346]

Claimants also spoke of Tāhuhunuiorangi, whose people migrated from Tāmaki to Mangawhai before spreading north.[347] Over many generations Manaia's people and Tāhuhunuiorangi's intermarried, and their descendants were early settlers of much of the territory north of Whāngārei and Kaipara. Tāhuhunuiorangi's people adopted new hapū names including Ngāti Rangi and Ngāi Tū.[348] Hapū of Whāngārei and Mangakāhia typically trace descent from both Ngāi Tāhuhu and Ngāti Manaia, and indeed often regard them as a single group.[349]

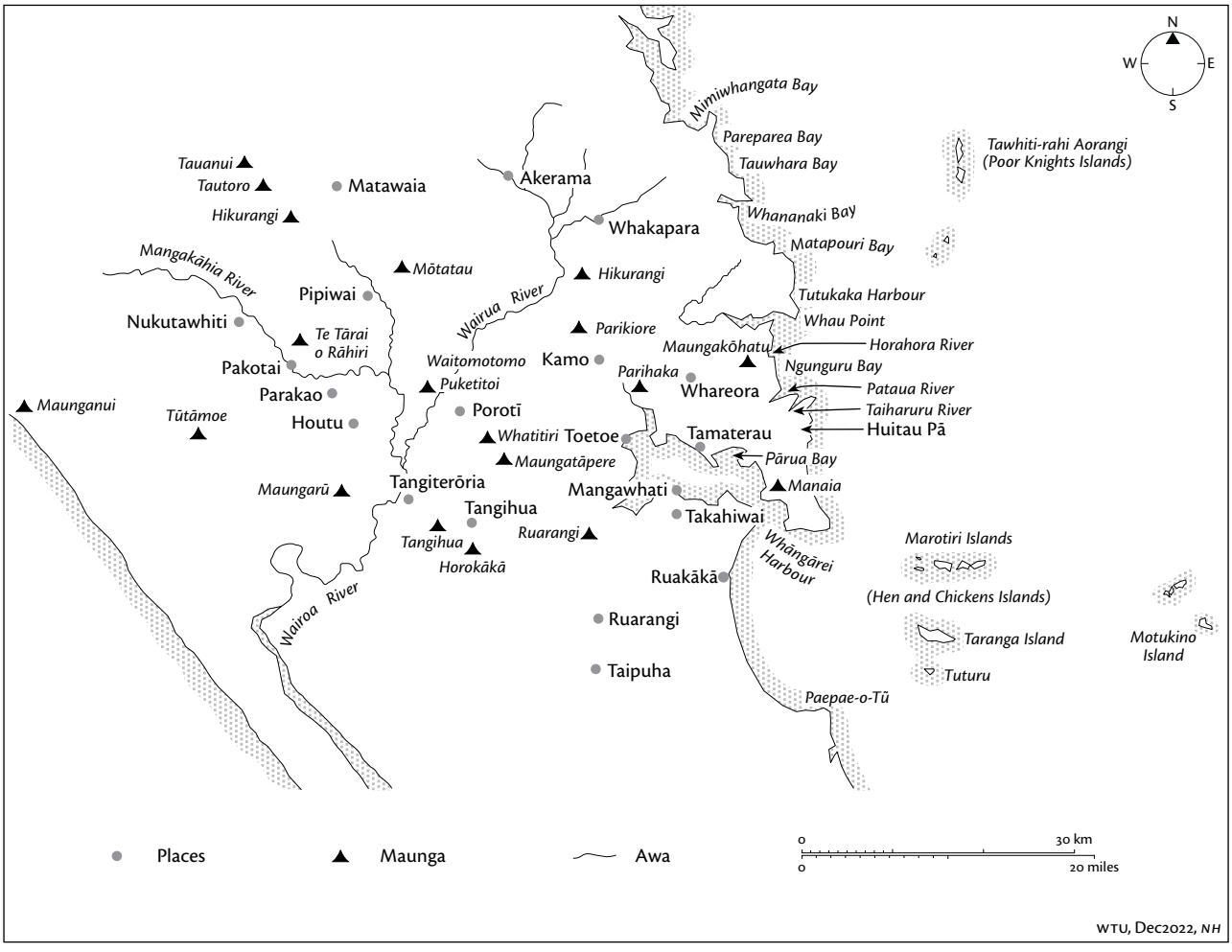
In turn, sections of Ngāpuhi also made their way into these districts. Nukutawhiti is said to have lived for a time in the Mangakāhia Valley,[350] and Moerewarewa is recalled as an early ancestor for one of the valley's hapū, Ngāti Pongia.[351] Rāhiri's journey through the Mangakāhia Valley is evoked in various placenames, including Te Iringa, Tautoro, and (most notably) Te Tārai o Rāhiri where he is said to have stopped to rest.[352] In Whāngārei traditions, Rāhiri met his wives – Ahuaiti, Whakaruru, and Moetonga – at Maungatāpere. All were descendants of Tāhuhunuiorangi and Manaia.[353] After Kaharau had grown to adulthood, Rāhiri is said to have returned to Whāngārei, living out his days there.[354]

Another wave of migration around 1700 brought a section of Te Waiariki to Ngunguru from Kaipara, where they had settled after leaving Hokianga a century or so earlier to escape the escalating conflict.[355] Likewise, about four generations after Rāhiri a section of Ngāti Hau left Hokianga and settled in territories from Ruapekapeka and Puhipuhi districts in the north to Towai, and Te Reponui a Hikurangi (Hikurangi Swamp) in the south.[356]

(2) *The defeat of Ngāi Tāhuhu*

In Whāngārei, as elsewhere in the district, the 1700s were a period of increased migration and intensifying conflict as hapū increasingly competed over lands and resources. The key players were descendants of the southern alliance (Torongare-Rangiheketini). Before settling in Taiāmai, Torongare and members of his whānau had lived for a time in the Mangakāhia Valley, and later at Tangihua and Whatitiri to the west of Whāngārei. When they departed for Waiōmio, Torongare's grandson Ruangāio stayed behind, marrying into Ngāi Tāhuhu and founding the hapū Ngāti Ruangāio (sometimes shortened to Ngāti Rua).[357] Sections of Ngāti Hine, Ngāti Kahu ki Torongare, and Ngāti Hau (mentioned earlier) had meanwhile established themselves in territories north of Whāngārei, broadly from Hikurangi and Pipiwai to the coast.[358]

There are different traditions explaining how these hapū asserted control over Whāngārei and southern Mangakāhia, but the essence is that a dispute occurred over control of Terenga-parāoa ('the swimming place of



Map 3.5: Whāngārei and Mangakāhia

the whales', a prized fishing and whale-hunting ground in Whāngārei Harbour).[359] Ngāti Ruangāio, with assistance from their relatives, responded by attacking and defeating Ngāi Tāhuhu hosts. During these hostilities the rangatira Te Kahore (Ngāti Ruangāio and Ngāti Kahu) saved many of his wife's Ngāi Tāhuhu people by gathering them under his protection at Toetoe and at Takahiwai and Ruakākā on the coast. Peacemaking and intermarriage followed, in which Ngāpuhi leaders acquired authority over lands from Whāngārei to the Wairua and Wairoa Rivers.[360] Te Kahore claimed Whatitiri; Te Waikeri took the Pukenui Forest and northern Whāngārei; Hautakere took Maungatāpere and lands to the south of there; while Tawhiro and Te Tirarau I took Aotahi (Tangiterōria).[361] Among the lands seized was the maunga Ruarangi, site of Te Nohonga o Torongare (the seat of Torongare), where Ruangāio's

Manaia maunga. Overlooking Whāngārei Harbour, Manaia is one of the poupou supporting Te Whare Tapu o Ngāpuhi. In Whāngārei traditions, the eponymous tupuna Manaia, his unfaithful wife, and their children were turned to stone, and the maunga and its smaller peaks were named for this event.

father is said to have lived during his temporary stay in the region.[362]

(3) *Whāngārei ki Mangakāhia*

Because of these arrangements, several new hapū emerged with mixed Ngāpuhi and Ngāi Tāhuhu bloodlines including Te Parawhau, Te Uriroroi, Te Patuharakeke, and Ngāti Taka. One account is that Te Waiariki defended their Ngunguru lands through one-on-one combat between their leader Rangitukiwaho and Te Tirarau I of Ngāti Ruangāio. Both were killed, and from this time, Rangitukiwaho's descendants became known as Ngāti Taka, while those of Te Tirarau I became known as Te Parawhau in memory of the whau leaves that cloaked his body.[363] Other accounts name Rangitukiwaho as a Ngātiwai rangatira whom Te Tirarau challenged to seek utu for the deaths of his relatives in an earlier battle.[364]

With Te Tirarau I's death, leadership responsibilities fell to his nephew Kūkupa, who consolidated the influence of Te Parawhau and Te Uriroroi over the territories

south and west of Whāngārei.[365] Another new hapū was Te Patuharakeke, who occupied the coastal lands south of Whāngārei Harbour – specifically encompassing Toetoe and Tamaterau in the north, and Taipuha and Bream Tail in the south, as well as Taranga, the Marotiri and Mokohinau Islands, and interests in Aotea and Hauturu.[366] Torongare's hapū, Ngāti Kahu, occupied lands north of the inner harbour including Kamo, Whareora, Parihaka, Tamaterau, and Pārua.[367] Ngāti Hau and Ngāti Kaharau occupied lands north of present-day Whāngārei.[368] Sections of Te Māhurehure and Ngāti Pākau occupied lands in the Wairua and lower Mangakāhia Valleys, intermarrying with Te Uriroroi and Te Parawhau.[369] Typically, all of these hapū acknowledged Ngāi Tāhuhu (or its offshoots such as Ngāi Tū) as original occupants of their lands, and many Whāngārei hapū regarded themselves as having Ngāi Tāhuhu and Ngāpuhi origins (some later came to consider themselves part of Ngāti Whātua or Ngātiwai or both as well).[370]

It is not clear how the conflicts of the late 1700s affected the central and upper Mangakāhia valley. Claimants and traditional historians told us that several hapū occupied lands around Nukutawhiti and Parakao, including Ngāti Toki, Ngāti Horahia, Te Kumutu, Ngāti Te Rino, and Ngāti Whakamau. As in the lower valley, these hapū appear to have emerged from intermarriage between sections of Ngāi Tāhuhu and the southern alliance.[371] Later, in the 1800s, Ngāti Hine would claim Whāngārei and lower Mangakāhia as part of their wider territory, on the basis of conquest and the seniority of Ruangāio's older sister Hineāmaru, who inherited the mantle of leadership from her father.[372]

(4) *Coastal hapū and iwi*

As noted, Te Waiariki and associated hapū Ngāti Taka and Ngāti Korora retained their coastal lands at Ngunguru (sometimes said to encompass the Ngunguru, Horahora, Pataua, and Taiharuru Rivers). Like others in the vicinity of Whāngārei, Te Waiariki acknowledged Ngāi Tāhuhu as original occupants of the land, with whom they intermarried after their migration from Kaipara.[373] Claimants also told us that there was extensive intermarriage between Te Waiariki and Ngāti Kahu and Ngāti Hau.[374] Nonetheless, they retain distinct identities, and their territorial interests are sometimes contested. Most Whāngārei hapū, for example, claimed interests in the lands that became Glenbervie State Forest.[375] Te Waiariki later became important allies for Ngāpuhi during the 1820s and 1830s.[376]

After Rangitukiwaho's death, leadership of Te Waiariki at Ngunguru fell to Te Mawe, an acclaimed mystic and tohunga. He is said to have transformed into a comet for overnight flights between Whāngārei and Hokianga, where his wife's Te Māhurehure hapū lived. He is also said to have had the power to summon and control taniwha to aid his people in times of conflict.[377] He uttered the whakataukī, 'He iwi mana, he iwi wairua', to describe Te Waiariki.[378] In turn, Te Mawe's mana passed to his descendants, including his grandson Wharetohunga, who assisted Hongi in his southern wars and, according to Te Waiariki tradition, on one occasion 'saved his troops from an ambush and certain death' by using his gift of flight to transport them to safety.[379]

Ngātiwai claimants told us their principal line of descent was from Manaia, whose people had been known as Ngāti Manaia.[380] They had initially settled the coast south of the Bay of Islands, gradually moving into Whāngārei and Mahurangi where they intermarried with other groups such as Ngāi Tāhuhu and Ngāti Rehua.[381] We were told that the name Ngātiwai was adopted after they were defeated by Te Kapotai of Waikare in a battle over control of fishing grounds at Mimiwhangata. Many Ngāti Manaia fled to offshore islands or to coastal areas from Whāngārei south, and '[f]rom that time [they] became Ngati Wai, the children of the water'.[382] Despite this and other migrations, Ngātiwai continued to occupy territories along the coast from Whangaruru to Ngunguru – including Mōkau, Paremata, Huruiki, Mimiwhangata, Pareparea, Whananaki, Matapōuri, and Tutukaka – as well as the islands Hauturu and Aotea, where they intermarried with Ngāti Rehua.[383]

Both Ngātiwai and Te Waiariki told us of their special relationships with water. They said that their tohunga could predict the future by gazing into underground springs (such as those at Taharuru, Marotiti, and

Mōkau) or into sacred waters in the cave Manawahuna at Motukokako.[384] Te Warihi Hetaraka of Ngātiwai told us:

> Ko nga mana katoa o Ngatiwai kei te wai, i nga taniwha me o ratou manawa. All of the power of Ngatiwai comes from the water, from the taniwha and their spirits . . . We became known as Ngāti Wai as a result of our connection to the sea, our ability to manage and hold the Islands, and to use the water as provider and protector of our people.[385]

Likewise, Pereri Mahanga of Te Waiariki told us that water was regarded as 'ariki, a taonga': 'We strongly believe that the spiritual and physical well-being of our people cannot be be achieved without our wai.'[386]

While Ngātiwai and Te Waiariki are the principal hapū associated with the coast between the Bay of Islands and Whāngārei, successive waves of migration, conflict, and intermarriage have led other groups to claim interests too. We were told, for example, of Ngāti Kahu o Torongare and Te Whānau Whero occupation of Whangaruru[387] and of Te Kapotai interests at Horahora in Ngunguru Bay,[388]and we received evidence about Te Whakapiko occupation of Whananaki.[389] The 1820s were a period of conflict and general upheaval in the Whāngārei region, leading many hapū to withdraw.[390] The coastal areas were later repopulated as hapū returned in more peaceful times to their kāinga, and sections of Ngāti Rehua, Ngātiwai ki te Moana, and Ngāti Taka would move from Aotea and Hauturu to Whangaruru, Whananaki, Matapōuri, Whakapara, Tutukaka, and other mainland settlements.[391] Rowan Tautari of Te Whakapiko told us that in Whananaki, Ngāti Manaia and Te Whakapiko were joined during the latter half of the nineteenth century by Te Whānau Whero, Ngāre Raumati, and other hapū, such as Ngāti Rehua and Te Ākitai, as a result of certain marriages and other arrangements.[392]

3.3.5 Waimate–Taiāmai and the Bay of Islands

As discussed earlier, Waimate and Taiāmai were highly prized over many centuries as sites for cultivation and settlement. Their volcanic plains provided ideal conditions for growing kūmara and other crops; rivers, lakes, and wetlands including Ōmāpere and Ōwhareiti provided abundant sources of tuna (eels); and the district's volcanic cones such as Tautoro, Pouerua, and Maungatūroto offered pā sites that were easily defended and had great visibility for many miles around. By the late 1700s, many thousands of people are believed to have lived and gardened in these lands.[393] Taiāmai is known as Te Tino a Taiāmai ('the delectable land of Taiamai'), due to this capacity to act as a garden for Ngāpuhi.[394] In turn, the river mouths, bays, and islands offered abundant access to a wide range of kaimoana including shark, kahawai, flounder, snapper, eagle ray, and many other species, further adding to the area's attractiveness as a site for settlement.[395]

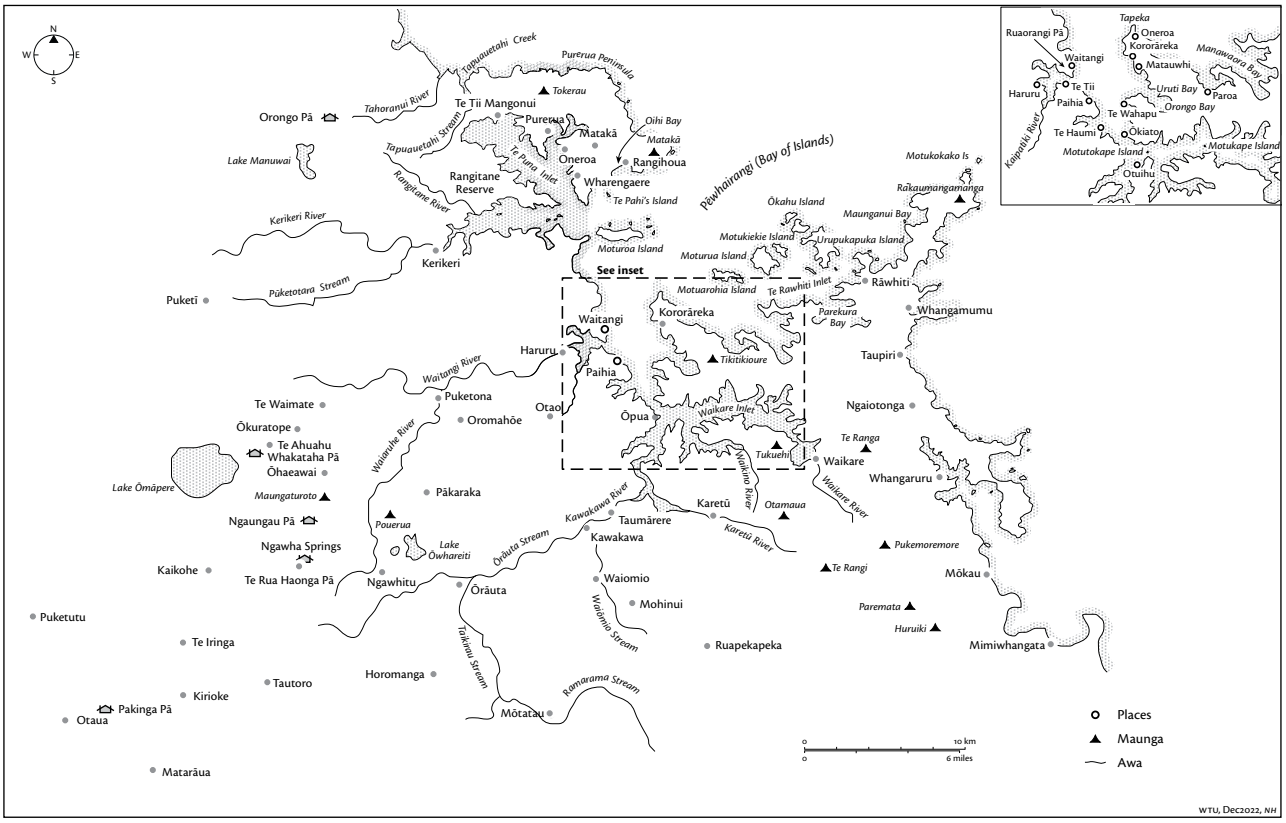
Claimants spoke of Te Awa Tapu o Taumārere flowing from Mōtatau to Ōpua, via the Ramarama and Tāikirau Streams and the Kawakawa River. The Taumārere, they told us, possesses its own mauri and derives its power from Ranginui. It is known as Te Awa o Ngā Rangatira (the river of chiefs) because rangatira held meetings there. From Taumārere, the river flows into Te Moana o Pikopiko i Whiti, the stretch of water from Ōpua to Te Haumi, which is regarded as tapu because warriors stopped there to prepare themselves for long-distance waka journeys and the warfare that awaited them.[396] Claimants also told us of the river's practical importance, describing its varieties of tuna and their capture in nets attached to weirs during their annual downstream migration. Before the environmental changes that had occurred since colonisation, the river 'was our pataka or food house . . . and a highway for trading'.[397]

(1) *Settlement to the mid-1700s*

While sections of the people who would come to be known as Ngāpuhi occupied Kaikohe, Taiāmai, Waitangi, and Te Puna in the mid-to-late 1700s, various other tribal groups occupied Waimate and other parts of the Bay of Islands. Ngāre Raumati occupied the south-eastern Bay of Islands coast and islands, from Tāpeka to Motukokako to Taupiri Bay.[398] Their immediate neighbours were Te Kapotai, whose territories surrounded the Waikare Inlet. Their lands extended from Orongo and Tikitikikioure on the north side of the inlet to Ngaiotonga, Te Ranga, and

The Taumārere River and Ōpua Marina, 6 February 1950. The Taumārere flows from its source in Hokianga through Mōtatau to Ōpua, where it has its confluence with the Waikare Inlet, and empties into the Bay of Islands. North of Ōpua to Te Haumi is known as Te Moana o Pikopiko i Whiti, an ocean voyaging departure area for Te Kapotai, Ngāti Hine, Ngāti Manu, and other Bay of Islands hapū.

Pukemoremore in the east, to the Kāretu, Waikino, and Kaurinui Valleys in the west. This included the islands Motukokape (Pine Island) and Motukura (Marriott Island). The latter had a major pā, as did Waikare and Kāretu.[399] Te Kapotai speakers told us they were a branch of Ngāi Tū (of Ngāi Tāhuhu). They said the name Te Kapotai emerged during the 1700s and referred to incidents that occurred during conflict with Ngāre Raumati.[400] The Waimate Plains, along with Kerikeri and Tākou, remained in possession of Ngāti Miru and Te Wahineiti, *Mātaatua* hapū who had remained behind after the departure of Ngāti Awa.[401] Ngāti Miru had taken part in battles against Ngāti Awa,[402] and had intermarried with Te Uri o Hua.[403] The various sections of the hapū groups that would ultimately come to be known as Ngāpuhi bordered these lands at Taiāmai, Kaikohe, Hokianga, and in the Ngāti Rāhiri territories from Pouerua to Waitangi. To the north lay the various hapū of Whangaroa (discussed later).



Map 3.6: Waimate–Taiamai and the Bay of Islands

(2) *The northern alliance defeats Ngāti Miru and occupies Waimate and Tākou*

During the late 1700s, through a series of conflicts, a number of northern alliance hapū asserted their authority over neighbouring peoples, in turn occupying the Taiāmai and Waimate Plains, the northern Bay of Islands from Kerikeri to Tākou, and a small section of the southern Bay of Islands from Ōkiato to Tāpeka. We have covered some of these events in our stage 1 report, but recount them here because of their influence on Māori–Crown relationships in the years before and after te Tiriti was signed.

The first of these conflicts occurred during the 1770s (or thereabouts) between Te Wairua's sons Auha and Whakaaria (Ngāti Tautahi, Te Uri o Hua) and Ngāti Miru, Te Wahineiti. The main Ngāpuhi protagonists were Te Wairua's sons Auha and Whakaaria (Ngāti Tautahi, Te Uri o Hua). Although the immediate cause of the conflict was the murder of their sister Whakarongo by her Ngāti Miru husband, according to some accounts, an underlying factor was the husband's suspicion that Whakarongo encouraged Auha and Whakaaria to seize control of Waimate's kūmara gardens.[404]

While there are slightly varying accounts of what occurred, the essence is that Auha and Whakaaria sought an alliance with the Ngāti Rāhiri leader Kauteāwhā and his brother Topi.[405] Ngāti Rāhiri land interests bordered those of Ngāti Tautahi at Kaikohe and Pouerua, and the two hapū had common strategic interests as well as

connections through intermarriage.[406] Together, these allies attacked several Ngāti Miru pā at Waimate, driving Ngāti Miru back to Matakā and Te Tii Mangonui. The victors then occupied Waimate while also maintaining their traditional lands around Kaikohe. Auha and Whakaaria established a pā at Ōkuratope and occupied both Ōkuratope and Whakataha, inviting their nephew Toko (Ngāti Rēhia of Ōrauta) to occupy the latter and maintain the Waimate kūmara gardens.[407] Some of the defeated Te Wahineiti people were allowed to return to territories between Kerikeri and Puketī Forest (including Puketōtara) and in southern Whangaroa, where they intermarried with Ngāi Tāwake, Ngāti Rēhia, and Ngāti Uru. Thereafter, they took the name Te Whiu.[408]

After a few years had passed and Ngāti Miru were regathering their strength, Auha, Whakaaria, and their allies launched attacks from inland and the coast, the decisive battles occurring at Kerikeri and Tapuaetahi. Following this campaign Ngāti Rēhia lands were extended from Waimate to Tākou (including settlements at Te Tii Mangonui and Tapuaetahi), though other northern alliance hapū acquired resource rights in those areas as well. Auha also brought a section of Ngāti Tautahi to occupy lands north of Matauri. The few surviving Ngāti Miru either retreated to Tākou and intermarried with others, or escaped to Mangonui.[409] Te Hikutū had not taken part in the battles – Auha and Whakaaria allowed them to leave before hostilities started – but from then they became associated with the northern alliance.[410]

(3) *The southern alliance defeats Ngāti Pou and occupies Ōhaeawai*

A decade or two after the defeat of Ngāti Miru, another conflict erupted, this time pitting southern alliance hapū against Ngāti Pou of Hokianga. Though Ngāti Pou descended from Tūpoto, they also had significant *Tainui* connections and were generally seen as a distinct people.[411] By the 1790s, they had extended their interests from the Waihou Valley east to Waimate and Ōhaeawai, where they occupied Maungatūroto and three other pā.[412] Also near Ōhaeawai were the southern alliance hapū Ngāti Rangi, Ngāti Hineira, and Ngāre Hauata. Ngāti Rangi occupied Te Rua Haonga pā at Ōhaeawai, and Ngāti Hineira occupied Ngaungau pā very close by. Ngāre Hauata occupied Ngāwhitu, a little to the south near Ōwhareiti.[413] Ngāti Rangi and Ngāti Hineira appear to have moved from Tautoro to Ōhaeawai after the conquest of Waimate, in which Ngāti Hineira supported the northern alliance and captured Ngaungau.[414]

The conflict with Ngāti Pou arose after members of that iwi killed several senior Ngāti Hineira people. One tradition is that these killings occurred during a dispute over fishing rights at the Kerikeri Inlet, where Ngāti Pou had rights on the northern banks, and Ngāti Hineira, Ngāti Rangi, and other southern alliance hapū had rights on the southern banks. Another explanation is that Ngāti Hineira became caught up in a prior conflict between Ngāti Pou and Te Pōpoto.[415] Whatever the original cause, Ngāti Hineira and their allies responded to the killings by attacking and capturing the three Ngāti Pou pā at Ōhaeawai. Before a follow-up attack could be made on Maungatūroto, a peace agreement was reached under which Ngāti Pou departed from Taiāmai. Some returned to Waihou, but most left for Pūpuke (inland Whangaroa) or Waimamaku (Hokianga) where they had relatives. Their former lands between Ōmāpere and Ōhaeawai were divided among the victorious hapū, with Ngāti Rangi occupying Maungatūroto and Ōhaeawai and lands to the west of there; Ngāti Hineira occupying the lands immediately north towards Te Waimate; and Ngāre Hauata also extending their lands north towards Pākaraka. Two new hapū, Te Whānau Whero and Te Uri Taniwha, emerged from Ngāti Hineira as a result of their participation in these hostilities.[416] Later, probably during the 1820s or 1830s, Te Uri o Hawato would emerge and occupy lands at Ōhaeawai.[417]

(4) *The emergence of Ngāti Manu*

As Ngāti Hineira, Ngāti Rangi, and Ngāre Hauata were occupying the Taiāmai lands, a new hapū emerged from intermarriage between the latter two. Ngāti Manu, as they were called, traced their name to the early Muriwhenua ancestor Ngā Manu, whose descendant Te Rawheao had settled at Tautoro and married Te Rukenga of Ngāti

Rāhiri.[418] For several generations, the descendants from this marriage lived at Tautoro as part of Ngāti Rangi, but around 1800 a section broke away, settling lands between Ruapekapeka and Taumārere.[419] Ngāti Manu were headed by the wāhine rangatira Hautai, her husband, Te Huru, her brother, Pehi (or Puhi), and Puhi's wife, Tūwhāngai.[420] Together, they could claim ancestral connections not only to Muriwhenua and Ngāti Rāhiri but to many other hapū. Hautai and Puhi were of Ngāti Rangi and Ngāi Tū,[421] and also had ancestors in Mangakāhia and northern Kaipara.[422] Te Huru was of Ngāti Hine and Ngāre Raumati,[423] and Tūwhāngai was of Ngāti Rongo, a hapū of Te Kawerau of Mahurangi (discussed later).[424] The establishment of this branch of Ngāti Manu consolidated the authority of southern alliance hapū from Taiāmai to the coast.[425] Inter-hapū connections were further cemented through ongoing intermarriage.[426]

Sometime in the 1790s, two senior Ngāti Manu women were killed by a section of Ngāre Raumati under the chief Tūpare. As utu, Tūpare gave up his lands on the peninsula between Tāpeka and Ōkiato, and Ngāti Manu established several kāinga along the coast including one at Kororāreka, which had formerly been occupied only seasonally as a fishing village.[427] At some stage, Ngāti Manu also acquired fishing rights from Taupiri Bay into the southern Bay of Islands.[428] Later, probably during the 1820s or 1830s, Te Uri o Ngongo would emerge from Ngāti Manu, occupying lands at Kawakawa.[429] Other associated hapū include Te Uri o Raewera at Ruapekapeka, and Te Uri Karaka.[430]

Like other southern alliance hapū, Ngāti Manu have a strong tradition of women holding crucial leadership and decision-making roles, while men provided the military strength to defend the mana of the hapū. The hapū was founded by Hautai on the instruction of her mother, Hinepapa.[431] Later, Hautai's son Whareumu would assume a leadership role, as would Puhi's daughter Haki and her son Whētoi, who took the name Pōmare I.[432] When Pōmare I died in battle in the 1820s, it was Haki who determined that her son Whiria would assume the mantle of leadership. He took the name Pōmare II in honour of his uncle.[433]

Ngāre Raumati remained in occupation of Pāroa and Te Rāwhiti.[434] Very soon afterwards, however, they became embroiled in a series of conflicts with the 'northern alliance' section of Ngāpuhi. Hostilities began either with a Ngāre Raumati attack on a Ngāpuhi pā at Te Waimate, or with an argument over a woman.[435] Whatever the cause, the matter soon escalated, with Ngāre Raumati killing a young Ngāti Rēhia man and the mother and sister of Ngāi Tāwake leaders Rewa, Moka, and Wharerahi.[436] These killings required utu. Auha's son Te Hōtete led one party, and another comprised leaders from the Ngāpuhi northern section and from related hapū in Hokianga and Whangaroa. Engagements occurred at various places along Te Rāwhiti inlet, including Tāpeka, Whiorau, and Ōkahu Island, resulting in heavy defeats for Ngāre Raumati. At this stage they were not forced off their lands. Another quarter of a century would pass before Rewa, Moka, and Wharerahi would seek final utu for the deaths of their mother and sister.[437]

(5) *The battles of Waiwhāriki and Moremonui*

While sections of Ngāpuhi were asserting their authority in and around the Bay of Islands, they were also becoming embroiled in larger regional conflicts. Sometime in the 1790s or thereabouts, an invading party of Ngāti Maru, Ngāti Paoa, Ngāi Tai, and others attacked Ngāpuhi at Waimate. Two battles then occurred, one near Pouerua and another at Puketona, which the invaders took with heavy loss of life in a battle known as Waiwhāriki. A Ngāti Rāhiri party from Pouerua then confronted and chased the invading party back to the coast. They returned to Hauraki, leaving behind a major cause for utu which would not be satisfied for some years to come. Most sources refer to Ngāti Rangi as the defeated hapū at Waiwhāriki, but the invading party landed at Waitangi and the attacks took place on Ngāti Rāhiri territories. It was northern alliance hapū who would respond, with a reprisal raid, led by Te Hōtete, which we will discuss later.[438]

Soon afterwards, in the early 1800s, the northern alliance also became embroiled in a series of conflicts against Te Uri o Hau and hapū of Te Roroa.[439] Ngāpuhi tradition is that the conflicts arose from a dispute over an adulterous

relationship or failed marriage alliance involving various Te Roroa and Kaipara hapū. When the dispute escalated and a young Ngāti Tautahi rangatira was killed, his father Pōkaia sought utu.[440]

Pōkaia was of senior birth – his grandfather was Whakaaria who had led the conquest of Waimate. Pōkaia led a successful raid against Te Uri o Hau at Maunganui Bluff,[441] but this heralded reprisals and further escalation, ultimately drawing in the various Ngāpuhi alliances and many hapū of Te Roroa and Kaipara.[442] Pōkaia and the northern alliance won a major victory at the Battle of Ripiro, but Pōkaia was not satisfied and attacked again at Moremonui, just south of Maunganui Bluff, this time suffering a major defeat.[443] The number killed was so large that the battle became known as Te Kai a te Karoro ('the feast of the seagulls').[444] One of the leaders at this battle was Pōkaia's young nephew Hongi Hika, whose brother and sister were killed, and who succeeded as the chief of Te Uri o Hua.[445] This defeat, following quickly after Waiwhāriki, left the northern alliance vulnerable and created a cause for utu that would come to have devastating consequences for their foes in years to come.[446]

3.3.6 From early contact to musket wars

The first, brief contacts between Māori and Pākehā in the far north occurred during Captain James Cook's visits on the *Endeavour* in 1769. Cook stopped twice, in Bream Bay and the Bay of Islands. After initial misunderstandings, Cook's crew traded with Māori for food and water.[447] Cook was followed by the French explorers Jean-François-Marie De Surville, who landed in Tokerau (Doubtless Bay) in 1769, and Marion du Fresne, who landed in the Bay of Islands in 1772. As discussed in our stage 1 report, during both of these visits there were cultural misunderstandings – disputes over resource use, and transgressions against tapu and mana – which led to significant violence.[448] These initial, fleeting encounters left two lasting impressions on Māori communities: first, they saw the technology that Europeans possessed, including the destructive effects of their weapons; and secondly, they were left with an enduring mistrust of the French.[449]

The next significant contact occurred in 1793, when the Royal Navy, while looking for flax-weaving technology for use in the Norfolk Island penal colony, kidnapped two Māori men from the Cavalli Islands. They lived as guests of the islands' Governor, Philip Gidley King, for several months before he returned them to Aotearoa with gifts including iron tools, wheat, and potatoes.[450] The latter rapidly became a staple crop throughout the north, supplementing and to some extent substituting for kūmara. By 1800, whaling ships were beginning to stop at the Bay of Islands to replenish their supplies, and were able to buy potatoes by the tonne.[451]

(1) *Growing trade and the* Boyd *affair*

In the early 1800s, the Rangihoua rangatira Te Pahi took the lead in what appears to have been a deliberate northern alliance strategy of escalating trading relationships. Te Pahi descended from northern alliance leader Auha, and was of Te Hikutū, Ngāti Rēhia, Ngāti Torehina, and Ngāti Ruamahue hapū.[452] Nuki Aldridge told us that Europeans had come to see Te Pahi and others such as Ruatara and Hongi as 'high chiefs' because they managed early diplomatic and trading relationships. But those who really 'gave the orders', including tohunga, remained behind the scenes during this early contact period.[453]

In 1804, Te Pahi sent his son Maatara to Port Jackson, where he stayed with King, who by then was Governor of New South Wales. Maatara returned with pigs and other gifts, allowing Bay of Islands Māori to provision visiting ships with pork as well as potatoes. Soon afterwards, Te Pahi and his sons visited King, remaining for several months, observing European technology and culture, and returning laden with gifts including materials for a brick house, which was erected at Te Puna.[454] Te Pahi sent Maatara on another diplomatic mission in 1806, this time to London where he met members of the royal family and sought axes, muskets, and other goods.[455] His close relative Ruatara also travelled to London, apparently for similar purposes.[456]

Whereas King's hospitality and gifts to Māori left a lasting positive impression,[457] contact between Māori and visiting traders was often fraught with tension. Visiting ships sometimes took on Māori crew or travellers, and

A portrayal of the *Boyd* affair, painted 99 years after the event took place in 1809. Ngāti Uru, seeking utu for the mistreatment of a young chief attacked by crews of several whaling ships, killed 40 to 70 European members of the ship's crew. The Rangihoua rangatira Te Pahi tried to intervene but was blamed for the killings; his success as a trader and his knowledge of business created jealousy among both Pākehā and Māori in the region. When Rangihoua was attacked by a whaling crew, Te Pahi was injured and died soon afterwards. The attack on Rangihoua had long-term consequences for the descendants of Te Pahi, who kept their identities secret for many generations to protect themselves from his rivals.

frequently mistreated them, on occasion seriously.[458] Visiting whalers and traders also mistreated their hosts. One visiting crew departed with Te Pahi's daughter and her British husband, who had settled at Te Puna and acted as a translator in trading missions. Both died overseas.[459] Another crew abducted several Bay of Islands women, including a close relative of Hongi, and two relations of the Ngāre Hauata leader Te Morenga. They were later delivered to the Bay of Plenty and East Cape, where they were killed and eaten, creating a cause for utu against those peoples.[460]

Te Pahi was himself beaten and tied to a ship's rigging during disputes with traders, while other Bay of Islands hapū experienced crop thefts and beatings. One crew refused to pay for its supply of pork, fish, and potatoes, and when their hosts demanded they do so, several were shot. A storm then blew the ship ashore, where its crew was killed.[461] Te Pahi appealed to the New South Wales

administration for assistance, and successive Governors made orders aimed at preventing mistreatment of Māori and other Polynesian crews, but they were not enforced and proved ineffective.[462] He returned to Port Jackson in 1808, but King had departed, and the colonial administration was in turmoil. Te Pahi was given no assistance.[463]

In 1809, a young Ngāti Uru rangatira returned to Whangaroa with stories of his mistreatment on the transport ship *Boyd*.[464] His hapū sought utu for this and earlier transgressions, killing and eating the *Boyd*'s crew. Though Te Pahi had tried to stop the killings, he was subsequently blamed by whalers and by other Māori who resented his success as a trader.[465] He took his children to Taupō Bay, leaving them with his Ngāti Kahu brother-in-law Patara, and then returned to Rangihoua to plead his innocence.[466] Not long after, the crews of several whaling ships attacked Rangihoua, burning the village and killing most of its residents. Te Pahi was wounded and died soon afterwards in a fight with a Whangaroa rival.[467] Te Pahi's descendants were gifted land at Taupō and became known as Ngāti Rua. The attack on Rangihoua had long-term consequences. Kuia Moana Nui a Kiwa Wood said they kept their identities secret for many generations to protect themselves from further reprisals from Te Pahi's rivals.[468]

(2) *The regional wars begin*

Disastrous as these events were, they did not put an end to Ngāpuhi pursuit of European goods and technology. After Te Pahi's death, Te Hikutū leadership responsibilities were assumed by Ruatara,[469] who was a great-grandson of Whakaaria and therefore a relative of Hongi and other northern alliance leaders.[470] Ruatara had spent time in Sydney with the missionary Samuel Marsden, where he had learned much about English farming techniques.[471] On his return to the Bay of Islands, he, Hongi, and other leaders cultivated Marsden, seeing him as the key to advancing their economic prosperity, and in turn, their military security.[472] In particular, Ruatara's goal was to grow wheat for supply to Sydney.[473]

A related goal was to encourage the return of shipping, which had dried up after the *Boyd* incident. Ruatara, Hongi, and other leaders reasoned that a missionary presence under their protection would reassure ships' captains and thus encourage a resumption of trade.[474] Marsden was therefore invited to establish a mission at Ōihi (near Rangihoua), on the understanding that it would remain under Ruatara's control,[475] and that missionaries would bring crops, livestock, a flour mill, and training in agriculture and technical skills.[476] Another mission was established in 1819 under Hongi's authority at Kerikeri, causing considerable jealousy among southern alliance leaders such as Te Morenga.[477]

Since Moremonui, Ngāpuhi leaders had largely abstained from fighting either within the Bay of Islands or in regional campaigns, instead focusing on recovering from earlier defeats and securing access to European agricultural technology.[478] But Waiwhāriki and Moremonui had not been forgotten. On Ruatara's death in 1815, Hongi assumed control of northern alliance trading relationships, placing a high priority on the acquisition of muskets. Missionaries and missionary workers were pressured to involve themselves in the trade – and some complied – while for visiting whaling vessels, muskets, in exchange for potatoes, became the main Bay of Islands currency.[479]

Hostilities among Māori resumed in 1818, when Hongi and Te Morenga led separate war parties south to the Bay of Plenty and East Cape, seeking utu for the earlier deaths of their relatives. They returned – after inflicting a series of rapid defeats – with many hundreds of captives.[480] The same year, sections of Ngāpuhi also became caught up in hostilities between Ngātiwai and Ngāti Manuhiri of Mahurangi.[481] These were the first major campaigns in which Hongi used muskets.[482]

Two years later, in 1820, Hongi sought to advance his people's economic and military security decisively by establishing his relationship with the British monarchy. He and his adviser, Waikato, travelled to London, where they stayed for several months, meeting King George IV, visiting the House of Lords, and acquiring a number of gifts including a suit of armour and helmet (which Hongi would often wear into battle) and a small number of guns.[483] On their way home, Hongi and Waikato stopped in Sydney, where they acquired a large cargo of muskets, numbering at least several hundred.[484]

On their return in 1821, Hongi and other Bay of Islands and Hokianga rangatira began a series of campaigns against their enemies in Mahurangi, Kaipara, Hauraki, Waikato, Hawke's Bay, and the Bay of Plenty. At various times, the leaders involved included Patuone and Nene of Ngāti Hao, Pōmare I and Te Whareumu of Ngāti Manu, Rewa of Ngāi Tāwake, Tītore of Ngāi Tāwake and Ngāti Rēhia, Te Morenga of Te Ngāre Hauata, and Rāwiri Taiwhanga, Moetara, and Tuhi of Te Ngāre Raumati.[485] Each campaign was intended to extract utu for an earlier Ngāpuhi defeat (such as Moremonui) or for the deaths of senior Ngāpuhi people. The main battles occurred during a four-year period, from 1821 to 1825.[486] While other battles occurred in the later 1820s and early 1830s, they were generally more restrained and had lesser consequences.[487]

Many of these conflicts had little or no direct impact on this district's tribal landscape. However, some did. Mahurangi was depopulated, along with neighbouring areas such as Tāmaki and Kaipara. The effects were also felt in Whāngārei, which bore the brunt of several reprisal raids.[488] The Bay of Islands population was inflated by war captives,[489] and by several hundred Ngāti Kahungunu under their leader Te Mauparāoa, who had formed an alliance with Ngāti Manu during the campaigns.[490] As the wars drew to a close, further realignments occurred in the Bay of Islands and Whangaroa as Hongi and his relatives became increasingly concerned with control of trading relationships. We discuss these events later.

3.3.7 Mahurangi and the Gulf Islands

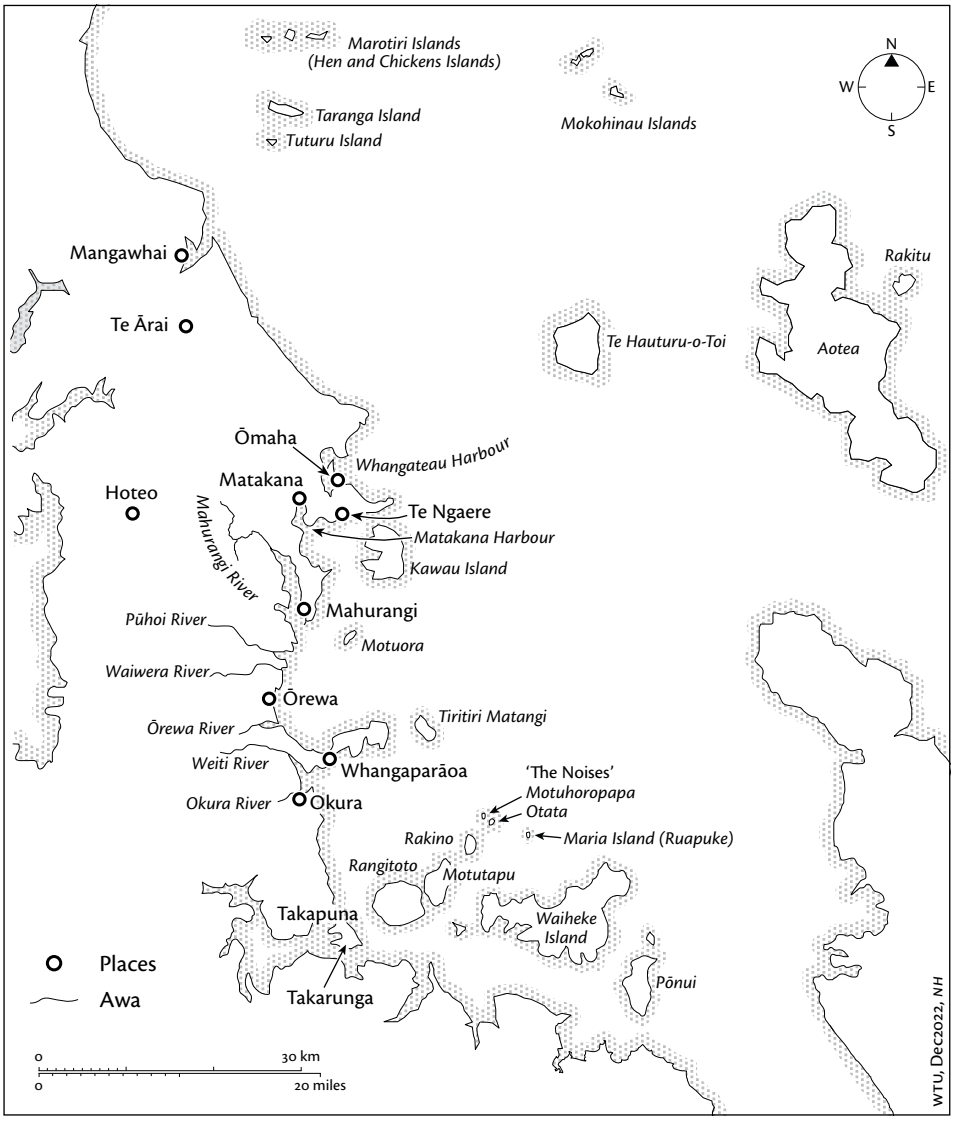
The Mahurangi section of this inquiry district extends along the coast from Te Ārai to Devonport, and inland to the territories between Wayby and Riverhead. Much of this is hilly and would have been heavily forested in pre-European times, though there were river valleys and areas of flat land. The southern part of this district also encompasses several islands including Tiritiri Matangi, Motuora, Kawau, Hauturu (Little Barrier) and Aotea (Great Barrier), and smaller islands in their vicinity. Islands and coastal territories were prized for their fisheries, and in particular for the shark fishery between Kawau and Whangaparāoa which was shared and sometimes contested among many Hauraki, Tāmaki, and Mahurangi tribes.[491]

(1) *Maki's people*

Mahurangi was first settled by Tāmaki peoples of *Tainui* descent, including descendants of Taihua.[492] During the 1700s, another *Tainui* group under the leadership of Kāwhia rangatira Maki occupied Tāmaki before moving into southern Kaipara, conflicting and intermarrying with other *Tainui* groups (such as Ngāoho and Ngāiwi) and with Te Roroa groups who were gradually migrating south.[493] In turn, Maki and his siblings and children launched a series of attacks against Ngāti Taihaua and related hapū Ngāti Taimanawaiti, claiming many of their territories along the Mahurangi coast.[494]

Maki's children formed several new hapū. Ngāti Manuhiri occupied lands from Mahurangi to Mangawhai, inland to Hoteo. One section intermarried with Ngāi Tāhuhu of Te Ārai.[495] Ngāti Rongo (sometimes known as Ngāti Rango[496]) formed through intermarriage between Maki's son Ngāwhetu and Moerangaranga of Ngā Rīriki (a section of Ngāti Awa). Moerangaranga was the granddaughter of Haumoewhārangi, who was also the progenitor of Te Uri o Hau and several other Ngāti Whātua hapū.[497] Some sources say that Ngāti Rongo is named after Moerangaranga's father, and others that it commemorated peace between Te Kawerau and Ngāti Whātua.[498] Ngāti Rongo occupied territories from Araparera in southern Kaipara to the Mahurangi Harbour, as well as Hauturu (Little Barrier Island) which they shared with Ngāti Manuhiri.[499] Claimants emphasised that, notwithstanding their Ngā Rīriki heritage, their rights in Mahurangi were from Maki.[500]

Ngāti Maraeariki occupied lands between Whangaparāoa and Ōmaha, but particularly became associated with Orewa.[501] Ngāti Poataniwha and Ngāti Kahu emerged through intermarriage with descendants of Taihaua, and occupied lands from Whangaparāoa to the North Shore. Ngāti Kahu is associated with the islands at Ōtata, Motuhoropapa and Ōruapuke (The Noises) east of Rangitoto, and Ngāti Poataniwha with Tiritiri Matangi.[502]



Map 3.7: Mahurangi and the Gulf Islands.

Te Kawerau ā Maki occupied lands south of the Kaipara Harbour, before conflicts with Te Taoū and other northern Kaipara hapū limited their territories into the Waitākere Ranges.[503] Several other hapū also emerged from these groups, including Ngāti Raupo and Ngāti Te Awa.[504] The descendants of Maki and Mataahu are known collectively as Te Kawerau,[505] and claimants in this inquiry used the collective name Te Uri o Maki.[506]

Maki's brother Mataahu led the conquest of Hauturu (Little Barrier Island). His son Rēhua then married into

Looking south from Kawau Island over the Gulf Islands, painted by Samuel George Frith. Whangaparāoa can be seen in the distance, with Tiritiri Matangi Island to the left and Motuketekete, Moturekareka, and Motutara Islands to the right.

Ngātiwai and led a combined force in the conquest of Aotea (Great Barrier) and Rakitu Islands. Ngāti Rehua is named for him.[507] Ngātiwai strengthened their connections with these islands and the Mahurangi coast through successive generations of intermarriage, in particular with Ngāti Rehua, Ngāti Manuhiri, and Ngāti Kahu.[508] Maki's inland and Kaipara descendants meanwhile continued to intermarry with Te Uri o Hau, Ngā Rīriki, and others to produce Te Taoū and Ngāti Whātua who later came to occupy Tāmaki.[509]

(2) *Conflict with Hauraki peoples*

While Te Kawerau hapū were occupying the Mahurangi coast, Ngāti Maru were emerging on the Hunua seaboard. During the 1700s, Ngāti Maru and associated tribe Ngāti Paoa occupied much of the Hauraki region,[510] and

conducted a series of raids into Tāmaki and Mahurangi. In turn, Ngāti Manuhiri, Ngāti Rongo, and related hapū mounted a series of retaliatory raids into Hunua, Tāmaki, and Waiheke, often aligning with Te Taoū and other Tāmaki hapū.[511]

Most sources suggest that these conflicts left Kawerau hapū and Hauraki tribes with shared rights along the coast. Whereas Kawerau hapū ultimately retained or regained possession of much of their land, the Hauraki tribes acquired rights to marine and coastal resources, as well as some land rights. Specifically, these included a right to share in the highly valued Mahurangi coastal shark fishery and rights to establish associated summer camps in the harbours and river mouths including those at Whangaparāoa, Matakana, Mangawhai, and Mahurangi.[512] According to *The Hauraki Report* (2006), the fishery was also managed from Coromandel settlements such as Umangawhā (Colville Bay).[513] The catch was typically returned to Coromandel and Hunua homelands.[514] Ngāti Maru obtained similar rights on Rakitu,[515] and Hauraki tribes also exercised resource rights in inner Gulf Islands including Tiritiri Matangi.[516] More generally, Hauraki tribes came to see themselves from the mid-to-late 1700s onwards as having resource rights throughout the marine and coastal area as far north as Matakana.[517] The saying 'Mai Matakana ki Matakana' refers to the settlements of that name in Mahurangi and Coromandel, and is commonly used among Hauraki peoples to explain their territorial interests.[518]

By the 1790s, other hapū had been drawn into the conflicts between Hauraki and Te Kawerau. These included Te Parawhau of Whāngārei, and Ngātiwai, both of whom had intermarried with Ngāti Manuhiri.[519] Some sources refer to 'Ngāpuhi' undertaking raids into Ngāti Paoa territories, but this appears to be a broad use of the term.[520] As discussed earlier, Te Parawhau were affiliated to the southern section of Ngāpuhi, and mainly comprised descendants of Tāhuhu and Manaia (Te Parawhau were also associated with Ngātiwai and Ngāti Whātua, as well as Ngāpuhi).[521] Maeaea, one of the main protagonists in these battles,[522] was a leader of Ngāti Manuhiri,[523] but was nonetheless sometimes described as 'Ngāpuhi'.[524] Another protagonist was Te Raraku, who had a Ngāti Rongo mother and a Ngāi Tū father. Te Raraku grew up at Ōtuihu and is an important ancestor for Ngāti Manu (Tūwhāngai was his daughter), but as an adult he mainly lived at Mangawhai and fought for Ngāti Rongo.[525] His provocations against Ngāti Paoa seem to have become the justification for the Hauraki attack on the Bay of Islands.[526]

The northern alliance leader Te Hōtete led the retaliatory raid, defeating Ngāti Paoa at Takapuna Beach, North Head, and Waiheke, and occupying Takapuna for a time before peace was made and the Ngāpuhi warriors returned home.[527] The archaeologist Anthony Packington-Hall said a pounamu pendant, 'Hina o te Ata', was given to Te Hōtete as a peacemaking gift.[528]

(3) *The impact of warfare in Mahurangi*

The final battle between Ngāti Paoa and Te Kawerau occurred in about 1800.[529] Among sections of Ngāpuhi, however, the defeat at Puketona continued to rankle, as did a number of more recent causes.[530] On Hongi's return from England, he and the leaders of other Ngāpuhi hapū from throughout the Bay of Islands and Hokianga gathered their warriors and moved south,[531] attacking settlements along the Mahurangi coast as utu for the deaths of two Ngāti Manu rangatira in recent conflicts.[532]

The party then continued onwards, attacking Ngāti Paoa settlements on Waiheke and other islands before moving into Tāmaki, claiming the major Ngāti Paoa-Ngāi Tai pā complex Mokoia–Mauinaina at the head of the Tāmaki River. Ngāpuhi forces next attacked Ngāti Maru at Te Tōtara, and (in 1822) invaded Waikato where they remained in occupation for some time before negotiating a peace agreement, secured through intermarriage.[533] In almost all of these battles, the Ngāpuhi forces inflicted heavy losses of life. They also returned to the Bay of Islands with many captives who were put to work in the district's potato gardens.[534] Ngāti Paoa mounted a series of retaliatory raids against Te Parawhau (twice) and against Ngātiwai and Ngāre Raumati, which provoked another Ngāpuhi push into Waikato. Te Taoū and other Tāmaki and Kaipara groups also attacked Te Parawhau.[535] The Ngāpuhi campaign culminated in the famous battle Te

Ika a Ranganui near the Kaipara settlement of Kaiwaka in 1825, where Hongi finally achieved utu for the defeat at Moremonui almost two decades earlier.[536] Following this battle, Te Parawhau were able to expand their territorial interests south as far as Mangawhai and west into Kaipara and Te Roroa territories.[537]

In Mahurangi (and also in Kaipara and Tāmaki), those who survived the Ngāpuhi onslaught were pushed out of their homelands.[538] Ngāti Rehua and Ngātiwai continued to occupy Aotea.[539] Michael Beazley (Te Uri o Maki) told us that small numbers of Te Kawerau warriors remained in their former territories.[540] But, otherwise, according to the nineteenth-century Ngāti Rongo rangatira Te Hēmara Tauhia: 'None were left at Hauturu, nor on the mainlands opposite [at Mahurangi], nor at Kaipara, nor at Tamaki.'[541]

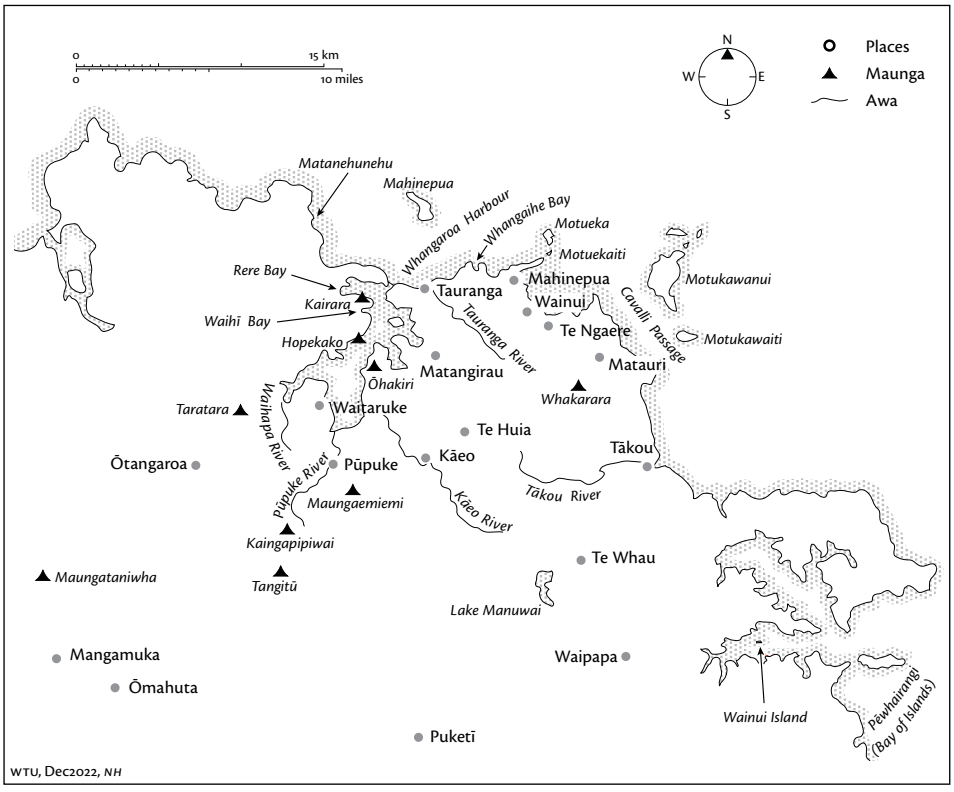
Later in the 1820s, some Mahurangi and Kaipara hapū began to return from the Waikato for temporary fishing and food-gathering expeditions, but did not settle permanently. Many defeated Kaipara and Mahurangi hapū were sheltered across the region. Ngāti Manuhiri were sheltered in the Hokianga with Ngāti Hao as well as in Whāngārei with Te Parawhau;[542] Ngāi Te Whiu and Ngāti Kawa at Utakura with Te Pōpoto; Te Waiaruhe at Pākanae with Ngāti Korokoro; and Ngāti Whātua at Mangakāhia with Ngāti Toki.[543] Sections of Ngāti Rehua and Ngātiwai left the Gulf Islands and moved to Whangaruru and other coastal settlements under the protection of mainland Ngātiwai communities.[544] Ngāti Rongo, numbering about 100, went to live with Ngāti Manu under the protection of their rangatira Pōmare II and Te Whareumu.[545] This occurred because Pōmare II, as a descendant of Tūwhāngai, Ngāwhetu's great-granddaughter, had Ngāti Rongo ancestry.[546] Due to this connection, Ngāti Manu had rights at Mahurangi and had not joined other Ngāpuhi leaders in their attacks against Te Kawerau.[547]

During the 1830s, Hauraki, Te Kawerau, and Ngāpuhi peoples all asserted rights along the Mahurangi coast. Peacemaking between Ngāti Paoa and Ngāpuhi began in about 1830 and was cemented in 1833 through the marriage of Ngāti Hao rangatira Patuone to a senior Ngāti Paoa woman.[548] This peacemaking gave Ngāti Paoa confidence to occupy Tāmaki and Mahurangi lands when others, such as Te Kawerau and Te Taoū, continued to fear Ngāpuhi or Waikato attack.[549] From 1833 to about 1836, Patuone mainly lived among his wife's Ngāti Paoa iwi at Waiheke and Whakatiwai in Hauraki,[550] but he is also recorded as living for a time at Ōmaha.[551] Later in the decade, he and his whānau had kāinga at Takapuna and Takarunga (Mt Victoria), while also maintaining a presence at Hokianga.[552] Patuone exercised significant influence in Ngāti Paoa affairs, representing them in discussions with Waikato[553] and making decisions about land allocation on the North Shore.[554] Also occupying Takapuna, Awataha, and other North Shore lands by the late 1830s were the Kawerau hapū Ngāti Kahu and Ngāti Poataniwha under the leadership of Hetaraka Takapuna. These hapū had close associations with Ngāti Taimanawaiti and Ngāti Paoa.[555]

Between 1832 and 1834, a section of Ngāti Paoa travelled into the abandoned Mahurangi territories to cut kauri for a Pākehā timber merchant. Patuone was involved in this arrangement and visited the timber station regularly.[556] In 1833 and 1834, he and the Bay of Islands leader Tītore (Ngāti Rēhia, Ngāi Tāwake) brokered a deal to supply Mahurangi spars to the Royal Navy.[557] While Ngāti Paoa and Ngāpuhi both supplied labour for this arrangement, neither sought to cultivate the land or settle it permanently.[558] Later in the 1830s, however, a section of Ngāti Hao took up land at Te Ngaere where they remained into post-treaty times. According to Michael Beazley, this land was gifted by a section of Ngāti Rongo, but the gifting was later contested by others of that hapū.[559]

While the surviving Te Kawerau hapū remained in exile, their leaders nonetheless continued to assert their rights in Mahurangi. The Ngāti Paoa timber operation was subjected to muru in 1832 by Pōmare II, who appears to have been defending the interests he had inherited through his Ngāti Rongo ancestry.[560] Other raids occurred in 1835, by Whāngārei hapū, who may have been asserting rights acquired through intermarriage with Ngātiwai and Ngāti Manuhiri.[561] Later in the 1830s, Te Hēmara objected to proposed land transactions affecting Ngāti Rongo territories.[562]

According to Mr Beazley, a small number of Ngāti



Map 3.8: Whangaroa.

Kahu, Ngāti Rongo, and Ngāti Raupo whānau returned to their Mahurangi lands in the late 1830s, and by 1840 Ngāti Kahu were occupying Whangaparāoa, including Okura and Orewa. Ngāti Rongo and Ngāti Raupo were also occupying Okura and Te Waihe, while Ngāti Raupo had lands at Te Kapa and Mangawhai as well.[563] Other sources suggest that Ngāti Rongo leader Te Hēmara did not return to Mahurangi until after 1840, though they acknowledge that he travelled between the Bay of Islands and Tāmaki during 1839.[564] Ngāti Manuhiri also returned, and though the date for their re-establishment at Mahurangi is unknown, it was likely after 1841.[565] By that time, many of these remnant Te Kawerau hapū had become associated with Ngāti Whātua.[566] Also by that time, the Hauraki tribes had asserted their rights by entering into land arrangements with settlers and the Crown, covering Aotea, Takapuna, and the entire Mahurangi coast.[567] We will discuss those transactions in chapter 6.

3.3.8 Whangaroa

Whangaroa, like Hokianga, is a place of Ngāpuhi origins. Kupe lived there for a time, and Puhi-moana-ariki settled at Tākou before his daughter married into Nukutawhiti's people. Whangaroa also became Hongi's final home, and it is because of his late influence on evolving hapū relationships there – in the 1820s – that we consider this district last.

Whangaroa is a former river valley, submerged by rising sea levels 'to create a long deep harbour with several large internal bays'.[568] The harbour 'is known for its diverse environments, its many maunga, and its many wai systems'.[569] In Whangaroa traditions, this landscape was

Taratara maunga overlooking Whangaroa Harbour, painted by colonial artist Charles Blomfield

created by fighting among 'lesser' taniwha as they 'tried to grab land for themselves', thereby gouging out harbour inlets and other waterways. Of particular significance was a fight between Maungataniwha (the dominant peak, who had travelled from Hawaiki ahead of humans) and his beautiful companion Taratara, of whom he was very jealous. Finding she had been unfaithful, he kicked her, leaving her with a broken back, while her head became the island Horoiwi. Her lover Hotou was kicked beyond Kaikohe, where he is a maunga.[570] There is another version of this kōrero, in which Taratara was instead a handsome, popular, and benevolent man. Maungataniwha, his jealousy roused – and his anger, too, after Taratara laughed at him – kicked and beat him savagely, so that his body parts were left scattered about Whangaroa. Maungataniwha took up his final location in the Mangamuka ranges.[571] Also highly significant in Whangaroa tradition is Tangitū, at the head of the harbour. Below Tangitū sits Kaingapipiwai, source of the four springs that flow down the valley into Whangaroa, Hokianga, Mangonui, and Bay of Islands harbours, 'establishing the basis of whanaungatanga that unites the people of these areas', and providing both spiritual and physical sustenance.[572]

Claimants told us that the harbour was correctly known as Whaingaroa ('the long wait'), in reference to the ancestor Rauru-iti who kept vigil after the departure of her husband Kaimohi for war. She is said to still be visible at Waihi Bay.[573] We were told that Whangaroa is an abode of

the atua who traversed the land before human occupation. On one of the cliff faces at the eastern harbour entrance is Te Pokopoko o Hinenuitepō, and the harbour 'is the womb of Hinenuitepō . . . a place of peace, where the winds don't seem to be as severe as outside the harbour, or the sea so rough'. Below the cliff face is Te Urenui o Māui, where Māui attempted to enter into his mother to acquire immortality.[574] Taupō Bay is where he stood as he slowed the course of the sun.[575] Māui lost the mortality battle, and therefore 'parts of him lie at the entry to the Whangaroa harbour'.[576] Outside the western harbour entrance is Matanehunehu (Pā Island), where the atua Tāwhaki is said to have begun his ascent into the heavens.[577] According to claimant Rāwiri Timoti:

> A wera wahi e honoana e honoana ki te ao wairua. E mohio o tatou matua o tatou tupuna i tera wa, i tera wahi.
>
> Those sites are our connection to the spiritual realm. Their significance was well known to our ancestors, and they passed on the stories to the generations of today.[578]

Whangaroa is also associated with early human occupation. Kupe is said to have lived there for a time, cultivating the land and creating an enormous hākari (feast) at Whakarara, near Matauri.[579] The waka *Mātaatua* is also said to have stopped in the harbour and at several places around the coast before reaching its final resting place in the Tākou River.[580] Frances Goulton of Whangaroa told us of the significance of these atua and tūpuna:

> [I] konei a Māui, i konei a Hine-nui-te-po, i konei a Tawhaki, i konei a Kupe rātou katoa, wā mātou nei whakapai e mara, ko ia ko te tīmatanga o te ao ko Whangaroa.
>
> Māui was here in the beginning, Hine-nui-te-pō was here, Tāwhaki was here, Kupe was here, all these significant ancestors and we assert that the commencement of the world began right here in Whangaroa.[581]

Tradition, supported by archaeological evidence, suggests that settlement was concentrated along the coastline, both inside and outside the harbour. In particular, there were significant settlements at river mouths (Pūpuke, Kāeo, Wairākau, Tauranga, and Tākou) which offered fertile land for cultivation, as well as access to kai ngāhere (bush food) and kaimoana (seafood). Also significant were coastal settlements from Mahinepua to Matauri.[582] Whangaroa claimants told us that their territories were 'part Tangaroa and part Papatūānuku', and their tūpuna 'developed ways to live in both domains,'[583] with 'one leg . . . on the land' and 'one leg . . . on the sea.'[584] Claimants also explained how their tikanga provided for sharing, use, and preservation of food sources. Mana moana, especially, was shared, with many hapū having rights to occupy seasonal fishing settlements on islands such as Motueka-nui and Motueka-iti.[585]

(1) *Initial waves of settlement*

Like other parts of this district, Whangaroa was peopled in many waves. Ngāti Awa are acknowledged as the territory's first long-term settlers.[586] After *Mātaatua* made its final landfall, its people spread out to occupy, at one time, the northern Bay of Islands and much of the territory north of Hokianga, before conflicts with other Muriwhenua groups began to reduce their territories.[587] In turn, Ngāi Tamatea and Ngāti Kahu reached Whangaroa from the north, along with associated hapū such as Te Paatu.[588] Throughout much of their histories, Whangaroa hapū shared the harbour, moving from place to place in accordance with seasonal food-gathering requirements.[589] Ngāti Torehina were also related to these groups and occupied the coast from Mahinepua to the Bay of Islands.[590] They intermarried with Te Hikutū and became established in various places on the Purerua Peninsula; they are now particularly associated with Wharengaere.[591]

The Bay of Islands and Hokianga conflicts discussed in previous sections led to new migrations and layers of intermarriage. During Rāhiri's lifetime, Te Kākā and Tōmuri won a series of battles in northern Whangaroa before they and their relatives settled in the district and intermarried.[592] Tōmuri's brother Tīpoki and Rāhiri's brother Tangaroa-whakamanamana are also recalled as important Whangaroa ancestors.[593]

During later conflicts with Ngāti Awa (in the early 1700s or thereabouts), various Hokianga groups including Te Hikutū are said to have settled along the coast between Mahinepua and Matauri, also intermarrying with existing populations.[594] We have already discussed migrations of Ngāti Rēhia, and sections of Ngāti Tautahi and Ngāi Tāwake in the 1780s (or thereabouts). At about the same time, a section of Ngāre Raumati was also migrating north, possibly in concert with some of Rāhiri's descendants. This group also established itself along the coast at Wainui and Mahinepua, before moving inland to Kāeo and Kaingapipiwai.[595] Whereas Ngāti Awa and Ngāti Miru are often said to have been forced out of Hokianga and Waimate, sections of these hapū as well as Ngāti Torehina remained in Whangaroa and intermarried with successive waves of new settlers. Through this process many new hapū were established, which we describe later. The last significant migration was that of Ngāti Pou, who settled at Pūpuke and Waihapa (in the inner harbour) after they were ejected from Taiāmai in the 1790s.[596]

(2) *Hongi's defeat of Ngāti Pou*

The final stage of Ngāpuhi settlement of Whangaroa lands occurred under Hongi Hika, whose mother was from Pūpuke.[597] After falling out with his Kaikohe kin in 1826, Hongi went to live on his mother's lands, where he quickly came into conflict with Ngāti Pou.[598] There were several causes, including Ngāti Pou occupation of these lands and desecration of his grandfather's bones.[599] Hongi gathered a force that included most Whangaroa hapū and was led by two of Hongi's cousins, Tāreha (Ngāti Rēhia) and Ururoa (Te Tahawai).[600] Together, these laid siege to the Ngāti Pou pā at Taratara. Most Ngāti Pou fled into the Mangamuka Valley before continuing on to Waimamaku on the Hokianga coast. During the hostilities, Hongi was shot and wounded, and Ururoa's brother was killed. Over a year later, in March 1828, Hongi died from the wounds he had sustained.[601]

According to the traditional history of Whangaroa compiled by a team led by claimant historian Dr Aroha Harris, authority over the harbour and its environs was then shared among Ururoa, Tāreha, Tupe of Te Whānaupani, and Hongi's son Hare Hongi Hika.[602] Pairama Tahere also named Te Hōtete and Pororua (who inherited leadership of Te Uri o Te Aho) as leaders for the western side of Whangaroa, extending to Maungataniwha and Kohumaru.[603] According to Rihari Dargaville (Te Rarawa, Ngāti Kaitutae, Ngāti Manawa), these leaders were responsible for protecting Whangaroa from further conflict, and also seemingly for managing trading resources (such as timber) and relationships.[604] As part of this role, a section of Te Matarahurahu (whose origins are discussed later) migrated from Kaikohe and, according to

Claimant historian Dr Aroha Harris, who was the coordinating author for the collaborative oral and traditional history report produced for Whangaroa. Here, Dr Harris presents on the report during hearing week three in July 2013 at the Turner Events Centre in Kerikeri.

claimant Rose Huru, occupied lands at Maungataniwha, Ōtangaroa, and Kohumaru, where they intermarried with and have since come to see themselves as part of Ngāti Kahu.[605]

(3) *Western Whangaroa*

All of the rangatira who exercised mana over Whangaroa territories after Hongi's defeat of Ngāti Pou had prior rights in the district – most through ancestry, and Tāreha through the prior raupatu (conquest followed by occupation) of Ngāti Miru in the territories from Waimate to Tākou.[606] The tūpuna involved were Te Puta and his son Tahapango, who affiliated to a number of groups, including Ngāti Mokokohi (a hapū of Ngāti Kahu), Ngāti Awa, and Ngāti Miru.[607] Te Puta and his descendants are said to have exercised mana over most of Whangaroa Harbour.[608] Hapū descending from him include Te Aeto, Kaitangata, Ngāti Imiru, Ngāti Kahuiti, and Ngāti Rangi.[609]

Together with Ngāti Mokokohi, these hapū were linked with territories along the western side of the harbour, inland as far as Ōtangaroa and Kohumaru. More specifically, Ngāti Mokokohi were linked with Taupō Bay, Ōtangaroa, and Pūpuke-Kaingapipiwai, but were said to have associations throughout the harbour.[610] Te Aeto were connected with the eastern harbour lands from Taupō Bay inland to Kohumaru, and also with Matangirau. They later relocated to Kāeo and Pūpuke.[611] Kaitangata were associated with Rere Bay at the north-western harbour entrance, and later relocated to Kāeo and Pūpuke-Kaingapipiwai.[612] Ngāti Rangi (and affiliated hapū) were associated with inland territories from Ōtangaroa to Waitaruke and Pūpuke-Kaingapipiwai.[613] Ngāti Imiru were associated with Pūpuke and Kaingapipiwai.[614] Also descending from Te Puta were Ngāti Kawau, who were mainly associated with territories along the eastern side of the harbour from Ōhākiri to Wainui, but also had interests inland at Kāeo and Pūpuke.[615]

Claimants told us that the inland interests of these hapū intersected with others, including Te Matarahurahu, and Pikaahu at Ōtangaroa, Maungataniwha, and Kohumaru;[616] Te Uri o Te Aho at Maungataniwha and Kohumaru;[617] and Te Ihutai and other Mangamuka hapū at Maungataniwha.[618] Nuki Aldridge noted that several hapū and iwi groupings claimed interests in Ōtangaroa, including Ngāti Kahu, Ngāti Kahu ki Whangaroa, Ngāpuhi ki Whangaroa, and Hokianga and Waimate–Taiāmai peoples.[619]

(4) *Eastern Whangaroa*

Te Puta's sons Tahapango and Ngāropuku were both important ancestors for Whangaroa hapū. Tahapango, in particular, is recalled for defending Whangaroa lands against Ngāti Pou encroachment, and for a series of strategic marriages between his children and their Ngāpuhi neighbours. His own marriage was to Taingariu of Ngāti Rēhia and Ngāti Ruangāio. Their daughter Tuhikura married Te Hōtete of Ngāi Tāwake and moved with him to Kaikohe. Hongi Hika was their son, and Tupe also descended from them. Another of Tahapango's children, Te Koki, married Te Mutunga of Ngāti Hine and Ngāti Rēhia. Ururoa was their son. Tahapango's third child was Te Putahi, whose son Whiro became leader of Te Aeto.[620]

Tuhikura, claimants said, was an example of the importance of wāhine rangatira in Whangaroa tradition.[621] So, too, were Hongi's wives Turikatuku and Tangiwhare, who were daughters of Te Koki and Te Mutunga.[622] Turikatuku was 'probably [Hongi's] closest friend and confidante'.[623] She was a matakite (seer or visionary)[624] and, though completely blind from 1816, she accompanied Hongi on his expeditions to the Bay of Plenty, Hauraki, and Waikato, advising him on strategy. Hongi's victory over Ngāti Maru in 1821 is credited to her tactics, and the power of her rhetoric inspired Hongi's troops at Te Ika a Ranganui. She was seriously ill when she accompanied Hongi on his Whangaroa campaign and passed away before it ended.[625]

Hapū associated with Tahapango and Taingariu include Ngāi Tūpango, Te Tahawai, Te Whānaupani, and Ngāti Uru.[626] Their overlapping territories extended along the eastern side of the harbour from Matauri to Pūpuke-Kaingapipiwai and inland to Taraire and Te Huia. More specifically, Ngāi Tūpango are now mainly associated with Te Ngāere,[627] but claimants told us they were associated with a much broader area extending from Whangaihe to Matauri and inland to Taraire.[628] Te Whānaupani are said

to descend from Ngāti Miru survivors of the Waimate campaign.[629] Their territories extend from Matangirau to Kāeo and inland to Te Huia. They are also associated with Pūpuke-Kaingapipiwai.[630] Ngāti Uru are associated with lands north of Puketī Forest, including Ōtangaroa and Maungataniwha in the north-west and Waipapa and Puketōtara in the south-east. Their main settlements were at Kāeo and Kaingapipiwai.[631] Closely related to Ngāti Uru are Ngāti Pakahi of Mangaiti.[632] Te Tahawai are mainly associated with Waitaruke, Pūpuke-Kaingapipiwai, and Kāeo.[633] Several of these hapū shared seasonal occupation and fishing rights at Mahinepua, and islands such as Motueka, Motukawanui, and Motukawaiti.[634]

Although Tahapango is recalled as a rangatira tupuna for these hapū,[635] there are several other important lines of descent. Ngāti Ruamahue, who are mainly associated with coastal territories such as Wainui, Te Ngāere, and Taupō Bay, are said to descend from intermarriage between Whangaroa peoples and Ngāre Raumati.[636] Ngāi Tūpango, Te Whānaupani, Ngāti Uru, and Te Tahawai have significant connections with Te Pōpoto, Te Hikutū, and Ngāi Te Whiu, which were forged after the final Hokianga battles with Ngāti Awa.[637] These connections saved Ngāti Uru from Hongi's utu after that hapū refused to join him in the campaign against Ngāti Pou. Kaitangata also refused to join Hongi and suffered heavy loss of life as a result.[638] Auha settled in Matauri late in his life and is recalled as a tupuna for Ngāi Tūpango and Ngāti Kura.[639] Although Ngāti Awa and Ngāti Miru were pushed out of Hokianga and the Bay of Islands, their bloodlines remain in all these Whangaroa hapū. Ngāti Torehina retain interests along the coast,[640] and a small group of Ngāti Miru continues to live at Mahinepua under that name.[641]

Many Whangaroa hapū names are relatively recent, emerging after the Ngāpuhi defeat of Ngāti Miru at Waimate, or after Hongi's ejection of Ngāti Pou. In turn, extensive intermarriage has blurred lines between them,[642] and land interests have also become blurred as a result of movements around the harbour during the 1800s, especially so from coastal areas to Pūpuke and Kaingapipiwai after Hongi's campaign against Ngāti Pou.[643] Rueben Porter told us that no one owned the land: '[it] was vested in everyone and we all shared in [it]'.[644] Likewise, Robyn Tauroa told us that Whangaroa peoples had many hapū affiliations but did not identify with any single waka or iwi. When asked to which she belonged, she replied, 'My dad used to say we were Whangaroa.'[645]

3.4 Ngā Hononga Hou / New Relationships, 1830–40

From the mid-1820s, Ngāpuhi involvement in warfare declined. Secure in their own territories, hapū leaders increasingly turned their attention towards advancing the prosperity of their people by taking advantage of their rapidly growing contact with Pākehā. From the late 1820s on, the number of whaling and trading ships visiting the Bay of Islands grew rapidly, creating demand for pork, potatoes, liquor, labour, and other provisions and services. Flax and timber became valuable export commodities. And missionaries, traders, sawyers, and others arrived to settle in ever-increasing numbers.

These developments affected the district unevenly. In Mahurangi and Whāngārei, European settlement was minimal and was confined to temporary sawmilling gangs, two small missions, and a handful of farmers and traders. Settlement concentrated mainly in the Bay of Islands and (to lesser degrees) Hokianga and Whangaroa. In those locations, growth in trading relationships brought opportunities for unprecedented material prosperity. By the 1830s, thousands of British pounds were flowing each year into those economies.[646] Demand for European clothing, goods, and other technology correspondingly grew. Mission schools taught the sons of rangatira to read and write while also learning about Europe's atua. Official contact with Britain increased, too, as rangatira sought an international alliance to help manage the challenges associated with growth in trade and settlement.

These events brought significant economic change, along with some accommodations by both Māori and Pākehā that were aimed at ensuring that relationships were harmonious and mutually beneficial. But these changes did not fundamentally alter the district's social or political organisation. With very limited exceptions, the various

Ngāpuhi hapū and alliances continued to exercise mana in the territories discussed earlier. Mana, including political and economic authority, remained with hapū; rangatira exercised that authority on behalf of their people, in pursuit of collective security and well-being. Inter-hapū alliances that had formed before 1830 endured and were strengthened by continued intermarriage. Pākehā arrivals were welcomed and incorporated into a Māori world in which whanaungatanga and associated values and tikanga continued to dominate.

We described these events in depth in chapters 3 to 5 of our stage 1 report. What follows is a summary acknowledging the changes that occurred, which brings our description of this district's tribal landscape up to the time of the treaty.

3.4.1 Conflict and peacemaking

Large-scale regional warfare reached its climax at Te Ika a Ranganui in 1825, and declined thereafter.[647] Ngāti Whātua and their allies suffered a defeat and subsequently left the Kaipara and Tāmaki areas.[648] A buffer zone had been established south of Whāngārei, reducing the likelihood that the Bay of Islands would again face attack from the south.[649] And the peoples of Waikato and Hauraki had obtained muskets in sufficient quantities to discourage further campaigns, at least on the scale of the Ngāpuhi-led conflict of 1821 to 1825.[650]

Under Hongi's instruction, Rewa, Te Wharerahi, and Hinutote of Ngāi Tāwake negotiated early peace agreements between the northern alliance and Waikato and Hauraki tribes. Hokianga hapū also respected these arrangements.[651] Of the three taua that travelled south after 1825, all were led by southern alliance or Te Parawhau rangatira seeking utu for causes that did not directly involve Hongi or Hokianga people.[652] Missionaries often sought to present themselves as the peacemakers, and on occasion were viewed as such in inter-iwi conflicts, which downplayed the traditional roles played by rangatira in negotiating peace and restoring relationships.[653] In fact, Māori had long peacemaking traditions which involved direct negotiation between the parties, often in the presence of a neutral ariki or rangatira. Peace agreements

Hongi Hika's carved self-portrait, made during his 1814 visit to Sydney.

were typically secured through intermarriage and other means such as gifts (as in Takapuna), transfer of resources or land (as in Mahurangi where Hauraki tribes acquired fishing rights), and return of war captives.[654]

Many of the senior Ngāpuhi rangatira of the 1820s and 1830s had reputations as peacemakers, and were involved in resolving both internal and external conflicts.[655] Rewa and Wharerahi played central roles in peacemaking negotiations with Waikato in 1823; notably, Rewa's daughter Matire Toha was betrothed to Kati-takiwā, the younger brother of Te Wherowhero, and their marriage preserved the peace between the two powerful confederations.[656] Rewa and, it seems, Wharerahi and Pōmare II also became involved in peace negotiations after the southern alliance, Ngātiwai, and Te Parawhau became involved in conflict with Hauraki tribes in 1828.[657] Patuone played a critical role in securing peace between Ngāpuhi and Ngāti Paoa,

marrying into that tribe and settling within their territory.[658] Patuone, Rewa, and Wharerahi were all involved in negotiations between Waikato, Hauraki, and Ngāti Whātua at Tāmaki in the late 1830s, which resulted in Te Taoū and other Tāmaki peoples returning to their former lands.[659] Southern alliance hapū, meanwhile, appear to have negotiated independently. Pōmare II reached a peace agreement with Ngāti Raukawa in the 1830s, which was cemented through his marriage to a senior woman of that iwi, and by Ngāti Raukawa gifting him a whare whakairo (carved house) at Kāretu.[660] Claimants told us that peace agreements such as these were regarded as highly tapu, and were sealed with ceremonies that invoked atua and sought their sanction, as well as through marriages that bound the parties together through whanaungatanga.[661] Ngāpuhi also secured peace with Ngāti Kahungunu and Ngāti Porou in the late 1830s.[662]

Northern alliance hapū were involved in some conflicts after 1825, but they tended to be local and relatively restrained. As well as Hongi's Whangaroa campaign against Ngāti Pou, there were minor conflicts in Hokianga during the 1820s as hapū contested authority over trading relationships and resources. One of those would lead to Ngāti Korokoro agreeing to confine their trading activities to the southern side of the harbour.[663] In the last few years of the 1820s, a coalition of Ngāi Tāwake, Ngāti Rēhia, Ngāti Rāhiri, and other northern alliance hapū mounted a series of attacks on Ngāre Raumati territories in the southern Bay of Islands. Utu for the death of Rewa's mother was one cause; another, underlying cause was the quest for control of Bay of Islands trading relationships. During the 1820s, Pāroa Bay (controlled by Ngāre Raumati) had gradually replaced Rangihoua (controlled by the northern alliance) as the preferred anchorage for visiting ships. The conflict ended with the northern alliance gaining control of Ngāre Raumati territories from Pāroa to the headlands at Rākaumangamanga and on to Taupiri Bay. Some Ngāre Raumati departed for Whangaruru, Whananaki, Matapōuri, and Ngunguru where they intermarried with Ngātiwai and other occupants; others are said to have remained in the Bay of Islands under the authority of northern alliance hapū.[664] In memory of these events the descendants of Rewa and Moka adopted a new hapū name, Te Patukeha.[665]

Te Matarahurahu (closely associated with Te Whānau Rara and sometimes recorded as Ngāti Rahurahu)[666] also seems to have emerged during the 1820s or thereabouts. They were closely associated with Ngāti Rāhiri and Ngāti Kawa,[667] and shared their territorial interests with those hapū at Waitangi, Puketona, Oromāhoe, and Pākaraka,[668] but they also had close links with Ngāti Tautahi, Ngāi Tāwake, and other Kaikohe hapū,[669] and were said by one claimant to be the descendants of Hongi.[670] During the 1840s, rangatira with Te Matarahurahu affiliations were among those who played a significant role in the Māori–Crown relationship: Hōne Heke (also of Ngāti Rāhiri, Ngāi Tāwake, Ngāti Tautahi, and Te Uri o Hua), Marupō (also of Ngāti Kawa, Ngāti Pou, and Ngāti Rēhia), and Te Kēmara (also of Ngāti Rāhiri and Ngāti Kawa).[671]

After the northern alliance gained control of Pāroa, it ceased to be a major anchorage, with that role passing to the Ngāti Manu settlement at Kororāreka. In 1830 that, too, passed into northern alliance hands following a conflict caused by a visiting ship captain. We heard two accounts of its origins. In one, the captain discarded his Ngāti Manu wives (one a daughter of the Kororāreka rangatira Kiwikiwi and the other a relative of Te Morenga) in favour of the daughters of Hongi and Rewa, and serious insults were then exchanged. In the second account, the captain, while under Ngāti Manu protection, abducted Hongi's daughter. In any event, the northern alliance, including Hongi's cousin Ururoa, responded by instigating a muru against Ngāti Manu. Ngāti Manu resisted and a woman from Ururoa's party was accidentally shot. The ensuing battle left at least 30 dead (and some estimates are much higher). Critically, one was the senior Ngāti Rēhia rangatira Hengi, whose death demanded utu. This conflict is commonly referred to as the 'Girls' War'.[672]

To prevent further hostilities, Ngāti Manu left Kororāreka, led by Pōmare II and Kiwikiwi to occupy Paihia initially, and then Ōtuihu. Tītore and Tāreha of Ngāti Rehia, Rewa and Moka of Ngāi Tāwake, and Hongi's cousin Ururoa (Te Tahawai) all acquired interests in Kororāreka,[673] though Ngāti Manu claimants told us

that their forebears had never relinquished their claim to mana whenua over the township.[674] Ngāti Manu retained control of the bays immediately south of Kororāreka, from Matauwhī to Ōkiato, but left them unoccupied, apparently as a buffer zone against further conflicts.[675]

Other conflicts would occur, most notably in 1837 when northern and southern alliance hapū again clashed.[676] But this was the last significant shift in control of the Bay of Islands land and trading relationships prior to the signing of te Tiriti o Waitangi in February 1840. By 1832, the musket wars would effectively be at an end so far as Ngāpuhi were concerned. The 'crisis of mana' that had afflicted them after Moremonui and Waiwhāriki had been resolved in their favour. Hongi and those who fought alongside him had brought Ngāpuhi a level of security that had not been felt for at least two generations and probably not since the wars with Ngāti Awa began in the 1600s.[677]

Although Hongi is recalled as a great leader, his legacy is broader than that. He was also one of the first Ngāpuhi leaders to sponsor missionaries; one of the first to plant and harvest wheat; one of the first to understand the economic and political importance of controlling trade; one of the first to grasp the potential for a large labour force using iron tools to revolutionise agricultural production; and one of the first to consciously foster alliance with Britain. He was, as recorded in the Whangaroa traditional history, a traditionalist in his motives (utu and mana) yet a modernist in the means he used to serve those motives.[678]

Hongi was one of several senior Ngāpuhi rangatira who died during the 1820s; Muriwai of Te Pōpoto, and Pōmare I and Te Whareumu of Ngāti Manu were others.[679] Their deaths left younger generations of leaders to guide their people through the 1830s and into the post-treaty years.[680]

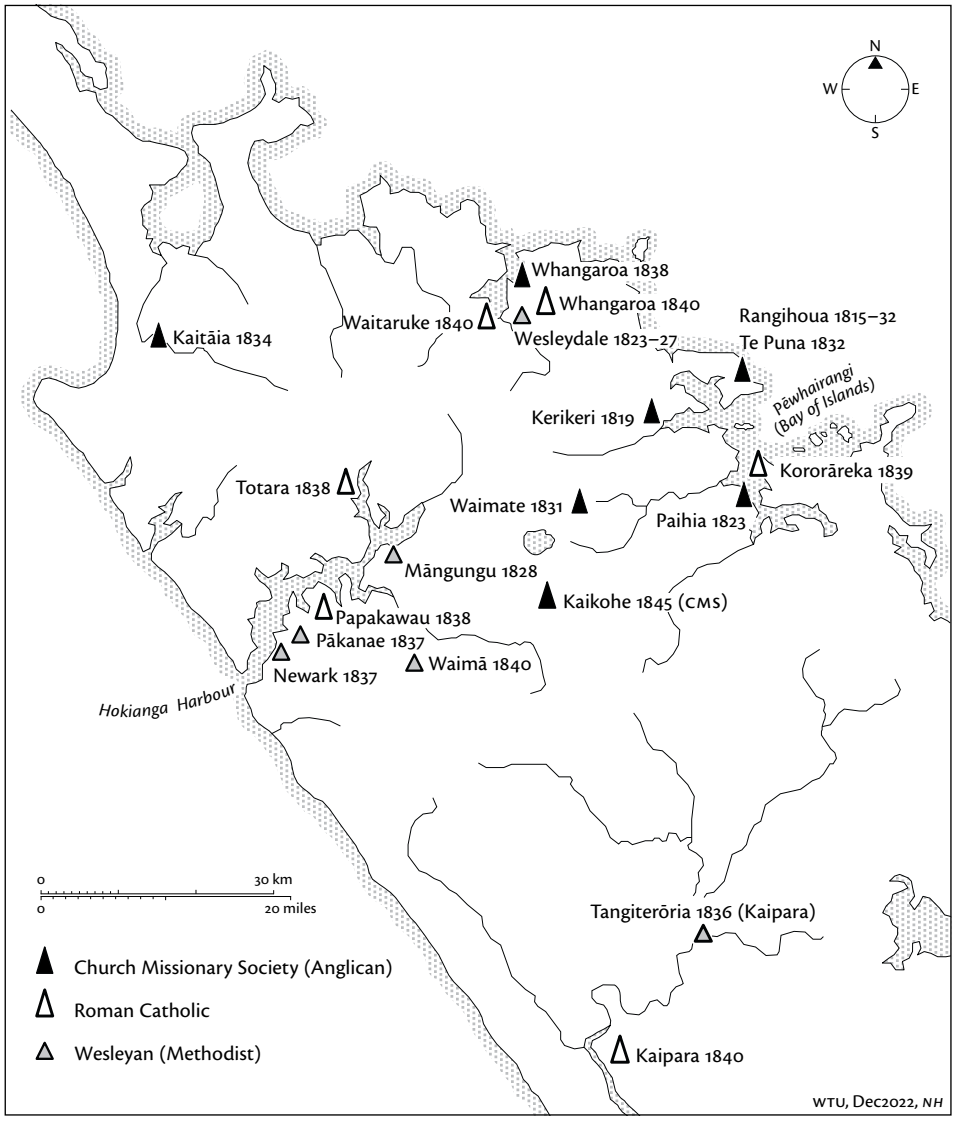
3.4.2 Missions and trade

From 1823 to 1840, the number of missions in this district increased six-fold. After the early experiments at Ōihi and Kerikeri, four more missions were opened in the Bay of Islands, four in Hokianga, three in Whangaroa (though one was subsequently abandoned after just four years), and one at Tangiterōria in the lower Mangakāhia Valley.[681] Rangatira initially competed to attract missions because they were seen as a step towards attracting settlers and traders.[682] From the mid-to-late 1820s, missions and mission schools became the means by which hapū could acquire literacy, farming skills, and cultural knowledge needed to further advance trading and other relationships.[683]

Trade advanced at a similar rate. The number of ships visiting the Bay of Islands grew from about 20 per year in the 1820s to well in excess of 100 by 1839.[684] Many of these were whaling ships which called at Kororāreka, Ōtuihu, or Waikare seeking provisions of water, pork, potatoes, and dried fish. But by the late 1830s, trading ships were seeking whole cargoes of food for export to New South Wales. Areas under cultivation grew rapidly as Waimate and Taiāmai effectively became market gardens for Sydney.[685] Flax was a highly valued commodity by the end of the 1820s, becoming a leading export item by 1831 (with a value of £26,000 that year) before it declined in importance.[686] Hokianga was the centre of that trade, and also became a centre for timber exports from the late 1820s. Whangaroa, Mahurangi, and to a lesser degree, Mangakāhia, also became sites for timber exports in the following decade.[687] By 1840, more than 20 sawmills had been established along the Hokianga rivers, and another two at Whangaroa, while a Mahurangi site had come and gone.[688]

Business opportunities brought permanent settlers in far greater numbers. Early settlement had been almost entirely limited to missionaries and escaped convicts,[689] but from about 1830 traders began to settle around the Bay of Islands and Hokianga coasts (and later also in Mangakāhia),[690] and they, in turn, brought sawyers, blacksmiths, shipwrights, and other tradespeople and labourers.[691] The European population north of Tāmaki probably numbered about 300 by the early 1830s, and about 800 by 1839, of whom most lived in the Bay of Islands (about 500) and Hokianga (about 200), with much smaller populations in Whangaroa and Mangonui, and little more than a handful near Whāngārei.[692]

Increased trade and settlement brought advances in prosperity but also new challenges. Agriculture, flax



Map 3.9: Missions, circa 1840.

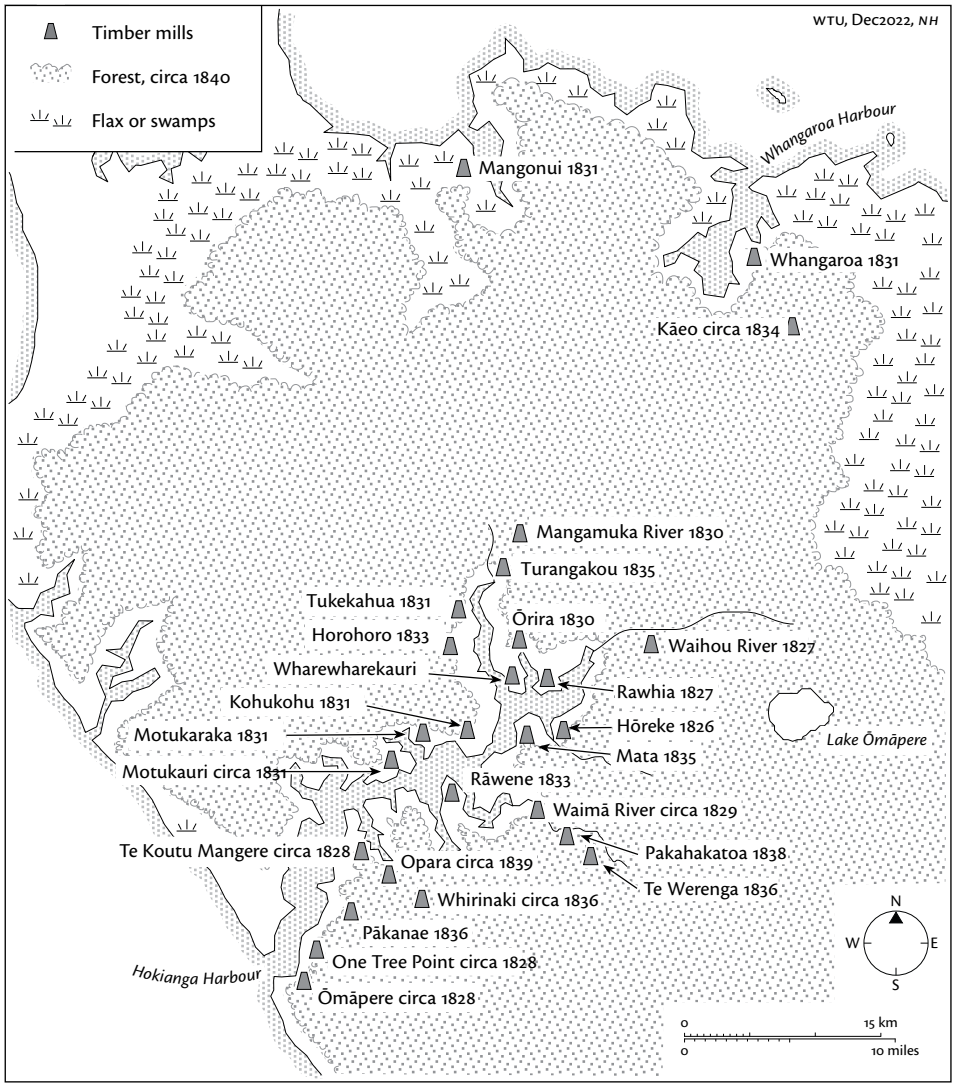
production, and timber milling all required coordination of substantial labour forces, and trade required negotiation across a cultural divide. Certain rangatira excelled in this new environment, establishing long-term relationships with traders who settled in territories under their authority.[693] Tītore of Ngāti Rēhia was one of those. He controlled shipping in Whangaroa, diverting international vessels to Kororāreka, which he shared with his Ngāi Tāwake relatives Rewa, Moka, and Whararahi.[694] He also brokered timber arrangements in territories as diverse as Hokianga, Whangaroa, and Mahurangi.[695]

After leaving Kororāreka in 1830, Pōmare II and

A scene in Kororāreka painted by Augustus Earle that depicts early European settlement alongside Māori whare in Pēwhairangi (Bay of Islands).

Kiwikiwi of Ngāti Manu quickly established Ōtuihu as a major trading station for visiting ships, offering liquor, prostitution, and dance and haka performances as well as the usual food supplies.[696] In Hokianga, a group of Te Pōpoto leaders – Taonui, Hōne Mohi Tāwhai, and the brothers Patuone and Nene – oversaw lucrative flax and timber trades in the Waihou and Mangamuka Valleys,[697] and Taonui provided land at Hōreke for the establishment of a shipyard.[698] Pī of Te Māhurehure in 1831 purchased his own coastal trading vessel, while others such as Pōmare II and Tītore seized vessels as utu and put them to commercial use.[699] Moetara of Ngāti Korokoro supplied visiting ships, and in the late 1820s lured sawmillers and carpenters from elsewhere in Hokianga to work under his protection.[700] Te Tirarau Kūkupa of Whāngārei and Mangakāhia brokered timber deals,[701] and Parore Te Āwhā of Mangakāhia and southern Hokianga traded in timber and flax.[702] Though it is not widely known or acknowledged, Hongi's daughter Hinewhare played a critical role in Bay of Islands trading relationships. Hinewhare settled at Te Rāwhiti during the 1830s and exercised mana whenua there, supplying water and food for visiting ships. According to her descendant Ruiha Collier:

> She was well gifted in growing and creating horticultural opportunities . . . She produced mara kai (cultivated food) in areas that appeared to be sheer rock faces. She also grew a certain type of harakeke amongst the rock crevasses that were



Map 3.10: The timber trade in Hokianga and Whangaroa.

bound into rope, which allowed the native gourds to be hung for the purpose of selling the water. In other inland areas such as Kaingahoa, Te Kokinga, and Wharau, she grew other extensive agricultural mara kai gardens which included taro, kumara and riwai and which provided another economic means for their hapu. . . . The successful economic well-being of their hapu was largely attributed to the wahine, such as Hinewhare, who applied the rules of te maramataka (the Maori calendar).[703]

These and other rangatira settled traders, sawyers, missionaries, and others on their lands and offered them protection. Under such arrangements, settlers were expected to live as part of the hapū; to serve hapū interests by

bringing goods and services that benefited the collective, and to accept the responsibilities expected of members.[704] Settlers were also expected to comply with their hosts' customary laws; for instance, by complying with tapu and rāhui, and could be subject to muru for transgressions.[705] Often, they were expected to marry into (and thereby align their interests with) the hapū.[706] Under tikanga, rights to occupy land and use resources were typically conditional on membership of and contribution to the hapū, and were non-exclusive; a family might occupy an area of land, for example, while other hapū members retained rights over the food sources on that land.[707]

With ongoing contact, Māori and Europeans acquired insights into each other's laws,[708] and accommodations often occurred in order to smooth relationships,[709] such as the more flexible and lenient enforcement of tapu by rangatira in contact situations.[710] Some rangatira began to acknowledge the weight Pākehā placed on written documents, while continuing themselves to place more importance on oral agreements and on the maintenance of ongoing relationships.[711]

While these Māori–settler relationships often flourished, they could also turn sour if settlers failed to respect their hosts' mana or transgressed against tapu.[712] An example of this occurred when Wesleyan missionaries at Kāeo sought to make themselves independent of their Ngāti Uru hosts, effectively 'set[ting] themselves up as a separate hapu without any consideration of the people who had put them there'. The missionaries were subjected to muru, in which their gardening tools and other goods were taken.[713] Among missionaries and other settlers, muru were often regarded as acts of theft,[714] whereas Māori saw them as rightful responses to offences against tikanga.[715]

3.4.3 Towards alliance

As contact increased, so, too, did associated challenges. Three issues emerged for which rangatira sought answers. The first was control of settlers, particularly where tens or hundreds were located together and had access to alcohol, but also in situations where settlers were disinclined to respect their hosts' mana and laws. In Kororāreka, growth in numbers of settlers and visiting whalers sometimes challenged order and Māori authority. Rangatira were also concerned about drunkenness there and at Hokianga sawmills. Occasionally, settlers and visiting whalers committed acts of violence against Māori.[716] Māori continued to vastly outnumber the settler population,[717] and while they possessed sufficient firepower to impose law and rein in disorderly Pākehā, they were reluctant to do so in case enforcement action might discourage other trade or provoke a military response from Britain.[718] While these concerns were real, it is important to recognise that they were also limited to a handful of settlements in a district comprising many hundreds of thousands of acres.[719]

A second and related issue for Māori was foreign threat, either through outsiders swamping them from abroad, or by military engagement. By the 1830s, significant numbers of Bay of Islands and Hokianga rangatira had visited Sydney, and some had visited London. They were well aware that European countries had large populations, and that uncontrolled immigration could have dire effects on indigenous populations. Ruatara had expressed such concerns before allowing Marsden to establish the first mission, and had only allowed it to go ahead after receiving assurances that missions would be managed in ways that brought mutual benefit.[720] More specifically, during the 1830s rumours emerged that France or French individuals were planning to annex Aotearoa and assert their authority here.[721]

A third, also related issue concerned management of trading and other international relationships. In 1830, the Hokianga-built vessel *Sir George Murray* was detained at an Australian port for sailing without a register or flag. On board were Te Pōpoto rangatira Taonui and Nene, which meant the incident was not only a threat to trade but a considerable affront to their mana.[722]

Ngāpuhi leaders responded to these challenges by seeking alliance with Britain, building on the relationship established by Hongi. Following on from this meeting, leaders from the Bay of Islands and Hokianga wrote to King William IV to express interest in continued trade, seek his friendship and protection against foreign threat, and ask him to deal with troublesome settlers

before Māori were forced to take matters into their own hands.[723] The King responded with a promise of 'friendship and alliance',[724] and the appointment of James Busby as British Resident, charged with mediating between rangatira and Europeans to facilitate trade and address Māori concerns.[725] During 1834 and 1835, Ngāpuhi leaders, following Busby's advice, adopted a national flag so that Aotearoa vessels could trade internationally, and asserted their mana and sovereignty by signing he Whakaputanga, the Declaration of Independence.[726] In turn, Britain responded with acknowledgement of the independence and nationhood of the northern tribes.[727]

Also of significance were trading arrangements during the mid-1830s in which Tītore and Patuone brokered the supply of kauri spars for the Royal Navy. When the HMS *Buffalo* sailed for Britain carrying the spars, it carried mere pounamu and kākahu (feather cloaks) from the rangatira for King William, along with a letter inviting him to see the spars as a contribution to Britain's defence against any future aggression by France. From the perspective of Tītore and Patuone, this was more than an exchange of goods: it was the establishment of a commercial and military alliance. William, in response, sent both rangatira suits of armour.[728]

Britain was not the only nation engaging with Aotearoa during the 1830s. The United States had appointed a consul, and American vessels were visiting frequently, as were those of France and other European nations.[729] As we explained in our stage 1 report, northern Māori chose to align with Britain because the relationship was furthest advanced, and because missionary and trading contacts had been largely positive, in contrast with the sometimes disastrous interactions between Māori and the French.[730]

As with commercial and resource arrangements, the political relationship between rangatira and Britain was subject to different cultural interpretations. Māori and British leaders had different notions of authority: those of Britain based on a monarch who was nominal head of state in a highly centralised system in which sovereignty resided in Parliament; those of Te Raki Māori based on mana possessed by many autonomous hapū, each exercising authority through its rangatira and with its consent in accordance with tikanga.[731] They also had different ways of concluding agreements. In British culture, the written word was paramount; in Māori culture, as we have seen, agreements were concluded orally, a rangatira's word being regarded as unbreakable.[732] He Whakaputanga in 1835 and the treaty signed at Waitangi in 1840 drew on the distinct notions of authority and methods for reaching agreement within the two cultures.

3.4.4 Conclusion: the situation in 1840

In this chapter we have described the enormous changes that occurred within this district since Rāhiri's time, particularly during the 70 or so years prior to the signing of te Tiriti o Waitangi. We have focused on the 'unfolding of Ngāpuhi', which began with Rāhiri's defence of his Hokianga and Kaikohe homelands, and was followed much later by Rāhiri's descendants expanding their influence into the Bay of Islands, Mangakāhia, Whāngārei, Mahurangi, and – in several waves – into Whangaroa.[733]

The tribal landscape that Europeans first encountered in the late 1700s was much altered by the time the treaty was signed some decades later. Migrations, sustained warfare, intermarriages, and other events had all played their part. New hapū had emerged, and some older ones had departed or lost their identities. By 1840, descendants of Rāhiri exercised dominance over most of the district, though their whakapapa reflected multiple generations of intermarriage between peoples of many waka and iwi. Ngāi Tāhuhu, Ngāti Awa, Ngāti Miru, Ngāi Tamatea, Ngāti Rangi, and others were not supplanted, but became part of the emerging Ngāpuhi story.

Claimants emphasised that political and economic authority remained with hapū, even as inter-hapū alliances emerged. Hongi did not exercise authority over all of Ngāpuhi; even in wartime, other leaders made independent decisions and took independent actions. As attention turned increasingly to trade in the 1820s and 1830s, hapū continued to act independently, and to defend their mana over important relationships and resources. Hapū did cooperate to manage and maintain trading relationships, but such arrangements typically occurred among closely related leaders, such as those of the Te

Pōpoto confederation in Hokianga, and the Ngāi Tāwake–Ngāti Rēhia alliance in the Bay of Islands and Whangaroa.

Claimants told us of increasing inter-hapū coordination from the early 1800s onwards. Major annual hui began in Whangaroa in about 1808, which subsequently grew to encompass the Bay of Islands, Hokianga, and Whāngārei.[734] Similarly, inter-hapū councils of war occurred at Kororipo (Kerikeri) and Terenga-parāoa (Whāngārei) before the conflicts of the 1820s.[735] Later, annual hui were associated with major hākari, attended by thousands, where Ngāpuhi wealth was celebrated and displayed.[736] Rangatira engaged in political discussions at these hui, with a focus on management of their emerging relationships with Europeans. On occasion, they also called at Busby's residence at Waitangi to make important decisions about international relations, such as the adoption of the flag and he Whakaputanga. Gatherings like these typically brought together all major leaders from the Bay of Islands, Hokianga, Whangaroa, Whāngārei, and Mangakāhia, as well as those of Te Roroa and Muriwhenua.[737]

Such arrangements supplemented and enhanced hapū authority, adding a new layer of coordination and decision-making through which rangatira could discuss and make collective decisions about the management of settler and foreign relationships. But claimants also emphasised, with considerable force, that hapū autonomy endured,[738] and the historical evidence supports that view.[739] Jointly made decisions could bind those who consented – as was always the case when a rangatira gave his word – but they could not bind hapū that did not participate or consent. 'Ngāpuhi' therefore remained, by 1840, a collection of autonomous hapū, each with their own zones of influence and resource rights, sharing common descent and able to cooperate or compete as circumstances and tikanga required. Sovereignty remained with hapū; te kawa o Rāhiri endured.[740]

Notes

1. This translation is from Dr Hohepa's evidence: Patu Hohepa, 'Hokianga: From Te Korekore to 1840', report commissioned by the Crown Forestry Rental Trust, 2011 (doc E36), p 172. We note that the whakataukī may be stated in slightly different ways but that the imagery is consistent whichever version is given: Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, '"He Whenua Rangatira": Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), p 26; Nuki Aldridge (doc B10), p 33; Patu Hohepa (doc A32), p 4; John Klaricich (doc C9), pp 13–14; Marsha Davis (doc C21), p 16.

2. Patu Hohepa (doc Q10), pp 14–16; Hohepa, 'Hokianga' (doc E36), p 167.

3. Rima Edwards, supporting papers (doc A25(a)), p 39.

4. Hohepa, 'Hokianga' (doc E36), pp 39–40.

5. Ibid, p 40.

6. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 23; Joseph Kingi (doc W34), p 3; Ricky Houghton (doc V6), p 2.

7. Dr Mary-Anne Baker (doc W23), pp 14–15; see also Jeffrey Sissons, Wiremu Wi Hongi, and Patu Hohepa, *Ngā Pūriri o Taiamai: A Political History of Ngā Puhi in the Inland Bay of Islands* (Auckland: Reed, 2001), p 57; Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c 1769 to c 1945* (Wellington: Victoria University Press, 1998), pp 131–132, 157; Angela Ballara, *Taua: 'Musket Wars', 'Land Wars' or Tikanga? Warfare in Māori Society in the Early Nineteenth Century* (Auckland: Penguin Books, 2003), pp 190, 192, 228; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 173–175, 197, 287, 366–367; Judith Binney, *The Legacy of Guilt: A Life of Thomas Kendall* (Wellington: Bridget Williams Books, 2005), p 209.

8. Robyn Tauroa and Thomas Hawtin (doc AA149), p 5; Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts', report commissioned by the Mahurangi and Gulf Islands District Collective and Crown Forestry Rental Trust, 2010 (doc A36), pp 221–222.

9. Patu Hohepa (doc Q10), pp 14–15; Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, supporting papers (doc A37(b)), p [64].

10. Patu Hohepa (doc Q10), p 15.

11. Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p [38].

12. Ibid, p [46].

13. Rima Edwards (doc A25), pp 51–52; Waitangi Tribunal, *He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), p 27.

14. Patu Hohepa (doc Q10), p 15; Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p [46].

15. Henare, Petrie, and Puckey, supporting papers (doc A37(b)), pp [44]–[49]; Hohepa, 'Hokianga' (doc E36), p 162; Patu Hohepa (doc Q10), p 15.

16. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 24–25, 46–47.

17. Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p [15].

18. Hohepa, 'Hokianga' (doc E36), p 168; Tony Walzl, 'Mana Whenua Report', report commissioned by the Tai Tokerau District Māori

Council, 2012 (doc E34), p 16; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 45, 60.

19. Hohepa, 'Hokianga' (doc E36), p 41.

20. Patu Hohepa (doc Q10), p 23. For the locations of these four hapū outside Hokianga, see Wiremu Reihana (doc T10(b)), p 11; Te Kapotai Hapu Korero (doc D5), pp 9–10; Erima Henare (doc D14), p [23]; Taipari Munro (doc I26), p 10.

21. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 14, 158–160, 470–471; Henare, Petrie, and Puckey, supporting papers (doc A37(b)), pp 48, 57; Erima Henare (doc A30(b)), pp 4–5; Moetu Tipene Davis (doc D13), pp 22–24; Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 106, 112–113, 136.

22. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 20.

23. Rima Edwards, supporting papers (doc A25(a)), p 2.

24. Te Ahukaramū Charles Royal, ed, *The Woven Universe: The Selected Writings of Rev Māori Marsden* (Masterton: Estate of the Rev Māori Marsden, 2003), pp 16–18; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 20.

25. Rima Edwards, supporting papers (doc A25(a)), pp 3–4; Royal, *The Woven Universe*, pp 16–18.

26. Rima Edwards, supporting papers (doc A25(a)), pp 5–11; see also Nuki Aldridge (doc B10), pp 11–13; Abraham Witana (doc C25), p 8.

27. Rima Edwards, supporting papers (doc A25(a)), pp 8, 10–12.

28. Ibid, pp 7–8.

29. Ibid, p 8.

30. Ibid, pp 2–4. As noted in our stage 1 report, the existence of Io as a pre-European belief is the subject of ongoing discussion. Some scholars have argued that there is no evidence of Māori having any concept of a supreme being prior to contact with Europeans. Others note that contemporary descriptions of Io may have been influenced by Christianity, but regardless, the concept of Io as the source of all creation predates European arrivals. For further details, see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 48 fn 10.

31. Rima Edwards, supporting papers (doc A25(a)), pp 9–10.

32. Ibid, pp 12–14.

33. Hohepa, 'Hokianga' (doc E36), pp 53, 59, 65; Nuki Aldridge (doc B10), pp 14–17.

34. Hohepa, 'Hokianga' (doc E36), p 63.

35. Rima Edwards, supporting papers (doc A25(a)), pp 23–24; Nuki Aldridge (doc B10), p 13.

36. Hohepa, 'Hokianga' (doc E36), pp 59, 86–87; Nuki Aldridge (doc B10), p 16; Rima Edwards, supporting papers (doc A25(a)), pp 28–29; Frances Goulton (doc S29), pp 13–14.

37. Hohepa, 'Hokianga' (doc E36), pp 55, 86–87, 89.

38. Rima Edwards, supporting papers (doc A25(a)), pp 24, 31–33; Nuki Aldridge (doc B10), p 16.

39. Hohepa, 'Hokianga' (doc E36), pp 65, 110, 115–116, 138; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 51; Rima Edwards, supporting papers (doc A25(a)), pp 32–35.

40. Mr Edwards said the names were used interchangeably: Rima Edwards, supporting papers (doc A25(a)), pp 33–34. In Dr Hohepa's view, the name *Matawhao* is a modern coinage and the original name *Matahourua* was a literal description of a double-hulled canoe: 'mata' for waka, and 'hou-rua' for the double hull: Hohepa, 'Hokianga' (doc E36), p 108. Another tradition has the *Matawhao* bound to the *Aotea* to make a double-hulled waka: Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 266.

41. Nuki Aldridge (doc B10), p 16; John Klaricich (doc C9), p 5. Another tradition is that Kupe followed a whale: Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 52.

42. Hohepa, 'Hokianga' (doc E36), p 132.

43. Hohepa cited 'many oral and written' accounts on this point: ibid, p 133.

44. Ibid.

45. Ibid, pp 34, 110, 133; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 51. Regarding Whangaroa traditions, see Claudia Brougham, 'Report to the Waitangi Tribunal on Whaingaroa Lands (Wai 58)', report commissioned by Te Rūnanga o Whaingaroa, 1994 (doc E2), pp 8, 12; Nuki Aldridge, Patricia Tauroa, Hemi-Rua Rapata, and Bryce Smith (doc E45), pp 12, 29.

46. Hohepa, 'Hokianga' (doc E36), pp 83, 104, 125, 127.

47. Ibid, pp 105–106, 110, 124, 138.

48. Ibid, pp 118, 138, 146; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 78, 170; Hone Sadler, Te Huranga Hohaia, transcript 4.1.1, Te Tii Marae, Waitangi, pp 157, 167. In some traditions Tuputupuwhenua or as Tumutumuwhenua was alive when Kupe left; in others he was turned into a taniwha.

49. Tuputupuwhenua's wives were Kui (Ngāti Kui or Te Tino o Kui) and Tārepo (or Te Repo): John Klaricich (doc C9), pp 5–8; Waitaha Grandmother Council (doc AA45), pp 2–3; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 118, 203–204, 239; Hohepa, 'Hokianga' (doc E36), pp 146, 159, 200; McBurney, 'Traditional History Overview' (doc A36), pp 40–42, 46, 63; Waitangi Tribunal, *Te Roroa Report*, Wai 38 (Wellington: Brooker and Friend, 1992), pp 5, 8–9, 360, 366. While most of these traditions refer to Tuputupuwhenua as Kupe's son, some say he predated Kupe and sprung directly from the earth or the gods.

50. John Klaricich (doc C9), pp 8–9; Hohepa, 'Hokianga' (doc E36), pp 34, 151.

51. Hohepa, 'Hokianga' (doc E36), pp 120, 135.

52. Claimants and others told us of Patupaiarehe and Tūrehu occupying Hauturu and other Gulf Islands, the North Shore, and Mahurangi: McBurney, 'Traditional History Overview' (doc A36), pp 41–42; Michael Beazley (doc K8), p 8; Whāngārei and Mangakāhia Valley at Ngunguru, Hikurangi, Whatitiri, Pākotai, and Matawaia: Te Ringakaha Tia-Ward (doc J7), pp 2–3; Waimarie Bruce-Kingi (doc I25), p 6; Waimarie Bruce (doc P29), p 10; Tukaha Milne, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 554; Moe Milne (doc W40), p 4; Mitai Paraone-Kawiti, transcript 4.1.22, Terenga Parāoa Marae, Whāngārei, pp 268, 277; Hokianga at Paremata (Utakura), Pikiparia (Kohukohu), and Kauati (Whakatere): John Marsden, transcript 4.1.23, Mātaitaua Marae, Utakura, pp 183–184; Pairama Tahere, transcript 4.1.23, Mātaitaua Marae, Utakura, pp 452, 455, 458; Oneroa Pihema (doc V13), p 11; Brougham, 'Report on Whaingaroa Lands'

(doc E2), p 13; and Whangaroa at Tākou and Motueka-nui: Ani Taniwha, transcript 4.1.8, Kerikeri, p 245, as well as other locations in the Hauraki and Muriwhenua districts. Waimarie Kingi provided six briefs of evidence to the Tribunal in this inquiry under different names, including Waimarie Bruce (née Kingi) (doc E47), Waimarie Bruce (docs I10 and P29), and Waimarie Bruce-Kingi (docs I25, U16(a), AA92, and AA92(a)).

53. For descriptions of Patupaiarehe and Tūrehu, see John Klaricich (doc L1), p 5; Hohepa, 'Hokianga' (doc E36), p 54; see also Te Ringakaha Tia-Ward (doc J7), pp 2–3; Pairama Tahere, transcript 4.1.23, Mātaitaua Marae, Utakura, pp 452, 455; Ani Taniwha, transcript 4.1.8, Kerikeri, p 245; McBurney, 'Traditional History Overview' (doc A36), pp 41–42; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 166–167, 203–204; Robyn Tauroa and Thomas Hawtin (doc AA149), p 10.

54. Dr Hohepa told us that Tūrehu played the same guardianship role for forests as taniwhā did for waterways: Hohepa, 'Hokianga' (doc E36), p 54. Tūrehu or Patupaiarehe were also said to have assisted Kupe's crew on their voyage to Aotearoa: Pairama Tahere, transcript 4.1.23, Mātaitaua Marae, Utakura, pp 452, 455; looked after burial caves: Patu Hohepa (doc Q10), p 18; assisted tohunga with pure (cleansing rituals) and other spiritual endeavours: Te Ringakaha Tia-Ward (doc J7), pp 2–3; Mitai Paraone-Kawiti, transcript 4.1.22, Terenga Parāoa Marae, Whāngārei, pp 268, 277–278; and created the top-knot that Rāhiri wore when he was courting Ahuaiti: Te Ringakaha Tia-Ward, transcript 4.1.11, Korokota Marae, Mangakāhia, p 12.

55. Rima Edwards named Tūrehu as one of Kupe's crew, alongside Tuputupuwhenua and many others: Rima Edwards, supporting papers (doc A25(a)), p 53. Ngāti Tautahi, Te Orewai, and Ngāti Kahu of Mahurangi all traced Tūrehu or Patupaiarehe ancestors, as did people of Te Roroa, Kaipara, and Muriwhenua. Patupaiarehe and Tūrehu are also recalled as tribes living in the Gulf Islands and Mahurangi prior to Toi's arrival in Aotearoa: Pierre Lyndon, transcript 4.1.11, Korokota Marae, Mangakāhia, p 433; McBurney, 'Traditional History Overview' (doc A36), pp 40–41; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 160, 203–205; Wiremu Reihana (doc T10(b)), p 7.

56. Nuki Aldridge (doc B10), p 16.

57. Hohepa, 'Hokianga' (doc E36), pp 141–144; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 114–115, 170.

58. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 115; Hohepa, 'Hokianga' (doc E36), pp 141–144; see also Brougham, 'Report on Whaingaroa Lands' (doc E2), p 28.

59. Rima Edwards, supporting papers (doc A25(a)), p 35; Buck Korewha (doc C4), pp 1–2; Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New', report commissioned by the Te Aho Claims Alliance, 2013 (doc E67), pp 85–86.

60. Hohepa, 'Hokianga' (doc E36), pp 143–144.

61. Ibid, pp 33, 154; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 78; John Klaricich (doc L1), pp 10–11. Alternative accounts of *Ngātokimatawhaorua*'s resting place include that it was left in the Waimā River: Hohepa, 'Hokianga' (doc E36), p 154.

62. Hohepa, 'Hokianga' (doc E36), pp 11, 146.

63. Waimarie Bruce (doc E47), pp 5, 10; Pereri Mahanga (doc I2), pp [11]–[12].

64. Hohepa, 'Hokianga' (doc E36), pp 12, 146.

65. Ibid, pp 146–147.

66. Ibid, pp 146–148; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 78, 171; Abraham Witana (doc C25), p 10. Most often, Nukutawhiti is said to have settled at Te Pouahi on the northern side and Ruanui on the southern, but Ruanui is then said to have explored the inland northern river valleys and Nukutawhiti the southern.

67. Hohepa, 'Hokianga' (doc E36), p 147; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 171; John Klaricich (doc C9), pp 11–12; Abraham Witana (doc C25), p 10.

68. Hohepa, 'Hokianga' (doc E36), pp 148–149, 154, 157–158; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 115–116, 171.

69. Hohepa, 'Hokianga' (doc E36), p 154; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 115–116, 172.

70. Hohepa, 'Hokianga' (doc E36), pp 157–158; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 173.

71. Hohepa, 'Hokianga' (doc E36), pp 83, 147–148; John Klaricich (doc C9), p 12.

72. Hohepa, 'Hokianga' (doc E36), pp 157–158.

73. Ibid, p 158; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 173.

74. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 113, 177; Hohepa, 'Hokianga' (doc E36), pp 11, 160–161; McBurney, 'Traditional History Overview' (doc A36), pp 42–43.

75. McBurney, 'Traditional History Overview' (doc A36), pp 42–43; Hohepa, 'Hokianga' (doc E36), pp 11, 160–161.

76. Pereri Mahanga (doc I2), p [11]; Ngaire Henare (doc U38), p 4.

77. Joseph Kingi (doc X17), p 4; Waitaha Grandmother Council (doc AA45), pp 3–4; Hohepa, 'Hokianga' (doc E36), pp 139–140.

78. Hohepa, 'Hokianga' (doc E36), pp 74, 76.

79. Rima Edwards, supporting papers (doc A25(a)), p 36; Tim Nolan, mapbook in support of the evidence of Nuki Aldridge, mapbook commissioned by Crown Forestry Rental Trust (doc B10(b)), pl 6; see also Waitangi Tribunal, *The Ngāti Kahu Remedies Report*, Wai 45 (Wellington: Legislation Direct, 2013), p 18.

80. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 180; McBurney, 'Traditional History Overview (doc A36), pp 50, 54.

81. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 210.

82. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45 (Wellington: GP Publications, 1997), p 17; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 116–117, 160, 162–164, 168; Brougham, 'Report on Whaingaroa Lands' (doc E2), p 28; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22, 2nd ed (Wellington: Government Printing Office, 1989), pp 262–263. In some

waka traditions, Whātonga travelled on *Kurahaupō*. After landfall in the far north, he continued down the west coast and then the east, settling with Toi-te-huatahi at Whakatane: Hohepa, 'Hokianga' (doc E36), p 128. In some traditions Te Ngaki is recalled as the name of the combined tāngata whenua–*Kurahaupō* people: Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 162.

83. Tamatea-mai-i-tawhiti is also known as Tamatea-ariki-nui.

84. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 116–118, 160, 162–164, 168, 170, 192–193; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 85; Brougham, 'Report on Whaingaroa Lands' (doc E2), pp 28, 32. The relevant whakapapa and Ngāi Tamatea southern migrations are described by Gary Hooker in 'Maori, the Crown and the Northern Wairoa District, A Te Roroa Perspective', report commissioned by the Waitangi Tribunal, 2000 (Wai 674 RO1, doc L2), pp 12–20; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 10, 359.

85. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 366–367.

86. Ibid, pp 116–119, 164–166; Hohepa, 'Hokianga' (doc E36), p 202.

87. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 118–119. According to Abraham Witana of Ngāti Manawa, Tūmoana returned to Aotearoa and became an ancestor for sections of Te Rarawa and Ngāpuhi of northern Hokianga: Abraham Witana (doc C25), pp 10–11.

88. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 116–119, 123–124, 166–168.

89. Margaret Mutu (doc AA91), p 2; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 167–168.

90. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 168–169; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp 260–261.

91. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 116–117, 160, 162–164, 168–169; Brougham, 'Report on Whaingaroa Lands' (doc E2), p 28; Pereniki Tauhara (doc X27(a)), pp 4–5; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp 262–263. According to Pereniki Tauhara, the name Ngāti Kahu emerged during the 1800s; prior to that, they and other hapū were still known as Ngāi Tamatea: Pereniki Tauhara (doc X27(a)), pp 4–5.

92. Waitangi Tribunal, *The Ngāti Kahu Remedies Report*, Wai 45, p 18; Arena Heta (doc B30), p 2.

93. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 116–117; Brougham, 'Report on Whaingaroa Lands' (doc E2), pp 29–30.

94. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 173–174.

95. Ibid, p 177.

96. Te Uira Associates, 'Oral and Traditional History Report for Te Rohe o Whangaroa', report commissioned by Whangaroa Papa Hapū, 2012 (doc E32), pp 23–24; McBurney, 'Traditional History Overview' (doc A36), pp 52, 67–68; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 76–77.

97. Brougham, 'Report on Whaingaroa Lands' (doc E2), pp 29–30; Manuka Henare, Hazel Petrie, and Adrienne Puckey, 'Oral and Traditional History Report on Te Waimate Taiamai Alliance', report commissioned by the Crown Forestry Rental Trust, 2009 (doc E33), pp 34–37; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 173–174, 177–178, 180, 212, 216; Buck Korewha (doc C4), p 7.

98. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 37–38; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 176–180.

99. Te Hurihanga Rihari (doc B15(c)), p 3. Though Mr Rihari did not say so, 'Ngāi Tahu' were probably of *Tākitimu* origins and related to Ngāti Kahu.

100. Te Warihi Hetaraka (doc C19), pp 3–4, 6; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 197–201.

101. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 182–183, 196, 371; Joseph Kingi (doc W34), p 10.

102. Hohepa, 'Hokianga' (doc E36), pp 199–201; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 RO1, doc L2), pp 12–14; Te Pania Kingi (doc B37), pp 2–3.

103. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 126, 205; Hohepa, 'Hokianga' (doc E36), pp 159, 199–199, 202; Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 10. The migrations are described by Hooker: Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 RO1, doc L2), pp 12–20.

104. McBurney, 'Traditional History Overview' (doc A36), pp 54–55; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 38; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 192, 194–195; Walzl, 'Mana Whenua Report' (doc E34), pp 22–24; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 96–98; Ngaire Henare (doc U38), p 5. Some sources refer to pre-waka origins for Ngāi Tāhuhu: Hana Maxwell (doc AA118), p 2; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 173–174.

105. Paeata Brougham-Clark and Hone Mihaka (doc W42), p 12; Taipari Munro (doc U43(a)), p 7.

106. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 RO1, doc L2), pp 13–16, 43; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 205–206; Hohepa, 'Hokianga' (doc E36), p 182; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 4–5.

107. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 69–70, 77–79, 88; Hohepa, 'Hokianga' (doc E36), pp 169–170; Waimarie Bruce (doc E47), p 8; Taipari Munro (doc I26), pp 3–4; Paeata Brougham-Clark and Hone Mihaka (doc W42), pp 10–12.

108. In his report on the traditional history of the district, Peter McBurney noted there are several *Tainui* tūpuna associated with the iwi names Ngāi Tai and Ngāti Tai. These include Taikehu, Taihaua, Taimanawaiti, Tainui, and Te Tai. The names Ngāi Tai and Ngāti Tai are often used interchangeably but are sometimes used to distinguish between Ngāi Tai south of the Tāmaki River and Ngāti Taihaua and Ngāti Taimanawaiti north of the river. Hapū names and uses,

including the uses of 'Ngāi Tai' and 'Ngāti Tai', have changed over time: McBurney, 'Traditional History Overview' (doc A36), p 208; Jasmine Cotter-Williams (doc K5), pp 2–3, 9–11, 14, 20–21, 24; Jasmine Cotter-Williams, app (doc K5(a)), pp 12, 24.

109. For the origins of Ngāi Tai and related hapū, see McBurney, 'Traditional History Overview' (doc A36), pp 51, 208–210; Michael Beazley (doc K8), pp 9, 14–16, 18; Jasmine Cotter-Williams (doc K5(a)), p 8; Pei Te Hurinui Jones and Bruce Biggs, *Ngā Iwi o Tainui: The Traditional History of the Tainui People* (Auckland: Auckland University Press, 1995), p 40. Taihaua's descendants are said to have at one time exercised mana over territories from Tāmaki to Whangaparāoa or Orewa: Joseph Kingi (doc X17(a)), p 7; Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996) (doc H2), p 24. More specifically, sources associated Ngāi Tai or related hapū (such as Ngāti Tai, Ngāti Taihaua, and Ngāti Taimanawaiti) with Devonport, Takapuna, Ōnewa (Northcote), Okura, Whangaparāoa, Pūhoi, Tiritiri Matangi, Kawau, and Aotea: Michael Belgrave, Grant Young, and Anna Deason, 'Tikapa Moana and Auckland's Tribal Cross Currents: The Enduring Customary Interests of Ngati Paoa, Ngati Maru, Ngati Whanaunga, Ngati Tamatera and Ngai Tai in Auckland', report commissioned by the Hauraki Maori Trust Board and Marutuahu Confederation, 2006 (Wai 1362 R01, doc A6), pp 22–23; McBurney, 'Traditional History Overview' (doc A36), pp 71, 78, 210; Michael Beazley, 'Te Uri o Maki Mahurangi and Offshore Islands Report', 2014 (doc K2), pp 16, 149, 172; Michael Beazley, responses to questions (doc K2(b)), p 5.

110. Jasmine Cotter-Williams (doc K5), pp 5, 14–15, 21–23; Jasmine Cotter-Williams (doc K5(a)), p 8; McBurney, 'Traditional History Overview' (doc A36), p 210; see also Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 R01, doc A6), pp 22–23. Several sources referred to intermarriage between the Tāmaki–Hauraki Ngāi Tai and a related *Tainui* group from Tōrere in eastern Bay of Plenty: Beazley, 'Te Uri o Maki' (doc K2), pp 16–17, 127, 132–133; McBurney, 'Traditional History Overview' (doc A36), pp 47–49, 52; Peter McBurney, transcript 4.1.12, North Harbour Stadium, p 11; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 209–210. Ms Cotter-Williams said that the *Tainui* waka of Tiki-te-au-whatu (father of Taihaua) made its way to Potaka just north of Hick's Bay, then stopped off at Tōrere before returning to Tāmaki. Some of the crew left the waka at Tōrere; eventually their descendants would become known as Ngāi Tai. Many generations later, some of those descendants would make their way north to Tāmaki in an event known as Te Hekenga o Ngā Tuatoru, which reunited Tōrere descendants with those who had generations earlier returned to Tāmaki. Te Hekenga involved three granddaughters of Tamatea-toki-nui, chief of the Ngāi Tai at Tōrere, who asked them to rejoin their Tainui relatives in Hauraki. Te Whatatau of Te Uri o Te Ao (a hapū of Waiohua) who was visiting Ngāti Maru when the sisters arrived, eventually married two of them. Ms Cotter-Williams took issue with the historian Murdoch, who argued that at this time the people of Ngāti Tai also became known as Ngāi Tai, pointing to various documentations of the Ngāti Tai name. She also cited a document provided by Anaru Makiwhara to G S Graham in 1922. Her evidence was that Te Hekenga accelerated a process already under way by the nineteenth century of the development of Te Uri o Te Ao into Ngāti Tai, a tribal entity separate and distinct from Ngāti Taimanawaiti.

111. Jasmine Cotter-Williams (doc K5), pp 2–3, 7–9, 13–14, 16–17. Ms Cotter-Williams told us there were two *Tainui* waka, with Taihaua and his father on one and Hoturoa on the other. She said that Ngāti Taimanawaiti descended from the first waka which brought the original inhabitants of Tāmaki, and Ngāi Tai from the second: Jasmine Cotter-Williams (doc K5), p 7. The more generally known tradition is that there was one *Tainui* waka with Hoturoa as captain, and Taihaua and other Tāmaki settlers as crew: see, for example, Miria Tauariki, Te Ingo Ngaia, Tom Roa, Rovina Maniapoto-Anderson, Anthony Barrett, Tutahanga Douglas, Robert Joseph, Paul Meredith, and Heni Matua Wessels, 'Ngāti Maniapoto Mana Motuhake', report commissioned by the Crown Forestry Rental Trust, 2012 (Wai 898 R01, doc A110), pp 93, 99, 103–113; Jasmine Cotter-Williams (doc K5), pp 7–9.

112. McBurney, 'Traditional History Overview' (doc A36), pp 45, 47–49, 51; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 209–210.

113. McBurney, 'Traditional History Overview' (doc A36), pp 56–58; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 203.

114. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 211–214; McBurney, 'Traditional History Overview' (doc A36), pp 66, 69, 72, 74–79, 100, 107–108; Beazley, 'Te Uri o Maki' (doc K2), p 8; Joseph Kingi (doc X17(a)), p 7; Peter McBurney, transcript 4.1.12, North Harbour Stadium, p 52.

115. Daamen, Hamer, and Rigby, *Auckland* (doc H2), pp 31–32; Joseph Kingi (doc W34), p 8.

116. McBurney, 'Traditional History Overview' (doc A36), pp 223, 225.

117. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 23–24.

118. Rima Edwards, supporting papers (doc A25(a)), pp 9, 12–14, 43.

119. Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 170, 175; see also Tom Murray (doc B25), p 5.

120. Hohepa, 'Hokianga' (doc E36), pp 144–145; John Klaricich (doc C9), pp 11–12; see also Rima Edwards, supporting papers (doc A25(a)), p 45; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 114.

121. Hohepa, 'Hokianga' (doc E36), p 124. For landing ceremonies completed by Nukutawhiti and Ruanui, see pp 33, 144–147. For Tāhuhunuiorangi's landing ceremony, see McBurney, 'Traditional History Overview' (doc A36), pp 54–55.

122. For example, see Pereri Mahanga (doc I2), pp [16]–[17].

123. Hohepa, 'Hokianga' (doc E36), pp 54, 149–152; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 18–19, 24.

124. Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 170, 175; see also Tom Murray (doc B25), p 5.

125. Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 170, 175.

126. John Klaricich (doc C9), p 11.
127. Rima Edwards, supporting papers (doc A25(a)), pp 9–10.
128. Royal, *The Woven Universe*, pp 5–6.
129. Hohepa, 'Hokianga' (doc E36), p 124; for landing ceremonies, see Hohepa, 'Hokianga' (doc E36), pp 33, 144–147; McBurney, 'Traditional History Overview' (doc A36), pp 54–55.
130. Nuki Aldridge (doc B10), pp 27–30; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 313–314; Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 108, 115–116, 124–125; John Klaricich (doc L1), p 14.
131. Rima Edwards, supporting papers (doc A25(a)), p 16; Tom Murray (doc B25), p 7; John Klaricich (doc C9), pp 12–14.
132. Rima Edwards, supporting papers (doc A25(a)), p 16; as cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 24.
133. Rima Edwards, supporting papers (doc A25(a)), p 18.
134. Ibid, pp 9–10; see also Hohepa, 'Hokianga' (doc E36), p 54.
135. Royal, *The Woven Universe*, pp 4–6; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 41; Abraham Witana (doc C25), pp 6–7.
136. Abraham Witana (doc C25), pp 6–9; Buck Korewha (doc C4), pp 13–14; Pereri Mahanga (doc I2), pp [8]–[11]; Tom Murray (doc B25), p 6; Nin Tomas (doc C1), p 11; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 41–42; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 44.
137. Frances Goulton (doc S29), p 4.
138. Nin Tomas (doc C1), p 11; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 41–42; Abraham Witana (doc C25), pp 6–7; Pereri Mahanga (doc I2), p [7].
139. Rima Edwards, supporting papers (doc A25(a)), pp 12–15, 21; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 35–36.
140. Nuki Aldridge (doc B10), p 53; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 302; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, Wai 262, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 37.
141. Nuki Aldridge (doc B10), pp 28–29, 53.
142. John Klaricich (doc C9), p 6; Rima Edwards, supporting papers (doc A25(a)), p 11; Manuka Henare (doc B3), p 14; Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 171, 175; Nuki Aldridge (doc B10), p 14; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi*, Wai 262 (Wellington: Legislation Direct, 2011), p 3.
143. Rima Edwards, supporting papers (doc A25(a)), p 11; Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 171, 175; Nuki Aldridge (doc B10), p 14; Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuatahi*, Wai 262, pp 2–7, 22.
144. John Klaricich (doc C9), pp 9–10; see also Hohepa, 'Hokianga' (doc E36), pp 144–145.
145. Erimana Taniora (doc G1), p 38; Te Warihi Hetaraka (doc C19), p 15.
146. Te Warihi Hetaraka (doc C19), pp 7, 9, 15.
147. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 133, 237, 302, 313–314; Nuki Aldridge (doc B10), pp 27–31; Eddie Taihakurei Durie, 'Custom Law' (Treaty Research Series, Treaty of Waitangi Research Unit), 2013 ed, pp 3–10; Royal, *The Woven Universe*, pp 5, 56; Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, vol 1, pp 16–17; Rima Edwards (doc A25(a)), pp 9–10, 29–30; Hone Sadler, transcript 4.1.1, Te Tii Marae, Waitangi, pp 172, 176–177; Khylee Quince, 'Maori and the Criminal Justice System in New Zealand', in *Criminal Justice in New Zealand*, ed Warren Brookbanks and Julia Tolmie (Auckland: LexisNexis, 2007), pp 336–341 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 25).
148. Nuki Aldridge (doc B10), pp 27–30.
149. Ibid, pp 27–28.
150. Nuki Aldridge (doc AA167), p 22.
151. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 230, 259, 386.
152. Dr Grant Phillipson, 'Bay of Islands Maori and the Crown, 1793–1853', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A1), pp 48, 51; Nuki Aldridge (doc AA167), pp 21–23; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 315.
153. For example, see Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 252–253.
154. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 33; Ballara, *Taua*, pp 103–111; Durie, 'Custom Law', pp 52–54.
155. John Klaricich (doc L1), p 3.
156. Hohepa, 'Hokianga' (doc E36), p 112; Waitangi Tribunal, *Ko Aotearoa Tēnei*: *Te Taumata Tuarua*, Wai 262, vol 1, pp 33–38, 115–116, 133–134, 238–239; John Klaricich (doc L1), p 3.
157. Hohepa, 'Hokianga' (doc E36), pp 61–62, 65, 133–134, 138.
158. Ibid, pp 26–27, 37–38, 81–83, 133–134; Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, Wai 262, vol 1, p 33. For a general explanation of this early transition period, see Atholl Anderson, Judith Binney, and Aroha Harris, *Tangata Whenua: A History* (Wellington: Bridget Williams Books, 2015), pp 67–71.
159. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 46–47; Hohepa, 'Hokianga' (doc E36), pp 186–188; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 24, 94–95, 110–111, 154, 221–232, 324–326, 336–338, 364; see also Waitangi Tribunal, *Ko Aotearoa Tēnei: Te Taumata Tuarua*, Wai 262, vol 1, pp 237–239.
160. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 135–137, 151–159; Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p 77; Nuki Aldridge (doc B10), pp 31–32.
161. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 135–137, 151–159; Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p 77; Nuki Aldridge (doc B10), pp 31–32.
162. Rima Edwards (doc A25), p 79 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 30).
163. Nuki Aldridge (doc B10), p 60.
164. Manuka Henare (doc B3), p 13.

165. Buck Korewha (doc C4), p 13; see also Abraham Witana (doc C25), pp 11–12.
166. Robyn Tauroa and Thomas Hawtin (doc AA149), p 9.
167. Frances Goulton (doc S29), pp 9, 15–16.
168. Frances Goulton, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, pp 422–423.
169. Awhirangi Lawrence, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, pp 454–455; Tom Murray (doc B25), p 6; Robyn Tauroa and Thomas Hawtin (doc AA149), p 10; Tai Tokerau District Māori Council, 'Oral History Report', 2016 (doc AA3), pp 48–55; Frances Goulton (doc S29), p 9.
170. Awhirangi Lawrence, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, p 454; Frances Goulton (doc S29), p 9; Tom Murray (doc B25), p 6; Robyn Tauroa and Thomas Hawtin (doc AA149), p 9.
171. Waimarie Bruce (doc C24), pp 19–20; see also Awhirangi Lawrence, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, p 454; Hinemoa Pourewa (doc S30), p 7; Hori Chapman and Cyril Chapman (doc V4), p 37.
172. Awhirangi Lawrence, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, pp 453–454; Frances Goulton (doc S29), p 7; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 258–259; Waimarie Bruce (doc C24), pp 19–20; Hori Chapman and Cyril Chapman (doc V4), p 37.
173. Tom Murray (doc B25), pp 6–7; Moka Puru (doc F21(a)), pp 6–7; Buck Korewha (doc C4), pp 13–14.
174. Danny Watson, Geoffrey Rakete, Gillard Parker, Nuki Aldridge, Coral Lucas, Kingi Taurua, Ken McAnergney, Barry Brailsford, Millan Ruka, and Tas Davis (doc Q6(a)), p 51; Tahua Murray (doc S21(b)), pp 9–10, 18–19; Rueben Porter (doc S6), p 55.
175. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 98–99; Waimarie Bruce (doc P29), pp 3–5.
176. For examples, see Aldridge, Tauroa, Rapata, and Smith (doc E45), p 29; Tony Walzl, 'Ngati Rehia: Overview Report', report commissioned by the Ngāti Rehia Claims Group, 2015 (doc R2), p 47; McBurney, 'Traditional History Overview' (doc A36), p 215.
177. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 98; Tahua Murray (doc S21(b)), pp 9–10, 18–19.
178. Joseph Kingi (doc X17(a)), p 10; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 83–96, 320–321.
179. Beazley, responses to questions (doc K2(b)), pp 4–5; Joseph Kingi (doc X17(a)), p 10; Ani Taniwha (doc G3), pp 14–15.
180. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 258–259. For examples of such marriages, see Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 211, 216, 219; Hone Sadler (doc B38), p 8.
181. Bruce Gregory (doc B22), p 8. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 30–31.
182. Patu Hohepa, transcript 4.1.25, Tauteihiihi Marae, Kohukohu, p 799.
183. Walzl, 'Ngati Rehia' (doc R2), pp 37–38; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 157; Kiharoa Parker and Hera Dear (doc H11(b)), pp 7–8, 12; Margaret Mutu (doc AA91), pp 37–39. Mr Tahere and Mr Klaricich discussed the importance of inter-hapū alliances: Pairama Tahere (doc B2), p 2; John Klaricich (doc C9), p 14. Mr Klaricich said that decisions were made by discussion and consensus: John Klaricich, responses to questions (doc C9(c)), p [2].
184. Tom Murray (doc B25), p 6; Pita Tipene (doc AA82), p 3; Margaret Mutu (doc AA91), p 30; Hori Chapman and Cyril Chapman (doc V4), p 37; see also Hana Maxwell (doc I5(a)), pp 7–8.
185. Pita Tipene (doc AA82), p 4; Bruce Gregory (doc B22), p 8.
186. Nuki Aldridge (doc B10), pp 32, 34, 51, 53.
187. Te Warihi Hetaraka (doc C19), p 11.
188. John Klaricich (doc C9), pp 11–12; Buck Korewha (doc C4), p 2; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), p 109; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 171.
189. Nuki Aldridge (doc B10), p 34.
190. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 224–232, 365–366; Erima Henare (doc A30(c)), p 7; Hīrini Henare, transcript 4.1.1, Te Tii Marae, Waitangi, pp 77–78; Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 108, 114, 154, 165; Erima Henare, transcript 4.1.1, Te Tii Marae, Waitangi, p 310; Bruce Gregory (doc B22), p 8; Buck Korewha (doc C4), p 14; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 30–31.
191. Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 77–78.
192. For further discussion of Rāhiri see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 26–29.
193. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 24–25; Hohepa, 'Hokianga' (doc E36), p 166; Walzl, 'Mana Whenua Report' (doc E34), p 25; John Klaricich (doc C9), p 13. Some sources gave different names for Rāhiri's parents, but these were the most often cited. See, for example, Brougham, 'Report on Whaingaroa Lands' (doc E2), pp [13], [14]; Abraham Witana (doc C25), p 3; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 105. There are also conflicting traditions regarding Rāhiri's descent, including traditions that Puhi-moana-ariki's mother was Ngāi Tamatea and that Puhi-moana-ariki's father descended from Nukutawhiti via Moerewarewa: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 85, 105.
194. Joseph Kingi (doc W34), pp 5–7, 9.
195. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 124.
196. Ibid, pp 211–214; McBurney, 'Traditional History Overview' (doc A36), pp 66, 69, 74–79.
197. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 R01, doc L2), pp 12–18, 47; Daamen, Hamer, and Rigby, *Auckland* (doc H2), pp 24–25; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 4–6.
198. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 R01, doc L2), p 13.
199. Rima Edwards, transcript 4.1.1, Te Tii Marae, Waitangi, pp 39, 44; Joseph Kingi (doc W34), p 15; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 10.

200. Ngaire Brown, 'Te Waiariki/Ngāti Korora Iwi Hapu and the Crown in the Northern Kaipara', 2000 (doc E23), pp [37]–[38]; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 114–115; Hohepa, 'Hokianga' (doc E36), pp 169–170, 200.
201. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 197–199.
202. Hohepa, 'Hokianga' (doc E36), p 161; Brougham, 'Report on Whaingaroa Lands' (doc E2), p 47; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 112, 114.
203. Herbert Rihari (doc R14), pp 4–5; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 4–6; Te Hurihanga Rihari (doc B15(a)), pp 3–4 [te reo]; Te Hurihanga Rihari (doc B15(c)), pp 3–4 [English translation].
204. Hohepa, 'Hokianga' (doc E36), pp 169–170.
205. Ibid, p 170; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 130.
206. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 25.
207. Hohepa, 'Hokianga' (doc E36), pp 41, 169–170, 200; Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p [38].
208. Hohepa, 'Hokianga' (doc E36), pp 170, 200.
209. John Klaricich (doc C9), pp 12–13; Hohepa, 'Hokianga' (doc E36), pp 166–167, 174–175; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 24–25, 174–175, 370–371; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 76–77.
210. Henare, Petrie, and Puckey, supporting papers (doc A37(b)), p 7; Hohepa, 'Hokianga' (doc E36), p 106; John Klaricich (doc C9), p 14.
211. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 45.
212. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 60.
213. Hohepa, 'Hokianga' (doc E36), p 41.
214. Henare to McRae, 22 July 1985 (cited in Merata Kāwharu, *Tāhuhu Kōrero: The Sayings of Taitokerau* (Auckland: Auckland University Press, 2008), p 113).
215. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 25–26, 184; Hohepa, 'Hokianga' (doc E36), pp 172–173; Patu Hohepa, transcript 4.1.1, Te Tii Marae, Waitangi, pp 104, 110–111; Erima Henare (doc A30(c)), p 87; John Klaricich (doc C9), pp 13–14.
216. Hohepa, 'Hokianga' (doc E36), pp 166, 172; see also Patu Hohepa, transcript 4.1.25, Tauteihiihi Marae, Kohukohu, p 798.
217. Patu Hohepa, transcript 4.1.30, Terenga Parāoa Marae, Whāngārei, p [791].
218. Patu Hohepa, transcript 4.1.25, Tauteihiihi Marae, Kohukohu, p 798.
219. Ibid, p 797.
220. Ibid.
221. Ibid, pp 797, 799.
222. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 24–25, 176, 180–181, 240; McBurney, 'Traditional History Overview' (doc A36), p 250.
223. They are variously said to be of Ngāi Tuputupuwhenua, Ngāti Awa, and Te Roroa: Hohepa, 'Hokianga' (doc E36), pp 168–169, 173–176; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 174–175, 366; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 78.
224. Hohepa, 'Hokianga' (doc E36), p 166.
225. Ibid, p 12. Hokianga has also been called 'te kohanga o Ngāpuhi' (the nest of Ngāpuhi): Hinerangi Cooper-Puru (doc C37), p 5, and 'Te Kohanga o Te Tai Tokerau' (the nest of Te Tai Tokerau): Rosemary Daamen, 'Exploratory Report on Wai-128 filed by Dame Whina Cooper on behalf of Te Rarawa ki Hokianga', report commissioned by the Waitangi Tribunal, 1993 (doc E11), p 10.
226. Patu Hohepa (doc A32), p 4; Hohepa, 'Hokianga' (doc E36), p 12.
227. John Klaricich (doc C9), pp 5, 6.
228. Ibid, p 7.
229. Ibid, pp 6–7.
230. Hohepa, 'Hokianga' (doc E36), p 33; John Klaricich (doc C9), p 8.
231. John Klaricich (doc C9), p 8.
232. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 78–79; see also Hohepa, 'Hokianga' (doc E36), p 33.
233. Hohepa, 'Hokianga' (doc E36), p 40; see also Anania Wikaira (doc L18(a)), p 5.
234. Hohepa, 'Hokianga' (doc E36), p 150; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 45.
235. John Klaricich (doc C9), pp 5, 12–13.
236. Hohepa, 'Hokianga' (doc E36), p 40.
237. Ibid, pp 40–41.
238. Erima Henare (doc A30(c)), pp 24–25; Erima Henare, transcript 4.1.1, Te Tii Marae, Waitangi, pp 217, 223; Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 23.
239. Hinerangi Puru-Cooper (doc C37), p 9; see also Abraham Witana (doc C25), pp 11–12.
240. John Klaricich (doc C9), pp 7–8.
241. John Klaricich (doc L1), p 3.
242. Hohepa, 'Hokianga' (doc E36), pp 174–179, 247–248.
243. Murray Painting (doc V12), pp 4–6; Anania Wikaira (doc L18(a)), pp 16–18, 22, 29; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 24–25, 29, 47; Hohepa, 'Hokianga' (doc E36), p 247.
244. Hohepa, 'Hokianga' (doc E36), pp 175–177; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 79; Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 366. Reitū is associated with the *Tainui* iwi Ngāti Hauā and Ngāti Apakura: Ipu Absolum (doc X46), pp 2–3; Moepātu Borell and Robert Joseph, 'Ngāti Apakura te Iwi Ngāti Apakura Mana Motuhake', report commissioned by the Crown Forestry Rental Trust, 2012 (Wai 898 ROI, doc A97), pp 37–38. In the Tribunal's *Te Roroa Report*, Reitū is listed as Ngāti Pou. However, other sources say Ngāti Pou emerged some generations later in Te Tai Tokerau: Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 366; Hohepa, 'Hokianga' (doc E36), pp 187, 248. Tutaerua descends from the Ngāi Tamatea ope who settled in southern Hokianga, becoming ancestors for Te Roroa and Ngāti Whātua: Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 13–14.
245. Hohepa, 'Hokianga' (doc E36), p 179.

246. Ibid, pp 188–189.
247. John Klaricich (doc C9), pp 2, 14; John Klaricich (doc L1), pp 4, 7, 9–12; Hohepa, 'Hokianga' (doc E36), pp 179, 200; Piripi Moore (doc AA144), pp 6, 14; Garry Hooker (doc X22), p 9.
248. Waimirirangi descended from Rāhiri's brother Māui and Ngāi Tamatea: Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), p 13.
249. Hohepa, 'Hokianga' (doc E36), pp 172, 177.
250. Ibid, pp 178, 181–182; Abraham Witana (doc C25), p 2; Buck Korewha (doc C4), p 8; Hinerangi Cooper-Puru (doc C37), pp 2–3.
251. Wayne Te Tai (doc C26), pp 2, 5.
252. Hinerangi Puru-Cooper (doc C37), pp 2, 5; Wayne Te Tai (doc C26), p 2; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 366–367.
253. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 366–367.
254. Waitaha Grandmother Council (doc AA45), pp 3–4; Te Porahau Te Korakora (doc Q7(a)), p 10; Hohepa, 'Hokianga' (doc E36), p 140.
255. Pereri Mahanga (doc I2), p [12]; Ngaire Henare (doc U38), p 4; Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p 4.
256. Pereri Mahanga (doc I2), p [11]; Ngaire Henare (doc U38), p 4; Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p 5.
257. Pereri Mahanga (doc I2), p [11]; Ngaire Henare (doc U38), pp 3–4.
258. Ngaire Henare (doc U38), p 4; Mitai Paraone-Kawiti (doc C23), p 5.
259. Pereri Mahanga (doc I2), p [11].
260. Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p 4; Pereri Mahanga (doc I2), p [12]; Ngaire Henare (doc U38), p 4.
261. Pereri Mahanga (doc I2), pp [11]–[12].
262. Ibid, pp [12], [16].
263. Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp 7–8; see also Pereri Mahanga (doc I2), p [16]; Ngaire Henare (doc U38), pp 2, 5.
264. Buck Korewha (doc C4), p 7; Hohepa, 'Hokianga' (doc E36), pp 154, 163.
265. Buck Korewha (doc C4), pp 2, 8–11; Rima Edwards (doc A25), pp 3–4, 6; Rima Edwards, supporting papers (doc A25(a)), pp 1–87; see also Hana Maxwell (doc AA118), p 2.
266. Te Raa Nehua (doc P6), p 8.
267. McBurney, 'Traditional History Overview' (doc A36), pp 312–313. For specific locations of Ngāti Hau settlements north of Whāngārei, see section 3.3.4.
268. Hohepa, 'Hokianga' (doc E36), pp 177, 179, 187.
269. Ibid, p 179.
270. Ibid, pp 177, 182–183; Whakatau Kopa (doc D6), p 4; Anania Wikaira (doc L18(a)), pp 16–17. These valleys were previously occupied by Ngāti Ue, Ngāti Tipa, and Ngāti Te Rā, all of whom descended from Rāhiri and Uewhati. They were absorbed into Te Māhurehure, Ngāi Tū, and Ngāti Pākau after Tūpoto's time: Whakatau Kopa (doc D6), p 4. Dr Hohepa named several hapū as emerging from Te Māhurehure, including Te Urikaiwhare, Ngāti Hurihanga, Te Whānau Whero, Ngāti Pou, Te Uri o te Aho, Te Māhurehure ki Porotī, Ngāti Whātua ki Moehau, and Te Rouwawe: Patu Hohepa (doc Q10), p 23; see also Pairama Tahere (doc G17(b)), p 7.
271. Waitaha Grandmother Council (doc AA45), pp 3–4.
272. Anania Wikaira (doc L18(a)), pp 16–17.
273. Hohepa, 'Hokianga' (doc E36), pp 181–182; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 79.
274. Hohepa, 'Hokianga' (doc E36), pp 181–182; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 79.
275. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 182, 399. Dr Hohepa named Ngāti Pou as a hapū of Te Māhurehure: Patu Hohepa (doc Q10), p 23.
276. Murray Painting (doc V12), pp 3, 6.
277. Ibid, pp 4–5, 7.
278. Ibid, p 6; Hohepa, 'Hokianga' (doc E36), p 181. For Ngāti Toro locations, see Moetu Eruera (doc V22), pp 5, 11–12.
279. Hohepa, 'Hokianga' (doc E36), pp 178, 181.
280. Murray Painting (doc V12), pp 3–6; Hohepa, 'Hokianga' (doc E36), p 248; Waitaha Grandmother Council (doc AA45), pp 3–4.
281. Murray Painting (doc V12), pp 3–6; Pairama Tahere (doc B2), p 2; Pairama Tahere (doc X42(a)), p 2; Ellen Toki (doc C30), pp 2–3. For Te Ihutai origins, see Ellen Toki (doc X4(a)), app B.
282. Pairama Tahere (doc B2), p 2.
283. Pairama Tahere (doc V19(b)), p 4.
284. Te Enga Harris (doc V2), p 2; Oneroa Pihema (doc V13), pp 4–10.
285. Anania Wikaira (doc L18(a)), pp 18, 21, 29; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), p 29.
286. Murray Painting (doc V12), pp 4–6; Anania Wikaira (doc L18(a)), pp 16–18; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 24–25, 33, 47; Hohepa, 'Hokianga' (doc E36), pp 253, 257.
287. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 36; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 369–371.
288. The leaders of Te Pōpoto and Ngāti Rāhiri descended from Te Wairua, as did the leaders of all northern alliance hapū: Maryanne Baker (doc C28), p 7; Murray Painting (doc V12), p 3; Arapeta Hamilton (doc F12(a)), pp 3–5 (doc W7), p 3; Philippa Wyatt, 'The Old Land Claims and the Concept of "Sale": A Case Study' (MA thesis, University of Auckland, 1991) (doc E15), fol 32.
289. Te Huranga Hohaia (doc D8), pp 3, 17–18; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 175; Hohepa, 'Hokianga' (doc E36), pp 167–168, 247.
290. Wiremu Reihana (doc T10(b)), p 11; Karena Rameka (doc T7), pp 2–3, 11.
291. Hohepa, 'Hokianga' (doc E36), p 175.
292. Ibid; Karena Rameka (doc T7), p 17; Wiremu Reihana (doc T10(b)), p 5.
293. Wiremu Reihana (doc T10(b)), p 5; see also Te Huranga Hohaia (doc D8), p 17.
294. Hohepa, 'Hokianga' (doc E36), pp 167, 175, 247.
295. Wiremu Reihana (doc T10(b)), pp 5–7; Terrance Lomax (doc O2(b)), p [25].

296. Wiremu Reihana (doc T10(b)), pp 6, 9, 11.
297. Te Huranga Hohaia (doc R3), pp 7–9.
298. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 161–162; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 93.
299. Shona Morgan (doc W51), p 8.
300. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 145, 181, 184.
301. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 67, 71; Te Huranga Hohaia (doc R3), p 8.
302. Kyle Hoani (doc D10), p 2.
303. Adrianne Taungapeau and Atareiria Heihei (doc W33), pp [3]–[4]; Te Huranga Hohaia (doc R3), p 6.
304. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 67, 71, 361.
305. Adrianne Taungapeau and Atareiria Heihei (doc W33), pp [3]–[4].
306. Te Huranga Hohaia (doc D8), pp 17–18.
307. Walzl, 'Ngati Rehia' (doc R2), pp 19–20; Te Huranga Hohaia (doc R3), p 9.
308. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 71, 89, 106–107; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 127; Hone Sadler (doc B38), pp 2–4.
309. Joyce Baker (doc F16(b)), pp 7–9; Shona Morgan (doc W51), p 10.
310. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 14, 46–49, 51–52.
311. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 244–245. For Huatakaroa's hapū affiliations, see Waimarie Bruce (doc C24), p 5; Renata Tane (doc W38), p 4; Waitangi Tribunal, *Te Roroa Report*, Wai 38, p 366.
312. Brougham, 'Report on Whaingaroa Lands' (doc E2), pp 13–14; Paeata Brougham-Clark (doc W41), pp 3–4; Maryanne Baker (doc C32), p 8; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 71.
313. Maryanne Baker (doc C28), p 7. For Ngāti Rāhiri connections to Ngāti Manu, see Arapeta Hamilton (doc F12), pp [4]–[5]; Arapeta Hamilton (doc W7), p 4.
314. Shona Morgan (doc W51), p 9; Shona Morgan (doc B40), p [7].
315. Joyce Baker (doc W37), p 4; Merata Kawharu (doc E50), pp [2], [4]–[5].
316. Arapeta Hamilton (doc B29(a)), p 4.
317. Maryanne Baker (doc C32), p 8; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 71.
318. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 174, 180, 221–223; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 77–78. Nukutawhiti is associated with Pouerua, as are Rāhiri and Uenuku. It is now known as one of the sacred maunga of Ngāpuhi: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 52, 65, 77–78; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 24.
319. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 71; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 176, 183; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 27.
320. Hone Sadler (doc B38), pp 3–4; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 106–107; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 82–83, 127.
321. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 38–39; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 69.
322. Hone Sadler (doc B38), p 4; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 53.
323. Hone Sadler (doc B38), p 3; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 71; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 114.
324. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 88; Paeata Brougham-Clark and Hone Mihaka (doc W42), pp 10–12; Waitangi Tribunal, *Te Roroa Report*, Wai 38, pp 4–6; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 9–10.
325. Esther Horton and Ian Mitchell (doc AA140), pp 3–4; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 81; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 94.
326. Hone Sadler (doc B38), pp 2–3; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 89, 104–105.
327. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 81; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 42, 72.
328. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 74, 89, 108; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 92, 99, 118.
329. Maryanne Baker, transcript 4.1.1, Te Tii Marae, Waitangi, p 13; Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 23; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 18, 42, 72, Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 71; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 176, 183; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 27.
330. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 70–73; Erima Henare (doc D14), pp [23]–[25]; Erima Henare, transcript 4.1.1, Te Tii Marae, Waitangi, pp 223–224; Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 26.
331. Pita Tipene (doc AA82), p 3; Erima Henare, transcript 4.1.1, Te Tii Marae, Waitangi, pp 223–224.
332. Pita Tipene (doc AA82), p 3.
333. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 68–69, 75.
334. Pita Tipene (doc AA82), p 3.
335. Erima Henare (doc D14), p [24]; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 68, 74, 87.
336. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 75, 106, 109–110; Erima Henare (doc D14), pp [24]–[26].

Specific settlements associated with Hineāmaru's grandchildren are Ōrauta, Pokapu, Matawaia, Mōtatau, Papatahora, and Pipiwai.

337. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 81, 107, 232, 397; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 27, 43–45, 114; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 406; Paeata Brougham-Clark and Hone Mihaka (doc W42), p 12.

338. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 92, 94. Dr Hohepa named Te Whānau Whero as a hapū of Te Māhurehure: Patu Hohepa (doc Q10), p 23.

339. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 92–93.

340. Ibid, p 88; see also Paeata Brougham-Clark and Hone Mihaka (doc W42), p 11.

341. Paeata Brougham-Clark and Hone Mihaka (doc W42), p 10.

342. Millan Ruka (doc U34(b)), p 10.

343. Taipari Munro, 'Whangarei Taiwhenua Opening Statements' (doc E46), pp 2–3. For settlements, see Walzl, 'Mana Whenua Report' (doc E34), p 278; Nolan, mapbook (doc B10(b)), pl 9.

344. Te Warihi Hetaraka (doc C19), p 4.

345. Ibid, pp 4–5.

346. Taipari Munro, 'Whangarei Taiwhenua Opening Statements' (doc E46), pp 3–4; Waimarie Bruce-Kingi (doc I25), p 6.

347. Waimarie Bruce (doc E47), pp 6–8; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 69–70, 77–78.

348. Terence Lomax (doc O2), p 10.

349. Taipari Munro (doc I26), pp 3–5; Hori Parata (doc C22), p 9; Hori Moanaroa Parata (doc K4), p 4.

350. Te Ringakaha Tia-Ward (doc J7), p 3; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), p 109.

351. Walzl, 'Mana Whenua Report' (doc E34), pp 21, 177.

352. Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp [37]–[38]; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 114–115. The full names are Te Iringa-o-te-kakahu-o-Rāhiri ('the hanging of the cloak of Rāhiri'), Tautoro ('stretched string' – another reference to his cloak), Te Whitinga-o-Rāhiri ('the crossing of Rāhiri', at Awarua), and Te Tārai o Rāhiri ('the dressing of Rāhiri').

353. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 114–115; Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp [37]–[38].

354. Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p [38].

355. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 192.

356. McBurney, 'Traditional History Overview' (doc A36), pp 312–313; Other locations associated with Ngāti Hau include Akerama, Puhipuhi, Waiotu, Opuawhanga, Whananaki, Māruata, Pehiaweri (Glenbervie), and Ruatangata: Hana Maxwell (doc P13), p 7; Rowan Tautari (doc U17), p 66; Millan Ruka (doc U34(b)), p 34; Ngāti Hine, 'Te Whanga Tuarua – Whenua' (doc M25(d)), pp 86, 89; Benjamin Pittman (doc P38), pp 19–20; Allan Halliday (doc P2), pp 2–3; David Armstrong, 'Ngati Hau "Gap Filling" Research', report commissioned by the Crown Forestry Rental Trust, 2015 (doc P1), pp 5–8, 13; Neale Hudson (doc U20), p 2.

357. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 92, 124–126.

358. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 88, 104; Erima Henare (doc D14), p 26; McBurney, 'Traditional History Overview' (doc A36), pp 312–314.

359. Taipari Munro, 'Whangarei Taiwhenua Opening Statements' (doc E46), p 6; Te Ihi Tito (doc C35), pp 2–3.

360. Taipari Munro (doc I26), pp 7–8; Taipari Munro, transcript 4.1.10, Forum North, p 10; Walzl, 'Mana Whenua Report' (doc E34), pp 210–213; Ngaire Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp [35]–[36].

361. Taipari Munro (doc I26), p 8; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 145–146.

362. Walzl, 'Mana Whenua Report' (doc E34), p 200.

363. Ngaire Henare (doc U38), p 7; Ngaire Brown, 'Te Waiariki/Ngāti Korora' (doc E23), p 17.

364. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 99–100; Taipari Munro (doc I26), pp 9–10.

365. Taipari Munro (doc I26), pp 9–10; see also Walzl, 'Mana Whenua Report' (doc E34), pp 228–229.

366. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 195, 201–202; Paraire Pirihi and Harry Midwood (doc I29(a)), pp 2–4, 6.

367. Taipari Munro (doc I26), p 14; Waimarie Bruce (doc E47), p 8.

368. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 70, 380.

369. Millan Ruka (doc U34(b)), p 5.

370. For example, see Waimarie Bruce (doc E47), pp 5, 8; Taipari Munro (doc I26), pp 8–9.

371. Te Hapae Ashby (doc J5), p 2; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 96–97; Walzl, 'Mana Whenua Report' (doc E34), pp 176, 183–187, 191, 195, 233–237; Paeata Brougham-Clark and Hone Mihaka (doc W42), p 12.

372. Erima Henare (doc D14), p [26]; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 52–53, 74–75; Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 125–126.

373. Mitai Paraone-Kawiti (doc E24), pp 5, 11; Ngaire Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp 10–12; Pereri Mahanga (doc U21), p [8]; Pereri Mahanga (doc I2), pp [11], [12], [20].

374. Ngaire Henare (doc U38), p 8; Hana Maxwell (doc P13), pp 7, 37–38.

375. Te Raa Nehua, 'Whangarei Taiwhenua Opening Statements' (doc E46), pp 76–77. For specific hapū interests, see (among others) Mitai Paraone-Kawiti (doc U37), pp 4–6; Te Raa Nehua (doc P6), pp 5–6, 43; Ngaire Henare (doc U38), pp 9–10; Ngāti Hine, 'Te Whanga Tuarua – Whenua' (doc M25(d)), p 203.

376. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 192.

377. Ngaire Henare (doc U38), pp 5, 8; Ngaire Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp 6–7; see also Pereri Mahanga (doc I2), pp [19]–[20]; Te Maawe Mahanga (doc U46(b)), p 4.
378. Ngaire Henare (doc U38), p 2.
379. Ibid, p 5; see also Pereri Mahanga (doc I2), p [15].
380. Te Warihi Hetaraka (doc C19), p 4.
381. Michael Beazley (doc K8), pp 5–6; Te Warihi Hetaraka (doc C19), pp 3–4; Taparoto George, Hori Parata, 'Whangarei Taiwhenua Opening Statements' doc E46, pp 10, 17.
382. Te Warihi Hetaraka (doc C19), p 6; Ngaire Brown, 'Te Waiariki/Ngāti Korora' (doc E23), pp 15–18.
383. McBurney, 'Traditional History Overview' (doc A36), pp 179–180, 199; Te Warihi Hetaraka (doc C19), pp 3–6; Hori Parata (doc C22), pp 5–6; Michael Beazley (doc K8), pp 5–7; Beazley, 'Te Uri o Maki' (doc K2), pp 162, 173, 200, 282; Mike Leuluai (doc U45), pp 7–10.
384. Te Warihi Hetaraka (doc C19), pp 4–5; Mylie George (doc U44(b)), pp [2]–[3].
385. Te Warihi Hetaraka (doc C19), pp 4–5.
386. Pereri Mahanga (doc I2), p [18].
387. Ngaire Henare (doc U38), p 8; Arnold Maunsell (doc T19), p 2.
388. Te Maawe Mahanga (doc U46), p [6].
389. Rowan Tautari (doc U17), p 61.
390. Taipari Munro, transcript 4.1.10, Forum North, Whāngārei, pp 15–19. Rowan Tautari gave evidence that large numbers of Māori occupied Whananaki several generations prior to European settlement; Samuel Marsden found an 'extensive settlement' there in 1820. But there was a 'severe reduction in the population' at Whananaki during the 1820s. Repopulation began from about 1845: Rowan Tautari (doc I32), pp 3–4, 8.
391. Taipari Munro, transcript 4.1.10, Forum North, Whāngārei, p 18; Michael Beazley (doc K8), pp 5–7; Beazley 'Te Uri o Maki' (doc K2), p 200.
392. Rowan Tautari (doc I32), p 8; Rowan Tautari (doc U17), pp 59–71; see also David Peters (doc U18), pp 5–6, and Marie Tautari (doc U48), p 1.
393. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 46–54; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 54–55; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 295.
394. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 48.
395. Ngāti Hine, 'Te Awa Tapu o Taumarere and Te Moana o Pikopiko i Whiti' (doc M30(a)), pp 22–23; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 364, 396–397. Te Awa Tapu o Taumārere claimants used the name Ipipiri for the Bay of Islands, Pēwhairangi being a transliteration: Ngāti Hine, 'Te Awa Tapu o Taumarere and Te Moana o Pikopiko i Whiti' (doc M30(a)), p 11. Another name for the Bay of Islands was Marangai: Paeata Brougham-Clark and Hone Mihaka (doc W42), pp 19–20.
396. The Taumārere River is also known as the Kawakawa River: Ngāti Hine, 'Te Awa Tapu o Taumarere and Te Moana o Pikopiko i Whiti' (doc M30(a)), pp 11, 33.
397. Ibid, p 22.
398. These are the territories claimed by Te Patukeha after the defeat of Ngāre Raumati in the 1820s: Matutaera Clendon (doc F19), p 8; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 182–183.
399. Te Kapotai Hapu Korero (doc F25(b)), pp 16, 19; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 96–97; Te Kapotai claimants, 'Te Kapotai Hapu Korero for Crown Breaches of te Tiriti o Waitangi: Mana i te Moana' (doc F27(d)), p 13. Te Kapotai share common ancestors with Ngāti Pare of Waihaha, and the two hapū have intermarried to such a degree that they are regarded as one: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 101–102.
400. Te Kapotai Hapu Korero (doc D5), pp 7–8.
401. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 287, 290, 295.
402. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 60.
403. Te Uri o Hua had been founded through intermarriage between Maikuku's grandson Te Taniwha and Kuraimaraewhiti of Ngāti Miru: Ronald Wihongi, transcript 4.1.6, Waitangi Marae, Waitangi, pp 249–250; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 91.
404. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 288–290, 295–296; Te Huranga Hohaia (doc D8), p 17.
405. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 290.
406. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 40–41; Te Huranga Hohaia (doc D8), pp 17–18; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 290.
407. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 290–291, 296–297; Walzl, 'Ngati Rehia' (doc R2), pp 22–23.
408. Rowan Tautari, 'Report on Land Previously Owned by Te Whiu Hapu, Puketotara/Pukeiti (inland Bay of Islands)', report commissioned by the Waitangi Tribunal, 1999 (doc E6), pp 2, 7; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 396; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 36. Te Whiu are sometimes known as Ngāti Te Whiu or Ngāi Te Whiu.
409. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 165–166, 174–178; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 297–298; Walzl, 'Ngati Rehia' (doc R2), pp 8, 22–23, 25–26, 31.
410. Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 175–176; Walzl, 'Mana Whenua Report' (doc E34), p 57.
411. Hohepa, 'Hokianga' (doc E36), pp 187, 248; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 79.
412. Hohepa, 'Hokianga' (doc E36), p 182; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 295. The three pā were known as Tapahuarau, Takaporuruku, and Pukepango (also known as Ngā Ruapango): Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 31, 87, 112.
413. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 112.

414. Ibid, pp 89, 112; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 296–297.
415. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 28–29, 112, 119, 124; Terence Lomax (doc O2), p 5; Hone Mihaka (doc O8), p 5.
416. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 34, 115, 119–125; Paeata Brougham-Clark and Hone Mihaka (doc W42), pp 10–11.
417. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 68, 170; Terence Lomax (doc O2), pp 5, 8–9.
418. Hamilton (doc W7), p 4; Arapeta Hamilton (doc AA67), p 3; Arapeta Hamilton (doc B29(a)), pp 4–5. Ngā Manu was of Ngāi Tuputupuwhenua and was the father of Te Kura who married Tamatea-mai-i-tawhiti: Hohepa, 'Hokianga' (doc E36), p 159; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 117.
419. Ngāti Manu established settlements at Manurewa (now Taumārere township) and Kāretu, and occupied Ōtuihu pā: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 103, 134.
420. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 81, 103, 134; Emma McIntyre (doc F13), p 1; Hamilton (doc W7), pp 3, 10. Henare, Middleton, and Puckey, in their traditional history for Te Aho Claims Alliance, recorded that Ngāti Manu split off from other Tautoro hapū after a conflict with Ngāti Toki: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 134.
421. For Ngāti Rangi and Ngāi Tū whakapapa of Hautai and Pehi, and their tūpuna Kohinetau, Te Kohuru, Te Inumanga, and Peketahi, see Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 81; Arnold Maunsell (doc T19), p 2; Parehuia Tangira (doc F35), p 1; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 43–44.
422. Ngā Manu's descendant Raninikura had migrated to Kaipara in the early 1600s with her Ngāi Tamatea husband. Some of their descendants had moved into the Mangakāhia Valley and then Tautoro: Arapeta Hamilton (doc F12(a)), pp 3–6; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 103; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 R01, doc L2), pp 12–13.
423. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 81.
424. Tūwhāngai's parents were Te Raraku and Mawae, both grandchildren of Ngāti Rongo founders Moerangaranga and Ngāwhetu: Arapeta Hamilton (doc K7(b)), pp 4–6.
425. Glenn Strongman (doc T23(b)), pp 4–5.
426. Wyatt, 'Old Land Claims' (doc E15), fol 36.
427. Arapeta Hamilton, appendices (doc W6(a)), p 26; Joyce Baker (doc F16(b)), pp 5–6; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 183; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 134; Wyatt, 'Old Land Claims' (doc E15), fol 36; Arapeta Hamilton (doc F12(a)), pp 6–7. The Ngāti Manu settlements were at Tāpeka, Kororāreka, Matauwhi, Te Uruti, Te Wahapū, Omata, Ōtuihu, and Ōkiato.
428. Arapeta Hamilton (doc W6(a)), pp 25–26.
429. Walzl, 'Ngati Rehia' (doc R2), p 62; Wyatt, 'Old Land Claims' (doc E15), fol 170. Principal rangatira associated with Te Uri o Ngongo were Pukututu and Te Hiamoe: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 232–233.
430. Arapeta Hamilton (doc F12), pp [2], [9]; Arapeta Hamilton (doc F22), p [6].
431. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 103.
432. Ibid, pp 134–135; Meretini Ryder (doc F15), p 1.
433. Meretini Ryder (doc F15), pp 1–2.
434. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), pp 80, 134; Wyatt, 'Old Land Claims' (doc E15), fol 36.
435. Walzl, 'Ngati Rehia' (doc R2), p 33.
436. Moka Puru (doc F21(a)), p 11. These events are also discussed by Walzl and McBurney: Walzl, 'Ngati Rehia' (doc R2), p 33; McBurney, 'Traditional History Overview' (doc A36), pp 257–260.
437. Moka Puru (doc F21(a)), p 11; Walzl, 'Ngati Rehia' (doc R2), p 33; McBurney, 'Traditional History Overview' (doc A36), pp 258–259. Regarding Hokianga involvement, see Walzl, 'Mana Whenua Report' (doc E34), p 58; Murray Painting (doc V12), pp 3–4.
438. McBurney, 'Traditional History Overview' (doc A36), pp 235–239; Walzl, 'Ngati Rehia' (doc R2), p 34; Rihari Dargaville (doc K16), p [6]; Anthony Packington-Hall (doc K15(b)), pp [3]–[4]; see also Pei Te Hurinui Jones and Bruce Biggs, *Nga Iwi o Tainui: The Traditional History of the Tainui People/Nga Koorero Tuku Iho a Nga Tuupuna* (Auckland: Auckland University Press, 1995), pp 328–331.
439. For accounts of these conflicts, see McBurney, 'Traditional History Overview' (doc A36), pp 262–270; Walzl, 'Mana Whenua Report' (doc E34), p 61; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 117; Moka Puru (doc F21(a)), p 11.
440. McBurney, 'Traditional History Overview' (doc A36), pp 262–267.
441. Moka Puru (doc F21(a)), p 11; McBurney, 'Traditional History Overview' (doc A36), pp 262–267.
442. Southern Ngāpuhi hapū taking part included Ngāti Manu, Ngāti Hine, and Ngāti Rangi: McBurney, 'Traditional History Overview' (doc A36), pp 264, 270; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 117.
443. McBurney, 'Traditional History Overview' (doc A36), pp 262–267; Ballara, *Taua*, pp 181–186.
444. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 130.
445. Ibid, p 118.
446. Ibid, pp 117–118.
447. Kathleen Shawcross, 'Maoris of the Bay of Islands, 1769–1840: A Study in Changing Maori Responses to European Contact' (MA thesis, University of Auckland, 1966), fols 15–19; Anne Salmond, *Two Worlds: First Meetings Between Maori and Europeans, 1642–1772* (Auckland: Viking, 1991), pp 213, 216–219, 221.
448. Salmond, *Two Worlds*, pp 299, 311–317, 359–372, 376–379, 386–388, 393–402; Shawcross, 'Maoris of the Bay of Islands', fols 45, 53–54, 91–99, 103–107, 110–111, 115–118, 123; Nuki Aldridge (doc B10), p 41; Hori Parata (doc C22), p 4.

449. Vincent O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland, c1769–1840, report commissioned by the Crown Forestry Rental Trust, 2007 (doc A11), pp 55, 57–58; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 52, 225–226.
450. Shawcross, 'Maoris of the Bay of Islands', fols 131–138.
451. Anne Salmond, *Between Worlds: Early Exchanges Between Maori and Europeans, 1773–1815* (Auckland: Penguin, 1997), pp 322–323, 326–327; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 362, 611–613.
452. Te Hurihanga Rihari (doc B15(a)), p 5 [te reo]; Te Hurihanga Rihari (doc B15(c)), p 5 [English translation]; Kyle Hoani (doc D10), pp 2–3; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 75–76, 79–80; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 147, 252; Tahua Murray (doc S21), pp 9–10.
453. Nuki Aldridge (doc B10), pp 34, 51–52.
454. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 76, 78–80; Salmond, *Between Worlds*, pp 329–330, 351–354, 356; Shawcross, 'Maoris of the Bay of Islands', fols 139–140, 155.
455. Salmond, *Between Worlds*, pp 360, 373.
456. John R Elder, ed, *The Letters and Journals of Samuel Marsden, 1765–1838* (Dunedin: Coulls Somerville Wilkie, 1932), pp 64–65.
457. Salmond, *Between Worlds*, pp 232–233; Shawcross, 'Maoris of the Bay of Islands', fols 136–137; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), p 74; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 210; Nuki Aldridge (doc B10), p 41.
458. Salmond, *Between Worlds*, pp 322–325, 408–410; Ormond Wilson, *Kororāreka and Other Essays* (Dunedin: John McIndoe, 1990), pp 30–32.
459. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 88–89; Salmond, *Between Worlds*, pp 364–366.
460. McBurney, 'Traditional History Overview' (doc A36), pp 260–261; Salmond, *Between Worlds*, p 362.
461. Salmond, *Between Worlds*, pp 368, 371.
462. Ibid, pp 327–328, 408–409, 432, 446; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 79, 92, 100–101.
463. Salmond, *Between Worlds*, pp 369–372.
464. Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, p 18.
465. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 92–95; Salmond, *Between Worlds*, pp 383–388, 391–393, 457; Moana Nui A Kiwa Wood (doc S11), p 5; Nuki Aldridge (doc B10), pp 53–54; Anania Wikaira (doc L18(a)), p 17.
466. Moana Nui A Kiwa Wood (doc S11), p 5.
467. Salmond, *Between Worlds*, pp 387–388, 391–392; Moana Nui A Kiwa Wood (doc S11), pp 5–6. Some accounts say the attack was on Te Puna, very close to Rangihoua: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 151.
468. Moana Nui A Kiwa Wood (doc S11), pp 4–5; Moana Wood, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, pp 366–367.
469. Salmond, *Between Worlds*, p 424.
470. Tai Tokerau District Māori Council, 'Oral History Report' (doc A A3), p 161. Ruatara was also a great-grandson of Whakaaria's sister Te Pehenga: Hohepa, 'Hokianga' (doc E36), p 251.
471. Salmond, *Between Worlds*, pp 415, 417–419.
472. Ibid, pp 433, 436–440, 442–443.
473. Ibid, pp 442–443.
474. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 124–125; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 116.
475. Salmond, *Between Worlds*, pp 446–447, 450, 455, 466; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 130; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), p 102; Shawcross, 'Maoris of the Bay of Islands', fols 297–298; Binney, *The Legacy of Guilt*, pp 49–50.
476. Salmond, *Between Worlds*, pp 452–461.
477. Walzl, 'Ngati Rehia' (doc R2), pp 48–50; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 124–125.
478. Michael Beazley (doc K8), p 23; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), p 150.
479. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 123–124, 133–134; Rihari Takuira (doc C7), p 15; Shawcross, 'Maoris of the Bay of Islands', fols 255–256.
480. McBurney, 'Traditional History Overview' (doc A36), pp 275–276; Michael Beazley (doc K8), p 23. Te Haupa of Ngāti Paoa also took part in Hongi's campaign, seeking utu for the capture of his daughter: McBurney, 'Traditional History Overview' (doc A36), pp 275–276.
481. Ngātiwai suffered a major defeat to Ngāti Manuhiri on Waiheke Island in 1818 in a battle known as Whakanewhanewha. Two years later, Te Kapotai and a section of Ngāpuhi aided Ngātiwai's quest for utu, in a battle at Te Kohuroa (Mathesons Bay, Ōmaha). This resulted in another defeat, creating a Ngāpuhi demand for utu: McBurney, 'Traditional History Overview' (doc A36), pp 200–201; Beazley, 'Te Uri o Maki' (doc K2), pp 30, 192.
482. McBurney, 'Traditional History Overview' (doc A36), p 276.
483. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 128–129; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 213–214, 216; Binney, *The Legacy of Guilt*, pp 68, 73–74; Dorothy Urlich Cloher, *Hongi Hika: Warrior Chief* (Auckland: Viking, 2003), pp 125, 129–131.
484. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 214; James Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane, 1996), p 160; Manuka Arnold Henare, 'The Changing Images of Nineteenth Century Māori Society, From Tribes to Nation' (doctoral thesis, Victoria University, 2003) (doc A16), pp 168–169.
485. McBurney, 'Traditional History Overview' (doc A36), pp 285–286, 293, 295, 307.

486. Michael Beazley (doc K8), pp 24–25; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 381–384; McBurney, 'Traditional History Overview' (doc A36), pp 278–312.
487. Michael Beazley (doc K8), pp 24–25; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 384–389; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 136–138.
488. Michael Beazley (doc K8), pp 24–25; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 377–378, 381–384; McBurney, 'Traditional History Overview' (doc A36), pp 308–311, 314, 318, 329–330.
489. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 62, 64.
490. Arapeta Hamilton (doc K7(b)), p 8; Arapeta Hamilton (doc F12(a)), p 8. As part of this alliance, Pōmare I married Ihumamao of Ngāti Kahungunu. On Pōmare I's death, she married his successor Pōmare II: Meretini Ryder (doc F15), p 1.
491. McBurney, 'Traditional History Overview' (doc A36), p 215.
492. Ibid, pp 56–58; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 203, 211–213.
493. McBurney, 'Traditional History Overview' (doc A36), pp 68–71.
494. Ibid, pp 78, 87, 160–161.
495. Ibid, pp 32, 80–82, 84–86.
496. Ibid, p 91; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 203; Beazley, 'Te Uri o Maki' (doc K2), p [1].
497. Beazley, 'Te Uri o Maki' (doc K2), pp 5, 7–8, 13, 17; Arapeta Hamilton (doc K7(b)), pp 2–4; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 39, 42; McBurney, 'Traditional History Overview' (doc A36), pp 91–93. Regarding Ngā Rīriki and Te Uri o Hau origins, see Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 32, 47–50; Daamen, Hamer, and Rigby, *Auckland* (doc H2), p 32.
498. Arapeta Hamilton (doc K7(b)), p 2; Beazley, 'Te Uri o Maki' (doc K2), pp 7–8; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 203, 216; McBurney, 'Traditional History Overview' (doc A36), pp 91–92. Some sources named Moerangaranga's father as 'Rongo' and others as 'Rango'.
499. McBurney, 'Traditional History Overview' (doc A36), pp 91–92, 94, see also pp 86–87.
500. Beazley, 'Te Uri o Maki' (doc K2), pp 20, 39–40; Arapeta Hamilton (doc K7(b)), pp 2–3.
501. McBurney, 'Traditional History Overview' (doc A36), pp 100–102.
502. Ibid, pp 101–102, 104–106; Peter McBurney, transcript 4.1.12, North Harbour Stadium, p 52; Jasmine Cotter-Williams (doc K5), pp 11–12, 14, 16; A J Packington-Hall, 'Suggested Sites for Tribunal Visits', 2014 (doc K15(c)), pp [6]–[7].
503. Michael Beazley (doc K8), pp 12–13, 51–52; McBurney, 'Traditional History Overview' (doc A36), pp 109–115, 119–125.
504. McBurney, 'Traditional History Overview' (doc A36), pp 88–90, 202, 291. Other Ngāti Manuhiri hapū included Te Uri o Katia (who later intermarried with Te Uri o Hau) at Hoteo; Ngāti Ruangakau who occupied lands from Te Ārai to Pākiri; Ngāti Te Awa who occupied lands from Pākiri to Whangateau; and Ngāti Marohiro who occupied the Tāwharanui Peninsula: McBurney, 'Traditional History Overview' (doc A36), pp 84–86, 88–90.
505. Beazley, 'Te Uri o Maki' (doc K2), p 5.
506. Ibid, p 1.
507. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 214–215; McBurney, 'Traditional History Overview' (doc A36), pp 193–195, 196–199.
508. McBurney, 'Traditional History Overview' (doc A36), pp 168, 172.
509. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 48–50; McBurney, 'Traditional History Overview' (doc A36), pp 123–125.
510. McBurney, 'Traditional History Overview' (doc A36), pp 204–208, 213, 216.
511. These conflicts are listed in Michael Beazley (doc K8), pp 21–22, and described in detail by Belgrave, Young, and Deason and McBurney: Belgrave, Young, and Deason: 'Tikapa Moana' (Wai 1362 ROI, doc A6), pp 505–525; McBurney, 'Traditional History Overview' (doc A36), pp 217–241. Belgrave et al referred to one tradition in which Ngāti Paoa is said to have claimed all of the land from Mahurangi to Waitematā, and another in which they are said to have claimed Mahurangi and Whangaparāoa only: Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 ROI, doc A6), p 524. However, other sources suggested that Kawerau hapū regrouped and reclaimed much or all of their land at Mahurangi and elsewhere: McBurney, 'Traditional History Overview' (doc A36), pp 221–224; Barry Rigby, 'The Crown, Maori, and Mahurangi, 1840–1881', report commissioned by the Waitangi Tribunal, 1998 (doc E18), pp 18–19.
512. Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 ROI, doc A6), p 524; McBurney, 'Traditional History Overview' (doc A36), pp 223–225; Rigby, 'The Crown, Maori, and Mahurangi' (doc E18), pp 12–13.
513. Waitangi Tribunal, *The Hauraki Report*, Wai 686, 3 vols (Wellington: Legislation Direct, 2006), vol 3, pp 1022, 1024; see also McBurney, 'Traditional History Overview' (doc A36), pp 27, 213–215, 224–225, 242–243; Beazley, 'Te Uri o Maki' (doc K2), p 95.
514. McBurney, 'Traditional History Overview' (doc A36), p 224.
515. Ibid, pp 193–195, 243; Beazley, 'Te Uri o Maki' (doc K2), p 95.
516. McBurney, 'Traditional History Overview' (doc A36), p 498.
517. Wai 686 ROI, doc A6, pp 4–5; Paul Monin, *This is My Place: Hauraki Contested 1769–1875* (Wellington: Bridget Williams Books, 2001), p 8.
518. Memorandum of counsel for Wai 100 (#3.1.1), p 1.
519. McBurney, 'Traditional History Overview' (doc A36), pp 87–88, 198–199, 355.
520. As Dr Angela Ballara has noted, Hauraki traditions tend to use the term 'Ngāpuhi' for all aggressors from the north, irrespective of hapū affiliation: McBurney, 'Traditional History Overview' (doc A36), pp 221–222.
521. Taipari Munro, Taparoto George, Huhana Seve, Hori Parata, and Eru Lyndon, 'Whangarei Taiwhenua Opening Statements' (doc E46), pp 3–5, 10, 12, 17, 33; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 194–196.

522. McBurney, 'Traditional History Overview' (doc A36), pp 219–224, 231, 233–235.
523. Ibid, pp 86, 219; Beazley, 'Te Uri o Maki' (doc K2), pp 18, 28, 151.
524. McBurney, 'Traditional History Overview' (doc A36), p 222.
525. Arapeta Hamilton (doc K7(b)), pp 3–5; Pierre Lyndon, transcript 4.1.12, North Harbour Stadium, p 720; McBurney, 'Traditional History Overview' (doc A36), pp 144, 428.
526. McBurney, 'Traditional History Overview' (doc A36), pp 233–234, 237–238. For conflicts over the waka, see pp 225, 230–231, 239.
527. McBurney, 'Traditional History Overview' (doc A36), p 239; Anthony Packington-Hall, apps (doc AA10(a)), app 2, p 6. For a *Tainui* perspective, see Jones and Biggs, *Nga Iwi o Tainui*, pp 328–331; see also Packington-Hall (doc K15(b)), pp [3]–[4].
528. Packington-Hall (doc AA10(a)), app 2, p 6.
529. Michael Beazley (doc K8), p 22.
530. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 132; McBurney, 'Traditional History Overview' (doc A36), p 280.
531. Leaders included Patuone and Nene (Ngāti Hao, Te Pōpoto of Hokianga); Pōmare I, Te Whareumu, and Te Morenga (Ngāti Manu); Tītore and Moka (Ngāi Tāwake); Te Kēmara (Ngāti Rāhiri); Tuhi (Ngāre Raumati); Te Tirarau (Te Parawhau); and Moetara (Ngāti Korokoro): McBurney, 'Traditional History Overview' (doc A36), pp 286–287; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 132.
532. The rangatira were Koriwhai and Taurawhero of Ngātiwai, Ngāti Manu, and Ngāti Hine: McBurney, 'Traditional History Overview' (doc A36), pp 188–192, 200; Arapeta Hamilton (doc K7), p 3; Rowan Tautari, 'Attachment and Belonging: Nineteenth Century Whananaki' (MA thesis, Massey University, 2009) (doc I32(d)), p 19; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 RO1, doc L2), pp 55, 56, 110, 182.
533. McBurney, 'Traditional History Overview' (doc A36), pp 287, 292, 294–299.
534. These events are described in detail by McBurney: McBurney, 'Traditional History Overview' (doc A36), pp 284, 287–296.
535. McBurney, 'Traditional History Overview' (doc A36), pp 305–306, 308; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 132–133.
536. McBurney, 'Traditional History Overview' (doc A36), pp 304–312.
537. Mangakahia Taiwhenua claimants, opening statement (doc E54), p 9; Patrick Hilton (doc I1), p 3.
538. McBurney, 'Traditional History Overview' (doc A36), pp 308–311, 314, 329–330.
539. Ibid, p 325.
540. Beazley, responses to questions (doc K2(b)), pp 3–4; Beazley, 'Te Uri o Maki' (doc K2), p 21.
541. *Hauturu* (1886) 5 Kaipara MB 1, 14–15 (McBurney, 'Traditional History Overview' (doc A36), p 318).
542. McBurney, 'Traditional History Overview' (doc A36), pp 317–318, 381–383, 395.
543. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 RO1, doc L2), p 60; McBurney, 'Traditional History Overview' (doc A36), p 381.
544. Beazley, 'Te Uri o Maki' (doc K2), p 21; Michael Beazley (doc K8), pp 5–7.
545. McBurney, 'Traditional History Overview' (doc A36), pp 381–382.
546. Arapeta Hamilton (doc K7(b)), pp 4–5; McBurney, 'Traditional History Overview' (doc A36), p 315; see also Beazley, 'Te Uri o Maki' (doc K2), pp 82–83. Tūwhāngai descended from two of Ngāwhetu's children, Pare and Tauhia.
547. Arapeta Hamilton (doc K7(b)), pp 3, 5.
548. McBurney, 'Traditional History Overview' (doc A36), pp 340–341.
549. Ibid, pp 340–341, 346–347; Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 RO1, doc A6), pp 527–528.
550. Anthony Packington-Hall, 'Suggested Sites for Tribunal Visits' (doc K15(c)), p [16].
551. Joseph Kingi (doc X17(a)), p 5; McBurney, 'Traditional History Overview' (doc A36), p 341.
552. Packington-Hall, 'Suggested Sites for Tribunal Visits' (doc K15(c)), pp [3]–[4], [16]–[17]; Packington-Hall (doc K15(b)), p [4].
553. McBurney, 'Traditional History Overview' (doc A36), p 347.
554. Packington-Hall, 'Suggested Sites for Tribunal Visits' (doc K15(c)), p [3].
555. Although Hetaraka was associated with all four peoples, he told the Native Land Court that his rights north of the Waitematā were from Ngāti Kahu and Ngāti Poataniwha: Beazley, 'Te Uri o Maki' (doc K2), pp 125–127, 149; Beazley, responses to questions (doc K2(b)), pp 2–5, 28–30, 41; McBurney, 'Traditional History Overview' (doc A36), pp 372–373; Jasmine Cotter-Williams (doc K5), pp 11–12, 14–18. Regarding Awataha, see Morehu McDonald, 'Hato Petera College Research Report', report commissioned by Ngā Tauira Tawhito o Hato Petera, 2012 (doc K1), pp 26–28. For Hetaraka's Ngāti Paoa links, see Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 RO1, doc A6), pp 522–528.
556. McBurney, 'Traditional History Overview' (doc A36), pp 352–356.
557. Ibid, pp 354, 356–365.
558. Ibid, pp 355–356, 413.
559. Michael Beazley (doc K8), pp 46–47.
560. McBurney, 'Traditional History Overview' (doc A36), pp 352–353.
561. Ibid, pp 354–355.
562. Ibid, pp 387–388.
563. Beazley, 'Te Uri o Maki' (doc K2), p 33; see also McBurney, 'Traditional History Overview' (doc A36), p 381.
564. Arapeta Hamilton (doc K7(b)), p 6; McBurney, 'Traditional History Overview' (doc A36), pp 383–389.
565. McBurney, 'Traditional History Overview' (doc A36), p 381.
566. Ibid, pp 396–398; Rigby, 'The Crown, Maori, and Mahurangi' (doc E18), pp 14–16.
567. McBurney, 'Traditional History Overview' (doc A36), pp 327–328, 380; Rigby, 'The Crown, Maori, and Mahurangi' (doc E18), pp 20–25; Belgrave, Young, and Deason, 'Tikapa Moana' (Wai 1362 RO1, doc A6), pp 526–528, 536–537.

568. Brougham, 'Report on Whaingaroa Lands' (doc E2), p 4.
569. Frances Goulton (doc AA124), p 9.
570. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 18–19.
571. Ibid.
572. Frances Goulton (doc AA124), pp 10–11; see also Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 20; Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 24–25; Robyn Tauroa (doc S28(b)), p 6.
573. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 20; Frances Goulton, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, pp 418–419; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 17.
574. Frances Goulton (doc S29), pp 13–14.
575. Frances Goulton (doc AA124), p 10.
576. Ibid.
577. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 26; Robyn Tauroa and Thomas Hawtin (doc AA149), pp 6–7; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 37; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 17.
578. Robyn Tauroa and Thomas Hawtin (doc AA149), pp 6, 8; translation in original.
579. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 29; see also Hohepa, 'Hokianga' (doc E36), p 124.
580. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 28; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 23–24.
581. Frances Goulton, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, p 420.
582. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 25–27; see also Ruiha Collier (doc G13), p 18.
583. Frances Goulton (doc S29), p 12.
584. Frances Goulton, transcript 4.1.20, Te Tāpui Marae, Matauri Bay, p 421.
585. Sailor Morgan (doc S13), p 10; Moana Woods and Harry Brown (doc N8), p 2; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 25–27; see also Ruiha Collier (doc G13), p 18.
586. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 23–24; Brougham, 'Report on Whaingaroa Lands' (doc E2), p 44.
587. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 23–24; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 173–174, 177–178, 180, 212, 216.
588. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 17, 28, 36–37, 233.
589. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 25.
590. Herbert Rihari (doc R14), p 4; John Pikari (doc AA65), p 4; Hugh Rihari (doc R7), p [2].
591. Herbert Rihari (doc R14(a)), p 1; Te Hurihanga Rihari (doc B15(c)), pp 3, 5.
592. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 190–198, 200. Ngāti Uru and Te Whānaupani are both said to descend from Te Kākā through intermarriage with Ngāti Awa: Erimana Taniora (doc C2), pp 1–2; Erimana Taniora (doc G1), p 33.
593. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 192; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 29.
594. Anania Wikaira (doc L18(a)), pp 17–18; Murray Painting (doc V12), pp 4–6; Erimana Taniora (doc G1), pp 32–33; Joseph Kingi (doc X17), pp 1, 4.
595. Claimants spoke of two waves of Ngāre Raumati migration. The first occurred during the 1600s, when a section of Ngāre Raumati became involved in conflicts with Ngāti Awa as far north as Kaitāia and Rangaunu. The second occurred during the late 1700s after Ngāre Raumati's disastrous interaction with Marion du Fresne, and took a section of Ngāre Raumati along the coast to Matauri and Mahinepua, then inland to Kāeo and Kaingapipiwai: Erimana Taniora (doc G1), pp 31, 32–35, 38, 55; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 35–36; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 31; Nuki Aldridge (doc AA154(c)), p 7.
596. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 23, 28, 29, 34–35, 60, 141.
597. Hongi's mother Tuhikura was the daughter of Tahapango (Ngāti Mokokohi) and Taingariu (who descended from Māhia and Torongare, founding ancestors of the northern and southern alliances): Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 43, 116–117, 192. Tahapango had grown up near Taupō Bay in northern Whangaroa, but had been gifted Pūpuke and Kaingapipiwai lands after defending them against an attack from Hokianga: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 42–43, 117, 233–234. He also occupied Kaheka Point at the entrance to Waitapu Bay: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 43.
598. Hongi blamed Kaikohe relatives for the suicide of his wife, Tangiwhare: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 135–136.
599. Other causes included Ngāti Pou harassment of the Wesleyan mission at Whangaroa, and earlier grievances arising from Moremonui and the *Boyd* killings: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 134–136.
600. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 60, 131, 136–138, 154; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 190. Hapū involved included Te Tahawai, Ngāi Tūpango, and Ngāti Kuta, as well as Te Awaraupo, Ngāti Kahuiti, Te Aeto, Toihau, Te Uruputete, Ngāti Kawau, Te Whānaupani, Ngāti Paruru, and even Ngāti Miru. Ururoa was also known as Rewharewha.
601. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34–35, 137–139. The Ngāpuhi campaign also extended into Maungataniwha and Kohumaru, claiming lands there. According to Mr Tahere, the leaders in these battles included Ururoa, Te Hōtete, and Te Awha, who was principal rangatira of Te Uri o Te Aho: Pairama Tahere (doc G17(b)), pp 3–4. Mr Tahere also gave an account from Hōne Mohi Tāwhai of Te Uri o Te Aho involvement in the campaigns and subsequent occupation of inland Whangaroa: Pairama Tahere (doc Q2(a)), p 4.

602. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 140, 154.
603. Pairama Tahere (doc G17(b)), pp 3–4.
604. Rihari Takuira (doc C7), p 21.
605. Rose Huru (doc G10), pp 3–4, 7, 11; Patricia Tauroa, transcript 4.1.15, Whangaroa, pp 81–82; see also Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 249.
606. Owen Kingi (doc N15), pp 5–7; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 140; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 145–146. Claimant Terry Tauroa referred to Whiro of Te Aeto gifting land to Hongi at Pūpuke in recognition of his descent and his assistance in dealing with Ngāti Pou: Terry Tauroa (doc AA107), p 5.
607. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34–35, 43, 191–192; Owen Kingi (doc N15), p 4. Ngāti Mokokohi is said to have originated at Ōruru near Mangonui, before occupying Whangaroa. Te Puta is specifically associated with Matanehunehu (an island in Frear Bay), Taupō Bay, Tauranga Bay, Pararako Bay, Touwai Bay, Matangirau, and Kāeo: Robyn Tauroa (doc S28), p 11. Angela Ballara identified Ngāti Mokokohi as a hapū of Te Wahineiti: Ballara, *Iwi*, p 130.
608. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 191–192, 220–222, 227–228. Hapū associated with Te Puta occupied lands as far inland as Ōtangaroa and Kohumaru.
609. Hapū specifically associated with Te Puta included Te Aeto: Owen Kingi (doc N15), pp 4–5; Terence Tauroa (doc N1), pp 1–2; with Kaitangata: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 138, 192; Ngāti Rangi: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 239; and Ngāti Imiru: Terence Tauroa (doc N1), p 2; Erimana Taniora (doc G1), p 35. Ngāti Kahuiti is associated with Te Aeto and Kaitangata: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 34. Ngāti Rangi is in turn closely associated with Ngāti Rangimatamoemoe and Ngāti Tara: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 35.
610. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 34; Lloyd Pōpata (doc G9), p 37; Brougham, 'Report on Whaingaroa Lands' (doc E2), pp 48–49.
611. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 32; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34–35; Robyn Tauroa (doc S28), p 11.
612. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34, 138, 192.
613. Ibid, p 35; Ihapera Baker (doc N9), p 2; see also Arena Heta (doc B30), p 2; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 27.
614. Erimana Taniora (doc G1), p 35.
615. Terence Tauroa (doc N1), p 3; Ani Taniwha (doc G3), pp 6–7; Moana Woods and Harry Brown (doc N8(a)), p 1; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34–36; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 31.
616. Rose Huru (doc G10), pp 3–4, 7, 11; Patricia Tauroa, transcript 4.1.15, Whangaroa, pp 81–82; see also Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 249.
617. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 249; Pairama Tahere (doc G17(b)), pp 4–6; Pairama Tahere (doc V19(b)), pp 2–3, 20.
618. Pairama Tahere (doc V19(b)), p 20; see also Te Enga Harris (doc V2), p 2; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 249; Pairama Tahere (doc G17(b)), pp 4–6; Rose Huru (doc G10), pp 3–4, 7, 11; Patricia Tauroa, transcript 4.1.15, Whangaroa, pp 81–82.
619. Nuki Aldridge, transcript 4.1.6, Waitangi Marae, Waitangi, pp 140–141; Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 11–12, 27–28.
620. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 35, 42–43, 116–117, 154, 192, 228–229; Terence Tauroa (doc N1), pp 2, 5; Terence Tauroa (doc N1(a)); Paeata Brougham-Clark (doc AA158), p 7; Rihari Takuira (doc C7), p 13; Tom Bennion, 'Kororipo Pa', report commissioned by the Waitangi Tribunal, 1997 (doc E7), p 4; Marina Fletcher (doc U55), pp 5–6; Joseph Kingi (doc X17), p 4. Te Mutunga is said to be of Ngāti Hine and Ngāti Rēhia, but also had older Whangaroa connections through descent from Tīpoki of Ngāpuhi and Orongoiti of Ngāti Awa: Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 116, 192; Owen Kingi (doc N15), p 5; Walzl, 'Ngati Rehia' (doc R2), p 32.
621. Robyn Tauroa and Thomas Hawtin (doc AA149), pp 9–10.
622. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 116–117.
623. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 252.
624. Ani Taniwha (doc G3), p 42.
625. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 252–254.
626. Kawhena Paul (doc S1), p 13; Nuki Aldridge (doc AA167), p 13; Rueben Porter (doc S6), p 4; Aldridge, Tauroa, Rapata, and Smith (doc E45), p 32; Erimana Taniora (doc G1), p 35; Owen Kingi (doc N15), p 2.
627. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 30; Nau Epiha and Hohepa Epiha (doc S25), pp 8–9; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 28, 137.
628. Rihari Takuira (doc C7), pp 21–22; see also Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 32, 36–37, 206, 207, 249, 313; Sailor Morgan (doc S13), p 2. Ngāi Tūpango are also said to have interests in Matangirau through intermarriage with other hapū.
629. Erimana Taniora (doc G1), p 43.
630. Ibid, pp 35–37, 43; Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 31–32; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 36.
631. Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 31–32; Erimana Taniora (doc C2), pp 5–6; Nuki Aldridge (doc AA154(c)), pp 9–10; Erimana Taniora (doc G1), p 47; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 35–36.
632. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 37; Nuki Aldridge (doc AA154(b)), p 7.
633. Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 8–11.
634. Rihari Takuira (doc C7), p 22; Aldridge, Tauroa, Rapata, and Smith (doc E45), pp 29, 32.

635. Aldridge, Tauroa, Rapata, and Smith (doc E45), p 32.
636. Tahua Murray (doc S21), pp 7–8, 10; Nau Epiha and Hohepa Epiha (doc S25), pp 8–9; Hone Hare (doc AA112), pp 1–2.
637. Ngāi Tūpango is said to descend from Tūpoto's son Tūteauru, founding tupuna of Te Māhurehure: Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 158, 175, 319; Gary Hooker, 'Maori, the Crown and the Northern Wairoa District – A Te Roroa Perspective', report commissioned by the Waitangi Tribunal, 2000 (Wai 674 ROI, doc L2), pp 79–80; Te Tahawai is said to descend from Te Waiariki and Ngāti Ruanui of northern Hokianga: Joseph Kingi (doc X17), p 4; closing submissions for Wai 2382 (#3.3.339), pp 3, 339. Ngāti Uru descends from Tūiti, one of the founding tūpuna for all inner Hokianga hapū including Ngāti Pou, Te Pōpoto, and Ngāti Hao; Ngāti Uru and Te Whānaupani descended from Rāhiri's grandson Rongomaitekawa, as did the Ngāti Hao leaders Patuone and Nene: Erimana Taniora (doc C2), pp 7–9; Erimana Taniora (doc G1), pp 31, 37, 39–40. Ngāti Uru intermarried with Ngāi Te Whiu from the late 1700s onwards: Erimana Taniora (doc G1), pp 31, 35–36, 38.
638. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 137–138.
639. Anaru Kira (doc S7), p 4; Rihari Takuira (doc C7), p 22.
640. Herbert Rihari (doc R14), p 4; Herbert Rihari (doc R14(a)), p 1; Hugh Rihari (doc R7), p 2.
641. Nau Epiha and Hohepa Epiha (doc S25), pp 8–9.
642. Erimana Taniora (doc G1), p 36, Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 21, 33, 195.
643. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 34–36.
644. Rueben Porter (doc S6), p 55.
645. Robyn Tauroa and Thomas Hawtin (doc AA149(b)), p 4.
646. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 142–143; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 631.
647. Michael Beazley (doc K8), pp 24–25, Walzl, 'Mana Whenua Report' (doc E34), p 61.
648. Walzl, 'Mana Whenua Report' (doc E34), p 61.
649. McBurney, 'Traditional History Overview' (doc A36), pp 308, 329.
650. Ibid, p 317.
651. Ibid, pp 300–303, 333–334, 338, 340–341.
652. In 1826, Pōmare I of Ngāti Manu invaded Waikato and was killed by Hauraki and Waikato tribes. In 1828, his nephew Pōmare II sought utu by killing two Ngāti Maru leaders, leading to Hauraki tribes defeating a combined Te Parawhau–Ngātiwai–Ngāti Manu force on the Coromandel Peninsula. In 1832, a Whāngārei taua travelled into Waikato, suffering serious defeat. These conflicts are described by McBurney: McBurney, 'Traditional History Overview' (doc A36), pp 314–324.
653. See Harrison Wright, *New Zealand, 1769–1840: Early Years of Western Contact* (Cambridge: Harvard University Press, 1959), pp 180–181; Belich, *Making Peoples*, pp 164, 168; Angela Ballara, 'Warfare and Government in Ngapuhi Tribal Society, 1814–1833: Institutions of Authority and the Function of Warfare in the Period of Early Settlement, 1814–1833, in the Bay of Islands and Related Territories' (MA thesis, University of Auckland, 1973), fols 188–192.
654. These matters are discussed in our stage 1 report: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 261–262.
655. Rewa, Whararehi, Patuone, Tītore, Pōmare II, and Kāwiti were all regarded as peacemakers: see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 261.
656. McBurney, 'Traditional History Overview' (doc A36), pp 300–303, 339–340; Joseph Kingi (doc W34), pp 3–5; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 403.
657. McBurney, 'Traditional History Overview' (doc A36), pp 320–322.
658. Ibid, pp 338, 340–341, 354.
659. Ibid, pp 347–350.
660. Paranihia Davis, (doc F11), pp 1–2. The house was dismantled after Pōmare II's death.
661. John Klaricich, response to question (doc C9(b)), pp [1]–[2]; Tonga Paati (doc C40), pp 3–4.
662. McBurney, 'Traditional History Overview' (doc A36), pp 325–326.
663. Hohepa, 'Hokianga' (doc E36), pp 279–280; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 616, 618–619, 622–623; see also Hinerangi Cooper-Puru (doc C37), pp 6–7; John Klaricich (doc C9), pp 21–22.
664. Walzl, 'Ngati Rehia' (doc R2), pp 61–62; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 384–388; Taipari Munro (doc I26(a)), p 16; Sissons, Wi Hongi, and Hohepa, *Ngā Pūriri o Taiamai*, pp 37–38, 52. The main Ngāpuhi leaders in this campaign were Rewa (Ngāi Tāwake), Tītore (Ngāti Rēhia), and Te Kēmara and Marupō (Ngāti Rāhiri). Some sources also name Mohi Tāwhai (Te Māhurehure of Hokianga) and Rewharewha (another name for Ururoa of Whangaroa) as being involved.
665. This refers to the turnip garden in which Rewa's mother was killed – 'keha', meaning 'turnip', and 'patu', meaning 'killing': Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 385.
666. Bruce Stirling, 'From Busby to Bledisloe: A History of the Waitangi Lands', report commissioned by the Waitangi Marae Trustees and James Henare Maori Research Centre, 2016 (doc W5), p 75.
667. Merata Kawharu (doc E50), pp [4]–[5]; Stirling, 'From Busby to Bledisloe' (doc W5), pp 34, 39, 56; Renata Tane (doc C18(a)), p 9.
668. Stirling, 'From Busby to Bledisloe' (doc W5), pp 34, 39, 41; Merata Kawharu (doc E50), pp [3]–[5]; Joyce Baker (doc W37), p 4.
669. Merata Kawharu (doc E50), pp [3]–[5]; Stirling, 'From Busby to Bledisloe' (doc W5), p 56.
670. Rose Huru (doc G10), p 7.
671. Stirling, 'From Busby to Bledisloe' (doc W5), p 56; Merata Kawharu (doc E50), pp [3]–[5].
672. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 109–110; Walzl, 'Ngati Rehia' (doc R2), pp 62–65; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 388–389; Ruiha Collier (doc AA162), pp 5–6; Te Huranga Hohaia (doc D8), pp 16–17; closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.99), p 41. Ruiha Collier gave evidence that this daughter was Ruiha (Hinewhare), of whom she is a direct descendant. Hinewhare

developed a passion for reading and writing at the mission school, and recorded detailed accounts of various events in diaries, among them entries relating to her abduction by Captain Brind, who had been charged by her uncle Ururoa with transporting her to a safer place (in Paroa Bay) to live after the death of her father Hongi. On the way, they stopped to visit Pōmare at Kororāreka: Ruiha Te Matekino Collier (doc AA162), pp 1, 5–6.

673. Walzl, 'Ngati Rehia' (doc R2), pp 62–65; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 388–389; Ruiha Collier (doc AA162), pp 5–6; Te Huranga Hohaia (doc D8), pp 16–17.

674. Joyce Baker (doc F16(b)), pp 3–4, 7; Marsha Davis (doc F33), pp 10–11.

675. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 43.

676. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 415.

677. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 142–143.

678. Ibid.

679. The dispute was known as the Pigs' War and concerned a dispute over pigs that Ngāti Manu gifted to the people of Waimā in the early 1800s and later reclaimed: Hohepa, 'Hokianga' (doc E36), pp 279–280; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 136.

680. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 388.

681. Nolan, mapbook (doc B10(b)), pl 19.

682. Te Uira Associates, 'Oral and Traditional History Report' (doc E32), pp 119–120.

683. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 195–197.

684. Ibid, p 119; see also Nolan, mapbook (doc B10(b)), pl 16.

685. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 146–148; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 118–119.

686. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 151–152.

687. Ibid, pp 152–153.

688. Nolan, mapbook (doc B10(b)), pl 18.

689. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 13–14, 117.

690. Walzl, 'Mana Whenua Report' (doc E34), pp 253–255.

691. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), p 119.

692. Ibid, pp 14, 119–121; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 55–57; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 47.

693. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 121.

694. Merata Kawharu (doc E50), p [4]; Walzl, 'Ngati Rehia' (doc R2), pp 24, 47, 71–72; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 145–147.

695. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 621, 631, 671; Te Uira Associates, 'Oral and Traditional History Report' (doc E32), p 155; McBurney, 'Traditional History Overview' (doc A36), pp 356–365.

696. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 148–149, 153.

697. Jennifer Rutene (doc C38), pp 7–8; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 620, 668.

698. Jack Lee, *Hokianga* (Auckland: Hodder and Stoughton, 1987), pp 47–52.

699. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 151, 208.

700. John Klaricich (doc C9), pp 22–23; Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 420; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 622–623.

701. Te Tirarau Kūkupa was Kūkupa's son and is also sometimes known as Te Tirarau III: Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 146.

702. Walzl, 'Mana Whenua Report' (doc E34), pp 252–253; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 617–618.

703. Ruiha Collier (doc AA162), p 8.

704. For example, see Erimana Taniora (doc C2), pp 9–14; Te Kapotai Hapu Korero (doc D5), p 21; Meere Shepherd Lloyd, 'Kenana in the Days of Yore' (doc G18(a)), pp 57–58; see also Tai Tokerau District Māori Council, 'Oral History Report' (doc AA3), pp 15–19.

705. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 122, 129.

706. Jennifer Rutene (doc C38), p 5.

707. Waimarie Bruce-Kingi, answers to Tribunal questions (doc U16(b)), p 2; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 532–536, 582, 686; Walzl, 'Ngati Rehia' (doc R2), pp 79–80.

708. For settler understanding of Māori land tenure, see Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 532–535. For settler understanding of tapu, see O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 11, 19, 214–217.

709. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 11–12, 221, 265–266.

710. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 152.

711. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 533–534.

712. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 129–132.

713. Erimana Taniora (doc C2), pp 13–14, see also pp 10–11.

714. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), p 1295.

715. Erimana Taniora (doc C2), p 14.

716. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 178–179; Phillipson, 'Bay of Islands Maori

and the Crown' (doc A1), pp 72–74; Shawcross, 'Maoris of the Bay of Islands', fols 333, 350–352, 364–365.
717. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 14, 119–121; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 55–57.
718. Belich, *Making Peoples*, pp 198–200; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 247–248.
719. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 72–74.
720. O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), p 102; Binney, *The Legacy of Guilt*, p 46.
721. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 217, 219, 223, 231.
722. Dr Donald M Loveridge, '"The Knot of a Thousand Difficulties": Britain and New Zealand, 1769–1840', report commissioned by the Crown Law Office, 2009 (doc A18), pp 54–55; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 240.
723. Manuka Henare, 'The Changing Images of Nineteenth Century Māori Society' (doc A16), pp 173–175; Nuki Aldridge (doc B10), p 4; Patu Hohepa (doc D4), pp 25, 27–28.
724. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 123.
725. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), pp 51–52.
726. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 240–243.
727. Crown document bank (submission 3.1.142(a)), pp 575–576; Arena Heta (doc B30), p 13; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 249. Pari Walker of Te Parawhau noted that when the flag was raised in 1834, the HMS *Alligator* fired a 21-gun salute in recognition of independent statehood: Pari Walker (doc C34), p 5.
728. Phil Parkinson, evidence on behalf of the Crown (doc D1), pp 65–67; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 149–150.
729. Shawcross, 'Maoris of the Bay of Islands', fols 414.
730. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 284, 497–502, 519, 524.
731. Ibid, pp 22–32, 42–43, 47–48.
732. Ibid, pp 418–426; see also Professor Alison Jones and Dr Kuni Jenkins, 'Aitanga: Māori–Pākeha Relationships in Northland between 1793 and 1825', report, 2010 (doc A26), p 6; Wiremu Heihei (doc D9), p 34.
733. Hohepa, 'Hokianga' (doc E36), p 166.
734. Nuki Aldridge (doc B10), pp 46–48; Nolan, mapbook (doc B10(b)), pls 12–15; Anania Wikaira (doc C20), pp [6]–[7].
735. Taipari Munro (doc I26), p 10; Arena Munro (doc R16), pp 21–22.
736. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 307–312; O'Malley, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 185, 212; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 79, 83, 247; Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 234, 249.
737. Manuka Henare, 'The Changing Images of Nineteenth Century Māori Society' (doc A16), p 108; Helen Lyall (doc C31), pp 2–3.
738. For example, see Nuki Aldridge (doc B10), p 50.
739. For example, see Dr Mary-Anne Baker (doc W23), p 20.
740. Nuki Aldridge (doc B10), pp 47, 50–51; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 27–29; Rueben Porter (doc S6), p 16; Manuka Henare (doc B3), p 5; Hohepa, 'Hokianga' (doc E36), pp 185–186, 190.

Page 84: Te Whare Tapu o Ngāpuhi

1. Patu Hohepa, 'Hokianga: From Te Korekore to 1840', report commissioned by the Crown Forestry Rental Trust, 2011 (doc E36), pp 38–39.

Page 102: Hokianga and Taumārere – the Springs of Ngāpuhi

1. Patu Hohepa, 'Hokianga: From Te Korekore to 1840', report commissioned by the Crown Forestry Rental Trust, 2011 (doc E36), p 172; Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, '"He Whenua Rangatira": Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), p 26.
2. Te Rūnanga o Ngāti Hine, 'Ngati Hine Evidence for Crown Breaches of te Tiriti o Waitangi', 2014 (doc M24), p 22; Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), p 29; Hohepa, 'Hokianga' (doc E36), pp 172–173.
3. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 26; Hohepa, 'Hokianga' (doc E36), p 173; see also John Klaricich (doc L1), p 7.
4. Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New', report commissioned by the Te Aho Claims Alliance, 2013 (doc E67), p 48.
5. Erima Henare (doc A30(c)), p 87; see also Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 26; Hohepa, 'Hokianga' (doc E36), p 173; Te Rūnanga o Ngāti Hine, 'Evidence for Crown Breaches of te Tiriti o Waitangi' (doc M24), p 22.
6. Erima Henare (doc A30(c)), p 87.
7. Te Rūnanga o Ngāti Hine, 'Evidence for Crown Breaches of te Tiriti o Waitangi', 2014 (doc M24), p 22.
8. Erima Henare, transcript 4.1.1, Te Tii Marae, Waitangi, p 223.

CHAPTER 4

TINO RANGATIRATANGA ME TE KĀWANATANGA, 1840–44: NGĀ TŪTAKITANGA TUATAHI O TE RAKI MĀORI KI TE KĀWANATANGA

TINO RANGATIRATANGA AND KĀWANATANGA, 1840–44: FIRST TE RAKI MĀORI ENCOUNTERS WITH KĀWANATANGA

> Ko te kawenata tenei i hanga ki Waitangi hei ture mo Niu Tireni, katahi ka pekea mai e te kaahu paoa iho e te kaahu, werewere haere ana i nga waewae, heoi tenei.
>
> This was the covenant made at Waitangi as a law for New Zealand. Suddenly a hawk interposed itself, snatched up the Treaty and flew away with it clutched dangling in its claws. That is this.
>
> —Maihi Parāone Kawiti[1]

4.1 Hei Tīmatanga Kōrero / Introduction

Tino rangatiratanga and its relationship with kāwanatanga lies at the heart of Te Raki claimant grievances against the Crown. Of all questions about the treaty, it is the most important and most contentious. It raises questions of enormous weight about authority over Māori communities and their well-being, and over Māori land and resources.

In our stage 1 report, we concluded that the rangatira who signed te Tiriti in February 1840 at Waitangi, Waimate, and Māngungu did not cede their sovereignty in so doing. They welcomed Captain William Hobson and agreed to recognise the Queen's kāwanatanga on the basis that they and the Governor would be equals, albeit with different roles and spheres of influence: the Governor would exercise control over settlers, and Māori would retain control over their communities. Where Māori and settler interests overlapped, the details of the relationship remained to be negotiated, rangatira to Kāwana, on a case-by-case basis.[2] The Crown, in our view, had also promised to investigate pre-treaty land transactions and return any lands that had not been properly acquired from Māori; and the rangatira appeared to have agreed that the Crown would protect them from foreign threats and represent them in international affairs.[3]

The Crown, whose understanding was reflected in the English text, saw the treaty as conveying Māori consent to a permanent cession of sovereignty. On 21 May 1840, Captain

Hobson proclaimed British sovereignty over all New Zealand. On 16 June, the New South Wales Legislative Council passed an ordinance extending that colony's laws to New Zealand. In October, the Crown gazetted Hobson's proclamations in London, and in November the Queen signed Letters Patent establishing New Zealand as a separate colony, known as the Charter; Hobson was appointed the colony's first Governor.[4] Based on the Crown's assertion of sovereignty, Hobson and his officials set about establishing the machinery of government and courts, and making laws which they presumed to be enforceable against all subjects, Māori or Pākehā.

Claimants told us that the Crown's proclamation of sovereignty was in breach of te Tiriti, and that subsequent Crown actions which presumed Crown sovereignty over Te Raki Māori were also in breach.[5] More particularly, claimants said the Crown breached the treaty during these early years by presuming that its laws applied to Māori; enforcing its criminal law against Māori; asserting control over Māori lands, resources, and trading relationships; and importing its system of land tenure under which the Crown claimed ultimate ownership of all New Zealand lands and also saw itself as entitled to the 'waste' land; that is, all land not actually used and occupied by Māori.[6]

The Crown, in its submissions about political engagement, made no specific concessions of treaty breach.[7] Crown counsel argued that the Crown acquired sovereignty, in accordance with its own laws, through a series of steps that included the treaty and the proclamations of sovereignty. The extension of British legal sovereignty over the whole of New Zealand was completed by 2 October 1840 when the imperial government published Hobson's proclamations.[8] Crown counsel submitted that, up to 1844 and well beyond, the Crown made very few attempts to exert authority over Te Raki Māori. Where the Crown attempted to apply English law, it did so gradually and with the consent of rangatira; otherwise, Te Raki Māori continued to govern themselves in accordance with their own laws for several decades after signing te Tiriti.[9]

In this chapter, we examine the extent to which the Crown's February 1840 agreement was honoured in the period from the signing of te Tiriti up to the end of 1844. We also examine the Crown's actions in proclaiming sovereignty and establishing Crown Colony government for New Zealand, and we consider the extent to which the new Government attempted to, and succeeded in, exerting authority over Te Raki Māori during these early years.

4.1.1 Purpose of this chapter

In the previous chapter, we examined the diverse communities and polities, governed in accordance with their tikanga, that emerged in the inquiry district in the generations prior to 1840. In considering how migration, conflict, relationship-building, and other dynamics shaped the tribal landscape of the north over centuries, we sought to understand the world of Te Raki Māori: the principles, values, and beliefs constituting the world inhabited by the peoples whose rangatira first signed te Tiriti.

In this chapter, we turn our attention to an issue central to the claims in this inquiry: the relationship – in the period under consideration, from the signing of te Tiriti to the end of 1844 – between the tino rangatiratanga intrinsic to the Māori world and the governing authority the Crown believed it had acquired. We have chosen this brief period because, early in 1845, war broke out in the north between some Ngāpuhi leaders and the Crown. The Northern War points to a remarkably rapid deterioration in the Crown–Māori relationship during these early years. We look at the origins and course of the war in chapter 5.

We also chart the development of the Crown–Māori relationship in the wake of the Crown's proclamations of sovereignty and its establishment of Crown Colony government. Is there evidence that it began well? How and when do tensions begin to appear, and how did leaders on both sides handle them? Our purpose is to understand the nature of the political engagement between Kāwana and rangatira as it evolved on the ground in different parts of this inquiry district.

4.1.2 Structure of this chapter

This report is necessarily shaped by our understanding of the treaty relationship in the north, as set out in our

stage 1 report. We therefore begin in section 4.2 by summarising the key findings from our stage 1 report, along with Tribunal findings from other districts that provide relevant guidance about the early years after te Tiriti was signed. We then consider the parties' arguments – where they agree and disagree on facts and matters of treaty interpretation – in order to identify the issues for determination in this chapter.

We address each of these issues in turn. In section 4.3, we consider the steps the Crown took to proclaim sovereignty and establish Crown Colony government, asking whether those steps were consistent with the treaty agreement.

In section 4.4, we consider the Crown–Māori relationship on the ground during these early years – and in particular, the Crown's attempts to assert effective authority over Te Raki Māori on matters such as land, trade, and criminal law.

In section 4.5, we consider the overall state of the Crown–Māori relationship in the north at the end of 1844. We summarise our findings (section 4.6) and assess the prejudice experienced by Te Raki hapū as a result of Crown treaty breaches (section 4.7).

4.2 Ngā Kaupapa / Issues

This chapter is about claims that, during the years 1840 to 1844, the Crown acted in ways that were inconsistent with the treaty agreement – by proclaiming sovereignty over the whole of New Zealand without first having obtained free, informed consent;[10] by asserting radical or underlying title over all New Zealand lands;[11] by establishing institutions of government that purported to have authority over Māori;[12] by making laws that applied to Māori;[13] by enforcing introduced criminal law against Māori;[14] and by asserting control over Māori lands, resources, and trading relationships.[15] We consider how far the Crown discussed these matters with Te Raki rangatira and how far it made provision for the exercise of Te Raki Māori rangatiratanga as it introduced British law and planned for the colonisation of New Zealand.

4.2.1 Our stage 1 conclusions

In our report on stage 1 of this inquiry, we described the relationship between the Crown and Te Raki Māori as it developed during the first part of the nineteenth century. As discussed in chapter 3 of that report, early relationships developed between Governors of New South Wales and rangatira; and from 1820, when Hongi Hika visited England with the missionary Thomas Kendall and met King George IV, Te Raki Māori sought to build an alliance with Britain, then the world's pre-eminent military and trading power. Through this alliance, they sought knowledge, trading opportunities, and protection from the potential harms arising from settlement and invasion by foreign powers, while also asserting their own mana and governing authority, most notably through he Whakaputanga (the Declaration of Independence) in 1835. Britain responded during the 1830s by acknowledging the sovereignty of northern hapū, recognising their flag, and promising protection. These events shaped Te Raki Māori understandings of the treaty and expectations for the post-treaty relationship.[16]

We also described (in chapter 6 of our stage 1 report) the British government's decision to intervene in and annex New Zealand. Britain made this decision because settlement was already occurring, and officials reasoned that civil government was necessary to protect British imperial interests and prevent harm to the Māori population. To control settlers, the Crown (under its own laws) needed sovereign authority over the relevant territories. It therefore sent Captain Hobson with instructions to obtain Māori consent for a declaration of British sovereignty over as much of New Zealand as they were willing to cede. The Crown also took a series of steps, in 1839 and early 1840, to prepare for the establishment of a British colonial Government in New Zealand.[17]

When Hobson met rangatira at Waitangi, Waimate, and Māngungu during February 1840, he and other British representatives explained that Britain's immediate practical objectives were to control settlers and protect Māori. Hobson also assured Māori that they would retain their lands and their independence. Hobson and

his representatives did not explain that 'sovereignty', in British eyes, meant that the colonial Government would have a right to make laws for and govern over Māori as well as settlers; nor that Britain planned to control all land transactions, and fund the colony by buying and selling Māori land.[18]

Accordingly, we concluded in our stage 1 report that rangatira who signed te Tiriti o Waitangi did not consent to the Crown acquiring sovereignty; that is, they did not consent to the Crown having authority to make and enforce law over their people and territories.[19] We concluded that the treaty's meaning and effect

> can only be found in what Britain's representatives clearly explained to the rangatira, and the rangatira then assented to. It is not to be found in Britain's unexpressed intention to acquire overarching sovereign power for itself, and for its own purposes. On that, the rangatira did not give full and free consent, because it was not the proposal that Hobson put to them in February 1840.[20]

Hobson, we concluded, did not clearly explain that the Crown expected to have power to make and enforce law over Māori, and this omission meant 'that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met'.[21]

Rather than consenting to the Crown exercising sovereignty over them, we concluded that the rangatira had agreed to a new arrangement in which they would share power and authority with the Crown, with each having different roles and spheres of influence, the Governor for settlers and rangatira for Māori. They 'agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests'. They entered this arrangement 'on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence'.[22]

We concluded that Te Raki leaders appeared to have agreed that the Crown would protect them from foreign threats and would represent them in international affairs when necessary.[23] Rangatira saw te Tiriti as continuing and strengthening their pre-Tiriti alliance with Britain, and as affirming he Whakaputanga, the 1835 Declaration of Independence, in which northern rangatira asserted their kīngitanga and mana over their territories, including their exclusive authority to govern over and make laws for their people. As we explained, rangatira believed that they were aligning with a powerful empire which had guaranteed to protect them and their chiefly authority. Rangatira were aware, however, that there were risks from an alliance with an imperial power – they knew, for example, of the experiences of indigenous people in New South Wales and Tahiti, and they feared that they could face the same threats if settlement were not controlled.[24] In their prior relationship with Britain, they had sought and received assurances that the monarch would protect them. The treaty negotiations provided the rangatira with further reassurance that Britain's intentions were peaceful and protective; the Governor would be 'a powerful rangatira to control Pākehā and protect them from foreign powers' but would not undermine their authority or exert power over them.[25]

We also concluded that the Crown and Māori spheres of influence would inevitably intersect, especially where Māori and settler populations intermingled; in those circumstances, the Governor and Māori would have to negotiate questions of relative authority case by case – as was typical for rangatira-to-rangatira relationships. But Te Raki rangatira

> did not regard kāwanatanga as undermining their own status or authority. Rather, the treaty was a means of protecting, or even enhancing, their rangatiratanga as contact with Europeans increased.[26]

With respect to land, it was our view that Hobson and other British representatives did not clearly explain the Crown's intention to exercise a right of pre-emption; indeed, it was not clear from the text of te Tiriti or the treaty debates that the Crown even expected a right of first refusal. All that could be said, in our view, was that rangatira had agreed to enter land transactions with the Crown, and that the Crown had 'promised to investigate

pre-treaty land transactions and to return any land that had not been properly acquired from Māori.'[27]

This, then, was the basis on which Te Raki leaders had agreed to allow the Crown to establish a new form of authority, kāwanatanga, in their territories.

4.2.2 What previous Tribunals have said

While our consideration of the issues in this chapter will reflect the specific circumstances in which te Tiriti was signed in this district and the particular constitutional issues that claimants have raised in our inquiry, other Tribunal reports also provide valuable guidance on the nature of the treaty relationship during the early 1840s and on the matters we are examining here.

(1) *Hobson's May 1840 proclamations of sovereignty*

As discussed in chapter 2, the Tribunal has consistently found that the treaty provided for kāwanatanga and rangatiratanga to coexist, with the right of tino rangatiratanga acting as a fetter or constraint on the Crown's power.[28] In treaty terms, therefore, previous reports have found that Captain Hobson's 21 May 1840 proclamations of sovereignty did not provide for the Crown to exercise supreme or unconstrained governing authority over Māori, but did impose obligations on the Crown to protect Māori autonomy, authority, lands, and resources.[29]

In the *Report of the Waitangi Tribunal on the Orakei Claim* (1987), the Tribunal concluded that the Māori text of the treaty – which did not provide for sovereignty, parliamentary supremacy, or English common law – did not invalidate Hobson's proclamations of sovereignty. This it based on surrounding circumstances in which Māori in that district accepted the Crown as having a higher, albeit protective authority. Nonetheless, after the proclamations, 'substantial rights' were reserved to Māori under the treaty.[30] In *The Taranaki Report: Kaupapa Tuatahi* (1996), the Tribunal found that 'from the day it was proclaimed, sovereignty was constrained in New Zealand by the need to respect Māori authority (or "tino rangatiratanga")'.[31]

The *Muriwhenua Land Report* (1997) concluded that, during treaty debates, the Crown had not explained the nature of the power it was seeking. It did not explain, for example, 'that, for the British, sovereignty meant that the Queen's authority was absolute'. Nor did it explain 'that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced'. The Crown's unspoken assumption was that it 'would rule on all matters', but Māori expected their relationships with the Crown and settlers to be defined by *their* rules – a view that was reinforced by the text of te Tiriti, by the treaty debate at Kaitāia, and by the fact that Māori were far more numerous than settlers in the far north.[32]

In the Tribunal's view, Māori therefore 'had no cause to consider that their ancestral laws should be abandoned' after signing te Tiriti, and indeed were entitled to assume that their laws would continue in force. Hobson's proclamations were consequently of limited effect, unless the Crown established its authority on the ground:

> Whatever may be said about the Treaty of Waitangi and the proclamation of sovereignty as introducing a new legal regime, no such regime could have been given serious thought [by Māori] until it could be seen to be established in fact and to be working on the ground.[33]

In *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (2003), the Tribunal described the circumstances in which the proclamations were issued, pointing to events in the new settler community as triggering Hobson's concern. The Tribunal noted that the treaty had not yet reached Wellington when Hobson proclaimed sovereignty – which he did with immense haste, after learning of events occurring there. On 2 March, New Zealand Company leaders 'had summoned a council of settlers . . . and persuaded the local chiefs to ratify its rules as a provisional constitution for the Wellington district'. Hobson was apprised of the situation on 21 May 1840:

> before the night was out, [he] had issued a proclamation declaring that sovereignty over the North Island had been ceded by Maori to the Queen. On the same evening, Hobson issued a second proclamation vesting sovereignty over the South Island and Stewart Island in the Queen. Although

> not so stated in the proclamation, this was done by right of discovery.[34]

Two days later, Hobson issued another proclamation in which he accused the Wellington settlers of forming an illegal association, which, as he put it, 'in contempt of her Majesty's authority . . . attempted to usurp the powers vested in me'. The proclamation called on the settlers to submit to the colony's Government. The Crown then continued with its steps to set up a colonial Government and establish New Zealand as a separate colony.[35]

In *He Maunga Rongo: Report on Central North Island Claims, Stage One* (2008), the Tribunal found that the proclamation of sovereignty brought the treaty relationship into effect. From that time,

> [t]here were two authorities, two systems of law, and two overlapping spheres of population and interest, as the settler State sought to establish itself alongside – and over the top of – Maori tribal polities.[36]

The Tribunal said that the 'standard legal orthodoxy . . . accepted by the courts' was that the proclamations established the Crown's sovereignty in New Zealand. However, that was a 'strictly legal argument', not a matter of treaty principle, and furthermore this legal view did not negate Māori rights to autonomy and self-government.[37]

In *He Whiritaunoka: The Whanganui Land Report* (2015), the Tribunal found that Māori had not consented to the Crown's sovereignty, but nonetheless it came to apply to them: first, because the proclamations had immediate legal effect; and secondly, because, over several decades, Māori either accepted or were forced to submit to the Crown's practical or effective authority. Due to the growth of the colonial State, the transfer of authority from the imperial government to an elected New Zealand Parliament, and the use of warfare to suppress Māori resistance, the Crown's sovereignty ultimately became a fait accompli. We note that this report was released soon after our stage 1 report and did consider its conclusions.[38]

In *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* (2018), the Tribunal addressed our stage 1 conclusions as part of its consideration of the treaty's meaning and effect as pertaining to that inquiry district. It found that Hobson's proclamations were a matter of English law and had little to do with Māori understanding of the treaty. The North Island proclamation refers to:

> Māori consent [to a cession of sovereignty] as judged through British eyes and for British purposes, and says little about how Māori understood the Treaty or what they freely and intelligently consented to in accordance with their own tikanga.

Hobson also proclaimed sovereignty over

> the entire North Island when he was in possession only of the Northland and Waikato–Manukau copies of the Treaty; he did not know whether Māori had signed the Treaty in other parts of the country, let alone what their understandings might be. Britain's principal representative in New Zealand therefore relied on an assumption that Māori would consent, as much as on a belief that they had.[39]

Furthermore, the Tribunal observed that the proclamations were based solely on the English text of the treaty. Officials regarded the proclamations as securing the Crown's 'supreme, unfettered governing and lawmaking authority', when that was not the proposal that they had put before Te Rohe Pōtae Māori and for which they had sought consent. On the contrary, they had sought consent only for a lesser power, sufficient to meet Britain's practical objectives – control of settlement and protection from foreign interference – but not to justify interference with Māori authority or autonomy.[40] The Tribunal likewise found that the proclamations had little practical effect in Te Rohe Pōtae for several decades after they had been issued, despite the Crown's establishment of institutions of government 'with notional authority across the whole country'.[41]

(2) *The Crown's assertion of 'radical' title*

Just as the Crown did not explain the full meaning of 'sovereignty' to rangatira who signed te Tiriti, nor did it explain its full intentions for Māori lands, as the Tribunal

has found in several reports. The article 2 guarantee of tino rangatiratanga meant that Māori retained full authority over their lands and resources,[42] or (in the words of the *Report of the Waitangi Tribunal on the Motunui–Waitara Claim* in 1983), 'the sovereignty of their lands'.[43] Yet, as the Tribunal explained in its *Muriwhenua Land Report*, the Crown understood its sovereignty as meaning that it would also import its systems of common law and land tenure to New Zealand. This included the common law doctrine of 'radical title', under which all land 'belonged to the Crown' in the Tribunal's words, though it added 'subject only to any native rights of user until those rights were extinguished' (see also the sidebar on page 188). Hobson and other Crown officials did not explain this doctrine, or its implications, to Māori before they signed te Tiriti.[44]

The Tribunal in the *Muriwhenua Land Report* found that the Crown's reliance on the legal theory of radical title 'was inappropriate for the circumstances of the colony, where the radical title was already spoken for' (that is, Māori already possessed the title to all land in New Zealand).[45] As the Tribunal explained, the doctrine provided a legal basis for other policies which the Crown applied to Māori land in the 1840s and beyond – including the Crown's pre-emption policy, its presumed ownership of 'surplus' lands from its inquiries into old land claims, and its presumed ownership (until 1846) of so-called 'waste' lands which Māori were not actively occupying and cultivating. The Tribunal said that Hobson and other officials did not explain the surplus or waste land policies to treaty signatories, yet the Crown subsequently relied on those policies to claim ownership of Māori lands.[46]

In *The Ngai Tahu Report* (1991), the Tribunal also considered the surplus and waste lands policies. The Tribunal found that the Crown regarded treaty guarantees over land as:

> little more than the opening round in a debate [among officials and settlers] . . . over whether Maori did own lands beyond their villages and cultivations, and whether the guarantees of article 2 . . . extended beyond these very limited classes of property.

The 'whole weight of European cultural assumptions was against acknowledging the ownership of land beyond what was cultivated or held under recognisable legal title'.[47] Yet, the Crown's view of Māori land ownership 'did not match the reality of Maori title', under which all land 'was claimed and owned under Maori concepts of ownership, which were in many ways quite different from those of British custom'.[48]

The Whanganui River Report (1999) provided further explanation of the doctrine of radical title and its application to Māori lands. Under that doctrine,

> All land is vested in the Crown. All grants of transferable titles . . . come only from the Crown. Where land was purchased direct from Maori, the purchase was acknowledged in the form of a Crown grant. Though the Crown grants land, it still retains the underlying or radical title.[49]

The Crown's common law acknowledged Māori rights to possess and use land, but not to legally own the land. Land that Māori occupied or used 'was still Crown land, but the Crown's radical title was . . . subject to Maori customary usages until the Maori customary interest had been extinguished'. This customary right (also known as aboriginal or native title) becomes 'a burden on the title of the Crown'.[50] This doctrine was applied from the beginning of Crown colonisation, and meant that the State was the source of all private land rights. This, however, 'is not the Maori position. Their title predates the Crown and comes from their ancestors.'[51]

Several Tribunal reports have considered the Crown's policy of pre-emption. In *The Te Roroa Report* (1992), the Tribunal found that Crown officials did not explain the policy to rangatira who signed te Tiriti. Article 2 in English gave the Crown a right of pre-emption, which Crown officials understood as an exclusive right to enter transactions over Māori land. However, the word 'exclusive' was not translated into the Māori text. As a result, the treaty gave the Queen a right to purchase land from sellers at agreed prices, but did not specifically rule out sales of Māori land to private purchasers.[52] In *The Wairarapa ki Tararua Report* (2010), the Tribunal also found that the

language used in article 2 'left considerable room for misunderstanding about the rights being given to the Crown' with regard to pre-emption.[53] In the *Report of the Waitangi Tribunal on the Waiheke Island Claim* (1987) and the *Te Whanganui a Tara* inquiry, among others, the Tribunal found that the right of pre-emption imposed obligations on the Crown to protect Māori interests – not prioritise its own or settlers' land-buying objectives over the rights of Māori.[54]

(3) *The establishment of Crown Colony government and assertion of Crown authority over Māori, 1840–44*

In *The Te Roroa Report*, the Tribunal described the Crown's intentions for its relationship with Māori after proclaiming sovereignty. The Crown's intention was to establish a colony and then gradually bring Māori 'under British law and British institutions'. As 'a temporary measure', the Crown would leave most Māori communities to govern themselves according to their own customs – albeit with some exceptions; the longer-term plan was that Māori would assimilate into settler culture, and the colony would then become self-governing under one system of law and government.[55]

In the *Ngai Tahu Report*, the Tribunal noted that '[a] sense of cultural superiority' influenced these Crown policies. Officials assumed, based on experiences in other colonies, that Māori were at risk of extinction, that 'only rapid and complete amalgamation with their own culture . . . would preserve Maori at all', and that any temporary tolerance for Māori law and government must 'be rapidly replaced by European customs'.[56]

In practice, the Tribunal's district inquiries have found that the Crown's approach to asserting authority over Māori communities varied from place to place, depending less on policy than on local circumstances – particularly the population and power balances among Crown officials, Māori, and settlers. In 1844, the Tribunal found in its *Ngai Tahu Report*:

> Europeans were heavily outnumbered and almost all the country was still in Maori ownership and control . . . Understaffed, without adequate financial support and at a serious military disadvantage, the governor was unable to assert his authority over Maori.[57]

Similarly, the Tribunal found in *The Te Roroa Report* that many Māori 'still lived beyond the reaches of effective government and law enforcement in Maori districts' into the 1850s and beyond.[58]

That was certainly the case throughout most of the North Island, including (as we will see) much of the north. In its *Muriwhenua Land Report*, for example, the Tribunal noted that Māori continued to outnumber settlers by a considerable margin during the 1840s, and very few Crown officials visited the district, let alone attempted to establish any form of government. The 'numbers alone gave Maori the control', and Māori accordingly continued to live under their own laws and authority throughout the period covered by this chapter and for a considerable time beyond.[59]

However, in other districts the Crown took more determined steps during these early years to assert its authority on the ground. In its *Orakei* report, for example, the Tribunal described the changing population and power balance in Auckland during the 1840s. Ngāti Whātua readily accepted the Crown's presence, which provided economic opportunities and some sense of protection from larger neighbouring tribes, but initially resisted Crown attempts to enforce colonial laws against Māori. But by 1845, settlers outnumbered Māori, who increasingly came to accept the colony's police and court systems.[60] Similarly, in Kaipara, the Government – at least on some occasions – felt able to exert its authority over a small Māori population.[61]

In the New Zealand Company settlements – which from the early 1840s had substantial and organised settler populations with significant influence in London – the Crown also asserted its authority from an early stage, but not always in a manner that protected Māori. In *Te Whanganui a Tara*, the Tribunal described the Crown's initial attempts to establish its authority in Port Nicholson after Hobson had proclaimed the Crown's sovereignty on 21 May 1840. In May, Hobson demanded that newly arrived New Zealand Company settlers submit to his

authority;[62] and in June, he sent the Colonial Secretary, Willoughby Shortland, with troops to intervene in a land dispute between Māori and the new settlers. The Crown's handling of this and other land disputes did not protect Māori interests;[63] rather, throughout the early 1840s, the Crown set about regulating and renegotiating the New Zealand Company's land dealings in a manner that favoured settlers' interests. The Crown then responded to Māori resistance by sending troops and using force against Māori communities.[64] Similarly, in Taranaki, the Crown asserted its authority at an early stage and in a manner that supported settlers' land objectives over the interests of Māori. In the *Taranaki Report*, the Tribunal found that there had been 19 years of intermittent Crown–Māori tension before war broke out in 1860.[65]

The Tribunal has also addressed claims in districts such as Te Urewera, the Central North Island, and Te Rohe Pōtae where Māori greatly outnumbered settlers and the Crown exerted little or no influence until many decades after the treaty. The Tribunal has found that, as Crown–Māori engagement eventually increased in those districts, the Crown attempted to assert its authority and law over Māori populations in breach of treaty guarantees.[66]

In sum, then, the Crown's approach to asserting its effective authority varied according to local circumstances. Where Māori populations were large and powerful, the Crown mostly left them to govern themselves for years after 1840; but, where it could, the Crown asserted its effective authority, and on occasions it used that authority to advance settler interests over the interests of Māori.

4.2.3 The claimants' submissions

The claimants in our inquiry submitted that Captain Hobson proclaimed sovereignty over the whole of New Zealand even though the Crown had not obtained free, informed consent from Māori for a cession of sovereignty. Rangatira who signed te Tiriti in this inquiry district had not agreed to give up their sovereignty, and many rangatira (in this district and elsewhere) had either refused to sign or not been given the opportunity.[67]

In submissions on political engagement, counsel Janet Mason submitted that, prior to entering negotiations for the treaty, the Crown 'had . . . recognised that the consent of Māori was a pre-requisite to the valid cession' of sovereignty, yet it failed to fulfil this self-imposed test before proclaiming its sovereign authority over the whole of New Zealand.[68] Ms Mason therefore submitted 'that Hobson's Proclamations did not bestow Crown sovereignty over Te Raki Māori'.[69]

Ms Mason acknowledged the Crown's view that, under its own laws, it had acquired sovereignty through a series of jurisdictional steps – which included pre-treaty instruments, the treaty itself, and a series of post-treaty actions to proclaim sovereignty and establish New Zealand as a separate colony.[70] But counsel submitted that all of these instruments were 'deficient'.[71] The pre-treaty instruments were not valid as they were conditional on Māori consent to a cession of sovereignty,[72] and the post-treaty instruments (including the proclamations) were not valid as they presumed that Māori had consented when that was not the case.[73] Neither the proclamations nor other instruments bestowed sovereign authority on the Crown.[74]

Counsel submitted that, nonetheless, from the time of the first signings of te Tiriti, the Crown presumed that it had fulfilled the requirement to obtain consent and therefore 'acted as though [it] had sovereign authority over New Zealand', imposing its laws and system of government accordingly.[75] By taking these steps, the Crown presumed that its authority applied to all Te Raki Māori people, territories, and resources.[76] It 'effectively denied' the authority of Te Raki Māori by assuming a right to make laws for them and their lands,[77] in breach of the treaty guarantee of tino rangatiratanga and the Crown's obligation to protect Māori authority.[78]

Counsel acknowledged that the Crown only gradually attempted to assert effective authority over Te Raki Māori, and that most Te Raki Māori continued to live under their own tribal structures and laws for several decades after te Tiriti was signed.[79] But she submitted that the Crown tolerated Māori law primarily because it did not yet have the capacity to enforce its own laws – Māori heavily outnumbered settlers in the north.[80] She and other claimant counsel submitted that, even in these early years, the Crown was making preparations to assert its effective authority

over Te Raki Māori. Darrell Naden, who represented Denise Egen of Te Māhurehure and several other named claimants, submitted that there were 'patent limits on the Queen's writ' during these early years, but the Crown was nonetheless 'developing its sovereign ambit', and it would be 'naïve to think that this was not occurring'.[81]

Indeed, claimants pointed to numerous examples from these early years of the Crown asserting, or at least attempting to assert, its effective authority over Te Raki Māori. In particular, the Crown established courts and institutions of government that purported to have jurisdiction over Te Raki Māori; enacted ordinances that applied to Te Raki Māori; enforced criminal laws against Te Raki Māori and warned Māori against enforcing their own laws; asserted its authority over trading relationships by imposing customs duties and prohibiting anchorage fees; imposed its authority over the timber trade by banning the felling of kauri; asserted its authority over Māori lands by imposing its pre-emption policy, inquiring into old land claims, and asserting ownership of the 'surplus' from those claims; and exercised its authority by moving the capital to Auckland without consulting Te Raki Māori. While taking these actions, claimants said, the Crown failed to enact laws that would prohibit settler transgressions against tikanga, or preserve Māori rights to live according to their own laws.[82]

Claimants also submitted that, from 1840, the Crown applied its laws to Te Raki Māori lands without first having obtained their informed consent.[83] In submissions on old land claims, claimant counsel (Bryce Lyall and Linda Thornton) submitted that the Crown imported the legal doctrine of radical title, under which 'the Crown acquired title to all land in New Zealand as a function of obtaining sovereignty'.[84] Prior to signing te Tiriti, counsel submitted, Māori 'did not consent, nor were they even told, that the Crown intended to rely on this doctrine'. Once adopted by the Crown, 'it became the foundation of the entire system that the Crown created in New Zealand to deal with land'.[85]

In particular, counsel submitted, the doctrine of radical title provided a legal basis for the Crown's investigations into old land claims;[86] for the Crown's decision to retain 'surplus' lands from those claims (that is, lands that settlers were deemed to have legitimately purchased but were not granted); and the Crown's view that it owned all 'waste' lands (that is, lands that Māori were not actively occupying or cultivating).[87] Mr Lyall and Ms Thornton submitted that rangatira who signed te Tiriti had not consented to any of these policies. The Crown had not told rangatira 'that the British government would rely on te Tiriti to claim to govern all land in New Zealand'; it had not explained the surplus or waste lands policies.[88]

Nor, counsel submitted, had the Crown explained that the English text of the treaty granted it pre-emption (an exclusive right to purchase land from Māori), that Māori 'could not sell their land to anyone else', or that the Crown 'was planning to fund the colonial enterprise by buying Māori land at the cheapest possible price and selling it at a high price'. The 'entire colonial plan was known to the Crown representatives on 5 February 1840 at Waitangi, yet none of this was disclosed'. After proclaiming sovereignty, the Crown nonetheless used proclamations and ordinances to bring its land policies into force.[89] These and other land policies caused significant prejudice to Te Raki Māori. In the long term, counsel submitted, the doctrine of radical title was the first step 'in an unbroken chain towards landlessness for Māori'.[90] In other submissions, Bryan Gilling argued that the Crown's attempts to impose its authority over Māori lands, resources, and trading relationships during this period, combined with the impacts of its decision to move the capital to Auckland, created conditions that led to the outbreak of war in this district in 1845 (as discussed in chapter 5).[91] According to claimant counsel, '[a]ny argument for pre-emption as protection is . . . undercut by the unilateral waivers of pre-emption by FitzRoy in 1844'.[92]

In submissions on tikanga, counsel Alana Thomas and Ihipera Peters emphasised that Te Raki Māori expected that they would continue to live according to their own laws after signing te Tiriti. Counsel submitted that tikanga was 'a framework of law and custom' that governed the way of life of Te Raki hapū.[93] They submitted that Captain

Hobson and other Crown representatives gave assurances at the Waitangi and Kaitāia signings, and again in a letter to northern rangatira in April 1840, that Māori would be able to maintain their customs.[94] Nonetheless, very soon after giving those assurances, Crown officials began to debate the application of English law to Māori. Some officials favoured a strict application, while others favoured a more gradual approach in which English law was modified to suit Māori needs and enforced through the agency of rangatira. Early ordinances reflected the latter approach, though it was based on a view 'that eventual assimilation of Māori within a British legal framework was the ultimate goal'. This assimilationist approach was evident in the Crown's handling of early criminal trials, in which the chief justice found that Māori were subject to English law.[95]

Counsel for Hokianga claimants, Jason Pou, told us that the treaty relationship should be viewed through the lens of te kawa o Rāhiri, the system of law (discussed in chapter 3) under which Ngāpuhi hapū had for centuries maintained their autonomy within their own spheres of influence, while also having capacity to work together, manage conflict, and maintain balance.[96] A fundamental principle was that only Hokianga could speak for Hokianga; that is, 'the source of the rights and authority of Hokianga is indigenous, and must be seen to lie in the peoples of Hokianga themselves'.[97] In submissions on the Northern War, claimant counsel Dr Gilling also referred to this kawa, submitting that it was 'the core of political authority in Ngapuhi' and 'central to the independent authority of rangatira of nga hapu o Te Raki'. It was, in short, a form of hapū sovereignty, and in the period after te Tiriti was signed, 'the Crown failed to protect this sovereignty and that of Te Kawa o Rahiri'.[98]

Ms Mason submitted that, because Te Raki Māori did not consent to the Crown exercising sovereign authority over them,

> all subsequent legislative action by the Crown, including the issuing of the Proclamations . . . the establishment of various mechanisms intended to effect colonial government over Aotearoa New Zealand and the passage of legislation, purporting to exert control over Te Raki Māori, their taonga, and people was, and is, in breach of te Tiriti/the Treaty.[99]

The Crown's sovereignty, imposed on Te Raki Māori without their confirmed consent, 'cannot co-exist with their rightful exercise of tino rangatiratanga.'[100]

Te Kani Williams, who represented claimants from Ngāti Kuta, Te Patukeha, and Pikaahu hapū, submitted that all post-treaty Crown attempts to exercise authority over Te Raki Māori were in breach of the treaty. Mr Williams said the Crown did not provide for the exercise of rangatiratanga, 'as the Crown assumed, wrongly, that it was sovereign'. In light of our stage 1 findings, Mr Williams submitted, the onus was on the Crown to demonstrate that it had 'taken positive steps to obtain sovereignty' in a treaty-compliant manner. The Crown had not done so, in his submission, and therefore there 'can be no legitimacy in the sovereignty they purport to hold today'.[101]

4.2.4 The Crown's submissions

Crown counsel Andrew Irwin submitted that: 'The Crown's sovereignty over New Zealand is incontrovertible.' Notwithstanding our stage 1 conclusions, Crown counsel insisted that the Te Raki Māori signatories to te Tiriti consented to the Crown's acquisition of sovereignty in 1840.[102] Crown counsel submitted that there was a need to distinguish between the Crown's effective (de facto) sovereignty on the ground, and its legal (*de jure*) sovereignty under its own constitutional law and theory. The latter, counsel submitted, extended to all its subjects – to Māori (after te Tiriti had been signed) and to settlers. On the other hand, effective sovereignty (that is, the Crown's 'physical capacity to make its writ run throughout the islands', or 'the practical application of British authority or law to Northland Māori') was not achieved by the Crown for many decades.[103]

In accordance with the Crown's constitutional law and theory, its legal sovereignty was achieved in New Zealand through a series of jurisdictional steps during 1840, notably Hobson's proclamations of 21 May 1840, and their

publication in the London *Gazette* on 2 October 1840. The extension of British sovereignty to New Zealand was therefore completed by 2 October 1840. The laws of New South Wales applied to New Zealand once New Zealand became a part of New South Wales 'probably from 21 May 1840', but '[a]t the latest . . . as from 16 June 1840', when the New South Wales Legislature enacted law to that effect.[104]

The Crown accepted that the explanation of sovereignty Hobson gave rangatira at Waitangi when he spoke on 5 February 1840 was 'not as comprehensive as it could have been', and that 'Hobson focused on asking the rangatira to give him the power to restrain British subjects in New Zealand'.[105] The Crown also accepted that accounts of the treaty debates did not record Hobson explaining 'precisely how British sovereignty would apply to Māori and how it might affect Māori law and custom'.[106]

Nonetheless, counsel submitted that 'Māori would have understood that the Governor's new form of authority (kawanatanga) was to relate to them and their lands in some way'. This was clear from article 1 of te Tiriti which referred to 'te Kawanatanga katoa o o ratou w[h]enua'.[107] Kāwanatanga and tino rangatiratanga 'were different in nature and application':

> Kawanatanga was to be a new form of authority exercised through the government of New Zealand. Tino rangatiratanga was a localised form of authority in relation to lands and taonga. The two forms of authority overlapped. The exercise of both forms of authority was subject to the paramount principle that the Crown and Māori were to act towards each other honourably, fairly, reasonably and in good faith.[108]

Because the two forms of authority were different in nature, they 'were not equal as such'. Kāwanatanga 'was to have a national focus', and therefore a different geographic reach from tino rangatiratanga; tino rangatiratanga was specific to whenua, kāinga, and 'taonga katoa'; and Māori would have understood 'that their chieftainship over their people and their lands continued, but that the new Governor would have a new over-arching authority over all people and places within New Zealand'.[109]

Counsel submitted, furthermore, that Crown officials in 1840 believed that Māori had consented to a cession of sovereignty:

> The Crown accepts that there was a disjoint in the Crown and Northland Māori understandings of the treaty. For the Crown, it considered Māori had consented to British sovereignty over all New Zealand, though it was honour-bound to respect Māori property rights. For Northland rangatira, they are likely to have considered they retained their chieftainship (tino rangatiratanga) over their people and that a new Governor would exercise a new form of power (kawanatanga).[110]

Because the Crown and rangatira had different understandings about the nature of the Crown's authority and how it might apply to Te Raki Māori, 'the application of that new form of power to Northland Māori had the potential to cause conflict'.[111]

Counsel cited a Crown witness, legal scholar Dr Paul McHugh, who said that the proclamations 'amounted to an announcement through the [Crown] prerogative that the process of acquiring sovereignty over all inhabitants was formally over'. This was 'plainly . . . aimed more at the settlers than Māori', and there was 'no supposition [by Crown officials] that such a ceremonial announcement meant that Māori would immediately defer to the Crown and switch to English law'. Crown officials, Dr McHugh said, understood that 'much more work needed to be done in terms of bringing home to Maori the actuality of the sovereignty that Hobson had announced'.[112]

In respect of Māori land, Mr Irwin said that – under the legal doctrine of radical title – the Crown acquired title to all land in New Zealand 'as a function of obtaining sovereignty in 1840'. The Crown regarded its radical title as burdened by, or subject to, customary title until that title was extinguished. Where customary title had been extinguished, 'the Crown considered that Māori had no further legal claim to the land'. Accordingly, 'where Māori had actually sold land to settlers prior to 1840, the Crown considered that it held a full title to that land'. Hence, it had

discretion to grant or withhold that land to settlers who made claims to the Land Claims Commission (established by The New Zealand Land Claims Ordinance 1840; see chapter 6). The Crown, counsel added, did not consider the doctrine of radical title 'to be inconsistent with the principles of the treaty'.[113] The Crown made no submission on its right of pre-emption, whether it had been properly explained to Māori at the time of the signing of the treaty, and whether it had been intended to protect them.

Crown counsel distinguished what he called 'the theory' from 'the facts' relating to the extension of British authority to Māori. Counsel said that the treaty was not clear about the extent to which Māori law and custom was to continue after 1840 (as the Crown had earlier accepted in stage 1 of our inquiry). Counsel focused on the various official instructions sent to Hobson about recognition of Māori customs, and on Queen Victoria's Charter of November 1840 establishing New Zealand as a separate colony. Counsel also cited the 1839 instruction of the Secretary of State for War and the Colonies, Lord Normanby, that Hobson should carefully defend Māori customs, with certain exceptions (human sacrifice, cannibalism, and intertribal warfare) for the time being, until Māori could be brought 'within the pale of civilized life'.[114]

In practice, Crown counsel submitted, during the period up to 1844 the Crown attempted to apply English law to Māori 'in only a few instances, and then with respect and through the agreement of rangatira'.[115] The Crown made no attempt to exercise day-to-day authority over Te Raki Māori; on the contrary, it respected the role of Māori law and custom.[116] On occasions, there were misunderstandings that led Te Raki leaders to believe that the Crown was exerting authority over them, when that was not the Crown's intention.[117] The Crown also enacted legislation providing for rangatira involvement in law enforcement.[118] In general, the evidence was that Te Raki rangatira 'continued to govern their communities through their own laws and customs' throughout the period covered by this chapter and until at least the 1870s.[119]

The Crown made no concessions in respect of the Tribunal's first issue; that is, tino rangatiratanga, kāwanatanga, and autonomy in respect of the period from 1840 to 1844.

4.2.5 Issues for determination

Our stage 1 report also outlined the discussions preceding the signing of te Tiriti in our district and the explanations that Captain Hobson gave to Te Raki rangatira. However, given our jurisdiction, in stage 1 we could not hear claims or make treaty findings about events before 6 February 1840.

In this report, we are considering claims about the Crown's acts and omissions 'on or after' 6 February 1840. This chapter considers claims about the treaty relationship in the period from the signing of te Tiriti through to the end of 1844 – a period marked by the emergence of significant tensions between the Crown and Te Raki Māori over their relative authority. The parties differed over the treaty compliance of the Crown's actions in proclaiming sovereignty and establishing a government with presumed authority over the whole of New Zealand. They also differed over the extent to which the Crown caused prejudice to Te Raki Māori by asserting its effective authority in the district during the years 1840 to 1844. We regard these as important issues. We also consider the overall state of the political relationship between Te Raki Māori and the Crown at the end of 1844, three months before the outbreak of the Northern War.

Accordingly, the issues for determination in this chapter are:

- Did the Crown breach the treaty by proclaiming its sovereignty over New Zealand and establishing Crown Colony government?
- To what extent did the Crown assert its effective authority over Te Raki in the years from 1840 to 1844?
- What was the state of the political relationship between Te Raki Māori and the Crown by 1844?

In considering the claims before us, arising from the Crown's actions from 6 February 1840, we will at times refer to the Crown's preparations for the annexation of New Zealand territory before that date, as a reminder of

that context. We note that the parties' submissions were influenced by our stage 1 conclusion – in particular, the conclusion that Te Raki Māori who signed te Tiriti did not cede their sovereignty to the Crown.

4.3 Did the Crown Breach the Treaty by Proclaiming its Sovereignty over New Zealand and Establishing Crown Colony Government?

4.3.1 Introduction

In this section, we discuss the steps the Crown took during 1840 and 1841 to proclaim its sovereignty over New Zealand and establish Crown Colony government. Even though Te Raki Māori had not ceded their sovereignty, Captain Hobson nonetheless proceeded on the basis that they had. On 21 May 1840, he issued two proclamations: one asserting the Crown's sovereignty over the North Island by cession, and the second asserting sovereignty over all the islands of New Zealand including the 'Southern Islands' (we will not consider the second proclamation insofar as it relates to the southern islands).[120]

Following these proclamations, the Crown took further steps to assert its sovereignty and establish a government with authority over the whole of New Zealand. These steps included the publication of the proclamations in the London *Gazette* (2 October 1840), the issuing of a Charter in the form of Letters Patent signed by the Queen establishing New Zealand as a separate colony, and the Queen's appointment of Hobson as Governor (November 1840), both dispatched to Hobson with Royal Instructions for establishing a government (9 December 1840); followed by the establishment of the machinery of government, including an Executive, courts of law, a commission to inquire into old land claims, and the Protectorate of Aborigines.[121]

As set out in section 4.2, the claimants said that the Crown breached the principles of the treaty by proclaiming sovereignty without the consent of Te Raki Māori, and then by establishing a government and making laws with presumed authority over Te Raki Māori people and territories.[122] Crown counsel submitted that, in 1840, Crown officials believed that Māori had consented to British sovereignty and to the establishment of a national government which would exercise some form of authority over them – though the treaty did not provide clarity about the precise relationship between the Crown and Māori, or about the extent to which Māori law would continue in force.[123] Crown counsel noted that early Governors were instructed to tolerate most Māori laws and customs, at least until the Crown was able to assert its practical authority over the whole country.[124]

In this section, we are therefore concerned with the extent to which the Crown's actions in proclaiming sovereignty and establishing a government during 1840 and 1841 were consistent with treaty principles.

We outline in more detail the steps the Crown took to proclaim sovereignty over New Zealand, the Crown's reasons for doing so, and the subsequent steps it took to establish Crown Colony government in New Zealand. We are concerned particularly with the Crown's motives for these steps. What weight did the Crown give to the treaty agreement it had signed with Te Raki rangatira as it assumed sovereign power? Did Crown officials believe Te Raki rangatira had consented to cede sovereignty and that the Crown had therefore met its own preconditions for proclamation of sovereignty? What other factors influenced the Crown's actions? Ultimately, we ask whether, on the basis of official understanding, the Crown's proclamation of sovereignty over New Zealand was reasonable.

We will consider the following three questions:

- What was the importance to the Crown of the treaty it had signed with Te Raki rangatira as it proclaimed sovereignty over New Zealand and established Crown Colony government?
- In light of Hobson's understanding of what Te Raki rangatira had consented to when they signed te Tiriti, was it reasonable for him to proclaim Crown sovereignty over New Zealand and thus embark on the establishment of a government with authority over Māori?
- To what extent did the Crown make provision for hapū and iwi to continue to exercise tino rangatiratanga, as it established its new system of government and introduced its own law?

We will conclude with our findings on claims that the Crown breached treaty principles by proclaiming its sovereignty and establishing Crown Colony government.

4.3.2 Tribunal analysis

(1) *What was the importance to the Crown of the treaty it had signed with Te Raki rangatira as it proclaimed sovereignty over New Zealand and established Crown colony government?*

Before it had presented te Tiriti to rangatira at Waitangi, the Crown had taken a number of steps to prepare for its planned annexation of New Zealand. Those steps were to come into effect only if the Crown obtained Māori consent to a cession of sovereignty. We outlined these events in our stage 1 report, but provide a summary here since it is valuable context for our understanding of the Crown's intentions and post-treaty actions.

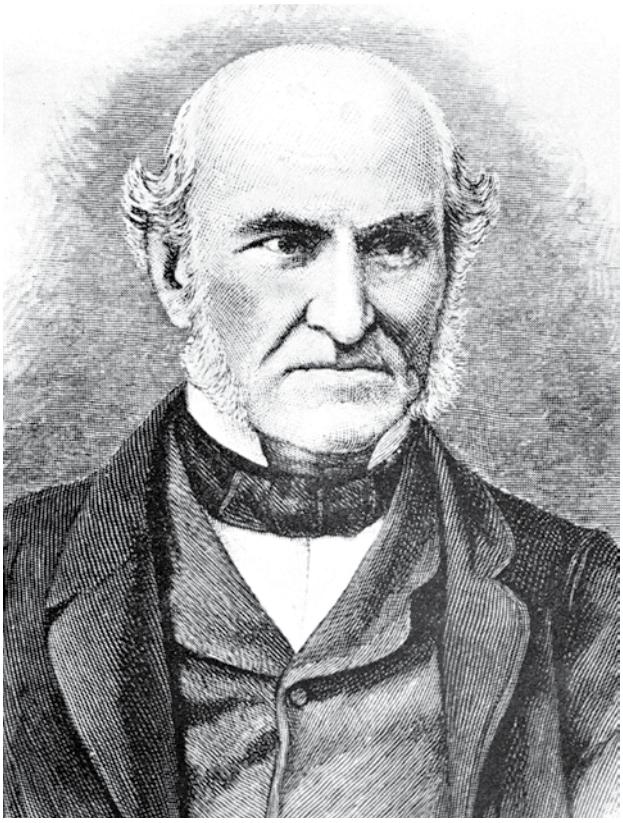
We commented in our stage 1 report on the origins of British economic and political interest in New Zealand and its people.[125] In the 1830s, the British Colonial Office was reluctant to expand its formal empire in the South Pacific, though officials at the periphery in New South Wales were by no means so hesitant. Early Governors, appreciating the potential for trade, had taken action to establish relationships with Māori from the Bay of Islands and Hokianga. From as early as 1813, the New South Wales Governor, anxious about the danger to trade posed by the reaction of Māori communities to the mistreatment of Māori on board ships, issued an order asserting his authority to punish serious criminal acts committed on sealing and whaling ships in New Zealand. In fact, New Zealand lay outside Britain's jurisdiction, as was made clear in subsequent Imperial Acts of 1817, 1823, and 1828, the latter two conferred jurisdiction on New South Wales courts to deal with crimes committed in New Zealand (though perpetrators had to be brought back to British territory).[126]

The British policy remained one of minimal intervention and acknowledgement that New Zealand lay outside British jurisdiction. But in 1830, the *Elizabeth* affair, in which the master of the brig *Elizabeth* transported Ngāti Toa warriors led by Te Rauparaha to Banks Peninsula to take revenge on Ngāi Tahu, was one factor in the Crown's decision to appoint a diplomatic representative, James Busby, who arrived at Waitangi in 1833.[127]

The missionaries still opposed any British intervention, but from 1837 the pressure from backers of organised emigration increased. The New Zealand Association was founded that year to pursue the object of systematic colonisation in accordance with the theories of Edward Gibbon Wakefield: that colonisation 'in a new land' should be regulated, and 'civilised' self-governing British communities founded. According to Wakefield, the key to the successful establishment of British settlement was to acquire land cheaply from the indigenous people and on-sell it to settlers at a high price; the proceeds could be used to fund working class emigration and ensure a labour supply, until eventually labourers could aspire to buy their own land.[128] Despite the concern of the Church Missionary Society (CMS) (which had a number of missionaries in New Zealand) about colonising proposals, the Colonial Office decided at the end of 1837 that an official British presence in New Zealand beyond that represented by the British Resident (Busby) was necessary. In December, it received a dispatch from Busby himself which gave a 'dire description of Māori disease and mortality' and of missionary inability to stem the impacts of '[h]aphazard white colonisation'.[129] Though we concluded there was 'a great deal of exaggeration' in the accounts of Busby and others about rapid Māori population decline, the Colonial Office was greatly concerned and became much more open to the idea that Britain should 'take control and impose order' – in Busby's view, 'under the nominal authority of Māori rangatira'.[130]

During 1838, the Colonial Office considered what form British intervention in New Zealand should take, and finally offered Captain William Hobson an appointment as British Consul there. But in early 1839, the New Zealand Association stepped up its own plans. In March, it turned into a public joint stock company, the New Zealand Land Company, and in April it advised the Colonial Office that it would shortly send out a preliminary expedition to New Zealand to acquire land and prepare for the first colonists.[131] It hoped to achieve this before the Government

James Busby, the British Resident in New Zealand from 1833 to 1840 and an old land claimant.



Sir George Gipps, Governor of New South Wales from 1837 to 1846.

established any authority there. Its first vessel, the *Tory*, set off for this purpose in May 1839, followed in September 1839 by several more New Zealand Company ships.[132] These developments led to a renewed sense of urgency in the Colonial Office and prompted further plans for extending the Crown's authority over any land it might acquire there. In a hasty British government response, Hobson was dispatched to negotiate with Māori for recognition of the Queen's sovereign authority over parts or all of the islands.

In our view, Britain was 'by no means a reluctant imperialist – it had long seen New Zealand as part of its de facto realm', even if it was reluctant to add New Zealand to its formal empire.[133] The trigger for change was the determined move of the New Zealand Company to undertake large-scale private colonisation. At that point, the British government responded emphatically, primarily to protect imperial interests; it wanted to take control of the land trade and prevent a private company setting itself up as a colonial Government. Its plans took shape during 1839, as it considered what role a treaty would play in the establishment of British sovereignty in New Zealand, and how a government would be established. It was decided that the most appropriate method of governing New Zealand would be through the Crown Colony model. In such a colony, the Crown would appoint and instruct a Governor

in whom legislative, executive, and some judicial powers were combined and concentrated.

The British government, we said, took various circumstances into account in making its decision about the process to be followed in establishing its authority in New Zealand (we consider these circumstances later). Questions of colonial law and policy were involved. Joseph stated that, for determining the application of English laws, the common law distinguished between settled colonies and conquered or ceded colonies. In settled colonies, the settlers took their own law with them (as far as applicable in the countries they colonised); in conquered or ceded colonies, the existing legal system remained intact, 'unless or until modified or abrogated by British Statute or Crown ordinance.'[134]

Colonial Office officials evidently grappled with the New Zealand situation. Stephen applied 'two cardinal principles': protection of Māori and recognition of their rights, on the one hand, and 'the introduction among the Colonists of the principle of self-government.'[135] Briefly, Crown Colony government was favoured over the alternative of granting representative institutions to the settlers as soon as the colony was established. As we outlined in our stage 1 report, in Stephen's view Crown Colony government would offer Māori 'the protection of British law' (though there would be temporary accommodation for Māori customary law), and they would eventually gain the full rights of British subjects. It would also provide for 'peace and order' between Māori and settler communities until a representative assembly could be safely established. There must first, however, be a cession of Māori sovereignty – and some time must be allowed for this; but the departure of the New Zealand Company ship *Tory* left little time. It was decided therefore to adopt a proposal to add New Zealand initially to the existing Crown Colony in New South Wales. The powers vested by Parliament in the Governor and Legislative Council of that colony might then be exercised over the 'inhabitants of the new colony' (see sidebar on page 188).[136] As the Secretary of State for the Colonies later explained, this was a modification of the settlers' right to a legislature; it would, for now, be a nominated legislature.[137]

Captain William Hobson, a naval officer who became the first Governor of the British colony of New Zealand in May 1841. He remained in the position until his death at 50 in September 1842. Hobson represented Queen Victoria at the signing of te Tiriti o Waitangi in 1840.

In Dr McHugh's view, it was because British officials were considering their obligations to both Māori, and to the British settlers (then and in the future) that they not only sought a cession from Māori but at the same time were acting on the basis that any colony would be designated as 'settled' (as opposed to 'conquered' or 'ceded'). They saw sovereignty as being established through a series of 'jurisdictional measures' affecting 'different segments of the islands' inhabitants': that is, British subjects, and Māori. Thus, 'one might say that Crown sovereignty was established both by cession and by the occupancy

attracting designation as a "settled colony"'. Both steps 'baked into the sovereignty of the whole'. The Colonial Office 'did not feel there was a need to make a choice'; the two steps were 'perfectly consistent'.[138]

On 15 June 1839, the British Crown initially provided for the extension of the boundaries of Her Majesty's territory of New South Wales so to include specifically 'any territory' within the islands of New Zealand 'which is or may be acquired in sovereignty by Her Majesty'. Lord Normanby's official instructions to Hobson of 14 August 1839 stipulated that, at least in the North Island, Hobson was to achieve the acquisition of sovereignty through a treaty. We emphasised in our stage 1 report that '[f]or our purposes, the most important point is that the British clearly and consistently expressed the view that, in achieving their objectives', they must have 'the free consent of the Natives, deliberately given, without Compulsion, and without Fraud'.[139] It would be up to Hobson to decide whether Māori consent had been obtained.

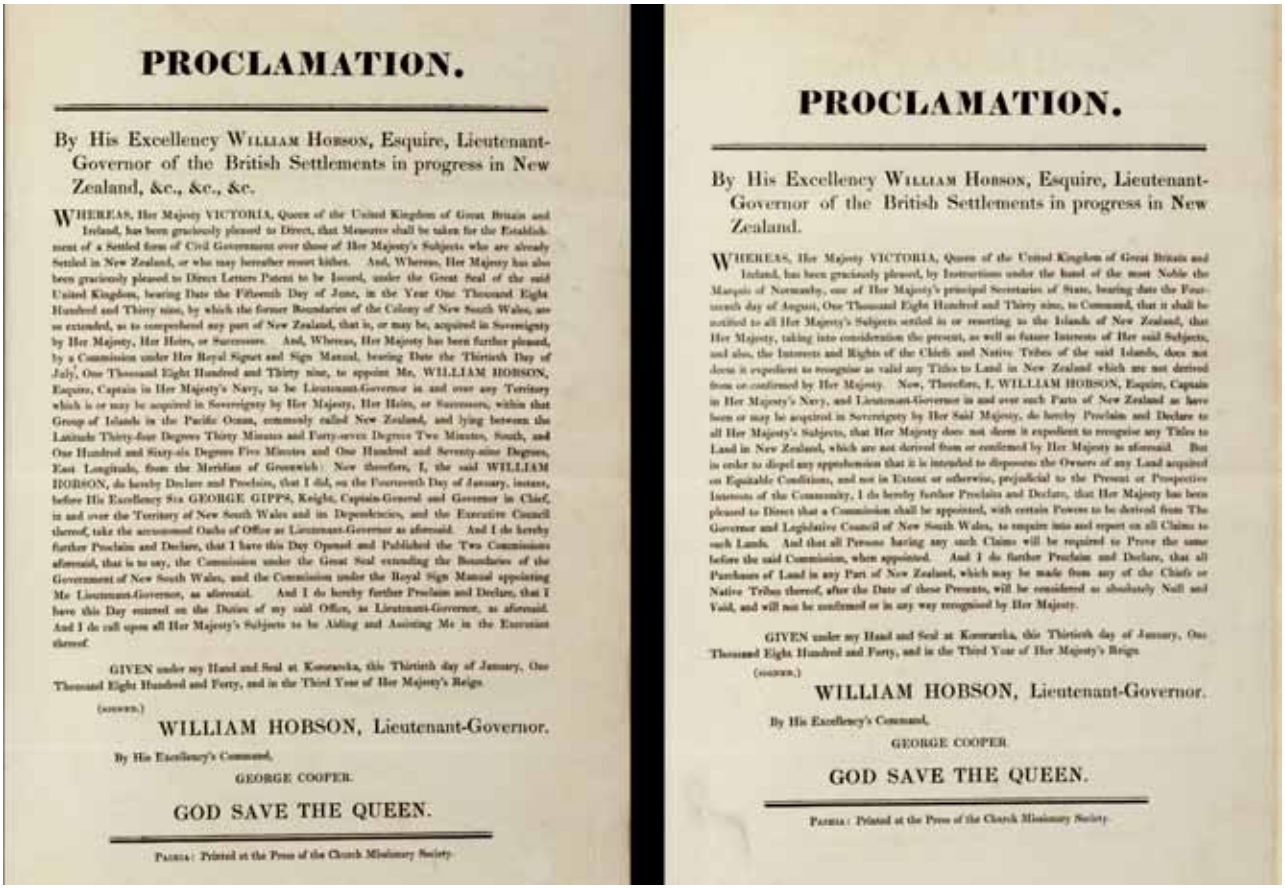
On 14 January 1840, as Hobson prepared to depart from Sydney for the Bay of Islands, George Gipps, Governor-in-Chief of New South Wales, signed three proclamations, the purpose of which was to extend the New South Wales boundaries to include any land acquired in sovereignty in New Zealand, to provide for Hobson's appointment as Lieutenant-Governor, and to put an end to the land trade in New Zealand. The first declared that Her Majesty extended her territory of New South Wales in accordance with the Letters Patent of 15 June 1839 to include 'any territory which is or may be acquired in sovereignty' by Her Majesty, within the islands of New Zealand.[140]

The second proclaimed that Gipps had sworn in Hobson as Lieutenant-Governor on the basis of his commission issued in Britain on 30 July 1839, 'over such parts of' any territory 'as is or may be acquired in sovereignty' in New Zealand. And the third announced that the Crown would recognise no private purchases of land in any part of New Zealand which might be made by 'any of Her Majesty's subjects' from any chief or tribe after 14 January 1840; such purchases would be considered 'absolutely null and void'. At the same time, the Governor proclaimed the Queen's command that it be announced 'to all [her] subjects in New Zealand' that she would not acknowledge any title to land acquired in New Zealand prior to that date or after it, unless it was 'derived from or confirmed by' a Crown grant, following an investigation into the acquisition of such land by commissioners appointed under a law to be passed in New South Wales.[141] The proclamations were issued in Sydney on 19 January, the day that Hobson sailed for New Zealand on HMS *Herald*, so that they might be issued on either side of the Tasman more or less at the same time.[142] He was accompanied by four police troopers, a sergeant, and a handful of civil servants, well short of the 67 members of staff he had requested.[143]

What was the significance of these January proclamations? Dr McHugh's view was that they 'did not suppose British sovereignty already'; he added that they 'were as much statements of royal intention, channelled through the Crown's commissioned officers, as substantive legal enactments'. They announced publicly to British subjects the consequences of the 'expected acquisition of sovereign authority in New Zealand' when Hobson's mission was complete. In London, the proclamations were received without dissent and 'were never regarded as the basis of Crown sovereignty in New Zealand'.[144]

The day after his arrival, on 30 January 1840 Hobson read aloud to 'all British subjects', whom he had invited to meet him at the church at Kororāreka, the Queen's two commissions of 15 June 1839 and 30 July 1839, and the proclamations framed by Gipps and the Executive Council of New South Wales.[145] Three hundred settlers and 100 Māori were present.[146] The first proclamation declared the extension of the boundaries of the Government of New South Wales to include any parts of New Zealand which 'is or may be acquired in sovereignty' (in accordance with Letters Patent of 15 June 1839), and further declared that Hobson's duties as Lieutenant-Governor had now begun. The second announced that Her Majesty would not recognise any titles to land in New Zealand that are 'not derived from or confirmed by a grant from the Crown'.[147] A commission would, however, be set up to inquire into and report on all claims to such lands.

We noted in our stage 1 report that whereas Normanby had envisaged Hobson landing as British Consul, and



PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand, &c., &c., &c.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased to Direct, that Measures shall be taken for the Establishment of a Settled form of Civil Government over those of Her Majesty's Subjects who are already Settled in New Zealand, or who may hereafter resort hither. And, Whereas, Her Majesty has also been graciously pleased to Direct Letters Patent to be Issued, under the Great Seal of the said United Kingdom, bearing Date the Fifteenth Day of June, in the Year One Thousand Eight Hundred and Thirty nine, by which the former Boundaries of the Colony of New South Wales, are so extended, as to comprehend any part of New Zealand, that is, or may be, acquired in Sovereignty by Her Majesty, Her Heirs, or Successors. And, Whereas, Her Majesty has been further pleased, by a Commission under Her Royal Signet and Sign Manual, bearing Date the Thirtieth Day of July, One Thousand Eight Hundred and Thirty nine, to appoint Me, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, to be Lieutenant-Governor in and over any Territory which is or may be acquired in Sovereignty by Her Majesty, Her Heirs, or Successors, within that Group of Islands in the Pacific Ocean, commonly called New Zealand, and lying between the Latitude Thirty-four Degrees Thirty Minutes and Forty-seven Degrees Two Minutes, South, and One Hundred and Sixty-six Degrees Five Minutes and One Hundred and Seventy-nine Degrees, East Longitude, from the Meridian of Greenwich: Now therefore, I, the said WILLIAM HOBSON, do hereby Declare and Proclaim, that I did, on the Fourteenth Day of January, instant, before His Excellency Sir GEORGE GIPPS, Knight, Captain-General and Governor in Chief, in and over the Territory of New South Wales and its Dependencies, and the Executive Council thereof, take the accustomed Oaths of Office as Lieutenant-Governor as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day Opened and Published the Two Commissions aforesaid, that is to say, the Commission under the Great Seal extending the Boundaries of the Government of New South Wales, and the Commission under the Royal Sign Manual appointing Me Lieutenant-Governor, as aforesaid. And I do hereby further Proclaim and Declare, that I have this Day entered on the Duties of my said Office, as Lieutenant-Governor, as aforesaid. And I do call upon all Her Majesty's Subjects to be Aiding and Assisting Me in the Execution thereof.

GIVEN under my Hand and Seal at Kororareka, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(GOD SAVE THE QUEEN.)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PAIHIA: Printed at the Press of the Church Missionary Society.

PROCLAMATION.

By His Excellency WILLIAM HOBSON, Esquire, Lieutenant-Governor of the British Settlements in progress in New Zealand.

WHEREAS, Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, has been graciously pleased, by Instructions under the hand of the most Noble the Marquis of Normanby, one of Her Majesty's principal Secretaries of State, bearing date the Fourteenth day of August, One Thousand Eight Hundred and Thirty nine, to Command, that it shall be notified to all Her Majesty's Subjects settled in or resorting to the Islands of New Zealand, that Her Majesty, taking into consideration the present, as well as future Interests of Her said Subjects, and also, the Interests and Rights of the Chiefs and Native Tribes of the said Islands, does not deem it expedient to recognise as valid any Titles to Land in New Zealand which are not derived from or confirmed by Her Majesty. Now, Therefore, I, WILLIAM HOBSON, Esquire, Captain in Her Majesty's Navy, and Lieutenant-Governor in and over such Parts of New Zealand as have been or may be acquired in Sovereignty by Her Said Majesty, do hereby Proclaim and Declare to all Her Majesty's Subjects, that Her Majesty does not deem it expedient to recognise any Titles to Land in New Zealand, which are not derived from or confirmed by Her Majesty as aforesaid. But in order to dispel any apprehension that it is intended to dispossess the Owners of any Land acquired on Equitable Conditions, and not in Extent or otherwise, prejudicial to the Present or Prospective Interests of the Community, I do hereby further Proclaim and Declare, that Her Majesty has been pleased to Direct that a Commission shall be appointed, with certain Powers to be derived from The Governor and Legislative Council of New South Wales, to enquire into and report on all Claims to such Lands. And that all Persons having any such Claims will be required to Prove the same before the said Commission, when appointed. And I do further Proclaim and Declare, that all Purchases of Land in any Part of New Zealand, which may be made from any of the Chiefs or Native Tribes thereof, after the Date of these Presents, will be considered as absolutely Null and Void, and will not be confirmed or in any way recognised by Her Majesty.

GIVEN under my Hand and Seal at Kororareka, this Thirtieth day of January, One Thousand Eight Hundred and Forty, and in the Third Year of Her Majesty's Reign.

(GOD SAVE THE QUEEN.)

WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency's Command,

GEORGE COOPER.

GOD SAVE THE QUEEN.

PAIHIA: Printed at the Press of the Church Missionary Society.

The proclamations Hobson read out upon his arrival in New Zealand on 30 January 1840. The first recited the extension of the boundaries of the Colony of New South Wales to include any territory in New Zealand that might be acquired in Sovereignty, and proclaimed that Hobson entered 'this Day' on his duties as Lieutenant-Governor. The second announced that no land titles would be recognised by the Queen as valid unless derived from or confirmed by a grant from the Crown, that a commission would be appointed to report on claims to such lands, and that henceforth private purchases of land from 'Chiefs or Native Tribes' would be considered 'null and void'.

progressively proclaiming himself Lieutenant-Governor over lands he acquired in sovereignty from the chiefs, Hobson 'decided to assert this higher status from the outset', before he had entered negotiations at Waitangi.[148] He may have done so on the basis of the 'cession' by the chief Rete in 1834 of some 200 to 300 acres near Busby's Waitangi residence, believing that it was sufficient for him to claim sovereignty over this small corner of the country.[149] Busby did not agree, telling Hobson that 'the land was not ceded in that sense by the natives', and that Hobson should act as consul until he had obtained a cession of territory 'by amicable negotiations with the free concurrence of the native chiefs.'[150] And Captain Joseph Nias of HMS *Herald* refused to accord him the 13-gun salute of a Lieutenant-Governor, giving him only the 11 guns due a British Consul.[151] Hobson was irritated but

still asserted his new status, signing the proclamations as 'Lieutenant-Governor'. It seems that he may have sought to downplay the absence of a negotiated cession at that time by heading his proclamations as follows: 'By His Excellency William Hobson . . . Lieutenant-governor of the British Settlements in progress in New Zealand' – which seems a wording designed to evade his instruction that he assume office as Lieutenant-Governor 'over such parts of any territory that may be acquired in sovereignty' (that is, by cession from Māori).[152]

Dr McHugh noted that Hobson would sign the treaty, 'stubbornly one suspects', both as consul and Lieutenant-Governor. He concluded:

> Whatever the basis for Hobson's Proclamation of 30 January declaring himself Lieutenant-Governor of territory which according to his terms of office had not been yet acquired in sovereignty for the Crown, the declaration if not ineffectual was no more than a declaration of office which came into effect as and when the condition precedent to its effect was met.[153]

In other words, Dr McHugh accepted that Hobson had proclaimed himself Lieutenant-Governor prematurely, before his crucial meeting with the rangatira to seek a cession of sovereignty. But he suggested that for that reason the declaration would have no legal effect, and submitted that events would soon overtake Hobson's jumping the gun: shortly afterwards, he did indeed secure the cession, meaning he had met the condition for his assumption of the office of Lieutenant-Governor.

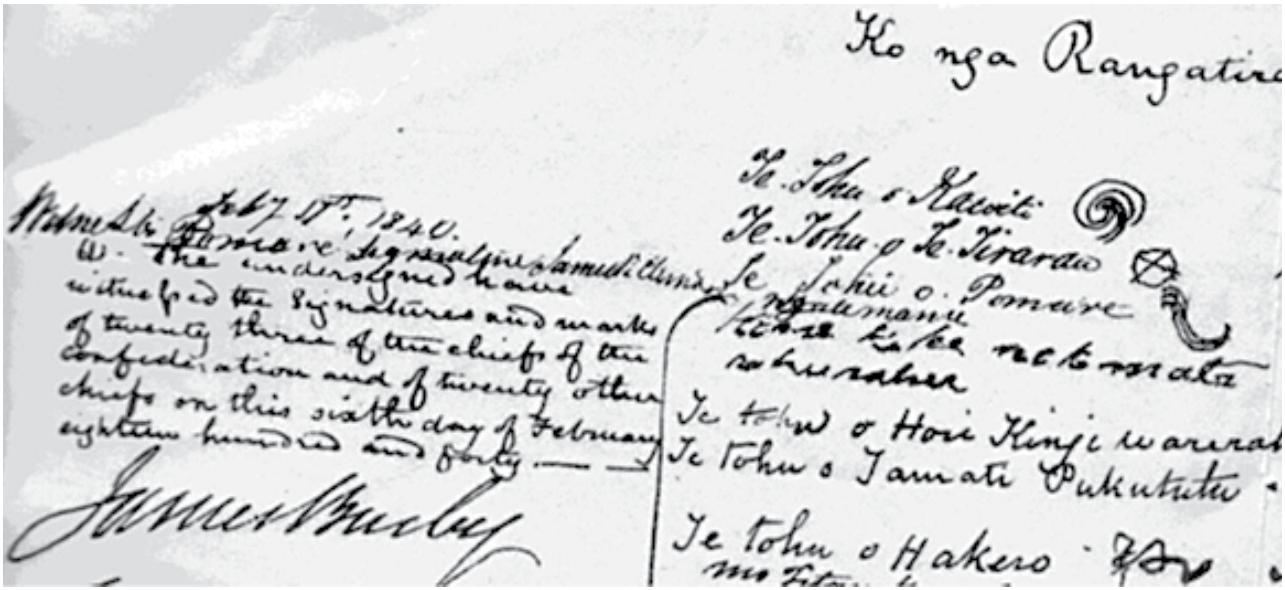
Meanwhile, Busby circulated invitations to each of the confederated chiefs ('nga Rangatira o te Wakaminenga o Nu Tireni') to meet Hobson at Waitangi on 5 February. Groups of Māori began assembling there from 4 February, and on the morning of the following day, when Hobson arrived at Busby's Residence, waka converged on Waitangi from all directions. When proceedings began, Hobson addressed the large gathering first, reading out the treaty in English. The missionary Henry Williams then read it in te reo Māori and explained it 'clause by clause'. The whaikōrero continued till late afternoon when the chiefs asked for time to discuss the treaty among themselves; the discussions, which included the missionaries, continued well into the evening. On 6 February, te Tiriti was signed by rangatira at Waitangi, and in the following days at Waimate and then at Māngungu, in Hokianga.[154]

(a) Why did Hobson issue proclamations of sovereignty in 1840 and what significance was accorded the treaty?

We turn here to the Crown's assumptions about the nature of its authority in New Zealand in the wake of the signing of te Tiriti, and the steps it took to assert sovereignty: Hobson's issue of proclamations of sovereignty in May and June 1840, and the establishment of Crown Colony government over New Zealand within just over a year after the treaty was entered into at Waitangi.

With the signings at Waitangi, Waimate, and Māngungu completed, Hobson returned to the Bay of Islands and had 200 copies of te Tiriti printed. He was planning to travel south to secure more signatures. His initial plan – based on the signatures he had secured to date – was to issue a proclamation announcing that the Queen had acquired sovereignty in all territories from the North Cape to the 36th parallel – that is, about as far south as Whāngārei and Dargaville.[155] As he went further south and gathered more signatures, he would then extend the limits further by proclamation until the whole country was included. He wrote to Gipps, informing him that, to his mind, 'on the conclusion of the treaty of Waitangi, the sovereignty of Her Majesty over the northern districts was complete'.[156]

On 18 February, Hobson drew up a proclamation announcing the Queen's sovereignty as far as 36 degrees south, but he decided against issuing it on the grounds that it might jeopardise his negotiations further south. This admission, in our view, indicates doubt on Hobson's part that British sovereignty would be generally acceptable to rangatira in those territories, and also a willingness on his part to proceed without clarifying British intentions. He may also have been concerned that he might irritate northern rangatira who were not inclined or had not yet had the opportunity to sign.[157] On 17 February, the rangatira Pōmare had signed, and a few days later Hobson set off for Waitematā.[158] Wiremu Korokoro of Ngāpuhi,



The tohu of Kawiti, Te Tirarau, and Pōmare II on te Tiriti. Pōmare II of Ngāti Manu affixed his tohu to te Tiriti on 17 February 1840 and later promised Hobson that he would persuade Te Tirarau and Kawiti, and indeed 'all the principal Chiefs for many miles around', to put their names to te Tiriti. He famously told the Governor that he would give him three years to see if he would prove as good a friend as Clendon (a local merchant) had been. Clendon witnessed Pōmare's signing te Tiriti. Pōmare did reach out to his whanaunga Kawiti and Te Tirarau, as he had done some years earlier when Ngāti Manu faced a large northern alliance taua at the prolonged Pakanga o Ōpua. The two rangatira accompanied Pōmare to meet the Governor and put their tohu to te Tiriti in mid-May. Kawiti is said to have expressed angry misgivings before doing so. Researchers Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey recorded that the distinctive tohu of the three leaders are 'all symbols with three elements, just as the three men stood together as a tripartite group – rangatira of Ngāti Manu, Ngāti Hine and Te Parawhau respectively. The tohu represent sky, water and Papatūānuku. Tirarau's is Te Taki-o-Autahi (the Southern Cross), Pōmare's is Ngā Wai Āta Rere (the meeting/confluence of three rivers), Kawiti's koru represents Te Whānaungatanga o te Ao (the birth of the world)'. The names and tohu of the three rangatira, who had all put their names to he Whakaputanga, were placed at the top of the Waitangi sheet of te Tiriti, above that of Hōne Heke, who had signed first on 6 February.

Ngātiwai, and Te Parawhau signed there at Karaka Bay in early March, together with some chiefs of Ngāti Paoa. Subsequently, in May (likely on 13 May), the rangatira Kawiti – after strongly expressing his concern about losing his land – and Te Tirarau put their names to te Tiriti in the Bay of Islands.[159]

On 1 March, Hobson suffered a stroke and had to return to the Bay of Islands, where he recuperated quite quickly. In the meantime, Willoughby Shortland, the police magistrate, made arrangements for other signings further south, sending copies of te Tiriti to mission stations or by ship. In late April, Hobson deputed Major Thomas Bunbury, who had recently arrived from Sydney, to carry the treaty in HMS *Herald* to the Bay of Plenty, Port Nicholson, the South Island, and Stewart Island. Over a period of six months, nine copies of te Tiriti were signed at about 50 meetings around the coasts of both islands.[160]

But before the copies were returned to Hobson, news was received that the New Zealand Company settlers recently arrived in Port Nicholson had established their own 'government', which they claimed derived its legality from authority granted by the local chiefs.[161] In March, they had elected a council and appointed Colonel William Wakefield its president and, as Hobson later described it,

had 'proceeded to enact laws and to appoint magistrates'.[162] They were reported to have a written constitution which had been drawn up before they left England and was now apparently signed and 'ratified' by the 'Sovereign Chiefs of the district of Wanga Nui Atera or Port Nicholson'.[163] This was despite the Colonial Office's strong reaction to an earlier agreement drawn up by the company binding them 'to be governed by a set of "provisional Regulations" which they would be required "to enforce . . . on each other"'. This would form the basis of the 'Constitution'.[164] The flag of the United Tribes, of an independent New Zealand, which had been made aboard the *Tory*, flew above Port Nicholson.[165] Yet the company officials had known that the Crown was intending to proclaim sovereignty, and had known that the Colonial Office considered the regulations to be illegal. Dr McHugh explained that, since British subjects lacked judicial power over one another not derived from formal royal warrant, Hobson considered the settlers' activity amounted to 'high treason'.[166]

At this point, Hobson moved with remarkable speed. News from Port Nicholson reached him at 8 pm on the evening of 21 May. Before the night was out, he had issued two proclamations.[167] In Dr McHugh's view, they were aimed 'jurisdictionally at the European settlers'.[168] They were 'primarily directed' at the exercise of the Crown's sovereignty vis à vis the settler population (in particular that of Port Nicholson) rather than Māori – though this did not mean that British sovereignty was restricted to British subjects.[169]

The first proclaimed Her Majesty's sovereignty over the North Island by cession, via a treaty, of 'all rights and powers of sovereignty . . . absolutely and without reservation' by both the 'Chiefs of the Confederation of the United Tribes' and the 'separate and independent Chiefs of New-Zealand' who were not members of the Confederation; ratified also 'by the adherence of the Principal Chiefs' of the North Island. Hobson, as Lieutenant-Governor, declared that 'from and after the date of the above-mentioned treaty' (wrongly given as 5 February), the sovereignty of the North Island 'vests in Her Majesty Queen Victoria, Her heirs and successors for ever'.[170]

The second proclamation, bearing the same date, recited

The New Zealand Company coat of arms. Aware of the Crown's intentions of declaring sovereignty, the company set up its own government in Port Nicholson. This action prompted Hobson to issue the 21 May proclamations of British sovereignty. In November 1840, the company and the Crown reached an agreement that the Queen would grant a charter of incorporation to the company for its future colonising operations and that it would be awarded land in proportion to the funds it had expended.

the Queen's command to assert her sovereignty over the southern islands (that is the 'Middle Island' and Stewart Island) as well as the northern island, which had been ceded, and declared 'the full Sovereignty of the Islands of New Zealand' to vest in the Queen. It did not give any grounds for Hobson's assertion, and on 16 June Hobson reissued it, specifying that sovereignty over the southern islands was asserted 'on the grounds of Discovery'.[171] Then two days later, he issued a third proclamation, referring to the formation at Port Nicholson of an illegal association 'under the title of a Council', which had, 'in contempt of Her Majesty's authority . . . assumed and attempted to usurp the powers vested in me [Hobson]'. He commanded all persons connected with the 'illegal' association to withdraw from it, and all in Port Nicholson or elsewhere 'within the limits of this Government, upon the allegiance they owe to Her Majesty Queen Victoria, to submit to the proper authorities in New Zealand, legally appointed'.[172]

In his dispatch to London enclosing the May proclamations, Hobson cited the 'universal adherence' of the chiefs of the North Island (despite the fact that he was

still waiting for confirmation of a number of signings of te Tiriti; at the time he held only the sheets signed in the north, and the copy of the Treaty – in English – at Waikato Heads and Manukau Harbour).[173] By this time, we note, Hobson had reconsidered his view of the significance of the various treaty signings. He no longer referred to the Waitangi and Hokianga signings as completing the Queen's sovereignty 'over the northern districts'. In his letter of authorisation to Major Bunbury of 25 April, on the eve of Bunbury's departure to the south with a copy of te Tiriti, Hobson stated:

> The treaty which forms the base of all my proceedings was signed at Waitangi on the 6th February 1840, by 52 chiefs, 26 of whom were of the confederation, and formed a majority of those who signed the Declaration of Independence. This instrument I consider to be *de facto* the treaty, and all the signatures that are subsequently obtained are merely testimonials of adherence to the terms of that original document.[174]

This decision is reflected in the wording of his first proclamation (cited earlier): the treaty (incorrectly) dated 5 February was 'made and executed' by himself, as the Queen's representative, on the one part, and the Chiefs of the Confederation (who are particularly mentioned) and independent chiefs, not members of the Confederation, on the other. The treaty was stated to have been 'further ratified and confirmed by the adherence of the principal Chiefs of this Island [the North Island]'.[175] The treaty entered into at Waitangi was, in Hobson's view, the document of Māori cession. Later, we consider the significance of this further.

Hobson further explained to the Colonial Office that his proclamations had been issued over both islands as a response to the emergency that had arisen in Port Nicholson. He had decided to proclaim sovereignty over the South Island on the grounds of discovery without waiting for the report of Major Bunbury. In any case, he added, the proclamation over the southern islands on grounds of discovery was justified by the 'uncivilized state of the natives' there.[176] At the time, Hobson was not aware that Henry Williams had secured signatures to the treaty at Port Nicholson and Queen Charlotte Sound. Bunbury had yet to travel down the east coast of the South Island, where he would secure signatures from principal Ngāi Tahu chiefs at Ōnuku (Akaroa), Ruapuke Island, and Ōtākou, and from Ngāti Toa at Cloudy Bay before proclaiming sovereignty over 'Tavai Poenammoo' (the South Island) at Cloudy Bay on 17 June 1840 by right of cession from the 'several independent native chiefs'.[177]

It was some time before Hobson received news of all the treaty signings. It was 15 October 1840 before he made a comprehensive report on the treaty to the Colonial Office, to which he attached certified copies of the English and Māori texts and a list of 512 signatories.[178] He did not mention the fact that a number of key senior chiefs had refused to sign: the ariki Te Wherowhero of Waikato, the ariki Mananui Te Heuheu of Ngāti Tūwharetoa; and also Tāraia Ngākuti Tumuhuia of Thames, and Hōri Kīngi Tūpaea of Tauranga. Te Arawa and Ngāti Tūwharetoa leaders generally would not sign. No meetings were held from Whanganui to Mōkau, and most of the Hawke's Bay and Wairarapa rangatira were not given a chance to sign; nor were Tūhoe leaders.[179] Nor did Hobson mention that not all chiefs in Te Raki had signed. In any case, the Colonial Office had already published Hobson's proclamations officially in the London *Gazette* on 2 October 1840. The Secretary of State for War and the Colonies, Lord John Russell, replied to Hobson's dispatch of 25 May 1840 on 10 November 1840, approving the steps he had taken: 'As far as it has been possible to form a judgment, your proceedings appear to have entitled you to the entire approbation of Her Majesty's Government.'[180] In our stage 1 report, we cited the view of Crown expert witness Dr McHugh: if he had to state an exact moment when sovereignty passed, he considered it was 21 May 1840 – at least for the purposes of British and colonial courts:

> Strictly, it amounted to the formal and authoritative announcement by the Crown through the prerogative that the prerequisite it had set itself before annexation could occur – Māori consent – had in its estimation been satisfied and that the Crown could now exert sovereign authority over all the inhabitants of the New Zealand islands.[181]

But Dr McHugh argued also that Crown officials never regarded the Crown's acquisition of sovereignty as happening at a single moment; rather, the Crown acquired sovereignty through a process spread over several months.[182] Moreover, it was a process that involved at least two 'jurisdictional communities or constituencies': British settlers and Māori. Hobson was most concerned about the newly arrived New Zealand Company settlers at Port Nicholson, and his proclamations were primarily directed at them. Bunbury was not called back from his signature-gathering mission, Dr McHugh added, indicating that, even though Crown sovereignty might now 'technically' have been established,

> British officials remained sincerely committed to meeting the self-imposed condition precedent of Māori consent even if those consents that remained outstanding had now become matters of form rather than actual necessity.

Nor did officials (including Hobson) regard the proclamations as 'impairing the foundations of British sovereignty' on grounds of Māori consent, even if they were 'somewhat premature.'[183]

The 21 May 1840 proclamations, and their gazetting on 2 October, are accepted in colonial and international law as marking the establishment of British sovereignty over New Zealand. In the 1987 case, *New Zealand Maori Council v Attorney-General* (the *Lands* case), Judge Ivor Richardson stated:

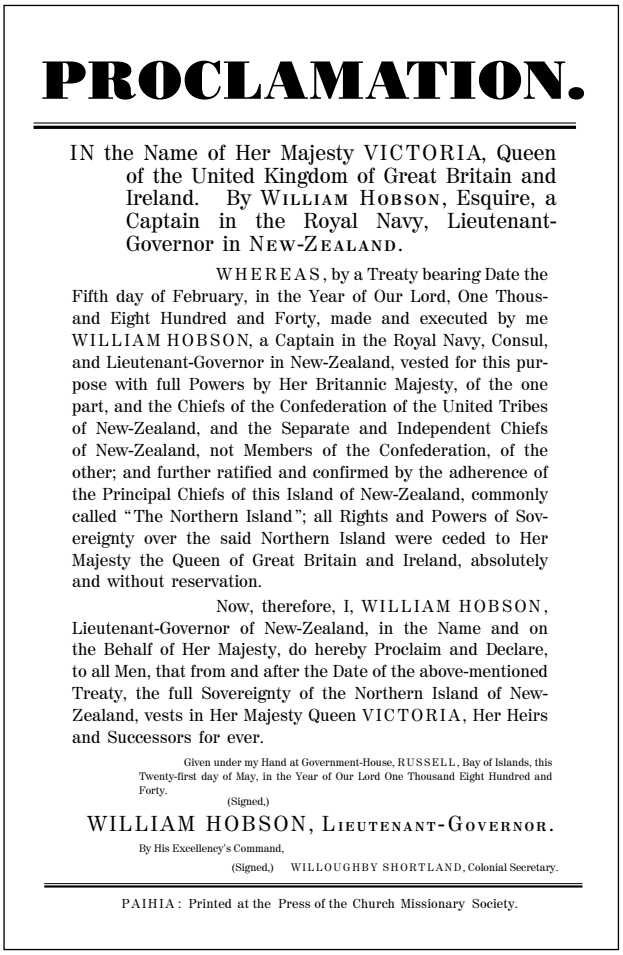
> It now seems widely accepted as a matter of colonial law and international law that those proclamations [of 21 May 1840] approved by the Crown and the gazetting of the acquisition of New Zealand by the Crown in the London *Gazette* on 2 October 1840 authoritatively established Crown sovereignty over New Zealand.

Justice Somers, referring to the proclamations being approved in London and published in the London *Gazette*, stated: 'The sovereignty of the Crown was then beyond dispute.'[184]

(b) From proclamations to the establishment of New Zealand as a new Crown Colony of the British Empire

We referred earlier to the initial arrangements for the Government of New Zealand. New Zealand was to be governed from New South Wales, which would pass laws for the new colony. Hobson, as Lieutenant-Governor would, in consultation with Governor Gipps, appoint the first, indispensable subordinate officers: a judge, a public prosecutor, a Protector of Aborigines, a Colonial Secretary, a Treasurer, a Surveyor-General of Lands, and a Superintendent of Police.[185] There was provision for a court of justice and a judicial system. There were further instructions about raising a revenue to defray the costs of the proposed settlements in New Zealand, by drawing initially on the Government of New South Wales. It was envisaged that moderate import duties on tobacco, spirits, wine, and sugar would avoid the necessity for other forms of taxation. But it was clearly envisaged that a land revenue would also be raised.

In fact, New Zealand's annexation to the colony of New South Wales was short-lived. Following the publication of Hobson's proclamations in the London *Gazette* in October 1840, and a change of government in Britain, it was decided that New Zealand should be a colony separate from New South Wales. At this point, well-oiled imperial machinery swung into action. We outline the provisions made for the government of the new colony in some detail, to underline this point. A key dispatch of 9 December 1840 from Lord John Russell (the new Secretary of State for War and the Colonies) to Hobson issued instructions, detailing the machinery of government to be set up in New Zealand and the need for a thorough survey of the colony so that its administrative divisions could be established. It enclosed a number of legal instruments. The Crown preserved its control over the colony through Letters Patent signed by the Queen on 16 November 1840 (under the authority of the New South Wales Continuance Act 1840 (UK)), known as the Charter. By the Charter, issued under the Great Seal of the United Kingdom, Queen Victoria erected the islands of New Zealand and other adjacent islands into a separate colony; renamed the North and South Islands,



PROCLAMATION.

IN the Name of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland. By WILLIAM HOBSON, Esquire, a Captain in the Royal Navy, Lieutenant-Governor in NEW-ZEALAND.

WHEREAS, by a Treaty bearing Date the Fifth day of February, in the Year of Our Lord, One Thousand Eight Hundred and Forty, made and executed by me WILLIAM HOBSON, a Captain in the Royal Navy, Consul, and Lieutenant-Governor in New-Zealand, vested for this purpose with full Powers by Her Britannic Majesty, of the one part, and the Chiefs of the Confederation of the United Tribes of New-Zealand, and the Separate and Independent Chiefs of New-Zealand, not Members of the Confederation, of the other; and further ratified and confirmed by the adherence of the Principal Chiefs of this Island of New-Zealand, commonly called "The Northern Island"; all Rights and Powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation.

Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, in the Name and on the Behalf of Her Majesty, do hereby Proclaim and Declare, to all Men, that from and after the Date of the above-mentioned Treaty, the full Sovereignty of the Northern Island of New-Zealand, vests in Her Majesty Queen VICTORIA, Her Heirs and Successors for ever.

Given under my Hand at Government-House, RUSSELL, Bay of Islands, this Twenty-first day of May, in the Year of Our Lord One Thousand Eight Hundred and Forty.

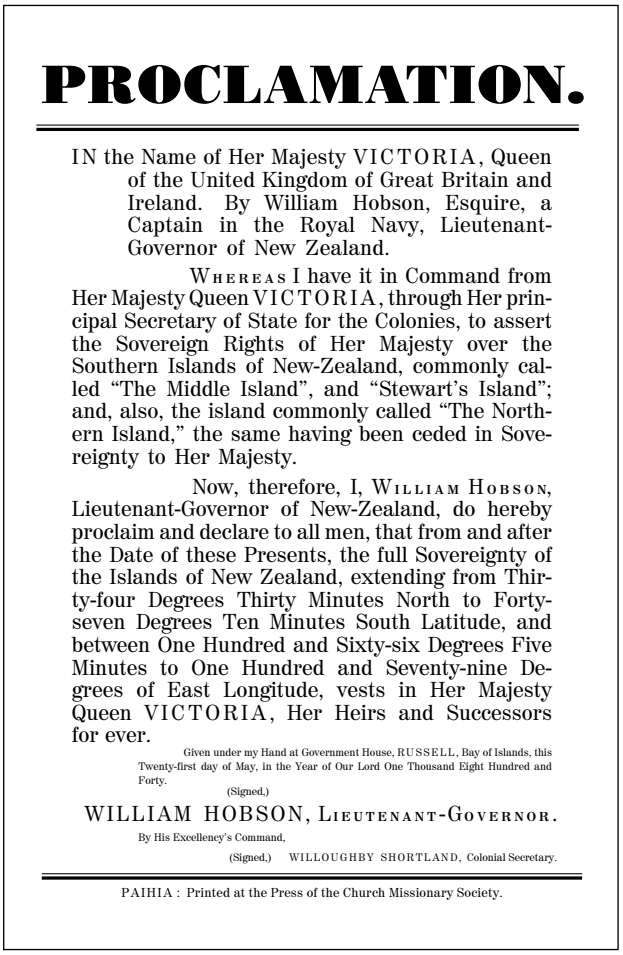
(Signed,)

WILLIAM HOBSON, LIEUTENANT-GOVERNOR.

By His Excellency's Command,

(Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary.

PAIHIA: Printed at the Press of the Church Missionary Society.



PROCLAMATION.

IN the Name of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esquire, a Captain in the Royal Navy, Lieutenant-Governor of New Zealand.

WHEREAS I have it in Command from Her Majesty Queen VICTORIA, through Her principal Secretary of State for the Colonies, to assert the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand, commonly called "The Middle Island", and "Stewart's Island"; and, also, the island commonly called "The Northern Island," the same having been ceded in Sovereignty to Her Majesty.

Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, do hereby proclaim and declare to all men, that from and after the Date of these Presents, the full Sovereignty of the Islands of New Zealand, extending from Thirty-four Degrees Thirty Minutes North to Forty-seven Degrees Ten Minutes South Latitude, and between One Hundred and Sixty-six Degrees Five Minutes to One Hundred and Seventy-nine Degrees of East Longitude, vests in Her Majesty Queen VICTORIA, Her Heirs and Successors for ever.

Given under my Hand at Government House, RUSSELL, Bay of Islands, this Twenty-first day of May, in the Year of Our Lord One Thousand Eight Hundred and Forty.

(Signed,)

WILLIAM HOBSON, LIEUTENANT-GOVERNOR.

By His Excellency's Command,

(Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary.

PAIHIA: Printed at the Press of the Church Missionary Society.

Hobson's 21 May 1840 proclamations in the name of Queen Victoria. The first asserts Crown sovereignty over the North Island by cession via 'a Treaty', incorrectly dated 5 February 1840 in this document. The second recites the Queen's command to assert sovereignty over the southern islands, specifying the 'Middle' (South) Island and Stewart Island, reiterates the cession of the North Island, and proclaims the Queen's 'full Sovereignty' over the islands of New Zealand. The original proclamation of 21 May did not give any grounds for Hobson's assertion and had to be reissued asserting sovereignty over the southern islands on the grounds of discovery.

and Stewart Island (names of British origin commonly used at the time by settlers) as New Ulster, New Munster, and New Leinster respectively; and provided for the future separate administration of the Government of New Zealand.[186] By further Letters Patent of 24 November 1840 (enclosed in the same dispatch), the Queen also appointed Captain Hobson Governor and Commander-in-Chief of the colony of New Zealand. Extensive Royal Instructions issued by Queen Victoria to Hobson dated 5 December 1840 were also enclosed.

Steps Taken by the Crown to Annex New Zealand and to Establish Crown Colony Government

15 June 1839: Letters Patent were signed by Queen Victoria extending the boundaries of New South Wales to include 'any territory which is or may be acquired in sovereignty by her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand'.[1]

30 July 1839: A Commission under the Royal Signet and Sign Manual appointed Hobson Lieutenant-Governor 'in and over that part of Our Territory . . . which is or may be acquired in Sovereignty by Us . . . within that group of Islands commonly called New Zealand'.[2]

13 August 1839: A Commission under the Great Seal appointed Hobson as Consul for the purpose of negotiating the recognition of the Crown's sovereignty by the chiefs of New Zealand.[3]

14 January 1840: Governor Gipps of New South Wales signed three proclamations (issued several days later on 19 January): the first declared that the boundaries of New South Wales were expanded to include any territory which is or may be acquired in sovereignty by Her Majesty in New Zealand; the second declared that Gipps had sworn Hobson in as Lieutenant-Governor to act in that capacity over any such territory so acquired; and the third stated that the Crown would recognise no private purchases of land made from Māori after 14 January 1840, and would not accept the validity of any purchases made before that date until an investigation had taken place.[4]

30 January 1840: Hobson proclaims at Kororāreka that he has 'this day entered on the duties of my said office' as Lieutenant-Governor.[5]

6 February 1840: Te Tiriti is signed at Waitangi by some 46 Ngāpuhi rangatira (perhaps more) and by Hobson, the Crown's representative; also at Waimate on 10 February by six chiefs and at Māngungu (Hokianga) on 12 February by over 60 chiefs.[6] Subsequently, Hobson became ill, and the task of gaining chiefly consent to the treaty in other parts of the country was delegated to officials, missionaries, and traders.

21 May 1840: Hobson issued two proclamations asserting Crown sovereignty: the first over the 'Northern Island' by cession, and the second over the islands of New Zealand, including the 'Southern islands' (that is, the 'Middle' Island and Stewart's Island), as well as the Northern Island. It was later amended to clarify that sovereignty over the South Island and Stewart Island was based on discovery.

16 June 1840: The Legislative Council of New South Wales passed an Act extending the laws of New South Wales to New Zealand; the ordinance provided that 'all Laws and Acts or Ordinances of the Governor and Legislative Council of New South Wales which now are or hereafter may be in force within the said Colony shall extend to and be applied in the Administration of Justice within Her Majesty's Dominions in the said Islands of New Zealand so far as the same can be applied therein, any Law usage or custom to the contrary in anywise notwithstanding'.[7]

7 August 1840: The New South Wales Continuance Act 1840 (UK) was passed by the British Parliament. It extended the provisions of the Australian Courts Act 1828 that provided for the administration of justice in New South Wales and Van Diemen's Land.[8] The New South Wales Continuance Act provided that the Queen might, by Letters Patent, lawfully erect any islands that were then or might in future be dependencies of the colony of New South Wales into a separate colony or colonies. It also provided that the Queen might lawfully appoint a Legislative Council for any such new colony. This was the Act under which the Queen would issue the Letters Patent of 16 November and 24 November 1840.[9]

2 October 1840: Hobson's May proclamations were published in the London *Gazette* to secure international recognition of the sovereignty of the British Crown over New Zealand.[10]

9 December 1840: Secretary of State Lord Russell sent a covering dispatch to Hobson enclosing three key instruments dated as follows: 16 November 1840, Letters Patent signed by Queen Victoria (the Charter) erecting New Zealand into a separate colony; 24 November 1840, Letters Patent appointing Hobson the first Governor of the colony of New Zealand, and its Commander-in-Chief; 5 December 1840, the Queen's instructions issued under the royal signet and sign manual for the guidance of the Governor and his successors in their administration of the Government.[11]

3 May 1841: The Charter was publicly read and proclaimed in New Zealand. Hobson issued a proclamation declaring his assumption of the administration of the Government as Governor and Commander-in-Chief; and proclaiming also the Queen's appointment of an Executive Council and a Legislative Council.[12]

By means of these, the new Governor was authorised to appoint an Executive Council of permanent officials (designated in the Secretary of State's covering dispatch as the Colonial Secretary, the Attorney-General, and the public treasurer) to advise and assist him in administration of the Government. The Governor was also authorised to appoint judges and justices of the peace.[187] A small, nominated Legislative Council was to be established, comprising the Governor and not fewer than six appointed members (three of whom were his permanent officials). The nominated Legislature had the power to enact laws and ordinances 'for the peace, order, and good government' of New Zealand.[188] New Zealand ordinances would replace those of the New South Wales Legislative Council. The Governor had the sole right to introduce topics for debate and to propose laws or ordinances. Laws enacted were not to be repugnant to the laws of England and had to comply with any instructions issued by the Queen in Council. All laws passed were subject to the Queen's confirmation or disallowance.[189] Professor Jeremy Finn has emphasised the 'cardinal fact of British colonial legal history is that the ultimate power in regard to legislation did not rest with the colony but with the British Government'. The power was not used all that often, but colonial draftsmen were always mindful of it. Statutes could be disallowed on a range of grounds, principally repugnancy to English law, or if a Governor had assented to a law in breach of his general instructions.[190] The expenses of the new civil administration of the colony were to be met by receipts from land sales and the customs (that is, by revenue raised entirely within the colony); which would initially be supported by a British parliamentary grant.[191] Separate instructions were issued to the Governor by the Lords Commissioners of Her Majesty's Treasury, and to the treasurer, for the conduct of the colony's financial affairs, the care of public moneys, and the keeping of public accounts.[192]

The Governor reported to London that on 3 May 1841 he had publicly read and proclaimed the Charter providing for the administration of the colony 'with all due solemnity, in the presence of the civil and military officers of this government and a large concourse of Europeans and New Zealanders'. He had proclaimed his own appointment by the Queen as first Governor and Commander-in-Chief, and issued two further proclamations which announced, respectively, the separation of the territory of New Zealand from New South Wales, and the appointment of the Executive and Legislative Councils.[193]

The first meeting of the Legislative Council began on 24 May 1841; its second in December 1841, by which time William Swainson (Attorney-General) and William Martin (Judge of the Supreme Court) had arrived in Auckland.[194] Swainson drafted much of the early legislation and guided it through the Council, providing for the machinery of justice in a series of ordinances constituting a supreme court, county courts of civil and criminal jurisdiction, and a jury system.[195] This completed the establishment of the initial governing infrastructure of the new colony, as the British government planned it.

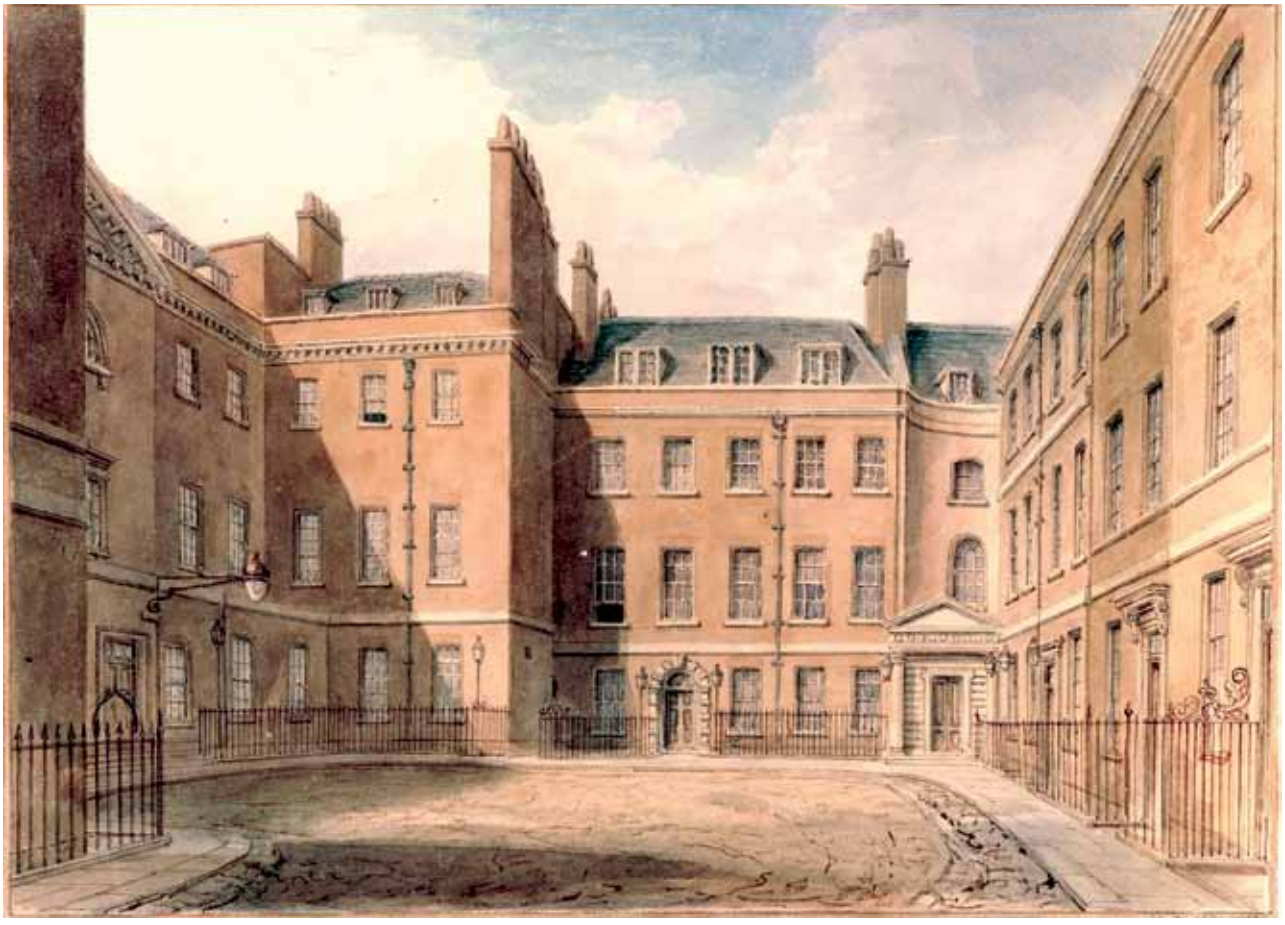
(c) How was the treaty understood in the context of international law at the time?

We stated in our stage 1 report that the history of British colonisation of territories for settlement in which 'the sovereign capacity of the indigenous inhabitants was recognised' had established clear principles about how sovereignty was to be acquired and a colonial Government established. These principles, the Crown's expert witness Dr McHugh argued, were considered to be binding on the Crown.[196] This was because the authorities saw it as a legal necessity, stemming both from long-standing British imperial precedent, and the 'scope of *jus gentium*, the law of nations'.[197]

Legal writers have considered this question in the broad historical context of the Crown's dealings with indigenous peoples over time, and have examined the importance it placed on the rules of international law. Well before 1840, Dr McHugh argued, 'international law recognized the juridical capacity of tribal societies to enter into treaties related to the powers of government (kawanatanga) in their territory'.[198] In his evidence to us, Dr McHugh emphasised the continuity in British practice evident in its response to both he Whakaputanga and its entering into the Treaty.[199] In his published works, he has discussed in greater detail the origins of what he sees as a major change in Britain's conduct of its relations with 'aboriginal' peoples from the end of the Seven Years War with France (1756 to 1763). Emerging from the war as the dominant European power, with expanding imperial interests which brought it into more frequent contact with non-European societies, Britain was influenced by the ideas of the Swiss jurist Emmerich de Vattel. Vattel's work *Le Droit des Gens* (1758) expounded a law of nations based on independent and equal state sovereignty. He argued that all nations, no matter how small, are independent and equal. In theory, no nation could lawfully interfere with another without consent, regardless of their relative power. His definition of nations or states was wide enough to include most non-Christian and tribal societies. A weaker state might place itself under the protection of a stronger one, but without divesting itself of its right to self-government and its sovereignty.[200] Vattel's work rapidly became influential in the conduct of imperial practice among European states, including Britain (it was first translated into English in 1760).

British imperial practice in respect of the relations between nations was affirmed and influenced by Vattel. In our stage 1 report. we cited Dr McHugh on the evolution over time of British adaptation to local circumstances when it came to applying their authority. But 'wherever the British went they remained wedded to the belief that their relations with other peoples had to be legitimated.' Dr McHugh emphasised that the British almost invariably made treaties 'whenever and wherever their empire went'.[201] In the latter part of the eighteenth century, Britain 'willingly treated as sovereign any non-Christian polity enjoying a perceptible degree of political organization'; that is, societies with rulers or leaders with whom negotiations could be conducted. Such societies were sovereign according to Vattel's criteria. There was a great increase in British treaty-making in the East Indies, in North America (pre-independence), as well as Africa, where over 100 treaties and formal agreements were entered into with various tribes in the period from 1788 to 1845. Treaties were also made over much of the same period with Malaysian, Arab, and Persian Gulf polities. Post-independence, the United States made its own treaties with independent tribes over the next century.[202]

Tom Bennion has pointed to treaties made by other western powers in the Pacific with island polities. France made four treaties with Hawaii between 1837 and 1846; Britain six between 1843 and 1869; the United States made five. The United States made a treaty with Tahiti in 1826 with 'the King, Council and headmen' of Tahiti;[203] France signed an agreement with the government and Queen of Tahiti in 1838. Pacific treaties, Bennion suggested, 'look like valid agreements in nineteenth century international law'. In each case, the parties to the treaty 'are clearly identified as entities of international standing, capable of entering into treaty obligations'.[204] The treaties dealt with matters of international law, not private law, he stated, and in subject matter were similar to treaties concluded between colonising powers. Some were treaties of cession. Bennion added that it is clear from the seriousness with



The old Foreign Office in Downing Street, London, better known as the Colonial Office, was headed by the British Secretary of State for War and the Colonies, assisted by a small experienced staff. Governors in New Zealand regularly reported to and were issued instructions by British Secretaries of State.

which the colonising powers viewed these treaties that 'unquestionably, they were intended to be enforceable amongst themselves.'[205]

In our stage 1 report, we emphasised that:

> a consistent thread of British policy throughout this entire period was that any form of jurisdiction established in New Zealand would require the consent of Māori, who were recognised as possessing some form of sovereign capacity.[206]

The British consistently expressed the view that, in achieving their objectives, they had what Lord Glenelg (Normanby's predecessor as Secretary of State for War and the Colonies) called 'no legal or moral right to establish a Colony in New Zealand, without the free consent of the Natives, deliberately given, without Compulsion, and without Fraud.'[207]

The British recognition of an independent New Zealand state was reiterated in Lord Normanby's official

instructions to Hobson on 14 August 1839, which acknowledged (albeit with qualifications) 'New Zealand as a sovereign and independent state'[208]

The New Zealand Company would challenge this position, arguing in a letter to Lord Palmerston, the Foreign Secretary, dated 15 November 1839, that the British already had sovereignty. (It cited Cook's taking possession for the Crown in 1769 and Busby's appointment, among other reasons.) Lord John Russell rebutted their view (on the advice of Colonial Under-Secretary Sir James Stephen) the following March, advising Palmerston of the reasons Britain did not have sovereignty:

> that the British Statute Book has, in the present century, in three distinct enactments, declared that New Zealand is not a part of the British dominions; and, secondly, that King William IV made the most public, solemn, and authentic declaration, which it was possible to make, that New Zealand was a substantive and independent State.[209]

Despite all this, the reception of the Treaty of Waitangi in England might be described as low key. Hobson sent a copy of it (in English) to Governor Gipps in a dispatch composed over 5 and 6 February 1840, and Gipps enclosed both documents in his own dispatch to Russell dated 19 February 1840.[210] The dispatch was received in the Colonial Office on 9 July 1840, where confirmation of the 'cession' by Māori chiefs aroused some interest – and quite some relief. The British government was still under some pressure from New Zealand Land Company supporters, dissatisfied with the Government's colonisation policies and its failure to assert sovereignty on the basis of Cook's 'discovery' of the country; they had secured the appointment of a Select Committee to examine these issues in July.[211] An internal Colonial Office minute by Stephen noted that Gipps's dispatch had arrived 'very opportunely' and seemed to prove,

> if proof were wanting, how much wiser was the course taken of negotiating for a Cession of the Sovereignty, than would have been the course of relying on the proceedings of Captain Cook or the language of Vattel in opposition to our own Statute Book.[212]

In other words, historian Dr Donald Loveridge added:

> those who argued that the time required for negotiations for cession would place British interests in the Islands in danger – the New Zealand Land Company and its supporters, among others – had been proven wrong.[213]

One further minute was apposite, that of Lord John Russell: 'The English & Natives both rely on our good faith.' Otherwise, there was no reference in the Colonial Office minutes to the substance of the treaty. The dispatch was designated to be printed for the New Zealand Committee of the Commons soon afterwards, and this was done by the House of Commons on 29 July 1840.[214] Lord Russell replied to Gipps on 17 July, expressing the Government's approval of his measures, and of Hobson's carrying them into effect.[215]

Russell had more to say about the significance of the treaty in his instructions to Hobson of December 1840. Noting the 'progress' of Māori and thus their special claims to the protection of the Crown, he pointed out:

> In addition to this, they have been formerly recognized by Great Britain as an independent state; and even in assuming the dominion of the country, this principle was acknowledged, for it is on the deliberate act and cession of the chiefs, on behalf of the people at large, that our title rests.[216]

Māori chiefs, therefore, were clearly deemed to have the legal and political capacity to enter into an agreement which was 'valid on the international plane', as eminent international lawyer, Ian Brownlie, put it. 'Moreover', he stated,

> there is evidence that, in the decade prior to the conclusion of the Treaty, the British Government conducted itself on the basis that relations with the Māori tribes were governed by the rules of international law.[217]

The British regarded Waitangi as a 'real treaty'.[218] Professor Brownlie, Sir Kenneth Keith, and Dr McHugh are among contemporary writers who have rejected the 'orthodox' view, based on 'euro-centric, mono-cultural and paternalistic' rules of public international law, to use Professor Philip Joseph's words, by which only 'civilised' peoples could exercise rights of state sovereignty.[219] It is their view that the practice of European states before 1840 supported the international capacity of tribal societies, and that their entering into treaties with the leaders of these societies was an 'entirely normal' practice in the first half of the nineteenth century.[220] Professor Brownlie stressed the irrelevancy of subsequent developments in international law doctrine that denied treaty-making capacity to what were described as 'Native Chiefs and Peoples'. What mattered was 'the principles of international law prevailing at the material time'.[221]

Thus, the British government entered into a treaty at Waitangi because international law at the time recognised that Māori had that capacity. It was also considered that such a move would strengthen recognition of the sovereignty of the British Crown over New Zealand. The historian Professor Alan Ward suggested an important concern for the British in their decision to negotiate a treaty was the likely reaction of France and the Americans, whose nationals – like Britain's – had also been buying land from Māori in preceding years. It seems that Stephen, despite his staunch defence of Britain's recognition of New Zealand as an independent state (as cited earlier), was also susceptible to the argument that by 'selling' vast tracts of land, Māori may have 'divested themselves of any real sovereignty they had possessed'. Ward concluded that the British authorities decided they 'would be in a stronger position politically, to investigate pre-1840 land purchases, including those of French and American citizens, if the chiefs ceded sovereignty to the Crown'.[222]

This decision was certainly vindicated by the response to the British assertion of sovereignty of the French, who were interested at the time in establishing a sphere of influence in the south Pacific. A small band of colonists from the Nanto–Bordelaise Company, protected by a French naval corvette, arrived in New Zealand in July 1840 to settle on land they claimed to have purchased from Māori at Akaroa two years earlier. The leader of the expedition, Captain Lavaud, called at the Bay of Islands where he met Hobson and learned of the British annexation of the whole of New Zealand. Initially, he thought that the British claim to the South Island by discovery was weak in international law; and he hoped that the island – or at least part of it – might yet be saved for the French. But that hope, according to Dr Peter Tremewan, was dashed when Lavaud found that the treaty had also been signed by southern chiefs.[223] Good relations between Hobson and Lavaud seem to have allowed an amicable solution to be reached in Akaroa, which recognised the twin realities of the arrival of French colonists and the assertion of British sovereignty, while preserving – at least until the French and British governments could reach agreement on New Zealand's colonial status – the dignity of the French leader and his authority over his people. Lavaud neither challenged nor recognised British sovereignty, while Hobson sent a man-of-war (whose French-speaking captain had been the interpreter at his meetings with Lavaud) and two magistrates to provide an official British presence in Akaroa when the French colonists landed.[224] The French Chamber of Deputies did later debate the validity of British sovereignty in 1844, but the status of the French settlement at Akaroa was finally resolved when the Nanto-Bordelaise company wound up and sold its claim to the New Zealand Company in 1849.[225]

The first recognition by an international tribunal that the Treaty of Waitangi constituted a cession to Great Britain would follow in 1854. Drs McHugh and Palmer have both noted an arbitration case between Britain and the United States, heard between 1853 and 1855 following a claim by American firm U L Rogers and Brothers.[226] The claim, for return of customs duties assessed on cargoes of rum landed in the Bay of Islands in 1840 and 1841, was arbitrated by an international commission, the 'London Commission'. The British commissioner's opinion (1854) was that 'it is proved beyond all doubt that the British sovereignty [acquired by cession from Māori] of New Zealand

was assumed and declared in the month of February, 1840'. The American commissioner did not deliver a judgment but dissented from the British commissioner's opinion – though it seems only on the question of the amount of compensation to be awarded.[227]

For Māori, however, recognition of the independence of New Zealand under their authority and of their capacity to enter into the treaty might be a two-edged sword. For what was the effect at international law of implementing a treaty deemed a treaty of cession? Legal writers have pointed out that by contemporary international law, if Māori exercised this right, 'the international obligation they entered into . . . was the cession of sovereignty'. As public law expert Dr Matthew Palmer explained, this meant:

> Any conditions to the cession . . . are unable to be enforced under international law since the ceding party no longer has legal status internationally – they are no longer sovereign. On that basis, hapū had, and have, no standing at international law to enforce the Treaty of Waitangi as a treaty of cession.[228]

More specifically, Brownlie stated that, by the Treaty of Waitangi,

> [the] separate international identity of the Confederation of Chiefs was extinguished and the procedure of implementation of the reciprocal promises was transferred from the plane of international law to the plane of internal public law.[229]

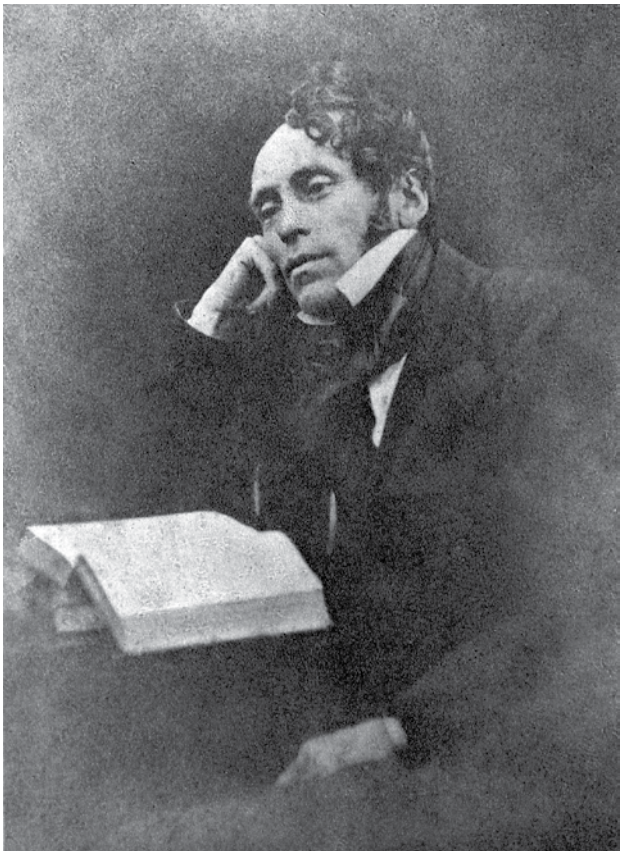
And, precisely because Britain and the United States had recognised Māori as possessing sovereignty in New Zealand *before* 1840, the Treaty was drafted (in English) as a treaty of cession. Accordingly, the United States and France eventually recognised sovereignty in New Zealand as being held by Britain, rather than remaining with individual Māori hapū. At international law, this meant that, though one or more Māori states might continue to exist, 'they were not treated as having that status'.[230] By signing te Tiriti, Māori were deemed to have lost their sovereignty, despite the Queen's guarantees of their tino rangatiratanga. As Palmer explained, 'an effect of the implementation of a treaty of cession is that the party ceding sovereignty ceases to exist in the international sphere'.[231] (See section 4.7.)

Yet, despite the strongly worded statements of British Ministers and bureaucrats in 1839 and 1840 about the importance of securing Māori consent to Crown sovereignty, it became evident only a couple of years later that there was some doubt among senior New Zealand officials as to whether the Crown had in fact secured the Māori consent upon which it had insisted. This led to the British government explaining its position in no uncertain terms, and closing the discussion. Because of its importance to our understanding of the Crown position, we include it here.

(d) The Swainson assertion of incomplete British sovereignty and the British government's rebuttal

The Crown's position in this inquiry is that its sovereignty over New Zealand was established as a matter of law from 2 October 1840, when Hobson's proclamations were published in the London *Gazette*. During 1842, however, colonial officials questioned whether that was in fact the case. More particularly, they questioned whether the Crown could assert its sovereignty over Māori who had not signed the treaty, or had signed without intending to give up their own authority or laws. The Colonial Office responded with a categorical statement: because the Queen had proclaimed her sovereignty, it was not now open to question. We consider this episode in some detail because of the light it sheds on both contemporary qualms among New Zealand officials about the extent of Māori consent to a cession of sovereignty, and on imperial sensitivities to this question.

The context which sparked the debate among New Zealand officials, including the Chief Protector of Aborigines, George Clarke senior; the Attorney-General, William Swainson; and the Acting Governor, Willoughby Shortland,[232] involved separate disputes in the Bay of Plenty. The first involved Taraia, chief of Ngāti Tamaterā of Hauraki, and his attack on a Ngāi Te Rangi settlement near Tauranga. Officials debated whether Māori should be left to continue customary feuds, and it was decided to try to mediate rather than to arrest Taraia. In a strong



William Swainson, who was the Attorney-General of New Zealand from 1841 to 1856. Swainson and other colonial officials questioned whether the Crown could assert sovereignty over Māori who had not signed the treaty or had signed without intending to give up their authority.

assertion of tino rangatiratanga, Taraia told Shortland 'that the Governor was no Governor for him or his people and that he had never signed the Treaty nor would he acknowledge its authority'.[233] Ultimately however, he offered to give up fighting if the Governor would send some soldiers to protect his district.[234] But five months later, Ngāti Whakaue of Maketū also attacked Ngāi Te Rangi. Shortland proposed to send troops this time, as further hostilities seemed imminent. At this point, he received a protest from the Protector and a letter from the Attorney-General 'expressing doubts as to whether the natives of Maketu came within the operation of British law'.[235]

Swainson's position, which he argued forcefully, was that Great Britain had acquired by treaty 'the sovereignty over a portion of [New Zealand] only'. He pointed to the refusal of 'many influential chiefs in various districts' to cede their sovereignty; to the fact that many important districts had never been visited; and also to 'constantly occurring' cases 'in which powerful chiefs are found, who, in the most indignant manner disclaim any acknowledgement of the Queen's authority'. He added that Major Bunbury had found the 'natives' of the southern island to be 'intelligen[t] and enterprising', and quite misunderstood by the Government when it decided to proclaim sovereignty over their island by discovery. In Swainson's view, given the stated determination of the Crown to obtain the 'intelligent consent' of Māori before acquiring sovereignty, 'those only who have acknowledged the Queen's authority . . . can be considered British subjects, and amenable to British law'. 'As regards the aborigines', he concluded, 'our title to the sovereignty over the whole of New Zealand appears to be incomplete'.[236]

Chief Protector Clarke, who appeared before the Executive Council in its two-day deliberation on the issue, gave written answers to questions put to him. Asked how far the various tribes acknowledged the Queen's sovereignty, he replied:

> The natives alone who signed the treaty acknowledged the Queen's sovereignty, and that only in a limited sense, the treaty guaranteeing their own customs to them; they acknowledge a right of interference only in grave cases, such as war and murder, and all disputes and offences between themselves and Europeans, and hitherto they have acted upon this principle. The natives who have not signed the treaty consider that the British Government, in common with themselves, have a right to interfere in all cases of disputes between their tribes and Europeans, but limit British interference to European British subjects.

And in answer to a further question, he added:

> In all my communications with the natives I have been instructed to assert, and have always asserted, that they are British subjects, and amenable to British authority, in which very few, even of those who signed the treaty, would acquiesce, save in matters relating to disputes or depredations upon each other (viz, differences between Europeans and natives).[237]

Shortland, in his dispatch to Lord Stanley, the Secretary of State for War and the Colonies, repeated a further answer given by Clarke to the Executive Council: that it would be 'destructive to the interests of the natives and the prosperity of the colony' to admit that the tribes of New Zealand were not British subjects, and not amenable to the colony's laws, as it would open the way for 'designing men' to embarrass the Government.[238] But Shortland did not agree with Clarke and said that the Government should make 'honourable' attempts to persuade tribes who had not ceded sovereignty to do so now, 'as this would be an admission of the fact, and no more effectual means could be taken to disseminate it'. In other words, it would amount to an admission on the part of the Crown that it had not yet secured cession of sovereignty from those tribes it approached, and that it needed to complete the task it had set itself. Nor did Shortland agree with the views of the Attorney-General; and he sought instructions from Stanley.[239]

Stanley's response, when it came, was blistering:

> It is my duty to deny, in the most unequivocal terms, the accuracy of any opinion . . . which may deny Her Majesty's sovereign title to any part of the territories comprised within the terms of the commissions issued under the Great Seal of the United Kingdom for the government of New Zealand.[240]
>
> Throughout the whole of his discussion of this subject, Mr Swainson makes no allusion to the terms of those instruments. The omission is very remarkable. If accidental and inadvertent, it is not creditable to Mr Swainson's accuracy. If he omitted all allusion to those commissions, as being irrelevant or unimportant to the question in debate, then the omission is hardly reconcileable with his possession of a just view of the history and constitution of the British colonial settlements.
>
> I regard the Royal Commissions for the government of New Zealand as ascertaining beyond all controversy the limits of Her Majesty's sovereignty in that part of the world – that is, I hold that it is not competent for any subject of the Queen's to controvert the rights which in those commissions Her Majesty has solemnly asserted.
>
> I do not think it necessary or convenient to discuss with Mr Swainson the justice or the policy of the course which the Queen has been advised to pursue. For the present purpose, it is sufficient to say that Her Majesty has pursued it. All the territories comprised within the commissions for the government of New Zealand, and all persons inhabiting those territories, are and must be considered as being to all intents and purposes within the dominions of the British Crown.[241]

This was, in our view, a remarkable discussion (though cut short by the reprimands from London). Some two years after te Tiriti was signed at Waitangi, the Attorney-General of New Zealand was expressing concern that the Crown had not in fact obtained the consent of Māori throughout all of New Zealand, and therefore had not met its own test for proclamation of sovereignty over those people and territories. The Chief Protector (Clarke) stated that, for the rangatira who signed the treaty, acceptance of their status as British subjects and their allegiance to the Crown was conditional on the Crown fulfilling its undertakings in the treaty. In particular, Clarke specified the guarantee to Māori that they would continue to live according to their own customs. Clarke said very few Māori, even those who signed the treaty, would agree that they were British subjects and amenable to British authority. But the Secretary of State was not prepared to consider the arguments of Swainson and Clarke at all. The Queen's sovereignty could not be denied; the act was done.[242]

The issue, we note, was raised by two key New Zealand officials: the senior legal official, and the Chief Protector. To them it raised doubts about whether the Crown had passed its own key test before asserting sovereignty; and doubts, too, about whether the Crown was upholding its treaty commitments.

In his examination of British intervention in New Zealand, historian Peter Adams commented that the

Colonial Office 'had not given much thought to the matter of unanimity' but considered that the fact that some chiefs might cede their sovereignty, and others retain it 'should not have seemed so dangerous'. Hobson himself had based his factories plan of 1837 on it, and it had been the basis of Colonial Office thinking until at least May 1839.[243] But when it came to the point, the attempt of some chiefs to stay outside British sovereignty 'proved unacceptable to the civil servants and politicians'.[244]

(e) Conclusion: The importance to the Crown of the treaty in its processes of asserting sovereignty and establishing a colonial Government in New Zealand

We have reviewed the processes by which the Crown asserted its sovereignty over New Zealand, annexed the islands to the colony of New South Wales, and finally erected New Zealand as a separate Crown Colony. We return here to the question of the significance to the Crown of the treaty it signed with Te Raki chiefs to secure their consent to its sovereignty. This is a question that goes to the heart of British intent in annexing and assuming the government of New Zealand.

At the time when the Colonial Office was considering the unwelcome views of Attorney-General Swainson on the extent of Māori consent to the treaty, Under-Secretary James Stephen wrote an internal note to his colleague G W Hope, on which Stanley's response (quoted earlier) was based. Dr McHugh noted Stephen's criticism of Swainson, who:

> wholly omits to notice that by three separate Commissions under the Great Seal of the United Kingdom, and by every other formal and solemn act, the Queen has *now* publicly asserted Her Sovereignty over the whole of the New Zealand Islands. [Emphasis in original.][245]

'By 1843', Dr McHugh stated, 'the thoroughgoing sovereignty of the Crown was incontrovertible.'[246] That is, Stephen saw sovereignty as a process, which by 1843 was 'surely complete'. We take him to mean that in the view of the Colonial Office, what was crucial were the Queen's own formal acts.

Dr Palmer, in his study *The Treaty of Waitangi*, has contrasted the significance of the treaty in British policy, and international law, with its significance at British law. In 1840 he suggested, it is clear that:

> British government practice, British government interpretation of international law and other sources of international law were all consistent with the stated British recognition of sovereignty residing with . . . hapu. This recognition of New Zealand sovereignty was a reason, in terms of government policy, and international law at the time, for Britain to treat with Māori for cession of sovereignty.[247]

Dr Palmer emphasised that British Colonial Office officials were aware that Māori 'were not a single monolithic nation' yet still sought their binding agreement. In his view:

> Māori and British colonial belief and practice at the time of the Treaty of Waitangi were based on the view that Māori rangatira held and exercised sovereignty in New Zealand on behalf of their hapū.

This included the capacity to enter into binding international legal obligations.[248] This recognition of New Zealand sovereignty, he stated, 'was a reason, in terms of government policy, and international law at the time, for Britain to treat with Māori for cession of sovereignty'.[249]

But Dr Palmer argued that the status of the treaty at British law was quite different from that accorded it in British government policy and at international law. It was sufficient for British courts that the British Crown had asserted its sovereignty over New Zealand. The courts would not

> second-guess the executive branch of government in exercising the Queen's prerogative, or Parliament in conferring statutory powers, in defining the territory over which Britain did or did not have sovereignty.[250]

Thus, although the treaty was a 'necessary precondition, in terms of policy and international law, to the British

acquisition of sovereignty', Dr Palmer wrote (and this was evident in Hobson's proclamation), in British law, it was not the basis for the Queen's assertion of sovereignty:

> as far as imperial British law was concerned, the legal authority for Britain exercising sovereign power in New Zealand rested on the royal assertion of sovereignty. This was achieved by the Charter of 16 November 1840 that was issued by the Queen in the form of Letters Patent under the authority of the New South Wales Continuance Act passed on 7 August 1840. Neither the Act, nor the Charter nor even the accompanying Royal Instructions to Hobson as Governor referred to the Treaty of Waitangi. As far as British law was concerned, once sovereignty was asserted by the executive, in accordance with a British statute, that was sufficient authority for the exercise of such sovereignty.[251]

These pronouncements clarify the position at British law. Despite all the political emphasis on securing Māori consent to British sovereignty, in the end the treaty was not considered part of the constitutional process by which the British Crown asserted its sovereignty. It was, we might say, written out of the official British script at that point. Adams described the treaty as a 'constitutional and legal nullity'. He added:

> It seems that Britain had it both ways. If the conditions of a fair cession had not been fulfilled it did not matter: sovereignty had been asserted, and anyway it was up to the British Government to decide whether the conditions had been fulfilled![252]

The Treaty of Waitangi reflected years of imperial practice. But not many treaties led to the establishment of a Crown Colony. We have outlined these steps in some detail because they highlight the gulf between Te Raki Māori and British understandings of the treaty. Te Raki leaders waited to see how the Crown would engage with them on the basis of their new agreement. The British, however, declared sovereignty over the whole country and then at once began to establish their own government according to their own protocols without further reference to Te Raki chiefs. With great speed – despite their huge distance from London, and despite the very small number of officials who initially arrived in New Zealand representing Her Majesty's government – they announced that the islands were British.

And despite the doubts raised in New Zealand by key Crown officials in the immediate post-treaty years as to whether that sovereignty was complete, the British government, according to Dr Palmer, was entirely certain that it was. The government's position was entirely at odds with the views of Te Raki Māori, as is clear from our conclusions in the stage 1 report.

(2) *In light of Hobson's understanding of what Te Raki Māori had consented to when they signed te Tiriti, was it reasonable for him to proclaim Crown sovereignty over New Zealand and thus embark on the establishment of a government with authority over Māori?*

We have already concluded that there was no cession of sovereignty to the Crown by Te Raki rangatira in 1840. The question to be considered here is whether Hobson, the Crown's representative, had reason to believe Māori had consented to a cession. And was it therefore reasonable that he proceeded to proclaim Crown sovereignty and thus embark on the establishment of Crown Colony government in New Zealand, in accordance with his instructions?

We begin by reiterating the British government's view, expressed in pre-treaty statements and in Normanby's 1839 instructions to Hobson, that the Crown could proclaim its sovereignty over New Zealand only after obtaining the free, informed consent of rangatira. Yet we note the injunctions in Normanby's instructions to Hobson of August 1839. Normanby admitted the possibility that Māori might not be able to understand the exact meaning of the agreement, owing to their ignorance of a treaty's inherently technical terms, as he put it. Hobson must be mindful of this and attempt to overcome their suspicion by the 'exercise . . . of mildness, justice, and perfect sincerity in your intercourse with them'. And he must give a full account of British intentions: 'You will, therefore, frankly and unreservedly explain to the natives, or their chiefs,

the reasons which should urge them to acquiesce in the proposals you will make to them.'[253]

Returning to the Tiriti negotiations themselves, we are struck again both by what Hobson said, and what he did not say. His speech at Waitangi, on such a crucial occasion, was brief. At treaty signings, Te Raki Māori consent to any assertion of Crown authority was dependent on understanding, and understanding was dependent on the explanations given of Hobson's speech to rangatira both at the time, and at the later hui by the missionaries in te reo. In turn, the British government was dependent on Hobson for his accounts of the extent of Māori consent to the treaty (we return to this point later.)

To what extent did Hobson believe he had met this requirement? Did he leave Waitangi and Hokianga believing that he had fully and 'frankly' explained the powers that the Crown intended to exercise? Did he believe that he had fully and clearly explained that the Crown would have power to govern over Māori; that they would be subject to English law and law enforcement; and that the Crown would assume new powers over their lands? We concluded in our stage 1 report, from the considerable evidence before us, that he failed to explain those powers with sufficient clarity and frankness for rangatira to have understood the full implications of British sovereignty. Hobson further failed to communicate the intention of the British to assert their overriding authority over law-making and law enforcement;[254] rather, he and his representatives presented the treaty as a means of protecting Māori rights and interests, and preserving Māori independence, authority, and property. We reiterate some of that evidence here.

According to the account of Felton Mathew (the Acting Surveyor-General, who could follow only what was said in English), after Hobson spoke, the treaty was read to the chiefs:

> by which the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same.[255]

Hobson's report to Gipps of 5 February stated that, in his explanations to the chiefs, he had 'assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction'.[256] Hobson's letter to Bunbury two months later added a further explanation he had given the chiefs:

> I offered a Solemn pledge that the most perfect good Faith would be kept by Her Majesty's Government that their Property their Rights and Privileges should be most fully preserved.[257]

According to the French priest Father Louis Catherin Servant, Hobson also told the chiefs they would 'retain their powers and possessions'.[258] Henry Williams, writing to Bishop George Selwyn in 1847, described how he had explained the treaty to rangatira at Waitangi, also stressing the guarantee of their 'full rights as chiefs, their rights of possession of their lands, and all their other property'. It seems clear that Williams also stressed that the Queen wished to establish a 'settled government, to prevent evil occurring to the natives and Europeans who are now residing in New Zealand without law'.[259]

According to an account of Hobson's speech by the missionary William Colenso, the Queen was anxious to 'restrain' her subjects who had settled among them. He, Hobson, had been sent as Governor to 'do good' to the rangatira and their people, but would not be able to do so until the chiefs consented and signed the treaty.[260] At his hui at Māngungu, Hobson took a similar approach, telling the rangatira that they would be 'stripped of all your land by a worthless class of British subjects' unless he was given the authority to deal with them under English law.[261]

On the other hand, absolutely no explanations were offered to Te Raki rangatira about the impact of the treaty agreement on their own authority – even though it was evident in his meetings that this was a major concern to them. We pointed to the key difficulties that Henry Williams faced in translating the treaty: his translation of

'sovereignty', and also 'civil government' as 'kawanatanga' (government, or governorship), and his avoidance of the term 'mana', without which, in our view, it was difficult to give a straightforward explanation of 'sovereignty'. (We refer readers to our detailed discussion of the treaty texts and negotiations, and various interpretations of them, in chapters 7, 8, and 9 of the stage 1 report.) We concluded that there was an agreement between Te Raki rangatira and the Crown's representatives, as is evident from the similarities between the Māori text, on the one hand, and the verbal explanations and assurances given by the missionaries and Hobson on the other. But this was despite the fact that Hobson and his agents concealed the full intentions of the British. As we put it:

> . . . Hobson laid no emphasis on law-making and law-enforcement, which – after all – was the overriding intention of the British, concentrating instead on acquiring control over British settlers. . . . As such, he omitted to mention the very powers Britain then claimed it had obtained: the authority to make and enforce law for all people and over all places in New Zealand.[262]

As a result, we add, Te Raki rangatira were unaware of the impact Crown sovereignty would potentially have on every aspect of their lives. They did not know how it would affect their own relationship with, and ownership of, their territories: their lands, rivers, lakes, and the takutai moana. They did not know about radical title or the control it gave the Crown over the status of their land under the new law. They did not know that the Crown would seek to buy large tracts of their land and would have a monopoly over land transactions.[263] There had been no explanation of such a monopoly. Nor is it clear that they could have understood the Crown had a right of first refusal when they offered to transact land – despite the fact that the concern of rangatira about such transactions was evident and that it was well known to the British that Māori were accustomed to conducting their own arrangements with settlers. Nor could it have been clear to the rangatira that the Crown might assume ownership of the foreshore by prerogative right (that is, powers exercised by the monarch alone). They were not aware of the implications of the exercise of Crown sovereignty for their tikanga. They were not aware of the scale of systematic British colonisation that was planned, or the fact that the new settlers would bring with them a strong commitment to their own governing assemblies that would be established by the mid-1850s, and have little respect for what Māori might think or want. They were not aware of the nature and complexity of the English legal system, or of the impending introduction of statute law and the common law (judge-made law, arising from litigation, and based on precedent)[264] which would be applied by the Crown's courts in their country. They were not aware that police forces would be organised to enforce English law.

We noted in our stage 1 report the comment of Crown witness Dr Donald Loveridge that the missionaries 'sought to present the Treaty in the best possible light' and to emphasise the protections available rather than the changes that would come with the new regime. But he also argued that future arrangements for the Government were yet to be decided and that 'the missionaries themselves would have had only a general idea of what shape that regime would ultimately take'. Hobson himself, he added, would not have been able to answer with any confidence Māori questions on (for instance) the land claims process, the Crown land system, and the judicial system. There was, in addition, the problem of the opposition of some settlers who might wish to undermine the land claims investigation process, which doubtless affected the way supporters of the treaty responded when they described it and its probable consequences. Dr Loveridge concluded: 'This is not to say their descriptions were inaccurate, but they probably focused on certain issues at the expense of others.'[265]

We accept that Hobson and the missionaries may have been selective in their discussion of the impact of the treaty because they were anxious to secure Māori agreement, but our view is that the omissions were so significant as to amount to misrepresentation. It may be the case that Hobson could not have answered Māori

questions about how a land claims commission would work (though doubtless he had had some discussions on the subject with Gipps in Sydney); indeed, he had sought more clarity himself on this from the Colonial Office before he left England – without success.[266] But as the Tribunal pointed out in *The Hauraki Report* (2006), there is no evidence that Hobson and his officials explained the 'surplus lands' principle, other than to respond to the clear anxieties expressed about land loss, by assuring the rangatira that 'all lands unjustly held would be returned'.[267] In hindsight, the Tribunal wrote, it would have been 'politic' to make some effort to do so, given the huge land claims pending in some parts of the country (and we add, the great number pending in parts of Te Raki). The silence was filled before long by allegations made by settlers and entrepreneurs that 'the Crown had been devious and, under a guise of offering protection, was in fact grabbing land from Maori and settlers alike. This charge quickly aroused Maori suspicion in Northland'.[268]

More broadly, Hobson was well aware of the nature of the acts of state that he was about to embark on: of the governing institutions he would shortly establish in the new colony, initially as Lieutenant-Governor; of the investigations of settler land claims that were to take place; and of the broad purpose of those investigations – namely, to limit settler grants so that the Crown might itself acquire large tracts of land for the programme of extensive British settlement it was now backing. He also knew the importance the Colonial Office attached to his securing Māori consent to the Crown's exclusive right to negotiate for the 'cession . . . of such waste lands', either 'gratuitously or otherwise', as required for settlers.[269] There is a fine line, it seems to us, between conscious omission and deliberate deception. Either way, if, as it seems, the full message of the Crown's representative was deemed so awkward and unpalatable that it could not be delivered, it must raise questions about the nature of the Crown's proceedings subsequently.

There was another important omission in Hobson's explanations to the rangatira of the significance of the treaty. When he reported his view of the Waitangi signings as being '*de facto* the treaty', he also referred specifically to the significance of the signatures of chiefs of the United Tribes who several years before had put their names to he Whakaputanga (the Declaration of Independence).[270]

It is clear that this was a deliberate move by the Crown's representative (and particularly by the British Resident James Busby) to ensure that cession was made by those who were party to he Whakaputanga. Busby had sent out invitations to 'all the chiefs of the confederation of New Zealand' on 30 January 1840 to meet the 'chief on board sent by the Queen of England to be a Governor for us both' at Waitangi.[271] In the Tiriti text, the note at its foot read:

> Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.[272]

This was recorded in the English text as:

> Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi, and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same [by attaching] our signatures or marks.

In other words, the treaty essentially invoked the wording used in the Declaration of Independence for the decision-making body of the assembly ('The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi').[273] Those chiefs were not signing te Tiriti as individuals, but collectively as the 'Congress assembled'. Dr McHugh noted that Hobson insisted that all northern chiefs be invited, whether party to he Whakaputanga or not,[274] which is not surprising; he wanted as many signatures as possible and was not sure of the extent of

support for the Confederation. In his letter to Bunbury, cited earlier, he would make a point of recording that of 52 chiefs who signed te Tiriti at Waitangi, 26 were 'of the confederation', and constituted a majority of those who signed the declaration.[275]

These are all clear indications of the importance the British government attached to securing the signatures of those who had endorsed he Whakaputanga. It is possible that the number of these signatures is one reason Hobson decided to attach such importance to the Waitangi treaty. Though Normanby did not instruct Hobson to do so, he did refer to the Crown's recognition of New Zealand as a 'sovereign and independent state' (which the Colonial Office often discussed in the same breath as the Declaration of Independence), and the importance therefore of securing the consent of 'the natives' to British governance of the islands of New Zealand.

As Crown counsel explained it, as far as the British were concerned, the treaty brought to an end the Māori sovereignty and independence asserted through the declaration.[276] But there is no record of Hobson mentioning he Whakaputanga at the Waitangi hui. We noted in our stage 1 report that this was a 'striking absence'.[277]

Te Raki Māori viewed the relationship between he Whakaputanga and te Tiriti very differently. The treaty came only a few years since they had asserted their mana and independence. Given the assertions in he Whakaputanga of the chiefs' kīngitanga and mana over the land, as well as their rangatiratanga, and its provisions that 'no one other than the rangatira would have the power to make law within their territories, nor exercise any function of government (kāwanatanga) unless appointed by them and acting under their authority', as well as its request for Britain to protect them from threats to their rangatiratanga, the treaty 'may well have seemed like the application of these provisions'.[278] Hōne Heke would write to Queen Victoria in 1849 that he had been misled by Hobson who had failed to explain that the 1834 flag of the United Tribes would be replaced by a British ensign.[279] It is our view that, given the Crown's own intention was to nullify he Whakaputanga, the onus was on Hobson to have explained that the treaty would replace he Whakaputanga, and to have discussed this with the rangatira.[280] How otherwise could he have expected Te Raki Māori to understand that the authority asserted in he Whakaputanga – the mana and the kīngitanga – would be replaced?

(a) After the Tiriti signings, did Hobson have reason to believe that Māori had not accepted British sovereignty?

Not only did Hobson fail to meet the transparency standard in his negotiations with the rangatira (which Normanby had urged on him), he was not open with Governor Gipps or the Colonial Office either. In his determination to report Māori adherence to the treaty, Hobson was less than forthcoming in his reports. He assured Gipps in his report on proceedings at Waitangi (at once forwarded by Gipps to London with Hobson's copy of the treaty in English), that 'the acquiescence of these chiefs . . . must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island'. Accordingly, he arranged for a 21-gun salute to be fired from the ship.[281]

Hobson also failed to give an accurate report of the proceedings at Māngungu on 12 February 1840, where opposition brewed both on the day of the large treaty hui, and two days later. It is not entirely clear how many Hokianga leaders signed. Hobson himself put the number at 'upwards of 56'; historians have estimated between 56 and 70.[282] Then, on 14 February, according to an account by the missionary Richard Taylor, as Hobson prepared to depart Māngungu, a waka arrived, and a letter was given to his party 'signed by 50 individuals stating that if the Governor thought that they had received the Queen he was much mistaken and then they threw in the blankets they had received into our boat'.[283] Hobson reported that 'two tribes, of the Roman Catholic communion, requested that their names might be withdrawn from the treaty'. His own response was unequivocal: 'I did not, of course, suffer the alteration'.[284] We do not know whether the 50 who signed the letter included all 50 who had signed te Tiriti at Māngungu a couple of days earlier, or simply some of them. Certainly, the letter represented a block of resistance to the treaty signing at Māngungu, and a clear wish on the

The Te Paparahi o Te Raki stage 2 panel during a site visit to Māngungu mission house.

part of two Hokianga hapū that a number of signatures be removed, the significance of which Hobson did not acknowledge in his official report on the outcome that was sent to London. Instead, he declared the sovereignty of the Crown complete in the northern districts: 'I can now only add that the adherence of the Hokianga chiefs renders the question beyond dispute.'[285]

Hobson also failed to clarify in his comprehensive 15 October 1840 report to the Colonial Office the extent of Māori opposition to the treaty in major tribal areas of the North Island. As we saw in section 4.3.2(1), he neither mentioned that senior chiefs in a number of districts had refused to put their names to the treaty, nor that the treaty had not been taken to some districts.[286] His proclamation of sovereignty over the North Island left no room for doubt about the quality of Māori consent to the treaty. It referred to the chiefs' cession of sovereignty as absolute and unreserved – which was certainly not the case in Te Raki – and to adherence of the principal North Island chiefs; also not the case.[287] Hobson had already decided, however, that the Waitangi signings constituted the treaty, and that later signatures would merely be affirmations – although he was aware that there were many more tribal groups in the North Island. In effect, this position allowed him not to worry about non-signing chiefs, and allowed him to misrepresent the extent of Māori unwillingness

to sign to the Colonial Office. James Stephen would note in 1842, when the question of non-signatory tribes was raised by Attorney-General Swainson, that he had no way of knowing whether the 'dissentients' were in fact a minority.[288]

And in the months after February 1840, as we discuss further in section 4.4, Hobson had also been well aware of continuing Māori concern in the Bay of Islands and Hokianga districts about the future of the treaty relationship, and how the Crown might attempt to assert its authority. He had been approached directly by Te Raki rangatira in April who had expressed their misgivings about the treaty, about the arrival of soldiers, and about the Crown's prohibition on private land arrangements.

(b) Conclusion: was it reasonable in the circumstances for Hobson to have proceeded in May to issue proclamations of sovereignty?

We return here to the question of Hobson's authority in making the decision that Māori had consented to British sovereignty. As we noted in our stage 1 report, Dr McHugh explained to us that Hobson was acting under the Royal prerogative when he treated with the rangatira for a cession of sovereignty, and he was therefore given the authority to determine when he had 'discharged his office'. That is, Dr McHugh explained, Hobson was not to meet particular legal requirements or to adjudicate on the quality of consent that was given; rather, the Governor would have approached his task in terms of 'discharge of office' when he judged that he had secured Māori consent.[289] And, in Dr McHugh's view, by making exhaustive efforts to secure Māori consent (even after he had had his stroke), the Governor took this office 'very, very seriously'.[290]

We make two comments on this. First, it seems to us that Hobson was more anxious about dealing with the New Zealand Company settlers at Port Nicholson, who in his view were attempting 'to usurp the powers' vested in him, than he was about gathering more Māori signatures.[291] On hearing news that the Port Nicholson settlers had declared the establishment of their own government, Hobson had acted immediately, issuing the proclamations and bringing the settlers under the Crown's authority. This is not surprising. His instructions placed more emphasis on the need to control British settlers than on ensuring Māori would be subject to the Crown's law-making authority. And, as we have said in the previous section, Hobson had already decided he had his treaty – the Waitangi document – and that more signatures were a bonus. They certainly would serve the purpose of impressing the humanitarian movement in Britain and would allow the Crown to claim legitimacy for its subsequent annexation. Securing signatures on te Tiriti also sent a message to European audiences – notably the French, who (as noted earlier) were sending settlers to the South Island. Our view, however, is that Hobson did not

Lord Normanby, who served as the Secretary of State for War and the Colonies from February to August 1839 and was succeeded by Lord John Russell.

regard additional signatures as essential to securing Māori 'consent'; it was a matter of form, rather than substance.

The second point is that Hobson seems to have relied on the leeway he had in deciding when he had 'discharged his office'. He made a convincing case to the Colonial Office about the extent of Māori adherence to the treaty, and one which was certainly not fully accurate. We might add that he had already shown he was in something of a hurry when he first arrived in New Zealand with his proclamation of 30 January, in which he declared himself Lieutenant-Governor despite having not yet received any cession of sovereignty. We note that Professor James Rutherford, in his study of the treaty and the British acquisition of sovereignty, considered that Hobson thereby departed from both the letter and the spirit of Normanby's instructions, which envisaged him treating with Māori first and then assuming office over lands as they were 'ceded'.[292]

But Hobson's early assumption of the office of Lieutenant-Governor leaves us in some doubt on this point. In fact, we do know that when he reported his taking of the oaths of office to Normanby on 16 February 1840, and offered his respectful and humble congratulations to the Queen on the 'acquisition of a large extent of territory in this country', he added, 'to which, I hope, may soon be added the remaining parts of these islands'.[293] He was already set on extending British sovereignty over the whole of New Zealand.

It is our view that Hobson, who had been sent to secure the sovereignty of the Queen over 'all or parts of New Zealand', early reached the decision that he could and should secure the whole country. The actions of the New Zealand Company settlers in Port Nicholson triggered an immediate response from him. But he had already laid the basis for his proclamations by his decision to regard the treaty at Waitangi as the document of cession. This enabled him to proclaim sovereignty over the North Island on the basis of a cession by Māori. And the Colonial Office was happy to accept his assurances. The Secretary of State was able to reach the comfortable conclusion that Hobson had done his job well. In July 1840, when he received a copy of the Treaty (in English) and Hobson's account of his proceedings, his verdict on them – some months before he knew of the proclamations of sovereignty – was that the negotiations for a cession of sovereignty had been a success.

(3) *To what extent did the Crown make provision for hapū and iwi to continue to exercise tino rangatiratanga, as it established its new system of government and introduced its own law?*

As we set out in our stage 1 report, the treaty provided for Māori and the Governor to exercise distinct but potentially overlapping spheres of influence – the rangatiratanga sphere focused on Māori communities and the kāwanatanga sphere focused on control of settlers and protection from foreign threat. During the treaty debates, Hobson and other Crown representatives made explicit promises to Māori about their sphere of influence. Through the text of te Tiriti they promised that Māori would continue to exercise tino rangatiratanga in respect of their whenua, kāinga, and 'taonga katoa'. During Tiriti debates, Hobson promised that Māori would retain their 'perfect independence' and would continue to live according to their own laws and customs. The question is, how far did these assurances reflect the policies of the Colonial Office as it prepared first to annex New Zealand, and then to establish a Crown Colony there? What policies did Crown ministers and officials contemplate at that time with respect to Māori governance, law, land and resources, and how far did they take account of Te Raki Māori rights?

Hobson was guided at the outset by lengthy instructions from two consecutive Secretaries of State, Lord Normanby and Lord John Russell. The first instructions, Normanby's in August 1839, were issued as Hobson set off for New South Wales to embark on his mission to secure British sovereignty over 'the whole or any parts of' New Zealand.[294] The second, from Russell, was dated 9 December 1840 and addressed to Hobson as the first Governor of New Zealand. James Stephen, the Permanent Under-Secretary at the Colonial Office, had a crucial role in drafting both sets of instructions. Together they illuminate imperial assumptions about the exercise of British authority, and the extent to which Māori were to exercise

authority after they accepted British sovereignty, both within their own communities and in the new government it contemplated establishing.

Lord Normanby set the tone in his outline of the broad concerns of the British government in respect of Māori:

> we acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even to deliberate, in concert.[295]

The limits on British recognition of Māori sovereignty were thus spelt out. Though Māori rights must be recognised, it would no longer be possible for them to maintain their 'national independence', given the circumstances of existing British settlement in New Zealand and the plans of the new colonising body, the New Zealand Association. The fact of impending British settlement dominated the instructions. It meant that the welfare of the 'natives' would best be served by the surrender of their rights to the Crown, and acceptance of British protection and of laws administered by British officials. Tribal government was inadequate and must be replaced. Similarly, British subjects must be 'protected and restrained by necessary laws and institutions' from repeating the same process of 'war and spoliation' that had had such dire impacts on 'uncivilized tribes' as emigration from Christian countries spread. Once the sovereign authority of the Queen had been recognised by Māori, if not over their entire country, at least in those districts 'within, or adjacent to which, Her Majesty's subjects may acquire land or habitations', civil government must be established, for the benefit of both Māori and of British emigrants.[296]

How would this government be established? As we saw in section 4.3.2(1), considerable thought had already been given in Britain to this question, and it had been agreed, both in the Colonial Office and in the House of Lords, that the most appropriate method of governing New Zealand would be through the Crown Colony model. Given the size of the Māori population and the newness of the colony, a local legislative authority must not yet be established. As Normanby put it:

> It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government.[297]

It was impractical to establish legislative, judicial, or fiscal institutions controlled by the settlers. Normanby made it clear that Māori must be protected in the first years of the colony from a representative settler assembly and the possible injustice that might result, while the settlers themselves must be protected from 'calamity' that might result from unregulated interaction with Māori.[298] Dr McHugh has pointed to the history of British imperial policy towards 'aboriginal' peoples as a story of 'centralized control as conducted through the Colonial Office (and its influential Under-Secretaries) . . . and its Governors'.[299] In other words, policy must be kept out of the hands of local legislatures.

At the outset, then, the British government attached considerable importance to balancing the rights of settlers and Māori, but it did not envisage a government representing both peoples. It was focused on protection of Māori interests, rather than their participation in government. Dr McHugh referred in his evidence to Stephen's consideration of the 'thorny question' of Māori representation (given that their proprietary rights, the basis for any franchise, were recognised). Stephen contemplated the possibility of the Crown creating a legislature, but this would have to be a representative assembly, he said, 'which I suppose everyone would agree in pronouncing an absurdity'.[300] To avoid the potential dangers that would arise from a legislature in which only settlers – a small minority of the total population of the islands – sat, there would initially be a largely external government.[301]

In May 1841, Hobson was able to announce his assumption of office as Governor of New Zealand, having received his detailed instructions of December 1840 from Russell, the newly appointed Secretary of State for War

Lord John Russell, who succeeded Lord Normanby as the Secretary of State for War and the Colonies in September 1839 and held this office until 1841.

and the Colonies. These instructions echoed the themes developed by Lord Normanby but provided considerably more guidance on policies that would affect Māori – especially the introduction of English law, and land policy. In both, the assumption was that the Crown would make the decisions on policy and how it would be implemented. There was no expectation that Māori leaders would have any input; the British would decide how far their 'customs' would be tolerated, and for how long; and how far their rights to land would be accepted. Māori authority, at this early stage, seemed barely to be a consideration.

(a) Were Māori law and customs to be recognised?

When Hobson took up his position as the first Governor of New Zealand, Lord Russell's December 1840 instructions urged him to devote his attention to the welfare of the 'aborigines of New Zealand' and their protection from 'many moral and physical evils, fatal to [their] health and life' which generally arose from intercourse between two 'races'. But in the longer term, welfare, evidently, was code for assimilation, and it was more important than preserving Māori law. Hobson was to 'look rather to the permanent welfare of the tribes now to be connected with us, than to their supposed claim to the maintenance of their own laws and customs'. Where there was damaging conflict between tribes, the Queen's sovereignty 'must be vindicated, and the benefits of a rule extending its protection to the whole community must be made known by the practical exercise of authority'.[302]

The instructions to Hobson, Professor of Law Shaunnagh Dorsett has suggested in her study *Juridical Encounters*, reflected evolving ideas about the position of indigenous peoples in the various British colonies. Drawing on and shaping these ideas was the report of the House of Commons Select Committee handed down in 1837 after two years of hearings. Britain, it stated, must rectify the damage done to 'aborigines' in British settlements and protect them in future.[303] The point Dorsett makes is that ideas about the amenability of Māori to British law and toleration of their customs were very much in the minds of imperial officials, colonial administrators, and settlers by the 1840s.[304] As she puts it:

> The exceptional laws of the 1840s were forged over a decade of thinking about exceptionalism, about ways to bring indigenous people to British law, and about how to modify

that law for their amelioration, protection and ultimate legal assimilation.[305]

In general, there was little guidance from the British government on how these various policies should be implemented, or how, if customs led to disputes with settlers, such disputes should be handled. Hobson would be disappointed when he asked for practical advice on how he was to forbid 'intolerable' customs, and how was he to restrain native wars, or protect tribes who were 'oppressed'. Dorsett stated that 'no one was sure which customs were not to be tolerated'.[306] Normanby was not sure how to advise Hobson, though he thought such customs might readily be given up. But if persuasion did not work, such customs 'should be repressed by authority, and, if necessary, by actual force'.[307]

His instructions also distinguished between Māori customs that should not be tolerated (cannibalism, human sacrifice, and infanticide in particular) – customs that were 'pernicious' but better overcome by benign influence than by legal penalties; and customs that were 'absurd and impolitic' but not 'directly injurious', which could be tolerated for the time being, until Māori voluntarily set those customs aside. It was important to address this topic directly, as we referenced earlier, Russell told the Governor, because 'without some positive declaratory law, authorizing the executive to tolerate such customs, the law of England would prevail over [Māori]', which would likely cause Māori 'much distress, and many unprofitable hardships'.[308]

That was a proposal that, despite its framing, seemed to point to some recognition of tino rangatiratanga. But, according to Professor Ward, Russell had watered down the wording of Stephen's original draft which had suggested a declaratory law 'recognising' such customs, and Stephen had intended explicit recognition or codification of Māori customs, and explicit legal sanctioning of them.[309] Dorsett noted that in any case a 'positive declaratory law' would have required significant effort 'in order to first identify Māori laws, and then to assess which were acceptable'.[310] Nor, we add, did Russell provide any accompanying instruction to discuss such a law or its implementation with rangatira.

Russell envisaged an active role for the Protector of Aborigines and his officers. He emphasised the duty of the Protector of Aborigines to 'watch over . . . the rights and interests of the natives', become familiar with their customs, and arbitrate in disputes between Māori and non-Māori. Laws should be passed 'for preventing and punishing any wrongs to which their [Māori] persons or property may be exposed', and the protectors must be vested with legal power to intervene in matters concerning the rights and interests of 'the natives' as they might be affected by execution of the new laws. In criminal cases that might arise, Russell suggested that the protector should have a summary jurisdiction in matters concerning Europeans and Māori, with access at all times to courts of criminal justice, so that he might proceed with prosecutions. He should also deal with matters arising among Māori themselves, so far as this was compatible with their customs, 'not in themselves immoral, or unworthy of being respected'.[311] Subsequently, the Governor was instructed that a law should be passed constituting the protector as the advocate or attorney ex officio to represent Māori in all suits and prosecutions in which they might become parties in any of the ordinary courts.[312]

In general, there was lack of clarity over policy. Typically, officials assumed that Māori would sooner or later have to comply with British law, and would wish to do so. The question was how to manage that transition. Some settlers believed Māori should be compelled to comply through strict application of British law. Most officials held other views: some, that Māori should be left alone until they chose to assimilate; others, that Māori should be encouraged to assimilate – and to this end, some Māori laws and law enforcement should become part of the colony's legal system. Russell's instructions encouraged 'tolerance' of Māori law rather than its defence or protection. Professor Ward considered that the instructions 'favoured the speedier extension over the Maori' of the colony's laws.[313]

As we will see throughout this report, Te Raki Māori did not find much support for tikanga in introduced law.

By 1842, Lord Stanley, Russell's successor, endorsed the principle that the colony's laws should enshrine Māori values. If Māori were 'to be satisfied with our mode of administering justice, and to abandon their own,' he wrote, 'our legislation must be framed in some measure to meet their prejudices'. This meant, for example, that the colony's laws should impose significant punishments for desecration of wāhi tapu:

> We must satisfy the natives that what are considered grave offences by them will be punished by us or they will not be restrained from taking the law, or rather vengeance, into their own hands.[314]

But the colonial Government dragged its heels on giving any legal recognition to Māori custom. In May 1843, James Stephen wrote an irritated minute at the Colonial Office asking why the instruction to Hobson to issue an ordinance authorising the temporary protection of acceptable customs had not yet been delivered: 'I know not what hinders the enactment of such a law'.[315]

By this time, Stanley had already faced the doubts of the Attorney-General about the extent of Crown sovereignty in the context of the tribal conflicts in the Bay of Plenty. Despite his strong view that British sovereignty was unchallengable, Stanley nevertheless argued that Māori law should be recognised alongside English law. However, in 1843 he faced perhaps an even greater test following an open confrontation over disputed land at Wairau in the northern South Island. It involved a group comprising police constables and New Zealand Company officials – led by Captain Arthur Wakefield (Edward Gibbon Wakefield's brother) and the Nelson police magistrate Henry Thompson – and an armed party of Ngāti Toa led by Te Rauparaha and Te Rangihaeata. After Ngāti Toa symbolically burnt a surveyor's hut, the magistrate had been granted a warrant for the arrest of Te Rauparaha on a charge of arson, which the party was intent on executing. Between four and nine Māori and 10 settlers were killed during the fight, plus a further 12 settlers, including Arthur Wakefield and Thompson, were captured and killed as utu for the death of Te Rangihaeata's wife.[316]

Despite settler outrage, Stanley supported the new Governor, Robert FitzRoy, who held the settlers to be at fault, and decided to take no action against Ngāti Toa. Stanley still defended a policy of recognition of Māori law.[317] In November 1844, his response to the Wairau confrontation, dated 10 February 1844, was published in New Zealand newspapers. Stanley concluded that Thompson and his constables had provoked the attack by attempting to arrest Ngāti Toa leaders who had committed no offence:

> the natives were and had ever been the actual occupants of the soil . . . Consequently the attempted dispossession of them . . . without any process of law, was a lawless act, and the resistance was justifiable.[318]

Stanley acknowledged that some settlers believed English law should apply to Māori–settler relations. Yet, on a strict application of English law, he said, the actions of Thompson and the settlers were 'manifestly illegal'. However, he cautioned against applying English law exactingly to Māori communities, even in cases of Māori–settler conflict. He agreed it was necessary to adhere 'as closely as possible to the general principles of English law' but he warned against any rigorous, technical application of the English legal code or judicial procedures against people who were unfamiliar with English laws, language, religion, and customs. Such an approach, in his view, was neither practicable nor just, because,

> on the grounds of equity and of prudence, the measure [issue of a warrant for arrest of the chiefs] was more clearly indefensible. Justice required that respect should be shown, not merely for the strict rights, but even for the prejudices and the natural feelings of these people, who were not only the ancient owners, but the original lords and sovereigns of the land.[319]

Stanley added that he would not direct any prosecution of the parties in the legal tribunals. This was precisely why the Crown had established a local legislative council, so that laws could be framed that were suitable to the colony's unique circumstances. Until such laws were drawn up, magistrates must apply the law with 'equity and prudence' to avoid further provocation or conflict. In this case, the magistrate had acted in a manner that was manifestly unwise and unjust. In a strong reassertion of the Colonial Office view that legal pluralism was perfectly acceptable, and that 'singular Crown sovereignty' might accommodate 'multiple jurisdictions',[320] Stanley continued:

> I know of no theoretical or practical difficulty in the maintenance, under the same Sovereign, of various codes of law for the Government of different races of men. In British India, in Ceylon, at the Cape of Good Hope, and in Canada, the Aboriginal and the European inhabitants live together on these terms. Native laws and native customs, when not abhorrent from the universal and permanent laws of God, are respected by English legislatures and by English courts.[321]

Stanley concluded by urging FitzRoy and his officials to act with 'conciliation, sincerity, and firmness', and so restore Māori confidence in the Crown.

Settlers greeted Stanley's dispatch with considerable dismay. In the view of the *New Zealand Spectator*, for example, the Crown's policy was to 'leave the colonists without any protection whatever against the natives', while doing little to ensure that settlers could 'obtain and cultivate lands, in the face of a whole race of Maories bent on obstructing them'.[322] As Dr McHugh suggested, local authorities were 'less tolerant' of accommodating customary law than imperial authorities.[323] It was Chief Protector George Clarke who came closest among New Zealand officials to recognising tikanga in the introduced legal system, and we discuss his views later (see section 4.4). We also note that the events at Wairau, and official British reaction to them, were to resonate subsequently through the relationship between the Crown, settler bodies, and Māori – including in Te Raki.

(b) How far were Māori land and resource rights to be recognised?

We turn now to the question of British recognition of Māori authority and Māori land rights as Ministers and officials shaped early land and settlement policies for New Zealand. Land and resources were, of course, fundamental to Te Raki Māori communities and their exercise of tino rangatiratanga. Land was now also of central importance to the British authorities, who saw its control as essential for the future growth of a British colony in New Zealand.

Normanby's August 1839 instructions to Hobson acknowledged the importance of land to both Māori and the Crown. He began with a reminder that Māori 'title to the soil and to the sovereignty of New Zealand is indisputable'. As we have seen, this reflected the established position of the British government that New Zealand remained independent – even as it stood poised for 'reluctant' intervention to negate that independence.[324] But their 'title to the soil' would soon appear to be less well established in British policy. Crown historian Dr Loveridge put that policy in an Australasian context: Māori were perceived, he argued, 'as being somewhat higher up the ladder of socio-cultural progress than the indigenous peoples of Australia'. For this reason, he explained, 'they were considered in many quarters to have rights of ownership to land which had to be recognised by the colonizing power'.

Despite this, the British government was guided by the position in the Australian colonies, where the rights of Aboriginal peoples were not acknowledged, and the assumption of sovereignty by the Crown meant that 'all lands automatically became "waste lands of the Crown"', which it might dispose of as it wished. And it was decided, even before te Tiriti was signed, that New Zealand 'would be placed in exactly the same category as the Australian colonies once Britain became the sovereign power'; that is, in order to be recognisable in British law, by definition all titles would have to issue from the Crown.[325]

In the following sections, we discuss some of the key legal principles and policies that the Crown imported with its proclamations of sovereignty, and the implications

Early Crown Law and Policies Affecting Māori Land: Key Terms

Radical title: Under English common law, on the Crown's assertion of sovereignty over New Zealand, it acquired 'radical' (that is, paramount or underlying) title to all New Zealand lands, but that title was considered to be 'burdened by', or subject to, customary title until customary title was extinguished. The doctrine of radical title was the legal basis for the Crown's claim to 'surplus' lands.

Old land claims: As part of the Crown's plan to establish sovereignty and foster British settlement in New Zealand, and consistent with the doctrine of radical title, the Crown determined that it would not recognise any land purchases in New Zealand unless the Crown itself awarded the title. The policy was that all settler titles must derive from the Crown, including those resulting from land deeds signed prior to 1840. Accordingly, in 1840, the Crown established the first Land Claims Commission, tasked with investigating pre-treaty transactions, determining their validity (according to English law), and making recommendations about the area to be awarded to settlers. The claims made by settlers for validation of their pre-treaty transactions have come to be known as 'old land claims'.

Surplus lands: When it established the Land Claims Commission, the Crown determined that it would limit the amount of land any individual settler could be granted. A scale of acres to be granted for money and goods expended was set with an upper limit of 2,560 acres, though this was later relaxed in some cases. If the Land Claims Commission determined that a settler had made a 'legitimate' purchase of land in excess of what the settler was entitled to by law, the Crown claimed the 'surplus' for itself on the basis that customary Māori title had been extinguished by the original settler transaction. The land therefore belonged to the Crown because of its underlying radical title.

Scrip: On occasions, the Crown acquired an old land claimant's confirmed land interests in exchange for a credit note known as 'scrip', which allowed the claimant to buy Crown land elsewhere in the colony at a fixed price per acre. The lands the Crown acquired through this arrangement became known as 'scrip lands'.

Right of pre-emption: Under the Crown's pre-emption policy, it had exclusive rights to conduct land transactions with Māori. Under the colony's laws, settlers could not buy or lease land directly from Māori. The policy had its origins in British colonial policy in North America. It recognised that under the common law, Māori rights to their land survived Crown sovereignty, but their rights were modified so that they could sell only to the Crown. The Crown could also control land titles in the new colony, through the issue of Crown grants. The policy could be used to protect Māori from uncontrolled land dealings, but also to ensure that the Crown controlled the land market and could fund the colony's development through profits from buying and selling Māori land.

Pre-emption waiver claims: During the mid-1840s, Governor FitzRoy issued regulations setting out the terms on which the Crown would waive pre-emption; this allowed settlers to purchase lands directly from Māori provided certain conditions were met, though only the Crown could issue title to the purchaser.

they had for Māori land and resource rights. British sovereignty has been described as establishing the Crown's power to 'make laws and to enforce them, and therefore the power to recognize existing rights or extinguish them or to create new ones.'[326] Its right of government gave the Crown the power to legislate in respect of land titles, and the administration, survey, and price of land. By the doctrine of pre-emption, the Crown also reserved to itself

the sole right to extinguish Māori customary rights to land – a right it proclaimed even before it took steps to secure sovereignty. It was regarded from the beginning as essential to assuring the success of colonisation in New Zealand, and care was taken to secure Māori agreement to pre-emption in the English text of the Treaty (though not, it turned out, in the Māori text). It was also quickly enacted in the first colonial land ordinances, including the New Zealand Land Claims Ordinance 1840 and the New Zealand Land Claims Ordinance 1841.[327] Yet, in the early years of the colony, the application of the right in New Zealand would be debated in the British Colonial Office, and in New Zealand. As we will see, the Crown could waive pre-emption if it chose, and a pre-emption waiver scheme was in fact put in place between 1844 and 1846 in favour of direct settler purchase from Māori, provided certain conditions were met.

Similarly, there was extensive British debate in this period over the nature and extent of Māori customary rights in land: did tribes own all the land of New Zealand, or only certain lands which they occupied and 'used'? Would it be possible for the Crown to assume ownership of considerable tracts of 'unused' land at the outset (without buying it at all) as Crown demesne? For according to the doctrine of radical title, which the Crown imported when it assumed sovereignty, it has 'the paramount ownership of its territory'. Colonial law imported the feudal principle that 'the Crown is the exclusive source of title to land'.[328] And, while the Crown was bound under the common law to recognise Māori customary rights, these might be found to be limited, either in nature (mere occupancy) or in area, or in both. As we will see, the Crown also considered that if such rights were found to have been extinguished by pre-treaty 'purchases' from Māori, but only part of the land involved in any transaction could be granted to the settler (because of statutory limits on awards), the remainder, or 'surplus', would be deemed to be Crown land.

Here, we discuss in turn the doctrine of radical title, the Crown's sole right of pre-emption and its waiver, and early developments in Crown debate and policy on the recognition of Māori customary rights.

(i) *Crown radical (paramount or underlying) title and common-law aboriginal title*

In our inquiry, Crown counsel explained radical title in these terms: under the legal doctrine of radical title, the Crown 'acquired title to all land in New Zealand as a function of obtaining sovereignty in 1840'. But the Crown's title was considered to be 'burdened by, or subject to, customary title until customary title was extinguished'. When that happened, the Crown considered that Māori had no further legal claim to the land, and 'the Crown gained a full title'.[329]

Dr McHugh has explained that common law aboriginal title 'is concerned with the effect of Crown sovereignty upon the pre-existing property rights of the tribal inhabitants'.[330] To what extent did the introduced law (in all its forms) allow for the 'aboriginal' inhabitants to have their customary property rights recognised and enforced in the courts? The arrival of Crown sovereignty, he stated, could have led to one of two results; that is, the Crown's courts could have operated in accordance with one of two suppositions. The first was the suspension of all tribal property (in other words, non-recognition of the rights of indigenous owners), the second was some form of legal recognition in the courts of the new legal system. Under the common law native title, the proclamation of Crown sovereignty (sometimes called *imperium* – defined by Dr McHugh as 'the self-claimed right to govern') did not simultaneously exclude pre-existing property rights (*dominium*).[331] 'Sovereignty and ownership', Dr McHugh said, 'were not to be conflated.' So the Crown 'technically' became the paramount owner of all the land within its new colony. Settlers could acquire title to land only from the Crown, but title held by tribes was recognised as surviving. Tribal owners could have their communal land rights recognised by the introduced common law legal system as a 'burden' (qualification) on the Crown's radical title. The Crown's title was not absolute, in other words. Aboriginal title took the traditional association of tribal owners with their ancestral land and its resources out of what had become (with the arrival of British sovereignty) the legal cold and gave them a place in the new justice system.[332]

But in fact, there were grave limits to the legal right of tribes themselves. It was reasoned at the time that, since tribal occupation did not rest on a Crown-derived basis and their land remained ungranted land, the tribe had no land rights of which a common law court might take cognisance. Tribal title could not be recognised or enforced. Dr McHugh's evidence was that this belief was rooted in the British view of Crown 'guardianship' of non-Christian peoples with whom it had relations in America, Asia, and more recently, Africa. The rising political influence of slavery abolitionists, humanitarians, and evangelicals was important in this development:

> By the commencement of Victoria's reign, it was understood both in the imperial and colonial spheres that tribes (like minors, the mentally deranged, and wards in their own spheres) did not have legal status as tribes. That is to say, tribes could not commence or maintain proceedings in protection of tribal rights, those to property especially. Rather . . . their legal protection lay in the guardianship of the Crown wrapped up in its prerogative position.[333]

Dr McHugh has argued further – surveying the wider empire – that from the 1830s there emerged among authorities in Britain an unwillingness to recognise the legal status of traditional polities after the acquisition of Crown sovereignty.[334] The future of indigenous peoples lay in their securing the rights of specially protected British subjects, it was believed, rather than in recognition of the 'quasi-sovereignty' of those polities. The best way to recognise the rights of 'aboriginal' peoples was through the Crown's guardianship. This would give them the opportunity to shed their tribalism and enjoy the full political and constitutional advantages of British subjects. So juridical status was to be denied to tribes, and also to individuals claiming 'aboriginal' rights. Instead, tribally derived rights were to be protected through the office of a 'Protector'. Protectors became a feature of British colonial practice in Australia, New Zealand, British Guiana, and Canada; they were legally empowered to represent the rights of aboriginal subjects. Rather than their rights being entrusted to colonial legislatures (which London opposed steadfastly in this period), the trust would be exercised through the executive.[335]

In our view, the introduced law of aboriginal title was rooted in a completely different world view and legal tradition from those of Māori. As legal scholar and historian Professor Richard Boast noted in his evidence in the Tribunal's Muriwhenua Land inquiry, referring to New South Wales Governor Gipps's speech on the Land Claims Bill in 1840, '[t]he Eurocentric basis of the aboriginal title doctrine is so plain from Gipps' words as to scarcely require comment.'[336] Yet the key aspects of the doctrine were not explained to Te Raki rangatira before they signed te Tiriti, nor were they told how it might affect their land rights. But for the Crown, it was a short step from the guarantee in the Treaty text (in English) of Māori rights to their lands, forests, and fisheries – and the chiefs' 'cession' of sovereignty in that same text – to proclamations of British sovereignty and to the right to make unilateral decisions gravely curtailing the rights the Crown had guaranteed, without even discussion with the chiefs.

In te Tiriti, up front, Māori authority over their lands was to be protected. But through the back door came the Crown's assertion of paramount title to the land of New Zealand and a 'doctrine of aboriginal title' which placed Māori land rights in a contemporary foreign legal paradigm that made them vulnerable to alienation on the Crown's terms. As we have noted, the Crown's assertion of radical title enabled it to claim ownership of lands deemed to have been legitimately purchased from Māori, but which, under the existing statutory limits, could not all be granted to the original purchaser. The Crown was entitled to the 'surplus' lands because settler 'purchase' had extinguished its customary title (we discuss the nature of the Crown's surplus lands policy further in chapter 6).

This was a doctrine which the Crown (and the wider British community) stood to benefit from. As Lord Stanley explained to Governor FitzRoy in June 1843 when FitzRoy sought guidance on the issue of who owned the excess:

> the purchaser is not the proprietor [of the excess]; and . . . the hypothesis being, that the claims of the aboriginal sellers have been justly extinguished, they are no longer the proprietors.

> Hence the consequence seems immediately to follow, that the property in the excess is vested in the Sovereign, as representing and protecting the interests of society at large. In other words, such land would become available for the purposes of sale and settlement.[337]

Stanley did not mention the legal doctrine which underlay this conclusion, which was so convenient for British interests. But it is interesting that Stanley clearly appreciated that Māori might consider the 'excess' lands should be returned to them. He added that the 'natives', if in possession of any such lands, might seek their resumption, 'prompted by feelings [which are] entitled to respect'. In which case, his advice to FitzRoy was to deal with such requests with 'the utmost possible tenderness, and even to humour their wishes' insofar as this could be done without compromising the 'other and higher interests' over which he was required to watch, as Governor.[338] In other words, Stanley was alive to the possibility that Māori wishes might readily be understood, and could therefore be met, so long as they were not incompatible with Crown interests.

(ii) *Crown pre-emption and its waiver*

The origins of pre-emption in British colonial policy have been outlined by historian Rose Daamen in her Rangahaua Whanui report, *The Crown's Right of Pre-emption and FitzRoy's Waiver Purchases*.[339] Drawing on the work of Dr McHugh and Professor Kent McNeil, she explained that the British did not employ pre-emption universally in their colonies, but adopted it, particularly in colonial North America, 'by choice, not law'; it became a 'settled basis of colonial relations with the Indian tribes' by the mid-eighteenth century.[340] Legislation followed, limiting private purchases from tribes – from which it is evident that the Crown's role was intended to be one of 'an "impartial" keeper of peace, intermediary between the races and protector of native peoples' rights to their land'. As she added, 'Of course, a paternalistic colonial power in favour of expansion could not be "impartial"'.[341]

Explanations for the Crown's assertion of a right of pre-emption in countries where it acquired sovereign title are both legal and historical.[342] In terms of the common law, if the Crown left the inhabitants in possession of their private property, and those rights survived the change in sovereignty, it was presumed by the doctrine of continuity that customary law still governed indigenous land rights, and that those rights might be alienable. Settlers, however, required a Crown-derived title subject to British law. The Crown, by assuming the sole right to extinguish native title, was able to ensure that British law applied to the title of the settlers, supplying them with a Crown grant which would ensure the recognition and enforcement of their title in the colonial courts. Thus, though the native title 'continued' as in the doctrine of continuity, it was modified by a restriction on the extinguishment of native title to the Crown alone.[343]

Alongside the legal explanations, historians have noted the importance of humanitarian arguments and economic motives for the Crown's assertion of a right of pre-emption. Daamen pointed particularly to the British humanitarian movement and its concern for the welfare of indigenous peoples, which was 'at its height' in the 1830s. An 1837 report of a Committee of the House of Commons, charged with considering what practices should be adopted towards native inhabitants of British colonies, recognised their 'incontrovertible right' to their own soil. It believed that the duty of protecting native peoples belonged solely (and appropriately) to the executive government, since settler disputes with local tribes could not fairly be judged by a local settler legislature. And it suggested that private purchases by British subjects of native land in or adjacent to 'the Crown's dominion' should be declared 'illegal and void', while if they tried to acquire land outside these categories, they should understand that they could expect no support in securing title to it.[344]

Humanitarian motives sat comfortably with the Crown's economic goals. In New Zealand, in particular, the increasing numbers of settlers and speculators 'buying' land by the late 1830s were a concern for the Colonial Office, and on top of this came the 'systematic colonisation' organised by the New Zealand Company, which intended to establish its own government in its first settlement.[345] Both these factors made it even more attractive to

the Crown to secure the valuable monopoly provided by the sole right of pre-emption, and to control colonisation, the titling of land, and the pace of settlement.

Normanby first instructed Hobson to tackle the many claims arising from European 'purchases' of land from Māori – especially those involving enormous acreages. Therefore, on 30 January 1840, Hobson – following a similar proclamation issued in New South Wales by Gipps dated 14 January (see section 4.3.2(2)) – proclaimed in the Bay of Islands that the Crown would not acknowledge any claim to land 'which is not derived from, or confirmed by, a grant to be made in Her Majesty's name'.[346] In his negotiations with the chiefs, Hobson was also instructed to induce them, if possible, to agree to cede land (with or without payment) in future only to the Crown of Great Britain, so that the Government might regulate the sale of 'unsettled lands'.[347]

The British government envisaged that the land market would be self-sustaining: on-selling of the first lands would fund further purchases as required. The Crown intended to assert monopoly control over the trade in land in order to produce a revenue that would above all fund British migration to the new colony and public works.[348] The prices to be paid to Māori were to be much lower than those at which the Government would resell the land to settlers.[349] 'Nor', Normanby argued,

> is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value.

Rather, Māori would benefit over time from the increased value of their land as British capital and settlers were introduced.[350] It was essential, the instructions said, that the Crown's land purchasing be done systematically so that land revenue was not squandered, emigration was not delayed, and land itself was not 'parcelled out amongst large landholders', thus remaining unprofitable for long periods because they could not make it productive. This modern 'Land Fund' model of systematic colonisation was to be adopted for New Zealand (we discuss the significance of the Crown's land fund model further in chapter 8).

In practice, this apparently simple model quickly unravelled. Almost from the outset, it was opposed by both settlers and many Māori in the northern part of the country. Settlers lobbied against the first New Zealand Land Claims Ordinance 1841 (this declared null and void all titles claimed by 'purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles' from chiefs or other Māori[351] – that is to say, any agreement of any kind between Māori and settlers for the use of Māori land or its resources) and they sought to win Māori support for a reversal of Crown policy by telling them that they were being denied their rights as British subjects to deal with their lands as they saw fit.

Some Te Raki Māori leaders expressed considerable frustration also over the Crown's pre-emption policy; that is, its sole right to enter into land transactions with Māori. As we found in our stage 1 report, this policy had not been clearly explained to Māori; indeed, the words of te Tiriti (in te reo) did not even clearly convey that the Crown would have a right of first refusal, though Henry Williams later said that he had explained pre-emption in those terms.[352] As several technical witnesses explained, pre-treaty land transactions had been a source of significant income for Te Raki Māori and had established ongoing economic relationships between Māori and settlers. From 1840, the Crown prohibited these private transactions but lacked the capital to acquire land for itself. As a result, the market stalled, and an important source of economic return and beneficial relationships dried up.[353]

By 1844, the waiver of pre-emption was being seriously considered. In the *Hauraki* report, the Tribunal has pointed out that by that time, there was also growing support for 'direct purchase' from Māori in official circles. No 'surplus' lands had been yet identified, and there were only limited successful Crown purchases of land for on-sale; nor were there sufficient funds to finance government and further land purchase for colonisation. In fiscal crisis and faced with mounting criticism from both Māori and Pākehā, allowing 'direct purchase of Maori land by

settlers seemed to offer a way out'.[354] The newly appointed Governor of New Zealand, Robert FitzRoy, anticipating that he might need to act on the issue of Crown land purchase, sought guidance from the Colonial Office and Lord Stanley before his departure and raised the possibility of waiving the Crown's pre-emption 'in certain cases' under 'defined restrictions' (he also proposed the return of surplus land).[355] FitzRoy expressed concern that the Crown's use of its power of pre-emption to pay only low prices for Māori land was undermining their trust and holding up the progress of the colony. He suggested to Stanley:

> Existing and threatening difficulties may be obviated by a cautious use of such a power as that of allowing individuals or companies to purchase land from . . . [Māori] . . . who will not sell land to Government at a low valuation, seeing, as they do, that it is re-sold for a high price . . . Some powerful tribes are said to have already combined to refuse to sell land to the Government, and such combination is likely to be extended while . . . [Māori] . . . look upon the Government as opposed to their interest, seeking only its own advantage.[356]

The Colonial Office remained concerned, however, that relinquishing pre-emption would be a departure not only from the terms of the treaty but also the principles outlined by Normanby that informed the Crown's purchase policy intended to limit its impact on Māori. The land and emigration commissioners, who reviewed official colonial correspondence on land matters, advised against adopting FitzRoy's proposal, believing it would mean that the Crown would become 'mixed-up' with purchases undertaken by individuals, and that any deviation from the treaty (a 'compact which it would seem undesirable to depart from unless on some very strong reason') would raise questions of 'good faith' and 'must greatly enhance the responsibility of Govt for any unforeseen ill-consequences to the Natives'.[357] Stanley presumably did not entirely endorse this assessment but authorised FitzRoy to make any recommendation regarding pre-emption he considered expedient after inquiry. According to Daamen, Stanley's major concern was for the impact of the Governor's proposal on the land fund and the colonial project.[358] He instructed FitzRoy that he was to keep two objects in mind should he consider it advisable to waive the Crown's right: settlers were to be prevented from acquiring land from Māori at a cheaper rate than they would from the Government; and a contribution should be paid by the purchaser to the emigration fund.[359]

As we will see, the Crown's right of pre-emption was immediately a public issue when FitzRoy arrived in Auckland. Both Māori leaders and settlers raised it in their addresses to the Governor, who responded positively, indicating that he had been authorised to investigate new arrangements for land purchase. We consider this issue and FitzRoy's waiver scheme further in chapter 6, see section 6.6.

(iii) *How were Māori land rights to be defined and could the Crown assert a right to demesne lands?*

Radical title was a given to the British authorities. But while Māori customary rights were recognised as surviving proclamations of sovereignty over New Zealand, questions remained: how were customary rights to be understood and defined? And how extensive were they? This was the subject of disagreement both among British policy makers and with the New Zealand Company supporters. Although the company was not involved directly in the history of the north, its views were often influential in Britain as well as New Zealand, and policy makers had to consider and respond to them. A key question following the signing of the treaty was how to identify lands that were not considered subject to Māori ownership. This was important both to the Colonial Office and to the New Zealand Company, which was anxious for such areas to be transferred without delay to it by Crown grant, and then to its settlers. If Māori could be confined to lands that were cultivated (for example, kūmara gardens), their proprietary needs and rights would be more restricted.

We found the work of legal scholar Professor Mark Hickford helpful in considering the context in which the British imperial policy on Māori property rights was formulated during this period. Hickford pointed to two sources: stadial history, the view that history proceeded in stages from 'savagery' to 'civilisation', each

stage distinguished by predominant modes of subsistence (hunting and gathering, pastoralism, agriculture, and commerce); and *ius gentium*, a law of 'civilised' nations, and their relations with each other and with those who were considered 'not civilised'. Cultivation or the planting of crops was the common factor in gauging the quality of occupation.[360] The New Zealand Company found support for its position on Māori land rights in a popular interpretation of stadial *ius gentium* sources, what has come to be known as the 'waste lands' theory. Waste lands theory was derived from the works of Swiss jurist Emmerich de Vattel, who argued that the cultivation of land was 'an obligation imposed upon man by nature', and those who 'disdain' it, 'fail in their duty to themselves' (we discussed Vattel's influence on British imperial policy in our stage 1 report, pointing out that, despite his theory of independent and equal state sovereignty, others of Vattel's arguments 'had perhaps more troubling implications for British imperial practice').[361] Vattel's principles of the land ownership of nations were popularised in Britain during the nineteenth century by Dr Thomas Arnold, the headmaster of Rugby School. Arnold advocated that within the British Empire, indigenous peoples were only guaranteed rights in the lands they occupied or cultivated. All other lands were to be deemed 'waste' or 'wild' lands, and following the Crown's assertion of its sovereignty, would become its demesne.[362]

On the other hand, the Colonial Office policy makers, Hickford argued, resisted being boxed in to a fixed definition of the proprietary rights of Māori. As we discussed in our stage 1 report, a number of prominent officials at the Colonial Office, such as Lord Glenelg (Normanby's predecessor as Secretary of State) and the James Stephen (Permanent Under-Secretary from 1836 to 1847), had strong connections with humanitarian and missionary groups like the Aborigines' Protection Society and the Church Missionary Society.[363] Prior to the signing of the treaty, they had opposed the colonising aims of the New Zealand Company, and were emboldened by the report of the 1837 House of Commons Select Committee on Aborigines which had concluded that the British government had 'solemnly recognized' Māori 'title to the soil'.[364] James Stephen distinguished Māori as having a settled form of government, who had 'divided and appropriated the whole territory amongst them'.[365] He distanced himself, according to Hickford, from *Johnson v M'Intosh*, the decision of the chief justice of the United States, John Marshall, which he regarded as proving that a grant from an Indian tribe of lands in the State of Ohio would confer no valid title whereas a grant from the United States would. To Stephen, it showed that:

> the whole Territory over which those tribes wandered was to be regarded as the property of the British Crown in right of discovery and of conquest – and that the Indians were mere proprietors on sufferance.[366]

Far better, Stephen argued, that Māori should have the protection of British law in a Crown Colony, and eventually gain the full rights of British subjects, than to be 'denied tribe members status as citizens of the republic and left . . . as a collectivity described as "domestic dependent nations"'.[367] His focus was on Crown control of the process of acquiring land through transactions with Māori, in parallel with a long process of gathering information about Māori tenure, and commissioners investigating direct purchases from Māori by settlers. Through a system of imperial land management, districts could be opened to sale in an orderly fashion.

Lord Normanby's 1839 instructions to Hobson reflected the Colonial Office's position at that time. He recognised that even 'unoccupied' lands belonged to Māori, though he thought they were of little value to them. However, Normanby believed that if private land speculation was allowed to continue, these rights would become 'precarious', and the Crown would be unable to provide any 'securities against abuse'.[368] His instructions devoted considerable attention to the acquisition, titling, and management of Māori land. He gave specific directions about the conduct of transactions with Māori (see chapter 8). Purchases were to be conducted 'on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands'.[369]

By the time Lord Russell issued his instructions to Hobson in December 1840, the Colonial Office's position on the management of New Zealand lands was evolving – though it does not seem to have been unanimous. Russell was preoccupied with the sale and settlement of 'waste lands' – lands that the Crown might control from the outset because they belonged neither to Māori nor to the settlers who would eventually receive grants for their pre-treaty purchases which were deemed to be valid. The tension between Māori rights and authority, and the rights the Crown now assumed it had, was very evident in the final part of Russell's instructions, which returned to the need to separate public land from the land claimed by private individuals (as a result of 'contracts or grants said to have been made by the native chiefs'; that is, old land claims) by means of an investigative commission. Once this was done, and it was clear which lands were still retained by the 'aborigines', the land remaining would be deemed Crown lands, and would then be surveyed and sold.[370]

The Queen's December 1840 instructions to her new Governor on these points, sent at the same time, were detailed. The Governor was to have a survey made of all lands in the colony, so that the whole country was divided into districts, counties (each of some 40 miles square),[371] hundreds (each of some 100 square miles), towns, townships, and parishes (each of some 25 square miles).[372] The Surveyor-General was to report what lands should be reserved in each of the new divisions for public roads, and for the sites of towns, villages, churches, cemeteries, landing places on the sea coast or by navigable streams, or any other reservations for public use. Such parcels of land should be marked on charts appended to the Surveyor-General's reports, and must not be granted or occupied by any private person. The Charter that accompanied Russell's instructions for the erection of the separate colony and its government purported to give Hobson the power to make and execute 'grants of waste land' to the Crown or private persons, under the seal of the colony.[373] All waste and uncleared lands which remained to the Crown after such reservations had been made should be sold to the public (who could make payment either in New Zealand or in the United Kingdom) at a uniform price per acre. A later dispatch clarified that when any Crown purchase of land from Māori was made, a sum of 15 to 20 per cent of the purchase money should be transferred to the protectorate, to pay for its costs, as well as for any charges authorised by the Governor for Māori health, civilisation, education, and religious care.[374]

Māori land rights were not entirely forgotten in the midst of this assertion of Crown rights over the lands of the colony, and its preoccupation with settling and selling them. The Charter and the Queen's instructions had both stressed that Māori rights to the 'occupation or enjoyment' of their lands should not be infringed by any of the Government's surveying or administrative activities.[375] We note in particular the phrase 'occupation or enjoyment' – an expression that had little relation to Māori customary rights.[376] Nor, as Loveridge pointed out, was any definition of 'enjoyment' offered.[377] The implication of these instructions, the historian Dr Vincent O'Malley argued, was that lands that were deemed to be unused or unoccupied 'could be assumed to form part of the royal demesne, available for onsale to incoming settlers'.[378] Dr Loveridge contended that the only way in which Russell's instructions can be understood is if they did propose that the Crown could directly broker the sale of unused lands to settlers.[379] He pointed to a note Russell wrote on 24 December 1840 in which he seems to imply that only lands 'now occupied & cultivated by Maori'[380] would be left in their possession, and that 'all unused and unsold lands would become the property of the Crown'. Loveridge noted that neither in the December instructions to Hobson nor in his later note was there any reference to past or future purchasing of Māori land by the Crown. Reserves were not land returned to Māori out of a sale to the Crown, but were permanent reserves made for Māori *before* sales of Māori lands to settlers began.[381]

In our view, Crown purchase was not referred to because Russell was not contemplating purchase from Māori. The Crown would sell lands that he referred to as 'public' (Crown demesne) lands, and would set apart 15 per cent of all the purchase money to be applied for the benefit of Māori. His note produced a strong, if diplomatic

reaction from the Permanent Under-Secretary at the Colonial Office, Stephen who 'chose to believe' that Russell had simply forgotten to mention that the lands sold to settlers would 'first be purchased from Maori', and recast the Minister's proposals in terms of a 'purchase' model.[382] Stephen, a strong believer in the treaty land guarantee, was 'firmly convinced of "the great cardinal principle, that the lands are not ours, but – that we have no title to them except such as we derive from purchase"'.[383]

Russell did not respond directly to Stephen's criticism of the 'omissions' or 'contradictions' in his 1840 instructions. He simply issued further instructions on 28 January 1841 confirming that the 'territorial rights of the natives, as owners of the soil, must be recognized and respected'.[384] Here, for the first time, Russell mentioned purchase of Māori land by the Crown, reiterating the Crown's sole right of pre-emption. That right was also to be reasserted in colonial legislation, so that any conveyance by any chief or Māori individual to any person 'of European birth or descent' would be deemed absolutely invalid.[385] Māori might sell, but only to the Crown. Russell did not directly address the matter of whether lands deemed unoccupied or unutilised could be claimed as the Crown's demesne,[386] but emphasised that provision was now to be made for recording lands that the British considered essential to Māori well-being. These lands were to be marked out precisely on the general maps and surveys of the colony. Decisions as to inalienable tracts of land to be retained by Māori were to be a matter for the Surveyor-General and the Protector of Aborigines, with final approval to be given by the Governor with the advice of the Executive Council.[387] Though Russell did not clarify his views on Māori land rights at the time, he would later reflect (after leaving office) that he had not considered that:

> any claim could be set up by the natives to the millions of acres of land which are to be found in New Zealand neither occupied nor cultivated, nor, in any fair sense, owned by any individual.[388]

It is telling that, as the New Zealand Company argued for the policy outcomes it sought from 1840, 'many of these conversations were internal to British political agitation, directed to an intra-European audience and not shared with Maori'.[389] Hickford has pointed to the failure of both the Colonial Office and the company to try to understand the nature of Māori land rights or how their political relationships worked. And there was no conversational engagement with Māori at all.[390] Despite the emphasis of the treaty on Māori property rights, Māori were not even apprised of the far-reaching plans of British policy makers for dividing the land of New Zealand. Phrases such as 'occupation or enjoyment' (or more commonly, 'occupation and enjoyment') were used to read down Māori rights, and again, the emphasis was on protection of these limited rights, as the British defined them.[391] Officials did not consider the implications of these policies for the authority of Māori communities over their lands and resources.

But that did not mean they did not impact Māori. By 1844, the debate on the extent of Māori land rights was coming to a head in London. During his period as Secretary of State, Lord Stanley (1841 to 1845) had to cope with the growing unease in London, spearheaded by supporters of the New Zealand Company, about the investigation of company land titles in New Zealand by the Land Claims Commission headed in central New Zealand by William Spain. News of the conflict in Wairau between an armed party of Ngāti Toa, police constables, and New Zealand Company officers reached London in December 1843.[392] The solution the company proposed was a Crown declaration of ownership over unused lands, and it directly appealed to the British Parliament for an inquiry into 'the whole New Zealand question'.[393] This request was granted, and a select committee was appointed in April 1844 to inquire into 'the State of the Colony of New Zealand, and into the Proceedings of the New Zealand Company'.[394]

The select committee's report was of course not binding on the Colonial Office, but as Lord Stanley well knew, it would nevertheless carry weight. The committee's report is perhaps best known for its concluding resolutions and its condemnation of the treaty, in particular its guarantee of Māori lands and property. The third of the resolutions read:

> That the acknowledgment by the local authorities of a right of property on the part of the Natives of New Zealand, in all wild lands in those Islands, after the sovereignty had been assumed by Her Majesty, was not essential to the true construction of the Treaty of Waitangi, and was an error which has been productive of very injurious consequences.[395]

The committee was critical of the treaty's wording, especially its guarantee to Māori of 'possession of all lands held by them individually or collectively'. It would have been better, it said,

> if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction; and it therefore amounted to little more than a legal fiction, though it has already in practice proved to be a very inconvenient one, and is likely to be still more so hereafter.

The committee considered that the sovereignty over the North Island might have been

> at once assumed, without this mere nominal treaty, on the ground of prior discovery, and on that of the absolute necessity of establishing the authority of the British Crown for the protection of the natives themselves, when so large a number of British subjects had irregularly settled themselves in these islands.[396]

The root of the committee's criticism of the terms of the treaty lay, it emphasised, in its 'stipulations . . . with respect to the right of property in land'. It was these, and the subsequent proceedings of the Government, which had

> firmly established in the minds of the natives notions . . . which they had then but very recently been taught to entertain, of their having a proprietory title of great value to land not actually occupied.

It should have been assumed at once, in accordance with the principles of colonial law (and indeed with the Charter of December 1840 and Lord Russell's instructions to the first Governor) that 'all unoccupied land . . . [belonged] to the Crown as a right inherent in the sovereignty'. Such a policy would have made the proceedings of the Land Claims Commission (who were investigating the validity of pre-treaty transactions) much more straightforward, and it would have been much easier to give settlers 'quiet possession of the land they required'.[397]

Lord Stanley, responding to the select committee's report in a dispatch to Governor FitzRoy, noted that the committee had acknowledged that it might be difficult to change policies that the Crown had already embarked on, and had refrained from recommending that the Governor be instructed at once to assert the rights of the Crown 'as they believe them to exist'. Stanley made it clear that he did not consider Māori rights could be restricted to 'lands actually occupied for cultivation', because this was simply 'irreconcilable with the large words of the treaty of Waitangi' in article 2 (he also quoted the English version); nor was it compatible with Normanby's instructions to Hobson. And it was inconsistent with the practice of the tribes 'who, after cultivating, and of course exhausting, a given spot for a series of years, desert it for another within the limits of the recognized property of the tribe'.[398] The results of proceeding with the policy seemed fraught with danger to relations between the two races, and he could not, he said, 'take on myself the responsibility of prescribing to you a course which, I believe, would neither be consistent with justice, good faith, humanity or policy'.[399] However, Stanley was also of the opinion that on his arrival in New Zealand, FitzRoy would find that:

> there were considerable tracts of country to which no tribe could establish a *bonâ fide* title; and still more extensive districts, to which by personal communication with the chiefs, you would obtain a title on easy terms.[400]

While Stanley considered the committee's views inpracticable, he did not fully accept the premise that Māori could claim ownership of all lands in New Zealand.

As it happened, Lord Howick, who had chaired the committee, became the third Earl Grey in 1845, and then

Secretary of State for War and the Colonies. From mid-1846, the New Zealand Company's argument concerning the limits of Māori property received – briefly – a favourable reception. We return to this change in policy and to the long shadow cast by these debates, and to Earl Grey's policy decisions, in later chapters.

(c) Conclusion: What was the extent of the Crown's provision for the continuing exercise of tino rangatiratanga of hapū and iwi?

In all these respects – the nature of the new governance system; the introduction of a new legal system, and the secondary and temporary role envisaged for Māori law; and the re-conception by the British authorities of Māori land rights to limit them so that both Crown and settler needs for extensive tracts of land might take precedence – the importance of these early instructions and policies cannot be overstated. The assumptions on which they were based included the superiority of British institutions and the importance of the needs of settlers who were now beginning to arrive in New Zealand in growing numbers. These assumptions also drove the policies of the colonial Government, as we will see in the next section and in later chapters of this report. Despite the promises in te Tiriti, there was little provision for Te Raki Māori communities to exercise tino rangatiratanga. There were some promising signs: the evident commitment by some Secretaries of State and by Colonial Office staff to the treaty land guarantees, and a willingness to provide for recognition of tikanga, at least in the short term and insofar as it was understood in London. But such official attitudes to both the treaty and Māori law were offset by more negative reactions. The influence of the New Zealand Company in and on the British Parliament kept the interests of settlers well publicised, and growing Māori opposition to the exercise of kāwanatanga (notably in the far north, but elsewhere as well) raised British fears of a rocky road ahead.

Professor Ward, contemplating the beginnings of British government policy for Māori, took a bleak view. The most serious flaw in policy, he argued, was not lack of idealism, nor what he described as its:

> Eurocentrism and assumptions of Maori weakness and submissiveness to paternal direction; the Maori themselves could soon remedy that. Its most serious flaw was that it was emasculated by European attitudes of racial or cultural superiority, and by pandering to settler prejudices, which denied the Maori real participation in the European order except at a menial level.[401]

Māori were in no way inclined to accept subordination but were willing to engage with the new order on their own terms:

> State-building did have a chance of Maori co-operation. A form of government closely regulating settlement and promptly involving Maori leaders in political and judicial institutions and in the police power which would support them, stood a good chance of acceptance. Unfortunately nothing so subtle was planned in Downing Street.[402]

It was not a promising start.

4.3.3 Conclusions and treaty findings: Did the Crown breach the treaty by proclaiming its sovereignty and establishing a Crown Colony government with authority over the whole of New Zealand?

We note again the acknowledgement of the importance officially attached to the consent of the rangatira to a 'cession', as the Secretary of State put it. In effect, Russell said, the Crown's title, its sovereignty, rested on the treaty signed at Waitangi and elsewhere. Yet, as the British reaction to the arguments of New Zealand Attorney-General Swainson about the incompleteness of Māori consent showed, the treaty had served its purpose and was not to be called on once the acquisition of sovereignty had been completed. After all, as Dr Palmer pointed out, this acknowledgement that the basis of British sovereignty lay in the treaty was not mentioned in the charter erecting a government in New Zealand, or in the official instructions sent to the first Governor. These were the instruments issued under the Royal prerogative for the government of New Zealand by the British Crown. And it is clear that the treaty was ultimately irrelevant to the process when it

came to the next stage of asserting the Crown's authority over New Zealand. Constitutionally, the exercise of the prerogative was purely a matter for the sovereign. And on that basis only, the Crown issued instructions for the establishment of a colonial Government in New Zealand, and the Governor oversaw that establishment on the ground. But there are larger issues here.

Dr Palmer has referred to the British acquisition of sovereignty as 'a fact of raw political power', and it is hard to disagree with this assessment.[403] We cannot find that the Crown officials who proclaimed sovereignty and began to establish Crown Colony government genuinely believed that Māori had understood and consented to the full implications of British sovereignty. Māori were not part of the processes at all, and these constitutional steps did not reflect what the rangatira had agreed to. They are processes which must be seen in the broader context of the imperial acquisition of territory and the establishment of settler societies whose success was grounded, it has been argued, 'on the appropriation of indigenous lands and resources, subordination of indigenous peoples, and the perpetuation of racist myths'.[404]

Some legal experts, mindful of this context, have recently challenged the legality and the legitimacy of the British assertion of sovereignty and its processes, though they reach differing conclusions. We refer here first to the views of constitutional theorist Emeritus Professor F M (Jock) Brookfield. He argued in his 1999 study *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* that the Crown's taking of power in New Zealand was 'at least in part, unlawful in relation to the Maori legal orders', which were customary in nature and lacked the organs of government, the executive, legislative, and judicial branches.[405] His discussion is a wide-ranging one, set, he explained, in the context of a consideration of 'the legitimacy of legal systems or orders established by revolution, especially in the case of the revolutionary conquests of Western expansion and colonization'.[406] In Professor Brookfield's view, the Crown assumed sovereignty over the polities of Māori iwi and hapū through a 'revolutionary seizure of power'.[407] He explained his definition of revolution as:

> the overthrow and replacement of any kind of legal order, or other constitutional change to it – whether or not brought about by violence (internally or externally directed) – which takes place contrary to any limitation or rule of change belonging to that legal order.[408]

Thus, the Crown's assumption of sovereignty began with the British proclamations of sovereignty of May 1840 over New Zealand.[409] It was revolutionary in relation to iwi and hapū, he said, to the extent that 'the power asserted and seized by the Crown exceeded what was ceded' by the treaty.[410] Brookfield argued that the Crown's seizure of power was manifested, in the case of groups that did not sign te Tiriti and who had ceded nothing, 'as a conquest by Queen Victoria's very different polity'; and for those that did sign, 'either as [a conquest] or as a revolutionary enlargement of power'.[411] We add that in the case of Ngāpuhi, while they had signed te Tiriti, they had ceded nothing.

In support of his view, Brookfield drew attention to the fact that Attorney-General William Swainson realised that there was a discrepancy between the Crown's claim of authority over the whole country and 'what it could properly claim under the Treaty of Waitangi', given the number of non-signatories.[412] We have discussed Swainson's argument in section 4.3.2(1) and the strongly worded rejection of it by the Secretary of State and his Under-Secretary, Sir James Stephen. There might be questions about the justice and the morality of the acts of state by which the Crown had asserted sovereignty but, in the words of Stanley, Her Majesty had been advised to pursue a course, 'and [she] has pursued it'.[413]

Considering the Colonial Office response to Swainson, Brookfield observed:

> One should note carefully what the Secretary and Under-Secretary were in effect saying. The Queen on the advice of her ministers had asserted her sovereignty over the whole of New Zealand by acts of state that were revolutionary . . . And, as with all revolutions, whatever ideological justification the revolutionaries may claim, the revolution must rest finally upon its success, upon what is 'done', rather than what

> is just or moral or legal (since the revolution is by definition illegal, in this case in relation to the customary legal orders of Maori).[414]

Brookfield noted problems with official British assumptions that the passage of time would cure any defects in the Crown's procedures. For decades after the 1840s, he wrote, the 'revolution was far from completely effective throughout the country'; there continued in parts of New Zealand the customary legal orders of Māori and also more developed Māori orders.[415]

Claimant counsel Janet Mason underlined Brookfield's distinction between the legality and legitimacy of a regime:

> Revolutionary legality, Brookfield states, relates to the test of success and effectiveness of a government. Legitimacy, on the other hand, requires considerations of morality and justice, and these considerations may still deny full legitimacy to a regime that may be judicially recognised as 'legal' because it passes that limited but sufficient test.[416]

But ultimately, in Brookfield's view, a revolutionary regime, whether established legally or not, could become legitimate by enduring and becoming the dominant constitutional arrangement.[417]

Dr Palmer appeared to agree with Brookfield that sovereignty had been acquired by the Crown as time passed, due to this shift in power dynamics.[418] Realities on the ground, in particular the significant growth in the settler population over the next 30 years, coupled with the British government's policies shifting 'away from the humanitarian ideals of the 1830s towards the interests of colonisation in the second half of the 1840s', resulted in a fundamental change to 'the reality of the New Zealand constitution' such that the treaty 'provided no safeguard for Māori.'[419]

Claimant counsel Jason Pou argued against the approaches of Professor Brookfield and Dr Palmer. He submitted that Brookfield's conclusion – that the Crown's sovereignty had become legitimate because time had passed and that Māori had effectively acquiesced to the Crown's assumption of sovereignty – was 'merely another attempt to manipulate facts to impute consent where none exists'; or indeed, that the Crown's assumption of sovereignty had to be based 'upon a consent that is deemed largely irrelevant within the acquisition [of sovereignty] itself'.[420] Instead, Mr Pou argued, the Crown 'wrested sovereignty' by deliberately concealing its true intentions and simply imposing its authority 'in a way that was inconsistent with [te Tiriti]'.[421] In our view, that particular point is consistent with Brookfield's own interpretation of a British 'seizure of power' in 1840 by one people over the territory of another.

Likewise, legal expert Moana Jackson has argued that the 'rationalisations' of the British Crown in relation to he Whakaputanga and te Tiriti, as well as the moves to annex the territory of hapū and iwi, derived from a 'jurisprudence of oppression', 'privileging the rights and authority of those who belong to what one jurist called the "charmed circle" of European States'. The term 'annexation', he said, 'was just the 19th century euphemism for their assumed right [of the British Crown] to dispossess'.[422] In his evidence presented to us, Mr Jackson was critical of the approach of jurists who see the legal history of imperialism as a 'reasoned debate about points of jurisprudence'; rather, it was a 'race-based discourse [which] positioned Indigenous Peoples as objects who could and should be dispossessed'. He cited Chief of the James Bay Cree nation, Dr Ted Moses, who has argued that 'the question that most trouble[d] colonisers [was] "How can a thief go about establishing legal and legitimate possession of his stolen spoils?"' 'This', Jackson suggested, 'is the difficulty – no matter what the constitutional laws, jurisprudence or other legal trappings a State might assume, this fact stares us in the face.'[423]

Mr Jackson argued further that the British Crown justified its 'annexation', or dispossesion, in various ways. Among these justifications, he singled out the doctrine of discovery, and the notion that the imperium it erected in New Zealand had to be exercised 'beneficently': 'the presumption that there was an "absence of any other legal system that might appropriately apply to British subjects"',[424] as well as 'associated perceptions about the limitations of indigenous legal and political capacity'. As

we have seen in chapter 2, Mr Jackson based his criticism of colonising assumptions and actions in a discussion of tikanga and its guidelines which

> formed part of a values-laden jurisprudence upon which decisions were made to settle disputes, regulate trade, ensure peace after war and reconcile all of the competing interests in human existence.[425]

Likewise, he discussed mana as a 'concept of power', a 'culturally and tikanga-specific understanding of political authority'. Mana denotes an 'absolute authority . . . because it was absolutely the prerogative of Iwi and Hapu'; each polity exercised its own mana.[426]

Mr Jackson considered the Crown's emphasis on securing Māori consent to the treaty, and that it 'was "a valid instrument of cession" and that "the basis of Crown sovereignty lay in Maori consent"'.[427] It was his view that, in constitutional terms, the notion of consent was crucial to the Crown; it reinforced its belief in its own 'beneficence' and gave legitimacy to the imperium it would then erect in New Zealand 'by assuming it could govern with the consent of Iwi and Hapu'.[428] Yet, the assumption that iwi and hapū would give away their 'site and concept of power' was, in his view 'another race-based assumption [which] flew in the face of all political realities':[429] as he pointed out, when has any polity in peace time voluntarily ceded its authority to another?[430] Mr Jackson also cautioned against acceptance of the 'doctrine of a benevolent protection':

> The very doctrine . . . contains some internal inconsistencies, hypocrisies even. The first is the notion that the bad faith and dishonourable process of one people colonising another could ever be one of good faith and honour. Dispossession is dispossession whether it is carried out at the point of a gun or with a benevolent promise. There can be no such thing as a humane or benevolent colonisation. The second is that it is premised on all of the racist dualities about the inferiority of Indigenous Peoples and the consequent assumption that they lacked the capacity to look after and protect themselves.[431]

Tikanga and law expert Moana Jackson, who presented before the Tribunal during hearings for stage 1 of the inquiry.

We might add that one does not have to look far in the writings of British authorities at that time for evidence of such assumptions.

Mr Jackson's basic concern was the presentation of

> erecting the imperium . . . as a reasoned and considered attempt to abide by 'the law' in order to 'exercise a lawful authority in those islands' through 'the voluntary cession of it by the Chiefs in whom it is at present vested'.[432]

Colonisation, he argued in effect, must not be lost sight of, for it 'required the diminishment of a law and authority already in place'. Its 'violence and inherent injustice'

must not be minimised.[433] In sum, Mr Jackson noted the somewhat arbitrary basis for the Crown's claims of legal sovereignty, as officials 'debate[d] about what rights the discovered peoples might have in the new jurisdiction they were apparently under' and agonised over the 'rituals' required to make the claims of their own country legitimate:

> What was never discussed in all the legal debate was the legitimacy of the right itself – it was simply accepted as a legal fact. What was also never acknowledged was the application of any indigenous jurisdiction that might be in place or whether in fact it would recognise that the mere waving of a flag on one of its beaches was a surrender of its authority to complete strangers.
>
> Instead the doctrine became a given assuming that indigenous lands could be taken, even when it was clear that others were already there and even though it would have been illegitimate (and probably a cause for war) if for example Hobson had raised a flag on the beach at Calais and declared British sovereignty over France. In its 19th century manifestation it was an essentially racist assertion of the will to dispossess, and its proclamation by Hobson gave the British Crown the reassurance that its authority would apply simply because it said it would.[434]

In short, if imperial expansion and colonisation are not accepted as part of the natural order of things, it is possible to take a quite different view of the kinds of debates the British authorities had among themselves, and with other imperial powers.

Counsel for Ngāti Hine, Michael Doogan, also stressed the importance of not losing sight of Ngāpuhi and Ngāti Hine views of the betrayal of the treaty: 'It was a Treaty of Waitangi, not a "proclamation" of Waitangi.'[435] Yet Hobson's proclamations of sovereignty were contrary to that treaty because the Crown had not obtained Māori consent for the power it intended to exercise. The result was that the 'British asserted its sovereignty over New Zealand, and usurped Māori mana or rangatiratanga, by a species of political fraud.'[436]

Much hangs on whether the proclamations of sovereignty were issued in good faith. We have asked whether, in light of Hobson's understanding of what Te Raki rangatira had consented to when they signed te Tiriti, it was reasonable for him to proclaim British sovereignty over New Zealand and proceed to establish Crown Colony government over the whole of New Zealand. We have some difficulty with Dr McHugh's argument that Hobson had done what was required of him to gain Māori consent, and had thus 'discharged his office'.[437] Certainly, that was how Hobson presented the matter to the Colonial Office. In his initial report to Gipps he stressed the number of signatures he had secured at the Bay of Islands and in Hokianga (52 in the Bay Islands and 'upwards of 56' in Hokianga, including it seems at least some of those signatories who had tried, and failed, to withdraw their names the following day).[438] It was not clear in his account that there were large parts of the country from which he had not received reports at all. Hobson did not send a subsequent dispatch until 15 October 1840, which was little more than a covering letter, and made little comment on the detailed reports he enclosed from his treaty-bearers.[439] However, in the meantime Hobson's May proclamations had been approved by the Crown and were notified in the London *Gazette* on 2 October 1840, almost two weeks before Hobson's dispatch was written, and months before it would arrive in London.[440] It seems that Hobson's May 1840 dispatch, which claimed the 'universal adherence of the native chiefs to the Treaty of Waitangi', was sufficient for the British government to conclude that Hobson had passed its self-imposed test.[441] But that cannot be the end of the matter when the representative of the Crown, newly arrived in New Zealand to negotiate a treaty at Waitangi, was silent on many of the key issues that he should have put to the rangatira.

In particular, we have concluded, he should have been clear about the kind of government the Crown intended to establish, the kinds of powers it expected to exercise, the nature of the legal system it would introduce, and how it would conduct its relations with Te Raki rangatira on a day-to-day basis. Given the importance Hobson attached

to securing the signatures of rangatira who had put their names to he Whakaputanga, he should have indicated to Ngāpuhi how the Crown saw the treaty agreement in relation to the Declaration of Independence. And he should have spoken of the Government's plans to send large numbers of British colonists to New Zealand, to settle in different parts of the country, and to buy land and build towns.

Ngāpuhi, after all, had hosted hundreds of settlers who had settled on their lands and often had close relations with their communities; they had developed their economy and engaged in trade extending to Australia. It should have been possible for Hobson to discuss with them the future of their relationship with the British.

It seems however that Hobson did not get beyond his key messages of goodwill, the Queen's protection, and guarantees of Ngāpuhi authority and independence.[442] The processes by which the Crown would assert sovereignty, and the immediate consequences of that act, the establishment of its own institutions of government, were not explained to the rangatira. Hobson knew that he had not done so. Above all, despite all the British emphasis on the importance of securing a 'cession of sovereignty' from Māori, and despite the emphasis on a cession in the May proclamations, that had not been explained at Waitangi either. As a result, Māori assumptions and understandings of how their authority would be exercised once the treaty agreement had been signed were very different from those of the British Crown. Though they had reservations about the treaty, they accepted it on the basis of the relationship they had developed, as they understood it, with the British monarch, and with their settlers and their missionaries. They certainly thought they understood the relationship they would have with the Kāwana; that he and they would be equal. But because Hobson failed to make the actual terms of the treaty in the English text clear, they did not in fact understand British plans. The 'deliberate act and cession of the chiefs' which Lord John Russell spoke of after the event as the foundation of the Crown's authority in the colony had not occurred in Te Raki, and that must be taken into account in any consideration of the Crown's actions after 6 February.[443] On the basis of all the evidence we had heard, we concluded in our stage 1 report that the Crown did not acquire sovereignty through an informed cession.[444]

Two and a half years later, the Colonial Office found that it had been somewhat ill-informed about Māori adherence to the treaty, as it faced embarrassing questions from the new New Zealand Attorney-General as to the extent of its sovereignty. Swainson's view was that British sovereignty had been acquired over only a portion of New Zealand, and that only those who had acknowledged the Queen's authority could be considered British subjects. It is clear from Colonial Office minutes that this was not only irritating but a cause of some compunction. Stephen expostulated to his colleagues at the effrontery of a 'junior' official, but he made a remarkable statement to G W Hope as he passed judgement on Attorney-General Swainson's arguments:

> Admit, if it must be so – that this [the Queen's formal and solemn act in publicly asserting her sovereignty over the whole of New Zealand] was ill-advised – unjust – a breach of faith – and so on, yet who can gainsay that such are the claims of the Queen and of the Nation for whom HM acts.[445]

That was a statement from London that seemed to admit to some doubt as to the wisdom of the course the government had pursued. But it was a statement made privately, inside the walls of the Colonial Office. Publicly the government refused to consider, once the deed was done, whether there was any alternative to insisting that the acts of state by which the Crown had asserted its sovereignty were incontrovertible.

The treaty was thus considered a source of British title to New Zealand by the British government, but not – as it gazetted the proclamations, instructed the new Governor – as an agreement with the signatory chiefs that gave rise to continuing commitments on the part of each party. There had been no opportunity, it seems, to consider the terms or the significance of the treaty.

It is perhaps not surprising, therefore, that the Crown

failed to make adequate provision for Te Raki Māori to exercise tino rangatiratanga, despite the guarantees given in the treaty. The initial imperial instructions saw no place for Māori in the Crown Colony system of governance; no more than a secondary, temporary role for Māori law; and a reduction of Māori land and resource rights to mere 'occupation and enjoyment' within limits to be defined by British officials. They were based on assumptions of the superiority of British institutions and the importance of the needs of the settlers, and later we will consider the influence of these assumptions on the policies of the colonial Government. It seems to us, however, that the reach of the proclamations was immense. Professor Ward, contemplating the impending impact of British imperialism in his seminal work *A Show of Justice*, was critical of the policy of 'hasty and wholesale assimilation' adopted by the authorities at the time Hobson's instructions were drafted. In the rush, he wrote, Māori were left 'exposed to the impositions of state power without any share in the exercise of state power'. And the measures 'intended to avert the danger of collision between them and the settlers went far towards inviting collision between them and the state.'[446] We agree with this assessment.

Accordingly, we find that the Crown acted inconsistently with the guarantees in article 2 of te Tiriti and in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga/the principle of partnership by:

- Proclaiming sovereignty over the northern island of New Zealand by virtue of cession by the chiefs, and over all New Zealand in May 1840, and publishing and thereby confirming the proclamations in October 1840 despite the fact that this was not what Te Raki rangatira had agreed to or expected; nor did the proclamations reflect the treaty agreement reached between Te Raki rangatira and the Crown's representative about their respective spheres of authority.
- Subsequently appointing Hobson as Governor and instructing him to establish Crown Colony government in New Zealand, on the basis of the incomplete and therefore misleading information he supplied about the extent of Māori consent, without having considered the terms and significance of the treaty, in particular the text in te reo, and its obligations to Te Raki Māori from the outset.
- Undermining Te Raki Māori tino rangatiratanga and authority over their land by asserting radical (paramount) title over all the land of New Zealand, without explaining, discussing, or securing the consent of Te Raki Māori to this aspect of British colonial law, despite the control it gave the Crown over Māori land, and more especially the ultimate disposal of lands transacted pre-treaty with settlers.
- Further undermining Te Raki Māori authority over their land by asserting its sole right of pre-emption, which was not clearly expressed in either the te reo text of te Tiriti nor in the oral debate; the Crown was anxious to secure this right so it could fund and control British colonisation, and its failure to convey its intentions on a matter of great importance to hapū used to conducting their own transactions with settlers was not in good faith.
- Failing to acknowledge the significance of the treaty and of Te Raki Māori agreement to it in any of the Crown's acts of state asserting sovereignty over New Zealand.

These actions, in the absence of informed Te Raki Māori consent to the Crown's plans for the governance of New Zealand, were also inconsistent with the Crown's duty of good faith conduct, and thus breached te mātāpono o te houruatanga me te mātāpono o te whakaaronui tetahi ki tetahi/the principles of partnership and of mutual recognition and respect.

4.4 To What Extent Did the Crown Assert its Effective Authority over Te Raki in the Years 1840–44?

4.4.1 Introduction

In this section, we consider how Te Raki Māori experienced the Crown's authority in operation in this district in the years immediately following the signing of the treaty.

As we have seen, the Crown's policies were focused at the outset on bringing New Zealand under British sovereignty, erecting a functional Government, and establishing processes for land settlement and revenue gathering, while also protecting Māori in possession of their lands and resources in accordance with developing Crown views of the extent of those rights. In all of these policies, the Crown showed little regard for Māori views about land ownership or for Māori understandings of te Tiriti.

Claimants told us that, having proclaimed sovereignty without the consent of Te Raki Māori, the Crown then made a series of attempts to assert its effective authority over them. Those steps included: establishing courts and Government that purported to have jurisdiction over Māori; enacting laws and ordinances that applied to Māori; arresting and imprisoning rangatira (Kihi in 1840 and Maketū in 1842); warning rangatira against conducting taua muru; asserting Crown authority over the timber trade, for example, by prohibiting the cutting of kauri; imposing customs duties and prohibiting Te Raki Māori from charging anchorage fees; moving the capital from the Bay of Islands to Auckland; and asserting Crown authority over land, through its policies on 'waste' or unoccupied Māori lands, pre-emption, old land claims, and 'surplus' lands from those claims.

In addition, claimants said, the Crown failed to address settler transgressions against tikanga Māori (for example, breaches of rāhui) and sometimes intervened when Māori attempted to enforce their laws.[447] Claimants acknowledged that, during these early years, the Crown did not succeed in establishing de facto (effective) authority over the whole district, but did take steps to assert that authority in ways that breached the treaty.[448] The Crown's actions created conflict with Te Raki Māori, creating the conditions in which the Northern War would break out in 1845.[449]

Crown counsel submitted that, although English law applied in New Zealand from 14 January 1840 (and New South Wales law from 16 June 1840 at the latest), the Crown, 'with few exceptions', did not impose English law on Te Raki Māori during the 1840s and 1850s.[450] Counsel noted that Britain did not expect to 'instantaneously' apply its laws to Māori,[451] but rather provided for Māori customs (with some exceptions) to be defended or tolerated.[452] Counsel cited evidence from historian Dr Grant Phillipson that the Crown's authority 'rested very lightly' on Ngāpuhi during those early years, with Māori law applying to Māori and non-Māori alike. This was particularly true after the capital was moved to Auckland in 1841.[453] In general, the Crown 'respected the role that Māori law and custom played'.[454]

Crown counsel submitted that, on the rare occasions when Te Raki Māori were tried in the colony's courts – notably the cases of Kihi and Maketū – this occurred respectfully and with the consent of Te Raki rangatira.[455] With reference to economic impacts, the Crown submitted that it did not prohibit the cutting of kauri in 1841, but only the theft of kauri.[456] Nor did it prohibit the charging of anchorage fees, though it did impose its own customs duties.[457] Counsel submitted that moving the capital to Auckland was not a breach of the Crown–Ngāpuhi relationship, nor of any promise made at Waitangi.[458] The Crown did begin to apply English law to Te Raki Māori 'in a gradual way' from 1844.[459] The Native Exemption Ordinance 1844 provided for English law to be applied through the cooperation of rangatira; the law 'was not imposed as such on Māori communities'.[460] Nonetheless, Crown counsel acknowledged that by mid-1844, 'a number of issues' were causing Te Raki rangatira concern, including the customs duties, the removal of the capital, the general economic conditions, and concerns over land. The Crown acknowledged that these issues had affected the district's economy.[461]

In this section, we will consider the on-the-ground relationship between Te Raki Māori and the Crown, with particular reference to the Crown's attempts to apply criminal law to Māori and to control land, resources, and trading relationships. To a significant degree, the evidence is focused on the Bay of Islands and Hokianga, where settlers had arrived in the greatest numbers and the impacts of the Crown's actions were most felt. In other parts of this district, there were relatively few settlers in the early 1840s and, in general, the Crown made very few attempts to impose its authority. Nonetheless, some Crown actions

had significant impacts – for example, on kauri trade in Whangaroa, as we will see.

4.4.2 The Tribunal's analysis

(1) *Did the Crown attempt to enforce its laws against Te Raki Māori in the years immediately after te Tiriti was signed, and if so, how did they respond?*

When Te Raki rangatira signed te Tiriti, officials promised that they would remain 'perfectly independent' and retain their full rights as rangatira.[462] One of the fundamental roles of rangatira was management of disputes, both within the hapū and in relation to other groups.[463] Nothing in the treaty debates suggested that would change with respect to disputes among Māori. Indeed, as we found in our stage 1 report, the treaty debates barely touched on questions of law enforcement among Māori. Clearly however, the Governor was to exercise authority over settlers, and this inevitably involved the enforcement of laws that would keep the peace and protect Māori. Where Māori and settler communities came into conflict, negotiation would be required. We also explained in our stage 1 report that rangatira likely saw Hobson as an enhanced British Resident: that is, someone they could turn to in the event of disputes, but who would otherwise leave them to manage their own relationships with settlers.[464]

Nonetheless, as discussed in section 4.3, officials presumed that the Crown had acquired sovereignty and that Māori were therefore (at least in theory) subject to English criminal law. The Crown's policy on enforcement of that law was inconsistent during these early years. Official instructions provided that Māori could (with some exceptions) continue to live according to their own customs but provided little guidance on what that would mean in practice, or on how Māori–settler disputes should be resolved. The colonial Government made few attempts to incorporate Māori values into the law or protect Māori legal principles such as tapu. When it did develop policies or local laws, it did so without reference to Māori. Yet, despite regarding itself as sovereign, the Crown in practice lacked sufficient policing or military power to enforce its laws against Māori communities, except on rare occasions when rangatira chose to cooperate. For the most part, Māori in Te Raki therefore remained self-governing despite the adherence of officials to the legal theory of Crown sovereignty.

(a) Appointment of magistrates and protectors

Even before the Crown had entered negotiations over te Tiriti, it was making preparations to establish a fledgling legal system in New Zealand. During Hobson's stopover in Sydney in January 1840, he was furnished with (in the words of historian Dame Claudia Orange) 'an ill-chosen assortment of local men who were to form the nucleus of a New Zealand civil service'. Alongside a Treasurer, a Surveyor, and a Colonial Secretary, the former Royal Navy commander Willoughby Shortland was appointed as police magistrate. A sergeant 'and three troopers of the New South Wales mounted police' were also added.[465] They were followed in September 1840 by three land commissioners, Mathew Richmond, Edward Godfrey and Francis Fisher, appointed to inquire into pre-treaty land claims.[466]

After arriving in New Zealand, Shortland established an office in Kororāreka, though by mid-February his jurisdiction was extended to cover the entire 'Northern district'.[467] Hobson initially used the troopers as an escort and to conduct mounted patrols, first in the Bay of Islands, and then beyond, moving from settlement to settlement in the north.[468] Their importance decreased, however, once troops from the 80th Regiment landed in April 1840 – comprising, according to their commanding officer, Major Thomas Bunbury, 'one field-officer, one captain, two subalterns, four sergeants, two drummers, and eighty rank and file'.[469] This was sufficient to swell the Bay of Islands Pākehā population and create pressure on Hobson to find somewhere to house them. By the middle of the year, Hobson had secured the appointment of several more police magistrates, including William Symonds and Thomas Beckham. In September 1840, Shortland was transferred to Auckland and replaced by Arthur McDonogh.[470]

The police magistrates had authority over the discipline and organisation of their forces, and their arming. Beckham, who was initially based at Hokianga before

moving to the Bay of Islands, was considered competent; he engaged constables and, by October 1840, had asserted Crown authority over the clusters of Pākehā settlement along the Hokianga River. His force consisted of a chief constable, two constables, and two boatmen; they were armed with muskets, cutlasses, and pistols. At the time, there were some 200 Europeans in the area and an estimated 5,000 Māori. Beckham established good relations with the local rangatira before being transferred by Hobson to the key position at Kororāreka (then a town of approximately 1,000 people) and Ōkiato (now known as Old Russell).[471] McDonogh, a less competent character, succeeded him at Hokianga. Hobson had also to find police magistrates for Auckland, the New Zealand Company settlements further south, and Akaroa.[472]

Normanby's instructions to Hobson had emphasised the importance of controlling settler communities, and thereby keeping peace between settlers and Māori, who were – for the time being, and with some exceptions (discussed later) – to be left alone to live according to their own customs.[473] Whereas British officials regarded this as a significant, albeit temporary, concession to Māori custom, we note that Māori had not consented to any interference beyond what was necessary to control settlers and so prevent breaches of the peace.[474]

Hobson's initial instructions to Shortland emphasised the importance of addressing Māori–settler tensions. The Governor specified that police were to act as 'mediators' between the two peoples, and to exercise discretion in applying English and New South Wales laws and standards to Māori. They were to settle disputes among Māori 'according to their own Usages and Customs'; and the mounted police were instructed not to arrest Māori themselves but to work through chiefs.[475] The implicit assumption was that the laws of England and New South Wales applied to Māori, even if they could not be enforced, and this indeed was the case under English law once sovereignty was proclaimed in May 1840, despite the fact it did not match Māori understanding of treaty guarantees.[476] Nonetheless, in April 1840 Hobson wrote an open letter to Māori chiefs assuring them that he would 'ever strive to assure unto you the customs and all the possessions belonging to Maoris'.[477] The Crown's own stance in this respect was somewhat ambiguous.

Hobson had been instructed to appoint an official who would 'watch over the interests of the aborigines as their protector', with a particular focus on ensuring that Māori retained sufficient lands for their current and future needs.[478] Accordingly, in May 1840 Hobson appointed George Clarke senior as Chief Protector of Aborigines. Clarke, a lay missionary, was instructed to assure Māori 'that their native customs and habits would not be infringed, except in cases that are opposed to the principles of humanity and morals'.[479] As Professor Ward observed in *A Show of Justice*, 'it was precisely this power to permit or to forbid that the chiefs had not conceded to the British'.[480] Lord Russell's December 1840 instructions provided additional guidance about the role of the protector, as discussed in section 4.3.[481] During 1841 and 1842, several sub-protectors were appointed to assist Clarke, including Henry Tacy Kemp, appointed in February 1842 with responsibility for the northern district.[482]

(b) The arrest of Kihi

In practice, the Crown made some initial attempts to assert police powers over Māori, but they appear to have complied only on rare occasions and for reasons that were consistent with tikanga. The first significant test for the new constabulary occurred in April 1840. A visiting Tauranga Māori named Kihi was alleged to have killed a shepherd (Patrick Rooney) working on one of the mission farms at Puketona (Waimate). Henry Williams's sons apprehended Kihi and delivered him to Kororāreka, where he was brought to trial before the Bench of Magistrates and indicted.[483] As the trial began, a party of some 300 armed Māori under Te Haratua (Ngāti Kawa) descended on the town. They marched to the Anglican church where the trial was taking place (it being the only building big enough), performed a haka, and (in Williams's account),

> demanded that the prisoner should be handed over to them, that they might dispatch him at once, Haratua expressing his indignation that the shepherd employed by his own pakehas should have been so brutally murdered.[484]

Christ Church, Kororāreka. Kihi was tried before the Bench of Magistrates and indicted for murder at the church in April 1840. Angry that a Pākehā under his mana had been killed, Te Haratua of Ngāti Kawa led a taua of 300 men into the town and demanded the right to punish Kihi. Potential conflict was averted after Edward Williams gave assurances to the magistrate, Willoughby Shortland, and persuaded Te Haratua to let the case proceed. This was one of the earliest trials under the new colonial legal system that lacked foundations such as a local court of criminal jurisdiction and an Attorney-General. Kihi became ill and died before he could be tried in the Supreme Court.

Other accounts said that Te Haratua refused to allow the principal witness, a woman from his hapū, to give evidence unless her relative could also appear in court bearing arms, presumably to protect her.[485]

A standoff ensued, during which Shortland and some of the Kororāreka settlers armed themselves, refusing to give up Kihi or allow Te Haratua's party into the Court. According to a visiting doctor:

> We were all of one opinion, that it was a critical moment, and that it was our duty to maintain the integrity of the first British Court of justice held in New Zealand and not to condescend to parley with armed Men endeavouring to intimidate us.[486]

Shortland called for backup from the 80th Regiment, which had just arrived in the Bay of Islands from Sydney,

and the regiment quickly armed themselves and landed. In military officers' accounts, the appearance of 80 soldiers in various states of dress so cowed the much larger Māori party that they immediately agreed to leave the town, allowing Kihi's trial to proceed.[487] The outcome was cause for much self-congratulation among members of the newly arrived military, and among settlers. The *New Zealand Spectator* saw the episode as proof that, within 'a very few minutes' the military had 'proved . . . that English law ruled the land'.[488] Bunbury went so far as to assert that Māori were so impressed by the soldiers' appearance that their mere presence was sufficient 'for the four years that I remained in the country to keep [Māori] in subjection'.[489]

Henry Williams gave a very different account, in which his son Edward had negotiated with Te Haratua outside the church, and Te Haratua agreed to leave and allow the trial to go ahead so long as Kihi was shot. After hearing that soldiers were on the way, Te Haratua decided to wait around and see what would happen. Shortland, in a panic, then threatened to fire on the Māori, and Edward Williams had to intervene again, explaining to Te Haratua that Shortland's ignorance of Māori customs had led him to misunderstand proceedings. To ensure that no shots were fired, Edward Williams remained with Te Haratua's party until they left. Henry Williams concluded: 'Had a trigger been pulled on this occasion, this would have been the beginning and the end of the Colony of New Zealand.'[490] Henry Williams's stark comment reflects his understanding of where the power lay in the Bay of Islands, notwithstanding the arrival of the Crown and its small detachment of troops.

The historian Ralph Johnson, in his evidence about the Northern War, suggested that Te Haratua allowed the trial to go ahead because the victim had been Pākehā. Had the perpetrator and victim been Māori, 'then the take [matter] would certainly have been dealt with according to tikanga'.[491] We agree, and we also note that Te Haratua's actions amounted to a public assertion of mana over the fledgling Government's judicial process: he halted proceedings, then consented to their continuing so long as Kihi met a fate that he regarded as tika (just).[492] In fact, Kihi became ill and was released into the care of the CMS mission, then died before he could be tried in the Supreme Court. Hobson had been anxious about how to try Kihi; there was no local court of criminal jurisdiction according to Shaunnagh Dorsett, until the Court of Petty Sessions which did not sit until September 1841 – 17 months later. Nor had an Attorney-General been appointed, and there were no lawyers to defend the accused. The most appropriate court would have been the Supreme Court of New South Wales.[493] Hobson also feared, evidently on the basis of news from Tauranga, that Kihi's people might 'seek revenge' on the settler community there, and urged Major Bunbury, who was departing on HMS *Herald* to seek signatures on the treaty further south, to visit Tauranga first and investigate the matter urgently, so that 'so dreadful a calamity' might be averted. Ultimately however, the tensions died down.[494]

Nonetheless, the incident – and the arrival of British soldiers – appears to have caused disquiet among Te Raki leaders. During the same month (April), a delegation of Māori from Kaikohe, Taiāmai, Waimate, and Waitangi visited the Governor, expressing misgivings about te Tiriti. Their concerns were with the arrival of soldiers, and also with the Crown's prohibition on private land arrangements. According to the diary of John Johnson, the rangatira told Hobson:

> Our hearts are dark and gloomy from what Pakehas have told us, they say 'that the Missionaries first come to pave the way for the English who have sent the governor here, that Soldiers will follow and then he will take away your lands and shoot you, which is easy as the Missionaries by making you Christian have unfitted you for defending yourselves'.

Hobson, in response, said that settlers were spreading these rumours because they were no longer able to buy Māori land. Johnson's diary continued:

> He told them that he was commanded by the Queen to prevent them from selling all their lands to White men, instead of coming to take them away the Queen would only buy such lands from them as they did not require and that they would see that what he said was true.

> They [the chiefs] listened with great attention and one chief rising expressed his belief in what the governor said in a grave and impressive manner and ended by saying that 'Our hearts are made light by the words of the 'Kawana.'[495]

Later the same evening, Tāmati Waka Nene visited the Governor, saying that 'wicked men' had been telling him that 'the English will plant themselves around the native . . . and then sweep us away'. Nene said he would not believe those men, and would instead trust Hobson's word and that of English gentlemen (presumably a reference to the missionaries and other Crown allies, such as the former Resident James Busby and the trader James Reddy Clendon). Nene continued, 'all mouths are open against me, accusing me of having brought the English here, but I care not, I know they are come for our own good'. Hobson again emphasised the protective intent behind the treaty.[496]

The chiefs visited Hobson again the next day, alleging that 'it was the intention of the English to exterminate them all'. Hobson, in response, said Britain had enough ships and men to kill them all and take New Zealand by force if that was its wish; instead, he had come to New Zealand 'with only one servant and a friend'. Hōne Heke then stood and said he and his people would die before a hair was touched on the Governor's head, and Nene similarly gave an assurance that he and his people would surround the Governor if anyone dared to attack.[497]

These early exchanges were important in several respects. First, they demonstrated that Māori continued to harbour significant concerns about the treaty relationship. Before signing te Tiriti, they had expressed considerable suspicion about the Crown's intentions, and had sought and received assurances that their authority and lands would be protected.[498] On those occasions, their doubts had also been encouraged by Pākehā who told them the Crown intended to exercise authority over them.[499] As he had at the treaty signings, Hobson assured the rangatira of the Crown's protective intent, and the rangatira were satisfied.[500] As Ralph Johnson noted, Te Raki leaders were expressing renewed concerns '[b]efore the Governor had even begun to act'. Hobson had not yet proclaimed sovereignty, let alone attempted to exercise sovereign power over Māori.[501]

Clearly, the arrival of troops was a significant catalyst for Māori leaders' concerns. As discussed in our stage 1 report, since the early nineteenth century Ngāpuhi leaders had feared that Britain, or some other European power, would invade their territories and kill or enslave them, as had happened in other territories.[502] Indeed, Ngāpuhi tradition is that King George IV assured Hongi Hika in 1820 that this would not occur; that Britain would not send soldiers, lest Māori be deprived of their country.[503]

Māori concerns about the treaty appear to have had an impact – the Mangakāhia leaders Te Tirarau, Parore Te Āwhā, and Mate were invited to the Bay of Islands in April to sign te Tiriti, but did not appear.[504] Indeed, a rumour circulated that some rangatira who had not signed te Tiriti – led by Kawiti of Ngāti Hine and also including some Hokianga rangatira – were planning to force the Governor to abandon New Zealand. The Governor was also aware of these rumours, and resolved to have Kawiti and others involved 'closely watched'.[505] This threat appears to have been related to a local land dispute between Taiāmai Māori and the Williams family. When Māori began to build a pā on Lake Ōwhareiti, Williams's sons threatened to burn it down, on grounds that the land was part of the vast Pākaraka estate that the family claimed to have purchased during the 1830s. In response, the hapū concerned threatened to shoot the Williams family and reclaim possession of the entire estate and the Waimate mission station.[506] The incident illustrates the conflicting expectations of Māori and settlers over the future of pre-treaty land arrangements: Pākehā expected the Crown to enforce their understanding, and Māori expected theirs to prevail. We will consider this issue in chapter 6.

On 27 April, Hobson responded to Te Raki leaders' concerns with a circular letter in which he urged them not to listen to the words of 'Pakeha kino'. Those Pākehā were encouraging them to become hostile to 'te Rangatiratanga o te KUINI' (the Queen's authority; capitals in original), and were telling them: 'E tangohia o koutou wenua, a ka takahia rawatia o koutou rangatiratanga, me o koutou ritenga tika.' According to the historian Thomas Lindsay

Buick, the English text was: 'Your lands will be wrested from you; that your original customs will be trampled down and abolished'.[507]

These statements were false, Hobson said; he had told the truth at Waitangi and Māngungu:

> ka tohe tonu te Kawana ki te wakau i nga tikanga, me nga taonga katoa o nga tangata maori; a ka tohe hoki te Kawana kia mau ai te rongo, te atawai, me nga ahuwenuatanga, i tenei wenua.

According to Buick:

> the Governor will ever strive to assure unto you the customs and all the possessions belonging to the Maori. The Governor will also do his utmost towards the maintenance of peace and goodwill and industry in this country.[508]

We point out that the use of 'rangatiratanga', 'tikanga', and 'ritenga tika' in this letter mean that Māori were likely to have understood it as an assurance that the Governor would preserve their authority and laws, as well as their lands and other property; it was, therefore, consistent with northern Māori understanding of te Tiriti.

In Mr Johnson's view, it was striking that the term 'te Rangatiratanga o te KUINI' was used to signify the Queen's authority:

> It is little surprise then that Northern Maori saw the guarantee of 'te tino Rangatiratanga' in Te Tiriti at the same time as a confirmation of their own chiefly authority and sovereignty.[509]

In our stage 1 report, we saw that it became a common pattern in the early 1840s for Crown officials to refer to themselves using the terms 'rangatira' and 'rangatiratanga', appropriating for themselves the power that Māori had in fact retained.[510]

We note that this exchange occurred before Kawiti or Te Tirarau had signed te Tiriti, and before the Kaitāia signing.[511] Notwithstanding Hobson's efforts, Te Raki Māori continued to express concerns, and these were not confined to the Bay of Islands and Hokianga. In June 1840, the Whangaroa missionary James Shepherd observed:

> A Governor has arrived. . . . Soldiers have arrived, prisoners are taken, murders and thefts having been committed and what was never before witnessed by the poor heathen, they have seen their own countryman tried and committed to death. The natives, at least some of them, have looked upon the soldiers with a jealous eye indeed, they have expressed a decided wish that the Governor would withdraw.[512]

A few days after Shepherd made these comments, an American sailor started a fight at Pōmare II's Ōtuihu pā,[513] and threatened to burn it down. In retaliation, Pōmare's people seized two of the Americans' boats. The sailor escaped with a minor injury, running away and raising the alarm with a false claim that Māori had killed a dozen of his colleagues and imprisoned others. Hobson sent a navy vessel. While its commanding officer, Captain Lockhart, was negotiating for the release of the boats, some of the seamen fired on Māori who were defending the pā. No one was hurt and, remarkably, Pōmare's people did not retaliate, instead allowing the seamen and whalers to depart with the boats. Hobson became acutely aware that the whalers had been in the wrong, and feared that by sending his small navy contingent, he might have antagonised one of the region's most powerful and well-connected chiefs.[514]

The following morning, Pōmare visited Hobson, and – much to the Governor's relief – expressed gratitude that the navy had prevented the whalers' attempt to set the pā on fire. Hobson, in his report on the incident, explained that he sent soldiers only to keep the peace, and he asked Pōmare to send for assistance whenever any similar incident occurred. Pōmare, in turn, 'promised [that] if I would keep the white men in order he would answer for the natives'. On one or two occasions in the weeks afterwards, Pōmare sent for soldiers to deal with unruly whalers, giving them generous food and lodgings.[515] This arrangement, it seems to us, was a significant example of Māori understanding of the treaty partnership: the Crown

Dr Grant Phillipson presenting his Crown Forestry Rental Trust commissioned research report 'Bay of Islands Maori and the Crown, 1793–1853', during hearing week 21 at Turner Centre, Kerikeri, in 2016.

would control its people and prevent them from antagonising Māori; Māori would answer for their own; and any overlap would be resolved through negotiation.

In reporting on this incident, however, Hobson sought to present it as an expression of British power and Māori acquiescence. It showed, he informed Gipps, that Pōmare 'has a proper respect for our power', an outcome that would be felt throughout the country, given the chief's significant connections with leading rangatira at Cook Strait, Hauraki, and Kaipara. Hobson acknowledged 'the very frail tenure by which peace is maintained with the native population', in which '[a] mere drunken brawl might have involved us in a war with half the country'. It had been 'a dangerous experiment' to send in the navy, yet he had done so on the basis that inaction would have been 'criminal' if the reports of whalers being killed had been true. The outcome, he believed, would 'greatly tend to strengthen the influence of Government'.[516] That may have been so, though in our view, it also demonstrated that any influence the Government might exercise at that time would require the ongoing consent of powerful Te Raki rangatira. Indeed, despite his protestations to the contrary, Hobson was aware of this. He reported:

> The inference to be drawn from these occurrences is that an augmentation of the military is absolutely necessary; it must never be overlooked that the native population are a warlike race, well armed, and ever ready to use those arms on the slightest provocation.[517]

According to Dr Phillipson, the Governor's experience with Pōmare caused him to rethink his approach to Māori–settler disputes. From that time, he relied on negotiation and persuasion rather than military force or police presence.[518] Indeed, by that time the Governor was realising that he had his hands full attempting to govern the district's Pākehā residents, who till then had been answerable only to rangatira. As Phillipson explained:

> The CMS clergyman, Robert Burrows, stated that an 'attempt was made to establish law and order, which only partially succeeded'. Many attempts to arrest Pakeha failed, if they were able to obtain shelter at a Maori settlement, although ship captains were able to retrieve runaway sailors by paying Maori a bounty for them. There were frequent drunken quarrels but 'the magistrate very wisely did not encourage the interference of the policeman in every case, but the combatants were either left to fight it out, or some person or persons of influence managed to put a stop to the quarrel'. The magistrate's court was not always an orderly affair, and 'nor were all the decisions strictly according to English law or justice'. And this was just for the Queen's Pakeha subjects.[519]

In August 1840, the tension between colonial law and chiefly authority flared up again, when Hōne Heke and his followers conducted a muru against the settler George Black. As we discussed in chapter 3, muru were a process for peaceful dispute resolution, usually by the removal of goods. They were much loathed by settlers, who called them 'stripping parties' and regarded them as a form of theft. As such, the continued conduct of muru was a measure of the relative power of Māori and settlers, as well as their accommodations to each other's values.[520] In response to Heke's muru, Hobson did not send soldiers or police but wrote a letter to Heke expressing his displeasure and appending a list of the goods that had been taken. If the reports he had heard were true, Hobson said, this was 'a very grievous offence indeed' ('Ka tahi ano te he waka hara'). As Governor, he asked Heke to return all the property. He concluded his letter: 'Na te mea kei au kei te kawana te ritenga mo nga tuturanga o te Pakeha o te tangata Maori ano hoki' ('because I, the governor (I am the person), having the power for the wrongs both of Europeans and natives').[521]

As Dr Phillipson noted, though Hobson was claiming to have the power, the most he could do was request that Heke return the property, and then only if Heke acknowledged that a wrong had been committed. There was 'no thought of a court inquiry or compulsion'.[522] Hobson sent a copy of the letter to London as an example of how he had been attempting to adjust quarrels – and also of his powerlessness without additional troops. It was this situation that prompted him to propose the appointment of sub-protectors to mediate between settlers and Māori, enforcement of English law not being a realistic option.[523] Hobson received yet another lesson in this powerlessness in October, when the Government attempted to construct a customs house at Kororāreka. A delegation of local rangatira complained that it was being built on an urupā, and the Government responded 'immediately' by starting to 'pull down the timbers'. When the job was not completed, Māori returned themselves and finished the demolition.[524]

Even Hobson's more conciliatory approach does not appear to have satisfied Te Raki leaders. On the contrary, from about this time there appears to have been a marked increase in their concerns about settler behaviour and the Crown's intentions for their lands and authority. In September 1840, the missionary Richard Davis wrote to the Church Missionary Society in London, reporting that the number of Māori–settler disputes was increasing; 'some of the settlers give the Natives much trouble' and this was causing 'much excitement and distrust' among Māori. Notably, the missionaries were being regularly called on to keep the peace, as Māori distrust extended to the Crown. There was 'much thoughtfulness and concern' among Māori 'as to what the measures of Government may lead to'.[525] The same month, Hobson issued another proclamation aimed at calming Te Raki leaders' concerns, which he blamed on 'Pakehas (white people) who dislike this our Government'. He promised to protect Māori and be a guardian; and he also promised, once more, that the Crown would not take Māori lands or other properties.[526]

Yet Māori continued to express suspicion. In October, the Waimate missionary Richard Taylor reported to the CMS: 'I am sorry to say the Natives appear to have no confidence in the good intentions of the government. They have been and shall continue to be very unsettled in this part.'[527] A few weeks later, another missionary, John King, reported: 'The natives have no idea of being governed and the thought is repugnant to their feelings of independence and it fills some of them with savage anger.'[528] At Māngungu, the Wesleyan missionary John Hobbs told his superiors that there was 'considerable dissatisfaction' among Māori, largely because they could not understand the Government's motives or intentions.[529] In December 1840, James Buller, also of the Wesleyan mission, recorded:

> Tirarau [leader of Te Parawhau] angrily declared he believed warnings, originating from the Bay of Islands, that 'the designs of the Government respecting them are not good' and that the Government wanted to kill the chiefs and take their slaves.[530]

In February, another Waimate missionary reported that there was 'much uneasiness' among Māori.[531] In March

1841, Hokianga leaders formed a 'Native Committee' aimed at securing Māori lands and authority, which they believed to be under threat from the Government.[532] By April 1841, Te Tirarau declared he was expecting 'a serious fight', and that the Governor was gathering troops in Auckland so he could attack Māori.[533]

Many factors contributed to this unease among the district's Māori leaders. On the one hand, they were expressing prospective concerns about the Crown's intentions, based on the arrival of soldiers in their district, along with their understanding of how colonial authorities had operated in New South Wales and in the Pacific. Hobson's decision to move the capital to Auckland (discussed in section 4.4.2(2)) had cut off lines of communication and created fertile ground for rumours to spread. On the other hand, Māori concerns reflected actions that the Crown had already taken – not only with respect to dispute resolution but also trade and land, as we will see. As Paul Thomas observed in his evidence about the northern Wairoa rohe, from the end of 1840 the Governor was absent from the district, and the Crown's actions otherwise 'impacted negatively rather than positively on the lives of local Maori'.[534]

In March 1841, another case highlighted the Crown's relative powerlessness with respect to conflict within Māori communities. McDonogh (the Hokianga police magistrate) reported that there was great tension, which could erupt into war. Two months earlier, a Māori man had been killed, and utu had been exacted by his kin, who 'without reference to any legal authority', killed four individuals of the other hapū and took two prisoners. McDonogh attempted to mediate, with assistance from the missionaries. He visited the hapū concerned and wrote letters appealing for peace, but to little avail. The 'weaker' hapū was willing to follow his advice, but the stronger was not. McDonogh noted that his effectiveness was hampered by the lack of an interpreter. He appealed for one to be appointed urgently, though, as with most other things at the time, the fate of his request came down to money. Hobson approved it, but said the person selected must be able to fill some other office, such as clerk of the bench, if the expense was to be justified. In making his appeal, McDonogh emphasised that Māori 'rely much [on] the advice and protection of Government'.[535] It appears to us that this was overstating things: it was only the weaker hapū that had sought protection, and then it treated the magistrate as a potential ally, not as a higher authority who could enforce law over Māori.

On occasions, the Government's constables did help to decrease tensions between Pākehā and Māori; for example, by impounding stock which destroyed Māori crops. Police magistrates were similarly conscious of a need to protect Māori from bad characters, especially whalers and sealers, and from excessive supplies of alcohol.[536] In Professor Ward's view, during these early years, while Māori were frequently willing to accept Crown officials acting as mediators in Māori–settler disputes, they did not see themselves as submitting to officials' authority. Instead, official intervention became a new option for dispute resolution, alongside more traditional methods. Furthermore, Māori expected officials to respect Māori values even though these were not recognised in English law. Māori would not hesitate to enforce their own laws against settlers 'if no official were handy or if he failed to give satisfaction'.[537] Historians in this inquiry told us that the Crown intervened in conflicts involving Māori on very few occasions during the early 1840s – a point we will return to later. As Dr Phillipson explained:

> To a significant extent, Māori law and Māori sanctions applied not only to *Māori* communities in the north . . . but also continued to apply to Māori–settler interactions during the 1840s. [Emphasis in original.][538]

(c) Maketū's conviction and execution

The most significant exception to this general rule occurred with the trial of a young Bay of Islands man, Maketū Wharetōtara (also known as Wiremu Kingi Maketū), under the new colonial legal system.[539] Maketū, aged 16, had been employed by the Roberton family on their farm at Motuarohia, an island off Te Rāwhiti. Bullied or provoked by the Robertons' servant, Thomas Bull, Maketū was said to have snapped, killing Bull, Mrs Roberton, her children, and Isabella Brind (the granddaughter of Rewa, rangatira of Ngāi Tāwake and Te

Patukeha).[540] This incident occurred on 20 November 1841. Maketū, the son of Ruhe, an important Ngāti Rangi chief, was found soon afterwards with goods from the Roberton family in his possession. Maketū's people refused to give him up to the Crown, and the police magistrate Beckham was unwilling to compel them to do so, fearing he would antagonise Maketū's people and provoke a major conflict. The historian Richard Hill has suggested that Beckham was ignorant of currents within Ngāpuhi, and not very active in finding them out, which earned him a strong rebuke from Hobson.[541]

In the immediate aftermath, settlers feared that Rewa would himself dispatch Maketū as utu for the death of his grandchild, potentially sparking another Bay of Islands war. But a hui was called on Motuarohia on 24 November, attended by some 300 Māori. There, Ruhe was persuaded to give up his son for trial (according to Mr Johnson, Crown officials attended this hui and attempted to bribe the rangatira with blankets and other goods).[542] Maketū is said to have confessed to the murders the day before to a Kororāreka land speculator, Thomas Spicer, who was part of the jury empanelled by the coroner for an inquest, also conducted on 24 November.[543] Maketū was then sent to Auckland by sea and held in custody. He was tried in the Supreme Court in Auckland on 1 March 1842. This was only the Court's second trial, it having been officially opened the previous day. Many Māori were present, including some called to give evidence, and George Clarke junior (a sub-protector, and the son of Chief Protector George Clarke) interpreted proceedings.[544] Maketū was found guilty and sentenced to death by hanging, and was executed on 7 March.[545]

According to the Ngāti Rāhiri kuia Emma Gibbs-Smith, 'Our kōrero is that Maketū did not kill the Robertons or Rewa's grand-daughter; Thomas Bull did it.' As she tells it, Maketū cared deeply for the children, and killed Bull as utu after discovering the crimes.[546] Richard Witehira of Te Patukeha also referred to this tradition, and recalled his elders weeping after hearing stories that Maketū had committed the murders.[547] Dr Phillipson did not know whether there were other oral histories; he did question why (as we will see) Ngāpuhi leaders subsequently

Emma Gibbs-Smith presenting evidence on behalf of Ngāti Kawa, Ngāti Rāhiri and Ngāre Raumati during the opening day of hearings, May 2013 at Te Tii marae, Waitangi.

acknowledged Maketū's guilt.[548] Colonial officials, and missionaries such as Henry Williams, saw the arrest and execution as a significant breakthrough in their attempts to assert the Crown's authority over Māori. Indeed, Hobson wrote to thank Ngāpuhi for their cooperation with the Crown.[549]

Historians have tended to see it differently, pointing out that the Crown had been powerless to arrest Maketū, who had been given up only with Ngāpuhi consent. Dr Phillipson concluded that the case was 'an unusual [one] in which, for reasons of their own, Ngāpuhi allowed the trial of Maketū to occur'. He did not accept that English

Maketū Wharetōtara, who was tried and convicted for murder under the new colonial legal system. Maketū was the first person executed in New Zealand under British law. His lawyer, who was appointed an hour before the trial, raised the question during the trial whether Maketū could understand the charges against him.

law had been *imposed* on Ngāpuhi in this instance; rather, Ruhe had given up his son to save him from death at Rewa's hands.[550] Professor Ward suggested that Rewa's people might have taken wider vengeance on Ruhe's people and that Maketū was given up 'to avoid a greater calamity'.[551] Mr Johnson was also of this view, noting that Ngāpuhi had made the decision in order to avoid a renewed outbreak of inter-hapū conflict similar to the so-called Girls' War of 1830 (discussed in chapter 3).[552] He also observed that, because the victims were Pākehā and Māori, Ngāpuhi had common cause with the Crown, joining Rewa in seeking justice or utu.[553] Kihi's victim had been Pākehā, and indeed this was true in all cases of Māori tried in the Supreme Court in the early years of the colony.[554] Furthermore, in the case of Maketū, several historians have noted that Ngāpuhi shared the Pākehā view that the crimes were particularly horrific.[555] Indeed, Hobson reported to his superiors in London that had Maketū's offence 'been less atrocious, or had his guilt not been so clearly established, I feel convinced that we should have had a severe struggle to carry the law into execution'.[556]

In our inquiry, Crown counsel agreed with Dr Phillipson that the Maketū case was an 'important exception' to the continuing application of Māori law to Māori–settler interactions during the 1840s. Counsel submitted that the case 'showed that when British criminal law was applied to Māori in Northland', it was applied 'respectfully' and 'through the involvement of rangatira'. Counsel submitted: 'It shows how rangatiratanga and kawanatanga could operate well together, particularly in disputes involving Māori and settlers.'[557] On the face of it, this might seem to be the case, though we note that the Crown regarded itself as having the legal authority to act without Ngāpuhi consent; it took the course it did, of negotiating with rangatira, because at that point it lacked the practical authority.

Although Ruhe had been persuaded to give up his son, the decision remained controversial among Ngāpuhi. Some leaders continued to believe that Maketū should have been dealt with according to Ngāpuhi law.[558] Some also resented the fact that Maketū had been taken so quickly to Auckland and were offended by the public nature of his trial and execution, which Hobson acknowledged was 'considered a degradation on the whole aboriginal race'.[559] Beckham reported that Maketū had managed to smuggle letters out of his cell, urging that Hobson be murdered and British troops attacked. His relatives held a meeting at Kawakawa in early December where they resolved to 'revenge themselves, and wage war with the Europeans'.[560] Hobson took these threats seriously, remaining 'on my guard' while expressing fear for 'unprotected' officials in the Bay of Islands.[561]

In response to the rising tensions, Tāmati Waka Nene and several other senior rangatira (including Pōmare, Waikato, Rewa, and notably, Ruhe himself) approached Henry Williams, seeking to reassure settlers and prevent any further violence. Williams and the rangatira called a hui at Paihia on 16 December 1841, and more than 1,000 Ngāpuhi attended, from the Bay of Islands, Hokianga, and Whangaroa. The rangatira passed a series of resolutions which (in translation) disapproved of 'the murders of Maketu'; declared that he acted alone with no forewarning; and further declared 'that they have no thought of rising to massacre the Europeans', and were 'sorry' that this rumour had been spread and caused alarm. They strongly opposed the return of Maketū to the Bay of Islands.[562]

Ngāpuhi leaders sent a series of letters to the Governor condemning the murders, asserting that Maketū had acted alone, and denying any intention to kill Europeans. One of the letters was signed by Pōmare, Kawiti, Ruhe, Paratene, and Tāmati Waka Nene – the first four of whom were southern Bay of Islands leaders.[563] Another was signed by 19 rangatira from the northern Bay of Islands and Whangaroa, including Mānu (Rewa), Te Kēmara, Whai, Tohu, Tāreha, Te Hira Pure, Te Huarahi, and others.[564] A third letter, signed by Tāmati Waka Nene, said his people had met at Māngungu, and he had also spoken with rangatira from throughout the Bay of Islands and Whangaroa, securing their agreement to leave Maketū to the Crown.[565]

Two of these letters were subsequently printed in *The Maori Messenger/Te Karere o Nui Tireni*,[566] a new Māori-language gazette which the Government decided (on the advice of George Clarke senior) to start publishing at this time. The first issue focused almost entirely on the murders.[567] One leader who did not support leaving Maketū to the Crown was Hōne Heke; according to the settler Hugh Carleton, Heke attended the Paihia hui and 'tried to excite the assembled natives to rise against the English, telling them that they would all be seized as Maketu had been'. Such was Heke's 'violent spirit', Carleton wrote, that Rewa, Ururoa, and many other rangatira left the meeting and armed themselves, fearing an attack.[568] George Clarke junior, who was the translator at Maketū's trial, later wrote that Heke's anger had arisen because under Māori law, 'a man's own tribesmen [should be] the judges of his crime, and the executioners of his sentence'.[569]

Soon after the meeting of 16 December, Kororāreka residents wrote to the Governor referring to a 'general disaffection' among Ngāpuhi, albeit caused less by the Maketū affair than by the Crown's interference in their trading relationships and lands – matters we will return to in section 4.4.2(2). The settlers argued that Maketū's arrest and other Crown actions had created a general fear among Ngāpuhi that the Crown meant to assume power over them and deny their rights, leading some to a view that they needed to repel the Pākehā population and 'recover their independence'.[570]

Henry Williams expressed similar concerns in a letter to James Busby a few months later. He noted that the Maketū affair had been resolved through the colony's legal system only because Rewa's grandchild had been among the victims, and therefore Rewa had sided with the Crown; otherwise, the result would have been different. More generally, all Ngāpuhi leaders continued to express distrust in the Government and its intentions towards Māori and their possessions.[571] 'In regard to British law', Williams continued, 'the natives do not yet consider that it applies to them.'[572]

Likewise, George Clarke senior wrote in his half-year report that there was 'a general notion prevalent among the chiefs who signed the Treaty' that 'in ceding the Sovereignty they reserved to themselves the right of adjudicating according to Native custom in matters purely native', while surrendering rights only in respect of intra-Pākehā and Pākehā–Māori disputes. Clarke said he had sought to correct this view, while acknowledging that English law 'can scarcely be expected' to operate among Māori.[573] In September 1844, when Governor FitzRoy met Ngāpuhi leaders in a major hui at Waimate (see also chapter 5), the Hokianga leader Taonui referred to Maketū's execution as a case of 'life for life'; that is, the

Crown was entitled to utu under its own system for the deaths of settlers.[574] As we will see later, after Maketū's execution Te Raki Māori acted as if they retained rights to resolve disputes not only among themselves but also with settlers; they left the Crown to govern settlers where their own interests were not affected.

We are not convinced that English law was applied with total respect or care in Maketū's case, even allowing for the standards of the time. Governor Hobson was clearly anxious to assure the Secretary of State that proper processes had been followed, that Māori had accepted the outcome of the trial, and that justice had been seen to be done; he reported the whole matter in at least three dispatches to the Colonial Office.[575] But Dr Phillipson expressed reservations about the conduct of the trial and its handling of the evidence. With respect to the evidence against Maketū, Dr Phillipson noted that Spicer's understanding of the Māori language was poor, and that there were discrepancies in the chronology and manner by which Spicer was supposed to have obtained Maketū's confession. In Dr Phillipson's view, Maketū's guilt was established not by the evidence heard in court, but by the actions of Ngāpuhi in handing him over for trial.[576]

Dr Phillipson also raised significant procedural concerns about the trial. He noted that Maketū was not tried by a jury of his peers, since the Juries Ordinance 1841 did not provide for Māori as well as Pākehā jurors in cases where both races were involved.[577] He noted also that Maketū's counsel, C B Brewer, was appointed only an hour before the trial began, though Maketū had been in custody for three months; that the lawyer had not had an opportunity to read any of the depositions, or to speak with his client, or to call witnesses. Furthermore, Brewer's client could not speak English and had no knowledge of English law.[578] Dr Phillipson also pointed out that the Court's jurisdiction had been questioned. According to the brief account in the *New Zealand Herald*, Brewer argued that the Court could not hear the case against Maketū as his client 'was not aware of the British laws' or of the nature of the crime he was alleged to have committed.[579] *Te Karere Maori* published a fuller account, in Māori, which quoted Brewer as asking: 'e tika ana ranei kia wakawakia tenei tangata e tatou, he tangata maori hoki? [A], e mohio ranei ia ki te ritenga o te ture o Ingarani?' ('Is it right for him to be judged by us, as he is a Maori? [A]nd, does he even know the requirements of the laws of England?')[580] According to the *New Zealand Herald*:

> The Attorney-General replied by saying that, Mr Brewer's objection could not hold good as, from the moment the Proclamation was read, every person on these Islands was amenable to the law of England; but should Mr Brewer's objection hold good, three-fourths of the people of England were ignorant of the law.[581]

The trial judge, Chief Justice William Martin, then confirmed his view that Maketū was subject to English law.[582] *Te Karere Maori* quoted the exchange as follows:

> Ka wakatika te Kai Korero mo te Kuini, ka ki atu, 'Ae ra, e tika ana kia wakawakia, ta te mea, kua korerotia nuitia te pukapuka o te Kuini, e mea ana, kia kotahi tonu te ritenga mo nga tangata katoa o tenei motu, ahakoa pakeha, ahakoa tangata maori.' Ka ki atu te Tino Kai Wakawa ka mea, he pono, e tika ana kia wakawakia.[583]

> The Queens representative then stood up and said, 'yes, it is right that he be judged, as the Queens book has been widely discussed, which says, that there should be one rule for all people of this land, whether Maori or Pakeha.' The Chief Judge then spoke, he said that was true and it is right for him to be judged.[584]

In his closing submission, Brewer raised the point again, arguing that this was the first case in which a Māori had faced a full trial before the colony's courts, and that his ignorance of English law should at least be considered as a mitigating factor during sentencing.[585] Counsel for Emma Gibbs-Smith and several other claimants questioned the use of the term 'te pukapuka o te Kuini'

('the Queen's book') in *Te Karere Maori*, with reference to Hobson's proclamations of sovereignty. 'In legal, technical terms, there is no such document', counsel submitted. 'The phrase is too colloquial for it to have been used in legal submission by an Attorney-General.'[586]

It was counsel's submission that Swainson 'did not refer to "the Queen's book" but in fact referred to Hobson's proclamations as the reason why Maketū was amenable to the Court's jurisdiction and the laws of England. This was obvious from the *Herald* account of the proceedings.[587] Rather, he suggested, it was George Clarke senior and his team of editors who inserted the phrase 'the Queen's Book' in the Government publication *Te Karere* to avoid alarming their Māori readers by reference to the proclamations rather than the treaty.[588] Crown officials, they argued, had not discussed the proclamations with Te Raki Māori either before or after they were issued, and so, in its account of the trial for Māori, the Crown deliberately suppressed reference to them and to their legal effect. Any official acknowledgement 'that the source of the Supreme Court's jurisdiction to hear Maketū's case stemmed from Hobson's Proclamations, and not from te Tiriti o Waitangi, could have caused the extreme tension in the north' at a time when tensions were already very high.[589]

In further criticism of the trial's conduct, Dr Phillipson noted that proceedings moved with considerable haste. Maketū pleaded innocence, yet the jury took only a few minutes to decide his guilt. Although there was the 'theoretical' possibility of an appeal to the Privy Council, this was removed by the speedy passing of a death sentence, and by Maketū's execution days later.[590] We add that the Governor might also have granted Maketū a free or a conditional pardon.[591] In Dr Phillipson's view, the trial of a young Māori for a capital crime was an event 'of great significance' in terms of Māori willingness to adhere to English law: 'It follows that particular care would likely have been taken to ensure that the trial exemplified British justice, especially in terms of fairness. Yet this does not seem to have happened.'[592] This was also the view of the Ngāti Rāhiri claimant Emma Gibbs-Smith:

> Maketū never received a fair trial. . . . It was all a jack-up so that the Crown could impose its criminal law and authority on the Māori people of the north, even over a 16 year old child.[593]

The Crown did not respond to this point, and we did not hear detailed evidence about the standards of fairness that applied to colonial trials at the time. We note that the English court system has evolved, and that trials in the 1840s were conducted much more rapidly and with less emphasis on procedural fairness – including rights to defence – than in modern times. As the legal historian Douglas Hay has observed, the right to defence counsel had only recently been enshrined in English statute, and nineteenth century trials were sometimes conducted 'with amazing speed' and with very little detailed consideration of the evidence.[594] Nonetheless, we agree with Dr Phillipson that the trial was scarcely a fine example of British justice, and cannot have encouraged Ngāpuhi to submit to the colony's laws. Indeed, Ms Gibbs-Smith told us that, following Maketū's execution, 'all the rangatira got together and vowed to never give another man up to the Pākehā again.' This was a saying that Ngāpuhi had passed down through generations: 'I even remember my mother saying it to us kids, "Never again do we give up our people. Never again."'[595]

(d) Continued enforcement of Māori law over Māori and settlers

The case of Maketū was to be the last occasion for some years on which the Crown attempted to arrest or imprison any Te Raki rangatira. As Dr Phillipson observed, the removal of the capital (and the 80th Regiment) to Auckland in mid-1841 took the heat out of questions of relative authority, allowing Ngāpuhi, for the most part, to manage Māori–Māori and also Māori–settler conflicts with minimal Crown intervention other than occasional attempts at mediation. The 'face of the Government in the north was now the Police Magistrate [Beckham], the gaoler, a few police, and the protector [Kemp]'.[596] With

this very limited official presence, 'the 12,000 Nga Puhi were not in any immediate danger of being actively governed'.[597] On the contrary, the protectorate 'did nothing more than try to mediate disputes'.[598] Beckham, similarly, 'did not try to overreach himself', for the most part leaving Māori–settler disputes to rangatira and missionaries.[599]

As a result, Dr Phillipson noted, Māori were largely able to deal with those disputes as they had before the arrival of Hobson's officials. In pre-treaty times, they had already made accommodations for Pākehā 'so as not to inconvenience Europeans to the point where they felt compelled to leave or stop visiting', and these accommodations carried on after 1840 as Māori continued to enforce their laws with an eye on trade.[600] Phillipson saw such accommodations as examples of Māori and settlers meeting on a 'middle ground', where they continued to view interactions through their own cultural lens, while 'adjust[ing] their differences through what amounts to a process of creative, and often expedient misunderstandings'. This point is discussed in more detail in chapter 6.[601]

These misunderstandings can clearly be seen in Pākehā responses to the Māori system of law and authority, based on mana, tapu, and utu, enforced through mechanisms such as rāhui (temporary bans on the use of places or resources) and muru.[602] Many longer-term settlers had come to reluctantly accept occasional muru as a price of their residence among Māori, and had learned to negotiate voluntary adjustments in order to prevent conflict. Māori, in turn, had chosen to make some allowances in order to facilitate trade and good relations; for example, by turning a blind eye to minor transgressions, or enforcing utu against Pākehā with more lenience.[603] In this, Dr Phillipson observed, Māori adoption of Christianity was a significant influence.[604] From 1840, many settlers – particularly the more recent arrivals – expected the Crown to intervene in cases of muru and enforce English law, but in practice, muru continued well after 1840, and 'customary law and fundamental Maori values continued alongside (or as part of) Maori Christianity'.[605]

We have already discussed Heke's August 1840 muru of George Black.[606] Another significant muru occurred in the northern Kaipara district in early 1842. The Tribunal has already considered the events in *The Kaipara Report* (2006), but we mention them here as an example of the Crown's early attempts to enforce its authority over Māori. During the latter months of 1841, the leaders of Te Parawhau and Te Uri o Hau became aware that a Kaipara trader, Thomas Forsaith, had a skull on display in his general store. Believing that Forsaith had looted an urupā and was trading in kōiwi (human remains), they raided and destroyed his store, taking the skull to give it a proper burial. George Clarke senior, who was sent to investigate, accepted Forsaith's claim that his wife had found the skull beside a river. The protector therefore pressed Te Tirarau and other leaders to give up a large area of land at Te Kōpuru, estimated in 1919 to contain between 9,000 to 10,000 acres, as compensation.[607]

Te Tirarau is recorded as responding that the Governor 'would have no land . . . until he first killed them and their children'.[608] But he soon relented, apparently because Clarke threatened military action.[609] Clarke later acknowledged to Hobson that he had misgivings about Forsaith's actions.[610] Te Roroa historian Garry Hooker also recorded a later account from the missionary James Buller, that Māori had been 'duped' by Forsaith's false accounts.[611] Nonetheless, the land was taken, the Crown keeping most of it while granting a small portion to Forsaith as compensation. Forsaith took the land as scrip and departed for Auckland, where he was soon appointed as a subprotector.[612] Mr Hooker also stated that the Crown had taken land that did not in fact belong to Te Parawhau, but rather to Te Roroa hapū Ngāti Whiu and Ngāti Kawa.[613] *The Kaipara Report* found the Crown's handling of this incident to be in breach of the treaty.[614]

For Te Parawhau and other Mangakāhia tribes, Clarke's intervention was their first – highly unfortunate – direct contact with the Crown's authority. The Crown had almost entirely ignored the Mangakāhia district after Te Tirarau and other rangatira signed te Tiriti in May 1840. Its only tangible impact had been to prohibit private land

arrangements and invalidate those already in place – thereby discouraging the trade that Te Tirarau and others were attempting to build in a district that still had only a few dozen permanent settlers. By April 1841, Te Tirarau was threatening violence against the Crown, angered by the negative impacts of these land decisions. In Paul Thomas's view, Clarke's approach to the Forsaith muru the following year created a risk of major conflict between the Crown and Te Parawhau, defused only because Te Tirarau did not wish at this point 'to destroy the nascent relationship with the Crown and endanger the prospect of further European settlement'.[615]

Clarke's uncompromising approach appears to have been guided by Hobson, who wanted to stamp out muru altogether and, according to Professor Ward, sought to have Te Tirarau arrested.[616] In an initial report to London, the Governor expressed his

> great regret . . . that I have not sufficient power to demand and enforce the abolition of these practices, as it generally happens that the violence of the natives is not directed against the individual person who has committed the aggression, but against every unprotected white settler in the neighbourhood.[617]

We observe that in the case of Forsaith, this was patently untrue; and indeed it is generally untrue for the muru discussed in this chapter. Furthermore, it demonstrates Hobson's failure to understand taua muru as a mechanism for adjusting disputes in accordance with tikanga. Hobson also reported that settlers' rights were being 'frequently invaded' and needed greater support, and to this end he wrote to Lord Stanley: 'I am sure your Lordship will admit of the necessity that exists for placing a stronger force of military in this country.'[618]

Ralph Johnson noted that Governor Hobson sent 'numerous' requests for additional troops, with the clear intention that they would be used to control Māori as well as settlers.[619] In 1839, he had responded to his instructions by asking for armed forces, or at least equipment for a local militia, as the presence of such forces 'would check any disposition to revolt, and . . . enable me to forbid in a firmer tone those inhuman practices I have been ordered to restrain'.[620] After receiving a small detachment from the 80th Regiment, he continued to seek a larger force. As noted earlier, he made additional requests in June 1840 after the outbreak of fighting between visiting whalers and Ngāti Manu, and again in October 1840 after Heke's muru on George Black.[621] On those occasions, and again in his response to the muru on Forsaith, he had made clear that his intention was to use soldiers against Māori where he deemed it necessary, and to protect settlers even when they had transgressed against Māori law. In Professor Ward's view, this illustrated 'the dangerous tendency, endemic in imperial situations, for officials to look to a narrow and highly provocative military solution, in a complex problem of inter-cultural relations'.[622]

Stanley's response to Hobson's latest request arrived in October 1842. Stanley expressed serious misgivings about the Forsaith case, noting that the muru was not unprovoked, and that the cession of land was punitive and 'of too questionable a propriety to be often repeated'. Further confisations of land were likely to escalate conflict between Māori and Pākehā, with 'most dangerous consequences . . . to the happiness of the Natives, and to the future peace of the colony'.[623] Stanley also recommended that the colony establish legal protections for Māori, in particular by imposing severe penalties on settlers who desecrated wāhi tapu. By giving Māori recourse under the colony's laws, he observed, they would be more inclined to trust the Crown's authority and feel less need to take matters into their own hands.[624] Hobson's calls for additional troops appear to have gone unheeded for the time being, though a small detachment from the 96th Regiment was sent in 1843.[625]

In the absence of sufficient troops to control Māori communities, Hobson and his officials had little option but to tolerate the practice of muru, at least for the time being.[626] A few months after the Forsaith incident, George Clarke senior was called to Whāngārei after settlers there complained of another muru by Te Tirarau and his people. Clarke reported that Te Parawhau had gone to visit tribal urupā near the present-day Whāngārei city centre, and had discovered that William Carruth and several other settlers were occupying the site and had desecrated it.

Adding to the insult, the occupied land was part of a disputed pre-treaty transaction with Gilbert Mair (see chapter 6), who had asserted rights over far more land than he had been granted and had never completed the agreed payment. As Clarke explained, the hapū had resolved to remove the bones of their ancestors to another site, while also claiming modest utu for the settlers' transgressions.[627]

Te Parawhau 'quietly' visited the settlers, 'and respectfully ask[ed] them for a payment for their profanation and for their daring trespasses, concluding that they would take only what was given them'. Having explained their intentions, the Māori asked what the settlers had to offer, then 'pointed out what they wanted, and took what was given them, expressing their satisfaction'. The taua continued from house to house 'holding out no threats'. Having received 'a small equivalent' of what they were entitled to, they departed,

> unconscious of having violated any Law of Equity, Human or Divine and considering the Europeans under great obligation to them for the very quiet way in which they had disposed of the case.[628]

In effect, on this occasion Clarke's response amounted to official acknowledgement that Māori laws could be justifiably enforced against settlers, and that Māori themselves could do the enforcement. Indeed, Clarke's view was that the conduct of the muru reflected 'very great credit' on the Māori, and very little on the settlers who had swindled Te Parawhau out of their land.[629]

Carruth himself remonstrated with one of the Te Parawhau leaders 'for allowing his pakeha to be robbed', and was told that the incident was justified, and indeed was an honour for the Pākehā.[630] There were numerous other instances of Te Tirarau asserting mana over settlers. In May 1842, in response to an insult by the missionary James Buller, the rangatira enforced a temporary boycott of church services.[631] Paul Thomas observed that Mangakāhia rangatira had a well-deserved reputation for encouraging settlement, but 'could be harsh if they believed their authority was being challenged or settlers were not living up to their expectations'.[632]

From about this time, there were numerous instances of the Chief Protector and other officials, or missionaries, negotiating the payment of utu as a means of settling Māori–settler conflicts, and accepting that Māori had rights to enforce the law of tapu and other customary laws.[633] One significant and seemingly precedent-setting incident occurred early in 1842.[634] Hōne Heke and Taihara wrote to Bishop Selwyn, on 6 February, asking that he investigate Pākehā who were shooting protected birds near his kāinga at Lake Ōmāpere:

> Mau e Titiro iho te haerenga mai o nga Pakeha ki te pupuhi i nga manu o taku kainga, Omapere, no te mea, he mana kei runga i aua manu no to matou kingi i mua hei ingoa no to matou matua aua manu. He mea tapatapa. Tahae ake ano te tangata i aua manu, maru ake te tukituki.
>
> I tawahi ko ta koutou nei rahui he mea tuhituhi ki te reta koutou nei rahui, tahae kau te Pakeha. Ka mau te ture ko to matou tikanga he mea tapatapa tahae kau ka maru te tukituki.
>
> I wish for you to investigate the excursions of the Europeans, to shoot the birds of my village, Omapere, because we have the rights over those birds, a chant has been recited over them so that should anyone stake those birds, they will die for their sin.
>
> Overseas, your territorial boundaries are written on paper and can be easily stolen by the European. It is our custom to adhere to the rules. A chant is recited, then should anything be stolen, the consequence is death.[635]

Heke and Taihara said it was the third letter they had sent to the missionaries – to Selwyn, the Reverend Richard Taylor, and the mission farmer Richard Davis:

> Mau e wakarite tenei hara, ki te kahore, ka haere atu ahau ano, he tahae i [te] po. Me homai he whakamarie moku. Ka mutu ka tae te marietanga. Ki te kahore, e kore e mutu i utua.
>
> It is for you to rectify this wrong, if you do not, I will go myself, as a thief in the night, to gain satisfaction for myself. Once done harmony will reign. If not revenge will never end.[636]

As the anthropologist Dr Merata Kawharu noted, Heke was frustrated that his authority over his land and his resources was being flouted; and that the Crown 'was not keeping its Treaty obligation to protect local Maori from the illegitimate actions of settlers'. The problem did not go away, and in 1843 a taua visited Selwyn demanding compensation after some of the mission's young men had shot ducks that were protected by tapu. The bishop wrote of this incident:

> Of course I refused to recognise their heathen customs, but finding that the 'tapu' meant no more than our English word 'preserve', I confessed that the young men had done wrong in poaching.

In accordance with scripture, he paid four times the market value of the ducks, sufficient utu to resolve the grievance.[637] Dr Phillipson saw this as an example of 'both sides were making adjustments to keep the relationship working'.[638]

In March 1844 there was a further repetition of Pākehā duck shooting at 'a tapu swamp' at Lake Ōmāpere, where several wild ducks were shot.[639] Heke arrived with a taua and demanded utu for the breach of the rāhui. George Bennett, the British military engineer who recorded the incident, stated that the British involved, including missionaries, met with Heke and asked whether they wished to have the matter dealt with by the magistrate at Kororāreka, their own (Māori) laws, 'or by the new ritenga of the New Testament'. Heke apparently chose the New Testament – presumably meaning he would receive four times the market value – and Bishop Selwyn immediately handed over the payment. Bennett recorded that Heke's group 'were not well pleased but thinking the decision just they said no more'.[640] So both sides continued to make accommodations; in Heke's case, despite his irritation that his rāhui continued to be ignored. As Mr Johnson noted, it is interesting that Heke approached the leader of the missionaries, rather than the colonial authorities.[641] It is clear that Heke felt strongly about the shooting of protected birds – as he had previously explained, breaching rāhui was a capital offence among Māori. He might also have found the involvement of missionaries especially irritating, given their knowledge of tikanga. He spelt out for Selwyn how he saw the relationship between tikanga and introduced English law:

> I tawahi ko ta koutou nei rahui he mea tuhituhi ki te reta koutou nei rahui. Tahae kau te Pakeha, Ka mau te ture ko to matou tikanga. He mea tapataopa tahae kau ka maru te Tukituki.
>
> Your prohibition is written in letters, and [with] your prohibitions if a Pakeha just steals, the law binds him. Our custom is from naming some things as sacred, and if there is stealing, there is killing.[642]

Dr Phillipson noted that Māori laws were not enforced only in cases of transgressions against tapu. Other breaches of tikanga could also lead to muru or other enforcement action. For example, Te Raki Māori sometimes conducted muru against Pākehā who occupied disputed lands or failed to respect traditional gift-giving arrangements.[643] Prior to 1840, settlers who occupied Māori lands also took on obligations to their host hapū, which included regular gift-giving. After the signing of te Tiriti, there was a widespread expectation among Pākehā that they would be freed of these customary practices and could instead occupy their lands as freehold, whereas Māori continued to view the relationships in reciprocal terms (see chapter 6). According to Phillipson, this cultural difference was behind many of the muru that occurred in the first few years of the 1840s. 'A lot of what was seen as robbing or pillaging was actually attempts to restore the balance', he wrote. 'Those who were not generous or hoarded wealth could expect a visit from a taua muru', even if such actions were 'anathema to Pakeha and could not be pushed too far'.[644]

Heke explained the process after he was accused of raiding settlers' homes at Mangonui and Taipa during a conflict between Ngāpuhi and Te Rarawa in 1843. 'It was through me that the [settlers'] houses of Mongonui and Taipa were saved', Heke told the Chief Protector. In return, 'I only asked them for potatoes for my tribe, and

they gave me some . . . had they been withheld I should have been angry'.[645] As this example shows, Māori–settler relationships involved ongoing reciprocal obligations; enforcement mechanisms were threatened or used when the relationship fell out of balance. Dr Phillipson observed that even into the 1850s and beyond, disputes were typically adjusted through 'negotiations and ceremonial confrontations' between the affected parties; where settlers were involved, they might represent themselves, but it remained common for their host hapū to adjust matters on their behalf. Indeed, the resident magistrate was heavily reliant on Māori resolving disputes in this way.[646]

Notwithstanding continued Māori authority over their own affairs, some Te Raki leaders remained concerned about the Crown's long-term intentions.[647] Settler transgressions against Māori law were a factor in this, though scholars such as Dr Phillipson and Mr Johnson pointed to other factors, such as the Crown's handling of old land claims, the removal of the capital to Auckland, and Crown interference in Ngāpuhi trading relationships as more significant in raising tensions and eroding trust (we discuss these factors in section 4.4.2(2)).[648] According to Johnson, the number of muru increased after 1840 because the settler population was growing and beginning to operate 'according to rules and laws in competition with those of local chiefly authority'.[649]

During 1844, there was a significant escalation in Crown and settler responses to muru, which in turn led to an increase in tensions in the north. Whereas Pākehā had previously complied, albeit reluctantly, with muru, they began to demand that the Crown take action to protect their properties, while also (in Mr Johnson's words) describing muru in 'in vivid terms that encouraged the belief that [they] were incidences of free-ranging violence and lawlessness'.[650] The colonial Government, responding to this pressure, began to escalate matters by calling for troop reinforcements and sending in armed forces.[651]

In July 1844, Heke led a taua muru to Kororāreka seeking compensation after Kōtiro, a Taranaki war captive who had formerly been part of Heke's household, took up residence with a butcher named Lord. Heke had wanted her back, but she met his messenger with insults. Heke then arrived with his taua muru and took up residence at Lord's house. The episode escalated as Lord failed to provide payment he had promised, resulting in a confrontation between Heke and the police magistrate Beckham. This led Heke to protest that the Queen (and by extension her officials) had no right to interfere in his business, and to announce that he would cut down the flagstaff which (because of customs duties, discussed later) had destroyed Bay of Islands trade. The missionaries Henry Williams and Robert Maunsell intervened, paying utu of rice and sugar on Lord's behalf to address that matter, but leaving unresolved the broader issue of Crown interference in Māori affairs – to which Heke's party responded by carrying out their threat to cut down the flagstaff, and Governor FitzRoy, in turn, sent troops to the Bay of Islands.[652]

Other incidents continued throughout the year. In September, George Clarke senior visited Hokianga where another dispute had erupted between rangatira and settlers. On this occasion, the Hokianga police magistrate Robert St Aubyn, together with armed constables, raided the kāinga of the chief Ngāhu, attempting to recover a Ngāpuhi woman who, Johnson noted, was apparently the wife of a European. When Ngāhu saw the party approaching, he armed himself, at which point the constables made a hasty retreat by boat. Ngāhu fired a shot, which passed through the neck of a cow belonging to a Pākehā neighbour, Kelly. The shot caused very little injury, but nonetheless Ngāhu was subjected to a muru in which he lost his house, along with all of his food and pigs. Clarke, hearing of these events, took no action except to encourage Hokianga leaders to keep peace among themselves.[653]

Another major incident was sparked in September when police injured the wāhine rangatira Kohu (Ngāti Hine, Ngāti Manu) as they were attempting to arrest her Pākehā husband (Joseph Bryers, who we discuss further in chapter 6). Kohu was of senior descent; her grandfather was the Ngāti Hine leader Kawiti. Regarding the injury as minor, the police magistrate Beckham refused to pay compensation – a decision that Dr Phillipson regarded as 'a serious error in judgement'.[654] In response, Kohu's brother Hori Kingi Tāhua conducted a series of muru against Pākehā settlers, taking several horses. Tāhua's people

also stripped the jail in Kororāreka. Pōmare II, Tāmati Waka Nene, and other leading rangatira appealed to the Governor to address the situation before it worsened, and FitzRoy responded by sending the Royal Navy sloop HMS *Hazard* with Chief Protector Clarke senior aboard. Clarke acknowledged that Tāhua had a legitimate grievance and negotiated the payment of utu, in exchange for the return of the horses. Clarke also recommended that Crown officials pay utu in cases where they had offended against Māori law to reassure Māori of the Crown's good intentions.[655] During these negotiations, Clarke attempted to dissuade Tāhua from taking matters into his own hands; Tāhua responded that he had approached Beckham twice to no avail, and 'if he could not meet with redress from the police magistrate, he would take it'.[656]

Although Clarke's intervention had resolved the immediate issue, tensions were rising in the district. In Clarke's view, there were multiple causes. Māori were distrustful of the Crown's intentions towards them and their lands, and frustrated over rapidly declining trade; some settlers were encouraging these fears in the hope of scaring away their business competitors; and the influence of senior chiefs who had previously kept the peace was declining.[657] After these events, there were further muru at Te Puna, Waikare, and Kororāreka in 1844; FitzRoy responded by sending a warship and threatening military action against the Māori involved.[658] Yet more muru at Kawau and Matakana in January 1845, apparently sparked by settlers' occupation of contested lands, led the Governor to order confiscation of land and issue warrants to arrest several rangatira. This further escalation set the scene for another attack on the flagstaff, and ultimately for the outbreak of the Northern War, which we will consider in chapter 5.[659]

(e) What steps did officials take to recognise tikanga in New Zealand law?

It is clear that in the first few years of the colony, there was considerable uncertainty among Crown officials over the extent to which the colony's laws might be applied to Māori, and conversely the extent to which the colony should recognise and protect tikanga Māori.[660] There was also some tension between the views of Ministers and officials in London, and the colonial Government. As we have seen, local officials initially attempted to enforce its law over some Te Raki Māori, before quickly stepping back and addressing most issues through mediation and negotiation.

In Dr O'Malley's view:

> This was the dilemma for authorities, and while some officials argued that the most honest course of action was for the Crown to abandon any pretensions to rule over Māori districts, others believed that such a policy would merely lead to further problems as unregulated settlement of such areas inevitably brought colonists into conflict with the tribes.[661]

Various events during 1842 and 1843 highlighted the difficulties the colonial Government faced in attempting to keep peace and manage Māori–settler relations. These included an outbreak of intense intertribal fighting in the Bay of Plenty, which the Crown tried and failed to suppress; and the Wairau Incident, in which Nelson settlers provoked a conflict with Ngāti Toa by attempting to force them from disputed land.[662] Intertribal fighting also broke out at Ōruru in the Mangonui district in 1843, at least in part (according to historian Dr Barry Rigby) because of the Crown's handling of conflicting land claims.[663]

In response to the Bay of Plenty conflicts, Attorney-General Swainson recommended the establishment of native districts where Māori would live under their own laws, subject only to the influence of missionaries and protectors. Underlying this proposal was Swainson's view that the Crown had no legal authority over Māori who had not signed te Tiriti, or had signed it without clear understanding of its provisions in the English text. Swainson did not intend that these districts be fully independent: the Crown would have jurisdiction over settlers, including power to disallow their land claims and punish them for breaches of the law. According to Professor Ward, such an outcome would have involved 'a *de facto* acceptance of the Maori social system', while allowing Māori to engage with the British parts of the colony as they chose. The result, Ward wrote, 'would have been a very different New Zealand, an essentially Maori New Zealand'.[664] In Orange's

view, the native districts proposal 'probably came close to the Maori understanding of the treaty'.[665]

Chief Protector George Clarke did not believe that self-government would protect Māori from unruly or unscrupulous settlers; rather, that Māori would benefit from the protection of the colony's legal system, but only if they could be induced to submit to it – a step that would require concessions to existing Māori systems of law, authority, and conflict resolution. He proposed, therefore, that the colony's legal system protect Māori customs and that rangatira be co-opted to act as magistrates to adjudicate and enforce the law among their communities. In 1842, he reported: 'British law . . . can scarcely be expected to operate among [Māori], until they have the means of both knowing and making use of those laws . . . especially those living at a distance.' As things were, it was difficult, he said, to protect Māori from 'great hardships and from great injustice' if they came into contact with the colony's legal system. A Pākehā knew how to proceed in 'maintaining his right'; Māori were 'ignorant of even the first steps to be taken'. Where there were disputes between Māori and Europeans, over the killing of pigs belonging to Māori, trespass and spoiling of their crops by cattle, destruction of their wāhi tapu, encroachment on their land, the cutting of their kauri and other timber, and 'low abuse held in great abhorrence by the natives, viz. swearing at them', what was needed, in his view, was an 'efficient officer' who could 'direct and adjudicate'. English law thus posed problems for Māori:

> The law makes no provision for the many cases which, according to native custom, may be adjusted by compensation; it takes away all that once united society, and gives nothing adequate in its place.[666]

In 1843, Clarke wrote a lengthy paper for the Colonial Secretary setting out his views in detail on adapting English law to tikanga. He began with a strong statement about the treaty:

> The inapplicability of the English law to the natives of New Zealand arises, in the first place, from the provision of the treaty of Waitangi, which guarantees all native customs. Now it is obvious that native customs and usages, if not absolutely at variance with the spirit of English law, in all cases, are, both in form and final issue, diametrically opposed to its administration, and especially inimical to its tardy operation.[667]

In other words, though tikanga was not incompatible with the spirit of English law, it was administered totally differently, its outcomes were totally different, and the slow operation of English law did not sit well with tikanga.

And, Clarke argued, leaving aside treaty rights, and focusing on Māori as British subjects 'amenable to British law in all its manifold ramifications', they were subject to 'great hardships' either because those who wronged them might escape conviction because of legal technicalities, or because they knew how to operate in commercial transactions to escape financial obligations. Therefore, English law 'pertaining to assault, larceny and felony, is irreconcilable with the natives' view of equity, and opposed to native custom'. It was inexplicable to them why compensation was not made to the injured party, and the result was that they sought redress in ways 'more compatible with their notions of justice' or became disgusted at 'a system which is attended only with inconvenience and delay, especially when they appear as prosecutors'. The upshot was that, despite the British promises of protection, Māori in different parts of the country 'have suffered wrong'.[668] Clarke turned then to his own proposal, which Ward outlines as follows:

> Clarke . . . proposed to legalise certain Maori principles of justice and apply them in Native Courts, consisting of the Protector of the district associated with the principal chiefs, and a jury – all Maori in disputes between Maoris, half European and half Maori in mixed cases. The courts were to sit in the villages and the record of their proceedings was to provide a guide to the further codification of custom. Decisions on land disputes were to build a record of land claims through the Colony.[669]

In Ward's view, an essential element in the scheme was Clarke's belief 'that the involvement of the ruling chiefs in

the judgment would be tantamount to its execution'. The police would thus work in support of the chiefs, rather than of an alien authority. Clarke believed that the Crown should provide Māori with a code of laws, which they could use to 'adjust their differences'. Nothing should be done that seriously affected Māori usages and customs 'without reference to them through their chiefs'. The provision of courts in centres of Māori population would meet Māori expectations that offences should be dealt with expeditiously, and would get round the problem of trying to move all those involved to hearings in distant locations.[670]

Acting Governor Shortland shared Clarke's opposition to separate Māori districts, fearing that most or all Māori would take this course and reject British authority.[671] While he preferred Clarke's proposals, he also had reservations. The first was the cost. There were no funds available to administer the courts. The second was the risk of failure if the courts had no power to enforce decisions 'against turbulent chiefs or tribes'. Shortland was anxious that the Crown's position should be strengthened by the presence of an adequate military force.[672]

The Colonial Office made no objection to Clarke's proposals. Lord Stanley wrote to Shortland endorsing the principle behind them:

> [T]here is no apparent reason why the aborigines should not be exempted from any responsibility to English law or to English courts of justice, as far as respects their relations and dealings with each other. The native law might be maintained and the native customs tolerated, in all cases in which no person of European birth or origin had any concern or interest.[673]

Later that year, Under-Secretary Stephen clarified that, in the Crown's view, Māori were British subjects whether they had consented to the treaty or not. He refuted the suggestions, 'subjection to British sovereignty and subjection to English law are convertible terms'; that is, Māori could be British subjects while still having their own laws.[674]

Robert FitzRoy, the incoming Governor, was against using Crown troops in internal Māori conflicts; in his view, negotiation, compensation, and moral influence should be relied on instead.[675] In January 1844, newly arrived in New Zealand, FitzRoy addressed the Legislative Council in support of the introduction of 'declaratory or exceptional laws, in favour of the aborigines [Māori] and their descendants', and suggested that 'an arrangement for guardedly authorizing some of the native chiefs to act in a qualified manner as magistrates in their own tribes' would be one of the measures in the Government's legislative programme.[676]

Two incidents around the time of FitzRoy's appointment further reinforced the need for some alterations to the colony's laws. In one, Pipitea (Wellington) Māori twice freed the rangatira Te Waho from police custody, and threatened to sack the town, relenting only with the possibility of military action held against them. In another, Ngāti Whātua freed one of their kinsmen who was accused of petty theft, after a zealous magistrate declined an offer of compensation and instead imposed a prison sentence. These incidents reinforced the limited options available to FitzRoy. If the colonial Government was not going to adopt Swainson's native districts proposal, it either had to adapt its laws to Māori needs, or take what Professor Ward described as the 'expensive and bloody solution of conquering the country by force of arms'.[677]

Soon after these incidents, FitzRoy met Te Kawau and other rangatira at Government House where he explained that the Crown was preparing 'special laws for your good', so that Māori should not be dealt with harshly when they were not sufficiently acquainted with the law. He asked for the assistance of some of the chiefs in framing such laws.[678] The rangatira present responded with a request that cases involving Māori be resolved by payment of utu rather than imprisonment.[679] The Governor reiterated his stance at a major hui at Remuera in May 1844, acknowledging that some English laws and customs were 'very displeasing' to Māori. The Chief Justice and the Attorney-General, he said, were preparing laws 'less at variance with those

habits and customs which, in your present circumstances, cannot be at once laid aside and discarded'.[680]

(f) The Native Exemption Ordinance 1844

Ultimately, the Governor and his advisers included some accommodations for Māori concerns in four of the ordinances passed by the Legislative Council during 1844. The most important of these was the Native Exemption Ordinance. It provided that, in cases of Māori–Māori conflict, the alleged offenders should not be charged or arrested except through the agency of rangatira. In cases of Māori–settler conflict, it provided that the law should be enforced in a manner least likely to endanger peace, and that outside of the main settlements, arrests should be made by rangatira, who would be paid an allowance of at least £2 for this service. The ordinance also made some provision for the tikanga of utu and recognised Māori abhorrence of imprisonment. Specifically, it provided that cases of theft or receiving stolen goods could be settled by the payment of four times the value of the property taken (whereas Pākehā defendants would be imprisoned), and it provided that defendants facing charges other than rape and murder could be bailed on the payment of £20.[681] The other ordinances that year were the Unsworn Testimony Ordinance, which allowed Māori to give evidence in court without taking a Christian oath; the Juries Amendment Ordinance, which allowed Māori men to serve on mixed juries in cases involving Māori plaintiffs or defendants, and the Cattle Trespass Amendment Ordinance, which protected cultivations (including those of Māori) by allowing claims for damages caused by wandering cattle.[682]

Clarke regarded the Native Exemption Ordinance as a 'very judicious and philanthropic measure' which was 'admirably adapted' to meeting the needs of both the settler and Māori communities.[683] As Ward observed, the ordinance in essence recognised the reality that the Crown could not enforce its laws without Māori cooperation. Without a much larger armed force, FitzRoy had 'no real alternative to restricting the issue of warrants against Maori'. His only effective means of law enforcement was to rely on the cooperation of local chiefs; anything else could at the very least leave Māori in open defiance of the law, and at most embroil the whole colony in conflict.[684]

Professor Ward also noted that the ordinance incorporated the principle of utu, in that Māori convicted of theft could pay compensation to the complainant instead of facing imprisonment or some other punitive action. This, in his view, was 'a genuine attempt to make English law more acceptable to the Maori'.[685] Clarke reported in 1845 that the measure had satisfied the 'intelligent' rangatira, who paid compensation for offences committed by their people.[686] We note that the payment – four times the value of the goods taken – appears to be an extension of the principle established in 1842, when protected ducks were shot at Ōmāpere, and Bishop Selwyn resolved the issue by paying Hōne Heke four times the ducks' market value. As such, the rule combined the Māori principle of utu with scriptural precedent.[687]

We agree with Professor Ward that statutory recognition of utu was significant. However, we also observe that the provision applied only to Māori defendants; settlers who transgressed against Māori law were not required to pay utu, even though on many occasions the payment of utu was an appropriate and effective means of resolving the dispute. Furthermore, it is notable that the measure applied to cases of 'theft', a common Pākehā term for the taking of goods by taua muru. The ordinance cannot be seen as providing for full protection of Māori law. Nor did it implement Clarke's original plan under which rangatira would exercise authority by acting as magistrates. Ward noted that the utu principle was extended in 1845 to cover cases of assault, providing that half the fine would be paid to the victim.[688]

In Dr Kawharu's view, the ordinance went 'some way to recognizing that rangatira had a primary role in administering . . . the affairs of their people', but in general, Government officials 'took the view that they knew what was best for Maori'.[689] Dr Phillipson considered that Clarke genuinely intended to leave Māori communities to govern themselves without Crown interference 'except in

matters that involved settlers' rights'. The ordinance recognised that there were two systems of law in operation, which would have to interact in some way when Māori and settlers clashed.[690] Mr Johnson saw the ordinance as an example of 'how a law might pay attention to the authority of rangatiratanga, albeit with a limited frame of reference'.[691] But he also pointed out the ulterior purpose, spelled out in its preamble: to weaken Māori attachment to their own laws and customs in order to bring Māori to 'a ready obedience to the laws and customs of England'.[692] The ordinance was, in other words, 'a colonial project designed to gradually uproot Maori customary tikanga and chiefly authority', in a manner that conflicted with the Tiriti guarantee of tino rangatiratanga.[693]

The ordinance came into force on 16 July 1844, soon after Hōne Heke's first attack on the flagstaff – an event that heralded a rapid hardening of the Governor's attitude towards Māori autonomy.[694] As we discuss in chapter 5, FitzRoy called for armed reinforcements and threatened an invasion of the north. He was persuaded to back down, but only in return for assurances that Ngāpuhi would control Heke – an extremely provocative action given the Ngāpuhi tikanga of hapū independence. On several more occasions from October 1844 into early 1845, FitzRoy again threatened Heke and other rangatira with military action and arrest. Their crime was to have conducted taua muru in response to breaches of tikanga, including injury to a wāhine rangatira and occupation of contested land.

In any case, the ordinance had a short life. Settlers had loathed it from the beginning. According to Professor Ward, 'a stream of invective against the Governor was sent to London from the New Zealand settler community'.[695] Letters, petitions, newspaper articles, and more called for FitzRoy's replacement, repeal of the ordinance, abolition of the treaty, and adoption of a much firmer line against Māori. Settlers regarded Heke's resistance as proof that FitzRoy's 'appeasement' and 'mediation' policy had failed.[696] In Ward's view, the opposite was true. Crown–Māori tensions were emerging because the Crown had pressed too hard on Māori, failing to respect or provide legal protection for their independence, or to make sufficient provision for Māori to have any effective role in the machinery of the State or the administration of justice.[697]

Within a short period, the Colonial Office received news of the enactment of the ordinance, the vitriolic settler response, Heke's rising against the Crown, and the emergence of Crown–Māori tensions in other parts of the North Island. Having initially regarded the ordinance as 'wise' if potentially controversial, Colonial Under-Secretary Stephen now determined that it contained an 'undue bias'[698] in favour of Māori, and that 'laws weighted too much in favour of the weaker party' would inevitably be self-defeating.[699] George Grey, appointed to replace FitzRoy as Governor after the fall of Kororāreka, was instructed to amend the ordinance to confine its application to disputes within Māori communities, and to enforce English law without compromise except where doing so might threaten public safety.[700] Grey went further, repealing the ordinance in 1847 and replacing it with the Resident Magistrates Courts Ordinance 1846, which we will consider in chapter 7.[701]

(g) The Land Claims Commission and the Crown's land policies

As discussed in section 4.3, land was of central importance to the treaty relationship. Māori were assured, in article 2, of the tino rangatiratanga or fullest authority over their whenua, kāinga, and other taonga. Hobson also promised to inquire into settlers' pre-treaty land transactions and return any lands that had not been properly acquired. In the months after the treaty signings, Hobson provided further assurances that Te Raki Māori would retain possession of and authority over land, and during 1840 and 1841 the Crown took steps to establish the promised inquiry.

Yet, as we have explained, the Crown's assertion of sovereignty also brought with it British legal concepts about land – including the doctrine of radical title and associated pre-emption and 'surplus' land policies. The Crown's implementation of these policies during the early 1840s caused significant disquiet among Te Raki Māori and led

Circular Published by the First Land Claims Commission

Friend

This book is to inform you of the sittings of the Queen's Investigators of Land for New Zealand at ____, and they will inquire as to the equity of the land sales by the Europeans from the New Zealanders, and they will then report to the Governor, who will acknowledge or invalidate them. The Governor says, the land-sellers should come at the same time with the Europeans, on the ____ day of the month ____, to give correct evidence concerning the validity or invalidity of the purchase of your lands. Hearken! [T]his only is the time you have for speaking; this, the entire acknowledgment of your land sale forever and ever.

From your friend

W Hobson.[1]

to rumours that the Crown intended to dispossess Māori of their lands, which we will discuss later.

Even before te Tiriti was first signed on 6 February 1840, the Crown had taken significant steps to assert its authority over New Zealand's land market. Specifically, on 14 January 1840, Governor Gipps of New South Wales proclaimed that the Crown would not recognise any land title in New Zealand unless the title derived from a Crown grant. Gipps also proclaimed that a commission would be established to inquire into transactions prior to 14 January 1840, reassuring settlers that they would not be dispossessed of any property acquired from Māori under 'equitable conditions'.[702]

This commission was established in January 1841 and operated until October 1844.[703] We consider its activities in detail in chapter 6, but discuss them here because of their relevance to the broader Crown–Māori relationship during that period. The commission was initially authorised by the New Zealand Land Claims Ordinance 1840, which was closely based on an 1835 New South Wales law, and was passed by the New South Wales legislature. The ordinance presumed that the Crown held the radical (underlying) title to New Zealand lands, and that all land titles must therefore derive from the Crown. Under the ordinance, the commission was required to inquire into land transactions before 14 January 1840, determine whether they were equitable and well founded, and make a recommendation about whether to award a Crown grant (the final decision rested with the Governor). The commission could recommend awards up to 2,560 acres if it was satisfied that the award 'may not be prejudicial to the present or prospective interests of . . . Her Majesty's subjects', subject to a sliding scale aimed at ensuring equity between earlier and later transactions.[704]

In conducting their inquiry, commissioners were to be 'guided by the real justice and good conscience of the case without regard to legal forms and solemnities' and 'direct themselves to the best evidence they can procure or that is laid before them'. They were to identify the land concerned, the nature of the transaction, the price, the payments made, and the circumstances in which the transaction occurred. Evidence from Māori was to be considered 'subject to such credit as it may be entitled to from corroborating or other circumstances'.[705] Reflecting

the Crown's assumption of radical title, the commission could not recommend awards of land that was required for defensive purposes or for any town or public utility, or if the land was 'on the sea shore within 100 feet of high-water mark'.[706]

In September 1840, Gipps had appointed two former military officers, Captain Matthew Richmond and Colonel Edward Godfrey, as land commissioners.[707] The following month, he issued more detailed instructions on their duties. For all hearings, they were to publish advance notice, ensure that a translator was present, and ensure that the Protector of Aborigines (or his representative) was present to protect Māori rights and interests. Proceedings were to be conducted as far as practicable with 'open doors'.[708]

The commissioners' reports were to include, among other things, a description of any 'surplus' land; that is, any land they regarded Māori as having sold but were not awarding to settler claimants. As discussed in section 4.3, the Crown intended to claim this land for itself, even though it had not explained this policy to rangatira before they signed te Tiriti. There was no instruction to commissioners about reserving kāinga and other places of occupation or cultivation out of grants to settlers.[709] However, as we discuss in chapter 6, it seems that Gipps anticipated that any necessary reserves could be set aside out of the 'considerable tracts of land' that would be placed at the Government's disposal as a result of the commission's work – that is, surplus lands (see section 6.4.2(1)).[710]

The New Zealand Land Claims Ordinance was enacted in June 1841 after New Zealand ceased to be a dependency of New South Wales (and five months after the commission had begun its sittings at Kororāreka). This ordinance repeated most of the key terms of the earlier New South Wales measure – like retaining the 2,560-acre limit and requiring that the commissioners be guided by the real justice and good conscience of the case.[711] There were, however, some significant changes; for example, the ordinance clearly stated that the Crown had a pre-emptive right, and that the commission must inquire into pre-treaty leases as well as sales.[712]

The first Land Claims Commission began its hearings at Kororāreka in January 1841; Hokianga claims were heard in March 1841 in Auckland, and then locally in December 1842 and January 1843; and claims from Whangaroa also in December 1842. During 1843, the commission visited Mangonui and Kaitāia in January–February, and returned to the Bay of Islands and Hokianga in March. A few more Bay of Islands claims were heard in Auckland, along with those for Auckland, Kāwhia, and Waipā, between April and July. The commission would then turn its attention to the Hauraki district in June and July, and to the South Island claims later in the year. It returned briefly to the Bay of Islands and Hokianga in March 1844, and went to Kaipara for most of April. Coromandel, the Gulf Islands including Aotea (Great Barrier Island), Mahurangi, and Firth of Thames claims were heard from late May to mid-June.[713] The last reports were submitted in October 1844, bringing the work of the first commission to an end.[714]

In this district, the commission began its work by attaching a hand-written notice to the doors of the church and 'town house' at Kororāreka, giving advance notice of the first hearings.[715] The commissioners also informed the Colonial Secretary of New South Wales that their intention was to obtain

> from the best sources as full information and evidence as can be procured of the nature of the Aboriginal titles and the rights of the chiefs and others to the particular lands they may have sold or to which they claim an exclusive proprietorship against others of the same tribe.[716]

The commissioners gave the Chief Protector (Clarke) a list of claims and notice of the commission's proceedings so he could carry out his duties as 'defender of the rights and interests of the natives' at the opening hearing. Godfrey assumed that Clarke would obtain 'all the necessary information' from Māori who were affected by the claims, and ensure that rangatira attended to give evidence about their rights and interests.[717]

Aware that some Māori were complaining about 'the secrecy of the Government' regarding their lands and themselves, Clarke advised the commissioners to publish a circular in te reo (see text box) which would correct any

misapprehensions. Such a measure was necessary, Clarke thought, because many of this district's Māori believed 'that the principal object of the Commission is to secure land for the Government at the expense of the Europeans'. Clarke also warned that some Māori expected the 'surplus' lands 'will revert again to them' even if 'fairly purchased'.[718]

Clarke advised that copies of the claims to be heard should be translated into Māori and sent to the chiefs named as vendors so that they could approve or protest them;[719] and that sub-protectors should be sent to a district prior to notice of hearings 'to gather the necessary information' (though, as we discuss in chapter 6, it is unclear how often this in fact occurred).[720] In Clarke's view, these measures would ensure the 'continuation of peace and harmony amongst the tribes and Europeans'.[721]

The first hearing at Kororāreka went ahead without Clarke (who had been delayed) or an interpreter (none had yet been appointed). Unwilling to delay proceedings, Godfrey determined that the Chief Protector could review written evidence and decide whether any rangatira should be recalled.[722] James Davis, son of the missionary Richard Davis, agreed to act as a temporary interpreter. In his preliminary report, Godfrey noted that a combination of bad weather and poor communication had made it difficult to obtain Māori evidence. There was also no surveyor available, so the boundaries could be only loosely described in the commission's recommendations.[723] The second hearing was scheduled for 10 March 1841, and was to be held in Auckland though the claims concerned land in Hokianga. Despite Clarke's objection, the hearing went ahead as planned, but from then on it became standard practice to hear claims in this district near the land involved, and at various locations, though some were occasionally heard in Auckland.[724]

It is not easy to gauge Māori reaction to the land claims ordinance and the commission's work. There appear to be no extant newspaper reports of the hearings and the attendance of Māori or their demeanour. Certainly, some 'old settlers' (such as James Busby and William Powditch) were angered by the 2,560-acre limit, the Crown's decision to keep any 'surplus' above that limit for itself, and the Crown's imposition of pre-emption which prevented direct dealings with Māori.[725] Those settlers argued that the prospect of Crown interference in land arrangements had caused northern Māori the 'greatest excitement and indignation'.[726]

Similarly, early in 1842, Kororāreka residents petitioned the Legislative Council and wrote to the press, describing local Māori as being 'in a state of most dangerous irritation respecting the Government measures'. There was, they warned, 'scarcely a korero in which their grievances are not brought forward; *they do not consider themselves as British subjects*'. Māori thought the Governor had treated the settlers as slaves by assuming the right to 'meddle' with their land and had concluded that 'unless they resist the Governor in this matter, *they* [the Crown] *will treat them* [Māori] *as such*' (emphasis in original). There were rumours, it was alleged, of a 'threat . . . going round among them, that they will kill the white men, and take the white women for themselves'.[727]

Governor FitzRoy also wrote later that Māori had been 'much astonished and irritated by the interference of government with estates purchased from them previous to 1840'.[728] In particular, Hōne Heke was angry at the commission's early handling of a Kororāreka transaction he had arranged with the trader Joel Polack, which was later contested by Rewa and others of Te Patukeha. According to Buick:

> [Heke] chose to regard the proceeding as an unwarrantable interference with his right to sell his own land. So deeply did he resent this prying into his dealings that he told the gentleman who was the purchaser that he was quite prepared to close the whole argument by driving such an inquisitorial authority out of the country.[729]

This suspicion of Crown intentions was likely of greatest significance in the Bay of Islands and Hokianga, where settler claims were more numerous.[730] Indeed, in Hokianga at about this time, fears about the Government's intentions for Māori lands led a recently formed Māori committee to draw up hapū boundaries and impose a rāhui on the entire district. A local missionary observed that Hokianga Māori had 'a dread of being deprived of

their land and reduced to a state of servitude'.[731] These fears were further fuelled by the kauri proclamation, discussed later in section 4.4.2(2).

Māori were also reported to be dissatisfied with the commission's proceedings, especially at Kororāreka where there were numerous small claims, each requiring the claimant to pay a £5 fee. In many cases this exceeded what Māori had received in the original transaction. There is also evidence that Māori viewed the commission hearings in a completely different light from that intended by the Crown. Philippa Wyatt, who has researched Bay of Islands old land claims, questioned whether Māori saw the commission as confirming land sales, or rather as confirming their economic relationships with the settlers concerned. She noted that Māori largely relied on what 'their' settlers told them.[732] There is also evidence of Māori demanding presents in return for attending hearings, a sign that the relationship was still seen in traditional terms.[733]

Some Government officials thought reports of Māori dissatisfaction with the commission to be exaggerated. Colonial Secretary Willoughby Shortland rejected claims that Māori were 'dissatisfied with the proceedings of government' or thought that the commission would deprive them of their lands. Shortland assured the Legislative Council:

> The natives are, on the contrary, perfectly satisfied that no such intention, on the part of Government, ever existed. All the communications which the Government has received from the natives themselves, and from persons best qualified to form a correct opinion on the subject, fully disprove the assertion of the [Kororāreka] petitioners. The natives do not now, and never did, entertain an opinion, so far as regards the Government, of distrust. They have, on the contrary, shown unbounded confidence in the justice and fair dealing with which they have hitherto been treated, and know that they can rely on being similarly dealt with for the future.[734]

Godfrey told Hobson in early 1842 that Māori rarely refused to attend the commission's hearings, so long as the hearings were not too far from their kāinga. Hearings were often conducted under canvas and in Government premises, leaving the doors open (as Gipps had instructed), where possible, to alleviate any suspicion among Māori that these matters were being decided in secret.[735] Despite the reports of mistrust, hearings in this district proceeded smoothly and were completed without major incident. There was, however, a near outbreak of warfare between Ngāpuhi and Te Rarawa at Ōruru (Mangonui) when Godfrey took his commission there in 1843.[736]

In sum, then, the Land Claims Commission was established to inquire into pre-treaty land claims, as Hobson had promised at Waitangi in 1840; but the legislation empowering the commission was based on English land law, as transplanted to New South Wales, and asserted the Crown's radical title and its associated rights to pre-emption and surplus lands, none of which were part of the treaty agreement. There is some evidence of Māori opposition to the commission's work, in part because of the Crown's claim to surplus lands, and in part because the commission was seen as interfering in Māori relationships with what many still perceived to be 'their' settlers. We will consider these matters further in chapter 6, where we make our findings about the old land claims process.

(2) *Did the Crown neglect this district's economy or intervene in the economy in ways that affected the tino rangatiratanga of Te Raki Māori?*

When Te Raki Māori signed te Tiriti, they did so in the belief that they were strengthening the existing Crown–Ngāpuhi alliance – which had already brought significant benefits in terms of access to trade and technology. On the basis of assurances they had received during the treaty debates, they expected the Crown to use its powers to control settlers and settlement, in a manner that would bring them

> peace and prosperity, protection of their lands and other taonga, the return of lands they believed Europeans had wrongly claimed, security from mass immigration and settler aggression, protection from the French, and a guarantee of their ongoing independence and rangatiratanga.[737]

Claimants told us that in the early years of the colony, the Crown made laws that supplanted the authority of Te Raki rangatira, by enacting ordinances in 1841 that prohibited the felling of kauri, prohibited the charging of anchorage fees, and imposed customs duties on trade. The Crown had also undermined the district's economy and the Crown–Ngāpuhi partnership by moving the capital to Auckland and encouraging settlers to leave Te Raki.[738]

The Crown's view was that the kauri notice had been misunderstood and was not intended to prevent Māori from cutting kauri on their own lands. The Crown did not accept that it had breached the treaty by moving the capital to Auckland, submitting that it had made no promise to keep the capital in this district.[739] It acknowledged that customs duties had an impact on trade and caused Ngāpuhi concern before the fees were removed in 1844.[740] But it submitted that it had not guaranteed Te Raki Māori economic prosperity, and that economic decline occurred at least partly for reasons that were beyond the Crown's control.[741]

(a) The kauri proclamation: October 1841

On 30 October 1841, the *New Zealand Gazette* published a notice prohibiting the 'stealing, cutting, or destroying [of kauri] Pine, with intent to steal the same' on pain of prosecution. According to the notice, this was a response to 'serious depredations' that had occurred in some kauri forests, combined with the Crown's desire to preserve remaining kauri 'for the use of the British Navy'.[742] In this district (and also Kaipara), the notice caused considerable alarm among Māori, who interpreted it as a general prohibition against any felling of kauri and therefore as an attack on their rights to manage their forests as they chose.[743] Nene expressed his displeasure with the kauri proclamation, perceiving it as Crown interference in what had been a lucrative and important trade. According to Henry Williams, the proclamation 'tended seriously to disturb and unsettle the minds of all classes of the community'.[744]

The proclamation broadly coincided with two other events (discussed earlier) which also heightened Māori concerns about the Crown's intentions: the arrest of Maketū;[745] and the establishment of the first Land Claims Commission.[746] As noted in those sections, by December 1841 some elements within Ngāpuhi were evidently considering war against the Crown and Pākehā.[747] As Kororāreka residents wrote to the Governor:

> It is now no longer to be concealed that the present general excitement is by no means caused by the late atrocious murder; a case in which we feel assured the natives themselves would have inflicted due punishment; but that it has been a means of bringing into operation the general disaffection caused by the Proclamation prohibiting to cutting [*sic*] Kauri timber and the claim of preemption of land. We are perfectly aware that although these acts of the government seem not to affect Native Populations, the Natives know and feel, through the depression of trade, the full extent of the evil done to private Europeans, and consequently perceive the future [?] injury which will be inflicted on themselves in the total cessation of that trade, followed by the prospect of a deprivation of their rights and property by the assumption of power which neither they nor the Europeans who desired and seconded the introduction of a civilized government could possibly contemplate; and we feel afraid unless these measures be totally and entirely rescinded, they [Ngāpuhi] will shortly make a strong and general effort to destroy or repel the European population with a view to recover their independence.[748]

Hobson responded in January, accusing settlers of misleading Māori and 'injudiciously' circulating rumours and false information 'with a view to excite their disaffection'. He chose not to directly answer the settlers' claims about the Land Claims Commission, on grounds that colonial officials were acting in accordance with instructions from London, though he did allude to numerous 'discrepancies and unfounded assumptions' in the settlers' petition. With respect to kauri, he wrote that his notice had been 'entirely misapprehended':

> It was never intended to prevent natives from cutting timber from lands which they had not alienated, nor to interrupt

> persons who had preferred claims before the Commissioners, from cutting timber from the . . . lands they had claims to; but the notice applied to those who neither had nor claimed any property [yet] had taken advantage of the existing state of things to commit serious injury to the forests, knowing well that claimants could not prosecute them in the absence of any title from the Crown.[749]

But this was not clear even in the original notice, which began with a badly worded statement – given the Crown's intentions – that 'all lands purchased from the Natives . . . [were] now the property of the Crown'. So far as we can determine, the notice was never translated into Māori; but if Māori became aware of its content, they were hardly likely to be reassured; and nor were settlers whose claims were before the land commissioners. The notice continued with a series of statements about penalties for criminal acts committed on kauri trees, or in the 'koudi forests of New Zealand', or affecting the 'Koudi Pine . . . within the Colony of New Zealand' which made no reference at all to the rights of owners of lands on which the forests were growing. Hobson attempted to clarify this important point in his later statements without taking responsibility for the shortcomings of the notice. He focused instead on the Government's efforts to address the 'delusion' about which forests were affected and 'disabuse the natives of any false notions they may have imbibed'.[750] Henry Williams intervened, attempting to ease Māori concerns about the Crown's intentions. In January, Hobson wrote to thank him for 'refuting the wanton and unworthy insinuations that were circulated amongst the natives to create rebellion'.[751]

Nonetheless, tensions remained. In March 1842, Hobson informed the Secretary of State that Māori in Kaipara were 'in a state of considerable excitement' as a result of 'unfounded and inflammatory reports', spread by the 'lower order' of settlers, that the Crown intended to seize Māori lands. As evidence of this, settlers had referred to notices published in London newspapers offering lands for settlement. Similarly, Hobson wrote, the kauri order, which was intended only to prevent 'unrestrained and profligate destruction' of valuable forests, 'was converted into the means of exciting the most alarming apprehensions that the property of the natives would not be respected, and that the treaty was a mere farce'. The 'ruffian' settlers had also taken advantage of Maketū's arrest and trial 'to show that the British Government have no respect for [Māori] rights and customs, and . . . will in a short time overturn them altogether'.[752]

Soon afterwards, Williams wrote that Bay of Islands Māori distrust of the Crown was 'palpable' and was evident among all of the rangatira he knew. Māori frequently expressed their concern 'as to the ultimate intention of Government towards the natives and their possessions, which will require every care to correct'; and as noted earlier, he expressed the view that Māori did not see English law as applying to them.[753] He referred later to Waka Nene's reaction to the proclamation: 'Waka particularly declared that if the Governor were present he would cut down a Kauri tree before him and see how he would act.'[754] We note that Nene was far from the only rangatira who understood the notice as applying to Māori lands. The chiefs Mahe and Barton wrote to Governor FitzRoy in 1844 asking whether it was 'a just act to seize the Kauri of the forests' and therefore deprive Māori of an important source of income.[755]

Mr Johnson, in his evidence about the Northern War, saw the kauri proclamation as part of a broader pattern in which the Crown had begun to assert its effective authority over Te Raki Māori:

> [I]n some senses it was immaterial whether the timber regulations applied to Maori or not. The fact was that the governor's proclamation was perceived as another law or act seen to be impinging on rangatiratanga, supposedly protected by Te Tiriti. While from a British perspective, these laws might have seemed necessary for the foundation of a colony, to Maori, and Ngapuhi in particular, they directly conflicted with rangatiratanga and economic survival.[756]

Crown counsel acknowledged that Māori had understood the ordinance as an attack on their authority. During

hearings, counsel told us that Nene's response reflected his understanding that 'despite signing the Treaty, he retained some kind of authority':

> when Nene thought . . . that [the] ordinance was going to apply to his lands he rejected that concept. And so his understanding was, it is not as simple as, 'I am loyal to the Queen and therefore I have to accept the authority of the British.' That was not his understanding in 1841.

Asked if Nene understood the treaty as meaning that he retained authority over his own people while the Crown acquired authority over settlers, counsel responded: 'In that individual circumstance yes.' Counsel then added that Nene also showed the same understanding of te Tiriti in his conduct in the lead-up to the Northern War.[757]

Historians Bruce Stirling and Richard Towers noted that the kauri proclamation was not an isolated measure, but one of several steps the Crown had taken to assert its control over the kauri trade. On the basis of its newly proclaimed sovereignty, the Crown had asserted its underlying or radical title over the lands of New Zealand; it had then imposed Crown pre-emption; and subsequently had 'stretched the concept of Crown pre-emption still further to include timber cutting agreements'.[758] Hobson had furthermore reserved forests for naval use and provided that 'Crown licences were required for timber cutting'.[759] In November 1841, Hobson gazetted his intention to preserve areas of kauri forest for naval purposes and to prosecute those who misused the forest. Historian Michael Roche added that Hobson had no way of policing the regulations.[760] Even if Hobson's kauri proclamation was not aimed at Māori lands, the cumulative impact of the Crown's various policies in the far north, leading to loss of Pākehā settlers and markets, was to undermine a trade that to this point had been extremely lucrative for Māori in Hokianga and elsewhere.[761]

We heard conflicting evidence on the tangible impacts of the kauri proclamation in this district. Dr Phillipson told us, 'Inevitably, the Government's authority was ignored.'[762] That certainly appears to have been the case in Mangakāhia, where Te Tirarau and other leaders entered kauri-cutting arrangements and private land transactions without feeling any need to involve the Government in the process. In that area, the kauri industry appears to have grown during the 1840s, though the market was volatile. Informal (or illegal) arrangements continued well into the 1850s and beyond.[763] In Hokianga, where timber had been a vital export commodity prior to 1840, Stirling and Towers concluded that the Crown's restrictions on the kauri trade were causing real economic harm by 1844, leaving once wealthy Māori in a state of 'debt and distress . . . relying on credit for goods they could once well afford';[764] indeed, the economic downturn in that district was 'just as severe' as in the Bay of Islands.[765]

(b) Customs duties and anchorage fees: June 1841

Another significant point of tension between the Crown and Māori during these early years concerned control of trade. As discussed in our stage 1 report, the 1820s and 1830s had seen rapid growth in the district's economy thanks to visiting whalers, and exports of flax, timber, and kauri gum, as well as food cargoes to New South Wales. By 1839, New Zealand exports, much of them leaving from the Bay of Islands, were worth more than £72,000 in Sydney.[766] In turn, this rapid growth had created significant demand for services, including shipbuilding and carpentry, accommodation, liquor, and prostitution.[767] One small but nonetheless lucrative element of this trade was the charging of anchorage fees. This practice emerged during the 1830s, with rangatira charging up to £5 per vessel to anchor at coastal sites around the Bay of Islands. The fees went to the rangatira with mana over the area: Te Wharerahi or Rewa for Kororāreka; Pōmare II for Ōtuihu; Hōne Heke for Paihia and Waitangi; and Te Kapotai leaders for Waikare.[768] As Mr Johnson explained:

> This was a well-established system administered by the leading rangatira in the Bay of Islands and represented a tangible extension of rangatiratanga. Ngapuhi were mindful of the importance of the total quantity of trade and for this reason, levied a flat fee on each vessel, rather than separate

> customs fees on the amount or type of produce imported or exported. The fee also recognised the value of trade to Maori in the Bay of Islands.[769]

With 170 ships visiting during 1839, these fees were a significant contribution to the district's then thriving economy.[770] While the Bay of Islands was the principal trading settlement, other harbours – Hokianga, Whangaroa, and Mangonui – were also important in their own right.[771] Claimants told us that Pororua of Te Rarawa charged anchorage fees at Mangonui, and Te Taonui charged fees 'for all ships passing the narrows at Kohukohu' in the Hokianga Harbour.[772] We also received evidence that Roera Makere charged anchorage fees at Waitapu.[773] As we discuss later, rangatira who signed te Tiriti expected that a closer relationship with Britain would protect their rights and interests, thereby securing the conditions for further increases in material prosperity.[774]

From October 1840, the New South Wales legislature began to assert its authority over trade and commerce in New Zealand, passing an ordinance requiring that all liquor importers and sellers must be licensed, and empowering Hobson to grant licences in return for a fee of £30.[775] This had obvious application to Bay of Islands settlements such as Ōtuihu and Kororāreka with their numerous grog shops. According to Arapeta Hamilton (Ngāti Manu, Te Uri Karaka, Te Uri o Raewera), among the Crown's early targets were

> the two grog shops at Otuihu Pa – the Eagles Inn and the Sailors Return. . . . Hobson decreed that all establishments selling grog had to be licensed by the Crown, and Pomare's two grog shops did not get licenses.

We do not know whether Pōmare and other rangatira complied with the ordinance, but it seems more likely that they simply ignored it.[776]

Subsequently, on 17 June 1841, the New Zealand Customs Ordinance came into force, reflecting Hobson's instructions from London. This provided that no goods could enter New Zealand except under the supervision of customs officers, and set out detailed requirements for the declaration, inspection, and storage of imported goods, with substantial penalties (potentially including forfeiture of vessels) for smuggling or other breaches. A schedule provided for duties on wine (15 per cent), spirits (four or five shillings per gallon), tobacco (ninepence to one shilling per gallon), food staples such as flour and other grains (5 per cent), and all other goods (10 per cent).[777] According to Johnson, the Government subsequently designated the Bay of Islands, Hokianga, and Whāngārei as official 'ports of entry', meaning goods could be imported only through these harbours. Whangaroa was excluded.[778]

Johnson also told us that the ordinance 'prohibited chiefs from charging anchorage fees',[779] and other witnesses repeated this view.[780] The Crown argued that this was untrue. It submitted that the ordinance 'provided a code for the importation of goods into New Zealand' but 'did not contain any provision that prohibited the ability of rangatira to charge anchorage fees in harbours as they had done'.[781] The Crown furthermore submitted that there was some evidence of Heke continuing to charge 'victualling rights' (for anchorage and supplies) after the ordinance was imposed. It speculated that other rangatira might have also done so, though it provided no evidence of this occurring after 1840.[782]

We agree with the Crown that the ordinance did not explicitly prohibit anchorage fees. Nonetheless, it is clear that the ordinance – and indeed the mere existence of customs officials – imposed practical difficulties in the way of collection of these fees by rangatira. James Cowan, in *The New Zealand Wars*, described the anchorage fees as 'a kind of Customs dues', and reported that Heke and other rangatira collected the fees before ships had anchored, boarding them as they rounded Tāpeka Point.[783] The ordinance provided for customs officials to board ships and required that ships' masters report to customs officials with details of their cargoes.[784] We can reasonably presume that masters and captains would have been reluctant to allow their ships to be boarded twice by competing authorities, and unwilling to pay two sets of duties. In historian David Alexander's view, the Crown was 'heavily dependent for its own income on duty charged on imports' and therefore 'took over control of ship visits at an early stage, and

Ships anchored in Pēwhairangi (the Bay of Islands) in the 1840s. Rangatira such as Makoare Te Taonui, Pōmare, Hōne Heke and Roera Makere collected fees from ships anchoring in the area they had mana over. The 1841 New Zealand Customs Ordinance, however, imposed practical difficulties for rangatira collecting fees and placed Māori and the Crown in direct competition for economic benefits.

prevented Maori from continuing to enjoy an income from that source'.[785] Mr Hamilton told us that the Crown did explicitly forbid Māori from charging fees. Recalling what his elders had told him about the early post-treaty years, he said:

> The ink had barely dried on Te Tiriti when Hobson rowed over to Otuihu to tell Pomare that he could no longer collect tolls on the ships as they did not belong to him but that they belonged to the Queen. This was the first recorded incident of the marginalization of Pomare by the Crown. Hobson's actions greatly angered Pomare and the other chiefs in the Bay. The anchorage fees formed a great part of their wealth in those days (to anchor a ship they were paid either five pounds sterling or one musket).[786]

In any case, the Bay of Islands trade entered a steep decline after the ordinance was enacted. As Johnson explained, most of the ships entering the Bay of Islands were whalers, which operated on principles of free trade. Kororāreka had flourished in accordance with these principles, with rangatira carefully managing relationships to ensure that the fees they charged for anchorage and other services did not discourage trade:

> There were a number of other towns on the whaling routes, such as Apia, Levuka, Honolulu, Valparaiso and Papeete, all competing with Kororareka. It appears that, upon the imposition of the government regulations, that whaling captains and other traders simply packed up and shipped off to another port town that supported free trade. The downturn that the departure of the whalers caused, hit Kororareka and the north hard.[787]

Johnson acknowledged that other factors also contributed to economic decline, including the Crown's decision to move the capital to Auckland. Nonetheless, the ordinance was at the very least a significant contributing factor.[788] For example, George Clarke junior later wrote:

> The Bay of Islands was at the time of the cession of New Zealand, the great resort of whaling ships, French, English and especially American. There were often as many as twenty whalers anchored at Kororareka at the same time, and of course there was a large trade between them and the natives. The proclamation of British sovereignty changed it all. The immediate result of imposing Customs regulations, was to destroy this local commerce, and the Ngapuhi tribe, from being the richest and most prosperous in the country, sunk rapidly into poverty. The port was deserted, and the [Maiki Hill] flag-staff [flying the British flag] and what it meant was the visible cause of the evil.[789]

Another settler noted in 1846 that the economic decline also led to an exodus of settlers:

> [The] government . . . drove the whaling ships entirely away by their obnoxious [customs] measures, and as they were the staple support of the place, the inhabitants began to remove themselves.[790]

With falling trade and an exodus of settlers, the prices of food crops also collapsed, further fuelling a spiral of decline.[791]

According to Johnson, Ngāpuhi 'reacted strongly' to this imposition of Crown authority over their trading relationships, and to the resulting loss of income.[792] He noted that their concerns were as much about relative authority as about economic benefits:

> The colonial government's decision to impose customs duties and prohibit the anchorage fees formerly controlled by Maori chiefs marked a major change in relations between Northern Maori and the Crown. From this act it became abundantly clear that the British kawana intended to make laws that supplanted the authority of rangatira.[793]

The imposition of duties was one of the principal motives behind Heke's first attack on the Maiki Hill flagstaff in June 1844: as one settler wrote, Heke felled the flagstaff because it 'drove all the shipping away and caused them (the natives) to have no trade'.[794] At a major hui at Waimate on 2 September (see also chapter 5, section 5.4), called in response to the arrival of British troops in the Bay of Islands, other Te Raki rangatira spelled out their grievances about the decline of the whaling trade and the parlous state of the district's economy:

> The cause of the discontent they plainly and forcibly stated to be their present extreme poverty and depression, because of the restrictions on the sale of their lands, and more especially the injury which they had sustained since the whaling ships, and other traders had ceased to visit their ports. In consequence of which they were now unable either to dispose of their produce, or to obtain those articles of European trade and manufacture, to which they had been accustomed, and had so easily and cheaply procured before the establishment of the Government.[795]

FitzRoy was already aware of the harm caused by the duties. In April 1844, he reported to Lord Stanley:

> At this time there are about 10 sail of Whaling Ships, besides other vessels, lying there [in the Bay of Islands]: and were it not for the Customs regulations, probably thirty or forty sail of vessels would be seen there, at one time – as was the case formerly.[796]

Yet, in June, the ordinance was amended, increasing the duties on wine and imposing new duties on ales and munitions, while reducing the duty on general goods.[797] By September, facing a potentially disastrous conflict with Ngāpuhi (discussed in chapter 5), the Governor relented. Shortly before the hui at Waimate, FitzRoy called together the Russell settlers 'and informed them that the Bay of Islands was to be henceforth a Free port, and that the Custom House officers would be immediately removed'. FitzRoy's unilateral suspension of the ordinance had not been authorised either by the Legislative Council or the Colonial Office. Nonetheless, the Governor had judged it to be the price of Ngāpuhi support against Heke; he acted before the hui because he wanted to be seen as acting voluntarily, not responding to Ngāpuhi pressure. At a subsequent hui at Waimate, he told the assembled rangatira:

> I have found that some of the regulations of the Government about ships, and goods brought in them, have been injurious, have done harm to those who live near the Bay of Islands. Being truly desirous of promoting the welfare of the settlers among you, and yourselves, I have altered those regulations; and you will in future be able to trade freely with all ships.[798]

In the view of the *Daily Southern Cross*, the Governor was clearly acting to prevent other rangatira from joining Heke in a general Ngāpuhi uprising against the Crown's control of the district's trade:

> He might have saved a little revenue by keeping up the Customs at the Bay of Islands, but the attempt to do so would cost England a thousand times the amount before the Natives were subdued, and his own name and that of his country would be hatefully remembered as the destroyers of the Aborigines of New Zealand. He has acted differently, and we earnestly trust the Home Government will approve of his conduct.[799]

The Legislative Council soon afterwards held an urgent meeting to abolish customs duties throughout the colony, replacing them with a property tax. Addressing the Council, FitzRoy presented the change as a response to two related concerns: first, 'the critical nature' of Crown–Māori relations, 'owing in a great measure to the operations of the Customs Ordinance'; and secondly, the fact that the suppression of trade had left the colony without any source of funds.[800] Soon afterwards, the Governor wrote to Lord Stanley seeking his approval for the measure, and for these decisions,

> The effect of the Customs' establishment in New Zealand has been most pernicious, and, if continued, would be fatal to the prosperity of the colony, not only in a commercial point of view, but in a political sense, for it would alienate from us a large portion of the aborigines, would cause open opposition, indeed, rebellion, and involve us not only in hostilities with the native race, but possibly with France or America.[801]

Māori, being 'so jealous of their independence', would 'not long endure' a Government that prevented them from trading freely in their respective ports, or imposed duties that obliged them to pay higher prices for their tobacco, clothing, and tools.[802]

Yet, only seven months later the Government reversed its decision and reintroduced the duties. As Dr Phillipson explained, the abolition of duties did not materially improve Te Raki Māori economic circumstances. More importantly from FitzRoy's point of view, the Colonial Office had been 'astonished' to see the Governor ridding himself of his main source of taxation. When the property tax also failed to gather sufficient revenue for the colony, FitzRoy's hand was forced – the Government had to obtain revenue from somewhere.[803]

(c) What were the impacts of the Crown's decision to move the capital to Auckland?

Ngāpuhi resentment of growing economic difficulties was exacerbated by the Crown's decision to move its capital away from the Bay of Islands, and the economic situation continued to worsen.[804] When Te Kēmara rose to close the treaty debate at Waitangi on 5 February, he asked where

Governor Hobson might live. With the missionaries and the former British Resident James Busby having claimed so much Bay of Islands land, Te Kēmara said, there was 'no place left' for the Governor. In response, Busby said the Governor would live at Waitangi.[805] Indeed, just the previous day, Hobson had signed an agreement to rent Busby's home for the substantial sum of £200 a year.[806] Te Kēmara responded by rushing up to Hobson and shaking his hand.[807]

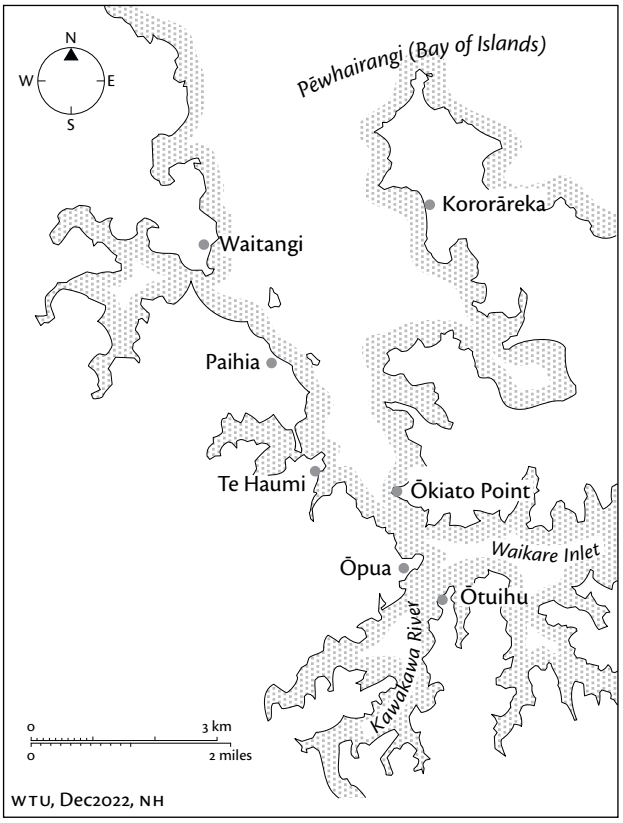
While Hobson made no specific promise to establish or keep the capital at Waitangi, there is no record either of his contradicting Busby's assurance.[808] In Ms Wyatt's view,

> to have had the Governor living on his land, under his protection (an interesting paradox), would have been of great moment to any chief, not to mention the significant revenue generated by his presence.[809]

Dr Phillipson, likewise, argued that Ngāpuhi leaders signed te Tiriti believing that the Governor would live among them, establish a Government town, and bring settlers, trade, and prosperity.[810] More particularly, Te Kēmara signed te Tiriti believing he would 'get the Governor as his Pakeha'.[811]

In fact, Hobson did not follow through on his agreement to rent Busby's house, and the capital was never established at Waitangi.[812] After te Tiriti was signed, Hobson based himself briefly at Paihia before moving to Ōkiato Point, which he established as his capital and renamed 'Russell' in honour of the Secretary of State.[813] The land at Ōkiato Point was acquired from the trader James Reddy Clendon, whose station had been established under the protection of the Ngāti Manu rangatira Pōmare II. According to the Ngāti Manu kaumātua Arapeta Hamilton, when Pōmare initially refused to sign te Tiriti, Hobson made his signature a priority.[814]

Mr Hamilton told us that the Governor and Pōmare 'met at Otuihu on a number of occasions to discuss Te Tiriti', but it was the trader Clendon who induced Pōmare to sign. In particular, what swayed Pōmare was the suggestion that New Zealand's first capital would be established on Clendon's land at Ōkiato Point, and therefore 'great trading opportunities' would come Pōmare's way'.[815]



Map 4.1: Ōkiato Point and environs.

Mr Hamilton also related Pōmare's response to these events, which demonstrated hope for future benefit mixed with scepticism about whether the Governor would deliver the expected results:

> He ngawari te ki ko ahau to hoa[.] Engari a Kapitana Hopihana e mohio he tino hoa a Kerenana ki a matou. Kahore ahau [i te] mohio ka taea e ia. E hoatu ana nga tau e toru. Tena pea a tera wa ka kitea e tatou mehemea he tino hoa ia e kahore ranei. He tangata whai rawa a Pomare i tenei wa. Aini pea ka pohara ia[.] Ka kite ahau a tera wa ka taea te maori

> pohara e tahanga ana ki tona kuaha Ka tukua he paraikete he kai mena e matekai ana. He ngawari noa iho te ki Ko ahau to hoa Ka hoatu ahau ki a Kapitana Hopihana nga tau e toru ki te whakatau ana korero.
>
> It is very easy to say I am your friend[.] However Captain Hobson does not know what a good friend Clendon has been to us. I do not know that he (Hobson) can even achieve it, I will give him 3 years. By then we will truly see whether he is a true friend or not. Pomare is a rich man at this time. Perhaps one day he will be poor[.] I will see at that time if a poor naked Maori arrives at his door whether a blanket will be given to him and food for him to eat. It is easy to say I am your friend but I will give Captain Hobson 3 years to really prove his words to us.[816]

Pōmare then promised to return with Te Tirarau, Kawiti, and other chiefs to sign it on a later date, and did so.[817] Hobson was aware that Clendon had a close relationship with Pōmare, and that – because of his role as United States consul – he was seen as neutral in the matter.[818] The American naval commander Charles Wilkes, who was then visiting the district, recorded that Clendon and others 'were made to understand that their interests would be much promoted if they should forward the views of the British Government'. From this time, '[e]very exertion was now made by these parties to remove the scruples of the chiefs'.[819] Ms Wyatt acknowledged that it was not possible to determine exactly what was promised to Clendon, but noted that Hobson agreed to buy Ōkiato Point soon after Pōmare signed te Tiriti. While it could not be proved that the two events were linked, it 'certainly seems . . . that this is what occurred'.[820] Indeed, Clendon later claimed that it was only through his influence that Pōmare signed.[821]

We note, however, that Hobson had other reasons for choosing Ōkiato. After the signing of te Tiriti, the Surveyor-General, Felton Mathew, had investigated the lands around the Bay of Islands, determining that Waitangi's exposed location and shallow waterways made it unsuitable for a substantial settlement. Mathew also advised against Kororāreka, and recommended Ōkiato as 'the only spot in the Bay of Islands which is at all suitable for a settlement, or calculated for the purposes of the Government'. It had a deep harbour, sheltered anchorage, sufficient land for a town, abundant water and timber, and a location – near the mouth of the Kawakawa (Taumārere) River – that was particularly suitable for communication with the interior. Furthermore, it already had sufficient buildings to house the Crown's officials and troops, and for offices, stores, workshops, and boatbuilding yards. But even then he regarded the Bay of Islands as too far north for a capital, and its terrain too 'rugged and impracticable'; Mathew therefore recommended that a Government town be established at Ōkiato, while the capital was established elsewhere.[822]

In April 1841, Hobson agreed to buy the 300-acre Ōkiato site for the very substantial sum of £15,000; he later wrote to the New South Wales Governor Sir George Gipps seeking to excuse himself for incurring 'so great an expense' without permission, his hand having been forced by the arrival of a ship carrying settlers from Sydney, who otherwise had nowhere to establish themselves.[823] The Colonial Office subsequently rebuked Hobson for exceeding his authority, indicating that it would only reluctantly allow the deal to go ahead. Hobson was instructed to enter no further land transactions without explicit authority.[824]

Ōkiato therefore became a temporary capital, while Hobson's agents investigated other options. Even before te Tiriti had been signed, Henry Williams had recommended that the capital be established at Waitematā, which offered several advantages: a more central location, a larger port, better river communication, and more land available for the development of a town, as well as plentiful timber and fertile soil. After a series of investigations and much lobbying from settlers in other parts of the colony, Auckland was confirmed as the new capital on 17 September 1840.[825] Land was acquired in September and October 1840,[826] and the Governor moved there between January and March 1841, along with his staff and troops, leaving only the police magistrate, a sub-protector, and a few constables in the Bay of Islands. It was barely a year since te Tiriti had been signed.[827]

While investigating Waitematā, Crown officials also turned their attention to the Mahurangi Harbour – its sheltered nature, abundant kauri, and sparse population in their view making it an ideal location for a Government settlement. Accordingly, in April 1841 George Clarke senior negotiated with Hauraki rangatira for rights to all territories from the North Shore to Te Ārai. As Dr Rigby noted in his history of Mahurangi lands, this vast territory – some 190,000 acres – was already subject to numerous old land claims; it was also highly contested among Māori, with Marutūāhu (Hauraki), Ngāti Whātua, and Te Kawerau a Maki groups all claiming occupation and usage rights. This initial purchase would therefore set off a chain of additional transactions lasting well into the 1850s. A second transaction covering lands from Te Ārai to Bream Tail was similarly complex. These transactions, so far as we can determine, were the sum total of Crown engagement with Mahurangi Māori during these early post-treaty years.[828]

The removal of the capital to Auckland was a significant blow to Ngāpuhi. As Dr Phillipson explained, not only had they 'lost the Governor as their Pakeha' but also the anticipated economic prosperity that went with him. 'Not only that, but it had been lost to their traditional enemies, Ngati Whatua.'[829] Johnson noted that what was more, Ngāpuhi had spent at least two generations nurturing their relationship with the British, and had built what they saw as a significant alliance with the Crown offering prosperity and protection. When Hobson decided to move from the Bay of Islands, rangatira saw him as spurning this long-term relationship.[830] Murray Painting of Te Pōpoto said the decision to remove the capital caused a loss of mana for Bay of Islands hapū.[831]

The decision had significant economic impacts. According to Johnson, there was 'a notable exodus of people and economic industry from the Bay of Islands.'[832] At September 1841, David Alexander reported, the 'combined European population of the Bay of Islands, Hokianga and Kaipara would have been less than 500.'[833] This compares with estimated 1839 populations of between 500 and 600 in the Bay of Islands and 200 in Hokianga, with 100 or so others in Whangaroa and Mangonui.[834] In turn, this drew trade and shipping away from the Bay of Islands, deepening the impacts of the customs regulations and helping to create the conditions for economic depression.[835] Crown officials acknowledged these impacts on several occasions. In April 1844, for example, FitzRoy reported that the Bay of Islands trade had been 'much checked subsequent to the removal of the Local Government to Auckland'.[836] Later, in September, Chief Protector Clarke visited several communities to calm tensions after the Waimate hui. At Hokianga, leaders such as Taonui and Patuone explained how the decision to remove the capital had harmed their relationship with the Crown:

> they said they were now extremely poor; a few years ago they were able to procure not only necessaries, but luxuries; now they were reduced, as I might see, to an old thread-worn blanket; and they had been given to understand that this was in consequence of their having signed the Treaty of Waitangi.[837]

Whereas previously there were ready markets for their produce, they were now travelling from one end of the Hokianga estuary to the other, in order to sell enough for a little tobacco:

> They had been told that the reason the Europeans could not now buy their produce was, that the demands of the Government for money were so great, that they had none to buy their produce; they confessed they felt these remarks, especially as they (from a conviction that their approval of the late Governor, and signing the treaty would tend to prosperity) had taken such an active part in getting the treaty signed; and after having taken such an active part in welcoming the Governor, and then to see him removing from them to Auckland was too much for them, and not treating them well.[838]

Expert witnesses Drs Manuka Henare, Hazel Petrie, and Adrienne Puckey noted that since 1820 rangatira had deliberately fostered the Bay of Islands as a trading port, forming alliances with traders, colonial officials, and successive monarchs. This allowed them to benefit from the bay's natural advantages: its anchorage, plentiful supplies

of timber, and proximity to Australia and to Pacific whaling grounds. 'When the capital was relocated from Kororāreka to Auckland, the advantages of location were very largely lost to Ngāpuhi and the northern tribes.'[839]

Early in 1845, Clarke wrote again that Ngāpuhi were drawing a contrast between

> their former comparative wealth and their present poverty, in consequence of the depression of trade – in their opinion entirely the effect of the removal of the seat of Government from Russell to Auckland.[840]

As these reports made clear, Ngāpuhi leaders felt a deep sense of betrayal over Hobson's departure and over the associated economic impacts; they had welcomed him expecting prosperity, and instead were considerably worse off than before. As Johnson observed, the insult was heightened by the Government's regulations affecting matters such as customs and land, leaving Ngāpuhi to experience 'governance from afar'. Having experienced a close relationship with the Crown for many years – far closer, indeed, than any other tribe – Ngāpuhi now found that the relationship was increasingly distant.[841] FitzRoy referred to this in a pamphlet in 1846. He wrote that the removal of the capital had 'caused very great dissatisfaction' to Te Raki Māori:

> They soon discovered that the restraints and inconveniences of the newly-constituted authority which they had consented to acknowledge, however reluctant to obey, remained to interfere with them; while the countervailing advantages of augmented traffic, and good markets, were not only lost – gone to their greatest enemies – but that even the trade enjoyed previous to 1840 was almost destroyed by the Custom House regulations, and by the presence of government officers at Kororareka – (now called Russell).[842]

Historians in this inquiry said it was difficult to determine the relative impacts of the shift of the capital and the customs regulations; both caused significant harm to the Te Raki economy, as did other, market-related factors which we will discuss later.[843] Even after war had broken out in this district, some Ngāpuhi leaders continued to insist that the capital should return. When the new Governor, George Grey, visited the region in November 1845, the Kawakawa rangatira Tāmati Pukututu asked him to establish his residence in the Bay of Islands: '[W]ill the Governor remain here, or go to the south to live, from whence his words only will come to us. They have had two Governors at Auckland, and why should not this one live here'. Pukututu continued:

> We asked him [Hobson] to come and live among us at Russell, which he did, but afterwards went to Auckland. I felt very much annoyed at his leaving Russell, and at the departure of the strangers and soldiers who I had invited to live among us.

After Hobson had died, Pukututu had asked that the new Governor live in the Bay of Islands, but FitzRoy remained at Auckland, 'and while he was there . . . evil grew'. Grey gave no commitment, and the capital did not move until 1865 when it was established even further south, in Wellington.[844]

In Dr Phillipson's view, it was reasonable for the Crown to consider factors such as river and ocean communication, a central location, and available land when determining its site for the capital. Phillipson noted that policy towards Māori was a factor:

> If the intention of the Governor was, as Busby believed, to mediate between Maori and settlers but not actively to colonise the country, then the Bay of Islands was a logical choice. It was the largest centre of European settlement and trade, set in the midst of a large Maori population. Nga Puhi wanted settlers and increased trade, but not to be swamped. If, on the other hand, the goal was to keep the corrupting influence of settlement as far as possible from Christian Maori, then Williams' choice [Waitematā] (which he believed empty of Maori) was also logical.[845]

Dr Phillipson suggested that Hobson wanted a northern location to be close to the majority of the Māori population, but he also sought somewhere that settlers

did not already claim to own 'so that he could lay out a future city and sell its sections for the profit of the Crown, and to subsidise the Government and settlement'. The Bay of Islands 'simply was not practical in this respect'.[846] Dr Nicholas Bayley, in his evidence about this district's economic history, agreed that Hobson moved the capital in order to secure revenue streams for the Crown. In this respect, the early success of the Bay of Islands as a trading centre had counted against it remaining as the capital.[847]

However, Dr Phillipson considered that Hobson could have taken steps to prevent his decision from becoming a grievance to Ngāpuhi. First, he could have consulted Ngāpuhi and other northern Māori; secondly, he could have established a Government town in the Bay of Islands, even if it was not to be the capital, providing some economic stimulus for the region; and thirdly, the Governor could have spent part of the year in the Bay of Islands. In the absence of these mitigating measures, the decision to move the capital 'was one of the contributing factors to the political crisis' that emerged during 1844 when Heke felled the Kororāreka flagstaff.[848] Professor Ward noted that the Governor did not seem to have considered consulting Māori; rather, he 'overlooked the wishes of northern rangatira', seeming to regard decisions about the machinery of government as a national matter which was solely within the realm of kāwanatanga, and to which the guarantee of rangatiratanga did not apply.[849]

Dr Phillipson also noted that the decision to move the capital was not entirely negative. While it harmed the economy and the treaty relationship, it also took the heat out of the contest for authority between Hobson and rangatira. With few officials on the ground, the Crown ceased its attempts to actively govern the district's Māori.[850] In 1841, soon after the capital had moved, Henry Williams observed:

> Many changes of a political nature have taken place and all have been kept in a continual state of anxiety. The natives have been evidently under serious alarm lest their country should be seized by the English. We are happy to observe that this feeling has now generally subsided. Since the removal of the Governor with the Government officers and people connected therewith to Auckland, the Bay of Islands has assumed its wonted quietness, the Europeans being comparatively but few.[851]

In Dr Phillipson's view, the Crown's departure 'postponed confrontation' between the Crown and Ngāpuhi to determine their relative authority.[852]

We note also that the economic damage from the Crown's departure was mainly focused on the Bay of Islands and Hokianga. Whāngārei claimants told us that the change had been beneficial for their taiwhenua: 'When the capital was moved to Auckland, the harbours of Whangarei Taiwhenua became the most strategic harbours for trade in the North.'[853]

(d) Did other factors also contribute to the district's economic decline?

The economy in the northern part of this inquiry district – the Bay of Islands, Hokianga, and Whangaroa – had grown rapidly during the 1820s and 1830s, based on demand for flax, kauri, and services and supplies for visiting whalers. By 1840, Bay of Islands Māori were growing and supplying significant amounts of food (meat and crops) to visiting ships and the British colony in New South Wales. From 1840, the economies of these northern areas entered a rapid decline which contributed to and continued after the outbreak of war. While the Crown's decisions to move the capital and impose customs duties were of undoubted importance, historians in evidence before us also referred to market forces that contributed to the decline.[854]

The flax trade had already declined by 1840, and the kauri trade was to follow.[855] Kauri had been of particular significance to Hokianga and Whangaroa Māori, and was of political as well as economic import: Patuone and Nene had entered arrangements with the Royal Navy, which they clearly viewed as part of a broader alliance with Britain.[856] By the end of the 1830s, there were high hopes of further growth owing to demand for building timber from Sydney and other Australian colonies.[857] Yet the optimism was not to last. According to historian Ian Wards,

this trade peaked between 1838 and 1842 before entering a steep and rapid decline. This, in his view, was largely due to economic depression in Australia which suppressed demand.[858] Another factor was rising costs. Because the kauri resource had already been exploited, traders had to travel further inland and upriver to find spars of the required height and quality for sale to shipyards. Labour costs had also risen, as Pākehā and Māori alike were earning the higher wages they demanded, which meant that profits in the trade were less, and the initial advantages over Australian suppliers that New Zealand offered went into decline.[859]

As the decade wore on, reductions in British government spending further suppressed demand; the Royal Navy was no longer willing to pay the costs of extraction and shipping from New Zealand, and turned instead to other markets such as Russia and the United States.[860] Yet another factor in the decline of the kauri trade was competition from within New Zealand, especially after the decision to move the capital. According to Alexander, 'the very first wooden houses of Auckland were built with timber from the Hokianga', and this inspired a brief revival of the industry in 1841. However, from this point on, most of the timber for Auckland 'came from the closer and more accessible forests of the Waitemata, the Kaipara, and the Coromandel'.[861] George Clarke noted the declining timber trade as a contributing factor in the extreme poverty he witnessed when he visited Hokianga in 1844.[862]

Environmental and market forces also appear to have contributed to the decline in the number of whalers visiting the Bay of Islands. According to Dr Bayley, overexploitation of the resource was a significant factor: the decline occurred because there were fewer whales to be caught, and it would have happened regardless of the Crown's imposition of customs duties.[863] Dr Phillipson was also of this view that the decline in whaling 'would have happened regardless of the customs regulations'.[864] Johnson suggested that a fall in the price of whale oil might have been a factor as well.[865] Dr John Owens has written that the decline occurred through a combination of overfishing (which reduced supply), economic depression (which reduced demand), and the opening of other whaling grounds that were more financially viable.[866] All of these historians nonetheless acknowledged that the customs fees were a factor in the decline of the trade.[867]

The number of whalers visiting New Zealand peaked in 1839, then declined in 1840 before dropping steeply in 1841. While that was the year the customs fees were introduced, other factors were also influential. Harry Morton has written of the decline of the New Zealand right whale fishery from about 1840 as a result of overfishing by 'highly efficient American whaleships in New Zealand bays', and the discovery of major new grounds off the north-west Pacific coast of the United States.[868] Lindsay Alexander has noted that whaling off the western Australian coast also peaked in the early 1840s, and that the overwhelming majority of whaleships that visited the Bay of Islands were American.[869] Alexander McLintock saw an obvious connection, and noted that the trade briefly recovered in the mid-1840s before the right whale fishery was depleted in 1846.[870]

While environmental and market factors might have been significant, we note that contemporary observers (including Crown officials) were near unanimous in their view that the Bay of Islands economic decline could be mainly attributed to the customs duties and the decision to remove the capital. We have noted the views of Hōne Heke, George Clarke junior, Governor FitzRoy, and the settler John Weavell, who all agreed that the customs duties had driven away shipping and therefore closed down Bay of Islands trading relationships.[871] None of these sources referred to market forces or the depletion of the fishery. The only exceptions were Bishop Selwyn and his assistant William Cotton, both of whom in 1844 expressed surprise that Māori were aggrieved about the operation of 'political economy' which had reduced prices for their foods and moved the capital to Waitematā.[872] These clerics appear to have been referring to general economic decline, as distinct from the whaling trade specifically.

As we have already discussed, the Crown's land policies were another significant factor in economic decline after 1840. The Crown's assertion of pre-emption cut off an

important source of income (private land transactions) and prevented settlers from entering new economic relationships with Māori.[873] The anger of Te Parawhau rangatira Te Tirarau with the Crown early in 1841 arose in large part from this cause. In general, during the early 1840s Te Tirarau and his settlers simply ignored the Crown's directives and entered informal arrangements for kauri cutting rights and occupation of land. But, on occasions, settlers withdrew from these arrangements, fearing that their rights would not be recognised under the new colony's laws. The Government's action was therefore a blow to Te Parawhau trading relationships at a time when the district's Pākehā population was still very modest.[874] As Paul Thomas observed, it appeared to Te Tirarau that the Crown was interfering with Māori lands and mana.[875]

Governor FitzRoy, reporting to the Colonial Office in 1844, also noted that pre-emption was a factor in growing Ngāpuhi dissatisfaction with the Crown. In the Governor's view, these concerns were actively fanned by settlers who wanted Māori land and were telling Māori 'that while our flag waved in New Zealand they would be oppressed'. As a result, FitzRoy wrote, Māori believed that the Crown was 'only waiting till our numerical strength in New Zealand is sufficient to make all the aborigines slaves, and take from them all their land'.[876] Hobson's decision to allow settlers to exchange old land claims for 'scrip' (a right to take up land elsewhere in the colony) also led settlers to leave the district and move closer to the new capital.[877] During 1844, as tensions rose in the district, Clarke encouraged Hokianga settlers to follow this course.[878] Dr Phillipson noted that the Crown's arrival also changed settler attitudes; they became less willing to give gifts to rangatira as part of an ongoing, reciprocal economic relationship.[879]

Overall, Dr Bayley's view was that the Crown's actions after 1840 had significant detrimental impacts on the district's economy and exacerbated the harm done by downturns in the kauri and whaling industries. The Crown's decision to move the capital to Auckland took settlers away from this district, reduced Ngāpuhi influence, and increased competition from other districts. The Crown's customs duties and land policies also harmed the economy.[880] Dr Bayley noted that it was difficult to give an exact weighting to the many components that contributed to economic decline. But, from the 1840s, the Government played 'an increasingly significant role in the capacity of Te Raki Maori to engage with, respond to, and advance economic opportunities'.[881] Dr Bayley wrote:

> Maori leaders knew what was needed for the region to develop economically, namely settlers, infrastructure, tradeable products and markets. They consistently sought to encourage the growth and development of these factors from 1840 onwards. National and international trading opportunities declined and the Te Raki region became less competitive however, which meant that sustaining a viable economic future became more challenging. Some of the factors that would have assisted Te Raki Maori to meet the economic challenges of this period were controlled or directly influenced by government action.[882]

Although Te Raki leaders might have expected the Government to take account of their concerns, it did not do so. The reality was that the Crown became 'a competitor with Maori'; it regarded other regions as more important, and prioritised its financial interests and associated need to obtain land for settlement over the interests of Te Raki Māori.[883] Johnson's view was that the Crown's decisions caused demonstrable harm to the district's economic fortunes, by removing settlers and cutting sources of revenue. Even if market forces were also at play, decisions such as moving the capital and imposing customs duties 'left the Bay of Islands susceptible to the vicissitudes of wider economic factors'.[884] This was also Phillipson's view. The drop in ship visits, the removal of the capital, and the Crown's land policies all combined to cause a serious downturn:

> The new settlers who might have formed a stable market went to Auckland instead of Russell. Local traders were affected and some either left or had their businesses fail. People like Busby went into serious debt. Those who wanted to speculate in land or sell what they believed they had acquired, found they had either no titles recognisable in British law, or paper awards for limited portions of the lands claimed. The 'surplus', it was said, belonged to the Crown. It was difficult to

attract finance or start development under these conditions. The result was a spectacular economic crash.[885]

(e) Had the Crown promised prosperity?

In his reports on Bay of Islands Māori and the Crown, Dr Phillipson said the Crown had promised Te Raki rangatira increased prosperity if they signed. When the economy declined, Ngāpuhi blamed the Government, he said, because it had 'promised the opposite'. The 'belief that the Governor would bring settlers, trade, and prosperity was one of the factors in Nga Puhi's acceptance of the Treaty'. Economic decline therefore 'quickly became a grievance against the Government'.[886] Furthermore, FitzRoy became convinced that the Crown had caused the economic downturn:

> Maori had been led to expect prosperity if they signed the Treaty, and it had not happened. Worse, their economic situation had seriously declined, and the Government was blamed. The British flag became a symbol of economic 'oppression'.[887]

The Crown did not accept that Hobson had made any explicit promise that Māori would be prosperous if they signed te Tiriti.[888] It sought clarification from Dr Phillipson, who acknowledged that he could not 'point to any specific promise made by Hobson', and that the word 'promise' might not have been correct.[889] The Crown also questioned Mr Johnson, who had made a similar point, about his source; Mr Johnson responded that he had been unable to locate the reference.[890] Crown counsel, responding to Dr Phillipson, submitted:

> The Crown accepts that there may have been an occasion where Hobson suggested that the colonisation of New Zealand would be for the economic benefit of Ngāpuhi, but says that there is no evidence that Hobson made this a condition of the treaty or made any promise to guarantee economic prosperity.[891]

Even if the surviving accounts do not record any specific promise, historians in this inquiry pointed to significant evidence that Ngāpuhi believed they had been promised prosperity, or at least believed that prosperity would inevitably follow their acceptance of the Governor. We have discussed much of this evidence earlier. We referred, for example, to the view of Hokianga leaders in 1844 that they had signed te Tiriti believing that it would 'tend to prosperity';[892] and to Chief Protector George Clarke's view, also in 1844, that the Crown had delivered neither protection nor the prosperity that Hobson had led Māori to expect.[893] We note also the evidence (discussed earlier) that Te Kēmara and Pōmare both signed because they expected the Governor to live on their lands, bringing settlers and trading opportunities.[894]

Professor Ward, in his evidence to this inquiry, concluded that Māori 'expected their trust and cooperation to be reciprocated by the Crown, including a fair share of the benefits of the new economy'.[895] Similarly, Dr Phillipson concluded:

> the kōrero of Governor Hobson and his supporters [at Waitangi] included what Ngāpuhi understood to be assurances that economic prosperity would result from agreeing to the Governor and Te Tiriti.

Phillipson also noted that the question of what assurances Hobson might have given should be seen in the broader context of the Crown–Ngāpuhi relationship: 'Similar statements had been made by Busby and the missionaries prior to 1840, and were also made by FitzRoy in 1844 and by Captain Graham (on behalf of Grey) in 1846.'[896]

Indeed, we discussed in our stage 1 report the many occasions on which Te Raki leaders had approached the Crown during the 1820s and 1830s seeking protection and trading opportunities, and Crown officials had responded with encouragement that prosperity would follow any alignment with Britain.[897] We have no doubt that rangatira saw the treaty in this context – as deepening an already lucrative alliance with Britain, founded on mutual benefit.[898] We concluded that the Crown had at least promised to 'create the conditions for peace and prosperity', by guaranteeing Māori their lands and resources, and by controlling settlers who might otherwise threaten mutually

beneficial relationships.[899] In our view, then, it was reasonable for rangatira who signed te Tiriti to conclude that prosperity would follow.

We add that the Tribunal has also expressed this conclusion in other reports. In the *Wairarapa ki Tararua* report, for example, the Tribunal concluded that 'the Treaty envisaged Māori sharing with settlers the prosperity of the new colony'.[900] In *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims* (2010), the Tribunal found: 'The fundamental rationale for signing the Treaty was that Māori and settlers would each participate in the security and prosperity of the new nation thereby created.'[901] Indeed, this expectation that Māori and settlers would share in the benefits of a developing colonial economy is the basis for the well-established treaty principle of mutual benefit.[902]

4.4.3 Conclusions and treaty findings

The Crown's treaty obligations to Te Raki Māori can be summarised readily enough. It was obliged to recognise and honour tino rangatiratanga, the right of Te Raki Māori to live according to their own laws and exercise authority over their communities, lands, resources, and other possessions without external interference. It was obliged to protect Māori rights and interests. The Crown had a right to exert control over settlers, in order to keep peace and protect Māori, and it could make laws to that end. But it could not interfere with Māori rights and interests except with their informed agreement. Where kāwanatanga and tino rangatiratanga intersected, negotiation was required, in which both parties must act fairly and in a spirit of partnership and good faith.

(1) *Tikanga and criminal law*

We have found that the Crown was in breach of the treaty in proclaiming its sovereignty. It then further departed from these obligations, taking steps to impose – or at least attempt to impose – its authority in ways that challenged Māori authority. With respect to criminal law, soon after te Tiriti was signed, the Crown established a rudimentary police force and began to assert its right to adjudicate in Māori–settler disputes. Kihi was brought before the Court and faced English legal proceedings, the Governor sent troops to Pōmare's pā, and he also insisted to Heke that he alone could adjust disputes. These initial attempts to assert control were based on the Crown's assertion of sovereignty and its assumption that Māori were therefore subject to English law.

The Crown did make some concessions to Māori authority, which to a significant degree reflected the limits of the Crown's capacity to exert effective authority as it wished during these early years. Magistrates were instructed to make allowances for Māori customs and legal values, and to consult rangatira about arrests. After meeting initial resistance to its attempts to enforce English law, the Crown softened its stance further, choosing in most instances to mediate rather than make arrests. This was largely a matter of political reality; a few constables and a small detachment of troops were no match for 12,000 Ngāpuhi, and Te Raki leaders continued to enforce their own laws and resist most attempts to establish authority over them.

Nonetheless, the Crown's presumption was that it had sole discretion to determine whether English laws would be enforced against Māori or not. Having appointed magistrates and constables, the Government also established the Supreme Court in December 1841. During Maketū's trial, the Court confirmed its jurisdiction over Māori on the basis of the Governor's proclamations of sovereignty. In pre-treaty times, resolving conflict had been the preserve of rangatira and their people; notionally at least, this new legal authority was therefore a significant challenge to the rangatiratanga of Te Raki Māori.

The trials of Kihi and Maketū provided early tests of the relationship between Crown and Māori authority. In both cases there was resistance among Ngāpuhi leaders, though ultimately, they acquiesced for their own reasons, particularly because there were Pākehā victims, which meant that Pākehā were entitled to seek utu. In the case of Maketū, the decision to hand him over to the Crown appears to have been motivated by a desire to avoid internal warfare that might otherwise have erupted had Rewa sought utu for the death of his granddaughter. Neither case, in our view, indicated that Māori accepted the general authority

of the courts. On the contrary, the evidence is clear that Māori continued to enforce their own laws among their own people, and quite frequently against settlers as well. Where they engaged with the Crown's courts or officials, this was a matter of choice; the Crown provided another option for dispute resolution. This reflected the balance of power in the district at the time and meant that the prejudicial impacts of the Crown's claim to legal authority over Māori were limited, at least during these years.

After the trial and execution of Maketū, Te Raki Māori appear to have become less willing to experiment with British justice, and Māori resistance made the Crown's officials more wary of attempts to enforce their laws. We agree with Dr Phillipson that the decision to move the capital to Auckland also took the heat out of this contest for authority. The Crown's officials had been instructed by the Colonial Office to 'tolerate' Māori custom and appear to have mostly done so during the period between Maketū's trial and Governor FitzRoy's attempts to suppress taua muru in the second half of 1844, which we consider in chapter 5.

Ironically, FitzRoy's attitude was hardening just as his Native Exemption Ordinance 1844 came into effect. That ordinance in essence provided that the Crown would not get involved in Māori–Māori conflicts except through the agency of rangatira, and that in cases of Māori–settler conflict outside the main towns, the Crown would pay rangatira to make an arrest. In fact, these provisions did little more than bring statutory recognition to the existing reality that the Crown could not enforce its laws without the consent of rangatira. The ordinance also made provisions that would allow Māori to avoid imprisonment except in cases of rape and murder.

Nonetheless, as 'positive declaratory law' of tikanga, it fell short of treaty compliance. It provided no general recognition of the right of Māori to live by their own laws. By providing that 'theft' and 'receiving stolen goods' were offences of which Maori might be convicted, resulting in their making payment to the owner of the goods, it in essence confirmed that the Māori law enforcement practice of muru was illegal under English law. And it offered no protection for Māori when settlers breached rāhui or violated wāhi tapu. On Chief Protector Clarke's recommendation, and ultimately at the urging of the Colonial Office, the Government had considered proposals that would have provided greater recognition for the authority of rangatira, and greater protection against violations of tikanga. But these were not adopted, and officials did not engage with Māori leaders about the matter.

Accordingly, we find that:

- By asserting the authority of its police and courts to enforce criminal law over Māori communities, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. By claiming this authority without first engaging with and seeking the consent of Te Raki Māori, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- By failing to engage with Māori to ensure appropriate recognition and respect for Māori customary law, including appropriate recognition of the law of tapu and for the mechanisms of rāhui and muru, and appropriate recognition of the role of rangatira in the exercise of tikanga, the Crown also breached te mātāpono o te houruatanga/the principle of partnership.

(2) *The Crown's impacts on the district's economy*

During this period, the Crown asserted its authority over Te Raki trading relations by enacting customs regulations which included duties on imported goods. Prior to the treaty, Te Raki rangatira had managed relationships with visiting ships, and had charged anchorage fees as well as receiving substantial incomes for food, timber, and other export goods. The decision to charge duties was in accordance with Hobson's instructions, and from the Crown's point of view, was necessary to fund the new Government. It was also a clear example of the Crown asserting its authority over an activity that had previously been under the control of rangatira, placing itself, in so doing, in direct competition for the economic benefits arising from the district's trade. There is no evidence that rangatira were informed of the Crown's plans prior to their decision

to sign te Tiriti. Nor is there any record of their being consulted in the months afterwards; the limited evidence available suggests that duties were imposed and rangatira were informed that they must comply.

In respect of the Crown's decision to move the capital to Auckland, there is no record of engagement with Te Raki Māori either. In Tiriti debates, rangatira had been led to believe that the capital would be established at Waitangi, and Pōmare was later promised that it would be at Ōkiato. In either case, rangatira believed it would remain in the Bay of Islands, and that they would benefit from the trading opportunities arising from the establishment of a new town. The evidence suggests that Hobson and his officials deliberately encouraged Māori in this view; at the very least, they did not attempt to correct it.

Hobson was within his rights as Governor to select a capital, but his lack of transparency in the months after te Tiriti was signed was a breach of good faith, and the decision to move the capital can fairly be seen as a broken promise. For Te Raki leaders who had spent two decades building their relationship with the Crown, this was a significant blow with implications for their trust in the Governor and for the long-term treaty relationship. We agree with Dr Phillipson that the Crown could have mitigated the impacts of Hobson's actions by engaging with Māori on the implications of this major decision, and by establishing a town at Ōkiato as Hobson planned to do, until overruled by the Colonial Office.

We acknowledge that Hobson did not prohibit Māori from felling kauri on their own lands, though it is clear that Nene and other rangatira believed he had done so. We did hear some evidence that the Governor took steps to seize control of the kauri trade in order that the Crown could take the profits. If that was the case, it would be another example of the Government usurping an economic role that was formerly the preserve of rangatira, and directly competing with Māori. However, the evidence we heard was not sufficiently detailed to justify such a finding.

Altogether, it is clear that the Crown's actions had significant impacts on the district's economy – in particular the economies of the Bay of Islands, Hokianga, and Whangaroa, which went into rapid decline from 1841. We acknowledge that other factors beyond the Crown's control were also relevant: fresh whaling grounds were opening off the north-west American coast as the number of whales available in the southern bays was declining; the demand for kauri was declining too. But Crown officials such as Clarke and FitzRoy acknowledged that the customs duties and the decision to move the capital were significant factors in the district's economic collapse. Together with other forces, these actions contributed to a spiral in which visiting whalers ceased to call, settlers departed from the district, and the market for produce dried up. To the extent that environmental and market forces contributed, the Crown's actions made Te Raki Māori more vulnerable than they would otherwise have been.

We also note that during this period, Te Raki Māori expressed considerable concern about the Crown's land policies. We will consider these issues and the impact of Crown policies and acts further in chapters 6 and 8.

We acknowledge that Governor Hobson did not explicitly promise that Te Raki Māori would become more prosperous if they signed te Tiriti, though Crown counsel acknowledged that he might at least have suggested that colonisation would bring economic benefits.[903] Certainly, Hobson and other officials knew that Māori were seeking to advance their people's material well-being and engaged with the Crown at least partly for that reason.

Accordingly, we find that:

- By imposing customs duties without engaging with Te Raki Māori and without considering the impacts on Māori, the Crown breached te mātāpono o te tino rangatiratanga, and te mātāpono o te houruatanga/the principle of partnership.
- By moving the capital to Auckland without engaging with Te Raki Māori, in breach of prior assurances (from Busby to Te Kēmara, and from Hobson to Pōmare) that the capital would remain in the Bay of Islands, and without attempting to mitigate the impacts of its decision, the Crown fundamentally altered the course of its treaty relationship with Te

> Raki Māori, acting inconsistently with its duty of good faith, and breaching te mātāpono o te houruatanga/the principle of partnership.

4.5 What Was the State of the Political Relationship between the Crown and Te Raki Māori by 1844?

When they signed te Tiriti, Te Raki Māori understood this new arrangement on political and personal levels. They saw themselves as deepening their alliance with Britain, and securing the benefits of that alliance in terms of increased trade and protection from foreign threat. They also saw the Governor as 'a rangatira for the Pākehā'. He would be a more powerful version of the British Resident, an authority over the settlers; he would address offences and breaches of tapu, and enforce the tikanga associated with land arrangements. They would be able to turn to him when Māori–Pākehā disputes arose.[904] In Dr Phillipson's view, rangatira saw the Governor as 'a Busby with a little more of everything', notably more power to control settlers.[905] The historian Dr James Belich likewise considered that they understood the Governor would 'assist them in policing the Pakeha-Maori interface', freeing them of the burden of controlling the growing settler population.[906] Rangatira also saw the Governor as a representative of the Queen and of Britain's power and generosity. They expected the Governor to live among them at the Bay of Islands as Busby had – one of 'their' Pākehā, with whom they would experience an ongoing personal relationship.[907] As Dr Phillipson noted, this included expectations that the Governor would give gifts and distribute wealth, as befitting his status as 'a great chief'.[908] This obligation was explained to Bishop Selwyn as 'he whakaaro rangatira no tua iho', which he translated as 'an hereditary aristocratic feeling', similar to the European concept of *noblesse oblige*.[909]

Māori expectations of the Governor can be seen in early exchanges between Hobson and Pōmare II. As discussed earlier, after a fight between whalers and Māori at Ōtuihu, Pōmare told the Governor: 'if I would keep the white men in order he would answer for the natives'.[910] The Governor's role, in other words, was to control settlers and keep them from causing trouble for Māori. Pōmare also wondered if Hobson would be as generous to Ngāti Manu and Māori as the American trader James Clendon had been. He commented shrewdly:

> Capt Hobson does not know how good a friend Mr Clendon has been to us[.] I do not expect him to be such a one but I give him three years then I shall see if he is a friend. Pomaray [Pōmare] is rich now perhaps he may be poor perhaps not, but I shall by that time see if when the *Poor* Mauri [Māori] goes to his door naked he is given a blanket and to eat should he be hungry or if he is driven away. It is easy to say I will be a friend, I give Capt Hobson three years to prove his words. [Emphasis in original.][911]

For reasons we have already discussed, in most respects the new Governor, and the Crown he represented, were significant disappointments to Ngāpuhi. This was particularly true of those in the Bay of Islands, Hokianga, and Whangaroa who had actively fostered their alliance with the Crown in the years prior to the treaty. Hobson assumed that Māori were subject to English law and acted accordingly. With respect to criminal law, the Governor instructed his officials to make concessions to Māori, such as working through chiefs to make arrests, and exercising discretion when applying the law.[912] In accordance with his instructions, the Governor also asserted the Crown's authority over trade, imposing customs regulations and duties that undermined the authority of rangatira and caused significant economic damage.[913] Additionally, Gipps and Hobson imposed the Crown's authority over the district's pre-treaty land arrangements; their laws and policies presumed that pre-treaty transactions could be understood in terms of English property law, and that the Crown was entitled to keep any surplus above that it granted to settlers (see chapter 6).[914] Early in 1841, Hobson moved his capital to Auckland, effectively ending his personal relationship with Te Raki rangatira, causing further economic damage.[915] All of these actions

inspired suspicion and distrust among Te Raki leaders, who expressed fears that the Crown intended to assert its authority and take their lands.[916]

We have seen no evidence that the Governor or his officials thought to engage with Te Raki Māori over any of these decisions.[917] Nor is there any evidence of early Governors seeking to foster close relationships with the rangatira – so far as we can determine, during Hobson's brief time in the Bay of Islands, he called no hui after the treaty signings and offered little in the way of hospitality to his host rangatira. On occasions, he communicated with the district's rangatira by circular letter. After his departure for Auckland, Hobson did not return to the Bay, and nor did Acting Governor Willoughby Shortland. Governor FitzRoy first visited the north in September 1844, by which time the Crown–Ngāpuhi relationship had deteriorated.[918] In effect, Hobson's departure in March 1841 severed the personal relationship between Crown and rangatira that Ngāpuhi had enjoyed for many years before the treaty. In the period between March 1841 and September 1844, the Crown's senior officials in this district were the police magistrate Beckham and the sub-protector Kemp; and its main political engagement was through sporadic visits by the Chief Protector Clarke.[919] In southern parts of this district, there was simply no political relationship. The Crown ignored Whāngārei and Mangakāhia, other than on two occasions when Clarke arrived to mediate in taua muru (see section 4.4). It ignored Mahurangi completely, except to buy vast tracts of land (we discuss the 1841 Mahurangi and Omaha purchase in chapter 8).

Although Clarke moved to Auckland with the Governor, he travelled widely and returned to the north on several occasions. He attempted to mediate in disputes between Māori and settlers, and between hapū or tribes. In 1842, he reported that Māori–settler relations were generally peaceful, though this reflected Māori patience more than settlers' prudence.[920] Clarke's reports during these early years informed his superiors about Māori systems of law, authority, and economic management; he explained, for example, that Māori held land and other possessions in common, and that overlapping interests created a risk of conflict over land transactions.[921] Clarke also alerted Hobson and others to Māori unease or irritation over the Crown's attempts to regulate their lives or interfere with trading relationships and land arrangements.[922]

Clarke had been present at the treaty signings in Waitangi, Waimate, and Māngungu. He believed that Hobson had guaranteed Māori not only their lands and estates, but also their customs. On several occasions, he noted that Māori were determined to retain their independence and did not see English law or authority as applying to them.[923] In 1843, for instance, he reported that Māori were unwilling to accept Crown intervention in intertribal disputes; there was

> never a people more uneasy under the yoke of submission to authority than the New Zealanders, and they only want a bold and enterprising leader to throw off even the name of subject.[924]

Later that year, after attempting to intervene in a land dispute in Hokianga between Nene and Taonui, Clarke reported that Māori were 'asserting their independence of, and contempt for, the Government'.[925] In 1845, he acknowledged that Te Raki rangatira who signed te Tiriti had not understood what was meant by sovereignty, and as a consequence had not shared the Crown's understanding of the agreement.[926] Later still, he acknowledged that Māori had been guaranteed far more than possession of their lands:

> when the subjects in the Treaty were under consideration, the subject of Tribal rights and the full power of the Chiefs over their own tribes and lands was explained to the natives, and fully understood by the Europeans present.[927]

This was in our view a remarkable statement. Dr Phillipson observed that Clarke's account was corroborated by others from Waitangi, who confirmed that 'both sides understood the Treaty to guarantee the full power and authority of the chiefs over their lands and people'.[928] Nonetheless, like other colonial officials, Clarke believed that Māori must eventually be brought under the rubric of the colony's law and Government – otherwise its laws

could not protect Māori from the growing settler population. Clarke therefore sought to persuade Māori of the Crown's benevolent intentions. To this end, in 1842 he founded *The Maori Messenger/Te Karere o Nui Tireni*, a Māori-language newspaper. As the first issue outlined, its purpose was to explain 'nga tikanga a te Kawana' (which historian Dr Lachy Paterson (now Professor) has translated as 'the role of the Governor'); 'nga ture a te kuini' ('the Queen's laws'); 'nga tikanga wakawa, me nga hara e wakawakia ai te tangata' ('the principles of justice and the crimes for which people are judged'); and other aspects of the Pākehā system of law and Government, so that Māori and Pākehā would no longer be ignorant of each other's customs.[929]

The newspaper first appeared soon after Maketū was arrested, and the first edition was almost entirely devoted to letters from Ngāpuhi rangatira explaining their decision to hand him over to the colony's justice system.[930] But the decision to launch had been made earlier, after news of Governor Gipps's New Zealand Land Claims Ordinance 1840 reached New Zealand. This prompted Māori to ask in 1841 why the Crown was making laws for their lands, and to ask why those laws were not circulated among Māori so they could judge for themselves.[931] Clarke, in response, advised that settlers were stirring up Māori concerns about the Crown's intentions, and it was 'much safer' for the Crown to inform Māori directly.[932]

Dr Paterson regarded the newspaper as part of a broader Crown attempt to convert its notional sovereignty to on-the-ground power. As he explained, the Crown's 'theoretical sovereignty' did not mean that Māori accepted British government or English law, and nor did it cause them to sell land for settlement:

> Lacking effective coercive powers, successive early governors relied largely on personal relationships, persuasion and propaganda, including niupepa [newpapers], for the first two decades of colonial rule in their attempts to 'amalgamate' Māori into the nascent state.[933]

The initial print run for *Te Karere* was 250 copies, later raised to 500. Circulation, however, was much wider. Clarke arranged for copies to be sent to mission stations and sub-protectors, and some Māori also travelled to Auckland where copies of the paper were read out and discussed (though we do not know if Te Raki Māori joined in these meetings).[934]

The newspaper was edited mainly by the sub-protector Thomas Forsaith, who was appointed in 1842, shortly after Kaipara Māori had accused him of stealing kōiwi (see section 4.4). According to Rose Daamen, *Te Karere* contained 'official Government announcements (policies and laws) affecting Maori' but also 'a fair amount of moralizing on the value of education and on Christian beliefs'.[935] In their evidence, Drs Henare, Petrie, and Puckey also pointed to Māori-language newspapers supporting 'the suppression of women and the curtailing of their activities by addressing readers as men and advising them on how to treat "their" women'.[936] From mid-1843, Clarke also arranged for Māori to receive the Government *Gazette* and copies of legislation. On occasions, *Te Karere* published Māori responses to the Governor's initiatives.[937] The Auckland settler Walter Brodie, writing in 1845, described the newspaper as '[o]ne of the few good acts that the Government have ever done in New Zealand', and asserted that it was the first indigenous-language newspaper published in a British colony. He also made the interesting comment that descriptions of the colony's laws were frequently 'simplified' to make them more acceptable to Māori, 'for on these points their usages are so opposite to ours, that much tact is required to prevent their thinking us inconsistent and unjust'.[938] The publication lasted until 1846, when Governor Grey abolished it and the protectorate.[939]

Another of Clarke's projects was the adoption of a legal code that recognised chiefly authority and Māori customary law. He opposed other officials who proposed establishing separate native districts under Māori law, believing that this would leave them vulnerable as the number of settlers increased. In his view, Māori needed to be part of the colony's legal system so it could protect them from settlers.[940] As discussed in section 4.4, he advocated for the appointment of rangatira as magistrates and proposed that settlers pay utu for violations of tapu. While these proposals were not adopted, Clarke's influence was

evident in the Native Exemption Ordinance 1844, which (as discussed earlier) made some modest concessions to tikanga.[941] In his 1845 half-year report, Clarke lamented the Government's failure to adopt the measures he had proposed:

> I feel persuaded that many, if not all, of our difficulties would have been prevented had we legalised those native customs which are not repugnant to the fundamental principles of morality, and had we invested the well-disposed and most intelligent of their chiefs with magisterial authority: but, instead of this, we have been so apprehensive lest any portion of the executive power should pass into their hands, that our firmest friends have been shaken in their confidence in our ultimate intentions . . .[942]

As we have discussed in section 4.3, the Colonial Office was anxious for a declaratory law and expressed support for recognition of Māori law (with some qualifications) alongside English law on a number of occasions. But London was a long way off, and the concerns that Clarke identified about sharing power with Māori were clearly local ones.

With respect to protection of Māori lands, Clarke's role was considerably more ambiguous. Clarke did write a substantial report on Māori land tenure, when asked to. As with all official interest in Māori land rights and requests for information, underlying his report was a wish to understand how to conduct purchases more effectively. But he tried to convey the origin of hapū and iwi land rights, and the care with which names were bestowed on every landmark and waterway, and passed down over generations. He conveyed the great range of family resource rights, and stressed 'how very tenaciously they [Māori] maintain their customs and usages on all subjects connected with their lands'.[943] Clarke acknowledged that Māori land tenure was complex. He advised that there was a risk of conflict if the Crown attempted to purchase land, or confirmed pre-treaty purchases, without involving all those who held customary rights.[944] He warned of the dangers to the 'dignity' of the Government of its becoming a purchaser of land. He also acknowledged that there were significant risks that Māori and settlers did not have the same understanding of pre-treaty transactions.[945]

Clarke and the northern sub-protector, Henry Tacy Kemp, both served as translators and advisers to the first Land Claims Commission, which sat in this district from 1841 to 1844.[946] Indeed, the commissioners were highly dependent on Clarke and the missionaries, since they knew nothing themselves of Māori land tenure.[947] Yet, Clarke was also a claimant before the commission, having entered agreements for substantial tracts of land at Waimate and Whakanekeneke.[948] In the view of Stirling and Towers, Clarke's advice was compromised by his own land interests and his other official duties, which included purchasing land for the Crown.[949] Other historians agreed with this assessment, which we will consider further in chapters 6 and 7.[950] Stirling and Towers were also critical of Clarke's role in assessing settlers' applications for pre-emption waivers allowing them to buy Māori land.[951]

Overall, in Dr Phillipson's view, 'the yoke of Crown authority rested very lightly on Nga Puhi' during these early years, with the Crown making 'no real attempt to turn nominal sovereignty . . . into substantive sovereignty'. This was partly because of Clarke's influence and partly because the Governor, with his officials and troops, had moved to the new capital at Auckland. But, above all, Te Raki Māori continued to conduct their affairs in accordance with tikanga. Local officials, such as the resident magistrate Beckham and the northern sub-protector Henry Tacy Kemp, had minimal impact on Te Raki Māori lives.[952] Nonetheless, as we have previously set out, some Crown actions did have impacts on Te Raki rangatiratanga and became significant irritants in the Crown–Māori relationship. These included the moving of the capital to Waitematā and the Crown's approaches to tikanga, customs, land, and management of the kauri resource.[953]

In 1844, these tensions spilled over, and a series of events brought the district to the brink of open conflict (which we discuss at length in chapter 5). In July 1844, the Ngāti Tautahi leader Hōne Heke led a taua muru into Kororāreka, which ended when his party felled the flagstaff

on Maiki Hill, symbolically challenging the Crown's claim of authority over Te Raki Māori.[954] Heke was a young mission-educated chief who had, in 1840, been the first signatory to te Tiriti.[955] In response, FitzRoy called for military reinforcements and threatened to invade Heke's territories. This was a significant change of course for the Governor, who had caused much anger among settlers with his refusal to intervene after the Wairau Incident.[956] It was also a change of course for Clarke, who was present when the Executive Council resolved to call for troops.[957] FitzRoy then reached a compromise with Tāmati Waka Nene and other Ngāpuhi leaders, in which he withdrew his army and made a series of concessions (including removal of the customs duties) in return for their agreement to control Heke.[958]

As Phillipson and Johnson both observed, these leaders shared Heke's concerns about the Crown's policies, but did not want war.[959] In the months that followed, Crown–Māori tensions escalated. Local officials injured and then insulted senior Ngāti Hine leaders; Māori responded with a series of taua muru; the Governor made further threats of military invasion; and in 1845 war erupted.[960] We will consider these events in detail in chapter 5. Our concern here is with the deterioration of the relationship in the period leading to Heke's July 1844 attack on the flagstaff. It does not appear that any single decisive event triggered a breakdown in the relationship during 1844; rather, as Clarke and other officials observed at the time, the relationship broke down due to cumulative effects of the Crown's actions over the four years since te Tiriti was signed, combined with Māori mistrust of the Crown's future intentions.[961] As Clarke explained in July 1845, Māori had always been aware of the double-edged nature of their relationship with Pākehā. On the one hand, settlers and traders brought much-desired material possessions and prosperity; on the other, contact with settlers and with Britain's imperial power could lead to them being overrun and losing their authority, lands, and newfound prosperity. This, indeed, had been exactly the consideration that had led Māori to accept the establishment of a governing authority for settlers.[962] However, Busby wrote in 1845 that the Northern War had resulted because Māori believed they had been misled by the Crown over its intention to fund colonisation through profits from trade in Māori land.[963]

Te Raki rangatira had signed te Tiriti only after much 'anxious discussion' and reassurance from the missionaries, and some at least were uncertain that they were taking the right step. Scarcely had te Tiriti been signed than Māori began to express 'doubts and misgivings' about the wisdom of that step. These misgivings 'increased when they were told that they must no longer take the law into their own hands in the punishment of offenders'.[964] They were willing to put these concerns aside so long as they could continue to trade, but then they found the Government was interfering in their economic relationships as well:

> [T]he establishment of a regular Government necessarily required the introduction of certain regulations and prohibitions which were as little understood as expected by the natives. The sole right of pre-emption vested in the Crown, which in itself cut off one fruitful source of their wealth, – the exacting of customs, – some injudicious notices respecting the felling of Kauri timber; – all these natural concomitants of the establishment of a regular government [combined to] . . . rekindle in the minds of the native chiefs those feelings of doubt and suspicion which had been smothered by the novelties of their temporary prosperity.[965]

We observe that none of these regulations had been fully disclosed to Māori during the treaty debates. Pre-emption had been explained by Henry Williams only as a right of first refusal;[966] and no mention had been made of Crown controls on the kauri trade or on imports.[967] Clarke, however, blamed Māori concerns on 'unthinking and disaffected Europeans' who had themselves been affected by the customs duties and other regulations, and had therefore misled Māori about the Crown's intentions:

> [E]ven the institution of the [Land] Commissioner's court, which was intended to serve as a check to the fraudulent

> proceedings of land speculators, was represented to the natives as calculated to infringe upon their freedom in disposing of their lands in any quantity, and to whomever they might think proper.[968]

By blaming Heke's actions on disaffected whalers and settlers, Clarke sought to deflect attention from the Crown's own role in contributing to Māori concerns. Nonetheless, he could not avoid the fact that the Crown was partly responsible. This was somewhat due to 'one or two imprudent acts on the part of the Government', but more broadly it was because Māori who signed te Tiriti had not expected the Government to assert its authority as it had. Clarke made some very telling comments: as he put it, they 'had not a correct and comprehensive idea of all that was implied in ceding the sovereignty of their land'. As a result, it was 'very probable' that there was 'a . . . discrepancy between their intentions in the act, and our views and interpretations of it'; some rangatira felt the Governor's laws only applied to Europeans, and Te Raki Māori in general believed they were free to exercise 'sovereign acts and rights' such as the rights to make war and peace.[969] Clarke acknowledged that Te Raki leaders 'plead ignorance' on the impacts of Crown sovereignty, 'and accuse us of abusing their confidence' – though again he sought to absolve the Crown by blaming this on 'the exaggerations of the public press' and on settler agitation and by claiming that, despite their protestations, Māori were 'not altogether ignorant of the general meaning and tendency of their own act in signing the treaty'.[970]

Ms Wyatt noted that the main Pākehā agitators during the lead-up to the Northern War were the American settlers William Mayhew and Henry Smith, and the English-born ex-convict Charles Waetford, all resident traders at Te Wahapū under Pōmare's patronage. Frequently accused of being 'evil' or 'tangata kino', in Ms Wyatt's view they were simply explaining Britain's real intentions to assert authority over Māori and acquire their lands for settlement. Unlike missionaries and Government officials, they had no reason to 'mislead, deceive or assure' Māori: according to Ms Wyatt, none had claims to land, and none stood to benefit from any Māori rebellion against the Crown. They did, however, believe 'that their trading partners had been misled, and that an injustice had been committed'.[971]

This last point is borne out by Clarke's 1845 report, which amounts to an unambiguous admission by a senior official that the Crown had failed to give a clear explanation of its intentions before asking Māori to sign te Tiriti, either in general terms or in relation to specific matters such as the application of English law to criminal acts, trade, and use of land and resources. Being 'not altogether ignorant' of those intentions is scarcely the same as giving informed consent; indeed, as we concluded in our stage 1 report, Māori carefully presented their concerns and fears to Governor Hobson, and in return received assurances that they would retain their independence and would not be subordinate to the Governor.[972] Governor FitzRoy, writing in 1846, viewed the growing tensions in very similar terms, while also noting that the removal of the capital had caused 'very great dissatisfaction' to Te Raki Māori, and that the Wairau Incident – in which Nelson settlers had attempted to take disputed land by force and arrest Te Rauparaha – had shaken Māori confidence in settlers as people of peace and trade.[973] Dr Phillipson observed that these concerns were common among Ngāpuhi and were shared by Hōne Heke and those who would ultimately oppose him.[974]

While the Crown had acted in ways that had increased tensions, Bishop Selwyn pointed out that it had also failed to act in ways that might have fostered mutually beneficial relations. Early missionaries, he noted, had won Māori confidence by establishing schools and churches, whereas the Crown had brought soldiers, jails, 'swindling transactions in land', and protectors who did no more than patch up quarrels. The Crown could prove its good intentions by building schools and hospitals, securing Māori lands for the future, protecting Māori rights, and keeping its promises. Then Māori would have 'loved the Government as much as they do the Mission'.[975]

The colonial Government, of course, had no money in this period. Jonathan Adams, in his study of FitzRoy's financial plight, has highlighted the Governor's attempts to solve the colony's massive monetary problems by issuing

Government debentures. FitzRoy saw this as a short-term measure until the depression had passed (in the wake of a huge drop in revenue from trade and customs duties), the British government had sent assistance, and the development of the colony's resources had allowed it to become self-supporting. In the meantime, the colonial debt was increasing daily, the payment of Government salaries was behind, and FitzRoy could neither raise a loan nor draw bills on Treasury. He compounded his departure from his instructions by passing an ordinance proclaiming the debentures as legal tender. These would be prime causes of his dismissal from office (a decision that was taken by the Colonial Office by April 1845). But the Executive Council had supported his issue of the debentures, and the Legislative Council had passed his ordinance, seeing no alternative.[976]

It is hard to avoid the conclusion that the British government, in its rather rushed preparations for annexation, had simply made no proper provision for financing a new colony with a large indigenous population, which was also poised to receive a continuing influx of settlers. It seems to have relied instead on frequent reminders to the Governors to be as frugal as possible. By the time Governor Grey, FitzRoy's successor, was appointed, the matter was at least addressed, with Grey receiving substantial parliamentary grants in aid of New Zealand's revenue from the outset. But for the first crucial years of the colony's existence, when Crown policies aimed at bringing about the prosperity it had held out to Te Raki Māori might have been expected, the colonial Government was left without resources and was living hand to mouth.

Historians in this inquiry acknowledged the same immediate causes of tension between Te Raki Māori and the Crown that Clarke and FitzRoy had identified.[977] In Dr Phillipson's view, land issues were of considerable significance. As he saw it, Te Raki Māori wanted to maintain relationships with their settlers, and saw those relationships as involving ongoing reciprocal obligations; settlers occupied and used a portion of hapū lands, and in turn advanced Māori prosperity by giving gifts (both as part of the initial land transaction they entered into, and subsequently) and bringing trade. This arrangement had continued into the early 1840s – indeed, many rangatira appeared before the Land Claims Commission only after receiving gifts. According to Dr Phillipson, Ngāpuhi leaders were indignant when they learned that the Crown would grant a limited acreage to settlers and keep the surplus for itself. Dr Phillipson regarded this policy as one of 'confiscation'. He noted that settlers had been telling Heke and other rangatira for years that the Crown intended to take their lands, but these rumours were not believed until Māori became aware of the surplus lands policy. But once Māori learned of the policy, and more generally understood that the Crown intended to acquire and profit from their lands, their mistrust grew, contributing to the emergence of a full-blown crisis in the Crown–Māori relationship in 1844.[978]

During the latter months of 1844 and into 1845, Clarke and several missionaries made attempts to repair the relationship and to reassure Māori of the Crown's protective intent. Clarke, together with Nene and other rangatira, persuaded the Governor against invading Ngāpuhi territories in September 1844.[979] Clarke also mediated in Crown–Māori disputes, and encouraged the Crown to respect Māori law and acknowledge the roles of rangatira in keeping peace and governing the country.[980] Towards the end of the year, Clarke and Henry Williams arranged for copies of te Tiriti to be circulated in the district, and Clarke also urged that the Crown respect Māori law.[981] These efforts were undermined by other Crown officials. Beckham and Kemp angered Ngāti Hine leaders by refusing to pay utu after a constable wounded one of their wāhine rangatira.[982] After threatening to invade Ngāpuhi territories, FitzRoy made significant concessions at his hui with Ngāpuhi leaders at Waimate in September 1844, including promises (later broken) to end the customs duties and return the surplus lands.[983] But his subsequent actions tended to escalate tensions. Wounded by incessant settler criticism of his policy of appeasement, he became increasingly determined to stamp out taua muru and make an example of Heke – to demonstrate once and for all that Māori must obey the colony's laws or face severe consequences.[984] War in the north was not inevitable at the end of 1844, but it was growing ever closer.[985]

4.6 Whakarāpopototanga o ngā Whakataunga / Summary of Findings

In respect of the Crown's proclamation of sovereignty and the establishment of Crown Colony government, we find that the Crown acted inconsistently with the guarantees in article 2 of te Tiriti and in breach of te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga / the principle of partnership by:

- Proclaiming sovereignty over the northern island of New Zealand by virtue of cession by the chiefs, and over all New Zealand in May 1840, and publishing and thereby confirming the proclamations in October 1840 despite the fact that this was not what Te Raki rangatira had agreed to or expected; nor did the proclamations reflect the treaty agreement reached between Te Raki rangatira and the Crown's representative about their respective spheres of authority.
- Subsequently appointing Hobson as Governor and instructing him to establish Crown Colony government in New Zealand, on the basis of the incomplete and therefore misleading information he supplied about the extent of Māori consent, without having considered the terms and significance of the treaty, in particular the text in te reo, and its obligations to Te Raki Māori from the outset.
- Undermining Te Raki Māori tino rangatiratanga and authority over their land by asserting radical (paramount) title over all the land of New Zealand, without explaining, discussing, or securing the consent of Te Raki Māori to this aspect of British colonial law, despite the control it gave the Crown over Māori land, and more especially the ultimate disposal of lands transacted pre-treaty with settlers.
- Further undermining Te Raki Māori authority over their land by asserting its sole right of pre-emption, which was not clearly expressed in either the te reo text of te Tiriti nor in the oral debate; the Crown was anxious to secure this right so it could fund and control British colonisation, and its failure to convey its intentions on a matter of great importance to hapū used to conducting their own transactions with settlers was not in good faith.
- Failing to acknowledge the significance of the treaty and of Te Raki Māori agreement to it in any of the Crown's acts of state asserting sovereignty over New Zealand.

These actions, in the absence of informed Te Raki Māori consent to the Crown's plans for the governance of New Zealand, were also inconsistent with the Crown's duty of good faith conduct and thus breached te mātāpono o te houruatanga me te mātāpono o te whakaaronui tetahi ki tetahi / the principles of partnership and of mutual recognition and respect.

In respect of the assertion of effective Crown authority over Te Raki Māori during this period, we find that:

- By asserting the authority of its police and courts to enforce criminal law over Māori communities, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect. By claiming this authority without first engaging with and seeking the consent of Te Raki Māori, the Crown breached te mātāpono o te houruatanga / the principle of partnership.
- By failing to engage with Māori to ensure appropriate recognition and respect for Māori customary law, including appropriate recognition of the law of tapu and for the mechanisms of rāhui and muru, and appropriate recognition of the role of rangatira in the exercise of tikanga, the Crown also breached te mātāpono o te houruatanga / the principle of partnership.

In respect of the Crown's impacts on the district's economy, we find that:

- By imposing customs duties without engaging with Te Raki Māori and without considering the impacts on Māori, the Crown breached te mātāpono o te tino rangatiratanga and te mātāpono o te houruatanga / the principle of partnership.
- By moving the capital to Auckland without engaging with Te Raki Māori, in breach of prior assurances

(from Busby to Te Kēmara and from Hobson to Pōmare) that the capital would remain in the Bay of Islands and without attempting to mitigate the impacts of its decision, the Crown fundamentally altered the course of its treaty relationship with Te Raki Māori, acting inconsistently with its duty of good faith, and breaching te mātāpono o te houruatanga / the principle of partnership.

4.7 Ngā Whakahāweatanga / Prejudice

The breaches of the treaty discussed in this chapter have caused lasting prejudice to Te Raki Māori. Te Raki rangatira had signed te Tiriti believing the Governor would be their equal – a British rangatira who would control settlers, minimise harm to Māori arising from the process of settlement, and set the district on a course that would bring peace and prosperity to both Pākehā and Māori. Hobson's initial steps as Governor set the district on a different course. His 21 May proclamations of sovereignty asserted that the Crown was to be the superior authority. The British expected to establish its authority over hapū and iwi through its own governing and legal institutions without further discussions even with the signatories at Waitangi whom Hobson considered had entered into the actual treaty with the Queen.

This constitutional step set in train events that would ultimately undermine the authority that Ngāpuhi had sought to protect when they signed te Tiriti. The Crown created and took sole control of the institutions that would shape and run the colony in future. From the Crown's point of view, all legislative and executive authority in New Zealand would thereafter be exercised by its officials, acting in the name of the Queen; the Governor and Executive Council – and their superiors in London and (initially) Sydney – would make decisions about matters of vital interest to Te Raki Māori, including past and future land arrangements, and trade. British law – though modified to fit New Zealand circumstances – would thereafter be the law of the land. During these early years, officials would make some concessions to Māori tikanga and authority, partly for reasons of humanitarian sentiment and partly because it was simply the most realistic position to take – especially when so many Māori communities lived well beyond the reach of British settlements. But, in any case, it was always considered by the Colonial Office and Governors to be a short-term measure along the path to assimilation. We note therefore that for Māori the fact that New Zealand was designated a 'settled' rather than a 'ceded' colony probably made little difference in respect of the early colonial legal system. 'Settled' status embodied the legal position that English law would in principle apply to all inhabitants; but had 'ceded' status been allocated, the existing legal system (Māori customary law) would have remained instead, 'unless or until it was modified or abrogated by British statute or Crown ordinance'.[986] It seems very unlikely that the status of Māori law, in this case, would have remained unchanged for very long. Both categories, as Dr McHugh explains, arose in the course of Britain's territorial acquisition and the eventual attempts of British colonists to secure their political rights.[987]

The treaty relationship in Te Raki was in fact fragile from the start. The Queen's representative had just arrived in New Zealand, and had to feel his way; Ngāpuhi were committed to te Tiriti, but uncertain about the role of the new Kāwana. We cannot see that Governor Hobson made a sustained effort to nurture the relationship, or even saw that it was important to Ngāpuhi that he do so. He did not call hui or explain his decisions to the rangatira or form relationships with them. There seemed little sign that he considered the rangatira to be on an equal footing. Yet, Ngāpuhi rangatira had made it clear that this was what they expected. When he spoke at Waitangi, Patuone explained graphically, 'by bringing his two index fingers side by side, that they would be perfectly equal, and that each chief would similarly be equal with Mr Hobson'.[988] As Crown policies unfolded, suspicion and disenchantment took root. To some degree, this could be blamed on agitation by self-interested settlers, but to a greater degree it reflected the Crown's actions and Māori perceptions of them: its policies on old land claims; Māori control of the kauri trade; customs; the role of introduced law;

the presence of its soldiers; Hobson's claims that he alone could manage Māori–settler disputes; the imprisonment and execution of the young man Maketū; and the Governor's decision to abandon the district altogether and remove his establishment to found a new town in Auckland.

These decisions jeopardised the treaty relationship and also caused substantial economic harm to Te Raki Māori. By asserting authority over shipping, by charging customs duties, by enforcing British understanding of the land arrangements they had entered into with Pākehā pre-1840, and by abandoning the Bay of Islands, the Crown undermined tino rangatiratanga, contributed to a collapse in trade, and discouraged settlement in the north. Market forces could take some of the blame, but the Crown's actions at worst precipitated the collapse and at best made Te Raki Māori much more vulnerable to economic downturn than they would otherwise have been. Overall, Te Raki Māori, who had been wealthy in 1840, were described as impoverished by 1844 – thus beginning a long and difficult history of Māori economic marginalisation in the far north as further Crown policies saw reduced, not increased, settlement and economic activity.

The political impacts of Crown actions were also significant. The Government may at first have struggled to exert substantive power in Te Raki. But, as we will see, that in itself contributed to Governor FitzRoy's failure to defuse rising tensions there in 1844 and 1845. Under considerable settler pressure and fearing that he might be held responsible for insults to the Queen's flag, he rapidly resorted to a military and naval response. The Crown's conduct during the Northern War would prove a low point in Crown relations with Te Raki Māori. Though its armies suffered defeats in the field, its naval and fire power enabled it to inflict damage and distress on many communities, destroying their pā, kāinga, waka, and cultivations. In the end, it was the kind of heavy-handed imperial response that some Māori had long feared and some settlers had predicted; it seemed that warnings of dispossession by the British authorities had after all been justified.

Further long-term prejudicial legal and political impacts on the rights of tribes arose from the Crown's decision to secure Māori consent to its sovereignty through a treaty of cession, and from the impact of that sovereignty on Māori land rights. Both would be gravely damaging to tribal rights in ways Māori could not have foreseen; in fact, they were impacts that would not be evident to them for some time to come. We add at this point that it is possible that they have borne the brunt of a historical construction of the treaty of Waitangi by international lawyers – as a treaty of cession – that may yet be found to be wrong. Dr Palmer has suggested that this is the case, based on what is now understood of the Māori text of the treaty and the intentions of the rangatira who put their names to it. Quoting Sir Robert Jennings, he stated that conventional international law is clear:

> To constitute cession it must be intended that sovereignty will pass. Acquisition of governmental powers, even exclusive, without an intention to cede territorial sovereignty, will not suffice.[989]

Dr Palmer concluded: 'This analysis makes it difficult to accept that the Treaty of Waitangi was a treaty of cession of sovereignty at international law'. ('[I]t may have been more analagous to a "treaty of protection"', he suggested, but in 1840 'Britain did not enter into treaties of protection'.) 'On the basis of what we know today, an interpretation of the Treaty . . . that accorded to most rangatira an intention to cede sovereignty is, in my view, untenable.'[990] Certainly, as we have concluded, Te Raki rangatira did not cede their sovereignty; they had no intention to do so and did not understand that that was the effect of their signing te Tiriti.

Yet, the English text of the treaty was drafted as a treaty of cession. The Government sought a cession from Māori for a range of reasons. This was its normal practice, as we have outlined, but it was also concerned about he Whakaputanga, in which the chiefs, mostly from the far north, had affirmed the independence of their country only a few years before. There was the further complicating factor of the pre-1840 purchases by settlers or speculators – including those by French and American citizens. It was considered that the Government would be

in a stronger position to deal with these if the chiefs ceded sovereignty to the Crown.

For Māori, the legal impacts of the British decision were lasting. The loss of their tribal rights at law happened despite the British government's commitment by the early nineteenth century to recognise the capacity of tribal societies to enter into treaties at international law. By signing te Tiriti, despite their own understanding of it as an agreement between equal parties, Te Raki Māori were deemed by the Crown to have ceded sovereignty, and as the ceding party they 'cease[d] to exist in the international sphere'.[991] Dr Palmer, noting the view of international law experts on this, cited Ian Brownlie's view that the signing of the treaty meant that 'the separate international identity of the Confederation of Chiefs was extinguished'. He added, however, that 'such a conclusion is easily founded on the English text of the Treaty'. He himself draws the conclusion that 'iwi or hapu no longer possess international legal capacity'; they have 'no standing at international law to enforce the Treaty of Waitangi as a treaty of cession' (see section 4.3). He stated, however, that the 'extinction of a party at international law, or even the entire performance of a treaty, does not terminate its binding force', though it makes it 'more difficult to enforce in practice'.[992]

The characterisation of the treaty by the British Crown as a 'complete cession of all the rights and powers of sovereignty of the chiefs' would also have long-term consequences for Māori treaty rights in New Zealand's domestic law. The general rule, Dr Palmer explained, 'is that an international treaty will not be taken by New Zealand courts to impose domestic legal obligations unless Parliament says so by enacting it in legislation'.[993] It is now incorporated into some legislation, 'for some purposes, in certain circumstances, but not others'.[994] In *Te HeuHeu Tukino v Aotea District Maori Land Board* (1940), the Privy Council considered the legal status of the treaty (on the basis of the English text), commenting:

> It is well settled that any rights purporting to be conferred by such a treaty of cession cannot be enforced in the courts, except insofar as they have been incorporated in the municipal law.

The Privy Council noted that this principle had been laid down in a series of decisions, summarised by Lord Dunedin in the Gwailor case, *Vajesingji Joravarsingji v Secretary of State for India*, in these words:

> When a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing.[995]

The court could not therefore recognise claims based on the treaty. Dr Palmer, writing in 2008, expressed his surprise that *Te HeuHeu Tukino* was 'still the most recent judgment by New Zealand's highest court to consider directly the legal status of the Treaty of Waitangi'.[996]

These decisions would not, however, be the only impact of introduced law on Māori rights. We noted earlier in this chapter the impact of common law aboriginal title. As we have seen, on the proclamation of Crown sovereignty, tribal land rights were recognised as a qualification on the Crown's radical (or paramount) title to the land of New Zealand. But an emerging view among British authorities in the late 1830s was that the legal status of traditional polities after the acquisition of sovereignty should not be recognised. They might be recognised, it seems, just long enough to cede their sovereignty. In a new colony, however, tribal lands had not been granted by the Crown; they had no rights therefore which might be recognised at common law. Tribes had no legal status, and could not commence or maintain proceedings in court to protect tribal rights. Instead, their rights would be recognised through the Crown's guardians (indeed, through appointed Protectors).[997] The individual rights of indigenous people might be recognised, Dr McHugh has argued, but the British, having assured themselves of sovereignty over them, were then much less willing to recognise their

collective rights, particularly those associated with the authority of their polities and their ownership of land. Post sovereignty, tribal polities held no legal status. They were subordinated to the authority of the settler-states.[998]

In New Zealand the proclamations of sovereignty and the establishment of the country as a British colony with a system of Crown Colony government had set in motion the process of ensuring that British authority and laws would also apply to Māori. Ultimately, it is no exaggeration to draw a direct line from these constitutional upheavals to countless subsequent breaches of the treaty in which the Crown and its institutions would exercise authority in a manner inconsistent with Māori rights and interests, causing war, land loss, and lasting political, economic and cultural prejudice. We consider the extent of this prejudice in some detail in the rest of our report.

Notes

1. Maihi P Kawiti to Taonui, 24 March 1876 (translation of Erima Henare, 4 October 2010) talking about te Tiriti; Erima Henare, translation of the Whenua Papatupu document (doc D14(d)), pp [13]–[14].
2. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), pp 527–529.
3. Ibid, pp 528, 529.
4. Crown closing submissions (#3.3.402), p 4.
5. Crown closing submissions in reply (#3.3.450), pp 121–128, 132; claimant closing submissions (#3.3.228), pp 153–155; closing submissions for Wai 320, Wai 736, Wai 1307, Wai 2026, Wai 2476, and Wai 1958 (#3.3.234), pp 4–5.
6. Claimant closing submissions (#3.3.228), pp 8–9, 28, 211–212; claimant closing submissions (#3.3.219), pp 21–22; claimant closing submissions (#3.3.223), pp 5, 11, 29–31; claimant closing submissions (#3.3.222), p 32.
7. The submissions did refer to concessions about land titling: Crown closing submissions (#3.3.402), pp 167–168; see also Crown statement of position and concessions (#1.3.2), pp 1–7.
8. Crown closing submissions (#3.3.402), pp 4, 9–16.
9. Ibid, pp 48, 59.
10. Claimant closing submissions (#3.3.228), pp 8, 11, 153–155, 209–211; claimant submissions in reply (#3.3.450), pp 130, 132.
11. Claimant closing submissions (#3.3.223), pp 5, 29–31; claimant closing submissions (#3.3.222), p 32; claimant submissions in reply (#3.3.470), p 14.
12. Claimant closing submissions (#3.3.228), pp 8–9, 28, 211–212; closing submissions on behalf of Wai 320, Wai 736, Wai 1307, Wai 2026, Wai 2476 and Wai 1958 (#3.3.234), pp 4–5.
13. Claimant closing submissions (#3.3.228), pp 59–60; claimant closing submissions (#3.3.219), pp 21–22; claimant closing submissions (#3.3.221), pp 101–102; submissions in reply for Wai 2382 (#3.3.553), pp 26–28.
14. Claimant closing submissions (#3.3.219), pp 10–11, 20–21; claimant closing submissions (#3.3.221), pp 94–97; closing submissions for Wai 1477 (#3.3.338), pp 31–34; closing submissions for Wai 1477, Wai 1522, Wai 1531, Wai 1716, Wai 1957, Wai 1968, Wai 2061, Wai 2063, Wai 2377, Wai 2382. and Wai 2394 (#3.3.338(a)), pp 28–32; closing submissions for Wai 1354 (#3.3.292(a)), p 17; closing submissions for Wai 2377 (#3.3.333(a)), pp 29–30; submissions in reply for Wai 2382 (#3.3.553), pp 26–27; closing submissions for Wai 1514 (#3.3.357), pp 53–54; claimant submissions in reply for Wai 121 and others (#3.3.49(a)), p 15; claimant submissions in reply (#3.3.420), p 8.
15. Claimant closing submissions in reply (#3.3.228), pp 153–155; claimant closing submissions (#3.3.219), pp 21–24; claimant closing submissions (#3.3.220), pp 8–9; submissions in reply for Wai 2382 (#3.3.553), pp 26–28; closing submissions for Wai 1514 (#3.3.357), pp 53–54; claimant closing submissions (#3.3.220(a)), p 6; closing submissions for Wai 1968 (#3.3.551), pp 24–25. Rueben Porter's (Wai 1968) submissions were repeated in several other closing submissions: submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 25–26; submissions in reply for Wai 2394 (#3.3.546), pp 25–26; submissions in reply for Wai 2063 (#3.3.544), pp 24–26; submissions in reply for Wai 1477 (#3.3.547), pp 24–26; submissions in reply for Wai 2000 (#3.3.541), pp 23–26; submissions in reply for Wai 2005 (#3.3.542), pp 23–26; submissions in reply for Wai 2377 (#3.3.545), pp 26–29.
16. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 55–137, 502.
17. Ibid, pp 295–333, 505–506.
18. Ibid, pp 509, 524–525, 526–528.
19. Ibid, pp 526, 529.
20. Ibid, p 528.
21. Ibid, p 527.
22. Ibid, pp 524–525, 529.
23. Ibid, p 529, see also p 526.
24. Ibid, pp 89–90, 124–125, 100, 195, 284, 356, 399, 512, 520.
25. Ibid, pp 520–521, 524–525, 528.
26. Ibid, pp 528, 529.
27. Ibid, pp 518–519, 523, 529.
28. For example, see Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, Wai 6, 2nd ed (Wellington: Government Printing Office, 1989), p 51; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, Wai 8 (Wellington: Government Printer, 1985), pp 66–67; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wai 143 (Wellington: Legislation Direct, 1996), p 20; Waitangi Tribunal, *The Muriwhenua Land Report*, Wai 45 (Wellington: GP Publications, 1997), pp 115–116; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, pp 195–196. In some

reports, the Tribunal has found that Māori did not clearly consent to any transfer of power, either because the treaty terms were too vague or because they were never asked to sign: Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, Wai 903, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 151; Waitangi Tribunal, *Te Urewera*, Wai 894, 8 vols (Wellington: Legislation Direct, 2017), vol 1, p 164.

29. Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 20; Waitangi Tribunal, *Muriwhenua Land Report*, p 2; Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*, Wai 64 (Wellington: Legislation Direct, 2001), pp 30–31; Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage One*, Wai 1200, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 196, 200; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 205–208, 217.

30. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 189.

31. Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 20.

32. Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, pp 115–116.

33. Ibid, p 2.

34. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145 (Wellington: Legislation Direct, 2003), p 82.

35. Waitangi Tribunal, *Te Whanganui a Tara*, Wai 145, p 82.

36. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 166.

37. Ibid, pp 196, 200.

38. Waitangi Tribunal, *He Whiritaunoka*, Wai 903, vol 1, pp 145–146.

39. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 200.

40. Ibid, pp 205–206, see also p 180.

41. Ibid, p 130, see also pp 207–208, 217, vol 2, 1108–1109.

42. Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, p 185; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, Wai 22, 2nd ed (Wellington: Government Printing Office, 1989), pp 173–174; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wai 27 (Wellington: GP Publications, 1991), vol 2, p 252.

43. Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, Wai 6, pp 50–51; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp 173–174.

44. Waitangi Tribunal, *The Muriwhenua Land Report*, Wai 45, pp 6, 174–175, 177–178.

45. Waitangi Tribunal, *The Muriwhenua Land Report*, Wai 45, p 6.

46. Ibid, pp 5–6, 115–116.

47. Waitangi Tribunal, *The Ngai Tahu Report*, Wai 27, vol 2, p 252.

48. Ibid, p 255.

49. Waitangi Tribunal, *The Whanganui River Report*, Wai 167 (Wellington: GP Publications, 1999), p 15.

50. Ibid, pp 15–16.

51. Ibid, p xx.

52. Waitangi Tribunal, *The Te Roroa Report 1992*, Wai 38 (Wellington: Brooker and Friend Ltd, 1992), p 26.

53. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p 38.

54. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed, Wai 10 (Wellington: Government Printing Office, 1989), pp 35–36; Waitangi Tribunal, *Te Whanganui a Tara*, Wai 145, p 75.

55. Waitangi Tribunal, *The Te Roroa Report*, Wai 38, p 28; see also Waitangi Tribunal, *The Muriwhenua Land Report*, Wai 45, p 2; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 143–144.

56. Waitangi Tribunal, *The Ngai Tahu Report*, Wai 27, vol 2, pp 275–276.

57. Ibid, p 250.

58. Waitangi Tribunal, *The Te Roroa Report*, Wai 38, p 28.

59. Waitangi Tribunal, *The Muriwhenua Land Report*, Wai 45, pp 2, 184–185, see also p 120.

60. Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, pp 24–26.

61. Waitangi Tribunal, *The Kaipara Report*, Wai 674 (Wellington: Legislation Direct, 2006), pp 22, 25–26.

62. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa*, Wai 145, p 82.

63. Ibid, p 87.

64. Ibid, pp 143–144, see also pp 108, 139, 211–213, 220–226.

65. Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 1, 26–31.

66. The *Te Urewera* report provided detailed accounts of negotiations between Māori and the Crown, leading to what the Tribunal regarded as a treaty-compliant agreement to acknowledge Urewera Māori authority: Waitangi Tribunal, *Te Urewera*, Wai 894, vol 2, pp 763–890. The Te Rohe Pōtae inquiry regarded the treaty relationship as involving two spheres of authority (rangatiratanga and kāwanatanga) which were 'subject to ongoing dialogue and negotiation' (pp 175, 183). That inquiry also provided a detailed account of Crown–Māori negotiations that did not produce treaty-compliant results (ch 8): Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 1, pp 202, 210, vol 2, 837–1135. The Central North Island report provided detailed analysis of available models for Māori self-government during the nineteenth century, and of subsequent Crown–Māori negotiations that did not lead to treaty-compliant results: Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 201–208, 282–410).

67. Claimant closing submissions (#3.3.228), pp 209–211, see also pp 153–155.

68. Ibid, pp 154–155.

69. Ibid, p 210.

70. Crown closing submissions (#3.3.402), pp 9–11, 13; claimant submissions in reply (#3.3.450), pp 121–122.

71. Claimant submissions in reply (#3.3.450), p 124.

72. Ibid, pp 124, 127.

73. Ibid, p 122, see also pp 128, 132–133.

74. Claimant closing submissions (#3.3.228), p 153.

75. Ibid, pp 9, 154, 155, 211; claimant submissions in reply (#3.3.450), pp 122, 133.

76. Claimant closing submissions (#3.3.228), p 10.

77. Ibid, pp 60–66.

78. Claimant closing submissions (#3.3.228), p 138.
79. Ibid, pp 9–10, 27–28, see also pp 212, 303; see also submissions in reply for Wai 2382 (#3.3.553), pp 26–28; closing submissions for Wai 1477 and others (#3.3.338(a)), pp 21, 24–25, 27.
80. Claimant closing submissions (#3.3.228), pp 26–27; submissions in reply for Wai 2382 (#3.3.553), pp 26–28; closing submissions for Wai 1477 and others (#3.3.338(a)), pp 21, 24–25, 27; claimant closing submissions (#3.3.221), pp 86–87; submissions in reply (#3.3.501), pp 39–40; amended closing submissions for Hokianga (#3.3.297(a)), pp 31–33.
81. Submissions in reply for Wai 2005 (#3.3.542), p 23. Several other claimants made the same submission.
82. Claimant closing submissions (#3.3.219), pp 21–22, 24; claimant closing submissions (#3.3.220), pp 10–11; closing submissions for Wai 1477 (#3.3.338), pp 31–34; closing submissions for Wai 1477 and others (#3.3.338(a)), pp 30–32; closing submission for Wai 1354 (#3.3.292(a)), p 17; closing submissions for Wai 2377 (#3.3.333(a)), pp 27, 32–34; submissions in reply submissions for Wai 2382 (#3.3.553), pp 26–28); closing submissions for Wai 2022 (#3.3.331), p 52; closing submissions for Wai 1514 (#3.3.357), pp 53–54.
83. Claimant closing submissions (#3.3.228), p 8; claimant closing submissions (#3.3.223), pp 30–31.
84. Claimant closing submissions (#3.3.223), p 5.
85. Ibid, pp 30–31.
86. Ibid, pp 30–31.
87. Ibid, pp 11, 30–31.
88. Ibid, pp 12–14.
89. Ibid.
90. Ibid, p 31.
91. Claimant closing submissions (#3.3.219), pp 19–24.
92. Claimant closing submissions (#3.3.208), p 34.
93. Claimant closing submissions (#3.3.221), pp 56–61, 86.
94. Ibid, p 73.
95. Ibid, pp 86, 87–96.
96. Claimant amended closing submissions (#3.3.297(a)), pp 9, 12–13.
97. Ibid, p 9.
98. Claimant closing submissions (#3.3.219), pp 14, 15.
99. Claimant closing submissions (#3.3.228), p 8, see also pp 345–346.
100. Ibid, p 8.
101. Closing submissions on behalf of Wai 320 Wai 736, Wai 1307, Wai 2026, Wai 2476, and Wai 1958 (#3.3.234), pp 4–5.
102. Crown closing submissions (#3.3.402), pp 3, 4–5, 9–11.
103. Ibid, pp 4, 6.
104. Ibid, p 4; see also Dr Donald M Loveridge, '"The Knot of a Thousand Difficulties": Britain and New Zealand, 1769–1840', report commissioned by the Crown Law Office, 2009 (doc A18), p 245.
105. Crown closing submissions (#3.3.402), p 5.
106. Ibid, p 25.
107. Ibid, pp 5–6.
108. Ibid, p 6.
109. Ibid, pp 29–30.
110. Ibid, p 25.
111. Ibid, see also p 30.
112. Dr Paul McHugh (doc A21), p 72 (cited in Crown closing submissions (#3.3.402), p 11).
113. Crown closing submissions (#3.3.412), pp 3–4.
114. Normanby to Hobson, 14 August 1839 (cited in Crown closing submissions (#3.3.402), pp 40–42).
115. Crown closing submissions (#3.3.402), p 48, see also p 6.
116. Ibid, pp 6, 48, 59.
117. Ibid, pp 55–57.
118. Ibid, pp 60–62.
119. Ibid, p 59, see also p 6.
120. As we noted in our stage 1 report, the second proclamation of sovereignty which referred to the assertion of the Queen's sovereignty over the southern islands of New Zealand omitted any grounds for Hobson's assertion, though in his accompanying dispatch to London he stated that it was on the grounds of 'discovery'. The proclamation was later corrected to include this explanation: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 387, 389.
121. Russell to Hobson, 9 December 1840 and enclosures, IUP/BPP, vol 3, pp 146–169.
122. Claimant closing submissions (#3.3.228), pp 57–58, 138, 153, 210–211.
123. Crown closing submissions (#3.3.402), p 30, see also pp 5–6, 25–26.
124. Ibid, pp 40–43.
125. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 504.
126. The three Acts were concerned with providing for the punishment of crimes committed against Māori (in the case of the 1823 and 1828 Acts, in New South Wales courts): the Murders Abroad Act 1817 (UK) 57 Geo III c 53, the New South Wales Act 1823 4 Geo IV c 96, and the Australian Courts Act 1828 (UK) 9 Geo IV c 83. Peter Adams has observed that these statutes recognised that, 'as far as Britain was concerned, New Zealand was independent territory': Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), p 53; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 55–137, 326.
127. At Akaroa, the Pākehā master lured the senior Ngāi Tahu rangatira Tamaiharanui, his wife, and daughter on board, where they were captured by Te Rauparaha. The Ngāti Toa party then attacked the village, while Tamaiharanui and his wife were taken back to Kāpiti and killed; they killed their daughter before their arrival, to spare her the fate that awaited them. Ngāpuhi, later learning of this, were concerned that tactics such as those of Ngāti Toa might be used against them to avenge attacks made by Hongi Hika in his raids, and in 1831 sent a deputation to Sydney to complain to Governor Darling and seek redress and protection from the British government. This led to Darling's decision to appoint a Resident, though he was recalled in 1831 and did not proceed further with the plan himself: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 110.
128. Ibid, pp 296–297, 313.
129. Ibid, pp 232–233, 302–304.

130. Ibid, pp 232–233, 237, 303–304.
131. Loveridge explained that the various organisations formed for the colonisation of New Zealand in the 1830s were often referred to indiscriminately as 'The New Zealand Company'; they included the New Zealand Association and the New Zealand Land Company (1839), while the New Zealand Company was created by the Crown Charter in November 1840. In this report, most of our references to the company date from 1840 and we have decided generally to use that name in this part of our report, with the exception of this specific reference: Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 6.
132. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 313, 505.
133. Ibid, p 505.
134. Philip Joseph, *Joseph on Constitutional and Administrative Law*, 5th ed (Wellington: Thomson Reuters New Zealand Ltd, 2021), p 53.
135. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 327; McHugh (doc A21), p 90.
136. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 327–329.
137. McHugh (doc A21), p 90.
138. Ibid.
139. Glenelg, memorandum, 15 December 1837 (cited in McHugh (doc A21), pp 44–45).
140. Gipps was thus appointed Governor-in-chief of the enlarged territory of New South Wales, which included 'any territory which is or may be acquired in sovereignty by Her . . . Majesty . . . within that group of islands . . . commonly called New Zealand'. The proclamation provided coordinate details for the area it described as the New Zealand islands in the Pacific Ocean, 'lying between the latitude of 34 degrees 30 minutes and 47 degrees 10 minutes south, and 166 degrees 5 minutes and 179 degrees east longitude, reckoning from the meridian of Greenwich': proclamation, 14 January 1840, IUP/BPP, vol 3, pp 37–39.
141. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 340; see also Gipps' proclamations dated 14 January 1840, IUP/BPP, vol 3, pp 37–39.
142. Joseph stated that Gipps dated them 14 January retrospectively: Joseph, *Joseph on Constitutional and Administrative Law*, p 51; see also Gipps to Russell, 9 February 1840, IUP/BPP, vol 3, p 37; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 340.
143. Ibid; see also McHugh, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, p 605.
144. McHugh (doc A21), p 61.
145. Hobson, proclamation, 30 January 1840, IUP/BPP, vol 3, p 44; Hobson to Gipps, 4 February 1840, IUP/BPP, vol 3, p 43.
146. Forty of those present, led by James Busby, signed a document bearing witness to Hobson's reading of the commissions. The moko of one Māori, Moko, was witnessed by a settler.
147. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 340–341.
148. Ibid, p 341.
149. The 'cession' had been a forfeiture of land to the King of England, a punishment suggested by Henry Williams after Busby was subjected to a night attack on his home in April 1834, and theft of property, as well as being fired upon; Busby drew up a deed accordingly and had other chiefs sign it. The chiefs also agreed that Rete should be banished from the district, though it appears this did not occur. By 1840, the land had been reoccupied by Māori: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 134–136, 341.
150. Busby quoted in Thomas Lindsay Buick, *The Treaty of Waitangi: How New Zealand became a British Colony*, 3rd ed (New Plymouth: Thomas Avery and Sons Ltd, 1936), p 105 (Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 341).
151. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 341.
152. Ibid.
153. McHugh (doc A21), pp 62–63; Paul McHugh, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, p 608.
154. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 351–376.
155. Ibid, p 385; Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 213; Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin, 1987), p 66.
156. Hobson to Gipps, 17 February 1840, IUP/BPP, vol 3, p 134.
157. Hobson left the document with Shortland on 21 February, instructing him not to circulate it 'unless some circumstances arise that render its publication actually requisite': Hobson to Shortland, 18 February 1840 (Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 213).
158. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 385.
159. As far as we are aware, there is no documentary evidence which allows us to state the date of this signing with certainty. However, this is the date provided by Ngāti Hine and also reflects the consensus among historians. The exception is Nancy Taylor, the editor of Ensign Best's journal, who suggested the signing occurred on 11 May 1840 on the basis of her study of the available evidence: Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 9; 'Treaty Signatories and Signing Locations: page 3 – Ngā Wāhi – Treaty Signing Occasions', https://nzhistory.govt.nz/politics/treaty/nga-wahi-signing-occasions.
160. Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, pp 137–139; K A Simpson, 'William Hobson', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1h29/hobson-william, accessed 12 April 2021.
161. Orange, *The Treaty of Waitangi*, p 84.
162. Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, p 138.
163. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 386.
164. The regulations provided for the formation of a governing committee which was empowered to make and enforce laws and to raise a militia: Dr Donald Loveridge, '"An Object of the First Importance":

Land Rights, Land Claims and Colonization in New Zealand, 1839–1852', report commissioned by the Crown Law Office, 2004 (Wai 863 ROI, doc A81), p 35 fn 74.

165. Orange, *Treaty of Waitangi*, p 84.

166. Hobson to Russell, 25 May 1840 (cited in McHugh (doc A21), p 69).

167. Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa*, p 82.

168. McHugh (doc A21), p 70.

169. Ibid, pp 71–72.

170. Hobson described himself in the text of the North Island proclamation as 'Consul and Lieutenant-governor in New Zealand', but signed as Lieutenant-governor; in the second proclamation he described himself only as 'Lieutenant-governor of New Zealand', and signed as such: proclamations enclosed in Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, pp 140–141.

171. Dr Donald Loveridge, 'The New Zealand Land Claims Act of 1840', report commissioned by the Crown Law Office, 1993 (Wai 45 ROI, doc I2), pp 139–144; proclamation, 21 May 1840, encl in Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, p 141; proclamation, 21 May 1840 (Dr Donald M Loveridge, supporting papers (doc A18(d)), p 585); Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), pp 218–219.

172. Proclamation, 23 May 1840, IUP/BPP, vol 3, p 141.

173. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 387–389.

174. Hobson to Bunbury, 25 April 1840, 25 May 1840, IUP/BPP, vol 3, p 139.

175. Proclamation, 21 May 1840, IUP/BPP, vol 3, p 140.

176. Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, p 138.

177. Declaration of Sovereignty over Tavai Poenammoo, IUP/BPP, vol 3, p 234.

178. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 389; Orange, *The Treaty of Waitangi*, p 85.

179. Orange, *The Treaty of Waitangi*, pp 54–57.

180. Russell to Hobson, 10 November 1840 (cited in Matthew S R Palmer, *The Treaty of Waitangi in New Zealand's Law and Constitution* (Wellington: Victoria University Press, 2008), p 56).

181. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 525.

182. McHugh, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, p 523.

183. Ibid, pp 523, 527.

184. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 at 671, 690 (CA).

185. The 'protector of aborigines' was the official charged with protecting the interests of the indigenous people of a colony – in New Zealand, the interests of Māori: Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 89. George Clarke senior was the first appointed to this position, in 1840. He was initially referred to as the Protector of Aborigines but after sub-protectors were also appointed in 1841, the position was renamed Chief Protector of Aborigines. He began referring to himself as such from about 1843: Alexander Hare McLintock, *Crown Colony Government in New Zealand* (Wellington: R E Owen, 1958), p 180; Ray Grover, 'George Clarke', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1c18/clarke-george, accessed 12 April 2021.

186. Stewart Island was named for William Stewart, first mate on board the *Pegasus*, who charted Port Pegasus in 1809. New Munster, New Ulster, and New Leinster were named after provinces in Ireland, which was then part of the Union of Great Britain and Ireland. The proclamation made no mention of the Māori names of the various islands.

187. Charter for erecting the colony of New Zealand, enclosed in Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, pp 147, 153–155.

188. Instructions, 5 December 1840, IUP/BPP, vol 3, p 157.

189. Joseph, *Joseph on Constitutional and Administrative Law*, pp 148–149. We add that The New South Wales Continuance Act 1840 (UK), cited by the Charter as empowering the Crown to establish a Legislative Council for New Zealand, specified not only that the laws it made were not to be repugnant to the law of England, but that they were to be 'consistent therewith, so far as the Circumstances of . . . [the] Colony may admit'.

190. Jeremy Finn, 'Colonial Government, Colonial Courts and the New Zealand Experience', in *A New Zealand Legal History*, ed Peter Spiller, Jeremy Finn, and Richard Boast, 2nd ed (Wellington: Brooker's Ltd, 2001), pp 61–62.

191. McLintock, *Crown Colony Government*, p 90.

192. Russell to Hobson, 25 February 1841, and encls, IUP/BPP, vol 3, pp 169–172.

193. Hobson to Russell, 26 May 1841, and enclosures, IUP/BPP, vol 3, pp 450–452.

194. The Legislative Council would sit on 12 occasions, twice under Hobson, three times under FitzRoy, and seven under Grey. It passed 129 ordinances in total. Its sessions were described by McLintock as 'irregular and brief': McLintock, *Crown Colony Government*, pp 103, 132.

195. Ibid, pp 132–133.

196. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 327.

197. Ibid, p 329.

198. Paul McHugh, *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi* (Auckland: Oxford University Press, 1991), p 178 (cited in Palmer, *The Treaty of Waitangi*, p 158).

199. McHugh (doc A21), p 95.

200. P G McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-determination* (Oxford: Oxford University Press, 2004), pp 110–111. Vattel's work became the handbook of the British Foreign Office.

201. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 45.

202. McHugh, *Aboriginal Societies and the Common Law*, p 111.

203. 'Articles between the United States and Tahiti', 6 September

1826 (Tom Bennion, 'Treaty-Making in the Pacific in the Nineteenth Century and the Treaty of Waitangi', *Victoria University of Wellington Law Review*, vol 35, no 1 (2004), p 188).
204. Bennion, 'Treaty-Making in the Pacific', p 188.
205. Ibid, pp 188, 195–196.
206. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 333.
207. Glenelg, memorandum, 15 December 1837 (cited in McHugh (doc A21), p 45); see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 506.
208. Normanby to Captain Hobson, 14 August 1839, IUP/BPP, vol 3, p 85; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 317.
209. Memorandum in Stephen to Backhouse, 18 March 1840, IUP/BPP, vol 3, pp 116–117.
210. Hobson to Gipps, 5 February 1840, enclosed in Gipps to Lord John Russell, 19 February 1840, IUP/BPP, vol 3, pp 42–47.
211. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), pp 174–181.
212. Stephen, minute on Gipps to Russell, 19 February 1840, IUP/BPP, vol 3, p 42 (cited in Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 212). As noted above, three British statutes (1817, 1823, and 1828) had clarified that New Zealand lay outside British jurisdiction (see note 126 above). The Colonial Office, as McHugh explained, had in the 1830s 'consistently declined assertion of some version of the doctrine of discovery in New Zealand along the lines of the Marshall judgments, by which [doctrine] European states acquired and asserted amongst one another – but not as against the tribes – exclusive rights in the Americas'. The principle of discovery established the title of the United States to its territory in line with Vattel's *ius gentium*. McHugh, (doc A21), p 12; McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-determination* (New York: Oxford University Press, 2004), pp 37–40.
213. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 212.
214. Hobson to Gipps, 5–6 February 1840, encl in Gipps to Russell, 19 February 1840, and enclosures, IUP/BPP, vol 3, pp 45–46. The timing meant that Hobson's report of the signing of the Treaty of Waitangi was available to the select committee, which published Gipps's dispatch of 19 February, enclosing Hobson's reports from Waitangi as an appendix to its draft report. This report appeared in the proceedings of the committee for 30 July 1840. The draft report opened with the statement that Hobson's reports 'make it appear probable that sovereign rights over the whole of the islands will shortly be ceded by the natives to the Queen': draft report submitted by Lord Eliot, 30 July 1840, IUP/BPP, vol 1, p vi (cited in Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), pp 180–181).
215. Russell to Gipps, 17 July 1840, IUP/BPP, vol 3, p 47.
216. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 149.
217. Ian Brownlie, *Treaties and Indigenous Peoples: The Robb Lectures 1991*, ed Frederic Morris (Jock) Brookfield (Oxford: Clarendon Press, 1992), p 8.
218. Ibid; Palmer, *The Treaty of Waitangi*, pp 158–159. Brownlie added that the Treaty of Waitangi appears in authoritative collections such as *British and Foreign State Papers* and *Hertslet's Commercial Treaties*.
219. Joseph, *Joseph on Constitutional and Administrative Law*, p 67.
220. Brownlie, *Treaties and Indigenous Peoples*, p 8 (cited in Joseph, *Joseph on Constitutional and Administrative Law*, pp 70–71).
221. Brownlie, *Treaties and Indigenous Peoples*, pp 8–9.
222. Alan Ward, *An Unsettled History: Treaty Claims in New Zealand Today* (Wellington: Bridget Williams Books, 1999), p 13.
223. Peter Tremewan, *French Akaroa: An Attempt to Colonise Southern New Zealand* (Christchurch: University of Canterbury Press, 1990), pp 83–88, 119.
224. Ibid, pp 87–101. Dr Tremewan's view is that Hobson and Lavaud got on well and that each understood the other's position, but that they were not entirely frank with each other. Hobson did not tell Lavaud about Bunbury's declaration of sovereignty over the South Island by cession after signatures of Ngāi Tahu chiefs had been obtained; and Lavaud did not tell Hobson of the French government's financial and political backing for a projected French colony, or its wish to set up a penal colony: ibid, p 96.
225. Palmer, *The Treaty of Waitangi*, p 420 n 51.
226. Palmer acknowledged McHugh's discussion of the case in his book *Aboriginal Societies and the Common Law*.
227. 'Messrs Rogers and Co, Opinion', 1854, p 125 (Palmer, *The Treaty of Waitangi*, pp 159–169 n).
228. Palmer, *The Treaty of Waitangi*, pp 159, 160.
229. Brownlie, *Treaties and Indigenous Peoples*, p 8 (cited in Palmer, *The Treaty of Waitangi*, p 161).
230. Palmer, *The Treaty of Waitangi*, p 165.
231. Ibid, p 160.
232. Shortland assumed this office after Hobson's death in September 1842. His official title was officer administering the Government.
233. Nancy M Taylor, ed, *Journal of Ensign Best, 1837–1843* (Wellington: Government Printer, 1966), p 364 (cited in Richard Boast, 'Maori and the Law, 1840–2000' in Spiller, Finn, and Boast, *A New Zealand Legal History*, pp 136–137).
234. Alan Ward, *A Show of Justice: A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press/Oxford University Press, 1973), p 58.
235. W Shortland to Stanley, 31 December 1842, IUP/BPP, vol 2, p 456.
236. Swainson to officer administering the Government, 27 December 1842, IUP/BPP, vol 2, pp 470–471.
237. Clarke's answers to Executive Council, 29 December 1842, IUP/BPP, vol 2, pp 459–460.
238. Willoughby Shortland to Stanley, 31 December 1842, IUP/BPP, vol 2, p 457.
239. Ibid.
240. McHugh stated in his evidence that the reference to public assertion under the Great Seal was a reference among other things to the charter of the colony of December 1840: McHugh (doc A21), p 76.
241. Stanley to officer administering the Government, 21 June 1843, IUP/BPP, vol 2, p 475.

242. In a later dispatch to FitzRoy, when the treaty was under attack from the report of the select committee of the House of Commons, Stanley would add that it had been 'officially promulgated and laid before Parliament': Stanley to FitzRoy, 13 August 1844, IUP/BPP, vol 4, p 146.
243. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 212–213.
244. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), p 163.
245. The original minute was on Shortland's dispatch to Stanley of 31 December 1842. Stephen added that Mr Swainson's arguments were those of 'a Politician or a Moralist, not of a Lawyer'. He believed that 'to have such privileged spots [that is, parts whose chiefs had not 'ceded the dominion', where the inhabitants were not the Queen's subjects] in the centre of a British Territory, would be injurious to everyone. I apprehend that the assent of the preponderating majority of the Chiefs is binding on the Dissentient minority.' We are not as certain as McHugh was that Stephen underlined the word 'now', but perhaps not a great deal hangs on the point; the word 'now' is itself telling: Stephen to Hope, 19 May 1843 (McHugh (doc A21), pp 75–76).
246. McHugh (doc A21), p 76.
247. Palmer, *The Treaty of Waitangi*, p 74.
248. Ibid, p 159.
249. Ibid, p 74.
250. Ibid, pp 74–75.
251. Ibid, p 75.
252. Adams, *Fatal Necessity*, pp 162, 163.
253. Normanby to Hobson, 14 August 1839 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 317–318).
254. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 526–527.
255. Felton Mathew, *The Founding of New Zealand: The Journals of Felton Mathew, First Surveyor-General of New Zealand, and his Wife, 1840–1847*, ed J Rutherford (Dunedin: AH & AW Reed, 1940), p 34; see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 467.
256. Hobson to Gipps, 5 February 1840, IUP/BPP, vol 3, p 130.
257. Hobson to Bunbury, 25 April 1840 (cited in Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 193 (Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 355)).
258. Louis Catherin Servant as translated by Peter Low, 'French Bishop, Maori Chiefs, British Treaty', in *The French and the Maori*, ed John Dunmore (Waikanae: Heritage Press Ltd, 1992), pp 102–103; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 516.
259. H Williams to Selwyn, 12 July 1847 (cited in Hugh Carleton, *The Life of Henry Williams: Archdeacon of Waimate*, 2 vols (Auckland: Wilsons & Horton, 1877), vol 2, pp 156–157); Dr Grant Phillipson, 'Bay of Islands Maori and the Crown, 1793–1853', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A1), p 282.
260. William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6, 1840* (1890; repr Christchurch: Capper Press, 1971), pp 16–17 (Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 355).
261. Hobson to Normanby, 17 February 1840 (Anne Salmond (doc A22), p 66); see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 380.
262. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 526.
263. Ibid, p 519.
264. Joseph, *Joseph on Constitutional and Administrative Law*, p 32.
265. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 239 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 467–468).
266. Hobson to Under-Secretary, Colonial Department, August 1839; Normanby to Hobson, 15 August 1839, IUP/BPP, vol 3, pp 90–93.
267. Hobson quoted in Colenso, *The Authentic and Genuine History*, p 19 (cited in Waitangi Tribunal, *The Hauraki Report*, Wai 686, 3 vols (Wellington: Legislation Direct, 2006), vol 1, pp 83–84).
268. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 1, p 83.
269. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, pp 86, 87.
270. Hobson to Bunbury, 25 April 1840, IUP/BPP, vol 3, p 139.
271. Busby, invitation, 30 January 1840 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 342).
272. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 346, 348.
273. See ibid, p 169.
274. McHugh (doc A21), p 63.
275. Hobson to Bunbury, 25 April 1840, IUP/BPP, vol 3, p 139.
276. Crown closing submissions (#3.3.33), p 189.
277. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 520.
278. Ibid, p 521.
279. Heke to Queen Victoria, 10 July 1849 (cited in Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), pp 402–403).
280. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 520–521.
281. Hobson to Gipps, 5–6 February 1840, encl in Gipps to Russell, 19 February 1840, IUP/BPP, vol 3, pp 127–131.
282. Hobson to Gipps, 17 February, IUP/BPP, vol 3, p 133; Hobson to Bunbury, 25 April 1840, IUP/BPP, vol 3, p 139; see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 383; Buick, *The Treaty of Waitangi*, p 175; Orange, *The Treaty of Waitangi*, p 275 fn 13; Claudia Orange, *The Treaty of Waitangi/Te Tiriti o Waitangi: An Illustrated History* (Wellington: Bridget Williams Books Ltd, 2020), pp 290–292.
283. Taylor, journal, 14 February 1840 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 384–385).
284. Hobson to Gipps, 17 February 1840, IUP/BPP, vol 3, p 133.
285. Hobson sent his report on the Hokianga signing to Gipps, dated 17 February, and enclosed it with his earlier report on Waitangi in a dispatch to Lord Normanby dated 16 February 1840: Hobson to Gipps,

17 February 1840, encl in Hobson to Normanby, 16 February 1840, IUP/BPP, vol 3, pp 132–134.
286. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 389.
287. Proclamations enclosed in Hobson to Secretary of State for the Colonies, 25 May 1840, IUP/BPP, vol 3, pp 140–141; Orange, *The Treaty of Waitangi*, p 85.
288. McHugh (doc A21), p 76.
289. McHugh, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, pp 544–545.
290. Ibid.
291. Proclamation to Port Nicholson settlers, 23 May 1840 (cited in McHugh (doc A21), pp 69–70).
292. James Rutherford, *The Treaty of Waitangi and the Acquisition of British Sovereignty over New Zealand, 1840*, History Series 3: Bulletin 36 (Auckland: University College, 1949), p 19.
293. Hobson to Normanby, 16 February 1840, IUP/BPP, vol 3, p 132.
294. Normanby to Hobson, 14 August 1939, IUP/BPP, vol 3, p 85; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 317.
295. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, pp 85–86; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 317.
296. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, pp 85, 86.
297. Ibid, p 88.
298. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 327–329.
299. McHugh, *Aboriginal Societies and the Common Law*, pp 132–133.
300. Stephen to Vernon Smith, note, 21 July 1840 (cited in McHugh (doc A21), p 89).
301. McHugh (doc A21), p 89.
302. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 149.
303. Shaunnagh Dorsett, *Juridical Encounters: Maori and the Colonial Courts, 1840–1852* (Auckland: Auckland University Press, 2017), p 38. We considered the report of the select committee and historians' views of it in our stage 1 report: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 323–325.
304. Dorsett, *Juridical Encounters*, p 52.
305. Ibid, p 44. Damen Ward notes that exceptionalists 'stressed the injustice of requiring that indigenes were expected at once to conform' without any allowance being made for their own laws, customs, and their 'prejudice', as it was put at the time. Exceptional laws, providing exemptions from English criminal law, were seen as a necessary transitional step to acceptance of English law, assisting the assimilation process: Damen Ward, 'A Means and Measure of Civilisation: Colonial Authorities and Indigenous Law in Australasia', *History Compass*, vol 1, no 1 (2003), p 8.
306. Dorsett, *Juridical Encounters*, p 66.
307. Hobson to Normanby, [circa August 1839], IUP/BPP, vol 3, p 91; Normanby to Hobson, 15 August 1839, IUP/BPP, vol 3, p 93.
308. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 150.
309. Ward, *A Show of Justice*, pp 37–38.
310. Dorsett, *Juridical Encounters*, p 66.
311. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 150.
312. Russell to Hobson, 28 January 1841, IUP/BPP, vol 3, p 174.
313. Ward, *A Show of Justice*, p 38.
314. Stanley, minute, 23 August 1842 (cited in Ward, *A Show of Justice*, p 63).
315. Stephen, minute, 19 May 1843 (cited in Ward, *A Show of Justice*, pp 62–63).
316. The dispute had been brewing for some time, as Ngāti Toa refused to allow Wairau to be included in the company's claimed land, and had sent several deputations to Captain Wakefield while waiting for the Spain Commission to report on the company's claim: Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 195–197; see also Boast, 'Maori and the Law', p 137.
317. FitzRoy arrived in New Zealand in December 1843: Stanley to FitzRoy, 10 February 1844, IUP/BPP, vol 2, pp 171–174.
318. Stanley to FitzRoy, 10 February 1844, IUP/BPP, vol 2, p 172.
319. Ibid, pp 172, 173.
320. McHugh (doc A21), p 78.
321. Stanley to FitzRoy, 10 February 1844, in 'Wairau: Lord Stanley's Despatch to Governor FitzRoy', *New Zealand Spectator and Cook's Strait Guardian*, 16 November 1844, p 4.
322. Editorial, *New Zealand Spectator and Cook's Strait Guardian*, 16 November 1844, p 2.
323. McHugh (doc A21), p 77.
324. Normanby to Hobson, 14 August 1839 (Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 316–317).
325. Donald M Loveridge, '"An Object of the First Importance": Land Rights, Land Claims and Colonization in New Zealand, 1839–1852', report commissioned by the Crown Law Office, 2004 (Wai 863 ROI, doc A81), pp 24–26.
326. *Oyekan v Adele* [1957] 1 WLR 876 (PC) at 880 (cited in Joseph, *Joseph on Constitutional and Administrative Law*, p 47).
327. Section 2 of the Land Claims Ordinance 1841 stated 'that all unappropriated lands within . . . New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and remain Crown or domain lands of Her Majesty, Her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, Her heirs and successors': Land Claims Ordinance 1841, IUP/BPP, vol 3, p 276; see also Gipps to Russell, 16 August 1840, IUP/BPP, vol 2, p 185.
328. Joseph, *Joseph on Constitutional and Administrative Law*, p 47.
329. Crown closing submissions: old land claims (#3.3.412), p 3.
330. P G McHugh, *Aboriginal Title: The Modern Jurisprudence of Tribal Land Rights* (Oxford: Oxford University Press, 2011), p 1.
331. Paul McHugh, 'Common Law Aboriginal Title in New Zealand after *Ngati Apa v Attorney-General* (2003)', in Richard Boast and Paul McHugh, *The Foreshore and Seabed: New Zealand Law Society Seminar* (Wellington: New Zealand Law Society, 2004), p 26.
332. McHugh, *Aboriginal Title*, pp 2–3. In *Attorney-General v Ngati Apa*, Chief Justice Elias stated that in British territories – including New Zealand – the introduced common law 'adapted to reflect local

customs, including property rights'. From the beginning, the common law of New Zealand as applied in the courts differed from the common law of England 'because it reflected local circumstances'. She pointed out, however, that New Zealand courts did not always hold to this view. In *Wi Parata v Bishop of Wellington*, the Court held that the rule of common law that native customary property survived the acquisition of sovereignty had no application to the circumstances of New Zealand. Māori, it considered, had 'insufficient social organisation upon which to found custom recognisable by the new legal order'. Despite the Privy Council's rejection of this approach, the reasoning in *Wi Parata* continued to influence thinking in New Zealand. In particular, the Crown 'continued to argue in litigation that, through the acquisition of sovereignty, all land in New Zealand became owned by it. In other words, it equated sovereignty with ownership (conflating imperium and dominium). This, Chief Justice Elias suggested, may in part have been a result of the influence of Sir John Salmond (who was largely responsible for drafting the important Native Lands Act 1909). In his view, this was the consequence of the introduction of English law 'with its system of estates derived from feudal land tenure'. All England, he argued, was originally not merely the territory but also the property of the Crown; legal ownership of the land remained vested in the Crown. And when New Zealand became a British possession, it became not merely the Crown's territory but also the Crown's property; that is, the Crown acquired both imperium and dominium. This view would be criticised by Sir Kenneth Roberts-Wray in his 1966 book *Commonwealth and Colonial Law*, on the ground that it failed to take into account the 'vital rule that, when English law is in force in a Colony . . . it is to be applied subject to local circumstances'. See *Attorney-General v Ngati Apa* [2003] 3 NZLR 643, pp 651–655; Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (London: Steven & Sons, 1966), p 626.

333. McHugh (doc A21), p 18; see also McHugh, 'Common Law Aboriginal Title in New Zealand', p 27.

334. He pointed specifically to the Select Committee on Aborigines (1837) which made recommendations on the subject: McHugh, *Aboriginal Societies and the Common Law*, p 133.

335. Ibid, pp 134–135.

336. In his speech, Gipps compared the rights of a civilised power to those of the 'uncivilised inhabitants of any country [who] have but a qualified dominion over it, or a right of occupancy only' and were thus unable to grant to individuals outside their own tribe any portion of it, since they themselves lacked individual property rights: Richard P Boast, 'Surplus Lands: Policy-making and Practice in the Nineteenth Century', report commissioned by the Waitangi Tribunal, 1992 (Wai 45 ROI, doc F16), pp 71–72, 72 fn 126; see also Gipps, speech, 9 July 1840, IUP/BPP, vol 3, pp 185–187.

337. Stanley to FitzRoy, 26 June 1843, IUP/BPP, vol 2, p 188.

338. Ibid.

339. Rose Daamen, *The Crown's Right of Pre-emption and FitzRoy's Waiver Purchases*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1998).

340. P G McHugh, 'The Aboriginal Rights of the New Zealand Maori at Common Law' (doctoral thesis, University of Cambridge, 1987), fol 202 (Daamen, *The Crown's Right of Pre-emption*, p 2).

341. Daamen, *The Crown's Right of Pre-emption*, pp 1–3.

342. McHugh has outlined the explanation given by Chief Justice Marshall, notably in *Johnson v M'Intosh*, of the origin of the principle: it lay in discovery, which established the title of the United States to its territory (and indeed of other European nations to theirs in the Americas) under the '*jus gentium*' (law of nations) – each asserting the exclusive right of the discoverer to appropriate the lands occupied by Indians. But why was it that the Indian title was regarded in America (as it had been previously under British colonial law) as inalienable other than to the Government? That rule –the rule of pre-emption – derived from the conquest of the Indian tribes as they ceded their land by treaty. The Indian inhabitants might continue to occupy their lands, but could not transfer the title to others. Conquered, and civilised peoples might retain the right to dispose of their property as they wished; uncivilised tribes could not: McHugh, *Aboriginal Societies and the Common Law*, pp 38–39. Likewise, in the Supreme Court of New Zealand, Judge Chapman stated in *Queen v Symonds* that 'The rule . . . adopted in our colonies, "that the Queen has the exclusive right of extinguishing the Native title to land," is only one member of a wider rule, that the Queen has the exclusive right of acquiring new territory, and that whatsoever the subject may acquire, vests at once . . . in the Queen. And this, because in relation to the subjects, the Queen is the only source of title': *R v Symonds* [1847] NZPCC 387, paras 389–390.

343. Daamen, *The Crown's Right of Pre-emption*, pp 4–5.

344. Ibid, pp 6–7. These themes of recognition of 'native' rights to their lands, and the Government's duty of protection – including that of protection of native peoples from private purchases of their land by British subjects – would be echoed in *Queen v Symonds*: 'The legal doctrine as to the exclusive right of the Queen to extinguish the Native title . . . necessarily arises out of our peculiar relations with the Native race, and out of our obvious duty of protecting them. To let in all purchasers, and to protect and enforce every private purchase, would be virtually to confiscate the lands of the Natives in a very short time . . . The existing rule then contemplates the Native race as under a species of guardianship.' See *R v Symonds* [1847] NZPCC 387, para 391.

345. Daamen, *The Crown's Right of Pre-emption*, pp 7–9.

346. Normanby to Hobson, 14 August 1839 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 318–319).

347. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 86.

348. Ibid, pp 86–87.

349. Ibid.

350. Ibid, p 87.

351. Land Claims Ordinance 1841, IUP/BPP, vol 3, p 276.

352. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 519; see also Bruce Stirling and Richard Towers, '"Not with the Sword but with the Pen": The Taking of the Northland Old Land Claims', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A9), pp 439–440.

353. Nicholas Bayley, 'Aspects of Maori Economic Development and Capability in the Te Paparahi o Te Raki Inquiry Region from 1840 to c2000', report commissioned by the Waitangi Tribunal, 2013 (doc E41), p 50; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 312–313.
354. Waitangi Tribunal, *The Hauraki Report*, Wai 686, vol 1, pp 109–110.
355. FitzRoy to Stanley, 16 May 1843, IUP/BPP, vol 2, pp 387, 388.
356. Ibid. He was not alone in this view. Shortland as Acting Governor also thought that 'The Government, by becoming a purchaser of land, is placed in a position which tends to weaken its influence and lower its dignity in the eyes of the natives generally': Shortland to Stanley, 30 October 1843, IUP/BPP, vol 2, p 340.
357. Report of colonial land and emigration commissioners, attached to FitzRoy to Stanley, 16 May 1843 (cited in Daamen, *The Crown's Right of Pre-emption*', pp 59, 80).
358. Stanley to FitzRoy, 26 June 1843, IUP/BPP, vol 2, pp 389–390; Daamen, *The Crown's Right of Pre-emption*, pp 60–61.
359. Stanley to FitzRoy, 26 June 1843, IUP/BPP, vol 2, pp 389–390.
360. Hickford stated that the law of nations was predominantly described in texts such as those of Hugo Grotius, Emerich de Vattel, James Mill, and others: Mark Hickford, '"Decidedly the Most Interesting Savages on the Globe": An Approach to the Intellectual History of Maori Property Rights, 1837–52', *History of Political Thought*, vol 27, no 1 (2006), pp 122–125, 130, 133–134; see also McHugh, *Aboriginal Societies and the Common Law*, pp 121–122.
361. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 85; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 45–47.
362. Bernard Cadogan, '*A Terrible and Fatal Man*': *Sir George Grey and the British Southern Hemisphere*, Treaty Research Series (Wellington: Treaty of Waitangi Research Unit, 2014), p 165.
363. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 299; see also McHugh, *Aboriginal Societies and the Common Law*, pp 122–123; Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 18.
364. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 85; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 333.
365. Hickford, '"Decidedly the Most Interesting Savages"', pp 123, 153.
366. Stephen to Vernon Smith, 28 July 1840 (cited in Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire* (Oxford: Oxford University Press, 2011), p 125); McHugh (doc A21), p 75.
367. McHugh (doc A21), p 91; see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 327.
368. Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 86.
369. Ibid, p 87 (cited in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 319).
370. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 152; Hickford noted that Russell was a student of Dugald Stewart at Edinburgh University from 1809 to 1812. Stewart was among those whose works constituted the 'Scottish Enlightenment' literature of the eighteenth century in which stadial theory was described: Hickford, 'Decidedly the Most Interesting Savages', pp 124, 127.
371. Note that a mile square refers to a square region with each side having the specified length; thus 40 miles square = 40 × 40 = 1,600 square miles.
372. Queen's Instructions to Hobson, 5 December 1840, IUP/BPP, vol 3, pp 161–162. Loveridge noted that '[t]hese survey instructions made no distinction between Crown lands and Maori customary lands: all were apparently to be encompassed by the national surveys': Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 48.
373. Charter for erecting the Colony of New Zealand, 16 November 1840, IUP/BPP, vol 3, p 154.
374. Russell to Hobson, 28 January 1841, IUP/BPP, vol 3, p 174.
375. Nor were the rights of the descendants of Māori to be infringed: Queen's Instructions to Hobson, 5 December 1840, IUP/BPP, vol 3, p 161; charter for erecting the Colony of New Zealand, 16 November 1840, IUP/BPP, vol 3, p 154.
376. The New Zealand Company took heart from the use of the phrase 'actual occupation and enjoyment' in the Letters Patent. For if Māori owned only gardens and dwelling places, the company might well expect to take possession of vast tracts of New Zealand land which were unowned by Māori. It would use the term in defence of its purchases in discussions with the Colonial Office throughout the 1840s: Hickford, 'Decidedly the Most Interesting Savages', pp 135–137.
377. Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 52.
378. Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), p 30.
379. Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 55.
380. Russell, note, 24 December 1840 (Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 53).
381. Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 53.
382. Ibid, pp 54–55.
383. Stephen, minute to Vernon Smith, 28 December 1840 (cited in Adams, *Fatal Necessity*, p 181).
384. Russell to Hobson, 28 January 1841, IUP/BPP, vol 3, p 174.
385. Loveridge, '"An Object of the First Importance"' (Wai 863 RO1, doc A81), p 57.
386. Ibid, p 56.
387. Russell to Hobson, 28 January 1841, IUP/BPP, vol 3, p 174 (Vincent O'Malley, supporting documents (doc A6(a)), vol 24, p 8068.
388. Russell to Hobson, 29 June 1844, IUP/BPP, vol 2, p 412 (O'Malley, supporting documents (doc A6(a)), vol 24, p 8054).
389. Hickford, 'Decidedly the Most Interesting Savages', p 137.
390. Hickford, *Lords of the Land*, p 107.
391. The company argued for policy outcomes on Māori property rights through the lens of stadial history and *ius gentium* combined: Hickford, 'Decidedly the Most Interesting Savages', pp 135–137.

392. Loveridge, '"An Object of the First Importance"' (Wai 863 R01, doc A81), pp 196–197.
393. Ibid, pp 200–201.
394. Ibid, p 201.
395. Report from the Select Committee on New Zealand, 1844, IUP/BPP, vol 2, p 13.
396. Ibid, p 5.
397. Ibid, pp 5–7.
398. Stanley to FitzRoy, 13 August 1844, IUP/BPP, vol 4, pp 145–147.
399. Ibid, p 150.
400. Ibid, p 147.
401. Ward, *A Show of Justice*, p 39.
402. Ibid.
403. Palmer, *The Treaty of Waitangi*, p 177.
404. Roger Maaka and Augie Fleras, *The Politics of Indigeneity: Challenging the State in Canada and Aotearoa New Zealand* (Dunedin: University of Otago Press, 2005), p 40.
405. Frederic Morris (Jock) Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*, revised ed (Auckland: Auckland University Press, 2006), p 91.
406. Ibid, p 11.
407. In our inquiry, the Crown (in answer to Tribunal questions) challenged what it called Professor Brookfield's 'new' definition of revolution, noting that he himself clarified that his definition is broader than most standard definitions, according to which the concept of revolution 'requires the use of force'. Counsel submitted that, according to Brookfield's definition, 'virtually any conceivable form of colonial government would have been "revolutionary" regardless of what protections were put in place for indigenous peoples': Crown memorandum (#3.2.2681(a)), pp 5, 14.
408. Brookfield, *Waitangi and Indigenous Rights*, pp 13–14.
409. Ibid, p 85.
410. Ibid, pp 95, 105.
411. Ibid, p 15.
412. Ibid, pp 108–109.
413. Stanley to Shortland, 21 June 1843, IUP/BPP, vol 2, p 475.
414. Brookfield, *Waitangi and Indigenous Rights*, p 109.
415. Ibid, p 109.
416. Claimant closing submissions (#3.3.228), p 62.
417. Brookfield, *Waitangi and Indigenous Rights*, pp 109, 136.
418. Palmer, *The Treaty of Waitangi*, pp 80–81.
419. Ibid, p 81.
420. Closing submissions for Wai549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297(a)), pp 20–21.
421. Ibid, p 21.
422. Moana Jackson, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, pp 160–161.
423. Jackson, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, p 160.
424. McHugh (doc A21), p 91 (cited in Moana Jackson (doc D2), p 21).
425. Jackson (doc D2), p 7.
426. Ibid, pp 11–13.
427. McHugh (doc A21), p 73 (cited in Jackson (doc D2), pp 21–22).
428. Jackson (doc D2), p 28.
429. Ibid, pp 28–29.
430. Ibid, p 29.
431. Jackson, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, p 164.
432. Jackson (doc D2), p 31.
433. Ibid.
434. Ibid, p 23.
435. Claimant submissions in reply for Wai 49 and Wai 682 (#3.3.40), p 2.
436. Michael Doogan, transcript 4.1.5, Otiria Marae, Moerewa, p 272. Mr Doogan (now Judge Doogan) was counsel for Ngāti Hine in stage 1 of our inquiry: claimant submissions in reply for Wai 49 and Wai 682 (#3.3.40), p 14.
437. McHugh, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, pp 544–545.
438. Hobson to Gipps, 17 February, IUP/BPP, vol 3, p 133; Hobson to Bunbury, 25 April 1840, IUP/BPP, vol 3, p 139.
439. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 389; Orange, *The Treaty of Waitangi*, p 85. Hobson to the Secretary of State, 15 October 1840, IUP/BPP, vol 3, pp 220–234.
440. McHugh (doc A21), p 71.
441. Hobson to Russell, 25 May 1840, IUP/BPP, vol 3, p 138. Russell replied to Hobson's May dispatch on 10 November 1840, notifying Hobson that he had inserted the proclamations in the London *Gazette*, and that he would soon transmit Letters Patent under the Great Seal, constituting New Zealand a separate government, as well as his own commission as first Governor: Russell to Hobson, 10 November 1840, IUP/BPP, vol 3, p 141.
442. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 528.
443. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 149.
444. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 529.
445. Stephen to Hope, 19 May 1843 (cited in McHugh (doc A21), pp 75–77 fn 204).
446. Ward, *A Show of Justice*, pp 39–40.
447. Claimant closing submissions (#3.3.219), pp 21–22, 24; claimant closing submissions (#3.3.220), pp 10–11; closing submissions for Wai 1477 (#3.3.338), pp 31–34; closing submissions for Wai 1477 and others (#3.3.338(a)), pp 30–32; closing submissions for Wai 1354 (#3.3.292(a)), p 17; closing submissions for Wai 2377 (#3.3.333(a)), pp 27, 32–34; submissions in reply for Wai 2382 (#3.3.553), pp 26–28); closing submissions for Wai 2022 (#3.3.331), p 52; closing submissions for Wai 1514 (#3.3.357), pp 53–54.
448. Submissions in reply for Wai 2382 (#3.3.553), pp 26–28; closing submissions for Wai 1477 (#3.3.338(a)), pp 21, 24–25, 27; claimant closing submissions (#3.3.221), pp 86–87; claimant closing submissions (#3.3.228), pp 26–27; submissions in reply (#3.3.501), pp 39–40; closing submissions for Hokianga (#3.3.297(a)), pp 31–33.
449. Claimant closing submissions (#3.3.219), pp 21–23; claimant closing submissions (#3.3.220), pp 10–11; closing submissions for Wai

1477 and others (#3.3.338(a)), pp 27, 30–32; closing submissions for Wai 1477 and others (#3.3.338), pp 33–34; closing submissions for Wai 1354 (#3.3.292(a)), p 17; closing submissions for Wai 2377 (#3.3.333(a)), pp 27, 32–34.

450. An ordinance of New South Wales declared that the laws and ordinances of New South Wales applied to New Zealand as from 16 June 1840 (see sidebar, p 188). The Crown further stated that the English Laws Application Act 1858 declared that the laws of England as existing on 14 January 1840 were deemed to have been in force from that day on: Crown closing submissions (#3.3.402), pp 4, 6.

451. Ibid, p 46.

452. Ibid, p 45.

453. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 321 (cited in Crown closing submissions (#3.3.402), pp 48–49).

454. Crown closing submissions (#3.3.402), p 59.

455. Ibid, pp 49, 52–53, 55.

456. Ibid, pp 55–57.

457. Crown closing submissions (#3.3.403), pp 56–57.

458. Crown closing submissions (#3.3.402), pp 57–58.

459. Ibid, p 59.

460. Ibid, pp 60–61.

461. Ibid, pp 65–66; Crown closing submissions (#3.3.403), pp 53, 56.

462. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 356, 467, 526–528.

463. Ibid, p 30.

464. Ibid, pp 524–525, 526.

465. Orange, *The Treaty of Waitangi*, p 33.

466. See Rosemarie Tonk, 'The First New Zealand Land Commissions' (MA thesis, University of Canterbury, 1986), fols 29, 31, 37, 52; Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 252; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 127.

467. Richard S Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767–1867* (Wellington: V R Ward, 1986), p 131.

468. Ibid, pp 121–130.

469. Thomas Bunbury, *Reminiscences of a Veteran: Being Personal and Military Adventures in Portugal, Spain, France, Malta, New South Wales, Norfolk Island, New Zealand, Andaman Islands, and India*, 3 vols (London: Charles J Skeet, 1861), vol 3, p 53.

470. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 324; see also Dr Grant Phillipson, answers to questions for clarification (doc A1(e)), p 2; Hill, *Policing the Colonial Frontier*, pp 130, 134, 148.

471. Hill, *Policing the Colonial Frontier*, pp 148–149.

472. Ibid, pp 142, 155.

473. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 316.

474. Ibid, p 526.

475. Hill, *Policing the Colonial Frontier*, p 152.

476. Ward, *A Show of Justice*, p 46; McHugh (doc A21), pp 77, 96–97.

477. Hobson to New Zealand chiefs, 27 April 1840 (cited in Ward, *A Show of Justice*, p 45).

478. Normanby to Hobson, 14 August 1839 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 270).

479. Clarke to colonial secretary, 31 July 1843, IUP/BPP, vol 2, p 349; Ward, *A Show of Justice*, p 45.

480. Ward, *A Show of Justice*, p 45. In this inquiry, Professor Ward gave evidence that some rangatira, at least, had expected the Governor to keep peace between Māori, though it was not clear how this might occur. Professor Ward also noted that, prior to the treaty signings, Britain's main focus was on control of Pākehā, and it was only later that imperial or colonial officials gave serious consideration to questions about whether or how the Crown's laws related to tikanga Māori: Alan Ward (doc A19), pp 80–84, 106–107.

481. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 150.

482. Carol Yeo, 'Ideals, Policy and Practice: The New Zealand Protectorate of Aborigines, 1840–1846' (MA thesis, Massey University, 2001), p 28 (see also pp 24, 29–30).

483. Ward described this as the 'preliminary hearing of charges': Ward, *Show of Justice*, p 47.

484. Carleton, *The Life of Henry Williams*, vol 1, p 21.

485. There are several accounts of this incident, with some critical differences between them: Bunbury, *Reminiscences of a Veteran*, pp 54–55; Taylor, *The Journal of Ensign Best*, pp 217–218; Carleton, *The Life of Henry Williams*, vol 2, pp 21–22; Dr John Johnson, Journal: 17 March to 28 April (cited in Taylor, *The Journal of Ensign Best*, app 3, pp 407–408). Bunbury said the trial was for theft of a blanket, whereas the other accounts make clear it was for murder. In other details, including timing of troops arriving in the Bay of Islands and landing in Kororāreka, the troops' movements, Te Haratua's refusal to give up the witness, amongst many more, the accounts all agree. Based on Bunbury's account Alan Ward described them as two separate incidents: Ward, *A Show of Justice*, p 47.

486. Johnson, journal (cited in Taylor, *The Journal of Ensign Best*, app 3, pp 407–408).

487. Bunbury, *Reminiscences of a Veteran*, pp 54–55; Taylor, *The Journal of Ensign Best*, pp 217–218.

488. 'Colonial News', *New Zealand Gazette and Wellington Spectator*, 13 June 1840, p 2.

489. Bunbury, *Reminiscences of a Veteran*, pp 54–55.

490. Carleton, *The Life of Henry Williams*, pp 21–22.

491. Johnson, 'The Northern War' (doc A5), p 55; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 322.

492. Williams appears to have seen Te Haratua's actions in these terms, recounting that Te Haratua's party only withdrew after having 'made a display of their zeal': Carleton, *The Life of Henry Williams*, pp 21–22.

493. Shaunnagh Dorsett, *Juridical Encounters*, pp 99–100.

494. Ward, *A Show of Justice*, p 47; Hobson to Bunbury, 25 April 1842, IUP/BPP, vol 3, p 140.

495. John Johnson, journal, 7 April 1840 (cited in Johnson, 'The Northern War' (doc A5), pp 48–49).

496. Ibid (p 50).

497. Ibid, 8 April 1840 (p 50).

498. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 520, 528.
499. Ibid, pp 377, 384–385.
500. Ibid, pp 520, 528.
501. Johnson, 'The Northern War' (doc A5), pp 50–51.
502. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 89–90, 100, 116.
503. Ibid, p 100.
504. Paul Thomas, 'The Crown and Maori in the Northern Wairoa, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 1999 (doc E40), p 59.
505. Hobson to Gipps, 5 May 1840 (cited in Phillipa Wyatt, 'The Old Land Claims and the Concept of "Sale": A Case Study' (MA thesis, University of Auckland, 1991) (doc E15), fol 203).
506. Wyatt, 'Old Land Claims' (doc E15), fol 203.
507. Hobson to rangatira, 27 April 1840 (cited in Buick, *The Treaty of Waitangi*, p 191; Ward (doc A19), pp 91–92).
508. Hobson to rangatira, 27 April 1840 (cited in Phil Parkinson and Penny Griffith, *Books in Māori 1815–1900/Ngā Tānga Reo Māori: An Annotated Bibliography/Ngā Kohikohinga me ōna Whakamārama* (Auckland: Reed Books, 2004), p 80; Buick, *The Treaty of Waitangi*, p 191 (Ward (doc A19), pp 91–92)).
509. Johnson, 'The Northern War' (doc A5), p 51.
510. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 394.
511. Orange, *The Treaty of Waitangi*, pp 393, 400.
512. James Shepherd to William Jowett, 12 June 1840 (cited in Tony Walzl, 'Mana Whenua Report', report commissioned by the Tai Tokerau District Māori Council, 2012 (doc E34), p 447).
513. This was presumably Ōtuihu where Pōmare frequently hosted visiting whalers, though Hobson identified it only as a pā on the Kawakawa River.
514. Hobson to Gipps, 15 June 1840 (O'Malley, supporting documents (doc A6(a)), vol 16, pp 5274–5275).
515. Ibid.
516. Ibid. Arapeta Hamilton of Ngāti Manu elaborated on Pōmare's intertribal connections: he was related through marriage to Te Heuheu of Ngāti Tūwharetoa, and to Ngāti Raukawa, thereby connecting him to Tainui iwi in Hauraki, Waikato, Te Rohe Pōtae, and Cook Strait. He also had a close relationship with Te Hapuku of Ngāti Kahungunu: Arapeta Hamilton (doc F12(a)), p 12.
517. Hobson to Gipps, 15 June 1840 (O'Malley, supporting documents (doc A6(a)), vol 16, p 5275).
518. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 322.
519. The Reverend Robert Burrows, *Extracts from a Diary kept by the Rev R Burrows during Heke's War in the North in 1845* (1886; repr Christchurch: Kiwi Publishers, 1996), p 4 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 322–323).
520. See Vincent O'Malley and John Hutton, 'The Nature and Extent of Contact and Adaptation in Northland, c 1769–1840', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A11), pp 235–238; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 48, 51, 75–76, 81–83, 92; O'Malley, 'Northland Crown Purchases' (doc A6), pp 68–71. We discussed these mutual adjustments and accommodations in our stage 1 report: see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 241–242, 253–254.
521. Hobson to Hone Heke, translated by Henry Tacy Kemp, 24 August 1840, IUP/BPP, vol 3, p 239; see also Johnson, 'The Northern War' (doc A5), p 56; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 323.
522. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 323.
523. Hobson to Secretary of State for the Colonies, 15 October 1840, IUP/BPP, vol 3, p 235.
524. *New Zealand Advertiser and Bay of Islands Gazette*, 8 October 1840 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 68).
525. Davis to Secretaries of the Church Missionary Society, 10 September 1840 (as cited in Walzl, 'Mana Whenua Report' (doc E34), p 446).
526. Proclamation, 8 September 1840 (cited in Wyatt, 'Old Land Claims' (doc E15), fol 209).
527. Taylor to Sowell, 5 October 1840 (cited in Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), p 177).
528. John King to Secretary, Church Missionary Society, 20 October 1840 (cited in Merata Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 177).
529. Hobbs to General Secretaries, WMS, 26 January 1841 (cited in Walzl, 'Mana Whenua Report' (doc E34), p 426).
530. James Buller, journal, 4 December 1840 (cited in Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), p 61).
531. Richard Davis to secretary, Church Missionary Society, 7 February 1842 (cited in Walzl, 'Mana Whenua Report' (doc E34), p 426).
532. Hobbs, journal, March 1841 (cited in Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 211).
533. James Buller, journal, 20 April 1841 (cited in Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), p 62).
534. Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), p 60.
535. McDonogh to Lieutenant Governor Hobson, 7 March 1841 (O'Malley, supporting documents (doc A6(a)), vol 1, pp 13–16). McDonogh gave no details about who was involved in this dispute.
536. Hill, *Policing the Colonial Frontier*, vol 1, part 1, p 152.
537. Ward, *A Show of Justice*, p 52.
538. Phillipson, answers to questions for clarification (doc A1(e)), p 3.
539. Claimant closing submissions (#3.3.221(e)), p 7; closing submissions for Wai 1477 and others (#3.3.338(a)), p 11; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 323.
540. Hill, *Policing the Colonial Frontier*, p 214; Carleton, *The Life of Henry Williams*, vol 2, p 35; Johnson, 'The Northern War' (doc A5), p 56.
541. Hill, *Policing the Colonial Frontier*, pp 214–215.

542. Carleton, *The Life of Henry Williams*, vol 2, pp 36–40; Grant Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 11–12.
543. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 11–12.
544. Dr Phillipson stated that two protectors, one of them the Chief Protector, interpreted 'for Maketū' at the trial, but he was not sure of the role of the protectorate in respect of a criminal trial: Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), p 16; see also 'Opening of the Supreme Court', *New Zealand Herald and Auckland Gazette*, 2 March 1842, p 3.
545. Vincent O'Malley, 'English Law and the Māori Response: A Case Study from the Runanga System in Northland, 1861–65', *Journal of the Polynesian Society*, vol 116, no 1 (2007), p 10.
546. Emma Gibbs-Smith (doc W32), pp 17–18.
547. Richard Witehira, transcript 4.1.7, Waitaha Events Centre, Waitangi, p 292.
548. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 13–14.
549. Ward, *A Show of Justice*, p 53; Johnson, 'The Northern War' (doc A5), p 58.
550. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 6–7.
551. Ward, *A Show of Justice*, p 53; see also O'Malley, 'Northland Crown Purchases' (doc A6), pp 63–64.
552. Johnson, 'The Northern War' (doc A5), p 57.
553. Ibid, pp 56, 59; see also Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 109–110.
554. Emmet Maclaurin, 'The Application of British Criminal Law Towards Māori During the Early Colonial Period', LLB (Hons) dissertation, University of Otago, 2015, p 30.
555. For example, see Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 324; O'Malley, 'Northland Crown Purchases' (doc A6), p 64.
556. Hobson to Principal Secretary of State for the Colonies, 16 December 1841, IUP/BPP, vol 3, p 542.
557. Crown closing submissions (#3.3.402), p 55.
558. Johnson, 'The Northern War' (doc A5), pp 57–58, 60–61; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 323–324.
559. Hobson to Principal Secretary of State for the Colonies, 16 December 1841 (Crown document bank (doc W48), pp 139–140); see also O'Malley, 'Northland Crown Purchases' (doc A6), p 64; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 323.
560. Thomas Beckham to Colonial Secretary, 3 December 1841 (cited in Johnson, 'The Northern War' (doc A5), p 58).
561. Hobson to Secretary of State for the Colonies, 16 December 1841 (cited in Crown document bank (doc W48), p 140).
562. Henry Williams to George Clarke, 20 December 1841 (cited in Carleton, *The Life of Henry Williams*, vol 2, p 41); see also Phillipson, 'Responses to Post-hearing questions' (doc A1(g)), p 7.
563. *Maori Messenger/Te Karere Maori*, 1 January 1842, p 2.
564. *New Zealand Herald and Auckland Gazette*, 19 January 1842, p 2; Carleton, *The Life of Henry Williams*, vol 2, p 43.
565. *Maori Messenger/Te Karere Maori*, 1 January 1842, p 3.
566. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 16–19; Carleton (*The Life of Henry Williams*, vol 2, p 43) recorded that one of the letters was signed by 19 rangatira including Te Kēmara of Waitangi, Hāre Hongi Hika of Whangaroa, Mānu (Rewa) of Te Rāwhiti, Tāreha, and others. Another letter was signed by Ruhe, Pōmare, Tāmati Waka Nene, and others.
567. O'Malley, 'Northland Crown Purchases' (doc A6), pp 64–65; Johnson, 'The Northern War' (doc A5), p 59 fn 123.
568. Carleton, *The Life of Henry Williams*, vol 2, app, pp xx–xxi.
569. George Clarke, *Notes on Early Life in New Zealand* (Hobart: Walch and Sons, 1903), p 68 (cited in claimant closing submissions (#3.3.219), p 20).
570. Kororāreka residents to Governor, 18 December 1841 (cited in Johnson, 'The Northern War' (doc A5), pp 58–59).
571. Carleton, *The Life of Henry Williams*, vol 2, app, pp xxi–xxii; Johnson, 'The Northern War' (doc A5), p 59.
572. Henry Williams to James Busby, 20 April 1842 (cited in Johnson, 'The Northern War' (doc A5), p 60).
573. George Clarke, 'The Chief Protector's Report for the Half-year ending 30 April 1842', pp 113, 115 (cited in Johnson, 'The Northern War' (doc A5), p 61).
574. 'Successful and Amicable Settlement of the Native Disturbance at the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2.
575. Hobson to Principal Secretary of State, 16 December 1841, 12 March 1842, 14 March 1842, IUP/BPP, vol 3, pp 541–542, 542–544, 546–547.
576. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 11, 13, 16. In closing submissions, Maketū's counsel noted that there was no evidence against his client other than the confessions, which Spicer had obtained by repeatedly badgering Maketū asking if he was the murderer: 'Supreme Court', *New Zealand Herald and Auckland Gazette*, 5 March 1842, p 2.
577. The Jury Ordinance was passed by the Governor, with the advice and consent of the Legislative Council, on 23 December 1841. It provided that every man (with a number of exemptions for those in particular occupations) between the ages of 21 and 60, who had 'to his own use a freehold estate in lands and tenements within the colony' should be qualified and liable to serve as a juror.
578. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 7–16. Joseph stated that the right of appeal to the Privy Council had 'extended to New Zealand in 1840 as a superior jurisdiction to superintend local judicial developments' in the colony: Joseph, *Joseph on Constitutional and Administrative Law*, p 889.
579. 'Opening of the Supreme Court', *New Zealand Herald and Auckland Gazette*, 2 March 1842, p 3.
580. 'Ko te Wak[a]wakanga o Maketu', *Maori Messenger/Te Karere Maori*, 1 April 1842, p 13. Translations are from '*R v Maketu*', New Zealand's Lost Cases Project, Victoria University of Wellington (documents for cross-examination of Dr Phillipson (doc Y1), p 12).

581. 'Opening of the Supreme Court', *New Zealand Herald and Auckland Gazette*, 2 March 1842, p 3.
582. Ibid.
583. 'Ko te Wak[a]wakanga o Maketu', *Maori Messenger/Te Karere Maori*, 1 April 1842, p 13.
584. '*R v Maketu*', New Zealand's Lost Cases Project, Victoria University of Wellington (documents for cross-examination of Dr Phillipson (doc Y1), p 12).
585. 'Supreme Court', *New Zealand Herald*, 5 March 1842, p 2.
586. Closing submissions for Wai 1477 and others (#3.3.338(a)), p 13.
587. Counsel cited the *Herald* account as given in Guy Lennard's biography of Sir William Martin: closing submissions for Wai 1477 and others (#3.3.338(a)), p 15.
588. Ibid, pp 13–15.
589. Ibid, p 14.
590. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), pp 7–16.
591. This power was granted to the Governor of New Zealand by the Queen in the Charter (16 November 1840). In the Royal Instructions of 5 December 1840, further instructions were laid out for the grant of a pardon or reprieve in the case of persons condemned to death by any court: IUP/BPP, vol 3, pp 154, 163–164.
592. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), p 14.
593. Gibbs-Smith (doc W32), p 20.
594. Douglas Hay, 'Crime and Justice in Eighteenth and Nineteenth Century England', in *Crime and Justice*, vol 2 (1980), p 53.
595. Gibbs-Smith (doc W32), p 21.
596. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 324, see also p 343.
597. Ibid, p 321.
598. Ibid, p 324. Phillipson provided very little evidence of Kemp successfully mediating in any disputes during the 1840s; he did act as a translator and adviser to the Land Claims Commission which considered his father's claims among others, unsuccessfully attempt to dissuade Hōne Heke from his first flagstaff attack, and play a small but critical role in escalating Crown–Māori tensions and bringing Ngāti Hine into the Northern War: ibid, pp 144, 329–330, 344.
599. Ibid, p 324.
600. Ibid, p 81.
601. Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991), p x (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 76).
602. For discussion of mana, tapu, and utu, see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 22–25, 263.
603. See O'Malley and Hutton, 'The Nature and Extent of Contact and Adaptation in Northland' (doc A11), pp 235–238; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 48, 51, 75–76, 81–82, 92; O'Malley, 'Northland Crown Purchases' (doc A6), pp 68–71.
604. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 82.
605. Ibid, p 83.
606. Ibid, pp 322–323.
607. Waitangi Tribunal, *The Kaipara Report*, Wai 674, pp 86–92; Garry Hooker, 'Maori, the Crown and the Northern Wairoa District – a Te Roroa Perspective', report commissioned by the Waitangi Tribunal, 2000 (Wai 674 ROI, doc L2), pp 80–95. Other accounts are given in Walzl, 'Mana Whenua Report' (doc E34), pp 272–274; Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), p 53; O'Malley, 'Northland Crown Purchases' (doc A6), pp 70–71; Bruce Stirling, 'From Busby to Bledisloe: A History of the Waitangi Lands', report commissioned by the Waitangi Marae Trustees and James Henare Maori Research Centre, 2016 (doc W5), p 92; Johnson, 'The Northern War' (doc A5), p 85. Hooker named the leaders of the muru as Te Tirarau, Paikea, Te Wheinga, Waiata, and Haro. Parore Te Āwhā chose not to take part.
608. Clarke to Hobson, 15 March 1842 (cited in Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), p 60).
609. Waitangi Tribunal, *The Kaipara Report*, Wai 874, p 88; Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 85–86.
610. Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), p 82.
611. Buller, 'Rough Notes of my Visit to Kaipara, Mangahai, Waipu, Whangarei, Mangapai, Wairoa' (cited in Hooker, 'Maori, the Crown and the Northern Wairoa District' (Wai 674 ROI, doc L2), p 95).
612. Waitangi Tribunal, *The Kaipara Report*, Wai 874, pp 89–91. In 1845, Forsaith investigated a muru in Wairarapa, requiring the chief Te Weretā to forfeit land as compensation. The Waitangi Tribunal found that this response was unfair, disproportionate, discriminatory, and in breach of the treaty: Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 864, vol 3, p 1046.
613. Hooker, 'Maori, the Crown, and the Northern Wairoa District' (Wai 674 ROI, doc L2), pp 78–80, 86–90, 95.
614. Waitangi Tribunal, *The Kaipara Report*, Wai 874, pp 100–101.
615. Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), pp 60–62.
616. Ward, *A Show of Justice*, p 58.
617. Hobson to Secretary of State for the Colonies, 12 March 1842 (Crown document bank (doc W48), pp 141–142).
618. Hobson to Stanley, 29 March 1842 (cited in Johnson, 'The Northern War' (doc A5), p 85).
619. Johnson, 'The Northern War' (doc A5), p 86.
620. Hobson to Under Secretary of the Colonial Department, August 1839, IUP/BPP, vol 3, p 92.
621. Hobson to Secretary of State for the Colonies, 15 October 1840, IUP/BPP, vol 3, p 235.
622. Ward, *A Show of Justice*, p 58.
623. Stanley to Hobson, 27 October 1842 (cited in Stirling, 'From Busby to Bledisloe' (doc W5), p 93).
624. Waitangi Tribunal, *The Kaipara Report*, Wai 874, p 91.
625. See 'Proceedings of Government Officials in the Straits', *Nelson Examiner and New Zealand Chronicle*, 23 December 1843, p 6. The 80th Regiment returned to New South Wales in April 1844 and was

replaced by another detachment from the 96th, numbering 150. Larger forces (from the 58th, 96th, and 99th Regiments) were sent in August 1844 in response to Heke's first attack on the Kororāreka flagstaff. Regarding the 96th Regiment in 1843, see 'Proceedings of Government Officials in the Straits', *Nelson Examiner and New Zealand Chronicle*, 23 December 1843, p 6. Regarding the 96th Regiment in 1844, see 'We should never bark when we cannot bite', *Nelson Examiner and New Zealand Chronicle*, 20 April 1844, p 26 and 'Shipping List', *Daily Southern Cross*, 20 April 1844, p 2; Johnson, 'The Northern War' (doc A5), pp 112–113, 165–166; 'Regiments that Have Been Amalgamated', in *An Encyclopaedia of New Zealand*, Ministry for Culture and Heritage, https://www.teara.govt.nz/en/1966/british-troops-in-new-zealand/page-2, accessed 12 April 2021.

626. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), p 2.

627. O'Malley, 'Northland Crown Purchases' (doc A6), pp 68–69.

628. Clarke to Colonial Secretary, 23 May 1842 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), pp 70–71).

629. Ibid (p 71).

630. Alexander M Rust, *Whangarei and Districts' Early Reminiscences* (Whāngārei: Mirror, 1936), p 61 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 69).

631. Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), pp 52–53.

632. Ibid, p 52.

633. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), p 2.

634. The formula for compensation Bishop Selwyn agreed upon to resolve this incident – of four times the market value of the ducks that were shot – was subsequently used in later incidents involving rāhui, and later enshrined in the Native Exemption Ordinance 1844, s 7.

635. Hone Heke to Selwyn, 6 February 1842 (cited in Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 180). Dr Kawharu did not identify the translator. Johnson provided an alternative translation of this paragraph, by Dr Jane McRae: 'This is another letter for you [asking] you to consider the Pakeha who came to shoot the birds in my settlement of Omapere, because there is authority [mana] over those birds from our previous king and those birds are in the name of our elder so they are sacred, and if a person steals those birds again, there will be killing': Johnson, 'The Northern War' (doc A5), p 62.

636. Hone Heke to Selwyn, 6 February 1842 (cited in Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 180).

637. H W Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, 2 vols (London: William Wells Gardner, 1879), vol 1, p 150. Selwyn relied on the New Testament parable of the tax collector Zaccheus, who upon meeting Jesus promised that if he had cheated anyone, he would pay back four times the amount.

638. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 76.

639. Johnson, 'The Northern War' (doc A5), p 89.

640. George Bennett, 'Journal, 1838–1845' (cited in Johnson, 'The Northern War' (doc A5), p 89).

641. Johnson, 'The Northern War' (doc A5), p 62.

642. Heke ki te Pihopa Selwyn, 6 Pepuere 1842 (cited in Johnson, 'The Northern War' (doc A5), pp 63–64). Translation by Dr Jane McRae.

643. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 69, 312, 324.

644. Ibid, p 312.

645. Heke to George Clarke, May 1843 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 312).

646. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 94.

647. Ibid, p 324.

648. Ibid, ch 7; Johnson, 'The Northern War' (doc A5), ch 1.

649. Johnson, 'The Northern War' (doc A5), p 86.

650. Ibid, pp 86–87.

651. For Governor FitzRoy's threats to use military force against Ngāpuhi during the second half of 1844, see Johnson, 'The Northern War' (doc A5), pp 99–100, 110, 135–141.

652. Johnson, 'The Northern War' (doc A5), pp 90–92; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329.

653. Johnson, 'The Northern War' (doc A5), p 129.

654. Phillipson, 'Bay of Islands Maori and the Crown' (doc A5), pp 324, 344–345.

655. Johnson, 'The Northern War' (doc A5), pp 141–145; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A5), p 345; Clarke to Colonial Secretary, 19 October 1844 (Crown document bank (doc W48), pp 168–169).

656. Clarke to Colonial Secretary, 19 October 1844 (Crown document bank (doc W48), p 169).

657. Johnson, 'The Northern War' (doc A5), p 145.

658. Ibid, pp 145–149.

659. Ibid, pp 154–157.

660. See Alan Ward, 'Law and Law-enforcement on the New Zealand Frontier, 1840–1893', NZJH, vol 5, no 2 (October 1971); O'Malley, 'English Law and the Maori Response', pp 10–11; Damen Ward, 'A Means and Measure of Civilisation: Colonial Authorities and Indigenous Law in Australasia', in *History Compass*, vol 1, 2003, pp 1–2, 6–7.

661. O'Malley, 'English Law and the Māori Response', p 11.

662. Ward, 'Law and Law-enforcement', p 132.

663. Barry Rigby, 'The Oruru Area and the Muriwhenua Claim', report commissioned by the Waitangi Tribunal, 1991 (Wai 45 RO1, doc C1), pp 30–31, see also pp 26–30.

664. Ward, *A Show of Justice*, pp 61–62.

665. Orange, *The Treaty of Waitangi*, p 111.

666. 'Chief Protector's Report', 18 June 1842, IUP/BPP, vol 2, p 191.

667. Clarke to Colonial Secretary, 31 July 1843, IUP/BPP, vol 2, p 346.

668. Ibid, p 347.

669. Ward, 'Law and Law-enforcement', p 133.

670. Clarke to Shortland, 31 July 1843, IUP/BPP, vol 2, p 348; Clarke to Shortland, 30 June 1843, IUP/BPP, vol 2, p 345.

671. Ward, *A Show of Justice*, p 62.

672. Shortland to Stanley, 30 October 1843, IUP/BPP, vol 2, p 340.

673. Stanley to Shortland, 21 June 1843, IUP/BPP, vol 2, p 475; Ward, *A Show of Justice*, p 63.

674. Stephen, minute, 28 December 1843 (cited in Ward, *A Show of Justice*, p 62).
675. FitzRoy to Stanley, 16 May 1843, IUP/BPP, vol 2, p 389.
676. 'Minutes and Proceedings of the Legislative Council of New Zealand, 3rd sess, 1844, IUP/BPP, vol 4, p 246; Adams, *Fatal Necessity*, p 223.
677. Ward, *A Show of Justice*, p 65.
678. Ibid; FitzRoy, 'Address to Native Chiefs', 9 March 1844, IUP/BPP, vol 4, p 196.
679. Ward, *A Show of Justice*, p 65.
680. FitzRoy to Stanley, 25 May 1844, IUP/BPP, vol 4, p 229.
681. Ward, *A Show of Justice*, p 66; Native Exemption Ordinance 1844, sch. We note the long title of the ordinance, an 'exceptional' law, designed to ease the transition of Māori from their 'ancient usages' to English law: 'An Ordinance to exempt in certain cases Aboriginal Native Population [*sic*] of the Colony from the ordinary process and operation of the Law'.
682. Ward, *A Show of Justice*, p 66. The Cattle Trespass Ordinance 1842 had allowed claims only when damage was caused to fenced cultivations. The 1844 amendment extended this protection to unfenced cultivations, thereby imposing greater obligations on livestock owners to control their stock.
683. Clarke to the Colonial Secretary, 31 July 1844 (cited in Ward, *A Show of Justice*, p 67).
684. Ward, *A Show of Justice*, pp 66–67.
685. Ward, *A Show of Justice*, p 67.
686. Clarke to FitzRoy, 1 July 1845 (cited in Ward, *A Show of Justice*, p 67).
687. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 76; Johnson, 'The Northern War' (doc A5), p 89; Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, vol 1, p 150.
688. Ward, *A Show of Justice*, p 67.
689. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 151.
690. Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p 229.
691. Johnson, 'The Northern War' (doc A5), p 138.
692. Native Exemption Ordinance 1844, preamble; Johnson, 'The Northern War' (doc A5), p 138.
693. Johnson, 'The Northern War' (doc A5), p 138.
694. Orange, *The Treaty of Waitangi*, p 113; Johnson, 'The Northern War' (doc A5), p 138.
695. Ward, *A Show of Justice*, p 68.
696. McLintock, *Crown Colony Government*, pp 187–188.
697. Ward, *A Show of Justice*, p 71.
698. Stephen, minute, 1 August 1845 (cited in Ward, *A Show of Justice*, p 71).
699. Stanley to Grey, 13 August 1845 (cited in Ward, *A Show of Justice*, p 71).
700. Ward, *A Show of Justice*, p 71.
701. Police Magistrates and Native Exemption Repeal Ordinance 1846; Ward, *A Show of Justice*, pp 68–71, 74–76; Orange, *The Treaty of Waitangi*, pp 112–113.
702. David Armstrong, 'The Land Claims Commission – Practice and Procedure, 1840–1845', report commissioned by the Crown Law Office, 1992 (Wai 45 ROI, doc I4), p 5; proclamations, 14 January 1840, IUP/BPP, vol 3, p 39.
703. Tonk, 'The First New Zealand Land Commissions', pp 74, 77–78.
704. New Zealand Land Claims Ordinance 1840.
705. For further details of the ordinance, see Professor Alan Ward, *National Overview*, 3 vols, Waitangi Tribunal Rangahaua Whanui Series (Wellington: GP Publications, 1997), vol 2, p 34; Ward (doc A19), pp 91, 91 fn 169; Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), pp 7–11; Duncan Moore, Dr Barry Rigby, and Matthew Russell, *Old Land Claims*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997) (doc H1), pp 14–17. Armstrong used the title New South Wales Act. As Ward explained, that was in fact the title of an imperial Act passed in 1841 to repeal the original ordinance and transfer jurisdiction to New Zealand.
706. New Zealand Land Claims Ordinance 1840 (cited in Boast, 'Surplus Lands' (Wai 45 ROI, doc F16), p 76).
707. As we noted above, a lawyer, Francis Fisher, was also appointed at this time but never sat as a commissioner and, it seems, acted as a legal adviser only. He resigned, and his commission ended in June 1841. Governor FitzRoy appointed a further commissioner, Robert FitzGerald, in 1844, in an attempt to speed up the process; see also Tonk, 'The First New Zealand Land Commissions', pp 52–53; Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 252; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, p 127.
708. Gipps, instructions to commissioners, 2 October 1840 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), pp 12–13).
709. Gipps, instructions to commissioners, 2 October 1840 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 14); see also Gipps to Hobson, 2 October 1840 (David Armstrong, supporting papers (Wai 45 ROI, doc I4(a)), pp 213–214).
710. Gipps to Hobson, 2 October 1840 (Armstrong, supporting papers (Wai 45 ROI, doc I4(a)), pp 213–214).
711. Ward, *National Overview*, vol 2, p 34; Moore, Rigby, and Russell, *Old Land Claims* (doc H1), pp 15–17.
712. Loveridge, '"An Object of the First Importance"' (Wai 863 ROI, doc A81), pp 84, 87–88. In early 1842, Hobson would try to change the scale and increase the limit of land that could be awarded, and speed up the process of surveying grants by concentrating settlement in a few districts (including the Bay of Islands and Hokianga). However, the Colonial Office disliked the abandonment of the limit and the sliding scale and disallowed the ordinance.
713. The following month, Commissioner Godfrey went to Tauranga, where he investigated claims as far south as Poverty Bay.
714. Tonk, 'The First New Zealand Land Commissions', pp 77–78.
715. Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 40. The commission had planned to publish a notice in the *Bay of Islands Gazette*, but it had ceased publication.

716. Godfrey to Thompson [NSW Colonial Secretary], 9 December 1840 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 40).
717. Godfrey to Clarke, 8 January 1841 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 43).
718. Clarke to Colonial Secretary, 9 February 1841 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), pp 46–47).
719. Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), pp 46–47.
720. Clarke to Hobson, 26 February 1841 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 47).
721. Clarke to Colonial Secretary, 8 July 1841 (cited in Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 52).
722. Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 44.
723. Ibid, pp 44–45.
724. Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), pp 46–48; Tonk, 'The First New Zealand Land Commissions', p 83.
725. 'Opinions Adopted at a Meeting of Landowners', *New Zealand Herald and Auckland Gazette*, 19 January 1842, p 2; see also Johnson, 'The Northern War' (doc A5), p 80.
726. Busby to Hope, 17 January 1845, IUP/BPP, vol 4, p 517.
727. Letter to the editor [10 January 1842], *New Zealand Herald and Auckland Gazette*, 19 January 1842, p 2.
728. Robert FitzRoy, *Remarks on New Zealand* (London: W & H White, 1846), p 12 (cited in Wyatt, 'Old Land Claims' (doc E15), fol 202).
729. Thomas Lindsay Buick, *New Zealand's First War, or, the Rebellion of Hone Heke* (Wellington: Government Printer, 1926), p 31; Wyatt, 'Old Land Claims' (doc E15), fol 202.
730. Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996) (doc H2), p 74.
731. Reverend Warren, Waimā, to WMS, 16 September 1841 (cited in Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 212).
732. Wyatt, 'Old Land Claims' (doc E15), fol 209.
733. Tonk, 'The First New Zealand Land Commissions', pp 84, 93–95.
734. 'Legislative Council', *New Zealand Herald and Auckland Gazette*, 9 March 1842, p 3.
735. It is unclear, however, whether this was the practice throughout Te Raki; Whāngārei cases could be heard in the Bay of Islands or in Auckland: Tonk, 'The First New Zealand Land Commissions', p 83.
736. Armstrong, 'The Land Claims Commission' (Wai 45 ROI, doc I4), p 176; Barry Rigby, 'The Mangonui Area and the Taemaro Claim', report commissioned by the Waitangi Tribunal, 1990 (Wai 45 ROI, doc H2), pp 17–18.
737. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 528.
738. Closing submissions for Wai 1040, Wai 549, Wai 1526, Wai 1728, and Wai 1513 (#3.3.297(a)), pp 36–37; closing submissions for Wai 1477 and others (#3.3.338(a)), pp 30–31; claimant closing submissions (#3.3.220(a)), pp 6, 9–10; claimant submissions for Wai 1968 (#3.3.551), pp 24–25. Mr Porter's submissions were repeated in several other closing submissions: submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 25–26; claimant submissions in reply for Wai 2394 (#3.3.546), pp 25–26; claimant submissions in reply for Wai 2063 (#3.3.544), pp 24–26; claimant submissions in reply for Wai 1477 (#3.3.547), pp 24–26; submissions in reply for Wai 2000 (#3.3.541), pp 23–26; claimant submissions in reply for Wai 2005 (#3.3.542), pp 23–26; claimant submissions in reply for Wai 2377 (#3.3.545), pp 26–29.
739. Crown closing submissions (#3.3.402), pp 56–58.
740. Crown closing submissions (#3.3.403), pp 55–56, 85.
741. Andrew Irwin, transcript 4.1.32, Waitaha Events Centre, Waitangi, p 120.
742. *New Zealand Government Gazette*, 3 November 1841, p 97 (Crown document bank (doc W48), p 147).
743. Johnson, 'The Northern War' (doc A5), pp 58–59, 64–65.
744. Williams to Church Missionary Society, 1 May 1847 (as cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325).
745. Johnson, 'The Northern War' (doc A5), pp 56–58.
746. 'New Zealand Land Commission', *New Zealand Herald and Auckland Gazette*, 10 July 1841, p 4.
747. Johnson, 'The Northern War' (doc A5), pp 57–58.
748. Residents of Kororāreka to Governor, 18 December 1841 (cited in Johnson, 'The Northern War' (doc A5), pp 58–59).
749. 'The Governor's Reply to the Address of the Inhabitants of Kororarika', *Bay of Islands Observer*, 24 February 1842 (Johnson, supporting papers (doc A5(a)), vol 5, pp 991–992).
750. 'The Governor's Reply to the Address of the Inhabitants of Kororarika', *Bay of Islands Observer*, 24 February 1842 (Johnson, supporting papers (doc A5(a)), vol 5, pp 991–992).
751. Hobson to Williams, 24 January 1842 (cited in Carleton, *The Life of Henry Williams*, vol 2, app, p xxi).
752. Hobson to Secretary of State for the Colonies, 12 March 1842, IUP/BPP, vol 3, p 543.
753. Williams to Busby, 20 April 1842 (cited in Carleton, *The Life of Henry Williams*, vol 2, app, p xxii).
754. Enclosure in H Williams to Church Missionary Society, 1 May 1847 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325).
755. *Daily Southern Cross*, 17 February 1844 (Daamen, *The Crown's Right of Pre-emption*, p 123).
756. Johnson, 'The Northern War' (doc A5), p 65.
757. Andrew Irwin, transcript 4.1.32, Waitaha Events Centre, Waitangi, pp 37–38.
758. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 441.
759. Ibid.
760. Wendy Pond, *The Land with All Woods and Waters*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 40.

761. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), pp 448–449.
762. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325.
763. Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), pp 36–37.
764. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), pp 448–449.
765. Ibid, p 1094; Bayley, 'Aspects of Maori Economic Development' (doc E41), p 49.
766. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 239.
767. Kathleen Shawcross, 'Maoris of the Bay of Islands, 1769–1840: A Study of Changing Maori Responses to European Contact' (MA thesis, University of Auckland, 1967), pp 332–334, 351.
768. Johnson, 'The Northern War' (doc A5), p 65; Te Kapotai Hapu Korero (doc F25), p 27. James Cowan, in his history of the New Zealand Wars, says Heke split his fees with the Ngāti Rēhia leader Tītore: James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols (Wellington: R E Owen, 1955), vol 1, p 16.
769. Johnson, 'The Northern War' (doc A5), p 65.
770. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 240.
771. Ibid, ch 5 (see especially pp 239–240, 243–245, 267, 275–276).
772. Pairama Tahere (doc G17(b)), p 44; Murray Painting (doc V12), p 14.
773. Ruiha Collier (doc G13), p 24.
774. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 524, 528; Phillipson, answers to questions for clarification (doc A1(e)), pp 5–6.
775. 'Government Gazette dated October 31, 1840', *The Sydney Monitor and Commercial Advertiser*, 6 November 1840, p 2. The ordinance also provided that recently imposed New South Wales customs duties would not apply in New Zealand until 1 July 1841. Duties on unmanufactured tobacco were further deferred to 1 January 1843, apparently to avoid conflict with Māori: 'Customs Duties in New Zealand', *New Zealand Gazette and Wellington Spectator*, 3 October 1840, p 3.
776. Arapeta Hamilton (doc F12(a)), p 12.
777. Customs Ordinance 1841. This repealed the existing New Zealand Customs Ordinance 1840, enacted by the New South Wales Legislative Council; for the table of duties see 'Table of Duties of Customs', 25 June 1841, *New Zealand Gazette*, no 1, p 4 (Crown document bank (doc W48), p 144).
778. Johnson, 'The Northern War' (doc A5), p 66.
779. Ibid, p 65.
780. For example, see Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New', report commissioned by the Te Aho Claims Alliance, 2013 (doc E67), pp 247–248; Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, 'He Whenua Rangatira: Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), pp 631–632; Willow-Jean Prime (doc F25(a)), p 8; Pairama Tahere (doc G17(b)), p 43; Manuka Henare (doc O20), pp 27–28; Ngāti Hine, 'Te Awa Tapu o Taumarere and Te Moana o Pikopiko i Whiti' (doc M30(a)), p 29.
781. Crown closing submissions (#3.3.403), p 56.
782. David McGill, *Guardians at the Gate: The History of the New Zealand Customs Department* (Wellington: New Zealand Customs Department/Silver Owl Press, 1991), p 22 (cited in Crown closing submissions (#3.3.403), p 56). The Crown also cited the *Report on the Muriwhenua Fishing Claim* to support a view that pilotage fees might have been charged; that report gave one example of a pilotage fee being charged in 1833: Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, p 61.
783. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period* (Wellington: R E Owen, 1955), vol 1, p 16.
784. Customs Ordinance 1841, ss 11, 14–16.
785. David Alexander, 'Land-based Resources, Waterways, and Environmental Impacts', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A7), p 57.
786. Arapeta Hamilton (doc F12(a)), pp 11–12.
787. Johnson, 'The Northern War' (doc A5), p 67.
788. Ibid.
789. George Clarke, *Notes on Early Life in New Zealand*, pp 68–69 (cited in Johnson, 'The Northern War' (doc A5), pp 66–67).
790. John Weavell to Alfred Wilson, 25 January 1846 (cited in Johnson, 'The Northern War' (doc A5), p 69).
791. Henare, Middleton, and Puckey, 'He Rangi Mauroa Ao te Pō' (doc E67), p 247.
792. Johnson, 'The Northern War' (doc A5), p 66.
793. Ibid, p 65.
794. Weavell to Wilson, 25 January 1846 (cited in Johnson, 'The Northern War' (doc A5), p 91).
795. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2.
796. FitzRoy to Stanley, 10 April 1844 (cited in Johnson, 'The Northern War' (doc A5), p 72).
797. Johnson, 'The Northern War' (doc A5), p 67.
798. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands", *Daily Southern Cross*, 7 September 1844, p 2.
799. Ibid.
800. 'Legislative Council', *Daily Southern Cross*, 21 September 1844, p 2. The meeting took place on Tuesday 19 September, a week after FitzRoy's hui at Waimate. The Property Rate Act 1844 came into effect on 28 September.
801. FitzRoy to Stanley, 16 September 1844 (Crown document bank (doc W48), p 164).
802. Ibid (p 165).
803. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 313.
804. Johnson, 'The Northern War' (doc A5), pp 66–67.

805. William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6, 1840* (1890; repr Christchurch: Capper Press, 1971), p 27 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 129).
806. Wyatt, 'Old Land Claims' (doc E15), fol 207.
807. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 129.
808. Phillipson, answers to questions for clarification (doc A1(e)), p 1; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310.
809. Wyatt, 'Old Land Claims' (doc E15), fol 207.
810. Phillipson, answers to questions for clarification (doc A1(e)), p 1; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310.
811. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 129.
812. Orange, *The Treaty of Waitangi*, p 274 n 64. After the signing, the Surveyor-General, Felton Mathew, advised that Waitangi was not suitable for a substantial settlement, and also asked whether Hobson was willing to allow private speculators to control settlement of the district: Mathew to Hobson, 23 March 1840, IUP/BPP, vol 3, pp 492–493.
813. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 307–308; Johnson, 'The Northern War' (doc A5), pp 68–69. The government buildings at Ōkiato Point were destroyed by fire in 1842, and the site fell into disuse. The name 'Russell' was later transferred to Kororāreka, whereas Ōkiato Point is sometimes referred to as 'Old Russell'.
814. Arapeta Hamilton (doc F12(a)), p 10.
815. Ibid.
816. Ibid, p 11. Another account is given in Taylor, *The Journal of Ensign Best*, pp 219–220.
817. Taylor, *The Journal of Ensign Best*, p 220.
818. Wyatt, 'Old Land Claims' (doc E15), fols 206–208.
819. Wilkes, extract from journal (cited in Buick, *The Treaty of Waitangi*, p 149 n); Wyatt, 'Old Land Claims' (doc E15), fol 206.
820. Wyatt, 'Old Land Claims' (doc E15), fol 207.
821. Ibid, p 208.
822. Mathew to Hobson, 23 March 1840, IUP/BPP, vol 3, pp 492–493; Philipson, 'Bay of Islands Maori and the Crown' (doc A1), p 308.
823. Hobson to Gipps, 21 April 1841, IUP/BPP, vol 3, pp 494–495. Under the agreement, Clendon was to be paid £1,000 when the Government took possession on 1 May 1840, and another £1,000 on 1 October. The remaining £13,000 was due on 1 April 1841, with an additional 10 per cent interest. The Executive Council later agreed to grant Clendon scrip of 30 acres for each acre he had given up at Ōkiato, subject to his title being confirmed by the Land Commission, and to pay him rent in the meantime.
824. Stanley to Hobson, 10 May 1842, IUP/BPP, vol 3, pp 496–497.
825. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 307–308; Johnson, 'The Northern War' (doc A5), pp 68–69.
826. Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, pp 22–23.
827. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 307–308; Johnson, 'The Northern War' (doc A5), pp 68–69; Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, p 23.
828. Barry Rigby, 'The Crown, Maori, and Mahurangi, 1840–1881', report commissioned by the Waitangi Tribunal, 1998 (doc E18), pp 2, 6–7, 20.
829. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 306. As the Ōrākei Tribunal noted, the results for Ngāti Whātua were mixed. On the one hand, the arrival of the Crown provided some additional protection from attack by Ngāpuhi, which they continued to fear, and provided significant economic opportunities; on the other, the settler population quickly outstripped that of Māori, leading to rapid alienation of much of Auckland's land: Waitangi Tribunal, *Report on the Orakei Claim*, Wai 9, pp 24–25.
830. Johnson, 'The Northern War' (doc A5), pp 69–70.
831. Murray Painting (doc V12), p 25.
832. Johnson, 'The Northern War' (doc A5), p 69.
833. Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), p 57.
834. Adams, *Fatal Necessity*, pp 26–27; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 239.
835. Johnson, 'The Northern War' (doc A5), pp 68, pp 72–73; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 307.
836. FitzRoy to Stanley, 10 April 1844 (cited in Johnson, 'The Northern War' (doc A5), p 72).
837. Clarke to Colonial Secretary, 30 September 1844 (Crown document bank (doc W48), p 276).
838. Ibid.
839. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 631.
840. Clarke to Colonial Secretary, 1 January 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 307).
841. Johnson, 'The Northern War' (doc A5), p 70.
842. Robert FitzRoy, *Remarks on New Zealand* (London: W & H White, 1846), p 14 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 307).
843. Johnson, 'The Northern War' (doc A5), pp 69–70.
844. Minutes of meeting between Governor Grey and chiefs at Kororāreka, 28 November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 307).
845. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 309.
846. Ibid.
847. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 47.
848. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310.
849. Alan Ward, 'Summary/Response' (doc A19(a)), p 37.
850. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 320.
851. Henry Williams, Paihia Mission Station Annual Report, 30 June 1841 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 323).
852. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 320.
853. Whāngārei Taiwhenua opening statement (doc E46), p 32.
854. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 45; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 54; Johnson, 'The Northern War' (doc A5), pp 68–69.

855. Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), pp 55–56.
856. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 239–245.
857. Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), pp 45–46.
858. Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832–1852* (Wellington: Historical Publications Branch, Department of Internal Affairs, 1968), p 96.
859. Bayley, 'Aspects of Maori Economic Development' (doc E41), pp 45–46; Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), pp 55–56.
860. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 49; Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), p 55.
861. Alexander, 'Land-based Resources, Waterways, and Environmental Impacts' (doc A7), p 57.
862. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 310–311; see also Johnson, 'The Northern War' (doc A5), p 71.
863. Bayley, 'Aspects of Maori Economic Development' (doc E41), pp 45, 48.
864. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 313.
865. Johnson, 'The Northern War' (doc A5), p 68.
866. J M R Owens, 'New Zealand Before Annexation', in *The Oxford History of New Zealand*, ed W H Oliver (Wellington: Oxford University Press, 1981), p 32.
867. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 48; Johnson, 'The Northern War' (doc A5), pp 70–71; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 54, 311; Owens, 'New Zealand Before Annexation', p 32.
868. Harry Morton, *The Whale's Wake* (Dunedin: University of Otago Press, 1982), p 160.
869. Lindsay McFarland Alexander, *Whaleship Arrivals and Departures on the North-East Coast of New Zealand: Bay of Islands, 1841–1894* (Russell: Kororareka Press, 2011), pp 8–9; Lindsay McFarland Alexander: *Whaleship Arrivals and Departures on the North-East Coast of New Zealand: Mangonui, Whangaroa, Auckland and other Northern Ports* (Russell: Kororareka Press, 2013), p 46.
870. 'Early Whaling Operations', in *An Encyclopedia of New Zealand*, Ministry for Culture and Heritage, https://www.teara.govt.nz/en/1966/whaling-in-new-zealand-waters-1791–1963/page-5, accessed 30 March 2021.
871. Johnson, 'The Northern War' (doc A5), pp 66–67, 69, 91; *Daily Southern Cross*, 7 September 1844, p 2; Crown document bank (doc W48), p 164.
872. William Cotton, journal, 8 July 1844, 3 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 311, 339); see also Bayley, 'Aspects of Maori Economic Development' (doc E41), p 45.
873. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 50; Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), pp 60–62.
874. Ibid, pp 35–37.
875. Ibid, pp 60–62.
876. FitzRoy to Stanley, 16 September 1844 (Crown document bank (doc W48), p 164).
877. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 48. Scrip was usually awarded at £1 for each acre the settler had been awarded by the Land Claims Commission: Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 7.
878. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 1094.
879. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 312.
880. Bayley, 'Aspects of Maori Economic Development' (doc E41), p 62.
881. Ibid, p 49.
882. Ibid, p 63.
883. Ibid.
884. Johnson, 'The Northern War' (doc A5), pp 68–69.
885. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310.
886. Ibid.
887. Ibid, p 312.
888. Crown closing submissions (#3.3.403), pp 54–55.
889. Phillipson, answers to questions for clarification (doc A1(e)), pp 5–6.
890. Memorandum of Crown counsel (#3.2.1675(a)), p 3; Ralph Johnson, questions for clarification (doc A5(e)), p [2].
891. Crown closing submissions (#3.3.403), p 54.
892. Clarke to Colonial Secretary, 30 September 1844 (Crown document bank (doc W48), p 276); see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310; Johnson, 'The Northern War' (doc A5), pp 72–73.
893. Crown document bank (doc W48), p 169; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 310.
894. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 129; Arapeta Hamilton (doc F12(a)), p 11.
895. Ward, 'Summary/Response' (doc A19(a)), p 31.
896. Phillipson, answers to questions for clarification (doc A1(e)), p 6.
897. For example, see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 114, 125–126, 131, 239, 245, 271, 502–503; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 238, 254–255.
898. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 519, 525.
899. Ibid, pp 515–517, 524.
900. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, Wai 863, vol 2, p 559.
901. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, Wai 215, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 23.
902. Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992*, Wai 27 (Wellington: Brooker and Friend Ltd, 1992), pp 273–274; Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report*, Wai 776 (Wellington: GP Publications, 1999), pp 41, 51–52;

Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, Wai 22, pp 194–195; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, Wai 785, vol 1, p 5; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, Wai 1130, 3 vols (Wellington: Legislation Direct, 2013), vol 1, pp 16–17.

903. Crown closing submissions (#3.3.403), p 54.

904. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 524–525, pp 527–528.

905. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 250.

906. James Belich, *Making Peoples: A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane, 1996), p 200.

907. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 306–308.

908. Ibid, p 313.

909. G Selwyn to W Selwyn, 15 September 1849 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 313). *Noblesse oblige* literally translates as 'nobility obligates' and refers to a belief that people of aristocratic lineage are obliged to support and be generous to others of lesser means.

910. Hobson to Gipps, 15 June 1840 (O'Malley, supporting documents (doc A6(a)), vol 16, pp 5274–5275).

911. Taylor, *The Journal of Ensign Best*, p 220.

912. Ward, *A Show of Justice*, p 46. Damen Ward has discussed colonial officials' debates about the extent to which indigenous law should be incorporated into colonial law: Ward, 'A Means and Measure of Civilisation', pp 1–4, 9–10, 14.

913. Johnson, 'The Northern War' (doc A5), pp 65–67. Normanby's 1839 instructions to Hobson referred to the 'absolute necessity' that the colony become self-funding, and recommended import duties as the primary means of raising revenue, supplemented by a modest land tax and funds raised through buying and selling Māori lands: Normanby to Hobson, 14 August 1839, IUP/BPP, vol 3, p 89. Later, Governor Gipps approved a budget comprising £10,000 from customs duties, £5,000 from sale of lands, and another £5,000 if required from the New South Wales Treasury: Gipps to Hobson, 5 January 1840 (as cited in Robert Carrick, *Historical Records of New Zealand South Prior to 1840* (Dunedin: Otago Daily Times and New Zealand Witness, 1903), p 47).

914. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 318, 323.

915. Ibid, pp 306–309.

916. For examples, see Johnson, 'The Northern War' (doc A5), pp 48–49, 59–60, 87; Thomas, 'The Crown and Maori in Northern Wairoa' (doc E40), pp 61–62; Wyatt, 'Old Land Claims' (doc E15), fols 244–245.

917. According to Phillipson, there was no consultation about the decision to move the capital: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 308, 310.

918. Johnson, 'The Northern War' (doc A5), p 113.

919. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 324.

920. Johnson, 'The Northern War' (doc A5), p 84.

921. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 65–66, 67; Orange, *The Treaty of Waitangi*, pp 105, 108–109.

922. Orange, *The Treaty of Waitangi*, pp 94, 96–97.

923. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 276, 280, 325.

924. Clarke, half-yearly report, 4 January 1843 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325).

925. Clarke to Colonial Secretary, 1 June 1843 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325).

926. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 276.

927. G Clarke, *Remarks Upon a Pamphlet by James Busby, Esq* (Auckland: Philip Kunst, 1861), p 21 (as cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 284–285).

928. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 306.

929. *Te Karere o Niu Tireni*, January 1842, p 1 (cited in Lachy Paterson, 'The New Zealand Government's Niupepa and Their Demise', NZJH, vol 50, no 2 (October 2016), p 48).

930. Johnson, 'The Northern War' (doc A5), p 59 fn 123; *Te Karere o Niu Tireni*, January 1842, pp 2–4.

931. Daamen, '*The Crown's Right of Pre-emption*', pp 49–50; Protector of Aborigines' Report of his Visit to Thames and Waikato, no date, IUP/BPP, vol 3, p 445.

932. Protector of Aborigines' Report of his Visit to the Thames and Waikato, IUP/BPP, vol 3, p 448 (cited in Daamen, *The Crown's Right of Pre-emption*, p 50).

933. Paterson, 'The New Zealand Government's Niupepa', p 46.

934. Daamen, *The Crown's Right of Pre-emption*, pp 50–51.

935. Ibid, p 50.

936. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 511.

937. Daamen, *The Crown's Right of Pre-emption*, pp 50–51.

938. Walter Brodie, *Remarks on the Past and Present State of New Zealand* (London: Whittaker & Co, 1845), pp 108–109.

939. Daamen, *The Crown's Right of Pre-emption*, p 50.

940. Orange, *The Treaty of Waitangi*, p 111.

941. 'Chief Protector's Report', 18 June 1842, IUP/BPP, vol 2, p 191.

942. Clarke, half-yearly report, 1 July 1845 (Crown document bank (doc W48), p 268).

943. George Clarke to colonial secretary, 17 October 1843, IUP/BPP, vol 2, pp 356–359.

944. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 284–285; Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 239.

945. Shortland to Stanley, 30 October 1843 (cited in Daamen, *The Crown's Right of Pre-emption*, p 62); Duncan Moore, Barry Rigby, and Matthew Russell, 'Old Land Claims', Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 19.

946. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), pp 256–257, 286, 429; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 132, 143.

947. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 216.

948. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), pp 626–627.
949. Ibid, p 216.
950. Moore, Rigby, and Russell, 'Old Land Claims', pp 19–20.
951. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 466.
952. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 321.
953. Ibid, pp 373–374; Johnson, 'The Northern War' (doc A5), p 96.
954. Johnson, 'The Northern War' (doc A5), pp 90–94.
955. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 375; Orange, *The Treaty of Waitangi*, p 54; Johnson, 'The Northern War' (doc A5), p 41.
956. Johnson, 'The Northern War' (doc A5), pp 88, 99–100, see also pp 113–117.
957. Ibid, pp 116–117, see also p 99.
958. Ibid, pp 116–117, see also pp 117–127.
959. Ibid, pp 116–117, 213–214; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 325, 349.
960. These events are recounted in Johnson, 'The Northern War' (doc A5), pp 135–149.
961. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 362, 373–374; Johnson, 'The Northern War' (doc A1), p 22.
962. Crown document bank (doc W48), pp 265–266.
963. Johnson, 'The Northern War' (doc A5), pp 342–343; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 283–284.
964. Clarke, half-yearly report, 1 July 1845 (Crown document bank (doc W48), pp 265–266).
965. Clarke, half-yearly report, 1 July 1845 (Crown document bank (doc W48), pp 265–266). Missionaries and Hobson also commented about Māori doubts in the period soon after the treaty was signed: Johnson, 'The Northern War' (doc A5), p 87; Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 643–646; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 324.
966. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 519; Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 449.
967. The debates are described in detail in Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 351–383.
968. Clarke, half-yearly report, 1 July 1845 (Crown document bank (doc W48), p 266).
969. Ibid (p 267).
970. Ibid.
971. Wyatt, 'Old Land Claims' (doc E15), fol 247.
972. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 524.
973. FitzRoy, *Remarks on New Zealand*, pp 12–13, 14, 16, 31–32.
974. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
975. G A Selwyn to E Coleridge, 8 August 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 313–314).
976. Jonathan Adams, 'Governor FitzRoy's Debentures and their Role in his Recall', NZJH, vol 20, no 1 (April 1986), pp 44–63.
977. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 373–374; Johnson, 'The Northern War' (doc A1), p 22.
978. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 100, 103, 147, 283–284, 316–317, 362, 370, 373.
979. Ibid, p 333.
980. Ibid, p 345; Johnson, 'The Northern War' (doc A5), pp 93, 114, 130.
981. Johnson, 'The Northern War' (doc A5), pp 87, 149.
982. Johnson discussed these events in detail: Johnson, 'The Northern War' (doc A5), pp 141–149.
983. Johnson described FitzRoy's negotiations and concessions in detail: Johnson, 'The Northern War' (doc A5), pp 116–129. FitzRoy reinstated customs duties in April 1845: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 313. He did not inform the Colonial Office of his promise to return surplus lands, and nor did he take any action to implement the promise. Instead, he simply deferred any action: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 339–341.
984. Johnson, 'The Northern War' (doc A5), pp 135–141.
985. In Phillipson's view, war became inevitable only after Heke's fourth attack on a heavily fortified and defended flagstaff in March 1845: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 355, 363.
986. Joseph, *Joseph on Constitutional and Administrative Law*, p 53.
987. McHugh (doc A21), pp 82–97.
988. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 366.
989. Sir Robert Jennings and Sir Arthur Watts, eds, *Oppenheim's International Law*, 9th ed, 2 vols (London: Longman, 1991), vol 1, p 680 (cited in Palmer, *The Treaty of Waitangi*, p 164).
990. Palmer, *The Treaty of Waitangi*, pp 164–165.
991. Ibid, p 160.
992. Brownlie, *Treaties and Indigenous Peoples*, p 9 (cited in Palmer, *The Treaty of Waitangi*, p 161). Palmer added, however, that, if there were a judicial ruling that the Treaty of Waitangi was valid in international law, 'it would be difficult for the New Zealand executive government to ignore, . . . without huge embarrassment': Palmer, *The Treaty of Waitangi*, p 168, see also pp 160–162.
993. Ibid, p 168. Joseph noted that the Treaty of Waitangi 'received legislative recognition from the outset but this did not transform the promises exchanged into justiciable rights'. He cited early legislation such as the Land Claims Ordinance 1841, the New Zealand Constitution Act 1852 (UK), and the Native Lands Acts 1862 and 1865 as examples of such Acts, and he cited *Nireaha Tamaki v Baker*, in which the judicial committee determined that the Land Claims Ordinance 'did not establish any independently enforceable rights': Joseph, *Joseph on Constitutional and Administrative Law*, pp 77–78.
994. Palmer, *The Treaty of Waitangi*, p 153.
995. *Te HeuHeu Tukino v Aotea District Maori Land Board* [1941] NZLR 590 (PC) (cited in Palmer, *The Treaty of Waitangi*, p 173).
996. Palmer, *The Treaty of Waitangi*, pp 172–174. We add that the Treaty has already been recognised by the courts as a relevant interpretative tool in statutory interpretation, regardless of whether

the statute in question refers to the treaty. And, in *Takamore v Clarke* [2011] NZCA 587 at [248]–[249], the Court of Appeal cited Matthew Palmer in his work *The Treaty of Waitangi*, noting that he stated that the courts have nonetheless enforced the Treaty indirectly in a number of ways.

997. McHugh, *Aboriginal Societies and the Common Law*, pp 133–134.

998. Ibid, pp 132–134.

Pages 188–189: "Steps Taken by the Crown to Annex New Zealand and to Establish Crown Colony Government"

1. Dr Donald M Loveridge, '"The Knot of a Thousand Difficulties": Britain and New Zealand, 1769–1840', report commissioned by the Crown Law Office, 2009 (doc A18), pp 148–150; Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), pp 314, 340–341.

2. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 150.

3. Dr Paul McHugh (doc A21), p 60.

4. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 340.

5. Loveridge, '"The Knot of a Thousand Difficulties"' (doc A18), p 188.

6. Historians have not found it easy to be certain of the exact number of rangatira who put their names to te Tiriti at Waitangi and at Mangungu on these dates, given that this first Tiriti document records some 200 names from many northern areas, as well as those of witnesses, but the dates of all signings have not been clearly recorded: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 402 n 190.

7. Extension of New South Wales laws to New Zealand, 1840 3 Vic 28; Crown closing submissions (#3.3.402), p 13.

8. Australian Courts Act (UK) 1828 Geo IV c 83.

9. New South Wales Continuance Act 1840 (UK) 4 Vict c 62. This Act provided for the continuation until 31 December 1841 of the Australian Courts Act 1828 (UK) 9 Geo IV c 83, which was an 'Act to provide for the administration of Justice in New South Wales and Van Diemen's Land' through the establishment of courts of justice and a judicial system.

10. Crown closing submissions (#3.3.402), p 4. McHugh has explained that publication is a 'formal requirement for a valid proclamation (ie legislation under the prerogative) although it need not be effected in a special manner or place': McHugh (doc A21), p 60.

11. Russell to Hobson, encls 1–3, 9 December 1840, IUP/BPP, vol 3, pp 146–164.

12. Hobson to Russell, 26 May 1841, IUP/BPP, vol 3, pp 450–451.

CHAPTER 5

TE PAKANGA O TE RAKI, 1844–46

THE NORTHERN WAR, 1844–46

I tawahi ko ta koutou nei rahui he mea tuhituhi ki te reta koutou nei rahui. Tahae kau te Pakeha, Ka mau te ture ko to matou tikanga. He mea tapatapa tahae kau ka maru te tukituki.

Your prohibition is written in letters, and [with] your prohibitions if a Pakeha just steals, the law binds him. Our custom is from naming some things as sacred, and if there is stealing, there is killing.

—Hōne Heke, 6 February 1842

If you say, let peace be made, it is agreeable; but . . . you shall not have my land; no, never, never! I have been fighting for my land; if you had said that my land should be retained by myself I should have been pleased. Sir, if you are very desirous to get my land, I shall be equally desirous to retain it for myself.

—Kawiti to the Governor, 7 October 1845[1]

5.1 Hei Tīmatanga Kōrero / Introduction

By 1844, there was increasing tension between the treaty partners in Te Raki. The Crown and Māori had differed over land and resources, law and tikanga, control of trade, and the very nature of their relationship. Rangatira who had signed te Tiriti believing it would bring their people prosperity, security, and ongoing independence instead found that the district's economy was declining sharply, while the Crown and settlers increasingly challenged or ignored their authority.

On 8 July 1844, rangatira Hōne Heke Pōkai and his supporters signalled their dissatisfaction with how the treaty relationship had developed by felling the flagstaff on Maiki Hill. Tensions increased during the following months, and early in 1845 he felled the flagstaff on three more occasions. The last of these, on 11 March 1845, involved violent clashes between Ngāpuhi and British forces, and ended in the destruction of Kororāreka. These events widened internal divisions within Ngāpuhi as some rangatira sought to limit the impact of Heke's actions and maintain peaceful relations with setters.[2] The Governor of New Zealand, Robert FitzRoy responded by sending forces to attack Heke, Te Ruki Kawiti, and others he considered to be in rebellion against the Crown. Between 28 April 1845 and 11 January 1846, Crown and Māori forces fought four battles at Te Kahika (also known as

Hōne Heke's Attacks on the Maiki Hill Flagstaff

On four occasions during 1844 and 1845, Hōne Heke and his supporters felled the flagstaff on Maiki Hill. These actions occurred on 8 July 1844 (which, for convenience, we sometimes refer to as 'the first attack'); 10 January 1845 ('the second attack'); 19 January 1845 ('the third attack'); and 11 March 1845 ('the fourth attack').

Puketutū), Ōhaeawai, Waikare, and Ruapekapeka. Crown forces destroyed several pā, kāinga, and cultivations. Taking into account both sides, more than 200 people were killed.[3] These conflicts would come to be known collectively as the Northern War.

This chapter addresses the large number of claims we received concerning the origins and causes of the Northern War, the Crown's use of force, and the Crown's approach to peace negotiations.[4] The tensions that emerged between 1840 and 1844 reflected divergent Crown and Māori understandings of the treaty. The Crown and claimant submissions in this inquiry also reflected different perspectives on the treaty's meaning in Te Raki in 1840. Put in simple terms, the Crown believed (and believes) it had a right to exert its authority over Te Raki Māori in the 1840s; the claimants and their tūpuna rejected that view. As first discussed in chapter 2, successive Tribunal reports have conceptualised the treaty relationship as a partnership based on mutual recognition of powers, kāwanatanga, and tino rangatiratanga, each of which qualifies or fetters the other. In this district, the terms of that partnership can be found in those elements of the Crown's proposal that rangatira consented to – not in what the Crown assumed, based solely on the English text and its own political and legal norms. In essence, rangatira did not consent to the Crown's exercise of sovereignty over them or their territories but they did consent to the Crown controlling British subjects, in order to keep peace and protect Māori interests. Rangatira agreed also to regulate their own communities and expected to be the Governor's equals, albeit with distinct spheres of influence.[5] These differences in understanding were core precursors to the outbreak of the Northern War.

5.1.1 The purpose of this chapter

This chapter addresses issues of claim relating to the causes of the Northern War, the Crown's use of force during this conflict, and its approach to peace negotiations after. Many of the issues discussed here centre on what the claimants have described as the Crown's unwillingness to have meaningful discussions about the Crown–Māori relationship in the lead-up to the war; its subsequent aggression, and the efforts of their tūpuna, as the established and legitimate authority in Te Raki, to protect their tino rangatiratanga in the face of military force. The overarching aim in exploring these issues is to assess the extent to which the Crown's actions during the Northern War complied with its treaty duties and obligations.

5.1.2 How this chapter is structured

The next section of this chapter (section 5.2) sets out our issues for determination. We begin by introducing the key themes and conclusions of previous Tribunal reports concerning the Crown's treaty obligations in respect of Crown–Māori warfare, and the positions of the parties in stage two of our inquiry. Our issues for determination are distilled from the key differences in the positions of claimant and Crown parties, and from Tribunal jurisprudence.

The main historical analysis is prefaced by a brief chronological narrative, an overview of the key events of the Northern War, to provide context for our subsequent discussion of the issues. We proceed to address these issues, structuring our analysis of the treaty-compliance of the Crown's conduct into three key time periods: the phase of escalating tensions preceding the outbreak of armed conflict on 11 March 1845 (section 5.3); the Crown's use of force against sections of Ngāpuhi between 29 April 1845 and 11 January 1846 (section 5.4); and the peace negotiations that occurred from mid-1845 until the war's conclusion in January 1846 (section 5.5). We then consider the prejudice suffered by Māori as a result of these Crown

actions (section 5.6). In the final section, we summarise our findings (section 5.7).

5.2 Ngā Kaupapa / Issues

5.2.1 What previous Tribunal reports have said

In other inquiries, the Tribunal has found that treaty partners may use force but only in very limited circumstances. In *Te Urewera* (2017), the Tribunal found that the Crown was justified in using force to respond to a series of lethal attacks by Te Kooti and his followers against Māori and settler communities. The Crown was duty-bound to protect its citizens,[6] and had a right to use force to keep peace[7] and restore order during a state of emergency where lives were at stake.[8] By the 1860s, when these events occurred, most Māori expected the Crown to protect them from harm caused by other Māori. In this respect, the Tribunal noted, circumstances differed from the immediate post-treaty years.[9]

The Tribunal has also found that the Crown can use force to secure peace and protect its citizens from harm, but only on two conditions. First, force must be necessary under the circumstances – the Crown cannot justify the use of force based on rumours or supposition; it must genuinely believe that force is required to address a real threat of physical harm.[10] Secondly, the Crown cannot resort to force without exhausting all other reasonable means of maintaining and securing peace; if at all possible, it must arrive at a negotiated solution.[11] These tests mean that the Crown cannot use force for the purposes of subjugating Māori, or asserting its sovereignty, or imposing its laws on Māori communities in breach of the guarantee of tino rangatiratanga.[12] The Crown cannot claim to have exhausted all possibilities for peace if it fails 'to provide for or protect Māori tino rangatiratanga, as the treaty required it to do'.[13] As the Tribunal found in *The Taranaki Report* (1996), and as we confirmed in our stage 1 report, New Zealand was founded on the principle that authority (and, indeed, sovereignty) must be shared between Māori and the Crown. Crown recognition of and respect for Māori autonomy was therefore 'the only foundation for peace' between the treaty partners.[14]

In several inquiries, the Tribunal has considered situations in which the Crown used force to suppress what it saw as a rebellion. The Tribunal's concern has not been with the question of whether Māori were in rebellion in terms of the British law, but with the treaty compliance of the Crown's actions, particularly in the context of claims that the Crown had unfairly branded Māori as rebels, causing them prejudice.[15] Consistently, the Tribunal has found that Māori could only be labelled as such if two conditions were met: first, as the Tribunal found in *Te Urewera*, they must be 'citizens owing a duty of allegiance to the Crown'; and secondly, they must intend to overthrow the Crown's established authority by using force or the threat of force.[16] In *The Taranaki Report*, the Tribunal questioned whether a duty of allegiance could exist where the Crown's practical authority had not yet been established on the ground, and concluded that for much of the Taranaki War, 'The Governor was in rebellion against the authority of the Treaty and the Queen's word that it contained.'[17]

In other inquiries, the Tribunal has found that Māori have a right to defend their people, lands, and autonomy against threatened or actual Crown invasion.[18] This includes a right for hapū to support kin in accordance with tikanga and defend territories neighbouring their own where necessary to protect their own lands.[19] Under these circumstances, Māori could not fairly be regarded as being in rebellion,[20] and to deem them so would be a breach of treaty principles.[21]

When force is used for legitimate purposes (such as protecting citizens from violence), the Tribunal has found that it must be reasonable and proportionate. The force used must be no more than is absolutely necessary to support legitimate objectives.[22] Even during times of war, fundamental treaty principles endure, including principles of active protection and good government, and the obligation to act honourably, fairly, and in good faith; these rights 'do not all evaporate in emergency conditions'.[23] Treaty partners have a right not to be arbitrarily punished or deprived of life.[24] The Tribunal has found breaches of the treaty where prisoners were summarily detained, deported, or executed without due process; non-combatants imprisoned or killed; and food and property

Some of the claimants (and the claimant groups they are representing) who presented evidence on the Northern War during Waitangi Tribunal hearings. *Circular from far left:* Arapeta Hamilton (Ngāti Manu, Te Uri Karaka, Te Uri o Raewera), Hori Parata (Ngātiwai), Murray Painting (Te Pōpoto), Nuki Aldridge (Ngā Hapū Whānau o Whangaroa), Te Kerei Tiatoa (Te Uri Taniwha, Ngāi Te Whiu), Dr Benjamin Pittman and Titewhai Harawira (Kaumātua and Kuia of Ngāpuhi), Wayne Stokes (Te Urikapana, Ngāre Hauata), and Willow-Jean Prime (Te Kapotai).


Te Papoto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plundered or destroyed without a legitimate military purpose and without sufficient regard for the potential impacts on non-combatants.[25]

5.2.2 Crown concessions

The Crown conceded that it had breached the treaty and its principles by 'making a cession of land a condition for peace in July 1845'. As a result of this condition, 'the war continued to the prejudice of those affected by it'.[26] We discuss this issue in section 5.5. The Crown also conceded that the 'effective confiscation' of Pōmare II's land interests at Te Wahapū in 1845 breached the treaty and its principles.[27] We discuss this in section 5.5.[28]

5.2.3 The claimants' submissions

The war, and all it represents, is of course a significant issue for the claimants. They saw it as having emerged from the Crown's unjustified claim of sovereignty over Te Raki Māori and its attempts to extend its practical authority into the north.[29] They viewed each of the attacks on the Maiki Hill flagstaff as symbolic acts that were aimed at asserting mana and tino rangatiratanga, at contesting the Crown's claims of sovereign authority over Māori, at defending against Crown attempts to extend its practical authority into the north, at protesting over the negative impacts of Crown and settler actions, and at challenging the Crown to engage and resolve these matters.[30] Some described these as acts of political protest;[31] others, as acts of resistance.[32]

Claimants told us that the Crown's responses were unreasonable. Instead of addressing Ngāpuhi concerns and thereby avoiding war, the Crown took actions that made armed conflict inevitable:[33] it rebuilt the flagstaff;[34] ignored or delayed invitations to engage with Heke and other rangatira;[35] and threatened to use force against Heke. Thus, they escalated tensions, caused or widened divisions within Ngāpuhi, and forced Ngāpuhi to take sides.[36] The subsequent militarisation of Kororāreka was an overt and provocative demonstration of the Crown's determination to assert authority over Ngāpuhi. This was the catalyst for the fourth attack on the flagstaff, on 11 March 1845, and meant that action could not occur without violence.[37] In 'the first true act of war', claimants said, the Crown responded by shelling and destroying Kororāreka.[38] And throughout the period leading up to war, in the claimants' view, the Crown took a punitive and autocratic approach, and failed to consider options other than military escalation; indeed, the Crown was more concerned with asserting its claim of sovereignty than maintaining peace,[39] despite knowing from an early stage that war would be the inevitable result of this approach.[40]

After the destruction of Kororāreka, claimants said, the Crown once again ignored opportunities to seek peace. Instead, it adopted a 'punitive and bellicose course'.[41] The Crown declared martial law,[42] and its troops invaded Ngāpuhi territories, attacking and destroying pā, kāinga, and other property, including that of rangatira who had taken no part in the attacks on the flagstaff.[43] The Crown wrongly labelled some Ngāpuhi as 'rebels' and others as 'loyal', causing stigma to both.[44] The Ngāti Manu rangatira Pōmare II was wrongly arrested and detained, despite the Crown being aware of his neutrality.[45] Claimants said that throughout the conflict, the Crown was the aggressor while Ngāpuhi (on both sides) fought only reluctantly, in order to defend their homes and territories, and their mana and tino rangatiratanga.[46] The Crown ignored or rejected numerous offers of peace,[47] continued to initiate military actions after it had received those offers,[48] and when negotiations began, it imposed unreasonable conditions and refused to negotiate in good faith.[49]

Claimant counsel submitted that the Crown's actions caused the war, which was imposed on all of Ngāpuhi, including those who fought against Heke's alliance.[50] Those actions were in breach of the treaty principles of active protection, equity, and partnership.[51] Claimants therefore submitted that the Crown's use of force throughout the war was inappropriate and illegitimate.[52] It was not Ngāpuhi aggression that brought the conflict to the district, but 'the Crown's obstinate and wrongful belief that it was sovereign over Ngāpuhi, combined with its readiness to use aggressive war to defend that wrongful belief'.[53] The Crown 'did not merely fail to recognise or provide for the

tino rangatiratanga and autonomy of nga hapu o Te Raki, but actively sought to crush it, in serious breach of the Treaty of Waitangi'.[54]

5.2.4 The Crown's submissions

Aside from its concessions (discussed earlier at section 5.2.3), the Crown maintained that it had acted reasonably in all circumstances, while Heke escalated tensions and ultimately started the war.[55] Crown counsel acknowledged that Heke most likely cut down the flagstaff in order to assert his mana and challenge the Crown's right to govern over Māori; however, the Crown did not regard this as a legitimate or widely supported cause.[56] Counsel submitted that it was necessary for the Governor to respond with a show of military force in order to assert the Crown's authority.[57] The Governor then acted reasonably by negotiating with leading rangatira to secure peace, while making concessions that resolved all outstanding Ngāpuhi concerns.[58] It was Heke who acted unreasonably by declining to meet the Governor.[59]

After Heke had felled the flagstaff twice more, and was preparing for a fourth attack, the Governor issued a warrant for Heke's arrest and sought military reinforcements. Crown counsel submitted that these actions were reasonable under the circumstances.[60] The 'attack on Kororāreka' by Heke and Kawiti on 11 March 1845 was unreasonable and put lives at risk.[61] The Crown asserted that it was not at fault for that attack or for the conflict that followed.[62] Military action became necessary 'after Heke and Kawiti had failed to meet their Treaty responsibilities by breaching law and order'[63] and because Heke and his allies were in rebellion against the Crown's authority.[64] The Crown acknowledged that its actions during the war included attacking and destroying pā, and destroying property including whare, food sources, and waka. Crown counsel submitted that these actions were justified for military purposes.[65]

5.2.5 The issues for determination

Arising from the findings of previous Tribunal reports (section 5.2.1), the differences between the parties' arguments (sections 5.2.2, 5.2.3, and 5.2.4), and the evidence presented to us, the issues for determination in this chapter are as follows:

- From June 1844 to March 1845:
  - What prompted the first (8 July 1844) attack on the flagstaff, and did the Crown take all reasonable steps to resolve tensions with Te Raki Māori?
  - Did the Crown take all reasonable steps to resolve tensions in the period between the September 1844 Waimate hui and the January 1845 attack on the flagstaff?
  - Did the Crown cause or provoke the fourth (11 March 1845) attack on the flagstaff?
- From March 1845 to January 1846:
  - Was the Crown justified in pursuing military action against Heke, Kawiti, and their allies?
  - Were some Ngāpuhi 'rebels' and others 'loyal'?
  - Was the Crown justified in destroying Ōtuihu and arresting Pōmare II?
  - Did the Crown take advantage of divisions within Ngāpuhi to support its military objectives?
  - Was the Crown's stance on 'neutral' rangatira and hapū reasonable?
  - Did the Crown use inappropriate or excessive force?
  - Did the Crown take all reasonable steps to restore peace?

5.3 The Key Events of the Northern War, 1844–46: An Overview

The parties did not contest the facts though they disagreed about how these events should be interpreted. The Crown and claimants agreed that the attacks on the Kororāreka flagstaff were intended as challenges to the Crown's claim of authority over Te Raki.[66] They also agreed that the Governor threatened and later used force in order to assert the Crown's authority over Heke and his supporters. The essential point of difference between claimants and

the Crown concerned the legitimacy of these actions. As the claimants regarded tino rangatiratanga as the established authority in Te Raki before and after 1840, they therefore regarded actions (including force) in defence of tino rangatiratanga as reasonable and legitimate, and actions that challenged tino rangatiratanga as illegitimate. The Crown's position was completely the reverse: it regarded its sovereignty as the established legal authority over the whole of New Zealand from 1840 onwards, and so considered actions in defence of its sovereignty and laws as reasonable and legitimate, and actions that challenged its authority as illegitimate.

To contextualise our consideration of these main points of difference, in this section we summarise the key events of the Northern War.

5.3.1 The attacks on the Kororāreka flagstaff

On 5 July 1844, Hōne Heke and a large party of his followers entered Kororāreka and conducted a taua muru against one of the townspeople. Heke remained in the town for three days, and on 8 July his party felled the flagstaff on Maiki Hill.[67] In his response, Governor FitzRoy sought to make a show of force 'that could maintain order and support the law when necessary'.[68] He requested military and naval support from Sydney.[69]

On 17 July, a first contingent of soldiers arrived from Auckland with orders to defend Kororāreka and rebuild the flagstaff.[70] The following day, a large hui was held at Waimate, attended by more than 300 rangatira, who expressed their desire for peace and their opposition to the presence of British troops in their territories. Heke objected to the power exercised by Pākehā since the signing of the treaty, and more particularly to the replacement of the 1834 flag of independence with a British ensign.[71]

On 19 July, Heke wrote to the Governor offering to install a new flagstaff so as to secure peace, and he urged that FitzRoy keep his soldiers away from Te Raki.[72] Other Ngāpuhi rangatira, including Tāmati Waka Nene of Ngāti Hao, also wrote to FitzRoy and reminded him of King William's offer to recognise the Māori flag.[73] FitzRoy received Heke's letter in early August but did not reply.[74] Nor did he rescind his request for troops or his order that the flagstaff be rebuilt.[75] At some point in early-to-mid August, the flagstaff was rebuilt,[76] and on 18 August troop reinforcements arrived from Sydney.[77] These developments angered Heke and alarmed other Ngāpuhi leaders.[78]

On 25 August, FitzRoy arrived in the Bay of Islands with further military reinforcements,[79] demanding that Heke pay compensation for the flagstaff or face military action. Heke refused, saying he would not meet the Governor or agree to terms so long as the flagstaff remained up.[80] FitzRoy then pressed ahead with his plan to march on Kaikohe,[81] but relented after overtures from Nene and several other leading rangatira who promised to pay the required utu and answer for Heke's future conduct.[82] On 2 and 3 September, a major hui was held at Waimate where this arrangement was formalised. The utu was paid, and the Governor agreed to withdraw his troops, sending most of them back to Sydney, leaving Nene and others to control Heke.[83] As part of this hui, FitzRoy made some important concessions. He announced that he was removing Bay of Islands customs duties (first discussed in chapter 4), which had crippled the northern economy and caused much resentment among Ngāpuhi. FitzRoy also told rangatira that he would provide a flag for Ngāpuhi and reverse the Crown's policy of retaining 'surplus' lands from pre-1840 land claims.[84]

Heke did not attend this hui, hosting a rival hākari nearby, but sent a note asking the Governor to remain for a few days so they could meet. FitzRoy did not stay.[85] On 7 September 1844, Heke visited Waimate, where he addressed a gathering of missionaries and Ngāpuhi. He said he wanted the Governor and rangatira to erect dual flagpoles, to fly the British and Māori flags side by side.[86] Soon afterwards, he wrote to FitzRoy asking for a hui to resolve their differences, and expressing a wish for peace.[87] Te Hira Pure (Te Uri o Hua, Te Uri Taniwha) also wrote to the Governor, saying he had committed a hostile act by bringing soldiers and restoring the flagstaff. He asked the Governor to return, take down the British flag, and hold another hui so peace could be secured.[88] On 5 October, FitzRoy replied, promising to visit in summer, and he explained that from his point of view, the flag was a sacred symbol of the Queen's authority.[89]

In the meantime, during late September and early October, Ngāti Hine conducted a series of taua muru against settlers as utu for a police action during which one of one of their wāhine rangatira had been injured; named Kohu (Ngāti Manu and Ngāti Hine), she was a granddaughter of Kawiti.[90] Other Bay of Islands and Whāngārei hapū also conducted taua muru during the period from October 1844 to January 1845. Although many were motivated by disputes over land and tikanga,[91] another factor was growing concern among Bay of Islands Māori that the Crown was claiming to have acquired authority over their territories through the treaty. Copies of it were reprinted by the Government and by missionaries, who offered reassurance that the Crown's intentions were entirely protective.[92]

Yet, FitzRoy also prepared for the possibility of conflict. On 19 October 1844, he wrote to the Colonial Office seeking two warships and a regiment of troops.[93] On 21 October, he wrote to the Bay of Islands resident magistrate recommending that settlers leave the area, warning that military action might be necessary. FitzRoy also sent a visiting warship to the Bay of Islands.[94] In December, he wrote to Te Raki rangatira instructing them to prevent any further unrest and to warn that he might take action himself. This was published on 1 January 1845 but, as historian Ralph Johnson observed, may not have reached Ngāpuhi before the punitive proclamations that followed.[95] On 8 January, the Governor issued one such proclamation that called for the arrest of rangatira responsible for taua muru at Kawau and Matakana, and warned that anyone who assisted them would face 'the strongest measures'.[96]

Early in the morning on 10 January 1845, Heke attacked the flagstaff for the second time.[97] Although no violence was involved, the Governor issued a new proclamation ordering Heke's arrest for defying 'the Queen's authority' and offering a £100 bounty for his capture.[98] On 17 January, soldiers arrived in the Bay of Islands and established their camp at Kororāreka. The following day, they erected a new flagstaff, and on the next Heke felled it – the third time he and his supporters had done so. Although the flag was guarded by Nene's forces, no violence was involved.[99]

From this point, FitzRoy was certain that military action was necessary.[100] On 21 January, he wrote to the Governor of New South Wales, Sir George Gipps, asking for permanent troops and naval support.[101] FitzRoy sent two warships to the Bay of Islands, with instructions that the flagstaff be rebuilt with its staff encased in iron, and that it be surrounded by a palisade and guarded by soldiers in a blockhouse.[102] As tensions grew, missionaries wrote to FitzRoy urging him to visit the Bay of Islands, which he refused to do.[103] During the second half of February, Heke sought to build alliances with other Ngāpuhi leaders.[104]

On 11 March, Heke, Kawiti of Ngāti Hine and Pūmuka of Te Roroa together with Te Kapotai and sections of Ngāti Manu were involved in the attacks in Kororāreka during which the flagstaff was felled for a fourth time. Fighting occurred between British forces and Māori, leading to casualties on both sides. After the flagstaff had fallen, British officers evacuated the town and began to shell it to prevent it from falling into Māori possession. Māori responded by looting and burning the town.[105]

5.3.2 The key battles

The escalation to all-out conflict in the aftermath of the felling of the flagstaff was swift. Historians have characterised the Northern War as a three-sided conflict, in which Heke and Kawiti fought against both the Crown and other sections of Ngāpuhi, led by Tāmati Waka Nene and other Hokianga leaders. Other parts of Ngāpuhi, such as Whangaroa and the coastal Bay of Islands, remained neutral. Historian Dr Grant Phillipson, in his report 'Bay of Islands Maori and the Crown: 1793–1853', characterised the conflict as a civil war in two senses: first, within Ngāpuhi, and secondly, between sections of Ngāpuhi and the Crown.[106]

On 31 March 1845, Heke met with Nene in an attempt to make peace. This was not successful and armed skirmishes began almost immediately afterwards, continuing throughout much of April.[107]

On 17 April, the Governor issued a proclamation ordering a naval blockade of the Bay of Islands, and the following day the HMS *Hazard* sailed from Auckland back to the Bay of Islands, where many Ngāpuhi resided, to

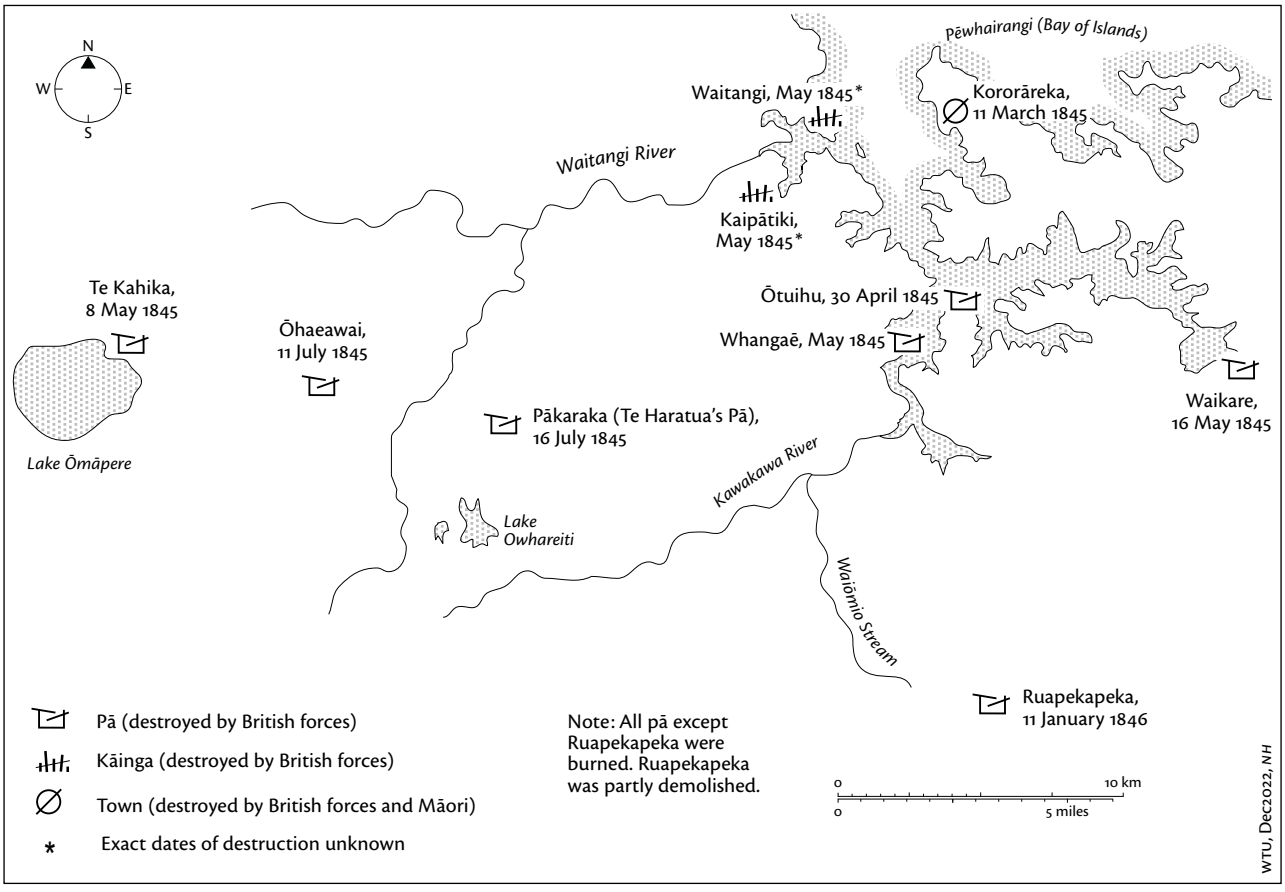
Historian Ralph Johnson presenting his Crown Forestry Rental Trust commissioned report 'The Northern War, 1844–46' during hearing week 19, Oromāhoe Marae, July 2016.

enforce the edict.[108] On 26 April, martial law was declared throughout the district and would remain in place until the war ended. Heke, Kawiti, and their allies were declared to be in rebellion against the Crown's sovereign authority.[109] Governor FitzRoy instructed his military force to capture Heke, Kawiti, and other leaders, alive if possible, but to spare no other 'rebels'.[110] On the same day, a proclamation called on 'loyal' Māori to gather at mission stations, to fly the British ensign from their own pā, or else to follow the instructions of Nene and other Hokianga leaders who had aligned with the Crown; otherwise they would be regarded as rebels.[111]

On 30 April, British forces attacked and destroyed Ōtuihu, the pā of Ngāti Manu rangatira Pōmare II. Pōmare and his eldest daughter Iritana were captured and taken to Auckland aboard the *North Star*, where Pōmare was pardoned after Patuone (Ngāti Hao) and other rangatira intervened.[112]

On 8 May, the British forces attacked Te Kahika, a pā built by Heke and Te Hira Pure on Te Uri o Hua land at Ōmāpere. Heke and Te Hira Pure were joined in their defence by Ngāti Hine warriors under Kawiti, and by several other Bay of Islands and Taiāmai hapū.[113] Johnson observed that the final death toll of this fighting is not known.[114] Historian James Belich estimated that five of Heke's party were killed inside the pā, and Kawiti 'lost twenty three killed outside the pā.'[115] Johnson noted that these figures are corroborated by the account of a French missionary, who wrote, 'Each side suffered about 50 casualties, with Maori dead outnumbering British by 28 to 13.'[116] English missionary Robert Burrows estimated that the British lost 14 killed and more or less 40 wounded.[117] At about the same time, seamen and marines from the Royal Navy ships attacked and destroyed several kāinga and a significant number of waka around the Bay of Islands coast. The kāinga are recorded as Waitangi, Whangae, Kaipatiki, and Kaihera.[118]

On 16 May, British forces led an attack on Te Kapotai at Waikare. They found the pā evacuated and destroyed it, along with the surrounding settlement, without engaging

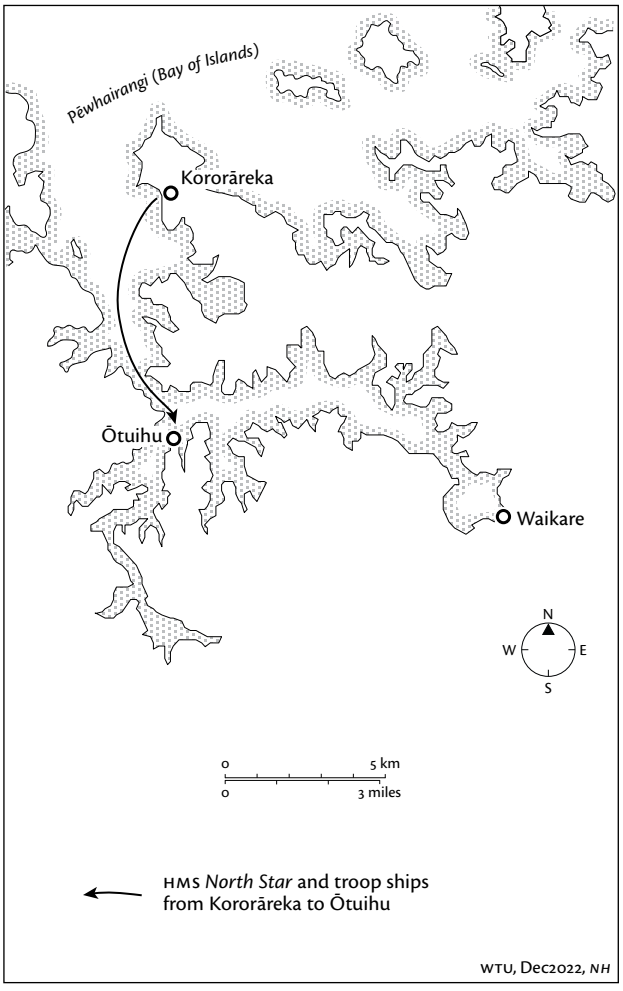


Map 5.1: Northern War key sites.

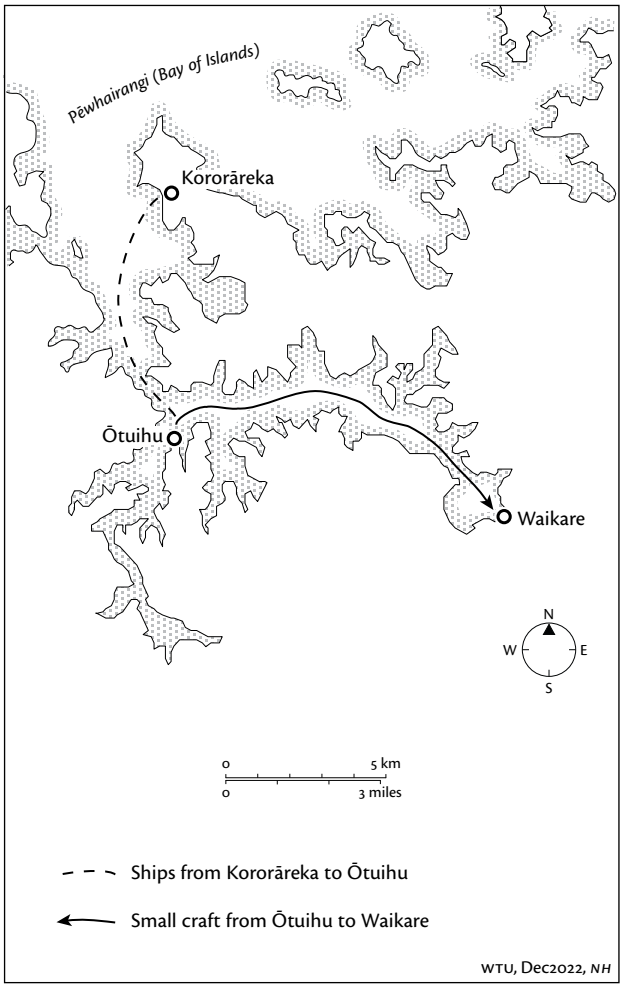
in any direct combat. At the British commander's request, Te Patukeha, Te Māhurehure, and Te Hikutū attacked the retreating Te Kapotai, with each side experiencing about 10 casualties.[119] Afterwards, all British soldiers temporarily returned to Auckland. In their absence, on 26 May, Rewa of Ngāi Tāwake and Repa of Te Māhurehure led another attack on Te Kapotai, destroying canoes and carrying away all their food.[120]

Meanwhile on 19 May, the naval blockade was extended to Whangaroa.[121] On 21 May, Heke wrote to FitzRoy denying responsibility for the destruction of Kororāreka and to ask the Governor if he was willing to meet and make peace.[122] FitzRoy received the letter on 29 May but did not reply.[123] Instead, on the same day, the Executive Council resolved to attack Heke again.[124]

By early June, British soldiers had begun to return to the Bay of Islands.[125] FitzRoy, who had by this time determined that Heke and Kawiti would have to forfeit land as a condition for peace, told one of his officers that any confiscated land would be divided among the 'loyal' Ngāpuhi.[126] While the troops were preparing for another attack, Nene and other Hokianga leaders had begun to move into the territories east of Ōmāpere, challenging the mana of Heke and his Taiāmai supporters. On 12 June, a



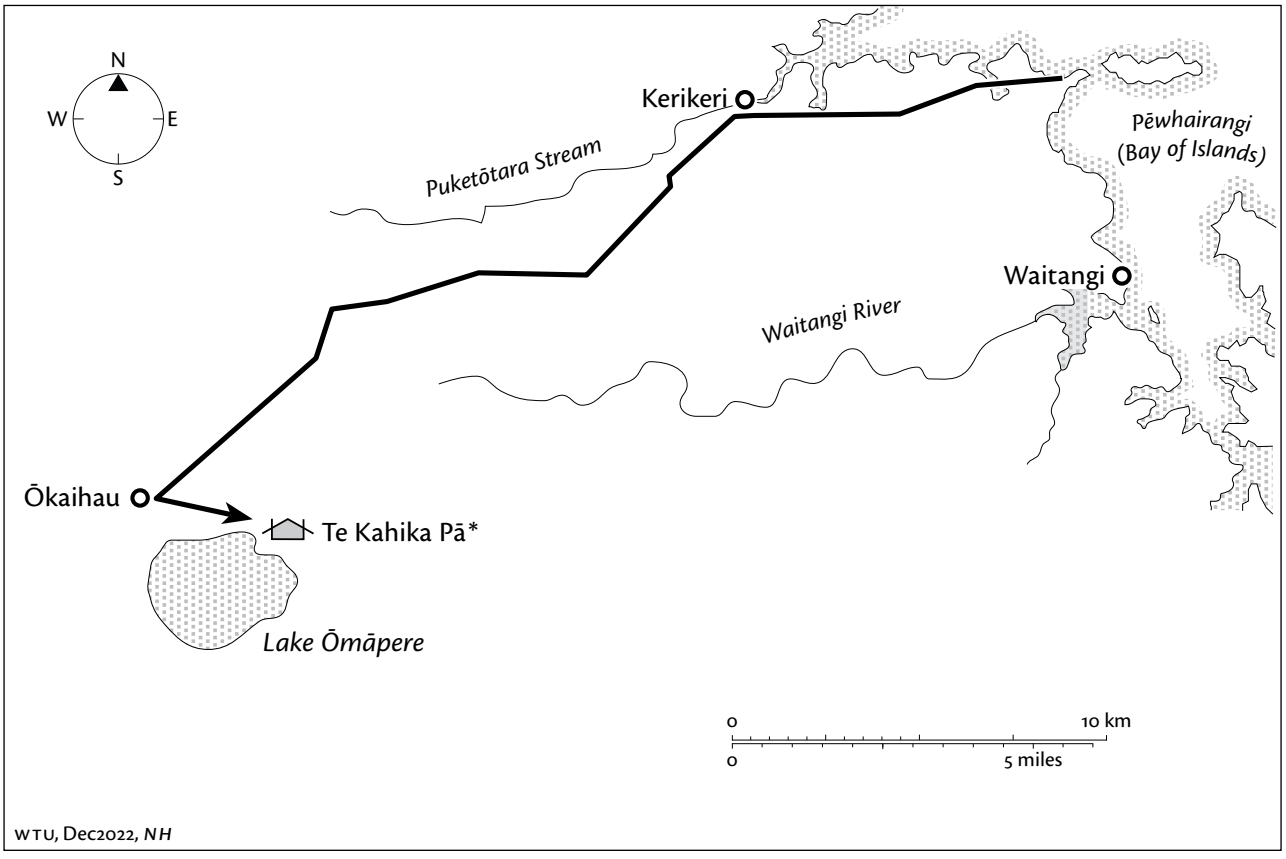
Map 5.2: The route taken by the HMS *North Star* and two troop ships on 29 April 1845 to attack Ōtuihu. The British force numbered about 500.



Map 5.3: The route taken by a 200-strong British force to attack Te Kapotai at Waikare on 15 May 1845. The British force was under the command of Major Cyprian Bridge and mainly comprised soldiers from the 58th Regiment. It was accompanied by 100 warriors from Te Hikutu and smaller forces from Te Māhurehure and Ngāi Tāwake.

major battle took place for control of a new pā Heke was building at Te Ahuahu. There was no British involvement. Heke lost the pā and was seriously wounded.[127]

On 24 June, British forces began a week-long bombardment of Ōhaeawai. The defence was led by Kawiti and Pene Taui of Ngāti Rangi, while others involved included Ngāti Tautahi, Ngāti Kawa, Te Uri Taniwha, and Te Kapotai. Heke did not take part. On 1 July, British soldiers attempted to claim the pā, suffering heavy losses. Refusing Kawiti's offer of a temporary peace, the British



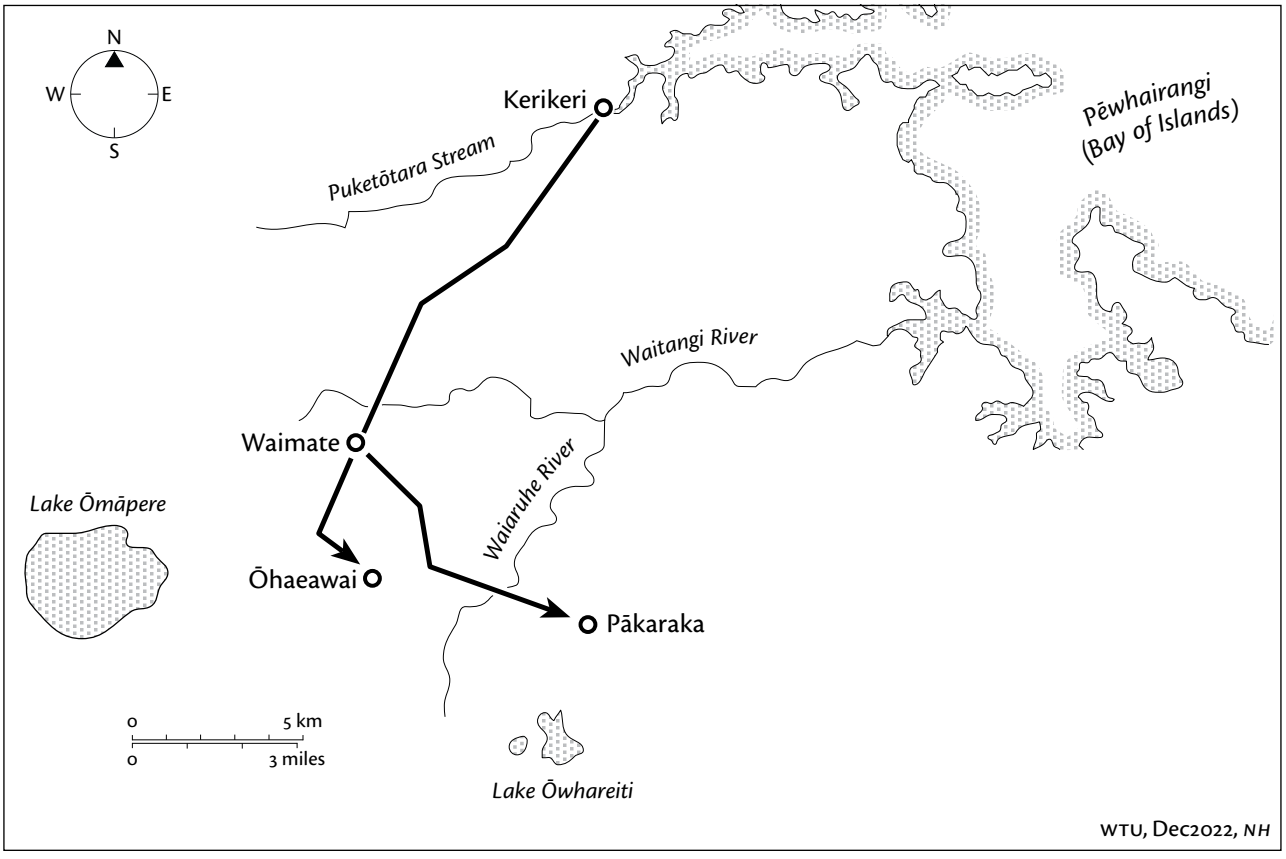
Map 5.4: The route taken by a British force under the command of Lieutenant-Colonel William Hulme to attack Te Kahika Pā on 8 May 1845. The force comprised 460 soldiers of the 58th and 96th Regiments supported by marines and seamen. Te Kahika was a Te Uri o Hua pā.

force resumed its bombardment. The defenders evacuated the pā on 10 July, leaving the British to occupy and destroy it.[128] On 16 July, British soldiers left Ōhaeawai and marched to Te Haratua's pā at Pākaraka, which they found abandoned and also destroyed.[129]

From then until December there was no further fighting. The troops retreated to Waimate.[130] On 19 July, Heke wrote to Governor FitzRoy renewing his offer of peace and to ask why FitzRoy had not responded to his earlier overture.[131] This time the Governor responded; he demanded that Heke 'offer an atonement' for the destruction of Kororāreka or face further military action. FitzRoy had already requested more military reinforcements from Sydney and he warned Heke that they were on their way.[132]

Heke correctly understood the Governor's request for 'atonement' to mean confiscation of land. On 29 August, Heke wrote back; he sought another meeting with FitzRoy to arrange peace, and questioned why he should atone when – in his view – the Governor and Nene were equally to blame for the war.[133] On 24 September, Kawiti wrote to the Governor also seeking peace.[134]

FitzRoy responded to Heke on 29 September and to Kawiti on 1 October, setting out his conditions for hostilities to end. One was that Māori forfeit significant tracts

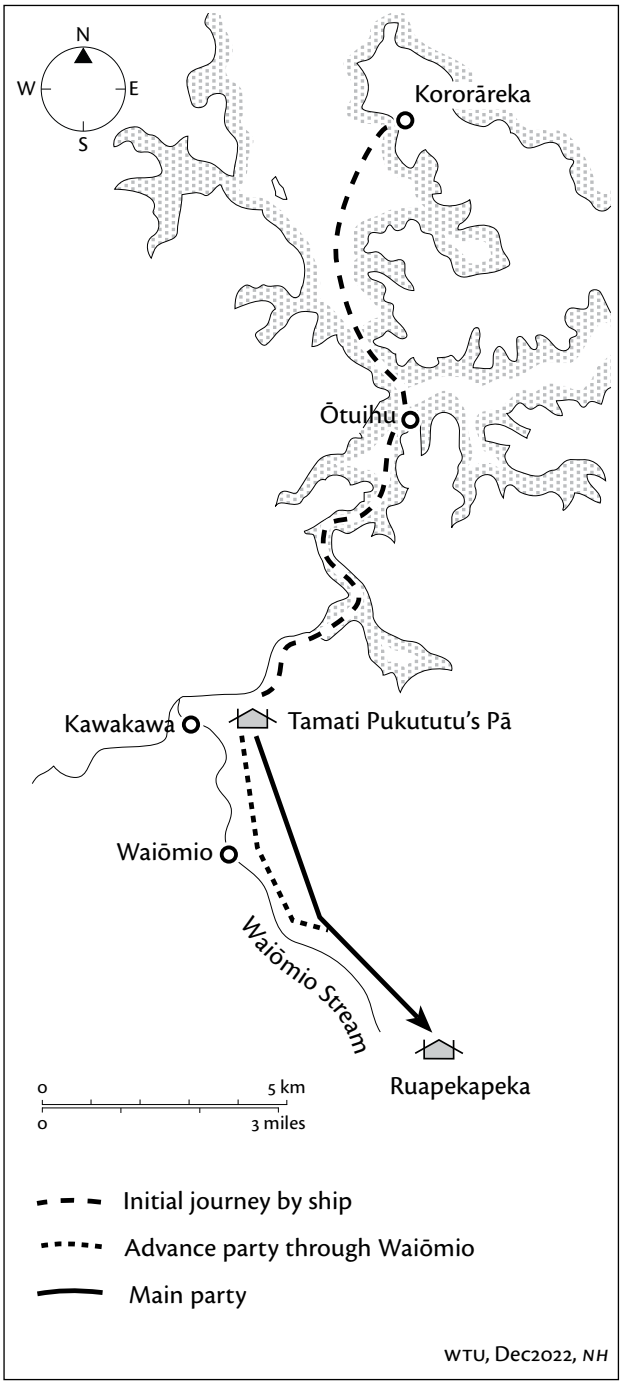


Map 5.5: The route taken by a 520-strong British force to attack Pene Taui's pā at Ōhaeawai. The attack lasted from 24 June to 10 July and ended in defeat for the British force. After regrouping and returning to Waimate, they destroyed Te Haratua's empty pā at Pākaraka on 16 July 1845.

of southern Bay of Islands and Taiāmai land. Heke must atone because he was entirely responsible for the war, the Governor stated, and again he warned that more soldiers were coming; indeed, Britain could continue the war until Heke, Kawiti, and their allies 'were all destroyed'.[135]

On 1 October, FitzRoy received notice that he was being recalled to Britain, in part because of his failure to resolve the conflict.[136] Six days later, Kawiti replied to the Governor's letter, saying he was willing to make peace but was not prepared to give up land.[137] FitzRoy, reluctant to negotiate, did not reply, but he instructed his troops to go to Ōkiato, to cut off Ngāti Hine access to the sea and prevent them from fishing. On 3 November, the missionary Henry Williams met with Heke and Kawiti, and reported that, while they both wanted peace, they would fight if the Governor insisted on taking their lands.[138]

FitzRoy's replacement as Governor, George Grey, arrived on 14 November.[139] He travelled to the Bay of Islands and on 28 November, issued Heke and Kawiti with an ultimatum to accept the existing peace terms – including land confiscation – or face further military action.[140] The rangatira were given five days to reply. Both responded on 2 December, saying (again) that they wanted peace but would not accept land confiscation.[141]



On 5 December, Governor Grey ordered his troops to attack Kawiti's pā at Ruapekapeka.[142] About 20 to 25 of its defenders were killed and 12 British soldiers. Grey returned to the Bay of Islands on 18 December to lead the campaign, with the objective to 'crush' one or both of Heke and Kawiti. By this time reinforcements had arrived to swell the British force to 1,300, against a maximum of 400 defenders.[143] On 24 December, after several weeks of preparations, the British began to fire on the pā with heavy artillery.[144] On about 8 January 1846, after a fortnight of sustained shelling, the pā's defenders began a planned evacuation. Finally, on 11 January the pā was breached, allowing the British forces to storm it and attack the retreating Ngāpuhi.[145] Of the British forces, 12 were killed and 29 wounded. Estimates of casualties among those defending the pā range from nine to 25 killed and about 30 wounded.[146] The defenders of the pā withdrew, and the British forces, having destroyed the huts and palisades, departed on 14 January.[147]

Heke and Kawiti were unharmed.[148] Yet again they sought peace, but this time they approached Pōmare II to act as mediator. On 19 January 1846, Kawiti wrote to Governor Grey seeking peace, and Pōmare also wrote to assure the Governor of Heke and Kawiti's sincerity. On 21 January, a major hui was held at Pōmare's Kāretu Pā, where peace was cemented between Heke, Kawiti, and Nene. Pōmare and Nene then travelled to Auckland, where they told the Governor that Heke and Kawiti would no longer fight.[149] On 23 January, Grey issued a formal peace proclamation and a full pardon to all involved in the 'rebellion'.[150] On 29 January, Kawiti wrote to Grey to confirm he consented to peace, on behalf of himself and Heke. With this act, the war was at an end.[151] The blockade was lifted on 1 February 1846.[152]

After the conflict, British troops remained at Waitangi.[153] On 29 January 1858, Ngāti Hine, after erecting a new flagstaff atop Maiki Hill under the leadership of Te Kūhanga

Map 5.6: The routes taken to Ruapekapeka in December 1845 by a British force totalling more than 1,300 soldiers and sailors under the leadership of Colonel Henry Despard and Governor Grey.

Kawiti (later Maihi Parāone Kawiti), held a ceremony to raise the flag and name the pou Te Whakakotahitanga o Nga Iwi. On this occasion, he stated that he would gift land to 'settle peace between Ngati Hine and the Crown.'[154]

5.4 The Road to War: July 1844 to March 1845

5.4.1 Introduction

On four separate occasions from 8 July 1844 to 11 March 1845, supporters of the rangatira Hōne Heke Pōkai entered Kororāreka and felled the flagstaff on Maiki Hill.[155] The Government regarded each of these events as an affront to the sovereignty it presumed to exercise over Te Raki. It responded accordingly, sending for troops in preparation for armed conflict with Heke and his allies, while it also maintained dialogue with other sections of Ngāpuhi.[156] From early January, tensions rapidly increased, culminating in a fourth and final attack on 11 March 1845, during which Heke, Kawiti, Pūmuka, and their allies clashed with Crown forces, leading to casualties on both sides.[157]

Claimants and the Crown had very different views of these events. Claimants told us that the Crown caused the conflict, first by asserting its authority over Te Raki Māori[158] and then by failing to respond appropriately to Heke's protests,[159] instead pursuing a divisive and punitive course that made war inevitable.[160] In the Crown's view, all of its actions during this period were reasonable, and it was Heke who escalated tensions and initiated violence.[161] Heke's 11 March 1845 attack on the flagstaff amounted to 'a declaration of war on the Crown and those Ngāpuhi who had sworn to maintain the peace'.[162]

In this section, we thus consider these issue questions:

- What prompted the first (8 July 1844) attack on the flagstaff and did the Crown take all reasonable steps to resolve tensions with Te Raki Māori?
- Did the Crown take all reasonable steps to resolve tensions in the period between the September 1844 Waimate hui and the second (10 January 1845) attack on the flagstaff?
- Did the Crown cause or provoke the fourth (11 March 1845) attack on the flagstaff?

5.4.2 The Tribunal's analysis

(1) *What prompted the first (8 July 1844) attack on the flagstaff and did the Crown take all reasonable steps to resolve tensions with Te Raki Māori?*

The first attack on the Maiki Hill flagstaff took place on 8 July 1844.[163] Governor FitzRoy responded by sending troops to the Bay of Islands and ordering that the flagstaff be rebuilt. He demanded that Heke pay utu for his actions or face military action. Heke declined. Faced with the threat of military invasion, other Ngāpuhi leaders then stepped in and negotiated with FitzRoy, and on Heke's behalf, paid the utu in return for concessions to ease their concerns about land and trade.[164]

In the claimants' view, the underlying sources of conflict were the Crown's illegitimate claim of authority over Te Raki, and its attempts to extend its practical authority into the district.[165] In their view, Heke and his people attacked the flagstaff in a legitimate act of resistance against Crown authority.[166] Claimants told us that the Governor had failed to meet Heke or address his valid concerns, and instead had responded in an unreasonable manner that escalated tensions.[167] The Crown argued that all of its responses were reasonable and rather it was Heke who had acted unreasonably and had caused tensions to mount.[168] We consider these divergent perspectives in the following sections.

(a) The reasons for the 8 July 1844 attack on the flagstaff

The 8 July 1844 attack on the Maiki Hill flagstaff took place after a three-day muru raid in Kororāreka. During this time, according to settler accounts, about 50 or so of Heke's people occupied and plundered a settler's home, captured an escaped slave, took pigs and food, and broke into other houses, threatening and alarming some of the settler women.[169] According to Phillipson, Heke's party also made speeches threatening violence against Pākehā.[170] Heke met with the Crown officials and missionaries to relate:

> the grievances of the natives, from the death of French explorer Marion Du Fresne to the present time, and

The flagstaff today at Maiki Hill in the Bay of Islands was shaped , then transported and finally re-erected in the middle of January 1858 – except for the topmast. Ngāti Hine clearly expected that the Governor, then visiting the Bay of Islands, would attend the naming ceremony. He did not, and after he left the Bay Ngāti Hine proceeded with the naming ceremony on 29 January.

> particularly mentioned the manner the chiefs had been entrapped into signing the treaty of Waitangi.[171]

Heke also blamed the flagstaff for driving away shipping, which had caused Māori 'to have no trade'.[172]

The first attack on the flagstaff took place early in the morning of 8 July. Heke's party split into three groups: one took a waka to Waihihi, another acted as a covering party in Kororāreka, while a third climbed the hill to fell the flagstaff, then chopped it up and set alight the pieces. Police Magistrate Thomas Beckham and others watched on, judging themselves powerless to intervene. According to Ngāti Kawa sources, Heke was not present when the flagstaff came down as he had delegated the task to a close Ngāti Kawa relative, Te Haratua.[173] According to Beckham, no violence occurred during Heke's time in Kororāreka, other than one minor incident which, the police magistrate said, arose from a misunderstanding.[174] Nor, according to the former British Resident James Busby, was there any plunder of the town's shops, despite them being 'filled with every article on which the natives set a value'.[175] Having fulfilled their mission, Heke's party returned to Kaikohe.[176]

The kuia Emma Gibbs-Smith (Ngāti Kawa, Ngāti Rāhiri) told us that the decision to cut down the flagstaff was made by Ngāti Kawa collectively at a hui at Waitangi, after Heke had sought permission from the hapū. Although the Crown later focused its response on Heke, Ms Gibbs-Smith said the main organiser was the Ngāti Rāhiri and Ngāti Kawa rangatira Te Kēmara, who was too old to participate in the action but retained considerable influence. Te Haratua was from the 'fighting arm' of Ngāti Kawa and he cut the flagstaff down on this and other occasions.[177] Ms Gibbs-Smith told us:

> The Crown focused its rīri on Hone Heke to try and isolate him but it wasn't his decision alone. That is not how our people carry out those sorts of activities. It was the hapū that decided to take the flag down. Putting flags up and then chopping them down are moments of great weight. You don't get individuals in our society doing those sorts of things alone.[178]

She told us that the flagstaff belonged to Heke's Ngāti Kawa hapū. Under Heke's supervision, they harvested the pou from one of their forests in 1834, and fashioned and erected it at Waitangi with the intention that it fly the 1834 flag of the United Tribes. At some point, the flagstaff was moved to Maiki, where ships would see it as they entered

Hōne Heke Pōkai (d 1850) of Ngāti Rāhiri, Ngāi Tāwake, Ngāti Tautahi, Te Matarahurahu, and Te Uri o Hua, the first northern rangatira to sign te Tiriti o Waitangi. Heke, like other signatories, expected the Governor to control settlers and protect Māori from foreign threats. However, he and his hapū soon expressed their dissatisfaction with the Crown's interpretation of the treaty relationship by felling the flagstaff on Maiki Hill four times between July 1844 and March 1845 as a challenge to the Crown's claim of authority over the northern region. A great writer of letters, with the help of his wife Hariata Rongo, Heke wrote to the Governor several times as tensions grew and war broke out in the north, drawing his attention to their conflicting understandings of the treaty and seeking recognition for their shared authority.

the harbour. After the signing of the treaty, Crown officials took down the 1834 flag and raised the Union Jack.[179]

In her view, the first action against the flagstaff was not intended as a threat to the Crown, but rather as a protest or complaint over Crown actions that had harmed Māori interests, including the loss of anchorage fees, loss of trade, loss of land, and loss of the capital to Auckland.[180] Overarching these issues were questions about the treaty relationship and the relative mana of the Crown and rangatira. Ms Gibbs-Smith said that Hōne Heke had supported the treaty but afterwards 'he came to realise that the British were not true to their word'; he found out he 'wasn't a rangatira anymore. . . . He was under the Queen and so was everyone else.'[181] He organised the removal of the flagstaff because of the 'attack on our mana that hoisting the [British flag] represented'.[182]

Historian Ralph Johnson said the Kawiti family had given him access to a document from the family archives that also described the attack as motivated by concerns about the treaty relationship. Titled 'Te Tapahanga Tuatahi o Maiki Pou Kara' ('The first cutting of the Maiki flagpole'[183]), the manuscript affirmed that 'The government and the Treaty of Waitangi had lowered his [Heke's] mana', and for that reason he had decided the flagstaff 'should be brought down'.[184]

Te Raki Māori had particular concerns about the decline in Bay of Islands trade,[185] about the Government's land policies,[186] about settler transgressions against tikanga,[187] and about the Crown's attempts to enforce its laws against Māori.[188] All of these issues had directly affected Heke and his people. He and his hapū (which included Ngāti Rāhiri, Ngāi Tāwake, Ngāti Tautahi, Te Matarahurahu, Te Uri o Hua, as well as Ngāti Kawa) had significant territorial interests from Waitangi and Paihia inland to Kaikohe and Tautoro.[189] They had benefited significantly from anchorage fees at Paihia and Waitangi until the Crown prohibited them and imposed customs duties.[190] Heke was a 'prime mover' on land issues among Ngāpuhi rangatira. According to Dr Phillipson and Mr Johnson, this reflected Heke's obligation to fulfil the dying wish of his relative and father in law Hongi Hika: 'Children, and you my old comrades, be brave and strong in your country's cause. Let not the land of your ancestors pass into the hands of the pakeha.'[191]

Heke regarded the inquiries of the Lands Claims Commission into pre-treaty land claims (see chapter 4, section 4.4, and chapter 6, section 6.4) as Crown interference in relationships between rangatira and settlers.[192] More particularly, he resented the Crown's policy of retaining 'surplus' lands from those claims (that is, lands that settlers claimed but were not awarded to them because the acreage exceeded what was allowed under the law; the Crown retained this 'surplus' for itself instead of returning the land to Māori).[193] Heke had also been frustrated by increasingly frequent settler transgressions against tikanga and tapu at places such as Ōmāpere,[194] and by the attempts of Crown officials to impose their legal system on Māori as had occurred with the arrest and trial of Maketū in 1843 (which we discussed in section 4.4.2).[195]

We discussed the continued use of taua muru during this period as a manner of enforcing Māori law and dispute resolution.[196] In many instances, Māori–settler conflicts caused by breaches of tikanga were a cause of muru, but were settled by officials or missionaries with the payment of utu. For instance, when settlers breached the rāhui at lake Ōmāpere to take ducks in 1843 and 1844, Heke arrived with a taua muru and demanded utu for the breaches of tikanga. In both instances, he accepted payment from the Anglican Bishop of New Zealand, George Augustus Selwyn, as compensation.[197] Heke's Kororāreka muru occurred when a young woman named Kōtiro – a Taranaki war captive – ran away with a settler, thereby challenging Heke's mana.[198] As discussed in chapter 4, these incidents reflected different Māori and Pākehā interpretations of the treaty. Māori believed te Tiriti preserved their independent authority, preserved their lands, protected them from uncontrolled settlement, and provided a basis for ongoing mutually beneficial relationships with the Crown and settlers.[199] Rangatira had signed te Tiriti only after receiving assurances that they and the Governor would be equals, and that Britain would use its power to protect them and their interests, not subjugate the Māori people.[200] Furthermore, during the early 1840s Te Raki Māori had continued to govern themselves in accordance

with their tikanga, and manage Māori–Māori and also Māori–settler conflicts with minimal Crown intervention (see chapter 4).[201] In this period, muru were much loathed by settlers as contrary to their laws of property and protection of person but tolerated while the colonial Government had insufficient troops to control Māori communities.[202]

Conversely, the Crown believed it had acquired sovereignty over Māori territories and people, and had a right to enforce its laws over them.[203] Since 1840, the Crown had acted accordingly by proclaiming its sovereignty and gradually seeking to extend its practical authority.[204] As Lieutenant-Governor, then Governor, William Hobson had been instructed by successive Colonial Secretaries, including Lord Normanby, Russell, and Stanley, to 'tolerate' Māori customs that were 'not directly injurious'.[205] As we discussed in chapter 4, Stanley had responded to Hobson's request for more soldiers, following Heke's October 1840 muru of George Black, with the recommendation that the colony establish legal protections for Māori (see section 4.4.2.1). In particular, he considered that severe penalties could be imposed on settlers who desecrated wāhi tapu. By giving Māori recourse under the colony's laws, he observed, they would be more inclined to trust the Crown's authority and feel less need to take matters into their own hands.[206] However, settlers and the colonial Government were generally more intolerant than imperial authorities of Māori customary law.[207] No legal recognition was provided for Māori custom, and tensions had emerged when the Crown and settlers overstepped what the treaty had granted and increasingly asserted authority over Māori in respect of trade, resources, and land, and transgressed against tikanga. Indeed, in many cases their actions neglected the relationship altogether.[208]

For years, settlers had warned or taunted rangatira that the Crown's understanding of the treaty did not match that of rangatira. Some had said that Māori had lost their mana and had become 'enslaved' as a result of the treaty, and some said also that the Crown was waiting until it had sufficient practical power to seize their lands, as it had in other nations.[209] As discussed in chapter 4, Heke had on occasion raised these issues with the Chief Protector of Aborigines, George Clarke senior, or with missionaries.[210]

Consistently, Heke explained his actions against the flagstaff in terms of the treaty relationship, and in particular his belief that the Crown had deceived Māori into signing, by failing to explain its intentions fully. As noted earlier in this section, Heke told officials at Kororāreka that Māori had been 'entrapped' into signing te Tiriti.[211] In 1845, he wrote that he had not initially believed settler warnings about the Crown's understanding of the treaty, but gradually he came to believe them, and 'at once approached [the] Flagstaff, and cut it asunder that it might fall'.[212] Later that year, he referred to the treaty as 'soft soap', reflecting his view that its meaning in te reo was good but its English meaning was elusive.[213] In 1849, Heke wrote to the Queen to say that Hobson had misled him by failing to explain that the 1834 flag of the United Tribes would be replaced by a British ensign. This was literally true but was also intended figuratively, a reflection of Hobson's failure to explain clearly that Britain's offer to protect Māori was conditional on their submission to the Crown's authority. Heke told the Queen that he and other rangatira had 'in our folly' consented to the treaty '[n]ot understanding the authority which accompanied the appointment of governors'.[214]

Crown officials also recognised that differing interpretations of the treaty lay behind Heke's concerns. Governor FitzRoy and other officials typically blamed this on 'bad and designing' settlers leading Heke astray,[215] though some officials were aware that Māori did not see themselves as having submitted to the Crown's laws or authority.[216] Busby wrote in 1845 that the conflict had begun because Māori believed the Crown had misled them at Waitangi, particularly over its intention to fund colonisation through profits from trade in Māori land.[217] Tāmati Waka Nene wrote in 1847 that Heke's opposition to the Crown arose from settlers' words to Māori, 'taurekareka kua riro te mana o to koutou whenua' (which we translate as 'Slave, your authority over your country is gone').[218] The missionary Henry Williams, in response to Nene, acknowledged that the war had been caused because Pākehā were

telling Ngāpuhi: 'the sovereignty [mana] of your country is gone'.[219]

Heke chose the flagstaff as his target because he recognised it – and the ensign it flew – as symbols of the Crown's claim of authority.[220] To Heke, that authority had driven away shipping, impoverished his people, and subverted his mana.[221] Later, on several occasions he elaborated on his understanding of the flag as a symbol of authority and control. Explaining his actions to Governor FitzRoy, he wrote that Māori lands would be seized by the Governor and the people destroyed or exterminated, as had occurred in other colonies.[222] 'Ko te kara te kai tango wenua', he wrote.[223] The missionary Thomas Forsaith translated this as: 'The Ensign (or Color) takes possession of the Land.'[224] Another missionary, James Kemp, translated it as: 'The flag is the sign of conquest.'[225] Heke also explained that the flag must be seen in the context of the long-standing relationship between Ngāpuhi and the Crown. In 1820, Heke's relative, Hongi Hika, had met King George IV. King George had assured Hongi that Britain would never seize possession of New Zealand unless the British flag was flying here. When Busby had arrived with a flag in 1834, that had not been a challenge to Ngāpuhi mana, but when Hobson arrived with the Queen's flag, Heke knew that King George had spoken the truth.[226]

Heke's understanding of the flag and flagpole as a symbol of authority was inevitably shaped by the Māori tradition of pou rāhui – carved sticks that were used as markers of territorial rights, especially when those rights were contested. Just as raising a pou rāhui was an assertion of rights, cutting it down signalled rejection of that claim. During the 1830s, Te Rarawa had used a British ensign for exactly this purpose, and Ngāpuhi had felled the pole from which it flew.[227] In an 1856 account of the war, the Eastern Sub-Protector of Aborigines Edward Shortland described the relevant tikanga:

> When two tribes contest the right to any place, one of them will set up their post: their antagonists will soon after come and cut it down: but, probably, either party will take care not to meet the other on the disputed ground till the post has been cut down and re-erected several times: when, if neither party will yield, the dispute at last ends in a fight.[228]

According to Ms Gibbs-Smith, the Crown committed a 'grave insult' to Ngāti Kawa when it removed the 1834 flag and replaced it with the British ensign. Heke and his people therefore determined to act.[229] Te Haratua felled the flagstaff on Heke's behalf, because 'you don't remove your [own] pou'.[230] This account accords with Heke's own explanation. Soon after felling the flag, he wrote to the Governor, 'The pole that was cut down belonged to me. I made it for the Native flag and it was never paid for by the Europeans.' By arranging for the flagstaff to be felled, he was asserting his mana and that of his hapū over the pou and all it represented.[231]

After the flagstaff was downed, Heke offered to erect two flagpoles on Maiki Hill, so as to symbolise the dual authority of the Crown and rangatira.[232] Later, he offered other means by which he could assert his mana while also acknowledging the Crown's kāwanatanga. The dual flagpoles are in contrast with Heke's proposal after the second felling in January 1845 (discussed later), when he offered to rebuild the lower part of the flagstaff, symbolising 'his right to the Mana (chieftainship) of the country', while the Government would build the part above and hoist its flag.[233]

In sum, we see the felling of the flag as a carefully organised and controlled action in which Heke, Te Haratua, and others sought to signal their resistance to Crown actions that impinged on their chiefly authority, including attempts to control Te Raki lands, trade, and criminal justice.[234] Heke and his supporters resorted to this action after previous attempts at engaging with the Crown had proved fruitless, as discussed in chapter 4.[235] We do not believe that the Crown's actions up to that point had fatally weakened the tino rangatiratanga of Ngāpuhi hapū; on the contrary, those hapū largely continued to govern themselves.[236] But the Crown did assume it possessed sovereign authority over the north and had attempted to exert practical authority in a manner that had damaged Ngāpuhi interests. This caused Heke and other rangatira

Robert FitzRoy, Governor of New Zealand from 1843 to 1845.

to question the Crown's understanding of the treaty.[237] We agree with Dr Phillipson that Heke's goal was to challenge the Crown's claim of authority over Te Raki and its people,[238] and to press the Governor to acknowledge their tino rangatiratanga.[239]

(b) Crown and Ngāpuhi responses to the first felling

The action by Heke and his people represented a challenge not only to the Crown but also to neighbouring hapū with interests in Kororāreka.[240] During the 1830s and early 1840s, Heke had asserted rights over land at the foot of Maiki Hill, leading to disputes with the section of Ngāi Tāwake and Te Patukeha living at Te Rāwhiti.[241] By orchestrating the attack, Heke was asserting his claim over the flagstaff and its land, and so was also renewing his challenge to those hapū.[242] Within hours of the flagstaff being cut, about 400 Te Rāwhiti Māori descended on Kororāreka.[243] According to Police Magistrate Beckham, they were incensed at Heke's conduct. The Te Rāwhiti people declared that the flagstaff had been erected under their authority, not that of Heke or his people. They therefore erected a temporary flagstaff, offering to protect it until a permanent replacement could be built, and 'determined to punish [Heke] for the outrages he had committed'.[244] The Crown presented this as evidence that 'many within Ngapuhi disagreed with Heke's actions'.[245] In fact, as we will see, many within Ngāpuhi (including Te Patukeha leader Rewa) shared Heke's concerns about the treaty relationship, even if they did not necessarily support his methods.[246] In this initial response, Te Rāwhiti Māori were defending their own authority over the flagstaff, land, and the Crown–Māori relationship.[247]

Fearing a general outbreak of war, Beckham persuaded Te Rāwhiti Māori to take no action against Heke until the Governor's wishes were known. Bishop Selwyn then intervened, inviting all Bay of Islands and Hokianga rangatira to a hui at the Waimate mission on 18 July 1844.[248] Governor FitzRoy appears to have heard of Heke's actions on 9 or 10 July, through reports from Beckham; the Northern Sub-Protector of Aborigines, Henry Tacy Kemp; and some Kororāreka settlers.[249] While he acknowledged that Heke's actions had alarmed Kororāreka residents,[250] in our view, his subsequent words and actions made clear that his main concern was the attack on the flagstaff – which he understood as a symbolic attack on the Crown's sovereignty.[251]

Although the flagstaff had been taken down without serious violence,[252] Governor FitzRoy determined that a show of military force was needed to demonstrate that rangatira could not dishonour the flag or harass settlers without consequence. FitzRoy made this decision without seeking input from the Colonial Office in London, nor did he conduct any inquiry into the facts or seek Heke's view; instead, he relied on advice from Kororāreka settlers and local officials.[253] On 10 July, FitzRoy sent a contingent of 30 soldiers and one officer from Auckland to Kororāreka. He instructed Beckham to wait for the troops' arrival in a few days and then to re-erect the flagstaff in the same position as before.[254]

This initial force was to remain in Kororāreka and act only in a defensive capacity.[255] But FitzRoy also planned to send a much larger force, with a punitive purpose in mind. His plan, which he discussed with the Executive Council, was to send a warship and a contingent of troops to the Bay of Islands, and demand some form of compensation or atonement from Heke. By this means, he intended to show Heke and indeed all Māori 'that outrages cannot be committed with impunity' and that colonial laws would be enforced. If Heke would not comply with the Governor's demands and 'make atonement for his conduct', then 'compulsory measures would be employed to oblige him to do so'.[256]

FitzRoy, furthermore, determined to co-opt other Ngāpuhi leaders to assist him in his action against Heke. On 12 July, he instructed Crown officials in the Bay of Islands to call the district's leading rangatira together and ask for their assistance 'in obliging Heke to make such compensation and atonement as I shall deem necessary'. FitzRoy emphasised:

> Heke is alone considered blameable; that it is from him that atonement will be demanded; and that the concurrence

> of all other chiefs is desired and expected, in obliging him peaceably to acknowledge and make compensation for his misconduct.

FitzRoy's view that Heke acted alone appears to have derived from initial settler and official accounts.[257]

Accordingly, on 13 July FitzRoy wrote to Governor Gipps in Sydney, asking for a warship and two companies of soldiers, together with artillery, ammunitions, and provisions for three months. These reinforcements would join the HMS *Hazard* (already in New Zealand) and the troops now at Waitangi, before moving against Heke.[258] FitzRoy told Gipps he had gone to 'the utmost pains and precaution . . . to avert the necessity of making a hostile display', but had reached the point where 'there is no longer any alternative'. Either the Government must accept that it could not defend settlers or the honour of the flag, or it had to take military action to 'restore respect for our flag, and ensure tranquillity in the colony'.[259]

Here, FitzRoy made it plain that he was targeting Heke with a broader purpose in mind. Heke's attack on the flagstaff coincided with land disputes between Māori and settlers in Taranaki and Wellington, both of which had threatened to erupt into violence. In FitzRoy's view, a 'timely demonstration of power' was needed. The greater the display, the more effective such action would be at restoring the Crown's authority and, through that, maintaining order. The Governor therefore sought to make an example of Heke with an 'overpowering' military display, hoping that the 'moral effect' would be felt throughout the country. FitzRoy sought 'at least' two companies of soldiers, as well as 'two light field pieces, a howitzer, some rockets and hand grenades, and a supply of provisions for three months'.[260] Governor Gipps responded in August by sending an officer and 150 soldiers aboard the *Sydney*, with the proviso that the troops must return once their task was complete.[261]

FitzRoy's response may also have been influenced by the relentless criticism he continued to face over his refusal to arrest Ngāti Toa leaders for their roles in the Wairau Incident. While the Governor was determining how to counter Heke, Nelson settlers were circulating a petition to the House of Commons which they hoped would force his resignation. FitzRoy had refused to take enforcement action against Ngāti Toa because the New Zealand Company had provoked the conflict. But he also believed that any action would lead to a war, which the Crown, with its meagre military resources, would inevitably lose.[262] The action by Heke and his people provided an opportunity to strengthen the Crown's hand at a time when, according to newspaper reports, the British government was offering FitzRoy a much larger force should it be needed.[263]

In contrast to Wairau, the Governor was now committed to a punitive course, under which Heke would be forced to atone for his own challenge to the Crown's authority and to serve as an example for other Māori. Furthermore, the Governor had decided to act immediately and without making any proper attempt to inquire into the facts or understand Heke's motives. We agree with Mr Johnson that the Governor was not interested in conciliation; rather, his aim was 'to buttress [the Crown's] claim to sovereign authority in the Bay of Islands and New Zealand as a whole'.[264] Punitive action was not necessary to secure peace in Kororāreka as Heke's party had left without committing any acts of serious violence, Rewa of Te Patukeha was protecting the town, and troops were on their way to supplement the town's defence.[265]

During our hearings, we asked Dr Phillipson whether he was surprised at the strength and urgency of FitzRoy's reaction to Heke, given his earlier, more considered, and lenient approach towards the rangatira involved in the Wairau killings. The difference, in his view, was that 'there was no attack on the Queen and the Queen's sovereignty in what happened at Wairau':

> [FitzRoy] saw it purely as a land dispute in which the New Zealand Company was clearly in the wrong. And although it resulted in significant killing of people, he therefore took a view that was quite different when he felt that the Queen and the sovereignty of the Queen and the Queen's flag was being attacked.[266]

Even if a punitive military response had been necessary, FitzRoy was required first to exhaust all non-violent means of securing peace and good order.[267] Yet the Governor had made no attempt to find out why Heke had felled the flagstaff, let alone opened any dialogue with Heke. Though FitzRoy did seek dialogue with other Ngāpuhi leaders, it was only for the purpose of forcing Heke into compliance. Had he sought to understand Heke's concerns, FitzRoy might have also understood the signal he was giving by sending troops and ordering the flagstaff rebuilt.[268] As we will see in later sections, each of FitzRoy's initial decisions – to rebuild the flagstaff, demand atonement from Heke, threaten force if Heke did not comply, and seek assistance from other rangatira to force Heke's compliance – would push the Crown and Ngāpuhi closer to conflict.

It is notable, in this context, that the Crown had not considered military responses to previous taua muru in Te Raki or elsewhere.[269] As discussed extensively in chapter 4, the Crown's policy in 1840 had been one of tolerance (for the time being) of most Māori laws and customs, as a first step towards assimilation, except in cases of 'atrocities' such as cannibalism. Since 1840, there had been many discussions among colonial officials about how to provide for customary law within the colony's legal system. In practice, the colonial Government had done little to intervene in cases of settler–Māori conflict except where serious violence was involved (as it had been when the Crown sought Maketū's arrest). Even then, the Crown had negotiated with rangatira to resolve matters instead of relying on its own enforcement powers.

To some degree this policy reflected the humanitarian underpinnings of British policy makers; however, it also reflected the pragmatic acknowledgement that the colonial Government lacked the resources or military power to assert its will over large, well-armed Māori populations. Chief Protector Clarke had long advocated for the principal rangatira in each district to be recognised in the colonial justice system as judges and enforcers of law, both for internal Māori disputes and for those between Māori and settlers. As we have seen, the Native Exemption Ordinance 1844 enacted a watered-down version of this policy, providing for rangatira to be recruited as agents for the enforcement of colonial laws, and for utu to be paid (instead of imprisonment) in cases of 'theft'. This measure came into effect on 16 July, three days after the Governor called for more troops, and was not popular among the growing settler population.[270] It is no exaggeration to see FitzRoy's request for troops as a significant departure from the previous Crown approach. He was determined to ensure that the Crown's laws were enforced and its authority respected, though he would remain open, at least for the time being, to rangatira enforcing law on the Government's behalf.

(c) The July 1844 Waimate hui

Ngāpuhi leaders had long held concerns about the prospect of Britain or any other European power sending soldiers into their territories. While they had confidence in their own military abilities, they were also aware – from their travels to London and Sydney, and from previous incidents of European-Māori violence – of the threat posed by Europe's larger armies and military hardware.[271] During the treaty debates in 1840, Rewa, Kawiti, Tāreha, and others explicitly rejected any arrangement in which British soldiers were sent to New Zealand.[272] They and other rangatira signed te Tiriti only after receiving explicit assurances that the Crown would not use its military power to deny their mana and make them 'slaves', and would instead use that power only to protect them from other foreign threats.[273]

By signing te Tiriti, they had taken a calculated risk that the Crown would be true to its word and would exercise its power in a manner that protected their tino rangatiratanga.[274] When news of FitzRoy's military plans reached Te Raki, it seemed to Ngāpuhi that this promise was to be broken, and that the Crown's guns were to be turned on some of their own.[275] In spite of their misgivings about the Crown's exercise of kāwanatanga, most rangatira did not want to become embroiled in a potentially messy conflict that would further upset trading relationships and, regardless of how well they fought, could ultimately lead to their being overwhelmed.[276]

Sketch by Reverend Thomas Biddulph Hutton of one of the 1844 hui organised by Bishop Selwyn and held at the Waimate mission station. It is unclear whether this depicts the July or September hui.

FitzRoy had instructed Sub-Protector Kemp to call Ngāpuhi leaders together to deliver his message about the compensation he required from Heke.[277] But ultimately it was Bishop Selwyn, together with missionaries and Ngāpuhi leaders, who organised the hui.[278] Selwyn invited at least 52 senior Ngāpuhi rangatira to meet at Waimate on 18 July 1844.[279] The day before, the first contingent of soldiers arrived from Auckland aboard the *Sydney*,[280] and rangatira began to gather at Horotutu Beach near Paihia.[281] According to the Whangaroa kaumātua Nuki Aldridge and witness in our inquiry:

> The arrival of the troops was a breach of the Māori understanding of what they essentially believed was a treaty of peace. It is clear that there was nothing in the Treaty that warned Māori of the threat of war or of a British military presence in New Zealand.[282]

Among the 300 or so recorded as attending the Waimate hui were Makoare Te Taonui and Tāmati Waka Nene of Waihou, Paratene Te Kekeao of Taiāmai, Waikato of Rangihoua, and Wiremu Hau, Rāwiri, and Heke of Kaikohe.[283] Rewa of Kororāreka chose not to attend, presumably because of his dispute with Heke over Maiki Hill. It is not clear from the available evidence whether Ngāti Hine leader Kawiti, who did not attend, was invited.[284] The bishop's chaplain, William Cotton, recorded some details of the proceedings. Most speakers, he said, were

'peaceably disposed', and all were against 'the sending for the [British] soldiers'.[285] As he had at Kororāreka, Heke gave a long speech about the impacts of Pākehā in the north, and 'made a great grievance' about the Crown replacing the 1834 flag with its own ensign. According to Cotton, Heke had felled the flagstaff because it was erected 'for the New Zealand flag & not for the Queen's'. Heke's other concern was that a Church of England service had been amended after 1840, replacing a prayer for rangatira with a prayer for the Governor and Queen.[286] Both of Heke's concerns, in other words, arose from his perception that the Crown had usurped the mana of Ngāpuhi rangatira.[287]

Having called the hui, Selwyn intended to visit the Governor immediately afterwards with a message from the rangatira. He was aware of the Governor's plan to attack Heke and of the potential for any conflict to engulf all of Ngāpuhi; he hoped that a suitably worded letter would appease the Governor and secure peace.[288] During the hui, the missionary Robert Maunsell drafted a letter to FitzRoy setting out Heke's main points, and 'all the chiefs' signed it. This suggests that other rangatira present, including Tāmati Waka Nene, shared Heke's concerns about Crown and Pākehā challenges to Māori authority and about the Crown's replacement of the 1834 flag with its own.[289]

Selwyn was not happy with the letter and refused to convey it to the Governor. He encouraged the rangatira present to find wording that expressed their concerns less directly and would therefore appease FitzRoy and prevent conflict.[290] The morning after the hui, Selwyn met with several 'principal Maori chiefs' in his study and drafted 'a more satisfactory letter'.[291] This second letter appears to have been written in Māori and then translated into English by the Auckland Sub-Protector of Aborigines, Thomas Forsaith.[292] According to Johnson, British archival records contain several versions of the translated letter, with very slight variations. Some of these were signed by Heke alone, and others by Kainga Tuanga, Wiremu Hau, and Te Hira Pure.[293] The version that was published in the *British Parliamentary Papers* was signed by Heke alone and read:

> Friend governor, this is my speech to you. My disobedience and rudeness is no new thing – I inherit it from my parents, from my ancestors, do not imagine that it is a new feature in my character – but I am thinking of leaving off my rude conduct towards the Europeans. Now I say that I will prepare another pole, inland at Waimate, & I will erect it at its proper place at Kororarika in order to put an end to our present quarrel. Let your soldiers remain beyond Seas, and at 'Waitemata', do not send them here. The pole that was cut down belonged to me. I made it for the Native flag and it was never paid for by the Europeans.
>
> From your friend, Hone Heki Pokai[294]

This letter was far more conciliatory in tone than Heke's speech had been, and less clear about the concerns he shared with other Ngāpuhi rangatira. It contained what Dr Phillipson described as 'a somewhat ambivalent apology',[295] and offered to restore balance by re-erecting the flagstaff. Whereas on other occasions Heke had made statements that openly challenged the Crown's claim of authority over Māori, here he framed his cause narrowly as an argument about rights in the flagstaff itself. His only clear assertion of mana was to insist that he, not the Government, would reinstall the flagstaff. Crucially, the letter contained a clear appeal for peace.[296] It was thus a significant compromise on Heke's part and indicated the lengths to which he and other rangatira would go to avoid armed conflict. Bishop Selwyn later said that Tāmati Waka Nene 'almost compelled John Heke to sign that letter of apology'.[297]

In Bishop Selwyn's view, the letter from Heke would prevent a war.[298] He therefore took it with great haste to Auckland, just missing the Governor, who had departed aboard the HMS *Hazard* on 20 July. FitzRoy was bound for New Plymouth where a dispute arising from a New Zealand Company land claim was threatening to erupt into bloodshed.[299] Ironically, while on its way to Taranaki, the *Hazard* called in briefly at the Bay of Islands. FitzRoy remained on board, telling no one of his presence, but nonetheless assuring himself that 'tranquillity was restored' in Kororāreka.[300] Having arrived in Auckland to find the Governor absent, Selwyn continued overland

with the aim of meeting him in Taranaki, covering the distance 'in only 7 days instead of the usual fortnight' and delivering the letter around the end of July or beginning of August.[301]

On 22 July, several Ngāpuhi rangatira sent another letter to FitzRoy. This was signed by Te Hira Pure, Te Pakira, Hohaia Waikato, Anaru Aa, Tāmati Waka Nene, and Rapata Tahua. These rangatira represented territories from inland Hokianga and Kaikohe to Rangihoua and Whangaroa. In contrast to Heke's letter, theirs was assertive in tone and set out the points that – in the interests of peace – Heke had agreed to remove from his letter to the Governor. This new letter called on the Crown to recognise and honour its pre-treaty commitment to Māori independence and asked that the Governor agree to a new flag for rangatira:

> E mara e te kawana
>
> Tenei ta matou kupu ki a kupu ki a koe.
>
> E mahara ana matou ki te korero a Kingi Wiremu i mua. Tena ma te karaka e korero atu ki a koe. I te kainga o te Puhipa te Komiti.
>
> I whakaetia i reira te tahi kara ma te tangata Maori
>
> Tae rawa mai te Kawana Tuatahi
>
> Ka pehia ta matou kara i Waitangi, kawea ketia ana ki Kororareka
>
> Heoi e mea ana matou kia whakaaetia e koe te tahi kara me matou ma nga rangatira Maori
>
> Te Hira Pure
> Na te Pakira
> Hotoaia [Hohaia] Waikato
> Anaru Aa [Ai?]
> Tamati Waka Nene
> Rapata Tahua[302]

There is no surviving contemporary translation of this letter, but Ngāpuhi kaumātua Rima Edwards provided a modern translation:

> Dear governor,
>
> These are our words to you.
>
> We recall and remember the words of King William before. Clarke [the Chief Protector of Aborigines] will explain/speak to you.
>
> The Committee is [was] at Puhipi's [Busby's] home.
>
> It was agreed that there would be a flag for the Maori people.
>
> When the first governor arrived, our flag was denied at Waitangi.
>
> It was instead taken to Kororareka.
>
> We are saying [asking] that you agree to a flag for us, the Maori rangatira.
>
> Signed
> Te Hira Pure,
> Te Pakira,
> Hohaia Waikato,
> Anaru Aa,
> Tamati Waka Nene,
> Rapata Tahua[303]

The 18 July hui and the letters that followed were significant for several reasons. First, the hui appears to have been widely attended, and there is no evidence of significant tension or division.[304] Secondly, the rangatira present, including Tāmati Waka Nene, explicitly shared Heke's concerns about the British ensign replacing the 1834 flag. But they were also unanimous in wanting peace and in opposing the presence of any British troops in their lands. Thirdly, Selwyn did not believe the Governor could be persuaded to keep the peace if Heke and other rangatira honestly expressed their views about the treaty relationship and the flag. Fourthly, Heke was prepared to compromise his views and sign a letter of contrition in order to secure peace; as he said, he hoped that his offer to restore the flagstaff would be sufficient to 'put an end to our . . . quarrel'.[305] Finally, other Ngāpuhi rangatira, including Nene, felt strongly enough about the flag to send a separate letter expressing their views.[306] Having sent their letters, Ngāpuhi now waited to see how FitzRoy would respond.[307]

(d) The Governor's response to letters from rangatira

It is not clear when FitzRoy received the letter sent by Nene and others, or how he responded.[308] As noted earlier,

he was in possession of Heke's letter around the end of July or early in August 1844,[309] and he understood Heke to be apologising and offering atonement for his earlier actions.[310] Nonetheless, FitzRoy made no changes to his plans. He did not reply to Heke,[311] nor did he cancel his request for additional troops from Sydney or rescind the order for Beckham to rebuild the flagstaff.[312] After visiting Taranaki, FitzRoy continued to Wellington and then Auckland, where he arrived on 19 August.[313]

During this period, two significant developments had occurred in the Bay of Islands. Together, they created the impression that the Crown had rejected Heke's overtures for peace and was instead preparing for war. First, Beckham and the Auckland soldiers rebuilt the flagstaff. The exact timing of this event is not clear.[314] The missionary William Williams recorded Heke reacting to the rebuilding of the flagstaff on 16 August, about a fortnight *after* FitzRoy received Heke's letter.[315] Irrespective of the exact timing, the flagstaff was rebuilt on FitzRoy's orders, which were made before he had attempted to communicate with Heke or any other Ngāpuhi leaders.[316]

To Heke, it appeared that FitzRoy had rejected his conciliatory offer and was persisting in his claim of authority over Ngāpuhi and their territories.[317] We noted earlier that he later wrote to FitzRoy explaining that he had felled the flagstaff because he had been told that the Crown intended to destroy Māori and seize their territories, and because he saw the flag as a symbol of the Crown's claim of authority or conquest over those territories. After the flagstaff was rebuilt, he and other rangatira 'concluded it was true inasmuch as it was persisted in', and they therefore determined to defend their territories or die trying.[318] As we have discussed, this was consistent with the tikanga under which any decision to rebuild a pou rāhui was seen as a clear assertion of territorial sovereign authority, and could lead to war if neither party backed down.[319]

Several missionary and official observers saw this as a critical moment in the trajectory towards war and commented on FitzRoy's failure to engage in dialogue before the flagstaff was rebuilt. In Selwyn's view, Heke's letter would have been enough to secure peace 'if the Flag Staff had not been erected, without further communication between the Government and the Ngapuhi Chiefs'.[320] Another missionary, James Shepherd, wrote in 1848 that the subsequent war had been caused by a Ngāpuhi belief that the Government intended to seize their territories, 'and the putting up of the flagstaff time after time confirmed the natives in that opinion'.[321] Williams recorded that Heke was 'much incensed' because the Governor had acted without waiting for or responding to his peace proposal.[322]

The second significant development was the arrival on 18 August of a ship from New South Wales, with 150 soldiers and an officer aboard to supplement the 30 soldiers earlier sent from Auckland.[323] Ngāpuhi leaders had been waiting for a response from the Governor and were much alarmed when a large contingent of soldiers preceded him and set up camp at Kororāreka.[324] As Bishop Selwyn wrote in 1845, 'the whole body' of Ngāpuhi suspected Britain's intentions, 'and the arrival of the soldiers led them to believe that all their suspicions of old standing were then to be fulfilled, by an attempt on our part to subjugate the people'. In other words, FitzRoy's orders appeared to be proving Heke right.[325] Many rangatira gathered at Horotutu Beach to debate this new development and consider how to respond if hostilities broke out.[326]

Meanwhile, after circumnavigating the North Island, FitzRoy reached Auckland on 19 August and made immediate plans to continue on to the Bay of Islands,[327] where he arrived, six days later, aboard the HMS *Hazard*. Its crew of 50, together with further reinforcements from Auckland, brought the total number of troops at FitzRoy's command to 250,[328] making it the biggest British military force so far assembled in New Zealand.[329]

FitzRoy's intention, he wrote to Secretary of State for War and the Colonies, Lord Stanley, in London, was 'to make an immediate demonstration' of military power sufficient to 'overawe the ill-disposed, and encourage others who are friendly'.[330] He gave orders that the soldiers under his command be taken by ship to Te Puna Inlet, in preparation for landing at Kerikeri and an overland march to Heke's pā at Kaikohe.[331] Mr Johnson understood these actions to mean that FitzRoy intended 'a short and sharp attack' on Heke and his supporters, and FitzRoy certainly

prepared for such a possibility.[332] But FitzRoy's plan, approved by the Executive Council and outlined in letters to other Government officials, was to demand compensation first and use force only if Heke did not comply.[333] Peace, in other words, was conditional on Heke accepting the Governor's non-negotiable terms and submitting to the Crown's authority. FitzRoy's faith in British firepower led him to hope that the mere threat of military intervention would be enough to secure Heke's compliance.[334] He had initially sought the troops for a maximum of three months,[335] and now hoped that they would soon return to New South Wales after 'proving that we do not take undue advantage of our strength'.[336]

While FitzRoy and his party had been travelling from Auckland, Ngāpuhi had been debating how they should respond to the arrival of troops.[337] Most rangatira shared Heke's concerns about the Crown's actions and intentions,[338] and at that point were likely to side with Heke if he were attacked.[339] But they were also anxious to avoid war if they could, due to its uncertain outcomes and inevitable cost to trading relationships.[340] On 26 August, FitzRoy stopped at Kororāreka where he was met by 70 Māori including the senior rangatira Nene, Te Kēmara, Tāreha, Rewa, and Moka.[341] Nene was from the inner Hokianga, and the others represented northern Bay of Islands hapū.[342] The surviving records do not mention southern Bay of Islands hapū such as Te Kapotai, Ngāti Manu, and Ngāti Hine as being present.[343]

The rangatira told FitzRoy they did not want war and asked what compensation he sought.[344] According to one missionary account, FitzRoy demanded that Heke 'give up ten guns and the axe with which the flagstaff was cut'.[345] Another report stated that FitzRoy also asked for Heke's waka and demanded that Heke meet him in person and apologise. If Heke complied with these terms, 'all will be settled'; if not, the 200 troops would march on Kaikohe.[346] Yet another account recorded FitzRoy requiring that Heke and his supporters make a promise of future good conduct.[347] According to William Cotton, the rangatira were 'quite delighted with the easy terms, saying "Kotahi ka ora tatou. Now for the first time we are saved."' They acknowledged that '[a]n utu may be payed' to atone for Heke's actions. But, Cotton observed, 'had John Heke's person been demanded, very many natives would have joined him'.[348]

Following the meeting between Heke and FitzRoy, Chief Protector Clarke and three or four senior rangatira visited Heke at Kerikeri and attempted to persuade him to agree to the Governor's terms. The missionary William Williams also visited Heke, and Clarke returned the following day (August 27) for further discussions.[349] Heke refused to agree to terms 'while the British flag was up',[350] and was determined 'not to see the Governor unless it is agreed to take away the flagstaff'.[351] Later, the rangatira Ruhe said that Heke had understood 'ten guns' to mean the confiscation of 10 miles of land between Ahuahu and Kaikohe, though no other sources support this.[352] In essence, this was a contest for mana. Heke had set out his terms in his letter to FitzRoy, who (from Heke's point of view) had ignored or rejected them and imposed his own terms, demanding that Heke comply or face military action. As Johnson observed, Heke was unlikely to allow his rangatiratanga to be trampled in this manner.[353] Heke was also unimpressed with the British military contingent that was supposed to force him into submission. According to one settler, 'It is said that John H laughed at the idea of 200 coming to oppose him and well he may.'[354]

In the absence of a positive response from Heke, FitzRoy pressed ahead with his plan to march on Kaikohe. An army captain was sent on foot to determine whether artillery could be moved inland, while FitzRoy ordered the troops back onto ships in preparation for a landing at Kerikeri on 28 August.[355] As an indication of just how high tensions were, troops at Kororāreka very nearly opened fire on Te Patukeha warriors who were performing a haka to signal their support.[356]

A day before the planned invasion, Nene and several other rangatira met the Governor. They proposed a compromise that did indeed secure immediate peace but ultimately, and seriously, deepened existing divisions within Ngāpuhi. They offered to pay the utu FitzRoy had demanded and to answer for Heke's future conduct. In turn, they insisted that British troops 'must not enter Ngapuhi territory armed'. They warned the Governor that

Tāmati Waka Nene (d 1871) of Ngāti Hao, a leading rangatira and war leader of Hokianga. Nene fought against Hōne Heke during the Northern War in defence of his understanding of te Tiriti and because of his promise to the Governor in 1844 to keep Heke under control. This was a strategic decision to avoid British soldiers coming into Ngāpuhi territory. Dr Benjamin Pittman gave evidence that Nene understood that Māori 'were caught between two worlds' but clearly saw that Pākehā had a capacity for dishonesty. Nene also understood what the British flag symbolised for Māori but described the flagstaff as 'he iti rākau' (merely a bit of wood).

any troop landing would be a significant provocation that would 'confirm Ngapuhi suspicions and result in a general uprising'.[357] Nene also questioned whether Heke's actions had been serious enough to justify a military response. He pointed out that felling the flagstaff was Heke's first act of defiance against the Government, and said Ngāpuhi 'do not look upon the cutting down of the flagstaff in the same light you do, we cannot regard it of so dreadful a nature as to call for the sacrifice of life'. Nonetheless, Nene confirmed, if Heke transgressed again there would be cause to act against him.[358] In order to secure peace, Nene and his supporters proposed a hui where the Crown and Ngāpuhi leaders could meet, unarmed, and resolve their differences.[359]

In making this overture, Nene and the other rangatira were taking a significant risk. They were presuming to speak for Heke – a clear insult to his mana.[360] They were also staking their own mana on Heke's future conduct, placing themselves on a potential collision course with him. We agree with Mr Johnson that FitzRoy's actions pressured Nene into taking this step. Nene was not motivated by any direct request from the Governor 'but by a perceived threat' arising from FitzRoy's determination to punish Heke.[361] If the Crown invaded Ngāpuhi territories at that time, the evidence suggests that most Ngāpuhi would have lined up alongside Heke to begin a war with likely immense costs for both sides in terms of casualties and impacts on trading relationships. Nene sought to 'avoid the entry of the soldiers into Ngapuhi lands' and these potentially disastrous outcomes.[362]

It was not only Ngāpuhi who sought to avoid war. Clarke, as Chief Protector, also opposed FitzRoy's plans for military engagement, as did Sub-Protector Kemp and several Bay of Islands missionaries.[363] Whereas FitzRoy was confident that British troops would prevail,[364] Clarke and the missionaries shared Nene's awareness of the potential risks. According to Dr Phillipson, it was Clarke who persuaded the Governor to accept Nene's proposal and order his troops back to Kororāreka.[365]

Later, various settler commentators acknowledged how close the colony had come to disaster. In early September, the *Daily Southern Cross* observed that, while British forces might ultimately have prevailed, they would have first become embroiled in a long and messy campaign in which they had neither much hope of capturing Heke or his supporters nor of protecting settlers from retaliation.

War at that time would have had the effect 'of endangering the lives of every European in the country, and destroying the Colony itself for many years to come'.[366] Bishop Selwyn looked back on this episode in November 1845, after the Northern War had been under way for several months. In his view, had FitzRoy proceeded with his planned attack, 'the British Government would not . . . have had a single native ally North of the Waitemata'. Furthermore, military officers had told him 'if that body of men had marched against Heke in September 1844, not one of them would have returned'.[367] FitzRoy later acknowledged how risky his planned invasion had been, but at the time he showed no such insight.[368] As the Crown acknowledged, the evidence is clear that it was Nene who took the initiative for peace when the Governor was determined to pursue war.[369]

(e) The September 1844 Waimate hui

After FitzRoy agreed to call off his planned invasion, Bishop Selwyn, Chief Protector Clarke, and Ngāpuhi leaders pressed ahead with plans for a hui at Waimate to formalise Nene's peace agreement. Selwyn and Clarke sent out separate invitations, making the hui 'a joint Government and Church-sponsored affair'.[370] Three hundred Ngāpuhi attended – about the same number as at the July hui.[371] They included many leading rangatira from inland Hokianga (Nene, Patuone, Mohi Tāwhai, and Makoare Te Taonui),[372] the Bay of Islands coast (Rewa, Moka, Whareraahi, Tāreha, Kaitara, and Waikato), and Waimate–Taiāmai (Wiremu Hau, Paratene Te Kekeao, and Wai). Ruhe (Ngāti Rangi, Ngāti Hineira) also attended.[373]

Heke was invited to the hui but did not attend.[374] There is no record of any rangatira attending from coastal or northern Hokianga, nor from Whangaroa, Kaikohe, nor from the major southern Bay of Islands hapū such as Ngāti Hine, Ngāti Manu, and Te Kapotai.[375] The hui therefore could not speak for all or even most of Ngāpuhi, even if its attendees did include many significant rangatira. The historian Merata Kawharu described those present as 'the major leaders of the Waitangi-Hokianga region', but even that is questionable in light of the apparent absence of Te Kēmara and other Ngāti Rāhiri leaders.[376] FitzRoy attended with his private secretary and his two senior military officers, Lieutenant-Colonel William Hulme (of the 96th Regiment in Auckland) and Captain David Robertson (of the HMS *Hazard*).[377] Due to Nene's warning that landing armed soldiers would lead to a Ngāpuhi uprising, FitzRoy and his officers did not bring soldiers or carry arms.[378]

The hui began with a lengthy speech by FitzRoy in which he defended the flag against claims that its presence harmed Māori interests. Describing the flag as 'sacred', FitzRoy told the assembled rangatira that it flew as a guarantee of the Crown's protection of their freedom and security. Through the flag, Māori had protection against lawless settlers and colonisation by other European powers, a guarantee that their lands were secure, and a guarantee that they were 'perfectly free'. They also possessed 'all the advantages of English laws' while retaining the right to live according to their own, so long as their actions did not affect settlers. Whereas the flagstaff was 'a mere stick', the British ensign was 'of very great importance' and stood as 'a signal of freedom, liberty, and safety',[379] protecting Māori from the same fate as had occurred in Tahiti, which France had annexed in 1843.[380] This was the first of several occasions in the months before the war in which the Crown or its representatives would emphasise the flag's protective intent while saying nothing of the Crown's claim of authority over Māori communities. FitzRoy's emphasis on the flag as a symbol of British protection presumably reflected, in part, his former career as a naval officer.[381]

The Governor's claims about the benefits of British sovereignty contrast markedly with Heke's concerns about Crown and settler transgressions against Māori authority. As if to prove this point, the Governor acknowledged that the Crown had harmed the economy for Ngāpuhi and settlers alike by prohibiting anchorage fees and imposing customs duties. He announced that he had rescinded those regulations, allowing Ngāpuhi hapū once again to trade freely with passing ships.[382] Later, FitzRoy would acknowledge in his memoir that this decision was unauthorised, since it was made without Executive Council approval (that came later). Nonetheless, he had acted

because Ngāpuhi had complained of their 'ruined trade' and in his view, the 'obnoxious customs regulations' were the main source of their discontent.[383] In fact, FitzRoy had other reasons for removing customs duties: they had depressed trade throughout New Zealand at a time when the colony was in a parlous financial position, and were highly unpopular among settlers. The Government had already been considering other options for raising revenue and had sought permission from the British government to make changes. The Governor may have used the crisis in the north as a pretext to implement a new policy without seeking authorisation.[384]

Turning then to Heke's actions, FitzRoy warned that any threat to settlers would drive them away, leaving Ngāpuhi destitute. He said it had made his heart sick 'to be obliged to bring soldiers and war-ships here, on account of bad conduct', but he could not 'allow such behaviour, or such insults as those of Heke, to pass unatoned for'. In such matters he promised to act 'in concert with the principal Chiefs', presumably excluding Heke himself. 'My wish is for peaceable measures', FitzRoy said, 'although I am prepared to act otherwise.' But with the help of the rangatira present and 'God's providence, we shall succeed in our object of restraining the ill-conducted and checking the bad men.'[385]

FitzRoy then acknowledged for the first time that Heke had 'written me a letter of apology about the flag-staff, and has offered to put up another'. The only remaining thing he required, he said, was that 'a certain number of guns be . . . immediately given up to me, as atonement for the misconduct of Hone Heke.'[386] At this point, according to a newspaper report of the occasion:

> Several chiefs sprung up, went away to their places and brought about twenty guns, and many tomahawks, which they laid at the Governor's feet, telling him he might have more if he chose.[387]

FitzRoy, in response, said the Government did not wish to profit from Heke's 'crimes', and had asked for the guns only as acknowledgement of his error. To demonstrate that the Government did not want their land or property, he returned the guns and indicated that he would send the soldiers away, saying he trusted 'that no future disturbance would occur', while warning that soldiers might return if their future conduct was not good.[388]

In total, 24 rangatira gave speeches in response.[389] According to the *Daily Southern Cross*, they indicated that they accepted the Governor's assurances, desired peace, and wanted Europeans to remain among them – although they also wanted the Government's soldiers to leave. Some expressed concerns about land and especially wished to know the Governor's policies on Crown pre-emption and surplus lands (matters we discussed in chapter 4 and return to in chapter 6).[390] Hokianga rangatira took a prominent role, alternately criticising Heke and emphasising their desire for the troops to go. Anaru of Ngāti Korohue said that Heke took after his father-in-law, Hongi, and 'has always been troublesome'. Makoare Te Taonui told the Governor he was glad that conflict had been avoided: 'when I heard of the guns and soldiers being landed, my heart was dark – Ngapuhi, live in peace! peace! peace!'[391] Mohi Tāwhai appealed to FitzRoy to handle any future troubles by meeting peacefully with senior rangatira instead of arriving 'with guns and soldiers.'[392]

Patuone, an acknowledged diplomat and peacemaker, was reported to have told the Governor 'you are come in peace, and you are welcome', apparently meaning that the Governor was gladly received so long as he did not have soldiers. Patuone said that Heke's conduct had been wrong, and the Governor was right; nonetheless, he considered the Governor should leave and take his soldiers with him: 'You're welcome, go and return again to Auckland; we will endeavour to maintain peace here.'[393] Nene also extended the promise to defend the flag, saying, 'Governor, if that flag staff is cut down again, we will fight for it.' He was sorry for what had occurred but assured FitzRoy that he could now take his soldiers away: 'Return, Governor, we will take care of the flag.'[394] Other speakers, likewise, said they would 'quarrel' with Heke if he attempted to attack the flagstaff again.[395]

Other rangatira also spoke at the hui, urging settlers to stay and the Governor and his troops to leave, and urging all parties to be kind to each other. One rangatira,

named in the newspaper account as Hihiatoto, said that it was he who had felled the flagstaff: 'I am the man who cut the staff down, do not look after that man Heke, take me as payment. Who is Heke?' Ngāti Kawa tradition is that Heke remained at Waihihi or Kororāreka while Ngāti Kawa leaders climbed Maiki Hill and felled the flagstaff.[396] Ruhe (Maketū's father) also spoke, surprising those present by saying that he did not stand with Heke. He said he had urged Heke to attend the hui but Heke refused on the grounds that 'he has nothing to say with you [the Governor]'. According to Ruhe, Heke 'understood . . . the request for guns to mean land, the Ahuahu he thought was to be the butt-end of them, and the Kaikohe the barrels, the distance of ten miles'. Heke, through Ruhe, also delivered a warning to Nene: 'Tell Waka I shall go and have a quarrel with him for the active part he has taken.'[397]

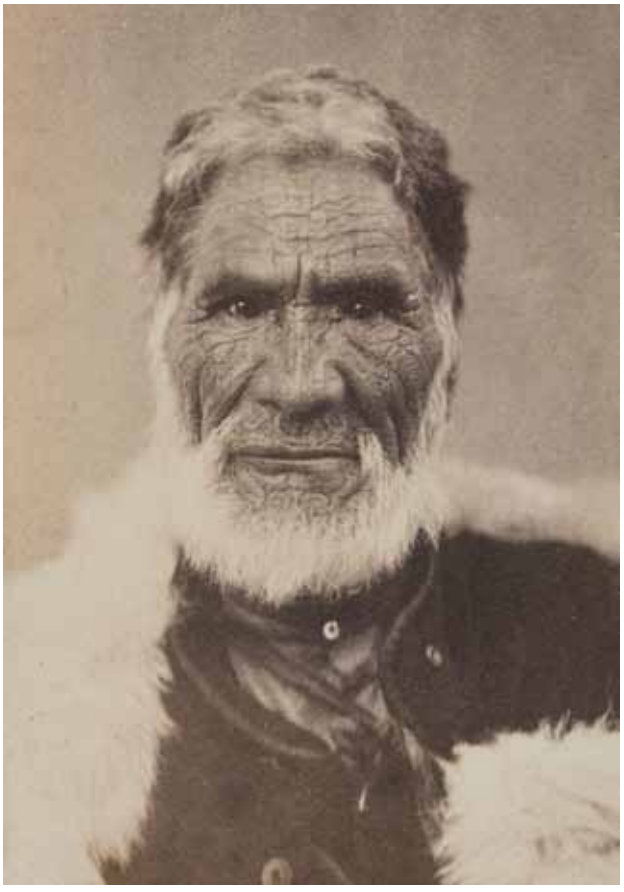
It is not clear whether the *Daily Southern Cross* had a reporter at the hui or relied on Crown officials for its account. Another description of the event was provided by the schoolteacher William Bambridge, whose brief account suggests the Governor met with a less positive response than the newspaper report claimed. According to Bambridge, during the hui a 'young man rose and said that all their talking was of no use, and all they were doing was nothing because John Heke was not present'.[398]

The hui was a critical juncture for Ngāpuhi. In effect, Nene and other rangatira offered an undertaking that they would protect the flagstaff from any future attack in return for certain concessions by the Crown to give better effect to their understanding of the treaty agreement and the Governor sending his soldiers away and agreeing to leave them in peace to manage their own affairs.[399] By this means, Nene and others (particularly rangatira from the inner Hokianga) were challenging Heke in a manner that meant neither side could subsequently back down without loss of mana.[400] As discussed in the preceding section, this situation had arisen because of the pressure created by FitzRoy's threat of invasion.[401]

Dr Phillipson regarded the hui as a renegotiation of the treaty alliance, under which FitzRoy delegated Patuone, Nene, and other rangatira to govern the north on the Crown's behalf.[402] The Governor and missionaries might have seen it that way. Bishop Selwyn wrote in 1845 that Nene had been appointed 'as guardian of the peace',[403] and another missionary drew a comparison with the British practice of governing through indigenous elites in other colonies.[404] We do not believe that Patuone, Nene, and others saw themselves as consenting to govern on the Crown's behalf; rather, they were attempting to fulfil their side of the treaty agreement and taking the pragmatic steps necessary to rid the north of the Crown's soldiers and therefore protect their own mana and tino rangatiratanga. The absence from the hui of senior rangatira such as Kawiti, Pōmare, Rewa, and Te Kēmara (as well as Heke) means the hui was not a negotiation between the Crown and all of Ngāpuhi. Nor was it a free and open negotiation, since it was conducted under the threat of military invasion, which Ngāpuhi leaders were all anxious to avoid.

On 3 September, the second day of the hui, FitzRoy met privately with several rangatira for further discussions. Those in attendance included Te Taonui, Patuone, Te Hira Pure, Turau, Rāwiri, Noa, and Repa. Others may have been present but were not named in the missionary accounts.[405] Rangatira made two requests: that the Crown return surplus lands from settlers' pre-treaty land claims, and that it provide a flag for Ngāpuhi. These requests show that Heke's concerns were shared throughout Ngāpuhi, even by those who were concerned by his tactics.[406] FitzRoy said he would provide a new flag for the rangatira, '[a]n English ensign with the motto Hoa Tiaki o Nui Tireni – Allied Guardians of New Zealand'.[407] While missionary accounts of the hui indicate that rangatira were satisfied with this, they do not say how the proposal was explained to them. Rangatira may have seen the agreement as signifying Crown recognition of their independence, whereas FitzRoy intended the new flag to signify the status of Nene and others as indigenous agents of the Crown, charged with managing their section of the empire on Britain's behalf.[408]

The Waimate hui, in our view, was a turning point. It preserved peace for the time being. FitzRoy agreed to send his troops away in return for a promise that Nene and other



Eruera Maihi Patuone (1764–1872), the elder brother of Tāmati Waka Nene and a leading rangatira of Hokianga. A diplomat and peacemaker, his marriage to a senior Ngāti Paoa wāhine was critical to cementing peace between Ngāpuhi and Ngāti Paoa. From the 1830s, Patuone relocated to the Tāmaki and Hauraki regions to live with his wife's iwi. During the 1840s, he was given the Waiwhāriki estate in Takapuna by Governor George Grey. Dr Benjamin Pittman gave evidence that Patuone predicted 'it would only be in the time of his great-great grandchildren that the dreams and aspirations he had for his people would start to come to fruition'.

rangatira would control Heke and keep the peace. FitzRoy had offered solutions to several concerns expressed by rangatira. He had removed the much-despised customs duties, promised a new flag, and the return of surplus lands. He had also seemed to acknowledge the authority of the rangatira although it soon became clear that his basic assumption that the Crown had the overarching right to impose its laws was unchanged. The hui formalised the division between Heke's people and the inner Hokianga coalition led by Nene, while failing to settle any of the underlying issues concerning the relative authority of rangatira and the Crown. With these matters unresolved, the seeds were sown for later conflict.[409]

The agreements reached at Waimate were binding on the Governor and on those rangatira who attended and consented to the arrangements made. Heke, Kawiti, Pōmare, Rewa and other prominent rangatira did not attend and were therefore not a party to the agreement.[410] While the Waimate hui was underway, Heke staged his own hākari at a location recorded as being close to Waimate but still within Heke's rohe. The hākari platform had one central pou, taller than the rest, which had 'a rudely carved head on the top . . . which the natives called "Te Kawana", and in insult put a rope around its neck'.[411] As Dr Phillipson observed, this was a 'graphic' challenge to the Governor's authority.[412] In Johnson's view, it was also an assertion that Heke's authority was equal to that of the Governor, since in the British system of government only governors had the power to hang people.[413]

(f) Heke's reasons for staying away from the Waimate hui

Heke gave several explanations for his decision to stay away from Waimate. Prior to the hui, he said he would not meet the Governor unless the replacement flagstaff was removed.[414] During the hui, Ruhe explained that Heke was not attending as he had nothing to say to those present. The record is not clear as to whether Heke intended this message for the Governor, or for Nene and other rangatira, or both. Ruhe's account also suggested that Heke believed the Governor intended to take his land and had been angered by Nene's offer to challenge him, and expected it to lead to conflict.[415] Soon after the hui, Heke visited Waimate, apparently telling Bishop Selwyn and others:

> he did not wish to treat the Governor with contempt in not coming to the meeting . . . On the contrary he sent a message to His Ex. requesting that he would remain at the Waimate 2 or 3 days longer, because he could not leave the party whom he had invited to feast with him at Kaikohe, lest they be offended.[416]

In September, Heke wrote to FitzRoy saying, 'The reason I did not attend the meeting at Waimate was for fear of a collision (or quarrel) with the natives.'[417]

Despite Selwyn's account, we do not think that Heke stayed away because he could not leave his guests at Kaikohe. As Dr Phillipson observed, this explanation was 'disingenuous at best', since the hākari was clearly intended as 'a competitive display of mana'.[418] Nonetheless, Heke's note was significant; it indicated that he was willing to meet, albeit not at a time and place determined by Nene and his allies.

Nor is there clear evidence that Heke genuinely believed FitzRoy wanted to take his land at that time (though the Governor would later seek confiscation). We accept the Crown's submission that no one other than Ruhe made this claim, and there is no evidence of Heke raising this concern with missionaries or anyone else.[419]

Heke's other reasons for staying away from the hui must be considered in context. As described earlier, after the June hui Heke had invited the Governor to visit and offered peace so long as he could restore the flagstaff himself. From Heke's point of view, FitzRoy had rejected these terms by rebuilding the flagstaff, arriving with troops, making a non-negotiable demand for atonement, and threatening to march on Kaikohe. All of this had occurred in advance of the hui.[420] FitzRoy had then reached a deal with other rangatira by which they would respond with force to any further attempts by Heke on the flagstaff, as the price for the Governor's agreement to withdraw his forces. Heke clearly wanted to meet FitzRoy on his own, away from Nene and others who might push him publicly to comply with the Governor's demands.

The final reason Heke gave for staying away from the hui was that he feared conflict with other rangatira. The Crown did not regard this as a valid explanation, submitting that Heke had attended the June hui without the outbreak of fighting and that steps had been taken to ensure that the September hui was peaceful.[421] In fact, circumstances had changed significantly since the June hui, principally because Nene had offered to answer for Heke's conduct. Heke was understandably angered by this affront to his mana and warned Nene to stay out of his affairs, or the pair would 'quarrel'.[422] Later events confirm that Heke saw Nene's intervention not only as a personal affront but also as a challenge to te kawa o Rāhiri, the code that bound Ngāpuhi hapū together while also guaranteeing the autonomy of each.[423] During the hui, Māori clearly had access to arms, which they were able to present when FitzRoy called for them to pay utu on Heke's behalf. The threat of armed conflict was therefore real, either at Waimate or afterwards.[424] On this basis, we agree with Dr Phillipson that Heke stayed away from the hui 'lest it result in an open breach and fighting among Ngāpuhi'.[425]

(2) *Did the Crown escalate tensions in Te Raki between September 1844 and January 1845?*

(a) FitzRoy's response to Heke's request to fly two flags

Governor FitzRoy and his party left the Waimate hui shortly after noon on 3 September 1844 to return to their ships. The Governor sent the 99th Regiment back to Sydney and departed for Auckland with the remaining troops, while Chief Protector George Clarke remained behind so he could travel to Hokianga, address any remaining concerns and further explain to Māori the deal that had been reached at Waimate.[426] At Waimā and the Hokianga headlands, rangatira promised to maintain peace with settlers and expressed a wish for the Governor to visit.[427] At Māngungu, several Hokianga rangatira including Nene, Patuone, Makoare, Te Taonui, and Te Hira Pure expressed their concerns about both the treaty relationship and the declining economy. They felt the Government had treated them poorly, and they had heard from Europeans 'that they were enslaved, and the Government were their oppressors'. In spite of these considerable misgivings, they said they were determined to

treat settlers well.[428] Here was further evidence that Heke's concerns were shared, even among those who had promised to oppose him by protecting the flagstaff.

On 7 September, Heke visited Waimate with a party numbering between 150 and 250. He asked for details of the Governor's speech from the previous week's hui and was read a brief summary. Heke said he had sent a message asking the Governor to remain after the Waimate hui so they could meet separately.[429] Heke is then recorded as saying that 'he wanted the governor to come and visit him and take down the present flag staff and then erect two, side by side, one for the English and one for the Maori flag'.[430] This was a clear appeal for the Governor to recognise the dual and equal authority of the Crown and rangatira, in accordance with the Ngāpuhi understanding of te Tiriti. As Dr Phillipson observed, Te Raki rangatira had signed te Tiriti only after insisting that they would be the Governor's equals – a condition famously symbolised 'by Patuone holding his two index fingers up, side by side'.[431] According to Johnson, Heke was also making the point that the Governor had acted unilaterally by rebuilding the flagstaff, 'and therefore it was the governor's responsibility to come and remove it, and then to act in concert with the chiefs or re-erect poles to embody a partnership and dual authority'.[432]

Soon afterwards, Heke drafted two letters to the Governor. Bishop Selwyn, not liking Heke's tone, refused to receive them 'nor . . . allow any one from the Mission to write one for him'.[433] This was the second time the Bishop had refused to convey Heke's message to the Governor – the first having occurred at the previous Waimate hui in July when he had demanded that Heke and other rangatira redraft their letter in a more conciliatory tone.[434] Notwithstanding Selwyn's refusal, at some time during September both Heke and Te Hira Pure again wrote to the Governor, making it clear that there were outstanding matters to resolve.[435]

Te Hira Pure wrote that the 'evil' over the flag had not yet been settled. FitzRoy had been hasty in calling for soldiers, and in restoring the flag – this was 'he karanga riri' ('a hostile act'). If FitzRoy had called a hui before restoring the flagstaff, Heke would have attended and shaken the Governor's hand, they would have discussed their differences, and 'kua mai te rongo i reira' ('peace would have been established'). Te Hira Pure therefore asked the Governor to return to the Bay of Islands, take down the British ensign, and call another hui: 'you will then see the good resulting from it'. But the ensign had to be removed first, 'because it has been the root of all this evil (and is equal to the taking [of] our country from us)'.[436]

Heke, too, asked the Governor to visit him at Waimate. He asked the Governor to explain the significance of the flagstaff, so he could understand the great wrongs ('nga henga he nunui') he was supposed to have committed. We believe that Heke understood the significance of the flagstaff as a symbol of territorial authority but saw FitzRoy's immediate threat of war as a disproportionate response, and therefore sought to understand the Governor's reasoning. Heke expressed his clear desire for peace: '[E] whai atawhai ana koe, ka whai atawhai ano hoki matou ki a koe' ('if you thus show your love to us, we will show our peace and love to you').[437] But Heke also made clear that the question of the flagstaff remained unresolved and that matters could only be settled by the Governor visiting and taking joint action over the flagstaff with him:

> Ki te whakaae koe ki te haere mai tika tonu mai ki te Waimate korero ai, ka mutu ka haere atu taua ki Kororareka.
>
> If you will consent to come, do come direct to Waimate, and there let us talk, and when we have finished our talk let us go to Kororarika, and there let the matter end.[438]

If the Governor did not come, the existing 'raru' (which George Clarke senior translated as 'confusion') would remain forever, and there would be fighting among Ngāpuhi.[439]

Johnson understood this as a conciliatory letter in which Heke genuinely wanted peace, while also making clear that the Governor had as much responsibility as he did to secure that peace.[440] We agree, but also observe that the letter came with a warning. Heke was not backing

Hōne Heke's September 1844 Letter to the Governor

E hoa e te Kawana,

Ka karangatia atu ana a koe e au. Kia haere mai ne? ae, haere mai, kei riri koe, na nga ngutu o te tangata o te pakeha, na i riri [nui?] ai tenei kino e takoto ake nei, me aha ranei ka pirau ai tenei mea, koia ahau ka mea atu nei ki a koe. kia haere mai koe, ki konei; tana ata korero ai, kia tika ai a tana korero, ki te mea e kore koe e tae mai; heoi ra ka mea atu ahau e kore e oti tenei mea. e werewere ana taku, e werewere ana tau, e werewere ana ta Ngapuhi. E karanga ana ta Ngapuhi ki te poka, e karanga ana ta matou ki te poka, e karanga ana tau ki te poka. Koia matou ka mea atu nei, ma wai ranei Wakaoti e tanu? na, ke kai wakarite koe no nga he nunui Mau ano hoki tenei e wakaoti, haere mai koe kia korero taua ki te ritenga o te rakau: e kore ahau e mohio, engari kia tae mai koe, kia korero taua; ki te mea e kore koe e tae mai, ka mau tonu tenei pou raru ki te ao, ake tonu atu, mehemea e kore koe e tae mai ka piri te namunamu nei he tangata maori, he tangata maori a nga ra e takoto ake nei. Mehemea ka oti tenei mea, ka mea ahau he aroha tau, he atawai tou. Ki te mea e whai aroha ana koe, ka whai aroha ano hoki matou ki a koe, ki te mea e whai atawai ana koe, ka whai atawhai ano hoki matou ki a koe ki nga Mihanare katoa kaua ki nga pakeha kino kaua ki nga tangata kino. Ki te whakaae koe ki te haere mai tika tonu mai ki te Waimate korero ai, ka mutu ka haere atu taua ki Kororareka. Ma ka oti i konei ki te mea e kore [?] koe e tae mai, heoi ano, ka mutu aku whakaaro titiro atu ki tau kupu pai. katahi ano ahau ka mea hiahia nga tatau o raro. kia pakaru mai te pouritanga ki konei ki te ao. Ki te pai koe, ki te haere mai, tuhituhia mai tetahi pukapuka ki au, kia matau ai ahau e kore koe e tae mai, kia matau ai ranei e tae mai koe.

Ta te mea hoki ahau te tae atu ai ki to huihuinga i te Waimate e tupato ana ahau, kei whawhai matou te tangata Maori.

Signed, Na H H Pokai[1]

Friend governor,

I write to you to come to me; will you come? Do come, and do not be angry. It is by the lips of the Europeans that the late proceedings were increased and aggravated; in what way [how] can we extinguish this evil? In order that it may be extinguished, I ask you to come here, that we two may quietly and equitably adjust this offence; but if you do not come I say it will not be extinguished; we shall all remain in doubt without confidence. The Ngapuhi are calling out to have this evil buried; you and I are calling out the same. I say, who is to adjust and bury it? You are appointed to adjust these affairs, and bring to nothing great evils (or crimes). You only [only you] can adjust and bring to a conclusion this affair about the flag-staff, the evil of which I do not yet know; do therefore come, that we may talk these matters over; but if you will not come this confusion will remain in the world for ever; if you will not come this evil will adhere like a blister-plaster, and the end of it will be native (fighting) native; but if the affair is amicably adjusted, it will be a mark of your love and peaceable feeling towards us; and if you thus show your love to us, we will show our peace and love to you, and to the missionaries, but not to bad Europeans and mad natives. If you will consent to come, do come direct to Waimate, and there let us talk, and when we have finished our talk let us go to Kororarika [*sic*], and there let the matter end; but if you will not come, I have nothing more to say than this, that I shall cease to look and think favourably of your good words; then I shall call to the infernal gates to burst and deluge the world with darkness; but if you will be pleased to come, write me a letter, and if you decide on not coming, write in order that I may know that you will not come.

The reason I did not attend the meeting at Waimate was for fear of a collision (or quarrel) with the natives.[2]

away from his original commitment to shared authority; if the Governor failed to come to Waimate and negotiate directly with Heke, conflict was likely, at least among Ngāpuhi.

FitzRoy had failed to respond to Heke's previous letter but this time he wrote back. He said that Heke had been deceived by 'ill-disposed Europeans'. FitzRoy said he would meet with him, but not until summer when he planned to visit the Bay of Islands. He was confident that once they had spoken, Heke would see his good intentions. As he had at Waimate, FitzRoy gave a long explanation of the flag's importance as a symbol of the Crown's status as 'defender of New Zealand' and 'guardian of the rights of the chiefs and people'. The flag also bound New Zealand to the rest of the British empire 'for mutual advantage and security', whereas other nations would not recognise a Māori flag. For these reasons, FitzRoy said, the British flag was 'sacred' and cutting it down was 'an insult'.[441] FitzRoy was blunter in his response to Te Hira Pure. He said there were 'several objectionable things' in Te Hira Pure's letter, which did 'not read so well as Heke's'. Nonetheless, FitzRoy enclosed a copy of his letter to Heke and said he would meet Te Hira Pure to discuss matters at leisure when he next came to Waimate.[442]

In our view, although FitzRoy was eventually open to meeting Heke and Te Hira Pure, he was not amenable to discussing the substantive questions they raised about dual flags or dual authority. Nor was he willing to meet soon, even though both rangatira had warned him that the dispute remained unresolved, and that conflict was likely within Ngāpuhi if he did not take steps to settle it. Nor was the Governor willing to be seen to raise Heke's status by negotiating with him directly. In accordance with the arrangement he had made at Waimate, FitzRoy therefore left Nene to deal with Heke in the meantime, despite Heke's warnings that this approach would also lead to conflict within Ngāpuhi. In effect, the Governor was rejecting the resolution proposed by Heke and Te Hira Pure, under which two flags would fly at Maiki Hill. Certainly, his letter did nothing to moderate Heke's concerns; soon after receiving the reply, Heke wrote to the trader Gilbert Mair, warning him not to fly the British flag on land he was transacting at Whāngārei.[443] Dr Phillipson saw the Governor's decision to delay as 'the crucial decision that would lead to war in March 1845', since it left Heke with an unresolved grievance and Ngāpuhi divided.[444] While war was not yet inevitable, we agree the Governor missed a crucial opportunity to enter dialogue and seek resolution.

(b) Taua muru and increasing tensions: September to October 1844

In the months after the Waimate hui, the Bay of Islands did not remain tranquil. On the contrary, a series of events escalated tensions between Ngāpuhi and settlers, and between Heke and the Crown. Ultimately, those tensions would lead to Heke felling the flagstaff for a third and fourth time.

The first event was another clash between colonial and Māori systems of law enforcement. On 21 September 1844, Police Magistrate Beckham attempted to arrest a settler (Joseph Bryers) in his home. During the arrest, one of the constables used his cutlass and cut the hand of Bryers' wife Kohu, who was a rangatira – the granddaughter of Ngāti Hine rangatira Kawiti and the daughter of Ngāti Manu rangatira Te Whareumu.[445] Although the cut was not deep, she was a woman of high birth and shedding her blood was a serious matter. Her brother Hori Kingi Tahua visited Beckham and the Sub-Protector Kemp seeking compensation.[446] The officials dismissed the matter as 'trifling' and refused to pay, even though they were aware that Kohu 'would according to native custom have become entitled to some compensation'.[447]

Their dismissal of Kohu and Hori Kingi Tahua's legitimate claim had inevitable repercussions; it reignited existing tensions about law enforcement and provided further evidence to Māori that colonial authorities would not respect their laws or protect them from Pākehā transgressions. Nene and Pōmare II considered the matter so serious that they travelled to Auckland to meet the Governor. Hori Kingi Tahua visited Beckham for a second time and asked for a horse. When he was again refused, he led a muru against a nearby settler, Captain John Wright, and took eight horses.[448] Wright had no direct involvement in the dispute, and Tahua later explained that he took the

horses only to force Beckham and Kemp to negotiate.[449] Beckham and Kemp then attempted to reach a settlement, but by this time Ngāti Hine had a new grievance after settlers desecrated a wāhi tapu at Ōkiato. In mid-October, the Governor sent Chief Protector Clarke aboard a warship to mediate. Together with Henry Williams, Clarke senior visited Tahua and negotiated the utu to be paid. Tahua, in turn, agreed to compensate Wright.[450]

Clarke left the Bay of Islands on 17 October, having spent just two days there. Although he believed the dispute with Tahua was over, he also observed that there was a general feeling of 'distrust and insecurity' between Māori and settlers.[451] The number of taua muru was growing as Māori became increasingly frustrated with settler transgressions against tikanga and the failure of colonial officials to address these matters.[452] According to the Wesleyan missionary Walter Lawry, many of the tensions arose because of newer settlers who 'do not understand the native language, make great blunders, and . . . draw very false conclusions', and in their ignorance and fear, adopted hostile attitudes towards Māori.[453] Clarke blamed 'misguided' settlers who told Māori that the Government's offers of protection were insincere.[454] Younger Māori were responsible for many of the muru that occurred, and Clarke felt this reflected declining influence on the part of senior rangatira. Mr Johnson provided evidence, however, that many of the muru were sanctioned by senior leaders and that 'in the politically charged climate of late 1844, chiefs were no longer willing to simply "turn the other cheek" to constant and in some cases, deliberate, injuries'.[455]

Clarke recommended two measures: first, that settler officials provide 'speedy redress' for any transgressions against tikanga; and secondly, that the Government should take steps to strengthen the influence of senior rangatira and reward them for their roles in keeping peace.[456] There is no record of Governor FitzRoy responding to the first recommendation. He showed some sympathy for the second, and sought permission to offer salaries and uniforms to senior Ngāpuhi rangatira.[457] These measures were not adopted, though the Crown later provided gifts of flour, blankets, tobacco, and other items to rangatira who supported it during the war.[458]

Instead of accepting Clarke's advice regarding breaches of tikanga, it appears that FitzRoy's position on muru was hardening. On 19 October 1844, he wrote to Stanley expressing what he considered to be the dangers posed by muru, which he described as 'retaliation on unoffending persons, settlers in the interior, or at a distance from the principal settlements'. Whereas Clarke had recognised the Kohu affair as arising from the insensitivity of local officials to tikanga, the Governor saw it as evidence of the 'unsettled and lawless, if not insurrectionary, disposition' of many Bay of Islands Māori, blaming this on the influence of American and French agitators against the British government. He expressed concern that, if a taua muru came into conflict with settlers,

> in all probability the lives of persons unconnected with the affray would be taken; and a personal quarrel, or mere chance-medley, might lead to a general rupture between the races.[459]

FitzRoy made no reference to the role of muru in enforcing tikanga and the resolution of disputes, often through negotiated payment of utu; indeed, his willingness to rely on rangatira to manage affairs and resolve conflicts in their own territories was rapidly diminishing. His other response was to call for military reinforcements, and he requested two warships and a full regiment of soldiers, to be stationed permanently in New Zealand. While the Governor said he hoped not to use these options, in his view their presence was necessary to deter misconduct by Europeans and Māori alike. Without them, minor conflicts between Māori and settlers could quickly escalate, with any loss of life causing a general Māori uprising. Such an outcome could only be prevented by the presence of such a large force 'that organized resistance to it might be quite hopeless'.[460]

FitzRoy then took a series of steps that caused alarm among both Kororāreka settlers and Ngāpuhi.[461] On 21 October 1844, he wrote to Beckham to warn him that the Government might use force in response to any future muru, and to suggest that settlers leave the Bay of Islands so they were not harmed by any military activity.[462] In the

following month, some settlers did depart from the Bay of Islands and also Hokianga.[463] The departure of several long-serving missionaries during October, and the closure of an agriculture school associated with the Waimate mission, also contributed to a perception that Europeans were abandoning the district.[464] From late October, Tahua conducted a series of taua muru in Kororāreka, particularly targeting the town's jailhouse. In a move that further escalated tensions, Ruku of Te Uri Ngongo took six horses from a Kawakawa settler named Hingston after a dispute about a foal.[465]

Kororāreka settlers responded by petitioning the Governor for a military force and by threatening to take matters into their own hands if they were not protected.[466] In this, they received backing from settler newspapers in Auckland. One opined that the Governor had been far too lenient on Heke, and that he and other rangatira 'ought to be taught that the laws are not to be broken with impunity';[467] it also advocated that settlers should not pay taxes until the Government could protect them from taua muru and punish the 'offenders'.[468]

FitzRoy sent the HMS *North Star* (which was passing through Auckland) to the Bay of Islands as a warning to those who were conducting taua muru.[469] Tensions continued to rise until Pōmare II intervened by persuading Tahua to desist and return some of the goods he had taken. From that point, the muru in Kororāreka ceased.[470] FitzRoy nonetheless pressed ahead with plans to remove settlers from the Bay of Islands, sending a message in early November that all government protection would be withdrawn from them at the end of December.[471] To Māori and settlers alike, it appeared that FitzRoy was preparing for war.[472]

(c) Ngāpuhi seek reassurance on the treaty: September 1844 to March 1845

In this environment of distrust and heightened tension, rangatira turned their attention to the treaty, seeking further assurances about its meaning. At Waimate, FitzRoy had presented the treaty as an agreement through which Māori retained their independence under British protection. However, events since that hui – including Thomas Beckham's handling of the offence against Kohu and the Governor's preparations for a military response to taua muru – had caused considerable uncertainty. In early November, several rangatira wrote to the Chief Protector seeking clarification of the treaty's meaning,[473] to which Clarke responded by organising a printing of 50 copies of the te reo text and sending them to Bay of Islands rangatira.[474] A very brief covering letter from FitzRoy warned against the influence of 'nga tangata kino' (bad people) and expressed a desire for peace. The unnamed 'tangata kino' were presumably those who warned rangatira that the Crown claimed authority over their lands.[475]

At about the same time, and in a move that may have been coordinated with Clarke's, the missionary Henry Williams organised a much larger reprinting of 400 copies of the treaty.[476] According to historian Dame Claudia Orange, Williams' immediate goal was 'to avert a major Maori uprising which he was sure would result in a Maori victory'. He also was facing personal criticism: claims from Māori that he had deceived them at Waitangi, and from settlers that he had failed to secure informed Māori consent for Britain's assertion of sovereignty.[477] Williams, in a letter to Busby, the former British Resident, explained that he had returned to Te Raki on 16 September (after spending two months at Tūranga) to find all Bay of Islands and Hokianga Māori in a state of agitation about the treaty's meaning and intentions:

> [it] having been declared as the origin of all the existing mischief by which the Chiefs had given up their Rank, Rights, and Privileges as Chiefs, with their lands and all their possessions.[478]

According to Dr Phillipson, from September 1844 to March 1845, Henry Williams, Robert Burrows, Richard Davis, and other missionaries were busy attending numerous coastal and inland hui, 'advocating for the Treaty and the alliance, and waging a war of words with Heke for the minds and hearts of Nga Puhi'.[479] Williams had told the chiefs that the treaty was their 'Magna Charta' [*sic*], under which 'their Lands, their Rights and Privileges were reserved for them'. On the basis of this campaign, he

reported, Nene and other rangatira put aside their concerns and 'admitted that the Treaty was Good'.[480]

Williams also described the treaty as a 'sacred compact between the British Government and the chiefs of New Zealand', under which neither the Queen nor the Governor would tolerate any deception of Māori people.[481] Yet, as Orange observed, by reprinting and distributing the Māori text to disseminate, Clarke and Williams engaged in 'a deliberate blurring of the meaning of sovereignty' and played down the 'significant loss of Maori power' inherent in the English text. If Ngāpuhi at this time had fully comprehended Britain's understanding of the treaty, she said, 'the future would have been placed at great risk'.[482]

In our stage 1 report we concluded that the Crown and its agents chose not to explain the full meaning of the 'sovereignty' they were seeking, and instead presented the treaty in terms that were 'most calculated to win Māori support', giving emphasis to the Crown's authority to control settlers and protect Māori from foreign threat, and the retention by Māori of their independence and tino rangatiratanga.[483] In 1844, Clarke and Williams adopted the same approach. In the face of Māori concerns that their mana had been signed away, the Chief Protector and the treaty's principal translator chose to reassure Māori by presenting them with the Māori text only.[484]

(d) Tensions escalate further: early January 1845

Having warned Bay of Islands settlers that they would need to leave the district, Governor FitzRoy further escalated tensions by threatening to return with his soldiers. FitzRoy communicated this intention in a letter dated 17 December 1844 and published in *Te Karere Maori* on 1 January 1845. We do not have definitive evidence of when rangatira saw it, but mid-January seems likely (the trading schooner *John Franklin* left Auckland for the Bay of Islands on the ninth, and other vessels followed in the next few days; the journey typically took about one day).[485] FitzRoy's letter was addressed to rangatira of Hokianga and 'Tokerau'. It chastised them – in particular Pōmare II, Kawiti, Tāmati Pukututu, and Mohi Tāwhai – for failing to prevent tahae (thefts) from Europeans, and for failing to suppress 'hunga tutu' (rebels). He claimed the rangatira had not fulfilled promises made at Waimate. FitzRoy had agreed to take his soldiers away from Te Raki and return later with flags for rangatira, but he could not honour these promises if they would not restore order and return goods to Europeans. If they could not fulfil their part of the agreement, they should write to him so he could take action: 'e kore ahau e tuku i te kino kia tupu' ('I will not let the evil happen').[486]

This was a provocative act on several levels. It was an attack on the mana of Te Raki rangatira, especially for the four who were named – two of whom (Pōmare and Kawiti) had not been at Waimate and so were not party to the agreement made there. It was the first time the Governor is recorded as using the term 'hunga tutu' (rebels) to describe his Te Raki Māori opponents. By dismissing taua muru as mere thefts and labelling any Māori as rebels who had taken part in raids, FitzRoy's language demonstrated his contempt for Māori systems of law enforcement. Most significantly, the Governor threatened to withdraw from the Waimate deal and return with soldiers if rangatira did not prevent future muru. Later, in his memoirs, he would claim – without evidence – that Heke had been behind all of the raids, with the deliberate goal of 'bring[ing] about a collision with the government'.[487] It appears that FitzRoy had become preoccupied by taua muru and was considering them evidence of Māori opposition to the Crown.

Soon after sending this letter, FitzRoy learned of a report by a British House of Commons select committee that also threatened to destabilise Crown–Māori relations.[488] Heavily influenced by the New Zealand Company, the report described the treaty as 'little more than a legal fiction', and declared that indigenous people had no property rights in any lands they did not occupy and cultivate. It therefore recommended that the Government claim title to all unoccupied Māori lands. Though not Government policy, its findings carried the authority of the House of Commons. Stanley, FitzRoy, and Clarke were all highly alarmed. Once made public, the report, they believed, would confirm Māori suspicions that the Crown intended

FitzRoy's 8 January 1845 Proclamation

I the governor do hereby proclaim and declare, that until all the property taken away from Mr Hingston, at the Bay of Islands, and from Mr Millon and others, at Matakana, is restored to them, until sufficient compensation is made for the injuries sustained, and until the chiefs Parehoro, Mate and Kokou [Koukou] are delivered up to justice, I will not consent to waive the government's right of pre-emption over any land belonging to the Kawakawa or Wangarei tribes, or to any tribe which may assist or harbour the said chiefs.

I also hereby warn all persons, European or Native, that their assisting or harbouring the said chiefs, or other persons concerned in committing outrages, will render themselves liable to be proceeded against according to law. And I further proclaim that the strongest measures will be adopted ultimately, in the event of these methods being found insufficient.[1]

to seize their lands. Chief Protector Clarke considered that war would inevitably follow once Māori learned of its contents, and the Governor consequently did all he could to delay publication.[489] He appears to have succeeded for a short time – its contents were not published in New Zealand until mid-February.[490]

Meanwhile in early January 1845, Te Parawhau of Whāngārei and Ngāti Rongo of Mahurangi conducted muru against settlers Thomas Millon and George Patten at Matakana. The muru appears to have occurred because of an old land claim dispute, concerning the payment of Ngāti Paoa while ignoring the claims of the earlier Ngāti Rongo occupants (who were close kin to Te Parawhau).[491] The Government neither verified the facts independently nor considered Māori views before deciding on its course of action – which was to receive letters from the affected settlers, and then call an Executive Council meeting where the settlers described their experiences in person.[492] At this meeting, which took place on 8 January, just two days after the Matakana muru, it passed a resolution to seek additional military forces to prevent a repetition of what it regarded as unlawful outrages.[493] FitzRoy also issued a proclamation condemning the muru; this offered a £50 reward for the capture of three rangatira – Parihoro, Koukou, and Mate – and demanded that they return all property taken from the settlers and, in addition, offer them compensation for the harm done.[494]

The Governor responded not only to the Matakana and Kawau muru but also those in October against Hingston, and he consequently included all Kawakawa hapū in his punitive response. His proclamation stated that he would not issue any pre-emption waivers (see chapters 4 and 6) for Whāngārei or Kawakawa tribes until his demands were met. If that was not sufficient to force compliance, 'the strongest measures will be adopted'.[495] In a note to Colonial Secretary Andrew Sinclair, the Governor described these stronger measures to include a naval blockade of the harbour, the removal and destruction of canoes, and 'further punishment . . . if necessary'. In other words, he was preparing for a military response. Someone should be sent, he added, to warn settlers 'and demand *compensation* from the natives' (emphasis in original). He considered similar action against Bay of Islands rangatira but decided to hold off at that point.[496]

In effect, the issue of this proclamation marked an end to the Government's policy of tolerating Māori customary law and working through rangatira to resolve Māori–settler conflicts. For Te Raki Māori, the Government's threats likely came out of the blue. As we have discussed, muru had previously led to negotiations between rangatira, officials, and sometimes local missionaries, and had largely been resolved peacefully. With FitzRoy's January 1845 proclamation, this policy of engagement with rangatira regarding their settler breaches of Māori tikanga was suddenly reversed.

It soon turned out that the settler accounts of events at Matakana had not been altogether reliable. One of the settlers had named Mate of Ngāti Hine as involved

in the muru, but this was false. Mate rode to Auckland with an armed party, met the Governor, and protested his innocence so convincingly that FitzRoy acknowledged the offending testimony 'was unworthy of any degree of credit'. As well as cancelling the order to arrest Mate, he compensated him with two horses and some blankets.[497] Notwithstanding this, the Governor pressed ahead with action against Parihoro and Koukou and demanded land from them. Mate appears to have brokered a deal under which the two rangatira would give up 1,000 acres of the southern Whāngārei headlands (known as Te Poupouwhenua) in return for FitzRoy agreeing not to arrest them.[498] According to historian Dr Vincent O'Malley, FitzRoy imposed this 'land penalty' in contravention of previous instructions from Lord Stanley, 'and seemingly without prior investigation into Parihoro's very real grievances'. From Parihoro's perspective, 'his lands at Matakana had already been sold from under his feet. Now further lands were to be taken from him for responding to this in accordance with Māori tikanga.'[499] We cannot determine whether there was any substance to the Governor's assumption that Bay of Islands hapū played some role in the muru. But it is clear that the Government's reaction to the muru at Matakana, while hasty and ill-advised, embodied a major policy decision.

(e) The second attack on the flagstaff, 10 January 1845

We do not know exactly when FitzRoy's 8 January proclamation reached the Bay of Islands,[500] but – as we mentioned in the preceding section – we do know that there were frequent (almost daily) voyages between Auckland and the Bay of Islands at that time,[501] and the journey could be completed in less than one day.[502] It was common for events in the north to be discussed in Auckland two days after they occurred; for example, FitzRoy responded to the 8 July 1844 felling of the flagstaff on 10 July, and the Executive Council discussed the 6 January 1845 Matakana muru on 8 January.[503] In Johnson's view, Heke very likely became aware of the proclamation on 9 January.[504]

What we do know is that, early in the morning on 10 January, Heke attacked the flagstaff for the second time.[505] The flag itself was not flying at the time. The only settlers present when Heke's party arrived were the signalman James Tapper and his son, who were trapped in their house by a rope tied to the door.[506] After the flagstaff was felled, Heke knocked on the door, shook hands with Tapper, 'and told him that he had not come to hurt him; but only to cut the Flag Staff down'.[507] Heke and his party then departed, taking the rigging with them. Tapper and his son emerged from the house to find the flagstaff cut up and burned.[508]

The attack took Crown officials by surprise.[509] The police magistrate, Beckham, immediately notified FitzRoy, making it clear that no violence had occurred, and that Heke had not attempted to enter Kororāreka township.[510] Accounts of Heke's motives make no mention either of the proclamation or of FitzRoy's earlier letter chastising Bay of Islands rangatira for failing to control 'hunga tutu'.[511] We therefore cannot be certain that either was a trigger for Heke's actions, though it seems likely that Heke was at least aware of the earlier letter and the threat to return to the Bay of Islands with soldiers.

The evidence is clear, however, about Heke's general motivation, which was to challenge the Crown's understanding of the treaty and its claim of authority over Te Raki Māori. According to Beckham, Heke had spent 9 January with the acting American consul Henry Green Smith, 'where the merits of the treaty of Waitangi, and other political subjects connected with this colony were discussed'. After felling the flagstaff, Heke flew an American ensign from his waka.[512] According to the Wesleyan missionary John Hobbs, Heke's reasons for this second attack were the same as for the first:

> that is, that the Mana of te Whenua, the power of the country might not be vested in the government, but partly in him (Heke), although he was one of the first to sign the Treaty of Waitangi ceding the sovereignty of the country to the Queen.[513]

Heke subsequently offered to rebuild the lower part of the flagstaff, leaving the Government to build the upper part and fly its flag – a modification of his earlier request for Crown and Māori flags to fly side by side. As noted

earlier, Hobbs explained that Māori considered the foundation of the flagstaff in the earth to be symbolic of Heke's 'right to the Mana (chieftainship) of the country'.[514] Heke, in other words, sought to challenge the Crown's claim of authority over Te Raki Māori, while asserting his own understanding of te Tiriti. By flying an American flag on his waka, meanwhile, he signalled his right as a rangatira to align with whomever he chose. If the Crown would not respect his mana, Heke would consider alternatives.

Heke's action must be seen in the context of the Governor's prior actions. Heke and Te Hira Pure had asked the Governor to remove the flagstaff and meet them to discuss the construction of dual flagpoles at Kororāreka, representing the co-existence of Māori and Crown authority. The Governor, unwilling to negotiate on this point, had chosen instead to leave matters unresolved. In the meantime, some settlers continued to advise rangatira that the British ensign was a symbol of the Crown's authority over them and meant that territorial authority had passed from Māori to the Crown. FitzRoy, Clarke, and missionaries had all told rangatira that the treaty guaranteed Māori independence, including possession of land and the continued exercise of Māori customary law.[515]

In Dr Phillipson's view, Heke remained uncertain about whom to believe and continued to hope that the Governor would disprove what his American advisors and others had been saying.[516] His suggestion that Māori rebuild the lower part of the flagstaff certainly indicated a willingness to compromise, though Heke, with justification, remained determined that the Crown must provide some recognition of Te Raki Māori territorial authority. He must have been giving up hope, however, given FitzRoy's unwillingness to negotiate on this question and his repeated threats of military action against Māori who conducted taua muru or challenged the Crown.

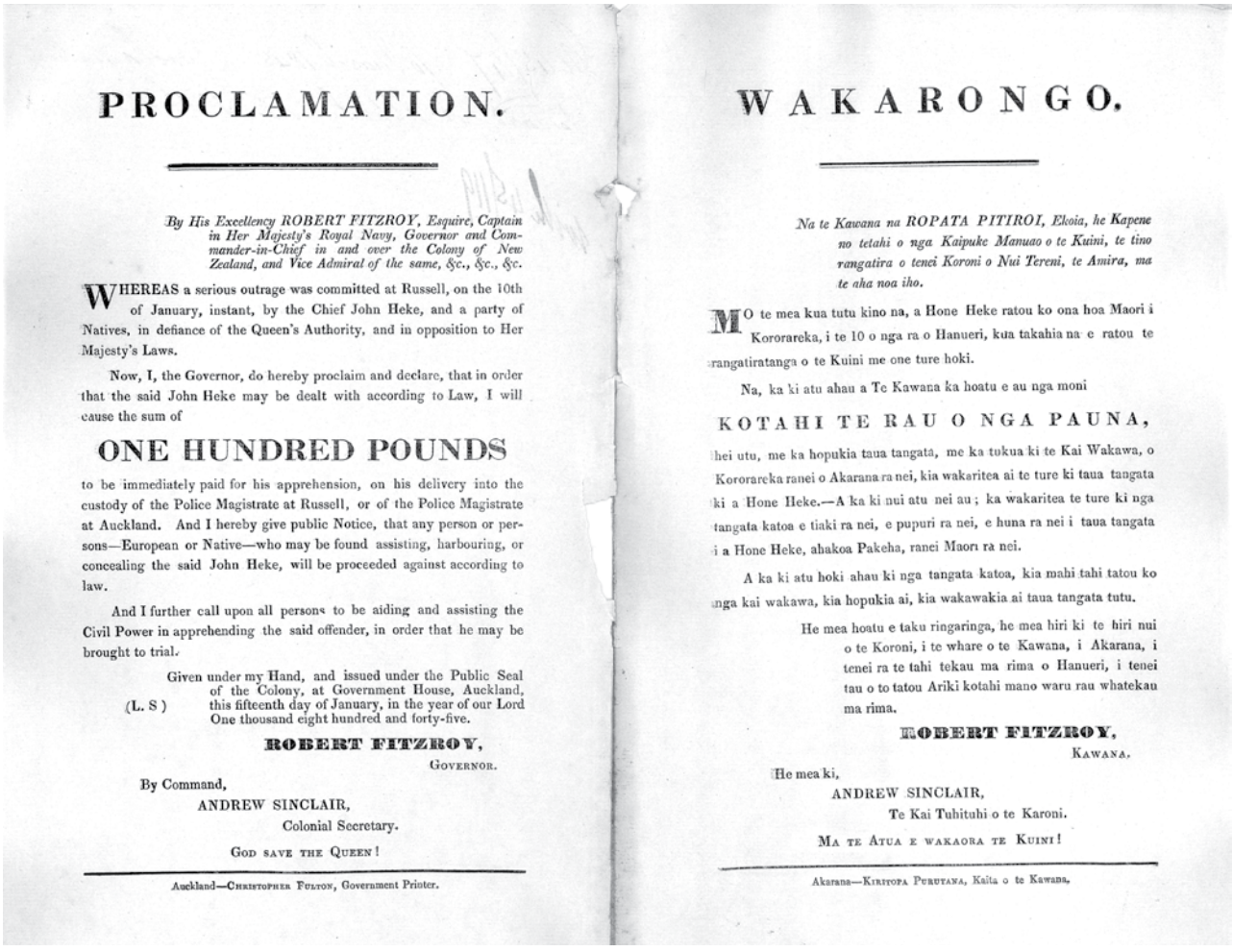
Heke's action was also a challenge to Nene and other rangatira who had promised to respond with force to any further damage he inflicted on the flagstaff, and to Rewa and Moka, who claimed mana over Kororāreka and rejected any corresponding claim by Heke.[517] According to Hobbs, Nene and some others saw Heke's actions as 'a great insult' to them, and Nene sent letters to other Hokianga rangatira asking them 'to join him in attempting to punish Heke', though the missionary did not think it likely that they would join such an action at that time.[518] As they had after the first (8 July 1844) attack, Rewa and his people occupied Kororāreka to prevent further conflict and assert their own mana.[519]

After felling the flagstaff, Heke remained in the Bay of Islands, basing himself at Te Wahapū, the settlement of Ngāti Manu leader Pōmare II.[520] From there, according to Beckham, Heke conducted a series of muru against settlers which threw the district 'into the greatest state of alarm and excitement'.[521] On 13 and 15 January, Heke and his party landed at Kororāreka and threatened to tear down the jail and other government buildings. The presence of Rewa's warriors deterred them, and they left for Te Wahapū having caused no damage.[522]

(f) FitzRoy's responses to the second attack

FitzRoy responded to Heke's actions on 14 January by ordering Lieutenant-Colonel Hulme to send 30 troops and an officer to the Bay of Islands.[523] On 15 January, FitzRoy issued another proclamation in English and Māori in which he referred to the 'serious outrage' ('te mea kua tutu kino na') committed by Heke and his party 'in defiance of the Queen's Authority, and in opposition to Her Majesty's Laws' ('kua takahia e ratou te rangatiratanga o te Kuini me one ture hoki').[524] FitzRoy's reference to the Queen's 'rangatiratanga' is notable in this context, especially in light of recent assurances by FitzRoy, Clarke, and Henry Williams that the treaty guaranteed Ngāpuhi independence and authority.[525] FitzRoy offered a £100 bounty for Heke's capture and called on settlers and Māori to assist in this, warning that anyone who aided him 'will be proceeded against according to the law'.[526] When Heke heard of the proclamation, he understood it to mean that FitzRoy wanted him taken dead or alive,[527] and asked, 'Am I a pig that I am thus to be bought and sold?'[528] He offered a reciprocal reward – an area of land – for the capture of FitzRoy.[529]

On the same day as he issued the proclamation, FitzRoy wrote to Beckham instructing him, as police magistrate, to issue a warrant for Heke's arrest 'according to usual



PROCLAMATION.

By His Excellency ROBERT FITZROY, Esquire, Captain in Her Majesty's Royal Navy, Governor and Commander-in-Chief in and over the Colony of New Zealand, and Vice Admiral of the same, &c., &c., &c.

WHEREAS a serious outrage was committed at Russell, on the 10th of January, instant, by the Chief John Heke, and a party of Natives, in defiance of the Queen's Authority, and in opposition to Her Majesty's Laws.

Now, I, the Governor, do hereby proclaim and declare, that in order that the said John Heke may be dealt with according to Law, I will cause the sum of

ONE HUNDRED POUNDS

to be immediately paid for his apprehension, on his delivery into the custody of the Police Magistrate at Russell, or of the Police Magistrate at Auckland. And I hereby give public Notice, that any person or persons—European or Native—who may be found assisting, harbouring, or concealing the said John Heke, will be proceeded against according to law.

And I further call upon all persons to be aiding and assisting the Civil Power in apprehending the said offender, in order that he may be brought to trial.

Given under my Hand, and issued under the Public Seal of the Colony, at Government House, Auckland, (L. S) this fifteenth day of January, in the year of our Lord One thousand eight hundred and forty-five.

ROBERT FITZROY,
GOVERNOR.

By Command,
ANDREW SINCLAIR,
Colonial Secretary.

GOD SAVE THE QUEEN!

Auckland—CHRISTOPHER FULTON, Government Printer.

WAKARONGO.

Na te Kawana na ROPATA PITIROI, Ekoia, he Kapene no tetahi o nga Kaipuke Manuao o te Kuini, te tino rangatira o tenei Koroni o Nui Tereni, te Amira, ma te aha noa iho.

MO te mea kua tutu kino na, a Hone Heke ratou ko ona hoa Maori i Kororareka, i te 10 o nga ra o Hanueri, kua takahia na e ratou te rangatiratanga o te Kuini me one ture hoki.

Na, ka ki atu ahau a Te Kawana ka hoatu e au nga moni

KOTAHI TE RAU O NGA PAUNA,

hei utu, me ka hopukia taua tangata, me ka tukua ki te Kai Wakawa, o Kororareka ranei o Akarana ra nei, kia wakaritea ai te ture ki taua tangata ki a Hone Heke.—A ka ki nui atu nei au; ka wakaritea te ture ki nga tangata katoa e tiaki ra nei, e pupuri ra nei, e huna ra nei i taua tangata i a Hone Heke, ahakoa Pakeha, ranei Maori ra nei.

A ka ki atu hoki ahau ki nga tangata katoa, kia mahi tahi tatou ko nga kai wakawa, kia hopukia ai, kia wakawakia ai taua tangata tutu.

He mea hoatu e taku ringaringa, he mea hiri ki te hiri nui o te Koroni, i te whare o te Kawana, i Akarana, i tenei ra te tahi tekau ma rima o Hanueri, i tenei tau o to tatou Ariki kotahi mano waru rau whatekau ma rima.

ROBERT FITZROY,
KAWANA.

He mea ki,
ANDREW SINCLAIR,
Te Kai Tuhituhi o te Karoni.

MA TE ATUA E WAKAORA TE KUINI!

Akarana—KIRITOPA PUKUTANA, Kaita o te Kawana.

Proclamation issued by Governor FitzRoy offering a bounty for the capture of Hōne Heke following the 10 January 1845 felling of the Maiki Hill flagstaff. For Heke's 'delivery into the custody of the Police Magistrate' at either Russell or Auckland £100 would be paid, and those assisting the rangatira were threatened with prosecution. In response, Heke issued his own reward for the capture of FitzRoy.

English law and not through the intervention of the Protector of the District'.[530] In a separate dispatch, FitzRoy advised Beckham that troops were on their way from Auckland and would remain to protect Kororāreka. He was instructed to form a 50-strong settler militia (a move the Governor had previously resisted on the grounds that it was likely to escalate conflict) and told to warn settlers that the Governor was contemplating a naval blockade of the Bay of Islands.[531] FitzRoy also instructed Beckham to build and erect a new flagstaff 'without delay'.[532] 'I have gone to the utmost limit of forbearance and moderation,' FitzRoy wrote, and 'shall now take a different course' under which 'Heke with those . . . who assist or countenance him, must prepare for the consequences'.[533]

The Auckland troops arrived aboard the *Victoria*, which anchored in the Bay of Islands on 17 January. They set up camp at Kororāreka. The *Victoria*'s big guns were cleaned and mounted, and small arms were distributed among the crew. As an assertion of mana and show of goodwill, Rewa responded to the troops' arrival by erecting a temporary flagstaff. The following day (18 January), the troops erected a new permanent flagstaff,[534] against the advice of Henry Williams, who believed this action would provoke Heke and might endanger settlers.[535] While Rewa's people remained in Kororāreka, Nene sent warriors to protect the new flagstaff. An arrangement was made by which Nene's forces and the colonial troops would guard it on alternate nights.[536] As tensions increased, a large group of Ngāti Manu – relatives of Kohu – travelled to Kororāreka where they challenged Rewa's people before withdrawing.[537] During these exchanges, some of Nene's people reportedly said they would 'put Heke in their pipes and smoke him' – that is, capture him, claim the reward money, and spend it on tobacco.[538] As Mr Johnson observed, '[s]uch statements were as much a challenge to Heke's authority and mana as the governor's actions'.[539]

(g) The third attack on the flagstaff: 19 January 1845

On 19 January, at about 2 am, Heke felled the flagstaff again.[540] According to Dr Phillipson,

> Challenge having been given, Heke walked up Maiki Hill . . . One member of Waka's party pointed his gun at the chief, but Heke brushed it aside and cut down the temporary flagstaff while they stood aside and let him. When it came to a choice of actually laying hands on a rangatira in defence of the Pakeha rahui, they would not do so.[541]

Settler accounts say Heke was accompanied by two or three others.[542] The officer on watch aboard the *Victoria* reported that Heke had been protected by Rewa's party;[543] and the missionary Richard Davis also believed that many Te Rāwhiti Māori supported Heke and therefore allowed the 'quiet removal' of the flagstaff.[544] Dr Phillipson's view is plausible: 'All that had happened . . . was that some young men had been surprised by Heke in the middle of the night.' Without a senior rangatira present, 'and in face of Heke's courage and mana, they did not dare lay hands on him'.[545] The missionary Charles Dudley described a scuffle in which one of Rewa's people took a shot at Heke, though no casualties resulted. Afterwards, Heke and his small party reached their waka and paddled to Waitangi.[546]

Soon after these events, Davis wrote that Heke

> has done much mischief by instilling into the minds of the natives that the mana of the Island is invested in the Queen of England, and that they are thereby made thoroughly poor men and slaves.

This was the view of 'nearly the whole of Nga Puhi', though most were not as forward as Heke in making their views known.[547] Heke continued to seek Crown recognition of Māori authority, which required the Crown to undo its claim of sovereignty over Te Raki and its people. According to Davis, Heke and his supporters had 'no anger' towards the Queen or Governor, but:

> seeing that they are a lost people – they and their children – for ever, they now wish to have undone what they ignorantly did, or to make an effort to save themselves and their children from ruin, or perish in the attempt. They say: 'It is for the Governor to save or destroy us. If the flagstaff be again raised it will be a sufficient indication to us as to what the Governor's intention is – namely, our destruction. Should he permit the flagstaff to remain down we are friends again.'[548]

Here, Heke acknowledged that his rejection of Crown authority could lead to conflict – but only if the Crown persisted in asserting its mana over Ngāpuhi territories by once again rebuilding the flagstaff. If that occurred, Davis wrote, Heke would not cut it down under cover of darkness but would return in daylight to complete the deed.[549] Henry Williams urged Beckham not to rebuild the flagstaff this time, warning of the possibility that most of Ngāpuhi would side with Heke.[550] In a private letter to another cleric, Williams remarked that Heke saw himself as a patriot, and as doing 'good work'; indeed, he carried a New Testament and prayer book at all times. Prior to

the third attack (19 January), Heke 'asked a blessing on his proceedings', and then afterwards 'he returned thanks for having strength for his work'.[551] Ultimately, Colonial Secretary Sinclair (who was on board the *Victoria* on 19 January) instructed Beckham that the flagstaff should not be rebuilt for the time being.[552]

(3) *Did the Crown cause or provoke the fourth (11 March 1845) attack on the flagstaff?*

(a) The Government prepares for war

From this point, the Governor escalated his preparations for war. On 20 January 1845, he wrote to Lieutenant-Colonel Hulme saying there was 'no longer any doubt as to the necessity of employing the military in active operations' at the Bay of Islands and Whāngārei.[553] He instructed that blockhouses be prepared at Auckland ready for transportation to the Bay of Islands, and informed Beckham that the HMS *North Star* and HMS *Hazard* would soon arrive; in addition, troops would be requested from Sydney. FitzRoy also mentioned that he had written to Rewa and other Kororāreka rangatira, though no copy of the letter was included in published parliamentary papers.[554] In response to Beckham's concerns about the influence on Heke of the acting American consul, FitzRoy banned the raising of any non-British flag at the Bay of Islands – but then instructed Beckham not to proceed with the ban in case it caused an international incident.[555]

On 21 January, FitzRoy wrote to Governor Gipps in New South Wales asking for 200 soldiers and naval support, to be based permanently in New Zealand.[556] Four days later, FitzRoy sent another 10 soldiers from Auckland to the Bay of Islands.[557] He also sent instructions to Beckham about the flagstaff, saying it should be rebuilt with the first eight feet sheathed in iron 'to resist any axe'. When the blockhouse arrived from Auckland, it was to be put up near the flagstaff, with a deep ditch and palisade surrounding both. No one except soldiers on duty should be allowed within the palisade at any time.[558] FitzRoy's decision to rebuild and fortify the flagstaff reflected his view that it was sacred but also confirmed to Heke that the Governor intended to press ahead with the Crown's claim of authority over Te Raki by force if necessary.[559]

FitzRoy's actions reflected his belated realisation that Nene could not or would not forcibly prevent Heke's attacks on the flagstaff, and that the agreement made at Waimate was therefore ineffective.[560] As Dr Phillipson explained, the Governor therefore became 'intent on a military demonstration and the suppression of what he saw as rebellion'.[561] Johnson described this as 'almost an emotional response' in which the Governor saw any attack on the flagstaff as 'an attack on the Queen'. FitzRoy was facing escalating difficulties (not all of his own making). There were settler demands for reprisals following the conflict in Wairau in 1843 (discussed in chapter 4) and an exodus of settlers from the Bay of Islands back to Auckland.[562] FitzRoy expressed his fear in his 19 October 1844 dispatch to Stanley that taua muru might result in people being killed and a 'rupture between the races', and that would lead to a wider Māori uprising.[563] At the same time, the 1844 report of the select committee of the House of Commons reflected pressure from the New Zealand Company and parts of the imperial government for the Crown to claim ownership of unused or unoccupied lands.[564] Johnson argued FitzRoy was 'very aware of the restrictions and challenges' facing the colony, including its substantial debts. Under pressure and under-resourced, FitzRoy feared that Heke and Kawiti posed a military threat and perhaps feared also that the Crown might lose its colony on his watch.[565] In this heightened state of anxiety, he did not consider other options before determining that a military response was needed.[566] But he must have realised that Heke would regard the new fortified flagstaff as merely a further challenge.

(b) Missionaries attempt to ease tensions

By this time, most of Ngāpuhi were also convinced that war was inevitable. Heke determined to stand his ground, leaving other rangatira to decide whether they would fight and, if so, with whom they would side.[567] Settler and missionary accounts indicate that many rangatira – almost certainly a majority – accepted Heke's view that the Crown had deceived them when they signed te Tiriti.[568] The Sub-Protector of Aborigines, George Clarke junior, who had been sent to the Bay of Islands to gather intelligence,

reported that almost all rangatira displayed 'a strong and . . . general feeling of dislike and contempt for the authority of Her Majesty's Government'.[569] These attitudes had hardened after the Governor's 15 January proclamation calling for Heke's arrest,[570] and for a time in late January it still appeared that most of Ngāpuhi would line up with Heke.[571]

Even Nene had become distrustful of Crown intentions and angry at being drawn into a conflict that was not of his making. Most notably, he shared in the belief that the 'evils' now facing Ngāpuhi 'arose from their having signed the Treaty of Waitangi'.[572] Nonetheless, he had made a commitment to oppose Heke and he continued to honour it, even as the Governor's soldiers returned, which was in breach of the Waimate agreement.[573] At the end of January, Nene called a hui at Pāroa Bay with the apparent aim of dissuading other Ngāpuhi hapū from joining in the war; a quick victory for the Crown over an isolated Heke was preferable to a drawn-out conflict involving all of Ngāpuhi and endangering settlement.[574]

Henry Williams attended and gave a clause-by-clause explanation of te Tiriti, which was intended to reassure rangatira about the Crown's protective intentions. As in previous hui, Williams relied on the Māori text and by this means continued to conceal the true nature of the Crown's claim of sovereignty.[575] Williams described the Governor as 'a Chief', which implied equality with rangatira; and as 'a regulator of affairs with the natives of New Zealand',[576] which implied that the Governor would negotiate and work with rangatira, not govern over them. Williams also described te Tiriti as protecting rangatira 'in their rights as chiefs', and as guaranteeing 'to the chiefs and tribes, and to each individual native, their full rights as chiefs, their rights of possession of their lands, and all their other property of every other kind and degree'.[577] These guarantees of full chiefly authority had been clearly conveyed in the Māori text of te Tiriti, but not the English text.[578]

Williams later claimed this explanation had converted most of Heke's supporters, who no longer feared that the Crown intended to seize their country and therefore pledged to remain neutral in the forthcoming war.[579] In a letter to FitzRoy, Williams pointedly observed that the treaty had been 'the only weapon' that could be used to calm Ngāpuhi fears.[580] According to other sources, many rangatira remained sympathetic to Heke but chose neutrality because they did not want to embroil their people in a messy conflict. Ngāpuhi peacemakers were at the hui and very likely contributed to this outcome.[581] After the hui, Williams and Ururoa both attempted to dissuade Heke from any further attack against the flagstaff.[582] In response, Heke told Williams that the treaty was 'all soap . . . very smooth and oily, but treachery is hidden under it'.[583] In early February, Heke and Nene met in an apparent attempt to resolve their differences, but this was also unsuccessful.[584]

(c) The flagstaff is rebuilt

During February, Heke travelled or sent envoys throughout the north – from Whāngārei to Mangonui – seeking support.[585] Many of the younger Waimate rangatira and warriors joined him, as did some sections of Whangaroa who were closely related to his wife, Hariata. According to George Clarke junior, Heke told his opponents 'that they are all slaves of British tyranny', and that 'his object is to restore their former freedom, and remove every mark of British authority'. Whereas Heke was setting himself up in open opposition to the Crown, he nonetheless wanted settlers to remain. George Clarke junior was satisfied that Heke had not personally committed any acts of aggression against settlers, though he had not restrained his followers. Heke had told other rangatira 'that he would not molest the white settlers, except in retaliation for any hostile measures the Government might adopt towards himself or his friends'.[586]

By this time, FitzRoy was tempering his earlier decision to initiate military action against Heke. In the meantime, the Pāroa Bay hui had been held, and fear of a general Ngāpuhi uprising had therefore eased. Williams had also informed the Governor about the depth of Ngāpuhi frustration with the Crown and the risk that any aggressive action against Heke might prove counter-productive by causing neutral hapū to join him. On 18 February, FitzRoy thanked Williams for his efforts at calming the situation and advised that, while he remained determined

to uphold the Crown's authority and influence, he would not 'irritate a wounded place'. He had therefore decided to act defensively 'for the present', in the hope that military action might not be needed.[587]

Nonetheless, he would not compromise on the flagstaff and was prepared to defend it with force. The HMS *Hazard* arrived in the Bay of Islands on 15 February carrying the blockhouse that was to be erected adjacent to it.[588] FitzRoy sent instructions that, at least for the time being, his Bay of Islands soldiers should be used only in a defensive role to avoid any acts that would cause alarm or suspicion among 'friendly' Ngāpuhi.[589] The New South Wales Executive Council had by this time agreed to send up to 200 soldiers to New Zealand 'to keep in check the natives, and to preserve peace between the two races'.[590] Whereas the council had initially resolved to send troops from Port Jackson, it then decided to await the arrival of the 58th Regiment, due soon from England, and instead send it to New Zealand, which it reached in late April. As we will see in the next section, FitzRoy waited for the regiment's arrival before taking military action against Heke and Kawiti.[591]

In making their decision to send troops, the New South Wales authorities had been particularly concerned about the likely inflammatory effects of the findings of the select committee of the House of Commons (which FitzRoy had probably learned of in December 1844). As noted earlier, the report included resolutions that the treaty was a policy 'mistake', and that Māori could only lawfully claim ownership over the lands they occupied or cultivated (we discuss the select committee's report further in chapter 4, section 4.3.2(3), and chapter 8, section 8.3.2(5)).[592] On 15 February 1845, the *Daily Southern Cross* published details of the report, after receiving copies of London newspapers (they had been taken to Wellington on the *Caledonia*, then on to Auckland on the HMS *Hazard*).[593] FitzRoy clearly expected a response from Heke and other Bay of Islands Māori, and on 18 February he sent word to Williams in the apparent hope that the missionary would again smooth things over.[594] In the view of Chief Protector Clarke senior, the report justified all Heke's fears about British intentions and contradicted every assurance given by Crown officials and missionaries, and in the treaty itself. Clarke told FitzRoy of these concerns on 24 February, warning that once the content of the report became widely known among Māori, they would tend to 'disturb the peace of the country, and . . . destroy confidence in the government'.[595]

Both Dr Phillipson and Mr Johnson believed that Ngāpuhi rangatira learned of the House of Commons report at some point in late February or early March, and that this inflamed Heke's opposition to the Crown and triggered his fourth attack on the flagstaff on 11 March.[596] 'The effect at the Bay of Islands cannot be exaggerated', Phillipson wrote: 'I am quite certain that it convinced Heke he now knew for certain how the Crown understood Te Tiriti and what its intentions were towards Maori and their lands.'[597] In reaching this view, Phillipson relied on an account from Henry Williams, who maintained that opposition to the Crown had increased markedly after the report was published, undoing the work he himself had done in explaining the treaty to rangatira.[598] From this point, Phillipson concluded, 'there was a marked change in the intensity of the crisis'. Whereas the Governor had 'determined to employ military sanctions' in January, Heke remained open to a settlement 'until late February/early March, after the publication of the House of Commons' select committee report'.[599]

The other cause of rising tensions was the arrival of the *Hazard* in the Bay of Islands, with the blockhouse and instructions for the fortification of the flagstaff.[600] A week after its arrival, on 22 February, Beckham wrote to the Governor informing him that '[t]he lower mast of the flag-staff was erected this morning.' In accordance with instructions, the flagstaff was sheathed in iron and protected by the blockhouse and palisades, which were in place before carrying out this task.[601] As noted earlier, FitzRoy had ignored missionary warnings that Heke and Ngāpuhi would regard this as a provocative act. Heke understood it as a signal that the Crown would persist in its claim of exclusive authority in the district and would use force to support that claim. His message to the missionaries had been clear: if the Governor wanted peace, he should leave the flagstaff down; if he wanted war, he should raise it again.[602] Heke and his supporters would

then 'die upon our Land, which was delivered to us by God'.[603]

From this time, there was a steady heightening of tensions around the Bay of Islands, and the Crown regarded conflict as imminent. Heke moved his supporters from Kaikohe to Te Wahapū. Beckham considered an attempt to arrest him there but was warned off by Henry Williams on the grounds that the Crown would then be the aggressor, likely provoking most of Ngāpuhi to unite against it. Beckham therefore reported that he would wait until Heke landed at Kororāreka and arrest him then.[604] In response, FitzRoy instructed Beckham to warn settlers that Heke might attack, and that lives would be lost. The Government would defend the flagstaff and blockhouse and would offer protection for settlers in Kororāreka but not elsewhere. FitzRoy was also contemplating a naval blockade as a precursor to aggressive measures against Heke but said he would not act without warning settlers.[605]

Some settlers responded by burying their valuables and leaving their homes.[606] The missionaries Henry Williams and Richard Davis both wrote to the Governor urging him to travel to the Bay of Islands in a late attempt to resolve the conflict.[607] Beckham reported Williams' view that the Governor's presence 'would be extremely beneficial' and might prevent the 'collision' that otherwise seemed imminent.[608] FitzRoy declined without giving reasons.[609] We agree with Dr Phillipson that this was another significant missed opportunity to enter dialogue with Heke and ease tensions.[610] Soon afterwards, FitzRoy wrote to Gipps in Sydney, making it clear that he was holding back from military action against Heke because he feared a general uprising. Advising him that the situation was 'more critical' than he had previously stated, FitzRoy emphasised his urgent need for troops. He was reliant on reinforcements arriving soon, and 'meanwhile, am acting only on the defensive' in order to avoid provoking Ngāpuhi.[611] This was another signal that he intended to take action against Heke once reinforcements arrived.

(d) Heke forms an alliance with Kawiti

In the last week of February,[612] Heke was joined by a party of 200 from Mangamuka.[613] He then travelled with his supporters to Te Wahapū where he met Kawiti, presenting the Ngāti Hine leader with a ngākau – a symbolic request for assistance.[614] This particular ngākau was a mere smeared with human excrement. Kawiti's great-grandson Tawai Kawiti later wrote that 'the meaning was obvious. Someone had defiled the mana of Ngapuhi and such a challenge must be met!'[615] According to claimant David Rankin, the mere possessed enormous mana, having been used by Hongi Hika before it was passed down to Heke.[616] The alliance was, on the face of it, not a natural one, since it brought together senior leaders from the northern and southern alliances, which for decades had competed for Bay of Islands influence.[617] Yet, Kawiti's people regarded Heke's cause as just and were finally drawn into the conflict by the Kohu incident and the Crown's insensitive response. They were now ready to consider an alliance. Tohunga spent all night tracing tātai (lines of descent) that could bind Heke's Ngāti Rāhiri, Ngāti Tautahi, Ngāi Tāwake, and Te Uri o Hua hapū with Ngāti Hine and other southern Bay of Islands hapū, including Ngāti Manu, Te Kapotai, and Te Waiariki. In the event, those tātai reached back several generations to Hineāmaru and Torongare, and even further to the time of Rāhiri.[618]

The alliance between Heke and Kawiti was a momentous one. Kawiti was one of the senior leaders of the so-called southern alliance, a coalition comprising Ngāti Hine, Ngāti Manu, Te Kapotai, and others, which had controlled Kororāreka and other southern Bay of Islands ports during the 1820s and 1830s. Heke's whakapapa included Ngāti Tautahi and Ngāi Tāwake, founding hapū of the 'northern alliance', which had expanded from Kaikohe in the late 1700s and early 1800s to seize control of much of the northern Bay of Islands coast. The northern and southern alliances had clashed during the 1830s as each vied for control over Kororāreka and other trading centres. Heke was also of Ngāti Rāhiri and Ngāti Kawa, which occupied territories from Waitangi to Kaikohe and had remained neutral during the 1830s conflicts. (See chapter 3 for detail on the relevant hapū alignments and conflicts.)

Kawiti's decision to join Heke caused considerable alarm among settlers and Crown officials. Beckham informed Governor FitzRoy that he had armed his

settler militia and established civil and military patrols in Kororāreka. Samuel Polack's home and store at the north end of Kororāreka beach was chosen as a refuge for women and children in the event of hostilities, and a 'strong fence' was built around it to protect anyone inside from gunfire. The house was picked because it was out of range of the *Hazard*'s heavy artillery.[619] Beckham had to calm fears from Ngāti Rēhia and others that the Crown would target Ngāpuhi indiscriminately if open conflict did break out.[620]

Emboldened by their new alliance with Heke, Kawiti's people began a series of taua muru against settlers in and around Kororāreka, burning down houses and taking horses. The main victims were Wright, Hingston, Benjamin Turner, and others against whom Kawiti's people had prior grievances. Although there was significant property damage, no violence occurred. Heke took no part in these raids.[621] On 3 March, Beckham attempted to intervene in one of these muru and pursued the raiding party up the Taumārere (Kawakawa) River, where Ngāti Hine opened fire. From this, Beckham concluded 'that the natives are determined to have war'.[622]

Certainly, Heke and Kawiti were determined that the flagstaff should come down and lost no opportunity to make their intentions known to settlers, missionaries, and Crown officials.[623] Both made it clear that settlers would not be harmed and that they did not wish to have any conflict with the Crown – but they would use force if their mission was resisted.[624] With a party of 150, Heke visited the Waimate mission on 3 March. There, Te Kekeao and Ruhe warned Heke not to go to Kororāreka; if he did, they said, they would join Tāmati Waka Nene and prevent Heke from returning to his home at Kaikohe. Heke is said to have responded that 'the snake whose head has thrice been cut off is come to life again [and] he has grown to a taniwha and has many mouths'; that is, the flagstaff had been rebuilt three times and was now accompanied by a blockhouse with many defences. Heke was 'desirous to go and see this strange sight'.[625]

On 4 March, Heke told Burrows and Henry Williams that he had 'no wish to injure either sailor, soldier, or any of the settlers', but the flagstaff had been rebuilt without any reference to him, and the Governor had offered £100 for him to be taken dead or alive. As he had on other occasions, he said that Māori had been deceived into agreeing to the treaty and therefore 'signing away their lands'. This referred to the Crown claiming territorial sovereign authority, not mere possession of land.[626] As was his habit, Williams defended the treaty's protective intent without addressing Heke's fundamental concern about Crown and Māori authority.[627] At about this time, Kawiti told Catholic bishop Jean-Baptiste François Pompallier that he did not wish to harm anyone; that 'they wanted only to cut down the flagpole; and . . . if no-one fired on them, they would do no further injury and would return home'. He said that Kawiti then elaborated, 'If the flag were only for the whites . . . we would not take up arms; we would not attack it; we would say nothing; but this flag takes away the authority of our chiefs and all our lands.'[628] According to another source, Kawiti also complained of having been 'deceived' by the Crown, which persisted with its claim of sovereignty despite Māori intentions being 'well known': 'Let the flagstaff be cut down and all will be at peace. We have no intention of giving up our authority and our lands to any nation whatsoever.'[629]

Between 6 and 9 March, there were several skirmishes between Kawiti's forces and colonial troops. On one occasion, the *Hazard*'s gunboat fired on some of Kawiti's men as they crossed the bay in a waka;[630] on another, shots were exchanged when Beckham took an armed party to intervene in taua muru at Uruti and Matauwhī. Three Māori were wounded.[631] By 8 March, Kororāreka residents were 'in a great state of alarm' and believed an attack was imminent.[632] In addition to the two cannons and blockhouse atop Maiki Hill (which we describe as the upper blockhouse), the town was by this time heavily fortified and defended. Another blockhouse (which we call the lower blockhouse) had been built further down the hill, with three cannons; it faced in the direction of Matauwhī and was intended to protect Polack's house, which was now surrounded by a stockade for the protection of the townspeople. The stockade also contained the troops' gunpowder magazine. A single cannon was placed at the south end of the beach. The colonial troops were housed

in the township and numbered about 140 (50 soldiers and 90 sailors and marines). About 200 townspeople and volunteers from merchant vessels in the bay had been formed into a settler militia (although Henry Williams thought few of them would know how to load a gun, let alone aim and fire).[633] The *Hazard*, anchored in the bay, carried another 18 cannons.[634]

On Sunday 9 March, Heke's supporters attended a church service at Uruti, responding to each part of the service except the prayer for the Queen.[635] Beckham reported to the Governor that Kororāreka was 'completely besieged, being surrounded by armed parties of natives', their total numbers between 600 and 700. Kawiti and Heke had been joined by most of Pōmare II's Ngāti Manu people (though not Pōmare himself) and by Pōmare's ally Te Mauparāoa (Ngāti Kahungunu), who had lived at Ōtuihu since the 1830s.[636] Beckham also sent two of the *Hazard*'s crew to spy on Kawiti's people at Uruti. They were captured and disarmed, but to their amazement were then allowed to return to the *Hazard* unharmed.[637] According to one account, the *Hazard* fired a shell at a party of Ngāpuhi who were seen on a ridge above Kororāreka.[638]

On the same day, Wai (Ngāi Tāwake) and Rewa (Te Patukeha and Ngāi Tāwake) visited Beckham offering to protect Kororāreka from any attack. Beckham declined and asked them to leave the town, as he was uncertain they could be trusted and also feared that British soldiers might become confused and fire on them.[639] Beckham may have been partially correct about Rewa's motives. According to visiting French navy captain André Bérard, Rewa wanted to protect the town and its settlers, regarding them as being under his mana, but he 'would have nothing whatever to do with the matter of the flagpole'.[640] His offer rejected, Rewa took his people away from the town and in so doing, removed its most powerful source of protection.[641]

(e) The fourth attack on the flagstaff: 11 March 1845

Settlers were expecting an attack on Kororāreka on Monday 10 March, but the day passed quietly.[642] During that evening, the missionary Henry Williams and the trader Gilbert Mair informed Beckham that it would happen the following morning. Williams sent Beckham a handwritten note: 'I understand that the natives intend to make their attack on the morrow in four divisions'; Mair's account was similar.[643]

Beckham was dismissive of these warnings,[644] and it does not appear that the military officers stationed in the Bay of Islands were informed. Certainly, when Heke, Kawiti, and their supporters (numbering between 450 and 600)[645] launched their action sometime between 4 am and 5 am on the morning of Tuesday 11 March, the soldiers, sailors, and marines were far from prepared. Kawiti and his party landed at Matauwhī Bay alongside another party led by the influential Te Roroa rangatira Pūmuka, who had lived for many years in the Bay of Islands. Together, they moved inland in parallel columns on either side of what is now Matauwhi Road, until they reached the single gun battery on the outskirts of Kororāreka. There, they surprised a party of sailors and marines who were digging a defensive trench.[646] A British sentry fired on the party,[647] and the sailors and marines charged at Kawiti's men.[648] In the brief, close-quarter fighting that ensued, there were many casualties on both sides. According to Ngāpuhi traditions, as his forces claimed the single gun battery on the Matauwhī side of town, Pūmuka was the first to kill an enemy soldier, and Pūmuka himself was also the first to be killed on the Ngāpuhi side. Captain Robertson of the *Hazard* was severely wounded.[649]

This battle drew the attention of a smaller party of soldiers who were digging trenches on Maiki Hill. As the soldiers moved off to investigate, Heke and his party – who had been hiding since midnight in scrub on the Tāpeka side of the hill – rushed in and seized control of the upper blockhouse and flagstaff, shutting most of the soldiers out of their own defensive position. Once inside the blockhouse, Heke's supporters shot and killed the four soldiers who had remained behind. The signalman Tapper was shot and injured, and a Māori girl shot and killed, both having been mistaken for soldiers (like the soldiers, they were wrapped in blankets as they slept). Tapper's wife and daughter were left unharmed. Some of Heke's followers then dug underneath the iron sheathing on the flagstaff and began slowly to cut through the thickest part of the

The HMS *Hazard*, the *Victoria*, and the *Matilda* in Kororāreka the morning before Hōne Heke's fourth attack on the Maiki Hill flagstaff. The arrival of British troops aboard ships like the *Hazard*, and later the *North Star*, heightened tensions around the Bay of Islands.

timber beneath, while others remained in the blockhouse firing on British soldiers outside and forcing them down the hill.[650]

Meanwhile, the remaining soldiers formed up at their barracks at Kororāreka, ready to join the battle against Kawiti. To prevent them from doing so, Te Kapotai (under Hikitene) and Ngāti Manu (under Hori Kingi and Mauparāoa) began to fire on them from the hills surrounding the town.[651] According to accounts from British officers, these covering parties made no attempt to move into the township and took no part except to provide covering fire for Heke and Kawiti. This tactic appears to have been intended to support destruction of the flagstaff while minimising direct engagement, and caused considerable confusion among British officers who had trained only for open combat.[652] After their brief battle at Matauwhī, Kawiti's troops withdrew into the surrounding bush where they, too, provided covering fire for Heke.[653]

According to Henry Williams, who was in the town at the time, the entire military engagement (the battle at Matauwhī, the capture of the upper blockhouse, and the withdrawal of Kawiti's men into the hills) was over within a very short time. The 'commencement and termination of the fighting of that day on the part of the natives' occurred within 'a space of a few minutes, say ten'.[654] Officers' accounts suggest it took longer – beginning about 4.45 am and ending at 6 am when Heke took the blockhouse, and Kawiti withdrew.[655] By the end of that very brief period, Heke's men were in the upper blockhouse, the other Ngāpuhi forces had withdrawn into the hills, and the British military forces had all returned to the stockade at Polack's house, 'with the exception of a few, in the lower [gun] battery, who received no injury'.[656]

Lieutenant Edward Barclay of the 96th Regiment described exchanges of fire between the soldiers in the lower blockhouse and Māori who were occupying the

Hōne Heke attacking the flagstaff at Maiki Hill. This early twentieth century depiction is from Reginald Horsley's book *New Zealand: Romance of Empire* (1908) and is among a series of images of early scenes in New Zealand by Arthur David McCormick, a British illustrator and painter of historical scenes.

valley between there and Heke's party.[657] At about 11 am, a group of civilians left Polack's stockade to engage with a group of retreating Ngāpuhi nearby, though the encounter was brief and no one was hurt.[658] While all of these exchanges were occurring, the officers on the *Hazard* were turning the sloop broadside to the town. As the hand-to-hand exchanges came to an end, the *Hazard*'s cannons were fired at the flagstaff and blockhouse, and at the hills where the warriors were waiting and firing from under cover. The *Hazard* maintained this bombardment at regular intervals throughout the morning, as warriors fired back from the hills.[659] Soldiers in the lower blockhouse also used ships' guns against Māori in the hills above them.[660]

Heke and his party captured the flagstaff at 6 am. According to the log book of the government brig *Victoria*, it took until 10 am for the flagstaff to come down, at which point 'the firing ceased'.[661] Beckham confirmed this, reporting that 'a tremendous fire was kept up . . . until about ten o'clock, when the natives retreated and the firing ceased'.[662] Lieutenant Barclay reported that exchanges of gunfire (and cannon fire) continued 'all the morning', without providing a specific time;[663] and FitzRoy would report to Gipps that the firing from the hills was general until 'towards noon'.[664] After leaving the upper blockhouse, Heke raised his own flagstaff on a neighbouring peak and – according to one witness – 'put a soldier's jacket on one arm of the new flagstaff and a hat on the other and rahui'd the place'.[665] It is clear from the available evidence that Heke and his allies remained in the hills for most of the morning, and ceased firing soon after they had cut down the British flagstaff and erected their own. Hostilities ended probably around 10 am, but by noon at the latest.[666]

(f) The destruction of Kororāreka: 11 and 12 March 1845

At noon, the Ngāpuhi forces raised white flags on Maiki Hill and at the south end of Kororāreka Beach, signalling the end of hostilities. Heke had Tapper and his wife escorted down Maiki Hill under cover of a white flag, to join other settlers at Polack's house.[667] Soldiers and Māori alike began to gather their dead and tend to their wounded.[668] But during the next hour, several events occurred that together contributed to the destruction of Kororāreka township. These included the evacuation of the town; an explosion in the ammunition store of the colonial forces; the sabotage of the remaining British cannon; the shelling of the town by the *Hazard*; and plunder and burning by Ngāpuhi forces.[669]

There are several accounts of these events, almost all from military officers, Crown officials, and missionaries.[670]

While these are contradictory, the general sequence of events is clear. Soon after the Ngāpuhi parties raised white flags at noon, British officers decided to remove the women and children from Polack's stockade onto the ships in the bay. It appears this decision was made out of fear that Ngāpuhi forces might attack the town, even though all Ngāpuhi forces had by then withdrawn. The evacuation was completed before 1 pm.[671]

At that time, two other events occurred that contributed to a decision to abandon the town altogether: first, the powder magazine of the colonial troops blew up, injuring several people and destroying Polack's house, along with property that had been taken there for safekeeping;[672] and secondly, someone sabotaged the cannon in the lower blockhouse – the one defensive placement that remained in British hands.[673] Even though British officers were in the stockade at the time of the explosion, none could provide a convincing account of what transpired; the commanding officer could not say who, if anyone, had given the order. They told their superiors that they did not know whether the explosion was caused by an accident or an act of sabotage, though they believed an accident to be more likely. One officer's report indicated that panic within the stockade was a factor but did not give details.[674]

These events only added to the panic. The British forces had now lost the upper blockhouse and flagstaff, the stockade, and all their ammunition and cannon. Under these circumstances, the commanding officer, Lieutenant George Philpotts of the *Hazard*, ordered a full evacuation of the town.[675] 'Why the town was evacuated, is not for me to explain', Henry Williams wrote soon afterwards. 'I merely state that the inhabitants were not driven out of the town by the natives; they withdrew to the ships, by order of the authorities in command.'[676]

Having already withdrawn from the town, Heke and his allies remained in the hills 'without making any movement',[677] while the wounded, other townspeople, and finally the soldiers and sailors were loaded onto boats and taken to the ships anchored in the bay.[678] Lieutenant Barclay reported that 'occasionally a random shot was fired' during the evacuation, but none directly at townspeople or troops.[679] Bishop Selwyn, who helped the wounded and others onto boats, said that no shots were fired at all. One soldier was left behind on the beach, and Māori let him be while a boat returned for him.[680]

The accounts indicate that Heke and his allies were highly surprised to find Kororāreka suddenly vacated. After the evacuation was complete, Ngāpuhi warriors began to move slowly into the town, at first quietly and in small numbers, with others following as it became clear that the town was genuinely empty.[681] Heke forbade his own men from harming or plundering settlers,[682] though some Ngāpuhi warriors did begin to loot shops and homes, taking supplies of sweets and a cask of liquor (according to Burrows).[683] During the afternoon and evening, some of the townspeople began to return to Kororāreka to reclaim their remaining possessions. Māori offered no resistance, willingly handing property back to its owners and on numerous occasions helping them to transport possessions to the boats.[684] While this was occurring, Lieutenant Philpotts made the decision to bombard the town, and thus broke the ceasefire and renewed hostilities.[685]

Andrew Bliss, the master of the whaler *Matilda*, gave a first-hand account of these events. At about 3 pm, he was helping settlers onto boats. He wrote that Māori 'were not hostile to the settlers, but only warred with the Government', adding that Heke and his allies were willing to allow settlers to return to their homes and promised not to harm them. One of the settlers, named Clayton, visited the *Hazard* and asked Philpotts to maintain a ceasefire while settlers were in the town. Philpotts agreed. Bliss reported that the settlers then returned to shore, where they were met 'with every demonstration of respect and good will'; Māori were 'desirous the settlers should return to their homes unmolested'. The settlers sent a message to Heke to confirm the ceasefire,[686] and missionaries also negotiated with him.[687] According to Bliss:

> Scarcely had the messenger left us, when two [cannon] shot were fired from the *Hazard*, which wounded one of the Natives slightly with a splinter: this immediately broke up all further intercourse. They sprang to their feet, and pointing their muskets at us, ordered us down to the beach, saying

> we came on shore to deceive them, and saying that we had broken faith with them: surrounding us on all sides, they would not hear a word we had to say, but vociferated, our Government was very bad . . . they then followed us down to the boat directing us to be off, and I thought myself very fortunate, in being allowed to effect my escape unmolested after such a breach of faith on our side.[688]

The *Hazard* continued to shell the town at frequent intervals throughout the evening and the following day, while Ngāpuhi, missionaries, and some settlers remained in the town.[689] Henry Williams wrote that this action caused 'imminent risk' to the Europeans gathering their property,[690] and George Clarke junior later described the firing as 'somewhat wild, but heavy'.[691]

On 13 March, two days after the flagstaff was felled, the *Hazard* and other British ships departed for Auckland.[692] Philpotts wrote to the Governor on 15 March, giving a long account of the attack on the flagstaff and the evacuation of the town, but no explanation for his decision to open fire, except to say that the *Hazard* 'was constantly employed in shelling the town when deemed requisite'.[693] Two days later, he explained that he fired 'whenever the natives made their appearance', though he left a window of 'more than four hours' for townspeople to save their possessions.[694]

It appears from these comments that Philpotts regarded the mere presence of Māori in the town as sufficient justification for shelling it, even though white flags were flying, hostilities had otherwise ceased, colonial officers had voluntarily abandoned the town, Māori were assisting settlers to recover their property, and shelling posed considerable risk to the lives of settlers and Māori alike. Bishop Pompallier later wrote that colonial officers had decided in advance to shell the town if it fell into Māori hands.[695]

FitzRoy was incensed at the behaviour of his military officers (with the exception of the injured Captain Robertson) throughout the conflict. 'The shameful conduct of those officers whose uselessness caused the loss and destruction of Kororareka is now the subject of an enquiry.'[696] Two officers faced courts martial, one of whom (Ensign Campbell, who had been responsible for defending the upper blockhouse) was found guilty. Philpotts, who made the decision to shell Kororāreka, faced no charges.[697]

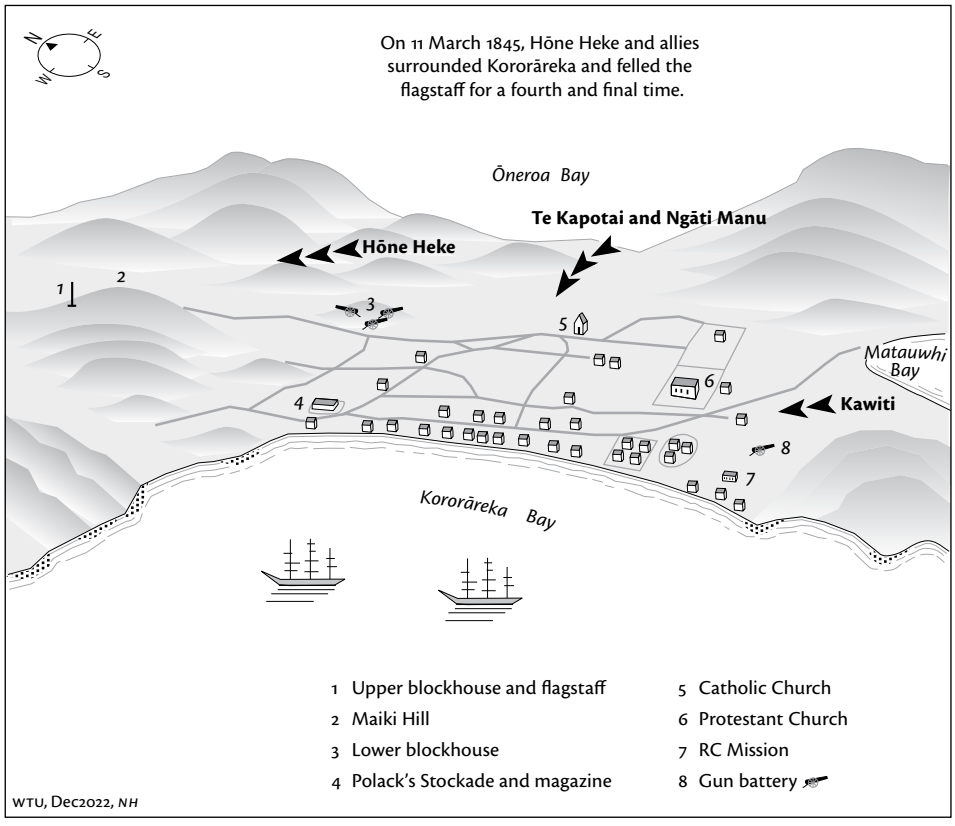
(i) ***Who was responsible for the destruction of Kororāreka?***

The decision to bombard Kororāreka during a ceasefire was a critical turning point. It threatened the lives of everyone still in the town: settlers, missionaries (who were assisting settlers and burying the dead), and Māori. Before the bombardment, the town stood intact; once it began, Māori retaliated by setting buildings alight; within a few days, the town was destroyed.[698]

The various accounts differ over when the fires were started. The *Hazard* began to shell the town on the afternoon of 11 March 1845, and Lieutenant Philpotts and Mr Bliss both recorded in their logs that the town was on fire that evening.[699] Beckham reported that the fires were started the next morning.[700] Lieutenant Barclay noted that 'the natives burnt the town, with the exception of the churches and the houses of the missionaries' on the afternoon of 12 March.[701] Philpotts informed FitzRoy that he decided to leave the Bay of Islands that evening: the *Hazard* was running out of water, the ship's surgeon had warned that there was a risk of disease among the wounded on the crowded ship, and with 'the flag-staff down, and the town sacked and burnt, what use would there have been in remaining? We had nothing left to protect.'[702]

Philpotts also reported that, by the time he left, the town was 'burnt nearly level with the ground'.[703] Yet according to the missionary Robert Burrows, when he arrived in Kororāreka on the afternoon of 14 March, 'the houses were still being plundered and burnt'.[704] Some claimants argued that the town was destroyed by cannon fire,[705] but there is little evidence to support this. The only report of damage from shell fire was a complaint by Henry Williams that the Church of England parsonage and school had been 'cut up . . . by the shot of the Hazard'.[706] In contrast, Heke later acknowledged that the town had been burned, though not by his men.[707]

Non-military observers at the time appeared to regard the burning as inevitable and reasonable retaliation for



Map 5.7: The fourth attack on the Kororāreka flagstaff.

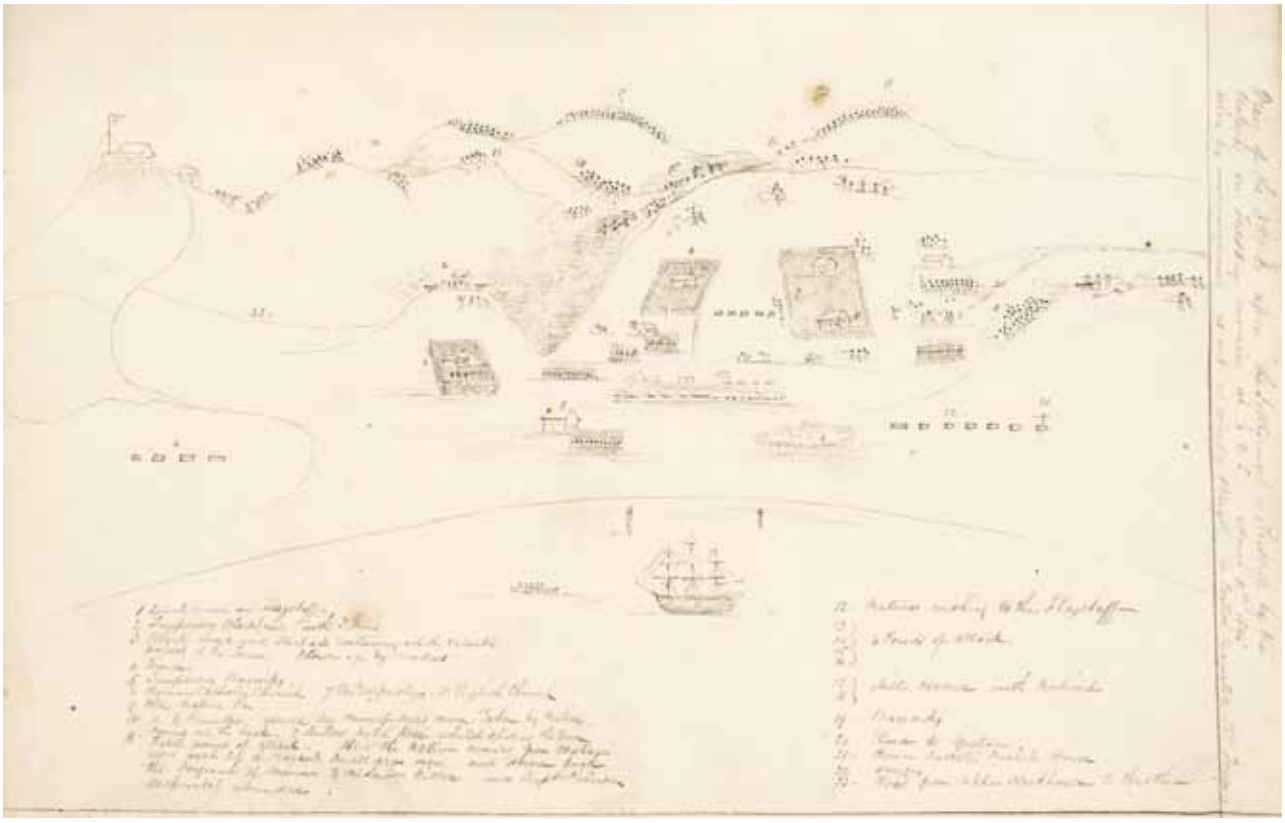
the decision to shell Kororāreka and endanger lives during a ceasefire. According to Bliss:

> It is my decided opinion, that had those shots not been fired, the Town might have been saved from plunder and destruction: for shortly after our arrival [back] on board, they commenced plundering in every direction, and fired the town.[708]

Williams shared this view:

> The greater part of the property might have been saved, but the Commanding Officer gave the orders to fire upon the Town from time to time during the remainder of the same day [11 March] and following day [12 March] – though many of the Settlers had landed for the purpose of securing what they might be able – the natives behaved very well considering the circumstances under which they were.[709]

Williams added that the 'conduct of the soldiers and men of the sloop of war is very distressing – they would gladly cut the natives up right and left'. As a result, he feared a general uprising among Māori, not only in the Bay of Islands but potentially also in Auckland and further south.[710] Auckland settlers feared this as well, and soon afterwards the Executive Council resolved to strengthen Auckland's defences.[711] It appears that there was some truth in these rumours: two Tangiterōria missionaries recorded that Kawiti sent a messenger to his relative Te Tirarau carrying a pouch with a handful of bullets and a



Annotated sketch by William Bambridge, a cleric at the Waimate mission, of the battle scene at Kororāreka, the day of the settlement's destruction. It is not clear that every movement is precisely depicted.

letter asking Te Parawhau to join in the attack. Te Tirarau consulted two other senior rangatira, Parore Te Āwhā and Paikea. Anxious to maintain peace and attract more settlers and traders to their territories, they wrote back to Kawiti declining; Te Tirarau is said to have thrown the bullets in a river. Later, government sources amended this story, recording that Heke had sent the bullets.[712]

Governor FitzRoy blamed Heke and Kawiti for the fires that destroyed Kororāreka and would later use this as a justification for war. But the evidence on this is less conclusive. None of the officers or missionaries who were at Kororāreka on 11 and 12 March specifically identified which Māori were involved in burning or plundering the town. Indeed, as the Governor soon acknowledged, the officers found it impossible 'to distinguish friend from foe', let alone distinguish between the various hapū engaged in Kororāreka.[713] Burrows later said that Heke's men were responsible but he was not in Kororāreka when the fires were lit, so his account was based on hearsay.[714] Though Williams did not identify those responsible, he did say they were intoxicated.[715]

Heke denied any involvement in the town's looting or destruction. Writing to FitzRoy in May 1845, he said there was some skirmishing between Māori and Europeans after the *Hazard*'s 'great guns' were fired. He had intervened to calm the situation, he explained, and had saved

Te Ruki Kawiti (1770–1854), the paramount chief of Ngāti Hine during the period of the signing of he Whakaputanga and te Tiriti and the establishment of the colonial government. He is remembered for his strong reservations about te Tiriti (although he did sign it), the respect he earned on the battlefield as a military leader and strategist, his protection of Ngāti Hine lands from the confiscation threatened by the Governor in 1845, and his call to his people to resist assimilation and to act when treaty promises were not upheld.

the lives of missionaries and settlers, including Williams. His people then left for Mawhe, having spent only one day in Kororāreka. 'Ko te rakau anake ano taku hara,' he wrote. 'Ka hore ahau me aku tangata i taku i nga ware.'[716] The missionary Thomas Forsaith translated this as, 'The flagstaff is my only crime. Neither I nor my men burnt the houses.'[717] Heke did not deny that houses were burned but attributed that to others; in fact, he asserted that the town was burned by just one person, whom he named as Te Aho, one of Kawiti's lieutenants.[718] Whether Heke's account is accurate or not, the evidence is clear that he showed considerable restraint towards Kororāreka settlers, and that buildings were burned only after the Crown had broken the ceasefire.[719]

Heke also blamed others for the plunder of Kororāreka, saying that his men took only a very small share. He said that 100 of his followers had supported his attack on the flagstaff but as many as 500 Māori had poured into the town to plunder. In particular, he blamed Māori from Te Rāwhiti and Te Puna, and supporters of Nene, Taonui, and Paratene Te Kekeao.[720] Again, the evidence is inconclusive. As noted earlier, Burrows said he came across some of Heke's men with plunder from the town,[721] whereas George Clarke junior said that Heke had forbidden his men from looting settlers' property.[722]

There is evidence that crew from American whaling ships took part in the plunder of the town and carried off a large quantity of copper wire, among other items.[723] It is also unclear how much of real value had been left in the town by the time it was destroyed. Some of the townspeople had buried their precious possessions in anticipation of an attack.[724] Most had taken their possessions to the stockade, where they were destroyed in the explosion.[725] Other than liquor, sweets, and a cloak that Pōmare II was accused of receiving, it is not clear what was plundered.[726]

(ii) *Did Heke and Kawiti intend to destroy Kororāreka?*

Although Kororāreka was destroyed, there is clear evidence that Heke and Kawiti did not intend this and that the flagstaff was their sole target. Both rangatira had made their plans known well in advance, to missionaries and Government officials alike: they would take down the flagstaff and intended no violence against anyone, but would use force if opposed. They informed Henry Williams and Gilbert Mair of their intention to approach from several directions and had even attempted a trial landing at Matauwhī a few days beforehand. In the event,

the gun battery at Matauwhī appears to have been more heavily defended than they had anticipated, and this led to brief but intense fighting between Kawiti's party and the *Hazard*'s men. Otherwise, the plan was carried out almost to perfection.[727]

Henry Williams, who spent time with Heke before and immediately after the conflict, reported to the Governor that Heke and Kawiti 'had not sought to attack the town'.[728] Governor FitzRoy acknowledged that this was the case; he informed a meeting of the Executive Council on 15 March that Heke's objective was 'simply against the flag-staff and the soldiers', and the rangatira's intention throughout had been to leave Kororāreka and its people untouched. FitzRoy believed that Kawiti's party had attempted to attack the town, but this reflected his misunderstanding of the strategy adopted by Heke, Kawiti, and their allies.[729] Clarke junior, struck by the care that Heke showed towards Kororāreka settlers, wrote that the rangatira 'behaved throughout the business with unexampled magnanimity worthy [of] a better cause'.[730]

Dr Phillipson and Mr Johnson accepted Heke's assertion that he intended doing no more than remove the flagstaff. Both were of the same view that Heke and Kawiti had carried out a carefully planned strategy to distract the Crown's forces while they claimed the flagstaff, sustaining their attack only until that objective had been achieved and then withdrawing into the surrounding hills. Each also argued that Heke and Kawiti had deviated from their initial plans only after the Crown evacuated the town. Finally, both scholars argued it was scarcely in Heke's or Kawiti's interests to upset Kororāreka trade or to anger Rewa, both of which would have been inevitable outcomes of any attack on the town itself.[731] On this point, it is notable that Rewa did not mount any retaliatory attack against either Heke or Kawiti; indeed, in some subsequent skirmishes Rewa fought alongside Heke's people.[732]

This fourth (11 March 1845) attack on the flagstaff, and the destruction of Kororāreka that followed, was a major escalation in an already simmering conflict between sections of Ngāpuhi and the Crown. Heke, Kawiti, Pūmuka, Hikitene, Hori Kingi, and Mauparāoa had acted knowing that loss of life was likely, given the heavy military presence in the town. Nonetheless, their action followed a series of signals from the Governor that he would not compromise the Crown's claim of sovereignty over Te Raki and was preparing to use force to defend this position. Since the beginning of the year, the Governor had threatened military action against any Māori who committed taua muru, labelling them hunga tutu (rebels) for enforcing customary law. He had offered a bounty for Heke's arrest, sent troops, and fortified Kororāreka. He had made repeated requests for military reinforcements. More significantly, he had told other officials that he intended to use these reinforcements against Heke as soon as they landed. As Dr Phillipson observed, Heke and Kawiti decided to resort to violent conflict months *after* the Governor had made that decision,[733] and then only after the flagstaff was rebuilt – which, to Heke, signalled that the Governor wanted war.[734] Under these circumstances, Heke and Kawiti appear to have believed they had two options: to renew their challenge, even at considerable cost, or to wait until FitzRoy attacked. They chose the former.

5.4.3 Conclusions and treaty findings

As discussed in previous chapters, and in our stage 1 report, Te Raki Māori who signed te Tiriti did not consent to Britain exercising sovereignty over them. Rather, they consented to Britain exercising a lesser power, kāwanatanga, that allowed it to control settlers and thereby keep peace and protect the interests of Māori and settlers alike. Rangatira understood that the Governor would be their equal and would negotiate with them on questions of relative authority as the colony developed.[735] The Crown, on the other hand, understood the treaty as granting it sovereignty over Māori people and territories. From the time of the treaty onwards, tensions arose as the Crown sought to turn its legal sovereignty into effective power over Te Raki people and territories.

We agree with the claimants that Hōne Heke and his supporters felled the flagstaff for the first time on 8 July 1844 to signal their opposition to the Crown's encroachment on Ngāpuhi tino rangatiratanga and to challenge

the Crown to meet and resolve issues of their respective authority under the treaty agreement.[736] The Crown had made only limited attempts to govern Ngāpuhi up to that time, but those attempts had done significant damage to Ngāpuhi interests. More broadly, the Crown assumed that it had sovereignty, and the steps it was taking signalled to Ngāpuhi that it intended to expand its effective authority into the north. Heke had been told that the Crown's understanding of the treaty did not match that of Māori. He resorted to direct action after previous Ngāpuhi attempts at engaging with the Crown over the effect of the treaty had proved fruitless, as discussed in chapter 4.[737] By felling the flagstaff, Heke challenged the Crown to clarify its understanding of and intentions for the treaty relationship.

At this point, the Crown essentially had three courses open to it: it could persist with its claim of authority over Te Raki territories and people, irrespective of their protests; it could seek dialogue to understand and negotiate over their concerns; or it could desist altogether from its claim of authority over Te Raki and its people. In treaty terms, the Crown was obliged, at the very least, to seek dialogue and take reasonable steps to recognise and provide for Ngāpuhi tino rangatiratanga, even where that imposed limits on the Crown's authority. Yet, in the months that followed Heke's first attack on 8 July 1844, the Crown consistently chose to ignore opportunities for negotiation. It persisted with its attempts to assert sovereign authority without regard for treaty-guaranteed rights of Ngāpuhi independence and self-government. We agree with the claimants that the Crown failed to consider the underlying causes of Heke's concerns and failed to take adequate steps to resolve its differences peacefully with him.[738] We also agree that the Crown's determination to assert its authority without adequate regard for the tino rangatiratanga of Te Raki Māori was the underlying cause of all the subsequent conflict with Heke.[739]

Governor FitzRoy asserted the Crown's authority over Te Raki Māori in several ways. After the first attack, he ordered that the flagstaff be rebuilt, sent for military reinforcements, and determined that Heke must atone for his action or face military reprisal. The Governor alone would determine the terms on which peace could be secured; there was to be no negotiation with Heke, nor even any attempt to understand his motivation. Initially, troops were instructed to operate only in a defensive manner, to protect Kororāreka and the flagstaff. However, when troops arrived from New South Wales, FitzRoy put his plan into action, bringing the district to the brink of war. These actions compounded the earlier challenges to Ngāpuhi tino rangatiratanga which we discussed in chapter 4. The Crown acknowledged that its threat of military invasion had been made because 'without an outward display of military force, FitzRoy lacked authority'. It further submitted that the demonstration of military force was 'not unreasonable in the circumstances' and while it 'upped the ante and created a risk some conflict might ensue, FitzRoy managed the risk appropriately'.[740]

As discussed in section 5.2.1, the Tribunal has found in other inquiries that the Crown is entitled to use force against its treaty partner only when necessary to protect citizens from harm.[741] According to Crown officials in Kororāreka, in their first (8 July 1844) action against the flagstaff, Heke's allies had felled it without serious violence and had then left for Kaikohe, so there was no clear or immediate threat that required a forceful response. Even if there had been imminent danger, the Crown was obliged to exhaust all non-violent means of securing peace. The Crown cannot be said to have done that if it has not recognised and given effect to the tino rangatiratanga of its treaty partners. It cannot use force to assert its authority over Māori or force submission to its authority.[742]

The partnership principle imposes an obligation on treaty partners to act honourably, fairly, and with the utmost good faith in their relationships with each other, and to negotiate any questions of relative authority as they arise. The Tūranga Tribunal described the good-faith obligation as a high standard, which requires the Crown to behave 'impeccably' in its dealings with Māori, avoiding 'any appearance whatever of manipulation' while seeking to protect the Māori interest at all times.[743]

In its response to Heke's 8 July 1844 attack on the

flagstaff, the Crown fell well short of these standards and assumed a power to control Māori it did not have under the treaty. This was not an immediate and urgent question of protecting settler and Māori lives.

Accordingly, we find that:

- By threatening to use force against Heke in August 1844, when he had signed te Tiriti and had consented to the Crown's kāwanatanga but not the imposition and exercise of its sovereignty, the Crown did not adequately recognise and respect the tino rangatiratanga of Ngāpuhi hapū. This was in breach of te mātāpono o te tino rangatiratanga. It was also in breach of te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By failing to seek dialogue with Heke before making this threat, the Crown acted inconsistently with its obligation to act honourably, fairly, and in good faith, and therefore breached te mātāpono o te houruatanga/the principle of partnership.

The Governor, having refused to respond to Heke's overtures did invite him to the important hui at Waimate in September 1844. Heke refused to attend, hosting a rival and, it must be acknowledged, somewhat provocative event nearby. However, in the absence of Heke and a number of other senior rangatira (Kawiti, Pōmare, Te Kēmara, Rewa) FitzRoy negotiated with the rangatira who were there, seeking to pressure Heke into submitting to the Crown's terms. In so doing, he was prepared to make some major concessions reversing decisions that had been of concern to both Ngāpuhi leaders and himself; notably the matter of Crown retention of surplus lands, the imposition of customs duties that were depressing trade in the region and loss of anchorage fees. He also gave rangatira to understand that it was they who would be the 'guardians' of New Zealand.

Ngāpuhi leaders could not understand why Heke's actions had led the Crown to threaten war, and saw the Governor's threat as disproportionate. Nonetheless, a number of their key concerns seemed to have been addressed, they had been assured of the importance of their standing and they were desperate to keep British soldiers out of Ngāpuhi territories. Any Crown invasion would oblige them to defend Heke, drawing them into violence they preferred to avoid and upsetting vital economic relationships. Accordingly, Tāmati Waka Nene and other rangatira proposed a deal in which they would pay the required compensation, protect the flagstaff, and ensure that Heke did not again challenge the Crown's authority.

We reject the Crown's submission that Nene and his allies made this offer freely as an expression of their tino rangatiratanga.[744] The Hokianga and Waimate rangatira had won some important concessions but they were also negotiating while under threat of Crown invasion, and they negotiated knowing that the Governor would not compromise over the payment of utu or over the requirement to control Heke's future actions.

We find that:

- By negotiating with Waka Nene and other Ngāpuhi rangatira in September 1844 while also threatening military invasion should its demands not be met, the Crown acted inconsistently with its obligations of fairness and good faith, and therefore breached te mātāpono o te houruatanga/the principle of partnership.
- By negotiating in a manner that pressured Ngāpuhi to take sides, the Crown breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. This was also inconsistent with its obligations to recognise and respect the tino rangatiratanga of Ngāpuhi hapū, and thus breached te mātāpono o te tino rangatiratanga.

As previously discussed, te kawa o Rāhiri was based on principles of hapū autonomy even in times of common threat. Te Tiriti o Waitangi also provided a guarantee of hapū autonomy. The result of the September 1844 negotiations was an agreement that Nene and his allies would oppose Heke and protect the flagstaff were it attacked again. In effect, Nene and the rangatira aligned with him agreed to support the Crown in its attempt to contain Heke and preserve the treaty relationship. However,

FitzRoy's underlying assumption that the Crown held sovereign power had not shifted and ultimately the rangatira at Waimate were misled. This agreement was a clear attack on Heke's independence and mana engineered by the Crown.

Hence, we find that, by entering an agreement in September 1844 with the rangatira assembled at Waimate that they would be responsible for protecting the flagstaff and opposing Heke if he attacked it again, the Crown acted inconsistently with its obligations to recognise and respect tino rangatiratanga in accordance with tikanga, in breach of te mātāpono o te tino rangatiratanga. It was also in breach of te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.

The Crown's response to Heke's July 1844 attack set the tone for all subsequent events through to the outbreak of armed conflict on 11 March 1845. Having ignored Heke's letter of July 1844, the Governor responded to further requests for dialogue with delaying tactics while also ignoring the substance of the concerns raised by Heke and Te Hira Pure. These were missed opportunities to engage in good-faith negotiation, in a manner that might have improved mutual understanding and paved the way for a potential resolution. Heke and Te Hira Pure had warned the Governor that tensions would continue to grow if he did not enter into dialogue, and that is indeed what occurred.

Tensions were further heightened – and other hapū drawn into the conflict – by the arrogant and insensitive handling of local officials in the offence to Kohu. As the number of taua muru increased in response, the Governor ignored advice that Crown officials should respect tikanga and exacerbated tensions by advising settlers to leave the district and by making preparations for military action. In December 1844, he advised rangatira that he would not return while taua muru were occurring and when he did, it might be with troops. In January, FitzRoy issued proclamations against taua muru without first seeking to understand the causes, demanded confiscation of land as a condition of peace for Kawau and Matakana muru, and ordered that Heke and others be arrested and tried under the colony's law. This marked a significant step away from the Crown's previous policy of tolerating Māori customary law and incorporating rangatira into the colony's legal framework, and it significantly heightened tensions and the potential for conflict.

Crown counsel argued that the Crown was entitled to prosecute 'crimes' in accordance with English law.[745] We do not agree. Te Raki rangatira who signed te Tiriti did not consent to colonial law applying to them. Nor had they offered any such agreement in the years since. As discussed in chapter 4, their consent for Maketū's trial was not a general precedent,[746] but a one-off decision reflecting settlers' right to utu. The Governor and other Crown officials knew that the relationship between tikanga and colonial law was far from settled in the north and required further negotiation, yet FitzRoy did not attempt to do this, nor even consult.

Accordingly, we find that:

- By issuing warrants for the arrest of Heke and other rangatira in January 1845, and by condemning taua muru as lawless and rebellious despite the fact that the Governor had been instructed to provide legal recognition for Māori custom, and that the operation of taua muru had previously been tolerated, the Governor acted inconsistently with the Crown's duty to recognise and respect the tino rangatiratanga of Te Raki hapū, in breach of te mātāpono o te tino rangatiratanga. The Governor also breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By taking these actions without entering into dialogue with the rangatira concerned, the Crown acted inconsistently with its obligation of good faith conduct, and thus breached te mātāpono o te houruatanga/the principle of partnership.
- By requiring Te Parawhau to forfeit 1,000 acres of the Whāngārei headlands (known as Te Poupouwhenua) as payment for the January 1845 taua muru against the settlers Millon and Patten, the Governor acted inconsistently with the Crown's duty to recognise and respect tino rangatiratanga, in breach of te

mātāpono o te tino rangatiratanga. He also breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.

- By taking these actions when it was foreseeable that they would heighten tensions between the Crown and Te Raki Māori, and without first pursuing negotiation, the Crown breached te mātāpono o te houruatanga me te mātāpono o te matapopore moroki/the principles of partnership and active protection.

During January and February 1845, missionaries worked tirelessly (but with less than complete candour) on the Crown's behalf to resolve Ngāpuhi concerns about the treaty relationship. Henry Williams and others assured Māori that they retained their tino rangatiratanga, notwithstanding the Crown's unwillingness to engage on that point. Other than relying on the missionaries, the Governor made no attempt to de-escalate tensions, let alone engage with Heke and others. On the contrary, he made matters worse by rebuilding the flagstaff each time it came down (thereby signalling that the Crown would persist in its claim to have authority over Te Raki and its people), by repeatedly calling for troop reinforcements, by militarising Kororāreka and fortifying the flagstaff, and by threatening military action against Heke and his allies. We agree with the claimants that the Governor could have avoided conflict by desisting from any of these actions. Heke also escalated tensions by felling the flagstaff, but he did so to defend his treaty rights and challenge Crown encroachments against his mana, whereas the Crown escalated tensions in order to defend a sovereignty for which it had never won consent.

Thus, we find that, by raising the flagstaff in January and February 1845, by fortifying the flagstaff and militarising Kororāreka when it knew these actions increased the risk of conflict, and by taking these actions without seeking opportunities for dialogue to resolve tensions, the Crown acted inconsistently with its obligation to act with the utmost good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.

The Crown's approach sent a clear signal that the Crown did not share Heke's understanding of the treaty as a power-sharing arrangement, would persist in claiming sovereignty over Ngāpuhi hapū, and would use military force to defend that claim. We do not agree with the contention of some claimants that the Crown deliberately sought to start a war with Heke and Kawiti.[747] However, we consider that it did provoke them to a degree that made military conflict hard to avoid. Ultimately, Heke and Kawiti faced a difficult choice. Persisting in their symbolic defence of their treaty rights after the militarisation of Kororāreka would likely require force. But the other option was to desist from their defence of those rights, leaving the Crown to assert a sovereignty that it had not acquired by consent. The approach they took reflected the relevant tikanga. When the Crown kept rebuilding its pou, it signalled that it wanted to fight.

Heke and Kawiti planned their 11 March 1845 action meticulously, explaining in advance that their sole objective was the flagstaff, that they did not want to use force but would do so if resisted, and that they would not harm settlers. They even shared the exact timing of their action and the military strategy they would use. Violence erupted when the Crown's forces resisted their action but lasted only a short time before Ngāpuhi forces disengaged and withdrew into the hills. They remained there until Kororāreka was abandoned. During the afternoon of 11 March 1845, while Ngāpuhi were flying white flags and assisting settlers to recover their property, the HMS *Hazard* began to bombard the town. This action needlessly renewed hostilities after a period of ceasefire and endangered the lives of Māori, missionaries, and settlers alike. The destruction of Kororāreka by fire, though also needless, was seen by contemporary observers as an understandable response to the Crown's reckless act.

We find therefore that, by shelling Kororāreka on 11 and 12 March 1845 in breach of a ceasefire and while Māori were in the town, the Crown committed a flagrant breach of its duty to actively protect the lives, interests, and tino rangatiratanga of Te Raki Māori. This action thus breached te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te tino rangatiratanga.

5.5 The Crown's Military Campaign: April 1845 to January 1846

5.5.1 Introduction

Heke's final attack on the flagstaff was the first in a series of violent encounters between Ngāpuhi and colonial troops. The Crown responded first with the bombardment of Kororāreka, which we have covered in the preceding sections. It then went ahead with a military invasion of the Bay of Islands, which we consider in the sections that follow.

In April 1845, the Governor ordered a naval blockade to be established in the Bay of Islands and proclaimed martial law.[748] When troop reinforcements arrived towards the end of the month, most were sent to the Bay of Islands under orders to attack all Ngāpuhi who had opposed the Crown's authority.[749] The Crown's military campaign then gathered pace, with a series of violent encounters between Ngāpuhi and colonial troops. We have identified the key events already in section 5.3.2, beginning with the destruction of Pōmare II's pā at Ōtuihu on 29 April 1845.[750] Attacks then followed against Heke, Kawiti, and their allies at Puketutū, Waikare, Ōhaeawai, Pākaraka, and Ruapekapeka over an eight-month period.[751] Each battle was punctuated by extended periods in which attempts were made, principally by Heke, to negotiate peace.[752] By the time the war had ended, Ngāpuhi casualties totalled at least 74 deaths and 90 or more wounded.[753] British casualties totalled 72 to 74 dead and at least 136 wounded.[754]

Claimants said the Crown initiated the war; was the aggressor in all of the major engagements;[755] ignored or rejected opportunities to secure peace;[756] used force in an inappropriate, indiscriminate, and punitive manner;[757] sought to divide Ngāpuhi;[758] and used war as a means of asserting sovereignty over Te Raki and other Māori.[759] The Crown conceded that it breached the treaty and its principles by making cession of land a condition of peace from July 1845, and by confiscating Pōmare II's land interests at Te Wahapū.[760] Otherwise, the Crown submitted that it had taken necessary military action to respond to Māori hostilities and suppress a rebellion,[761] and had acted reasonably throughout the war.[762]

In this section, we consider the following issue questions:

- Was the Crown justified in pursuing military action against Heke, Kawiti, and their allies?
- Were some Ngāpuhi 'rebels' and others 'loyal'?
- Was the Crown justified in destroying Ōtuihu and arresting Pōmare II?
- Did the Crown take advantage of divisions within Ngāpuhi to support its military objectives?
- Was the Crown's stance on 'neutral' rangatira and hapū reasonable?
- Did the Crown use inappropriate or excessive force?
- Did the Crown take all reasonable steps to restore peace?

5.5.2 The Tribunal's analysis

In this section we consider the Crown's decision to pursue military action against Heke, Kawiti, and their allies; and the Crown's conduct during the war. We ask whether the Crown sought to create or take advantage of divisions within Ngāpuhi in order to achieve its military objectives; whether its arrest and detention of Pōmare II was justified; whether its treatment of 'neutral' hapū was appropriate; whether it used inappropriate or excessive force; and whether it took opportunities to make peace, or alternatively continued the war after Heke and Kawiti had sought peace.

(1) *Was the Crown justified in pursuing military action against Heke, Kawiti, and their allies?*

As discussed in section 5.2.1, the Crown can be justified in pursuing military action against its treaty partners only in very limited circumstances. In essence, that action must be necessary to protect lives, and then only if all other options for peaceful resolution have been exhausted.

(a) FitzRoy's reasons for declaring war

On 26 April 1845, Governor FitzRoy formally ordered an invasion of the Bay of Islands and took the legal and practical steps he regarded as necessary to support this act. These included proclaiming martial law for an area of 60

miles around Kororāreka, imposing a naval blockade on the Bay of Islands, and issuing instructions to his officers. These proclamations and instructions set out FitzRoy's political objectives both explicitly and implicitly. His primary objective was to secure the Crown's sovereignty over the Bay of Islands and its people. He regarded Heke and Kawiti as rebels against that sovereignty, and war as a justified action to suppress that rebellion.[763] This was made clear in FitzRoy's declaration of martial law:

> Whereas certain disaffected Natives in the Northern District of the Colony have taken up Arms, and are now in Rebellion against the Queen's Sovereign authority, and for the suppression of such Rebellion active Military operations are about to be immediately undertaken by Her Majesty's Forces.[764]

He instructed his commanding officer, Lieutenant-Colonel Hulme, to travel to Kororāreka and hoist the British ensign 'with all due formality' while Royal Navy ships fired a 'Royal Salute'. By this means, he intended to assert the Crown's authority over Kororāreka and the Bay of Islands. Hulme was then instructed to march inland and carry out 'the signal chastisement of the rebels within your reach'.[765] While Heke and other leaders of the 'insurrection' were to be captured alive if possible, the general instruction was to 'spare no rebel in arms against lawful British Authority'.[766] In other words, those who challenged the Crown's authority would either be killed or forced into submission.

FitzRoy also required Ngāpuhi non-combatants to declare their loyalty to the Crown by gathering at mission stations, flying British ensigns at their own kāinga, or otherwise acting under the direction of Nene, Patuone, and other Hokianga rangatira. He warned that those who were not known to be loyal would be regarded as rebels and treated accordingly.[767] He furthermore hoped the capture and punishment of Heke and Kawiti would send a 'signal warning' to Māori in other parts of New Zealand that they could not defy the Crown's authority or injure its subjects with impunity.[768] He and other Crown officials feared a general Māori uprising and considered the future of the Crown's colonial Government was at stake.[769]

FitzRoy later moderated his stance on Ngāpuhi non-combatants, choosing to treat as rebels only those who were armed.[770] He otherwise remained consistent in his intention to suppress what he perceived as a rebellion and punish those he regarded as its instigators. FitzRoy and other Crown officials repeatedly labelled Heke, Kawiti, and their supporters as 'rebels' and acted on the basis that the war could be ended only by their submission or death.[771]

Throughout the conflict, FitzRoy, Grey, and Crown officials aimed for an overwhelming military victory, seeing this as necessary to establish the Crown's dominance and prevent any further challenge.[772] To this end, FitzRoy instructed that 'rebels' should not be spared. If possible, however, leading rangatira (whether engaged in open insurrection or in covert support) should be captured as hostages and ultimately transported; but they were not to be humiliated by being put in chains, if it could be avoided, and assured that their lives were safe.[773] He ordered the destruction of all pā and waka belonging to communities deemed to be in rebellion.[774] In October, he told Kawiti that the war would continue until he and Heke were either 'destroyed' or 'submitted to the Government'.[775] When Grey was sent to replace FitzRoy as Governor, he was instructed to use 'all powers . . . civil and military' to enforce subjection to the Crown's authority,[776] and he vowed to 'crush the rebels'.[777]

The Crown's determination to assert its authority over Heke and Kawiti was also reflected in its approach to peace. Throughout the conflict, neither FitzRoy nor Grey was prepared to take the initiative to secure peace, which they regarded would be a sign of submission on the Crown's part.[778] Nor were they prepared to negotiate the terms of peace,[779] since doing so would require them to treat Heke and Kawiti as formal equals.[780] Heke approached the Crown on several occasions offering peace, and the Crown either rejected these offers in favour of using force to assert its dominance,[781] or required forfeit of land, submission to the Crown's authority, and

acknowledgement of the British flag as conditions of peace.[782]

If suppression of a rebellion was FitzRoy's principal reason for declaring war, his second reason was to avenge the plunder and destruction of Kororāreka. The loss of the town, one of only a few large Pākehā settlements in New Zealand, had caused major embarrassment to the Governor and his armed forces. The success of the Ngāpuhi campaign shattered the Governor's complacent assumptions about British military superiority, and highlighted the chasm between the Crown's claim of legal sovereignty and its ability to exert practical authority on the ground.[783] FitzRoy blamed Heke and Kawiti for the town's plunder and destruction,[784] and regarded it as further justification for his military campaign against them.[785] The Crown's military officers also gave the presence of plunder as reasons for destroying Ōtuihu and Waikare.[786]

As discussed in section 5.4.2, Kororāreka was destroyed only after the HMS *Hazard* violated a ceasefire by shelling the town, risking the lives of everyone in it. Māori retaliated – understandably, in the view of Henry Williams and other contemporary observers – by setting fire to most of the town's buildings. Heke denied responsibility for this action, but the Governor nonetheless blamed him and sought to punish him for the town's destruction.[787]

In summary, neither of the Crown's reasons for declaring war on Heke and Kawiti concerned protection of citizens against any clear or imminent threat. The Crown's principal reason was to shore up its own authority against Heke's challenge. Its second reason was a punitive one: it sought to punish Heke and Kawiti for the loss and destruction of Kororāreka many weeks earlier, notwithstanding the Crown's own responsibility for that event.

(b) Was military force necessary to protect lives?

For many months prior to the fall of Kororāreka, Governor FitzRoy had been considering using force against Heke and his supporters. Having sent troops back to Sydney in September 1844, he called for reinforcements in October,[788] and again in January[789] and February. On the latter two occasions, he indicated he would use the troops against Heke when they arrived. These decisions were made in response to the second and third attacks on the flagstaff, before Kororāreka had fallen.[790]

Immediately after the town was destroyed, FitzRoy reiterated his policy: he would take no action while the colonial Government lacked military power but, when soldiers and ships arrived, he would be 'firm and uncompromising'.[791] He was true to his word. On 22 April, when the 58th Regiment arrived from Britain, he immediately ordered a punitive attack on the Bay of Islands. By this time, six weeks had passed since Kororāreka had fallen. None of the 'rebel' leaders had since attempted to attack any Pākehā settlement; indeed, Heke was defending himself against a series of raids by Nene's forces.[792] The Governor made no attempt to communicate with Heke, Kawiti, and their allies before launching military action. Nor is there any record of his considering any alternative course.[793]

The Crown was the aggressor in all the battles of the Northern War, beginning with its attack on Ōtuihu, the pā of the neutral rangatira Pōmare II, which we consider in depth later. The same pattern continued throughout the war: Heke, Kawiti, Hikitene, and their allies engaged with the Crown's forces only in a defensive capacity.[794] They were not prepared to surrender land or authority to the Crown, but nor did they initiate any military action against it after the fourth and final attack on the flagstaff. Before one engagement with the Crown, Heke told the missionary Robert Burrows that he would not be the aggressor at any point during the war. He would defend his people and lands, but he would never fire the first shot; a commitment he kept.[795]

Heke and Kawiti sought to minimise military engagement. They adopted an approach known as 'he riri awatea' (fighting in broad daylight) under which they made no attempts to ambush or attack colonial forces, or even to disrupt their supply lines.[796] In battle after battle, Heke, Kawiti, Te Hira Pure, and other leaders allowed the Crown's forces to march inland, set up their positions, and begin firing on their pā; only then did they return fire.[797] This approach came at significant military cost to Heke and Kawiti – colonial officers and soldiers acknowledged that any ambush during the long approaches to Te Kahika,

Ōhaeawai, and Ruapekapeka would likely have inflicted significant damage on their campaign.[798] Colonial officers could scarcely believe Heke's 'chivalry', regarding it as either naïve or extraordinarily honourable.[799] Even when colonial forces retreated to Waimate after their terrible defeat at Ōhaeawai in early July, Heke and Kawiti left them alone, allowing them to regroup and wait for reinforcements.[800]

Heke and Kawiti also consistently attempted to shield non-combatants (Māori and Pākehā) from the effects of conflict. They deliberately built defensive pā away from hapū settlements and cultivations, so that non-combatants would not be directly affected by the fighting.[801] Historian James Belich, in *The New Zealand Wars*, observed that Heke and Kawiti effectively developed a new form of pā, built 'deep in the interior, approachable only by difficult bush tracks', and designed to withstand heavy bombardment but essentially 'valueless' in terms of territorial defence; this meant they could be abandoned as soon as they were breached. By constructing pā in this manner, Heke and Kawiti maximised the cost and difficulty of attack while minimising the risk of casualties.[802]

Before hostilities began, Heke wrote to his supporters with 'he ture' (a law), instructing them to fight no one but soldiers. The soldiers were 'hoa wawai' (enemies) to Ngāpuhi mana, whereas all other Pākehā were 'o tatou hoa aroha' ('our loving friends') and were therefore to be respected. In case this was not sufficiently clear, Heke added that no settlers' houses were to be burned.[803] He honoured this commitment throughout the war as well, and at times acted against his own military interests to do so. For example, he left a bridge standing over the Waitangi River, despite its strategic important to colonial troops as a transport and supply route, because its destruction would also harm the Waimate mission and other inland settlements.[804]

While acting only in a defensive manner, Heke and Kawiti also frequently sought opportunities to enter dialogue with the Governor and restore peace. After each of the main battles, one or both sent messages to the Governor to seek an end to hostilities. They imposed no conditions, except that they be left to live in peace within their own territories.[805] Successive Governors either did not respond to these overtures,[806] or demanded that Heke and Kawiti forfeit land and submit to the Crown's authority as conditions of peace.[807]

On two occasions, the Crown renewed hostilities after periods of peace. There was a five-week break between the attacks on Waikare and Ōhaeawai.[808] During that time, the Crown's troops spent time in Auckland recuperating, leaving Nene and Taonui to invade Heke's territories. It is not clear what threat Heke or Kawiti could have posed to the Crown or settlers during this period.[809] Heke presented a peace offer, but the Government ignored it and resolved to attack again,[810] seeking the 'capture or destruction' of Heke, Kawiti, and other 'rebel' leaders.[811]

A five-month hiatus followed the Crown's defeat at Ōhaeawai. During this time, the Government sought reinforcements,[812] and also responded to Heke's renewed offers of peace by again representing the flag as fully guaranteeing the freedom and privileges of all men who lived under it. The treaty, he assured Heke, bound the Crown 'equally with yourself'. However, he continued to insist that Heke atone for his actions.[813] The colonial troops remained at Waimate from July to mid-September, during which period neither Heke nor Kawiti had shown any sign of aggression.[814] They instead spent their time preparing cultivations to replace the food they had lost during the conflict. Governor Grey claimed that Heke and Kawiti intended to attack the colonial forces as soon as their potatoes were harvested, and therefore ordered a renewal of hostilities in early December. He did not explain to the Colonial Office why Heke and Kawiti should attack at that point, when they had not initiated any previous battle other than the 11 March attack on the flagstaff.[815]

We have seen no persuasive evidence that Heke, Kawiti, or their allies presented any threat to civilian lives at any time after 11 March 1845. On the contrary, the Crown was the aggressor throughout the war; it initiated all the major battles, and sometimes renewed hostilities after lengthy periods of peace. Heke and Kawiti fought only in a defensive manner, went to considerable lengths to protect civilians (Māori and Pākehā) from harm, and repeatedly sought peace.

Hōne Heke (1807–50) and his wife, Hariata Rongo (1815–94), painted by nineteenth-century artist Joseph Jenner Merrett. Hariata Rongo was the daughter of Hongi Hika and Turikatuku and had lived for some years with missionary James Kemp and his family, where she learned to read and write. She married Hōne Heke in 1837 and later married Arama Karaka Pī. Both marriages were important alliances.

(2) *Were some Ngāpuhi 'rebels' and others 'loyal'?*

The Crown governed from 1840 in accordance with the assumption that it possessed legal sovereignty over all New Zealand lands and people. Acknowledging its inability to exercise practical authority over all territories, it initially adopted a general policy of tolerance over the continued exercise of Māori political authority and customary law, seeing this as a first step towards gradual assimilation of Māori into the colony's political and legal systems. As we have seen, tensions arose whenever the

Crown attempted to convert its notional sovereignty into on-the-ground authority, this being contrary to Māori understanding of te Tiriti. Thus, at the beginning of 1845, the dominant civil authority in Te Raki continued to be the tino rangatiratanga of hapū, despite some encroachments by the Crown. Even in Kororāreka and in respect of Bay of Islands trade, the Crown exercised authority only to the extent that rangatira acquiesced for the purpose of sustaining the treaty relationship, as events in the build-up to the war demonstrated.

Notwithstanding these limitations on the Crown's power (both in treaty and practical terms), when conflict erupted, the Governor viewed it through the lens of colonial law. He regarded Nene and his allies as 'loyal' to the Crown's authority, and Heke, Kawiti, and their allies as 'rebels' against that authority.[816] Claimants told us that both labels were unfair and had created stigma that had been handed down through generations. In their view, both sides fought in defence of their mana, and in defence of their understanding of the treaty relationship.[817] In this section, we consider what the various parties were in fact fighting for, and the extent to which these engagements amounted to defence or rebellion against established authority.

(a) Why Heke, Kawiti, and their allies fought

As discussed throughout this chapter, Heke felled the Maiki Hill flagstaff on four occasions so as to challenge the Crown's understanding of the treaty. He saw te Tiriti as part of a continuum in the Crown–Ngāpuhi relationship, in which King George IV and his successors had demonstrated their respect for Māori independent authority, and had taken steps to affirm and support that authority by sending Māori a flag and sending officials to mediate in Māori–settler disputes.[818] As discussed in our stage 1 report, during the treaty debate in 1840, though Heke had expressed doubt about whether the Governor would 'raise up' or 'bring down' the Māori people, he nonetheless wanted protection from 'French people' and 'rum-sellers', and made it clear that he was signing te Tiriti for that reason.[819] Heke, like other signatories, signed te Tiriti in the expectation that the Governor would control settlers and protect Māori from foreign threat.[820] In Heke's view, the Crown had misled rangatira into signing te Tiriti by concealing its intention to assert sovereignty over Māori people and territories, and in particular to assert authority over land. In symbolic terms, this deception was reflected in Hobson's failure to explain that the British ensign would replace the flag of the United Tribes.[821] Heke therefore saw the ensign as a symbol of the Crown's illegitimate claims. By cutting down the flagstaff, he sought to highlight Crown actions that impinged on Māori authority, and to challenge the Crown to acknowledge the mana and tino rangatiratanga of Māori.[822]

Heke's views remained consistent throughout the war and in the years that followed. He told the Governor in May 1845 that he had felled the flag because it was a symbol of the Crown's claim to possession or conquest of Te Raki territories.[823] In August 1845, he told the missionary Robert Burrows that the treaty was 'in itself good', but there was 'something intended . . . which it did not express'.[824] On more than one occasion he referred to the treaty as 'soap'.[825] In December 1845, under threat of renewed hostilities, he clearly asserted his right to independence and the Crown's obligation to support that independence, telling Governor Grey that God had made New Zealand for Māori, 'and not for any stranger or foreign nation to touch'.[826]

Heke wrote to Queen Victoria in 1849 explaining that rangatira had signed te Tiriti without understanding the authority that Governors would exercise, and had therefore consented 'in our folly'. He considered the Crown 'very bad' for concealing its true intentions and likened it to a house with so many rooms that it could never be searched to completion – it contained a room of peace as well as others that symbolised death and judgement.[827]

Hobson's deception was 'the cause of my error, for I was the person that consented that both [the British Resident] Mr Busby and the first governor should live on shore, thinking that they would act rightly'. Heke said that, after rangatira had signed te Tiriti, a succession of governors had arrived, each with their own policy. Heke had sought dialogue with FitzRoy 'in order that we might talk on the subject of the flag-staff' (and, by extension, the

The flag gifted to Pūmuka by British Resident James Busby in recognition of Te Roroa rangatira Pūmuka's assistance in facilitating relations between the Crown and local Māori. It was present at the 6 February 1840 signing of the Treaty of Waitangi and descendants raise it each 6 February. Pūmuka was killed during the 1845 battle at Kororāreka.

relationship between Crown and Māori authority). But the Governor did not come, and instead re-erected the flagstaff with iron bars around it, asserting the Crown's claim. FitzRoy's 'obstinacy' was the cause of war, in Heke's view.[828]

Heke referred to Hongi Hika's conversation of 1820 with King George IV, during which the King had promised never to take possession of New Zealand. Having deceived Māori over its intentions, the Crown had then sent FitzRoy and Grey ('a fighting Governor') to assert the Crown's authority. The Queen had sent these men, and it was therefore the Queen's responsibility to remedy their errors:

> Don't suppose that the fault was mine, for it was not, which is my reason for saying that it rests with you to restore the flag of my island of New Zealand, and the authority of the land of the people. Should you do this, I will then for the first time perceive that you have some love for New Zealand and for what King George said, for although he and Hongi are dead, still the conversation lives; and it is for you to favour and make much of it, for the sake of peace, love, and quietness.[829]

Heke argued that it was also for the Queen to prevent 'troublesome' people from migrating to New Zealand, including French, Americans, and Governors who attempted to rule over Māori. Heke wanted only '[t]he

missionaries, the gentlemen, and the common people' who would live in peace with Māori:

> But I say to you, that although they are living on this island and I also, still the management of my island remains with me, and although they have obtained possession of part of it, still the adjustment of the pieces which they have acquired remains with me; also, for God apportioned the land to this nation and to that, for the power of God is very good for New Zealand.[830]

Among those who fought against the Crown, Heke was by far the most prolific at committing his thoughts to paper – but he was not the only one. As already discussed, Te Hira Pure also wrote to the Governor on two occasions to demand that he restore the flag of the United Tribes or approve a replacement, and to seek dialogue about the treaty relationship. Like Heke, Pure saw the British ensign as a symbol of the Crown's claim to mana over Te Raki territories.[831]

Kawiti understood himself as defending Māori lands and authority from Crown encroachment, and as responding to the Crown's deception at Waitangi.[832] As the war was coming to an end, Kawiti famously advised his people 'kia kakati te namu i te wharangi o te pukapuka, hei kona ka tahuri atu ai' ('wait until the sandfly nips the pages of the book, [o]nly then will you stand to challenge what has happened'). The 'pukapuka' was te Tiriti. Kawiti's statement meant that a long time would pass, but his people would one day stand up once more for te Tiriti's true meaning. He no longer wished to fight, but nonetheless his commitment to tino rangatiratanga endured in the face of the Crown's forceful challenge.[833]

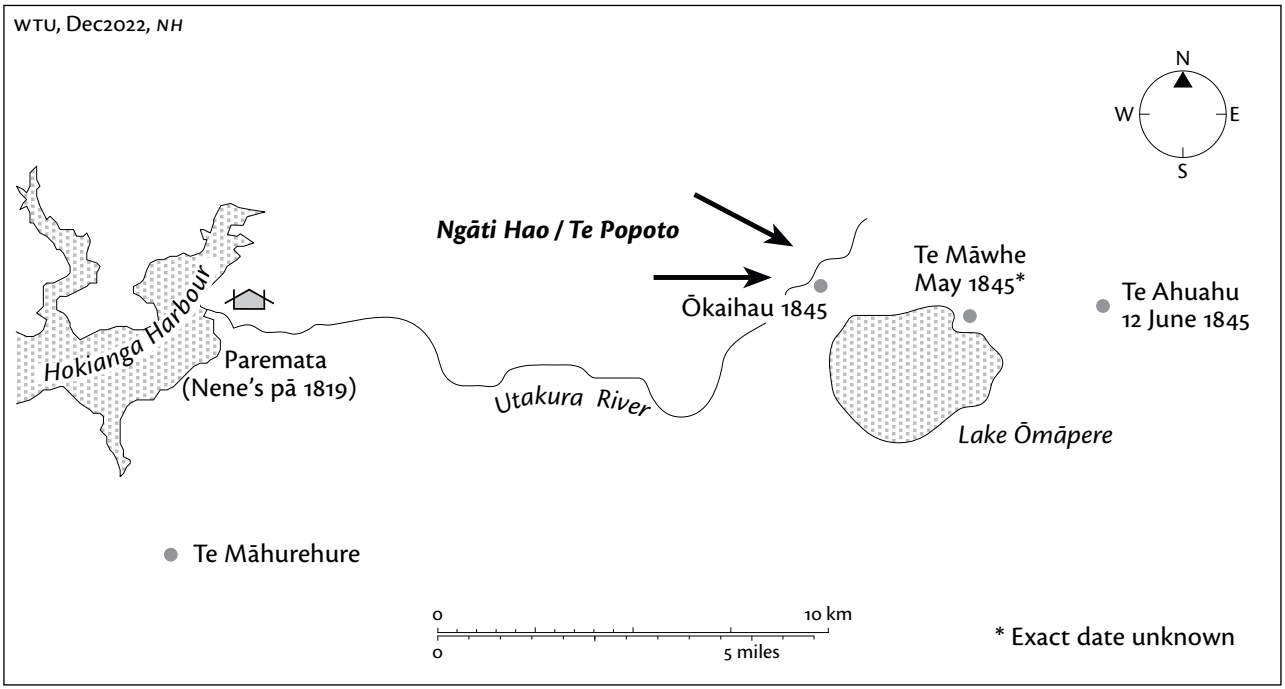
Others who fought alongside Heke and Kawiti did not leave written statements about their reasons for challenging the Crown though we note the words printed onto the ensign that Busby had gifted to Pūmuka: 'Tiriti Waitangi'.[834] Kōrero about their motivations have been handed down through the generations. In 1882, the Kaikohe rangatira Hirini Taiwhanga and several other leading rangatira petitioned Queen Victoria seeking recognition of Māori rights under the treaty. In that petition, the rangatira said that Ngāpuhi had chosen England over other countries to be their protector. Heke had then cut down the flagstaff in protest against 'land sales and the withholding of the anchorage money at Bay of Islands . . . contrary to the second article of the Treaty of Waitangi.'[835] Heke's action was partly due to misunderstanding, because he 'imagined that the flag was a symbol of land confiscation'. Nonetheless, 'there was no blood in the flagstaff' that would justify the Governor raising an army to fight Heke. If the Governor had entered dialogue with Heke, there would have been no war; but instead, 'the Europeans flew as birds to make war against Heke, which brought about the blood-shedding of both Europeans and Maoris.'[836]

In 1897, Heke's great-nephew Hōne Heke Ngāpua told Parliament that the war had occurred not because Māori wanted to fight Europeans but because of the Crown's departure from the treaty (see also chapter 11):

> The fact is that the feeling of disloyalty amongst the Natives who opposed Her Majesty's troops in the early days was on account of the departure from a contract made between Her Majesty's representative and the Native Chiefs of New Zealand, in 1840. The contract of which I speak was the Treaty of Waitangi, by which the minds of the Natives of that time and of to-day were impressed with the feeling that that contract must be held sacred. It was broken, and that was the cause of the wars.

Heke and his allies recognised:

> that some of the articles of the treaty had been broken by the rulers in New Zealand representing the British Crown. They recognised that they had the right to protest that; and it was through that treaty being broken, and through the misunderstanding by the Europeans of the Native mind in the early days of the colony, that all these troubles Her Majesty's subjects in New Zealand, were brought about. The expense was about six millions, I believe. The whole cause of these wars, then, as I say, was that the English authorities misunderstood the Native mind.[837]



Map 5.8: Nene's expansion into Taiāmai. During the Northern War, Tāmati Waka Nene, Makoare Taonui, Mohi Tāwhai, Arama Karaka Pī, and other Hokianga leaders expanded from their Hokianga homelands into territories north of Ōmāpere. They established a pā at Ōkaihau, occupied Te Māwhe, and finally captured Heke's pā at Te Ahuahu, challenging the mana of Te Uri o Te Hua and other Taiāmai hapū. On 12 June 1845, Heke was seriously injured in an attempt to regain the pā.

In this inquiry, Te Kapotai hapū told us that their tūpuna joined with Heke and Kawiti 'to ensure that their rangatiratanga over Te Kapotai remained, and that te mana o te Tiriti was respected';[838] and that they 'had no option but to fight against the Crown in the Northern War because the Crown was taking our lands and our rangatiratanga.'[839] Emma Gibbs-Smith said that Te Haratua, Marupō, and their kin fought to defend themselves against the 'attack on our mana' represented by the Crown's assertion of authority in Te Raki. In accordance with te Tiriti, they sought a partnership of equals with the Crown.[840] Hone Pikari of Te Uri o Hua told us that Heke fought 'because the Crown refused to accept that our people were its equals'. Pure had tried to resolve his issues with the Crown through diplomacy but,

> faced with a kawanatanga that refused to meet to discuss the issues man to man – a kawanatanga that continued to act as if it had extinguished our sovereignty – Te Hira Pure had no other choice but to fight to assert his sovereignty.[841]

For Phillip Charles Bristow of Ngāti Manu and Te Roroa, Pūmuka's flag was a reminder to 'perservere for te Tiriti o Waitangi and the sovereignty of our people'.[842]

Historians in recent times have typically expressed similar views. James Belich, in *The New Zealand Wars*, wrote that Heke fought not to overturn the treaty but 'to ensure the application of the Maori version'.[843] Ralph Johnson, in his evidence about the Northern War, observed that Heke and Kawiti were declared rebels 'for the fact that they sought to oppose the sovereign authority of the Queen',

even though they had never consented to that authority being exercised over them. This, in Mr Johnson's view, reflected the 'awful logic' of the Crown's assumption of sovereignty.[844] Dr Phillipson told us that the concept of rebellion 'was a hard one to make stick in 1840s New Zealand' where the Crown's authority was 'so new and untried, and Maori consent to the cession of kawanatanga so limited and conditional'.[845]

Heke, Kawiti, and others who fought against the Crown were not rebels against the Crown's sovereignty, for the simple reason that they had never consented to that sovereignty applying to them or their communities. Nor was the Crown's authority established in practical terms. On the contrary, the mana and tino rangatiratanga of Te Raki hapū was the established authority within their territories. So far as Te Raki rangatira were concerned, the Crown had affirmed that mana and tino rangatiratanga in its various dealings with Te Raki leaders between 1820 and 1840, and again in the discussions at Waitangi in 1840 and in the text of te Tiriti. To them, the concept of rebellion would have made no sense. As they saw it, the Crown had been challenging that agreement and asserting its authority far beyond what had been agreed in 1840. To borrow from *The Taranaki Report: Kaupapa Tuatahi* (1996), 'The Governor was in rebellion against the authority of the Treaty and the Queen's word that it contained.'[846] Far from rebelling, Heke and his allies were reminding the Governor of the limits of his power.

(b) Why Patuone, Nene, and their allies fought

Before the Crown's attack on Pōmare II's pā at Ōtuihu, Heke had already clashed with Tāmati Waka Nene and a Hokianga coalition in a series of skirmishes near Ōmāpere. Settler witnesses described these as 'staged fights' between close kin in which warriors from both sides fired off large numbers of rounds while causing very few casualties. During these early clashes, Rewa of Kororāreka fought on the side of Heke. Alongside Nene's Ngāti Hao people were Te Pōpoto under Makoare Te Taonui, and Te Māhurehure under Mohi Tāwhai and Arama Karaka Pī.[847] These were closely related hapū who all occupied contiguous inner Hokianga territories to the west of Heke's Kaikohe homelands (see chapter 3). When the Crown's troops arrived in the Bay of Islands, this coalition did not fight alongside them;[848] rather, they continued to wage a parallel campaign to keep pressure on Heke while colonial troops went after Kawiti and others. Nene then advised colonial officers of the best time to attack Heke and offered valuable military advice and logistical support, such as guiding, feeding, and lodging the troops.[849]

In early June 1845, Nene, Taonui, Tāwhai, and Pī began a strategic advance towards Taiāmai and Ōmāpere.[850] When Taonui captured Heke's unguarded pā at Te Ahuahu, a fierce battle ensued with many hundreds of warriors involved. Heke and Te Haratua both received serious wounds. In all, 12 were killed – seven of Heke's men and five from Hokianga.[851] Nene then encouraged colonial officers to conduct an immediate attack on the wounded Heke and his people at Ōhaeawai.[852] Nene offered to fight alongside colonial troops but was refused.[853] Thereafter, his warriors guided colonial troops to Ōhaeawai,[854] but they remained aloof from fighting there aside from two minor skirmishes with Heke's people.[855] Later, during the battle of Ruapekapeka in January 1846, Nene's warriors clashed with those of Kawiti and were the first to enter the pā before it was captured, though they did not stay to fight alongside the Crown's troops.[856]

Throughout the war, this Hokianga coalition of Ngāti Hao, Te Pōpoto, and Te Māhurehure were Heke's main Ngāpuhi antagonists,[857] though other hapū sometimes joined the conflict. When British forces attacked Te Kapotai at Waikare in May 1845, Rewa's Te Patukeha and Ngāi Tāwake hapū joined in the attack, as did Te Hikutū under Hauraki and Te Māhurehure under Mohi Tāwhai and Repa. Nene seems to have been absent on this occasion.[858] After colonial troops had departed, Repa and Rewa attacked Te Kapotai again, on 26 May.[859] Other rangatira to oppose Heke and Kawiti included Tāmati Pukututu of Te Uri o Ngongo and Te Uri o Hawato, Rangatira of Ngāti Korokoro, Paratene Te Kekeao of Ngāti Matakire, and Wiremu Hau of Ngāti Te Whiu.[860] Panakareao of Te Rarawa joined the January 1846 battle against Kawiti and his allies at Ruapekapeka.[861]

Several reasons have been advanced for Tāmati Waka Nene and his allies fighting against Heke, some concerning Ngāpuhi relationships with the Crown and settlers, and others pertaining to more traditional objectives. The most direct cause of Nene's involvement in the war arises from the promises he made in September 1844 to keep Heke under control. As discussed earlier, Nene made this commitment in response to FitzRoy's planned invasion, which threatened to embroil all of Ngāpuhi in war against the Crown. He was determined to keep British soldiers out of Ngāpuhi territories and in pursuit of that goal, gambled on his ability to keep his younger relative in line. Having made this commitment, Nene was bound as a matter of mana to keep it.[862]

During the last few months of 1844, Nene made efforts to dissuade Heke from openly challenging the Crown's authority; and in early March 1845, he and others threatened to use force if Heke attacked the flagstaff again. According to Phillipson, Nene had considered initiating forceful action to prevent Heke's final attack on the flagstaff but was reluctant to fight his own kin on the Crown's behalf, and was also dissuaded by Hokianga missionaries (and possibly by FitzRoy himself), who feared that any action might begin a long and difficult inter-hapū conflict.[863] Following the destruction of Kororāreka, Nene changed his mind. Heke's actions meant the Crown would soon return with a larger force, potentially jeopardising trading relationships and (ultimately) chiefly authority, should Ngāpuhi forces lose any subsequent war. Nene therefore told Māori and Crown officials that he would fight against Heke in a limited manner, sufficient to occupy him until colonial troops arrived. When they did, Nene would leave Heke to the British.[864] Subsequently, during the war, Nene, Tāwhai, Taonui, and Pī provided the Crown with logistical support, and very occasional and limited military assistance alongside (but never under the command of) British forces.[865]

The Crown regarded them as 'friendly' or 'loyal' to the Crown,[866] but these labels masked the sometimes-complex motivations of Nene and his allies. As we have mentioned previously, Nene shared many of Heke's concerns about Crown encroachments on Ngāpuhi authority. In chapter 4 we discussed his resistance to Crown interference in the kauri trade (see section 4.4.2).[867] On several occasions in 1844, he expressed his displeasure at Crown actions that impinged on Māori authority, including Britain's replacement of the flag of the United Tribes with its ensign.[868] In late January 1844, Nene and his allies were scarcely less angry than Heke about the Crown's pretensions of authority over Ngāpuhi.[869]

Historians appearing before our inquiry agreed that Nene, Taonui, Tāwhai, Pī, and their allies were not fighting for the Crown's sovereignty. Mr Johnson argued that 'it is incorrect to refer to them as "loyalists" to the Crown, as some government officials labelled them at the time'.[870] Mr Johnson told us that Nene was as concerned as Heke about safeguarding Ngāpuhi authority and 'the sanctity of Te Tiriti'.[871] According to Dr Phillipson, 'Those who ended up supporting or opposing the Government, and those who remained neutral, all wanted to ensure the continued independent authority of rangatira over their communities.'[872] Doctors Manuka Henare, Hazel Petrie, and Adrienne Puckey in their traditional history of Ngāpuhi, wrote that '[b]oth Māori factions . . . resented state interference'.[873] Dr O'Malley concluded that Heke and Nene both fought to uphold their mana:

> [W]hereas Nene and the other so-called 'friendly' chiefs were reassured by Crown promises that their mana would be recognised and their ability to govern the internal affairs of their people left untouched, Heke and his followers remained unconvinced.[874]

James Belich argued similarly, that Heke and Nene shared objectives but differed over tactics. Both sought to maximise the benefits of contact with settlers while minimising any threat to Māori authority, and both had seen the treaty as a means to those ends. But, whereas Heke vigorously and directly defended Māori law and authority, Nene and his allies believed that peaceful alliance with Britain was a more effective means of protecting chiefly authority and advancing trade.[875] Historians in this

inquiry expressed similar views.[876] Mr Johnson referred to a famous utterance by Taonui to Heke during the conflict:

> E whakaae ana ahau i takahia to tatou tapu e te Pakeha, Engari kaua e patua te pakeha. Me korero e tatou, kia puta.
>
> I agree that the Pakeha has trampled on the treaty however do not kill the Pakeha. Let us dialogue as a way out.[877]

The Whangaroa claimant and kaumātua Nuki Aldridge told us that Nene's stance in the war had been misunderstood. He said that Nene was a staunch protector of Ngāpuhi independence who had participated in Te Whakaminenga (a formal assembly of rangatira from autonomous hapū that gathered to deliberate and act in concert[878]) from early in the nineteenth century and was later instrumental in extending Te Whakaminenga into Auckland to oversee the settler Parliament.[879] Mr Aldridge noted:

> We're told now though that Waka Nene and other Hokianga rangatira were supporters of the British and the Crown. I question that historical finding. Participation was lacking, he only looked on. . . . [Nene] was acting for the survival of his people, his own hapū.[880]

According to Ben Pittman of Ngāti Hao, Ngāpuhi internal politics played a role in the dispute between Nene and Heke. Nene regarded himself as the region's pre-eminent rangatira, and Heke as 'an impudent upstart'. Nene was deeply suspicious of the colonial Government, but equally suspicious of Heke 'who he saw as a threat to his mana and rangatiratanga'. This influenced Nene's initial decision to 'keep an eye' on the flagstaff, even though he shared Heke's contempt for the British flag, referring to the flagstaff as 'He iti rakau'.[881] According to Mr Pittman:

> Nene and Patuone had their own agendas and one was to keep the British from bringing in ever larger forces while they attempted to sort out their own affairs within and as a Ngāpuhi collective.[882]

Thereafter, each time Heke felled the flagstaff, this was an insult to Nene's mana, which eventually required him to act. Britain was no more than an 'appendage' to Nene's desire to preserve his mana and tino rangatiratanga;[883] privately, Nene and his allies had 'serious misgivings'.[884] The descendants of Nene, Patuone, Tāwhai, and others had faced ongoing resentment for the roles their tūpuna played.[885]

There is some evidence that Nene and his Hokianga allies were also motivated by territorial expansion. During the war, they occupied territories abandoned by Heke and his allies to the north and north-east of Lake Ōmāpere. Initially, they occupied and cultivated lands at Te Mawhe, then occupied Heke's pā at Te Ahuahu. These were valuable agricultural areas that had traditionally been contested among Ngāpuhi hapū. It is not clear that Nene and Taonui began the war with territorial expansion in mind, but it does appear that they responded opportunistically to the power imbalances that arose in the wake of the Crown invasion.[886] The Government encouraged these ambitions by offering to confiscate land from Heke and other 'rebels' and grant that land to 'loyal' Ngāpuhi.[887]

Patu Hohepa provided evidence that Nene, Taonui, and Tāwhai fought to seek utu for previous conflicts, particularly for attacks by Hongi Hika against Whiria and other Hokianga pā. As Hongi's relative, Heke bore the brunt of the Hokianga response.[888] In an August 1845 letter to the Governor, Heke argued that Nene fought to avenge the death of Hao, eponymous ancestor of Nene's hapū. However, none of the claimants or historians provided any evidence about Hao's death.[889] Heke wrote that traditional grievances were 'the real causes' of the war. Nene wanted the Governor to believe he was fighting for Europeans so that 'the multitude may be deceived as well as you; and that they may obtain powder . . . that thus they may obtain satisfaction for their dead'.[890]

Aside from Patuone, Nene, and their Hokianga and Waimate allies, other rangatira played limited parts in the war. Panakareao and a section of Te Rarawa arrived in September 1845 and joined in the battle of Ruapekapeka. According to Mr Johnson, Panakareao had genealogical

connections to Nene and sought utu for Heke's role in a Ngāpuhi conflict against Te Rarawa at Ōruru in 1843, and for earlier actions by Hongi against Te Rarawa. Panakareao also sought to demonstrate his commitment to Te Rarawa's relationship with Britain. Another section of Te Rarawa, under Papahia, sided with Kawiti, while a third section remained neutral.[891]

In May 1845, Repa of Te Māhurehure and Rewa of Te Patukeha fought against Te Kapotai at Waikare, alongside Mohi Tāwhai and a force from Te Hikutū. According to the claimant Arapeta Hamilton of Ngāti Manu, they joined in the battle to seek utu for the deaths of Tāwhai and Pī (fathers of Mohi Tāwhai and Arama Karaka Pī respectively) at the hands of Ngāti Hine and Ngāti Manu during a battle at Ōpua a generation earlier.[892]

Tāmati Pukututu also took a very limited role in the war in support of Nene. Pukututu was related to Kawiti and lived near him at Kawakawa (Kawiti had kāinga at Ōtuihu, Taumārere, and Waiōmio among other locations). Pukututu seems to have been motivated by a land dispute with Kawiti, and perhaps also by a desire to secure an alliance with the Government. Late in 1845, Pukututu constructed a pā at the mouth of the Taumārere River to protect British supply lines and to cover the retreat of the British troops from their attack on Ruapekapeka.[893]

Based on the evidence outlined in this section, we conclude that Nene, Taonui, Tāwhai, and other rangatira did not fight to defend the Crown's claim of sovereignty but for a range of other reasons. Principally, these Hokianga rangatira entered the war to defend their mana and tino rangatiratanga. They had made an agreement at Waimate in September 1844 to keep Heke under control. They had not freely consented to this arrangement but had given the Governor their word while under threat of invasion and in return for a number of concessions and assurances. They promised to control Heke so the Governor would send his soldiers home and their territories would not be threatened. Having made that commitment, they were obliged as a matter of mana to honour their commitment; having been pressured into taking sides, they then had little option but to fight. More broadly, they sought to maintain peaceful relations with the Crown and with traders, seeing that as the most effective means by which they could secure their authority and advance their people's material well-being. Once drawn into war, they might also have chosen to take advantage of the circumstances to achieve territorial expansion and utu for past causes.

Others who fought at Waikare and Ruapekapeka did so to seek utu for traditional causes and to advance their relationship with Britain. We agree with Dr O'Malley that, for all Ngāpuhi combatants, 'maintaining and upholding their mana was the primary consideration beyond all others.'[894]

(c) What the Crown knew of Heke's concerns about the treaty relationship

FitzRoy and other colonial officials understood the treaty principally through its English text, which granted sovereignty to the Crown in return for the Crown's protection and a land guarantee for Māori.[895] It was on this basis that FitzRoy declared Heke and Kawiti to be in rebellion and he initiated his military campaign against them.[896] Throughout the conflict, FitzRoy and other Crown officials insisted that they were honouring the treaty's terms,[897] and demanded that Heke and Kawiti also honour those terms by submitting to the Crown's sovereignty.[898]

Nonetheless, FitzRoy and other officials were aware that Māori had a different understanding of the treaty, shaped by the Māori text and by the verbal assurances Hobson had given during the treaty debates.[899] As discussed in chapter 4, almost immediately after the treaty was signed, Te Raki leaders had begun to protest and seek assurance that the Crown did not intend to claim their lands or assert authority over them. Heke and other Ngāpuhi leaders had drawn their attention to conflicting interpretations of the treaty by sending letters, by attacking the flagstaff, and by seeking recognition of shared or dual authority. They had also raised their concerns with missionaries, traders, and other Pākehā in the Bay of Islands and Hokianga (see chapter 4). Between 1842 and 1845, Chief Protector Clarke senior reported to his superiors that Māori did not see themselves as subject to colonial law and authority.[900] During 1844 and early 1845, Clarke, Governors FitzRoy

Crown forces attacking Te Kahika Pā on the banks of Lake Ōmāpere, 8 May 1845, as depicted by John Williams, an artist and a soldier of the 58th Regiment. Heke and the Te Uri o Hua rangatira Te Hira Pure built Te Kahika (also referred to as Puketutū or Māwe (Te Māwhe)) on Te Uri o Hua lands. Pure, dissatisfied with the Governor's response to his attempts to secure dialogue, joined Heke. Kawiti led his own taua to join the pā's defence. The British forces marched inland to Te Kahika as the Kerikeri River was too shallow in places for the *North Star* and the *Hazard* to navigate, and they brought no heavy artillery. There was intense hand-to-hand fighting outside the pā, and casualties on both sides were high. Kawiti's oldest son, Taura, was killed. Colonel Hulme failed, however, to capture the pā and decided that night to withdraw his troops to Kerikeri.

and Grey, and missionaries all sought to reassure Ngāpuhi about the treaty's protective intent, while blurring the true meaning of the sovereignty that Britain claimed.[901]

In 1845 and 1846, Clarke and the Colonial Under-Secretary James Stephen both acknowledged that Māori had not understood the treaty as granting Britain authority over them.[902] On 1 July 1845, the former British Resident, James Busby, wrote to Lord Stanley attributing the entire war to Māori 'indignation at what they consider a violation of faith [in the treaty], and their determination to resist further encroachment [on their rights]'.[903] In his memoirs, Governor FitzRoy acknowledged that Māori

had been frustrated with the Crown's attempts to exert its authority, 'which they had consented to acknowledge, however reluctant to obey'.[904]

In sum, both before and during the war, Crown officials were made aware that Māori did not interpret the treaty as the Crown did, and did not regard questions of relative authority as settled. Yet the Crown nonetheless determined that Heke and others who challenged the Crown's interpretation were committing acts of rebellion against what officials saw as its established and legitimate authority.

(3) *Did the Crown take advantage of divisions within Ngāpuhi to support its military campaign?*

The threatened invasion of Ngāpuhi territories in August 1844 led Tāmati Waka Nene, Patuone, Mohi Tāwhai, Makoare Te Taonui, and others to align themselves with the Crown against Heke.[905] During the war, they conducted a parallel campaign against Heke,[906] while also providing the Crown's forces with advice, logistical assistance, and occasional military support.[907] As noted earlier, Dr Phillipson described the conflict as 'a "civil war" in two senses: it was a war within Ngāpuhi, and it was a war between certain Ngāpuhi leaders (and hapū) and the Crown'.[908] He said:

> It's a civil war within Ngā Puhi because it is a war in which alignments are affected by whakapapa and relationships, but the choice of which side to fight for and in fact the fact of fighting at all is as a result of the Crown and the existence of new civil polity in New Zealand.[909]

Specifically, in April 1845, Nene and his allies conducted a series of attacks north of Ōmāpere, keeping Heke's forces occupied until the Crown's forces could arrive.[910] Prior to the attack on Te Kahika, Nene, Patuone, Te Tainui, Mohi Tāwhai, and Pī provided guides for the Crown's troops as they advanced inland, then lodged the troops at Ōkaihau.[911] Te Māhurehure and Te Hikutū advised the Crown's officers prior to the attack on Waikare, and (acting under their own command) led its first wave.[912] After Te Kahika, Nene, Taonui, and Tāwhai invaded Heke's territories, occupying Te Kahika and other pā in northern Ōmāpere. They then moved into Taiāmai where they claimed Heke's pā at Te Ahuahu, seriously injuring Heke as he tried to regain it.[913] Before the attack on Ōhaeawai, Nene offered Colonel Despard, FitzRoy's new commanding officer, the service of his warriors, which Despard refused. Nene's forces then conducted a brief attack in advance of the Crown's forces.[914] Nene, Tāwhai, and Panakareao joined the attack on Ruapekapeka, advised the Crown's officers on tactics, and led the first advance after the pā had been breached. Te Taonui meanwhile sent warriors to Heke's pā at Hikurangi.[915]

The Crown regarded the support of 'loyal' Māori as important to its campaign and sought to reward them in three ways. The first was by offering material support. From April 1845 and for the remainder of the conflict, it supplied Nene and his allies with ammunition, and also made gifts of flour, tobacco, and blankets.[916] Crown officials ensured that all Ngāpuhi understood this policy and therefore had material incentive to fight against Heke. In May, shortly before the battle of Ōhaeawai, the Colonial Secretary reported that Nene had been given 100 blankets, 3,000 percussion caps, and a bag of flints.[917] Between July and September, the Crown gave out goods valued at £380, most of that in tobacco and blankets. Other items included flour, flags for 'loyal' chiefs, and calico for badges so the Crown's forces could distinguish between friend and foe.[918] The scale of gift-giving was such that George Clarke junior warned against excess generosity, saying that 'if they know they can obtain it so easily, they do not value it'.[919] Nonetheless, payments continued until the end of the war and afterwards: Crown accounts for the six months to June 1846 recorded 'special payments' of £80 to Hokianga leaders, £12 to build a house for Patuone, and £15 for presents to Nene and his closest supporters.[920]

Gifts took on considerable importance because of the economic blockade, which prevented Te Raki Māori from acquiring munitions and other goods by trade. When the blockade was extended on 19 May 1845 to cover Whangaroa and Whāngārei, the Governor accompanied

it with an assurance that the Crown would 'make Presents to all the Loyal Chiefs who have taken part or may be taking part in putting down disturbances'. The blockade would furthermore be lifted as soon as the 'rebellion' was crushed.[921] The blockade was extended because the Governor learned that munitions were being landed at Whangaroa.[922] Nevertheless, we agree with Mr Johnson that the Governor took the opportunity to increase economic pressure on neutral hapū, giving them incentive to 'attack their fellow kin'.[923] These measures angered Heke and neutral leaders alike.[924] 'Waka [Nene] is fighting for what he can obtain from you', Heke told the Governor in May 1845. 'There is nothing sincere in him.'[925] As described earlier, he later accused Nene of having duped the Governor into arming him so he could obtain utu for traditional causes.[926]

The Crown's second method for rewarding 'loyal' Ngāpuhi was to offer them land taken from Heke and his allies. FitzRoy's view was that Māori who transgressed against the Crown's authority or breached its laws should forfeit land as atonement. According to the historian Ian Wards, this doctrine reflected a view that the Crown's protection and land guarantee applied only to those who were loyal.[927] FitzRoy had applied this doctrine in January 1845 by taking land at Whāngārei,[928] and again in May when he took Pōmare II's land at Ōtuihu.[929]

Throughout the war, FitzRoy acted on the basis that land confiscation would form part of any peace terms, and this appears to have been common knowledge in the Bay of Islands from at least May 1845. When Heke wrote to the Governor on 21 May offering peace, he asked, '[B]ut still you insist on my giving up the land? Then where are we to go? Are we to go to Port Jackson or to England?' Heke then sarcastically inquired if the Governor would provide him with a ship.[930] By that time, Police Magistrate James Clendon possessed draft terms of peace that specified the lands to be taken.[931] In June, as the Crown's troops returned to Te Raki prior to the battle of Ōhaeawai, FitzRoy instructed Despard to 'assure the Natives generally that land forfeited by the rebellious will be divided among the loyal Natives, and that no land will be taken by the government'.[932] In August, the Governor responded to Heke's overtures for peace by demanding that Heke 'offer an atonement to the utmost of your ability' for the destruction of Kororāreka,[933] a demand that Heke rightly understood as requiring forfeit of land.[934] In September, FitzRoy drew up formal terms of peace specifying the lands he intended to take,[935] and communicated those terms to Heke and Kawiti.[936] FitzRoy's stance confirmed in Heke's mind that the Crown had no intention of honouring its treaty guarantees, and therefore hardened his determination to hold out.[937] Yet the promise to transfer land to 'loyal' Māori emboldened Nene and Taonui, leading them to commit to territorial expansion from Hokianga into Taiāmai.[938]

In November, Governor Grey initiated a third method for rewarding 'loyal' Ngāpuhi. From 5 December, those who fought alongside the Crown were granted a daily ration of flour and sugar from the Crown's stores. Grey hoped that this would encourage Nene and others to bring in more warriors, and that those warriors would become more responsive to British officers' commands. Grey also authorised the establishment of a permanent company of Ngāpuhi soldiers, who would be paid professionals under the command of British officers. However, we have seen no evidence that this company was established before the war ended in January 1846.[939] After the war, the Crown continued to reward Nene and other 'loyal' rangatira by paying annual salaries.[940]

We agree with Mr Johnson that through its gifting and land confiscation policies the Crown deliberately 'sought to strengthen the basis of [its] support' in a manner that deepened the divisions between Nene and Heke, and also caused resentment towards Nene among other Ngāpuhi.[941] In May and again in December, Heke warned that the conflict within Ngāpuhi would endure after he had made peace with the Crown, as 'the wound is too deep to be healed without more bloodshed'.[942] George Clarke junior warned in August that Ururoa and other Ngāpuhi felt 'bitter' towards Nene, and if Nene was not supported by the Government, it was likely he would be 'attacked by an overwhelming force'.[943]

The HMS *North Star*, painted by John Williams. The naval vessel, with two transport ships, carried Crown forces to attack Ōtuihu, the pā of rangatira Pōmare II and Ngāti Manu, on the Kawakawa (Taumārere) River in April 1845. When it arrived in front of the pā, which had been fortified with formidable defences, both Pōmare and the ship raised white flags. However, when Pōmare and his daughter Iritana met with the colonial forces, who had landed on the shore, they were both arrested and detained on board the *North Star* for two weeks before they were taken to Auckland. An armed standoff ensued, and the pā was destroyed after most of the Ngāti Manu inhabitants had escaped or relinquished their weapons.

(4) *Was the Crown justified in destroying Ōtuihu and arresting Pōmare II?*

The first pā attacked in the Crown's military campaign was Ōtuihu, on 29 April 1845. British officers arrived at the pā with orders to capture Pōmare,[944] those considered to be covertly supporting the 'insurrection'[945] and a premeditated plan – agreed by British officers – to 'knock [the pā] about [Pōmare's] ears and raze it to the ground.'[946] Ōtuihu was the first target for the simple reason that it was the most accessible of the Kawakawa River pā that the Governor had ordered destroyed.[947]

The Government had been advised that Pōmare played no part in the attack on Kororāreka and was genuinely neutral; but according to Clarke junior, he made 'no distinction between friend or foe'. Pōmare had in fact spent the duration of the Kororāreka conflict guarding the lives

Pōmare II, rangatira of Ngāti Manu (d 1850). His mother, Haki, was the elder sister of Pōmare I, and after his uncle's death, Pōmare II assumed the leadership of Ngāti Manu, and the names Whētoi and Pōmare. Pōmare established Ōtuihu and Ōpua as important economic centres for Ngāti Manu, and he developed good relationships with European traders. He collected anchorage fees in southern Pēwhairangi and had two 'grog shops' at Ōtuihu Pā. During the destruction of Kororāreka, Pōmare travelled to Te Wahapū to look after the settlers there, for whom he felt responsible. Despite his neutrality, Pōmare's pā at Ōtuihu was the first attacked in the Crown's military campaign in April 1845. After the arrest of Pōmare and his daughter Iritana, his release was conditional on him giving up his interests at the trading station at Te Wahapū to the Crown. Arapeta Hamilton described the impact of all these events of the war as 'catastrophic' for Pōmare and Ngāti Manu.

and property of traders at Te Wahapū.[948] Pōmare himself had written to the Governor saying he was a friend of Pākehā and wished to remain neutral in any conflict, and the Governor had written back accepting this assurance.[949] Nonetheless, some of Pōmare's people had provided covering fire for the attack on Kororāreka, and Pōmare was rumoured to have received a cloak from the plunder. These facts – together with some 'treasonous letters' FitzRoy had obtained that were apparently from Pōmare's pā at Ōtuihu (though not in his hand) and another rumour that he had secretly provided ammunition to Heke – led the Government to regard the rangatira and all his people as hostile. As had become his habit, FitzRoy gave orders based on information from settlers and British officers, making no attempt to inquire more deeply into the facts, let alone consider the perspective of the rangatira he was ordering arrested.[950]

At midnight on 29 April, a colonial force numbering about 470 landed outside Ōtuihu, supported by the warship HMS *North Star*. A white flag was flying from the pā the next morning, and the *North Star* raised its own white flag. Pōmare, with his daughter Iritana, came to the foreshore. Pōmare said he was a friend of the Governor and demanded to know why his pā was surrounded. When he and Iritana then attempted to return to the pā, they were arrested and taken onto the ship.[951] An armed standoff then ensued, in which Lieutenant-Colonel Hulme demanded that Ngāti Manu relinquish their arms; otherwise, they would be treated as rebels, and the pā and all property inside it would be destroyed. Ngāti Manu then offered the colonial force a small portion of their weapons, but most of their number – about 200 in all – fled out the back of the pā, taking what they could carry, while the *North Star* fired shells at them.[952] Hulme later reported that his orders did not allow him to recognise a flag of truce flown by 'a supposed rebel'.[953]

At about 3 pm, Hulme gave the order to burn the pā and destroy all nearby waka, later justifying the decision on the basis that plundered items had been found inside the pā. Another officer, Major Bridge, reported that the pā was burned because Ngāti Manu refused to give up their arms. Neither explanation is plausible in light of the clear evidence (discussed earlier in this section) that the decisions to arrest Pōmare and destroy the pā were premeditated.[954]

Nor, indeed, does the 'plunder' justification stand on its own terms. The Crown's officers later claimed that they found a good amount of Kororāreka plunder at the pā,

yet the only items specified in their written accounts were pigs, turkeys, ducks, an old rifle, and a mere. The officers did not explain how they could distinguish Kororāreka property from that belonging to Pōmare and his people, Ōtuihu already being one of the wealthiest trading centres in the north. British soldiers were allowed to plunder all the livestock and other food inside the pā before it was torched. Major Bridge took the mere as a souvenir. Given these actions, justifying the pā's destruction because of 'plunder' was hypocritical at best.[955]

There were other, strategic reasons for destroying Ōtuihu. The pā was a potential threat to Kororāreka, where the soldiers were to be based during their time in the Bay of Islands. More importantly, where it lay at the mouth of the Kawakawa River was a vital transport route for the Crown's planned inland expeditions against Heke and Kawiti.[956] Later, during the war, colonial troops would use Ōtuihu as a base for their expeditions to Waikare and Ruapekapeka.[957]

Pōmare and his daughter were detained on the *North Star* for about two weeks and were then taken to Auckland. After intervention by Nene's brother Patuone – who was also to play a key peacemaker role on other occasions – and other Hokianga rangatira, FitzRoy conceded that Pōmare had not been responsible for or had even known of the 'treasonous' letters that had prompted his arrest. FitzRoy agreed to pardon and release Pōmare, on five conditions. First, Pōmare was required to acknowledge that he had failed actively to suppress the rebellion or prevent plunder from being taken to his pā, and the Governor therefore had just cause for being suspicious of him. Secondly, the Governor claimed that many 'very bad' letters had originated from Pōmare's pā, even if Pōmare had not been responsible for them. Thirdly, Pōmare had to promise to punish Heke and Kawiti for their transgressions and return any plunder he was able to. Fourthly, he was required to grant the Crown his interests in the trading station at Te Wahapū (that territory was occupied by the traders Gilbert Mair and Charles Waetford, who acknowledged Pōmare's ongoing rights and interest, consistent with traditional rangatira–settler relationships).[958] Officials regarded Waetford, an ex-convict, as one of the 'bad and designing' settlers who had encouraged Heke to challenge the Crown's authority; the confiscation was likely aimed as much at him as at Pōmare.[959] The final condition was that after the war, the Crown would station a company of soldiers at Te Wahapū.

The conditions for Pōmare's release were extraordinary. In effect, the Governor was acknowledging that he had used force against Pōmare and his people based on flawed intelligence. Then, having acknowledged Pōmare's innocence, FitzRoy nonetheless required that Pōmare be punished – not for the transgression of which he was accused, but for his failure to control Heke when he had never promised to do so. In effect, as Johnson noted, Pōmare 'was declared guilty of remaining neutral'.[960] After Pōmare's release, FitzRoy moderated his stance on neutral Māori, ensuring that colonial troops acted only against those who were known to be in arms against the Crown.[961] Kaumātua Arapeta Hamilton told us that Ngāti Manu had never forgotten these events. They are commemorated in names given to Pōmare's descendants such as Te Nota (North Star) (first given to Pōmare's daughter after she returned to her family)[962] – and Te Hereheretini (tied up in chains), a name given to Mr Hamilton's great-grandfather, Uru Davis). The names serve as reminders of 'the indignity of the Crown's actions towards our Tupuna'.[963]

Pōmare's arrest, and the destruction of Ōtuihu, had significant, enduring consequences for Ngāti Manu. Ōtuihu was a site of great significance, occupied for many hundreds of years by Ngāti Tū, Ngāti Hine, and Ngāti Manu. It had once been home to Ngāti Hine founding ancestor Hineāmaru. Pōmare II had lived there with his Ngāti Manu people since his departure from Kororāreka after the Girls' War in 1830. He had established Ōtuihu as a major trading settlement, second only to Kororāreka in importance.[964] Initially, Ngāti Manu were forced to retreat to a small kāinga called Mātairiri (at Taumārere). Later, after it was rebuilt, they moved to Puketohunoa Pā at Te Kāretu.[965] The destruction of Ōtuihu and the confiscation of Pōmare's interests in the trading station at Te Wahapū cut off Ngāti Manu trading relationships, and the retreat of the hapū inland cut off their access to the sea. 'Ngati Manu in the 1800s were a sea people', Arapeta Hamilton told us.

'We travelled the coast of the North Island, we fished and lived off the sea, we controlled our water ways with a huge respect as a tino taonga.' Through the destruction of the pā, 'We lost the control of our resources, whether it be the sea, land or water or Ngahere [forest].'[966]

(5) *Was the Crown's stance on 'neutral' hapū reasonable?*

(a) The nature of Ngāpuhi neutrality

Most of Heke's allies occupied territories extending from the southern Bay of Islands inland to Taiāmai and Kaikohe, while their opponents from other hapū mainly occupied inland Hokianga river valleys. This left a large portion of Te Raki hapū who were not active combatants or played only very limited roles in the war. In December 1845, Governor Grey identified the principal non-combatants: Ururoa and Hongi (Te Tahawai of Whangaroa); Kupe (Ngāti Kawau of Whangaroa); Tāreha (Ngāti Rēhia of Tākou); Rewa and Moka (Ngāi Tāwake of Te Rāwhiti); Pōmare II and Waikato (Ngāti Manu of southern Bay of Islands); and Papahia (Te Rarawa).[967] Crown officials used the term 'neutral' to describe these hapū, but this masks their often complex motivations for abstaining from active combat. Dr Phillipson thought there were two 'neutral' camps: those who were actually neutral, and those who opposed the Crown in secret by providing logistical support for Heke and his allies.[968]

During January 1845, Ururoa supported Heke's cause against the Crown and attempted to recruit others to join in the fourth attack against the flagstaff, which took place on 11 March 1845. After attending the Pāroa Bay hui and receiving assurances about the meaning of the treaty, Ururoa declared that he would not fight against British forces. He then visited Heke and attempted to dissuade him from any further action against the flagstaff.[969] The Whangaroa claimant and kaumātua Nuki Aldridge told us that was only partially correct. While Ururoa decided to abstain from fighting, he nonetheless supported Heke.[970] After the fall of Kororāreka, Ururoa sent 130 warriors to protect Heke in case of attack,[971] and Ururoa's people also fought with Heke's at the battle of Te Ahuahu.[972] To put it simply, Whangaroa Māori were prepared to fight with Heke when colonial troops were not present but generally abstained from action otherwise, apart from providing small numbers of reinforcements when needed. 'Our people talk about being at the battles and participating,' Mr Aldridge said, naming Ruapekapeka as one such instance.[973] Dr Phillipson referred to a small Whangaroa contingent, under the rangatira Pona, playing a part in the war as well.[974]

Mr Aldridge explained to us that Whangaroa Māori also provided food and shelter for Heke and Kawiti's forces, and safe haven for warriors and whānau when it was needed. '[W]hen they had to get away and be safe somewhere until things cooled down, they would come over to Whangaroa. If the warriors needed food and shelter, they received it.'[975] Kinship was a critical factor in this arrangement – Ururoa was closely related to Heke and his wife Hariata Rongo.[976] But according to Mr Aldridge, many in Whangaroa also supported the cause for which Heke and Kawiti were fighting:

> I've been told that we looked at their efforts from that symbolic point of view, as protecting our waters, lands and other resources. To the people of Whangaroa they were doing the right thing on behalf of our people and the right thing for the future of Māoridom. I think the whole of the North were on this kaupapa.[977]

In Dr Phillipson's view, Ngāti Rēhia and Ngātiwai also supported Heke while remaining officially neutral. He considered it was no coincidence that coastal hapū professed neutrality as they were far more vulnerable to attack than those inland, such as Kawiti's Ngāti Hine and Heke's Ngāti Tautahi hapū.[978]

The role played by Rewa's Ngāi Tāwake and Te Patukeha people was similarly complex. Identified by Governor Grey as 'neutral',[979] Rewa and his brothers Moka and Te Wharerahi were described by Dr Phillipson as supporters of Nene and the Crown.[980] Neither label fully explains the brothers' actions during the war. After the destruction of Kororāreka, Rewa and his people sought refuge in Whangaroa.[981] The loss of the town naturally angered them; indeed, one Crown official claimed that Rewa responded by declaring war on Heke.[982] In fact, it is not

clear whether Rewa blamed Heke or the Crown for the town's destruction, and Rewa took no direct military action against Heke at any stage during the war. On the contrary, he fought with Heke against Nene during the initial skirmishes, believing that Heke's cause was justified, and Nene's was not.[983]

Once British forces had arrived, Rewa and Moka adopted different and seemingly contradictory approaches. They largely abstained from active combat but did not remain neutral.[984] Having initially fought with Heke against Nene, the brothers then provided practical support for Nene's forces. This included catching fish, maintaining cultivations to feed Nene's warriors,[985] and joining with Mohi Tāwhai to burn down houses in Heke's territories.[986] This suggests that Rewa and Moka saw destruction of property as sufficient utu for Kororāreka and that they did not believe that Heke's actions warranted loss of life. Whānau relationships were also a factor. Rewa, Moka, and their older brother Wharerahi were all of Ngāi Tāwake descent and therefore close relatives of Heke.[987] But Wharerahi was also married to Nene's sister Tari, imposing obligations on both sides.[988] As previously discussed, Rewa and Moka did fight on two occasions alongside the Crown and Hokianga hapū, joining them in attacks against Te Kapotai at Waikare. These actions were partly to avenge the destruction of Kororāreka, and partly to seek utu for an older cause but as Mr Johnson observed, not aimed at supporting that of the Government.[989]

Grey also identified the Ngāti Manu leader Pōmare II as neutral.[990] Pōmare had declared himself so before the war,[991] and according to his descendant Arapeta Hamilton, he remained personally neutral throughout.[992] Yet that position masked complex motivations. Pōmare had close relatives among the Kawakawa and Hokianga antagonists; and in common with Patuone and Nene, he also wanted to sustain lucrative trading relationships with settlers and a constructive relationship with the Governor.[993] After his capture, detention, and release early in the war, Pōmare walked a fine line, aimed at maintaining positive relationships on all sides without antagonising any. At times, he made efforts to be seen as friendly to the Crown. In June 1845, his followers helped to rescue a Crown troop ship that had foundered near Onewhero Bay, and soon afterwards, Pōmare himself visited Nene and the Crown's force at Waimate in another demonstration of friendliness.[994] But Pōmare also allowed many of his supporters to fight in support of Kawiti, not only at Kororāreka but also at Ruapekapeka. Ngāti Manu provided food supplies for Ruapekapeka, and Pōmare offered Kawiti refuge afterwards. By taking these steps, Pōmare was acknowledging their close relationships with Kawiti's granddaughter Kohu.[995]

Other rangatira abstained from fighting because they did not see warfare as the most effective means of protecting their tino rangatiratanga or advancing the interests of their people. Paratene Te Kekeao (Te Uri Taniwha) and Ruhe (Ngāti Rangi, Ngāti Hineira) attempted to act as peacemakers throughout.[996] Others abstained because they feared that Europeans would leave if they took sides,[997] or feared that the Crown would attack them if they supported Heke.[998] Te Tirarau and Pārore Te Āwha of Te Parawhau declined Kawiti's requests for assistance for these reasons. Te Tirarau wrote to the Governor in April 1845 with an assurance that his people had played no part in the previous month's attack on the flagstaff. He asked for a flag as a signal of neutrality.[999]

(b) FitzRoy's stance on neutrality

On 26 April 1845, as he initiated the Crown's military campaign, Governor FitzRoy issued a proclamation aimed at Māori of 'Tokerau' and 'Pēwhairangi'. It stated that those who wished to retain 'peace, commerce, and friendship with Europeans, and the maintenance of the Queen's just authority', must separate themselves from 'te Iwi tutu' or 'ill disposed Natives'. It instructed them to gather, with their rangatira, either at mission stations or at their own kāinga under protection of a British flag.[1000]

As the proclamation and accompanying instructions made clear, the Governor's main purpose was to ensure that British troops would not mistake neutral Māori for enemies and accidentally fire on them. This was partly to save lives, and partly because any accidental shooting of neutral Māori would be likely to strengthen Heke's support. But under the circumstances, the instruction to

gather under a British flag was provocative and tantamount to requiring a declaration of loyalty to the Crown. Whereas the proclamation otherwise expressed protective intent, FitzRoy's instructions to Lieutenant-Colonel Hulme struck a different and more threatening tone. Hulme was told that non-combatant Māori must gather either at missions or at places directed by Nene, Patuone, and other Hokianga leaders – an obvious insult to the mana of other rangatira. Furthermore, any who did not comply within a few days 'will be considered disaffected'. In other words, those who did not surrender their mana and fly a British flag risked being treated as rebels. Although Hulme was also warned not to take enforcement action against any non-combatants, his instructions created some risk that neutral hapū who chose not to fly an ensign or comply with instructions from Nene might be caught up in hostilities.[1001] Indeed, as discussed in section 5.3, the Crown's first action after declaring war would be to destroy the pā of a neutral rangatira, Pōmare II.[1002]

(c) Grey's stance on neutrality

Governor Grey's arrival in November 1845 signalled a further shift in the Crown's approach to 'neutrality'. Whereas FitzRoy had sought to avoid drawing neutral hapū into the conflict,[1003] Grey determined that some Ngāpuhi 'under the guise of what they term neutrality' were covertly supporting Heke with both men and supplies, while avoiding direct conflict with colonial troops. As discussed in the preceding sections, claimant evidence suggests this was true at least of Ngāti Manu and Whangaroa hapū. In Grey's view, the Crown had not been sufficiently firm with these groups. In early December, after his decision to attack Ruapekapeka, Grey sent a message around the Bay of Islands and Whangaroa saying that he 'should not recognize any neutrality on the part of any chief' and would call on all to assist the Crown actively. Those who did not would be regarded as rebels and treated as such.[1004]

(6) *Did the Crown use inappropriate or excessive force?*

(a) The Crown's instructions to its military commanders

On 26 April 1845, Governor FitzRoy instructed Lieutenant-Colonel Hulme to carry out the 'signal chastisement' of all Māori considered to be in rebellion as a 'warning that British subjects are not to be grievously injured with impunity'. No 'rebel' in arms against 'lawful British authority' should be spared though no life should be taken 'except in actual hostilities'. However, the 'principal chiefs' whether 'actually engaged in this insurrection, or who may be covertly assisting the rebels should be taken alive if possible and kept as hostages' – ultimately to be transported. FitzRoy saw this as his duty to his sovereign, country and indeed the 'well-disposed native of New Zealand'.[1005] FitzRoy was also sensitive to the possibility of defeat and of general Ngāpuhi uprising, either of which could fatally undermine the Crown's authority in the north. He therefore instructed Hulme to attack only when certain of victory, and to avoid any confrontation with or provocation towards non-combatants. Women, children, and the elderly and the 'unresisting' were not to be harmed.[1006]

FitzRoy described the need to issue such orders as 'deeply painful', but we find them extraordinary.[1007] Of course, Ngūpuhi leaders did not see themselves as in rebellion since they did not accept that they had ceded sovereignty at all. FitzRoy insisted that they had and his intention to take them 'hostage' (rather than prisoner) underlines his emphasis on putting down rebellion by enforcing the good behaviour of their hapū, while the rangatira themselves were to be removed entirely from their country and their communities. The instructions regarding those 'covertly assisting' opened the door wide to punitive and unjustified action – and incidents of opportunistic looting. This was demonstrated in the capture of Pōmare and the sacking and destruction of Ōtuihu three days after he issued his orders to Hulme.

This essential objective of ensuring the complete capitulation of the 'rebels' remained consistent throughout the campaign. In early May, before the attack on Te Kahika, FitzRoy instructed Hulme to destroy all principal pā along the Kawakawa River, particularly those of Kawiti, Hori Kingi Tahua, Ruku, Waikare (Te Kapotai), and Marupō (Matarahurahu and Ngāti Rāhiri). Until these pā were destroyed and 'till the majority of their rebellious inhabitants are killed', there could be no peace. In addition,

The British attack Waikare. The raid was intended to punish Te Kapotai for their involvement in support of the attack on the flagstaff and for their alleged plunder of Kororāreka. The artist, Major Cyprian Bridge, led a force of 200 soldiers and marines, with a taua comprising Te Hikutū, Ngāi Tāwake, and Te Māhurehure (who had their own reasons for seeking utu from Te Kapotai for losses suffered in battle a number of years before) also taking part. The force set off at midnight on 15 May, intending a surprise attack, but their small craft struggled with the tidal estuaries at the end of the inlet, and many grounded on the mudflats and were late arriving. In any case, Te Kapotai were alerted to the arrival of the boats as large numbers of birds took flight. This gave time for women and children to evacuate the pā.

FitzRoy said, 'every canoe belonging to the Rebels should be destroyed', there being 'many concealed near the falls of Waitangi, belonging to Heke, and his adherents'.[1008]

In June, before the attack on Ōhaeawai, FitzRoy instructed Colonel Despard: 'The principal object . . . is the capture or destruction of the rebel Chief Heke and his principal supporters', who were identified as Kawiti, Te Hira Pure, Hori Kingi Tahua, Te Haratua, and Marupō. All of these 'notorious' rangatira were to 'share the fate which *their* destruction of the settlement of Russell (or Kororarika) has rendered inevitable' (emphasis in original). Despard was additionally instructed not to make any peace unless the terms included Heke and these other rangatira being taken prisoner.[1009]

The attack on Waikare, which began just after sunrise on 16 May 1845. The settlement was described by a visitor as comprising about 200 houses and 'the most cleanly and extensive town in . . . the Bay of Islands'. It had a strong economy and Major Bridge recorded the plunder by his men of 'significant quantities' of food, including pigs and potatoes, after which the kāinga was set on fire and 'burned . . . to the ground', along with the whare whakairo. Meanwhile, Te Hikutū, Ngāi Tāwake, and Te Māhurehure had engaged Te Kapotai in the bush behind the pā, and the British took part in the skirmishing. The entire force returned to their vessels at high tide and travelled back down the river with their plunder.

While seeking to destroy Heke and his allies, FitzRoy was also at pains to ensure that the colonial troops did not kill indiscriminately. He repeated his earlier order that the Crown must 'spare and protect the old, the helpless, the women, the children and the unresisting'. He also warned that soldiers had attracted a reputation that they 'give no quarter'.[1010] Some claimants understood this to mean that British soldiers had previously indiscriminately killed the vulnerable in battles.[1011] According to Belich, FitzRoy repeated his earlier order after learning that British soldiers had killed wounded warriors at the battle of Te Kahika on 8 May, a practice he did not want repeated.[1012]

Governor Grey was on hand to supervise the battle of Ruapekapeka and does not seem to have left detailed written instructions for Despard. Nonetheless, Grey informed Lord Stanley that it would be 'absolutely requisite to crush either Heke or Kawiti' before peace could be restored.[1013]

(b) Did the Crown attack non-military targets?

During the war, British forces attacked six pā: Ōtuihu, Te Kahika, Waikare, Ōhaeawai, Pākaraka, and Ruapekapeka. All had some connection with leaders who had taken part in the 11 March 1845 attack on Maiki Hill and were therefore – from the Crown's perspective – legitimate military targets.[1014] Two of those pā (Te Kahika and Ruapekapeka) were purpose-built for fighting and a third, Ōhaeawai, had been rebuilt with that intention. Strategically located to draw the Crown's forces away from centres of population and cultivation, they were designed to be difficult and costly to attack, simple to defend for long periods, and safe and easy to abandon without significant loss of life.[1015] The other three pā (Ōtuihu, Waikare, and Pākaraka) were all centres of hapū life, and whānau were in occupation when the Crown attacked.[1016]

As already explained, some occupants of Ōtuihu pā had supported Heke and Kawiti at Kororāreka; many others had not.[1017] At the time of the Crown's attack, at least 200 people were inside the pā and possibly many more. While some of the pā's occupants challenged the Crown's forces, most fled carrying what they could while the *North Star* shelled their path. The Crown's forces discovered large quantities of livestock and other food inside the pā; they took what they could before burning it and all its buildings and destroying all nearby waka.[1018] Ngāti Manu retreated to the kāinga Mātairiri (at Taumārere), and later moved to Puketohunoa Pā at Te Kāretu.[1019]

Waikare was another long-established pā site – one held by Te Kapotai.[1020] During the 1820s and 1830s, a thriving trading settlement had grown up around it, supplying timber for ship repairs and settlers' homes, and offering an anchorage that was outmatched only by Kororāreka and Ōtuihu.[1021] The surrounding settlement included hostels and homes for European traders, and kāinga occupied by many Te Kapotai families.[1022] The colonial troops attacked on 15 May 1845, intending to surround the pā and cut off any escape, but the sound of ducks taking off from the shore alerted the pā's occupants, allowing them to begin evacuation.[1023] Women and children departed first, leaving a small party to cover the escape.[1024] As at Ōtuihu, plundering occurred; the colonial forces took large quantities of pigs, potatoes, and other food, before burning the pā and all surrounding buildings.[1025]

Crown forces also discovered and claimed large food stores at Ōhaeawai and Pākaraka before those pā were destroyed.[1026] Pākaraka, one of Te Haratua's pā, was abandoned as the Crown's forces approached, leaving British troops to discover its large stores.[1027] At Ōhaeawai, British forces discovered six months' supply of potatoes and corn. This was shared out among Crown and 'loyal' Ngāpuhi troops and consumed within days.[1028] As well as food, the Crown's troops stole other items. At Ōtuihu, the British officer Cyprian Bridge carried away a mere as a souvenir.[1029] After Ruapekapeka he stopped off at Waiōmio where he 'went into a burying place of Kawiti's and picked up a skull which I brought away with me'.[1030] Henry Williams later described the soldiers as a 'scourge', remarking that they 'steal all they can put their hands upon, to say nothing of their dreadful destruction wherever they move'.[1031]

In early May, seamen from the *North Star* and *Hazard* destroyed several undefended settlements around the Bay of Islands coast. Clarke junior identified the destroyed settlements as Kaipatiki, Waitangi, Kaihera, and Pūmuka's settlement (known as Te Raupō) at Whangae.[1032] Clarke and James Clendon had been present at the attack on the first two and pointed out whare belonging to 'friendly' Māori. Those, along with church buildings, were the only structures saved.[1033] It is not clear where Kaihera was or who it was associated with. The other settlements appear to have been targeted because of associations with Heke or others who were resisting the Crown. Clarke identified Kaipatiki as one of Heke's settlements.[1034] The claimant Emma Gibbs-Smith told us that Te Kēmara of Waitangi orchestrated the resistance at Puketutū, Ōhaeawai, and Ruapekapeka, in which his nephews Heke, Marupō, and Te Haratua all played key roles.[1035] Pūmuka had been

killed at Kororāreka on 11 March and his relatives fought against the Crown in subsequent battles. While British forces had been instructed to destroy pā associated with the Crown's opponents, there was no clear direction to destroy kāinga.[1036] FitzRoy's instruction that all waka belonging to 'rebel' Māori be destroyed[1037] was duly carried out during the attacks on Ōtuihu, Waikare, and Bay of Islands kāinga.[1038] Waka were also destroyed at Ōtuihu.[1039] At Waikare, British officers allowed Nene's men to take away Te Kapotai waka.[1040]

Chief Protector Clarke senior later acknowledged the heavy cost to hapū arising from the destruction of their homes, waka, fishing nets, and other property, and the plunder of their food stocks which could not be replenished during winter. These events deepened the already serious economic crisis arising from the naval blockade. Despite acknowledging the severity of the repercussions, Clarke regarded them as 'unavoidable' consequences of war.[1041] Although the Crown's actions put the lives and livelihoods of non-combatants at risk, there is no evidence of the Crown forces deliberately firing on those populations. One woman and two children were killed by shellfire inside Ruapekapeka.[1042]

(7) *Did the Crown take all opportunities to secure and restore peace?*

(a) Peace negotiations: 1845

Six weeks passed between the destruction of Kororāreka and the British attack on Ōtuihu, during which the Governor made no attempt to communicate with 'rebel' leaders or consider alternatives to military action.[1043] Once the Crown's military campaign had begun, Heke and Kawiti made regular overtures to the Governor seeking peace.[1044] Governor FitzRoy ignored Heke's first approach, which was made just three weeks into the campaign.[1045] Thereafter, the Crown indicated it was willing to make peace only if Heke and Kawiti gave up land and submitted to its authority.[1046]

Heke first attempted to negotiate peace on 14 May 1845, soon after British forces had attacked Te Kahika. He approached the missionary Robert Burrows to ask what terms the Governor would require for peace, then again met him – and also Henry Williams – a week later, repeating his request for peace and offering terms (though there is no surviving record of what they were).[1047] On 21 May, he wrote to FitzRoy offering an end to hostilities. Heke made it clear that he would not surrender but that he would lay down arms if the Governor were willing to also.[1048]

In this letter, Heke carefully weighed the Crown's transgressions against his own. He explained why he had cut down the flagstaff, and why the Governor's insistence on rebuilding it was a provocation. He tallied the losses of his pā, kāinga, waka, cultivations, and livestock against the loss of the flagstaff, while denying responsibility for the plunder or destruction of Kororāreka.[1049] Even at this early stage Heke was aware that FitzRoy would demand land as a condition of peace, as he had done in the cases of Parihoro and Koukou in January,[1050] and Pōmare earlier in May.[1051] Crown officials already possessed draft peace terms setting out the lands to be taken,[1052] leading Heke to ask where he was supposed to go if the Governor insisted on proceeding with this plan.[1053] It was the Governor who had opened the doors of 'Anger and of Death' by invading his lands, said Heke, and it was therefore for the Governor to close them: 'If you say, let war continue, I answer Yes. If you say let peace be made, I answer – Yes – make peace with your enemy. If you agree to this law, come and converse.'[1054]

FitzRoy received this letter on 29 May but made no response. The Executive Council met that day and resolved to attack Heke again. In its view, military victory was a necessary precursor to peace. As discussed earlier, the Government's concern was not only with defeating Heke but also with warning other Māori against any challenge to the Crown's authority.[1055] After Kawiti's resounding defeat of the British force at Ōhaeawai, Heke wrote again seeking peace.[1056] Only an English translation survives:

> O Friend the Governor,
>
> This is my good news to you. I call upon you to make peace. Would it not be well for us to make peace? – to seek a

> reconciliation with God on account of our sins, as we have defiled his presence by human blood?
>
> The Scriptures tell us to pray to God, who will give us a knowledge of his laws.
>
> I felt a regard for the soldiers, although they came with their heavy things (shells etc) to destroy me. I did not burn the bridges on the Keri Keri road; this was my act of great kindness to the soldiers.
>
> If you think well of these sentences, write to me quickly, in order that I may learn your sentiments. This is my second letter to you, and I now know that there is anger within you, because you have not sent me one letter. I also know that it is Walker [Waka Nene] who kills the soldiers, for he lets the soldiers fight, but runs away into the bush himself.
>
> What are the reflections respecting this affair? I say, do you look into this affair both for yourself and me.[1057]

As Johnson observed, this was 'a clear and direct appeal for peace', which imposed no conditions.[1058] This time, the Governor responded. He said he had not answered Heke's first approach 'because it was not a proper letter'. Now, he was willing to make peace, but only if Heke and Kawiti offered 'an atonement to the utmost of your ability' for the destruction of Kororāreka and the lives lost. He made no comment on Heke's claim that others had destroyed the town, or that his own intransigence had contributed to the conflict.[1059] Although FitzRoy did not spell it out, 'atonement' meant forfeiting land, as Heke understood.[1060] FitzRoy also enclosed a copy of te Tiriti, telling Heke he was 'bound equally' with the Crown and lived under the protection of its flag. Heke could either submit and pay the required atonement, or face a larger Crown force:

> I bear the sword of justice, but I will use it with mercy. I am obliged to put down those who cause tumult and war. Many ships and a great many soldiers are coming, but at my word they will stop, or they will act.[1061]

Heke responded by dismissing te Tiriti as saying one thing and meaning another. According to the missionary Robert Burrows, Heke regarded the Crown's true intention to mean: 'I hereby secure to you in the name of the Queen of England big guns rockets shells and muskets, but your lands, your forests and fisheries I mean to take as soon as I can.'[1062] As proof, Heke held up the Governor's letter and said:

> We have already had the guns etc and now we have to forfeit our lands, no let them destroy us first and then they can have our lands. Kawiti will never agree to give up his. My people will never quietly give up theirs.[1063]

Nonetheless, Heke replied to the Governor. Again, he denied responsibility for the plunder or destruction of Kororāreka and again he enumerated the losses his people had experienced from the war. He asked FitzRoy to share responsibility for the conflict:

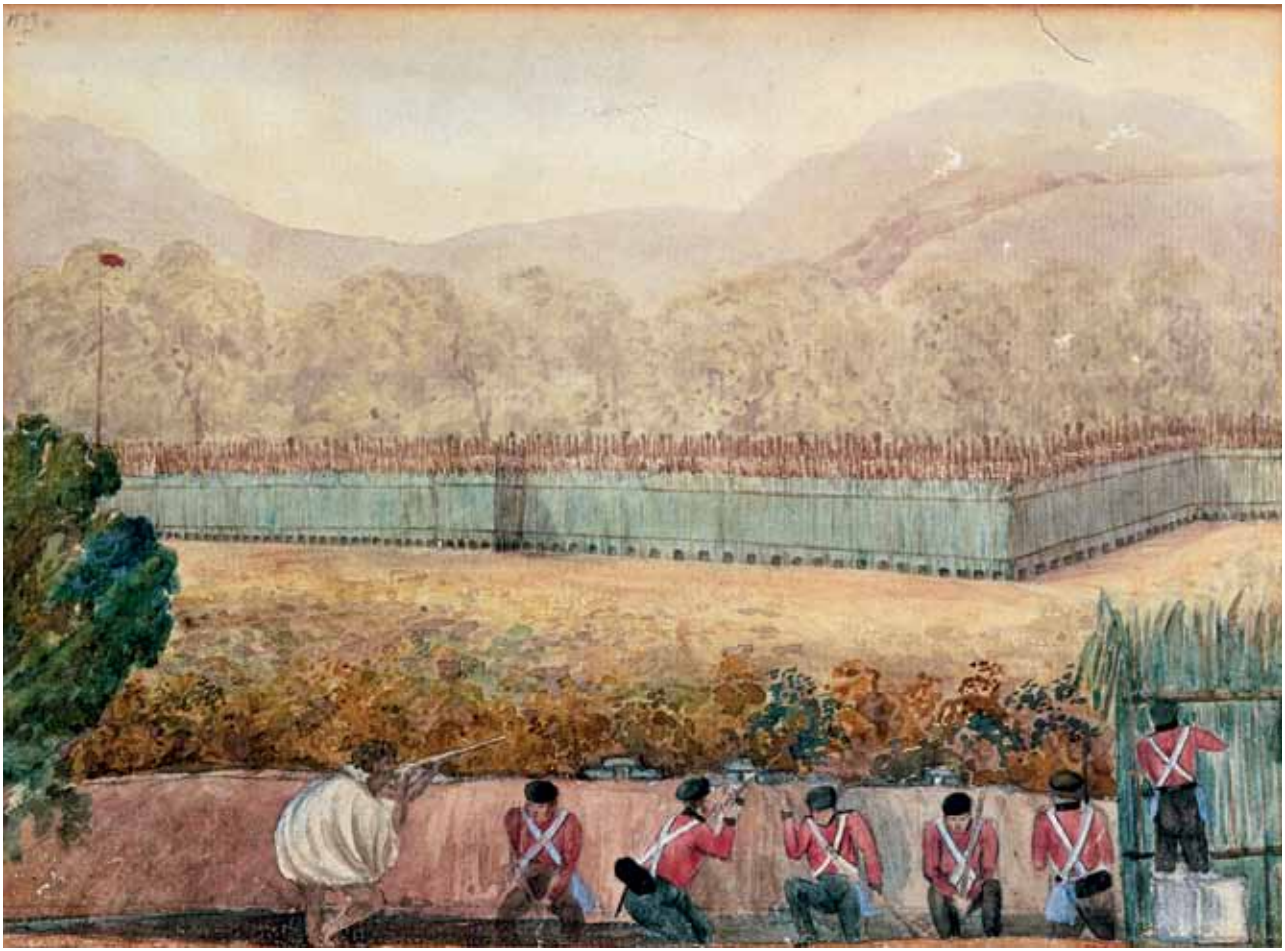
> You have said, that my sin was the sole cause which produced so much evil in the world: that may be; but let it not be said that it was solely my fault. You raised it (flag) up; I cut it down. (So that) we are both alike.[1064]

By making these comments, Heke was reiterating his point that utu had already been achieved and the Governor could thus make peace without demanding anything further. To underline this, Heke explained that land was:

> [t]he thing I put most value upon; because it was given by God for a dwelling-place for man in this world, a resting place for the soles of his feet, a burial place for the strangers of the world.

Heke told the Governor that any peace would have to include Kawiti, and he asked him to visit the rangatira and negotiate directly, because negotiating through letters was not satisfactory.[1065]

This was Heke's third letter seeking peace. It took six weeks to reach the Governor, because (for reasons he never explained) the missionary Henry Williams held it back.[1066] In early September, Kawiti also wrote a very brief letter to the Governor to say that he consented to peace being made, as too many Māori and Pākehā had died.[1067] On 25 September, FitzRoy responded to Heke and Kawiti



The battle at Ōhaeawai Pā, painted by 58th Regiment commanding officer Major Cyprian Bridge. The pā was built by Pene Taui, and Kawiti and Te Haara strengthened its defences. It had two parallel lines of palisades and trenches, with the outer palisades constructed of large pūriri logs sunk deeply in the ground. The outer timber wall was masked with green flax, tightly bound to the palisades. The second line was even stronger, and from a trench behind it the defenders fired through small loopholes at its base. Inside the pā were subterranean canon-proof bunkers and tunnels. The British had bombarded the pā for a week but had only just moved a 32-pounder into place to supplement six-pounder and 12-pounder carronades on the nearby hill, which had created few or no breaches in the defence. Colonel Despard was incensed by a surprise attack on 1 July made by a Ngāpuhi group from the pā on one of the British positions on the hill and by the sight of a Union Jack they had captured in the attack being hoisted in the pā beneath their own flag. He ordered a frontal assault on the pā the same day, expecting his troops to cut down the supports to the palisades and then pull them down with ropes. The British, unable to see the Māori defenders inside their tunnels behind the pā walls, suffered heavy losses during the first 10 minutes of their assault. It is estimated that nearly a third of the attacking force was killed or wounded. Despard had gravely underestimated the strength of the pā, which had been adapted to protect the defenders from heavy artillery bombardment with underground bunkers linked to trenches. They were also modified to deal with the formidable assaults of British troops: the firing trenches were carefully sited to enfilade attackers, and the outer palisades to slow them down when they were within firing range of slow-loading muskets. Historian Lindsay Buick wrote (on the basis of missionary observations) that '[f]or the scientific nature of these lines [of the outer pā defences] the genius of Kawiti was largely responsible.' Despard did not attempt another frontal attack, though after some days he recommenced artillery fire. Ngāpuhi defenders silently evacuated the pā on the evening of 10 July.

setting out his conditions; he refused to meet until peace had been concluded. We have the English text of FitzRoy's letter to Heke but not its translation. FitzRoy specified the terms as follows:

1st. The treaty of Waitangi to be binding.
2d. The British colours to be sacred.
3d. All plunder now in the possession of the natives to be forthwith restored.
4th. The following places to be given up to the Queen, and remain unoccupied by any one until the decision of Her Majesty be signified; namely, parts of Mawe, Ohaeawae, Taiamai, Te Aute, Wangai, Waikare, Kotori, and Kaipatiki.
5th. Hostilities to cease entirely between all chiefs and tribes now in arms, with or against the Government.[1068]

These conditions, FitzRoy said, were 'very favourable' to Heke and Kawiti, 'who have caused so much evil and distress in this land'. He explained that he would consent to peace only on these terms and repeated his assertion that the war was entirely the fault of Kawiti and Heke. More soldiers would be brought in, he told them, and war must continue until they either submitted to the Crown's authority or were 'destroyed'.[1069]

To Heke and Kawiti, these terms were a combination of the unpalatable and impossible. Taken together, the first and second conditions make clear that rangatira were to accept the English text of the treaty, which granted Britain sovereignty over New Zealand and therefore established the Union Jack as the national flag. As already explored, Heke and Kawiti's understanding of the treaty was very different, a situation of which FitzRoy was aware but refused to countenance. Here, he was asking them to submit to the Crown and acknowledge its flag as sacred. Heke had already explained that he possessed no plunder from Kororāreka and so had none to return. As far as he was concerned, anything taken was in the hands of Hokianga or coastal Bay of Islands hapū.[1070] Nor could Heke and Kawiti accept the Governor's other conditions. Kawiti replied in early October to state he would agree to peace but could never give up his territories: 'I have been fighting for my land', he told the Governor, 'if you are very desirous to get my land, I shall be equally desirous to retain it for myself.'[1071] Even if Heke and Kawiti had been willing to comply, the specific lands demanded by FitzRoy were not theirs to give; they either had no interests in them or their interests were jointly held with other hapū.[1072]

Nonetheless, both FitzRoy and his successor regarded the terms as non-negotiable. FitzRoy therefore ceased communication after Kawiti's refusal, other than to warn of dire consequences if the terms were not accepted. Kawiti and Heke continued to speak to Crown officials in the Bay of Islands, making clear that they wanted peace, but not at the cost of their lands or territorial authority. In early November, Henry Williams held talks with both rangatira, at which Kawiti reiterated that they would give up 'no land whatever'. He and Heke would fight if they had to, but according to Williams, 'They all wished for peace.'[1073]

When Grey replaced FitzRoy as Governor in November, he determined that it was preferable for the Crown to achieve a decisive victory than to negotiate peace.[1074] Any negotiation would mean treating Heke and Kawiti as equals, 'somewhat in the position of sovereign princes', which was something Grey was unwilling to do.[1075] He judged that his plan to defeat Heke and Kawiti and then offer them unconditional pardons was the most effective way of humiliating them and conveying their status as subjects.[1076] Accordingly, Grey engineered an end to the peace negotiations by demanding that Heke and Kawiti comply with all demands (including the forfeit of lands belonging to other hapū)[1077] or face another round of military action.[1078] On 2 December, Heke rejected Grey's ultimatum:

> Land? Not by any means, because God made this country for us; it cannot be sliced, if it were a whale it might be sliced; but as for this, do you return to your own country, to England, which was made by God for you. God has made this land for us, and not for any stranger or foreign nation to touch (or meddle with) this sacred country.[1079]

E Te Whānau: The Kōrero of Te Ruki Kawiti after the Battle of Ruapekapeka

After the battle of Ruapekapeka, Kawiti went to Pukepoto, a pā in Pehiawiri in Whāngārei, to take the 'kawe mate' of Tuhaia, a warrior who had died at Ōhaeawai. Moetu Tipene Davis of Ngāti Hine spoke to us about his kōrero there, which is given below, and about his waiata tawhito (very old and traditional songs) taught to her generation by Tā Himi Henare, who 'epitomised for us the height of excellence as an exponent'.

Kawiti, she said, was a paramount chief, a celebrated tactician, a military engineer, a gifted student of the Whare Wānanga of Ngāti Hine and Ngāpuhi, a leader with political wisdom, a family man, a peacemaker, and a gifted composer. Through his gift as a composer, Kawiti was able to record some of his innermost feelings about the consequences of the signing of he Whakaputanga and te Tiriti. And he did so also when he spoke at Pukepoto:

E te whanau
I te pakanga ahau ki nga Atua i te po,
Hoi, kihai ahau i mate.
Na reira, takahia te riri ki raro i o koutou waewae
Kia u ki te whakapono, he poai Pakeha koutou i muri nei.
Waiho kia kakati te namu i te wharangi o te Pukapuka.
Hei konei ka tahuri atu ai
Kei takahia e koutou nga papa pounamu a o
Koutou tupuna e takoto nei.
Titiro atu ki nga taumata o te moana.

My illustrious warriors and people
I had my wars with the Gods during the night,
but I survived.
Therefore I call upon you to suppress war underfoot.
Hold fast to the faith, for the day will come when you will become like the Pakeha.
Await therefore until the sand fly nips the pages of the book.
Then and only then shall you arise and oppose.
Do not desecrate the sacred covenants
endorsed by your forebears.
Look beyond the sea to the transfiguration of the future.

Ms Davis, in explaining Kawiti's injunctions to his people, referred to the similar struggle in the scriptures of Jacob, the grandchild of Abraham, 'with the gods'.[1] Kawiti, she said, survived the battle with the gods; surely he will survive his battle with mere mortals, 'he korero mo te Karauna (the Crown)'.

Kawiti could also see that, in the changing world, there was a need to suppress war underfoot – 'that is to find new ways to fight'. He was aware that te Tiriti contained mutual obligations, and he implored his people to uphold the covenants of te Tiriti ('the book'). He established the sacred nature of te Tiriti; it was the responsibility of his people to 'arise and oppose' any failure by the Crown to honour those covenants. Kawiti was a matakite (a seer). He saw the future through realistic and practical eyes. He could see the time when Māori could become like Pākehā. Yet, his vision of the future was optimistic, despite 'the tumultuous times as colonisation tightened its grip'. He was 'anxious that his people would be prepared for the rapidly changing world and above all for Ngati Hine to retain the lands under the Tino Rangatiratanga of the chiefs'.

'Te ataahua o ona kupu, te hohonu o ona kupu, te tawhiti o ona kupu; these all came together in a man that loved and respected his people, wanting to ensure them a bright and secure future'.[2]

As Heke's letter makes clear, the question of land was not merely about possession of a resource, but also about territorial authority: Heke's perception was that the Crown was interfering in his country. In early December, Heke made one final attempt to arrange peace and sought to talk with Grey directly. Grey was willing to oblige and

Ruapekapeka Pā. The pā occupied a strategically strong position on the Tapuaeharuru ridgeline, with steep ravined sides that prevented attackers from outflanking it. The British established their first battery in front of their main camp, some 750 yards from the pā, which they fired on day and night at regular intervals from 31 December. By 10 January, they had completed two forward battery positions, one within 350 yards of the pā containing two 32-pounder guns and a second at about 160 yards had an 18-pounder and a 12-pound Howitzer. The gunners then concentrated their fire on the north-west corner and the south-west angle of the pā and made breaches (E, F, and G on the sketch), enabling troops to enter on the morning of 11 January. Colonel Despard was struck by 'the extraordinary strength' of the fortification, particularly its internal defences; every hut was 'a complete fortress in itself', protected by a deep bomb-proof excavation close to it. The earthworks and trench system were of such dimensions that he decided to leave them undemolished when he withdrew his troops from the pā.

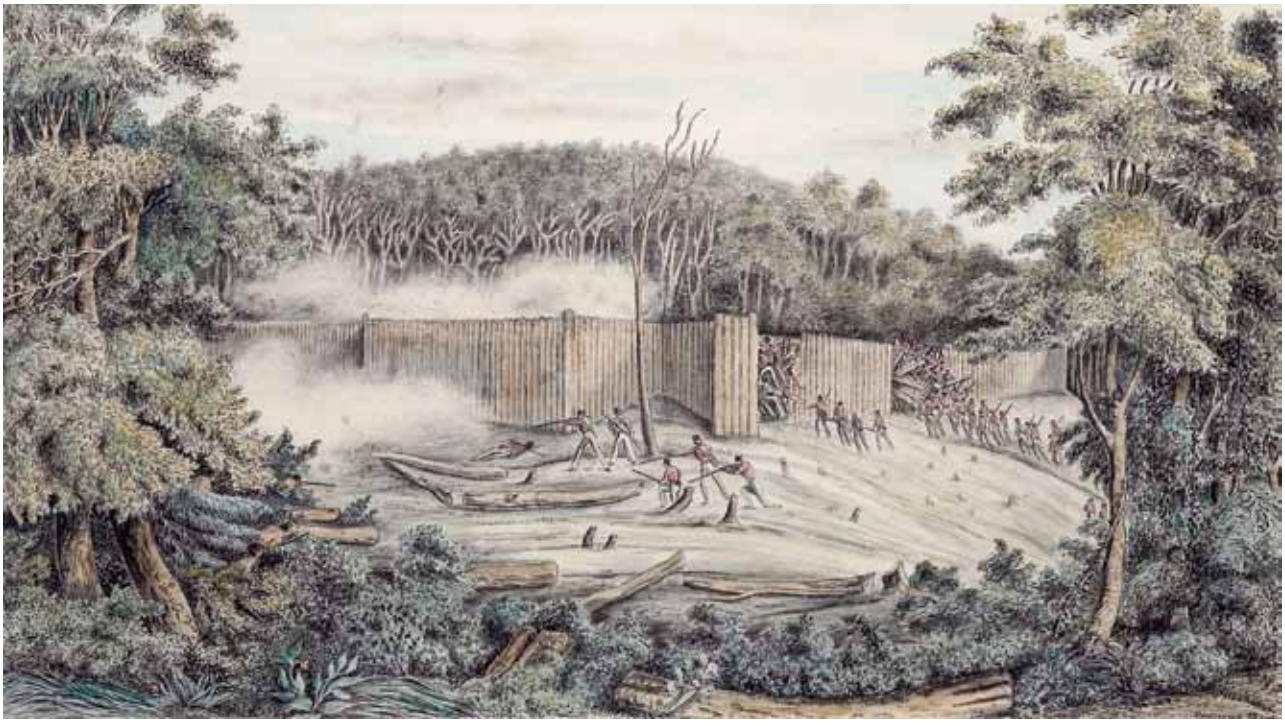
travelled to Ōtuihu, but a misunderstanding over the timing meant the meeting did not eventuate. On 5 December, Grey ordered his forces to attack Ruapekapeka.[1080]

(b) Peace is concluded: January 1846

The Crown's troops bombarded Ruapekapeka almost constantly for 11 days before the pā was finally breached. On 11 January, Nene's forces entered through the gap in the palisade to find Kawiti's men in a state of retreat. Several hundred British soldiers followed very soon afterwards, and a battle ensued,[1081] beginning inside the pā and then moving into the dense bush outside. After some hours, those still defending the pā withdrew into the bush.[1082] As they had elsewhere, the colonial forces removed anything of value from the pā and then burned it and the surrounding camps.[1083]

Governor Grey subsequently proclaimed that taking Ruapekapeka had led to 'the complete defeat of the rebels Heke and Kawiti by Her Majesty's forces.'[1084] As he represented matters, this was the overwhelming victory that the Government had been seeking for the previous eight months.[1085] Not everyone was convinced. The missionary Henry Williams later doubted that the capture of an abandoned pā could be regarded as such a triumph, and some settler newspapers and early military historians have also dismissed Grey's claims.[1086] The casualty numbers were fairly even: for the British, 12 men were killed and 29 wounded; for the defenders of the pā (according to Belich), between nine and 12 lives were lost and 30 or so were wounded.[1087] Once again, Heke and Kawiti had survived the Crown's assault.[1088]

After the battle, Kawiti and his warriors retreated south to Pehiāweri (northern Whāngārei) where they buried their dead and tended their wounded. Te Kapotai and Heke's people returned to their homes.[1089] Very soon afterwards, Heke and Kawiti renewed their peacemaking efforts. On previous occasions they had approached missionaries and the Governor, but this time they requested



The battle for Ruapekapeka Pā. Kawiti chose the inland site of the pā 'because you could see the sea at Tokerau' and, on a clear day, 'the mountains of the House of Ngapuhi' as far as Panguru and Paparātā. Its site would force British soldiers to tramp 'a long way to battle' dragging their heavy cannons. Ruapekapeka was an immensely strong fortress and a feat of military engineering. However, its wooden palisades were inevitably vulnerable to sustained heavy artillery bombardment and, after days of constant fire, two large breaches were made on 10 January 1846. That night, the British fired regularly to prevent the defenders from repairing the damage. On the following morning, Sunday 11 January, many of them were outside the back of the pā, where there was a separate village and potato gardens. Some were holding karakia. A small group of Nene's men conducting a reconnaissance were followed through a hole in the palisades by a group of British soldiers and sailors, who eventually numbered between six and seven hundred. There was intense fighting for the next few hours, first at the rear of the pā and then in the bush behind, where Kawiti's men, who had begun a strategic evacuation a couple of days before, had felled trees and would lay ambushes to cover the retreat of the last defenders, with their dead and wounded. The British gave up the pursuit and occupied the pā briefly till 14 January, burning its huts and palisades. Kawiti withdrew his forces and his allies to Pukepoto and Pehiaweri. In such battles, Pita Tipene said, 'our tupuna, Kawiti, put his own life on the line and the lives of his people and his allies to fight for freedom'.

Pōmare II and Te Whareumu to act as intermediaries in brokering peace with Nene and Grey.[1090] Pōmare then sent a message to Nene: 'Kaati te whawhai, kua mate ano te tangata i aia. Me whakamutu!' (which we translate as 'The battle is over and the man is dead. Let's stop.'). Nene agreed, and Pōmare then brought Heke and Kawiti to his pā at Puketohunoa where they completed the arrangements.[1091]

On 19 January 1846, a week after Ruapekapeka was abandoned, Kawiti wrote a brief letter to Grey. The original does not appear to have survived, but an English translation read: 'friend governor, I say let peace be made between you and I. I am filled (satisfied or have had enough) of your riches (cannon balls); therefore, I say, let you and I make peace.'[1092] Pōmare II and Te Whareumu wrote to FitzRoy (who was still in New Zealand) on the

same day, confirming that the principal resistance leaders all sought an end to hostilities. They insisted that the deal be concluded in person, and offered to travel to Auckland and return with Grey to the Bay of Islands.[1093] This was the fifth occasion since September 1844 in which Ngāpuhi leaders had sought a face-to-face meeting with the Governor. No meeting had yet taken place.[1094]

On 21 January, Heke, Kawiti, Hikitene, and Nene all attended a hui at Puketohunoa and there reached agreement to make peace. Nene then travelled to Auckland aboard a Royal Navy ship, possibly with Te Whareumu and Pōmare II. Chief Protector George Clarke senior kept an account of the meeting, according to which Nene declared that Heke and Kawiti would not fight any more under any circumstances; if the Governor would not make peace, 'they must become wanderers in the bush'. Nene also claimed that Heke and Kawiti were now willing to give up land, but no other surviving statement corroborates that, and no land was ever taken.[1095] Ben Pittman of Ngāti Hao told us that Patuone and Nene 'made it very clear to Grey on no account that Kawiti or Heke suffer any consequences. This is generally not known or even acknowledged but it is part of our history.'[1096]

The day after this meeting, Grey issued a peace proclamation granting full pardons to Heke, Kawiti, and other 'rebel chiefs'. No confiscation or other punitive measure was imposed. Grey claimed that Heke, Kawiti, and their allies had been 'defeated and dispersed', and had 'made their complete submission to the Government.'[1097] Soon afterwards, Grey reported to Lord Stanley that he had avoided punitive measures because he wanted Māori throughout the country to recognise the Crown as 'generous and liberal' towards its 'native subjects.'[1098] Another explanation is that an unconditional pardon allowed the Crown to extract itself from a costly war while also claiming authority over Heke and Kawiti.[1099] By this time, Grey was dealing with another conflict in the Hutt Valley and could not risk fighting in two regions.[1100] According to the missionary Robert Burrows, Grey was as pleased as Heke and Kawiti to be done with fighting, especially in a war that brought 'neither honour nor glory to anyone'.[1101]

Grey's claim that Heke and Kawiti had offered their 'complete submission' does not bear scrutiny. The Crown, after insisting for months that the conflict must continue until Heke and Kawiti were crushed, had instead accepted an unconditional peace negotiated entirely within Ngāpuhi and presented to the Governor as a fait accompli.[1102] Heke and Kawiti were free to return to their homes.[1103] They accepted that they could not fight the Crown indefinitely, but otherwise continued to assert their tino rangatiratanga.[1104] O'Malley told us that the Government's claim of victory was 'a convenient fiction',[1105] and Phillipson's view was that the Crown 'fought a war to no purpose'.[1106]

(c) The aftermath of war

Soon after peace was concluded, Heke wrote to Governor Grey asking that he and FitzRoy both travel north for a meeting. Nene and Rewa had raised the possibility of rebuilding the flagstaff, but Heke continued to insist that the Crown and Ngāpuhi do this jointly: '[C]ome that we may set aright your misunderstandings and mine also, and Walker's too', wrote Heke, 'then it will be right; then we two (you and I) will erect our flagstaff; then shall New Zealand be made one with England.'[1107] Nothing in this brief letter indicated that Heke was submitting to the Crown's authority or giving up any of the cause for which he had been fighting; rather, he appears to have regarded the conclusion of peace as an opportunity to negotiate.[1108]

Grey told the Colonial Office that he would make the journey, and on 7 February he arrived in the Bay of Islands on a Royal Navy man-of-war. When Heke came to the shore for a meeting, Grey refused to leave the ship, and Heke would not go on board, fearing that he would be captured and imprisoned as Pōmare had been.[1109] Heke then composed a waiata to describe his mistrust of Grey: 'Haere atu ki te pai a te Kawana. He pai ranei? He kahore ranei?' ('Go off to the peace of the Governor. Is it peace? Or not?')[1110]

Grey left two Royal Navy ships in the Bay of Islands, and a garrison of soldiers at Waitangi on the land Busby claimed to have purchased (the soldiers were soon afterwards moved to Te Wahapū).[1111] He also took some limited steps to assert the Crown's civil authority, leaving two

military officers (Colonel Wynyard and Major Bridge) as justices of the peace. Bridge later became the resident magistrate. On 7 February, the customs office was reopened.[1112]

However, the Governor showed little other interest in the north, preferring to focus his attentions on asserting the Crown's authority and acquiring land for larger settlements such as Port Nicholson. He made scant attempt to assert practical authority over Ngāpuhi communities. Nor did he seek land for settlement, nor ensure the return of surplus lands – despite his attack on the large missionary claims (discussed in chapter 6) – nor make any attempt to support trade or economic renewal.[1113] Whereas Dr Phillipson saw this as a policy of 'benign neglect',[1114] Dr O'Malley viewed it as a deliberate attempt to 'strangle the lifeblood' out of the district's economy, because Ngāpuhi had failed to recognise the Crown's authority.[1115]

According to Phillipson, Heke, Kawiti, and others who had resisted the Crown 'lived fairly much as before, their authority unimpaired by the war or their supposed defeat'.[1116] The war enhanced Heke's mana to such an extent 'that he appears to have been the principal rangatira at the Bay of Islands in the late 1840s'. Right up to his death in 1850, he continued to exercise independent authority within his community, and sometimes also over settlers, enforcing tikanga, punishing breaches of tapu, and conducting taua muru when he saw fit.[1117]

Crown officials did not dare rein him in. Instead, in cases of Māori–settler disputes, they sought his aid to enforce their laws – which he refused to give. In response to one approach from Major Bridge, Heke said:

> I am no magistrate for the Europeans. I am a Maori man for the Maori people. You have a law an erroneous law. I have a law likewise: it is a straight law . . . Should the lower order of Europeans misbehave in future I will not look to the Magistrate, it matters not whether they are Chiefs or whether the Governor goes to war, that will be good.[1118]

Later that year, he wrote his letter to the Queen, insisting that she honour the treaty by restoring Māori authority.[1119] He was far from alone in continuing to assert that the north should be governed according to Māori law – other rangatira shared this view. After a series of killings in 1847, Nene warned the Government against intervening, arguing that the deaths were legitimate under Māori law.[1120] Henry Williams, a few months earlier, had written to his brother-in-law in England: 'The flag-staff in the Bay is still prostrate, and the natives here rule. These are humiliating facts to the proud Englishman, many of whom thought they could govern by a mere name.'[1121] In O'Malley's view, Grey chose not to rebuild the flagstaff because he feared it would be toppled again and he wanted to spare the Crown the humiliation of embarking on another unwinnable war.[1122]

If the Government was unable to enforce its laws during the late 1840s, that does not signify that Māori control was complete; rather, an uneasy balance was maintained. For the most part, neither rangatira nor colonial officials were willing to risk open conflict by challenging the other. This meant not only that colonial authorities could not impose their laws over Māori but also that rangatira struggled to impose their authority on settlers. Breaches of tapu might result in enforcement action, but Māori – Heke included – struggled to enforce their understanding of pre-1840 land claims, and received no effective help from the Governor.[1123]

Nene and Heke met in October 1846 to finalise their peace, and there agreed that no Ngāpuhi rangatira should again interfere in the affairs of another.[1124] Heke and Grey met – at last – in April 1848. The Government sent gifts of blankets and cash in advance, which Heke refused to accept.[1125] He would himself present the Governor with a mere pounamu, some pigs, and the hani (wooden weapon) that he had used throughout the war.[1126] According to the *Daily Southern Cross*, the Governor went to some length to ensure that the meeting was not in public. Nonetheless, the newspaper acquired detailed accounts from some who were present.[1127] Heke told the Governor:

> Haere mai e te Kawana, haere, kia u tou puri i aku kupu, kia u taku pupuri i au.
>
> Tenei tenei kino o taua kua mutu, kua mau te rongo, e pai ana. Tenei ake pea te kino nui atu i tenei me ko wai ka kite?

> Kia rongo mai tatou e nga tangata o te Waimate, o te Ahuahu, o Kaikohe o hea, o hea, kia tatou katoa, tenei kupu. E mara e te Kawana, kati atu nga Taone mou i Kororarika, i Akarana, i nga kainga o nga porahu. Hei Taone aha hoki to Taone? Ina hoki titiro noa ana ahau, kiki tonu nga toa o te Waimate i te taonga, kahore ano, i hemo noa te hokoko ki te Maori.
>
> Hoki atu koe ki reira noho mai ai, ka hoki ahau ki taku kainga noho ai ki te kai nani.
>
> E nga Mihinare, kia u te noho i o koutou wahi, me tatou kia u te noho i o tatou wahi.

The newspaper translated this as:

> Come, o Governor, go. Hold fast my words as I will hold fast yours.
>
> Here has this our old quarrel been concluded. Peace has been made, it is good. Hereafter, perhaps, there will arise a still greater quarrel. Who can tell? Listen all ye men of Waimate, or Ahuahu, of Kaikohe, and of all the adjacent places, this word is to you all. Friend Governor, keep your Towns at Kororarika, and at Auckland, at the places already in confusion. What is the good of your Towns? I see the stores of the Waimate are full of goods, they are not empty, neither is the traffic with the natives suspended.
>
> Go, return to these places, and remain. I shall return to my place and remain and eat my native food (lit. cabbage).
>
> Ye missionaries, hold fast, and remain in your places, as we also remain in our places.[1128]

In September 1849, Ngāti Manu hosted a hui where Grey and Kawiti also finally met face to face, and Kawiti formalised peace by placing a kōtuku feather in Grey's cap.[1129]

Although Ngāpuhi had not been defeated, prosperity remained elusive. The combined effects of war, the departure of settlers, increased competition from other ports, and Crown neglect all combined to push the Bay of Islands economy into a steep decline.[1130] The scale of this can be seen in the value of Bay of Islands exports, which fell from £5,678 in 1844 to just £43 in 1855. By 1853, Kororāreka's population numbered about 40.[1131] This was not the prosperity that Hobson had promised in 1840,[1132] and that Grey had again promised when peace was made in 1846.[1133]

Economic neglect achieved what war had not. During the late 1840s and the 1850s, Ngāpuhi made several efforts to re-engage with the Crown, offering land – sometimes at nominal prices – for townships. Māori also appealed to the Government for more settlers, recognising the need for larger markets to create economic prosperity.[1134] Rangatira Moetara and other Hokianga leaders wrote to the Government in the mid-1850s to say they were 'impoverished and neglected', and had done no wrong that they should now be 'deserted by the Europeans'. Makoare Te Taonui also wrote to express similar sentiments: the Government's wartime allies were suffering as much as its opponents.[1135]

In 1857, the emerging Kīngitanga movement sent envoys to the north to seek expressions of support. Several Ngāpuhi communities, fearing the effects of continued isolation and neglect, responded instead by offering messages of support for the Crown. Nene, Tāwhai, Te Hira Pure, and several other rangatira held a meeting where they determined to reject the overtures from Waikato and affirmed their loyalty to the Queen. They wrote to the Governor with this assurance. As an expression of their commitment, they also determined to rebuild the flagstaff on Maiki Hill and erect another at Mangonui.[1136]

The Crown responded, offering some hope of reconciliation and economic engagement. Governor Thomas Gore Browne visited in January 1858 and met with rangatira at Kororāreka, Waitangi, Waimate, and Māngungu.[1137] One practical outcome of these hui was that the Crown brought into fruition a long-discussed plan to remove its troops from the Bay of Islands (a decision that reflected their inability to exercise any effective control over the district should there be further serious unrest);[1138] another, greatly welcomed by Ngāpuhi, was the Governor's proposal that a town be established.[1139]

Ultimately, Kerikeri was selected as the site. But, in return, Te Raki Māori would have to accept the authority

of the second Land Claims Commission (see chapters 4 and 6), along with a system of Crown rule through local rangatira who would receive salaries and have influence over local bylaws in return for keeping peace.[1140] This proposal reflected the Crown's recognition that 'English law cannot be strictly carried out without the agency of the Natives.'[1141] In Dr O'Malley's view, this was a plan for 'the extension of substantive British sovereignty by means of indirect rule through favoured chiefs, and by implication, the assimilation of northern Māori into colonial society'.[1142]

By the end of January 1858, after nearly two months of preparation, the flagstaff stood again on Maiki Hill. Ngāti Hine provided the spar, which was fashioned into a pole by a local carpenter. More than 300 people from Ngāti Hine, Te Kapotai, and other hapū then dragged the pole up Maiki Hill and erected it. Kawiti had died a few years earlier, and his son Te Kūhanga (later Maihi Parāone) Kawiti supervised the operation. In a ceremony at the end of January, he named the pou 'Te Whakakotahitanga o Ngā Iwi', a name intended to represent the unification of Te Raki Māori with the Crown and settlers. Maihi Parāone promised that the pole would never again be touched. He also spoke of a gift of land; in the words of Ngāti Hine witness Willow-Jean Prime, this was 'a whakaaro of Maihi's to gift some land to settle peace between us and the Crown'. This was the origin of his gift of Kawakawa land to the Crown which would lead to Crown purchases in that area and Maihi's disillusion with its processes. (We discuss these events in greater detail in chapter 7.) By its reinstatement, Ngāti Hine, Te Kapotai, and others asserted their mana while also symbolising friendship with the Crown. This was all that Heke had sought more than a decade earlier. However, if the flagstaff was intended as a sign of reconciliation, that process was not complete. Though he was then in the Bay of Islands, Governor Gore Browne declined to attend the ceremony. He feared that Ngāpuhi might cut the flag down again as quickly as they had raised it, and that the Crown would once again be drawn into conflict.[1143]

5.5.3 Conclusions and treaty findings

Te Tiriti o Waitangi/The Treaty of Waitangi founded a partnership under which hapū and the Crown were to share authority, paving the way for mutually protective and mutually beneficial Māori–settler relationships. Any armed conflict between the Crown and Māori represented a significant breakdown in that partnership. As set out in section 5.2, previous Tribunal reports have found that the Crown is entitled to use force against its treaty partners only in very limited circumstances. In essence, the force must be necessary to protect lives,[1144] and even then it can only be used if all non-violent options have been exhausted.[1145] In Te Raki, the Crown should not have used force to assert its authority over Māori or settle questions of relative authority,[1146] nor could it claim to have exhausted all possibilities for peace if it had failed to recognise and respect tino rangatiratanga;[1147] and repeatedly rejected opportunities for negotiation.

After the destruction of Kororāreka, a period of six weeks passed during which there were no further hostilities between Crown and Māori forces, nor any evident threat to settler communities. The Crown did not launch its military campaign because it perceived that settler lives were under threat,[1148] but rather for two other reasons. First, it was determined to assert its dominance over Heke and Kawiti by suppressing what it regarded as a rebellion to demonstrate to other Māori that the Crown's authority could not be resisted. This was, as Governor FitzRoy's 26 April 1845 proclamation of martial law made clear, a war for 'the Queen's sovereign authority' over people who had never consented to it, and over a district where questions of respective authority had not yet been negotiated, let alone resolved.[1149] Secondly, the Crown sought atonement, in the form of surrendering land, from Heke and Kawiti for the destruction of Kororāreka.

In the absence of any imminent threat to citizens' safety, and in the absence of any attempt by the Crown to resolve its differences with Heke and Kawiti by negotiation, these were not sufficient reasons for going to war.

Accordingly, we find that:

- By launching a military campaign in order to assert the Crown's sovereignty, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te matapopore moroki/the principle of active protection. It further acted inconsistently with its obligation to act honourably, fairly, and in good faith, in breach of te mātāpono o te houruatanga/the principle of partnership. This finding applies to actions taken to support the military campaign, including the imposition of martial law and the naval blockade.
- The orders issued to Colonel Hulme on 26 April 1845 instructing him to spare no 'rebel' and 'if possible' to capture principal chiefs as hostages – both those in arms and those in 'covert' support – was a breach of te mātāpono o te tino rangatiratanga and of te mātāpono o te houruatanga/the principle of partnership.

Having declared war against Ngāti Manu, Ngāti Hine, Ngāti Rāhiri, Ngāti Kawa, Ngāti Tautahi, Te Uri o Hua, Te Roroa, and other hapū, the Crown then initiated attacks on their pā and kāinga. Throughout the war, the Crown was the aggressor while Heke, Kawiti, Hikitene, and their allies acted entirely in a defensive manner, fighting only when attacked in their pā, eschewing any acts of ambush or sabotage, and attempting to shield Māori and settler communities as much as possible from the effects of conflict. In June 1845, the Crown renewed hostilities after a five-week hiatus. In December, it renewed hostilities after a further hiatus of five months. During these periods of peace, Heke, Kawiti, Hikitene, and their allies had carried out no action against settlers or the Crown.

Thus, we find that, by renewing hostilities in June and December 1845 after periods without conflict, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.

Throughout the war, Heke and his allies regarded themselves as fighting to defend their mana and territories from the Crown's attempts to establish sovereignty over them. Yet the Crown regarded them as 'rebels' and justified its war on that basis. The claimants told us that the label was unfair and had stigmatised their tūpuna.[1150] We agree. Rebellion occurs when a party attempts armed uprising against established civil authority. As we have previously concluded, Te Raki rangatira who signed te Tiriti o Waitangi in 1840 were not consenting to the Crown's sovereignty, but to a shared power arrangement which would require negotiation as it developed. The Crown's subsequent assertion of sovereignty under English law could not change this essential fact. In practical terms, the established civil authority in Te Raki in 1844 continued to be the tino rangatiratanga of hapū. Even in Kororāreka and in respect of Bay of Islands trade, the Crown exercised authority only to the extent that rangatira acquiesced for the purpose of sustaining the treaty relationship, as events in the build-up to the war demonstrated.

We find that, by labelling Māori leaders who took action against the flagstaff 'rebels', the Crown acted inconsistently with its obligation to act in good faith towards its treaty partner, and therefore breached te mātāpono o te houruatanga/the principle of partnership.

In conducting the war, the Crown deliberately took advantage of divisions within Ngāpuhi. The Crown had deepened existing divisions by threatening to invade Ngāpuhi territories. During the war it offered gifts to hapū who aided its war effort, promised them the lands and waka of 'rebel' hapū, and (at Ruapekapeka) gave them rations as if they were part of the British army. These actions widened the rifts within Ngāpuhi, causing lingering resentment of Nene and his allies by 'rebel' and 'neutral' hapū alike. When faced with division among Māori, the Crown is obliged to take reasonable steps to support reconciliation, not exploit the division for its own purpose, especially when that purpose is the assertion of its authority in breach of the treaty's article 2 guarantees. Nene and others who opposed Heke's course of action did so in order to preserve their people's mana and tino rangatiratanga, not to support the Crown's sovereignty.

Thus, we find that, by taking advantage of and encouraging divisions within Ngāpuhi, the Crown breached te mātāpono o te mana taurite me te mātāpono o te

houruatanga/the principles of equity and partnership, by acting inconsistently with its obligation to act with utmost good faith towards its treaty partner.

On occasions, the Crown also attempted to pressure non-combatant rangatira to declare their loyalty. Early in the war, Governor FitzRoy imposed this pressure to ensure that the Crown's forces did not inadvertently attack non-combatants causing outrage among his Te Raki allies. Later, Governor Grey pressured 'neutral' leaders to declare their loyalty under threat of military action, because he suspected them of secretly supporting Heke.

We find that, by pressuring non-combatant rangatira to declare their loyalty to the Crown or face military action, the Crown breached te mātāpono o te houruatanga/the principle of partnership.

The detention of Pōmare and Iritana was arbitrary and unjustified, the evidence against Pōmare being little more than hearsay. The Crown made no attempt to inquire into the facts or seek Pōmare's view before ordering his arrest and the destruction of his pā. The terms of Pōmare's release required him to acknowledge that he had been justifiably detained, even when not. The pardon also required him to acknowledge guilt for failing to prevent rebellion by Heke and Kawiti. This was inappropriate: first, because Heke and Kawiti were not in rebellion; and secondly, because Pōmare had no legitimate means of exercising authority over them; to do so would be a breach of their mana and tino rangatiratanga; nor had he agreed to the attempt. The Crown has acknowledged that it breached treaty principles by requiring Pōmare to forfeit land as part of this arrangement.[1151] We agree with Ngāti Manu claimants that Pōmare 'had committed no offence' and therefore 'there was nothing to pardon.'[1152]

Accordingly, we find that:

- The arbitrary capture and detention of the rangatira Pōmare II and his daughter Iritana was in breach of te mātāpono o te tino rangatiratanga, article 3 rights, and te mātāpono o te matapopore moroki/the principle of active protection.
- By requiring Pōmare II, as a condition of his release, to acknowledge that he had been justifiably detained when that was not the case, and guilty for failing to control the actions of Heke and Kawiti, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te mana taurite/the principles of active protection and equity. It also acted inconsistently with its duties of honour and good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.
- By requiring land at Te Wahapū as a condition of Pōmare II's release, the Crown breached its duty to recognise and respect the tino rangatiratanga of Ngāti Manu and their rights to their lands and resources, in breach of te mātāpono o te tino rangatiratanga.

We accept the Crown's submission that it confined its campaign to military targets such as pā, or to other targets that had potential to support military action (such as kāinga that could be used as bases for campaigns, waka that could provide transport, and food stores that could be used to support military action).[1153] We also accept the Crown's submission that there was no evidence of its killing non-combatants or prisoners,[1154] though there is evidence of its forces killing the wounded in some battles.[1155] We agree with the conclusion in the *Te Urewera* report, however, that the Crown was obliged to consider the consequences of its actions, even when those actions were carried out for genuine military purposes. In particular, that report found that the Crown's forces, when attacking food sources and plundering cultivations, must consider the impacts on the wider community, not only on combatants.[1156] During the Northern War, the Crown plundered stock and destroyed communal food stores, destroyed waka and fishing nets that were used to gather seafood, and destroyed the homes of many hundreds (if not thousands) of Ngāpuhi. It did so during winter, and during an economic blockade that had already imposed considerable hardship. Crown officials acknowledged the hunger and misery that resulted, but regarded those impacts as inevitable costs of war.

We find that, by failing to adequately consider and address the welfare of non-combatants affected by its military campaign, systematically destroying pā, kāinga,

waka, and food stores, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te mana taurite/the principles of active protection and equity.

On several occasions during the war, Heke and Kawiti approached the Governor offering peace. Heke made approaches in May, July, and August of 1845, while Kawiti wrote in September. The Crown ignored Heke's initial approach, and thereafter imposed conditions on peace – including submitting to Crown authority, acknowledging the flag as inviolable, and forfeiting land. The Crown has acknowledged that it breached the treaty and its principles by insisting on land confiscation as a condition of peace from July 1845 until the end of the war.[1157] In fact, it seems to have been clearly understood among Māori and officials from as early as May that the Crown would insist on confiscation. Heke referred to this fact in his 21 May 1845 letter; the police magistrate possessed draft terms by then detailing the lands to be confiscated; and FitzRoy confirmed as much in his instructions to Despard on 6 June. The Crown's concession can therefore be applied to all conflicts after the attack on Waikare.

Even then, we do not consider that the concession goes far enough, since it fails to acknowledge the Crown's insistence that Heke and Kawiti submit to its authority as a condition of peace.

We find that:

- By failing to respond to Heke's initial offer of peace, the Crown acted inconsistently with its obligation of good faith, breaching te mātāpono o te houruatanga/the principle of partnership.
- By initially insisting on submission and land confiscation as conditions of peace, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.
- By refusing to engage and negotiate in person despite Heke's repeated requests, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- By continuing its military campaign after sincere offers of peace had been made in May, July, August, and September of 1845, the Crown acted inconsistently with its duty of good faith conduct. It breached te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.

5.6 Whakarāpopototanga o ngā Whakataunga / Summary of Findings

In respect of the Crown's actions before the war, we find that:

- By threatening to use force against Heke in August 1844, when he had signed te Tiriti and had consented to the Crown's kāwanatanga but not the imposition and exercise of its sovereignty, the Crown did not adequately recognise and respect the tino rangatiratanga of Ngāpuhi hapū. This was in breach of te mātāpono o te tino rangatiratanga. It was also in breach of te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By failing to seek dialogue with Heke before making this threat, the Crown acted inconsistently with its obligation to act honourably, fairly, and in good faith, and therefore breached te mātāpono o te houruatanga/the principle of partnership.
- By negotiating with Waka Nene and other Ngāpuhi rangatira in September 1844 while also threatening military invasion should its demands not be met, the Crown acted inconsistently with its obligations of fairness and good faith, and therefore breached te mātāpono o te houruatanga/the principle of partnership.
- By negotiating in a manner that pressured Ngāpuhi to take sides, the Crown breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect. This was also inconsistent with its obligations to recognise and respect the tino rangatiratanga of Ngāpuhi hapū, and thus breached te mātāpono o te tino rangatiratanga.
- By entering an agreement in September 1844 with the rangatira assembled at Waimate that they would be

responsible for protecting the flagstaff and opposing Heke if he attacked it again, the Crown acted inconsistently with its obligations to recognise and respect tino rangatiratanga in accordance with tikanga, in breach of te mātāpono o te tino rangatiratanga. It was also in breach of te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.

- By issuing warrants for the arrest of Heke and other rangatira in January 1845, and by condemning taua muru as lawless and rebellious despite the fact that the Governor had been instructed to provide legal recognition for Māori custom, and that the operation of taua muru had previously been tolerated, the Governor acted inconsistently with the Crown's duty to recognise and respect the tino rangatiratanga of Te Raki hapū, in breach of te mātāpono o te tino rangatiratanga. The Governor also breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By taking these actions without entering dialogue with the rangatira concerned, the Crown acted inconsistently with its obligation of good faith conduct, and thus breached te mātāpono o te houruatanga/the principle of partnership.
- By requiring Te Parawhau to forfeit 1,000 acres of the Whāngārei headlands (known as Te Poupouwhenua) as payment for the January 1845 taua muru against the settlers Millon and Patten, the Governor acted inconsistently with the Crown's duty to recognise and respect tino rangatiratanga, in breach of te mātāpono o te tino rangatiratanga. He also breached te mātāpono o te whakaaronui tētahi ki tētahi/the principle of mutual recognition and respect.
- By taking these actions when it was foreseeable that they would heighten tensions between the Crown and Te Raki Māori, and without first pursuing negotiation, the Crown breached te mātāpono o te houruatanga me te mātāpono o te matapopore moroki/the principles of partnership and active protection.
- By raising the flagstaff in January and February 1845, by fortifying the flagstaff and militarising Kororāreka when it knew these actions increased the risk of conflict, and by taking these actions without seeking opportunities for dialogue to resolve tensions, the Crown acted inconsistently with its obligation to act with the utmost good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.
- By shelling Kororāreka on 11 and 12 March 1845 in breach of a ceasefire and while Māori were in the town, the Crown committed a flagrant breach of its duty to actively protect the lives, interests, and tino rangatiratanga of Te Raki Māori. This action thus breached te mātāpono o te matapopore moroki/the principle of active protection, and te mātāpono o te tino rangatiratanga.

In respect of the Crown's conduct of the war, we find that:

- By launching a military campaign in order to assert the Crown's sovereignty, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te matapopore moroki/the principle of active protection. It further acted inconsistently with its obligation to act honourably, fairly, and in good faith, in breach of te mātāpono o te houruatanga/the principle of partnership. This finding applies to actions taken to support the military campaign, including the imposition of martial law and the naval blockade.
- The orders issued to Colonel Hulme on 26 April 1845 instructing him to spare no 'rebel' and 'if possible' to capture principal chiefs as hostages – both those in arms and those in 'covert' support – was a breach of te mātāpono o te tino rangatiratanga and of te mātāpono o te houruatanga/the principle of partnership.
- By renewing hostilities in June and December 1845 after periods without conflict, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.
- By labelling Māori leaders who took action against the flagstaff 'rebels', the Crown acted inconsistently with its obligation to act in good faith towards its

treaty partner, and therefore breached te mātāpono o te houruatanga/the principle of partnership.
- By taking advantage of and encouraging divisions within Ngāpuhi, the Crown breached te mātāpono o te mana taurite me te mātāpono o te houruatanga/the principles of equity and partnership, by acting inconsistently with its obligation to act with utmost good faith towards its treaty partner.
- By pressuring non-combatant rangatira to declare their loyalty to the Crown or face military action, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- The arbitrary capture and detention of the rangatira Pōmare II and his daughter Iritana was in breach of te mātāpono o te tino rangatiratanga, article 3 rights, and te mātāpono o te matapopore moroki/the principle of active protection.
- By requiring Pōmare II, as a condition of his release, to acknowledge that he had been justifiably detained when that was not the case, and guilty for failing to control the actions of Heke and Kawiti, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te mana taurite/the principles of active protection and equity. It also acted inconsistently with its duties of honour and good faith, in breach of te mātāpono o te houruatanga/the principle of partnership.
- By requiring land at Te Wahapū as a condition of Pōmare II's release, the Crown breached its duty to recognise and respect the tino rangatiratanga of Ngāti Manu and their rights to their lands and resources, in breach of te mātāpono o te tino rangatiratanga.
- By failing to adequately consider and address the welfare of non-combatants affected by its military campaign, systematically destroying pā, kāinga, waka, and food stores, the Crown breached te mātāpono o te matapopore moroki me te mātāpono o te mana taurite/the principles of active protection and equity.
- By failing to respond to Heke's initial offer of peace, the Crown acted inconsistently with its obligation of good faith, breaching te mātāpono o te houruatanga/the principle of partnership.
- By initially insisting on submission and land confiscation as conditions of peace, the Crown breached te mātāpono o te tino rangatiratanga, as well as te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.
- By refusing to engage and negotiate in person despite Heke's repeated requests, the Crown breached te mātāpono o te houruatanga/the principle of partnership.
- By continuing its military campaign after sincere offers of peace had been made in May, July, August, and September of 1845, the Crown acted inconsistently with its duty of good faith conduct. It breached te mātāpono o te matapopore moroki me te mātāpono o te houruatanga/the principles of active protection and partnership.

5.7 Ngā Whakahāweatanga/Prejudice

The Northern War had immediate and long-term impacts for all of Ngāpuhi. Immediate effects included hardship, destruction of property, dislocation, increased internal division, and loss of life. Longer-term consequences included loss of identity and leadership, stigmatising of the families of 'rebel' and 'loyal' leaders, economic decline, and a breakdown of the Crown–Ngāpuhi relationship.

5.7.1 Immediate impacts

(1) *Loss of life*

There are no definitive records of the numbers of Ngāpuhi killed and wounded in the various battles of the Northern War. Ralph Johnson, drawing on various sources, estimated Ngāpuhi defenders lost at least 63 killed and 72 were wounded from the battles of Te Kahika, Ōhaeawai, Waikare, and Ruapekapeka (which were initiated by the Crown). The figure for those killed is likely to be an underestimate: significant numbers died later from their

wounds, and at least for some battles, only rangatira were counted.[1158] Others died or were wounded in battles between Hōne Heke and Tāmati Waka Nene. The Crown supported Nene's military efforts because they diverted and weakened Heke's forces.[1159]

Some of those who died during the conflict were non-combatants. Two children and one woman were killed during the shelling of Ruapekapeka. The woman was Emma Kopati, Kawiti's granddaughter.[1160] Significant numbers of rangatira were killed or wounded in the various battles. Pūmuka was killed at Kororāreka.[1161] Kawiti's son Taura was killed at Te Kahika. Family tradition is that he was struck by sniper fire while saving Heke's life.[1162] Two of Kawiti's nephews were also killed in that battle, as were Ruku of Te Uri Ngongoi, and Ngāwhitu of Ngāre Hauata.[1163] Riwhi Hare of Te Kapotai was killed at Waikare.[1164] At Ruapekapeka, the dead included Te Whau and Rewiri Nohe of Ngāti Tū, Houmatua of Ngāti Tautahi, Rimi Piheora and Pene Haimona of Te Roroa; Ripiro, Wharepapa, Te Horo and Te Aoro of Te Kapotai; Te Huarahi and Te Maunga of Ngāti Hine; and Tuhaia of Te Waiariki.[1165] Mr Johnson recorded Kawiti's general Te Aho as being severely wounded at Ruapekapeka,[1166] and he appears to have later died. His wife Tarahu composed a lament asking: 'Ma wai e ranga, i te mate i te ao' ('Who will avenge your death in this world?').[1167]

Te Kerei Tiatoa (Te Uri Taniwha and Te Whiu) reminded us of the effects of these deaths on whānau:

> The men would go to protect their whanau, their lands and their way of life from the Crown. At Ruapekapeka many men died. What happened with the women and children? There was no marae, no food, no money, no shelter, your man had died, and there were other women that were in the same position. They had three or four children. How did those women survive?[1168]

(2) *Economic hardship and loss of resources*

The Crown's war strategy included establishing a naval blockade and destroying pā, kāinga, waka, and food supplies, which together were intended to undermine the economic base of resisting hapū. As kaumātua Richard Dargaville of Ngāti Kawau explained, these measures 'left a trail of severe social and economic impacts'. Many of the attacks involved plunder and destruction of food supplies that were supposed to last hapū through winter, and several hapū were displaced from their lands, forcing them to seek refuge among neighbours.[1169] The plunder of food, Mr Johnson told us, left many hapū in a 'desperate struggle for survival'.[1170]

At Ōtuihu, which had been an important trading settlement, soldiers destroyed waka, slaughtered livestock, plundered food supplies and other goods, and burned the pā to the ground.[1171] The pā's occupants, numbering several hundred, were forced to evacuate to a small kāinga at Taumārere, and then Puketohunoa Pā at Te Kāretu. With the destruction of Ōtuihu and its waka, Ngāti Manu lost its trading relationships and its ability to seek sustenance from the sea. Arapeta Hamilton told us that Ngāti Manu 'have never forgotten the injustices of the Crown and the events that occurred at that time'.[1172]

Waikare, another significant Bay of Islands trading settlement with a population of over 150, was also attacked. Women and children were forced to flee at night into the hills as the British forces approached.[1173] We received evidence from Shirley Hakaraia that '[t]he British soldiers intended to kill our people, they burnt our whare to the ground and plundered our pa of all crops, food stores and goods'.[1174] Among the buildings burned were a whare whakairo and several hostels which were used to accommodate visiting traders and labourers.[1175] Te Kapotai claimants told us their ancestors had been left without food for the winter months and that, coupled with the naval blockade, caused them serious hardship.[1176] The attack 'has had devastating and lasting effects for our hapu,' said Ms Hakaraia.[1177] Te Haratua's people were also forced to seek refuge and lost their winter food supply when their pā at Pākaraka was plundered and destroyed.[1178]

The three largest battles occurred at Te Kahika, Ōhaeawai, and Ruapekapeka, which were purpose-built

fighting pā designed to be abandoned. This meant that Ngāpuhi communities would not be forced into exile at the end of each battle. Nonetheless, the plunder and destruction of these pā caused significant economic losses. British forces found several months' supply of corn and potatoes in Ōhaeawai, which they and Nene's people rapidly consumed.[1179]

Kāinga were destroyed at Waitangi, Kaipatiki, and Kaihera on the Bay of Islands coast. Pūmuka's pā at Whangae was burned.[1180] Waka and cultivations were also destroyed around the coast. Te Kapotai claimants told us that the destruction of waka contributed to their economic hardship, as they were unable to use the inlet to access other settlements for trading purposes.[1181] While the Crown destroyed coastal settlements, its Ngāpuhi allies burned inland kāinga. In August 1845, Hōne Heke wrote to the Governor saying he had lost more than £10,000 in fires lit by those forces, as well as livestock and other possessions.[1182]

The blockade of Bay of Islands shipping, later extended to Whāngārei and Whangaroa, affected all of Ngāpuhi irrespective of whether they had taken sides in the war.[1183] According to Mr Johnson, the blockade 'had a devastating impact on all Ngapuhi', afflicting large numbers of people who had chosen to remain neutral and leaving them in a state of hunger and 'increasing desperation'.[1184] Whangaroa claimants were particularly concerned about the blockade, since that harbour was heavily reliant on trade. Mr Dargaville told us that it 'destroyed our economic base'.[1185]

The Crown suggested that the economic impacts of its actions 'are sometimes overstated', and that Heke and Kawiti managed to acquire substantial supplies and ammunition in spite of the blockade.[1186] In respect of food, there is clear evidence that Heke and Kawiti had substantial supplies *before* the Crown destroyed their kāinga and the Ōhaeawai, Waikare, and Pākaraka pā.[1187] However, that changed. George Clarke senior reported on 1 July 1845:

> The destruction of the rebel pahs [*sic*], the consumption of their crops, the loss or disabling of their canoes, fishing nets, and other valuable property, has reduced them to a state of great privation and misery; and it is to be regretted that the loyal natives are more or less affected by these calamities, the unavoidable accompaniments of war. The blockading of the port, and the consequent suspension of commerce, equally afflictive to the loyalist and the rebel, has convinced them by sad experience what manifold evils the ambition of one man has occasioned.[1188]

In December, Governor Grey reported that Heke and Kawiti had very few remaining supplies and were waiting for their potatoes to ripen. This was one of the reasons for the timing of Grey's attack on Ruapekapeka.[1189] British forces do not appear to have discovered any substantial food supply at Ruapekapeka, though potatoes were growing behind the pā.[1190]

For some hapū, economic hardships were compounded by confiscation of land. In 1845, in one of the critical events in the lead-up to war, the Crown confiscated 1,000 acres of land (known as Te Poupouwhenua) at the southern Whāngārei harbour mouth as utu for a muru raid on a Matakana settler.[1191]

For Ngāti Manu, the loss of Ōtuihu was compounded by the arbitrary arrest of Pōmare II and the subsequent confiscation of his interests in Te Wahapū.[1192] According to Mr Hamilton, the Crown also took the island of Toretore, a wāhi tapu, even though Pōmare did not regard that as part of his pardon.[1193] After the war, British soldiers were initially garrisoned at Waitangi but moved to Te Wahapū, remaining there until 1858.[1194]

Mr Hamilton said that Ngāti Manu had been a wealthy hapū with extensive influence over the Bay of Islands coast and waterways. With the Crown's arrival, their rangatiratanga was 'taken forcibly, and trampled into the ground', and all of Pōmare's hopes for a prosperous future 'were blasted into smithereens, just like the effects of a British mortar on our land'. Mr Hamilton summarised the effects of war, and the Crown's assertion of authority over his people, as follows: 'He raupatu whenua, he raupatu taaonga, he raupatu mana rangatira, he raupatu moana,

he raupatu wai.'[1195] We translate this as: 'Our lands, our treasured possessions, our authority and leadership, our oceans and waterways: all were taken.'

5.7.2 Long-term impacts

The Crown entered the Northern War determined either to destroy Heke and Kawiti or to force them into submission.[1196] The war instead ended inconclusively. The Crown had captured an almost empty pā at Ruapekapeka,[1197] peace had been declared,[1198] and Heke and Kawiti returned to their lands to live almost as they had previously.[1199] However, Mr Johnson told us that the war resulted in a 'significant weakening' of Māori authority and seriously crippled Ngāpuhi's ability to exercise their tino rangatiratanga.[1200]

As we outlined in this chapter, the Crown fought to assert its practical sovereignty over Heke and others who resisted, but it did not achieve the decisive victory it sought. Instead, it accepted a peace that left questions of relative authority more or less as they had been before. The war's immediate effects on tino rangatiratanga were therefore limited. The Government left some soldiers at Waitangi, but they had little impact on Māori communities. Crown officials, fearing any new outbreak of conflict, made no attempt to control Heke and instead sought his assistance in resolving Māori–settler conflicts. While other rangatira may have been more circumspect, Heke felt able to take enforcement action against Māori and settlers alike for breaches of tikanga.[1201]

Crown and settler neglect of the district compounded the problems facing Ngāpuhi. The settler population did not recover after the war, and nor did the Ngāpuhi economy. Trade from the Bay of Islands declined rapidly to negligible levels during the 1850s. Market forces had some influence, but so, too, did a deliberate Crown policy of holding back settlement and neglecting development in the north. In essence, the Crown was not willing to engage unless questions of relative authority were settled decisively in its favour. During the 1850s, rangatira turned with increasing urgency to the Crown, seeking to re-engage. Expressions of loyalty to the Queen quickly followed, and in 1858 Ngāti Hine and Te Kapotai rebuilt the flagstaff on Maiki Hill, gifting it to the Crown. The Crown began a limited re-engagement, withdrawing its soldiers and promising to build a town in return for rangatira acknowledging its authority in respect of both land and law enforcement.[1202] We will consider their impacts in chapter 7.

According to Dr Phillipson, it was during the 1860s that substantive authority over this district transferred from Māori to the Crown.[1203] Our view, as discussed in chapters 7 and 11, is more complex. Te Raki Māori post-war expressions of loyalty to the Queen and her Governor did not necessarily translate to acceptance of colonial institutions, especially as those institutions increasingly represented settlers' objectives and interests. Te Raki Māori engaged with the Crown's rūnanga and Native Land Court during the 1860s, and from that time onwards the Crown was increasingly able to assert its substantive authority – but Māori also resisted that encroachment, and pursued options for self-government at local, tribal, and national levels throughout the rest of the century. Throughout, they continued to view the treaty relationship as one that offered them the Queen's protection, not as one that provided for the subjection of the rangatiratanga sphere.

The prejudicial effects of the Northern War on tino rangatiratanga would have been much more immediate had it not been for the brilliance of Kawiti's military strategies. Together with Heke, Hikitene, and others, he succeeded in defending land and authority against the Crown invaders. Nonetheless, the eventual transfer of substantive sovereignty was a prejudicial, if delayed, effect of war. The war sent Ngāpuhi a clear message that any direct challenge to the Crown's claim of sovereignty could be met with military force. But the war also caused the Crown to lose interest in the north and to adopt a policy of holding back settlement. In essence, the Crown responded to its own failure to achieve a decisive victory by withdrawing from the treaty relationship. It then re-engaged only to promote its land purchasing policies (see chapter 8) and

the work of the Bell commission (see chapter 6), which the Crown expected to extend its authority over the district.[1204] 'The government would have us believe that the transfer of sovereignty was an orderly and legal affair, and that it is sovereign because we have accepted its sovereignty', the claimant Rueben Porter told us. 'But this is not true. . . . Rather, my tūpuna were forced to submit.'[1205]

The war also caused fresh and ongoing divisions within Ngāpuhi. Although Heke and Waka Nene met to make peace in 1846, their relationship remained strained up to the end of Heke's life, largely because Nene continued to assert rights over the Ōmāpere and Taiāmai lands his people had occupied during the war. Nene's claims on these lands had arisen as a direct result of Crown actions – first, because occupation and then withdrawal of these areas by the Crown's forces created a power vacuum which Nene sought to fill; and secondly, because the Governor had promised Nene the spoils of war.[1206] Further conflict nearly erupted again in 1848, when Nene attempted to build a flour mill at Kaikohe, funding it from the government salary that he was drawing. Nene presented this as a peace offering, but Heke and his people opposed the project, fearing it would bring more settlers to their rohe.[1207]

Another enduring impact was the discredit and exclusion arising from the Crown branding some hapū as 'rebels'.[1208] Claimants told us that those who carried this stigma were excluded and rejected from settler society and the opportunities it brought.[1209] Mr Aldridge told us that Whangaroa Māori continue to carry this stigma, which reflected their widely misunderstood role in the 1809 *Boyd* affair (see chapter 3) as well as their limited support for Heke during the Northern War: 'We're often still viewed as a pack of rebels. Maybe we are to them [the Government]. But we question where they get the authority to call us that. This is our river, this is our whenua, this is our harbour. Where do they get the rebel label from?'[1210]

So, too, did descendants of Kawiti and Pōmare II.[1211] 'We . . . want to have our rights and privileges reinstated as rangatira . . . rather than as rebels,' Dr Mary-Anne Baker told us.[1212] Erima Henare of Ngāti Hine told us that some of Kawiti's descendants had also changed their names to avoid being stigmatised.[1213] Claimants told us of the hurt arising from false narratives that had emerged about the war, including Governor Grey's claim of victory, which Ngāti Manu claimants saw as an attack on their tino rangatiratanga. Historians have written extensively about the Crown's justifications for the war and about Grey's claims of victory, which James Belich described as 'propaganda' and 'a hoax'.[1214] Nuki Aldridge told us:

> There is a lot of history that we have been told about the Northern War. We have been told about who was involved, where the battles took place, and what the consequences were. Most importantly, we have been told about how it all started and who can be blamed for its commencement. The history that we have heard, and that has been promoted by historians and government officials alike is not the history that our people have been told.[1215]

Tā Himi Henare, in a 1989 television interview, said that history books had been written to justify the Crown's actions and make the Crown look strong: 'Ki tāku nei titiro, e tino hē rawa atu ana.' ('From my perspective it is extremely wrong.')[1216] Wayne Stokes of Te Uri Kapana and Ngāre Hauata told us that his people had 'become almost invisible' in written histories, and the effects were still felt in modern times:

> Even amongst our own people we are often forgotten about as though we no longer exist. . . . Feelings of loss of identity from post 1840 and Northern War reverberate in losses today, from suicide, several of our whanau have taken their own lives, and illnesses such as alcoholism.[1217]

Other claimants – descendants of Nene and other Hokianga leaders – referred to the resentment and hurt arising from their tūpuna being branded 'traitors' and wrongly accused of having fought to defend the Crown.[1218]

Notes

1. Hone Heke to Selwyn, 6 February 1842 (cited in Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), p 63); Kawiti to FitzRoy,

7 October 1845, encl in FitzRoy to Stanley, 25 October 1845, IUP/BPP, vol 5, p 312.

2. The principal rangatira who acted in opposition to Heke and Kawiti were Patuone, Makoare Te Taonui, Tāmati Waka Nene, Hōne Mohi Tāwhai, and Arama Karaka Pī among others: Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), p 213.

3. According to Ralph Johnson, at least 74 died from among Ngāpuhi who were resisting the Crown: Johnson, 'The Northern War, 1844–1846' (doc A5), p 413. Another five of Heke's party were killed at Te Ahuahu in fighting against Hokianga hapū: Johnson, 'The Northern War' (doc A5), pp 290–291. The Crown lost 10 at Kororāreka, 13 to 14 at Te Kahika, more than 100 at Ōhaeawai, and 12 at Ruapekapeka: Johnson, 'The Northern War' (doc A5), pp 206, 252–253, 306, 380. Māori who opposed Heke lost two to three at Waikare and five at Te Ahuahu: Johnson, 'The Northern War' (doc A5), pp 270, 290–291.

4. This includes the following claimants who raised the Northern War in their submissions: Whangaroa Taiwhenua collective (submission 3.3.385) and Mangakahia Taiwhenua collective (submission 3.3.293(a)); Wai 49 and Wai 682 (submission 3.3.382(b)); Wai 120 (submission 3.3.320); Wai 121, Wai 230, Wai 568, Wai 654, Wai 884, Wai 1129, Wai 1313, Wai 1460, Wai 1896, Wai 1941, Wai 1970, and Wai 2191 (submission 3.3.262 and submission 3.3.324); Wai 156 (submission 3.3.401(c)); Wai 354, Wai 1514, Wai 1535, and Wai 1664 (submission 3.3.399); Wai 375, Wai 520, and Wai 523 (submission 3.3.322); Wai 421, Wai 593, Wai 869, Wai 1247, Wai 1383, and Wai 1890 (submission 3.3.329(b)); Wai 549, Wai 1513, Wai 1526, and Wai 1728 (submission 3.3.297); Wai 605 (submission 3.3.315); Wai 774 (submission 3.3.391); Wai 862 (submission 3.3.290); Wai 919 (submission 3.3.390); Wai 990, Wai 1467, and Wai 1930 (submission 3.3.274); Wai 966 (submission 3.3.252); Wai 1354 (submission 3.3.292(a)); Wai 1445 (submission 3.3.343); Wai 1464 and Wai 1546 (submission 3.3.395); Wai 1477 (submission 3.3.338); Wai 1514 (submission 3.3.357); Wai 1516 and Wai 1517 (submission 3.3.246); Wai 1522 and Wai 1716 (submission 3.3.368(a)); Wai 1534 (submission 3.3.292); Wai 1536 (submission 3.3.368); Wai 1666 and Wai 2149 (submission 3.3.323); Wai 1732 (submission 3.3.278); Wai 1971 and Wai 2057 (submission 3.3.282); Wai 2059 (submission 3.3.296); Wai 2071 (submission 3.3.375); Wai 2355 (submission 3.3.275); Wai 2371 (submission 3.3.327); Wai 2377 (submission 3.3.333(a)); and Wai 2394 (submission 3.3.336).

5. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wai 1040 (Wellington: Legislation Direct, 2014), pp 528–529.

6. Waitangi Tribunal, *Te Urewera*, Wai 894, 8 vols (Wellington: Legislation Direct, 2017), vol 1, pp 281, 291–293, 498–499.

7. Ibid, pp 315–317, 498–499.

8. Ibid, pp 319, 498–499, see also pp 315–317.

9. Ibid, p 318; see also Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201 (Wellington: Legislation Direct, 2004), p 220.

10. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, pp 214, 216, 219–220; see also Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 116–118; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, Wai 898, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, pp 500–502.

11. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 894, vol 1, pp 480–483. For an example of the application of this principle, see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, pp 216–217.

12. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 121; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wai 143 (Wellington: Legislation Direct, 1996), pp 78–79, 103.

13. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 482–483; see also Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 80.

14. Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 6, 20; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 524–525, 528–529.

15. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 457–458, 566; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage 1*, Wai 1200, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 253–254; see also Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 9, 91–92.

16. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 292–293, 317; see also Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, pp 117–118; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, p 248; Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, p 253.

17. Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 9, 132–133.

18. Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, vol 1, pp 253–254; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, pp 120–121; Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 59–60, 80; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 458–459, 502.

19. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 396–397, 458–459, 502; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, Wai 215 (Wellington: Legislation Direct, 2004), p 114.

20. Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 9, 79–80; Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, Wai 215, p 114; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, pp 116–117; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, p 249; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 457–458.

21. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 292–293, 317.

22. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 470–471, 505, 572; Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 296, 319; see also Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 116. The Tribunal, in its Te Rohe Pōtae inquiry (see *Te Mana Whatu Ahuru*, vol 1, pp 503–505), considered whether there were standard rules of military engagement, understood by both Māori and colonial forces, at the time of the Taranaki and Waikato wars. It concluded that if there was any doctrine covering the conduct of colonial troops, 'it was the concept of military necessity: do what has to be done to achieve the desired ends, but no more than that'. That Tribunal

report (p 527) also determined that all military action was in breach of treaty principles if the war itself was not justified and carried out for legitimate purposes.

23. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 319, 321–322, 499.

24. Ibid, p 319.

25. Ibid, pp 319, 327–330; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 395, 572–573; Waitangi Tribunal, *The Mohaka ki Ahuriri* Report, Wai 201, p 219; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 193.

26. Crown statement of position and concessions (#1.3.2), p 2.

27. Ibid, p 3.

28. Crown closing submissions (#3.3.403), p 3.

29. Claimant closing submissions (#3.3.219), pp 18–19, 24–25, 81–84; closing submissions for Wai 1477 (#3.3.338), pp 6–7.

30. Claimant closing submissions (#3.3.219), pp 49–51, 56, 57, 60, 89–91; claimant closing submissions (#3.3.220), p 6; reply submissions for Wai 120, Wai 966, Wai 1837, and Wai 2217 (#3.3.521), pp [9]–[10].

31. Claimant closing submissions (#3.3.219), pp 90–91, 93–94; submissions in reply for Wai 1477 (#3.3.547), p 32; closing submissions for Wai 2377 (#3.3.333(a)), p 15; closing submissions for Wai 2394 (#3.3.336), p 10; closing submissions for Wai 1477 (#3.3.338), pp 6–7; closing submissions for Wai 774 (#3.3.391), p 25.

32. Submissions in reply for Wai 120, Wai 966, Wai 1837, and Wai 2217 (#3.3.521), pp [9]–[10].

33. Claimant closing submissions (#3.3.219), pp 34–35, 49–50; claimant closing submissions (#3.3.220), p 31; closing submissions for Wai 1477 (#3.3.338), pp 11–12, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p [27].

34. Claimant closing submissions (#3.3.219), pp 34–35.

35. Ibid, pp 34–35, 51–52, 54–55, 57.

36. Ibid, pp 28, 34–35, 52–54, 56–57, 86–87, 92; draft closing submissions for Wai 1514 (#3.3.357), p 52.

37. Claimant closing submissions (#3.3.219), p 93; claimant closing submissions (#3.3.220), pp 11, 12, 15; closing submissions for Wai 1477 (#3.3.338), pp 11, 15.

38. Claimant closing submissions (#3.3.220), p 6; claimant closing submissions (#3.3.219), pp 95–99.

39. Claimant closing submissions (#3.3.219), pp 54, 57, 60–61, 99–100; closing submissions for Wai 2059 (#3.3.296), pp [26]–[27].

40. Closing submissions for Wai 1477 (#3.3.338), pp 11–12.

41. Claimant closing submissions (#3.3.219), p 61.

42. Ibid, p 62.

43. Ibid, pp 63–66, 68–71.

44. Draft closing submissions for Wai 1514 (#3.3.357), p 52; reply submissions for Wai 2382 (#3.3.553), p 24; submissions in reply for Wai 1477 (#3.547), pp 23, 48–49; Jason Pou, transcript 4.1.30, Terenga Parāoa Marae, Whāngārei, pp [409]–[410]; closing submissions for Wai 2059 (#3.3.296), p [27].

45. Closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399), p 84.

46. Claimant closing submissions (#3.3.219), pp 36, 80; closing submissions for Wai 2059 (#3.3.296), p [26].

47. Claimant closing submissions (#3.3.219), p 139, see also pp 67–68, 70–71, 128–130, 139.

48. Ibid, p 146.

49. Claimant closing submissions (#3.3.219), pp 129, 135–136.

50. Closing submissions for Wai 1477 (#3.3.338), p 11; closing submissions for Wai 2059 (#3.3.296), p [27]; claimant generic closing submissions (#3.3.219), pp 72–73, 80.

51. Closing submissions for Wai 1477 (#3.3.338), p 11; claimant generic closing submissions (#3.3.219), pp 72–73, 80.

52. Claimant closing submissions (#3.3.219), pp 146–148.

53. Ibid, p 73.

54. Ibid, p 181.

55. Crown closing submissions (#3.3.403), pp 7–8, 69–70, 72–74, 90–91, 98–99, 105–108, 110, 125–126, 128–129.

56. Ibid, pp 5–6, 69–70.

57. Ibid, p 74.

58. Ibid, pp 6–7, 87.

59. Ibid, pp 6–7, 80.

60. Ibid, pp 6–7, 90–91.

61. Ibid, pp 7–8.

62. Ibid.

63. Crown statement of position and concessions (#1.3.2), p 80.

64. Crown closing submissions (#3.3.403), pp 104–105.

65. Ibid, pp 8–9.

66. Claimant closing submissions (#3.3.219), pp 49–51, 56, 57, 60, 89–91; claimant closing submissions (#3.3.220), p 6; Crown closing submissions (#3.3.403), pp 5–6, 69–70.

67. Johnson, 'The Northern War' (doc A5), pp 92–94; Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, '"He Whenua Rangatira": Northern Tribal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands)', report commissioned by the Crown Forestry Rental Trust, 2009 (doc A37), p 457; Emma Gibbs-Smith (doc W32), p 24.

68. Executive Council Minutes, 11 July 1844 (Johnson, 'The Northern War' (doc A5), p 100).

69. Ralph Johnson, presentation summary and response to statement of issues, 2016 (doc A5(f)), p 12.

70. Johnson, 'The Northern War' (doc A5), p 112.

71. Ibid, pp 102–103.

72. Ibid, p 104.

73. Ibid, p 108.

74. Ibid, p 109.

75. Ibid, p 110.

76. Ibid.

77. Ibid, pp 112–113.

78. Ibid, pp 110, 112–113; Dr Grant Phillipson, 'Bay of Islands Maori and the Crown, 1793–1853', report commissioned by the Crown Forestry Rental Trust, 2005 (doc A1), pp 332–333.

79. Crown document bank (doc w48), p 191; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
80. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332, 338; Johnson, 'The Northern War' (doc A5), pp 113–115.
81. Johnson, 'The Northern War' (doc A5), p 115.
82. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332, 334–335.
83. Johnson, 'The Northern War' (doc A5), pp 121, 129, 130.
84. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 333–334, 339.
85. Ibid, p 338.
86. Johnson, 'The Northern War' (doc A5), p 131.
87. Ibid, pp 133–135.
88. Ibid, p 132.
89. Ibid, pp 140–141.
90. Ibid, pp 141–144.
91. Ibid, pp 145–146, 148–149, 166.
92. Ibid, pp 149–150; Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen & Unwin, 1987), pp 121–122; Hugh Carleton, *The Life of Henry Williams, Archdeacon of Waimate*, 2 vols (Auckland: Wilsons and Horton, 1877), vol 2, p 200.
93. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 346–347; FitzRoy to Stanley, 19 October 1844, IUP/BPP, vol 4, p 413.
94. Johnson, 'The Northern War' (doc A5), p 147.
95. Ibid, pp 153–154.
96. Proclamation, 8 January 1845 (Johnson, 'The Northern War' (doc A5), p 157).
97. Johnson, 'The Northern War' (doc A5), pp 157–159.
98. Proclamation, 15 January 1845 (Johnson, 'The Northern War' (doc A5), p 159).
99. Johnson, 'The Northern War' (doc A5), pp 163–164.
100. Ibid, pp 164–165.
101. Ibid, p 165.
102. Ibid, pp 165, 169.
103. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 351–352; Johnson, 'The Northern War' (doc A5), pp 179–180.
104. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 352.
105. Johnson, 'The Northern War' (doc A5), pp 196–200.
106. Grant Phillipson, answers to questions of clarification (doc A1(e)), p 13; Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p [243]; see also Johnson, 'The Northern War' (doc A5), p 227.
107. Johnson, 'The Northern War' (doc A5), pp 228–229.
108. Ibid, pp 222–223.
109. Ibid, pp 224–225.
110. Crown document bank (doc w48), p 253.
111. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc w48), p 250); Johnson, 'The Northern War' (doc A5), pp 226–227.
112. Johnson, 'The Northern War' (doc A5), pp 232, 235–238, 241–243.
113. Ibid, pp 228, 249–251. Hapū involved in defence of the pā included Te Uri o Hua, Ngāti Hine, sections of Ngāti Manu, Te Kapotai, Ngāti Hineira, Ngāti Rangi, Te Uri Taniwha, and Ngāti Korohue: Hone Mihaka (doc B35), p 9; Hone Pikari (doc w11), pp 10–11; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 54; Paeata Brougham-Clark (doc AA158), p 6.
114. Johnson, 'The Northern War' (doc A5), p 253.
115. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Auckland University Press, 2015), p 43 (cited in Johnson, 'The Northern War' (doc A5), p 253).
116. Brother Emery to Brother Francois, 14 September 1845 (cited in Johnson, 'The Northern War' (doc A5), p 253).
117. Johnson, 'The Northern War' (doc A5), p 253.
118. Ibid, pp 256–257.
119. Ibid, pp 265, 267–270. The number of casualties varied in different accounts from two to three killed and five to seven wounded for Te Patukeha, Te Māhurehure, and Te Hikutū, and one killed and nine to 10 wounded for Te Kapotai.
120. Ibid, p 271.
121. Ibid, pp 283–284.
122. Ibid, pp 257–259.
123. Ibid, pp 272–273.
124. Ibid, p 286.
125. Ibid, p 289.
126. Ibid, p 293.
127. Ibid, pp 289–291.
128. Ibid, pp 301–306, 309–310. For Te Kapotai involvement, see Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), pp 54–56.
129. Johnson, 'The Northern War' (doc A5), pp 311–312.
130. Ibid, pp 317–318.
131. Ibid, pp 319–320.
132. FitzRoy to Heke, 6 August 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 313, 319–321).
133. Johnson, 'The Northern War' (doc A5), pp 323–326.
134. Ibid, pp 330–332.
135. FitzRoy to Kawiti, 1 October 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 332–333).
136. Johnson, 'The Northern War' (doc A5), pp 336–337.
137. Ibid, pp 337–338.
138. Ibid, pp 338–340.
139. Ibid, p 340.
140. Ibid, pp 344–346.
141. Ibid, pp 346–347.
142. Ibid, p 348.
143. Grey to Stanley, 10 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 360); Johnson, 'The Northern War' (doc A5), pp 360–362, 377–380.
144. Johnson, 'The Northern War' (doc A5), pp 363–365.
145. Ibid, pp 367–371.
146. Ngāti Hine told us that Māori killed and wounded numbered about 30, while the British suffered a total of 45 casualties: Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 105; Johnson, 'The Northern War' (doc A5), pp 377–380.

147. Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), p 105; Johnson, 'The Northern War' (doc A5), p 385.
148. For a Ngāti Hine account of the strategy undertaken at Ruapekapeka, see Ngāti Hine, 'Te Wahanga Tuatahi – Rangatiratanga' (doc M24(b)), pp 102–105.
149. Johnson, 'The Northern War' (doc A5), pp 391–393.
150. Ibid, pp 394–395.
151. Ibid, pp 397–398.
152. Ibid, p 397.
153. Ibid, pp 398–399.
154. Different dates are given for the raising of the flagstaff. This seems to be because of the long planning, the time it took to arrange the felling of the tree and move it to Kororāreka (several hundred men were involved in this), and the fact that the flagstaff was transported and erected in the middle of January but not completed and named till the end of the month: 'The Visit of his Excellency Governor Gore Browne to the Bay of Islands and the North', *Maori Messenger/Te Karere Maori*, 15 January 1858; 'Kororareka', *Maori Messenger/Te Karere Maori*, 15 May 1858; Browne to Labouchere, 5 February 1858, CO 209/145, pp 97–98; closing submissions for Ngāti Hine (#3.3.382(b)), pp 59–60; Johnson, 'The Northern War (doc A5), p 405; 'His Excellency's Visit to the Bay of Islands', *Daily Southern Cross*, 22 January 1858; O'Malley, supporting documents (doc A6(a)), p 6328.
155. Johnson described these events: Johnson, 'The Northern War (doc A5), pp 92–94, 157–166, 188–192.
156. Ibid, pp 99–100, 117–118, 135–141, 155–157, 178–180, 211–213, 224–225.
157. Ibid, pp 188–192.
158. Claimant closing submissions (#3.3.219), pp 18–19, 24–25, 81–84; closing submissions for Wai 1477 (#3.3.338), pp 6–7, 11; closing submissions for Wai 2059 (#3.3.296), p 27.
159. Claimant closing submissions (#3.3.219), pp 27, 33–35, 86, 89, 91–94; closing submissions for Wai 1477 (#3.3.338), pp 11–12, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p [27].
160. Claimant closing submissions (#3.3.219), pp 34–35, 49–50; claimant closing submissions (#3.3.220), p 31; closing submissions for Wai 1477 (#3.3.338), pp 11–13, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p [27].
161. Crown closing submissions (#3.3.403), pp 7–8, 69–70, 72–74, 90–91, 98–99, 105–108, 110, 125–126, 128–129.
162. Ibid, pp 93–94.
163. Johnson, 'The Northern War' (doc A5), pp 90–91, 93; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329.
164. Johnson, 'The Northern War' (doc A5), pp 115–116, 121–122.
165. Claimant closing submissions (#3.3.219), pp 18–19, 24–25, 81–84; closing submissions for Wai 1477 (#3.3.338), pp 6–7, 11; closing submissions for Wai 2059 (#3.3.296), p 27.
166. Claimant closing submissions (#3.3.219), pp 49–51, 56, 57, 60, 89–91; claimant closing submissions (#3.3.220), p 6; closing submissions for Wai 1477 (#3.3.338), pp 6–7; submissions in reply for Wai 120, Wai 966, Wai 1837, and Wai 2217 (#3.3.521), p 9.
167. Claimant closing submissions (#3.3.219), pp 27, 33–35, 86, 89, 91–94; closing submissions for Wai 1477 (#3.3.338), pp 11–12, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p 27.
168. Claimant closing submissions (#3.3.403), pp 7–8, 69–70, 72–74, 90–91, 98–99, 105–108, 110, 125–126, 128–129.
169. Johnson, 'The Northern War' (doc A5), pp 90–93; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329.
170. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329.
171. Hector to FitzRoy, 8 July 1844 (cited in Johnson, 'The Northern War' (doc A5), p 93).
172. Weavell to Wilson, 25 January 1846 (cited in Johnson, 'The Northern War' (doc A5), p 91).
173. Emma Gibbs-Smith (doc W32), p 24; Freda Rankin Kawharu, 'Hōne Wiremu Heke Pōkai', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1h16/heke-pokai-hone-wiremu, accessed 2 April 2020; Johnson, 'The Northern War' (doc A5), pp 93–94; see also Thomas Lindsay Buick, *New Zealand's First War, or, the Rebellion of Hone Heke* (Wellington: Government Printer, 1926), pp 36–38 (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329). As noted in section 8.4.2.1.5, in September 1844 another rangatira, named Hihiatoto, said he had cut down the flagstaff. We have received no evidence from claimants about Hihiatoto.
174. Johnson, 'The Northern War' (doc A5), p 94.
175. Busby to Hope, 17 January 1845 (Johnson, 'The Northern War' (doc A5), p 94).
176. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 329; Johnson, 'The Northern War' (doc A5), p 94.
177. Emma Gibbs-Smith (doc W32), pp 21, 23–24; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 93–94.
178. Emma Gibbs-Smith (doc W32), p 24.
179. Ibid, pp 22–23; see also Johnson, 'The Northern War' (doc A5), p 109.
180. Emma Gibbs-Smith (doc W32), pp 24–25.
181. Ibid, pp 23–24.
182. Ibid, pp 24–25.
183. Tribunal's translation.
184. 'Te Tapahanga Tuatahi o Maiki Pou Kara' (cited in Johnson, 'The Northern War' (doc A5), pp 96–97).
185. Johnson, 'The Northern War' (doc A5), pp 65–73, 96; Emma Gibbs-Smith (doc W32), pp 24–25.
186. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1),

pp 314–319; Johnson, 'The Northern War' (doc A5), pp 48–49; see also Crown document bank (doc W48), pp 332–333.
187. Johnson, 'The Northern War' (doc A5), pp 62–64.
188. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 322; Johnson, 'The Northern War' (doc A5), pp 53–54.
189. Merata Kawharu (doc E50), p [3].
190. Johnson, 'The Northern War' (doc A5), pp 65, 97.
191. Buick, *New Zealand's First War*, p 29 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 315).
192. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 316.
193. Ibid, pp 314–315; Johnson, 'The Northern War' (doc A5), pp 73–74.
194. Johnson, 'The Northern War' (doc A5), pp 62–64; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 316.
195. Johnson, 'The Northern War' (doc A5), pp 53–54, 56–57.
196. See Vincent O'Malley and John Hutton, 'The Nature and Extent of Contact and Adaptation in Northland, c 1769–1840', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A11), pp 235–238; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 48, 51, 75–76, 81–83, 92; Vincent O'Malley, 'Northland Crown Purchases, 1840–1865', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A6), pp 68–71. We discussed these mutual adjustments and accommodations in our stage 1 report: see Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 241–242, 253–254.
197. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 76; Johnson, 'The Northern War' (doc A5), p 89.
198. Johnson, 'The Northern War' (doc A5), pp 90–91.
199. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 518, 528–529; see also Crown document bank (doc W48), pp 331–333.
200. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 518.
201. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 321, 324.
202. Phillipson, 'Responses to Post-Hearing Questions' (doc A1(g)), p 2.
203. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 529.
204. Johnson, 'The Northern War' (doc A5), p 53; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 306.
205. Russell to Hobson, 9 December 1840, IUP/BPP, vol 3, p 150; Normanby to Hobson, 15 August 1839, IUP/BPP, vol 3, pp 91, 93.
206. Stanley to Hobson, 5 October 1842, as quoted in Waitangi Tribunal, *The Kaipara Report*, Wai 674, p 91.
207. Paul McHugh (doc A21), p 77.
208. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316, 321; Johnson, 'The Northern War' (doc A5), p 96; Johnson, presentation summary (doc A5(f)), p 3.
209. Johnson, 'The Northern War' (doc A5), pp 74, 110, 130; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316.
210. Johnson, 'The Northern War' (doc A5), pp 74–75.
211. Hector to FitzRoy, 8 July 1844 (cited in Johnson, 'The Northern War' (doc A5), p 93).
212. Heke to FitzRoy, 21 May 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 316).
213. The Reverend Robert Burrows, diary (cited in Johnson, 'The Northern War' (doc A5), pp 321–322).
214. Heke to Queen Victoria, 10 July 1849 (cited in Johnson, 'The Northern War' (doc A5), pp 402–403).
215. FitzRoy to Gipps, 4 September 1844 (cited in Johnson, 'The Northern War' (doc A5), p 135); see also Johnson, 'The Northern War' (doc A5), pp 278–280. In particular, Crown officials seem to have been concerned with the role played by the acting American consul Henry Green Smith (see https://nzetc.victoria.ac.nz/tm/scholarly/tei-WilNewZ-t1-g1-t1-body-d2.html) and his trading partners William Mayhew and Charles Waetford. Heke met Smith on several occasions before attacking the flagstaff: Johnson, 'The Northern War' (doc A5), pp 278–279; Phillippa Wyatt, 'The Old Land Claims and the Concept of "Sale": A Case Study' (MA thesis, University of Auckland, 1991) (doc E15), fol 247. For a discussion of Smith's career including his connections with Heke, see Joan Druett, 'The Salem Connection: American Contacts with Early Colonial New Zealand', *Journal of New Zealand Studies*, no 8 (2009), p 185.
216. See Johnson, 'The Northern War' (doc A5), pp 60–61; Swainson to the Officer administering the Government, 27 December 1842, enclosed in Willoughby Shortland to Stanley, 31 December 1842, IUP/BPP, vol 2, minutes of evidence, pp 470–471; Clarke's answers to the Executive Council, 29 December 1842 enclosed in Willoughby Shortland to Stanley, 31 December 1842, IUP/BPP, vol 2, minutes of evidence, pp 459–460; George Clarke, 'The Chief Protector's Report for the Half-Year Ending 30 April 1842', CO 209/16, facing p 115 (Crown document bank (doc W48), pp 168–169).
217. Busby to Stanley, 1 July 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 342–343).
218. Nene to Williams, 12 October 1847 (cited in Carleton, *The Life of Henry Williams*, vol 2, p 200); see also Orange, *The Treaty of Waitangi*, p 122. Carleton translated Nene's words as 'slave, your right [mana] over the land is gone', and explained that the issue was not loss or sale of land, but 'that the country was taken from them, by passing under the Queen's sovereignty'.
219. Williams to Nene, 15 October 1847 (cited in Carleton, *The Life of Henry Williams*, vol 2, p 201). Williams also argued that loss of sovereignty had been a necessary price for Māori to protect their lands and personal security from foreign and settler threats, though that protection extended only to Māori who 'sat quietly' and 'kept straight'.
220. Johnson, 'The Northern War' (doc A5), pp 95, 96; Atholl Anderson, Judith Binney, and Aroha Harris, *Tangata Whenua: A History* (Wellington: Bridget Williams Books, 2014), p 207.
221. Johnson, 'The Northern War' (doc A5), p 91; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 312; see also Ani Taniwha (doc G3), p 12; Rueben Porter (doc S6), pp 36–37.
222. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316; see also doc A5(a), vol 1, pp 237, 246.
223. Heke to FitzRoy, 21 May 1845 (doc A5(a), vol 1, p 227).

224. Translation by Thomas Forsaith (doc A5(a), vol 1, p 235).
225. Translation by James Kemp (doc A5(a), vol 1, p 246).
226. Edward Shortland, *Traditions and Superstitions of the New Zealanders: With Illustrations of their Manners and Customs* (London: Longman, Brown, Green, Longmans, and Roberts, 1856), pp 264–265; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 315; see also Heke to Queen Victoria, 10 July 1849, translation by John Johnson (interpreter, Civil Secretary's Office) (Crown document bank (doc W48), pp 346–347).
227. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316; Anderson, Binney, and Harris, *Tangata Whenua*, p 207.
228. Shortland, *Traditions and Superstitions*, pp 264–265.
229. Emma Gibbs-Smith (doc W32), p 23.
230. Ibid, p 24; see also 'Te Tapahanga Tuatahi o Maiki Pou Kara' (Johnson, 'The Northern War' (doc A5), p 97).
231. Johnson, 'The Northern War' (doc A5), p 104.
232. Cotton, journal, 7 September 1844 (cited in Johnson, 'The Northern War' (doc A5), p 131).
233. Grant Phillipson, summary of 'Bay of Islands Maori and the Crown' (doc A1(d)), pp 18–19; Johnson, 'The Northern War' (doc A5), p 158.
234. Johnson, 'The Northern War' (doc A5), p 95.
235. Ibid, p 96.
236. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 321.
237. Phillipson, summary of 'Bay of Islands Maori and the Crown' (doc A1(d)), pp 18–19.
238. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 328–329; Phillipson, answers to questions of clarification (doc A1(e)), pp 6–7.
239. Phillipson, answers to questions of clarification (doc A1(e)), pp 7–8.
240. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 330; Johnson, 'The Northern War' (doc A5), pp 100–101.
241. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 135, 330; see also Emma Gibbs-Smith (doc W32), pp 22–23; Johnson, 'The Northern War' (doc A5), pp 101, 109. For further detail on Heke's land interests, see Bruce Stirling with Richard Towers, '"Not with the Sword but with the Pen": The Taking of the Northland Old Land Claims, Part 1: Historical Overview', report commissioned by the Crown Forestry Rental Trust, 2007 (doc A9), pp 77, 110; Johnson, 'The Northern War' (doc A5), pp 161–162. Heke's interests in Maiki Hill may have derived from his Ngāi Tāwake or Whangaroa ancestry, or from other lines of descent.
242. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 330.
243. Ibid, pp 329–330.
244. Beckham to Colonial Secretary, 10 July 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 330).
245. Crown closing submissions (#3.3.403), pp 69, 119.
246. Johnson, 'The Northern War' (doc A5), pp 162, 213–214. Leaders expressed their concerns at subsequent hui and in letters to the Governor: Johnson, 'The Northern War' (doc A5), pp 101–103, 106–108; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 331, 344, 349–350. For general discussions about the motivations of various Ngāpuhi hapū and leaders, see O'Malley, 'Northland Crown Purchases' (doc A6), p 82; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 466–467; Belich, *The New Zealand Wars*, p 30; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 320.
247. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 329–330. It is also notable that Te Rāwhiti Māori did not respond to the taua muru – on the contrary, they allowed it to continue for three days without interference, which suggests they saw it as a legitimate enforcement of tikanga. They became involved only once their mana over the flagstaff, hill, and Crown–Māori relationship were challenged: ibid, pp 90–93, 100–101.
248. Ibid, p 330.
249. Johnson, 'The Northern War' (doc A5), p 92.
250. Crown document bank (doc W48), p [187].
251. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 345–346, 349; Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, pp [207]–[210].
252. Johnson, 'The Northern War' (doc A5), p 94.
253. Crown closing submissions (#3.3.403), p 71.
254. Crown document bank (doc W48), p [193].
255. Ibid.
256. Executive Council Minutes, 11 July 1844 (Johnson, 'The Northern War' (doc A5), p 100). The term 'compel' is crossed out in the minutes, and the '[*sic*]' is Johnson's.
257. FitzRoy to Beckham, 12 July 1844 (Crown document bank (doc W48), p [193]).
258. Crown document bank (doc W48), pp [194]–[195].
259. FitzRoy to Gipps, 13 July 1844 (Crown document bank (doc W48), pp [194]–[195]).
260. Ibid.
261. Crown document bank (doc W48), p [195].
262. Johnson, 'The Northern War' (doc A5), pp 88, 410–411; see also Robert FitzRoy, *Remarks on New Zealand: in February 1846* (London: W and H White, 1846), pp 19–20; 'Nelson', *New Zealand Gazette and Wellington Spectator*, 19 June 1844, p 3.
263. 'English New Zealand Intelligence', *New Zealand Gazette and Wellington Spectator*, 5 June 1844, p 2.
264. Johnson, 'The Northern War' (doc A5), p 100, see also pp 410–411.
265. Ibid, pp 93–94, 112, 160; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 329–330. The initial contingent of soldiers arrived from Auckland on 17 July.
266. Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p 254.
267. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 480–483. For an example of the application of this principle, see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, pp 216–217.
268. Johnson, 'The Northern War' (doc A5), p 100.
269. Taua muru had occurred on many occasions in Te Raki and elsewhere since 1840 without the Crown considering a military response: Johnson, 'The Northern War' (doc A5), pp 87–88, 91; O'Malley, 'Northland Crown Purchases' (doc A6), pp 11, 68–71.

270. These matters are discussed extensively in chapter 4; see also Alan Ward, 'Law and Law-enforcement on the New Zealand Frontier, 1840–1893', NZJH, vol 5, no 2 (October 1971), pp 129, 132–134; Merata Kawharu, 'Te Tiriti and its Northern Context', report commissioned by the Crown Forestry Rental Trust, 2008 (doc A20), p 150; Alan Ward (doc A19), pp 94–95; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 322; Vincent O'Malley, 'Runanga and Komiti: Maori Institutions of Self-government in the Nineteenth Century' (doctoral thesis, Victoria University, 2004) (doc E31), fols 16–18; Johnson, 'The Northern War' (doc A5), pp 137–138.
271. Johnson, 'The Northern War' (doc A5), pp 110–111; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 362.
272. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 358, 361, 362.
273. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 362–365, 367.
274. Ibid, p 528.
275. Johnson, 'The Northern War' (doc A5), pp 102, 105, 111. Settler fears were reflected in the comments of James Kemp and the urgency with which Bishop Selwyn travelled to Taranaki to meet FitzRoy. Māori fears were reflected in the appeals of Heke and others to keep soldiers out of the district.
276. Ibid, pp 103–105, 108, 115–116; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 331–333. For a settler perspective on the prospects of Crown military success, see 'Successful and Amicable Settlement of the Native Disturbance at the Bay of Islands', *Daily Southern Cross*, 7 September 1844 (Crown document bank (doc W48), p 197).
277. Crown document bank (doc W48), p 187.
278. Johnson, 'The Northern War' (doc A5), p 101.
279. Ibid.
280. Ibid, p 112.
281. Ibid, p 101.
282. Nuki Aldridge (doc A A167), pp 36–37.
283. Johnson, 'The Northern War' (doc A5), p 102.
284. Ibid.
285. W C Cotton, journal of a residence at St John's College, Te Waimate, 2 March – 25 August 1844, p 191 (cited in Johnson, 'The Northern War' (doc A5), p 102).
286. Ibid, p 193 (pp 102–103).
287. Johnson, 'The Northern War' (doc A5), p 102.
288. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331.
289. Cotton, journal, 18 July 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331); see also Johnson, 'The Northern War' (doc A5), p 103.
290. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331.
291. Cotton, journal, p 193 (cited in Johnson, 'The Northern War' (doc A5), p 103).
292. 'Successful and Amicable Settlement of the Native Disturbance at the Bay of Islands', *Southern Cross*, 7 September 1844, p 2.
293. Johnson, 'The Northern War' (doc A5), pp 104–105.
294. Heke to Governor, 19 July 1844 (cited in Johnson, 'The Northern War' (doc A5), p 104).
295. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331.
296. Ibid, pp 331–332; Johnson, 'The Northern War' (doc A5), pp 104–105.
297. Selwyn to FitzRoy, November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331).
298. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331. Selwyn and others at the hui appear to have been aware of the Governor's intention to require compensation from Heke using military force if necessary: Johnson, 'The Northern War' (doc A5), p 100.
299. Johnson, 'The Northern War' (doc A5), p 105; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331; FitzRoy, *Remarks on New Zealand*, pp 29–30.
300. FitzRoy to Stanley, 20 August 1844 (cited in Johnson, 'The Northern War' (doc A5), p 105).
301. Johnson, 'The Northern War' (doc A5), pp 105–106. Johnson said that FitzRoy probably received the letter before the end of July. The Crown said he received it in early August: Crown closing submissions (#3.3.403), p 17. The difference is not significant.
302. Te Hira Pure and others to FitzRoy, 22 July 1844 (cited in Johnson, 'The Northern War' (doc A5), pp 107–108).
303. Rima Edwards (Johnson, 'The Northern War' (doc A5), p 108).
304. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 589.
305. Heke to Governor, 19 July 1844 (cited in Johnson, 'The Northern War' (doc A5), p 104).
306. Johnson, 'The Northern War' (doc A5), pp 102–103.
307. Ibid, p 109.
308. Neither Mr Johnson (doc A5) nor Dr Phillipson (doc A1) provided any evidence on this point.
309. Johnson, 'The Northern War' (doc A5), pp 105–106; Crown closing submissions (#3.3.403), p 17.
310. Johnson, 'The Northern War' (doc A5), p 121.
311. Ibid, p 109.
312. Ibid, p 110.
313. Ibid, pp 105, 113.
314. Dr Phillipson said that the flagstaff had been rebuilt before Heke's letter reached FitzRoy, but his sources were ambiguous at best. Phillipson's first source was a letter from Selwyn to FitzRoy in November 1845, in which Selwyn recorded that Heke's letter 'would I believe have secured the peace of the country, if the Flag Staff had not been erected, without further communication between the Government and the Ngapuhi Chiefs'. This does not tell us when the flagstaff was rebuilt, only that the Governor failed to communicate with Ngāpuhi about the matter. Phillipson's second source is William Cotton's journal for 29 July 1845: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331.
315. Johnson, 'The Northern War' (doc A5), p 110.
316. Ibid, p 99.
317. Ibid, p 110; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316.

318. Heke to FitzRoy, 21 May 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 316). Forsaith translated the passage as: 'it [the flagstaff] was erected again, then indeed we concluded it [the allegation that the Crown would destroy Māori and take their territories] was true inasmuch as it was persisted in. We agreed that we would die upon our land which was delivered to us by God': Ralph Johnson, supporting papers (doc A5(a)), vol 1, p [236]. James Kemp translated this passage as: 'It was again erected. This at once convinced us of the truth of their statements, and we determined to die for the country provided for us by the Almighty': Johnson, supporting papers (doc A5(a)), vol 1, pp 246–247.
319. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316.
320. Selwyn to FitzRoy, November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331).
321. Shepherd to Colonial Secretary, 24 January 1848 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 315).
322. W Williams, journal, 16 August 1844 (cited in Johnson, 'The Northern War' (doc A5), p 110).
323. Johnson, 'The Northern War' (doc A5), pp 112–113. FitzRoy later informed the New South Wales Governor that the ship had arrived on 14 August, but Williams' journal recorded it as arriving on 18 August.
324. Johnson, 'The Northern War' (doc A5), pp 110, 113.
325. Selwyn to FitzRoy, November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332–333).
326. Johnson, 'The Northern War' (doc A5), pp 110, 112–113.
327. Ibid, p 113.
328. FitzRoy informed Gipps that this comprised 210 soldiers and 40 seamen: FitzRoy to Gipps, 4 September 1844 (Crown document bank (doc W48), p 191). Two years later, his memoir recorded that the 250 comprised 150 from New South Wales' 99th Regiment, 50 from Auckland's 96th Regiment, and 50 seamen and marines from the *Hazard*: FitzRoy, *Remarks on New Zealand*, p 31.
329. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
330. FitzRoy to Stanley, 20 August 1844 (cited in Johnson, 'The Northern War' (doc A5), p 113).
331. Johnson, 'The Northern War' (doc A5), pp 113–115; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
332. Johnson, 'The Northern War' (doc A5), p 113.
333. Ibid, p 100; Crown document bank (doc W48), pp 187, 188–189.
334. Johnson, 'The Northern War' (doc A5), p 100; Crown document bank (doc W48), pp 187, 188–189.
335. Crown document bank (doc W48), pp 188–189.
336. FitzRoy to Stanley, 20 August 1844, IUP/BPP, vol 4, p 304.
337. Johnson, 'The Northern War' (doc A5), pp 113–114.
338. Ibid, pp 103, 106–108.
339. See comments by Bishop Selwyn, James Kemp, and William Cotton: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332–333; Johnson, 'The Northern War' (doc A5), p 111.
340. Johnson, 'The Northern War' (doc A5), pp 110–111, 113–114; Belich, *The New Zealand Wars*, p 32.
341. Johnson, 'The Northern War' (doc A5), p 114; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
342. Te Kēmara was of Te Matarahurahu and Ngāti Rāhiri, and exercised mana at Waitangi: Merata Kawharu (doc E50), pp 4–5. Tāreha was of Ngāti Rēhia, who exercised mana over much of the northern Bay of Islands coast: Tony Walzl, 'Ngati Rehia: Overview Report', report commissioned by the Ngāti Rehia Claims Group, 2015 (doc R2), p 36; Tai Tokerau District Māori Council, 'Oral History Report', 2016 (doc AA3), pp 165–166. Rewa and Moka were of Te Patukeha and Ngāi Tāwake, and exercised mana over Kerikeri and Te Rāwhiti, while sharing Kororāreka with others: Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 384–388.
343. Johnson, 'The Northern War' (doc A5), p 114; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
344. Johnson, 'The Northern War' (doc A5), p 114.
345. Cotton, journal, 26 August 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332).
346. Marianne Williams, journal, 27 August 1844 (cited in Johnson, 'The Northern War' (doc A5), p 114 fn 66). William Williams' journal for 26 August 1844 also recorded FitzRoy as demanding that Heke meet him.
347. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.
348. Cotton, journal, 26 August 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332).
349. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332; Johnson, 'The Northern War' (doc A5), p 114.
350. M Williams, journal, 27 August 1844 (cited in Johnson, 'The Northern War' (doc A5), p 114).
351. W Bambridge, journal, 26 August, 2 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338).
352. Johnson, 'The Northern War' (doc A5), p 122.
353. Ralph Johnson, answers to post-hearing questions (doc A5(g)), p 25; see also Johnson, 'The Northern War' (doc A5), p 115.
354. W Bambridge, journal, 2 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338).
355. Johnson, 'The Northern War' (doc A5), p 115.
356. Crown document bank (doc W48), p 8.
357. Johnson, 'The Northern War' (doc A5), p 115.
358. Burrows, manuscript, 'The War in the North, 1845' (cited in Johnson, 'The Northern War' (doc A5), pp 115–116).
359. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332; Johnson, 'The Northern War' (doc A5), p 115.
360. Johnson, 'The Northern War' (doc A5), pp 115, 152; Crown document bank (doc W48); see also Murray Painting (doc V12), pp 25–26; Jack Lee, *I Have Named it the Bay of Islands* (Auckland: Hodder and Stoughton, 1983), p 254. Heke soon afterwards expressed his anger at Nene's action and threatened reprisal: 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2.
361. Johnson, answers to post-hearing questions (doc A5(g)), p 2.
362. Johnson, 'The Northern War' (doc A5), p 116; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332–333. The Crown,

in its closing submissions, emphasised that the initiative for peace had come from Nene, not from FitzRoy: Crown closing submissions (#3.3.403), p 73.

363. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332–333; Johnson, 'The Northern War' (doc A5), p 115.

364. Soon after the aborted attack, FitzRoy claimed that the mere sight of British forces had led Ngāpuhi to back down: Crown document bank (doc W48), p 191. This was in stark contrast to reports that Heke laughed at the size of the British force: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338.

365. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332; see also FitzRoy, *Remarks on New Zealand*, pp 33–34.

366. *Southern Cross*, 7 September 1844, p 2.

367. Selwyn to FitzRoy, November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 332–333).

368. FitzRoy, *Remarks on New Zealand*, pp 33–34. In these memoirs FitzRoy also made the contradictory claim that he had been aware of the risks all along and therefore deliberately courted Nene and others: FitzRoy, *Remarks on New Zealand*, pp 31–32. Yet he claimed no such insight at the time, reporting to Gipps that the mere sight of British forces had cowed Ngāpuhi into submission: Crown document bank (doc W48), p 191. Had he truly understood the potential consequences, his decision to land troops at Kerikeri was an extraordinary act of brinkmanship: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 332.

369. Crown closing submissions (#3.3.403), p 73; Johnson, answers to post-hearing questions (doc A5(g)), p 2.

370. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 333.

371. Johnson, 'The Northern War' (doc A5), p 117.

372. Nene, Patuone, and Te Taonui all lived in the Waihou River valley, and Tāwhai at Waimā.

373. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 333–337; Crown closing submissions (#3.3.403), pp 75–76.

374. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338.

375. Phillipson listed those who spoke and made no mention of the leading rangatira from these hapū and locations: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 333–337.

376. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 186.

377. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 335; Johnson, 'The Northern War' (doc A5), p 117.

378. Johnson, 'The Northern War' (doc A5), p 126.

379. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 194–195); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 333–334.

380. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 333.

381. FitzRoy had joined the Royal Navy aged 13, and had spent more than 25 years in its service before his appointment as Governor: Ian Wards, 'Robert FitzRoy', in *Dictionary of New Zealand Biography*, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/1f12/fitzroy-robert, accessed 2 April 2020.

382. Crown document bank (doc W48), pp 194–195; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 334.

383. FitzRoy, *Remarks on New Zealand*, pp 31–32. On 16 September, FitzRoy informed Lord Stanley of this decision and called a meeting of the Executive Council which approved the removal of customs duties throughout New Zealand: Crown document bank (doc W48), pp 164–166.

384. Crown document bank (doc W48), pp 164–166; see also Johnson, 'The Northern War' (doc A5), p 135; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 312; 'Customs', *Auckland Chronicle*, 24 January 1844, p 2; 'Estimates', *New Zealand Gazette and Wellington Spectator*, 12 June 1844, p 2; 'The House and Land Tax', *Daily Southern Cross*, 8 June 1844, p 2; FitzRoy, *Remarks on New Zealand*, pp 32, 34.

385. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 194–195); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 334.

386. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 194–195); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 334.

387. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 194–195); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 334.

388. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), p 195); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 334.

389. Kawharu, 'Te Tiriti and its Northern Context' (doc A20), p 187.

390. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 195–197); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 336–338.

391. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), p 196).

392. Ibid.

393. Ibid.

394. Ibid.

395. See Tuwakawa, Wapuku, and Wakarua in *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), pp 196–197).

396. 'Successful and Amicable Settlement of the Native Disturbance in the Bay of Islands', *Daily Southern Cross*, 7 September 1844, p 2 (Crown document bank (doc W48), p 196).

397. Ibid (p 197).

398. Bambridge, journal, 2 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338).

399. Johnson, 'The Northern War' (doc A5), p 152; see also claimant closing submissions (#3.3.219), p 53.

400. Johnson, 'The Northern War' (doc A5), p 152.

401. Johnson, answers to post-hearing questions (doc A5(g)), p 2; see also Phillipson, answers to questions of clarification (doc A1(e)), p 12.
402. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 328.
403. Selwyn to FitzRoy, November 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 333).
404. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 328, 339.
405. Ibid, p 339; Johnson, 'The Northern War' (doc A5), p 130.
406. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 339.
407. W Cotton, journal, 3 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 339).
408. Specifically, Lieutenant-Colonel Hulme described the offer of a flag as being 'in accordance with English policy towards the native princes of India': Cotton, journal, 3 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 339).
409. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 331–335, 341–342; see also Murray Painting (doc V12), pp 25–26.
410. Phillipson, answers to questions of clarification (doc A1(e)), pp 11–12.
411. Cotton, journal, 24 October 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338); see also Johnson, 'The Northern War' (doc A5), p 128.
412. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338.
413. Johnson, 'The Northern War' (doc A5), p 128.
414. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338.
415. Johnson, 'The Northern War' (doc A5), p 122.
416. Bambridge, journal, 2 September 1844 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338).
417. Heke to FitzRoy, [September 1844] (cited in Johnson, 'The Northern War' (doc A5), p 135).
418. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 338.
419. Crown closing submissions (#3.3.403), pp 82–83.
420. Nene's offer was delivered to FitzRoy on 28 August, five days before the hui began. During those days, Heke was in constant communication with rangatira and missionaries who were seeking to persuade him to accept FitzRoy's terms: Johnson, 'The Northern War' (doc A5), pp 114–115.
421. Crown closing submissions (#3.3.403), pp 80–81.
422. Ruhe attended the Waimate hui and warned Nene that Heke planned to 'quarrel' with him because of this affront to his mana: *Daily Southern Cross*, 7 September 1844 (Crown document bank (doc W48), p 197). Burrows later recorded Heke as saying: 'Let Waka keep to his own side of the Island, Hokianga, and not interfere with me': Burrows, *Extracts from a Diary*, pp 8–9 (doc W48(a), p 9).
423. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 359.
424. Crown document bank (doc W48), p 196.
425. Phillipson, summary of 'Bay of Islands Maori and the Crown' (doc A1(d)), p 21.
426. Johnson, 'The Northern War' (doc A5), pp 129, 130; Crown document bank (doc W48), p 419; see also 'Shipping List', *Daily Southern Cross*, 7 September 1844, p 2.
427. Crown document bank (doc W48), p 276; Johnson, 'The Northern War' (doc A5), p 129.
428. Clarke to Colonial Secretary, 30 September 1844 (Crown document bank (doc W48), p 276); Johnson, 'The Northern War' (doc A5), p 129.
429. Johnson, 'The Northern War' (doc A5), pp 130–131.
430. Cotton, journal, 7 September 1844 (cited in Johnson, 'The Northern War' (doc A5), p 131).
431. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 326.
432. Johnson, 'The Northern War' (doc A5), p 131.
433. Colenso to Church Missionary Society, 19 November 1844 (cited in Johnson, 'The Northern War' (doc A5), p 131).
434. Johnson, 'The Northern War' (doc A5), pp 103–104.
435. Ibid, p 132.
436. Te Hira Pure to FitzRoy, [September 1844] (Crown document bank (doc W48), p 317); Johnson, 'The Northern War' (doc A5), p 132. The letter was translated by George Clarke senior, presumably after the Governor had received it. Mr Johnson provided a full text of the English translation and some quotations from the original in te reo.
437. Hone Heke Pokai to FitzRoy, [September 1844] (cited in Johnson, 'The Northern War' (doc A5), pp 133–135). The letter and translation were published in *British Parliamentary Papers*.
438. Hone Heke Pokai to FitzRoy, [September 1844] (cited in Johnson, 'The Northern War' (doc A5), pp 133–134).
439. Ibid.
440. Johnson, 'The Northern War' (doc A5), p 135.
441. FitzRoy to Heke Pokai, 5 October 1844 (Crown document bank (doc W48), p 316); see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 345–346. Mr Johnson wrote that FitzRoy 'delayed his reply to Heke', not responding until 5 October 1844: Johnson, 'The Northern War' (doc A5), p 140. During hearings, he acknowledged that there was no record of when FitzRoy received the letter, and therefore it could not be said that there was any excessive delay: Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 605; Andrew Irwin, transcript 4.1.32, Waitaha Events Centre, p 130. The Crown submitted that FitzRoy replied as soon as he could: claimant closing submissions (#3.3.403), pp 86–87. This also cannot be known for certain.
442. FitzRoy to Hira Pure, 5 October 1844 (Crown document bank (doc W48), p 317); see also Johnson, 'The Northern War' (doc A5), pp 140–141.
443. Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), p 1699.
444. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 346–347.
445. Johnson, 'The Northern War' (doc A5), pp 141–142; Arapeta Hamilton (doc W7), p 7.
446. Johnson, 'The Northern War' (doc A5), pp 141–142.
447. Kemp to Clarke, 4 October 1844 (cited in Johnson, 'The Northern War' (doc A5), p 141).
448. Johnson, 'The Northern War' (doc A5), p 142.
449. Ibid.
450. Ibid, p 144.

451. Clarke to FitzRoy, 19 October 1844 (Crown document bank (doc w48), pp 168–169).
452. Crown document bank (doc w48), pp 168–169; Johnson, 'The Northern War' (doc A5), pp 144–147.
453. Lawry to Hobbs, 24 September 1844 (Crown document bank (doc w48), p 317).
454. Clarke to FitzRoy, 19 October 1844 (Crown document bank (doc w48), pp 168–169).
455. Johnson, 'The Northern War' (doc A5), pp 145–146.
456. Clarke to FitzRoy, 19 October 1844 (Crown document bank (doc w48), pp 168–169). Clarke sent the same letter to the Colonial Secretary (Crown document bank (doc w48), p 319).
457. FitzRoy to Stanley, 19 October 1844, IUP/BPP, vol 4, p 412.
458. Johnson, 'The Northern War' (doc A5), pp 215–216, 358–359.
459. FitzRoy to Stanley, 19 October 1844, IUP/BPP, vol 4, pp 412, 413.
460. Ibid, pp 412, 413.
461. Johnson, 'The Northern War' (doc A5), p 147.
462. Ibid, p 146.
463. For example, see 'Shipping Intelligence', *Auckland Chronicle and New Zealand Colonist*, 21 November 1844, p 2.
464. Johnson, 'The Northern War' (doc A5), pp 131, 150–151.
465. Ibid, pp 147–149.
466. Ibid, p 147.
467. *Auckland Chronicle and New Zealand Colonist*, 31 October 1844, p 2.
468. Ibid, 7 November 1844, p 2.
469. Johnson, 'The Northern War' (doc A5), p 147.
470. Ibid, pp 148–149.
471. Ibid, p 149.
472. Ibid.
473. Ibid.
474. Ibid.
475. Phil Parkinson and Penny Griffith, *Books in Māori, 1815–1900: An Annotated Bibliography/Ngā Tānga Reo Māori: Ngā Kohikohinga me ōna Whakamārama* (Auckland: Reed, 2004), p 134 (Johnson, 'The Northern War' (doc A5), p 149).
476. Orange, *The Treaty of Waitangi*, p 121. Mr Johnson said it was not known which language Williams had printed, but Orange said it was te Tiriti in te reo Māori: Johnson, 'The Northern War' (doc A5), p 150.
477. Orange, *The Treaty of Waitangi*, p 121; Carleton, *The Life of Henry Williams*, vol 2, pp 88–89.
478. Williams to Busby, 4 January 1847 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 344). See also Johnson, 'The Northern War' (doc A5), p 150.
479. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 344.
480. Williams to Busby, 4 January 1847 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 344); see also Johnson, 'The Northern War' (doc A5), p 150.
481. Williams to Bishop of New Zealand, 20 February 1845 (cited in Carleton, *The Life of Henry Williams*, vol 2, pp 88–89); Orange, *The Treaty of Waitangi*, p 121.
482. Orange, *The Treaty of Waitangi*, p 122.
483. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 514–515, 518.
484. Orange, *The Treaty of Waitangi*, p 122.
485. Johnson, 'The Northern War' (doc A5), pp 153–154; 'Shipping Intelligence', *Auckland Chronicle and New Zealand Colonist*, 16 January 1845, p 2. How long the journey took depended on the conditions and the size and speed of the vessel. Mr Johnson recorded one voyage in which the HMS *Victoria* completed the journey in less than a day, and numerous other occasions in which events in the Bay of Islands were discussed in Auckland two days later: Johnson, 'The Northern War' (doc A5), pp 156, 157, 160. The *Victoria* was larger and slower than some of the coastal trading schooners that regularly made the Bay of Islands run.
486. Robert FitzRoy, 'Ki Nga Rangatira o Tokerau, o Hokianga', *Te Karere Maori*, vol 4, no 1, 1 January 1845; Johnson, 'The Northern War' (doc A5), pp 153–154.
487. FitzRoy, *Remarks on New Zealand*, p 37.
488. Johnson, 'The Northern War' (doc A5), p 173. According to Johnson, FitzRoy received a dispatch from Lord Stanley describing the report's contents late in December, but the report itself did not reach New Zealand until early 1845. However, Lord Stanley's dispatch, dated 13 August, referred to a copy of the report being sent to FitzRoy at the end of July. It would presumably have reached FitzRoy either before or at the same time as Stanley's dispatch: Johnson, 'The Northern War' (doc A5), pp 170, 173; Crown document bank (doc w48), pp 205–211.
489. 'Report of the Select Committee of the House of Commons on New Zealand', *Daily Southern Cross*, 15 February 1845, p 2; Johnson, 'The Northern War' (doc A5), pp 170–172.
490. The *Daily Southern Cross* published an analysis of the report on 15 February 1845, taking its account from British newspapers. Three days later, FitzRoy wrote to Henry Williams enclosing Lord Stanley's advice and seeking Williams' assistance to calm Māori concerns. Then, on 24 February, George Clarke senior wrote to FitzRoy indicating that the report was sure to be circulated among Māori (indicating it had not yet been): Clarke to FitzRoy, 24 February 1845 (Johnson, 'The Northern War' (doc A5), pp 173–174); FitzRoy to Williams, 18 February 1845 (Carleton, *The Life of Henry Williams*, vol 2, pp 87–88). The Crown referred to evidence that Heke was aware of the report by 14 January. Its source was Dr Phillipson, who appears to have relied on a letter sent by Henry Williams to James Busby on 14 January 1847: claimant closing submissions (#3.3.403), p 101; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 318.
491. Peter McBurney, 'Traditional History Overview of the Mahurangi and Gulf Islands Districts', report commissioned by the Mahurangi and Gulf Islands District Collective and Crown Forestry Rental Trust, 2010 (doc A36), pp 389–391; 'Disturbance with the Natives', *Daily Southern Cross*, 11 January 1845; O'Malley, 'Northland Crown Purchases' (doc A6), p 73; Dr Barry Rigby, 'The Crown, Maori and Mahurangi, 1840–1881: A Historical Report', report commissioned by the Waitangi Tribunal, 1998 (doc E18), pp 33, 90–91.
492. Johnson, 'The Northern War' (doc A5), pp 154–156; O'Malley, 'Northland Crown Purchases' (doc A6), pp 72, 74.

493. O'Malley, 'Northland Crown Purchases' (doc A6), p 72; see also Johnson, 'The Northern War' (doc A5), p 156.
494. Johnson, 'The Northern War' (doc A5), p 157; O'Malley, 'Northland Crown Purchases' (doc A6), pp 72–73.
495. Proclamation, 8 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 157).
496. FitzRoy to Sinclair, 8 January 1845 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), pp 73–74); see also Johnson, 'The Northern War' (doc A5), p 156.
497. *New Zealand Spectator and Cook's Strait Guardian*, 8 March 1845 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 74).
498. O'Malley, 'Northland Crown Purchases' (doc A6), pp 71, 75–78; 156; Guy Gudex (doc I14), pp 3–6.
499. During February, the goods were returned and the land transferred. In March, FitzRoy cancelled his 8 January proclamation: O'Malley, 'Northland Crown Purchases' (doc A6), pp 71, 75, 77; see also Johnson, 'The Northern War' (doc A5), p 156.
500. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 619–621; Johnson, 'The Northern War' (doc A5), pp 157, 159.
501. See, for example, 'Shipping List', *Daily Southern Cross*, 10 January 1845, p 2.
502. Johnson, 'The Northern War' (doc A5), p 160.
503. Ibid, pp 99, 156–157.
504. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 619–620.
505. Johnson, 'The Northern War' (doc A5), p 157.
506. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 347–348; Johnson, 'The Northern War' (doc A5), pp 157–158.
507. Tapper, sworn affidavit, 10 January 1845 (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348).
508. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 347–348; Johnson, 'The Northern War' (doc A5), pp 157–158.
509. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
510. Johnson, 'The Northern War' (doc A5), p 157.
511. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 619–621; Johnson, 'The Northern War' (doc A5), pp 157, 159.
512. Beckham to FitzRoy, 10 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 158); see also Buick, *New Zealand's First War*, p 54. An abridged version of Beckham's letter was published in *British Parliamentary Papers*, omitting any mention of American influence (presumably to avoid a diplomatic incident) and attributing Heke's actions to 'a general dislike to the British Government': Beckham to FitzRoy, 10 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 158). For a discussion of Smith's career, including his connections with Heke, see Druett, 'The Salem Connection', p 185.
513. John Hobbs, 'Journals in Methodist Church Archives', 15 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 158).
514. Hobbs, 'Journals', 15 January 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 158–159).
515. Johnson, 'The Northern War' (doc A5), pp 120, 149–150; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
516. Phillipson, answers to questions of clarification (doc A1(e)), pp 7–8.
517. Johnson, 'The Northern War' (doc A5), pp 161–162.
518. Hobbs, 'Journals', 15 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 161).
519. Johnson, 'The Northern War' (doc A5), pp 161–162.
520. Ibid, p 162. Mr Johnson says that Heke returned to the Bay of Islands after learning of FitzRoy's proclamation against him, but Beckham's accounts clearly show Heke in the Bay of Islands in the days before the 15 January proclamation.
521. Beckham to FitzRoy, 14 January 1845 (Crown document bank (doc W48), p 278).
522. Johnson, 'The Northern War' (doc A5), p 162.
523. Ibid, p 160.
524. FitzRoy, Wakarongo, 15 January 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p [84]; FitzRoy, Proclamation, 15 January 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p [85]).
525. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350; Johnson, 'The Northern War' (doc A5), pp 120, 149–150.
526. FitzRoy, Proclamation, 15 January 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p [85]).
527. Burrows, *Extracts*, p 9 (doc W48(a), p 9).
528. Buick, *New Zealand's First War*, p 48.
529. Johnson, 'The Northern War' (doc A5), p 159.
530. Governor to Beckham, 15 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 159).
531. Johnson, 'The Northern War' (doc A5), pp 159–160.
532. FitzRoy to Beckham, 15 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 160).
533. FitzRoy to Beckham, 15 January 1845, IUP/BPP, vol 4, p 547 (cited in Johnson, 'The Northern War' (doc A5), p 160).
534. Johnson, 'The Northern War' (doc A5), pp 160–161.
535. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
536. Ibid.
537. Johnson, 'The Northern War' (doc A5), p 161.
538. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
539. Johnson, 'The Northern War' (doc A5), p 167.
540. Ibid, pp 163–164; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
541. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
542. Johnson, 'The Northern War' (doc A5), pp 163–164. Lindsay Buick, in his history of the Northern War, said that Heke acted alone: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 348.
543. Johnson, 'The Northern War' (doc A5), p 164.
544. Davis to Clarke, no date (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349).
545. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
546. Johnson, 'The Northern War' (doc A5), pp 163–164.
547. Davis to Clarke (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349).
548. Ibid.

549. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
550. Ibid, pp 348–349.
551. Williams to Marsh, 24 January 1845 (cited in Carleton, *The Life of Henry Williams*, p 86).
552. Johnson, 'The Northern War' (doc A5), p 164.
553. FitzRoy to Hulme, 20 January 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 164–165). FitzRoy also committed to military action at Port Nicholson.
554. FitzRoy to Beckham, 20 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 165).
555. Johnson, 'The Northern War' (doc A5), pp 169–170.
556. Ibid, p 165.
557. Crown closing submissions (#3.3.403), pp 90–91.
558. FitzRoy to Beckham, 25 January 1845 (cited in Johnson, 'The Northern War' (doc A5), p 169).
559. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
560. Ibid, pp 348–349.
561. Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p [210].
562. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 693–694.
563. FitzRoy to Stanley, 19 October 1844, IUP/BPP, vol 4, pp 412, 413.
564. 'Report of the Select Committee of the House of Commons on New Zealand', *Daily Southern Cross*, 15 February 1845, p 2; Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 694–695.
565. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 694.
566. Ibid, p 693.
567. Buick, *New Zealand's First War*, p 56.
568. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
569. George Clarke junior to George Clarke senior, 18 February 1845 (Crown document bank (doc W48), p 280). Tāwhai later opposed Heke during the northern war: Johnson, 'The Northern War' (doc A5), p 218.
570. Johnson, 'The Northern War' (doc A5), p 170.
571. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350; see also William Williams, *Plain Facts Relative to the Late War in the Northern District of New Zealand* (Auckland: Philip Kunst, 1847), p 14; Carleton, *The Life of Henry Williams*, pp 88–89, 141–142, 157.
572. Henry Williams (W Williams, *Plain Facts*, p 13); Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
573. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350; Johnson, 'The Northern War' (doc A5), pp 167–168.
574. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350.
575. Ibid.
576. H Williams to Selwyn, 12 July 1847 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 350–351).
577. Ibid.
578. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 508–509, 512–515.
579. H Williams to FitzRoy, 20 February 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 350); W Williams, *Plain Facts* (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350).
580. H Williams to FitzRoy, 20 February 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 350).
581. Buick, *New Zealand's First War*, p 56; Johnson, 'The Northern War' (doc A5), pp 168–169; see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 305, 320, 351, 357–359, 363.
582. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 351.
583. Buick, *New Zealand's First War*, p 57; W Williams, *Plain Facts*, pp xxvi–xxvii (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 351).
584. Johnson, 'The Northern War' (doc A5), pp 168–169.
585. Ibid, pp 177–179, 182; Burrows, *Extracts*, pp 8–9 (doc W48(a), p 9).
586. George Clarke junior to George Clarke senior, 18 February 1845 (Crown document bank (doc W48), p 280); see also Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 351.
587. FitzRoy to Williams, 18 February 1845 (cited in Carleton, *The Life of Henry Williams*, pp 87–88).
588. Johnson, 'The Northern War' (doc A5), p 178.
589. FitzRoy to Robertson, 11 February 1845 (cited in Crown closing submissions (#3.3.403), p 28).
590. 'Proceedings of the Executive Council Relative to an Application for the Governor of New Zealand for Military Assistance', 12 February 1845 (Crown document bank (doc W48), p 278); Johnson, 'The Northern War' (doc A5), pp 165–166.
591. Johnson, 'The Northern War' (doc A5), p 165.
592. Report from the Select Committee on New Zealand, 1844, IUP/BPP, vol 2, p 6.
593. Johnson, 'The Northern War' (doc A5), p 175.
594. Carleton, *The Life of Henry Williams*, pp 87–88.
595. Clarke senior to FitzRoy, 24 February 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 173–174).
596. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 351; Phillipson, answers to questions of clarification (doc A1(e)), p 8; Johnson, 'The Northern War' (doc A5), pp 175, 184; Johnson, answers to post-hearing questions (doc A5(g)), p 8.
597. Grant Phillipson, abbreviated summary (doc A1(f)), p 13.
598. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 318.
599. Phillipson, abbreviated summary (doc A1(f)), pp 8–9.
600. Johnson, 'The Northern War' (doc A5), pp 169, 178.
601. Beckham to FitzRoy, 22 February 1845 (Crown document bank (doc W48), p 217). Mr Johnson recorded that the flagstaff was rebuilt in late January immediately after FitzRoy gave the order; however, he gave no primary source: Johnson, 'The Northern War' (doc A5), p 169.
602. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
603. Heke to FitzRoy, 21 May 1845 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 316).
604. Crown document bank (doc W48), p 217; see also Johnson, 'The Northern War' (doc A5), pp 179–180.
605. Johnson, 'The Northern War' (doc A5), pp 178–179.

606. Johnson, 'The Northern War' (doc A5), p 179.
607. Williams' letter was sent on 20 February 1845: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 351–352.
608. Beckham to FitzRoy, 22 February 1845 (Crown document bank (doc W48), p 217).
609. Johnson, 'The Northern War' (doc A5), p 179.
610. Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, pp [209]–[210].
611. FitzRoy to Gipps, 25 February 1845 (Crown document bank (doc W48), p 217).
612. The exact timing is not known. Kawiti's great-grandson, Tawai Kawiti, wrote in *Te Ao Hou* in 1956 that the meeting took place at Te Wahapū. Beckham's dispatch on Saturday 22 February indicated that Heke was travelling to Te Wahapū early the following week, which would suggest a meeting date of 24 or 25 February: Phillipson, answers to questions of clarification (doc A1(e)), p 12; Tawai Kawiti, 'Heke's War in the North', *Te Ao Hou: The New World*, no 16, October 1956, p 38 (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 352); Beckham to FitzRoy, 22 February 1845 (Crown document bank (doc W48), p 217). In that dispatch, Beckham made no mention of Heke meeting Kawiti. On 27 February, Beckham mentioned a meeting that was due to take place between Heke and Kawiti, from which Beckham expected that Heke 'will venture an attack' on the flagstaff: Beckham to FitzRoy, 27 February 1845 (Crown document bank (doc W48), p 218). Marianne Williams recorded in her diary that the alliance was not concluded until 7 March, although Dr Phillipson found that implausible: Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 353; Phillipson, answers to questions of clarification (doc A1(e)), p 12.
613. Johnson, 'The Northern War' (doc A5), p 179.
614. Kawiti, 'Heke's War in the North', p 38; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 352.
615. Kawiti, 'Heke's War in the North', pp 38–39.
616. David Rankin, personal communication to Mr Johnson, 23 May 2006: Johnson, 'The Northern War' (doc A5), p 176. Hori Parata of Ngātiwai told us of a mere pounamu named Muramura which Hongi acquired as part of a peace agreement between Ngāpuhi and Ngātiwai, brokered at Moturahurahu: Hori Parata (doc C22), p 9.
617. As discussed in chapter 3, the northern alliance principally comprised descendants of Māhia who had emerged from Tautoro and Kaikohe during the late 1700s, achieving dominance over the northern Bay of Islands coastline. Principal hapū included Ngāti Tautoro, Ngāi Tāwake, Te Uri o Hua, Te Patukeha, and Ngāti Rēhia. The southern alliance comprised descendants of Maikuku and occupied territories along the southern Bay of Islands coast and Taiāmai. Principal hapū included Ngāti Hine, Ngāti Rangi, Ngāre Hauata, Ngāti Manu, Te Kapotai, and others: see Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 370–371.
618. Kawiti, 'Heke's War in the North', p 39 (Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 352); Johnson, 'The Northern War' (doc A5), pp 141, 176–177, 353; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 40; Pita Tipene (doc AA82), p 5; Erima Henare (doc D14(b)), pp 3–7.
619. Beckham to FitzRoy, 28 February (Crown document bank (doc W48), p 218); Johnson, 'The Northern War' (doc A5), p 180.
620. Crown document bank (doc W48), pp 217–218.
621. Johnson, 'The Northern War' (doc A5), pp 180–181; Crown document bank (doc W48), pp 218–220.
622. Beckham to FitzRoy, 4 March 1845 (Crown document bank (doc W48), p 220); Johnson, 'The Northern War' (doc A5), p 181.
623. Johnson, 'The Northern War' (doc A5), pp 180–182; Burrows, *Extracts*, pp 8–10 (doc W48(a), pp 9–10); Buick, *New Zealand's First War*, p 63.
624. Johnson, 'The Northern War' (doc A5), pp 180–182; Burrows, *Extracts*, pp 8–10 (doc W48(a), pp 9–10).
625. Burrows, 'The War in the North' (Johnson, 'The Northern War' (doc A5), p 182); see also Burrows, *Extracts*, pp 8–9 (doc W48(a), p 9).
626. Burrows, *Extracts*, p 9 (doc W48(a), p 9); Johnson, 'The Northern War' (doc A5), p 182.
627. Burrows, *Extracts*, pp 9–10 (doc W48(a), pp 9–10).
628. Pompallier, diary, 1 January–31 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 182).
629. Kawiti (Paul Moon, *Hone Heke: Nga Puhi Warrior* (Auckland: David Ling Publishing, 2001), p 95 (Phillipson, answers to questions of clarification (doc A1(e)), p 9)).
630. Burrows, *Extracts*, p 10 (doc W48(a), p 10).
631. Johnson, 'The Northern War' (doc A5), p 186.
632. Burrows, *Extracts*, p 10 (doc W48(a), p 10).
633. Crown document bank (doc A5(a)), vol 3, p 565; Belich, *The New Zealand Wars*, p 36.
634. Johnson, 'The Northern War' (doc A5), pp 180–181, 202–203; Beckham to FitzRoy, 4 March 1845 (Crown document bank (doc W48), pp 219–220); Burrows, *Extracts*, p 11 (doc W48(a), p 10); see also Crown closing submissions (#3.3.403), p 95.
635. Johnson, 'The Northern War' (doc A5), p 187.
636. Beckham to FitzRoy, 9 March 1845 (Johnson, 'The Northern War' (doc A5), pp 186–187); see also Crown closing submissions (#3.3.403), p 31. An alliance had formed between Ngāti Manu and Ngāti Kahungunu during the 1830s. This arose from a battle on the east coast, during which Te Mauparāoa's father saved the life of Pōmare I's nephew. In return, Te Mauparāoa was sent to live at Ōtuihu, where he would gain access to guns for his people: Arapeta Hamilton, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, pp 318–322, 329–330.
637. Crown document bank (doc W48), p 229; Johnson, 'The Northern War' (doc A5), p 182. The Crown's view, based on Burrows' account, was that these men were taking an innocent walk along the beach when they were 'suddenly pounced upon by some of Kawiti's people, who were lying in ambush': Burrows, *Extracts*, p 10 (Crown closing submissions (#3.3.403), p 31). However, Philpotts' own account to Governor FitzRoy makes it clear that he was spying at Beckham's request: Crown document bank (doc W48), pp 228–229.
638. Henry Williams, *The Fall of Kororareka in 1845* (Auckland: Creighton and Scales, 1863), pp 5–6.

639. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 354.
640. Bérard to Minister of Naval Affairs, no date (cited in Johnson, 'The Northern War' (doc A5), p 205).
641. Johnson, 'The Northern War' (doc A5), pp 204–205; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 354.
642. Burrows, *Extracts*, pp 11–12 (doc W48(a), pp 10–11); see also Johnson, 'The Northern War' (doc A5), pp 188, 190.
643. Williams, *The Fall of Kororareka in 1845*, p 4. This reproduces a draft letter Williams wrote to the editor of the *New Zealander* newspaper on 23 June 1845. Bishop Selwyn did not allow Williams to send it.
644. Belich, *The New Zealand Wars*, p 37.
645. Johnson, 'The Northern War' (doc A5), p 182.
646. Ibid, pp 188, 190; Burrows, *Extracts*, pp 11–12 (doc W48(a), pp 10–11); Williams, *The Fall of Kororareka in 1845*, p 5; Te Rūnanga o Ngāti Hine, 'Ngati Hine Evidence for Crown Breaches of Te Tiriti o Waitangi', 2014 (doc M24), p 91.
647. Crown document bank (doc W48), pp 226–227.
648. Williams, *The Fall of Kororareka in 1845*, p 5.
649. Johnson, 'The Northern War' (doc A5), pp 188, 190; Burrows, *Extracts*, pp 11–12 (doc W48(a), pp 10–11); Te Rūnanga o Ngāti Hine, 'Ngati Hine Evidence' (doc M24), pp 91–92; Crown document bank (doc W48), p 227.
650. Johnson, 'The Northern War' (doc A5), pp 188, 190–191; Burrows, *Extracts*, pp 11–13 (doc W48(a), pp 10–11). Mr Johnson identified the girl as the daughter of a Captain Wing. The *Victoria*'s log book and the missionary Robert Burrows both referred to these casualties as accidental. Tapper's wife was identified and saved because she cried out: Johnson, 'The Northern War' (doc A5), p 190.
651. Johnson, 'The Northern War' (doc A5), pp 188, 189–191; Arapeta Hamilton (doc W7), p 7.
652. Crown document bank (doc W48), pp 226–227, 228–229.
653. Belich, *The New Zealand Wars*, p 39.
654. Williams, *The Fall of Kororareka in 1845*, p 5.
655. The *Hazard*'s log book recorded the first shots at 4.45 am, which is consistent with officers' accounts: Johnson, supporting papers (doc A5(a)), vol 4, p 613; see also Crown document bank (doc W48), pp 226–227, 228–229, 231–233.
656. Williams, *The Fall of Kororareka in 1845*, p 5.
657. Beckham to FitzRoy, 15 March 1845 (Crown document bank (doc W48), p 232).
658. Crown document bank (doc W48), pp 226–227; Johnson, 'The Northern War' (doc A5), pp 192–193.
659. Johnson, 'The Northern War' (doc A5), p 191; Crown document bank (doc W48), pp 226–227.
660. Beckham to FitzRoy, 15 March 1845 (Crown document bank (doc W48), p 232).
661. *Victoria*, log book, 11 March 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p 550); Johnson, 'The Northern War' (doc A5), pp 191–192.
662. Beckham to FitzRoy, 17 March 1845 (Crown document bank (doc W48), p 227). An earlier account from Beckham also had Māori retreating into the hills mid-morning: Crown document bank (doc W48), p 226.
663. Barclay to Hulme, 15 March 1845 (Crown document bank (doc W48), p 232).
664. FitzRoy to Gipps, 20 March 1845 (Crown document bank (doc W48), p 225).
665. George Clarke junior to George Clarke senior, 21 March 1845 (Johnson, 'The Northern War' (doc A5), p 192).
666. Beckham to FitzRoy, 17 March 1845 (Crown document bank (doc W48), p 227); *Victoria*, log book, 11 March 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p 550); Barclay to Hulme, 15 March 1845 (Crown document bank (doc W48), p 232); FitzRoy to Gipps, 20 March 1845 (Crown document bank (doc W48), p 225); Burrows, *Extracts*, p 13 (doc W48(a), p 11).
667. Johnson, 'The Northern War' (doc A5), pp 192–193.
668. Ibid, pp 191–193.
669. Ibid, pp 193–196, 198–200; Crown document bank (doc W48), pp 231–233.
670. Johnson, 'The Northern War' (doc A5), pp 194–195.
671. Ibid.
672. Ibid; Burrows, *Extracts*, p 11 (doc W48(a), p 10). The police magistrate Thomas Beckham reported on 11 March that the explosion left 'several persons . . . severely hurt and confused': Crown document bank (doc W48), p 226; Johnson, 'The Northern War' (doc A5), p 195. On 15 March, Philpotts wrote that '[m]any casualties occurred' and two had died: Crown document bank (doc W48), p 229. Lieutenant Barclay reported on 15 March that none of the soldiers or sailors was injured, though one received a small cut. Barclay did not comment on civilian casualties: Beckham to Governor, 11 March 1845 (Johnson, 'The Northern War' (doc A5), p 195); Philpotts to Governor, 11 March 1845 (Johnson, 'The Northern War' (doc A5), p 195); Philpotts to FitzRoy, 15 March 1845 (Crown document bank (doc W48), pp 228–229); Barclay to Hulme, 15 March 1845 (Crown document bank (doc W48), pp 231–233).
673. Johnson, 'The Northern War' (doc A5), p 196.
674. Crown document bank (doc W48), pp 196, 228–229, 231–233.
675. Johnson, 'The Northern War' (doc A5), pp 194–196; see also Beckham to FitzRoy, 11 March 1845 (Crown document bank (doc W48), p 226); Philpotts to FitzRoy, 11 March 1845 (Crown document bank (doc W48), pp 227–228); Philpotts to FitzRoy 15 March (Crown document bank (doc W48), pp 228–229); Beckham to FitzRoy, 17 March 1845 (Crown document bank (doc W48), p 227). Contemporary accounts often attributed the loss of the blockhouse and stockade to officers' incompetence. Historian James Belich observed that settlers and officials resorted to this 'palliative' explanation because they could not stomach the alternative: that Heke and Kawiti had achieved their objective through superior military strategy: Belich, *The New Zealand Wars*, pp 40–41.
676. Williams, *The Fall of Kororareka in 1845*, p 6.
677. Barclay to Hulme, 15 March 1845 (Crown document bank (doc W48), p 232).

678. Many of the townspeople were taken to the United States Navy frigate *St Louis*, which happened to be visiting New Zealand. Others were taken to the English whaler *Matilda*, the trading schooner *Dolphin*, and the Royal Navy ships *Hazard* and *Victoria*: Barclay to Hulme, 15 March 1845 (Crown document bank (doc w48), pp 231–233); FitzRoy to Gipps, 20 March 1845 (Crown document bank (doc w48), p 221); Philpotts to FitzRoy, 15 March 1845 (Crown document bank (doc w48), p 229).
679. Barclay to Hulme, 15 March 1845 (Crown document bank (doc w48), p 232).
680. Johnson, 'The Northern War' (doc A5), pp 196–197, 258–259.
681. Crown document bank (doc w48), p 221; Johnson, 'The Northern War' (doc A5), p 197.
682. Johnson, 'The Northern War' (doc A5), p 200; Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p 227).
683. Burrows, *Extracts*, p 13 (doc w48(a), p 11); Williams, *The Fall of Kororareka in 1845*, p 7; see also Johnson, 'The Northern War' (doc A5), p 197; Crown document bank (doc w48), pp 221, 227; Johnson, supporting papers (doc A5(a)), vol 3, p 566.
684. Crown document bank (doc w48), pp 221, 231–233; Williams, *The Fall of Kororareka in 1845*, p 6; Johnson, 'The Northern War' (doc A5), p 197.
685. Johnson, 'The Northern War' (doc A5), p 198.
686. Andrew Bliss, 'Remarks on board the Matilda, 11 March 1845' (cited in Johnson, 'The Northern War' (doc A5), pp 197–198).
687. Williams, *The Fall of Kororareka in 1845*, p 6.
688. Bliss, 'Remarks on board the Matilda, 11 March 1845' (cited in Johnson, 'The Northern War' (doc A5), p 198).
689. Johnson, supporting papers (doc A5(a)), vol 3, p 566; Williams, *The Fall of Kororareka in 1845*, p 6; Crown document bank (doc w48), pp 228–230. Williams and his sons had three boats ferrying settlers and their possessions to the *Hazard* throughout the afternoon of 11 March and all of 12 March.
690. Williams, *The Fall of Kororareka in 1845*, p 6.
691. George Clarke junior, *Notes on Early Life in New Zealand* (Hobart: J Walch & Sons, 1903), p 72.
692. Crown document bank (doc w48), p 232.
693. Philpotts to FitzRoy, 15 March 1845 (Crown document bank (doc w48), p 229).
694. Philpotts to FitzRoy, 17 March 1845 (Crown document bank (doc w48), pp 229–230).
695. Bishop Pompallier later wrote that the *Hazard*'s officers had formed a predetermined strategy to shell the town before allowing it to fall into Māori hands: Fr J A M Chouvet, *A Marist Missionary in New Zealand, 1843–1846*, ed Jinty Rorke, trans Patrick Barry (Whakatane: Whakatane & District Historical Society, 1985), p 78; Johnson, 'The Northern War' (doc A5), p 203).
696. FitzRoy to Stanley, 9 April 1845 (Belich, *The New Zealand Wars*, p 39).
697. 'Narrative of Events at the Bay of Islands', *New Zealander*, 19 November 1845, p 1.
698. Johnson, 'The Northern War' (doc A5), pp 198–199, 208–209.
699. Ibid, p 199.
700. Crown document bank (doc w48), p 227.
701. Barclay to Hulme, 15 March 1845 (Crown document bank (doc w48), p 232).
702. Philpotts to FitzRoy, 17 March 1845 (Crown document bank (doc w48), p 230).
703. Philpotts to FitzRoy, 15 March 1845 (Crown document bank (doc w48), p 229).
704. Burrows, *Extracts*, p 13 (doc w48(a), p 11).
705. See, for example, claimant closing submissions (#3.3.219), p 98.
706. Williams to Church Missionary Society, 17 March 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p 567).
707. Johnson, supporting papers (doc A5(a)), vol 1, pp 237–238, 240–242; see also Johnson, 'The Northern War' (doc A5), pp 258–259.
708. Andrew Bliss, 'Remarks on board the Matilda, 11 March 1845' (cited in Johnson, 'The Northern War' (doc A5), pp 198–199).
709. Williams to Church Missionary Society, 17 March 1845 (Johnson, supporting papers (doc A5(a)), vol 3, p 566).
710. Ibid (pp 567–568).
711. 'Legislative Council', *Daily Southern Cross*, 22 March 1845, p 3.
712. The missionary sources were Thomas Buddle and James Buller: Eva Blight, 'The Work of the Reverend James Buller in the Methodist Church in New Zealand' (MA thesis, University of New Zealand, 1950), fol 44; Tony Walzl, 'Mana Whenua Report' (doc E34), p 275. See also Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996) (doc H2), pp 173–174.
713. 'Legislative Council', *Daily Southern Cross*, 22 March 1845, p 3.
714. Burrows, *Extracts*, p 13 (doc w48(a), p 11); Barclay to Hulme, 15 March 1845 (Crown document bank (doc w48), pp 231–233).
715. Williams, *The Fall of Kororareka in 1845*, p 7.
716. Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p [228]).
717. Ibid (pp [237]–[238]). Kemp translated this as: 'The flagstaff alone is my only annoyance. Neither myself or my people nor my men assisted in burning the town': Johnson, supporting papers (doc A5(a)), vol 1, p [247]; see also Johnson, 'The Northern War' (doc A5), pp 258–259.
718. Johnson, supporting papers (doc A5(a)), vol 1, pp [241], [249].
719. Ibid, vol 4, p 814; Johnson, 'The Northern War' (doc A5), pp 198–199.
720. Johnson, supporting papers (doc A5(a)), vol 1, pp 229–231.
721. Burrows, *Extracts*, p 13 (doc w48(a), p 11); George Clarke junior to George Clarke senior, 19 March 1845 (cited in Johnson, supporting papers (doc A5(a)), vol 4, p 814).
722. George Clarke junior to George Clarke senior, 19 March 1845 (Johnson, supporting papers (doc A5(a)), vol 4, p 814).
723. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 53.
724. Johnson, 'The Northern War' (doc A5), p 179.
725. Ibid, pp 179, 197; Burrows, *Extracts*, pp 11–12 (doc w48(a), pp 10–11).

726. Burrows, *Extracts*, p 13 (doc w48(a), p 11); Johnson, 'The Northern War' (doc A5), pp 236–238, 264, 268–270.
727. For an analysis of this point, see Belich, *The New Zealand Wars*, pp 38–39.
728. Williams to FitzRoy, 20 March 1845 (cited in Johnson, 'The Northern War' (doc A5), p 209).
729. 'Executive Council', *Daily Southern Cross*, 22 March 1845, p 3; see also Belich, *The New Zealand Wars*, pp 38–39.
730. George Clarke junior to George Clarke senior, 19 March 1845 (Johnson, supporting papers (doc A5(a)), vol 4, p 814).
731. Johnson, 'The Northern War' (doc A5), pp 189, 191, 192, 202–204, 208, 259; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 354–355; see also Belich, *The New Zealand Wars*, p 38 (Johnson, 'The Northern War' (doc A5), p 201). Mr Johnson acknowledged that some historians have concluded that Heke intended to attack Kororāreka township; in his view, this conclusion was coloured by later events and did not reflect the evidence of what occurred up to noon on 11 March 1845: Johnson, 'The Northern War' (doc A5), pp 200–201.
732. Johnson, 'The Northern War' (doc A5), pp 227–230; Belich, *The New Zealand Wars*, p 35.
733. Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p [211].
734. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
735. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 524–525, 528.
736. Claimant closing submissions (#3.3.219), pp 50–51; specific closing submissions for Wai 1477 (#3.3.338), pp 6–7; submissions in reply for Wai 120, Wai 966, Wai 1837, and Wai 2217 (#3.3.521), para 34.
737. Johnson, 'The Northern War' (doc A5), pp 95–96.
738. Claimant closing submissions (#3.3.219), pp 27, 33–35, 86, 89, 91–94; specific closing submissions for Wai 1477 (#3.3.338), pp 11–12, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p [27].
739. Specific closing submissions for Wai 1477 (#3.3.338), p 12.
740. Crown closing submissions (#3.3.403), p 74.
741. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 315–317, 498–499.
742. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 480–483. For an example of the application of this principle, see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, pp 216–217.
743. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 120.
744. Crown closing submissions (#3.3.403), pp 69–70, 79.
745. Ibid, pp 72, 90.
746. The Crown submitted that Maketū's arrest was a precedent for general application of the colony's laws to Te Raki Māori: Crown closing submissions (#3.3.403), p 72.
747. Claimant closing submissions (#3.3.219), pp 34–35, 49–50; claimant closing submissions (#3.3.220), p 31; closing submissions for Wai 1477 (#3.3.338), pp 11–13, 43; submissions in reply for Wai 1477 (#3.3.547), pp 31–32; joint submissions in reply for Wai 1522 and Wai 1716 (#3.3.548), pp 31–32; draft closing submissions for Wai 1514 (#3.3.357), pp 52, 54; closing submissions for Wai 2059 (#3.3.296), p [27].
748. Johnson, 'The Northern War' (doc A5), pp 221–227.
749. Ibid, pp 220, 231.
750. Ibid, pp 232, 237–238.
751. Ibid, pp 252–253 (Puketutū), 267–270 (Waikare), 301–306 (Ōhaeawai), 311–312 (Pākaraka), 363–364, 367–371 (Ruapekapeka).
752. Ralph Johnson described Heke's efforts to secure peace: ibid, pp 257–260, 271–273, 319–320, 323–325, 392–394.
753. Ibid, p 413.
754. Ibid, pp 205–207, 252–253, 307–308, 380. The numbers for individual battles were Kororāreka: 13 dead, 7–23 wounded; Puketutū: 13–14 dead, 30–40 wounded; Ōhaeawai: 34 dead, 70 wounded; and Ruapekapeka: 12–13 dead, 29 wounded.
755. Claimant closing submissions (#3.3.219), pp 36–37, 80, 95–99, 145.
756. Ibid, pp 61, 66–68, 70–71, 128–130, 137, 139.
757. Ibid, pp 30–31, 36, 61, 63–71, 80, 145–148, 164–166.
758. Ibid, pp 29–30, 124–127, 145–146.
759. Ibid, pp 72–73, 181; see also Waihoroi Shortland (doc AA81), p 13.
760. Crown statement of position and concessions (#1.3.2), p 77.
761. Crown closing submissions (#3.3.403), pp 96–100, 104–105; Crown statement of position and concessions (#1.3.2), pp 77, 80.
762. Crown closing submissions (#3.3.403), pp 8–9, 104–105, 107–115, 129.
763. Johnson, 'The Northern War' (doc A5), pp 220–221, 224–227.
764. Proclamation, 26 April 1845 (cited in Johnson, 'The Northern War' (doc A5), p 224).
765. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc w48), p 247).
766. Ibid (p 252).
767. Crown document bank (doc w48), p 250; Johnson, 'The Northern War' (doc A5), pp 226–227.
768. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc w48), p 252).
769. Johnson, 'The Northern War' (doc A5), pp 166, 174, 212, 313; see also Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wai 9, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 23.
770. Johnson, 'The Northern War' (doc A5), p 243.
771. For examples, see ibid, pp 242, 276–277, 286, 292, 312–313.
772. Ibid, pp 244, 313–314, 333, 343–348, 350–351.
773. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc w48), p 253); Johnson, 'The Northern War' (doc A5), p 292.
774. Johnson, 'The Northern War' (doc A5), p 244.
775. FitzRoy to Kawiti, 1 October 1845 (cited in Johnson, 'The Northern War' (doc A5), p 333).
776. Stanley to Grey, 13 June 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 340–341).
777. Grey to Stanley, 29 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 363); Johnson, 'The Northern War' (doc A5), p 360.

778. Johnson, 'The Northern War' (doc A5), pp 320–321, 332–333, 350–352.
779. Ibid, pp 320–321, 350–352.
780. Ibid, p 350.
781. Ibid, p 287.
782. Ibid, pp 328–329.
783. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 355; Johnson, 'The Northern War' (doc A5), p 221; Crown document bank (doc W48), p 237.
784. Crown document bank (doc W48), p 237.
785. Johnson, 'The Northern War' (doc A5), pp 293, 313, 319–321, 332, see also pp 209, 211, 224, 410.
786. Ibid, pp 234, 238, 264.
787. Ibid, pp 293, 313, 319–321, 332, see also pp 209, 211, 224, 410.
788. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 346–347.
789. Johnson, 'The Northern War' (doc A5), p 165.
790. Crown document bank (doc W48), p 217.
791. 'Legislative Council', *Daily Southern Cross*, 22 March 1845, p 3.
792. Johnson, 'The Northern War' (doc A5), pp 211–212, 217–218, 220.
793. Ibid, pp 211–212, 220.
794. Ibid, pp 232–233, 235–240.
795. Burrows, *Extracts*, p 17 (doc W48(a), p 21); Johnson, 'The Northern War' (doc A5), p 249. After the battle at Te Kahika, Heke also told Burrows that it was for the Governor to decide whether the fighting would continue or not. Heke would 'not seek for further hostilities, but wait for the soldiers to come to him if the Governor wanted more fighting': Burrows, *Extracts*, p 32 (doc W48(a), p 21); Johnson, 'The Northern War' (doc A5), p 260.
796. Johnson, 'The Northern War' (doc A5), pp 295–296. James Belich also referred to Heke and Nene taking this approach during their battles: Belich, *The New Zealand Wars*, p 35.
797. Johnson, 'The Northern War' (doc A5), p 298.
798. Ibid, pp 247–248, 295–297, 360–361.
799. Ibid, pp 295–296.
800. Ibid, pp 317–318.
801. Ibid, pp 299–300.
802. Belich, *The New Zealand Wars*, pp 63–64.
803. Heke to chiefs, no date (cited in Johnson, 'The Northern War' (doc A5), pp 219–220).
804. Johnson, 'The Northern War' (doc A5), pp 295, 318; Burrows, *Extracts*, p 24 (doc W48(a), p 17).
805. Johnson, 'The Northern War' (doc A5), pp 257–258, 271–272, 309, 319–320, 323–325, 330–331, 392–393.
806. Johnson, 'The Northern War' (doc A5), pp 260, 272–274. According to Mr Johnson, Heke also provided 'formal peace terms' alongside this letter, and the Crown later claimed to have located written peace terms in the abandoned pā at Ōhaeawai. However, historians have never located a copy of any such document, and nothing in Heke's letters suggests that he imposed any terms other than a cessation of hostilities. Burrows' account suggests that Williams proposed terms which Heke rejected, and Williams then took it upon himself to convey those terms to the Governor. Other than peace terms later proposed by the Governor, the only other document setting out peace terms was the trader James Clendon's journal. Those terms closely resemble the terms later proposed by FitzRoy, including proposals for land forfeiture which would have been unpalatable to Heke. They are more likely to have come from missionaries or officials than from Heke: ibid, pp 271–277; Burrows, *Extracts*, p 32 (doc W48(a), p 21).
807. Johnson, 'The Northern War' (doc A5), pp 293–294, 320–322, 332–333.
808. Ibid, pp 267, 304.
809. Ibid, pp 271–272, 283–284.
810. Ibid, pp 271–273, 286–288.
811. FitzRoy to Despard, 6 June 1845 (cited in Johnson, 'The Northern War' (doc A5), p 292).
812. Johnson, 'The Northern War' (doc A5), p 313.
813. Ibid, pp 319–320.
814. Ibid, pp 317–318.
815. Ibid, p 349.
816. Ibid, p 224.
817. Claimant closing submissions (#3.3.219), pp 123, 147, 152; closing submissions for Wai 2059 (#3.3.296), p 28.
818. Shortland, *Traditions and Superstitions*, pp 264–265; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 315; see also Crown document bank (doc W48), pp 346–347.
819. William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6, 1840* (1890; repr Christchurch: Capper Press, 1971), p 25; Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 363–364.
820. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 363, 524–525; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 292.
821. Crown document bank (doc W48), pp 346–347.
822. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349; Johnson, 'The Northern War' (doc A5), p 182; Burrows, *Extracts*, pp 8–9 (doc W48(a), p 9).
823. Johnson, supporting papers (doc A5(a)), vol 1, pp 235–236.
824. Burrows, diary, p 7 (cited in Johnson, 'The Northern War' (doc A5), pp 321–322).
825. Ibid.
826. Heke to Grey, 2 December 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 402–403).
827. Heke to Queen Victoria, 10 July 1849 (cited in Crown document bank (doc W48), pp 346–347). Historian Angela Middleton has studied the contribution of Heke's wife, wāhine toa Hariata Rongo (Hongi Hika's daughter), to his letter-writing. She suggests, on the basis of her handwriting and composition style, that Hariata may have been solely responsible for some of the letters, including Heke's July 1849 letter to Queen Victoria, using her skills to join Heke in the battle: Angela Middleton, 'The "Illustrious" Hariata Hongi and the Authorship of Hone Heke's Letters', NZJH, vol 52, no 2 (October 2018), pp 87–113.
828. Heke to Queen Victoria, 10 July 1849 (cited in Crown document bank (doc W48), pp 346–347).

829. Ibid.
830. Ibid.
831. Johnson, 'The Northern War' (doc A5), pp 108, 132.
832. Phillipson, answers to questions of clarification (doc A1(e)), p 9; Johnson, 'The Northern War' (doc A5), p 182.
833. Raumoa Kawiti provided this saying to Mr Johnson: Johnson, 'The Northern War' (doc A5), p 391. The Kawiti whānau and Rima Edwards provided the translation (alternative translations were provided for the third line).
834. Phillip Bristow (doc M16), pp 14, 30.
835. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, p 3. As noted in chapter 4, a marginal note in the petition said that Captain Hobson, at Waitangi, had promised that Heke would continue to receive the anchorage money after 1840. According to the note, the Crown honoured this promise for two years, and then insisted that ships instead pay fees to the customs house.
836. 'Petition from Maoris to the Queen', AJHR, 1883, A-6, p 1.
837. Hone Heke, NZPD, 1897, vol 97, pp 55–56.
838. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 41.
839. Ibid, p 58.
840. Emma Gibbs-Smith (doc W32), pp 24–25.
841. Hone Pikari (doc W11), pp 10, 11–12.
842. Phillip Bristow (doc M16), p 16.
843. Belich, *The New Zealand Wars*, p 34.
844. Johnson, 'The Northern War' (doc A5), pp 225–226. Mr Johnson acknowledged that historians in the nineteenth and early twentieth centuries had regarded Heke as being in rebellion, a reflection of their 'underlying assumption that there was a single form of government in operation at the time' against which Heke could rebel, and of their lack of understanding of the treaty, with its provision for dual Māori and Crown authority: Johnson, 'The Northern War' (doc A5), pp 25–26.
845. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 360.
846. Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 9.
847. Johnson, 'The Northern War' (doc A5), pp 227–230; Belich, *The New Zealand Wars*, p 35.
848. Johnson, 'The Northern War' (doc A5), pp 248–252, 262.
849. Ibid, pp 230–231, 244, 247–248, 262.
850. Ibid, pp 287–289.
851. Ibid, pp 289–291.
852. Ibid, pp 290, 294–295.
853. Ibid, pp 297–298.
854. Ibid, p 301.
855. Ibid, pp 298, 310.
856. Ibid, pp 366, 374.
857. Ibid, p 213. For accounts of their involvement in the main battles, see pp 248–252, 265–266, 301–302, 311–314, 363, 366–368, 370–371.
858. Ibid, pp 265–266.
859. Ibid, p 271.
860. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 358; Associate Professor Manuka Henare, Dr Angela Middleton, and Dr Adrienne Puckey, 'He Rangi Mauroa Ao te Pō: Melodies Eternally New', report commissioned by the Te Aho Claims Alliance, 2013 (doc E67), pp 232, 265.
861. Johnson, 'The Northern War' (doc A5), pp 355–357.
862. Murray Painting (doc V12), pp 25–26.
863. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 347; see also Belich, *The New Zealand Wars*, pp 34–35.
864. Johnson, supporting papers (doc A5(a)), vol 4, pp 833–834; Johnson, 'The Northern War' (doc A5), p 230.
865. For accounts of their roles in the main battles, see Johnson, 'The Northern War' (doc A5), pp 248–252, 265–266, 301–302, 311–314, 363, 366–368, 370–371.
866. Johnson, 'The Northern War' (doc A5), pp 224, 353–354. The Crown continued to use this terminology in its closing submissions: Crown closing submissions (#3.3.403), pp 37, 103, 121.
867. Johnson, 'The Northern War' (doc A5), p 64.
868. Ibid, pp 103, 107–108; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 331.
869. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 349.
870. Johnson, 'The Northern War' (doc A5), p 213.
871. Ibid, pp 408–409.
872. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 325.
873. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 468.
874. O'Malley, 'Northland Crown Purchases' (doc A6), p 82.
875. Belich, *The New Zealand Wars*, pp 30, 33–34.
876. O'Malley, 'Northland Crown Purchases' (doc A6), p 82; Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), pp 466–468; Johnson, 'The Northern War' (doc A5), pp 213–214, 467–468.
877. The tohunga Rima Edwards provided the whakataukī and translation to Mr Johnson: Edwards to Johnson, personal correspondence, 9 June 2006 (Johnson, 'The Northern War' (doc A5), p 214), see also pp 408–409.
878. Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, p 179.
879. Nuki Aldridge (doc AA167), p 40.
880. Ibid, p 39.
881. Benjamin Pittman (doc W12), p 13.
882. Ibid, pp 13–14.
883. Ibid, p 14.
884. Ibid, p 19.
885. Ibid, pp 19–20.
886. Johnson, 'The Northern War' (doc A5), pp 288, 295, 332; Murray Painting (doc V12), pp 25–27.
887. FitzRoy to Despard, 6 June 1845 (cited in Johnson, 'The Northern War' (doc A5), p 293); Johnson, 'The Northern War' (doc A5), pp 287–291.
888. Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey, supporting papers (doc A37(b)), p 46.
889. Johnson, 'The Northern War' (doc A5), pp 323–324.
890. Heke to FitzRoy, 29 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 324).
891. Johnson, 'The Northern War' (doc A5), pp 356–357, 362.

892. Arapeta Hamilton (doc W7), pp 4–5; Arapeta Hamilton (doc F12(a)), p 10; see also Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), pp 46–47; Johnson, 'The Northern War' (doc A5), pp 265–266, 269–270.
893. Johnson, 'The Northern War' (doc A5), pp 357–358.
894. O'Malley, 'Northland Crown Purchases' (doc A6), p 82.
895. Johnson, 'The Northern War' (doc A5), pp 225–226.
896. Ibid, p 224.
897. Ibid, pp 320, 341, 345.
898. Ibid, pp 327–328, 333–334.
899. We described Te Raki Māori understandings of the treaty in our stage 1 report: Waitangi Tribunal, *He Whakaputanga me te Tiriti*, Wai 1040, pp 524–525.
900. Johnson, 'The Northern War' (doc A5), pp 61, 281–282.
901. Ibid, pp 120, 140, 149–150; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 349–350; Orange, *The Treaty of Waitangi*, p 122.
902. Johnson, 'The Northern War' (doc A5), pp 61, 281–282.
903. Busby to Stanley, 1 July 1845 (cited in Johnson, 'The Northern War' (doc A5), p 343).
904. FitzRoy, *Remarks on New Zealand*, p 14 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 82).
905. Johnson, answers to post-hearing questions (doc A5(g)), pp 1–2; see also Johnson, 'The Northern War' (doc A5), pp 115–116; Phillipson, answers to questions of clarification (doc A1(e)), pp 11–12.
906. Johnson, 'The Northern War' (doc A5), pp 248–252, 262.
907. Ibid, pp 230–231, 244, 247–248, 262.
908. Phillipson, answers to questions of clarification (doc A1(e)), p 13.
909. Dr Grant Phillipson, transcript 4.1.26, Turner Events Centre, Kerikeri, p [243].
910. Johnson, 'The Northern War' (doc A5), pp 227–231.
911. Ibid, pp 247–248.
912. Ibid, pp 265–269.
913. Ibid, pp 290–291.
914. Ibid, pp 297–299.
915. Ibid, pp 362–363, 369–370.
916. Ibid, pp 215–216, 358–359. In December 1845, Governor Grey also made the decision to establish a Māori unit within the colonial forces, who would be paid for their services as well as receiving ammunition and food rations. The war ended before this plan was carried to fruition: ibid, pp 359–360.
917. Ibid, p 216.
918. Ibid, pp 358–359.
919. George Clarke junior to George Clarke senior, 28 July – 21 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 358).
920. Johnson, 'The Northern War' (doc A5), p 396.
921. Colonial Secretary to Clendon, 19 May 1845 (cited in Johnson, 'The Northern War' (doc A5), p 216); Johnson, 'The Northern War' (doc A5), p 283.
922. Johnson, 'The Northern War' (doc A5), pp 283–284; Nuki Aldridge (doc AA167), p 43.
923. Johnson, 'The Northern War' (doc A5), p 284.
924. Ibid, pp 215–216.
925. Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p [249]).
926. Heke to FitzRoy, 29 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 324).
927. Johnson, 'The Northern War' (doc A5), pp 293, 294.
928. O'Malley, 'Northland Crown Purchases' (doc A6), pp 71, 75; see also Johnson, 'The Northern War' (doc A5), p 156. During February, the goods were returned and the land transferred. In March, FitzRoy cancelled his 8 January proclamation: O'Malley, 'Northland Crown Purchases' (doc A6), p 77.
929. Johnson, 'The Northern War' (doc A5), pp 241–243.
930. Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p [248]).
931. Johnson, 'The Northern War' (doc A5), pp 275–276.
932. FitzRoy to Despard, 6 June 1845 (cited in Johnson, 'The Northern War' (doc A5), p 293).
933. FitzRoy to Heke, 6 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 321).
934. Johnson, 'The Northern War' (doc A5), pp 321–322.
935. Ibid, p 328.
936. Ibid, pp 332–333.
937. Ibid, pp 322–324.
938. Ibid, pp 287–288.
939. Ibid, pp 359–360.
940. Ralph Johnson, presentation summary and response to statement of issues (doc A5(d)), p 15.
941. Johnson, 'The Northern War' (doc A5), p 294, see also pp 215–216, 355.
942. Burrows, journal, 1 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 355); see also Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p [251]).
943. George Clarke junior to George Clarke senior, 28 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 355).
944. Johnson, 'The Northern War' (doc A5), pp 236, 240–241, 242–243. The commanding officer, Lieutenant-Colonel William Hulme, identified Pōmare as 'one of the proscribed chiefs' on a list he had been ordered to arrest: Hulme to FitzRoy, 27 May 1845 ('Official Summary of Military Operations at the Bay of Islands', *Nelson Examiner and New Zealand Chronicle*, 26 July 1845, p 83).
945. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc W48), p 253).
946. Bridge, 28 April 1845, 'Journal of Events on an Expedition to New Zealand 4 April – 25 December 1845' (cited in Johnson, 'The Northern War' (doc A5), p 232).
947. 'Official Summary of Military Operations at the Bay of Islands', *Nelson Examiner and New Zealand Chronicle*, 26 July 1845, p 83.
948. George Clarke junior to George Clarke senior, 21 March 1845 (cited in Johnson, 'The Northern War' (doc A5), p 234); see also Clendon's comments on p 234.
949. *Wellington Independent*, 5 July 1845, p 2.
950. Johnson, 'The Northern War' (doc A5), pp 234–235.

951. Ibid, pp 232, 235–237.
952. Ibid, pp 236–240.
953. Hulme to FitzRoy, 27 May 1845 (cited in 'Official Summary', *Nelson Examiner and New Zealand Chronicle*, 26 July 1845, p 83).
954. Johnson, 'The Northern War' (doc A5), pp 236–238, 243.
955. Ibid, pp 236–238; Bridge, journal (Johnson, supporting papers (doc A5(a)), vol 4, p 693).
956. Johnson, 'The Northern War' (doc A5), p 244.
957. Ibid, p 361.
958. Ibid, pp 241–243.
959. Wyatt, 'Old Land Claims' (doc E15), fol 247; Johnson, 'The Northern War' (doc A5), p 169.
960. Johnson, 'The Northern War' (doc A5), pp 242–243.
961. Ibid, p 243.
962. Ibid, p 240.
963. Arapeta Hamilton (doc F12(a)), p 13.
964. Johnson, 'The Northern War' (doc A5), pp 233, 237; Arapeta Hamilton (doc K7(b)), pp 5, 6; Manuka Henare, Hazel Petrie, and Adrienne Puckey, 'Oral and Traditional History Report on Te Waimate Taiamai Alliance', report commissioned by the Crown Forestry Rental Trust, 2009 (doc E33), p 149.
965. Arapeta Hamilton (doc F12(a)), pp 13–14.
966. Ibid, p 14.
967. Johnson, 'The Northern War' (doc A5), pp 353–354.
968. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 356.
969. Ibid, pp 349–350; Johnson, 'The Northern War' (doc A5), pp 168–169.
970. Nuki Aldridge (doc AA167), p 40.
971. Johnson, 'The Northern War' (doc A5), p 218; Nuki Aldridge (doc AA167), p 40.
972. Johnson, 'The Northern War' (doc A5), pp 354–355.
973. Nuki Aldridge (doc AA167), pp 41–42.
974. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 356–357.
975. Nuki Aldridge (doc AA167), p 41.
976. Ibid, p 40.
977. Ibid, p 41.
978. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 357.
979. Johnson, 'The Northern War' (doc A5), pp 353–354.
980. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 356–358.
981. Nuki Aldridge (doc AA167), p 41; see also Johnson, 'The Northern War' (doc A5), pp 207–208.
982. Johnson, 'The Northern War' (doc A5), pp 216–217.
983. Ibid, p 230.
984. Ibid, pp 214, 356–357, 362.
985. Ibid, p 355.
986. Ibid, p 323.
987. Kawharu (doc E50), pp 3–4.
988. Benjamin Pittman (doc W12), p 6.
989. Johnson, 'The Northern War' (doc A5), pp 265–266, 324.
990. Ibid, pp 353–354.
991. *Wellington Independent*, 5 July 1845, p 2.
992. Arapeta Hamilton (doc F12(a)), pp 9, 11, 13.
993. Johnson, 'The Northern War' (doc A5), pp 234–235.
994. Ibid, pp 295–296.
995. Ibid, pp 234–235, 353; Arapeta Hamilton (doc W7), p 8.
996. Johnson, 'The Northern War' (doc A5), p 218.
997. Ibid, p 219.
998. Ibid, p 230.
999. Ibid, pp 219, 355. Mr Johnson named Pārore and Te Tirarau as Ngāti Whātua, but they are more properly regarded as Te Parawhau and other hapū. Te Parawhau were related to Kawiti's Ngāti Hine people.
1000. Wakarongo, 26 April 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p 286); proclamation, 26 April 1845 (Johnson, supporting papers (doc A5(a)), vol 1, p 287).
1001. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc W48), pp 250–251).
1002. Johnson, 'The Northern War' (doc A5), pp 236, 240–241, 242–243.
1003. Crown document bank (doc W48), pp 247, 252–254; Johnson, 'The Northern War' (doc A5), pp 226–227, 231, 243. The Governor initially regarded Pōmare II as hostile, before acknowledging his neutrality: Johnson, 'The Northern War' (doc A5), pp 231–232, 234, 241–243.
1004. Grey to Stanley, 8 December 1845 (Crown document bank (doc W48), pp 302–303); see also Crown document bank (doc W48), p 306.
1005. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc W48), p 253).
1006. Ibid (pp 247, 251–254); Johnson, 'The Northern War' (doc A5), p 231.
1007. FitzRoy to Hulme, 26 April 1845 (Crown document bank (doc W48), p 252).
1008. FitzRoy to Hulme, 4 May 1845 (cited in Johnson, 'The Northern War' (doc A5), p 244).
1009. FitzRoy to Despard, 6 June 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 292–293).
1010. Ibid (p 292).
1011. Submissions in reply for Wai 1514 (#3.3.451), p 6; claimant closing submissions (#3.3.219), p 167.
1012. Belich, *The New Zealand Wars*, p 43.
1013. Grey to Stanley, 10 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 360).
1014. Johnson, 'The Northern War' (doc A5), pp 256–257.
1015. Ibid, pp 248, 300, 364, 377; see also Belich, *The New Zealand Wars*, pp 63–64.
1016. Johnson, 'The Northern War' (doc A5), pp 235, 267–268, 311–312; Te Kapotai Hapu Korero (doc F25(b)), p 48.
1017. Johnson, 'The Northern War' (doc A5), pp 187, 234.
1018. Ibid, pp 237–239.
1019. Arapeta Hamilton (doc F12(a)), p 13.
1020. Te Kapotai Hapu Korero (doc F25(b)), p 23.
1021. Ibid, pp 27, 29–32.
1022. Ibid, pp 49–50.

1023. Johnson, 'The Northern War' (doc A5), pp 267–268.
1024. Ibid; Te Kapotai Hapu Korero (doc F25(b)), p 49.
1025. Johnson, 'The Northern War' (doc A5), pp 268–270.
1026. Ibid, pp 238, 268–270, 310–311.
1027. Ibid, pp 311–312.
1028. Ibid, p 311.
1029. Ibid, pp 234, 236–238; Bridge, journal, 30 April 1845 (Johnson, supporting papers (doc A5(a)), vol 4, p 693).
1030. Bridge, 13 January 1846 (cited in Johnson, 'The Northern War' (doc A5), p 385).
1031. Williams to Church Missionary Society, 7 November 1845 (cited in Johnson, 'The Northern War' (doc A5), p 318).
1032. Johnson, 'The Northern War' (doc A5), p 256.
1033. Clarke to father, 19 May 1845 (cited in Johnson, 'The Northern War' (doc A5), p 256).
1034. Johnson, 'The Northern War' (doc A5), p 256.
1035. Emma Gibbs-Smith (doc W32), pp 24–25.
1036. Johnson, 'The Northern War' (doc A5), pp 190, 378.
1037. FitzRoy to Hulme, 4 May 1845 (cited in Johnson, 'The Northern War' (doc A5), p 244).
1038. Johnson, 'The Northern War' (doc A5), pp 239, 257, 271, 356.
1039. Ibid, pp 236–238, 243.
1040. 'Official Summary', *Nelson Examiner and New Zealand Chronicle*, 26 July 1845, p 83.
1041. Chief Protector, half yearly report, 1 July 1845 (Crown document bank (doc W48), p 267).
1042. Johnson, 'The Northern War' (doc A5), p 379.
1043. Ibid, pp 220–221.
1044. Ibid, pp 257–260, 330, 347, 392; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316, 319.
1045. Johnson, 'The Northern War' (doc A5), pp 286–287.
1046. Ibid, pp 336–338.
1047. Ibid, p 257.
1048. Ibid, pp 257–260; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316.
1049. Johnson, supporting papers (doc A5(a)), vol 1, pp 237–238.
1050. O'Malley, 'Northland Crown Purchases' (doc A6), pp 71, 75, 77.
1051. Johnson, 'The Northern War' (doc A5), p 242.
1052. Ibid, pp 275–276. These terms included Heke's, as well as another set of peace terms recorded by Clendon. According to Johnson, 'No further information has been located in relation to the peace terms recorded by Clendon', but they were unlikely to be from Heke or Kawiti.
1053. Johnson, supporting papers (doc A5(a)), vol 1, p 248.
1054. Heke to FitzRoy, 21 May 1845 (Johnson, supporting papers (doc A5(a)), vol 1, pp 233, 242, 244).
1055. Johnson, 'The Northern War' (doc A5), pp 286–287.
1056. Ibid, pp 319–320.
1057. Heke to FitzRoy, 19 July 1845 (cited in Johnson, 'The Northern War' (doc A5), p 319).
1058. Johnson, 'The Northern War' (doc A5), p 320.
1059. FitzRoy to Heke, 6 August 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 320–321).
1060. Johnson, 'The Northern War' (doc A5), pp 321–322. Prior to the attack on Ōhaeawai, FitzRoy told Colonel Despard of the 99th Regiment that the war would continue until Heke and Kawiti were dead or imprisoned, and their lands forfeited and handed over to Nene and his supporters: Johnson, 'The Northern War' (doc A5), pp 293–294.
1061. FitzRoy to Heke, 6 August 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 320, 321).
1062. Burrows, diary (cited in Johnson, 'The Northern War' (doc A5), p 322); Johnson, 'The Northern War' (doc A5), pp 322–324.
1063. Burrows, diary (cited in Johnson, 'The Northern War' (doc A5), p 322).
1064. Heke to FitzRoy, 29 August 1845 (cited in Johnson, 'The Northern War' (doc A5), p 324).
1065. Ibid (pp 325–326).
1066. Johnson, 'The Northern War' (doc A5), pp 326–327.
1067. Ibid, p 330.
1068. FitzRoy to Heke, 29 September 1845 (Crown document bank (doc W48), pp 342–343).
1069. Ibid; see also Johnson, 'The Northern War' (doc A5), pp 332–333.
1070. Crown document bank (doc W48), pp 333–335.
1071. Kawiti to FitzRoy, 7 October 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 337–338). We have been unable to locate this letter in te Reo Māori.
1072. Johnson, 'The Northern War' (doc A5), pp 349, 351–352.
1073. Captain Everard Home to Rear Admiral Cochrane, 13 November 1845 (cited in Johnson, 'The Northern War' (doc A5), pp 339–340); see also Burrows, *Extracts*, p 49 (doc W48(a), p 29).
1074. Johnson, 'The Northern War' (doc A5), pp 343–348.
1075. Grey to Stanley, 15 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 350).
1076. Johnson, 'The Northern War' (doc A5), p 351.
1077. Ibid, pp 349, 351–352.
1078. Ibid, pp 347–348.
1079. Heke to Grey, 2 December 1845 (cited in Johnson, 'The Northern War' (doc A5), p 347).
1080. Johnson, 'The Northern War' (doc A5), p 348.
1081. Ibid, pp 366–367, 369–370.
1082. Ibid, pp 370–371.
1083. Ibid, p 385.
1084. Grey to Stanley, 13 January 1846 (cited in Belich, *The New Zealand Wars*, p 60).
1085. Belich, *The New Zealand Wars*, p 60.
1086. Ibid, pp 60–61.
1087. Johnson, 'The Northern War' (doc A5), pp 377–378, 380.
1088. Ibid, p 377.
1089. Ibid, p 390; Shirleyanne Brown (doc P9), p 19.
1090. Johnson, 'The Northern War' (doc A5), p 392. Te Whareumu appears to have been the son of Hori Kingi Te Whareumu who was killed in 1828.

1091. Arapeta Hamilton (doc W7), p 9.
1092. Kawiti to Governor, 19 January 1846 (cited in Johnson, 'The Northern War' (doc A5), p 392).
1093. Johnson, 'The Northern War' (doc A5), p 392.
1094. Ibid, pp 257–260, 347; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 315–316, 319.
1095. George Clarke senior, 'Memorandum for His Excellency', 22 January 1846 (Johnson, 'The Northern War' (doc A5), p 393); Johnson, 'The Northern War' (doc A5), pp 393–395; Belich, *The New Zealand Wars*, p 65.
1096. Benjamin Pittman, transcript 4.1.17, Akerama Marae, Tōwai, p 290.
1097. *New Zealand Gazette*, 23 January 1846, no 2, p 7 (cited in Johnson, 'The Northern War' (doc A5), p 394).
1098. Johnson, 'The Northern War' (doc A5), p 395.
1099. Ibid, pp 350–352.
1100. Ibid, p 395.
1101. Burrows, *Extracts*, p 55 (doc W48(a), p 32).
1102. Belich, *The New Zealand Wars*, p 65.
1103. Burrows, *Extracts*, p 55 (doc W48(a), p 32).
1104. Johnson, 'The Northern War' (doc A5), pp 391–392.
1105. O'Malley, 'Northland Crown Purchases' (doc A6), p 91.
1106. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 361.
1107. Heke to Governor, no date (cited in Johnson, 'The Northern War' (doc A5), pp 397–398).
1108. Johnson, 'The Northern War' (doc A5), p 398.
1109. Ibid. Heke's fears were reasonable. A few months later, Grey would capture and imprison Te Rauparaha by luring him onto a Royal Navy ship.
1110. Hone Heke (Johnson, 'The Northern War' (doc A5), pp 398–399). Translation by Dr Jane McRae.
1111. Johnson, 'The Northern War' (doc A5), p 398; Lee, *I have Named it the Bay of Islands*, p 270. See chapter 6 for details of Busby's old land claim.
1112. Johnson, 'The Northern War' (doc A5), p 398.
1113. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 305.
1114. Ibid.
1115. O'Malley, 'Northland Crown Purchases' (doc A6), p 110, see also pp 107–109.
1116. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 360; see also Belich, *The New Zealand Wars*, pp 68–70.
1117. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 360–361; see also O'Malley, 'Northland Crown Purchases' (doc A6), pp 11, 88–93; Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 690.
1118. Heke to Bridge, 16 January 1849 (cited in Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 361).
1119. Johnson, 'The Northern War' (doc A5), pp 401–403.
1120. O'Malley, 'Northland Crown Purchases' (doc A6), pp 93–95.
1121. Williams to Edward Marsh, 28 May 1846 (cited in Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 469).
1122. Vincent O'Malley, '"A Living Thing": The Whakakotahitanga Flagstaff and its Place in New Zealand History', *Journal of New Zealand Studies*, no 8 (2009), p 41.
1123. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 361.
1124. Ibid, p 359.
1125. 'The Governor's Visit to the North', *Daily Southern Cross*, 6 May 1848, p 2.
1126. *New Zealander*, 3 May 1848, p 2.
1127. 'The Governor's Visit to the North', *Daily Southern Cross*, 6 May 1848, p 2.
1128. Ibid.
1129. Johnson, 'The Northern War' (doc A5), p 404; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 60.
1130. Nicholas Bayley, 'Aspects of Maori Economic Development and Capability in the Te Paparahi o Te Raki Inquiry Region from 1840 to c 2000', report commissioned by the Waitangi Tribunal, 2013 (doc E41), pp 51–55; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 361.
1131. O'Malley, 'Northland Crown Purchases' (doc A6), pp 87–88, 134–135.
1132. Johnson, 'The Northern War' (doc A5), pp 71–73.
1133. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 360; O'Malley, 'Northland Crown Purchases' (doc A6), p 81.
1134. O'Malley, 'Northland Crown Purchases' (doc A6), pp 108–110.
1135. Rangatira Moetara and others to Governor, 16 May 1855 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 108).
1136. O'Malley, 'Northland Crown Purchases' (doc A6), pp 115–116.
1137. Ibid, pp 121–127.
1138. Ibid, p 114.
1139. Ibid, pp 124–125.
1140. Ibid, pp 129–130; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 203–205, 361–362.
1141. Donald McLean to Governor Gore Browne, 20 March 1857 (cited in O'Malley, 'Northland Crown Purchases' (doc A6), p 129).
1142. O'Malley, 'Northland Crown Purchases' (doc A6), p 130.
1143. Ibid, pp 118–119; Johnson, 'The Northern War' (doc A5), pp 404–405; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 60; Willow-Jean Prime, transcript 4.1.14, Tau Henare Marae, Pipiwai, p 164.
1144. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 292–293, 315–317, 319, 498–499; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 116.
1145. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 480–483. For an example of the application of this principle, see Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, pp 216–217.
1146. Waitangi Tribunal, *The Taranaki Report*, Wai 143, pp 78–79, 103; Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, pp 480–483; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Wai 814, vol 1, p 121.
1147. Waitangi Tribunal, *Te Mana Whatu Ahuru*, Wai 898, vol 1, p 483; see also Waitangi Tribunal, *The Taranaki Report*, Wai 143, p 80.

1148. This was the essential test used by the Tribunal in *Te Urewera*: Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, pp 292–293, 315–317, 319, 498–499.
1149. Proclamation, 26 April 1845 (cited in Johnson, 'The Northern War' (doc A5), p 224).
1150. Claimant closing submissions (#3.3.219), p 123, see also pp 147, 152.
1151. Crown closing submissions (#3.3.403), p 3.
1152. Closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399), p 87.
1153. Claimant closing submissions (#3.3.403), pp 107, 110–111.
1154. Ibid, p 114.
1155. See, for example, the battle at Te Kahika: Johnson, 'The Northern War' (doc A5), p 253.
1156. Waitangi Tribunal, *Te Urewera*, Wai 894, vol 1, p 360.
1157. Claimant closing submissions (#3.3.403), p 3.
1158. Johnson, 'The Northern War' (doc A5), pp 270, 377–379, 413; Johnson, presentation summary (doc A5(f)), pp 33–34. Specifically: 28 or more killed and 22 wounded at Te Kahika; 10 or more killed and 10 or more wounded at Ōhaeawai; nine or 10 wounded and possibly one killed among Te Kapotai defenders at Waikare; and 23 killed and 30 wounded at Ruapekapeka.
1159. Johnson, 'The Northern War' (doc A5), pp 289–290.
1160. Ibid, p 379.
1161. Ibid, pp 188, 190; Te Rūnanga o Ngāti Hine, 'Ngati Hine Evidence' (doc M24), pp 91–92.
1162. Dr Mary-Anne Baker (doc AA94), p 5.
1163. Johnson, 'The Northern War' (doc A5), pp 252–253, 262.
1164. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 50.
1165. Johnson, 'The Northern War' (doc A5), pp 378–379; see also Ngā Hapū o Whāngārei site visit booklet, pt B (doc I45), p 19; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 57.
1166. Johnson, 'The Northern War' (doc A5), p 366.
1167. Ibid, pp 383–385.
1168. Te Kerei Tiatoa (doc T11), p 16.
1169. Rihari Dargaville (doc G18), pp 43–44; see also Johnson, 'The Northern War' (doc A5), pp 316, 411–412.
1170. Johnson, 'The Northern War' (doc A5), p 412.
1171. Ibid, pp 237–238.
1172. Arapeta Hamilton (doc W7), p 9.
1173. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), pp 29, 31, 46–47.
1174. Shirley Hakaraia (doc E49(h)), pp [3]–[4]; Te Kapotai Hapu Korero (doc F25(b)), p 6; Willow-Jean Prime, transcript 4.1.7, Waitaha Event Centre, pp 579–582.
1175. Johnson, 'The Northern War' (doc A5), pp 263–264, 269; Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 50.
1176. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), pp 46–47.
1177. Shirley Hakaraia (doc E49(h)), p [3].
1178. Johnson, 'The Northern War' (doc A5), pp 311–312.
1179. Ibid, p 311.
1180. Ibid, pp 256–257.
1181. Te Kapotai claimants, 'Te Kapotai Hapu Korero: Mana, Rangatiratanga' (doc F25), p 54.
1182. Johnson, 'The Northern War' (doc A5), p 323.
1183. Crown closing submissions (#3.3.403), p 35.
1184. Johnson, 'The Northern War' (doc A5), p 411.
1185. Rihari Dargaville (doc G18), p 43; see also Ani Taniwha (doc G3), p 13; Abraham Bent (doc S14), p 13; supplementary submission for Wai 2179, Wai 1673, Wai 1852, Wai 1681, Wai 179, Wai 1722, Wai 1582, Wai 1918, Wai 1666, Wai 2149, Wai 2010, and Wai 1832 (doc E57), p 6.
1186. Crown closing submissions (#3.3.403), p 8.
1187. Johnson, 'The Northern War' (doc A5), pp 270–271, 288, 290, 310–311.
1188. Chief Protector, half yearly report, 1 July 1845 (Crown document bank (doc W48), p 267).
1189. Johnson, 'The Northern War' (doc A5), pp 348–349.
1190. Ibid, pp 374, 385.
1191. O'Malley, 'Northland Crown Purchases' (doc A6), pp 71, 75, 77–78; see also Johnson, 'The Northern War' (doc A5), p 156; Guy Gudex (doc I14), pp 3–6. During February, the goods that had been taken during the muru were returned and the land transferred. In March, FitzRoy cancelled his 8 January proclamation: O'Malley, 'Northland Crown Purchases' (doc A6), pp 76–77.
1192. Johnson, 'The Northern War' (doc A5), p 242; see also closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399), p 90; Stirling and Towers, '"Not with the Sword but with the Pen"' (doc A9), pp 350–351.
1193. Arapeta Hamilton (doc F12(a)), p 14.
1194. Johnson, 'The Northern War' (doc A5), p 398; O'Malley, 'Northland Crown Purchases' (doc A6), pp 89, 114.
1195. Arapeta Hamilton (doc F12(a)), p 14.
1196. Johnson, 'The Northern War' (doc A5), pp 226–227, 333; see also Crown document bank (doc W48), pp 247, 252–253.
1197. Johnson, 'The Northern War' (doc A5), pp 368–369, 370–372, 376–377; see also Belich, *The New Zealand Wars*, pp 60–61.
1198. Johnson, 'The Northern War' (doc A5), pp 394–398.
1199. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), p 360; see also O'Malley, 'Northland Crown Purchases' (doc A6), pp 88–90.
1200. Ralph Johnson, transcript 4.1.24, Oromāhoe Marae, Oromāhoe, p 690.
1201. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 360–361; O'Malley, 'Northland Crown Purchases' (doc A6), pp 88–90; see also Belich, *The New Zealand Wars*, pp 68–70.
1202. O'Malley, 'Northland Crown Purchases' (doc A6), pp 129–130.
1203. Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 361, 365.
1204. O'Malley, 'Northland Crown Purchases' (doc A6), pp 129–130; Phillipson, 'Bay of Islands Maori and the Crown' (doc A1), pp 361–362.

1205. Rueben Porter (doc s6), p 38.
1206. Johnson, 'The Northern War' (doc A5), pp 287–291, 295, 332; Murray Painting (doc v12), pp 25–27.
1207. Henare, Petrie, and Puckey, '"He Whenua Rangatira"' (doc A37), p 477.
1208. Johnson, 'The Northern War' (doc A5), p 414.
1209. Closing submission for Wai 1536 (#3.3.368), pp 38–39; Hori Parata (doc C22), p 14.
1210. Nuki Aldridge (doc AA167), p 44.
1211. Closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399(b)), pp 95–96.
1212. Dr Mary-Anne Baker (doc AA94), p 6.
1213. Erima Henare, transcript 4.1.14, Tau Henare Marae, pp 126–128.
1214. Belich, *The New Zealand Wars*, p 70; Johnson, 'The Northern War' (doc A5), p 414.
1215. Nuki Aldridge (doc AA167), p 33; closing submissions for Wai 354, Wai 1514, Wai 1535, and Wai 1664 (#3.3.399)(b)), p 95.
1216. Henare, Petrie, and Puckey, 'Oral and Traditional History on Te Waimate Taiamai Alliance' (doc E33), pp 209–210.
1217. Wayne Stokes (doc H9(a)), p 14.
1218. Benjamin Pittman (doc W12), p 19; closing submissions for Wai 2059 (#3.3.296), p 28.

Page 348: Hōne Heke's September 1844 Letter to the Governor

1. Hone Heke Pokai to FitzRoy, [September 1844] (cited in Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), pp 133–134). Mr Johnson provided the transcript, noting that the letter is stored in microfilm and is difficult to read clearly, and the transcript may therefore contain errors.
2. Hone Heke Pokai to FitzRoy, [September 1844] (cited in Johnson, 'The Northern War' (doc A5), pp 134–136).

Page 353: FitzRoy's 8 January 1845 Proclamation

1. Proclamation, 8 January 1845 (cited in Ralph Johnson, 'The Northern War, 1844–1846', report commissioned by the Crown Forestry Rental Trust, 2006 (doc A5), pp 155–157).

Page 405: E Te Whānau: The Kōrero of Te Ruki Kawiti after the Battle of Ruapekapeka

1. Ms Davis added that Kawiti was not a Christian at this time; the 'whakapono' or faith he refers to is that of the ancient Māori world.
2. Moetu Davis (doc D13), pp 14–20; Moetu Davis, transcript 4.1.4, Whitiora Marae, Te Tii Mangonui, pp 94–106.